Circuit Court for Baltimore City
Case No. 24-D-20-001518

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0558

September Term, 2021

JONATHAN WEST

v.

TERESSA WEST

Fader, C.J.,
Friedman,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: March 18, 2022

This appeal involves a custody dispute between the appellant, Jonathan West ("Father"), and the appellee, Teressa West ("Mother"). In dueling complaints, each party sought sole legal and primary physical custody of their two minor children. The Circuit Court for Baltimore City awarded sole legal and primary physical custody to Mother. The court awarded Father parenting time on his two weekly days off work, to be supervised for the first six months and unsupervised after that.

Father contends that we should reverse the court's custody determinations because: (1) the court committed legal error when it applied the wrong set of factors to its custody analysis and relied on a single factor in reaching its decision concerning physical custody; (2) the court erred in admitting hearsay evidence of sexual abuse; and (3) the court abused its discretion in finding that Father lacked parental fitness.[1] We hold that the court did not commit reversible error or abuse its discretion and, therefore, will affirm.

BACKGROUND

Father and Mother married in 2013. They have two minor children, a daughter born in 2014 and a son born in 2018. Mother is a teacher in the District of Columbia Public School System. Father is a local delivery truck driver who, as of the time of trial, primarily works evenings.

The parties separated in June 2020. In August 2020, Father filed a complaint for absolute divorce based on cruelty of treatment. Mother filed a countercomplaint for

[1] Mother did not file a brief and has not participated in this appeal.

absolute divorce on the same ground. Both parents sought sole legal and primary physical custody of both minor children.

In May 2021, the circuit court held a one-day trial at which the parties were the sole witnesses.[2] Because Father was not present when the trial started, the court heard first from Mother. She testified that she had been the children's primary caretaker since birth, had performed all of the research and done all of the legwork concerning the children's schools, and was primarily responsible for getting the children to and from school, helping them with homework, cooking meals, handling extracurricular activities, attending school functions, and paying healthcare and childcare costs. She also testified about incidents of Father's abusive conduct toward her, including one incident of physical abuse, and his lack of attention to the children and their needs.

At the time of trial, Mother was living with both children in Texas, but had signed a lease for an apartment in Washington D.C. that was set to begin two weeks later. Father had not seen the children since January 1, 2021. In early December 2020, Mother filed for a protective order in Baltimore City and was granted a temporary protective order. Mother later withdrew her request for a permanent protective order after being told that Child Protective Services had developed a safety plan to be implemented with Father. Later that same month, Mother sought a protective order in Montgomery County "because . . . there was a live and active investigation with CPS." The Circuit Court for Montgomery County

[2] Each party offered one additional witness. Without prior notice, Father sought permission to have his mother testify by telephone, which the court denied. The court also excluded a witness Mother offered but had not disclosed in discovery. Neither of those rulings is challenged on appeal.

granted a temporary protective order and held a hearing on a permanent protective order in March 2020. After the hearing, in which the court was informed that the Department of Social Services' investigation had ruled out the alleged abuse by Father, the court dismissed the petition based on a lack of evidence.

Mother did not initially testify about the allegations that were the basis for her requests for protective orders, although she made several references to the involvement of Child Protective Services without objection. However, during cross-examination, Father's counsel asked her why she had requested that Father's visitation with the children be supervised. Over a hearsay objection, Mother testified that it was "because my daughter has told me that late at night in the basement, that [Father] would check her for yeast infections and that there were incidences of him taking his penis and rubbing it against her vulva saying that it was for a massage."

Approximately two hours after trial began, Father arrived and was permitted to testify. He testified that the sexual abuse allegations against him were "contrived" to justify denying him access to the children, and he denied ever sexually abusing his daughter. He claimed that he had been denied access to both children since early December 2020—with the exception of New Years' Eve and New Years' Day when he saw them at his mother's house—and to his daughter for months before that. He feared that unless he was given sole legal and primary physical custody of the children, Mother would shut him out of all decision-making and deny him access to the children. He asserted that he, on the other

hand, would permit Mother access to the children whenever she wanted in a "full co-parenting" relationship.

Father testified that his job involved ten-to-12-hour days, five days a week, beginning in the early afternoon and ending at or after midnight. Asked to explain his "care for the children" before December 2020, he said that he had "hired a full time nanny for that." Asked to explain his plan for caring for the children if he were given primary physical custody going forward, he said that he would hire a new nanny.

Father also testified about a separation agreement he had drafted, which the parties had signed in June 2020. The agreement contained the following language:[3]

> All the property in the McCulloh Street home would be [Father's] and would be uncontested by [Mother] and any person or person's body of people, corporation, societies or any human and/or non-human associates of [Mother] to be found anywhere in the known or unknown universe, universes, alternate pla[ne]s of existence, virtual universes, artificial, spiritual, imaginary and all other pla[ne]s of existence unrealized at the signing of this document.

At the conclusion of the hearing, the circuit court announced from the bench that it would grant Mother an absolute divorce on the ground of cruelty of treatment and award Mother sole legal and primary physical custody. The court awarded Father parenting time on his two days off each week, to be supervised for six months and unsupervised after that. We will discuss the court's analysis and ruling in further detail below.

[3] The record contains only a distorted copy of the first page of the agreement, which does not include the quoted language. The quote included here appears in the trial transcript, in a passage in which Mother's counsel was reading from the agreement while questioning Father.

Following the hearing, the court issued a written judgment of absolute divorce containing its rulings on custody and other issues.[4] This appeal followed.

DISCUSSION

Appellate review of child custody determinations requires consideration of "three interrelated standards of review." *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). First, "[w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies."[5] *Id.* (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)) (second alteration in *J.A.B.*). 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." *Id.* Third, the court's "ultimate conclusion," if "based upon factual findings that are not clearly erroneous" and the application of "sound legal principles," "should be disturbed only if there has been a clear abuse of discretion." *Id.*

Generally, "[a] trial court's findings are not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019). "Such broad discretion is vested in the [trial court] because only [the trial court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the trial court] is in a far better position

[4] The court made other rulings unrelated to custody that we will not discuss because they are not relevant to this appeal.

[5] Rule 8-131(c) provides that "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It 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."

than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *In re Yve S.*, 373 Md. at 586 (quoting *Davis v. Davis*, 280 Md. 119, 125 (1977)). "We will only disturb a decision made within the discretion of the trial court 'where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.'" *J.A.B.*, 250 Md. App. at 247 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1997)).

I. THE CIRCUIT COURT DID NOT COMMIT REVERSIBLE ERROR IN ITS APPLICATION OF CUSTODY FACTORS.

Father contends that the circuit court committed reversible error in two respects in relation to its application of custody factors. He argues that the circuit court erred in (1) applying the factors from *Taylor v. Taylor*, 306 Md. 290 (1986), instead of the factors set forth in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977); and (2) failing to consider any factors other than fitness of the parents in addressing physical custody. Under the circumstances, we discern no reversible error.

This case involves a challenge to the trial court's award of both physical custody and legal custody. "'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. 620, 627 (2016) (quoting *Taylor*, 306 Md. at 296 (1986)). The parent with whom a child spends a majority of his or her time has "primary physical custody" of the child. *Reichert v. Hornbeck*, 210 Md. App. 282, 345-46 (2013). In contrast, "'[l]egal custody carries with it the right and obligation to make long

range decisions' that significantly affect a child's life, such as education or religious training." *Santo*, 448 Md. at 627 (quoting *Taylor*, 306 Md. at 296).

In awarding custody, "the power of the court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child." *Taylor*, 306 Md. at 301-02 (quoting Md. Code. Ann., Art. 72A, § 1 (1957, 1983 Repl.)). Thus, "it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion." *In re Yve S.*, 373 Md. at 585-86 (quoting *Davis*, 280 Md. at 125). Despite that broad grant of discretion to the court, "there are numerous factors the court must consider and weigh in its custody determination." *J.A.B.*, 250 Md. App. at 253.

In *Sanders*, this Court set forth the following non-exhaustive list of criteria trial courts consider in making determinations concerning legal custody:

1) fitness of the parents;
2) character and reputation of the parties;
3) desire of the natural parents and agreements between the parties;
4) potentiality of maintaining natural family relations;
5) preference of the child;
6) material opportunities affecting the future life of the child;
7) age, health and sex of the child;
8) residences of parents and opportunity for visitation;
9) length of separation from the natural parents; and
10) prior voluntary abandonment or surrender.

38 Md. App. at 420 (internal citations omitted). We stated that although a trial "court considers all the above factors, it will generally not weigh any one to the exclusion of all

others. The court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor[.]" *Id.* at 420-21.

In *Taylor*, the Court of Appeals decided that an award of joint custody may be an appropriate "option available to the trial [court]" in its "overall consideration of a custody dispute." 306 Md. at 303. When considering joint custody, "the factors that trial judges ordinarily consider in child custody," including those set forth in *Sanders*, "remain relevant." *Id.* at 303 & n.10. But the Court identified a set of additional, still non-exhaustive, factors, partially overlapping with those set forth in *Sanders*, that are "particularly relevant to a consideration of joint custody." *Id.* at 303. Those are:

1) Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child's Welfare;
2) Willingness of Parents to Share Custody;
3) Fitness of Parents;
4) Relationship Established Between the Child and Each Parent;
5) Preference of the Child;
6) Potential Disruption of Child's Social and School Life;
7) Geographic Proximity of Parental Homes;
8) Demands of Parental Employment;
9) Age and Number of Children;
10) Sincerity of Parents' Request;
11) Financial Status of the Parents;
12) Impact on State or Federal Assistance;
13) Benefit to Parents;
14) Other Factors.

Id. at 304-11. Although "none [of those factors] has talismanic qualities," the Court emphasized that the first consideration—"the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare"—"is clearly the most important factor" in determining whether joint legal custody is appropriate. *Id.* at 303-04.

In *Azizova v. Suleymanov*, this Court observed that "[i]t is well established that custody determinations are to be made by a careful examination of the specific facts of each individual case," and that "[c]ourts possess wide discretion in determining questions concerning the welfare of children," based on the best interests standard. 243 Md. App. at 344-45 (2019). While the trial court is not limited in the factors it can consider in applying that standard, we noted that this Court and the Court of Appeals had identified a non-exhaustive set of 21 "factors that a court must consider when making custody determinations," drawn primarily from *Sanders* and *Montgomery* and collected in *Fader's Maryland Family Law*. *Azizova*, 243 Md. App. at 345-46 (citing Cynthia Callahan & Thomas C. Ries, Fader's Maryland Family Law § 5-3(a), at 5-9 to 5-11 (6th ed. 2016)). In the final analysis, however, those factors are simply tools used to help a circuit court ascertain what is in the best interests of the children. "In all family law disputes involving children, the best interests of the child standard is always the starting—and ending—point." *Azizova*, 243 Md. App. at 349 (quoting *Boswell v. Boswell*, 352 Md. 204, 236 (1998)).

Here, in analyzing legal custody, the trial court first applied the *Taylor* factors. The court recognized that both parties were seeking sole custody but thought that "the same factors apply." The court proceeded to address nine of the *Taylor* factors, finding that: (1) the parents' capacity to communicate on decisions was "non-existent"; (2) the parents' willingness to share custody was "non-existent"; (3) Father was not fit to make long-range decisions for the children but Mother was; (4) the children had "a very good and loving relationship with [Mother]," but it was "hard . . . to gauge" their relationship with Father;

(5) the children "are too young to have a preference"; (6) joint custody or custody by Father "would be disruptive of the[children's] school and social life"; and (7) Mother's home was proximate to the children's school and pre-school. Although the court did not expressly address the demands of parental employment while reviewing the *Taylor* factors, it did later note that Father's "work schedule wouldn't allow him to really be the type of parent that anyone would expect." Similarly, the court later implicitly questioned the sincerity of Father's request for custody based on his failure to testify at all "about what he does with the kids, [or why] he's interested in the kids," or "[w]hy it was in the[children's] best interest that [Father] should have legal and physical custody." The court did not directly comment on the financial status of the parents, any impact of its custody decision on state or federal assistance, or the benefit to the parents. Based on review of *Taylor* factors, the court stated that it would "grant legal custody to [Mother]."

Turning to physical custody, the court addressed the "fitness of each parent," which is a *Taylor* factor and also the first *Sanders* factor. The court found "no evidence presented to me to find that [Father] is a fit and proper person to have physical custody of these children." Indeed, the court observed, Father's sole argument for custody was that Mother had previously "denied him access to the children," which "doesn't speak at all to whether it's in the best interest of the children to be with [Father]." The court also found Father's "testimony to be highly incredible" and pointed specifically to a "bizarre" allegation Father had made in characterizing communication between Mother and Father's sister, who is a pediatrician, about their daughter's behavior when she was two years old. The court also

noted the "bizarre" separation agreement Father had drafted, including references to "human and/or non-human associates" of Mother.

Believing that it could "stop with that factor [of parental fitness] alone," the court did not explicitly review the remaining *Sanders* factors before stating its conclusion that Mother should have primary physical custody. The court did, however, touch on several of those factors in addressing parenting time, which is an aspect of physical custody. The court specifically referenced the difficulties presented by Father's work schedule and the court's significant concerns about Father's character that arose from his testimony, which caused the court to order that Father's parenting time be supervised for six months.

Father contends that the circuit court committed reversible error in two respects: (1) by utilizing the *Taylor* factors rather than the *Sanders* factors; and (2) by basing its physical custody decision exclusively on the fitness of the parents.

Father first takes issue with the circuit court's use of the *Taylor* factors at all, arguing: "To be clear, the *Taylor* factors are only utilized when at least one of the parties is seeking an award of joint custody," which is not the case here. Father's reading of *Taylor* is incorrect. To be sure, in *Taylor* the Court of Appeals identified the factors it listed there as "particularly relevant to a consideration of joint custody[.]" 306 Md. at 303. But: (1) the Court did not identify those factors as relevant *only* to joint custody; (2) several of the factors have substantial overlap with, or are identical to, *Sanders* factors and are plainly relevant to custody generally; (3) *Sanders* and *Taylor* both emphasize that the factors they list are not exclusive, and that in every case the court should consider any factor that is

relevant to the best interests of the children; and (4) we are not aware of any authority that would preclude a court from awarding joint custody, if it concluded that was in the best interests of the children, just because neither party requested it. We find no error in the circuit court's consideration of the nine *Taylor* factors it directly or indirectly reviewed in assessing the best interests of the children.

The circuit court's treatment of the *Sanders* factors presents a closer question. As noted, after finding that Father was not fit to have physical custody of the children, the court stated that it did not need to consider any other factors. We might agree with that if the court had found that Father was not fit to have any contact with the children at all. But the court did not make such a finding and, indeed, it awarded Father parenting time with the children two days a week, supervised at first by Father's mother and unsupervised after six months, with overnights available at Mother's discretion. Thus, the remaining factors were at least possibly relevant to the court's decision concerning how to allocate custody/parenting time, and needed to be considered to the extent applicable. *See Azizova*, 243 Md. App. at 345-46 (identifying 21 factors that the Court of Appeals and this Court have identified as "factors that a court *must* consider when making custody determinations," as well as nine additional "factors that courts are encouraged to consider") (emphasis added); *Sanders*, 38 Md. App. at 420-21 (stating that a trial "court considers *all* the above factors," "will generally not weigh any one to the exclusion of all others," and "should examine the totality of the situation in the alternative environments and avoid focusing on any single factor") (emphasis added).

Nonetheless, for two reasons, we conclude that the court did not commit reversible error in applying the *Sanders* factors. First, although the court said that it *could* stop with its consideration of parental fitness, that is not the only factor it considered. In its prior discussion of the *Taylor* factors and in its subsequent discussion of parenting time, the court effectively addressed such *Sanders* factors as the character of the parties, the parents' respective desires, the preferences of the children, and the residences of the parents and opportunities for visitation. The court thus effectively considered most of the *Sanders* factors, even if it did not do so by ticking them off of a list.

Second, Father has not explained how any factor the court did not expressly consider was applicable and might have been material to the court's custody decision. For example, although the court did not expressly address the "age, health, and sex of the child[ren]," *see Sanders*, 38 Md. App. at 420, the court certainly knew the age and sex of the children, there was no testimony that either of the children has any relevant health concerns, and Father fails to explain how explicit consideration of any of those points might have affected the court's custody decision. And although the court did not address the factor of prior voluntary abandonment or surrender, that factor is plainly inapplicable to this dispute, in which there is no allegation that either party voluntarily abandoned or surrendered the children. Courts are required to consider applicable *Taylor* and *Sanders* factors for the purpose of guiding their determinations concerning the best interests of the children.[6] *See*

[6] Father contends that in *Azizova*, this Court remanded a custody determination "based upon the trial court's failure to analyze the non-exhaustive custody factors delineated in a litany of custody cases." That is incorrect. To the contrary, this Court observed that "the trial judge considered many, if not all, of the relevant factors and made

Azizova, 243 Md. App. at 344-45. Here, Father has failed to explain how any of the factors the court did not discuss were applicable or might have affected the court's best interest analysis adverse to Father's interests. Under the circumstances, we discern no reversible error.

In a related contention, Father asserts that the court erred "when it failed to analyze any of the factors other than fitness when rendering its [physical] custody decision and award." As we have already explained, the court did not fail to analyze any factors other than parental fitness. To the contrary, the court directly and indirectly analyzed many other factors, including many of the *Taylor* and *Sanders* factors. Father's argument focuses on segmenting the court's analysis to include only what the court expressly considered in comments it made after concluding that Mother should have sole legal custody and before addressing Father's parenting time. In context, however, we believe it is more appropriate to read the court's findings together, as all ultimately contributed to the court's determination of the custody arrangements—including parenting time—that were in the best interests of the children.

factual findings consistent with the limited record that was presented." 243 Md. App. at 373; *see also id.* at 369 (stating that the trial court considered "twenty factors in [its] custody determination"). This Court vacated and reversed in *Azizova* due to the way the factors were applied, not any failure to consider them. *Id.* at 373-76. It is thus notable that in *Jose v. Jose*, we affirmed a circuit court's award of legal custody—although not its award of physical custody—when the court had expressly considered only 12 of the *Taylor* and *Sanders* factors as to each type of custody. 237 Md. App. 588, 602-05 (2018). The partial reversal was attributable to the court's failure to "adequately explain its resolution of physical custody," not to its failure to expressly consider all of the listed factors. *Id.* at 605-09.

In sum, Father has not demonstrated reversible error in the trial court's consideration of factors relevant to the best interests analysis with regard to its custody determinations.

II. THE CIRCUIT COURT DID NOT ERR IN ADMITTING THE CHALLENGED TESTIMONY.

Father contends that the circuit court erred both in allowing inadmissible hearsay testimony into evidence and in finding that Father had opened the door to such testimony. Father argues further that even if the statements were not initially admitted for their truth, the court improperly relied on them as substantive evidence. Because we conclude (1) that the testimony at issue was not hearsay, because it was not admitted for the truth of the matter asserted, and (2) that the court did not rely on the statements as substantive evidence, we hold that the court did not err.

The relevant exchange occurred during Father's cross-examination of Mother:

> [FATHER'S COUNSEL]: What kind of schedule would you want for [Father] to exercise with the children in terms of visitation?
>
> [MOTHER]: Supervised visitation on weekends or what would be conducive to his off days, should an off day occur during a school day, supervised visitation in D.C. I would be willing to transport [the] children at least halfway for supervised visitations.
>
> * * *
>
> [FATHER'S COUNSEL]: Why would you want the visitations to be supervised?
>
> [MOTHER]: Because my daughter has told me that [ ]—
>
> [FATHER'S COUNSEL]: Objection.
>
> [MOTHER]: Oh, sorry.

THE COURT:	Well, you asked her why so she's going to answer that question.
[FATHER'S COUNSEL]:	But it's hearsay and it's also —
THE COURT:	But you asked her why it is that she would want supervised visitation and it's based upon what someone else told her.
[FATHER'S COUNSEL]:	Right, and —
THE COURT:	I'm going to allow her to answer the question. You shouldn't have asked that question.
[MOTHER]:	I am requesting supervised visitation because my daughter has told me that late at night in the basement, that [Father] would check her for yeast infections and that there were incidences of him taking his penis and rubbing it against her vulva saying that it was for a massage —
[FATHER'S COUNSEL]:	Objection again, Your Honor.
[MOTHER]:	—so that he could relax.
[FATHER'S COUNSEL]:	Your Honor, I would object to that and ask that it be stricken.
THE COURT:	You asked the question. You asked why it was – yes, her position is based upon what someone else told her. **[E. at 115-17]**

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered to prove the truth of the matter asserted." Md. Rule 5-801(c). "Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. Of primary concern here is "[o]ne of '[t]he threshold questions when a hearsay objection is raised,'" which is

whether the evidence "is offered for the truth of the matter asserted." *Battle v. State*, 252 Md. App. 280, 312 (2021) (quoting *Stoddard v. State*, 389 Md. 681, 688-89 (2005)).

Mother's testimony about what her daughter told her would be hearsay if it had been offered for the truth of the matter asserted. Here, however, Mother's testimony was elicited by Father's counsel to explain why Mother was requesting supervised visitation. As such, it was offered to explain Mother's request, not for the truth of the matter asserted, and so was not hearsay. Had Mother's counsel sought to elicit the same testimony with the same question, the court might rightly have been skeptical of whether it was really being offered for the truth of the matter asserted. Here, that was not the case.[7]

Father further contends that even if the testimony were not initially admitted for the truth of the matter asserted, the court erroneously relied on it in ordering that Father's parenting time be supervised for the first six months. According to Father, there is no other explanation for that ruling. We disagree. The transcript contains some references to the allegations against Father—including, notably, undisputed evidence that the allegations had been ruled out by the Department of Social Services and that the Montgomery County Circuit Court had found no evidence to support a protective order. However, the court expressed both (1) that it did not have before it any actual evidence of abuse or of the

[7] We do agree with Father that if the testimony at issue were hearsay, the open the door doctrine would not apply. "The open [the] door doctrine 'authorizes admitting evidence which otherwise would have been irrelevant in order to respond to . . . admissible evidence which generates an issue.'" *Battle*, 252 Md. App. at 313 (quoting *State v. Robertson*, 463 Md. 342, 352 (2019)). "The 'open the door' doctrine does not, however, permit the admission of incompetent evidence – evidence that is inadmissible for reasons other than relevancy." *Daniel v. State*, 132 Md. App. 579, 591 (2000).

investigation into the allegations, and (2) that its decision regarding supervised visitation and overnight visits was based on "quite frankly the oddity of [Father's] testimony." We have no reason to doubt the court's statement that it was relying on Father's testimony in imposing supervised visitation, and therefore no reason to conclude that the court considered Mother's testimony about her daughter's abuse allegations as substantive evidence. Accordingly, we conclude that the court did not err in allowing the testimony into evidence and did not improperly rely on it later.

III. THE COURT DID NOT ABUSE ITS DISCRETION IN FINDING FATHER TO BE UNFIT.

Father's final argument is that the court abused its discretion when it ruled that Father was an unfit parent. Father contends that there was "a complete lack of evidence" on the issue of fitness and suggests that the award of custody to Mother was based instead on the court's "independent opinions and biases." Father suggests that rather than being supported by evidence, the court's finding of parental unfitness was "based on an underlying hunch that there was something wrong with [Father] based on his brief testimony."

"We review a trial court's custody determination for abuse of discretion," *Santo v. Santo*, 448 Md. 620, 625 (2016), taking into consideration that the trial court has the "unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses,'" *id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)). An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court," *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (alteration in

original), or "when the court acts 'without reference to any guiding rules or principles,'" *id.* (quoting *North v. North,* 102 Md. App. 1, 13 (1994)).

We discern no abuse of discretion in the trial court's finding that Father was unfit to have either sole legal or primary physical custody of the children. Mother's testimony, if believed, revealed ample evidence of Father's abusive conduct toward her and conduct that generally displayed a lack of care for or attention to the best interests of the children. The court found that Father's own testimony, which the court found to lack credibility, underscored Mother's. Father did not offer any testimony to establish his fitness as a parent. He did not testify about parenting of the children that he had performed in the past or planned to perform in the future. Instead, his plan to care for the children was to hire a nanny, without any explanation of what role he intended to play in raising or caring for the children. The court's finding concerning fitness relied heavily on Father's failure to present any evidence of his own fitness or of why it would be in the children's best interests for him to have custody, as well as on several other "bizarre" aspects of Father's testimony. Based on the deference we owe to the trial court's findings and credibility determinations, *see J.A.B.*, 250 Md. App. at 246, we discern no abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.