

Circuit Court for Harford County
Case No. 12-C-17-002992

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 564

September Term, 2021

M.N.

v.

A.N.

Berger,
Reed,
Shaw,

JJ.

Opinion by Berger, J.

Filed: February 3, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case involves a custody dispute originating in the Circuit Court for Harford County. After a four-day trial, the circuit court issued a Judgment of Absolute Divorce. In addition to resolving economic matters that are not at issue in this appeal, the circuit court determined legal and physical custody of the parties' two minor children.¹ The court awarded A.N. ("Mother") primary physical custody and set forth an access schedule for M.N. ("Father").² The court awarded joint legal custody to the parties but ordered that Mother would have tiebreaking authority.

On appeal, Father presents the following single question for our review:

Did the Circuit Court for Harford County err in awarding joint legal custody of the minor children to the parties, with [Mother] having tiebreaking authority, and in awarding primary physical custody of the parties' minor children to [Mother], with visitation to [Father]?

For the reasons explained herein, we shall affirm.

¹ "Physical custody . . . means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody." *Taylor v. Taylor*, 306 Md. 290, 296 (1986). "Legal custody carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Id.* "Joint legal custody means that both parents have an equal voice in making those decisions, and neither parent's rights are superior to the other." *Id.* "Joint physical custody is in reality 'shared' or 'divided' custody. Shared physical custody may, but need not, be on a 50/50 basis." *Id.* at 296–97. "The parent not granted legal custody will, under ordinary circumstances, retain authority to make necessary day-to-day decisions concerning the child's welfare during the time the child is in that parent's physical custody. Thus, a parent exercising physical custody over a child . . . necessarily possesses the authority to control and discipline the child during the period of physical custody." *Id.* at 296 n. 4.

² We use initials for the parents and refrain from using the children's names in order to protect the privacy of the minor children.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married on July 26, 2013 in Bel Air, Maryland. They are the parents of two children: a daughter, born November 13, 2013, and a son, born March 18, 2016. Mother also has two older children from previous relationships, and Father has a younger child with his current fiancée. The parties' relationship deteriorated after their marriage and they separated in March of 2017.

On November 17, 2017, Mother filed a Complaint for Absolute Divorce in the Circuit Court for Harford County. Mother was unable to serve Father and, accordingly, Mother filed a Motion for Alternative Service on February 12, 2019. The circuit court granted the motion and entered an order permitting Father to be served via a posting of the complaint on the courthouse door and via certified mail. Father was served at his last known address on February 21, 2019, and he subsequently filed an Answer as well as a Counter-Complaint for Absolute Divorce.

Following a hearing, the circuit court ordered that the parties complete a six-hour co-parenting program and participate in the Coping With Parents that Live Apart Program, which was sponsored by the Office of Family Court Services. The court also referred the parties for a parenting evaluation to be performed by social worker Kathryn A. Rogers. Ms. Rogers delivered her report orally on August 1, 2019.³ At that time, the parties entered

³ Ms. Rogers did not submit a written report. The August 1, 2019 oral report does not appear to have been transcribed. When Ms. Rogers testified at trial, she referred to certain portions of her prior oral report. We shall address these matters *infra* when relevant to the issue on appeal.

into a consent *pendente lite* custody order pursuant to which the children would be with Father on Monday to Wednesday of each week, with Mother on Wednesday to Friday of each week, and the children would be with each parent every other weekend. On August 2, 2019, the circuit court ordered that both parents participate in a Quick Initial Substance Abuse Screening.

On August 27, 2019, Father filed an Emergency Motion for Child Custody, in which he sought sole legal and primary physical custody of the children. Father asserted that Mother was engaging in inappropriate behavior on the internet including “entertain[ing] men on her webcam video through her pornographic website.” Father asserted that Mother was engaging in this activity in her locked bedroom when the children were in her custody and that the children were “being neglected and unattended.” Father asserted that the children were at “risk of imminent physical harm if there is a traffic of men coming in and out of [Mother’s] home accepting her sexual invitations from her website.” Father alleged that Mother was “not a fit and proper person to have custody of the minor children.” The circuit court issued a temporary order granting Father sole legal and physical custody on the same day.

Mother filed a Motion to Reconsideration of the court’s temporary custody order. Mother argued that there was no risk of imminent harm to the children and that Father had filed the motion in order to “get ahead of a CPS investigation on the same subjects, which

was nearing completion that cleared [Mother] of wrongdoing.”⁴ Mother asserted that the webcam activity in which she had been engaged, which she referred to as “camming,” occurred “behind a locked door while the children were asleep” and had “no impact on the children other than providing money for their support.” Mother argued that the activity went “to the core of the right to sexual privacy,” caused “zero risk to the children,” and should not justify limiting her custody. After a hearing on September 6, 2021, the circuit court granted Mother’s motion and reimposed the *pendente lite* shared physical custody schedule that had previously been in effect.

On November 13, 2019, a hearing was held before a Family Magistrate on the issue of child support, the result of which being that the parties were charged generally with the support of the minor children. Mother filed exceptions, which were denied after a hearing. The parties again appeared before a Family Magistrate on January 16, 2020 on a matter involving the parties’ son’s schooling.⁵ The magistrate ordered that the child continue to attend his Anne Arundel County preschool program on a *pendente lite* basis. Mother filed an Amended Complaint for Divorce on May 21, 2020, to which Father filed a response on June 5, 2020.

⁴ Child Protective Services cleared Mother of any wrongdoing in connection with this matter.

⁵ The parties were unable to reach an agreement as to whether their son would attend preschool in Anne Arundel County or Harford County.

A four-day merits trial was held via Zoom on April 6, 7, 9, and 15, 2021.⁶ In addition to the parties, the court heard and considered testimony from the child protective services worker who had previously investigated allegations about Mother, custody evaluator Ms. Rogers, the maternal grandmother, Mother’s fiancé, the father of Mother’s oldest child, Mother’s oldest child, Mother’s tenant, the paternal grandmother, Father’s siblings, Father’s fiancée, a former friend of Mother’s, a friend of Father’s, and a neighbor of Father’s.

Each party largely attributed the breakdown of the marriage to the other. Mother testified at length regarding what she alleged was abusive conduct by Father. Mother alleged that Father became abusive shortly after they married and that Father engaged in physically abusive behavior toward Mother as well as her two older children. Father testified that he had never been abusive and characterized Mother as a selfish individual who often put her own needs ahead of the best interests of the children. Each party presented testimony from other individuals that was largely consistent with their version of the events.

The circuit court issued its custody determination from the bench on April 15, 2021. Ultimately, the circuit court found Mother’s narrative more credible than Father’s. The court found that Father “often attempted to manipulate things only to his benefit, to the detriment of the children’s relationship with their mother.” The court recognized that

⁶ The trial was held via Zoom videoconferencing due to the ongoing Covid-19 pandemic.

Mother was not without faults but emphasized that Mother “admits to her faults” while Father, admits to no faults.” After setting forth its findings as to the *Taylor* and *Sanders*⁷ factors, the circuit court determined that the children’s best interests would be served by Mother being the primary custodian. The court ordered that the existing physical custody schedule would remain in place for the balance of the school year until June 18, 2021, but that Mother would have primary physical custody beginning with the 2021-2022 school year. Father was awarded access with the children on the first, third, and fourth weekends of each month. The court ordered that the children would alternate between Mother and Father’s homes on a weekly basis during the summer when school was not in session. The court further set forth a holiday schedule.

⁷ The *Taylor* and *Sanders* factors are the best interest of the child factors outlined in *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery Cty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1997), that trial court must consider when making custody determinations. The non-exhaustive factors set forth in *Taylor* are: (1) capacity of the parents to communicate and 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 and federal assistance; and (13) benefit to parents.

The non-exhaustive factors set forth in *Sanders* are: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentially 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 opportunities for visitation; (9) length of separation from the natural parents; and (10) prior voluntary abandonment or surrender.

With respect to the legal custody determination, the circuit court found that “[t]he parents can make joint decisions in this matter but one of them will have to have tiebreaker authority.” The court determined that Mother was the appropriate party to be granted tiebreaker authority. On May 25, 2021, the circuit court issued a written order memorializing its oral ruling.⁸

We shall discuss additional facts as necessitated by our consideration of the issues on appeal.

DISCUSSION

In this appeal, Father contends that the evidence and testimony presented at trial do not support the custody determination made by the trial court. He asserts that a proper consideration of the evidence as applied to the *Taylor* and *Sanders* factors should have resulted in an award of sole legal custody and primary physical custody to Father. Taking into consideration the highly deferential standard of appellate review of the findings by the court that saw and heard the witnesses, we perceive no clear error or abuse of discretion by the trial court.

I. Standard of Review

The best interest of the child “is always determinative” in child custody disputes. *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178

⁸ The circuit court ordered that Father pay child support in the amount of seven hundred ninety-four dollars (\$794.00) per month, in addition to child support arrears of four thousand nine hundred seven dollars (\$4,907.00), to be paid at the rate of one hundred dollars (\$100.00) per month until eliminated. Father does not raise any specific challenges to the child support award on appeal.

(1977). The trial court has the responsibility to “evaluate each case on an individual basis in order to determine what is in the best interests of the child.” *Gillespie v. Gillespie*, 206 Md. App. 146, 173 (2012) (citing *Wagner v. Wagner*, 109 Md. App. 1, 39 (1996)).

“Particularly important in custody cases is the trial court’s opportunity to observe the demeanor and the credibility of the parties and witnesses.” *Petrini v. Petrini*, 336 Md. 453, 470 (1994). Because only the trial court has the opportunity to personally observe the witnesses, the trial court is in the best position “to weigh the evidence and determine what disposition will best promote the welfare of the minor’ child.” *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

Appellate courts conduct only a “limited review” of a trial court's custody decision. *Wagner, supra*, 109 Md. App. at 39. We do “not make [our] own determination as to a child’s best interest; the trial court’s decision governs, unless the factual findings made by the [trial] court are clearly erroneous or there is a clear showing of an abuse of discretion.” *Gordon v. Gordon*, 174 Md. App. 583, 637–38 (2007) (citations omitted).

When evaluating factual findings under the clearly erroneous standard, we must view the evidence in the light most favorable to the prevailing party, and we will not disturb the trial court’s findings if the record contains any competent, material evidence to support those findings. *Omayaka v. Omayaka*, 417 Md. 643, 652-53 (2011) (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)).

An abuse of discretion is found where “no reasonable person would take the view adopted by the [trial] court[,]” where the trial court “acts without reference to any guiding

rules or principles[,]” where the ruling is “clearly against the logic and effect of facts and inferences before the court[,]” or where the decision is “well removed from any center mark imagined by the reviewing court.” *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (first alteration in original) (internal quotations omitted). In our review, we give “due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.” *In re Yve S.*, 373 Md. 551, 584 (2003). We recognize that

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. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the trial judge] is in a far better position 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.

Id. at 585-86.

II. The Trial Court’s Consideration of the Custody Factors and Associated Factual Determinations

With this deferential standard in mind, we turn to the specific allegations of error Father presents on appeal. Father does not contend that the court failed to consider the applicable *Taylor* and *Sanders* factors. Rather, he takes issue with the circuit court’s factual findings and reasoning as to certain factors.

A. The fitness of the parents

Father contends that the trial court should have found that Mother is not a fit and proper person to have custody of the parties’ minor children. Father further asserts that the

court's conclusions as to his alleged faults, and specifically the trial court's conclusion that Father was manipulative toward Mother to the detriment of the minor children, were not supported by the evidence.

Father acknowledges that Mother testified to the following:

- that Father was physically violent and emotionally abuse to her beginning in 2017;
- that Father was a physical disciplinarian towards the children, including Mother's two older children from prior relationships; and
- that Father did not assist Mother with household responsibilities.

Father asserts, however, that this testimony was “an attempt by [Mother] to undermine [Father] with falsehoods and contentions not supported by the evidence.” Father emphasizes that other witnesses testified that they had not seen Father physically discipline any of the minor children and the paternal grandmother and Father's fiancée also testified that Father often prepared meals for the children and assisted them with schoolwork.

Father further points to the testimony of custody evaluator Kathryn Rogers, who testified that Mother had not informed her of certain concerns she raised during trial during the custody evaluation process. Specifically, Mother testified at trial that Father had told her that he had been violent towards animals as a child, but Ms. Rogers had not been made aware of these allegations. Mother conceded that she did not bring up these matters from Father's childhood with the custody evaluator. Father asserts that the fact that Mother did not inform Ms. Rogers about the allegations from Father's childhood reflects negatively upon Mother's credibility.

The trial court was within its discretion to credit Mother’s testimony and discredit certain testimony from Father and his witnesses. The court specifically explained that while Mother “admits to her faults,” Father “admits to no faults” and presented testimony from other family members who “admit to no fault of Mr. Nixon.” The circuit court judge explained that she had “yet to see the perfect parent in any case” and that Father had, in the court’s opinion, “enlisted the assistance of others to say he’s a great parent, [a] perfect parent, and that [Mother] is a horrible person.” The court reasoned that this “ma[de] no sense.”

The court further considered evidence regarding conversations Mother had previously held with Father’s relatives regarding Father’s behavior. The paternal grandmother acknowledged that she had discussed Father’s problematic behavior with Mother in the past, but, at trial, the paternal grandmother testified that the concerns she had about Father’s behavior were based solely upon what Mother had told her. The paternal grandmother testified that after the parties separated, she no longer believed Mother’s version of events. At trial, the paternal grandmother expressed no concerns about Father’s behavior. Similarly, Father’s sister, W.N., testified at trial that she had no concerns about Father’s parenting. On cross-examination, W.N. was confronted with prior text message conversations from approximately 2014 between W.N. and Mother in which W.N. had described Father as emotionally abusive, potentially “a bit bipolar” and in need of “personal self-help,” having “never had to own up to his mistakes,” and having “mistreat[ed] her” in the past. W.N. testified that the earlier conversations were a reflection

of her younger immaturity in 2013 and 2014, explaining that they were a reflection of “a child’s mind.” W.N. explained that she would be turning “34 in July” of 2021 and the text messages at issue occurred when her “mindset is not 2021 . . . I’m still holding on to [a] childlike” mindset and “thinking more of an emotional perspective.”

The trial court was particularly troubled by the shift in the paternal grandmother’s and W.N.’s opinions about Father by the time of trial, explaining:

[The paternal grandmother] said No, [Father’s] never said anything negative about me, he’s never been abusive towards me. And his sister, [W.N.], said Nope, none of that’s true. But there [are messages] where they clearly admit that [Father] has some serious issues regarding his propensity for abusive behavior toward them, but now, all of a sudden, he’s a saint. And W.N. says that the reason we shouldn’t credit what she said in 2013 is because she was looking back to when she was a much younger child. Well, that absolutely makes no sense. She said those things when she was an adult and it was clear in reading them that she had the ability to reflect on the treatment from her brother and her mother, whom she translated for in terms of what . . . she said to [Mother]. [W.N.] also reflected on [Father’s] behavior from the past compared to what [Mother] says now. And they both say they only believe those things because [Mother] told them that, as if they had no ability to judge for themselves. And their writings clearly indicate that they’re able to judge for themselves. They just, for whatever reason -- and I get it, he’s their son, their brother -- they want to help him out.

The circuit court was presented with additional evidence that, in the court’s view, reflected negatively upon Father’s credibility and demonstrated Father’s tendency to engage in manipulative behavior. For example, the circuit court credited the testimony of the maternal grandmother, who testified that Father refused to cooperate with her and allow her to use the children’s car seats on an occasion when she did not have seats for the

children when she had driven to Anne Arundel County to pick them up. Instead, the maternal grandmother had to locate a store and purchase new car seats while the children waited. The court referred to a similar incident when Father refused to provide face masks for the children to use during Mother’s custodial time. The court reasoned that these types of incidents “create[] more tension, even if at seven and five [the children] didn’t necessarily know exactly what was going on.” The court emphasized that “to create that type of tension impacts the children and only prolongs the acrimony between the adults in this case.”

The trial court further emphasized the ways in which Father had misled both the custody evaluator as well as the public school system. Father told the custody evaluator that the children would remain in the same school district where they were in day care with the paternal grandmother while, in fact, “he knew that he wasn’t living there anymore” and the paternal grandmother was “not the day care provider” but would only “come[] over and provide[] lunch” for the children. The custody evaluator’s recommendation was based upon “the stability that [the paternal grandmother] actually provided in terms of being the day care provider,” but the evaluator was not given a full and accurate representation of the circumstances by Father. The court further emphasized that Father “misled the school system” and had not obtained “a boundary exception” for the children to attend an out-of-zone school and would not actually be eligible for a boundary exception. The court explained that Father “sort of thought that fudging it would fool the [c]ourt, but, in fact, it’s only because the school is not aware that he was able to keep the children there.”

In this opinion, we do not attempt to summarize all of the evidence presented over the course of the trial, but we offer this summary as an illustration of why, in our view, the trial court’s determination that Father had a tendency “to manipulate things only to his benefit, to the detriment of the children’s relationship with their mother” was supported by the evidence. There was ample evidence presented to support the trial court’s conclusion that Father was the more manipulative parent and the trial judge clearly explained why she found certain testimony more credible than other testimony. The court was not required to credit the testimony of Father and his witnesses and discount the testimony of Mother and her witnesses. Accordingly, we reject Father’s assertion that the trial court should have found that Mother was not a fit and proper person to have custody of the minor children.

B. The characters and reputations of the parties

Father’s challenges to the circuit court’s findings regarding the parties’ characters and reputations are similar to his challenges to the fitness determinations we have discussed *supra*. Father contends that Mother attempted “to disparage [Father] with unverified allegations, which were not corroborated by other witnesses who testified at trial.” Father further asserts that the evidence he presented about his own positive character and reputation was verified by collateral witnesses. Father contends that “a proper consideration of all of the evidence” would lead to “the appropriate conclusion” that Mother “is surely the manipulative party in the situation, both toward [Father] and others, and that [Mother’s] own selfish interest and priorities often places the minor children i[n] harmful and risky situations.”

We disagree with Father’s characterization of the evidence. The circuit court largely found Mother’s testimony to be credible and was in a far better place than this court to make such a credibility determination. As we explained *supra*, the circuit court judge pointed to several reasons why she found Father to be a less credible witness, including his lack of candor to the custody evaluator and the court about the children’s schooling and the role of the paternal grandmother as a babysitter, his refusal to engage cooperatively with the maternal grandmother and share the children’s car seats so as to enable transportation of the children, as well as Father’s family members’ about-face with respect to their characterization of Father in private communications with Mother years earlier as compared to their unwavering support of Father’s narrative at trial.

In sum, based upon our review of the trial court record, in our view, there was ample evidence to support the trial court’s conclusions about Father’s character. The circuit court judge clearly explained why she found that Father had a pattern of “disrupting the status quo” and frequently manipulated situations to his own benefit. There is further evidentiary support for the trial court’s conclusion that although both parents “have a lot of work to do” with respect to character and fitness, Mother “admit[ted] to her faults.” The circuit court considered all of the evidence presented and drew reasonable conclusions from the evidence. We perceive no error in connection with the circuit court’s assessment of the parties’ characters and reputations.

C. Willingness of the parents to share custody

Father asserts that when considering the parties' willingness to share custody, the circuit court failed to give appropriate weight to his testimony that Mother did not attempt to speak to the children during the two-week period after the parties' separation as well as during another two week period when Mother was out of the country. Father also points to testimony from witnesses who testified that Mother, at times, left the children in the care of others during her parenting time so that she could socialize with friends. Father asserts that this evidence reflects Mother's "willingness to share custody of the minor children . . . only when it is convenient for her." Father further asserts that the evidence establishes that Mother is "a parent that often prioritizes her own selfish interests and hobbies over the needs of the children, yet still creat[es] hostility and tension between the parties during periods of time when she decides she wants to have the children in her care and custody." According to Father, this conduct by Mother "does not demonstrate a willingness to share custody, but a vindictive and manipulative approach at co-parenting, which is surely not in the best interest of the minor children."

We shall not revisit Father's allegations that it is Mother who is the more manipulative of the parties, nor Father's general allegations of Mother's selfishness. We have discussed the circuit court's findings as to each of the parties' credibility *supra* and we have explained that there was ample evidence to support the court's finding that Father frequently engaged in manipulative behavior both before and after the parties' separation. With respect to Father's specific references to the instances when Mother did not attempt to speak with the children during certain periods of time immediately following the

separation and during a trip out of the country, we note that these events occurred several years before trial and the circuit court was not required to weigh these instances significantly in the custody analysis, nor was the circuit court required to weigh heavily the fact that Mother had arranged for appropriate childcare in order to participate in social engagements.

D. Each parent's ability to maintain the children's family relationships

Father contends that the trial court failed to consider properly each parent's ability to maintain the children's family relationships. Specifically, Father asserts that the trial court failed to consider the impact of its custody award on the children's relationship with the paternal grandmother. Father points to custody evaluator Kathryn Rogers' testimony and emphasizes that the custody evaluator believed at the time of her evaluation that the children should remain enrolled in Anne Arundel County Schools so that they could continue to use the paternal grandmother as a childcare resource. Father asserts that the custody evaluator observed how beneficial the relationship between the children and the paternal grandmother had been and that the children were performing well at their school in Anne Arundel County.

Our review of the record does not support Father's interpretation of the custody evaluator's testimony. At trial, Ms. Rogers testified that she had done no follow-up work in connection with this case in the twenty months since her evaluation, and, as a result, Ms. Rogers had no recommendations for the court regarding school enrollment or custody. Furthermore, Ms. Rogers recommendation that the parties' daughter be enrolled in Anne

Arundel County for kindergarten in 2019 was in part based on Father’s false representation that this arrangement would allow the child to remain in the same school where she had attended preschool. In fact, the parties’ daughter had gone to an independent preschool and began kindergarten at a public elementary school in Anne Arundel County.

Furthermore, in our view, Father’s assertion that the circuit court’s custody order would result in a “removal of the minor children’s involvement in their paternal grandmother’s life and regular routine” significantly exaggerates the effect of the court’s custody order. The court awarded Father physical custody of the children for three weekends per month and for alternating weeks during the summer vacation, and Father may, if he chooses, encourage the children to interact with the paternal grandmother during that time. Moreover, to the extent Father argues that the trial court’s custody determination would negatively impact the paternal grandmother, we emphasize that it is the best interests of the children that must be considered, not the best interests of the children’s grandmother.

The trial court explained in detail why, in the court’s view, the neutral family relationships factor weighed strongly in favor of Mother. The court found that Father had been “throwing up roadblocks” rather than encouraging family relationships. The court specifically referred to Father’s refusal to allow the maternal grandmother to borrow the children’s car seats or face masks, as well as Father’s refusal to allow Mother’s fiancé to transport the children. The circuit court particularly emphasized Father’s interference with Mother’s extended family events and specifically an incident when Father did not allow the children to participate in a family holiday celebration the week after Christmas. The

court credited evidence presented by Mother demonstrating that Mother encouraged the children's relationships with Father and Father's extended family. The court further credited testimony from the father of Mother's oldest child, who testified that Mother supported her oldest son's involvement with his father's family. We hold, therefore, that the circuit court's determination that Mother was the party more likely to maintain neutral family relationships was supported by the evidence presented at trial. The circuit court's consideration of this factor did not constitute error nor abuse of discretion.

E. The preference of the child

One of the factors appropriate for the trial court's consideration when making a custody determination is the preference of the child. This factor is to be considered when the child is of sufficient age and capacity to form a rational judgment. Father's challenge to the circuit court's assessment of this factor focuses upon the circuit court's denial of Father's request that the trial court speak with the parties' daughter *in camera*.

Father is correct that the preference of the child may be considered when making a custody determination, but it does not follow that the court was required to interview the parties' daughter, who was seven years old at the time of trial. "While the preference of the children is a factor that may be considered in making a custody order, the court is not required to speak with the children." *Lemley v. Lemley*, 102 Md. App. 266, 288 (1994). We review the trial court's decision to not interview a child for an abuse of discretion. *Karanikas v. Cartwright*, 209 Md. App. 571, 590 (2013). We have explained:

The trial court has the "discretion to interview a child."
Marshall v. Stefanides, 17 Md. App. 364, 302 A.2d 682 (1973).

“In disputed custody cases, the court has the discretion whether to speak to the child or children and, if so, the weight to be given the children's preference as to the custodian.” *Leary v. Leary*, 97 Md. App. 26, 36, 627 A.2d 30 (1993) (citing *Casey v. Casey*, 210 Md. 464, 474, 124 A.2d 254 (1956)). While the preference of the child “is a factor that may be considered in making a custody order, the court is not required to speak with the children.” *Lemley v. Lemley*, 102 Md. App. 266, 288, 649 A.2d 1119 (1994) (citations omitted).

We have explained that in determining whether to interview a child:

[T]he child's own wishes may be consulted and given weight if he is of sufficient age and capacity to form a rational judgment But we adopt a rule that there is no specific age of a child at which his wishes should be consulted and given weight by the court. The matter depends upon the extent of the child's mental development. The desires of the child are consulted, not because of any legal rights to decide the question of custody, but because the court should know them in order to be better able to exercise its discretion wisely. It is not the whim of the child that the court respects, but its feelings, attachments, reasonable preference and probable contentment.

Leary, 97 Md. App. at 30, 627 A.2d 30 (citing *Ross v. Pick*, 199 Md. 341, 353, 86 A.2d 463 (1952)). We review a trial court's decision relating to the competency of children to testify under an abuse of discretion standard. *Wagner v. Wagner*, 109 Md. App. 1, 24, 674 A.2d 1 (1996).

Karanikas, supra, 209 Md. App. at 590-91.

In this case, when Father first asked the court to consider interviewing the parties' daughter *in camera*, the circuit court reserved ruling on the matter until the conclusion of

other testimony. When Father renewed his request at the close of trial, the court declined the request, explaining as follows:

You know, I think I have heard more than enough and I think given the acrimony between the parties, [the parties' daughter] speaking to a stranger on camera would not be good for her. It's hard enough in person to try to make a connection with a young child, but on video with a young child, that would be incredibly difficult and I don't think would be very productive. All right. So I'm going to decline to do so.^[9]

In our view, the circuit court's determination that a video interview with a seven-year-old child would add little value to its custody determination was an appropriate exercise of the court's discretion. The circuit court reasonably concluded that she had heard sufficient evidence upon which to make a custody determination. Moreover, the court's conclusion that interviewing the parties' oldest child would not serve the child's best interests and would "not be good for her" was sensible in light of the tension between the parents and the ways in which the children had been exposed to parental discord while the parties' divorce litigation was pending.

Father asserts that the trial court's decision not to hear from the parties' daughter was particularly problematic given that the court heard testimony from Mother's oldest son. We are entirely unpersuaded. Mother's son, although a minor, was sixteen-years-old at the time of trial, while the parties' daughter was only seven. Notably, the trial court did

⁹ We note that this trial was held via videoconferencing technology due to the ongoing Covid-19 emergency. This explains the circuit court's references to "speaking to a stranger on camera" and "mak[ing] a connection with a young child . . . on video."

not interview Mother’s oldest son *in camera*; Mother’s son testified and was subject to cross-examination.¹⁰ The considerations of the usefulness and reliability of the parties’ daughter’s testimony were, therefore, quite different from those regarding Mother’s son’s testimony. Furthermore, the parties’ daughter’s best interest was specifically at stake in the litigation before the circuit court, and the parties’ daughter would be placed in the middle of her parents’ dispute by being interviewed by the trial court. In contrast, Mother’s oldest child was not Father’s child and was not placed at the center of a dispute between his parents. For all of these reasons, we hold that the circuit court’s decision to decline to hear from the parties’ daughter *in camera* was a reasonable exercise of the court’s discretion.

F. The capacity of the parties to communicate and reach shared decisions

The circuit court found that this factor weighed in favor of Mother, explaining that the evidence demonstrated that Mother “always made more of an effort to communicate and reach shared decisions.” Father asserts that the trial court failed to consider the two occasions when Mother was not in contact with Father or the children for two weeks at a time. Father further points to his own testimony in which he asserted that Mother did not communicate effectively with him about obtaining appropriate health insurance for the children after Father’s employment was terminated.

¹⁰ Mother requested that the circuit court interview her oldest son *in camera*, but that request was denied.

The circuit court was not required to credit Father’s testimony about the specific communications regarding health insurance (which, we note, were disputed by Mother), and, as we have discussed *supra*, the specific periods of time when Mother did not communicate with Father and the children occurred several years before trial and the circuit court was not required to weigh these instances significantly in her analysis. In connection with this factor, Father again asserts that the evidence presented at trial “demonstrate[s] the selfish nature in which [Mother] approached co-parenting” in general” and that the trial court should have found that “[Mother] is the problematic party in the communication and decision-making between” the parties. As we have discussed in connection with the parental fitness and parental character factors, there was ample evidence in the record to support the trial court’s findings that Father was generally the more manipulative parent and the parent less willing to cooperate with the other. We perceive no error in connection with the circuit court’s conclusion that Mother was the party more capable of communicating in good faith and attempting to reach shared decisions.

G. Geographic proximity of each parent’s residence

Father acknowledges that, because the parties live approximately thirty-five miles apart, it is necessary that one party be the primary custodian for the children during the school year.¹¹ Father takes issue with the court’s ultimate determination as to which party

¹¹ Mother resides in Abingdon, Maryland, and Father resides in Glen Burnie, Maryland.

should have primary physical custody but does not challenge the court’s finding that a primary physical custodian was necessary.

H. The ability of each parent to maintain a stable and appropriate home

With respect to the ability of each parent to maintain a stable and appropriate home, the circuit court found that “both parents make an effort to make sure the kids get what they need.” The court found, however, that the children’s lives were disrupted when Father relocated from Harford County to Anne Arundel County following the parties’ separation, which was “disruptive when [the children] already had some stability here in Harford County.” The court further observed that Father had moved to three different residences after the parties separated.

Father contends that the trial court abused its discretion by failing to take into consideration “potential dangers and potentially unsafe situations that exist for [the parties’] children while in the care and custody of [Mother].” Father specifically asserts that the court failed to properly consider Mother’s “excessive” use of alcohol, Mother’s “predisposition to shirk her parental responsibilities” by arranging for childcare when she socialized with friends, and Mother’s fiancé’s pending criminal charges. Father further asserts that the court failed to appropriately credit testimony from his witnesses that, in his view, established that Father appropriately took care of the children’s everyday needs, supported the children’s education, and promoted the children’s beneficial bond with the paternal grandmother.

Although Father asserts that Mother’s fiancé has a “substantial criminal record,” the evidence presented at trial established that he had resolved a case involving a single driving under the influence offense. The record is silent as to any further details. Although the court was permitted to consider this evidence, the circuit court judge was entitled to give it the weight she saw fit within the larger custody analysis. With respect to Father’s assertion that Mother often consumed alcohol in excess, we observe that the record reflects that Mother’s alcohol consumption was disputed by the parties. Mother testified that she consumes alcohol once or twice per month, and Mother’s oldest son testified similarly. The circuit court was within its discretion to credit Mother’s testimony on this issue. We disagree with Father’s contention that the circuit court abused its discretion in connection with its consideration of this factor.

I. The financial status of the parties and the demands of parental employment

With respect to the financial status of the parties and the demands of parental employment factors, Father contends that the trial court failed to consider appropriately Father’s availability for the children due to his unemployment as well as Father’s fiancée’s ability to assist with the children due to her remote work arrangement. In our view, the circuit court was not required to consider these factors particularly strongly in the custody analysis. At the time of trial, Father was actively seeking employment. Perhaps more importantly, at the time of trial, the court was anticipating the children’s return to in-person schooling for the 2021-22 school year. The court also heard significant evidence about Mother’s support system in Harford County including her older children, the maternal

grandmother, and other resources. The circuit court was not required to find that this factor weighed in favor of Father, nor was the court required to weigh this factor particularly heavily in its analysis.

J. The relationship established between the children and parents

Father contends that the circuit court failed to consider this factor appropriately because the court did not address the children’s loving bond with Father’s fiancée. The children’s relationship with Father’s fiancée is not a parental relationship, but, nonetheless, the court acknowledged that the children have a relationship with Father’s fiancée and expressed that the court “believe[d] that [Father’s fiancée] is trying to do the right thing” in connection with her relationship with the children. The court expressed, however, that Father “seeks to supplant [Mother] as the child’s parent” by encouraging the children’s relationship with Father’s fiancée and observed that “although [Father] may believe that [his fiancée] might be a better mother for his children, that doesn’t make her their mother.”

The record reflects that the circuit court specifically considered the children’s relationship with Father’s fiancée. The court, however, simply drew different conclusions about this relationship than those advocated by Father. Contrary to Father’s assertion that “[l]ittle evidence, if any, was presented to the court regarding the relationship that the minor children have developed with each parent,” the record reflects that the circuit court heard extensive testimony from the parties and other witnesses regarding the children’s familial relationships. The court found that the children had strong relationships with both parents, but immediately after commenting on Father’s relationship with the children, the

court expressly referred to the testimony of Mother’s oldest child, who testified “about the negativity that he suffered at the hands of [Father].” The court specifically found Mother’s oldest child to be “direct and clear and not parroting what [Mother] said just to help his mother out.” The record reflects that the circuit court considered the relationship established between the children and each parent and gave this factor the weight the court deemed appropriate. We perceive no error by the trial court in its consideration of this factor.

K. The length of separation

With respect to the length of time the parties had been separated, the court found that there was “no length of separation from either parent” in that the children had regular contact with both parents throughout the four-year period of separation leading up to the divorce trial. Father asserts that the court did not appropriately consider the fact that the children were thriving in Father’s home in Anne Arundel County and that Father had made great strides to promote stability and consistency for the children.

The record reflects that the court expressly considered the importance of stability in the children’s lives and attributed much of the responsibility for the disruption of the children’s lives to Father. The circuit court emphasized the way in which the children’s lives were disrupted by Father’s relocation from Harford County as well as by Father moving to at least three different residences during the period of separation. The record

reflects that the circuit court considered the length of the parties' separation and gave this factor appropriate weight.

L. The potential disruption of the children's social and school life

As we have discussed *supra* in our assessment of several other factors, Father asserts that the circuit court's ruling results in significant disruption to the children's social and school lives and that the court failed to appropriately consider this disruption. As we have explained, there was evidentiary support for the circuit court's conclusion that the children would not have been able to remain in the same school for the 2021-2022 school year regardless of which party was awarded primary physical custody in light of the fact that Father had been misrepresenting his residence for the purpose of school enrollment. Furthermore, the children had been attending school through a virtual and hybrid virtual/in-person format during the 2020-2021 school year and an adjustment to a fully in-person format for the 2021-2022 school year would be necessary regardless of which parent was awarded custody. Finally, we observe that the circuit court expressly considered the importance of promoting consistency and appropriate transition planning for the children when the court ordered that the children would complete the 2020-2021 school year in Anne Arundel County before enrolling in Harford County for the 2021-2022 school year. There was ample evidence to support the circuit court's conclusions regarding the potential disruption of the children's social and school lives, and we perceive no error in the court's assessment of this factor.

III. The Circuit Court Properly Exercised its Discretion in Awarding Primary Physical Custody and Tiebreaking Authority to Mother

Father's challenge to the circuit court's ultimate custody determination awarding primary physical custody and tiebreaking legal custody authority to Mother is premised upon his assertion that the trial court's factual findings were clearly erroneous. Father contends that an appropriate custody determination that promotes the best interest of the children would award Father primary physical custody and tiebreaking authority for legal custody determinations.

As we have explained in detail *supra*, our review of the record leads us to conclude that the circuit court's factual findings were supported by ample evidence. The circuit court drew reasonable inferences from the evidence presented by the parties and explained in detail how the factual findings impacted the custody determination. The conclusions drawn by the circuit court were not those advocated by Father, but they were reasonable nonetheless. When presented with conflicting testimony regarding issues that were hotly contested by the parties, the circuit court judge was entitled to credit the testimony she found persuasive and discount the testimony she found not credible. This is the appropriate role of the finder of fact, particularly in a high-conflict scenario such as the one implicated in this case, and we shall not disturb it on appeal.

Given the geographic distance between the parties' homes, the circuit court reasonably concluded (and Father does not dispute) that one party must have primary physical custody of the children during the school year. The court clearly explained why Mother was the best party to serve as the children's primary physical custodian. The circuit court further determined that Mother was the appropriate party to have tiebreaking

authority for legal custody decisions. The court’s assessment of the *Taylor* and *Sanders* factors was consistent with its ultimate custody determination and was eminently reasonable under the circumstances. In sum, we conclude that the circuit court’s factual findings were not clearly erroneous, and the circuit court’s ruling was founded upon sound legal principles. The circuit court’s decision to grant primary physical and tiebreaking authority to Mother was not “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *In re Yve S.*, *supra*, 373 Md. at 583-84. Accordingly, we affirm the circuit court’s custody determination.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**