

Circuit Court for Baltimore County  
Case No. C-03-FM-20-000824

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 573

September Term, 2021

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L.N.

v.

F.A.

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Graeff,  
Arthur,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: June 23, 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 appeal arises from a child custody dispute in the Circuit Court for Baltimore County. After a two-day trial, the court ordered shared physical custody and awarded sole legal custody to the father.

The mother has appealed. Because we perceive no error or abuse of discretion, we shall affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. History of the Parties' Relationship**

Appellant L.N. (“Mother”) and appellee F.A. (“Father”) met in May 2018. On April 27, 2019, Mother gave birth to their child, I.<sup>1</sup> Father moved in with Mother and her two older children at some point before the birth of I. Father moved out temporarily in November 2019 and moved out permanently in January 2020, when the relationship ended.

#### **B. Timeline: Child Protective Services Referrals, Criminal Charges, Protective Order, and Custody Action**

In December 2019, Father called Child Protective Services (CPS) after Mother allegedly attempted to force one of his children from a previous marriage to eat her own vomit. Father said that CPS would take no action because the child had not received or required medical treatment.

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<sup>1</sup> I. is a randomly selected letter. It may or may not be the first letter of the child’s name.

On an unspecified date in January 2020, Father called CPS after I. required sutures to close a wound that she sustained while in Mother’s care. The record contains nothing to indicate the outcome of the referral.

On February 3, 2020, Father applied for a statement of charges against Mother, alleging a prior domestic assault and telephone misuse. Mother was charged with both offenses, and a warrant was issued for her arrest.

On the same date, Father secured a temporary protective order against Mother. The District Court of Maryland for Baltimore County scheduled a final protective order hearing for February 10, 2020.

On the day of the hearing, Mother was arrested on the assault charge. She was released on personal recognizance the following day. The district court rescheduled the hearing on the final protective order for February 18, 2020, and granted Father temporary custody of I. pending the hearing.

On February 12, 2020, Father filed a petition for custody in the Circuit Court for Baltimore County. He requested that he be granted sole legal and physical custody of I.

On February 14, 2020, CPS received a report that, while in Father’s care, I. “lacked formula and was being kept in unsafe/unsanitary conditions.” According to a custody evaluation report ordered by the court, the referral was “screened ‘out due to insufficient allegations against the father.’” To “screen out” a referral apparently means to deem it unworthy of further investigation.

On February 18, 2020, the district court issued a final protective order against Mother. Mother noted an appeal to the circuit court.

On February 21, 2020, Mother filed a counterclaim in the custody action, requesting that she be granted sole legal and physical custody of I.

On February 24, 2020, Mother told the police that Father had previously abused her two older children. According to the custody evaluation report, the children had “no visible injuries.” “A copy of the report was forwarded to CACU,” which presumably means the Crimes Against Children Unit of the Baltimore County Police Department. The record contains nothing to indicate that anyone took any further action.

On February 25, 2020, the circuit court entered an interim consent order, signed by the parties’ respective counsel, in the custody case. The interim order provided for joint physical custody of I. pending trial, pursuant to a schedule in which each parent had physical custody during alternating weeks. The order further provided for the exchange of custody to take place at a police station in Baltimore County.

On March 4, 2020, CPS received a referral from Mother. Mother charged that I. had lost seven ounces of body weight while in Father’s care and implied that Father had unsecured guns in his home. The referral was “screened out as the allegations did not meet the threshold for a CPS response.”

On March 12, 2020, Mother filed a CPS report indicating that Father physically abused her two older children. The referral was “documented and screened out as the allegations did not meet the threshold for a current CPS response.”

On March 17, 2020, the circuit court held an evidentiary hearing on Mother’s de novo appeal from the final protective order. Both parties were represented by counsel.

The court found that Father was entitled to relief and issued a final protective order, effective for one year.

The court eventually placed the criminal charges against Mother on the stet docket. *See* Md. Rule 4-248(a) (providing that, on motion by the State and with no objection from the accused, “the court may indefinitely postpone trial of a charge by marking the charge ‘stet’ on the docket”).

On August 6, 2020, Mother was charged with a violation of the protective order; she received probation before judgment.

### **C. Custody Evaluation**

Before the trial in the custody case, the court ordered a custody evaluation. On September 29, 2020, the evaluator filed a report in which he recommended that Mother be granted primary physical and sole legal custody of I. and that Father have weekly overnight visitation. The evaluator based the recommendation on the following findings:

- Both parents are committed to raising [I.].
- Both parents are gainfully employed.
- [Mother] teleworks from home.
- [Father] works twelve-hour shifts at work.
- [Father] has an active protective order against [Mother].
- [Mother] and [Father] have difficulties communicating with one another.

Although the report made note of the CPS referrals and the protective order, it did not include any corresponding findings. Because of the hostility between Father and

Mother, the evaluator declined to recommend “co-parenting efforts.” “Both parents,” the evaluator noted, were “alleging physical and emotional abuse by the other.”

**D. Trial**

The court held a two-day custody trial on June 10 and 11, 2021. Mother was represented by counsel. Father appeared as an unrepresented litigant. I. was two years old at the time of the trial.

At the outset of the trial, Father requested a postponement so that he could find a new lawyer. He explained that his attorney had withdrawn from the case the previous week. When Mother’s counsel objected to the postponement on grounds that witnesses had been subpoenaed, Father explained that he has a learning disability and would be at a disadvantage without the benefit of counsel. The court denied the motion and proceeded with the trial.

Father stated his desire that the court continue the schedule of shared physical custody on an alternating-week basis until I. begins school. At that time, in Father’s view, the parties could discuss which parent’s neighborhood had better schools (apparently to make a decision about where I. should live). He requested joint legal custody.

Mother requested that she be granted primary physical and sole legal custody and that Father have overnight visitation once a week. Neither party requested child support from the other.

### Father's Case

Father explained that the alternating-week physical custody arrangement had been in place since I. was eight or nine months old. Father believed that it was in I.'s best interest to continue with the same schedule because, he said, I. "needs to see both parents" despite their disagreements with one another. Father explained that he was requesting joint legal custody because he believed that both parents should be equally involved in making decisions for I.

Father testified that Mother "has a temper" and that, "when she lets her temper get the best of her, she's dangerous." Father claimed to have observed Mother hitting her oldest child over the head with a closed fist. He said that Mother pushed the same child into a wall with enough force to crack the child's tooth.

According to Father, Mother hit him "quite a bit" during their relationship. He attributed her actions to "mood swings" during her pregnancy.

During an argument in November 2019, Father said, Mother repeatedly hit him on the head with a frying pan, resulting in a gash above his eye. Father introduced a photograph of his injury, taken on the day of the assault. Father did not seek medical treatment for the injury, but said that he had headaches for "a while." He did not report the assault because, he said, "no one listens to [men] when it comes down to being hit."

Father testified that following that incident he "lost all self[-]confidence." He removed his belongings from Mother's house and stayed with a friend. Shortly thereafter, however, Father reunited with Mother.

On December 25, 2019, Father was at Mother’s apartment for Christmas dinner, along with his three children from a previous marriage. One of his children became ill and vomited. According to Father, Mother “got mad” and insisted that the child had to eat the vomit. Mother reportedly “lunge[d]” at the child, but Father intervened to protect her. Mother told Father to “get the F out.” Father said that he would not leave his children with her, so Mother “kicked [them] all out” and would not let them come back inside.

Father called the mother of the three children, his ex-wife Ms. A., who drove to Baltimore from her home in Pennsylvania to pick up the children.<sup>2</sup> Father and the children were outside in freezing temperatures from 11:00 p.m. to 3:00 a.m., when Ms. A. arrived. After Ms. A. picked up the children, Father remained outside for another hour before Mother allowed him back into the apartment. Father reported the incident to CPS, but said that CPS took no action because the children had not received or required medical treatment.

Father testified that, after that incident, Mother did not treat him “like a human being.” He slept on the floor, he said, “like a dog.” He claimed that he was not allowed to take a shower until Mother left for work. He was distressed and sought counseling. He moved out of Mother’s house permanently on January 15, 2020.

On January 31, 2020, Father called 911 because Mother was sending him what he called “vulgar” text messages, and because he was fearful that Mother would show up at

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<sup>2</sup> Like I., A. is a randomly selected letter. It may or may not be the first letter of the Ms. A.’s last name.



the house where he was staying. Father reported the November 2019 assault at that time because, he said, he had “just [] had enough.” A police officer showed Father how to block Mother from contacting him by phone. The next day, someone from the “victim’s unit” called Father to explain his rights. As stated earlier in this opinion, Father filed criminal charges against Mother and secured a temporary restraining order on February 3, 2020.

According to Father, he and Mother do not communicate with each other at all. Father stated that he was willing to unblock calls and texts from Mother after the protective order expired and was willing to “rebuild communication” with Mother for purposes of co-parenting.

In addition to I., Father has two sons and a daughter from a previous marriage. At the time of the custody hearing, the children were eight, nine, and 13 years of age. The children live with their mother, Ms. A., in Pennsylvania. Father has visitation every other weekend and for longer periods of time during the summer.

In October 2020, Father married a woman to whom we shall refer as Ms. H.<sup>3</sup> Father testified that he is happily married and that I. gets along well with Ms. H. At the time of the hearing, Father and Ms. H. were expecting their first child together.

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<sup>3</sup> Like I., H. is a randomly selected letter. It may or may not be the first letter of the Ms. H.’s last name.

Father and Ms. H. live in a two-bedroom apartment. Father converted the dining room into a third bedroom that is used by his two sons when Father has visitation. I. shares one of the bedrooms with her half-sister.

Father is employed in a supervisory position and works an overnight shift, from 6:15 p.m. to 4:45 a.m. on Monday through Thursday. Ms. H. is home with I. when Father is at work. Ms. H. is employed full-time outside the home and returns from work two hours before Father leaves for work.

Ms. H. testified that she loves I. as she would her own child, but that she would never try to replace Mother. Ms. H. wished that she could communicate with Mother about I.'s well-being and developmental milestones, but she felt that Mother did not want her to be a part of I.'s life. Ms. H. obtained a peace order against Mother in August 2020 after Mother sent text messages threatening that “some form of harm” would come to her.

Ms. H. stated that Father has a loving relationship with his three older children. She described the communication between Father and his ex-wife as “perfect” and “great.”

Father called his ex-wife, Ms. A., as a witness at trial. Ms. A. stated that she left the marriage because Father was verbally abusive toward her and the children. Although she and Father were not able to communicate for a period of time after their divorce in March 2019, their communication has since improved. She and Father were now “on good speaking terms” and were able to “work it out well” if a scheduling issue arose. Ms. A. said that Father calls her several times a week to “check up” on their children. In

her view, Father was “trying to definitely improve as a father” and did “a very good job” fathering I.

Ms. A. testified that, during their eight years of marriage, Father never hit or “beat” her or their three children, and he was never violent. She did say, however, that Father had given the children “spankings” “every once in a while when something was necessary” and that he “smacked them on the face” once or twice if they “talked back,” but that these incidents did not concern her. Father acknowledged that he had hit his son “on the butt” to discipline him for hitting his teacher and that he occasionally gave his children a “quick tap on the mouth” for “talk[ing] back,” but he explained that he had “been learning” that “talking very calmly and explaining” what the child had done wrong “work[ed] a lot better[.]”

Ms. A. believed that Father would be able to take care of all five of his children, including the baby that was on the way, because Father had “met a very great wife [who] is a very good helper.” Ms. A. stated that Father’s wife treated her children “as her own” and that her children had not reported feeling neglected or mistreated while at Father’s house.

Father explained why he was seeking joint physical custody instead of sole custody, as he had initially requested in his petition:

I know that [I.] loves both of her parents. She needs both of us. And that’s why I am not looking for just sole [custody]. At first, I wanted it. . . .

Like I said beforehand, if you don’t listen to your children . . . you are not a good parent[.] . . . And [joint custody] is what [I.] needs.

And she doesn't have to say it. . . . She shows it. She shows it in her face. And that's why I'm asking for the joint, the 50/50.

In his closing argument, Father said: “we both had bad parts in our relationship.” “But,” he continued “that's not the argument here.” “[T]he argument here is our child.”

### **Mother's Case**

Mother testified that, after Father moved in with her and her children, he became “very angry . . . all the time” and that “nothing we did or said would [ ] calm him down.” She said that when Father drank alcohol he would become “angrier[,]” “louder” and “more aggressive.”

When she and Father argued, Mother said, Father would “storm off” into the bedroom and “cower [ ] in the corner next to his weapons” instead of talking about their problems and trying to resolve them. She testified that “the only thing” she could do to keep her and the children safe was to get him out of the house “when he got [ ] that crazy and boisterous and loud to the point that he's scaring the children.”

According to Mother, Father “would resort to smacking” her children “for discipline purposes.” She described one incident in which Father “smacked” one of her children “so hard [that] her head hit the wall[.]” She claimed to have told Father on numerous occasions that he should not put his hands on her children. She also claimed to have kicked him out of the house on four occasions for doing so. Mother said that she did not use physical discipline on her children.

In response to questioning from the court, Mother explained why she did not report Father to CPS on the occasions when, she said, she kicked him out of the house for

allegedly hitting her children. According to Mother, she “didn’t believe in doing that” and thought that she “handled it” by getting Father out of the house and away from her children. Mother acknowledged that she did call CPS after Father moved out, but said that she did so because her two older children revealed more than what she had previously known about Father’s conduct. Mother was “shocked” that there were “more allegations that [she] didn’t know about[.]” She felt the allegations “should have been addressed.”

Mother stated that she called CPS in February 2020 because she was “super concerned” that I. had lost seven ounces of weight while in Father’s care. According to Mother, I.’s doctor told Mother that the weight loss was “very concerning,” and she asked the doctor to “put that in writing.”

At trial, Mother introduced a letter dated February 25, 2020 from I.’s doctor. The letter stated:

To Whom It May Concern:

[I.] was seen today in the office for an upper respiratory illness. It was noted that the child had a 7 oz. weight loss since her last visit in early February. She was found to have nasal congestion and a right otitis media (ear infection). She was treated with Amoxicillin for the ear infection.

Mother lives in a two-bedroom apartment with Mr. A., whom she met in June or July of 2020. In May 2021, a month before the trial, Mother gave birth to a child whose father is Mr. A.

Mother’s two oldest children, who were nine and ten years old at the time of trial, share one bedroom. I. sleeps in Mother’s bedroom, which Mother shares with Mr. A. and their newborn baby.

At the time of the custody evaluation, in September 2020, Mother was teleworking from home. As of October 2020, however, her employment would require her to work in an office from 8:00 a.m. to 4:30 p.m. Mr. A. would watch I. while Mother was at work. At the time of the hearing, Mother was on maternity leave.

Mother expected to return to work in the office in August 2021, when her maternity leave expired. At that time, Mr. A. would take care of I. and their newborn baby during the day.

Mother said I. was “not speaking” as well as her two oldest children had been when they were two years old and that she was “working with [I.] on speech.” Mother expressed some concern that I. may have inherited a learning disability from Father. Mother said that, if I. “should have any kind of issues,” she would provide I. with resources to help her and “not force her to be normal,” as, she said, Father had been.

Mother testified that I. “loves [Father]” and that Father should have visitation.

Mother did not like the temporary joint-custody arrangement because, she said, “there’s no consistency, stability [or] communication.” Although the protective order had expired, and she was now permitted to communicate with Father, she said that she “refuse[d] to do so just because of everything” that Father and Ms. H. “put [her] through.” Mother believed that it was in I.’s best interest for her to have primary physical

custody because of the “consistency,” “stability[,]” and absence of “anger issues” in her home. She proposed that Father should have overnight visitation once a week.

Mother told the court that she was requesting sole legal custody because she did not have any “mental disabilities or any mental issues” and was able to “manage her emotions,” better than Father. Mother said that she “already [had I.] established” in a church and that it was “established” that I. would attend the school near Mother’s home.

Mother acknowledged that I. “loves [Father]” and has a loving relationship with Father’s three older children. There was, she said, “an abundance of love for [I.] on both sides.”

Mother called Howard Rollins as an expert witness in custody evaluation. Mr. Rollins, a court evaluator and social worker employed by the court, was assigned to conduct the Child Access Evaluation. He interviewed Father by telephone in August 2020. He interviewed Mother via Skype in September 2020. The court admitted a copy of Mr. Rollins’s report, dated September 29, 2020.

Mr. Rollins recommended that Mother be granted primary physical custody of I. When asked to explain the reason for his recommendation, Mr. Rollins stated that he “didn’t find any evidence to the contrary as to why [Father] should have [I.]” and that he saw no apparent risk to I. while in Mother’s care. He added that he saw no indication that Father was unable to take care of I. and recommended that Father be granted overnight visitation. Mr. Rollins recommended that Mother be granted sole legal custody “primarily because she was home[,]” and because he had no information to suggest that she was a bad parent.

The court asked Mr. Rollins if he knew of Mother’s new baby and of Father’s marriage and if that information would affect his recommendation. Mr. Rollins said that he was not aware of the change in circumstances since he completed his report, but that his recommendation would not change.

Mr. Rollins knew of the protective order against Mother. He stated, however, that it “didn’t factor in” to his recommendation because “it had nothing to do with [I.],” and because I. was not “necessarily placed at risk.” Mr. Rollins did not know of the peace order that Ms. H. had obtained against Mother, but stated that it did not alter his recommendation.

The court asked Mr. Rollins whether he had any concern about the “screened out” calls Mother made to CPS while I. was in Father’s care. Mr. Rollins acknowledged that some parties “weaponize” the system to “get back at one another,” but said that he could not answer the court’s question without speculating, because he did not know why Mother’s reports were screened out.

Mother introduced testimony from Mr. M., the father of one of her children. Mr. M. testified that he and Mother have a “good” co-parenting relationship. He stated that he and Mother “communicate well” and “don’t have any issues.” Mr. M. said that he never saw Mother use physical discipline on their child.

Mother’s mother, Ms. N., testified that she had no concerns about Mother’s parenting abilities. According to Ms. N., I. gets along “very well” with Mother’s older children. Ms. N. stated that Mother does not hit her children and that “the only punishment is time-out.”



Ms. N. described Father as a “good person” and stated that “he took good care” of I. She had no concerns about Father caring for I., but believed that I. “needs to be in one place, a stable place so she can start preparing to go to school.”

#### **E. Custody Determination**

At the close of evidence on the second day of trial, the court announced that it would grant Father’s request for the parties to continue to share physical custody on an alternating-week basis and would award sole legal custody to Father. The court addressed the factors to be considered in determining custody (*see generally Taylor v. Taylor*, 306 Md. 290 (1986); *Montgomery County Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977)), finding some to be neutral or inapplicable. The court found the following factors to be relevant:

#### **The Fitness of the Parents**

The court stated that the fitness factor was “a problem.” The court found that the protective order secured by Father was “quite concerning” and had been “tremendously minimized” by Mr. Rollins, the custody evaluator. The court expressly credited Father’s account of the assault in November 2019 and found it significant that Mother did not prevail in her appeal of the final protective order. The court noted that a court had entered a peace order that prevented Mother from contacting Father’s new wife, Ms. H.

The court expressed concern about Mother’s “weaponization of the system[.]” The court observed that, although Mother claimed that Father hit her two older children while she and Father were living together, she did not make a report to CPS until after she had been served with a protective order. The court did not find I.’s seven-ounce

weight loss while in Father’s care to be significant in itself to warrant a request for investigation by CPS. The court noted that I. had a common ear infection at the same time and that there was no evidence that I.’s doctor had expressed concern.

The court questioned the wisdom of Mother’s “decision to move in” with Mr. A., a man whom she “knew for six months or less,” to bring Mr. A. “into a bedroom with [her] two-year-old daughter,” and “to leave” Mr. A. “in charge of [her] child when [she was] at work[.]” The court distinguished Mother’s child-care situation from Father’s, noting that I. was asleep while Ms. H. cared for her during Father’s overnight work shift and was not “up and running around . . . with a new person in her life[.]”

The court noted that Father had acknowledged his past parenting mistakes and was “honest about . . . where he could do better[.]” Ultimately, the court found that “both parents are fit enough to have unsupervised, overnight visitation” with I.

#### **Character and Reputation of the Parties**

The court found this factor to weigh in Father’s favor, citing its findings regarding fitness and credibility. The court added that Mother was not “as credible” as Father.

#### **Potentiality of Maintaining Natural Family Relations**

The court remarked that I. has older siblings on both sides of the family and that, “by all accounts, all of her older siblings adore her.” The court observed that the alternating-week custody schedule allows I. to maintain relationships with both sets of siblings.

**Residences of Parents and Opportunity for Visitation**

The court noted that in Mother’s apartment I. shares a room with Mother, Mr. A., and an infant. In Father’s apartment, I. has her own room.<sup>4</sup>

**Capacity of the Parents to Communicate and Reach Shared Decisions Affecting the Child’s Welfare**

The court observed that the parties currently did not communicate. Father was hopeful that communication would resume and that “things would be better.” Mother does not wish to communicate with Father.

**Willingness of the Parents to Share Custody**

The court found that Father was willing to have joint custody, but that Mother was not.

**Relationship Established Between the Child and Each Parent**

The court found that I. “seems to have a good relationship with each parent.”

**Potential Disruption to the Child’s Social and School Life**

The court determined that joint custody would not disrupt I.’s social or school life.

**Demands of Parental Employment**

The court observed that Father works overnight shifts and is home during the day. The court commented that Father had worked the night before the first day of trial and that he “seemed quite alert and able to function” during the day-long proceedings. The

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<sup>4</sup> The court did not mention that H. shared a room with her half-sister when Father had visitation, which was on every other weekend and approximately one month each summer.

court noted that, when Mother’s maternity leave expired in August, she would return to work outside the home and that Mr. A. would watch I.

**Age and Number of Children**

The court found that, in addition to I., Father has three older children, with whom he has visitation every other weekend and for four weeks in the summer. Father and his wife, Ms. H., were expecting their first child together. Mother has two older children and a one-month-old baby.

**Sincerity of Parents’ Request**

The court found that both parties were sincere in their respective requests regarding custody.

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After considering these factors, the court found that it was in I.’s best interest to maintain the current schedule, under which each parent had physical custody of I. during alternating weeks. The court explained that it had heard no evidence that the schedule had a negative impact on I. The court went on to award sole legal custody to Father. The court reasoned that Father was more likely to include Mother in decision-making concerning I. because he was willing to communicate, while Mother was unwilling to communicate with him.

To assist with essential communication, the court ordered the parties to pass a notebook back and forth with I. at each custody exchange. The notebook is to be used to convey handwritten information regarding any issues affecting I.

On June 14, 2021, the court entered a written order consistent with its ruling.

Mother noted this timely appeal.

### STANDARD OF REVIEW

An appellate court applies different standards when reviewing different aspects of a custody decision:

The appellate court will not set aside the trial court’s factual findings unless those findings are clearly erroneous. To the extent that a custody decision involves a legal question, such as the interpretation of a statute, the appellate court must determine whether the trial court’s conclusions are legally correct, and, if not, whether the error was harmless. The trial court’s ultimate decision will not be disturbed unless the trial court abused its discretion.

*Gizzo v. Gerstman*, 245 Md. App. 168, 191-92 (2020) (citations omitted).

A trial court’s finding “‘is not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.’” *In re M.H.*, 252 Md. App. 29, 45 (2021) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). In reviewing the court’s findings, “all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below.” *Lemley v. Lemley*, 109 Md. App. at 628 (citation omitted).

“An abuse of discretion may occur when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court.” *Gizzo v. Gerstman*, 245 Md. App. at 201 (citing *Santo v. Santo*, 448 Md. 620, 625-26 (2016)). The abuse of discretion standard “‘accounts for the trial court’s unique opportunity to observe the demeanor and the credibility of the parties

and the witnesses.” *Id.* (quoting *Santo v. Santo*, 448 Md. at 625 (internal quotation marks omitted)). “The trial judge, who ‘sees the witnesses and the parties, [and] hears the testimony . . . is in a far better position than the appellate court, which has only a [transcript] before it, to weigh the evidence and determine what disposition will best promote the welfare of the [child].” *Id.* (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000) (additional citation omitted)). ““An abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case.” *B.O. v. S.O.*, 252 Md. App. 486, 502 (2021) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)).

### DISCUSSION

Representing herself on appeal, Mother claims that the court erred in ordering shared physical custody and in granting sole legal custody to Father. Mother contends that the court should have awarded primary physical custody and sole legal custody to her. In support of her claim of error, Mother asserts that the child “needs a more consistent/normal schedule to help with her speech impediment issues[,]” and that I. “would thrive better in a consistent home[.]” Father did not file a brief.<sup>5</sup>

““Unequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child.” *Azizova v. Suleymanov*, 243 Md. App.

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<sup>5</sup> Some of the factual assertions included in Mother’s informal brief are not part of the evidence that was presented to the court. These assertions include details of Mother’s personal history and Father’s childhood and events that are alleged to have occurred after the custody order that is the subject of this appeal. We do not consider such assertions in deciding whether the court erred or abused its discretion in determining custody. *See Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 663 (2010).

340, 347 (2019) (quoting *Boswell v. Boswell*, 352 Md. 204, 236 (1998)). Although a trial court is “not limited to a list of factors in applying the best interest standard in each individual case,” the Court of Appeals and this Court have discussed a well-known list of factors that are relevant to a custody determination. *Id.* at 345 (citing *Taylor v. Taylor*, 306 Md. 290 (1986); *Montgomery County Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977)). The circuit court considered the factors relevant to this case in reaching its decision.<sup>6</sup>

### **1. Physical Custody**

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. at 296. “Joint physical custody is in reality ‘shared’ or ‘divided’ custody[,]” for example, “custody by one parent during the school year and by the other during summer vacation months, or division between weekdays and weekends,” *id.* at 296-97, or, as in this case, custody on alternating weeks.

“The question of whether to award joint custody is not considered in a vacuum, but as a part of the overall consideration of a custody dispute.” *Id.* at 303. “[I]n almost all cases, it is in the best interests of the child to have reasonable maximum opportunity

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<sup>6</sup> The factors that the trial court found to be neutral or inapplicable in this case were (1) the desire of the natural parents or agreements between the parties, (2) the preference of the child, (3) material opportunities affecting the future life of the child, (4) the child’s age, health, and sex, (5) the geographic proximity of parental homes, (6) the financial status of the parties, (7) the impact on federal or state assistance, and (8) the benefit to the parents.

to develop a close and loving relationship with each parent.” *Boswell v. Boswell*, 352 Md. at 220.

We find no clear error in the court’s factual findings with regard to physical custody. It was undisputed that the parties had been sharing custody on alternating weeks since I. was eight or nine months old. And as the court noted, there was no evidence that the arrangement had had a negative effect on I. The evidence supports the court’s findings that the child seemed to have a good relationship with both parents and with her half-siblings on both sides, that I. was “well cared for” in both homes, and that the parties’ respective requests for custody were sincere. The evidence also supports the finding that the custody arrangement had no potential to disrupt I.’s school or social life, considering that I. was only two years old.

In light of these findings, the court’s ultimate determination, that it was in I.’s best interest for the parties to maintain shared physical custody, was not unreasonable or “against the logic and effect of facts and inferences before the court.” *Gizzo v. Gerstman*, 245 Md. App. at 201. The court did not abuse its discretion in ordering shared physical custody.

## **2. Legal Custody**

The parents’ capacity to communicate is “clearly the most important factor in the determination of whether an award of joint legal custody is appropriate[.]” *Taylor v. Taylor*, 306 Md. at 304. “Only where the evidence is strong in support of a finding of the existence of a significant potential for compliance with this criterion should joint legal custody be granted.” *Id.* at 307.



Here, given the parties’ inability to communicate and make shared decisions, it was reasonable to conclude that joint legal custody was inappropriate. Consequently, the question faced by the court was whether it was in I.’s best interest for sole legal custody to be granted to Mother or to Father.

Although the court found both parties were “fit enough” for shared physical custody, the court found Mother to be less credible than Father, expressed concern about Mother’s “weaponization of the system,” and judged that Mother’s stated refusal to have any further communication with Father was “hard to overcome.” On the other hand, the court found that Father was “much more likely” than Mother to share information with the other parent and to include her in decisions affecting I. Based on these findings, which we cannot say were clearly erroneous, the court did not abuse its discretion in deciding to grant sole legal custody to Father instead of Mother.

#### **CONCLUSION**

Based on our review of the record, and in consideration of the significant deference afforded to the circuit court’s custody determinations, we find no error in the court’s findings and no abuse of discretion in the court’s decision to grant shared physical custody on an alternating-week basis and to grant sole legal custody to Father. The court properly considered the factors relevant to the particular circumstances of this case and, relying on the evidence before it, adequately articulated the basis for its conclusion that its custody determination was in I.’s best interest.

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