

Circuit Court for Baltimore City  
Case No. 24-D-20-002820

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0192

September Term, 2022

---

DONALD E. HARRISON

v.

NEHDIA-UT-ZUHRA MUMUNI

---

Berger,  
Arthur,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Arthur, J.

---

Filed: December 2, 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.

This case concerns child custody and child support. The Circuit Court for Baltimore City awarded primary physical custody to the mother and ordered the father to pay child support. The father appealed.

We shall remand the issue of child custody for further proceedings, without affirmance or reversal, because we cannot ascertain whether the court considered the factors that it must consider in making a custody determination and because we cannot tell how the court’s conclusion follows from the consideration of those factors. We shall vacate the judgment as it pertains to child support and remand for further proceedings because the court committed clear error in computing the father’s child-support obligation by double-counting one aspect of his income.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Donald E. Harrison (“Father”) is a podiatrist and is the sole owner and employee of a business. Nehdia-ut-zuhra Mumuni (“Mother”) is an anesthesiologist. They are unmarried.

Father and Mother moved in together in 2018, after the first of their two children was born. The first child was diagnosed with cancer in October 2018, but has been in remission since December 2020 and is generally in good health.

Because both parents have demanding work schedules, they hired a full-time nanny to take care of their first child on weekdays. After their second child was born in April 2020, the nanny continued to provide full-time care for both children.

In August 2020, the parties separated. In September 2020, Father moved into a condominium across the street from Mother’s condominium. On June 28, 2021, the parties reached a temporary agreement that specified a set schedule for visitation.

Pursuant to the agreed schedule, the parties had what is colloquially referred to as a 3-1-3-1 schedule. Under the schedule, Father had the children from Thursday to Sunday every other weekend. During the weeks when Father did not have weekend visitation, he had the children from Tuesday evening to Wednesday evening.

On November 30, 2020, Mother filed a complaint for custody, asking for sole legal and physical custody of the children and child support. On April 16, 2021, Father filed an answer, asking for joint legal and shared physical custody of the minor children. Father took the position that he should have custody of the children 50 percent of the time.

In November 2021, the Circuit Court for Baltimore City conducted a three-day trial on the issues of legal and physical custody, child support, and attorneys’ fees. Both parents testified, as did the nanny, one of Father’s close friends (whom the court described as Father’s “surrogate father”), and a security guard at Mother’s condominium.

At the conclusion of trial, the court rendered an oral ruling as to custody, which began with a recapitulation of the testimony that it had heard.

Among other things, the court mentioned that Father’s surrogate father had expressed concern about how Father had behaved around the time when his relationship with Mother ended. It cited Mother’s testimony that Father had “minimal” involvement in the raising of the children. It credited the testimony of the security guard, who said

that Father would undress the children in the lobby of the building in order to prevent Mother from having access to the clothing that he had purchased for them. The court opined that Father “needs to . . . check his ego” and “not get his feelings hurt over situations[,] especially regarding his children.”

The court expressed skepticism about some aspects of Mother’s testimony, including an allegation of physical abuse. It criticized both parents for exposing the older child, whose cancer was in remission, to the possibility of infection during the COVID-19 pandemic. Similarly, it suggested that both parents could have been more involved than they were in the medical treatment of the older child. The parents, the court said, seemed to have been less interested in their children than in other aspects of their lives.

The court went on to say that both parents could have contributed more to the “household.” It singled out Father for criticism, suggesting that he spent too much time on other activities, such as coaching track, and not enough time with his children.

The court proceeded to offer its “general impressions about the parents.” It opined that Father “has a little further way to go because of his behaviors during this particular time.” The court added: “I understand the frustration in the relationship ending, but you still need to act in an appropriate manner.”

At this juncture, the court announced its ruling. It awarded joint legal custody, but gave tie-breaking authority to Mother on educational issues. In addition, it awarded primary physical custody to Mother and allowed Father to have parenting time on two consecutive days on the first, second, and fourth weeks of each month.

After the court had ruled, Father’s counsel asked the court (outside of Father’s presence) to explain why it did not order joint physical custody. The court responded:

The reason I didn’t grant [Father] joint physical custody is because of his general behaviors during this – these particular times. I found [Father’s] behaviors not to be, I guess for lack of [a] better word, mature under the circumstances.

The court also calculated Father’s child-support obligation. The court appears to have begun with the premise that Father earned \$251,214.00 per year, including approximately \$100,000.00 in fringe benefits on top of his salary. Reasoning from that premise, the court determined Father’s obligation to be \$3,484.00 per month, retroactive to the day of filing. The court also ordered Father to pay \$38,808.00 in arrearages, at the rate of an additional \$200.00 per month.

The court entered an order memorializing these terms on February 22, 2022. On March 22, 2022, Father filed a timely notice of appeal.

We shall provide additional facts as necessary to our discussion.

### **QUESTION PRESENTED**

On appeal, Father presents three questions, which we paraphrase:

1. Did the trial court err or abuse its discretion when it determined physical custody without considering the factors enumerated in *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery Cnty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1978)?
2. Did the trial court abuse its discretion in granting primary physical custody to Mother?
3. Did the trial court make a clearly erroneous finding of fact when calculating Father’s income for purposes of determining his child-support

obligation?<sup>1</sup>

For the reasons discussed in this opinion, we shall remand the issue of physical custody, without affirmance or reversal, and shall vacate the judgment as it pertains to child support.

### **STANDARD OF REVIEW**

We review child-custody determinations utilizing three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). First, when we scrutinize factual findings, we will “not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c); *see In re Yve S.*, 373 Md. at 586. Second, if the trial 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. *In re Yve S.*, 373 Md. at 586. Finally, when we view the ultimate conclusion of the trial court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the trial court’s decision should be disturbed only if there has been a clear

---

<sup>1</sup> Father formulated his questions as follows:

1. Did the Trial Court Fail to Utilize the Appropriate Legal Standard When Determining Physical Custody When It Failed to Consider The “Factors”?
2. Did the Trial Court Abuse Its Discretion When Granting Appellee Primary Physical Custody?
3. Did the Trial Court Commit a Clearly Erroneous Finding of Fact When Calculating Appellant’s Income for Child Support?

abuse of discretion. *Id.* A trial court abuses its discretion when it acts without reference to any guiding rules or principles. *See, e.g., Santo v. Santo*, 448 Md. 620, 625-26 (2016).

We review child support calculations for abuse of discretion. *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018) (citation omitted). A trial court can abuse its discretion by basing its decisions upon clearly erroneous findings of fact. *Guidash v. Tome*, 211 Md. App. 725, 735 (2013).

## DISCUSSION

### A. Consideration of the *Taylor-Sanders* Factors

“Embraced within the meaning of ‘custody’ are the concepts of ‘legal’ and ‘physical’ custody.” *Taylor v. Taylor*, 306 Md. 290, 296 (1986). “‘Physical custody . . . 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. at 627 (quoting *Taylor v. Taylor*, 306 Md. at 296).

In any child custody dispute, the determinative issue is the best interests of the child. *Id.* at 626 (citing *Ross v. Hoffman*, 280 Md. 172, 178 (1977)). Maryland’s appellate courts have identified a non-exhaustive list of factors for a trial court to consider in analyzing the best interests of the child. *See generally Taylor v. Taylor*, 306 Md. at 304-311; *Montgomery Cnty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1978); *see also Azizova v. Suleymanov*, 243 Md. App. 340, 345-47 (2019) (citing Cynthia Callahan & Thomas C. Ries, *Fader’s Maryland Family Law* § 5-3(a) (6th ed. 2016)).

Under *Taylor v. Taylor*, the factors include:

- (1) the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare;
- (2) the willingness of parents to share custody;
- (3) the fitness of parents;
- (4) the relationship established between the child and each parent;
- (5) the preference of the child;
- (6) the potential disruption of child's social and school life;
- (7) the geographic proximity of the parental homes;
- (8) the demands of parental employment;
- (9) the age and number of children;
- (10) the sincerity of parents' request;
- (11) the financial status of the parents;
- (12) the impact on state or federal assistance; and
- (13) the benefit to parents.

*Taylor v. Taylor*, 306 Md. at 304-11.

Similarly, under *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, the factors include:

- (1) the fitness of the parents;
- (2) the character and reputation of the parties;
- (3) the desire of the natural parents and any agreements between the parties;
- (4) the potentiality of maintaining natural family relations;
- (5) the preference of the child;



- (6) material opportunities affecting the future life of the child;
- (7) the age, health and sex of the child;
- (8) the residences of parents and opportunity for visitation;
- (9) the length of separation from the natural parents; and
- (10) any prior voluntary abandonment or surrender.

*Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. at 420.

“[N]o single list” of factors will satisfy the demands of every case, *Taylor v. Taylor*, 306 Md. at 303, and trial courts have great discretion in determining the best interests of the child. *Petrini v. Petrini*, 336 Md. 453, 469 (1994). A trial court, however, “*must consider and weigh*” these factors in its determination. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 253 (2021) (emphasis added); *accord Azizova v. Suleymanov*, 243 Md. App. at 345.

The Maryland appellate courts have affirmed custody determinations where the trial court completed a thorough, well-reasoned best-interests analysis in which it expressly discussed the *Taylor-Sanders* factors. *See, e.g., Santo v. Santo*, 448 Md. at 640-46 (finding no abuse of discretion where “[t]he [] [c]ourt’s determination [was] predicated on its thorough review of the *Taylor* factors”); *J.A.B. v. J.E.D.B.*, 250 Md. App. at 251-58 (finding no abuse of discretion where “the [] court considered and analyzed each factor identified in both *Sanders* and *Taylor* [and] provid[ed] an in-depth analysis of every factor”). On the other hand, this Court has vacated a custody determination where the trial court failed to link its factual findings to the *Taylor-Sanders* factors. *See, e.g., Jose v. Jose*, 237 Md. App. 588, 609 (2018) (vacating judgment and

remanding a custody determination where the court, though expressly evaluating twelve of the *Taylor-Sanders* factors, did not “adequately explain its resolution of physical custody”).

In making a custody determination, a trial court is not required to refer expressly to the *Taylor-Sanders* factors, many of which may be inapplicable in any given case. The record, however, must establish that the court considered the relevant factors. *Santo v. Santo*, 448 Md. at 630-31. The record must also establish how the court’s custody determination follows from its findings on the relevant factors. *Boswell v. Boswell*, 352 Md. 204, 223-24 (1998). Otherwise, an appellate court cannot intelligently evaluate whether the trial court appropriately exercised its discretion.

In this case, the circuit court made no express reference to any of the *Taylor-Sanders* factors. In fact, the court said nothing specifically about the best interests of the children. Instead, the court mainly discussed the parents’ behavior. In so doing, the court found fault with Father’s self-centered and immature reaction to the end of his relationship with Mother. The court found it particularly significant that Father had undressed (or would undress) the children at Mother’s condominium so as to prevent her from having access to the clothing that he had bought for them. In addition, the court cited Father’s decision to give greater priority to activities such as coaching others than to spending time with his own children. The court seemed to believe that Mother was more mature, and thus perhaps better suited as a parent, than Father.

One could speculate that the court’s discussion relates to the fitness of the parents, which is one of the factors enumerated in both *Taylor v. Taylor* and *Montgomery Cnty.*

*Dep't of Soc. Servs. v. Sanders*. Speculation, however, is neither appropriate nor required; we insist that the court spell out its reasoning with sufficient clarity to allow us to evaluate whether it properly exercised its discretion. The court did not spell out its reasoning with sufficient clarity in this case.

Furthermore, even if we were to speculate that the court's discussion concerned the fitness of the parents, we have no indication that the court considered any of the other relevant factors that, the cases say, it "must consider" in making a determination about the best interests of the children. Nor do we have any indication of how the court's ultimate decision followed from the consideration, if any, that it may have given to the *Taylor-Sanders* factors. The court not only failed to explain why it rejected Father's request for joint physical custody, but it also failed to explain why it settled on a visitation schedule that was considerably less advantageous to Father than the pendente lite agreement that the parties had made.

Because the court's explanation is insufficient for us to conduct an intelligent evaluation of how the court exercised its discretion, we shall remand the issue of physical custody to the circuit court without affirmance or reversal, pursuant to Maryland Rule 8-604(d). On remand, the circuit court shall explain the basis for its decision. The explanation must contain sufficient detail (1) to demonstrate that the court considered the *Taylor-Sanders* factors (and any other factors that may bear on the best interests of the children) and (2) to illustrate how the court's ultimate conclusion follows from its factual findings concerning the best interests of the children.

### **B. Grant of Primary Physical Custody to Mother**

Father's second question concerns the court's decision to grant primary physical custody to Mother. We must remand that decision as well, without affirmance or reversal, because it is embedded in the custody decision that we are remanding as a result of our inability to evaluate it intelligently. On remand, the court shall explain the basis for its decision with the level of detail described above.

### **C. Child Support**

In calculating Father's child-support obligation, the court found that his annual income was \$251,214.00. That \$251,214.00 figure included over \$100,000.00 in fringe benefits that, according to the court, Father received in addition to his salary.

Father argues that the court's finding is clearly erroneous. He is correct: the uncontroverted evidence established that Father did not receive the fringe benefits in addition to his salary, but rather that his salary included his fringe benefits.

When a court determines a parent's child support obligations, "the central factual issue is the 'actual adjusted income' of each party." *Reuter v. Reuter*, 102 Md. App. 212, 221 (1994); *see also Walker v. Grow*, 170 Md. App. 255, 267 (2006) (stating that, even in an "above-guidelines case," in which the statutory schedule of basic child support obligations does not apply, the trial court must ascertain each parent's "actual income"). "Adjusted actual income" means "actual income," which is defined in, section 12-201(b) of the Family Law Article, minus "preexisting reasonable child support obligations actually paid" and certain "alimony or maintenance obligations actually paid." Md. Code (1984, 2019 Repl. Vol.), § 12-201(c) of the Family Law Article ("FL").

FL § 12-201 defines “actual income” as “income from any source.” FL § 12-201(b)(1); *see Walker v. Grow*, 170 Md. App. at 267. For a party who is self-employed, like Father, “‘actual income’ means gross receipts minus ordinary and necessary expenses required to produce income.” FL § 12-201(b)(2). Additionally, actual income includes “expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business to the extent the reimbursements or payments reduce the parent’s personal living expenses.” FL § 12-201(b)(3)(xvi).

In its calculation of Father’s actual income, the court noted that Father is self-employed and that he receives fringe benefits through his company, Loft Soles Podiatry. Although Father was not entirely consistent in his accounts of his self-employment income, the court found that his actual income was \$12,954.00 per month. That finding is supported by an answer to an interrogatory and by Father’s testimony.<sup>2</sup>

Having found that Father’s self-employment income was \$12,954.00 per month, the court proceeded to find that his actual income from self-employment was \$151,000.00 per year, which is a little less than \$12,954.00 multiplied by 12.<sup>3</sup>

Father had testified that his monthly self-employment income “include[d]” certain fringe benefits – specifically, \$5,000.00 per month for life insurance policies to benefit

---

<sup>2</sup> In the answer to the interrogatory and at trial, Father actually testified that his self-employment income was \$12,984.50 per month. Thus, the court undercounted Father’s income by \$30.50 per month.

<sup>3</sup>  $\$12,954.00 \times 12 = \$155,448.00$ .

his children in case of his death and a rental payment of \$3,950.00 per month for the condominium where he resided. In other words, Father testified that his \$12,985.50 in monthly income “include[d]” payments, made by his business, on his behalf, for the insurance policies on his life and for his housing. These fringe benefits made up over \$100,000.00 of Father’s approximately \$151,000.00 in annual income.<sup>4</sup>

In computing Father’s actual income, however, the court did not recognize that Father’s income “include[d]” the fringe benefits. Instead, the court added a little more than \$100,000.00, representing the fringe benefits, to the total of \$151,000.00 in self-employment income. On the basis of that addition, the court concluded that Father’s actual income equaled \$251,214.00.

The court’s conclusion was clearly erroneous. Father testified, unequivocally, that his self-employment “include[d]” the fringe benefits. The record discloses no basis on which the court could reasonably have found otherwise. Thus, in adding more than \$100,000.00 in fringe benefits to Father’s self-employment income, which already “include[d]” the fringe benefits, the court erroneously double-counted one component of Father’s income.

Mother responds that this is an “above-guidelines case,” in which the statutory child-support guidelines do not apply because the parents’ “combined adjusted actual income” exceeded \$15,000.00 per month.<sup>5</sup> Mother correctly observes that in an above-

---

<sup>4</sup>  $(\$5000.00 + \$3950.00) \times 12 = \$8950.00 \times 12 = \$107,400.00$ .

<sup>5</sup> For cases filed on or after July 1, 2022, the child-support guidelines apply when the parents’ “combined actual income” is up to \$30,000.00 per month.

guidelines case “the court may use its discretion in settling the amount of child support.” FL § 12-204(d); *see Malin v. Mininberg*, 153 Md. App. 358, 410-11 (2003). Even in an above-guidelines case, however, a court does not have the discretion to make a factual finding that is not only unsupported but contradicted by the factual record. And even in an above-guidelines case, a proper exercise of discretion begins with an accurate finding of each parent’s actual income. *See, e.g., Ruiz v. Kinoshita*, 239 Md. App. 395, 427 (2018); *Walker v. Grow*, 170 Md. App. at 267.

Because the court committed clear error in its finding of Father’s actual income, we shall vacate the judgment insofar as it pertains to Father’s child-support obligation. On remand, the court shall reassess the evidence and make a new finding, supported by the record, concerning Father’s actual income. On the basis of that finding, the court shall recompute Father’s child-support obligation, including the amount, if any, of his arrearages.

**ON THE ISSUE OF PHYSICAL CUSTODY, THE CASE IS REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY, PURSUANT TO MARYLAND RULE 8-604(D), WITHOUT AFFIRMANCE, REVERSAL, OR MODIFICATION OF THE JUDGMENT, FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; AS IT PERTAINS TO CHILD SUPPORT, THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS VACATED, AND THE CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS ARE TO BE PAID BY APPELLEE.**