

Circuit Court for Carroll County
Case No. C-06-FM-21-000993

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0941

September Term, 2024

ERIK GONZALES

v.

COURTNEY GONZALES

Berger,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: May 16, 2025

* 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).

Erik Gonzales, the Appellant, filed a petition against Courtney Gonzales, the Appellee, to modify the custody of the parties’ children on October 9, 2023. The petition requested a change only for physical custody based on a material change in circumstances. The case was heard during a merits hearing on May 29, 2024, before the Honorable Maria Oesterreicher of the Circuit Court for Carroll County. At trial, evidence of the parties’ lack of effective communication was heard as well as other evidence supporting a material change of circumstances, and based on this evidence, Judge Oesterreicher ruled that the Appellee would have sole legal custody of the children. The Appellant appealed this modification in legal custody.

In bringing his appeal, Appellant presents one question for appellate review:

- I. Did the trial court err by *sua sponte* modifying legal custody when the parties did not raise legal custody as an issue in their pleadings?

For the following reasons, we reverse the judgment of the Circuit Court for Carroll County.

FACTUAL & PROCEDURAL BACKGROUND

The parties married on December 28, 2011. The parties then had two children, the first born on November 15, 2019, and the second born on January 19, 2021. The parties separated in 2021 and entered into a Marital Property Settlement Agreement (the “Agreement”) on November 12, 2021. In the Agreement, the parties agreed that they would have “joint legal custody and [Appellee] shall primary [sic] physical custody of the minor child.” The Agreement said that because the Appellant’s “work schedule is unpredictable” the parties needed to “exercise flexibility in finding time” for the Appellant to have time with the children.

On March 3, 2022, the Circuit Court for Carroll County filed the judgment of absolute divorce between the parties. The court ordered that the parties would have joint legal custody and the Appellee would have primary physical custody of the children. The Agreement was incorporated into, but did not merge with, the judgment.

Then, on October 9, 2023, the Appellant filed a Petition for Modification of Custody and Other Relief (the “Petition”). The Appellant asserted that there were material changes in circumstances that warranted a change in the Appellant’s physical custody arrangement and access to the children. Specifically, he said that he secured a two-bedroom apartment, he worked fewer overtime hours, and the youngest child no longer needed to breast feed. In this Petition, the Appellant did not request a change to the legal custody of the children. In the request for relief, the Appellant requested “such other and further relief as the nature of this cause may require.”

The Appellee responded to the Petition on November 8, 2023. The Appellee denied that there was a material change in circumstances or that it would be in the best interest of the children to change physical custody. The response ended with a request “[t]hat this Honorable Court award the [Appellee] such other and further relief as the nature of her cause may require.”

On May 29, 2024, a merits hearing on the case was heard before the Honorable Maria Oesterreicher of the Circuit Court for Carroll County. Throughout trial, both parties testified to significant communication problems. By the time of trial, the parties had not had a face-to-face conversation in over a year. The Appellee attributed the lack of in-person conversations to the fact that “it was really difficult to agree on anything.” The parties

communicated primarily now via emails and texts. The Appellee described these written communications as still “[h]igh-conflict and super rude.” Both parties testified to how during drop-off and pick-up at the Appellee’s home, she had to wait inside to avoid contact with the Appellant.

Judge Oesterreicher then gave her oral ruling on June 12, 2024. She began her ruling discussing how “[t]he primary concern that the Court has and is required to consider for legal custody is the ability of the parents to communicate to reach shared decisions that affect the welfare of the child.” She noted as a “big factor” the fact that the parties cannot communicate and “have no face-to-face or direct communication other than in writing.” As a result, she found a material change because the Agreement said the parties should communicate to reach a visitation schedule and both parties now agree they cannot communicate. Judge Oesterreicher said that she did not believe the parties can share legal custody because “they cannot communicate to reach shared decisions in the best interests of the children.” As a result, since the children reside with the Appellee, the trial court awarded sole legal custody and primary physical custody to the Appellee.

A custody order was filed the same day ordering that the Appellee had sole legal and primary physical custody. The Appellant timely filed this appeal on July 10, 2024.

DISCUSSION

A. Parties’ Contentions

The Appellant argues that the trial court erred when it modified the Appellant’s legal custody because the parties did not specifically raise that issue in their pleadings. The Appellant points to multiple cases where trial courts have been reversed because they ruled

on a matter that was unrelated to the matter the parties pleaded. As a result, the Appellant claims there was a due process violation since he had no notice or opportunity to be heard regarding legal custody.

The Appellee argues the trial court did not abuse its discretion when it modified legal custody. Because trial courts are granted sweeping authority over child-related decisions in family law matters, the Appellee argues the trial court was permitted to modify legal custody based on the facts elicited in the hearing. The Appellee points to the breakdown in communications and concerns over religion as two issues that would necessitate sole legal custody being granted to the Appellee.

B. Standard of Review

We review a trial court’s determination of child custody for abuse of discretion. *Santo v. Santo*, 448 Md. 620, 625 (2016) (citing *Petrini v. Petrini*, 336 Md. 453, 470 (1994)). This is because the trial court has the unique “opportunity to observe the demeanor and the credibility of the parties and the witnesses.” *Id.* (quoting *Petrini*, 336 Md. at 470). An abuse of discretion may arise 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.” *Id.* (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)) (internal quotations omitted).

Findings of fact are reviewed under the clearly erroneous standard of Md. Rule 8-131(c). *Boswell v. Boswell*, 118 Md. App. 1, 27 (1997) (quoting *Davis v. Davis*, 280 Md. 119, 125–26 (1977)). This means we “must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to

support the trial court’s determination, it is not clearly erroneous and cannot be disturbed.” *L.W. Wolfe Enterprises, Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. 339, 343–44 (2005) (quoting *GMC v. Schmitz*, 362 Md. 229, 234 (2001)). However, if a trial court’s order “involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are ‘legally correct’ under a de novo standard of review.” *Walter v. Gunter*, 367 Md. 386, 391–92 (2002).

C. Analysis

The Maryland Rules describe how a pleading “shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought.” Md. Rule 2-305. “[P]leading requirements apply equally in the family law context.” *Huntley v. Huntley*, 229 Md. App. 484, 492 (2016). We have previously described the roles that pleading plays in our judicial system: “It (1) provides notice to the parties as to the nature of the claim or defense; (2) states the facts upon which the claim or defense allegedly exists; (3) defines the boundaries of litigation; and (4) provides for the speedy resolution of frivolous claims and defenses.” *Id.* at 491 (quoting *Scott v. Jenkins*, 345 Md. 21, 27–28 (1997)). Of these four roles, the most important is notice. *Id.* (citing *Scott*, 345 Md. at 28). “[I]f a claim for relief is placed in the answer, the trial court can still adjudicate that claim as if it had been properly designated as a counterclaim, ‘if justice so requires.’” *Lasko v. Lasko*, 245 Md. App. 70, 78 (2020) (quoting Md. Rule 2-323(g)).

“Where a judgment was outside the cause of action stated in the complaint and the defendant was not given a fair opportunity to defend against the claim on which the judgment was based, the judgment is invalid and subject to collateral attack.” *Travelers*

Indem. Co. v. Nationwide Const. Corp., 244 Md. 401, 410–11 (1966); *see also Huntly*, 229 Md. App. at 492 (quoting *Scott*, 345 Md. at 35–36) (quoting same).

Trial courts are permitted to determine who has custody of a child. The Maryland Code says that in exercising jurisdiction over the custody of a child, an equity court may “direct who shall have the custody or guardianship of a child.” Md. Code, Fam. Law § 1-201(c)(1). “As part of their broad power to fashion appropriate relief, equity courts have ‘plenary authority to determine questions concerning the welfare of children.’” *Conover v. Conover*, 450 Md. 51, 82 (2016) (quoting *Stancill v. Stancill*, 286 Md. 530, 534 (1979)).

Custody includes both physical and legal custody. *Taylor v. Taylor*, 306 Md. 290, 296 (1986). 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*, 448 Md. at 627 (quoting *Taylor*, 306 Md. at 296). “‘Legal 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.” *Id.* (quoting *Taylor*, 306 Md. at 296).

“Joint legal custody means that both parents have an equal voice in making those decisions, and neither parent’s rights are superior to the other.” *Taylor*, 306 Md. at 296. The *Taylor* court listed multiple factors for trial courts to consider “in determining whether joint custody is appropriate.”¹ *Id.* at 303. The capacity of parents to communicate and reach

¹ The *Taylor* factors for determining child custody are:

(1) capacity of parents to communicate and to reach shared decisions affecting child’s welfare; (2) willingness of parents to share custody; (3)

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.” *Id.* at 304; *see also J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 256 (2021) (quoting same). As we have stated, “[r]arely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child.” *Taylor*, 306 Md. at 304. If parents cannot make these long-range decisions together because “they are unable to put aside their bitterness for one another, then the child’s future could be compromised.” *Santo*, 448 Md. at 628. Even if the parents cannot effectively communicate, a court may, “under appropriate circumstances and with careful consideration articulated on the record,” grant parents joint legal custody. *Id.* at 646.

Turning to the pleadings in this case, neither party in their pleadings made a request for a modification of legal custody. The Appellant asked for a modification of his access to the children and his child support obligations, along with an award of attorney’s fees. The Appellee asked for both of these modifications to be denied, and for the Appellant to pay the Appellee’s attorney’s fees. Both parties also asked the court for “other and further relief” as it related to their claims. Any claim for relief about legal custody was not directly

fitness of parents; (4) relationship established between child and each parent; (5) preference of 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 parents; (12) impact on state or federal assistance; and (13) benefit to parents.

J.A.B. v. J.E.D.B., 250 Md. App. 234, 256 (2021) (citing *Taylor*, 306 Md. at 304–11).

plead before the court.

Multiple family law cases have involved insufficient pleadings where the trial court was reversed for going beyond the parties' pleadings or affirmed when the trial court properly refused to go beyond the pleadings. First, in *Huntley v. Huntley*, the appellant argued that the trial court erred in refusing to divide the appellee's retirement benefits between the parties. 229 Md. App. 484, 489 (2016). Since a division of the retirement benefits was not in the pleadings, the appellee did not have the opportunity to object or request a monetary award for herself from the appellant's retirement benefits. *Id.* at 495. This Court held that the trial court did not err in denying the appellant's request when the appellant "did not request such relief in his answer or in any counter-complaint." *Id.* at 490.

In *Early v. Early*, a support enforcement agency filed a petition for contempt against the appellant. 338 Md. 639, 645 (1995). The trial court held the appellant in contempt but then also terminated his ongoing child support obligations and assessed his arrearages at zero. *Id.* at 646–47. While the circuit court had the authority to enter these orders, "that authority must be invoked by appropriate pleadings." *Id.* at 656. Since the only matter raised in the pleadings was the finding of contempt, the appellee was not involved in the proceeding, and no party moved for a modification of the support order, the trial court had improperly decided matters not placed before it. *Id.* at 661–62. Therefore, the Supreme Court of Maryland vacated and remanded the order. *Id.* at 643.

In *Gatuso v. Gatuso*, the appellant sought an order for the appellee to be held in contempt for a violation of an order for alimony and child support. 16 Md. App. 632, 635–36 (1973). The lower court properly ruled that the appellee was in contempt. *Id.* at 636.

The lower court then modified the amount of child support and excused any arrearages. *Id.* at 636. This Court reversed that order because the parties did not plead for any modifications to child support or excuse of arrearages and the court’s order was made “in a manner which denied to the affected spouse due process of law.” *Id.* at 638.

In *Woodham v. Woodham*, the Supreme Court of Maryland reversed the trial court’s modification of child support payments. 235 Md. 356, 361 (1964). The trial court increased the support payments *sua sponte*, and the parties had made no request for an increase. *Id.* There was no testimony about the child’s needs. *Id.* While the child support “is subject to modification,” “there must be some formal request for it, supported by evidence of the necessity for modification of that part of the decree.” *Id.*

In *Ledvinka v. Ledvinka*, by the time of trial, the appellee only alleged an annulment cause of action. 154 Md. App. 420, 428 (2003). During closing arguments, the appellee argued for the first time that the appellant may have fraudulently transferred assets. *Id.* at 426. The trial court ruled that the conveyance of the appellant’s property was fraudulent and set it aside. *Id.* at 427. We held that even though the trial court had sufficient facts to reasonably come to that conclusion about the appellant’s fraud, there was a procedural error because the issue was not properly framed by the pleadings. *Id.* at 430–31. Therefore, the trial court’s decision was reversed. *Id.* at 431.

None of these cases concerning insufficient pleadings dealt directly with the matter of child custody. *Huntley* dealt with retirement benefits. *Early*, *Gatuso*, and *Woodham* all dealt with modifications of child support, the former two arising in contempt proceedings. *Ledvinka* dealt with a fraudulent transfer of assets. However, these cases stand for the

principle that trial courts have “no authority, discretionary or otherwise, to rule upon a question not raised as an issue by the pleadings, and of which the parties therefore had neither notice nor an opportunity to be heard.” *Gatuso*, 16 Md. App. at 633. Here, neither party specifically raised the issue of legal custody in their pleadings before the trial court, and neither argued for a change in legal custody in their statements to the trial court.

Despite a specific request for a modification for legal custody not appearing in the pleadings, the Appellee points to both parties’ request for “other and further relief” in their pleadings as it related to their claims. In *Falise v. Falise*, the appellant argued the trial judge improperly gave the appellee a monetary award even though he did not specifically request one. 63 Md. App. 574, 583 (1985). In the Appellee’s complaint, he asked to be “awarded such other and further relief as the nature of his case may require.” *Id.* This Court held that language was sufficient to allow the trial court to make any necessary equitable adjustments related to a monetary award. *Id.* The court then remanded the issue for proper proceedings to apply the Marital Property Act. *Id.* at 586. While *Falise* would be applicable if the trial court was merely making adjustments regarding a monetary award, here the trial court made a decision about the legal custody of the parties’ child.

The trial court’s decision in this case involved the custody of one’s child. “[T]he rights of parents to direct and govern the care, custody, and control of their children is a fundamental right protected by the Fourteenth Amendment of the United States Constitution.” *Conover v. Conover*, 450 Md. 51, 60 (2016) (citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925)). This right is weighed against the best interests of the child, as that is the primary goal of access

determinations. *Caldwell v. Sutton*, 256 Md. App. 230, 265 (2022) (quoting *Conover*, 450 Md. at 60).

“[W]hen a state seeks to affect the relationship of a parent and child, the due process clause is implicated.” *Wagner*, 109 Md. App. at 25. Due process “is a flexible concept that calls for such procedural protection as a particular situation may demand.” *Wagner v. Wagner*, 109 Md. App. 1, 24 (1996). “[D]ue process merely assures reasonable procedural protections, appropriate to the fair determination of the particular issues presented in a given case.” *Burdick v. Brooks*, 160 Md. App. 519, 525 (2004) (quoting *Wagner*, 109 Md. App. at 24).

There was a hearing in this case, but that hearing did not have the purpose of analyzing the *legal* custody of the children. The trial court, after listening to evidence presented during the hearing, came to the conclusion that the parents could no longer properly communicate with each other and subsequently modified the legal custody arrangement. “The error here, however, is not factual; rather it is procedural.” *Ledvinka*, 154 Md. App. at 431. Legal custody was modified without arguments from the parties or requests for modifications in their pleadings.² Just as in the cases discussed above, the trial

² Courts have held that “[u]se of a general prayer for relief has a long tradition in equity pleading and practice” which allows for any relief that is warranted by the allegations. *Terry v. Terry*, 50 Md. App. 53, 60 (1981). In *Terry*, the court found that the appellee never argued that his alimony payment was inappropriate and the appellant had no notice of the possibility of it being reduced. *Id.* at 60. Therefore, the court found the trial court erred when it reduced the appellee’s alimony. *Id.* at 64. Here, the complaints in total do not raise allegations that would have put the parties on notice as to a change in child custody. The Appellee’s response denied the Appellant’s allegations and argued that there were not material changes in circumstances, but did not raise any additional arguments towards the breakdown in communication that the trial court relied upon in coming to its

court's ruling went beyond the specific issues the parties pleaded. In the absence of formal requests for the modification of legal custody, the Appellant was not put on notice of the possibility of a change that he could have argued against during the hearing.

The trial court's decision may have been in the children's best interest, but the trial court ruled on a matter that was not properly framed by the pleadings. As a result, we must strike the portion of the court's order that grants the Appellee sole legal custody.

decision regarding legal custody. As a result, the pleadings as a whole did not put the Appellant on notice of the possibility of a change to legal custody.

CONCLUSION

Accordingly, we reverse the judgment of the Circuit Court for Carroll County regarding its modification of the children's legal custody.

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