

Circuit Court for Anne Arundel County
Case No. C-02-FM-23-001663

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 0906

September Term, 2025

J.D.

v.

M.W.

Berger,
Friedman,
Robinson, Dennis M., Jr.
(Specially Assigned),

JJ.

Opinion by Robinson, J.

Filed: March 5, 2026

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

This appeal arises out of a dispute regarding child custody. J.D. (“Mother”) and M.W. (“Father”) are the parents of M.¹ Mother filed a complaint for child custody and child support seeking primary physical custody and sole legal custody of M. Mother also requested that any visitation between Father and M. be supervised. After a trial, the circuit court entered an order granting the parties joint legal custody of M. and granting Father unsupervised visitation. Mother appealed and presented three questions for our review, which we have rephrased:²

- I. Did the circuit court commit reversible error by making a custody determination without considering the applicable provisions of section 9-101 of the Family Law Article (cited as “FL § ___”)?

¹ In the interest of privacy, we shall refer to the parties as “Mother” or “Father,” refer to the minor child who is the subject of this case by her first initial, and refer to other family members by their initials.

² Mother presented the questions for review as follows:

- A. Did the trial court err or abuse its discretion in awarding Father unsupervised visitation without first “specifically find[ing] that there is no likelihood of further child abuse or neglect[,]” as required by Md. Code, Fam. Law, § 9-101?
- B. Did the trial court err or abuse its discretion by failing to “best protect” both Mother and M., who were subjected to Father’s abuse, as required by FL § 9-101.1(c)?
- C. Did the trial court err or abuse its discretion by entering a joint legal custody award that forces Mother to unnecessarily and excessively interact with her abuser despite no evidence of subsequent repair in the relationship or that they could otherwise effectively communicate or make shared decisions regarding M. under *Taylor v. Taylor*, 306 Md. 290 (1986)? Alternatively, did the trial court abuse its discretion in finding its ultimate award of custody was in the minor child’s best interests?

- II. Did the circuit court commit reversible error by making a custody determination without considering the applicable provisions on FL § 9-101.1?
- III. Did the circuit court commit reversible error by entering an order providing that the parties have joint legal custody of M.?

For the reasons explained below, we answer these questions with yes and reverse.

BACKGROUND

Relevant Procedural History

Mother filed a complaint for child custody and child support seeking primary physical custody and sole legal custody of M. Mother also requested that any visitation between Father and M. be supervised. Mother based her requests for relief on Father's history of domestic violence, substance abuse, and suicide attempts. The parties agreed on a *pendente lite* order providing that Mother have sole legal custody and ordering the parties "to participate in family counseling" and "cooperate with the therapist's recommendations" regarding reunification therapy, but required the parties' communication be through WhatsApp and limited to "issues concerning the child." Mother was ordered to "promptly obtain a therapist through her Maryland State insurance for the child and make her best efforts to schedule the first appointment with this therapist" within thirty days. The circuit court held a trial regarding custody and entered an order providing that the parties have joint legal custody of M. and granting Father unsupervised visitation with M. Mother filed a motion to alter or amend the judgment, which the circuit court denied. This appeal followed.

The Parties' Relationship and History of Domestic Violence

Mother and Father were in a relationship from 2013 until 2021. Mother acknowledged her struggle with alcohol addiction throughout the relationship, which culminated in Child Protective Services (“CPS”) removing M. from her custody in Spring 2021, after Mother was arrested for driving under the influence. Following Mother’s arrest, CPS placed M. temporarily with Father’s stepfather, S.C. Mother visited M. at S.C.’s house “every weekend,” until she regained custody of M. in June of 2022. After her arrest, Mother was voluntarily admitted into an intensive inpatient substance abuse treatment program and later transitioned to an outpatient treatment program. Mother testified that she has been sober since August 24, 2021. In June 2024, Mother and M. moved into recovery housing, where she was employed as a residential director responsible for overseeing other residents. Mother and M. each have their own bedroom and a living room and bathroom there.

In January 2022, Father called Mother from the hospital after attempting “to jump off the Bay Bridge” and trying “to grab one of the cops’ guns.” Later in 2022, Father went missing for weeks. After Mother made “missing” posters to look for him, Mother learned that Father “didn’t want anybody to know that he was in treatment for three weeks.” In Spring 2022, during the parties’ first unsupervised visit with M., Father arrived intoxicated, causing Mother “to end the [] visitation early,” bringing M. back to S.C.’s house, and then bringing Father home where he took a “bottle of Ativan in front of [Mother].” Mother drove Father to a hospital where he was admitted.

Mother testified that Father assaulted her at least ten times during their relationship, including putting her in chokeholds, pushing her up against the wall, and forcing her onto the floor. Some of these events occurred “[i]n front of [their] daughter.” When M. was one year old, Father “flipped a glass-top table” in the family’s home. Mother called police who, upon arrival, found Mother “bleeding, trying to clean up the glass.” When M. was three or four years old, she witnessed her parents physically fighting and ran to her room “scared.”

Mother testified that, in May 2022, another resident of the home where she was living had just left the home when Father called her asking who he had just seen leaving her home. “That’s when [Mother] realized [Father] had [her] around the neck, and forced [her] into the house.” Father then placed Mother in a “chokehold” while holding a knife to her neck and “forced [Mother] into the bathroom.” Mother testified:

I repeatedly asked him [Father] to not do this in the house. At the time, my housemate . . . and her son were in the next room. I convinced him to talk to me outside. And on the way outside, I tried to make a phone call, emergency phone call, on my smartwatch, and he said no, you’re not. And that’s when he had tried to cut it and slashed my wrist. . . . I was able to get him outside, forcefully. I pushed him outside, locked the door behind me. I went up in my room and I told him through the window – my window was open – I was calling 911. And he fled.

* * *

Upon arrival, [the police] saw that I was bleeding They asked me for my statement, and they had the dogs come for [Father’s] scent around the house, around the woods that he was, I believe, in while he was watching me. . . .

So [the police] came back. And they wanted to sit with me for a little bit longer and . . . the police asked me – I’m sorry – to ask [Father on the phone] if he would meet me at the convenience store, so we could talk. [Father] saw right through that, that he knew it was the cops. And he did not. Eventually, he came out of hiding. He tried to cross the street. Therefore, the cops saw him and arrested him.

The circuit court admitted photographs that Mother took of her injuries immediately following this incident. In May 2023, Father was released from incarceration after having been convicted of two counts of second-degree assault and one count of reckless endangerment. Mother introduced at trial evidence of Father’s convictions for second-degree assault and corresponding sentence. During cross-examination, Father repeatedly demanded “Where’s the proof?” regarding Mother’s testimony about Father’s abuse, including the knife attack, denying he broke into Mother’s house.

M. has been seeing an individual therapist since March 2023 and a reunification therapist since August 2024, where M. and Father participated in counseling via Zoom. Mother testified at trial that the reunification therapist had recently left, and that the treatment provider was in the process of identifying another therapist. Mother facilitated weekly phone calls between M. and Father, who was also able to call M. on her own cell phone. Prior to Father’s incarceration, Mother testified that Father was only “vaguely” involved in parenting M., as “[h]e couldn’t remain sober, so [she] was in fear of M’s safety.” Regarding M.’s therapy, Mother testified that, although she cut one session short because she and M. were not home and that M. and Father both missed one session due to

a miscommunication with the therapist, M. had otherwise attended all appointments. Mother also testified it was in M.'s best interest for her to be awarded sole custody and that any visitation with Father be supervised and that there be a three-phased plan to increase visitation as recommended by M.'s therapist.

At trial, Mother called Falkner Discher, LCSW-C, M.'s individual therapist. He testified that "best therapeutic practice" was to "slowly rematriculat[e] [M. And Father] towards a relationship" but "would defer to M.'s stated comfortability . . . as the ultimate metric for . . . how fast things occur." Regarding M.'s relationship with Father, Discher testified that M. "voiced . . . that she didn't wish to be talking to her dad" because "she had memories of arguments between parents, and it brought back memories of those arguments." Discher also testified that M. was troubled by "observations she made of how her father treated her mother" which he clarified, upon further questioning by the circuit court, "presented as independent memories." He also testified that "M. ha[d] told [him] that [M.]'s afraid of . . . [Father] . . . [b]ecause of the assault she witnessed on her mother."

Father called witnesses who spoke about his progress in recovery and his desire to see M. Dawn Klekotka, the director of the recovery house where Father was living at the time, testified that, although Father had his own room, he shared the kitchen, bathrooms, and living room with the other thirteen male residents, noting that the recovery house "do[es] not allow children." M.O., Father's sister, testified Father and M. were "welcome to come to [her] house for the weekend . . . just as long as it's pre-planned." Father

testified he wanted to be in his daughter's life but opposed restarting reunification therapy, and completely denied "harm[ing] M. in any way" because "there's no proof" that M. witnessed his abuse of Mother. When the circuit court acknowledged "we don't only hurt our children physically" and asked what M. may have observed, Father again responded, "[T]here's no proof of that, either." When asked, after hearing Mother's testimony, why Mother shouldn't have concerns, Father replied, "I still haven't heard a reason why – I mean, what proof is there? . . . There's no proof of anything."

During cross-examination, Father acknowledged he was convicted of reckless endangerment in August 2022 for an incident involving his 17-year-old niece, and was sentenced to four years in prison with all but one-year suspended. The circuit court admitted evidence of Father's conviction for reckless endangerment and the accompanying application for statement of charges. Father objected to admitting his conviction for reckless endangerment as irrelevant to the custody case and summarized the incident between him and his niece as follow:

Me and her always – she's also into karate and everything else. So we were horseplaying around. I grabbed her like this, which – clearly, you look at the pictures and everything else, you don't see her in distress, her face ain't red. And if she's into martial arts, okay, why wouldn't she try to defend herself? And second of all, if her mother's a second-degree black belt, are you going to let someone put their hands on your own kid's neck?

When questioned by the circuit court as to how long he had been sober, Father answered, "May whatever-it-was of '22" and added "I don't keep track of all that. I just – you know, I'm past all that. I don't need to worry about the date." Father ultimately

requested joint custody and immediate unsupervised visitation with M., arguing “there was no harm [done] to that kid physically.”

In closing, Mother argued through counsel that the evidence of Father’s abuse against Mother, including in the presence of M., required the circuit court to “make arrangements for custody or visitation that protected both the child and the victim” under FL § 9-101.1 and requested that any visitation with Father be supervised by “a professional supervisor” unrelated to the parties.

The Circuit Court’s Ruling

The circuit court provided an oral ruling, summarizing the factors in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986) and made the following findings relevant to this appeal:

Character and reputation of each parent

- “The parties had a volatile relationship, which resulted in criminal charges and the Defendant serving time in jail.”
- “Unfortunately, the minor child was exposed to the violence between the parties.”
- “The testimony was that [Mother] was an excellent mother, and throughout all of this, that she has taken great care of the minor child.”
- “Father has a current reputation of working hard to maintain his sobriety.”

Length of separation, voluntary abandonment, or surrender

- “[Mother] was separated from the minor child for approximately two years, while she was in treatment.”
- “The minor child was living with her parental step-grandfather.” “[Mother] testified that she would visit with the minor child every weekend.”
- Father “was separated from the minor child for approximately three years, although he also visited with the minor child sporadically while she was living with his stepfather.”
- “This factor does not support custody . . . to either parent.”

Benefit to the parents and sincerity of request

- Both parents “would greatly benefit from the continued interactions with the minor child.”
- “However, it has to be in a healthy way.” “[Mother] does not trust [Father].”
- “Assessing the parties’ history with domestic violence, alcohol and drugs, and arrest and protective orders, there is a lot of building that needs to occur between the parties.”

With respect to joint legal custody, the circuit court made the following findings about the parents’ ability to communicate and willingness to share custody:

Capacity of the parents to communicate and reach shared decisions affecting child’s welfare

- “The [c]ourt finds that the parties have the capacity to communicate and make shared decisions.”
- “[Father] went to jail because of his assault on [Mother].”
- “However, the parties have set up WhatsApp in order to communicate through the pendente lite order.”

Regarding Father’s history of domestic violence, the circuit court found that “the parties were clear that [Father] was never violent towards the minor child[;] [h]owever, she was present when the domestic violence occurred.” The circuit court awarded the parties joint legal custody, specifically requiring communication between the parties, including requiring that Mother keep Father apprised of her work address and phone number. Without reference to FL § 9-101 or § 9-101.1, the circuit court proceeded to award the parties joint legal custody and granted Father immediate, unsupervised visitation with M. on “a phased-in access schedule.”

The circuit court contemplated the first phase lasting two months with Father having access on alternating weekends at his sister’s house from 10:00 a.m. to 6:00 p.m. The second phase, expected to last almost two months, provided for Father having alternating weekend access from 10:00 a.m. Saturday to 5:00 p.m. Sunday. The third phase, anticipated to begin September 20, 2025, provided for Father having alternating weekend access from Friday after school until Sunday at 5:00 p.m. at his sister’s home. The circuit court also ordered, without specifying a location or requiring supervision, that “[c]ommencing immediately, [Father] shall have a mid-week dinner visit with [M.] every week from anytime after school until 7:00 p.m.”

The circuit court entered a corresponding custody order. Mother filed a motion to alter or amend the custody order, in which she argued that the undisputed evidence of Father’s abuse triggered the circuit court’s obligations to consider the applicable provisions of FL § 9-101 and § 9-101.1. The circuit court entered an order denying Mother’s motion to alter or amend the custody order. This appeal followed.

STANDARD OF REVIEW

An appellate court applies different standards when reviewing different aspects of a child custody decision:

The appellate court will not set aside the trial court’s factual findings unless those findings are clearly erroneous. To the extent that a custody decision involves a legal question, such as the interpretation of a statute, the appellate court must determine whether the trial court’s conclusions are legally correct, and, if not, whether the error was harmless. The trial court’s ultimate decision will not be disturbed unless the trial court abused its discretion.

Gizzo v. Gerstman, 245 Md. App. 168, 191-92 (2020) (cleaned up).

“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.” *Id.* at 201 (cleaned up) (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)). 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.” *Id.*

DISCUSSION

Mother raises three arguments on appeal. First, she argues that the circuit court committed reversible error by awarding Father unsupervised visitation without finding “there was no likelihood of further child abuse or neglect” as required by FL § 9-101. Second, she argues that the circuit court committed reversible error by failing to “best protect” Mother and M. as required by FL § 9-101.1. Third, she argues that the circuit court committed reversible error by granting the parties joint legal custody in light of the history of domestic violence against Mother. For the reasons explained below, we conclude that the circuit court committed reversible error, and we reverse.

I. The circuit court committed reversible error by making a custody determination without addressing the applicable provisions of FL § 9-101.

“Collectively, [FL §§ 9-101 and 9-101.1] concern custody and visitation determinations where there is evidence that a party previously committed certain

acts of abuse or neglect.” *Gizzo*, 245 Md. App. at 192. FL § 9-101 provides:

(a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

“In short, section 9-101 embodies a presumption ‘that a child’s best interest is not served by placing the child in the custody of someone with a history’ of child abuse or neglect.” *Gizzo*, 245 Md. App. at 193 (quoting *In re Adoption No. 12612 in Circuit Court for Montgomery Cty.*, 353 Md. 209, 238 (1999)). This statute “dictates that, if the court . . . has reasonable grounds to believe that a child . . . has been abused or neglected by a party to the proceeding, the court must determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to . . . the party responsible for the abuse or neglect.” *Id.* (quoting *In re Adoption No. 12612*, 353 Md. at 234). “Unless the court specifically finds that there is no likelihood of further [child] abuse or neglect by that party, it must deny custody or visitation rights to that party except for a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.” *Id.* (quoting *In re Adoption No. 12612*, 353 Md. at 234).

We have previously explained the analytical framework regarding FL § 9–101:

Pursuant to FL § 9–101, the court must engage in a two step process. First, the court must consider whether there are reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding. The preponderance of the evidence standard applies when the court determines whether reasonable grounds exist. Second, the court must determine whether it has been demonstrated that there is no likelihood of further abuse or neglect by the party. The court is explicitly prohibited from granting custody or unsupervised visitation to a party who has abused or neglected a child unless the court specifically finds that there is no likelihood of further abuse or neglect. Moreover, the burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9–101(b).

Baldwin v. Baynard, 215 Md. App. 82, 106 (2013) (cleaned up).

In this case, the circuit court specifically found that M. witnessed domestic violence between her parents. According to testimony at trial, Father was physically violent with Mother “[m]ore than ten” times during their relationship and some of these “altercations[,]” took place “[i]n front of [M.]” and M. “was aware” of the knife attack. Mother also testified about then four-year-old M. witnessing Mother “trying to get [Father] off of [Mother],” after which M. became “petrified[] and she ran up to her room, scared.” M. told her therapist that she was “afraid of [Father] . . . [b]ecause of the assault she witnessed on her [M]other.” Mother, demonstrated by a preponderance of the evidence that there were “reasonable grounds” to conclude that Father abused M. because FL § 5-701(b) defines child abuse to include “mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at substantial

risk of being harmed by [] a parent[.]” The evidence presented at trial also provides “reasonable grounds” to conclude that Father neglected M. under FL § 5-701(s) because there was evidence that Father failed to give M. “proper care and attention” under circumstances indicating M.’s “health or welfare” was harmed or, at minimum, “placed at substantial risk of harm”; and, equally sufficiently, Father caused M. “mental injury . . . or a substantial risk of mental injury.” FL § 5-701(s).

The requirements of FL § 9-101 were also triggered by the evidence that Father abused his minor niece, specifically, Father’s conviction for reckless endangerment arising from an altercation wherein Father “slammed [his niece] by her neck against a truck[.]” The fact that this incident of abuse involved M.’s cousin, instead of M., does not affect the circuit court’s obligation to consider the applicable provisions of FL § 9-101 when making a custody determination because the need to consider FL § 9-101 is triggered if there is “reasonable grounds to believe a child—any child—has been abused[.]” *In re Adoption No. 12612*, 353 Md. at 234. The statute’s focus “is not on a particular child but on the party guilty of the previous abuse or neglect.” *Id.* The circuit court abused its discretion by not addressing the applicable provisions of FL § 9-101 based on the evidence providing reasonable grounds for the circuit court to believe that Father abused M. and his niece.

II. The circuit court committed reversible error by not addressing the applicable provisions of FL § 9-101.1.

FL § 9-101.1 is related to, but it is not “superfluous to FL § 9-101.” *In re Adoption*

No. 12612, 353 Md. at 236. “The [Supreme Court of Maryland] has explained that FL § 9-101 often ‘needs to be considered together’ with FL § 9-101.1.” *Gizzo*, 245 Md. App. at 193 (quoting *In re Adoption No. 12612*, 353 Md. at 229). FL § 9-101.1 “deals not just with abuse [or neglect] by a party . . . against a child but also with abuse by that party directed against the other parent of the child or the party’s current spouse.” *Id.* (quoting *In re Adoption No. 12612*, 353 Md. at 236). “According to the [Supreme Court of Maryland], the ‘legislative history of § 9-101.1 indicates recognition by the Legislature of a deep concern over the effect on a child of being in the maelstrom of *any* domestic violence within the home, including the abuse of adults and other children, whether or not those victims are related to the child whose custody or visitation is at issue.’” *Id.* (quoting *In re Adoption No. 12612*, 353 Md. at 236–37).

In the process of enacting FL § 9-101.1, the General Assembly considered ‘the adverse effects on children from abusive households generally, not only the psychological harm derived from witnessing violence directed against other household members, but also the greater likelihood, statistically demonstrated, that violence directed against others, including adults in the home, will eventually be directed against them as well[.]’

Id. at 194 (quoting *In re Adoption No. 12612*, 353 Md. at 237).

FL § 9-101.1 provides:

(b) In a custody or visitation proceeding, the court shall consider, when deciding custody or visitation issues, evidence of abuse by a party against:

- (1) the other parent of the party’s child;
- (2) the party’s spouse; or

(3) any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation proceeding.

(c) If the court finds that a party has committed abuse against the other parent of the party's child, the party's spouse, or any child residing within the party's household, the court shall make arrangements for custody or visitation that best protect:

(1) the child who is the subject of the proceeding; and

(2) the victim of the abuse.

As defined by FL § 9-101.1, the term “abuse” includes various crimes against the person, including “an act that places a person eligible for relief in fear of imminent serious bodily harm” and “assault in any degree[.]” FL § 4-501(b)(1)(ii)–(iii). The circuit court abused its discretion by failing to consider the evidence of Father's abuse of Mother and whether the arrangements for custody and visitation “best protect” Mother.

III. The circuit court committed reversible error by entering an order providing that the parties have joint legal custody of M.

The Supreme Court of Maryland has explained that the capacity of parents to communicate and reach shared decisions affecting the child's welfare is “clearly the most important factor in the determination of whether an award of joint legal custody is appropriate.” *Taylor*, 306 Md. at 304. Despite that being the “most important factor” with respect to joint legal custody, the Supreme Court of Maryland has also “decline[d] to hold as a matter of law that a court errs if it awards joint custody to parents who fail to communicate effectively with one another.” *Santos v. Santos*, 448 Md. 620, 628, 630

(2016). “As the *Taylor* Court cautioned, ‘none’ of the major factors in a custody case ‘has talismanic qualities, and no single list of criteria will satisfy the demands of every case.’” *Id.* (quoting *Taylor*, 306 Md. at 303) (brackets omitted).

“[T]here is nothing to be gained and much to be lost by conditioning the making of decisions affecting the child’s welfare upon the mutual agreement of parents who are “severely embittered and whose relationship is marked by dispute, acrimony, and a failure of rational communication[.]” *Taylor*, 306 Md. at 305. The “best evidence” of parents’ capacity to communicate and reach shared decisions about their child is “the past conduct or ‘track record’ of the parties.” *Id.* at 307. “[R]arely, if ever should joint custody be awarded” absent such a track record and, even then, “only when it is possible to make a finding of a strong potential for such conduct in the future.” *Id.* at 304. Although joint custody is “often preferable to vesting sole legal custody in one parent,” it may be challenging due to “unresolved marital issues, lingering anger and hurt about the divorce, conflicts with or over new partners, or fruitless power struggles[.]” *Kpetigo v. Kpetigo*, 238 Md. App. 561, 585 (2018) (quoting *Shenk v. Shenk*, 159 Md. App. 548, 559 (2004)).

“[E]ffective parental communication is weighty in a joint legal custody situation because, under such circumstances, parents are charged with making important decisions together that affect a child’s future.” *Santos*, 448 Md. at 628. “If parents cannot make those decisions together because, for example, they are unable to put aside their bitterness for one another, then the child’s future could be compromised.” *Id.* “Blind hope that a

joint custody agreement will succeed, or that forcing the responsibility of joint decision-making upon the warring parents will bring peace, is not acceptable.” *Taylor*, 306 Md. at 307.

The Supreme Court of Maryland “emphasize[d] that a trial court should carefully set out the facts and conclusions that support the solution it ultimately reaches.” *Santos*, 448 Md. at 630. “[N]o robotic recitation that a custody award proposed by a custody court is in the child’s best interest serve[s] as a replacement for the serious consideration of the facts and circumstances of each case.” *Id.* at 630–31 (internal quotations omitted). “This is especially so in those cases where a court considers awarding joint legal custody to parents who cannot communicate effectively.” *Id.* at 631. “In such cases, a court must articulate well the justifications for awarding joint custody.” *Id.* “In the unusual case where the trial judge concludes that joint legal custody is appropriate notwithstanding the absence of a ‘track record’” of capacity to communicate and ability reach shared decisions, “the trial judge must articulate fully the reasons that support that conclusion.” *Taylor*, 306 Md. at 307.

In deciding to award joint custody, the circuit court explained:

[Mother] was ordered to establish counseling for the parties and the minor child, and that has not yet happened

. . . What is concerning to the Court is that the minor child could miss appointments again, as she did in the past, or the therapist could leave again, and the minor child and defendant would end up starting all over again.

Therefore, this Court finds it in the best interest of the minor child for the parties to have joint legal custody of the minor

child, and [Mother] have tie-breaking authority after meaningful discussion with [Father].

The circuit court also seems to have substantially relied upon the contemplated use of WhatsApp reflected in the parties' *pendente lite* custody order to conclude that Mother and Father are capable of communicating and reach shared decisions affecting M.'s welfare. While we are cognizant that there is not an established bright-line rule that makes certain conduct prohibitive of an award of joint legal custody, the circumstances presented in this case, including Father stabbing Mother and other domestic violence incidents in M.'s presence on multiple occasions, should cause serious concerns regarding the parties' ability to communicate effectively to make decisions regarding M. The circuit court's failure to sufficiently consider and analyze the parties' ability to communicate and reach shared decisions affecting M.'s welfare was an abuse of discretion that warrants reversal of the circuit court's conclusion that joint legal custody was appropriate in this case.

CONCLUSION

The circuit court committed reversible error by not considering the applicable provisions of FL § 9-101 and FL § 9-101.1. The circuit court also committed reversible error by awarding joint legal custody without sufficiently considering the parties' ability to communicate and reach shared decisions affecting M.'s welfare. For these reasons, we reverse and remand to the circuit court to consider the applicable provisions of FL § 9-101 and FL § 9-101.1 and to consider the parties' ability to communicate and reach shared decisions affecting M.'s welfare.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
REVERSED. COSTS TO BE PAID BY
APPELLEE.**