UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0670

September Term, 2015

GILLIAN GILBERT WASON

v.

JEFFREY EDWARD LONG

Krauser, C.J.,
Leahy,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: May 24, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

While in an intimate relationship, Gillian Gilbert Wason, appellant, and Jeffrey Long, appellee, had a child together, two-year-old B., who is the subject of this appeal. When that relationship ended, Mr. Long filed a complaint, in the Circuit Court of Wicomico County, seeking physical custody and joint legal custody of B. Ms. Wason responded with a counter-complaint, requesting sole physical and legal custody, and supervised visitation for Mr. Long. At the conclusion of the trial which ensued, the circuit court, after granting joint legal custody, awarded Ms. Wason sole physical custody of B., and Mr. Long, unsupervised visitation. It then ordered Mr. Long to pay child support. That monthly payment was, however, subject to abatement depending upon where he exercised his right to visitation, that is, in Maryland, where he lived, or in Georgia, where Ms. Wason and B. lived.

On appeal, Ms. Wason presents three questions for our review. Rephrased, to facilitate that review, they are:

> I. Did the Circuit Court make a finding of child neglect by Mr. Long, and, if so, did the lower court err by granting Mr. Long unsupervised visitation of B, absent a finding that there is no likelihood of further abuse or neglect?
>
> II. Did the Circuit Court err in calculating Ms. Wason's income for the purposes of child support?
>
> III. Did the Circuit Court err in permitting a deviation from Mr. Long's child support payments based on where he exercised his right to visitation?

For the reasons that follow, we shall vacate the circuit court's grant of unsupervised visitation to Mr. Long, and remand this case to that court for further proceedings regarding whether or not visitation should be unsupervised, in light of what appears to be a finding

by that court of "neglect." Furthermore, we conclude that the circuit court did not err in calculation of Ms. Wason's income, though either party may, of course, petition the circuit court to modify child support, based on a change in circumstances, upon the remand of this case. Finally, as to whether an abatement of Mr. Long's child support was warranted based on where he chose to exercise visitation, we neither affirm nor reverse but remand for the circuit court to clarify its decision with respect to whether the mode of transportation, chosen by Mr. Long, affects the amount of that abatement.

I.

Ms. Wason and Mr. Long met in 2011, when both were users of illegal drugs, in particular, heroin, though Ms. Wason had purportedly terminated her use of such drugs by the end of that year. A year later, the two became engaged to be married. Then, months later, on September 2, 2013, B. was born to Ms. Wason, and Mr. Long, who was also the father of two other children. At that time, they were living together in Salisbury, Maryland. A month after the birth of B., Mr. Long claims that he, too, ceased using illegal drugs, a claim which Ms. Wason disputed at trial.

By September 2014, the couple's relationship had ended, whereupon Ms. Wason, with B., left their shared home. The next month, Ms. Wason moved to Georgia, where her mother lived, taking B. with her and without informing Mr. Long of her decision to do so. Upon learning of the relocation, Mr. Long filed a complaint, in Wicomico County Circuit Court, seeking custody of B. or, alternatively, visitation with her. At the end of that year, a *pendente lite* hearing was held. The resultant order gave Mr. Long supervised visitation with B., and, in lieu of child support, he was responsible for the expense of Ms. Wason's

air flights to Maryland, where Mr. Long exercised visitation. A few months later, Ms. Wason filed a counter-complaint, seeking sole legal and physical custody of B. and requesting that any visitation granted to Mr. Long, with B., be supervised.

In May of 2015, at the trial on this matter, evidence was presented by Ms. Wason, which Mr. Long does not dispute, that, during visitation with his two other children in 2011, he drove those children in a car, while under the influence of heroin, and then, acted in a highly inappropriate and disturbing manner in front of those children. Specifically, during that visitation, Mr. Long was, according to Ms. Wason, "most of the time either half naked or completely naked. He was swinging from the bannister rail . . . he was grabbing ahold of it and swinging on it . . . [he] was just completely incoherent and would lose touch with what was going on and where he was and what his surroundings were. . .." Mr. Long neither admitted nor denied this conduct, asserting only that he had no memory of it.

Testimony was also presented that Mr. Long left a gun in various unsecured locations at the home that he and Ms. Wason shared and that a child of a visiting friend of Ms. Wason, had observed that gun on a coffee table, ran over to it, and grabbed the weapon. Fortunately, Ms. Wason was able to quickly remove it from the child's possession.

At trial, evidence was also presented concerning the parties' employment and income. Specifically, Mr. Long testified that he had previously worked as a car salesman but that he expected to be working shortly as a "sous chef" for a restaurant, where he would be making $46,000 per year. In contrast, Ms. Wason testified that, while in Maryland, she worked as a waitress and a hairdresser, and, after moving to Georgia, she worked as a childcare provider for $50 per week. She expected, however, to be working as a vendor at

a farmer's market for $480 per week beginning that May. She added, however, that that position was "seasonal," that is, she normally worked full-time through the summer, but, in August, her employment would be reduced to part-time, reflecting a seasonal adjustment. She failed to specify, however, whether her salary would be reduced in August, and, if it would be, by how much and for how long.

At trial, Mr. Long also presented evidence as to the cost of travel between Georgia and Maryland, which he had paid to visit B. under the *pendente lite* order, specifically, the expense of flying Ms. Wason and B. to Maryland. If, on the other hand, he chose to drive from Maryland to Ms. Wason's Georgia home, that car trip, he indicated, would be "eleven hours and 48 minutes" long. Finally, the court was advised by Ms. Wason that B. did not "do well" on long car rides. Specifically, Ms. Wason stated:

> Having travelled multiple times with [B.] . . . **she does not do well in car rides past a few hours** . . . [W]hen I drove from Salisbury to Georgia . . . **it took us two days** because we stopped multiple times at attractions to keep her . . . entertained and stimulated . . . even then she was not happy to be in the car for that long of a time.

The court, after those proceedings ended, issued an oral opinion and a written order, in which it awarded joint legal custody to both parties, sole physical custody to Ms. Wason, and unsupervised visitation to Mr. Long. The court then calculated Mr. Long's child support obligation, stating that that obligation would vary, based upon either his mode of transportation, as Ms. Wason claims, or upon the location of visitation, as Mr. Long insists.

Then, in granting Mr. Long unsupervised visitation the court observed:

> [Court:] I think [Mr. Long's] recitation of the law in the case is spot on, **unless [Ms. Wason] can show that visitation with [Mr. Long] presents a clear and present danger to [B.], he is entitled by Maryland law to have**

> **visitation** . . . . I have heard a lot of testimony with regard to [Mr. Long's] drug usage, as well as [Ms. Wason's] drug usage. **He goes off the wagon, so to speak, and when he does, does some fairly bizarre things** . . . we heard testimony . . . that [Mr. Long] was a hard-working, productive employee. So this isn't a situation which [Mr. Long] is always off on a bender. He has obviously supported himself and [Ms. Wason] and their child. . . . So, I do share [Ms. Wason's Counsel's] concern and [Mr. Long's] concern, about him using drugs. That should be addressed . . . in order to have visitation, [Mr. Long] should submit to a chemical test to show that he doesn't have any illegal drugs in his system. . . .
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> * * *
>
> When [Mr. Long] visits in Georgia, he flies down, has three days with her, say three eight-hour days with her, and again it's without supervision, **there is not even a scintilla of evidence in the record that he would harm his daughter**. . . . **There is evidence that he has been neglectful. There is certainly evidence that he has been neglectful.** Leaving a gun around in an apartment where there are kids? If something happens to a child, he would go to jail for reckless endangerment. **So yeah, there were times when he has been negligent. There are no two ways about that.**
>
> But again, I think that with the, that he's probably been under influences of substances at that time, he hasn't been in his right mind, and the court is going to, hopes that his taking of drug tests will be proof that he is in his right mind.

(Emphasis added.)

Consequently, the court ordered Mr. Long to submit to chemical tests for drugs one week prior to any scheduled visitation. If Mr. Long tested positive, visitation would not occur.

Next, in calculating Mr. Long's child support obligation, the court found that Mr. Long's pre-tax income was $3,833 per month, based upon his upcoming employment as a "sous chef" and that $2,080 per month, was the amount Ms. Wason "can earn" based on her employment, at that time, as a vendor for a peach farm at a farmer's market.

Immediately after that, the court stated, in response to an assertion by Ms. Wason's counsel that Ms. Wason's employment status may change, seasonally: "If that happens then she can certainly come back into court and ask for a change of support based upon a change in circumstance. But . . . even with the minimum wage it's going to be close to . . . $2,000 a month." Finally, the court ordered, in accordance with the child support guidelines, that Mr. Long pay $548 in child support monthly.

But, in calculating child support, the court, in effect, deviated from the child support guidelines. It declared that, if Mr. Long exercised visitation in Maryland, he would be responsible for the full amount, $548. However, as to any month that Mr. Long exercised visitation in Georgia, he would not have to pay child support for that month.[1] The court explained:

> So, again, if he goes to Georgia he can have the child for eight hours a day for three days, but **the child will be home sleeping with Mom at night** during those three days. And given **the expense that he would incur by having to fly down there and putting himself up for three or four days**, the court would find that would be a basis to go below the guidelines and **not require him to pay child support**. On the car scenario, he will be paying child support. **If he flies down to Georgia and has visitation there, with [B.] going to bed every night in her bed or her crib, whichever it is, then I think, again, that would be a reason to go below the guidelines and not require him to pay child support.**

Further, in addressing the advantages of Georgia as a visitation site, as opposed to Maryland, the court stated:

> [T]his is a very young child. For **her to be away from her mother for a significant period of time, from the bed that she's used to sleeping in, I think that can be injurious to the child.** All the case law says that the best

[1] The court made it clear that, if Mr. Long chose to visit B. in Georgia, but did not actually exercise that visitation, he would be responsible for child support for that month.

> interests of the child is to **keep the child's routine as uninterrupted as possible.**

Consequently, the court's ensuing written order stated:

> [I]f the father elects to exercise visitation in Georgia in any given month, his child support obligation as set forth herein shall be abated for that month and no payment is required. The Court makes this determination in consideration of the expenses the Father will incur by having to travel to Georgia for visitation.

II.

Ms. Wason contends that the circuit court made a finding of "neglect," and, therefore, Mr. Long had the burden, under Section 9-101 of the Family Law Article, before being awarded unsupervised visitation rights, to establish that he presented no likelihood of further abuse or neglect to B. Nonetheless, the circuit court, she maintains, erroneously placed the burden of proof on her to show that Mr. Long, as the court put it, "present[ed] a clear and present danger," before removing his right to visitation. Mr. Long responds that the circuit court did not make a finding that he had previously been neglectful, and, even if it did, the circuit court properly made the specific finding, that he presented no likelihood of further abuse or neglect to B. that is required by Section 9-101, before awarding him unsupervised visitation.

At trial, evidence was presented establishing, among other things: Mr. Long's drug abuse, the incident in which he drove his two other children, in his car, while under the influence of heroin, his practice of keeping a handgun in various unsecured locations throughout the home, and, once, the gun was left on a coffee table in the living room at the parties' then shared home, while children were present. Not only did Mr. Long admit that,

while under the influence of heroin, he had driven his two older children in his car, but, according to Ms. Wason, during that same period of visitation with his other two children Mr. Long was "most of the time either half naked or completely naked" and "completely incoherent." He "would lose touch," she said, "with what was going on and where he was and what his surroundings were. . . ." Mr. Long's response to these accusations was that he had no memory of this behavior.

But, notwithstanding this evidence, the court awarded Mr. Long visitation, stating that, "unless [Ms. Wason] can show that visitation with [Mr. Long] presents a clear and present danger to [B.], he is entitled by Maryland law to have visitation." Then, turning to the question of whether his visitation should be supervised, the court stated: "There is evidence that he has been neglectful. There is certainly evidence that he has been neglectful. Leaving a gun around in an apartment where there are kids? . . . So yeah, there were times when he has been negligent. There are no two ways about that." Yet, the court found that "there is not even a scintilla of evidence in the record that he would harm his daughter," and, therefore, awarded Mr. Long unsupervised visitation.

As the trial court is in "a far better position than is an appellate court . . . to weigh the evidence and determine what disposition will best promote the welfare of the [child]," *In re Yve S.*, 373 Md. 551, 584 (2003), we do not disturb decisions made by such a court "unless there has been a clear abuse of discretion." *In re Billy W.*, 387 Md. 405, 447 (2005). Moreover, "absent a misstatement of law or conduct inconsistent with the law, a '[t]rial [judge is] presumed to know the law and apply it properly." *See Medley v. State*, 386 Md. 3, 7 (2005) (quotation omitted); *John O. v. Jane O.*, 90 Md. App. 406, 429, (1992) (holding

that, unless it is clear from the record that a trial judge does not know the law, the presumption remains that the judge knows and applies the law correctly) *abrogated on other grounds by Wills v. Jones*, 340 Md. 480, 493 (1995).

The primary consideration, in all visitation determinations, is the best interest of the child. It has been said to be "always the starting—and ending—point." *Boswell v. Boswell*, 352 Md. 204, 236 (1998). "Thus, while a parent has a fundamental right to raise his or her own child . . . the best interests of the child may take precedence over the parent's liberty interest . . . ." *Id.* at 219. And, while "the non-custodial parent has a right to liberal visitation with his or her child at reasonable times and under reasonable conditions, [] this right is not absolute." *Id.* at 220 (internal quotation marks and citations omitted). In fact, under Section 9-101 of the Family Law Article, a parent's right to visitation may be curtailed for abuse or neglect. That section states:

> (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.
>
> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

In sum, under subsections (a) and (b) of Section 9-101 "when a court has reasonable grounds to believe that neglect or abuse has occurred . . . custody or visitation must be denied, except for supervised visitation, unless the court makes a specific finding that there

is no likelihood of further abuse or neglect." *In re Billy W.*, 387 Md. 405, 447-48 (2005). The two subsections, when read together, establish a two-step process:

First, under subsection (a), the court must determine if it has "reasonable grounds to believe" that the parent seeking visitation has abused or neglected a child, FL § 9-101(a), and that child need not be the one at issue, as subsection (a) "refers to the abuse or neglect of *any* child in the past." *In re Billy W.*, 387 Md. 405, 450 (2005) (citing *In re Adoption No.* 12612, 353 Md. 209 (1999)). Moreover, subsection (a)'s "reasonable grounds to believe" burden of proof is "indistinguishable from proof . . . by a preponderance of the evidence. . . . " *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 684 (2014).

Subsection (a) is relevant to, not only cases of sexual abuse, *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669 (2014); physical assault, *In re A.N.*, 226 Md. App. 283 (2015); second-degree murder of the parent's previous child, *In re Adoption No. 12612*, 353 Md. 209 (1999), but, also, to cases involving drug use by parents that may affect the children's living environment, *In re Adoption of Cadence B.*, 417 Md. 146 (2010); *In re Deontay J.*, 408 Md. 152, 968 A.2d 1067 (2009). And, as to such cases, "a court does not need to wait until a child suffers physical or mental injury prior to determining that neglect occurred." *Doe v. Allegany County Dept. of Social Services*, 205 Md. App. 47 (2012) (discussing neglect in the context of the definition given in Subtitle 7 of Title 5 of the Family Law Article) (citing *In re Dusting T.*, 93 Md. App. 726, 735 (1992)). Indeed "[n]eglect can be found if a child is placed in a significant risk of harm." *Id.*

Second, under subsection (b) of Section 9-101, if such "reasonable grounds" of previous abuse or neglect exist under subsection (a), the court must make an additional

"specific[] find[ing] that there is no likelihood of further child abuse or neglect" before granting custody or visitation rights to the party found to have previously been abusive or neglectful. FL § 9-101(b). If the court does not, or is unable, to make a finding that there is no likelihood of further neglect or abuse, it is required to deny custody or unsupervised visitation to that parent, although the court "*may* approve a supervised visitation." *Id.* (emphasis added).

But, more important here, in light of Ms. Wason's claim, is that, as to subsection (b), "[t]he previously abusive or neglectful parent shoulders the burden of proving that the past conduct will not likely be repeated." *In re Adoption of Cadence B.*, 417 Md. 146, 157 (2010). We do note, however, that "even upon substantial evidence of past abuse or neglect, [Section 9-101] does not require a finding that future abuse or neglect is impossible or will, in fact, never occur, but only that there is no likelihood—no probability—of its recurrence." *In re Adoption No. 12612*, 353 Md. 209, 238 (1999).

Having set forth the relevant legal principles, we now turn to the first question: whether the circuit court made a finding of neglect under subsection (a). The court was provided with testimony and evidence concerning Mr. Long's illegal drug use, and his addled and bizarre conduct, while under the influence of those drugs during his visitation with his two older children in 2011, including driving those children while on heroin, as well as appearing naked and incoherent before them while swinging from a bannister. No less troubling was testimony concerning Mr. Long's practice of keeping a handgun in various unsecured locations throughout his house, including, on a coffee table in the living

room, where a household guest's child once picked up that weapon after seeing it lying there.

The court concluded: "There is evidence that [Mr. Long] has been neglectful. There is certainly evidence that he has been neglectful. Leaving a gun around in an apartment where there are kids? . . . So yeah, there were times when he has been negligent. There are no two ways about that." Given the evidence before the court, and, more importantly, the court's express and what appears to be an emphatic finding of neglect, we believe Section 9-101 was triggered. That the specific neglectful act cited by the court, as Mr. Long points out, refers to an incident that involved another child, is not relevant. As we noted earlier, subsection (a) "refers to the abuse or neglect of any child in the past" *In re Billy W.*, 387 Md. at 450.

What is less clear is whether the circuit court properly applied subsection (b) of Section 9-101. It is true, as Mr. Long asserts, that the court stated that "there is not even a scintilla of evidence in the record that he would harm his daughter," which, of course, directly conflicts with his finding of neglect, even if it involved other children. This raises the question whether the court realized that neglect of other children would constitute evidence of neglect for the purposes of this case.

Moreover, it appears that the court placed the burden of proof on Ms. Wason, when it stated: "[U]nless [Ms. Wason] can show that visitation with [Mr. Long] presents a clear and present danger to [B.], he is entitled by Maryland law to have visitation." That shift in the burden of proof clearly violated current Maryland decisional law which places that burden on the previously neglectful or abusive party. *In re Adoption of Cadence B.*, 417

Md. at 157. Finally, that burden is not the absence of a showing of "clear and present danger" to the child at issue. Rather, the court must make a "specific finding that there is no likelihood of further abuse or neglect." Consequently, the record clearly suggests that the court did not properly apply Section 9-101 to the evidence before it, and, therefore, it abused its discretion in awarding unsupervised visitation to Mr. Long.

Accordingly, we will remand this case to readdress the issue of whether there was evidence of neglect by Mr. Long. If there was, the court must make a specific finding that Mr. Long presents "no likelihood of further child abuse or neglect," should it decide to award Mr. Long, once again, unsupervised visitation with B.

III.

Ms. Wason contends that the circuit court abused its discretion by improperly "imputing income" to her absent a finding that she was "voluntarily impoverished." Mr. Long responds that the court simply used Ms. Wason's actual income, at the time of trial, in calculating Mr. Long's child support obligation.

In calculating a parent's financial obligations under the child support guidelines, a court is required to consider the "actual income of a parent, if the parent is employed to full capacity," or, in the alternative, the "potential income of a parent, if the parent is voluntarily impoverished." Md. Code Ann., Fam. Law § 12-201. But, "[b]efore an award may be based on potential income, the court must hear evidence and make a specific finding that the party is voluntarily impoverished." *Reuter*, 102 Md. App. at 221 (*citing John O. v. Jane O.*, 90 Md. App. 406, 423 (1992)). In reviewing this issue, we do not disturb a factual finding of the circuit court unless we find it to be clearly erroneous, and a ruling

based on those facts must stand unless that ruling constitutes an abuse of discretion. *Reuter v. Reuter*, 102 Md. App. 212, 221 (1994) (citations omitted).

At the trial, in May 2015, Ms. Wason presented evidence that her employment as a farmer's market vendor was "seasonal" in nature and would shift from full to part-time in August 2015. But, although she testified that she was paid $480 per week, she did not provide the court with any information as to whether her income would be reduced when her position changed to part-time, and if it would be reduced, by how much and for how long. Consequently, the court found that $2,080 was "the amount of income that [Ms. Wason] can earn," and advised Ms. Wason that, if her employment changed in August, "if that happens, then she can certainly come back into court and ask for a change of support based upon a change in circumstance."

Thus, the circuit court did not base Ms. Wason's income calculation on her potential income, nor did the court make a specific factual finding that Ms. Wason was voluntarily impoverished. Rather, the court accepted Ms. Wason's testimony that she was, at the time, employed as a vendor and made $2,080. Thus, $2,080 was her *actual* income as a vendor at the time of the trial. Moreover, as noted, Ms. Wason failed to provide the court with what her income would be reduced to in August, if at all, and for how long. But, even if it was reduced, that court noted that "with the minimum wage it's going to be close to . . . $2,000 a month." But the circuit court made it clear that it was not basing calculation of Ms. Wason's income on that number, but rather, based on her actual income of $2,080 as

a vendor.[2] Absent any specific evidence, outside of her general assertion, of any possible changes to her income in August, it was not an abuse of discretion for the circuit court to assess her income as $2,080. We do note, however, that while we affirm the ruling of the circuit court as to the issue, either party may wish to petition the court to modify child support, based upon a change in circumstances, after remand of this case.

IV.

Ms. Wason contends that the circuit court erred in permitting Mr. Long's monthly child support obligation to vary based on where he exercised visitation for that month. Because this support abatement is, she claims, based on Mr. Long's "mode of transportation," it undermines, she insists, the purposes of the child support guidelines. Mr. Long responds that the circuit court did not abuse its discretion but appropriately considered the best interests of the child in tailoring Mr. Long's support obligation.

The circuit court ordered Mr. Long to pay $548 per month in child support if visitation was exercised in Maryland. However, if Mr. Long exercised visitation in Georgia, his child support obligation would be completely abated. The resultant order, however, makes no mention of Mr. Long's "mode of transportation," but, rather, succinctly states: "[I]f the Father elects to exercise visitation in Georgia in any given month, his child support obligation as set forth herein shall be abated for that month . . . . The Court makes

[2] Because we conclude that the circuit court did not, in fact, base her child support obligations on "potential income," but on her "actual income," we do not need to address Ms. Wason's claim that, since B. was under two years of age at the time of trial, the circuit court erred by basing her support level on her "potential income," as under Section 12-204(b) of the Family Law Article, a determination of potential income cannot be imputed to a parent who is caring for a child under two years of age.

this determination in consideration of the expenses the Father will incur by having to travel to Georgia for visitation."

Obviously, "[a] parent has both a common law and statutory duty to support his or her minor child." *Drummond v. State to Use of Drummond*, 350 Md. 502, 520 (1998) (citation omitted). To determine the monetary level of that duty, the legislature enacted those child support guidelines on the belief that "a child should receive the same proportion of parental income, and thereby enjoy the same standard of living, he or she would have experienced had the child's parents remained together." *Voishan v. Palma*, 327 Md. 318, 322 (1992). But, "the amount of a child support award is [ordinarily] governed by the circumstances of the case and is entrusted to the sound discretion of the trial judge," and his "determination should not be disturbed unless he has acted arbitrarily in administering his discretion or was clearly wrong." *Gates v. Gates*, 83 Md. App. 661, 663 (1990).

The decision of the circuit court appears predicated on two grounds: First, the costs that Mr. Long would incur by exercising visitation in Georgia, which might prevent regular visitation, and second, that visitation in Georgia, as opposed to Maryland, would be in B.'s best interests.

The circuit court based the amount of the abatement on the expense of Mr. Long flying to Georgia, were he to exercise his visitation there. The circuit court may consider, as Ms. Wason concedes, the expense of visitation in determining the appropriate amount of child support, and, here, Mr. Long provided the circuit court with evidence of the cost of flights from Maryland to Georgia. The court obviously believed that it was in B's best

interest to see her father at least monthly, and the high cost of travel to Georgia, unless the child support payment was abated, might preclude visitation on a regular basis.

Next, we note that, in tailoring this arrangement, the circuit court considered the benefits to B. of Mr. Long exercising visitation in Georgia, as opposed to Maryland, that is, B. would not be removed from her mother at night, nor her home. Specifically, the court stated that, if Mr. Long "flies down to Georgia and has visitation there, with [B.] going to bed every night in her bed or her crib . . . then I think, again, that would be a reason to go below the guidelines and not require him to pay child support." The court's decision to abate child support payment appears to also reflect Ms. Wason's concern that B. would not "do well" during the two twelve-hour car trips that would be required if Mr. Long were to exercise visitation in Maryland, as the abatement gives Mr. Long an incentive to exercise visitation in Georgia. It, therefore, appears that the court considered B.'s best interests in ordering an abatement of Mr. Long's child support payment, when he exercised visitation in Georgia.

However, while recognizing the significant discretion that trial courts may exercise over child support awards, we note an inconsistency, or, at least, an ambiguity, in the circuit court's ruling. As discussed, the circuit court considered the high cost of air travel which Mr. Long would incur by exercising visitation with B. in Georgia. It further outlined a specific visitation arrangement when Mr. Long exercised visitation in Maryland: "[H]e drives down to Georgia to get Brooklyn and brings her back here for visitation here in [Maryland]. And then [Ms. Wason] is coming back here to [Maryland] and picking the child up and bring her back to Georgia." Yet, in its written order, the court does not tie

abatement of Mr. Long's child support obligations exclusively to Mr. Long flying to Georgia, though other means of transportation, such as by car, are presumably less expensive. Consequently, pursuant to Maryland Rule 8-604(d),[3] we shall neither affirm, nor reverse, the determination of the circuit court as to Mr. Long's child support abatement. Rather, we shall remand for the circuit court to clarify if Mr. Long's child support abatement would differ if he elected to drive, not fly, to Georgia to exercise visitation there.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AS TO UNSUPERVISED VISITATION VACATED; JUDGMENT AS TO APPELLANT'S CHILD SUPPORT CALCULATION REVERSED; JUDGMENT AS TO APPELLEE'S CHILD SUPPORT ABATEMENT ARRANGEMENT, NEITHER AFFIRMED NOR REVERSED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.
COSTS TO BE DIVIDED EQUALLY BETWEEN APPELLANT AND APPELLEE.

[3] Maryland Rule 8–604(d)(1) provides:

> Generally. If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.