Circuit Court for Prince George's County
Case No.: CAD20-09740

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

Nos. 702 & 1306

September Term, 2022

VIMEL MASTA

v.

SAKSHI GAMBHIR

Shaw,
Tang,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: April 3, 2023

*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.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal arises from a divorce proceeding involving Vimel Masta ("Husband"), appellant, and Sakshi Gambhir ("Wife"), appellee. The couple has one child born in 2014. After separating, the parties filed their respective pleadings, seeking to resolve issues of custody, child support, and alimony.

A trial on the merits was held in the Circuit Court for Prince George's County over the course of three days between May 2021 and January 2022. The court entered an order for judgment of absolute divorce, awarding the parties joint physical and legal custody with tie-breaking authority to Wife, and ordering Husband to pay rehabilitative alimony and child support. Husband filed a motion to stay the order pending appeal, which the court denied.

Husband appeals the custody and alimony determinations as well as the denial of his motion to stay.[1] He presents six questions for our review, which we have condensed and reordered as follows:[2]

[1] Husband noted two appeals, which were docketed separately (case numbers 702/2022 and 1306/2022). This Court consolidated the appeals by order dated October 11, 2022.

[2] The questions presented by Husband in his brief are:

1. Did the Circuit Court err in not staying the action pending this appeal?
2. Did the Circuit Court err in not applying collateral estoppel to the findings in the previous protective order matter?
3. Did the Circuit Court err by delegating the findings of fact to the custody evaluator?
4. Did the Circuit Court err in its determination of child custody?
5. Did the Circuit Court err in its determination of alimony?
6. Did the Circuit Court err in its determination of child support?

(continued)

1. Did the court err in its custody determination?

2. Did the court err by awarding Wife $1,600 of monthly rehabilitative alimony for a period of three years?

3. Did the court err in refusing to give preclusive effect to the denial of domestic violence protective orders entered in prior proceedings?

4. Did the court err in denying Husband's motion to stay?

For the following reasons, we affirm the judgment of the circuit court.

PROCEDURAL OVERVIEW

On May 19, 2021, the circuit court began the trial on the merits, which continued into the next day. Husband called several witnesses to support his claim for sole custody, including the child's kindergarten teacher; former and current tenants who had, at various times, resided in the home with the parties; Husband's friend; a local religious leader; and Husband's brother.

Husband and Wife testified. Based on the divergent testimony regarding custody, the court suspended the trial and ordered a custody evaluation. It ultimately scheduled the resumption of the trial for January 27, 2022. In the meantime, the court ordered Husband to pay *pendente lite* child support, and the parties continued to share physical custody pursuant to an existing interim custody order, *infra.*

As to child support, Husband indicates, in his brief, that child support should be recalculated in the event this Court concludes that the circuit court "made incorrect findings of fact as to custody and alimony[.]" Because we affirm the court's custody and alimony determinations, we need not reach the issue of child support.

On January 27, 2022, the final day of trial, Wife concluded her testimony. The court heard testimony from Wife's friend and owner of the apartment where Wife had relocated during the parties' separation. The trial concluded with rebuttal testimony from Husband.

By that time, the custody evaluation had been completed and shared with the parties. Neither party subpoenaed nor called the evaluator to testify about the evaluation. The court admitted the evaluation report into evidence. The report indicated that the evaluator reviewed relevant records, interviewed the parties and the child, and conducted home assessments of the parties' respective residences. The report included a recommendation that the parties be awarded shared physical and joint legal custody of the child.

At the conclusion of the trial, the court directed the parties to submit proposed findings of fact for its consideration. On February 11, 2022, the court held a hearing and made its findings of fact and conclusions, *infra*.

EVIDENCE ADDUCED AT TRIAL[3]

Husband, 45 years old, has been living and working in the United States. According to his financial statement, his gross monthly wages exceed $12,000. He and his mother own a house in Prince George's County where the parties had lived during the marriage. The house was occupied by Husband's parents, his brother, and various tenants who rented rooms in the house from time to time.

[3] We cannot include, in this opinion, every account of conflicting testimony adduced at the three-day trial, nor are we required to do so. Rather, we summarize the facts, pertinent to the discussion below, viewed in the light most favorable to Wife, the prevailing party in the underlying proceeding. *See Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) ("[A]ll evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below.").

Wife, 36 years old, was born and raised in India, where her family continues to reside. She has a master's degree in business administration. In India, Wife had been employed as a "relationship manager" with Citibank where she earned a "six figure salary."

Each party had been previously married and divorced.

Marriage Arrangement

In 2013, Husband sought to remarry. He placed a matrimonial advertisement in a local newspaper in India, seeking a bride for a move to the United States. Wife's family responded to the advertisement. The parties (and their respective families) met in India and discussed marriage, as well as various other matters, including Husband's business goals and Wife's ability to return to India every year to visit her family after marriage, which had been a "major concern" for Wife. Husband conveyed to Wife, "this is not a game. This is serious. This is about families. I'm ready to settle down. There will be a lot of hurdles. It's more about the negative than the positives, but I'll be there[.]" Based on this discussion, the parties "decided" to marry.

In February 2014, the parties held a religious marriage ceremony in India. Thereafter, Husband returned to the United States, while Wife remained in India to obtain her passport so that she could relocate to the United States.

With the assistance of immigration counsel, Husband obtained, prepared, and submitted documents to secure a K1 fiancée visa. When Wife arrived in the United States, Husband's father took her passport for safekeeping. Wife testified that Husband agreed to financially support her and, as her sponsor, assist her in obtaining legal status in the United

States. In March 2014, the two held another ceremony in Prince George's County to memorialize the marriage.

Deterioration of Marriage

Soon after the marriage, the parties' relationship deteriorated. The dynamic of the marriage was influenced, in part, by Husband's family, who shared the home with the parties. Wife testified that, although she participated in family events and outings, she did not feel like a part of the family. She felt suffocated because she was not allowed to leave the home without being accompanied by a family member and was forced to perform physical household work beyond expected chores.

Although she was "well educated" and had been "very independent" in India, Wife was unfamiliar with the workings of a new country, which left her dependent on Husband and others. She was unemployed. She relied on her Husband to provide and file necessary documents to enable her to change her immigration status so she could secure employment. Wife did not have a driver's license. She did not have a credit card, relying on Husband (and others) to give her cash, which amounted to a few hundred dollars each month.

Difficulties During Pregnancy

In May 2014, the parties learned that Wife was pregnant. In July 2014, while Husband was at work, Husband's parents and Wife argued about wanting her to wash certain articles of Husband's clothing by hand. The argument prompted Wife to leave the house for a walk. Husband's parents followed Wife by car and asked her to return home, but she declined, explaining that she "needed space." When Husband learned of the situation, he called 911. Police located Wife and brought her home.

Later, Wife asked Husband for her passport. In response, according to Wife, he called police, claiming that she was "a threat" to his family. Husband testified that he called police because Wife had threatened violence. Police separated the two, and Wife stayed in a hotel for the night. The next day, Wife asked her neighbor for money so that she could resume her stay in the hotel.

When she returned to the hotel, Wife again encountered police. Husband had told police that she was suicidal, but Wife denied expressing any such ideation. She testified, "I have no idea how the police and the law works [in this country]. I was clueless and numb, scared for life." Police transported her to a local hospital where she was admitted to the psychiatric ward and treated for dehydration.

At the hospital, Wife was diagnosed with major depressive disorder. She acknowledged that she was "highly depressed" at the time "because of the situation. I was meeting with the police officers for no reason, falsely–claims made by husband, so yes. I was under the depression, with no prenatal care for the pregnancy." Husband and his father visited Wife at the hospital, but Wife was not ready to return home because she was afraid.

The hospital discharged Wife the next day. For the next few weeks, she stayed with the neighbor. In August 2014, Wife returned home after Husband apologized and promised to help her obtain a replacement passport, which she eventually obtained. She testified,

> I really was not ready to go back [home based on] what they did to me. That was really traumatized [sic] experience for me, going to the–like, dealing with the police and going to the psych ward . . . . I mean, basically, it was a[n] abusive relationship. Yeah. From that time period until the child came, it was not, like, all a hunky-dory kind of thing. Like, he presented me as a nice family member, but I was not. I was not the part of family member at all.

Wife was able to schedule her first prenatal appointment in September 2014 with the assistance of Husband's friend. Then, Husband "came into the picture," he took Wife to subsequent appointments, and she was "not allowed to talk to [Husband's friend] after that."

The child was born in December 2014. Thereafter, Wife became a stay-at-home parent.

Petitions for Protective Order

The birth of the child did not improve the marital relationship. Wife testified, "Nothing changed. He was still as abusive as he was before." For the next nine months, Wife asked Husband to assist her with the immigration paperwork "as he promised" because she wanted to see her family in India and have them meet the child. Husband indicated, "Yeah, we will do it. We will do it," but, according to Wife, he did not follow through.

When the child was a few months old, police again were called to the home when Wife took the child across the street. Husband's parents "did not want [Wife] to do such a thing," and it became "the big issue." Wife testified that, at one point, Husband had "kicked [her] out of the house." She stayed with the neighbor for a few days, while the child remained with Husband.

On September 25, 2015, Wife filed a petition for protective order against Husband, alleging that, the day before, he had shoved and detained her against her will. In the petition, Wife alleged that she was "forced to leave" the home and "leav[e] [the child]

behind." She also alleged, generally, that Husband and his family had subjected her to "consistent physical and mental abuse"; she had been confined to her room; and Husband had not "filed for [her] legal status." The district court denied the petition because "there [was] no statutory basis for relief. Petitioner could not meet required burden of proof."

On February 26, 2020, Wife separated from Husband and filed another petition for protective order against him. She alleged that Husband committed the following acts of abuse: "rape or other sexual offense (or attempt)"; "shoving"; and "threats of violence." In the petition, she indicated that the Masta family had taken her passport; Husband had not filed paperwork to adjust her immigration status; and Husband/his family "always threaten[ed]" to get her "deported" when she asked about her immigration "papers," which caused her to fear losing the child. The district court granted a temporary protective order but denied her request for a final protective order because she did not meet the required burden of proof. Wife appealed from the denial order, but she did not proceed with the appeal.

Interim Custody Agreement

As noted, Wife's separation from Husband coincided with the filing of the petition for protective order in February 2020. Wife took the child and began residing in her friend's apartment. The parties proceeded to negotiate an interim custody agreement, which was reached and incorporated into a court order entered on July 16, 2020 ("interim agreement").

The parties agreed to share physical custody pending resolution by the court on the merits. They acknowledged that the interim agreement served the child's best interest, and they signed the agreement "without prejudice."

COURT'S RULING

After trial on the merits, the circuit court awarded joint legal custody with tie-breaking authority to Wife and shared physical custody of the child. It ordered Husband to pay child support in the amount of $797 per month, plus $100 per month toward an arrearage of $10,183 until the arrearage is paid in full. In addition, the court ordered Husband to pay $1,600 per month in rehabilitative alimony for three years plus $200 per month toward an arrearage of $25,600 until the arrearage is paid in full. The payment obligations commenced on May 1, 2022.

Additional facts will be included as they become relevant in the following discussion.

DISCUSSION

I. Custody

Decisions as to child custody are governed by the best interest of the child. *Gordon v. Gordon*, 174 Md. App. 583, 636 (2007). In the best-interest assessment, consideration of guiding factors is laid out in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986).[4] When

[4] *Sanders* provides ten non-exclusive factors: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference of the child; (continued)

considering the *Sanders-Taylor* factors, the trial court should "examine the totality of the situation in the alternative environments and avoid focusing on any single factor" to the exclusion of all others. *Best v. Best*, 93 Md. App. 644, 656 (1992). The best interest standard is "*the* dispositive factor on which to base custody awards." *Wagner v. Wagner*, 109 Md. App. 1, 38 (1996) (emphasis in original).

In reviewing custody determinations, we employ three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). Our Supreme Court[5] has explained these three levels of review as follows:

> 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

(6) material opportunities affecting the future life of the child; (7) age, health and sex of the child; (8) residences of parents and opportunity for visitation; (9) length of separation from the natural parents; (10) prior voluntary abandonment or surrender. 38 Md. App. at 420 (citations omitted).

Taylor provides thirteen factors, some of which overlap with the *Sanders* factors: (1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; (2) willingness of parents to share custody; (3) fitness of parents; (4) relationship established between the child and each parent; (5) preference of the child; (6) potential disruption of child's social and school life; (7) geographic proximity of parental homes; (8) demands of parental employment; (9) age and number of children; (10) sincerity of parents' request; (11) financial status of the parents; (12) impact on state or federal assistance; and (13) benefit to parents. 306 Md. at 304-11.

[5] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

> 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.

Id. (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Where there is no clear error, we will uphold the court's findings unless there is an abuse of discretion, meaning that "no reasonable person would take the view adopted by the trial court," or the court acts "without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)) (cleaned up). "We will not reverse simply because we would not have made the same ruling." *Jose v. Jose*, 237 Md. App. 588, 599 (2018).

A.

Husband challenges the court's assessment of several *Sanders-Taylor* factors on two primary grounds. First, he contends that the court over-relied on the evaluation report and improperly delegated the fact-finding to the evaluator. Second, he challenges the court's factual findings, generally arguing that the court "ignored" evidence, adopted Wife's version of events, and/or failed to weigh both the evidence and the credibility of witnesses in his favor.

Before delving into each of the disputed factors, we begin with the general principles that guide our analysis of Husband's specific challenges to the court's assessment of the factors. As to the first contention, we have advised that a custody evaluator's "interest is to be neutral and to use his [or her] experience and training and try to give information to [the court] that [the court] can rely on" and that such reliance is appropriate when paired with the court's own evaluation of the evidence and consideration

of all the custody factors. *Barton v. Hirshberg*, 137 Md. App. 1, 31 (2001). As explained below, the court appropriately relied on the evaluation along with its own assessment of the evidence and consideration of the factors.

With respect to his second contention, we have stated that "in the arena of marital disputes where notoriously the parties are not in agreement as to the facts, . . . we must be cognizant of the [trial] court's position to assess the credibility and demeanor of each witness." *Keys v. Keys*, 93 Md. App. 677, 688 (1992). "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].'" *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020) (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)). "The fact finder may believe or disbelieve, credit or disregard, any evidence introduced[.]" *Qun Lin v. Jose Reyes Cruz*, 247 Md. App. 606, 629 (2020) (cleaned up). "In this regard, [the fact finder] may believe part of a particular witness's testimony but disbelieve other parts." *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136 (2000).

Our role is not to reweigh evidence nor assess credibility. *Qun Lin*, 247 Md. App. at 629 ("[A] reviewing court may not decide on appeal how much weight must be given to each item of evidence."). Instead, "[i]f there is any basis in the record for reaching a given finding, we allow that finding to stand." *Long v. Long*, 129 Md. App. 554, 567 (2000).

B.

We now address each of the disputed factors, grouping them as necessary to streamline the analysis.

(1) Fitness of Parents[6]
(15) Relationship Established Between Child and Each Parent

As to the first factor, the court found that "both parents are fit so this factor does not assist the [c]ourt." As to the fifteenth factor, the court found that "[b]oth parties are loving and have an attentive relationship" with the child, which weighed in favor of joint custody. Husband asserts that, contrary to the court's findings, Wife is not fit and does not have a good relationship with the child based on the testimonial examples from his witnesses.[7]

Husband described Wife as a "horrible" parent. He and his collateral witnesses variously testified about instances of Wife's inadequate supervision of the child, the child's poor hygiene and change in disposition while in Wife's custody, alleged emotional and physical abuse of the child by Wife, and Wife's mental condition, which Husband claims she failed to disclose to the custody evaluator.

Wife denied claims that she is unfit as a parent. Counsel for Wife cross-examined Husband's witnesses for purposes of showing their bias and/or opportunity (or lack thereof) to observe Wife with the child. Wife testified that she and the child have a "normal mother-child relationship." Wife's friend also testified that Wife is a good mother and has a "normal" and "loving" parenting relationship with the child.

[6] We have numbered the factors to correspond with the circuit court's recitation as laid out in its oral ruling.

[7] In his brief, Husband also asserts that there was "no further elucidation of the facts that served as the basis for" the court's finding of Wife's parental fitness. We have advised, however, that "[t]here is no requirement that the trial court recite, in its decision, exactly the testimony of every party on every subject." *Green v. Taylor*, 142 Md. App. 44, 59 (2001).

The evaluator's report corroborated the testimony presented by Wife and her friend, indicating that "it appears that [the child] has a loving relationship with both parents, [] he enjoys spending time with each of them[,] and feels happy and safe at both parents[']homes." With respect to a claim that Wife "hit" the child (which Wife denied), the evaluator noted one incident "a long time ago" when the child was "a baby." Further, Wife "was not identified in the State's system as being responsible for indicated child abuse or neglect."

With respect to Wife's mental health, the evaluation report indicated that Wife "reported one psychiatric hospitalization in 2014." The evaluator obtained Wife's mental health records, noted the previous diagnosis of depression, and remarked that Wife had not been hospitalized since the one occasion seven years ago.

Based on the record, there was evidence to support the finding that Wife was fit as a parent and had a good relationship with the child.

(2) Reputation of Parents

The court found that "[b]oth parties have a good reputation." Husband claims that the finding was not based on evidence. His witness, a local religious leader, however, testified to knowing the Masta family for over 20 years, and observing the parties regularly attending temple and other church functions. The witness did not observe any problems with the parties. We perceive no error with the court's finding.

(3) Sincerity of Parties' Request for Custody
(17) Prior Voluntary Abandonment of Child

The court found that "both parents are sincere in their request for custody" and that "[n]either party has ever abandoned or voluntarily surrendered [the child]." Neither factor assisted the court. Husband contends that the court "ignored" testimony of his three witnesses, who purportedly testified that Wife "abandoned" the child in 2015. He further maintains that Wife could not have been sincere in her request for custody where she had previously "abandoned" the child.

There was no dispute that, after the child was born, Wife left the house in 2015 and stayed with the neighbor for a few days while the child remained with Husband. The factual dispute, rather, related to the reason for Wife's departure and why the child remained with Husband during that time. Husband testified that Wife "deserted him" because she discovered "[he] had zero dollars in [his] account [and was] going through bankruptcy." Wife denied knowledge of Husband's financial status, instead testifying that he had "kicked" her out of the home and would not let her take the child during her stay with the neighbor. The court apparently found Wife's testimony and explanation credible. We perceive no error in the court's finding that Wife was sincere in her request for custody and did not voluntarily abandon the child.

(4) Agreement Between Parties

The court found the parties' interim agreement, which provided for shared physical custody, "weigh[ed] in favor of a permanent joint custody arrangement." Husband argues that the court's reliance on this agreement was wrong as the parties executed it "without

prejudice." It was not meant to be a final decision, and, therefore, reliance on the interim agreement prejudiced him.

First, Husband misconstrues the phrase, "without prejudice." "Without prejudice" means "[w]ithout loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." *Without Prejudice*, Black's Law Dictionary (11th ed. 2019). The phrase "imports that the parties have agreed that [the resolution] shall not . . . have any effect upon the rights of the parties[.]" "The use of the phrase simply shows that there has been no decision on the case upon the merits" and "leaves the whole subject" "open to litigation[.]" *Id*. (quoting 40 Cyclopedia of Law and Procedure 2130-31 (William Mack ed., 1912)).

In other words, at trial, Husband was free to assert, and he did assert, his position that a shared custody arrangement was not in the child's best interest.[8] The court allowed Husband to call several witnesses to demonstrate that shared physical custody, set forth in the interim agreement, was not in the child's best interest. Accordingly, Husband was not prejudiced by the interim agreement in so far as it related to his ability to take a different position on custody at trial on the merits.

Second, the phrase does not prohibit the court from considering the interim agreement as one of other factors in determining custody. A prior agreement between the

[8] Husband's trial counsel apparently understood the import of the phrase when she asserted below, "I do want to make clear that an interim order is completely without prejudice *to claim later*" as "there are serious, serious concerns that have arisen as to this child's health and well-being" after entry of the interim agreement; therefore, "this case should be decided on the evidence presented" at trial. (Emphasis added.)

parties may be entitled to weight and "should be considered in light of the circumstances when they were entered into along with the totality of the circumstances surrounding" the request for custody. *Jose*, 237 Md. App. at 607 (citing *Breault v. Breault*, 250 Md. 173, 180 (1968)). The court's consideration of the interim agreement was proper.

(5) Willingness of Parents to Share Custody
(9) Parties' Capacity to Communicate/Share Decisions Affecting Child's Welfare

The court found that Wife was willing to share custody, compromise, and communicate with Husband about decisions affecting the child. It found that Husband wanted sole custody and refused to communicate, resorting to communication through counsel. These factors weighed in favor of tie-breaking authority to Wife.

Husband maintains that the evidence demonstrated that Wife was unwilling to share custody where she had removed the child from the home, filed a petition for protective order against him in 2020, and then failed to inform him of their whereabouts.

Wife testified that she was open to and comfortable with shared custody because the child was doing well under the interim custody arrangement. She acknowledged that the child needs his father, and she wanted to co-parent to serve the child's best interests. She was "100 percent willing" to work with Husband to make joint decisions regarding the child as further demonstrated by her attendance at a parenting seminar.

Wife testified that Husband, on the other hand, had been making "major decisions" about the child (*i.e.*, school enrollment) with his family and not with Wife. Instead of communicating with Wife directly, Husband wanted to communicate through counsel, which made it difficult to resolve issues impacting the child as they arose. Because there

was evidence to support the court's findings with respect to these factors, we will not disturb them on appeal.

(6) Potentiality of Maintaining Natural Family Relations

The court found that "Husband's family lives with him. Wife's family lives in India. [The child] seems to have a good relationship with the Husband's family. This weighs in favor of joint custody." Husband argues that the court's analysis is "nonsensical," suggesting that the paternal family's involvement in the child's day-to-day care should weigh in favor of awarding Husband sole custody.

The parties expressed the importance of extended family relationships, which, for the paternal family, were forged and maintained through, *inter alia*, family dinners, outings, and religious gatherings. The court's comments signaled that it would serve the child's best interest for the child to develop a relationship with members of the maternal family, just as the child had with members of the paternal family. Based on the record, we perceive no error in the court's assessment of this factor.

(11) Parties' Ability to Maintain Stable Home

The court found that "Husband has a steady income and he is in a home with family support. Wife has no income and lives off of the generosity of family friends due to her immigration status. Wife's predicament is in large part due to Husband's failure to help her secure a green card as promised. Wife has done an admirable job making arrangements for care for [the child] under the trying circumstances."

Although the court found this factor to be neutral, Husband contends that the "findings for Factor 11 are not based on facts in the record. There is no indication of the

fitness of the home that [Wife] is living in. There is nothing to support this finding in the record." We disagree. Wife's friend testified that the apartment is in a safe building and that the apartment is furnished and clean. The evaluation report also noted that "[t]he overall condition of the home was good," was in a safe neighborhood, equipped with standard appliances and other furnishings, and kept organized with no appearance of any hazards. The record supports the court's finding that Wife had done "an admirable job" arranging for the child's care.

(12) Parties' Financial Status

The court found that "there is a substantial disparity of the parents' financial statuses, but Husband's conduct is at least partly to blame. Wife worked as a financial analyst in India and holds an MBA, but she cannot work due to her immigration status[.]" The court found this factor to be neutral.

Husband rejects the court's conclusion that the parties' financial status was a neutral factor, arguing that Wife's conduct, not Husband's, contributed to the financial disparity. He maintains that he did not cause Wife to become unemployed, explaining that he had hired an attorney to help her with her immigration issues. He further claims there was no evidence that she could not advance her financial status by seeking employment or applying for a work permit/green card.[9]

[9] Husband relies on *Dillon v. Miller*, 234 Md. App. 309, 321-23 (2017), for the proposition that Wife's immigration status does not necessarily impact her ability to work or support the child. In *Dillon*, the appellant failed to pay child support, claiming that he had no income because he was not permitted to work in the United States and did not have a green card. *Id*. at 314. We held that, despite his legal status, the appellant had available (continued)

Wife testified that, without first attaining legal immigration status, she believed she was unable to obtain employment, and Husband had not aided with the immigration process as promised. She further testified that "every time I asked him for my [immigration] paperwork, '[p]lease do it, please do it,' he would threaten me, that 'If you want to go, go. Otherwise, I'll call police or leave without the child.' So I was basically living . . . at the mercy of [Husband]."

Wife acknowledged that, in 2019, Husband took her to a lawyer to address her immigration status because she wanted to visit her mother, who was dying of cancer. Wife testified that she did not complete the necessary forms, in part, because the application required certain documentation that she did not have. The court credited Wife's testimony regarding her inability to secure employment due to her immigration status and Husband's "threats." Thus, there was evidence to support the court's finding that Husband was "partly to blame." We cannot conclude that the court's finding of neutrality on this factor was clear error.

Other Disputed Factors

Husband baldly asserts, with little to no explanation, that the court "ignored" the evidence when it made findings pertaining to the remaining disputed factors.[10] He fails to

methods by which he could obtain money to pay child support because he had a long work history in construction in the United States and was also given money from family members. *Id*. at 318-23. This is distinguishable from the instant case where Wife had no work history in the United States.

[10] Husband disagrees with the court's findings with respect to the following factors: (18) potential disruption of the child's social/school life (both are able to take the child to (continued)

present adequate arguments or references to the record articulating how the court erred in making its determinations regarding these disputed factors. As our Supreme Court has advised, "appellate courts cannot be expected to either (1) search the record on appeal for facts that appear to support a party's position, or (2) search for the law that is applicable to the issue presented." *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 618 (2011) (citing *State Rds. Comm'n v. Halle*, 228 Md. 24, 32 (1962) ("Surely, it is not incumbent upon [an appellate court], merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested.")). There is no basis for us to conclude that the court "ignored" evidence presented.

Based on our review of the record and for the reasons stated, we are satisfied that the court engaged in "precisely the type of analysis we have explained is appropriate to

and from school under the joint custody arrangement); (19) impact on state or federal assistance (weighs in favor of shared custody so Wife's eligibility for food stamps will not change); (20) benefit to the parent from joint custody (both benefit from joint custody); (21) the parties' ability to meet the child's developmental needs (both are equipped to meet these needs); (22) the parties' ability to meet the child's physical and educational needs (both will make sure the child has a good life based on respective earning potential); (23) the parties' ability to consider the child and protect the child from conflict between the parties (Wife demonstrated a willingness to compromise and communicate, while Husband did not); (24) history of alienation/interference (suspicion that Husband coached the child to make allegations of abuse against Wife during the custody evaluation); (25) child's exposure to domestic violence (Husband engaged in controlling behavior amounting to psychological/emotional abuse of Wife); (26) parental responsibilities (Wife was responsible for child's day-to-day needs while living with Husband); (27) potential disruption to the child's social/school life (both able to co-parent without disruption to child's social/school life); (28) whether the parties engaged in frivolous litigation (neither engaged in such litigation); and (30) any abuse (Wife's allegations of abuse and controlling behavior by Husband were credible).

evaluate the best interests of a child in the context of a custody determination." *J.A.B.*, 250 Md. App. at 258. Accordingly, we reject Husband's assertion that the court erred and abused its discretion in its custody determination.

II. Rehabilitative Alimony

Husband contends that the circuit court erred in awarding Wife rehabilitative alimony because (1) it "ignored" Husband's ability to pay; and (2) Wife had the ability to secure employment to support herself but failed to do so.

It is within the trial court's discretion whether to grant an alimony award and, if so, in what amount. *See* Md. Code Ann., Family Law ("FL") § 11-106(a)(1) (1984, 2019 Repl. Vol.). The trial court is directed to consider "all the factors necessary for a fair and equitable award, including twelve factors specifically enumerated" in FL § 11-106(b).[11] *Francz v. Francz*, 157 Md. App. 676, 690-92 (2004).

"An alimony award will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong." *Solomon v. Solomon*, 383 Md. 176, 196 (2004) (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)). "[A]ppellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings."

[11] These factors include: the ability of the party seeking alimony to be wholly or partly self-supporting; the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment; the standard of living that the parties established during their marriage; the circumstances that contributed to the estrangement of the parties; and the financial needs and financial resources of each party. FL § 11-106(b).

Tracey, 328 Md. at 385. "Thus, absent evidence of an abuse of discretion, the trial court's judgment ordinarily will not be disturbed on appeal." *Solomon*, 383 Md. at 196.

A.

As to his first contention, Husband argues that the court "simply snatched a figure, $1,600, and a duration, 3 years, out of the air" without analyzing Husband's ability to pay. We disagree. The alimony award was supported by the evidence. Wife testified that she needed three to four years to obtain employment which includes the time needed to change her immigration status.[12] Her financial statement stated a total of $2,555 in monthly living expenses, $1,600 of which was allocated toward residential living expenses. The duration of three years of alimony was based on the lower approximation of time necessary for Wife to secure employment, and $1,600 per month was based on the amount of her monthly residential expenses.

We also disagree with Husband's contention that the court did not analyze the parties' expenses and ignored his ability to pay. The court admitted the parties' financial statements, heard testimony about Husband's income, the parties' standard of living during the marriage, the parties' current expenses, debts, and other financial obligations. Based on the evidence, the court evaluated the relevant statutory factors as follows:

> Factor number 9, the ability of the party for whom alimony is sought to meet the party's needs while meeting the needs of the party seeking alimony. Husband's salary is roughly $140,000 a year [and] [h]e's able to meet Wife's needs in addition to his own[.]

[12] In early 2021, Wife retained *pro bono* counsel to assist her with her immigration filings.

* * *

> In regard to [factor number 11], Wife has no income and Husband makes . . . roughly [$]140,000 a year. . . . Both parties have typical financial obligations such as rent/mortgage, utilities, food and clothing. Husband also pays for private school for [the child].

With respect to his second contention, Husband challenges the court's factual findings regarding his "culpability" in Wife's "immigration travails" which resulted in her inability to secure employment. As previously discussed, there was evidence to support the findings in this regard. *See* Section I.B (Factor 12), *supra.* Although the parties' testimonies were divergent, the court found Wife's account credible. We see no reason to set aside the court's findings.

In sum, the court considered, on the record, each of the factors set forth in FL § 11-106. We perceive no abuse of discretion in the court's alimony determination.

III. Preclusive Effect

Husband argues that the circuit court erred by refusing to give preclusive effect to the denial of Wife's petitions for a protective order. At trial, the parties stipulated to the admission of the 2015 and 2020 petitions for protective order and the corresponding denial orders. Husband testified that the allegations of abuse made by Wife in the petitions "were knowingly false" and "a hundred percent inaccurate." He proceeded to testify and introduce evidence to refute the allegations. Wife testified to her accounts of abuse, and Husband's trial counsel cross-examined her about the petitions.

After trial, Husband filed a proposed statement of facts and conclusions, in which he raised, for the first time, "*res judicata*" on the issue of the alleged abuse. He stated,

> [Husband] has been conclusively established not to have abused [Wife] under the doctrine of res judicata. *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93 (2005), which state[s] "[t]he doctrine of res judicata bars the re-litigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter, and causes of action are identical or substantially identical as to the issues actually litigated and as to those which could have or should have been raised in previous litigation."
>
> In its oral ruling, the court addressed Husband's *res judicata* claim:
>
> With regard to the protective order, Husband asserted the affirmative defense of res judicata which was not timely pled, but even if it had been, the findings of fact in protection orders those cases are actually temporary in nature and they are not meant to have any sort of direct estoppel effect on a custody case.

The court proceeded to find that Wife's allegations of abuse were credible. It found that Husband was controlling,[13] had "refused to assist Wife in obtaining a green card to keep her from becoming independent and to maintain control over her life," and "threatened her with deportation and loss of access to her son if she didn't do what he wanted."

A.

On appeal, Husband reframes his argument as one premised on "collateral estoppel," not *res judicata*. In his brief, he argues that relitigation of the alleged abuse was "untenable" where Wife had ample opportunity to prove her abuse claims when she appealed from the denial of the protective order but declined to proceed with the appeal in

[13] In this regard, the court weighed the testimony of Wife's friend, who stated that she had encountered Husband, on February 1, 2020, at a memorial service for Husband's father, who had passed away. Wife was not present at the memorial service, which prompted the friend to ask Husband why Wife was not in attendance. Husband "got very angry and in a loud and angry voice, he said, 'I'm tired of you asking me about that bitch. Don't talk—ask me about that bitch again. I'm going to end it. I'm sick and tired of it. I'm going to end it.'"

2020. Therefore, he maintains, the court should have given "estoppel effect" to the "findings" that Husband did not abuse Wife.

At oral argument, Husband clarified that the circuit court appropriately heard "additional testimony" about the allegations of abuse. He argues, instead, that the court should have given the denial of the protective orders "weight." In other words, Husband's argument rests primarily on the weight of the evidence, rather than on preclusive effect.

B.

Res judicata and collateral estoppel are related but different doctrines. "The two doctrines are based upon the judicial policy that the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised." *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 391 (2000). But "they apply in different circumstances and they prevent different things." *Klein v. Whitehead,* 40 Md. App. 1, 12 (1978).

"Collateral estoppel is concerned with the issue implications of the earlier litigation of a *different case*, while *res judicata* is concerned with the legal consequences of a judgment entered earlier in the *same cause*." *Brown v. Mayor*, 167 Md. App. 306, 319-20 (2006) (emphasis added). The doctrines, however, share a common prerequisite of a final judgment on the merits in the previous action.[14] *Morgan v. Morgan*, 68 Md. App. 85, 92 (1986).

[14] *Res judicata*, or claim preclusion, applies to bar relitigation of a suit if (1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior (continued)

On appeal, we review without deference (*de novo*) "questions of law, such as a determination as to the applicability of the doctrines of *res judicata* and collateral estoppel." *Bank of N.Y. Mellon v. Georg*, 456 Md. 616, 666 (2017).

C.

As a threshold matter, Husband's collateral estoppel claim was not plainly raised and decided by the trial court. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any. . . issue unless it plainly appears by the record to have been raised in or decided by the trial court."). The issue raised and decided below was the application of *res judicata*, which doctrine is not the subject of Husband's appeal.

Assuming *arguendo* that Husband preserved and/or properly raised either claim on appeal, neither doctrine has preclusive effect under the circumstances. As to *res judicata*, the doctrine is not applicable because the domestic violence protective order proceedings and the underlying divorce/custody proceeding do not involve the same "cause of action."

adjudication; and (3) there was a final judgment on the merits in the previous action. *Colandrea*, 361 Md. at 389.

Collateral estoppel, or issue preclusion, applies when: (1) the issue decided in the prior adjudication is identical with the one presented in the action in question; (2) there is a final judgment on the merits; (3) the party against whom the doctrine is asserted is a party or in privity with a party to the prior adjudication; and (4) the party against whom the doctrine is asserted was given a fair opportunity to be heard on the issue. *Garrity v. Md. State Bd. of Plumbing*, 447 Md. 359, 369 (2016) (quoting *Colandrea*, 361 Md. at 391).

Husband's reliance on collateral estoppel is also problematic. Assuming, without deciding, that the prerequisites of collateral estoppel are met,[15] Husband waived the estoppel claim when he chose to relitigate the allegations contained in the petitions for protective order. This conduct was inconsistent with his position, on appeal, that the matter of the subject abuse was finally litigated in the protective order proceedings. *See Exxon Mobil Corp. v. Ford*, 433 Md. 426, 462 (2013) ("Waiver is conduct from which it may be inferred reasonably an express or implied 'intentional relinquishment' of a known right."). Having chosen to relitigate the abuse allegations, Husband waived any argument that the court was collaterally estopped from weighing all the evidence and making its own independent findings of abuse.[16]

[15] We are not convinced that the doctrine of collateral estoppel applies under the circumstances. The first prerequisite is that the issue decided in the prior adjudication is identical with the one presented in the action in question. *See* n.14. In his reply brief, Husband clarifies that he is not appealing the divorce on ground of cruelty of treatment; rather, he is appealing "the use of those facts that supported custody and alimony." Husband does not adequately explain how the issue of abuse, which was purportedly decided in the protective order proceedings, was identical to the issues of custody and alimony. For instance, the issue of custody, which implicates the assessment of several factors and the consideration of the child's best interests, is seemingly different from the issue at the protective order proceeding where a protective order, if granted, could not include an award *permanent* custody of a child. FL § 4-506 (d)(7) (providing for an award of *temporary* custody of a child as one form of protective order relief).

[16] Husband does not cite to any case, and we have found none, that supports his contention that the court was required to give collateral estoppel effect to the denial orders notwithstanding competent evidence of abuse presented in the divorce/custody proceeding. Indeed, on this record, the court was entitled to weigh all the evidence, including the denial orders and other evidence presented about abuse. *See, e.g.*, *Boyd v. Bowen*, 145 Md. App. 635, 660-61 (2002) (trial court was entitled to weigh an incompetency determination made (continued)

IV. Denial of Motion to Stay

Husband challenges the circuit court's denial of his request to stay pending appeal. After the court entered the order for judgment of absolute divorce, Husband filed, in the circuit court, a motion to stay the order pursuant to Maryland Rule 8-422. He argued that the custody and alimony awards were made without any regard to the evidence. He also argued that the alimony obligation would "drive" Husband into "financial peril" and "cripple" his ability to provide for the child.

The court denied the motion for stay. With respect to Husband's first point, the court reasoned that Husband failed to meet his burden of demonstrating that he was likely to prevail on the merits of his appeal. It explained that Husband did not "apprise the [c]ourt of his grounds for appeal" "nor d[id] he address the likelihood that he will succeed on the merits." With respect to Husband's second point, the court considered the disparity in the parties' financial status based on the evidence adduced at trial and concluded that "the injury to Wife would be greater if the stay is granted than it would be to Husband if it is denied."

A.

On appeal, Husband maintains that the court erred on both grounds. He claims that there is a likelihood of success on appeal, incorporating the arguments made on the merits in his brief. With respect to harm, he contends that the court "glossed" over the fact that

in an earlier case; it erred in treating this fact as conclusively established in a later case notwithstanding conflicting evidence presented).

Wife "voluntarily impoverished" herself and "overlooked any financial hardship" suffered by Husband.

When evaluating a stay of judgment pending an appeal, the question is whether it is likely that the applicant will prevail on appeal. *Gen. Motors Corp. v. Miller Buick, Inc.*, 56 Md. App. 374, 388 (1983). "Indeed, the would-be appellant must make a '*strong showing* that it is likely to prevail on the merits of its appeal.'" *Id*. at 389 (emphasis in original; citations omitted). "That, of course, is tantamount, in most cases, to proving the likelihood that the trial judge committed some reversible error." *Id*. "Whether to grant or deny a stay of proceedings is a matter within the discretion of the trial court, and only will be disturbed if the discretion is abused." *Vaughn v. Vaughn*, 146 Md. App. 264, 279 (2002).

In his motion to stay, Husband did not make a strong showing that he was likely to prevail on appeal. Indeed, we have addressed the arguments on the merits set forth in Husband's brief, and we affirm the court's custody and alimony determinations. We discern no abuse of discretion in the court's denial of the motion to stay.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.