

Circuit Court for Howard County
Case No. 13-C-15-105659

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2660

September Term, 2016

JUDITH DEL ROSARIO FORRESTEL

v.

BRADLEY ADAM FORRESTEL

Berger,
Nazarian,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 17, 2017

* 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.

On April 8, 2016, the Circuit Court for Howard County awarded joint *pendente lite* legal custody of their son (“Child”) to Bradley Forrestel (“Father”) and Judith Forrestel (“Mother”). In defiance of this order, Mother absconded with Child, leading to a bi-coastal search and ultimately her September 18, 2016 arrest in Seattle, Washington. During this time, the circuit court awarded Father sole *pendente lite* legal and physical custody. After Mother’s arrest, Father flew to Seattle to pick up Child and bring him back to Maryland, and Child remains in his sole custody.

During a custody hearing on October 28, 2016, Mother requested access to Child, arguing that it is in his best interest that he be allowed to see his mother. The court ruled that it would not consider that request until Mother underwent a psychological examination. Mother then filed two Emergency Motions for Supervised Visitation, both of which were denied based on a magistrate’s recommendation that the court had already ruled on the issue and that there was no emergency indicated by the facts of the case. Mother appeals all three of these rulings, alleging that these decisions violated her constitutional right to her child and her child’s constitutional right to his mother. We disagree and affirm.

I. BACKGROUND

Child was born on June 8, 2015. During a trip to Pennsylvania in October 2015, Father and Mother had an altercation.¹ Mother left the hotel where the family was staying with Child, and later filed a Petition for Protection from Domestic Violence in the District

¹ Father described it as an argument; Mother said that it was domestic violence.

Court for Howard County. The district court entered a temporary protective order that was dismissed when Mother failed to appear at a hearing. Father, who had attended the hearing, returned to the family home that day to find that Mother and Child and their belongings gone. Father did not learn of their whereabouts until eighteen days later, when he received notice of a court action and a temporary restraining order Mother sought against him in California.²

Once he learned that Mother and Child were in California, Father filed a complaint for custody in the circuit court. After a telephone conference with a court in California, the court determined that Maryland was Child's home state and that it had jurisdiction to determine custody. The court granted Father visitation rights,³ but the expense associated with weekly travel to California made this visitation plan unworkable, so he moved for a *pendente lite* hearing and sought a new custody plan. At the hearing, Mother sought sole custody so Child could remain with her in California,⁴ and Father sought joint custody and for Child to live in Maryland.⁵ On April 8, 2016, the court determined that joint legal

² The circumstances surrounding this case quickly become muddled, and we have focused on the facts bearing on Mother's appellate contentions.

³ Father was granted unsupervised visitation from 9:00 a.m. to 5:00 p.m. on Saturdays and Sundays, and at least one day per week of video conferencing.

⁴ Mother's proposal did not outline an access schedule for Father.

⁵ Father's proposal allowed Mother use and possession of the family home and vehicle to provide Child access to both parents and the home he has known since birth.

custody served Child’s best interests and ordered that Mother return to Maryland with him within fifteen days.⁶

Following this ruling, though, Mother did not respond to Father’s request for flight information, nor to his offer to purchase their return flight tickets himself. In response, Father filed an *ex parte* motion for immediate custody, which the court denied on procedural grounds. On Friday, April 29, 2016, Father traveled to California for a weekend visit, then flew back to his parents’ house in Maryland with Child that Sunday.⁷ Mother returned to Maryland shortly thereafter, and Father returned Child to her on the morning of Monday, May 2, at the Howard County Southern District Police Station, as the April 8 order required. Mother then took Child into the police station to file a report because, she alleged, that there were bruises on him, but the police determined that there was no evidence of abuse and took no further action.⁸

Throughout the week that followed, Father attempted to contact Mother to arrange a time to meet and exchange Child on Friday, May 6, for his weekend visit. But Mother

⁶ The court ordered visitation for Father from 5:00 p.m. to 8:00 p.m. on Wednesdays and from Friday evenings to Monday mornings each week, and that Mother had access the rest of the time. Further, the court awarded Mother exclusive use of the family home and car and ordered that each party submit to a “psychological evaluation to assess fitness to parent.” Finally, Father was ordered to pay Mother \$1,055.00 per month as *pendente lite* child support, along with \$2,578.80 in child support arrearages paid in \$100 monthly installments.

⁷ The April 8, 2016 *pendente lite* custody plan directed Father to stay at his parents’ house so that Mother could have full use of the family home.

⁸ The Police Report stated that the bruises were old, not new.

again was unresponsive, and did not appear at the police station for the exchange. As a result, Father asked that the police perform a wellness check on Mother and Child at the family home, but the police were unable to make contact with them.

On May 12, 2016, Father, who had not had any contact with Child since the May 2 drop-off at the police station, filed a Motion for Court to Issue Child Abduction Order. On June 2, 2016, the circuit court granted this motion, finding that Mother was in “violation of Maryland Family Law Code Annotated § 9-304 and/or 9-305, and is subject to the penalties set forth in § 9-307.” The court awarded Father sole *pendente lite* legal and physical custody of Child and ordered that that he could use whatever means necessary to locate and recover Child. Three weeks later, the same court issued a felony child abduction warrant against Mother. State and federal law enforcement officers attempted to locate Mother for over three months.⁹ They ultimately found and arrested her on September 18, 2016 in Seattle, Washington. Father was reunited with Child in Seattle on September 19, 2016, and they flew back to Maryland that day. Child has remained in Father’s sole care and custody ever since.

Mother has since filed three requests for supervised visitation with Child. She made the first request during a hearing in the circuit court, but the trial judge declined to consider the request until “there’s been a psychological evaluation” performed. Mother then filed an Emergency Motion for Supervised Visitation on January 30, 2017. The circuit court

⁹ Mother assumed a false identity and referred to Child by a different name when evading law enforcement.

adopted and entered a magistrate’s decision denying the motion since the “facts alleged do not constitute an emergency” and the circuit court “has already . . . denied [this] request until such time as the [c]ourt receives the results of a psychological evaluation.” Finally, Mother filed a Request for Emergency Relief and another Motion for Supervised Visitation on February 1, 2017. The circuit court again adopted the magistrate’s decision denying the motion because “the facts alleged do not constitute an emergency.” Mother filed a timely appeal of all three decisions.¹⁰

II. DISCUSSION

We have consolidated Mother’s issues on appeal¹¹ into three contentions. *First*, she contends that the circuit court erred in not considering her request that she be allowed to

¹⁰ Mother was a *pro se* litigant throughout these proceedings.

¹¹ Mother phrased the Questions Presented in her brief as follows:

1. Is the trial court’s decision to deny a 15-month-old baby **any and all access** with his mother and primary care giver, over the course of eight months to present day, in the best interest of the child?
2. Is the trial court’s decision to deny a baby **any and all access** with his primary care giver and mother, who he naturally had a strong bond and attachment with, a violation of Maryland law, an abuse of judicial discretion and an infringement on the child’s 14th Amendment rights as a person?
3. Is the trial court’s decision to obligate a child to remain in a dangerous situation with an unconscionable individual who has no insight or responsibility into his pattern of acts of abuse a violation of the child’s 14th Amendment right to live life free of abuse?
4. Is the trial court’s decision to deny Appellant-Mother’s January 30, 2017 Emergency Motion for Supervised Visitation with Conditions a violation of law, an abuse of

see Child until she had undergone a psychological evaluation. *Second*, she argues that the circuit court erred in adopting the magistrate’s recommendation that denied her motion for supervised visitation with conditions. *Third*, she challenges the circuit court’s adoption of the magistrate’s recommendation denying her request for emergency relief and motion for supervised visitation.

We review child custody determinations using three interrelated standards of review:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rule 8-131(c) applies. Second, if it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the court’s decision should be disturbed only if there has been a clear abuse of discretion.

Baldwin v. Baynard, 215 Md. App. 82, 104 (2013) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). The trial judge’s decision to deny Mother’s request for supervised visitation and

discretion and an infringement on Mother’s 14th Amendment rights?

5. Is the trial court’s decision to deny Appellant-Mother’s February 6, 2017 Request for Emergency Relief and Motion for Supervised Visitation a violation of law, an abuse of discretion and an infringement of Mother’s 14th Amendment rights?
6. Is the trial court’s decision to hold a hearing on April 19, 2017, make unsubstantiated findings of fact and continue denying Appellant-Mother care and custody of her child a violation of law, an abuse of judicial discretion and an infringement on Mother’s 14th Amendment rights?

adopt both magistrate recommendations to deny the Emergency Motions for Supervised Visitation entered by the circuit court all rest on sound legal principles and facts that are not clearly erroneous. Therefore, we review those findings to determine if there was an abuse of discretion. *See Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 686 (2014). We reverse a trial court’s decision only when the court acted “without reference to any guiding rules or principles,” or when “no reasonable person would take the view adopted by the circuit court,” or when the circuit court’s decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (quoting *North v. North*, 102 Md. App. 1, 13–14 (1994)).

The circuit court declined to consider Mother’s request for immediate supervised visitation with Child until Mother had undergone a psychological evaluation. The court denied Mother’s subsequent motions seeking emergency supervised visitation based on the magistrate’s finding that no emergency existed and the circuit court’s previous ruling on the issue. Mother argues that these denials of supervised visitation violate her constitutional right to her child and Child’s constitutional right to his mother. She alleges that she has been “egregiously denied due process, care and custody of her child and equal protection of the law.”¹²

The three rulings at issue all proceed from the same core decision: the court denied Mother’s requests for visitation because Mother failed to comply with the April 8, 2016 order’s directive that “each party shall submit to a psychological evaluation to assess fitness

¹² Mother cites no case law in support of her arguments.

to parent.”¹³ The court said as much the first time, and Mother has refused to follow through or to demonstrate that she can follow the court’s direction. Nor did she demonstrate an emergency—beyond her understandable desire for visitation—that compelled the court to override that condition. To the contrary, Mother’s actions—including absconding with Child for two months leading to felony child abduction charges, using different names for herself and Child while evading law enforcement, and taking Child to California without telling Father in the first place—refute the idea that “no reasonable person” would agree to condition further consideration of visitation on a psychological evaluation, or that such a decision fell “beyond the fringe of what th[is] Court deems minimally acceptable.” *Id.*

When reviewing visitation decisions, we defer to trial courts’ assessments of witness credibility because they are in a far better position to “determine what disposition will best promote the welfare of the child.” *Id.* at 687 (quoting *In re Yve S.*, 373 Md. at 584, 586). After seeing witnesses in person and hearing from both parties, the circuit court found that awarding sole custody to Father provides “stability for right now.” The court observed that Mother “has been in places and I don’t know where,” and expressed “concerns for the child’s welfare.” And this is all *pendent lite*—the trial court’s decision to order a psychological examination reflected the record the court had at the time, but was not a permanent custody decision, and could well be amended if further evidence supports a different final arrangement. We see no abuse of discretion in the court’s decisions to deny

¹³ Father completed his psychological evaluation on July 20, 2016.

Mother's requests for supervised visitation unless and until she obtains a psychological evaluation and the court has an opportunity to determine whether that analysis indicates that visitation is in Child's best interest.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**