

Circuit Court for Anne Arundel County
Case No.: C-02-FM-19-003384

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 684

September Term, 2025

C. C.

v.

F. H.

Friedman,
Albright,
Kehoe, Christopher
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, Christopher, J.

Filed: March 30, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises out of a custody dispute between “F. H.” (“Father”) and “C. C.” (“Mother”) regarding the parties’ minor child, whom we will refer to as “N.”¹ The parties were divorced by a judgment of absolute divorce entered in the Circuit Court for Anne Arundel County in 2022.

In September 2024, the court modified its prior custody order and, among other things, granted Mother primary physical custody of N. during the school year and Father primary physical custody during the summer months. Unhappy with this result, Father filed a petition for an in banc review of the court’s judgment before a panel of three judges of the circuit court. Without affirming or reversing the judgment, the in banc panel remanded the case to the trial court for it “to articulate how, if at all,” concerns regarding Mother’s “alleged illicit drug usage and her testimony related thereto, and [Mother’s] seemingly inconsistent stances regarding alleged sexual abuse in [Father’s] home and the underlying allegation itself, informed the Court’s overall custody determination and the best interests of the minor child.”

¹ We will refer to the parties and their child by initials to protect their privacy. *See J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 241 n.1, 242 n.4 (2021). Neither the minor child’s first name nor their last name begins with the letter “N.” We have chosen the letter “N.” at random. *See Augustine v. Wolf*, 264 Md. App. 1, 7 n.2 (2024).

In their briefs, the parties use “he,” “his,” “him,” “she,” and “her” to refer to individuals in lieu of non-gender specific pronouns. We will do the same.

Mother has appealed the in banc panel’s decision,² and presents the following questions for this Court’s review, which we quote:

1. Did the In Banc Panel err in remanding [the case] to the trial court to further describe any concerns about Mother’s alleged illicit drug use or her stances regarding sexual abuse in [Father’s] home?

2. Did the trial court abuse its discretion in failing to expressly address Mother’s alleged illicit drug use or her stances regarding sexual abuse in [Father’s] home when it issued its oral ruling?

As we will explain, our focus is on the merits of the trial court’s judgment and not on the in banc panel’s decision. We will vacate the court’s judgment without affirmance or reversal and remand this case to the circuit court for proceedings consistent with this opinion.

BACKGROUND

The parties are well aware of the facts and the complicated procedural history of this case. We will focus on what we deem necessary to put the matter in context to address the issues before us. With that said, and having reviewed the record, it is clear to us that both Mother and Father are devoted to N. but it is difficult for them to coparent their child.

Mother and Father were married in 2016 in Annapolis. N. was born in 2018. In September 2019, Mother filed a complaint for a limited divorce in the Circuit Court for Anne Arundel County and returned to her hometown of Pittsburgh, taking N. (as well as

² Because Father, not Mother, sought in banc review, Mother is not precluded from noting an appeal to this Court. *See* Md. Rule 2-551(h).

Mother’s son from a previous relationship) with her. It is not necessary for us to discuss in detail the early stages of this action. Pursuant to an order filed on October 5, 2020, the circuit court granted Mother a limited divorce; awarded the parties joint legal custody of N.; and awarded Mother primary physical custody of N. The court kept in place the child access schedule that the parties were following at the time: N. was in Father’s care every other week from Wednesday at 3:00 p.m. until Sunday at 3:00 p.m., with the parents exchanging the child in Breezewood, Pennsylvania. Because this access schedule would not be feasible once N. began kindergarten, the court ordered that when N. began kindergarten, Father’s access would change to every other weekend from Friday at 8:00 p.m. until Sunday at 6:00 p.m. We refer to this as the “2020 Order.”

In May 2022, the circuit court granted Father an absolute divorce from Mother and, having found a material change in circumstances, the court awarded the parents joint legal custody and put in place a “shared custodial arrangement” whereby the parties followed “a week on/week off schedule[.]” The order provided that this equally shared custodial arrangement “shall be applicable until the minor child begins kindergarten, at which time the provisions regarding the regular visitation schedule” from the 2020 Order “shall be reinstated unless otherwise ordered” by the court. We refer to this as the “2022 Order.”

In May 2023, Father filed a motion to modify the 2022 Order. He sought sole legal and primary physical custody of N., alleging, among other things, an inability of the parents to communicate and make decisions on issues of importance in N.’s life, including where N. should attend school. He also alleged that he received the child “on

certain exchange days with visible cuts and bruises” and that Mother had refused to discuss them.

Mother filed an amended counterclaim to modify custody. She asserted that, because N. would soon be enrolled in school full time, the existing shared custody would be impracticable. Mother also alleged, among other things, that N. “is now displaying increasing dislike and anxiety” before spending time with Father and “and says she does not wish to go.” Mother also alleged that “[n]ow, for a few days after” returning to Mother’s home following time in Father’s home, N. “is displaying new behaviors: being oddly fixated on kissing; laying her body on top of others; and asking others to observe her bodily functions.” In response, and among other allegations, Father asserted that *any* custody arrangement should provide that N. will be in his custody for the school year. The court scheduled a hearing to address the merits of the parties’ custody contentions.

Prior to that hearing, Mother filed a motion to postpone the merits hearing. Mother alleged that “recent events” indicated that there was a “need for a child custody evaluation to be conducted in this case[.]” Mother asserted that, on January 8, 2024, “the child returned home [from time with Father] and was diagnosed with vulvovaginitis”; and on or about February 14, 2024, “[a]fter her bath, the child repeatedly made concerning remarks” to Mother that “referenced an adult brother who may live in the paternal household.” Mother reported the incident to the appropriate child welfare agency in Pennsylvania. That agency referred to the matter to the Anne Arundel County Department of Human Services, which ruled out abuse after conducting an investigation. At the time, Mother “was content with that, and took no further action.” However, in

May 2024, “after her bath, the child again made remarks, which this time were even more concerning” and that, after reporting the child’s statements to a social worker, the social worker “reported the incident to Pennsylvania child protective services but the incident was not investigated.” Mother sought a postponement of the merits hearing to obtain a child custody evaluation.

On the same day, Mother filed a motion for a child custody evaluation. In the motion, Mother related the recent history regarding concerns sexual in nature and stated that, “[d]ue to the child’s young age, the fact that the child has made concerning comments on two separate occasions, the nature of the concern the comments raise, and the difficulty in establishing what the child has actually experienced,” a custody evaluation would be in N.’s best interest.

Father opposed both motions. He asserted that Mother had an “ulterior motive” for requesting the child custody evaluation, which was “to generate bogus allegations of a sexual nature[.]” Additionally, he suggested that her postponement request was designed to enable “the minor child [to] start going to school in Pittsburgh to create a status quo in favor of” Mother. Father also asserted that a postponement would “provide[] [Mother] more time to convince the minor child that something bad happens to her” when in Father’s care. Father further alleged that Mother “is fabricating comments that are sexual in nature and attributing them to the minor child in an attempt to imply that she is being abused” when she is in Father’s home. Father stated that

[i]t is imperative that a merits hearing be held as soon as possible so that the Court may have the opportunity to assess the validity of [Mother’s] claims, grant [Father] the opportunity to be fully heard, and not subject the

minor child to further investigations of alleged sexual abuse that have no basis in fact.

Father also asserted that, given “the history of this case,” it was likely that Mother was “concocting alleged concerns in an attempt to persuade the Court” that custody should not be awarded to him.

The court denied Mother’s request for a postponement. The court also denied the request for a child custody evaluation “due to the timing of [the motion] in relation to the Merits [hearing] date.”

The Merits Hearing

The merits hearing was conducted over four days in July 2024. We have read the transcripts and reviewed the exhibits. We will summarize the evidence necessary to place the parties’ contentions in context matter in context.

During Father’s testimony, he sought admission of the “investigation summary report,” dated February 29, 2024, prepared by a social worker with the Department of Social Services (“DSS”) investigating concerns about sexual abuse of N. by Father’s son (from a previous marriage) who was twenty-one years old at the time of the investigation. The report indicated that investigative findings “ruled out” any abuse.³

³ The report indicated that Father’s son was a college student. During the relevant time period, he resided on campus. When not at school, the son stayed with his paternal grandparents because Father’s house was undergoing renovations. The social worker further reported that the son adamantly denied ever touching N. in an inappropriate manner and denied even babysitting her. When interviewing N. (outside the presence of
(continued...))

Father testified about the DSS report and the circumstances leading up to the investigation. He related that he was contacted by the social worker about “an anonymous report” made “regarding” his son. Father eventually concluded that the allegation was raised by Mother.

Mother opposed the admission of the report, claiming, among other things, that it was not relevant, that the social worker who authored the report (and conducted the investigation) was no longer employed with DSS and was unavailable to testify, it contained hearsay, and Mother “accepted the finding of the investigation.” Father’s counsel asserted that they were not “using it for the truth of the matter,” but rather “to show . . . patterns and habits and motivation by” Mother. The court ruled that it would accept the report preliminarily, with the redactions of any hearsay within it, and “if a pattern . . . of behavior [by Mother] is not shown, then the report won’t be accepted.”⁴

either parent), the social worker noted that N. related she had “no worries or fears at dad’s house[,]” denied any inappropriate touching, and said if anyone would try to do something like that she would “tell her dad” because “her dad always keeps her safe.” N. also told the social worker that “if anybody ever [tried] to touch her in a way that she did not like, she will tell her mom, her dad, or Miss Rebecca.” Miss Rebecca is N.’s pre-school teacher.

The report further noted that the pre-school teacher at the pre-school that N. attended in Annapolis when in Father’s care had not observed any “behavioral changes” in N. nor witnessed “any sexualized behaviors in the classroom.”

⁴ From our review of the record, it does not appear that the court explicitly admitted or excluded the report. It is not our role to search the record to make that determination. *See Rollins v. Cap. Plaza Assocs.*, 181 Md. App. 188, 201 (2008). In any event, neither party addresses the issue in their briefs.

Father also moved into evidence a report from a January 8, 2024 pediatric visit in Pittsburgh. (This visit appears to have taken place about a month prior to the initiation of the DSS sexual abuse investigation.) The doctor’s report summarized an examination of N. on that date, which was precipitated by complaints of “genitalia ‘burning’” and redness after N. returned to Mother’s home following time with Father. It indicated that Mother was “concerned about possible yeast infection.” The physician diagnosed N. with “vulvovaginitis” and reviewed with Mother and N. “good wiping hygiene” and the like. The report also noted that Mother and Father were separated and “shared custody — contentious, per Mom, but no concerns for abuse or maltreatment, & no clinical suggestion of that on exam.”

Father testified about a message Mother sent to him on May 30, 2024 in which she informed him about concerns she had related to “some things” that N. had recently said. Mother’s message then stated that “Monday after [N.’s] bath she was asking me to engage in lewd sexual activity.” She went on to say that she had informed Diane Schwab at “Kids Plus”⁵ what N. had said, and Ms. Schwab “informed me that she would need to report what I had shared with CPS.” Mother asked Father who N. spends “time alone with” when in Father’s care and whether anyone babysits her. When Father responded asking Mother to clarify what N. had said, Mother replied that she “hesitate[d] to share specifics”; that this should be handled carefully; asked Father to contact the pediatrician;

⁵ It appears that “Kids Plus” is the pediatric practice Mother took N. to in Pittsburgh.

and asked Father to not speak to N. about it without guidance from the pediatrician because N. “might feel humiliated and that she can’t trust me.” Ultimately, the Allegheny County, Pennsylvania Department of Human Services, Office of Children, Youth, and Families concluded that the matter did not merit further investigation.

On cross-examination, Father acknowledged that Mother has a prescription for marijuana, prescribed for migraines. He testified that he had not detected any anxiety in N., but agreed that Mother had also raised a concern about N. being overly concerned about her bodily image. He admitted that, at least until recently, upon receiving N. for visits with him, he routinely scrutinized her body for any marks, bumps, scratches or the like and would photograph any that he found. He denied, however, still asking N. to hold up her arms and legs for inspection during video chats with her when in Mother’s home.

Pia Vining, who with her husband have been friends with Father for about thirty years, testified on Father’s behalf. They regularly socialize with Father, and Ms. Vining testified that he is “an engaged parent” and has a “very good connection” with N. Ms. Vining has also observed N. interacting with Father’s current wife and believes they have “a very loving relationship.”

Father’s son testified that he is a college student and resides on campus, and when school is not in session, he stays with his grandparents. He described N. as having a “great” relationship with Father and with Father’s wife. He also related that he has a very good relationship with N.

Father’s current wife testified about the “wonderful” relationship she has with N. and the positive relationship between Father and N. She described N. as “beautiful and happy, and healthy” and denied observing anything that might be concerning.

Father called Mother to testify in his case-in-chief. When asked whether she had a “medical marijuana card[,]” Mother replied in the affirmative. When asked if she takes any other prescriptions, she replied in the negative. Counsel then referred Mother to her answers to interrogatories dated September 27, 2023 in which, in reply to the directive to list “each and every occasion where you have used any controlled dangerous substance” from May 1, 2022 to the present, Mother answered only to prescription medical marijuana. When asked at trial whether she had “any other prescriptions[,]” Mother testified: “I am not currently taking any other prescriptions. No.”

Counsel then confronted Mother with the results of a drug screening test administered on April 7, 2023 that indicated she had tested positive for an amphetamine.⁶ Mother testified that she was “prescribed Adderall at the time.” When asked why she did not list Adderall in her interrogatory answer, Mother testified that she did not recall “not answering that.” She denied taking Father’s son’s Adderall when married to Father. The next day, as her examination continued, Mother again confirmed that, in her answer to the interrogatory asking her to “[l]ist each and every occasion where you have used any controlled dangerous substance, including but not limited to marijuana, from May 1,

⁶ It appears that the drug screening test was administered as part of a background check by Mother’s employer.

2022 to present” and including any such substances “prescribed by a doctor,” she had answered: “I have not used any controlled, dangerous substances” and reiterated that she is “prescribed medical marijuana,” which she uses “as needed.”⁷

Mother also denied making allegations of sexual misconduct against Father in her counterclaim for custody, but she admitted that there were some allegations that were “sexual in nature[.]” The examination continued:

[FATHER’S COUNSEL]: Okay. But sitting in this court today during this trial, do you have any concerns about that?

[MOTHER]: I do.

[FATHER’S COUNSEL]: Okay. And what are they?

[MOTHER]: I have concerns that my daughter has said things that are -- I deem very inappropriate for her age and unusual -- things that I wouldn’t expect her to just say -- age appropriate -- without having some exposure. So yeah, I’m concerned about it.

When asked if she had scheduled an appointment with a therapist to address these concerns, Mother responded no because Father seemed opposed to it.

When examined by her counsel, Mother testified that her oldest child, a son, is twelve years old, lives with her full time, and he and N. have a “wonderful relationship.” When asked how N. behaves when it is time to leave for Father’s home, Mother testified that “[s]ometimes she seems anxious, or she’ll ask . . . how many days” and sometimes “sulk a little bit.” When she returns, Mother described her as “excited to be home, to

⁷ When examined by her counsel, Mother testified that she was initially prescribed Imitrex for migraine headaches, but after experiencing some side effects, she switched to medical marijuana for which she has a prescription.

come home.” When meeting at the exchange site, Mother related that N. “runs to me, runs into my arms.”

Mother’s cousin, Briana DiSilvio, a physician in Pittsburgh, testified on Mother’s behalf and related that she and Mother have been close all their lives. She described Mother as a “kind,” “honest,” and “selfless person” and a “wonderful mother[.]” She has observed Mother with her children on numerous occasions and described Mother as a “patient and kind and sensitive mom.” In her view, N. is always well groomed, appears healthy, and generally “in good spirits.”

Mother’s mother testified on Mother’s behalf. She testified that Mother and Mother’s two children reside with her and her husband, Mother’s father. She described N. as “vivacious and lively” and content when in Pittsburgh.

In closing statements, Father’s counsel argued that Father should have primary custody of N. because, although “[t]here’s no doubt she’s loved in both places[.]” counsel pointed to the activities that N. is involved in when she is in Annapolis with Father and asserted that, if she were primarily in Pittsburgh with Mother “[N.’s] going to lose everything that she has now.” Counsel, among other things, also noted Father’s “concern about [Mother] testing positive for amphetamines.” Counsel stated that:

She was asked in discovery about controlled dangerous substances, and prescriptions, and things like that. She never produced one thing. She never answered about amphetamines. She testified to it being Adderall, but we don’t - - she said she had a prescription, but not once did she produce anything on that. So that’s a concern. Absolutely a concern.

Father’s counsel also claimed that Mother is not “a credible witness[,]” and that he was seeking sole legal custody and primary physical custody with Mother awarded visitation.

In her closing, Mother’s counsel addressed why Mother should retain primary physical custody, at least during the school year. Counsel made no specific mention of Mother’s positive drug test for amphetamine the previous year or any sexually related concerns Mother had regarding N. Counsel asserted that, despite “attempts to cast stones at her fitness,” Mother is an “outstanding parent[.]”

The Trial Court’s Ruling on the Custody Modification Request

On August 14, 2024, several weeks after the merits hearing concluded, the court announced its findings on the record, stating in relevant part:

The [court] finds that a material change to circumstance has occurred. At the entry of the [May 2022] order, the minor child was 3 years of age. The minor child is now 5 years old, and is scheduled to enter kindergarten this fall.

The Court has to look at several factors^[8] in order to determine the custody of the minor child. And the Court looks at first physical custody, and the first factor, fitness of the parent.

The Court finds that both parents are fit parents. They have been stable and loving parents to the minor child since her birth. This Court

⁸ Context indicates that the trial court was referring to the *Sanders/Taylor* factors. See *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery County Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1978); see also *Azizova v. Suleymanov*, 243 Md. App. 340, 345-47 (2019) (noting that cases decided after *Taylor* have identified additional factors “that courts are encouraged to considered in custody determinations” (citing Cynthia Callahan & Thomas C. Ries, *FADER’S MARYLAND FAMILY LAW* § 5-3(b), at 5-11 to 5-12 (6th ed. 2016))).

believes that both parents have, and will continue to provide a stable home environment for the minor child.

Character and reputation of each parent. The testimony revealed that each of the parents have a reputation of being good parents. Both parents are college educated, both parents are working. [Father] is very structured and regimented, and [he] has strong family values.

[Mother] is very family oriented, and [she] is very well thought of in the community. [Mother] has a reputation of being calm and not easily rattled.

The desire of the natural parents and agreements between parents. The parents did not reach any agreements regarding the minor child, as far as the custodial schedule is -- schedule is concerned. Parties were following the Court's schedule, or the schedule that was developed by the Court. Both parties desire sole legal custody of the minor child, and primary physical custody.

The potential for maintaining family relations. Despite the parties currently residing in different states, they have made a very good effort in order to maintain strong family bonds. Both parties have maintained strong relational bonds with their older siblings, and grandparents, and additional extended family.

Preference of the child. The Court did not receive testimony regarding -- or any evidence regarding the minor child's preference.

Material opportunities affecting the future of the child. Both parties have demonstrated the ability to provide opportunities for the minor child in different ways. [Father] prefers structural programming, and has enrolled the minor child in ballet, gymnastics, swim lessons, a music program, and a school program.

[Mother] prefers less structured programs, and unscheduled activities. She takes the minor child to different programs within a community that are free, and -- including cultural activities, and both -- both of these programs are important for the growth of the child.

Age, health, and sex of the child. The minor child, [N.], is a healthy five year old child. The minor child did have some minor delays, one as in speech, and then there was testimony regarding her eyes, all of which the minor child is now on -- I will say on par with where she is to be.

The ability of each parent to maintain a stable and appropriate home for the minor child. The parties have maintained stable and appropriate homes for the minor child.

The residences of parents, and opportunity for visitation. [Father] has a home which is being renovated, and for his parents to move in with him. [Mother] is living in her parents' home with her parents.

The minor child has her own room in both of the residences. The minor child has had ample opportunity to visit with both of her parents.

The length of separation for the natural -- from the natural parents. The minor child has not had any lengthy separations from either parent. Prior to the divorce, Plaintiff had a 70 day -- a 75 day separation from the minor child. That separation occurred when [Mother] left Maryland and returned to her hometown.

Prior voluntary abandonment or surrender. There has not been prior abandonment by either party.

Legal custody.

Capacity of the parents to communicate and to reach shared decisions affecting the child's welfare. The parties have been communicating through OurFamilyWizard. The parties have demonstrated that they communicate effectively through OurFamilyWizard. The shared decision that the parties make are after much discussions between the parties.

The Court notes that there is a power struggle between the parties based on the evidence that the Court has reviewed. The parties have different parenting philosophies and styles, which presents issues with making decisions for the minor child.

Willingness of the parents to share custody. The parties were sharing custody of the minor child on a 50/50 basis; a week on, week off schedule, and that was by Court order. However [Father] desires to have primary physical custody, and sole legal custody. And [Mother] desires to have primary physical custody, with joint legal, and tie-breaking authority.

Potential disruption of the child's social and school life. The minor child has not started school, but the fact that she is pending kindergarten was the impetus for one of the main reasons for the modification being filed.

The Court finds that there will be a potential disruption in the minor child's social life. While the minor child is in [Father's] custody, the minor

child participates in many extracurricular activities, which was detailed above.

However, while in [Mother's] custody, the minor child is involved with her cousins, and other family members on a consistent basis. The minor child's best friend lives next door, who she plays with often.

Additionally the minor child has an older brother that lives with her that she has a strong bond with. Therefore, there would be a major disruption in the minor child's social life if removed from [Mother's] custody.

Demands of parental employment. There was no evidence that the demands of either parents' employment would affect their involvement with the minor child.

Geographic proximity of parental homes. The geographic proximity of the parties is a major issue in this matter. [Father] lives in Maryland, and [Mother] lives in Pittsburgh, and they are approximately four-and-a-half to five hours away from each other.

The relationship established between the child and each parent. The minor child has developed strong parent-child relationships with both parties. The testimony and evidence represented that the minor child loves both of her parents, and enjoys spending time with them.

The sincerity of the parents' requests. The Court does not question the sincerity of either parent's request. Both parents seem to want the best for the minor child. Both parents have researched great schools for her to attend. Each of them would be partially relying on the assistance of their parents, if not wholly.

[Mother's] mother testified that she and her husband would do whatever was necessary to assist with the minor child.

[Father] testified that his parents were willing to financially assist with the minor child's education, and have set up a trust for her.

The financial status of the parents. Both parents are employed. [Father] has more resources and makes more money than [Mother]. [Father's] potential for increase in income will occur after the protective order ends and he is able to restore his security clearance.

[Mother] is employed, and indicated that her income would increase as well.

There will be no impact on state or federal assistance; that is not applicable in this matter.

The benefit to the parents. The Court finds that both parents have benefited, and will continue to benefit from having the minor child in their lives. It is clear that it -- that she enriches and makes both parents better people.

After reviewing the factors, the Court finds that it is in the best interest of the minor child for the parties to have joint legal custody.

The Court is concerned that if either party has sole legal custody, that that other parent will not be informed about what is occurring in the minor child's life.

The Court will order that if the parents are unable to make a decision, that they are to attend one mediation . . . session, and make a good-faith attempt at resolving the matter.

Further, the Court does believe that both parents have different strengths, and that those strengths will assist in making -- or making the minor child's development that much stronger.

The Court does further find that it is in the best interest of the minor child for -- and the Court will break this down into two different aspects, and it will be during the school year, and during the summer.

The Court finds that it is in the best interest of the minor child for [Mother] to have primary physical custody of the minor child during the school year. [Father] shall have video access with the minor child at least three times a week, and [Father] shall have a weekend visit with the minor child once a month. The parties can determine which weekend will be best.

If the minor child has off from school on a Friday or a Monday, then the minor child shall have access -- then [Father] shall have access with that minor child on that Thursday evening, and return the minor child to [Mother] on Sunday evening.

If the minor child is off on Monday, then [Father] shall have access with the minor child, and return the minor child to [Mother] on Monday by 6 p.m.

During the summer, [Father] shall have primary physical custody of the minor child. [Father] shall have the minor child on the 1st, 2nd, and 4th weeks of the month.

[Mother] shall have the minor child on the 3rd week. [Mother] shall have video access with the minor child three times per week during the summer.

The summer shall be defined as the first Friday after school ends. The parties shall follow the current holiday schedule.

Neither the court’s oral pronouncement of its findings nor its written order explicitly addressed Father’s concern about Mother testing positive for amphetamines, or that she testified at the merits hearing that she had had a prescription at that time for Adderall, but she had failed to identify that prescription in her answers to interrogatories filed in September 2023. Nor did the court address both parents’ concerns about sexual matters related to N., specifically, assertions that N. may have been exposed to inappropriate behavior or materials or that Mother may have fabricated or utilized such allegations to gain an advantage in the custody dispute.⁹

The In Banc Review Proceeding

Father filed a petition for an in banc review of the trial court’s judgment pursuant to Md. Rule 2-551. He argued that the trial court had “abus[ed] its discretion in its analysis of the best interest of the child factors[,]” which he maintained “led to an award of custody that was not supported by the evidence.”¹⁰ Father asserted, among other

⁹ The court’s amended written order, filed on September 6, 2024, stated that, “[t]he minor child shall, at all times, be properly supervised. She shall not be exposed to intimate adult activities.” The order, however, does not identify any findings that it had made which prompted this directive.

¹⁰ Father also challenged two aspects of the trial court’s calculation of child support payments. These issues are not discussed by either party in their briefs.

things, that the trial court gave little, if any, weight to his concerns that Mother may be abusing amphetamines. At oral argument, he maintained that the trial court “abused its discretion by failing to mention any of the testimony regarding drug use in its analysis of the factors.”

Father also spent considerable time focused on the fact that the trial court “made no mention” of allegations of sexual abuse of N. when in Father’s care—allegations that had been ruled out but, in Father’s view, shed negative light on Mother’s credibility. Father asserted that the trial court “narrowed her focus only on one factor, the disruption in [N.’s] social life.” Father asserted that the trial court failed to “perform a thorough examination of all [the] factors” a court must consider in a custody case.

During Mother’s responsive argument, the in banc panel asked her counsel to focus on Father’s assertions that the failure of the trial court to address the positive drug test and the sexual abuse allegations were “omissions that loom large in [the trial court’s] reasoning.” With respect to the sexual abuse allegations, counsel asserted that Mother “didn’t argue it in her closing arguments [before the trial court] and didn’t make an issue out of it.” Hence, Mother’s position was “it’s implicit that the court didn’t find it to be an issue[,]” and, implicit that the trial judge found Mother to be credible.

As for the positive drug test, counsel argued that Mother had testified that she had informed her employer that she had a prescription and the employer “was okay with

that,”¹¹ which “shows that there was no issue concerning inappropriate drug use and did not need to be further addressed by the court.”

In reply, Father pointed out that Mother testified at the merits hearing that she continued to have “concerns” about inappropriate comments of a sexual nature that N. has made. He argued that “either they exist or they don’t exist” and, therefore, the trial court could not completely ignore the topic, and if they “don’t exist, then [Mother’s] testimony is not credible on a hugely important subject.”

Mother’s counsel reiterated that child abuse was not an issue before the trial court and that Mother had not made such accusations in her “pleadings,” in “her discovery,” or in “her examination.” With regard to the positive test for amphetamine, counsel reiterated that the court obviously took “[M]other’s word on the credibility.”

The in banc panel subsequently issued a memorandum opinion, stating, among other things:

Both substantive areas of concern—that is, the mixed evidence regarding [Mother’s] prior drug use and the seeming inconsistencies in reporting allegations of sexual abuse—incite the Panel to review the Court’s assessment of [Mother’s] credibility. The Court, however, did not address in its oral opinion either of the underlying substantive concerns; nor how [Mother’s] testimony and prior actions regarding these substantive concerns impacted the Court’s overall assessment of [Mother’s] credibility.

* * *

¹¹ We are unable to locate any testimony by Mother that she had informed her employer that she had a prescription for an amphetamine. Mother does not repeat this assertion in her briefs filed in this appeal.

The Court did not state whether it believed that the allegation of sexual abuse in the home of [Father] had any credence. Seemingly the Court did not credit the allegations because the Court ordered the minor child to reside in [Father’s] home during the summer when [Father’s] older son ostensibly would be present. Relatedly, if the Court concluded that [Mother’s] allegations were indeed false, the Court should explain how, if at all, [Mother’s] false allegations impacted the Court’s determination of what custody arrangement best serves the best interests of the minor child.

Similarly, the Court failed to articulate how, if at all, the denials of past drug use impacted the Court’s custody determination. The Panel believes that this concern also is a significant omission from the Court’s opinion, which should be incorporated into the analysis of the factors.

The Panel is left only to speculate regarding the impact that these areas of concern had on the Court’s overall custody determination. Notwithstanding, these considerations are too significant to be left unaddressed.

Without affirming or reversing the judgment, the in banc panel remanded the case to the trial court for the following purpose:

to describe and explain how, if at all, concerns regarding [Mother’s] alleged illicit drug usage and her testimony related thereto, and [Mother’s] seemingly inconsistent stances regarding alleged sexual abuse in [Father’s] home and the underlying allegations thereto, informed the Court’s overall custody determination of what serves the best interests of the minor child. The trial court shall frame these concerns in the context of all the relevant custody factors.

Mother has appealed.

THE PARTIES’ APPELLATE CONTENTIONS

The parties’ appellate contentions pertain to the reasoning and conclusions of the in banc panel. Although our focus is on the judgment of the circuit court and not the rulings of the in banc panel, we will summarize the parties’ contentions for the sake of context.

Mother's Contentions

Mother asserts that the in banc panel “erred in remanding this case as their ruling was a prime example of a reviewing court improperly substituting its own judgment regarding credibility for that of the trial court and engaging in essentially ‘Monday Morning Quarterbacking.’” She maintains that “[n]one of the concerns outlined by the In Banc Panel identify a valid basis for setting aside the trial court’s findings.” She claims that the panel “made its own determination as to the best interests of the parties’ child and the credibility of the parties.”¹²

Mother asserts that the trial court “had ample evidence that [she] was a fit parent” and that N. is “happy, healthy, and loved in the custody of both parents.” Given the geographical distance between the parties, Mother maintains that the court “made a reasonable decision that the parties should split the school year and summer rather than do a week on-week off to limit travel.”

Mother acknowledges that “Father did provide one exhibit that indicated Mother tested positive for amphetamines and alluded to a prior Memorandum indicating Mother used to have a drug abuse problem,” but she points to her testimony “that she had a prescription for Adderall, and there was no additional evidence that Mother had an active substance abuse problem that impacted her ability to parent the child.” She rejects

¹² To be clear, the in banc panel remanded the case to the trial court, without affirmance or reversal, to address or clarify certain issues. It did not make a best interests of the child determination and did not set aside the trial court’s custody decision.

Father’s notion that Mother has a “pattern of behavior” related to substance abuse, claiming that “assertion was simply not supported by the evidence.”

Mother maintains that the in banc panel substituted its own opinion for that of the trial court as to the issues of past drug use and the significance of the referrals to child protective services agencies in this case. She also faults the panel for questioning Mother’s credibility, which she correctly asserts is a task for the trial court and not a reviewing court. *See* Md. Rule 8-131(c).

Mother maintains that the trial court’s “custody order was well supported by the record.” She quotes this Court’s opinion in *Gizzo v. Gerstman*, 245 Md. App. 168, 196 (2020) for the proposition that a trial court “need not articulate every step of the judicial thought process in order to show that it has conducted the appropriate analysis.”

Mother also asserts that the in banc panel’s memorandum opinion in support of its remand order includes “several factual errors that calls their findings that Mother was inconsistent into question.” She points to the panel’s summary of the evidence before the trial court related to the positive drug test for amphetamines:

[Mother] testified at trial that the only controlled substance she ever ingested was prescription marijuana. However, she was confronted at trial with employment records indicating that she had tested positive for unprescribed amphetamines. Further, notwithstanding her denial of any past illegal drug use, prior court records, of which this Panel takes judicial

notice, also indicate otherwise. The 2020 Memorandum Opinion describes [Mother’s] past challenges with substance use disorder.^{13]}

Mother asserts that there was no evidence before the trial court that she “was actively taking unprescribed amphetamines[,]” and it was error for the in banc panel to find otherwise. She notes that the drug screening test results do not indicate whether Mother had a prescription, or not, for an amphetamine. And she maintains that the trial court “implicitly accepted [her] testimony” that, at the time of the drug test, she had a prescription for Adderall. Mother asserts the in banc panel “improperly insert[ed] its own opinion on the weight of the evidence and credibility of the witnesses” to support its findings that the positive test stemmed from unprescribed amphetamine use.

Mother also faults the in banc panel for stating in its Memorandum Opinion that “Mother denied any past drug use” and that she claimed that “the only controlled substance she ever ingested was prescription marijuana.” To the contrary, she claims that she “testified that marijuana was the only controlled substance she had an active prescription for use, not the only substance that she had ever used.” And she testified that she “had also previously had a prescription for Adderall.”

Mother asserts that she “never testified at trial that she never had a history of addiction or drug misuse.” As for not listing Adderall in her answer to the interrogatory,

¹³ The 2020 Order of the circuit court stated that Mother had “admitted that she previously had an addiction to opiates. She also admitted that she utilizes medical marijuana for her migraines and has given marijuana to a third party. The Court finds that while she previously had addiction problems [Mother] has them under control.”

Mother states she “never denied taking Adderall” and that she testified at trial that she was “not currently taking any other prescriptions.” She further asserts that Father “presented no evidence of a pattern of an ongoing drug abuse problem.” Thus, Mother contends that the in banc panel “erred in finding Mother was inconsistent on her prior drug use.”¹⁴

The in banc panel also addressed Mother’s concerns regarding possible sexual abuse:

[D]uring trial, it was revealed that in February 2024 and May 2024, [Mother] made allegations to both Maryland and Pennsylvania child protection agencies that [Father’s] college-age son sexually abused the minor child. During the same timeframe that [Mother] made these formal sexual abuse allegations, [Mother] reported to the minor child’s pediatrician that she had no concerns regarding any alleged sexual abuse in [Father’s] home.¹ Moreover, at trial, [Mother] testified that the minor child was happy and healthy, and [Mother] conceded that she never pursued therapy or a forensic assessment of the minor child.

In a footnote, the in banc panel further stated: “The sexual abuse allegations were ultimately formally deemed unfounded by both State agencies, causing this Panel to

¹⁴ We agree with Mother that the in banc panel misunderstood some of the evidence before the trial court. The interrogatory propounded to Mother asked her to list any controlled dangerous substances she had used “from May 1, 2022 to present[.]” Her answer was filed on September 27, 2023. We see no evidence in the record before us that, in the 2024 modification proceeding, Mother denied “ever” using illicit substances or categorically denied “any past illegal drug use[.]” Our review of the record indicates that the court and the parties agreed that the custody modification requests were to be based on evidence following the issuance of the 2020 Order.

encourage the [trial court] to explore whether the allegations were made for opportunistic reasons.”¹⁵

Mother asserts that the in banc panel “misstates the record by finding that Mother made allegations in February 2024 and May 2024 to Maryland and Pennsylvania child protection agencies.” Although acknowledging that she “made the allegation in February 2024,” Mother asserts that the evidence supports the fact that the May 2024 allegation was made by the pediatrician’s office.

Mother also takes issue with the in banc panel’s finding that Mother made the allegations in “the same timeframe” in which she had informed the pediatrician during an office visit with N. that she had no concerns regarding any alleged sexual abuse in Father’s home. To the contrary, Mother points out that her comments to the pediatrician took place on January 8, 2024—a month or more prior to the February 2024 referral to CPS and several months prior to the May 2024 referral.

Mother contends that “the trial court was reasonable when it did not discredit Mother for making a report to child protective services, even though it did not make a finding that abuse occurred.” She points out that she “made one report, regarding the child’s half[-]brother, and not Father, to CPS based on a disclosure made by the minor

¹⁵ Based on our review of the record, the Allegheny County, Pennsylvania, Department of Human Services, “screened out” the May 2024 referral. Father testified that it was done so without any formal investigation. We see no evidence in the record before us that Allegheny County concluded that the allegation was “unfounded,” but we note that its report, when submitted at the merits hearing in this case, was largely redacted. We see nothing in the record that defines the term “screened out.”

child.” She claims that, after the “Ruled Out determination,” she “did not continue to push the issue or make further reports.” The second report, she states, was made by “Kids Plus, but that was not at the request or insistence of Mother.” And she maintains that she “did not even put the abuse at issue at trial.” Acknowledging that Mother did testify to “some concerns about the language the child was using,” she claims she “did not testify that she still had lingering concerns that the child was being abused.” And Mother insists that “[t]here was nothing in the record to indicate that Mother made this report to gain an advantage in the case[,]” and any “[s]uch . . . contention could only be made [by] inference which is not supported in the record.”

In her reply brief, Mother asserts that, given that the trial court had found Mother to be a fit parent despite Father’s concerns regarding illicit substance abuse and sexual allegations determined to be unfounded, the order of remand “is a needless procedure that wastes time and resources, and injects uncertainty while the child continues to grow up.” She points out that the trial judge discussed all the requisite factors, and maintains that the “child’s sexual[]abuse disclosures” and “Mother’s past drug use” were, “[i]n actuality, . . . minor issues over the course of the 3-day trial that proved, at best, inconclusive, which explains why the trial court was not obligated to specifically discuss them in its ruling.” In support of her position, Mother notes that Father’s counsel did not raise the sexual abuse concerns in closing argument before the trial court. And Mother maintains that there was “no contradiction” between Mother failing to identify Adderall in her interrogatory answer and her testimony at trial that she once had a prescription for it, and, therefore, she claims “the trial court was well within its rights to credit Mother’s

uncontradicted testimony.” Mother also claims that the “supposed credibility issues were isolated conflicts that do not remotely call into question her fitness as a parent.” Because she believes that “there is no reasonable possibility that a remand for the trial court to expressly address these marginal issues will do anything other than draw out the process to reaching the exact same result[.]” Mother urges this Court to vacate the in banc panel’s ruling.

Father’s Contentions

Father initially asserts that Mother “misstates the nature of the action taken by the in banc panel,” correctly noting that the panel did not modify, vacate, or reverse the trial court’s custody determination or direct that court to reach any particular outcome upon remand. Father acknowledges that the trial court could accept or reject the evidence before it, but he maintains that the meaningful appellate review is impossible if the reviewing court must speculate as to how the trial court weighed the evidence and what credibility determinations it made.

As to the remand order itself, Father maintains that the in banc panel “correctly identified Mother’s ongoing substance abuse problem as an issue directly affecting the welfare of the minor child.”¹⁶ Father further contends that concerns regarding illicit drug

¹⁶ The in banc panel’s analysis of what Father characterizes as Mother’s “ongoing substance abuse problem” is problematic. First, the panel based its decision on otherwise unidentified and undescribed “prior court records, of which this Panel takes judicial notice[.]” Both trial and appellate courts, including in banc panels, have the authority to
(continued...)

use and allegations of sexual abuse in Father’s home “cannot be treated as peripheral[,]” as they bear directly on the fitness and character of the parent and the best interests of the child analysis.

In short, Father asserts that the in banc panel “identified a failure of articulation that foreclosed meaningful appellate review” and appropriately “applied the least intrusive remedy available: remand to the same trial judge, on the same record, with full discretion preserved.”

ANALYSIS

For the reasons that we will explain, we will vacate the judgment of the circuit court and remand this case to it for further proceedings.

First, we will identify the proper standard of review. When the Supreme Court of Maryland or the Appellate Court of Maryland reviews a decision of an in banc panel of the circuit court, “generally, it is the judgment of the trial court that is under review.” *Bajaj v. Bajaj*, 262 Md. App. 435, 442 (2024) (quotation marks and citation omitted). As Judge Deborah Eyler explained nearly a decade ago:

For the party seeking it, in banc review serves as a substitute for an appeal to this Court. For that reason, the role of the in banc court is not to

take judicial notice of court records. *See, e.g., Abrishamian v. Washington Med. Grp., P.C.*, 216 Md. App. 386, 413-14 (2014). However, when appellate courts (including in banc panels) do so, they must identify what the records are and how those records can be accessed.

With that said, the in banc panel was concerned about the trial court’s failure to address any substance abuse issues that Mother might currently have. There is a colorable basis for the panel’s concerns, and we will address the issue in our analysis.

reconsider the decision of the trial court. Instead, it is to *engage in appellate review* of the trial court’s decision. *Azar v. Adams*, 117 Md. App. 426, 429 (1997) (“[T]he *in banc* panel sits to review the findings of the trial court and, as such, sits in an appellate capacity.”).

Hartford Fire Ins. Co. v. Est. of Sanders, 232 Md. App. 24, 37 (2017) (emphasis added; some citations omitted); *see also Guillaume v. Guillaume*, 243 Md. App. 6, 24 (2019) (stating that “the procedures for an appeal *in banc* are meant to essentially imitate those for an appeal to a Maryland appellate court”).

There is a significant difference between a trial court’s extremely broad authority to alter or amend a judgment in non-jury trials pursuant to Md. Rule 2-534¹⁷ and the scope of review vested in appellate courts, including in banc panels.

The authority of appellate courts is set out in Md. Rule 8-131, which states in pertinent part:

(a) **Generally.** — The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by an appellate court whether or not raised in and decided by the trial court. Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]

* * *

¹⁷ Md. Rule 2-534 states in pertinent part:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

(c) **Action tried without a jury.** — When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.^[18]

We review child custody judgments under three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). First, we will not disturb a trial court’s factual findings unless they are clearly erroneous.¹⁹ *Id.* Second, if we determine that the trial court erred as a matter of law and that the error was not harmless, we will remand for further proceedings. *Id.* Third, if a trial court’s ultimate conclusion is founded upon sound legal principles and factual findings that are not clearly erroneous, we will not disturb it absent a clear abuse of discretion. *Id.*

Returning to the case before us, Father argued, and the in banc panel agreed, that the allegations of sexual abuse and Mother’s positive test for amphetamine in April 2023 were significant issues bearing on Mother’s credibility and her fitness as a parent. We are not at all certain that either of these propositions is correct. However, we do know that the trial court did not expressly address either topic in what otherwise appears to be a thorough and well-reasoned analysis. It is not appropriate for us to speculate as how the

¹⁸ There are additional limitations on our Supreme Court’s scope of review. *See* Md. Rule 8-131(b).

¹⁹ “Clear error exists where the trial court’s factual findings are not supported by competent evidence.” *EBC Props., LLC v. Urge Food Corp.*, 257 Md. App. 151, 165 (2023). “[I]f there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *Carroll Indep. Fuel Co. v. Washington Real Est. Inv. Tr.*, 202 Md. App. 206, 224 (2011) (cleaned up).

trial court viewed these issues and if, and how, they factored into the court’s custody analysis and ultimate decision. Under the circumstances, the appropriate remedy is to remand this case to the trial court without affirmance or reversal for the trial court to address these issues. The court may, at its discretion, permit the parties to present evidence of matters that have occurred since the trial court entered its judgment.

To be clear, we express no opinion on the merits of the circuit court’s custody decision.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL COUNTY
IS VACATED AND THIS CASE IS
REMANDED WITHOUT AFFIRMANCE
OR REVERSAL FOR PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE DIVIDED EQUALLY
BETWEEN THE PARTIES.**