Circuit Court for Prince George's County
Case No. CAD2011773

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 400

September Term, 2021

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GISELLE YOUNG

v.

RYAN VIEIRA

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Reed,
Beachley,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Beachley, J.

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Filed: November 15, 2021

Appellant, Giselle Young, and appellee, Ryan Vieira, are the parents of a minor child born in 2011. The central issue in this appeal is whether the Circuit Court for Prince George's County erred in granting Mr. Vieira sole legal and physical custody when, at the end of a three-day trial and while the court was delivering its bench opinion, Ms. Young stated that she "would like to sign over all parental rights." Ms. Young asserts that the court erred "in modifying its original custody determination after [she] made an emotional outburst" in court.[1] We hold that the trial court did not err or abuse its discretion, and therefore affirm.

## FACTUAL AND PROCEDURAL HISTORY

Although the parties never married, they were in a long-term romantic relationship, which ended in 2019. In April 2020, both parties filed separate complaints for custody of their son within one day of each other. The two cases were later consolidated. The court rendered its final decision in April 2021, a year after the complaints were filed. During that year, the child lived with Mr. Vieira, and Ms. Young had almost no contact with her son. On January 11, 2021, the circuit court entered a *pendente lite* order granting Ms. Young supervised visitation with the child for eight hours every other Saturday. Both

[1] Ms. Young presented the following questions in her brief:

1. Did the Circuit Court for Prince George's County err in modifying its original custody determination after Mother made an emotional outburst, after the close of evidence, during the trial court's explanation of its original ruling?

2. Did the Circuit Court for Prince George's County err in its consideration of the factors established in *Taylor v. Taylor* in reaching its custody determination?

parties agree that the supervised visitation never occurred, but they disagree why it never took place.

The custody merits hearing was held on March 24, April 20, and April 22, 2021. Both parties testified, in addition to four witnesses called by Mr. Vieira. Ms. Young did not call any witnesses.

At the end of the trial on April 22, 2021, the court announced its decision on the record, making findings concerning the best interests of the child. The court found that both parties were "genuine and sincere" in their request for custody of the child, and were "willing to share custody albeit with limitations." Regarding other factors relevant to custody, the court expressed more concern about Ms. Young than Mr. Vieira:

> The capacity of the parents to communicate and to share decisions affecting his welfare is not -- is certainly a concern of mine. But based on [*Santo v. Santo*, 448 Md. 620 (2016)], I don't have to make a determination that is not something that can be done between the two. . . .
>
> . . . The relationship established between a child and each parent. [Mr. Vieira] had four witnesses testify about the relationship the minor child has with [Mr. Vieira]. It seems to be a loving, nurturing and respectful relationship.
>
> . . .
>
> The ability of each parent's -- each party's ability to meet the child's development needs including ensuring physical safety, supporting emotional[] security and positive self images promoting interpersonal skills and promoting intellectually cognitive growth. I am confident because of the testimony from the witnesses that [Mr. Vieira] has the ability to meet all of the child's developmental needs. I am concerned about [Ms. Young's] anger towards [Mr. Vieira]. About her ability to meet the child's emotional security and his positive self image.
>
> . . . I have concerns about the child's mental health when it comes to [Ms. Young]. I have equal concerns about the parties' ability to act on the needs

of the child solely as opposed to the needs and desires of the party. And protect the child from the adverse effects of the conflict between the parties.

. . . [Mr. Vieira] decided once [Ms. Young] refused to have supervised visits, that he took that and ran with it and just stopped -- I believe [Ms. Young] when she says she couldn't get through on the phone with her son and that cannot happen again.

. . .

Both parties give the [c]ourt reason to pause with their ability to co-parent without disruption to the child's social and school life. The extent to which each party has initiated or engaged in . . . frivolous litigation, the Plaintiffs [sic] did file some unnecessary protective orders. [Ms. Young] just continued to file protective orders. In fact, [Ms. Young] went as far as to go to Virginia and file for custody five months after this complaint was filed and after she answered this complaint, so she knew about it and filed and said that there was no evidence of any other proceedings. And that just was not true.

Abuse. I read the report. And I heard the testimony. And I want [Ms. Young] and [Mr. Vieira] to be clear, I do not believe that [Ms. Young] abused the minor child. I heard the testimony. I believed the child said that he heard his mother talk badly about his father. I believe that. And I believe that he confronted her about it and I believe that there was some physical altercation that caused if nothing else bruising to his arm. And that he did try to hurt his mother -- try to hit his mother. And that is probably why she reacted that way.

Each parent's ability to maintain the child's relationship with the other parent. I believe [Ms. Young] when she said she wasn't able to get through on the phone, I also believe that [Ms. Young] made the decision to not do this supervised visitation. And I consider that somewhat of a voluntary abandonment or surrender of custody to the child. As to the fitness of the parents, I believe that [Mr. Vieira] is fit to be the parent, the sole custody of the sole parent and I don't know frankly, if [Ms. Young] is fit or unfit. I am not willing to say you are not fit. I am not willing to take the risk and say that she is fit. I just can't take that risk. And that is why I am making this decision.

As to legal custody, I am giving joint legal custody with sole decision regarding school to [Mr. Vieira]. As to physical custody, I am giving [Mr. Vieira] sole physical custody with access to [Ms. Young] to go as follows.

> And my goal is to change this for this to eventually be shared custody. I want that to be clear. I think that if [Ms. Young] follows through on these visits, that this can end up being a shared custody situation. But as of now, I can't disrupt the minor child's life.

The court then described a physical custody schedule which provided increasing access to Ms. Young over the course of several months. The initial visitation schedule provided Ms. Young supervised visitation every other weekend for eight hours. After three weeks, Ms. Young would have eight hours of unsupervised visitation, and then, after another eight weeks, overnight visitation every other weekend. The court indicated its intent that the child would spend every other week with Ms. Young in the summers, beginning in 2022. The court also ordered that Mr. Vieira provide the child with a phone to allow the child to communicate directly with Ms. Young. Finally, the court determined that, because Ms. Young intended to pay for a supervisor for her supervised visitation, the court would reduce the amount of child support from $765 to $600 per month. The following colloquy occurred immediately after the court announced its child support ruling:

> [MR. VIEIRA'S COUNSEL]: And I do have one question, Your Honor. I just was not clear, when you awarded in the very beginning, joint legal custody, and then you said sole decision to the dad.
>
> THE COURT: Regarding --
>
> [MS. YOUNG'S COUNSEL]: Stop --
>
> MS. YOUNG: I would like to sign over all parental rights. I am not doing this.
>
> THE COURT: Oh, she is not doing it. Okay. Is that what you want? You don't want to do this?

MS. YOUNG: Yes, I would like to sign over all parental rights. And there is going to be a lawsuit.

THE COURT: Okay. Well, if this -- this is a lot of work to come up with a schedule and she doesn't want to do it.

MS. YOUNG: I definitely not -- I paid over $30,000 for an attorney. They kept my child from me intentionally to win this case -- I will be filing a lawsuit.

THE COURT: Okay. Then we will give full legal custody to [Mr. Vieira]. Full legal custody -- full physical custody to [Mr. Vieira]. And if she decides she wants to visit, she can do that and it will be --

MS. YOUNG: I am (inaudible) day, I am not going to --

THE COURT: Please mute.

MS. YOUNG: -- fraudulent.

THE COURT: I can mute her. [Ms. Young's counsel] --

[MS. YOUNG'S COUNSEL]: Your Honor, I apologize.

THE COURT: Mr. Vieira, I still want you to get that phone. I don't want that to be an issue. So get the phone. If she doesn't answer, she doesn't answer. But get the phone so that she can talk to her son.

MR. VIEIRA: Okay.

MS. YOUNG: I will (inaudible) answer and I will --

THE COURT: Ma'am, so that is that. I --

MS. YOUNG: No disrespect to the [c]ourt, Your Honor.

[MS. YOUNG'S COUNSEL]: Giselle, please stop.

THE COURT: Okay. She doesn't -- I can't force visitation. So, legal custody to the father. Sole legal custody to the father. Sole physical custody to the father. And the child support

> is $765 a month and since she is not doing visitation, there is no real reason to bring it down.

The court scheduled a "disposition hearing" for April 30, 2021, the purpose of which was to ensure that counsel had prepared a written order consistent with the April 22, 2021 proceedings.[2] After the court entered its custody order, this timely appeal ensued.

## DISCUSSION

We review the factual findings of a court for clear error, legal determinations under a *de novo* standard, and ultimate custody determinations for abuse of discretion. *In re R.S.*, 470 Md. 380, 397 (2020). "An abuse of discretion may occur when 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, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020).

We initially note that Ms. Young's principal appellate argument is that the trial court abused its discretion by accepting Ms. Young's "emotional outburst" in which she purported to waive her custody and visitation claim. Although variously characterized as waiver, estoppel, or acquiescence, it is well-established that a litigant cannot appeal a judgment to which she has consented:

> The law of this State is clear that the "right to an appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from

[2] At the disposition hearing, Ms. Young initially seemed to recant her previous statement that she "would like to sign over [her] parental rights." However, after the court stated, "I don't know if you've changed your mind," Ms. Young advised the court that she had "already set up an appeal" and questioned the fairness of the court's decision to supervise her visitation. Ms. Young does not contend that this colloquy constituted a request for reconsideration; in fact, Ms. Young does not mention the disposition hearing in the argument section of her brief.

> which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal." *Rocks v. Brosius*, 241 Md. 612, 630, 217 A.2d 531, 541 (1966). In conformity to this principle, we have heretofore held that the filing of a remittitur by the beneficiary, combined with the acceptance of the tendered payment of the award and causing the court record to be marked as satisfied, brings the litigation to a complete conclusion, thus barring an appeal by the judgment creditor, *Kneas v. Hecht Company*, 257 Md. 121, 124–26, 262 A.2d 518, 520–21 (1970); that no appeal lies from a consent decree, *Mercantile Trust Co. v. Schloss*, 165 Md. 18, 24, 166 A. 599, 601–02 (1933); and that after an invocation of the benefits accruing under an order of court, a party will not be heard to assail its validity. *Stewart v. McCaddin*, 107 Md. 314, 318–19, 68 A. 571, 573 (1908). This general rule of preclusion enunciated in the *Brosius* case has been variously characterized as an "estoppel," *Dubin v. Mobile Land Corp.*, 250 Md. 349, 353, 243 A.2d 585, 587 (1968), a "waiver" of the right to appeal, *id.* at 353, 243 A.2d at 587; *Bowers v. Soper*, 148 Md. 695, 697, 130 A. 330, 331 (1925), an "acceptance of benefits" of the court determination, *Dubin v. Mobile Land Corp.*, *supra*, creating "mootness," *Durst v. Durst*, 225 Md. 175, 182, 169 A.2d 755, 758 (1961), and an "acquiescence" in the judgment, *Rocks v. Brosius*, *supra*; *Stewart v. McCaddin*, *supra*, at 318, 68 A. at 573. We think the label applied to the rule is less important than its essence—that a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.

*Franzen v. Dubinok*, 290 Md. 65, 68–69 (1981) (footnote omitted). These principles generally preclude any challenge to the court's judgment granting Mr. Vieira sole legal and physical custody of the child because Ms. Young expressly requested that relief. *See In re Nicole B.*, 410 Md. 33, 64–65 (2009) (noting that father's appeal as to custody determination would be dismissed because he expressed to the trial court that he was not seeking custody); *In re K.Y.-B.*, 242 Md. App. 473, 487 (2019) (holding that "Mother cannot contest the earlier shelter care order after she herself requested or acceded to an order of shelter care"); *cf. Lohss v. State*, 272 Md. 113, 118–19 (1974) (holding that the State may not appeal from dismissals of indictments where the State agreed to the

dismissals and "[i]n essence, . . . simply abandoned their prosecution"), *superseded on other grounds by State v. Rush*, 174 Md. App. 259 (2008).

Nevertheless, we shall consider Ms. Young's principal argument—whether the court abused its discretion in accepting her waiver of any custody claims during the court proceedings.[3]

Ms. Young argues that the court erred by failing to call a recess, direct her counsel to speak with her, or consider the best interests of the child before accepting Ms. Young's waiver. Ms. Young cites two cases to support her argument: *Hunt v. State*, 312 Md. 494 (1988), and *Johnson v. State*, 100 Md. App. 553 (1994). Notably, neither of these cases involves a party spontaneously waiving substantive legal claims.

In *Hunt*, the appellant was convicted of the first-degree murder of a police officer. 312 Md. at 497. Hunt requested a mistrial after the victim's family "displayed signs of emotional distress" and left the courtroom while a recording of police radio communications was being played to the jury. *Id.* at 499. "The trial judge, after noting that the family 'left quietly' and caused 'no disturbance,' refused to grant the motion." *Id.* The Court of Appeals noted that "[e]motional responses in a courtroom are not unusual, especially in criminal trials, and manifestly the defendant is not entitled to a mistrial every time someone becomes upset in the course of the trial." *Id.* at 501. The Court compared the case to *Messer v. Kemp*, 760 F.2d 1080 (11th Cir. 1985), in which the father of a murder

[3] Because this is a child custody case, we shall also address whether the trial court's grant of physical and legal custody to the father was in the child's best interests.

victim "became enraged and lunged toward the defendant, shouting that the defendant would pay for what he had done." *Hunt*, 312 Md. at 501. Under these more egregious circumstances, the Eleventh Circuit "upheld the trial judge's refusal to grant a mistrial, reasoning that the trial judge was best able 'to evaluate the prejudicial effect of a spectator's outburst.'" *Id.* (quoting *Messer*, 760 F.2d at 1087). We note that the issue in *Hunt*—the propriety of the court's denial of a request for a mistrial—is vastly different from the issue before us.

*Johnson* concerned a series of criminal contempt judgments arising out of the defendant's comments to the trial judge. 100 Md. App. at 557–60. After Johnson was found guilty of violating his probation and sentenced, the court heard him say, "Don't make no mother f**king sense." *Id.* at 557. Johnson was then brought back before the trial judge, who, without informing Johnson that he was being convicted of contempt, and without attempting to de-escalate the situation, sentenced him to five months and twenty-nine days' imprisonment. *Id.* at 557–58. A back-and-forth between the judge and Johnson ensued, in which Johnson said things such as "F**k you, b**ch," after which the trial judge added five months and twenty-nine days more to Johnson's sentence. *Id.* at 558–59. In all, this resulted in ten separate criminal contempt convictions, each carrying a consecutive sentence of five months and twenty-nine days. *Id.* at 560. As the next case was being called, the trial judge stated, "Record should show that if I'd have had a shotgun I need to have shot him but I don't have it today." *Id.* at 559–60. On appeal, this Court considered whether the trial judge should have treated Johnson's "outbursts as a single incident rather

than a series of incidents[.]" *Id.* at 561. Because "the purpose of the contempt power is to provide a means for a judge to uphold the dignity of the judicial process," it is "vitally essential" that, when rendering a contempt verdict, a judge "act in a manner appropriate with his or her station" and refrain from acting "in anger, or as an immediate emotionally reflective response." *Id.* (quoting *Betz v. State*, 99 Md. App. 60, 68 (1994)). We noted:

> Indeed, when imposing a sentence, a sentencing judge must be sensitive to the fact that a sentence of incarceration is a ruling that may visit a most dramatic impact upon the emotions of a person who has just been deprived of his or her freedom. In a situation such as in the case at bar, if a person believes the sentence to be unfair, it is quite possible that a flash of displeasure could be communicated in a manner that is contemptuous. While such an outburst cannot be condoned, a judge needs to be sensitive to the reality that the language of the street is not the language of the courtroom. Every situation is different, and it is not possible or practical for this Court to dictate what trial judges should do when direct contempts are committed in their courtrooms. Nevertheless, trial judges are required to act reasonably and with decorum.

*Id.* at 561–62. Because the trial court made "no attempt . . . to defuse the situation," "lost his temper and his judicial demeanor," and engaged in a dialogue that "may have "provoked [Johnson] into repeatedly committing acts of contempt," we held that the "entire post trial incident" should "constitute only one episode of contempt." *Id.* at 562–63.

Although *Hunt* is not factually analogous and provides little guidance in resolving the instant case, we have no quarrel with Ms. Young's reliance on *Hunt* for the proposition that "emotional responses in a courtroom are not unusual." Nor do we disagree with *Johnson*'s observation that "trial judges are required to act reasonably and with decorum." 100 Md. App. at 562. Nevertheless, we are mindful that our review is guided by the deferential abuse of discretion standard.

In this case, we see no evidence that the trial judge lost her temper or judicial demeanor, nor did she provoke or instigate Ms. Young's decision to abandon her custody claim. Indeed, Ms. Young unilaterally interjected, "I would like to sign over all parental rights." It is true that the court seemed to be somewhat annoyed, stating, "this is a lot of work to come up with a schedule and she doesn't want to do it," but there is no evidence that the judge allowed her frustration to cloud her judgment. After Ms. Young indicated that she wanted to "sign over all parental rights," the court inquired of Ms. Young, "Is that what you want? You don't want to do this [custody and visitation schedule]?" Ms. Young unequivocally responded, "Yes, I would like to sign over all parental rights."[4] We see no evidence in the record that the trial judge acted unreasonably or otherwise violated the standard of judicial decorum as evidenced in *Johnson*. Our conclusion is supported by the court's direction that Mr. Vieira provide the child with a phone to allow direct communication with Ms. Young, and the court's comment that it was not foreclosing future visitation ("And if she decides she wants to visit, she can do that[.]").

We recognize that other options were available to the court, including an adjournment to allow further discussion between Ms. Young and her counsel (an action not requested in this case), or a more substantive colloquy between the court and Ms. Young concerning the effect of withdrawing her custody claims. That other judges may have taken such actions does not mean that the court here abused its discretion. At bottom,

[4] We do not construe this statement as a request to terminate parental rights, but merely Ms. Young's expression that she did not want to exercise the visitation and joint legal custody provisions of the court's ruling.

the court determined that it could not compel Ms. Young to exercise custodial rights that she did not want. *See Taylor v. Taylor*, 306 Md. 290, 307 (1986) ("Generally, the parents should be willing to undertake joint custody or it should not be ordered."). Based on this record, we cannot conclude that "no reasonable person would take the view adopted by the trial court." *Gizzo*, 245 Md. App. at 201.

Finally, because the best interests standard is paramount in custody cases, we shall address whether the court abused its discretion in awarding sole physical and legal custody of the child to Mr. Vieira. The court found that Mr. Vieira and his son have a "loving, nurturing and respectful relationship." The court specifically found that Mr. Vieira had "the ability to meet all of the child's developmental needs," but expressed concern about Ms. Young's ability in that regard. The court recognized that the child had been living with his father "for a year without interruption," although the court alluded to the fact that "once [Ms. Young] refused to have supervised visits," Mr. Vieira "ran with it" and became uncooperative in allowing Ms. Young to have telephone access with the child. The court also concluded that Mr. Vieira was a fit parent (whereas the court was uncertain as to Ms. Young's parental fitness). As to legal custody, although the court had concerns about the parties' ability to communicate, it was prepared to grant joint legal custody with father having the right to make the "sole decision" regarding the child's education.

The record amply supports the court's determination that an award of physical custody to Mr. Vieira was in the child's best interests. In the argument section of her brief, Ms. Young asserts that "the factors established in *Taylor v. Taylor* show that such an award

constitutes an abuse of discretion." At oral argument, however, Ms. Young's counsel conceded that the court's original award of primary physical custody to Mr. Vieira with joint legal custody would not constitute an abuse of discretion. In any event, Ms. Young's primary disagreement with the court's best interests analysis concerns Mr. Vieira's alleged parental alienation and failure to "promote any sort of beneficial relationship between Mother and the minor child since this proceeding started." She also asserts that the court did not adequately address Mr. Vieira's "anger issues."

The parties naturally had differing views on whether Mr. Vieira promoted a relationship between the child and Ms. Young. For example, Ms. Young testified that she had attempted to call the child's phone multiple times in the months between the December 2020 *pendente lite* hearing and the trial, but she was unable to talk to the child for various reasons. She did not attempt to call Mr. Vieira to have him put the child on the phone, and described communication with Mr. Vieira as "a waste of time" because of "gas lighting" and "game play[ing]." On the other hand, Mr. Vieira testified that Ms. Young had not made any attempts to contact him or the child since the entry of the *pendente lite* order. Mr. Vieira was not asked whether he had made attempts to reach out to Ms. Young. Ultimately, the court found Ms. Young's testimony on this point to be overall more reliable, stating "I believe her when she says she couldn't get through on the phone with her son." In an effort to facilitate contact, the court ordered Mr. Vieira to provide the child with a phone that Ms. Young could call. In the end, the court found that neither party made efforts to "alienate or interfere with the child's relationship with the other parent." In short, the

court weighed the competing testimony and its fact-finding on this issue is not clearly erroneous.

Ms. Young bases her concern about Mr. Vieira's anger issues on testimony indicating that Mr. Vieira sometimes raises his voice at the child, and two isolated incidents—one involving road rage, and one wherein she contends that Mr. Vieira damaged her current boyfriend's vehicle. However, the court relied on testimony from Mr. Vieira and his witnesses to conclude that there was no substantial cause for concern. One of Mr. Vieira's witnesses testified that Mr. Vieira would "raise his voice on occasion" when disciplining the child, and Mr. Vieira agreed that he "occasionally raise[s] [his] voice to" the child. According to Mr. Vieira's testimony, the road rage incident occurred when he was run off the road by another driver who was yelling "racial slurs." The child was in Mr. Vieira's vehicle at the time. Mr. Vieira attempted to catch up with the driver to view his license plate, but was unsuccessful in doing so. Lastly, Mr. Vieira testified that he paid Ms. Young $3,000 to prevent her and her boyfriend from "fabricating a story" that Mr. Vieira had damaged the boyfriend's vehicle. The only other evidence indicating that Mr. Vieira might have trouble controlling his anger came from Ms. Young's testimony. The court relied on the testimony of Mr. Vieira and his witnesses to find that Mr. Vieira and the child have "a loving, nurturing and respectful relationship," and that Mr. Vieira "has the ability to meet all of the child's developmental needs." The court's implicit determination that Mr. Vieira did not have an anger problem that affected the child was not clearly erroneous.

That the court also concluded that Ms. Young should have visitation access—which Ms. Young rejected—does not undermine the court's decision to award primary physical custody to Mr. Vieira. Similarly, as to legal custody, Ms. Young's decision to give up her right to joint legal custody has no bearing on the court's separate finding that Mr. Vieira is a proper legal custodian, a finding that is supported by the record. Thus, under these circumstances, the court did not err or abuse its discretion in awarding Mr. Vieira sole legal and physical custody of the parties' child. *See North v. North*, 102 Md. App. 1, 14 (1994) (a determination that is not "well removed from any center mark imagined by [this] court and beyond the fringe of what [we] deem[] minimally acceptable" does not constitute an abuse of discretion).[5]

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

[5] As noted by Mr. Vieira's counsel at oral argument, Ms. Young may file a motion for modification based on a material change in circumstances. Indeed, the trial court also seemed to recognize that legal avenue available to Ms. Young.