

Circuit Court for Worcester County
Case No. C-23-FM-19-000489

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1048

September Term, 2021

JONATHAN K. NOONEY

v.

DEMAIAH D. NOONEY

Kehoe,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: March 24, 2022

*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 matter stems from a divorce and child custody matter in the Circuit Court for Worcester County. The appellee, Demiah D. Nooney (“Wife”), filed a complaint for absolute divorce and related relief against the appellant, Jonathan K. Nooney (“Husband”). After the merits hearing, the court entered a judgment of absolute divorce. Wife received sole legal and physical custody of the parties’ two minor children. The court terminated Husband’s overnight visitation, but otherwise granted him regular visitation. The court ordered that if Husband tested positive for any illegal substance, then his visitation would become supervised. Wife received use and possession of the family home. Husband appealed and presents five questions¹ for our review, which we have combined and rephrased as follows:

1. Did the court abuse its discretion when it denied Husband’s postponement requests?

¹ Husband phrased the questions as follows:

1. Did the lower court abuse its discretion when it denied Mr. Nooney’s July 2, 2021 postponement request?
2. Was the lower court clearly erroneous when it found Mr. Nooney to be a threat to his children’s safety?
3. Did the lower court abuse its discretion when it terminated the overnight visitation periods?
4. Did the lower court err, as a matter of law, when it provided a contingent requirement for potential supervised visitation?
5. Did the lower court err, as a matter of law, when it awarded Ms. Nooney use and possession of the family home without considering any resulting hardship to Mr. Nooney?

2. Did the court err when it terminated Husband’s overnight visitation and imposed a contingent requirement of supervised visitation if Husband failed to comply with drug testing?
3. Did the court err when it awarded use and possession of the family home to Wife?

For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Husband and Wife married in September 2008. They had two children together. Wife filed a complaint for divorce and related relief in November 2019. At that time, their daughter was five and their son was two.

The parties entered an interim consent order that addressed several matters, including the following: Husband’s use of the family home, Wife’s primary physical custody of the children, and Husband’s visitation.

A *pendente lite* hearing was held in February 2020 and the magistrate’s report and recommendations followed. Citing evidence of Husband “berating and screaming at [Wife,]” and his admission of past “cocaine and ‘meth’” use, the magistrate found that Husband’s behavior was deeply troubling and negatively impacted the well-being of the children. The magistrate also noted that although Husband was ordered to submit to a hair follicle drug test, Husband testified that his hair was not long enough to have the test performed. The magistrate referenced a text message exchange between Husband and Wife and stated that Husband’s treatment of Wife in that exchange “is tantamount to verbal abuse.” Moreover, the magistrate found that “there is little doubt that the Children were

exposed to [Husband’s] controlling behavior towards [Wife,]” as the magistrate made these findings:

[Husband] installed hidden cameras in the parties’ home to videotape [Wife], hid [Wife]’s car keys, her wallet and her passport to prevent her from leaving the home, installed a tracking device on [Wife]’s vehicle, bleached the crotch of her pants the night before she was to travel for business, and removed car seats from her vehicle and blocked her vehicle in with work equipment, to prevent her from leaving the home. . . . This type of behavior within the family home while the Children were present is disturbing.

Husband then filed exceptions, which were denied by the court after a hearing.

The court entered a *pendente lite* order in June 2020. That order addressed visitation, anger management classes for Husband, and child support due from Husband. The order also required that neither party “abuse or threaten to abuse or harass the other party, and neither party shall contact or attempt to contact the other party, by any means, except to discuss the children or to discuss legitimate issues regarding the family home.”

Husband’s first counsel withdrew representation in September 2020.

Wife filed two contempt complaints. One hearing was held in October 2020, and the other was held in February 2021. After each hearing, the court found Husband in contempt for the following violations of the *pendente lite* order: failing to pay child support, failing to return the children to Wife on time, and having unauthorized contact with Wife. At the second contempt hearing, Husband lost his weekday overnight visitation because of the court’s concern about his repeated failure to return the children on time.

Husband’s second counsel was allowed to withdraw as counsel in June 2021. The merits hearing was held in July 2021.² After the merits hearing, the court reserved its ruling and ordered Husband to submit to a hair follicle test within forty-eight hours. Husband submitted to the hair follicle test a week later. The test was positive for methamphetamine. Additional facts will be discussed below.

DISCUSSION

I. POSTPONEMENT REQUESTS

After Husband lost his counsel for a second time, he filed a postponement request to obtain another attorney five days before the merits hearing. The court denied that request. Husband claimed during the merits hearing that he was experiencing a medical condition and requested a postponement. The court found that Husband was not credible and denied that postponement request as well. Husband argues on appeal that the court erred when it denied his postponement requests.

Md. Rule 2-508(a) provides as follows: “On motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.” We consider the decision to deny a postponement under an abuse of discretion standard. *See Touzeau v. Deffinbaugh*, 394 Md. 654, 670 (2006). An abuse of discretion is a decision that is “well removed from any center mark imagined by the reviewing court

² The same judge who presided over the merits hearing had also presided over the exceptions hearing and both contempt hearings. At the merits hearing, the court stated that it had adopted the magistrate’s report.

and beyond the fringe of what that court deems minimally acceptable.” *Evans v. State*, 396 Md. 256, 277 (2006) (quoting *Gray v. State*, 388 Md. 366, 383 (2005)).

Wife filed the complaint in November 2019. The merits hearing was held in July 2021. The following timeline outlines the withdrawals of Husband’s attorneys and the postponements that the court granted:

- In March 2020, Husband’s first counsel moved to postpone the exceptions hearing because the hearing was scheduled to occur during that attorney’s medical leave.
- In May 2020, the parties’ attorneys jointly moved to continue the merits hearing, which was scheduled for the same day as the exceptions hearing. That joint motion stated that the parties had been unable to fully prepare for the merits hearing because of the COVID-19 shutdown.
- In June 2020, because of COVID-19 restrictions on judiciary operations, the parties’ attorneys jointly moved to continue the merits hearing that was scheduled in July 2020.
- Husband’s first counsel withdrew in September 2020.
- In February 2021, the court rescheduled the merits hearing (scheduled for March 2021) to June 2021 because of COVID-19 restrictions on judiciary operations.
- Later in February 2021, Wife’s counsel moved to continue the merits hearing to July 2021 because Wife’s attorney had a scheduling conflict with another case.
- In May 2021, Husband’s second counsel mailed and emailed a letter to Husband stating their intention to withdraw the appearance as Husband’s attorney. About two weeks later, Husband’s counsel moved to withdraw representation. That same day, Wife’s counsel responded and asked the court to deny the motion to withdraw, if granting the motion would cause the merits hearing to be postponed. The court granted the motion to withdraw in June 2021. In that order, the court warned the parties: “This matter shall not be postponed again. It has been pending since November of 2019.” The court also issued a notice to Husband to employ new counsel.

Over three weeks after the court had granted Husband’s second counsel’s motion to withdraw and advised the parties that the matter would not be postponed again, Husband filed a motion to postpone — at 4:35 p.m. on the Friday before a three-day weekend for the Fourth of July holiday — five days before the merits hearing. That motion was based on Husband’s request to obtain another attorney. About two weeks before he filed that motion, however, Husband had emailed Wife’s counsel. In that email, Husband suggested that he would be representing himself: “[I’m] in the process of organizing the remaining evidence, transcripts, email, text messages, voice recording, videos, pictures etc. They will be submitted to the court and other parties.” Husband then failed to promptly obtain another attorney, failed to provide an adequate reason as to why he had not obtained another attorney, and failed to promptly request a postponement.

We are not persuaded by Husband’s reliance on *Reaser v. Reaser*, 62 Md. App. 643 (1985). In support of a continuance request, the appellant in *Reaser* told the court the following: “[My former counsel] withdrew from the case, and I have not been able financially or physically to retain another Attorney. And I *did not know until Thursday or Friday of last week that the case would be heard today.*” *Id.* at 645 (emphasis in original). On appeal, this Court determined that *Reaser* involved one “of those exceptional instances in which the refusal of the trial court to grant a continuance constituted an abuse of discretion.” *Id.* The trial court in *Reaser* gave no reason as to why it had decided to deny the continuance. *Id.* at 650. In addition, this Court noted that “no prejudice to the other side was shown and no objection voiced.” *Id.*

Unlike in *Reaser*, after Husband’s counsel had mailed and emailed the withdrawal letter to Husband in May 2021, Husband knew for about eight weeks that he might be without counsel on his trial date. And when Husband’s counsel moved to withdraw later that month, Wife’s counsel opposed that withdrawal motion, “if granting the Motion would cause the Merits Hearing to be postponed yet again.” In that response, Wife noted that further delay of the merits hearing would prejudice her because Husband had paid no child support despite two contempt orders against him.

Husband also suggests that the court erred when it denied another postponement request during the merits hearing. At the merits hearing, Husband showed signs of physical distress, which he called a Ménière’s attack. *See Merritt’s Neurology*, 13th Ed. CH59 (“Ménière disease is defined as the *idiopathic* occurrence of attacks of vertigo, hearing loss, tinnitus, or fullness in the affected ear.”). In response, the court referenced the magistrate’s report and the two contempt proceedings: “what has come out loud and clear out of all of that is that you’re not reliable.” The court continued to address the situation:

I have no idea what type of treatment you’re receiving, you have never submitted anything by way of documentation, you’ve never asked for anything from the Court by way of allowance of extra time or whatever because of any sort of medical disorder. And not to be disrespectful, but it would not be -- in my opinion, it would not be completely surprising to me if this were not at all a medical emergency, so much as something caused by something else.^[3]

³ Because of Husband’s behavior at the merits hearing and the hair follicle test that was positive for methamphetamine, the court inferred during its ruling that Husband’s physical distress at the merits hearing may have been related to symptoms associated with methamphetamine withdrawal.

Husband admitted that he had not seen a doctor about this in several years, and he had not been taking any medication for it. The court’s finding about Husband’s lack of credibility supported the refusal to grant a continuance under these circumstances. The court did not abuse its discretion when it denied Husband’s postponement requests.

II. VISITATION ISSUES

Husband next argues that the court was clearly erroneous when it found that he was a threat to his children’s safety and abused its discretion by denying overnight visitation. He also argues that the court erred when it imposed a contingent requirement of supervised visitation if he failed to comply with drug testing. After the merits hearing, the court entered an order addressing Husband’s visitation:

ORDERED that, subject to the other provisions of this Order, [Husband] is granted visitation with the children as follows: (a) the first and third weekends of each month from Saturday at 10:00 a.m. to Saturday at 2:00 p.m. and from Sunday at 10:00 a.m. to Sunday at 2:00 p.m.; (b) the Friday after Thanksgiving from 10:00 a.m. to 2:00 p.m.; and (c) Christmas Eve (December 24th) from 10:00 a.m. to 5:00 p.m.

* * *

ORDERED that . . . (2) [Husband] shall submit to a thorough substance abuse evaluation by J. David Collins, Salisbury, Maryland, within thirty (30) days, and shall follow all recommendations of Mr. Collins, including inpatient treatment; and (3) [Husband] shall submit to random monitored urine drug screens twice per week for six (6) months[.]

* * *

ORDERED that, if [Husband] tests positive for any illegal drug after October 1, 2021, his visitation with the children stated above shall terminate, and [Husband] shall have supervised visits with the children at the Lower Shore Visitation Center, Salisbury, Maryland, one time per week at his expense[.]

We review a child custody determination using three interrelated standards of review, which we have described as follows:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. 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.

Gillespie v. Gillespie, 206 Md. App. 146, 170 (2012) (quotation marks and citation omitted). The abuse of discretion standard recognizes “the trial court’s unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.” *Santo v. Santo*, 448 Md. 620, 625 (2016) (quotation marks and citation omitted). An abuse of discretion “may arise when no reasonable person would take the view adopted by the trial court[,]” “when the court acts without reference to any guiding rules or principles[,]” or where “the court’s ruling is clearly against the logic and effect of facts and inferences before the court[.]” *Id.* at 625-26 (cleaned up). And in all custody and visitation determinations, the best interest of the child is the overarching consideration. *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013).

Husband ignores the primary reason for the trial court’s decision: Husband’s methamphetamine use. Husband’s drug use was coupled with other evidence that also supported the court’s ruling. Once, Husband threw a feces-filled diaper into a vehicle occupied by Wife and their daughter. Husband repeatedly violated a court order requiring him to return the children to Wife at a certain time. Husband repeatedly went to Wife’s

rental home without permission while the children were present. Husband repeatedly sent profane, abusive text messages to Wife.

At the merits hearing, the court established its concerns for the children based on Husband's drug use and treatment of Wife:

I can -- very candidly, I can only conclude one of two things. Either his personality is such that he considers himself smarter and more clever than the rest of us and so he's going to do whatever he wants regardless of what a Court Order and its mandates tell him to do and regardless of his poor behavior in front of the children and how it affects them, that's option one.

Second conclusion [—] and maybe they're mixed together [—] is that his issues with substance abuse are so severe and so concerning that he is literally unable to control his impulses and his behaviors because of that dependency. I'm not a clinician, but certainly his behaviors are emblematic of an addiction. Either way, regardless of his professed love for his children, he has repeatedly throughout the course of this case failed to look out for their best interests by behaving terribly toward their mother, by presenting unsupported allegations of neglect and abuse, by consistently refusing to pay child support, by spending his money on illegal drugs, the possession of which is a crime. He just, as I said, presented as much more interested in hurting [Wife] than in lifting up the children.

* * *

I actually have genuine concerns about their safety at this point were they to stay with [Husband] for a weekend or an overnight. As I said, he's been under a microscope for more than a year and he is still unable to tailor his behaviors appropriately and to comply with court orders. So I think that the conclusion can certainly be drawn that he's lost the ability to control his behaviors, perhaps by way of -- because of his ingestion of meth, but at any rate he shall immediately contact J. David Collins to schedule a full substance abuse evaluation.

The trial court crafted a visitation order that considered the welfare of the children while allowing Husband to have some unsupervised visitation. The court also included a provision in the order that allowed Husband to see the children (on a supervised basis) even

if he could not abide by the drug testing requirements. Despite Husband’s argument, the court’s visitation order was reasonable given his methamphetamine use and other behavior. The court’s factual findings are not clearly erroneous, and the court did not abuse its discretion.

III. THE FAMILY HOME

Lastly, Husband argues that the court erred by granting use and possession of the family home to Wife because the court failed to consider the hardship on him. The circuit court’s decision “in awarding possession and use of a family home will not be disturbed on appeal in the absence of a showing that it was exercised in an arbitrary manner or a showing that the trial court’s judgment was clearly erroneous.” *St. Cyr v. St. Cyr*, 228 Md. App. 163, 199 (2016) (cleaned up).

Under Md. Code, Family Law (“FL”) § 8-206, the court can exercise its power to “enable any child of the family to continue to live in the environment and community that are familiar to the child” and “to provide for the continued occupancy of the family home . . . by a party with custody of a child who has a need to live in that home.” Accordingly, FL § 8-206 “provides trial courts with the discretion to award exclusive use and possession of the family home to the custodial parent.” *Bussell v. Bussell*, 194 Md. App. 137, 159 (2010).

When evaluating a claim for use and possession of the family home, the court must consider these factors:

- (1) the best interests of any child;
- (2) the interest of each party in continuing:

(i) to use the family use personal property or any part of it, or to occupy or use the family home or any part of it as a dwelling place; or

(ii) to use the family use personal property or any part of it, or to occupy or use the family home or any part of it for the production of income; and

(3) any hardship imposed on the party whose interest in the family home or family use personal property is infringed on by an order issued under §§ 8-207 through 8-213 of this subtitle.

FL § 8-208(b).

Husband misstates the court’s findings. On appeal, Husband states that the court considered him to be “broke and unable to get any work[.]” But our review of the transcript shows that the court found that Husband “*claims* that he is broke and unable to get any work.” (Emphasis supplied.) Indeed, the court’s ruling shows its view of Husband’s financial status and his ability to make money in his profession as a contractor:

So I would conclude that [Husband] can work, has the ability to work, and is either pretending as if he has no options available to him in terms of employment or he’s simply, as I said, maybe so knee deep in addiction that he can’t get hired by anyone, but I find that he’s financially able to sustain himself and the family.

The court also recognized that “there was no dispute that [Husband]’s spending money on meth as opposed to his children.” Moreover, Husband failed to present evidence of any other hardship for the court to consider. Indeed, at the end of the merits hearing, the court recognized that there was no evidence in the record to support Husband’s claim that he had no income. The court told Husband that “[t]here is no evidence that you are unable to support yourself.”

The record thus shows that the court considered whether granting use and possession of the family home to Wife would impose any hardship on the Husband. And the court determined that the other factors in FL § 8-208(b) supported granting use and possession of the family home to Wife as the custodial parent: “There was . . . ample testimony . . . that the children had resided there all their lives prior to the parties’ separation, that it is in close proximity to the children’s daycare[and] school, and is a safe and suitable home for them.”⁴ See *Knott v. Knott*, 146 Md. App. 232, 249 (2002) (“The use and possession statute’s sole purpose is for the benefit of the child or children of the family.”). The court did not err when it awarded use and possession of the family home to Wife.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**

⁴ Wife testified about her financial hardship and the benefits of the children returning to the family home. From April 2021 until the merits hearing in July 2021, Wife paid the monthly mortgage payments on the family home, despite the interim consent order that required Husband to pay the mortgage. That was another expense for Wife on top of Husband’s refusal to pay any child support.