Circuit Court for Montgomery County
Case No. 149675 FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 64

September Term, 2019

LEMLEM REDAE

v.

YOSEPH SEYOUM

Wright,
Graeff,
Nazarian,

JJ.

Opinion by Graeff, J.

Filed: September 30, 2019

This case arises from a dispute between Lemlem Redae ("Mother"), appellant, and Yoseph Seyoum, ("Father"), appellee, regarding their son, A.S. Mother appeals the custody and child support order issued by the Circuit Court for Montgomery County.[1] She presents the following questions[2] for this Court's review, which we have rephrased slightly, as follows:

[1] On October 31, 2018, at the end of the hearing, the court issued a ruling granting joint legal custody and shared physical custody of A.S. and ordering Father to pay Mother child support in the amount of $1,507. The court's written order was entered on November 27, 2018. Mother then filed a Motion to Alter or Amend, and For Reconsideration and Enforcement of Custody and Child Support Order, and Father also filed a motion for reconsideration. The trial judge held a brief hearing on the motions and a revised order was entered on March 5, 2019. Appellant filed her timely Notice of Appeal that day.

[2] The questions presented in Mother's brief are:

> 1. Under *Taylor v. Taylor*, did the trial court abuse its discretion in ordering joint legal custody, when the trial court correctly found that the parties' post-separation ability to communicate was severely lacking, that Father was authoritarian in nature when dealing with Mother, he diminished the parents' likelihood to be equal parents and he did not respect Mother's ability to make parenting decisions?
>
> 2. Did the trial court err in awarding joint physical custody when it did not analyze any of the *Montgomery County v. Sanders* best interest factors, focused only on the joint custody factors without a full analysis of the evidence presented, and did not separately address physical custody from legal custody.
>
> 3. Did the trial court abuse its discretion in not deviating from the presumptive amount of child support given Father's superior financial circumstances consisting of million dollar plus real estate investment portfolio and his technology based business, and Mother was found to have

1. Did the circuit court err in ordering joint legal custody of A.S.?

2. Did the circuit court err in ordering that the parties have joint physical custody of A.S.?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

The Parties' History

In 2011, Mother met Father at a comedy show.[3] They began dating, Mother became pregnant, and she moved from her apartment in Takoma Park into Father's townhouse in Northeast Washington, D.C.

Father received a bachelor's degree from Penn State in 1993. He is an entrepreneur. He testified that he was the "CEO for a tech company [called] Phantom Alert," he had another company called "Phantom Plate," he had an e-book, and he had "been tapped on the shoulder . . . to do a fund-raising [campaign] for the Prime Minister of Ethiopia." Additionally, at the time of trial, he was working on a commercial application for a pill to treat irritable bowel syndrome.

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no assets and her income and child support would not cover her expenses, thereby affecting child's standard of living in her home?

At oral argument, counsel for Mother withdrew the third issue, addressing child support, and proceeded only on her first two questions presented.

[3] Both Mother, who was 38 at the time of trial, and Father, who was 48 at the time of trial, are from Ethiopia.

Mother went to college to study office supply management. In 2009, she began taking classes to become a pharmacy technician, and she also enrolled at Montgomery College, where she took approximately 12 credits. At the time Mother was pregnant with A.S., she was taking classes and working for Rite Aid as a pharmacy technician. Mother currently works at Costco Pharmacy as a pharmacy technician.

In the months before Mother gave birth, Father went to many of Mother's prenatal care appointments, and Mother and Father spent time child-proofing the townhouse and preparing for the new baby. On June 10, 2013, A.S. was born, and Father was present for the delivery. Mother and Father brought A.S. home from the hospital together.

When A.S. was first born, the parties hired a nanny to assist Mother. Mother testified that she did not want a nanny, but Father insisted. Father testified that Mother became dissatisfied with the nanny after approximately 40 days, and he "had to let her go." Father told Mother that if she wanted a new nanny, she would have to hire one herself. Mother never hired a new nanny.

When A.S. was approximately eight weeks old, he was taken to the hospital because he appeared to be having a seizure. A.S. remained at the hospital for approximately three to five days while hospital personnel ran tests to ensure he was okay.[4]

Father testified that, when A.S. returned from the hospital, he became "extra sensitive" regarding A.S.'s well-being. Prior to visiting the hospital, A.S. slept in his crib

[4] The record does not indicate that the hospital ever determined what was wrong with A.S., but A.S. has not had any serious health issues since this incident occurred.

or with the parties, but after returning from the hospital, A.S. slept exclusively in between Mother and Father "for quite awhile." Father eventually left the master bedroom and began sleeping in the guestroom.

He and Mother ceased having sexual relations after A.S. returned from the hospital, and their relationship gradually changed.[5] Father testified: "[A.S.] went to the hospital. Things changed. My dad got sick. He died and then the relationship just kind of broke apart." Father further testified that, after his Father died, he and Mother "became like roommates." Mother testified that her relationship with Father did not change immediately after A.S.'s hospitalization. Rather, their relationship started to change when A.S. was approximately five or six months old, around the time Father's father died.

Mother testified that after Father's father died, Father started staying late at work, and he would return home "sometimes after midnight." She further testified that, "for no reason, he would get angry and would call [her] names," and then eventually, Father began sleeping in the guestroom, stating that he could not sleep because A.S. was waking him up.

Mother testified that, when A.S. was first born, her primary desire was to go back to school, or alternatively, work. Father encouraged her to stay home with A.S., however, and so she stayed home with A.S. while Father worked. Father testified that he gave Mother the option to go to school or to go back to work, but he "preferred that she stay[ed]

[5] Mother testified that she and Father ceased having sexual relations sometime before A.S. turned two years old.

home with" A.S. Mother stayed at home with A.S. until he turned three, and then she returned to work.

Father testified that, during the first three years of A.S.'s life, he fed A.S., changed his diapers, played with him, and put him to sleep. He "paid for everything," but Mother participated in raising and caring for A.S.

Father and Mother lived in the townhouse in D.C. from before A.S.'s birth until June 10, 2015. On June 10, 2015, Mother got into the driver's seat of one of Father's cars, while Father was in the back seat with A.S. As Mother prepared to back out of the townhouse's garage, she realized she had a juice in her hand that she had meant to give to A.S. Mother asked Father to give the juice to A.S, but he refused. Mother testified that she thought the car was in park. Mother let her foot off of the car brake, and the car then rolled forward and struck the house. Father testified that, as a result of this incident, the house was condemned.

The parties then took A.S. to Harrisburg, Pennsylvania, where Father has family. The parties lived with Father's mother for approximately one month, then rented a house in the area for approximately one year. During their time in Harrisburg, Father had to go back and forth to D.C. for work. Father testified that he would be in Harrisburg "three or four days" to see A.S., then would return to work in D.C., then would come back again to Harrisburg. He testified:

> So I always made it a point to come home for the weekend. So I would come home like maybe Friday. Friday, Saturday, Sunday, stay Monday. Maybe stay Tuesday. And then head out Tuesday. And then work Tuesday,

> Wednesday, Thursday and then come back Friday. But sometimes, you know, it might change. Most of the weekends I was there.

Mother testified that, during their time in Harrisburg, Father would come visit A.S. "every two weeks." She stated: "There was a time when he came in a week, but mostly in two weeks, and there was a time also where he didn't come [for] more than a month."

Father testified that, when A.S. turned three, he and Mother agreed that A.S. was old enough for preschool. The parties researched different schools and eventually settled on the Goddard School ("Goddard").[6] The parties then found an apartment in downtown Silver Spring, Maryland, near Goddard, Mother's work, and Montgomery College. They left this location after less than two months because A.S. was having allergic reactions, and they moved to another apartment in Silver Spring.

In the summer of 2017, Father, Mother, Father's mother, and A.S. went on vacation to Ocean City, Maryland. Mother testified that it was July 4th, and Father, his mother, and A.S. had gone to the beach and then to dinner. Mother stayed behind because she was studying for her national certification for her job as a technician. When the group returned, Mother was in the room where they were all staying, but she was out on the balcony watching a movie and did not hear them when they knocked. Father walked to the front of the building and waved to get Mother's attention on the balcony. When Father returned to the front door of their room, it was already open, and Mother and Father's mother were arguing. Mother testified that when she saw Father, she got up and opened the front door,

[6] They initially had him in a small childcare facility, but when another child at the facility bit A.S., the parties removed him from that facility and enrolled him at Goddard.

and upon opening the door, Father's mother "was very angry and then she pushed the door with [Mother] and then she hit [Mother] to the wall with the door, and the door hit [Mother's] foot" as well. Mother testified that she tried to explain what happened to Father, but Father's mother was "yelling and screaming" at her, and Father was "not willing to listen" to Mother. When Mother tried to explain to Father, he threatened to call the police. Father testified as follows:

> When I walked in [Mother] kind of yanked [A.S.] over to her and she was complaining saying come here. I mean all this drama. I'm being mistreated because of you. I'm going through all this because of you or for you. She was like chastising him and she pulled on him. And I told her to never do that to him again. And if she ever did that, I'll call the police. I was upset that we got locked out. She was tugging on him and blaming him for the incident. I mean he's a child.

As a result of the incident in Ocean City, the parties decided to cut the vacation short. Mother testified that, after that incident, she and Father "were not talking at all," and her relationship with his mother, which previously had been a good one, deteriorated, and she and his mother never spoke again.

The major breakdown in the relationship between Mother and Father occurred, however, after Thanksgiving 2017. The parties had spent previous Thanksgivings with Father's family in Harrisburg. That year, Mother was invited, along with Father and A.S., to come to the home of Father's brother, Yonas Seyoum. In the days prior to Thanksgiving 2017, however, Mother stated that she did not want to go to Harrisburg for Thanksgiving because she was not speaking with Father's mother. Father spoke to A.S. about the possibility of going to Harrisburg for Thanksgiving, and Mother texted Father telling him

not to talk to A.S. about the possibility of going because Father and Mother did not agree about whether A.S. would be going.

The Tuesday evening before Thanksgiving 2017, Mother and Father had a discussion about where they would be spending the holiday. Mother testified as follows:

> [Mother]: [Father] said we agreed that we're going to go to Harrisburg, why are you doing this to me, you can't come between me and my family, it's been always my tradition to go to my family, we're going.
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> [Mother's Counsel]: And did you respond to that?
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> [Mother]: I told him we did not agree to go. I heard you telling [A.S.] this morning, that's why I texted you, but we did not agree to go.
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> [Mother's Counsel]: What, if anything, did [Father] do or say in response to you telling him that you had not agreed and you were not going to go?
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> [Mother]: He said if I come between him and his son and his family, he will destroy me.
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> [Mother's Counsel]: Had he ever said that before to you?
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> [Mother]: He did multiple times.
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> [Mother's Counsel]: He told me a couple of times when we argued, he was like my death can be arranged.

Mother further testified that, during this discussion, Father kicked a footrest towards her, and then threw a remote control, which hit her right arm. Additionally, Father slammed luggage down next to her foot and told her that, if A.S. did not go with him to Thanksgiving,

he would "try to destroy [Mother's] life." When Father testified about this discussion, he denied making any threats, or kicking, throwing, or slamming anything.[7]

Prior to Thanksgiving, Mother and Father had a discussion about a Mercedes Father owned that Mother usually drove. Father testified that he had asked Mother to take ownership of the vehicle, and he gave her the necessary paperwork to do so, but she never took title to the vehicle. Father took the necessary paperwork to transfer title back because Mother had failed to get the car registered and inspected. Mother testified that she was going to change the vehicle registration to Maryland (it was registered in Pennsylvania at the time Father gave her the necessary paperwork), and she had a service appointment scheduled for the Friday after Thanksgiving 2017 that would have allowed the car to pass Maryland inspection. Mother testified that she informed Father of her plans for the car. Father, however, testified that Mother was not going to get the car inspected, that he was not aware of the appointment Mother had made, and as the registration and inspection had "lapsed," he thought it necessary to take the car to Pennsylvania to get it registered and inspected.

The Wednesday before Thanksgiving 2017, Father went to the Costco where Mother worked and took the Mercedes she had driven to work from the parking lot. Father sent Mother a text message "saying the car needed to get inspected and registered," so he

[7] Father testified that he checked the refrigerator at their home and concluded that Mother had no alternate plan for the Thanksgiving holiday. Mother testified that she was given a turkey by Costco, which she kept in the Costco fridge, but when she realized Father was going to go, she did not want to cook the whole turkey, so she donated it.

was "taking the car to Pennsylvania for Thanksgiving" to do that while he was there. He also informed her in this text message that he was taking A.S. with him for Thanksgiving. Father told Mother she could take an Uber to get from work to home.

Mother testified that, when she got off work the Wednesday before Thanksgiving 2017, she could not find her car, and then she saw the text message from Father. Mother tried to contact Father, but he would not answer. Mother called the police, who got in contact with Father while he was on the way to Harrisburg. Based on her discussions with the police, Mother believed that A.S. would return home Thursday night (Thanksgiving evening).

On Friday, when A.S. had not come home, Mother filed for a protective order.[8] She stated in the request for the order that one of her reasons for filing was that she did not know A.S.'s location. Father texted Mother Monday morning telling her that he had dropped off A.S. at Goddard, and Mother picked him up from Goddard after school. Father testified that, while he was in Harrisburg, the Montgomery County Police "were trying to get ahold of" him, but it was not until he returned to Silver Spring, Maryland, that he realized they were trying to serve him with papers regarding the protective order.[9]

[8] At the time of trial, the parties stipulated that there was a protective order in place, and that the protective order was on appeal.

[9] At trial, Sylvia Adams, Father's friend and an attorney, testified that she gave Father advice regarding taking A.S. to Harrisburg for Thanksgiving. She told Father that there was no custody arrangement in place, so Father could take A.S. to visit family in Harrisburg, but that he should let Mother know he was taking the child. When Father was receiving calls from the police, she advised him that it could possibly be due to a protective

Upon returning to Silver Spring, Father installed security cameras in their apartment. Father testified that he installed cameras in his closet and in his bedroom, but Mother testified that there was a camera in the bedroom closet as well as in the living room. Father testified that he texted Mother that the relationship was over, and he wanted her to leave the apartment. Additionally, Father contacted the apartment management and asked to have Mother removed from the lease.

II.

Commencement of Proceedings

On November 30, 2017, Father filed a Complaint for Custody, requesting sole physical and legal custody of A.S. Father later amended his complaint, requesting primary physical custody and sole legal custody of A.S. Mother filed an Answer and Counter Complaint for Custody and Child Support, requesting sole legal and physical custody of A.S.

On July 13, 2018, the circuit court entered a pendente lite order noting the following visitation schedule:

> ORDERED, that effective Tuesday, June 5, 2018 and every Tuesday thereafter, [Father] shall have access with the minor child, [A.S.] (born June, 2013) from after school, daycare, or camp until 8:00 p.m.; and it is further
>
> ORDERED, that effective Thursday, June 7, 2018[,] and every Thursday thereafter, [Father] shall have access with the minor child from after school, daycare, or camp until he returns him to school on Friday morning; and it is further

order, but he could deal with it upon his return to Maryland. Finally, she told Father he was within his rights to install cameras in the apartment.

> ORDERED, that effective Friday, June 1, 2018, and every other weekend, [Father] shall have access with the minor child, from after school, work, or daycare, until he returns him to school or daycare on Monday morning; and it is further
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> ORDERED, that all exchanges of the minor child shall continue in the lobby of [Mother's] residence; and it is further
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> ORDERED, that [Father] shall be responsible for all transportation of the minor child . . . .

III.

Trial

A.

Testimony

A two-day trial began on October 29, 2018. Yonas Seyoum, Father's brother, testified that Father visited Harrisburg, a two-hour drive from Maryland, every two weeks with A.S.[10] Mr. Seyoum witnessed Father playing with A.S., and he believed that Father was a fit and proper person to have custody of A.S. During Mother and Father's year in Harrisburg, Mother was very respectful to Father's family.

Adam Yonas, Father's nephew, testified that Father often played with him and A.S. when they are in Harrisburg. He had never seen Father hit A.S., and when he saw Father discipline A.S., Father would "just calm[] him down and [try] to reason with him."

[10] Father testified that he and A.S. did not come to Harrisburg every two weeks, stating: "He misspoke. It's not all the time."

Elsa Yohannes, who had known Father for over 10 years, testified that Father was "very loving" toward A.S. When he disciplined A.S., he would simply "talk to him" at "eye level."

Reisha Buster testified on behalf of Mother, stating that she knew Mother through the Goddard School, which their children attended. Mother was "kind and nurturing," and Ms. Buster admired Mother's calmness toward A.S. Ms. Buster believed that Mother was a fit and proper person to exercise custody over A.S.

Jessica Roydhouse, who also knew Mother through Goddard, testified that Mother was a fit and proper person to have custody of A.S. She had seen Father pick A.S. up from school in the past. Others also testified on Mother's behalf, stating that Mother had a great relationship with A.S., and Mother was a "model mother."

Vivian Yagan, the concierge at the parties' apartment, testified that she often witnessed the transitions when Father would come take A.S. from Mother for his visitation. The only time transitions would take some extra time was when A.S. did not want to leave Mother, and when that occurred, Mother would tell A.S. to go and he would have fun. Ms. Yagan had never witnessed a time when the transition between parents had not occurred. Ms. Yagan also stated that when A.S. would leave with his Father, he seemed happy.

Father testified that, at the time of trial, he was living in a condo in Adelphi, Maryland, but he recently had put an offer on a house near A.S.'s new elementary school. Father also testified regarding his work hours, stating that, with his schedule, he has time to be with A.S. after school. Father admitted that, as an entrepreneur, he is "always on the

clock," and there were times when his employees watched A.S. for him, but he stated that his hours were flexible. Mother disagreed, testifying that she believed Father did not "have that much time to care for" A.S.

Mother testified that, at the time of trial, she was working between 26 and 29 hours per week at Costco as a pharmacy technician, but she was hoping to go full time if Costco had an opening for a full-time position. She stated that, if she obtained full time employment, she would still be able to take A.S. to school in the morning and pick him up from aftercare.

With respect to finances, Father admitted his 2017 tax return, 2017 W-2, and financial statement as exhibits in evidence. Father testified that his total gross monthly income was $10,750. Mother's counsel asked Father if he would agree that his gross monthly income "would be [his] current rental income" from several rental properties he had, "and then [his] income in 2017, so [he'd] add all that together and get [his] gross income." Father agreed that was the correct calculation, but he later stated that, in assessing his current income for purposes of his financial statement, he did not include any income from his business, explaining that he did not get a W-2 from his business for the year because his business was suffering.

Mother submitted paycheck stubs and a financial statement as exhibits at trial to establish her financial status. Aftercare for A.S. cost $400 per month, and summer daycare/camp cost $333 per month. The rent for her apartment was $1,500 per month, excluding utilities.

Father and Mother testified regarding A.S.'s medical insurance. Father testified that, when Mother was pregnant, she got insurance for both herself and A.S., and she had maintained that insurance for him ever since. Mother testified that, at the time of trial, she covered A.S.'s health insurance through Costco, but before she went back to work for Costco, she and A.S. were on Medicaid, although Father always had private insurance for himself.

Father testified that, in September 2018, Mother signed A.S. up to play soccer every Saturday, a decision with which Father did not agree because it cut into his time with A.S. Father refused to bring A.S. to his soccer practices and games each Saturday Father was with A.S.

Mother testified regarding a situation in early September 2018, when she was at A.S.'s school for back to school night. She checked her cellphone and saw that A.S.'s aftercare had called stating that she needed to come pickup her son, even though it was Father's night to get the child. Mother went to the aftercare location, but it was closed and no one at aftercare would answer her calls. She then called and texted Father, who did not respond. Mother called the police, who told her that if her son was not truly missing, "they cannot just look for him," but they would need to come speak to her in person. While Mother was waiting for the police, a teacher from the aftercare program saw Mother and offered to call Father. The teacher called Father, who told her that he had picked A.S. up from school. Mother called the police and told them that they did not need to come speak with her anymore.

Father testified regarding how he disciplined A.S. If A.S. did something wrong, he stopped what A.S. was doing and explained to him what was wrong, the "right way" to do the thing in question, and the consequences. Mother testified that Father was never physical with A.S., but sometimes Father would "scream at" him.

Both Mother and Father testified regarding an incident that occurred during A.S.'s pre-K graduation from Goddard. Father testified that, when the time came for him to take A.S., "he didn't want to go." When Father realized A.S. would not go with him, he asked Mother to trade off and allow him to have a different day with A.S. Father stated that, although Mother encouraged A.S. to go with him, "[i]t was not sincere."[11] Mother testified that there was no "make-up night" that she agreed to with Father because she believed that Father already had been given additional days with A.S.

Father and Mother also testified regarding therapy for A.S. Father stated that, beginning in April 2018, he asked Mother to enroll A.S. in therapy because Goddard School administrators had recommended it based on some emotional and behavioral issues A.S. was having. At first, Mother was hesitant to have A.S. go to therapy, but after speaking to people about it, she realized it would be good for him. At the time of trial, A.S. was scheduled to go to an appointment in November.

Jennifer Schwartz, who was designated as an expert custody evaluator by the court, testified that she interviewed each of the parties individually, and she reviewed various

[11] Dejene Kassaye, who also knew Mother from Goddard, testified that, after the graduation, Mother encouraged A.S. to go with Father, but A.S. refused because he wanted to stay with Mother.

documents, including the court file, text messages and email communications between the parties, school records, transcripts from Mother's prior divorce, transcripts from the protective order hearing and the pendente lite hearing, medical records, pictures of school lunches, sign-in/sign-out sheets from Goddard, etc. She was concerned that Mother had alleged physical and verbal emotional abuse in the relationship, so she spoke to Father to determine if those allegations were true. Ms. Schwartz noted that the parties did not agree as to how the events that led to the protective order unfolded, nor did they agree on other events. Ms. Schwartz was concerned with the events leading to the protective order, as well as Father planting recording devices in the apartment and moving the Mercedes from Costco.

One consistency that Ms. Schwartz noticed in speaking to the parties was that Father worked a lot, and although he had an active role in A.S.'s life, it was not to the same extent as Mother's role. In reviewing the sign-in/sign-out sheets from Goddard, she noted that Mother was the primary parent who picked up and dropped off A.S.[12] Ms. Schwartz also noted that reports from Goddard indicated that the parties would talk negatively about each other around A.S.

In her interview with A.S., he said positive things about Father, but "he spoke more positively about his mom." Ms. Schwartz also observed A.S. with each parent. Father was "very good about managing" A.S.'s behavior and was "patient with him," but when A.S.

[12] Father disputed that conclusion, stating that he often did not fill out the sign-in/sign-out sheet when he picked up A.S.

was with Mother, he was less hyper. She did not have any concerns about either interaction.

Ms. Schwartz spoke to several people in rendering her evaluation. Elise-Papa LaPrade, a parent at Goddard, said that she usually saw A.S. with Mother, and she once had witnessed Father pull on A.S.'s arm and "drag [him] down the street." Ms. LaPrade told Ms. Schwartz that someone had to physically hold Father back at A.S.'s pre-K graduation when A.S. did not want to go home with him. Others testified that they did not have any concerns about Mother or Father in terms of parenting, mental health, anger management, or drug and alcohol use.

Ultimately, Ms. Schwartz recommended that the court grant Mother sole legal custody of A.S., which she believed was in A.S.'s best interest. She looked at the parties' seeming inability to communicate, the domestic violence issue that had been alleged, and the security cameras in the home. She continued:

> I don't think that there is an ability for them to be able to communicate with each other in an effective way for the child, that [Mother] said that [she was] the primary decision maker for the child since he was born, that the trust—there is like a trust at all. I mean I don't think she feels comfortable—[Mother] feels comfortable being around [Father] and is concerned . . . about her safety. And I think that impacts their ability to make decisions about the child.

Ms. Schwartz recommended that Mother be granted primary physical custody, and Father have an access schedule of "overnights every other weekend from Friday after school to Sunday evening[,] and every week a midweek dinner visit." In reaching this conclusion, she considered the fitness of the parents, how A.S. was doing in school, how

A.S. was doing with transitions between parents, the school reports about A.S.'s behavior, etc. Large factors in her decision were the behaviors that A.S. was exhibiting in school, as well as during transitions between the parents. Ms. Schwartz believed that 50-50 physical custody between the parties would not be possible.

During cross-examination, Ms. Schwartz stated that Mother exhibited some overprotective behavior in regard to A.S., and some of this behavior could interfere with the parties' communication. She did not, however, interpret Mother's behavior as sabotaging A.S.'s relationship with his Father. She disagreed that she had a mindset bias in favor of Mother. She admitted that Mother had told her that one of her reasons for filing the protective order against Father was that Mother wanted to get A.S. back.

Michelle Sarris was called as an expert witness for Father. She previously had been a court evaluator, but she subsequently became the manager of a court evaluator's office, so she had done custody evaluations as well as supervised custody evaluations. Ms. Sarris went through Ms. Schwartz's file and reviewed various medical reports and school reports that the parties provided. After considering these materials, Ms. Sarris concluded that Ms. Schwartz did not follow proper protocol in her custody evaluation. Ms. Sarris testified, in pertinent part:

> [Ms. Sarris]: One of the biggest issues that I have with the report is that what is presented to the reader and what was presented at the settlement status conference is not complete with what was in her file. For example, when there are allegations made—and there always are—one party will make allegations against the other.
>
> The evaluator must follow that up by talking to the other party who is having the allegation made against them. What is their version of what happened? Is this true? Tell me about the situation. And it needs to be in the

> report. And I see a lot of allegations made where there is no corroboration either by asking the other party and reporting what they said or if there was a possibility of a witness that they could have corroborated it with.
>
> It's not in there. What I really felt concerning was there are forms that we use when we interview when we speak of the psychosocial. And in that form are lots of questions. Is there domestic violence? Is there a family history? Is there a personal history? Is there substance abuse? Personal, family et cetera. And when you get into the meat of it you will have a party make allegations obviously against the other. And what I saw was when mom—[Mother]—made allegations against dad—[Father]—there was no questioning him. There were no phone calls. There was no follow up as to what his response was to these allegations.
>
> And yet in the reverse there was. There was a lot of notes written—handwritten—in [Father's] form where clearly the evaluator had contacted [Mother] to see was this true. Did this happen? Tell me about this. This is what the allegation is. So there is a big imbalance there I saw nowhere where she had asked him. The other thing is at the end of the form there is a list of questions. A lot of it goes to parenting. How you foster the relationship with your child with the other parent. And none of those questions are answered.
>
> So I presume she did not ask them. But later, digging through the file, I found an email where she had sent the questions to [Mother] and had her email her responses. There is no such email to [Father] or any response because clearly he hadn't—he was not given the same opportunity to answer those questions.
>
> [Counsel for Father]: Are there any other findings that you made concerning the report that concerned your professional capacity?
>
> [Ms. Sarris]: Things that I had read in the form that she had used to interview the clients that were not included in the report. For example, at some point [Mother] had stated to the evaluator that she would like to see overnights suspended basically. And in a period of time maybe once [Father] and the child are bonded or their bond is stronger th[e]n consider overnights. That was nowhere in the report.

Ms. Sarris further explained her concern that Ms. Schwartz did not give the same time, process, and questions to each party, and she discussed the possibility that Ms. Schwartz exhibited some mindset bias in favor of Mother. Ms. Sarris ultimately concluded that Father was not treated equally or fairly by Ms. Schwartz in her custody evaluation.

Father testified that he wanted to co-parent with Mother, that he would be able to do so, and prior to the protective order, he saw A.S. "almost every day." Father argued that he was entitled to shared physical custody with Mother, and he should have sole legal custody of A.S. because he was "more fit" to have sole legal custody. He explained:

> I believe because of the protective order and other incidents throughout the past five years, she has demonstrated to be a little immature, childish, vindictive, inability to follow through with tasks, goals, having unrealistic goals and ambitions, and she is showing me that when she doesn't get her way, she gets to be vindictive. When she's giving options or choices, she makes the wrong choices. Based on that, I think I'm a better—I'm better to make legal decisions for [A.S.].

Mother testified that she should have sole legal custody of A.S., although she wanted A.S. to have a good relationship with his Father. Mother contended that Father should have a visitation schedule where he would see A.S. every other weekend. Mother stated that "overnight visits during the weekdays" were affecting A.S., that going back and forth between Maryland and Harrisburg was exhausting him, and it was too much for A.S. to be traveling to Harrisburg every two weeks.

B.

The Circuit Court's Ruling and Subsequent History

On October 31, 2018, the circuit court issued its oral ruling. As discussed in more detail, *infra*, the court awarded the parties joint legal custody of A.S. and shared physical

custody, with a 2-2-5 visitation schedule.[13] Neither parent was given tie-breaking authority. Holidays would be split between the parties, and in the summertime, a 2-2-5 schedule would continue, but the parties were entitled to two weeks of vacation with A.S. The court also ordered Father to pay child support to Mother. On November 29, 2018, the court memorialized its decision in a Custody and Child Support Order.

On December 6, 2018, Mother filed a Motion to Alter or Amend, and for Reconsideration and Enforcement of Custody and Child Support Order. Mother requested that the Court reconsider its determination of Father's income, arguing "that the application of 'guideline' child support . . . resulted in an 'unjust and inappropriate' outcome," citing Md. Code (2012 Repl. Vol.) § 12-202(2)(v) of the Family Law Article ("FL").[14] On December 10, 2018, Father filed a Motion for Reconsideration, requesting that the court recalculate child support using a new figure that Father alleged was his "actual monthly income."

On February 14, 2019, the court held a hearing on the parties' motions. The court granted the motion to alter or amend "with respect to Father's income," and as to Mother's motion, concluded that it did not "have any basis in this case to deviate from the

[13] Mother was to have A.S. Monday after school until she dropped him off at school Wednesday morning, and Father had Wednesday night until Friday, and alternating overnight access every Friday through Sunday.

[14] In this motion, Mother alleged that Father was in arrears as to child support. At the hearing on the motion to alter or amend and for reconsideration, however, Mother's counsel explained that, by that time, all the necessary child support and alimony had been paid.

guidelines." On March 5, 2019, the court's Amended Child Support Order was entered, revising the child support award to $1,109 per month and providing that summer child care expenses over $400 would be divided in proportion to their income. Mother's timely appeal followed.

STANDARD OF REVIEW

In reviewing child custody determinations, we employ three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). The Court of Appeals has explained these three levels of review, as follows:

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] [i]f 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."

In re Yve S., 373 Md. 551, 586 (2003) (emphasis removed) (quoting *Davis v. Davis*, 280 Md. 119, 125–126 (1977) (footnote omitted)).

"[A]n appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 637–38 (2007). A trial court's findings are "not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628, *cert. denied*, 343 Md. 679 (1996). *Accord Thomas v. Capital Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 453 (2009)

(quoting *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005)). An abuse of discretion exists where "'no reasonable person would take the view adopted by the [trial] court' or when the court acts 'without reference to any guiding rules or principles.'" *Santo v. Santo*, 448 Md. 620, 625–26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

DISCUSSION

I.

Mother contends that the circuit court "erred in awarding pure joint legal custody after it found that Father's behavior was authoritarian, Father did not see Mother as an equal, and the parties' post-separation history provided ample examples of inability to communicate." She asserts that the court abused its discretion in awarding joint legal custody based solely on the hope that the parties could communicate in the future when there was no "evidence that the parties' ability to communicate would return to their pre-separation abilities after the case closed." Mother contends that the circuit court should have awarded sole legal custody to her or, "in the alternative, awarded joint legal custody with Mother having tie-breaking authority."

Father contends that the trial court properly exercised its discretion in awarding the parties joint legal custody. He asserts that the circuit court "found flaws with both parties," and it "ultimately found that while the parties had experienced incidents of conflict in the 11 months prior to the trial, for the four years since the minor child's birth until the separation of the parties, the parties had demonstrated an ability to communicate regarding

the best interests of the minor child." Father argues that the circuit court "is entitled to the deference due to it after having sat face-to-face with all the witnesses, observing their demeanor, and being present with the case through two days of trial."

A.

Legal Background

Before addressing this specific claim, we discuss generally custody determinations, including legal and physical custody. As the Court of Appeals has explained:

> "Legal custody carries with it the right and obligation to make long range decisions" that significantly affect a child's life, such as education or religious training. "Physical custody, on the other hand, means the right and obligation to provide a home for the child and to make" daily decisions as necessary while the child is under that parent's care and control."

Santo v. Santo, 448 Md. 620, 627 (2016) (quoting *Taylor v. Taylor*, 306 Md. 290, 296 (1986)). With joint legal custody, "'both parents have an equal voice in making [long range] decisions, and neither parent's rights are superior to the other.'" *Id*. (alteration in *Santo*) (quoting *Taylor*, 306 Md. at 296). "In joint physical custody, the parents will share or divide custody of the child, but not necessarily 'on a 50/50 basis.'" *Id.* (quoting *Taylor*, 306 Md. at 297). A circuit court's authority in child custody cases is "'very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child.'" *Id.* (quoting *Taylor*, 306 Md. at 201–02).

In *Montgomery County Dept. of Social Services v. Sanders*, 38 Md. App. 406, 420 (1977), this Court delineated ten non-exclusive factors for a circuit court to consider in child custody determinations:

1. Fitness of the parents;
2. Character and reputation of the parties;
3. Desire of the natural parents and agreements between the parties;
4. Potentiality of maintaining natural family relations;
5. Preference of the child;
6. Material opportunities affecting the future life of the child;
7. Age, health, and sex of the child;
8. Residences of parents and opportunity for visitation;
9. Length of separation from the natural parents;
10. Prior voluntary abandonment or surrender.

In *Taylor*, 306 Md. at 303, the Court of Appeals reiterated that these factors are relevant, but it stated:

> Formula or computer solutions in child custody matters are impossible because of the unique character of each case, and the subjective nature of the evaluations and decisions that must be made. At best we can discuss the major factors that should be considered in determining whether joint custody is appropriate, but in doing so we recognize that none has talismanic qualities, and that no single list of criteria will satisfy the demands of every case.
>
> We emphasize that in any child custody case, the paramount concern is the best interest of the child. As Judge Orth pointed out for the Court in *Ross v. Hoffman*, 280 Md. 172, 175 n. 1, 372 A.2d 582 (1977), we have variously characterized this standard as being "of transcendent importance" and the "sole question." The best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak.

The court then discussed 14 factors that are relevant in considering joint custody:

1. Capacity of the parents to communicate and to reach shared decisions affecting the child's welfare;
2. Willingness of parents to share custody;
3. Fitness of parents;
4. Relationship established between the child and each parent;
5. Preference of the child;
6. Potential disruption of child's social and school life;
7. Geographic proximity of parental homes;
8. Demands of parental employment;
9. Age and number of children;

10. Sincerity of parents' request;
11. Financial status of the parents;
12. Impact on state or federal assistance;
13. Benefit to parents;
14. Other factors.

Id. at 304–11.

B.

Circuit Court Ruling

In rendering its oral ruling, the court first noted that it was "obligated to consider several factors." The court specifically mentioned several of those factors, i.e., the "capacity of the parents to communicate"; fitness of the parents; "willingness of the parents to share custody"; "relationship established between the child and each parent"; "potential disruption of the child's social and school life"; child's preference; geographic proximity; "age and number of children"; "suitability of the homes"; "demands of parental employment"; sincerity of parents' requests; and the "financial status of the parents."

In considering the capacity of the parents to communicate, the court first discussed incidents that caused concern, including: (1) both parents' lack of "good behavior" at A.S.'s pre-K graduation from Goddard; and (2) Mother's enrollment of A.S. in soccer every other weekend, without consulting Father, although that infringed on Father's time with A.S., and Father responding by not taking A.S. to soccer practice. Additionally, the court stated that it was concerned about Mother's initial hesitation to bring A.S. to therapy and her general nonchalance about the several behavioral reports she received from

Goddard. The court also stated that it was skeptical regarding Mother's assertion that she would foster family relations between A.S. and Father's family.[15]

Regarding Thanksgiving 2017, the court stated that it did not believe that Mother had made alternate arrangements for Thanksgiving, but also that Father absconding with the child and taking the Mercedes from the Costco parking lot was "ridiculous." The court stated: "Instead of reaching a consensus, [Father] thought that [he] had the absolute authority in an authoritarian sort of way, to just take the child and go."

The court also noted that issues such as the surveillance cameras in the home and the fight regarding a nanny for A.S. indicated "a level of manipulation going on by both parties about small things." The court stated that it noticed a "level of superiority" in how Father spoke about Mother. Ultimately, however, as to the issue of their ability to communicate, the court said:

> And that brings me to the fact that I do think everyone seems to have overlooked that really until that horrible protective order incident, before that fight, these two really did co-parent very well. There were no problems. Dad said he's not very religious, but sometimes Mom takes him to church and it's fine. He doesn't object. The education issues, they came together, they went to Goddard, now he's at an elementary school here, and nobody has a fight about that. The medical issues--other than the one time he was sick when he was eight weeks old, when both parents acted completely correctly, took him to the ER, stayed with him and cared for him, there are no issues. But I tell you that issue about therapy on the medical point is a point of concern to the Court. Yes, they were able to ultimately agree. I'm not certain about when Mom finally came around. I think Mom finally came around because people told her look, it's not reasonable. Your position on this is not reasonable in the face of 18 reports of your child hitting other children, banging their head

[15] The court noted that Mother said that it was unsafe for A.S. to travel to Pennsylvania, but "even the custody evaluator said there's nothing unsafe about it, and he'd been doing it for a long time."

> on the floor. I'm glad that she came to agree, but I am concerned about that entire aspect of the records in this case and how they were treated. And so, with respect to the issue of the capacity of the parents to communicate, I do find that they can. They did for a very long time. They had a break down after the Thanksgiving incident.

As to the fitness of the parents, the court credited the many people that testified on Mother's behalf and found that Mother was a proper and fit parent. With respect to Father, the court considered the issue of the protective order. The court cited dicta from *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 130, 137 (2001), noting that protective orders could be considered by circuit courts when considering a party's fitness, character, or reputation, in adjudicating custody issues. The court then went over the facts surrounding Mother's filing for, and the issuance of, the protective order. The court noted the fight that Mother and Father had the Tuesday night before Thanksgiving and noted that Mother told the custody evaluator that one of her reasons for filing was because she wished to get A.S. back. The court credited that Father had not violated the protective order since it had been issued, noting that "there really [was] a lack of a prior history or physical abuse in this case," and "[t]here wasn't any child abuse alleged whatsoever." The court further considered the witnesses who had testified on behalf of Father, all of whom had testified as to his good character. The court discussed each of the custody evaluators who testified at trial, and it found some shortcomings in Ms. Schwartz's investigation and analysis. Ultimately, the court found that both Mother and Father were fit and proper parents.

With respect to the willingness of the parents to share custody, the court noted that Father stated that he was willing to co-parent with Mother. Mother was not willing to share

custody because she did not believe that Father had adequate time for A.S. The court, however, found Father's testimony that he had flexible hours to be credible.

Regarding the relationship established between the child and each parent, the court stated that it had "no doubt that [A.S.] loves both parents." As to the potential disruption of the child's social and school life, the court discussed the concierge's testimony and noted that transitions can be hard for children, but "it's a reality because the parents are no longer together." With respect to A.S.'s preference, the court stated that was not at issue, noting that A.S. was 5 years old. Regarding geographic proximity, Mother lived in Silver Spring and Father lived in Adelphi. In discussing suitability of the homes, the court explained that Mother was in a one-bedroom apartment and Father lived in a condominium but was in the process of purchasing a new home. The court stated that the custody evaluator, Ms. Schwartz, "observed [A.S.] at both homes and no problems were ever indicated."

The court next addressed the demands of parental employment, stating that there were "no problems" with Mother's hours. The court stated that it did "not see that [Father's] employment obligations" would "make it difficult for him to care for the child, as his hours are flexible since he is self-employed." The court found that both the parents' requests were sincere. With respect to financial status, the court determined that Mother's monthly income was $1,995, and Father's income was $10,750.

After this discussion of various factors, which spanned 18 pages of transcript, the court concluded: "So, for having considered all those factors, the [c]ourt does believe that

joint legal custody is appropriate and is in the best interest of [A.S.], and it is granted to the parties." It then stated:

> [T]he court finds that it is in [A.S.]'s best interest for the parents to share a 2-2-5 schedule. Mom will have [A.S.] Monday from school, and then Monday night, Tuesday night, Wednesday she would drop him off at school. Dad will have [A.S.] Wednesday night, Thursday night, and then he goes back to Mom on Friday for five days; Friday, Saturday, Sunday, Monday. So, we're going to follow a 2-2-5 schedule. Now, when [A.S.] is not in school, I'm just going to make that time 9 a.m. instead of school. In terms of exchange times.

C.

Analysis

As indicated, Mother contends that the circuit court abused its discretion in finding that the parties could communicate to make decisions. Regarding capacity to communicate, the Court of Appeals has stated:

> Ordinarily the best evidence of compatibility with this criterion will be the past conduct or "track record" of the parties. We recognize, however, that the tensions of separation and litigation will sometimes produce bitterness and lack of ability to cooperate or agree. The trial judge will have to evaluate whether this is a temporary condition, very likely to abate upon resolution of the issues, or whether it is more permanent in nature.

Taylor, 306 Md. at 307.

Here, after discussing the shortcomings of the parties over the course of the several months prior to trial, the court determined, citing to facts in the record, that the parties were able to communicate. In arriving at this conclusion, the court considered the parties' extensive "track record" of effective communication, as well as actions post-separation that

indicated that the parties could effectively communicate.[16] As noted in *Taylor*, the "best evidence" of being able to cooperate is the "past conduct or 'track record' of the parties." 306 Md. at 307. Although "the tensions of separation and litigation will sometimes produce bitterness and lack of ability to cooperate or agree," it is up to the trial judge to determine whether this is "a temporary condition" or "more permanent in nature." *Id.* The circuit court's finding in this regard was not clearly erroneous.

Moreover, the court considered multiple other factors and offered a thorough discussion as to each factor before it awarded joint legal custody. We have explained:

> "[In cases where] custody might well have been awarded to either parent, [it] aptly demonstrates the advisability of leaving to the [circuit court] the delicate weighing process necessary in child custody cases; *to disturb the award here would require that we substitute our judgment for that of the* [circuit court], and an appellate court sits in a much less advantageous position to assure that the child's welfare is best promoted."

McCarty v. McCarty, 147 Md. App. 268, 273 (2002) (quoting *Davis v. Davis*, 280 Md. 119, 131–32 (1977)). We perceive no abuse of discretion in the court's decision to award the parties joint legal custody.

II.

Mother next challenges the circuit court's decision regarding physical custody. She contends that the circuit court erred in limiting its analysis to only "nine factors exclusively

[16] Mother argues that "[i]t was only based upon [the parties'] pre-separation abilities that the court found the parties to have the capacity to communicate." We disagree. The court also cited to the fact that Father and Mother did not disagree regarding religious activities for A.S., that the parties were able to agree as to A.S.'s elementary school, and it noted that, even after the protective order, Mother and Father eventually reached a consensus regarding sending A.S. to therapy.

from the *Taylor* case[,] resulting in inadequate analysis that led the court to the comingled conclusion that joint legal and joint physical custody were appropriate." She asserts that the court performed "an incomplete analysis of the *Sanders* best interest factors, only focusing on joint custody factors" set forth in *Taylor*. Mother thus argues that the court abused its discretion in ordering a 2-2-5 joint physical custody schedule and that an assessment of the *Sanders* factors would "compel an award to Mother of primary physical custody or, at least, a schedule that minimized the amount of transitions between parents for [a 5-year-old]."

Father contends that the trial court did not abuse its discretion in awarding the parties shared physical custody, and the court "engaged in an appropriate analysis of the factors." Father contends that the circuit court was "not required to state each and every factor" it considered, but rather, pursuant to Maryland Rule 2-522(a), the court merely was required to provide "a brief statement of the reasons for the decision."[17] In any event, he asserts that the court correctly analyzed the relevant factors in *Taylor* and *Sanders*.

A.

Procedural History

As discussed, *supra*, in Part I.B. of this opinion, the court considered the following factors in detail: the capacity of the parents to communicate; fitness of the parents;

[17] Rule 2-522(a) provides: "In a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages."

willingness of the parents to share custody; relationship established between the child and each parent; potential disruption of the child's social and school life; child preference; geographic proximity; age of child; suitability of the homes; demands of parental employment; sincerity of parents' requests; and the financial status of the parents.

After discussing these factors, the court concluded that it was "in [A.S.'s] best interest for the parents to share a 2-2-5 schedule," and ordered that the parties split holidays.

B.

Analysis

This Court has explained:

> It is a bedrock principle that when the trial court makes a custody determination, it is required to evaluate each case on an individual basis in order to determine what is in the best interests of the child. *Gillespie* [*v. Gillespie*,] 206 Md. App. [146,] 173, 47 A.3d 1018 [(2012)] (citations omitted). *See also Bienenfeld v. Bennett–White*, 91 Md. App. 488, 503, 605 A.2d 172 (1992) ("It is well established that child custody determinations be made by careful examination of facts on a case-by-case basis."); *Montgomery Cnty. v. Sanders*, 38 Md. App. 406, 419, 381 A.2d 1154 (1978) (the best interest of the child varies with each individual case). "Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interest standard, but possess a wide discretion concomitant with their 'plenary authority to determine any question concerning the welfare of children within their jurisdiction[.]'" *Bienenfeld*, 91 Md. App. at 503–04, 605 A.2d 172 (internal citation omitted) (quoting *Kennedy v. Kennedy*, 55 Md. App. 299, 310, 462 A.2d 1208 (1983)). Nonetheless, Maryland courts have provided a list of factors that the trial court may use in rendering its custodial determination.

Reichert v. Hornbeck, 210 Md. App. 282, 304–05 (2013).

The Court of Appeals has explained that no one factor in a custody determination has "talismanic qualities, and that no single list of criteria will satisfy the demands of every

case." *Taylor*, 306 Md. at 303. For this reason, this Court, as well as the Court of Appeals, has reiterated that the best interest of the child standard is "'*the* dispositive factor on which to base custody awards.'" *Jose v. Jose*, 237 Md. App. 588, 600 (2018) (quoting *Wagner v. Wagner*, 109 Md. App. 1, 38 (1996)). *Accord Santo*, 448 Md. at 626 (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977) ("The light that guides the trial court in its determination, and in our review, is 'the best interest of the child standard,' which 'is always determinative in child custody disputes.'").

We agree with Father that the circuit court here reviewed all of the evidence it had before it and made findings of fact regarding multiple factors listed in *Sanders* and *Taylor*, which findings were amply supported by the record. Appellant cites no case supporting the proposition that a trial court must specifically cite and address each individual factor in both *Sanders* and *Taylor*, and we note that there is overlap between the factors listed in each case.[18] Here, based on our review of the record, the court properly considered the evidence in the context of both the *Sanders* factors and the *Taylor* factors relevant to the best interest of the child standard.

The circuit court articulated its reasoning in ordering shared physical custody. *See Viamonte v. Viamonte*, 131 Md. App. 151, 162 (2000) (pursuant to Md. Rule 2-522, the

[18] For example, both cases list as factors the fitness of the parents, the age and preference of the child, and the location of the parties' residences. *Taylor*, 306 Md. at 304–309; *Sanders*, 38 Md. App. at 420.

circuit court must simply offer a brief statement of its reasons for its decision). We perceive no abuse of discretion in the court's decision to award shared physical custody.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.