

Circuit Court for Prince George's County
Case No. CAD2015149

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 267

September Term, 2022

DANIEL SOLEE

v.

SONOVIA SOLEE

Graeff,
Arthur,
Reed,

JJ.

Opinion by Graeff, J.

Filed: November 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.

On March 17, 2022, the Circuit Court for Prince George’s County granted primary physical custody of S.S. to appellee, Sonovia Solee (“Mother”), and joint legal custody to Mother and appellant, Daniel Solee (“Father”).¹ On appeal, Father presents the following questions for this Court’s review, which we have rephrased slightly, as follows:

1. Did the circuit court err in denying Father’s motion for summary judgment or, in the alternative, motion to dismiss, regarding Mother’s claim of abuse?
2. Did the circuit court err or abuse its discretion in failing to provide its rationale in its child custody ruling?
3. Did the circuit court err or abuse its discretion in declining to vacate the consent *pendente lite* order issued on January 29, 2021?
4. Did the circuit court abuse its discretion in denying Father’s motion to disqualify opposing counsel, Marnitta King, for professional misconduct?

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

FACTUAL AND PROCEDURAL BACKGROUND

I.

Background and Initial Cross Protective Order Proceedings

The parties married in California in January 2013. Father relocated to Washington, D.C. for work in December 2015, and Mother subsequently moved to Maryland. In May 2016, S.S. was born in Maryland, and the couple purchased their marital home in Upper Marlboro.

¹ In the interest of privacy, we refer to the minor child by her initials, S.S.

By June 2020, the parties sought to separate, and Mother informed Father that she would be leaving for California in July with S.S. Father did not agree to Mother leaving with S.S. On July 24, 2020, Mother filed a complaint for custody of S.S. in the Circuit Court for Prince George's County, but the case never proceeded because she failed to pay the filing fees after the court denied her fee waiver request. On July 29, 2020, the court issued a temporary protective order against Father, based on Mother's allegations of physical and verbal abuse. Mother left with S.S. for California the next day.

On September 23, 2020, the circuit court held a hearing on the final protective order. Father was self-represented. Mother alleged that Father was verbally and physically abusive to her and mentally abusive to S.S. On February 10, 2020, he hit Mother "in her left eye with a closed fist." On three other occasions between 2018 and 2020, he struck or threatened her. Mother alleged that there was a progression of physical abuse that put her in fear of her life. Father told her that if anything happened to their daughter, he would kill her. He broke Mother's cellphone twice, and he had S.S. call her "the C-word." Father denied Mother's allegations.

The court found that Mother had not met her burden of proof to show that an act of abuse had occurred, stating that there was "insufficient credible testimony in this case." It denied the petition for a final protective order. The court ordered that the parties maintain joint custody of S.S., allowing Mother to have S.S. in California, with the parties to arrange S.S.'s travel to Maryland for visits with Father. Despite this order, however, Father, who

had not seen S.S. since July 29, 2020, did not have in-person contact with S.S. again until December 31, 2020.

On October 29, 2020, Mother appealed the final protective order ruling. Father filed for a cross protective order against Mother in the circuit court. Both requests for protective orders were scheduled for a joint hearing on December 22, 2020, even though Mother filed her appeal late.

Shortly before the hearing, Ms. King, Mother's attorney, spoke to Father by phone. Father agreed to: (1) dismiss his protective order request; and (2) with respect to the divorce and custody case, agree to a *pendente lite* order, providing that the parties had shared custody of S.S., with exchanges on a set schedule each month. In return, Mother agreed to dismiss her request for a protective order against Father.

At the hearing, Father again appeared *pro se*, and Ms. King informed the court of the agreed-upon terms. Father acknowledged that he agreed to withdraw his request for a protective order, "agreed to all of the other terms and conditions that Ms. King put on the record," and was "happy [Ms. King] called [him]."² The court then read the terms into the

² The following terms and conditions were put on the record at the hearing:

1. Father agreed to dismiss his protective order request against Mother.
2. Father agreed to dismiss a custody case that he filed as a foreign judgment in California.
3. Mother agreed to dismiss her protective order request against Father.
4. Both parties agreed to a *pendente lite* order for joint custody of S.S. on a month-to-month basis.
5. Father agreed to remove S.S. from the National Crime Information Center registry for missing children.

record, dismissed both protective order requests, and provided that, “upon submission, the *pendente lite* order with access for [S.S.] [would] be submitted to the other file.”

II.

Pendente Lite Order

On January 29, 2021, the court issued the *pendente lite* order regarding custody and visitation. The court ordered that, pursuant to the parties’ agreement, the parties would share access to S.S., Father would have access to S.S. every other month beginning on January 1, 2021, and Mother would have access beginning on February 1, 2021, on alternative months. The order also provided for the parents’ access to S.S. during school breaks, daily access to S.S. by telephone or video calls, and that Father would “take all efforts to” dismiss all cases pending against Mother and remove S.S. from any “missing or endangered children databases.”

Later that day, Father filed a motion to vacate the *pendente lite* order, alleging that his consent to the terms of the order was due to duress and misrepresentations by Ms. King. He argued that, during their phone call before the December 22, 2020 hearing, Ms. King discussed an agreement with him, despite Father having retained counsel in the divorce and custody case, and requested that he agree to the terms if he “wanted to see the minor child in person again.” Father “had not seen [S.S.] for five months and [Mother] was running from law enforcement and hiding [S.S.] . . . in the State of California, [which] listed

[S.S.] as a missing person in the [National Crime Information Center].”³ He further alleged that Ms. King “fraudulently induce[d]” him into agreeing to dismiss his protective order case, in consideration for Mother dismissing her protective order case against Father, but she did not disclose that the court had no jurisdiction to consider the case because Mother’s notice of appeal was untimely. Attached to Father’s motion was a retainer agreement from the Law Offices of Hoover & Hoover, LLC, with Father’s signature dated December 10, 2020, and Mr. Hoover’s signature dated December 18, 2020. Father was self-represented at the protective order hearing on December 22, and at that time, Mr. Hoover had not filed an appearance on behalf of Father for the divorce and custody case.

In response, Mother argued that Father was not represented by counsel and had never indicated that he had counsel as of the December 22, 2020 hearing, where he was self-represented. Father waited several days after the hearing before communicating that he had counsel and would not sign the *pendente lite* order.

³ After Mother left with S.S. for California, Father contacted California law enforcement and the FBI in an attempt to locate S.S. because he did not know her whereabouts. Subsequently, S.S. was listed as a missing person in the National Crime Information Center’s database.

III.

Divorce and Custody Merits Trial (I)

On March 30 and 31, 2021, the parties appeared for trial on the divorce and custody case.⁴ The parties focused on the January 2021 *pendente lite* order, but the court stated that evidence on that matter should not be the focus because “we are here [] to do a full evidentiary hearing . . . we are not here on the *pendente lite* order . . . [the] *pendente lite* order is going to be in place until . . . I come up with a new order.” The court explained that, “if there is ever an order in place, that order stays in place until it is superseded by another order.”

Following two days of trial, the parties required additional time. The case was reset for the next year, 2022, with the exception of a couple of limited issues, including a hearing regarding what school S.S. would attend for the following school year.

At the May 24, 2021 hearing on this issue, Father filed: (1) a motion to vacate, and (2) a motion to reconsider the court’s oral ruling to exclude evidence of the *pendente lite* order. The court denied Father’s motion to vacate, but granted his motion to reconsider by ordering that, with respect to S.S.’s school attendance, “the parties may testify to agreements between the parties, whether the parties complied with the agreement, and any defenses.” Beyond the court’s docket entry sheet for May 24, there is no other record of

⁴ The parties had already set their divorce and custody case for trial, prior to the court entering the *pendente lite* order.

the court's ruling on the *pendente lite* order on that day. The court did not issue a written order.

On August 4 and 17, 2021, the hearing regarding S.S.'s school enrollment continued. On August 24, the court issued its order, providing that: (1) the custody agreement from the original *pendente lite* order would "remain in effect until amended by a superseding order," and (2) with respect to S.S.'s school enrollment, she would enroll in a virtual learning program at Patuxent Elementary School in Maryland.⁵

IV.

Father's Motion to Disqualify Ms. King

On August 2, 2021, Father filed a motion to disqualify Ms. King. Father argued that Ms. King made misrepresentations on the record at the December 22, 2020 hearing while "pretend[ing] to be unaware" that Father was represented by counsel. He alleged that Ms. King told him that the terms had to be put on the record at the protective order hearing if Father wanted to see S.S. in person again. Father stated that he did "not have confidence in the integrity of the judicial process," and "the administration of justice has been impacted because Ms. King has conducted herself in a manner inconsistent with Maryland attorneys rules of professional conduct."

⁵ If S.S. could not be enrolled at Patuxent Elementary School, she would be enrolled at "a private school in Maryland," or if this was not possible, then at a virtual learning program in San Diego, or if this was unavailable, then at a national K-8 learning academy.

On August 31, 2021, the court denied the motion. Ms. King continued to represent Mother in the proceedings.

V.

Merits Trial (II)

From March 14–17, 2022, a new merits trial on the divorce case ensued. Because the original judge had retired by that time, the case was reassigned to another judge and the case was scheduled to start anew, as a *de novo* merits hearing.

At the outset of trial, Father, who appeared self-represented, and Mother, represented by counsel, amended their complaints to strike any specific grounds for divorce and to proceed only on the ground of a one-year mutual and voluntary separation. The parties agreed that they had been separated for a year, and the court granted an absolute divorce. The court then heard testimony on the other issues, including, as relevant to this appeal, custody.

A.

Father’s Testimony on Custody

Father testified that he was “more of an available parent to a child,” noting that he worked from home. He stated that, since S.S. was born, he has “been the most available parent to [S.S.] in terms of bathing, caring . . . feeding, and so forth.” She was doing well in school.

Father had concerns about S.S. living in California with Mother, and he believed that California was not a stable home environment for S.S. When Mother first went to

California, she and S.S. were staying at a home with Mother's grandmother and adult half-brother. Father called the police to investigate the living conditions at the house because it was not suitable for S.S. Mother and S.S. subsequently went from "hotel to hotel to hotel" for five and a half months. He was not able to see S.S. until December 2021, after he "had to settle for a deal with Ms. King" to bring S.S. back to Maryland. When S.S. was in California, Mother was relying on S.S.'s grandmother to babysit S.S. frequently, and S.S. was missing school and falling behind in her classes.

Regarding his relationship with S.S., Father had been deprived of the opportunity to be present in S.S.'s life because Mother did not provide him with frequent opportunities to speak to S.S. while S.S. was in California. Mother denied Father's request to talk to S.S. by phone, and it was "very, very difficult" to communicate over video calls or by email. Father stated that he was only requesting custody, not child support.

On cross-examination, opposing counsel asked Father if he was aware of Mother's temporary protective order on July 29, 2021, prior to her departure to California. Father indicated that the order "did not allow [Mother] to take [S.S.] out of the State of Maryland," and he was unable to have "regular access" to S.S. by phone between then and December 2021. On January 1, 2022, Father took custody of S.S., pursuant to the *pendente lite* order, which provided for him to have custody for the month of January. Father withheld custody of S.S. at that time. Mother was supposed to have custody for the month of February, and she flew to Maryland on February 1. Mother went to S.S.'s school at 9:00 a.m. that day, and the school called Father to alert him to this. Father then went to the school and picked

up S.S., and both he and Mother went to the circuit court to file a motion for an emergency hearing to modify the *pendente lite* order. Father sought to extend his custody of S.S., and Mother sought to immediately take custody. Later that day, Mother called S.S., who had her own cell phone, and S.S. indicated that she did not want to see Mother. Mother asked Father to drop S.S. off at a hotel where Mother was staying, but Father did not do so because he was afraid that Mother would leave Maryland with S.S. The next day, the court found that the matter was not an emergency and declined to hold a hearing to modify the *pendente lite* order. S.S. remained in Maryland through the trial in March because her school terminated its virtual learning program, and she returned to in-person schooling on January 28, 2022.

Counsel also questioned Father regarding his history of convictions for driving under the influence (“DUI”). He had three DUIs, most recently in 2011. Father stated, however, that he did not consume alcohol at the time of trial. He denied having purchased alcohol for personal consumption, although his bank statements listed charges at various liquor stores. Father testified that the charges were for alcohol at an event with other people, and it was not for his own consumption. He denied that, during the marriage, Mother had provided most of the care for S.S. because Father was drinking. He stated that, although he had been charged with DUIs and had faced challenges with alcohol when he “was a young man” and in the military, this had no impact on his ability to provide for S.S. at this time. Father denied ever calling Mother names in front of S.S., playing too roughly with S.S., or causing S.S. any injury.

B.

Mother's Testimony on Custody

Mother testified that she wanted the court to shield her address in California because she was afraid of Father, who had been physically and verbally abusive. Father objected, stating that collateral estoppel prevented the testimony because Mother had already testified to these allegations at the final protective order hearing on December 22, 2021.

The court responded:

[T]he issue is not the same. The issue before the [c]ourt on a [p]rotective [o]rder hearing was whether or not there was a sufficient basis from which the [c]ourt could rule that there had been violence which would support an entry of an order in relation to that violence for the [p]rotective [o]rder. The question before the [c]ourt here today is the divorce. So while there may be some overlap of information, the purposes and the reasons that we are together are different. So therefore, the [c]ourt finds that there is no collateral estoppel issue[] with this testimony. The [c]ourt will hear the testimony over the objection of [Father] and will give it the weight that the [c]ourt feels it deserves.

Mother testified that Father had behaved violently toward her on several occasions while S.S. was present. Father had a drinking problem throughout the parties' marriage, drank excessively every weekend, was "belligerent, yelling, cussing, calling [her] names, peeing in public," and he "would have blackouts where he would be angry and [call] [her] names . . .and [grab] her" in front of S.S. He would also drink and drive with S.S. in the car.

With respect to allowing S.S. to speak with Father, Mother stated that Father spoke with S.S. daily via Zoom "for as long as they liked." She "would like for them to continue to have a relationship," and it was never her intention to keep S.S. away from Father. When

Mother came to Maryland on February 1, 2022, she emailed Father and requested to see S.S., but Father did not oblige, and he had allowed Mother to interact with S.S. only sporadically since then. Father was not “willing and able to communicate on issues such as schooling and medical in the past,” and Mother stated that it would continue to be difficult to communicate with him about S.S.

On cross-examination, Mother testified that she never informed Father that she was filing a request for a protective order in July 2020 because she was afraid of Father. Because Father had abused her on several occasions between 2017 and 2020, she sought protection through the court, as well as the House of Ruth, a women’s shelter, because she “didn’t want the fighting, the verbal abuse, the violence. [She] just wanted a peaceful exit, so [she] went about seeking help from domestic violence groups.” Father asked Mother to recall specific instances of abuse, and Mother responded:

At times, I have seen you withhold affection when [S.S.] . . . didn’t want to go to you . . . [y]ou brainwash her. You tell her things like you don’t like your mom or your mom is lying and things that are not true about me so that she will be against me. And you manipulate her by trying to win her favor by giving her gifts and promises When you are screaming and you are yelling . . . [S.S.] is afraid.

On July 29, 2020, Mother and Father had an altercation because Mother tried to take S.S. from the marital home, and Father would not let her. Mother then obtained a temporary protective order, making it very clear to the court that she intended to take S.S. to California. Mother returned to the home in the afternoon to take S.S. Mother decided to go to California because she had “family and support there,” but not in Maryland.

On redirect examination, Mother stated that she was afraid of Father’s “violent outbursts, his verbal abuse and also he was very controlling.” Father had installed surveillance cameras around the marital home, but he did not allow Mother to have access to the camera footage. He also did not allow her to go into specific areas of the home and yelled at her if he noticed anything out of place in the home. She had to ask Father for permission to take S.S. anywhere, and she was afraid that he would hit her if she “didn’t obey.” There were instances when Father attacked Mother while he was holding S.S. He also pulled S.S. out of Mother’s arms while she held her.

C.

Court’s Findings on Custody

On March 17, 2022, the court issued its rulings regarding alimony, marital property, and custody. As discussed in more detail, *infra*, the court awarded Mother primary physical custody and joint legal custody, with Mother having tie-breaking authority. On April 6, 2022, the court subsequently issued its written Judgment of Absolute Divorce.

DISCUSSION

I.

Collateral Estoppel

Father contends that the circuit erred in “ruling that collateral estoppel did not apply to bar [Mother] from presenting the same facts or testimony regarding abuse in the divorce and custody action, which was previously litigated in the final [protective order] hearing.” He argues that the court erred in denying his motion for summary judgment or, in the

alternative, motion to dismiss, asserting that collateral estoppel does not require the causes of action to be the same.

Mother contends that the doctrine of collateral estoppel did not apply. She asserts that the issue at the protective order hearing was “whether there was one particular act of abuse,” whereas the issues at the divorce and custody trial were whether “there was cruelty of treatment, and/or desertion throughout the course of the marriage” and “whether it was in the minor child’s best interest to be awarded custody to the Father when he conducted certain behaviors towards Mother, regardless of whether those actions were considered abuse.”

A.

Proceedings Below

On August 3, 2021, prior to the divorce and custody trial in March 2022, the court held a hearing on Father’s motion to dismiss or, in the alternative, motion for summary judgment to bar Mother’s “issue, claim, or cause of action for domestic violence” under the doctrines of collateral estoppel and *res judicata*. Father argued that Mother should be barred from relitigating at the divorce trial the abuse allegations addressed at the final protective order hearing in September 2020. Specifically, he argued that, because the court had already ruled that Mother failed to present sufficient evidence to warrant a protective order for domestic violence, collateral estoppel barred Mother from presenting identical evidence to prove her claim at trial for “Constructive Desertion, Cruelty of Treatment/Excessively Vicious conduct, and Separation.”

Mother argued that her testimony concerning “various acts of physical and emotional abuse” by Father during the marriage should not be barred by collateral estoppel. She asserted that the issue at the final protective order hearing was whether Father had assaulted her “in any degree” on a specific date, whereas the issue with respect to domestic violence in the divorce and custody case was “whether or not [Father] was cruel or vicious through the course of the marriage.” The protective order hearing applied a different standard than what would be applied to findings in the divorce case.

The court denied Father’s motion. It noted that collateral estoppel did not bar the admission of evidence of domestic violence in the divorce case because the issue at the protective order hearing was not identical to that in the divorce case. The court stated that, although the allegations of physical abuse were relevant to both disputes, the protective order litigation was intended “to prevent harm to [Mother],” whereas the divorce and custody litigation would establish grounds for divorce, child support, and custody.

On March 14, 2022, the first day of the divorce merits trial, Father reintroduced his motion to dismiss on identical grounds. The court denied the motion. Father subsequently objected to Mother’s testimony on the same grounds, and the court stated that the issues were not identical, and it overruled the objection.

B.

Analysis

Whether collateral estoppel applies to bar relitigation of an issue is a question of law, which we review *de novo*. *Bank of N.Y. Mellon v. Georg*, 456 Md. 616, 666 (2017)

(“We review without deference, however, questions of law, such as a determination as to the applicability of the doctrines of *res judicata* and collateral estoppel.”).

Collateral estoppel applies when: (1) the issue decided in the prior adjudication is identical with the one presented in the action in question; (2) there is a final judgment on the merits; (3) the party against whom the doctrine is asserted is a party or in privity with a party to the prior adjudication; and (4) the party against whom the doctrine is asserted was given a fair opportunity to be heard on the issue. *Garrity v. Md. State Bd. of Plumbing*, 447 Md. 359, 369 (2016) (quoting *Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 391 (2000)).

With respect to the first factor, Mother’s request for a final protective order required the court to adjudicate the issue of whether Mother was abused, i.e., that Father engaged in an act that caused her serious bodily harm, or placed her in fear of imminent serious bodily harm. *See* Md. Code Ann., Fam. Law Art. (“FL”) §§ 4-501(b)(1), 4-506 (2019 Repl. Vol.). Mother alleged that Father was abusive on February 10, 2020, when he hit her in the left eye with a closed fist, as well as on three other occasions between 2018 and 2020, when he struck or threatened her and put her in fear of her life. The court found that Mother failed to meet her burden to show that abuse had occurred, and it denied her request for a protective order.

With respect to the divorce trial, the issue initially presented was whether divorce could be granted on the ground of cruelty. The parties subsequently agreed that the ground for divorce was a one-year mutual and voluntary separation, and the court granted the

divorce on that ground. Indeed, at oral argument before this Court, counsel for Father agreed that prior abuse did not impact the court's decision to grant a divorce.

Counsel argued, however, that evidence of the prior abuse did impact the issue of custody, and the evidence should not have been admitted. The issue for custody was what was in the best interest of S.S. *See Santo v. Santo*, 448 Md. 620, 626, (2016) (“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.’”) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)). This issue is different from the issue at the protective order hearing. As the Court of Appeals has acknowledged, the court may consider a protective order in making findings related to child custody, such as “the fitness, character, and reputation of the parents,” but the issues underlying the claims are different because “domestic violence protective orders do not award permanent custody of children.” *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 130 (2001). The circuit court did not err in determining that collateral estoppel did not prevent the admission of evidence of Father's abuse toward Mother.

II.

Child Custody

Father next contends that the circuit court erred or abused its discretion in failing to provide its rationale in awarding primary physical custody of S.S. to Mother. Mother contends that the court discussed all the requisite factors and properly exercised its discretion in awarding custody to her.

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

Id. (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Where there is no clear error, we will uphold the court’s findings unless there is an abuse of discretion, meaning that “no reasonable person would take the view adopted by the trial court,” or the court acts “without reference to any guiding rules or principles.” *Santo*, 448 Md. at 625–26 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)) (cleaned up).

“Decisions as to child custody and visitation are governed by the best interests of the child.” *Gordon v. Gordon*, 174 Md. App. 583, 636 (2007). There are multiple factors that are relevant to the court’s decision. For physical custody, those factors include: capacity of parents to communicate and to reach shared decisions affecting child’s welfare; willingness of parents to share custody; fitness of the parents; relationship established between the child and each parent; preference of the child; potential disruption of the child’s social and school life; geographic proximity of parental homes; demands of parental employment; age and number of children; sincerity of parents’ request; financial status of

parents; impact on state or federal assistance; and benefit to parents. *Taylor v. Taylor*, 306 Md. 290, 304–311 (1986). *Accord Azizova v. Suleymanov*, 243 Md. App. 340, 345–47 (2019) (listing a non-exhaustive set of factors for courts to consider in child custody cases), *cert. denied*, 467 Md. 643 (2020).

Here, despite Father’s contention to the contrary, the court did discuss those factors as they applied to this case. The court initially found that the preference of the child was not a factor applicable in this case because S.S. was only six years old. It then addressed the other factors, as follows:

1. Fitness of the parents:

There is no indication that either parent is unfit in this case. There was testimony about Mr. Solee’s past alcohol challenges and issues . . . [b]ut . . . they were not of the amount or the frequency that I think the [c]ourt would anticipate seeing if we were looking at someone who was still under the throes of an active alcohol challenge There is [no] alcohol related detriment to either [Father’s] character or reputation.

The court further noted that there had “been periods of separation from both parents . . . [over] the last couple of years. And the separations seem to be relatively equal.”

2. Willingness of parents to share custody: “[T]here remains the potential of maintaining natural family relations and I think each party understands and recognizes that the other needs to make sure that they maintain a relationship with [S.S.] . . . particularly while she is in her formative years.”

3. Material opportunities: “[B]oth parties are able to address” such opportunities, “like [the] ability to have friends, have normal growth as a child, sleep overs for

young ladies . . . trips to the parks, walks around the neighborhood . . . and there is no evidence that she is anything other than happy and healthy and doing well and thriving.”

4. Capacity of the parents to communicate and reach shared decisions:

[I]t is clear from the testimony and the history in this case that [this] is a challenge It appears from the testimony that there have been times perhaps that [Father] has not been particularly receptive to having full communication and trying to find middle ground. But that . . . has not been to the huge detriment of [S.S.] thankfully. There have been hurdles I think, on both sides with willingness to share custody . . . each parents has had times that they have withheld [S.S.] from the other parent. And thankfully that was for a relatively short period of time and . . . she is young enough that it will hopefully not have a lasting impact on her.

5. Potential disruption of school and social life:

[W]ith pandemic issues and remote learning . . . and given the fact that she is so young and only in kindergarten, there isn't really a very well established school life for her yet. And therefore any change that the [c]ourt may enter as a ruling shouldn't be hugely disruptive of either her social or school life. And certainly having a resolution through this case will hopefully disrupt her less than going back and forth month to month and attending school remotely [in Maryland] at the wee hours of the morning when she is in California.

6. Geographic proximity of the homes: “The court reflected on the geographic proximity of the homes and they are not close at all.” It stated: “Residences of the parents can't be much further apart But it appears from all of the testimony . . . [about] both parents financial situations . . . that wherever, whether it is on the East Coast or the West Coast . . . there are ample opportunities for visitation.”

7. **Demands of parental employment:** “[I]t appears from all of the testimony that both parents are able to maintain their employment in a sufficient manner but still not detriment the care of [S.S.]”
8. **Age and number of children:** “She is the only child and she is six.”
9. **Sincerity of the parents’ requests:** “Both parents’ requests for custody of [S.S.] are very sincere.” “I think the parties absolutely, positively, agree that they want what they believe is best for [S.S.]. They just don’t agree on what that is. I think that both parties want [her] to thrive and grow.”
10. **Financial status and impact on state or federal assistance and benefit to parents:** “We have two parents who are financially solvent and able to meet the financial demand that [S.S.] presents . . . both parents have a financial status that supports their having custody of [her].”

Based on this record, we conclude that the court properly addressed the requisite factors in determining custody of S.S. We agree with the court in its reflection that it “kept always the best interest of [S.S.] in the fore of [its] mind . . . in the course of fashioning this ruling.” *See Gordon*, 174 Md. App. at 636 (The best interest of the child is of “transcendent importance.”) (quoting *In re Adoption No. 10941*, 335 Md. 99 (1994)). We perceive no error or abuse of discretion in the court’s decision to award primary physical custody of S.S. to Mother.

III.

Father’s *Pendente Lite* Order Claim

Father contends that the circuit court erred or abused its discretion in failing to vacate the consent *pendente lite* order because he consented to it under duress, based on fraud and misrepresentation, and because he consented to it without the advice of counsel. Mother disagrees, arguing that Father did not have an attorney of record in the divorce case at the time of the agreement.

An order for *pendente lite* is a temporary measure that terminates once the court issues a final judgment of divorce. *Speropulos v. Speropulos*, 97 Md. App. 613, 617 (1993). A final judgment of divorce terminates a *pendente lite* order. *See Payne v. Payne*, 73 Md. App. 473, 482 (“[A] judgment of divorce terminates awards for child support and alimony *pendente lite* made in a prior judgment of separation.”) (quoting *Manuel v. Broderson*, 298 So. 2d 333, 335 (La. Ct. App. 1974)), *cert. denied*, 312 Md. 411 (1988).

On appeal, as in the circuit court, Father continues to argue about the *pendente lite* order, despite that it was replaced by the final judgment of divorce and is no longer in effect. There is, therefore, nothing for this Court to do regarding this non-existent order. “A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.” *Simms v. State*, 232 Md. App. 62, 68 (quoting *Att’y Gen. v. Anne Arundel Cnty. Sch. Bus Contractors Ass’n.*, 286 Md. 324, 327 (1979)), *aff’d*, 456 Md. 551 (2017). This Court does not ordinarily give opinions on moot issues. *Id.*

In *Krebs v. Krebs*, 183 Md. App. 102 (2008), this Court addressed a similar issue. Appellant argued that the court’s failure to honor her request for a *pendente lite* hearing violated due process. *Id.* at 109–10. We held that this issue was moot because there was no longer an existing controversy where the court subsequently established a final child custody arrangement, at a hearing where she was present. *Id.*

Similarly, here, because the January 29, 2021 *pendente lite* order ceased to be effective on March 14, 2021, when the court granted the final judgment of divorce, this claim is moot. Accordingly, we decline to address it.

IV.

Professional Misconduct Claim Against Opposing Counsel

Father contends that the circuit court abused its discretion by denying his motion to disqualify opposing counsel, Ms. King, for misconduct. He asserts that Ms. King violated several of Maryland’s Rules of Professional Conduct.

Mother asserts that her counsel “engaged in no misconduct,” and that the grievance Father filed against her was dismissed as lacking merit. She contends that her counsel discussed the *pendente lite* agreement with Father when she was not aware that he had retained counsel in the custody case.

A court’s decision to disqualify an attorney due to an ethical violation is a discretionary decision. *Klupt v. Krongard*, 126 Md. App. 179, 203, *cert. denied*, 355 Md. 612 (1999). As such, it is a ruling “that seldom warrants reversal.” *Peat, Marwick, Mitchell & Co. v. L.A. Rams Football Co.*, 284 Md. 86, 97 (1978).

Here, the court summarily denied Father's motion, without explanation. Based on the record, however, we cannot conclude that this was an abuse of discretion. Initially, apart from Father's assertions, which Ms. King disputes, there is no evidence that Ms. King knew that he had hired an attorney for the custody case prior to the issuance of the *pendente lite* order. Moreover, as the circuit court noted, any impropriety based on the *pendente lite* order would be moot once the court issued the final divorce judgment. Under these circumstances, the circuit court did not abuse its discretion in denying the motion to disqualify counsel.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**