

Circuit Court for Baltimore County
Case No. C-03-FM-20-003077

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 127

September Term, 2022

DANIELLE HANDY

v.

DELORES FRANCIS

Berger,
Nazarian,
Albright,

JJ.

Opinion by Berger, J.

Filed: December 9, 2022

*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.

Danielle Handy, appellant, filed, in the Circuit Court for Baltimore County, a complaint for custody against Delores Francis regarding the parties’ minor child, K.F.H. Ms. Francis thereafter filed a countercomplaint for custody. Following a hearing, the trial court entered an order awarding Ms. Francis primary physical custody of K.F.H. and granting Ms. Handy visitation with K.F.H. every other weekend. Ms. Handy thereafter noted this appeal, raising a single question for our review:

Whether the trial court failed to properly consider the requisite factors in making its custody determination.

For reasons to follow, we hold that the trial court did not err. We, therefore, affirm the court’s judgment.

BACKGROUND

Ms. Handy and Ms. Francis are the parents of K.F.H., who was born in 2012.¹ Ms. Handy and Ms. Francis lived together and were involved in a romantic relationship from 2010 to 2017. The parties shared caregiving duties of K.F.H. during that time.

In February 2017, the parties separated, and Ms. Handy moved to a different residence. In August 2020, Ms. Handy filed a complaint for custody, and, shortly thereafter, Ms. Francis filed a counter-complaint for custody. A two-day trial on the merits was held in late 2021.

¹ Ms. Francis is K.F.H.’s biological mother. At trial, Ms. Handy asked to be declared K.F.H.’s “*de facto* parent.” See *E.N. v. T.R.*, 474 Md. 346 (2021). The trial court granted that request without any opposition from Ms. Francis.

Trial

At trial, Ms. Handy testified that, after she moved out of the residence in 2017, she and Ms. Francis split access to K.F.H. according to a “2-2-3” weekly schedule, wherein K.F.H. would spend Monday and Tuesday with one party, Wednesday and Thursday with the other party, and Friday, Saturday, and Sunday with one of the parties on an alternating basis. Ms. Handy testified that Ms. Francis stopped following that access schedule after the two got into an argument about Ms. Handy’s current partner, with whom Ms. Handy was living. Ms. Handy stated that, on June 26, 2019, Ms. Francis sent her a text message saying that she would no longer be able to pick up K.F.H. Ms. Handy testified that she subsequently tried to contact Ms. Francis but that Ms. Francis did not respond. Ms. Handy stated that she had not had access to K.F.H. since June 26, 2019. Ms. Handy believed that it was in K.F.H.’s best interest for the parties to work towards reestablishing the custody schedule they had prior to June 2019.

Ms. Francis testified that she and Ms. Handy had co-parented K.F.H. until the parties separated and Ms. Handy moved out of the residence in February 2017. Ms. Francis testified that, at the time of their separation, the parties agreed that K.F.H. would live at the residence with Ms. Francis and that Ms. Handy would be granted liberal access. Ms. Francis stated that they did not share access equally and that K.F.H. spent approximately 70% of the time in Ms. Francis’s care. Ms. Francis testified that the situation changed in June 2019 following an alleged incident involving K.F.H. and Ms. Handy’s live-in partner. According to Ms. Francis, Ms. Handy’s partner had “physically reprimanded” K.F.H. by

“smacking her in the mouth.” Ms. Francis testified that she tried to discuss the incident with Ms. Handy, but that Ms. Handy had refused. Ms. Francis stated that she thereafter denied Ms. Handy access to K.F.H. Ms. Francis testified that she had not spoken to or received any child support from Ms. Handy since June 2019. Ms. Francis believed that she should have sole custody of K.F.H.

Trial Court’s Custody Order

On January 18, 2022, the trial court issued a written order granting Ms. Francis sole custody of K.F.H., granting Ms. Handy visitation access to K.F.H. every other weekend, and granting the parties joint legal custody of K.F.H. In that order, the court made the following findings:

When establishing physical custody, the ultimate test is what is in the best interest of the minor child. The seminal case for factors that the court should consider are found in *Montgomery County v. Sanders*, 38 Md. App. 406, 420 (1977). In the present case, the court finds that both [Ms. Handy] and [Ms. Francis] are fit parents. While [Ms. Francis] questions [Ms. Handy’s] fitness, the court disagrees. [Ms. Francis’s] complaints go more to [Ms.] Handy’s judgment, for example not adequately responding to [Ms. Francis] as to taking responsibility for “the incident.” [Ms. Francis] also raises the fact that [Ms. Handy] has not paid child support in the past two and a half years as indicative of unfitness. There was no negative evidence of character or reputation of either party. While there was an agreement between the parties, that agreement ended on June [26], 2019. As to maintaining natural family relations, there will need to be a rebuilding of a relationship between [K.F.H.] and [Ms. Handy], which will take time. Further the fact that [Ms. Handy] maintains a relationship with [her live-in partner], who has children of her own, and that [Ms. Francis] has remarried, “natural” family relations are unlikely, at least at this time. Material opportunities, environment and surroundings are not

significant factors, although the court has considered [Ms. Francis’s] concern that [Ms. Handy and her partner] live together. The court has placed significance on the overall well-being of [K.F.H.] to have [Ms.] Handy back in her life, and to have the chance of re-bonding with each other. Residences of the parties is not a factor, living only thirteen miles apart.

With all the above discuss in mind, the court finds that it is in the best interest of [K.F.H.] to be in the sole physical custody of [Ms. Francis]; that she is fit and proper to have such custody.

* * *

As to visitation access, the court finds that [Ms. Handy] should be in [K.F.H.’s] life, that she is fit and proper to have such visitation, and that it is in [K.F.H.’s] best interest. [Ms. Handy] essentially would have this court turn back the clock, to eventually reset things to the way they were prior to June 2019. This is not possible given the testimony the court has heard. The court declines to set a phased-up visitation schedule as proposed by [Ms. Handy].

The evidence shows that [Ms. Handy] has not provided child support since June 2019. Her failure to provide any support in two and a half years undercuts her testimony that she wants what is best for [K.F.H.]. Further, [Ms.] Handy asserts that child support is not even a part of this case. The court disagrees and does order child support as contained in this Opinion and Order.

Ms. Handy thereafter noted this timely appeal. Additional facts will be supplied below.

DISCUSSION

Ms. Handy contends that the trial court erred in granting Ms. Francis sole physical custody of K.F.H.² Ms. Handy asserts that the court did not properly consider the requisite

² Ms. Francis did not file an appellee brief.

factors before reaching its decision. Ms. Handy also asserts that the court’s decision to limit her visitation to every other weekend contradicted the court’s own finding that she and K.F.H. needed to rekindle their relationship. Ms. Handy contends that the “more appropriate course would have been for the trial court to phase in access between [her] and K.F.H., to ultimately arrive at the schedule the parties had in place prior to 2019.”

Standard of Review

Appellate review of a trial court’s decision regarding child custody involves three interrelated standards. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). First, any factual findings are reviewed for clear error. *Id.* Second, any legal conclusions are reviewed *de novo*. *Id.* Finally, if the court’s ultimate conclusion is “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 J.J.*, 231 Md. App. 304, 345 (2016) (citations and quotations omitted). “A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (citations and quotations omitted).

Analysis

In *Montgomery Cnty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977), this Court set forth a non-exclusive list of factors a trial court should consider when making a custody determination. *Id.* at 420; *see also J.A.B.*, 250 Md. App. at 253. Those factors include but are not limited to: the parties’ fitness; the parties’ character and reputation; the

parties’ desire; any agreements between the parties; the potential of maintaining natural family relations; the child’s preference; any material opportunities affecting the child’s future; the child’s age, health, and sex; the parties’ residence and the opportunity for visitation; the length of separation from the natural parents; and any prior voluntary abandonment or surrender. *J.A.B.*, 250 Md. App. at 253.

When considering those factors, “the trial court should examine the totality of the situation in the alternative environments and avoid focusing on or weighing any single factor to the exclusion of all others.” *Jose v. Jose*, 237 Md. App. 588, 600 (2018) (citations and quotations omitted). Moreover, “[t]he primary goal of access determinations in Maryland is to serve the best interests of the child.” *Conover v. Conover*, 450 Md. 51, 60 (2016). “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.” *E.N. v. T.R.*, 474 Md. 346, 397 (2021) (citations and quotations omitted). “In this regard, trial courts are endowed with great discretion in making decisions concerning the best interest of the child.” *Bussell v. Bussell*, 194 Md. App. 137, 157-58 (2010) (citing *Petrini v. Petrini*, 336 Md. 453, 469-70 (1994)).

Against that backdrop, we hold that the trial court did not err. In making its custody determination, the court expressly recognized its duty to consider the *Sanders* factors. The court went on to find that both parties were fit, that neither party exhibited evidence of a poor character or reputation, that the parties lived close to one another, and that the parties’ previous custody agreement had ended on June 26, 2019, following the alleged incident in

which Ms. Handy’s live-in partner purportedly struck K.F.H. in the face. The court noted that, while material opportunities, environment, and surroundings were not “significant” factors, Ms. Francis’s concern regarding Ms. Handy’s live-in partner was something that needed to be considered. The court recognized the importance of the relationship between K.F.H. and Ms. Handy, but the court also recognized that, because the relationship had not been fostered over the previous two years, the bond between K.F.H. and Ms. Handy needed to be slowly rebuilt. The court also noted that Ms. Handy had failed to pay any child support over the previous two and a half years, which “undercut[] her testimony that she wants what is best for [K.F.H.]” The court concluded that, under the circumstances, it would be inappropriate to simply reinstitute the parties’ former custody arrangement. The court found, rather, that it was in K.F.H.’s best interest that Ms. Francis be awarded primary physical custody and that Ms. Handy be allowed visitation every other weekend.

From that, it is clear that the court considered all of the relevant factors and gave each factor an appropriate weight. It is equally clear that the court reached a reasonable conclusion based on the totality of the situation and K.F.H.’s best interests. We see no evidence that the court abused its discretion in making its custody determination.

Ms. Handy argues that the trial court failed to consider the desires of the parties, any agreements between the parties, and K.F.H.’s age, health, and sex. We disagree. The court expressly considered the desires of the parties when it noted Ms. Francis’s concerns about Ms. Handy’s live-in partner and overall fitness as a parent and when it discussed Ms. Handy’s desire to “reset things to the way they were prior to June 2019.” The court also

expressly considered any agreements between the parties when it noted that, “while there was an agreement between the parties, that agreement ended on June [26], 2019.” Finally, although the court did not mention K.F.H.’s “age, health, and sex” or make express findings related to that factor as it did with the other factors, the court did make findings as to K.F.H.’s date of birth, her “overall well-being,” and her time spent in Ms. Handy’s care prior to June 2019. As such, we cannot say that the court failed to consider that factor, or any other factors, in reaching its decision.

Ms. Handy argues that the trial court did not give appropriate weight to her need to rekindle her relationship with K.F.H. or the fact that the parties lived near one another. Again, we disagree. The court expressly stated that it had “placed significance on the overall well-being of [K.F.H.] to have [Ms.] Handy back in her life, and to have the chance of re-bonding with each other.” The court then noted that the “residences of the parties is not a factor, living only thirteen miles apart.” Thus, the court properly considered those factors. That the court did not give those factors the weight that Ms. Handy believes they deserved does not mean that the court abused its discretion.

Finally, Ms. Handy asserts that the court’s decision to award Ms. Francis sole custody and to limit Ms. Handy’s visitation to every other weekend was contrary to the court’s own findings. She notes that the court found both parties fit, no negative evidence of character or reputation of either parties, and no significant impediments regarding material opportunities or distance. She also notes that the court expressly stated that she and K.F.H. needed to “rebond.”

We remain unpersuaded. At the time of trial, Ms. Handy had not seen K.F.H. in over two years. Recognizing the significance of K.F.H.’s overall need to have Ms. Handy back in her life, the trial court found that Ms. Handy should be granted reasonable access to K.F.H. The court found, however, that granting Ms. Handy’s request to “turn back the clock to June 2019” was “not possible given the testimony the court has heard.” The court also found that Ms. Handy’s “failure to provide any support in two and a half years undercuts her testimony that she wants what is best for [K.F.H.]” Based on those and other relevant considerations, the court determined that Ms. Handy should be given access to K.F.H. every other weekend. That decision was supported by the evidence and was based on an appropriate consideration of the totality of the circumstances, as dictated by the relevant factors. The court did not abuse its discretion in reaching that decision. That some of the court’s findings may have supported a different determination does not mean that the court abused its discretion. We, therefore, hold that the trial court did not err and affirm the court’s judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**