Circuit Court for Prince George's County
Case No. CAD17-09026

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 516

September Term, 2022

NATASHA SWEENEY

v.

HERMAN BARBER

Berger,
Arthur,
Tang,

JJ.

Opinion by Berger, J.

Filed: December 28, 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.

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case is before us on appeal from an order of the Circuit Court for Prince George's County addressing visitation of the parties' minor child. Following a March 4, 2022 status hearing, the circuit court issued an order on April 22, 2022 granting supervised visitation with the parties' minor child to Herman Barber, III ("Father"). Natasha Sweeney ("Mother") opposed any visitation for Father. On appeal, Mother asserts that the circuit court erred by ordering a resumption of supervised visitation. For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

The parties are the parents of one child, L.B., who was born on October 29, 2014. Father filed a divorce petition on April 4, 2017. On June 27, 2017, Mother was awarded primary physical custody of L.B. *pendente lite*. The circuit court further ordered that a circuit court custody/adoption investigator "conduct such investigations, interviews and evaluations as may be necessary for the purpose of an investigation to aid in a custody and visitation determination (on [Father] only)." The court ordered that a report be filed with the court by September 21, 2017. The parties were subsequently able to reach an agreement resolving all matters relating to their divorce, and a Judgement of Absolute Divorce was entered on May 21, 2018. Pursuant to the parties' settlement agreement, the parties had shared physical and joint legal custody of L.B.

In August 2018, Father filed a motion to modify custody.[1] Before a hearing was held on Father's motion, Mother reported two incidents to the Prince George's County Department of Social Services (the "Department"). In September 2018, Mother reported that L.B. was returned to her after a visit with Father with visible scratches. According to Mother, L.B. reported that Father's fiancée, Deja Powell, had grabbed her by the neck while telling her to stop crying. In October 2018, Mother reported that L.B. returned from her visit with Father with a black eye. Mother told the Department that L.B. reported that Ms. Powell had struck her with a can of insect spray.

On May 13, 2019, the circuit court held a hearing on Father's motion to modify custody. The court heard testimony from Child Protective Services worker Ashely Spinner, who testified about her investigation of Mother's reports. Ms. Spinner explained that both reports were closed as "unsubstantiated," which Ms. Spinner explained means "that the [D]epartment has received some information [about an] alleged incident that had occurred" but the Department was "unable to complete the assessment fully." Ms. Spinner explained that an unsubstantiated finding does not mean that there is no abuse. Rather, it means that the Department "can't say exactly what took place but there is a concern that something did happen."

[1] Both parties have filed many motions regarding custody and visitation in this case. We shall set forth those that are necessary for our consideration of the issues on appeal, as well as certain additional filings that are necessary for context, but we do not attempt to reproduce the entire procedural history of this case.

Ms. Spinner testified that she had seen photographs of L.B. that indicated that there may have been abuse. Ms. Spinner further testified that there were certain signs that led her to believe it was likely L.B. had been abused, including evidence of "emotional and mental abuse, signs of physical abuse, distress and other related traumas," as well as "neglect of supervision," "neglect of proper care," "concerns in regard to parenting," and "communication and redirection." Ms. Spinner noted that the incidents for which she received referrals occurred "while [L.B. was] in the care of [Father]," observing that "whether he was present or not, that was his responsibility." Ms. Spinner further testified that L.B. "would be upset or irritated" when "a person's name or incident" was brought up in conversation.

When Ms. Spinner was investigating Mother's reports, Father did not cooperate and his lack of cooperation "made it difficult to truly assess" the situation. Ms. Spinner explained that "[w]hen investigating a case or any referral, [the result of the investigation can be] substantiated, unsubstantiated, or the case can be ruled out, meaning that there is no concern in regard to the matter." None of the allegations regarding L.B. were ruled out, and Ms. Spinner testified that it is a common tactic for a parent to not participate in an investigation in order to avoid a finding of substantiated abuse.

At the end of the May 13, 2019 hearing, the circuit court denied Father's motion to modify custody, awarded Mother sole legal and physical custody, and awarded Father supervised visitation for four hours each alternating weekend at the Maryland Access

Center in Hyattsville, Maryland (the "visitation center"). A subsequent written order memorializing this ruling was issued on June 3, 2019.

The first scheduled supervised visit for Father and L.B. was on June 8, 2019. Mother brought L.B. to the visitation center, where Father was present and ready to visit with L.B., but L.B. became too upset to visit with Father. Visitation center staff made several attempts to encourage L.B. to visit with Father, but she was crying, screaming, and holding onto Mother. Ultimately the visit did not occur as scheduled. The next scheduled visit was on June 22, 2019. Mother brought L.B. to the visitation center and she had a visit with Father. According to the supervisor, the visit went well, and L.B. and Father engaged with each other well.

At the next visit on July 6, 2019, Mother and L.B. went to the visitation center, but L.B. again refused to participate in the visit. Another visit was scheduled for July 20, 2019, but Mother was unable to bring L.B. due to car trouble. The next visit was scheduled for August 3, 2019. Mother brought L.B. to the visitation center, but Father did not attend. Father told visitation center staff that he would not attend more supervised visits at the visitation center. Father told staff that he would pursue his legal options and file a motion for modification.[2]

Father filed a motion for modification and contempt on January 25, 2021, and the parties next appeared before the circuit court on May 4, 2021. In an order dated May 7,

[2] A visitation center employee did not recall precisely when this conversation with Father occurred, but she testified that it "might have been the morning of" the scheduled August 3, 2019 visit.

2021, the circuit court denied Father's motions for contempt and to modify custody and ordered the parties to contact the manager of the Family Support Services Unit "to establish an appointment regarding reunification therapy for [Father] and [L.B.]." The court scheduled a status hearing for August 2, 2021.

The next hearing did not occur until March 4, 2022. By the time of this hearing, the circuit court judge who had previously overseen the parties' case had retired and the parties appeared before a different judge. The court indicated that it had reviewed the February 3, 2022 report prepared by therapist Misbha E. Qureshi, Ph.D. Dr. Qureshi's report provided that Father had attended individual biweekly virtual sessions as recommended, but it was "difficult to build trust and rapport with" him. According to Dr. Qureshi, Father had "limited to no insight into his role in current family dynamics" and "lack[ed] accountability and responsibility [for] his own behaviors and their contributions to the current parent-child relationship (and lack thereof)." Father also "engage[d] in intimidating behaviors during sessions," had "poor boundaries in communication with [the t]herapist via emails and texts," and demonstrated "unwillingness to be open and honest in the therapeutic process." Father demonstrated "disregard of professional expertise and clinical recommendations made by" Dr. Qureshi, showed indications of "emotional dysregulation when he [was] challenged or encouraged to self-reflect," and engaged in "minimization of the relational trauma experienced by all parties involved, including [L.B.]"

Dr. Qureshi offered her assessment of L.B.'s safety in both Mother's and Father's homes. She had no concerns regarding L.B.'s safety in Mother's home based upon L.B.'s

"verbal communication of feeling safe and her presentation during sessions with Mother." Dr. Qureshi had "not been able to observe [L.B.] with" Father. Dr. Qureshi reported that L.B. had "[c]onsistently . . . shown reluctance to seeing" Father. Dr. Qureshi explained that L.B. "avoids the subject matter in sessions, as it has caused her emotional and physical distress." L.B. "engaged in self-injurious behaviors (pulling/picking at her hair, pulling her braids) at home after sessions where there was a discussion of her Father and reunification." L.B. "also experienced physical symptoms . . . includ[ing] stomach aches, nausea and vomiting during the first few days after sessions." Dr. Qureshi further explained that L.B. "has shown concerning behaviors (trauma responses) during session[s] when the topic of her Father has been explored."

Dr. Qureshi's clinical recommendation was "that reunification therapy is **not** in the best interest of [L.B.] at this time." (Emphasis in original.) Dr. Qureshi recommended that Father "seek[] intensive individual therapy on a weekly basis (with another provider) to address poor boundaries, unhealthy relationship patterns, and maladaptive personality traits."

At the March 4, 2022 hearing, counsel for Mother specifically asked the court to consider Dr. Qureshi's recommendations. The court repeatedly expressed concern about the fact that Father had not had the opportunity to visit with L.B. since 2019. The court observed that "Father's parental rights haven't been terminated" and reasoned that Father "is entitled to access to the child, and he hasn't had any. So, at a minimum he is entitled to supervised visitation." The circuit court judge commented, "I don't know what basis I

have to withhold the child from [Father]. I mean, I think at a minimum he is entitled to supervised visitation." The court made further similar comments, stating, "I can't keep him from seeing the child. You have got to at least give him supervised visitation with the child." The circuit court found that the "whole point to supervised visitation" is to "take . . . factors" regarding allegations of prior abuse or neglect into account.

After counsel for Mother asked the court to weigh the report from Dr. Qureshi, the court responded:

> And that is fine. But, Counsel, you are an attorney. So tell me. What authority do I have to withhold him from seeing the child if his parental rights have not been terminated? I have asked you over and over again. You are not citing any law. You are not giving me anything here. So until you can figure that out, I have made my decision that he is going to get supervised access to the child.

Following the hearing, the circuit court issued an order on April 22, 2022, requiring that Father and L.B. "participate in one session with any reunification therapist [Father] chooses within 90 days." The court ordered that "[a]fter completion of the session with the reunification therapist, [Father] and the minor child will participate in supervised visitation coordinated through the Children's Right[]s Coun[c]il." Mother subsequently appealed.

STANDARD OF REVIEW

We review child custody determinations using three interrelated standards of review, which we have described 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.

Gillespie v. Gillespie, 206 Md. App. 146, 170 (2012) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

The abuse of discretion standard recognizes "the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses." *Santo v. Santo*, 448 Md. 620, 625 (2016) (quotation marks and citation omitted). An abuse of discretion is "when no reasonable person would take the view adopted by the . . . court[,]" or "when the court acts without reference to any guiding rules or principles[,]" or when "the court's ruling is clearly against the logic and effect of facts and inferences before the court[.]" *Id.* at 625-26 (cleaned up). The best interest of the child is the overarching consideration in all custody and visitation determinations. *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013).

DISCUSSION

The first argument Mother presents on appeal is that the circuit court judge failed to appropriately familiarize herself with the record of the case. Mother argues generally that "[c]ircumstantial evidence suggests that the newly assigned judge . . . had not thoroughly reviewed the case record or recent activity when making her ruling." Mother concedes that "this may not constitute sufficient reason in and of itself to overturn" the circuit court's

decision but asserts that "it does help to frame and contextualize" Mother's argument regarding the circuit court's alleged error.[3] Trial judges are "presumed to know the law, and [are] presumed to have performed [their] duties properly." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003) (citation omitted). We shall address the issues raised by Mother and examine the record to determine whether the circuit court exercised its discretion properly, but, while doing so, we shall keep this presumption in mind.

Mother's first substantive argument is that the circuit court erred by failing to make a finding pursuant to Md. Code (1984, 2019 Repl. Vol.), § 9-101 of the Family Law Article ("FL") prior to granting supervised visitation to Father. Section 9-101 provides:

> (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.
>
> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

Mother asserts that Father had previously neglected L.B. by failing to prevent her abuse by his fiancée, and, accordingly, the circuit court could not award Father visitation unless it found either that there was no likelihood of further abuse or neglect or that the supervised

[3] Mother's paragraph presenting this argument includes no citations to legal authority and no references to the record extract.

visitation would assure L.B.'s safety and physiological, psychological, and emotional well-being.

First, we observe that Mother did not specifically raise the applicability of FL § 9-101 before the circuit court. The circuit court inquired of Mother's counsel as to what legal authority Mother was relying on to assert that Father should not be awarded any type of visitation with L.B. Mother did not cite FL § 9-101 or argue that any specific findings were required before granting supervised visitation. Pursuant to Md. Rule 8-131(a), this Court ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." An issue that is not preserved in the trial court generally cannot be raised for the first time on appeal. *DiCicco v. Balt. Cnty.*, 232 Md. App. 218, 224-25 (2017). The purpose of the preservation requirement is to ensure fairness by requiring that all parties bring their positions to the attention of the trial court so that the trial court has the opportunity to address the issues raised. *Bryant v. State*, 436 Md. 653, 659 (2014) (quotation and citation omitted).

Furthermore, even if the FL § 9-101 issue were preserved, our review of the record would lead us to conclude that no court issued a finding that Father had, in fact, committed abuse or neglect of L.B. Mother contends that we should infer that the circuit court found that Father had neglected L.B. when ruling on his motion to modify custody at the May 4, 2021 hearing. Our review of the record does not support Mother's proffered conclusion. The circuit court explained that "something did happen" with L.B. and observed that "if all parties aren't participating in the [child protective services investigation] process, it makes

it harder and more difficult." The court explained to Father that he "need[ed] to cooperate with [the Department] so that we can find out what is happening with your child" and that Father would be limited to supervised visitation "until [the court] can figure out and have more information where [Father] ha[s] participated in the [child protective services investigation] process."

Mother asserts on appeal that, based on the circuit court's statements, we should infer that the court "had reasonable grounds to believe that [L.B.] had been neglected by [Father]," but we are not persuaded. A circuit court's finding under FL § 9-101 that abuse or neglect occurred is made by applying the preponderance of the evidence standard. *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 685 (2014) (citing *Volodarsky v. Tarachanskaya*, 397 Md. 291, 306-08 (2007)). In this case, the circuit court did not specifically find, by a preponderance of the evidence, that Father had neglected L.B. Rather, the circuit court observed that Father's lack of cooperation impeded the appropriate investigation. We decline Mother's invitation to read into the circuit court's comments a specific finding of neglect by Father. Absent a finding of abuse or neglect, FL § 9-101 is not implicated. Accordingly, the circuit court was not required to make a specific finding that the supervised visitation arrangement would ensure the safety and the physiological, psychological, and emotional well-being of L.B.

Mother further asserts that the circuit court gave no weight to the recommendations of Dr. Qureshi. Our review of the record reflects that the circuit court acknowledged it had considered Dr. Qureshi's report. It was the role of the trial court to determine what weight

to give Dr. Qureshi's evaluation, and we shall not substitute our judgment for that of the fact-finder. *Pinkney v. State*, 151 Md. App. 311, 329 (2003) (explaining that appellate courts "do not re-weigh the evidence or substitute their own judgment" for that of the fact-finder).

Mother further contends that the circuit court should have ordered a further evidentiary hearing to evaluate what next steps to take prior to issuing an order granting Father supervised visitation. In this context, Mother again asserts that the circuit court had implicitly found in May of 2019 that Father had neglected L.B., and, accordingly, an evidentiary hearing was necessary for Father to adduce evidence and persuade the court to make a FL § 9-101(b) finding before granting Father visitation. As we already have explained, we disagree with Mother that a finding of neglect by Father was made in this case. We, therefore, reject Mother's contention that the failure of the circuit court to hold an evidentiary hearing constitutes reversible error.

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