

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0598

September Term, 2017

NAKIA POPE

v.

NOLDON POPE

Wright,
Leahy,
Raker, Irma S.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wright, J.

Filed: April 23, 2018

*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 out of a divorce action between appellant (“Mother”) and appellee (“Father”) in which both parties sought sole legal custody of their two children. The Circuit Court for Anne Arundel County judge awarded sole legal custody to Father.

Mother timely appealed and presents the following issue which has been condensed and rephrased for clarity:¹

Whether the circuit court erred in awarding sole legal custody to Father?

We answer the questions in the negative and affirm the judgment of the circuit court judge.

BACKGROUND

On May 10, 2017, and May 11, 2017, Mother and Father appeared before the circuit court judge for a hearing on divorce, custody, visitation, child support, and attorney’s fees.² Mother appeared with counsel, and Father appeared *pro se*. Both

¹ Appellant presented her questions as follows:

1. Was the threshold reached and exceeded as to the clearly erroneous standard in order to over-ride the Court’s determination that it was in the children’s best interest to award legal custody to [F]ather and therefore an abuse of discretion?
2. Does the *Montgomery County Dep’t of Soc. Servs. v. Sanders*[, 38 Md. App. 406 (1977)] factor of maintaining natural family relations include consideration of half siblings?
3. What other factors influenced the Court’s decision: The Car, Piety and contacts, The Day Care License, Attorney’s fees, Custody case concerning Justin?

² The disposition of all aspects of the proceeding with the exception of legal custody are irrelevant to the question considered in the instant case and, as such, are not further discussed.

parties sought sole legal custody of their two children, Joshua, 5-years-old, and Josiah, 2-years-old.

After closing arguments, the circuit court judge granted the parties their divorce. In reaching her decision on the remaining issues, the judge reiterated the “overriding concern” of the best interest of the children “[w]ith respect to custody and visitation and child support.” She stated that her decision “all comes down to my analysis of the factors . . . and what’s in the best interest of the children.” After this explanation, the judge discussed the fitness of the parents. She stated that both parents were “very impressive individuals.” She explained that Father’s “prior wife did talk about similar behavior which corroborated [Mother’s] testimony that he yelled in front of the children and got angry and said demeaning things, so I’m not doubting that testimony and that goes against [Father].” She also stated that “the Court found that Mother did not have a lot of humility, really felt that her view was the only view and she seemed very controlling,” and that “Mother had some credibility issues.”

The circuit court judge continued to discuss other factors, such as the potential for maintaining natural family relations, by stating:

Dad has a large family but they’re mostly not in Maryland. Mother does have an extended family that’s been very involved with her and they’re here in Court and willing to help her. And I would think that she’s a little more inclusive with her family than Father.

The judge reviewed material opportunities affecting the future life of the children.

“[T]hey lean more in Father’s direction” since Mother’s income is not certain unlike Father’s “steady income from his pension . . . and he again has a lot of time on his hands

so he can dedicate to them.” Additionally, she discussed the age of the children (“the children are two and three years old”), and the lack of prior voluntary abandonment issues (“[t]here’s not been a prior voluntary abandonment of either child”).

The judge discussed legal custody in particular, stating:

With respect to legal custody, the parents do not – I do not think the parents are able to communicate and reach shared decisions based on the text messages and the testimony. They have extreme difficulty communicating and I don’t think it would be in the best interest of the children for them to have to wait for the two parents to be able to resolve major issues.

As far as the children’s social and school life they really haven’t established it yet, they’re only 2 and 3. As far as the parents’ homes, I think the testimony was they were eight or ten miles apart, not too far apart. And as for the demands of parental employment, Dad is retired. Mother will be available if she gets her home business up and going. If not, she would, I presume, return to substitute teaching during the year. So that’s all the factors that the Court considered.

After the discussion above, the circuit court judge stated specifically for the record as to which parent would be awarded custody:

And the other thing I did indicate – I’m sorry – in the order is that *although I’ve granted legal custody to Father – I don’t think I said that* – it does provide that before he makes a decision he needs to consult with her [M]other and take into account her views.

(Emphasis added).

Mother timely appealed. Additional facts will be provided as they become necessary.

STANDARD OF REVIEW

“The standard of review in custody cases is whether the [circuit] court abused its discretion in making its custody determination.” *Petrini v. Petrini*, 336 Md. 453, 470

In making this determination, we use three interrelated standards of review in making this determination, which the Court of Appeals described as follows:

We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003).

In this case, we yield “to the opportunity of the lower court to judge the credibility of the witnesses.” *Id.* at 584. Custody determinations lie within the sound discretion of the circuit court, and we will only interfere with that determination upon a clear showing of an abuse of discretion. That discretion is vested in the trial court judge because the judge, unlike the appellate court, is in the best position to see the witnesses and parties, hear the testimony, and speak with the child. As an appellate court, we only have the record before us. Thus, it is the judge, not the appellate court, that is best positioned to weigh the evidence and determine an outcome meeting the best interests of the child. *See In re Yve S.* at 585-86.

DISCUSSION

We hold that the circuit court judge did not abuse its discretion when she granted legal custody solely to Father as the judge provided an adequate explanation in support of this decision.

“[L]egal 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.” *Taylor v. Taylor*, 306 Md. 290, 296 (1986). In reaching a custody determination, “the best interest of the child standard is the overarching consideration.” *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013). “In assessing the best interests of the child,” the circuit court judge “is in the unique position to marshal the applicable facts, assess the situation, and determine the correct means of fulfilling a child’s best interests.” *Id.* (citation omitted).

There are various factors to be considered when making a custody determination. These include the capacity of the parents to communicate and reach shared decisions affecting the child’s welfare, willingness of the parents to share custody, fitness of the parents, relationship established between the child and each parent, preference of the child, potential disruption of the child’s social and school lives, geographic proximity of the parental homes, demands of parental employment, age, and number of the children, sincerity of both parents’ requests, financial status of the parties, impact on state and federal assistance, benefit to the parents, and other factors. *See Taylor*, 306 Md. at 304-311.

In *Santo v. Santo*, 448 Md. 620, 626 (2016), Father appealed the circuit court judge’s decision to grant joint custody on the premise that “an award of joint legal

custody requires that the parents effectively communicate or will be capable of making parenting decisions together in the future.” The Court of Special Appeals affirmed, and the Court of Appeals, granting *certiorari*, affirmed as well. The Court conceded that “[t]o be sure, the *Taylor* Court saw ‘the most important factor’ in deciding whether to award joint legal custody as the ‘capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare.’” *Id.* at 628. However, the Court continued, “[t]o elevate effective parental communication so that it becomes a prerequisite to a joint custody award would undermine the trial court’s complex and holistic task.” *Id.* at 629. The Court opined, “As the *Taylor* Court cautioned, ‘none’ of the major factors in a custody case ‘has talismanic qualities, and [] no single list of criteria will satisfy the demands of every case.’” *Id.* at 630. For this reason, the Court asserted that “[c]onsistent with *Taylor*, we emphasize that a trial court should carefully set out the facts and conclusions that support the solution it ultimately reaches.” *Id.*

In the instant case, the circuit court judge discussed the *Taylor* factors, and concluded that many of those factors, including the capacity of the parents to communicate and reach shared decisions affecting the children’s welfare, supported the award of sole legal custody. The judge also discussed the fitness of the parents. In discussing this factor, she concluded it “lean[s] more in Father’s direction.” In regards to the fitness of the parents, the court was effusive and bears repeating in its totality:

With respect to the fitness of the parents, both of these parents are very impressive individuals. These are very lucky children to have such loving parents who are intelligent, caring, professional, attractive – you’re both very articulate and impressive individuals.

With respect – and both are healthy. There’s been no testimony about any concerns about any problem with alcohol misuse or anything else. In fact, the only concern raised about fitness was about Dad’s tendency to have a temper.

Now the Court does not discount that testimony and I believe there probably were times where Mr. Pope flew off the handle and said things that he probably regretted that Mrs. Pope considered demeaning or insulting. The Court is not convinced that they rose to the level of her fearing for her life because I find *Mrs. Pope to be a very strong individual and none of the other witnesses corroborated the fact that Mr. Pope who is a pastor would really be threatening the life of Mrs. Pope.*^[3]

So I did not believe her life was threatened. However, I did believe that there were heated arguments which unfortunately are not that uncommon in a marital relationship. No one testified that there is any concern about Father’s temper possibly being a threat to the physical safety of the children. There’s no indication of that by any witness.

Now Mr. Pope’s prior wife did talk about similar behavior which corroborated Mrs. Pope’s testimony that he yelled in front of the children and got angry and said demeaning things, so I’m not doubting that testimony and that goes against Dad.

With respect to their character and reputation, Mother’s testified that she had a Ph.D. in pastoral counseling that she also was a pastor, and again these are two upstanding individuals. Father is a pastor. He was a Navy corpsman where he was involved in the pediatric clinic. He had paramedic training. He worked for the Fire Department. Dad is now retired from the Fire Department.

³ Although the highlighted portions do not seem to have a material impact on the final decision to award custody to the Father, the sentiments expressed are not aligned with the research as to victims or perpetrators of domestic violence. In fact, research has concluded that batterers come from all walks of life and there is no single factor including culture, socioeconomic status, or racial identity that will predict a likelihood of battering. Further, women who are victimized by their partners come from a wide variety of backgrounds, income range, profession, age, race, and educational level. In short, there is no way to predict who will batter or the type of woman who will be battered. See generally, Mary Pezulla, *The Dynamics of Domestic Violence*, in *Domestic Violence Cases: Handling Them Effectively in Maryland District and Circuit Courts* (2017 ed.).

So Dad has a certain level of knowledge about medical matters which the Court can understand could cause him to express his views strongly because he has practice in that area and it could lead to disagreements about medical issues when the Mother has her own opinions about those issues.

Dad had a lot of humility. He acknowledges that he does not know everything. But there were suggestions that Dad was very manipulative and controlling. To be honest, the Court found that Mother did not have a lot of humility, really felt that her view was the only view and she seemed very controlling.

(Emphasis added).

In *Viamonte v. Viamonte*, 131 Md. App. 151 (2000), Mother appealed the circuit court judge's decision to grant physical custody to Father. *Id.* at 153. The Court of Special Appeals affirmed, and in doing so, discussed the circuit court's related conclusion awarding joint legal custody. *Id.* at 158-159. The Court explained that the chancellor's "memorandum opinion adequately explained how she resolved the ultimate issue." *Id.* at 159. It further asserted that the "chancellor correctly cited Maryland law and examined point-by-point the evidence in light of the considerations in *Taylor*." *Id.* at 158. The Court further explained that "[i]n her memorandum opinion, the chancellor applied evidence adduced to *each* of these considerations and determined that joint legal custody was in the child's best interest." *Id.* (emphasis added).

In *Baldwin v. Baynard*, 215 Md. App. 82 (2013), Father appealed the circuit court judge's decision awarding sole legal custody to Mother. *Id.* at 86. The Court of Special Appeals affirmed. *Id.* In reaching its conclusion, the Court noted:

In the instant case, the circuit court explicitly considered each of the factors. Regarding Mother's and Father's ability to communicate and reach shared decisions, the court observed that "the parties have not been able to

set aside their differences and work together to do what is in [Daughter]’s best interests.” The court also found that Father was verbally, emotionally, and physically abusive towards Mother in the past, which affected their ability to communicate. Significant evidence in the record supported the court’s conclusion that the parents struggled to communicate, including conflicts about Daughter’s therapy, conflicts regarding selected Saturday or Sunday as the visitation day, and Father’s history of trying to intimidate Mother.

Id. at 110-111.

The Court continued:

The court also considered the other *Taylor* factors, finding that neither parent had expressed desire for a joint custody arrangement. The court further found that Mother and Daughter shared a close relationship, and the distance of the parents’ homes did not lend itself to a shared custody arrangement. In concluding that sole legal custody was appropriate, the circuit court emphasized that it was particularly concerned about the parents’ ability to communicate effectively and reach shared decisions regarding Daughter’s welfare. Having determined that joint custody was inappropriate, the court granted sole legal custody to Mother, finding that she has been primarily responsible for Daughter’s education and medical needs, and that Mother was also going to continue to have primary physical custody.

Id. at 111-112.

Both *Viamonte* and *Baldwin* support our affirmance of the circuit court’s decision to award custody to the Father. In this case, the circuit court judge “examined point-by-point the evidence in light of the considerations in *Taylor*” and “appl[ied] evidence adduced to *each* of these considerations.” *Viamonte*, 131 Md. App. at 159 (emphasis added).

The circuit court judge’s discussion explicitly addressing legal custody before awarding it solely to Father is as follows:

With respect to legal custody, the parents do not – I do not think the parents are able to communicate and reach shared decisions based on the text messages and the testimony. They have extreme difficulty communicating and I don't think it would be in the best interest of the children for them to have to wait for the two parents to be able to resolve major issues.

As far as the children's social and school life they really haven't established it yet, they're only 2 and 3. As far as the parents' homes, I think the testimony was they were eight or ten miles apart, not too far apart. And as for the demands of parental employment, Dad is retired. Mother will be available if she gets her home business up and going. If not, she would, I presume, return to substitute teaching during the year. So that's all the factors that the Court considered.

In her analysis, the judge discusses the parents' capacity to communicate and reach shared decisions. She mentions the additional *Taylor* factors of geographic proximity, demands of parental employment, and the age and number of children. The judge explains that the children's social and school life is a non-factor since "they really haven't established it yet, they're only 2 and 3," and that the parents' homes are only "eight or ten miles apart, not too far apart" which would seem to favor joint custody. The judge, in her explanation, "explicitly considered each of the factors" and "adequately explained how [she] resolved the ultimate issue." *Baldwin*, 215 Md. App. at 110-111; *Viamonte*, 131 Md. App. at 159.

The circuit court judge mentioned at one point that "Mother cares a lot about the children" and that "[i]t was clear from the videos that the children were comfortable with their [F]ather." These comments are reflective of the judge's consideration of the *Taylor* factor regarding the parent and child relationship.

It is evident that the circuit court judge's determination was predicated on its review of the *Taylor* factors with the most important factor being the "capacity of the

parents to communicate and to reach share decisions affecting the children’s welfare.”

The decision to award custody to the Father was rational and guided by established principles of Maryland law.

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