Circuit Court for Prince George's County
Case No. C-02-FM-20-809511

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0897

September Term, 2020

DANIEL ZERISELASSIE

v.

SARA CRAWFORD

Graeff,
Reed,
Gould,

JJ.

Opinion by Reed, J.

Filed: September 10, 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.

This case concerns a custody/visitation dispute between Daniel Zeriselassie ("Appellant") and Sara D. Crawford ("Appellee"). The custody/visitation dispute relates to their child, P.C., who was 17 months old at the time of the circuit court's final custody order ("Final Order"). Under the Final Order, Appellee was granted sole legal and physical custody of P.C., and Appellant was granted visitation with P.C. every other weekend in addition to certain holidays. Appellant timely appealed the circuit court's Final Order.

Appellant presents the following two (2) issues on appeal:

I. Did the Visitation decision fail to apply Maryland law, and was it clearly erroneous and/or an abuse of discretion where the order fails to identify any factual basis for establishing just one overnight visitation every other weekend, when appellee's expert's testimony established that more frequent exchanges were age-appropriate?

II. Did the trial court abuse its discretion when it failed to direct that Appellant's name be entered on the child's birth certificate?

Finding no error or abuse of discretion, we affirm the decision of the circuit court.

FACTUAL & PROCEDURAL BACKGROUND

At the time of the Final Order, the parties had been separated for over a year, including having been separated for the majority of Appellee's pregnancy. Appellant operates a tree removal service, while Appellee holds an AS degree in Interior Design and a BS degree in Project Management and Business Analysis. (E. 386). Based on the record, the parties appear to have similar incomes. Appellant has six (6) prior convictions, including three (3) second-degree assault convictions, two (2) convictions for reckless endangerment, and one conviction for theft (under $500). Appellee has a son, A. J., by a different father, with whom she maintains a good co-parenting relationship.

Prior to the Final Order, a *pendente lite* hearing was held on October 16, 2020, after which the parties were given joint legal and physical custody of P.C. Under the *pendente lite* order, the parties were to share physical custody of P.C. on alternating weeks. However, following a hearing on the merits on January 25 and January 26, 2021, the circuit court issued the Final Order which granted sole legal and physical custody to Appellee, and granted Appellant overnight unsupervised visitation with P.C. every other weekend.

At the merits hearing, Appellee presented evidence of Appellant's excessive drinking habits. That evidence included bank statements showing the large amounts of money Appellant would spend at bars on a "nearly daily basis." Additionally, Appellee provided text messages between the parties, which Appellee offered to show Appellant's erratic behavior and to explain the parties' unwillingness to act as co-parents. Appellee also provided video footage of Appellant shooting a washing machine outside of his home. Appellant used his firearm to shoot the washing machine for "target practice" while the washing machine was facing in the direction of the street.

Appellant called his brother to testify at the hearing. Appellant's brother testified that he had seen Appellant take care of P.C. and described Appellant as "a great father." He further testified that Appellant was able to do all of the tasks necessary for P.C.'s well-being.

Appellant testified at the hearing that he was not told when Appellee went into labor, despite his desire to be present at the birth. Further, he testified that he took and completed a parenting course and a child CPR course in September of 2020. Appellant said that when

he was taking care of P.C. every other week, he did not want to deprive P.C. or Appellee of each other's comfort, so he permitted Appellee to visit his home daily to breast feed P.C.

At the hearing, Appellee also called an expert in child development to testify. The expert explained that "attachment theory forms the real foundation for psychological development with children." Appellee's expert testified that "overnights away from a primary attachment figure [Appellee in this case] are not necessarily detrimental to the child's wellbeing or capacity for a secure attachment." However, Appellee's expert testified that he believed that a disruption in a child's bond with primary caregivers could occur "if there is inconsistency, unpredictability, or unreliability or frequent changes." Further the expert testified that visits with a nonresidential parent should be "frequent but short daytime visits." He also testified that alternating weeks between parents would not be appropriate until the child is "at least" eleven or twelve years old.

Following the hearing, the circuit court explained its reasoning for the custody/visitation decision by considering the relevant factors to be considered under *Montgomery County Dept. of Social Services v. Sanders*, 38 Md. App. 406, 419 (1978):

> The fitness of the parents and their character and reputation. The mother I find to be a fit parent, of good character and reputation. The father I find based primarily on the text messages, but on all the other evidence, that the father has a history of demonstrating impulsive, immature, self-centered and grandiose behavior. Frankly, based on both my observations from cases I've heard over the last 18 and a half years and somewhat in my own family, not my immediate family but an uncle, that is classic alcoholic conduct. The bank records support this, that he has an alcohol problem, including multiple charges at two and three bars a day. So that is the way he acted leading up to the birth of his child.
>
> The defendant's mother reacted in the [predictable] manner to that conduct and did not invite him to the birth, and then did not allow him access to the

child. I'm not saying that that's appropriate, but it's certainly predictable. And there's some basis for her doing so.

The potential for maintaining natural family relations in a preference to avoid split custody, the PL order is one for split custody. I'm not going to award that. I don't think it is appropriate, certainly not appropriate for a child of this age.

The age and health and sex of the child, [P.C.] is, I guess, a 17 month-old girl in good health, perfect health as one of the parties described. The residence of the parents and opportunities for Visitation, both parents have sufficient residence to have [P.C.] with them, her own room. And they live close enough to each other to allow for Visitation.

The length of separation between the parents, that is probably close to two years now, and certainly for the entirety of [P.C.'s] life. Whether there was a prior voluntary abandonment or surrender of custody, there was not. The desires of the natural parents and any agreements between them, there [are] no agreements. Their desires are clearly set forth on the record. The mother wants sole custody. The father wants joint custody.

The [preference] of the child: The child is not of sufficient age to form a natural judgment. Material opportunities affecting the future life of the child, that is not appropriate in this case. This is not one of those cases where one parent has substantially greater resources and can offer material opportunities that the other parent can't.

So having considered all of the evidence that is presented here, I am going to award sole physical and legal custody to the defendant, the mother. I am going to award visitation to the plaintiff, the father, on alternate weekends from Saturday at 9:00 a.m. till Sunday at 6:00 p.m. That will be extended for any holidays that are pending Mondays that are a holiday with regard to other holidays, so that would be Memorial Day, Labor Day and the like. Any other holidays are to be divided as follows: Easter in odd years with the father from Saturday, the night before at 6:00 p.m., to Sunday, Easter Sunday.

Thanksgiving, every Wednesday from 3:00 p.m. until Thursday at 3:00 p.m. And then with mother from 3:00 p.m.

Thereafter, the circuit court issued its Final Order, which Appellant now challenges on appeal.

STANDARD OF REVIEW

"Child custody and visitation decisions are among the most serious and complex decisions a court must make, with grave implications for all parties." *Conover v. Conover*, 450 Md. 51, 54 (2016). The best interest of the child is the ultimate consideration for the circuit court. The "appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the [trial] court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007). "[W]hen the appellate court views the ultimate conclusion of the chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion." In *Gizzo v. Gerstman*, 245 Md. App. 168 (2020), we explained the broad discretion circuit courts are entrusted with in making child custody determinations:

> "On the ultimate issue of which party gets custody ... we will set aside a judgment only on a clear showing that the [trial court] abused [its] discretion." *Viamonte v. Viamonte*, 131 Md. App. at 157, (*citing Davis v. Davis*, 280 Md. 119, 125, 372 A.2d 231 (1977)). Appellate courts "rarely, if ever, actually find a reversible abuse of discretion on this issue." *McCarty v. McCarty*, 147 Md. App. 268, 273 (2002). An abuse of discretion may occur when 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, or when the ruling is clearly against the logic and effect of facts and inferences before the court. *See*, *e.g.*, *Santo v. Santo*, 448 Md. 620, 625-26 (2016). This standard "accounts for the trial court's unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Id*. at 625, 141 A.3d 74 (*quoting Petrini v. Petrini*, 336 Md. at 470). 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].'" *Viamonte v. Viamonte*, 131 Md. App. at 157

> (*quoting Davis v. Davis*, 280 Md. at 125). Because "appellate review is properly limited in scope, the burden of making an appropriate decision necessarily rests heavily upon the shoulders of the trial judge." *Taylor v. Taylor*, 306 Md. at 311 (citation omitted). Indeed, custody decisions are "unlikely to be overturned on appeal." *Domingues v. Johnson*, 323 Md. at 492.

DISCUSSION

A. Parties' Contentions

Appellant's primary contention concerns the following statement by the circuit court:

> The potential for maintaining natural family relations in a preference to avoid split custody, the PL order is one for split custody. . . I don't think it is appropriate, certainly not appropriate for a child of this age.

Appellant argues that the first sentence – of the above statement – reflects a legal error by the circuit court. Appellant asserts that, if the circuit court was referring to joint physical custody, Maryland law does not support the proposition that joint physical custody of a child is disfavored. Thus, Appellant contends that because the circuit court expressed an opinion contrary to Maryland law, his following sentence was "tainted by . . . misapplication of Maryland law." Appellant argues that the circuit court may have had a factual basis to change the alternating weeks schedule based on the expert's testimony; but asserts that the circuit court had no factual basis to decrease the schedule to one overnight every other weekend.

Appellee contends that the circuit court did not abuse its discretion in granting sole legal and physical custody to Appellee and reducing Appellant's visitation. Appellee argues that the circuit court's decision was made after considering each relevant factor for

child custody and visitation determinations. Further Appellee contends that the circuit court's custody and visitation decision was based on competent evidence, including Appellant's text messages as well as Appellant's bank records which disclosed his continuous spending on alcohol and bar visits. Moreover, Appellee notes that the circuit court's statement that "split custody . . . would not be appropriate," was supported by testimony from Appellee's expert.

Appellant also contends that the circuit court abused its discretion in failing to order that his name be added to P.C.'s birth certificate. Appellant argues that his parentage was established by judicial admission when Appellee conceded that he was the father at the merits hearing. Accordingly, Appellant argues that under Maryland's Health Article § 4-208(a)(8),[1] once his parentage was established by judicial admission, the circuit court was tasked with issuing an order to place his name on P.C.'s birth certificate. In response, Appellee notes that Appellant did not request to be added to the birth certificate in his pleadings, nor was it included in the proposed order, which was agreed to by both parties. Appellee concedes that Appellant made a single oral request to be added to the birth certificate during the merits hearing. Nonetheless, Appellee contends that the circuit court was not required to issue such an order *sua sponte* following a proceeding in which

[1] Md. Health Article § 4-208(a)(8) reads as follows:

> In any case in which parentage of a child is determined by a court of competent jurisdiction, the name of the parent who did not give birth to the child and surname of the child shall be entered on the certificate in accordance with the finding and order of court.

Appellant never requested the relief in any pleading before the hearing, nor in any motion or filing following the hearing.

B. Analysis

Child Custody/Visitation

In *Sanders*, we explained the primary factors to be considered by a circuit court in reaching a child custody/visitation determination:

> The criteria for judicial determination includes, but is not limited to, 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; 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.

38 Md. App. at 419. In the present case, the circuit court correctly determined that P.C. was not old enough to establish a preference. Moreover, the circuit court determined that the desire of the natural parents was opposite, and that the residences of the parents were close enough to allow opportunity for visitation. The circuit court also determined that there was no evidence of prior voluntary abandonment or surrender. The circuit court noted that the parties had been separated for the entirety of P.C.'s life.

The factors that the circuit court's decision seemed to turn on were (1) the fitness of the parents; (2) character and reputation of the parties; (4) the potentiality of maintaining natural family relations; and (7) the age, health and sex of the child. Appellant focuses his argument of the circuit court's statement regarding the fourth factor. Appellant contends that the circuit court misstated the law by stating that there is a "preference to avoid split custody." When the circuit court used the phrase "split custody," we assume the court was

referring to joint physical custody. The *pendente lite* order involved joint custody, under which the parties alternated physical custody of P.C. every other week, and it seems clear from the context of the circuit court's ruling that it was referring to the joint physical custody arrangement of the *pendente lite* order.

Appellant argues that the circuit court's statement was legally incorrect because there is no preference to avoid joint physical custody under Maryland law. However, we disagree that the circuit court's statement was necessarily intended to state a legal proposition, rather than a preference based on the facts of the case. The circuit courts successive statements indicate that, in forming a preference against joint physical custody, the court was considering P.C.'s age. The circuit court noted that it did not consider joint physical custody appropriate, "certainly not appropriate for a child of this age." In our view, the circuit court's preference against joint physical custody was not clearly meant to be a statement of law. Instead, the circuit court's statement pertained to the facts and circumstances of the case. Specifically, the circuit court's preference to avoid joint physical custody relied on the testimony of Appellee's expert. Appellee's expert testified that alternating weeks between parents would not be appropriate until P.C. is "at least" eleven or twelve years old. Given that P.C.'s age was clearly a factor in the circuit court's preference against joint physical custody, the circuit court's stated preference may have derived from the evidence relating to that factor which supported the circuit court's preference. The circuit court is presumed to know the law. *Durkee v. Durkee*, 144 Md. App. 161, 185 (2002) (*citing Lapides v. Lapides*, 50 Md.App. 248, 252 (1981); *Dunlap v. Fiorenza*, 128 Md. App. 357, 365 (1999)) Thus, we presume that the circuit court's

statement was not intended as a general statement of law. We hold that the circuit court did not misstate the law by expressing a preference against joint physical custody based on the facts of this case.

Appellant next argues that, although the circuit court had a factual basis to reduce his visitation schedule, the circuit court did not have a factual basis to reduce his visitation schedule to only one overnight visit every other week. We disagree. The largest factors in favor of the circuit court's grant of sole physical and legal custody and reduced visitation were clearly (1) the fitness of the parents; and (2) character and reputation of the parties. The circuit court found Appellee to be a fit parent of good reputation; whereas it found Appellant "impulsive, immature, self-centered," with an alcohol problem and prone to "grandiose behavior." The circuit court reached these findings "based primarily on [Appellant's] text messages," as well as Appellant's bank records which disclosed his expenditures on alcohol. Moreover, the circuit court had the opportunity to see and hear from each party and their witnesses in making these findings.

Additionally, the circuit court's visitation decision was supported by the testimony of Appellee's expert. Although Appellee's expert testified that more visitation "may be age appropriate," it was not an abuse of discretion for the circuit court to opt for the lesser amount of visitation where the expert's testimony supported either decision. *See Gizzo*, 245 Md. App. at 200 (noting that a circuit court's discretion in child custody cases extends to determinations where "the evidence and factors 'would support the ultimate decision made by the trial judge and 'would also support a contrary decision' to award custody to the other parent").

The circuit court properly applied the available evidence to the relevant factors considered in child custody cases under *Sanders*, 38 Md. App. at 419-21. The circuit court's decision to grant Appellee sole legal and physical custody of Appellant was grounded in an articulated factual basis. The circuit court reached its decision based on text messages and bank records from Appellant, as well as testimony from both parties which the circuit court was in the best position to assess. Accordingly, we hold that the circuit court did not err or abuse its discretion in reaching its decision regarding the parties' custody/visitation.

Birth Certificate

Appellant contends that the circuit court erred in failing to order that his name be added to P.C.'s birth certificate. We disagree. Prior to the merits hearing, Appellant did not petition the circuit court to be added to P.C.'s birth certificate. The only apparent request that Appellant made was in response to a question by the circuit court:

> **THE COURT:** [T]o your knowledge, were you included on the birth certificate?
>
> **APPELLANT:** I have no idea. I've never seen the birth certificate. I would hope to be on the birth certificate, but I've never seen it so I don't know.
>
> **THE COURT:** In the event that you're not, would you like to be included on the birth certificate?
>
> **APPELLANT:** Yes, a hundred percent.

Aside from this back and forth, Appellant did not make any attempt to secure a judicial order to have his name added to P.C.'s birth certificate. We note that "the trial court's authority to grant relief to a party is circumscribed by the relief requested in that party's

pleadings." *Huntley v. Huntley*, 229 Md. App. 484, 490 (2016) (*citing Ledvinka v. Ledvinka*, 154 Md. App. 420, 429-30 (2003)). Accordingly, the circuit court was not required, *sua sponte*, to grant relief which Appellant failed to request in his pleadings. Thus, we hold that the circuit court did not abuse its discretion by declining to issue an order for Appellant's name to be added to P.C.'s birth certificate.

CONCLUSION

We hold that the circuit court did not misstate the law, err, or abuse its discretion in reaching its custody/visitation decision under the Final Order. Further, we hold that the circuit court did not abuse its discretion by declining to order Appellant's name be added to P.C.'s birth certificate. Accordingly, we affirm the decision of the circuit court.

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