Circuit Court for Anne Arundel County
Case No. C-02-FM-19-003641

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 711

September Term, 2021

ALONZO L. JACKSON

v.

NATASHA N. STEPNEY

Kehoe,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 17, 2021

*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.

Alonzo Jackson appeals from the orders entered by the Circuit Court for Anne Arundel County denying his contempt petition against Natasha Stepney, the mother of his three children, and his motion to change primary physical custody of his children from Ms. Stepney to himself. Mr. Jackson, acting as his own counsel, presents three questions for our review, which we have slightly rephrased:

I. Did the circuit court err in denying his contempt petition because it failed to consider evidence about a specific visitation?

II. Did the circuit court err in denying his motion for change of custody because it failed to consider certain evidence about Ms. Stepney's mental health?

III. Did the circuit court "mishandle" the change of custody case for a variety of reasons?

For the reasons that follow, we shall dismiss appellant's first argument because we do not have jurisdiction to decide it. We shall affirm the judgments entered by the circuit court in all other respects.

BACKGROUND FACTS

Mr. Jackson (the "Father") and Ms. Stepney (the "Mother") are the biological parents of three children: a daughter born on May 20, 2010, and two sons, born on September 13, 2011 and December 13, 2013. Mother and Father, who never married, apparently lived together on an on-and-off basis between 2010 and 2014. Since then, the children have lived primarily with Mother in Anne Arundel County, except for a period in September/October 2019, when Father obtained an ex parte temporary protective order

against Mother. A week after obtaining the order, the court denied a final protective order due to insufficient evidence and the children were returned to Mother's care.

After denial of a final protective order, Mother filed a complaint for custody of the children, which Father opposed. A hearing was held before a magistrate, who issued a report and recommendation that Mother be awarded physical custody of the children. Father filed exceptions, which the court dismissed. The court entered a pendente lite order on November 12, 2020, granting Mother primary physical custody of the children with Father to have visitation every other weekend and one evening a week. The court did not make a ruling on legal custody.

The court docketed Father's petition for contempt against Mother on February 16, 2021. Father alleged various violations by Mother of the court's visitation order; he also filed a motion to modify custody and visitation. Father sought primary physical custody of the children.[1] A hearing was held before a magistrate on the contempt petition. The magistrate issued a report, recommending that, because the custody order did not specify a designee for pick up, Mother was not in contempt for refusing to deliver the children to Father's mother for visitation. Nonetheless, the magistrate recommended that Father be granted four makeup visitations. On May 10, 2021, Father filed exceptions to the Magistrate's recommendations.

[1] Between the court's pendente lite order and Father's motions on February 16, 2021, Father had filed several additional motions against Mother that were unsuccessful.

On May 25, 2021, a hearing was held before the circuit court on Father's contempt petition and motion to change custody.[2]

Mother testified on her own behalf and called her parents and her boyfriend as witnesses. From their testimony, it was shown that the children's grandparents live a half an hour away from Mother and are very active in their grandchildren's lives, seeing them often, participating at various school events, and frequently having them spend the weekends with them. Over the years, the grandparents often drove the children to Baltimore to see their Father because Father did not have a car. Both grandparents believed that the children are doing "very well" with their Mother, explaining that the children, who all attend the same elementary school in Annapolis, do well in school, attend after school programs, and have many friends in their neighborhood. The children also have maternal uncles and family nearby with whom they interact. The grandparents testified that both Father and Mother are good parents, but grandfather expressed his opinion that Father could do better. The grandparents denied that Mother abuses the children but admitted that she has spanked them.

Mother's boyfriend, with whom she and her three children have lived for three and a half years in Annapolis, also testified that both Mother and Father are good parents and that the children are doing well. He admitted that in 2019, he and Mother had an altercation in which he broke a window of her car and she broke his television. The children were not around during the altercation, and since then he and Mother have not had any problems.

[2] On the morning of the hearing, the court granted Father's counsel's motion to withdraw. Both parties then proceeded pro se as they have done ever since.

Mother testified that she works as a cosmetologist at a salon, mostly on the weekends, and during the week when her children are at school. She testified that when Father obtained the 2019 temporary ex parte, he removed the children from their school in Annapolis and enrolled them in a school in Baltimore, which was disruptive to them. Before the 2019 altercation, she or her parents would drive the children almost every weekend to Baltimore to see Father. She also testified that about a decade earlier, when her oldest child was an infant, she had attempted suicide while Father and their oldest child were in another room. She testified, however, that she has never threatened to hurt her children and never had "beaten" her children, but she has spanked them. When asked by the court why she believes she should have custody, she testified, "Because I do the best I can to provide my kids with a safe home and a life that they could always remember that was fun and filled with love."

Father also testified and called three witnesses: a former babysitter, his mother, and his former girlfriend with whom he lives. The babysitter, who watched the children in 2016 while Father worked, testified that she believed he was a good father. Father's mother testified she lives about a half an hour from Father; she has two grown daughters who live in the area; and she enjoys her grandchildren but sees them infrequently. She also believes that her son is a good father. Father's former girlfriend testified that she and Father currently live together and have a three-year-old son together. She has a 13-year-old daughter and an 11-year-old son from previous relationships, who also live with them. She opined that Father is a good parent.

Father testified that he currently works as a security officer, but his hours have been reduced due to COVID, and he does not have a car. He testified that he believed that Mother was a "bad" parent. He filed an ex parte protective order against Mother in 2019, after Mother confided in him that she and her boyfriend had a physical altercation during which she had a knife. He alleged that while the children were visiting him in 2017, he learned that Mother had "beat" their middle child the day before when she "spanked him twice on his thigh and he passed out." Father admitted that he saw no bruises on the child but nonetheless took his son to the hospital for an evaluation where a social worker spoke to the child. Father admitted that no action was taken against Mother in regard to that incident. He testified that in 2012 Mother threatened to kill herself and also threatened to hurt him and the children.

The court admitted into evidence many text messages which Father argued showed Mother's disrespect for him. The court agreed "that there's disrespect between you and [Mother]." The court also accepted that Father had registered at least five complaints with child protective services against Mother, but by Father's own admission, none of those complaints resulted in any action against Mother. Father also opined that Mother is not properly caring for the children's medical needs.

Mother was recalled and was questioned by the court. She testified that the children have a pediatrician and dentists and see them regularly. She testified that she and her boyfriend have not had an altercation since the incident in 2019, and during that 2019 altercation, the children were in school. She testified that after the court denied Father's permanent ex parte order in 2019 for lack of evidence, Father refused to tell her where he

lived or where the children went to school, and it took her two weeks to find her children and bring them back to Annapolis.

At the conclusion of the hearing, the court discussed several factors the court found relevant in determining whether to modify custody of the children. In particular, the court found that both parents were mentally and physically fit and were "well-intentioned and want the best for their children[.]" The court noted that in 2012, Mother had attempted suicide but stated there was no evidence of any current psychiatric care or illness. The court found that the factor of maintaining natural family relations weighed in Mother's favor, given the close interactions between the children and their maternal grandparents and maternal relatives. The court found that the material opportunities were equal between the parties. The court concluded by awarding primary physical custody and sole legal custody to Mother.[3] The court granted Father visitation every other weekend, two non-consecutive weeks over the summer, and certain holidays. The court advised Mother to inform Father of "all medical appointments, medical treatment, healthcare providers[.]" The court then affirmed the magistrate's recommendation not to find Mother in contempt and dismissed Father's exceptions to the magistrate's recommendation because the court "didn't have any testimony or enough sufficient evidence[.]"

The next day, the court entered a written custody order mirroring its oral ruling from the bench. Father subsequently filed a motion for reconsideration. The court denied the motion. This appeal followed.

[3] The court found that a joint custody solution would be unworkable because neither parent, by their own admission, is able to make joint decisions.

DISCUSSION

I.

Father argues that the circuit court erred in denying his contempt petition because it failed to consider his exceptions to the Magistrate's report. To support his argument, Father asserts facts regarding a visitation on February 5, 2021, when he apparently arrived at the agreed time and pick up location but Mother was not there with the children. We reject Father's argument for two reasons.

First, in Maryland, "a party that files a petition for constructive civil contempt does not have a right to appeal the trial court's denial of that petition." *Pack Shack, Inc. v. Howard County*, 371 Md. 243, 246 (2002). "[O]nly those adjudged in contempt have the right to appellate review. The right of appeal in contempt cases is not available to the party who unsuccessfully sought to have another's conduct adjudged to be contemptuous." *Becker v. Becker*, 29 Md. App. 339, 345 (1975) (citing *Tyler v. Baltimore County*, 256 Md. 64, 71 (1969)). We do not have jurisdiction to consider Father's arguments.

Secondly, assuming that we had jurisdiction, we would affirm the circuit court's decision to deny the contempt petition. Father put on little evidence at the hearing regarding the contempt petition. Neither Father, nor any of his witnesses, ever mentioned a visitation on February 5, 2021. Father did elicit general testimony from his roommate/former girlfriend that Mother keeps children away from Father, and there was general testimony that on at least one occasion Mother prevented children's paternal grandmother from picking up the children in lieu of Father. Under the circumstances, we

find no error by the circuit court in denying Father's contempt petition for insufficient evidence or in denying Father's exceptions to the Magistrate's report.

II.

Father argues that the circuit court erred in denying his motion to change custody because the court failed to consider Mother's "mental revengeful state"; Mother's 2012 "attempted suicide with her daughter" where she threatened to kill herself, Father, and the children; and the 2019 altercation between Mother and her boyfriend where the "children were woken up [at] 3 a.m. in the morning to an argument" and "[a] knife was brandished[.]" Father also posits that Mother gave false statements about the 2019 incident at the ensuing 2019 protective order hearing.

In reviewing child custody determinations, we employ three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012) (citation omitted).

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

Id. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). A trial court's findings are "not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (citations omitted), *cert. denied*, 343 Md. 679 (1996). "Additionally, all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below." *Id.* (citation omitted).

An abuse of discretion exists where "no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quotation marks and citation omitted).

In any custody determination, the paramount and overarching concern is "the best interest of the child." *Taylor v. Taylor*, 306 Md. 290, 303 (1986). *See Burdick v. Brooks*, 160 Md. App. 519, 528 (2004) (In custody cases, the "court's objective is . . . to determine what custody arrangement is in the best interest of the minor children[.]") (quotation marks and citation omitted). Although "[t]he best interest standard is an amorphous notion, varying with each individual case," a fact finder should "evaluate the child's life chances in each of the homes competing for custody and then to predict with whom the child will be better off in the future." *Montgomery County Dept. of Social Services v. Sanders*, 38 Md. App. 406, 419 (1977). The Maryland appellate courts have encouraged the circuit courts to look to several factors in considering child custody determinations.[4]

[4] In *Sanders*, we set out the following non-exclusive factors for a circuit court to consider in child custody determinations: 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) the ability to maintain natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health, and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender. *Sanders*, 38 Md. App. at 420. In *Taylor*, the Court of Appeals reiterated the *Sanders* factors and added several other factors it viewed as relevant in making joint custody determinations: 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; 13) benefit to parents; and 14) other factors. *Taylor*, 306 Md. at 304-11.

We cannot say that the circuit court's legal and physical custody determination was not soundly grounded in the best interests of the children in this case. As stated above, the court explained its reasoning on the record as to several factors it found relevant in making its custody determination, and those it did not. We note that the court had evidence before it that Mother had attempted suicide about ten years earlier, in 2012, but there was conflicting evidence as to whether she had threatened to kill the children, with Father testifying that she did and Mother testifying she did not. Moreover, as the court correctly pointed out, there was no evidence that Mother's current mental health was deleterious to the children. Additionally, the court questioned both Mother and her boyfriend about the 2019 altercation, and the details elicited do not support Father's summary of those events as set forth in his brief. Accordingly, under the evidence presented, we find no abuse of discretion by the circuit court in awarding custody to mother. *See Lemley*, 109 Md. App. at 627-28 (A trial court's decision in a contested custody case "founded upon sound legal principles and based upon factual findings that are not clearly erroneous will not be disturbed in the absence of a showing of a clear abuse of discretion.") (citations omitted).

III.

Lastly, Father casts a wide net as to why the court's custody ruling was wrong. Specifically, he argues that the court: "mishandled" the Anne Arundel County custody case because the judge had retired from the Montgomery County Circuit Court two years earlier; improperly denied "a motion for reconsideration filed by [Father] without a hearing"; denied the introduction of "key" evidence; and denied "a mental health evaluation of the children[.]" Additionally, Father makes much of a conversation between the parties and

the court at the end of the hearing where Mother allegedly failed to provide her "real" phone number to Father and the court but instead provided a "false number[.]" We find each of these claims either without merit or unpreserved.

The Maryland Court of Appeals designated retired Judge McGann as a sitting judge for Anne Arundel County in 2021.[5] Father does not direct us to (nor are we aware of) any statute, Md. Rule, or caselaw that would mandate a hearing from a denial of a motion for reconsideration under the circumstances presented.[6] Father does not specify what "key evidence" the court excluded, and therefore, there is nothing for us to review. *See* Md. Rule 8-504(a)(4) (an appellate brief shall contain "[a] clear concise statement of the facts material to a determination of the questions presented[.]") and Md. Rule 8-504(c) ("[T]he

[5] *See* Order by Chief Judge Barbera of the Maryland Court of Appeals designating Terrance McGann to sit as a senior judge in the circuit court in Anne Arundel County for the period of January 1, 2021 through July 23, 2022.

[6] After Father filed his petition for contempt and motion to change custody, a hearing was held before a magistrate on the contempt petition, after which the magistrate recommended the petition be denied. Father filed exceptions to the magistrate's recommendation, and the circuit court held a hearing on Father's contempt petition and custody motion. After that hearing, the circuit court denied Father's motions and his exceptions. Father then filed a motion for reconsideration of the circuit court's denial, which the circuit court denied without a hearing. Father argues on appeal that the circuit court erred in not holding a hearing.

Father's motion for reconsideration was in effect, a motion to alter or amend a judgment pursuant to Md. Rule 2-534. Because Md. Rule 2-311(e) does not require that a hearing be held on motions to alter or amend judgments, the circuit court did not err in denying Father's motion for reconsideration without a hearing. Father had a full and fair opportunity to present his arguments regarding contempt and custody at the hearing on those motions. Therefore, "a second hearing based on the same arguments and facts would have been duplicative and an inefficient use of the circuit court's resources." *Cf. Hill v. Hill*, 118 Md. App. 36, 44 (1997) (holding that a hearing was not required in the context of a motion for reconsideration of a court's determination on child support).

appellate court may dismiss the appeal or make any other appropriate order with respect to the case" for noncompliance with this Rule.).

We find no abuse of discretion by the circuit court in denying Father's request for a mental health examination of the children because he presented no evidence to suggest that one was appropriate. During the hearing, he advised the court that he is not aware of any medical problems from which the children suffer. Additionally, we do not read the exchange between the parties and the court about Mother's telephone as Mother's failure to provide Father with a workable telephone number to arrange visitation or Mother providing a "fake number." Mother stated that she has a text app by which Father can text her regarding visitation and, should he need to reach her by telephone, he can call their daughter's phone. We are mindful that the court is in the best position to weigh the evidence presented. After our review of the transcript and the evidence presented, we are persuaded that the court did not abuse its discretion in awarding physical and legal custody to Mother.

APPEAL DISMISSED IN PART; JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLANT.