Circuit Court for Harford County
Case No. C-12-FM-18-000105

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 848

September Term, 2019

BLAIR PAYTON

v.

RITA PAYTON

Fader, C.J.,
Nazarian,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: September 17, 2020

* 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.

Blair Payton ("Father"), the appellant, asks us to hold that the Circuit Court for Harford County erred in basing its custody determination in favor of Rita Payton ("Mother"), the appellee, on the best interest of the parties' minor child ("Child") at the time of the custody hearing. Father contends that, instead, the court should have given special, dispositive consideration to the fact that Mother had previously removed the child from the State without Father's consent. Finding no error or abuse of discretion by the circuit court, we will affirm.

BACKGROUND

Father and Mother married in November 2010, established a home in Maryland, and had one child together. Child was four years old at the time of the proceedings relevant to this appeal.

During the marriage, Mother, accompanied by Child, took trips to Oklahoma to attend to her ailing mother. Father encouraged at least some of these trips. In April 2018, however, Mother took Child to Oklahoma and informed Father that she did not intend to return to Maryland. Father and Mother each filed complaints for divorce.

Before trial, Mother and Father came to agreement regarding all issues except custody of Child. At the time of trial in June 2019, Child had been living in Oklahoma for more than a year on property owned by Mother's parents, regularly interacted with nearby family, and was attending school. Mother was employed as a critical care nurse. Meanwhile, Father remained in the former marital home in Maryland, where he was

employed as a commercial helicopter pilot. Father estimated that he had traveled to Oklahoma ten to 12 times to visit Child between April 2018 and June 2019.

At trial, the court heard from a custody evaluator mediator who had met with the family members on several occasions to attempt to resolve their custody dispute. The specifics of the mediator's testimony are not relevant, but she testified generally that the primary custody issue was "that [Mother] lives in Oklahoma, and [Father] lives [in Maryland]." The mediator believed that Child had a close relationship with both parents and did not doubt the fitness of either, but did "question [Mother's] decision to go that far away with [Child]." The mediator opined that although returning to Maryland would "be a big adjustment," Child appeared resilient.

After hearing testimony from the mediator and both parents, the court reviewed the relevant custody factors as set forth by the Court of Appeals and made findings of fact, including: (1) Mother had always been Child's primary caretaker, which the court found "very, very important because there's a continuum of interest going on"; (2) both parents were fit; (3) the court had no concerns about the character and reputation of the parties; (4) both parents were "very sincere about [Child]" and their desire for custody; (5) Mother's trips to Oklahoma with Child before the parties' separation "w[ere] all done with the tacit agreement of [Father]"; (6) Mother has family and a job in Oklahoma; (7) Child has "acclimated very, very well" to the home in Oklahoma, including Child's extended family and school; (8) Child could maintain a relationship with Father even while Child lived in Oklahoma; (9) Child was not old enough to express a preference for either

parent; (10) Child's material opportunities in Oklahoma and Maryland are in "equipoise"; (11) Child has no relevant medical or other conditions; (12) both parents' residences are suitable; and (13) there had been no prior abandonment by either party.

The court awarded Father and Mother joint legal custody of Child, but awarded Mother primary physical custody, subject to visitation "at any reasonable time" and over summer break and on holidays.[1] The remaining provisions of the court's judgment of absolute divorce all reflected the agreements that the parties had reached before trial. Father timely appealed the court's custody determination.

DISCUSSION

"When an action has been tried without a jury, the 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." Md. Rule 8-131(c). "We review a trial court's custody determination for abuse of discretion." *Santo v. Santo*, 448 Md. 620, 625 (2016). A trial court abuses its discretion when its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons," *Levitas v.*

[1] "'Physical custody . . . means the right and obligation to provide a home for the child and to make' daily decisions as necessary while the child is under that parent's care and control." *Santo v. Santo*, 448 Md. 620, 627 (2016) (quoting *Taylor v. Taylor*, 306 Md. 290, 296 (1986)). The parent with whom a child spends a majority of his or her time has "primary physical custody" of the child. *Reichert v. Hornbeck*, 210 Md. App. 282, 345-46 (2013). In contrast, "'[l]egal custody carries with it the right and obligation to make long range decisions' that significantly affect a child's life, such as education or religious training." *Santo*, 448 Md. at 627 (quoting *Taylor*, 306 Md. at 296). Father does not challenge the court's judgment granting joint legal custody.

Christian, 454 Md. 233, 243 (2017) (emphasis removed) (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring*, 418 Md. 231, 241 (2011)), or when it "acts 'without reference to any guiding rules or principles,'" or its ruling is "'clearly against the logic and effect of facts and inferences before the court[,]'" *Santo*, 448 Md. at 625-26 (emphasis removed) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). "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.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). We review without deference the trial court's rulings as to matters of law. *See Jackson v. Sollie*, 449 Md. 165, 173-74 (2016).

In his only claim of error, Father contends that "the trial court erred in granting primary [physical] custody to a parent who absconded with a minor child to another State." Father offers alternative bases for reaching this conclusion, all of which are grounded in policy concerns relating to fairness for noncustodial parents and deterring misconduct by custodial parents. First, he appears to ask us to adopt a rule of law that a parent who removes a minor child from the child's home jurisdiction without the permission of the other parent cannot be awarded primary physical custody of the child, regardless of any analysis of the child's best interest. Second, Father alternatively suggests that if a court is to undertake an analysis of the best interest of the child in such a circumstance, the analysis should focus on the situation that existed immediately before the child was removed, not at the time of trial. Third, Father contends that it is simply unfair to permit one parent to

alter the ground on which the best interest of the child will be assessed by removing the child to another state and establishing a life for the child there.

Although we do not question the significance of the concerns Father raises regarding the relocation of children without the consent of both parents, the law in Maryland is settled: (1) "[T]he test with respect to custody determinations begins and ends with what is in the best interest of the child," *Azizova*, 243 Md. App. at 347 (citing *Boswell v. Boswell*, 352 Md. 204, 236 (1998)); (2) in each case, the court must consider the best interest of the child "on a case-by-case basis," *Petrini v. Petrini*, 336 Md. 453, 469 (1994); (3) the "determinative factor" for what is in the best interest of the child "is what appears to be in the welfare of the children *at the time* of the [custody] hearing," *Azizova*, 243 Md. App. at 357 (emphasis in *Azizova*) (quoting *Raible v. Raible*, 242 Md. 586, 594 (1966)); and (4) "courts applying the best interests standard [may] consider any evidence which bears on a child's physical or emotional well-being," *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 504 (1992).

Each variation of Father's argument asks that we adopt a rule that would elevate the interest of a parent over and above a trial court's assessment of the best interest of the child at the time of the custody hearing. Even if we were so inclined—and we are not—we lack the authority to adopt such a rule. "When the custody of children is the question, 'the best interest[s] of the children is the paramount fact. Rights of father and mother sink into insignificance before that.'" *A.A. v. Ab.D.*, 246 Md. App. 418, 441 (2020) (quoting

Kartman v. Kartman, 163 Md. 19, 22 (1932)). And because each custody case is unique, there are no bright-line rules:

> The understandable desire of judges and attorneys to find bright-line rules to guide them in this most difficult area of the law does not justify the creation of hard and fast rules where they are inappropriate. Indeed, the very difficulty of the decision-making process in custody cases flows in large part from the uniqueness of each case, the extraordinarily broad spectrum of facts that may have to be considered in any given case, and the inherent difficulty of formulating bright-line rules of universal applicability in this area of the law.

Domingues v. Johnson, 323 Md. 486, 501 (1991). Here, after assessing all relevant factors, the circuit court properly focused on what was in Child's best interest at the time of the custody hearing. We cannot and will not adopt a different standard.

Finally, to the extent Father's appellate brief could be read to challenge the circuit court's exercise of discretion in determining what was in Child's best interest at the time of the custody hearing, we discern no abuse of discretion. In making a custody determination, "[t]he fact finder is called upon to 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. At the bottom line, what is in the child's best interest equals the fact finder's best guess." *Montgomery County Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 419 (1977). Although a parent's nonconsensual relocation of a child is a relevant consideration in a custody determination, it is but one consideration among many, and the court properly treated it as such. The circuit court engaged in a thorough and thoughtful analysis of the evidence presented at the custody hearing, considered all relevant factors, made findings of fact based on the evidence, and ultimately determined that Child's best

interest would be served by awarding primary physical custody to Mother, with visitation to Father. Father has not provided any basis on which we could disturb that exercise of discretion.

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