

Circuit Court for Wicomico County  
Case No. 22-C-12-0277

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1055

September Term, 2018

---

K.C.

v.

W.H.

---

Berger,  
Reed,  
Wilner, Alan M.,  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Berger, J.

---

Filed: May 2, 2019

\*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 is before us on appeal from an order of the Circuit Court for Frederick County modifying legal custody of the parties' minor children. The circuit court awarded sole legal custody of the parties' minor children to W.H. ("Father").<sup>1</sup> The court ordered that the parties would continue to share physical custody.<sup>2</sup> On appeal, K.C. ("Mother") asserts that the circuit court was clearly erroneous and abused its discretion in awarding sole legal custody to Father. For the reasons explained herein, we shall affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Mother and Father married in 2004. They have twin daughters, G. and C., who were born on December 27, 2010.<sup>3</sup> Following the children's birth, the parties' relationship deteriorated. Mother filed a complaint for divorce in the circuit court on February 21, 2012. The parties reached an agreement as to custody and all other matters on June 11, 2012, and the circuit court subsequently issued a Judgment of Absolute Divorce on

---

<sup>1</sup> We shall refer to the parties by their initials in order to protect their and their children's privacy.

<sup>2</sup> Physical custody . . . means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody." *Taylor v. Taylor*, 306 Md. 290, 296 (1986). "Legal custody carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Id.*

<sup>3</sup> The children were born via gestational surrogate. They are the biological children of both Mother and Father.

February 26, 2013.<sup>4</sup> The parties' Marital Settlement Agreement was incorporated but not merged into the Judgment of Absolute Divorce. The parties were awarded joint legal and shared physical custody in accordance with their agreement.

Both parties subsequently remarried. Mother married R.C. ("Stepfather") in March 2015, and Father married K.H. ("Stepmother") in April 2016. Despite certain challenges, the parties were able to co-parent somewhat effectively until 2016. The parties agree that their communication issues have become much more significant, but they characterize differently the reasons for the breakdown in their ability to co-parent. For example, Father asserts that "things went along fairly smoothly [after the divorce], so long as [he] did what [Mother] said to do." Mother, on the other hand, contends that the parties' co-parenting challenges are attributable to Stepmother, who she asserts "has wreaked havoc on the relationship between the parties and their ability to co-parent" the children.

On November 9, 2016, Mother filed a Motion to Modify Custody, but she failed to effectuate service on Father. Father filed a Motion to Modify Custody on March 2, 2017. The circuit court subsequently appointed a privilege and best interests attorney for the children, and discovery ensued.

While the divorce case was pending, Aarti Kishen, the children's therapist, contacted the Wicomico County Department of Social Services (the "Department") to

---

<sup>4</sup> In November 2012, Mother filed a Petition for Protection against Domestic Violence against Father. The petition was dismissed and ultimately shielded pursuant to Md. Code (1984, 2012 Repl. Vol., 2018 Suppl.), § 4-512 of the Family Law Article.

report suspected abuse.<sup>5</sup> The report was based upon a comment by one of the children that she had showered naked with Stepfather while Mother was out shopping. The Department initiated an investigation and ultimately ruled out sexual abuse. During the course of the investigation, the Department began to have concerns for the children’s mental well-being. Pursuant to the Department’s request, Ms. Kishen and a second independent assessor, Catherine Beers, assessed the children for mental injury. The Department ultimately concluded that the allegation of mental injury was “indicated” as to Mother and “unsubstantiated” as to Father.<sup>6</sup>

Following the mental injury finding by the Department, Father sought and obtained a Temporary Protective Order in the circuit court. At the hearing on Father’s Petition for a Final Protective Order on February 16, 2018, the circuit court determined that it was

---

<sup>5</sup> The Department had previously been involved with the family due to reports by Mother in 2016 and 2017 alleging neglect or abuse. Following investigations of Mother’s reports, the Department closed the cases, but recommended Father “seek mediation services in an attempt to be able to co-parent and communicate regarding [the] children.”

<sup>6</sup> Pursuant to Maryland Code (1984, 2012 Repl. Vol.), § 5-701(m) of the Family Law Article (“FL”), an individual is found responsible for indicated child neglect where “there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur.” “‘Unsubstantiated’ means a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out.” FL § 5-701(aa).

Both assessors concluded that Mother was responsible for the children’s mental injury. One assessor also concluded that Father was responsible for the children’s mental injury. The Department’s representative explained that “[t]o make an indicated finding in a mental injury case, you need both professional independent assessors to . . . name the same maltreater and identify that person.” Because Father was identified as a maltreater by only one assessor, the allegation related to Father was determined to be “unsubstantiated.”

unable “to conclude that the mental injury that supposedly exists is caused by behavior of” Mother. The circuit court denied Father’s Petition.

A hearing on the Motion to Modify Custody was held over three days in March 2018, during which the circuit court heard testimony from the many witnesses, including the parties, the stepparents, and various other individuals, including extended family members, the children’s former teachers and childcare providers, the children’s pediatrician, and the children’s therapist.<sup>7</sup> The court also heard testimony from licensed clinical social workers Catherine Beers and psychologist Peggy Hullinger. Ms. Beers had conducted an evaluation for mental injury of the children pursuant to the request of the Department, and Dr. Hullinger was appointed by the circuit court to conduct a custody evaluation.

At the conclusion of the trial, the circuit court determined that a material change of circumstances had occurred warranting a change of custody. The court found that “the deterioration of the communication between the parties that occurred following the marriage of [Father] to [Stepmother] constitutes a material change in circumstance.” The court explained:

In making this finding, I’m not talking about a little bit of stress here. Having presided over these types of cases now over a decade, but as a former Magistrate and now a Judge, I’ve seldom seen a level of hostility and deterioration, the likes of which I’ve seen in this case. So while that might not

---

<sup>7</sup> The children’s privilege and best interest attorney determined that it was in the children’s best interest to waive privilege in order for the children’s therapist to testify.

ordinarily be a change in circumstances, I find that it is in this case.

Based on credible testimony, the Court finds that from the date of the original Order until [Father] married [Stepmother], the dynamic between the parties was that [Mother] was dominant, and mostly -- and I put that in quotes, called the shots, end quote with regard to the custody arrangement.

[Father] was more passive and was described by [Stepfather] as, quote, a man of few words, end quote.

In addition, the dynamic included [Mother's] practice of involving both her parents and her husband and her sister in decision-making.

[Stepfather] in marrying [Mother] fit nicely into this situation, and [Father] remained passive. The introduction of [Stepmother] . . . into this dynamic resulted in what I called push back as to the existing dynamic and the involvement of [Stepfather] and the extended family.

\* \* \*

So as a result of this change in the dynamic, the passive nature of [Father] in this dynamic became problematic and things spiraled out of control. That's basically my conclusion.

The Court finds that this change in the dynamic constitutes a material change of circumstance in this particular case. It became toxic with the changed dynamic.

Having found a material change of circumstances, the circuit court turned to the familiar factors considered by courts when determining an appropriate custody arrangement set forth in *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986), and *Montgomery County Dep't of Social Services v. Sanders*, 38 Md. App. 406, 420-21 (1977). The court considered the fitness of the parents, the parents' character and reputation, the sincerity of the parents' requests, the prior agreement between the parties, the parties' willingness to

share custody, the potential for maintaining natural family relationships, the age and number of children in the home, the preference of the children, the capacity of the parents to communicate with each other, geographic proximity of the parties, the ability of each parent to maintain a stable and appropriate home, the financial status of the parties, the demands of parental employment, the age and health of the children, the established relationship between the children and each parent, the length of separation of the parents, any prior voluntary abandonment or surrender of custody, potential disruption of the child's social and school life, impact on state and federal assistance, and any benefit a parent may receive from an award of joint custody and how that will enable the parent to bestow a benefit on the child.

After discussing each factor and describing how each factor affected the ultimate custody determination,<sup>8</sup> the circuit court addressed the expert opinions of Dr. Hullinger and Ms. Beers. The court observed that Dr. Hullinger recommended family therapy without the stepparents as well as group therapy for the children. The court further observed that Dr. Hullinger was “highly critical” of Stepmother. The court explained that it did “not agree with all of the criticism,” but “[f]ound] some truth and concerns raised about” Stepmother. The court also expressed concern that Stepmother had “so freely arrived and announced her stated opinion that [Mother] was a sociopath.” The court explained, however, that Stepmother “is an intelligent individual who will follow the [c]ourt’s Orders,

---

<sup>8</sup> We shall summarize the circuit court’s analysis of each factor *infra* in the Discussion section of this Opinion.

loves her husband, loves her stepchildren, and has the ability to refrain from interjecting herself into the parenting difficulties of the parties.” The court found Ms. Beers’ testimony to be particularly persuasive. The court noted that it “was impressed” with Ms. Beers “mastery, facts, objectivity, and with her ability to sit, listen patiently, [and] hear the testimony at the hearing and to modify her opinion.”

The court found that “the best interests of the children warrant” certain modifications to the existing custody order. The court ordered the parties to participate jointly in family therapy and to continue the children in therapy. With respect to legal custody, the court granted sole legal custody to Father. The court found that “[t]he parties now lack the ability to communicate effectively regarding the children” and “cannot reach necessary agreements in a timely way regarding sporting activities, medical needs, and mental and physical health needs.” Due to the parties’ inability to communicate effectively, the circuit court explained that it was “forced to conclude that one parent must take the lead.” The court found “that it is in the best interest of the children to grant sole legal custody to [Father]” because “he is the more flexible parent” who was likely to “listen to any concerns from [Mother].” The court expressly commented that “this was not an easy decision.” The shared physical custody arrangement was unchanged.

This appeal followed. Additional facts shall be set forth as necessitated by our discussion of the issues on appeal.

#### **STANDARD OF REVIEW**



The best interest of the child “is always determinative” in child custody disputes. *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)). We review “a trial court’s custody determination for abuse of discretion.” *Id.* at 625. “This standard of review accounts for the trial court’s unique ‘opportunity to observe the demeanor and the credibility of the parties and the witnesses.’” *Id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)).

“A court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous.” *In re Adoption/Guardianship of Ta’Niya C.*, 417 Md. 90, 100 (2010). In our review, we give “due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.” *In re Yve S.*, 373 Md. 551, 584 (2003). We recognize that “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.” *Id.* at 585-86.

We have explained that a “court can abuse its discretion by reaching an unreasonable or unjust result even though it has correctly identified the applicable legal principles and applied those principles to factual findings that are not clearly erroneous.”

*Guidash v. Tome*, 211 Md. App. 725, 736 (2013). For an appellate court to reverse a trial court's ruling under this scenario,

[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

*North v. North*, 102 Md. App. 1, 15 (1994).

### **DISCUSSION**

The issue raised in this appeal is quite narrow. Mother does not assert that the circuit court erred in finding that a material change of circumstance warranting a change in custody had occurred. Indeed, Mother expressly agrees that the deterioration of the parties' relationship subsequent to Father's marriage to Stepmother constitutes a material change. Mother further acknowledges that the circuit court addressed the *Taylor* factors and explained its reasoning as to each. Mother alleges that the circuit court erred by weighing the parties' inability to communicate too heavily in its determination. Mother further takes issue with the circuit court's ultimate decision to grant sole legal custody to Father, arguing that the evidence establishes that the best interest of the children mandates that sole legal custody be granted to Mother. As we shall explain, the circuit court's ruling was premised upon sound legal principles and based upon factual findings that were not clearly erroneous. Furthermore, the circuit court's ultimate decision to grant sole legal custody to Father was not an abuse of discretion.

We first address Mother’s assertion that the circuit court weighed the parties’ inability to communicate too heavily. Mother cites *Montgomery County Dep’t of Social Services v. Sanders*, 38 Md. App. 406, 420-21 (1977), in support of her argument. In *Sanders*, we explained that a trial court “will generally not weigh any one [factor] to the exclusion of all others.” 38 Md. App. at 420. Rather, a “court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor.” *Id.* at 420-21. Mother contends that the circuit court failed to examine the totality of the situation and inappropriately “largely based its decision on the ‘communication issue.’”

Contrary to Mother’s assertion, the record reflects that the circuit court carefully considered all of the factors and did not inappropriately focus on a single factor. Furthermore, it is well-established that the parents’ ability to communicate effectively and reach shared decisions about the children’s welfare is “the most important factor in the determination of whether an award of joint legal custody is appropriate.” *Taylor, supra*, 306 Md. at 304. The Court of Appeals has explained why this factor is so important when considering whether to award joint or sole legal custody:

*Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child’s Welfare.* This is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate, and is relevant as well to a consideration of shared physical custody. Rarely, 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, and then only when it is possible to make a finding of a strong potential for such conduct in the future.

*Id.* See also *Santo v. Santo*, 448 Md. 620, 628 (2016) (“*Taylor* stands for the proposition that effective 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. 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.”).

It was, therefore, entirely appropriate for the parties’ ability to communicate effectively -- or lack thereof -- to weigh heavily in the circuit court’s analysis. The circuit court found that the parties “talk past each other, even in writing” and “each parent believes the worst of the other parent.” The court recognized the parties’ inability to communicate about even “relatively minor issues,” such as extra-curricular activities that one parent arranged. The court found that Mother “in particular simply decides on activities for the children” regardless of Father’s agreement and that both parents “actually believe they should not have to” listen to one another. The record reflects that court’s discussion of this factor was supported by the evidence. Furthermore, in light of the complete breakdown in communication between the parties, this factor was not weighed inappropriately heavily compared to the other *Taylor* factors.

We next turn to Mother’s assertion that sole legal custody should have been granted to her rather than to Father. In addressing Mother’s contentions on appeal, we observe that in this opinion, we cannot set forth every detail the circuit court heard and considered, nor is it the place of the appellate court to do so. It is the circuit court judge, and not the

appellate court, who “sees the witnesses and the parties [and] hears the testimony.” *In re Yve S.*, 373 Md. 551, 585 (2003). The circuit court judge is “in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.” *Id.* On appeal, “we do not re-weigh the evidence or substitute our own judgment” for that of the fact-finder. *Pinkney v. State*, 151 Md. App. 311, 329 (2003). We will, however, discuss aspects of the record that are necessary in order to evaluate Mother’s appellate issues.<sup>9</sup>

As we discussed *supra*, when evaluating what custody arrangement would serve the children’s best interests, the circuit court considered the *Taylor* and *Sanders* factors. We shall summarize the circuit court’s findings and analysis of each factor. With respect to the fitness of the parents, the circuit court found that “both parents are fit.” The court expressly discounted Stepmother’s claim that Mother was a sociopath, explaining: “The [c]ourt does not agree that there is evidence that [Mother] is a sociopath and finds no persuasive objective mental health professional evidence to this effect.” The court found “that both parents are impressive and intelligent, which makes their inability to put their differences

---

<sup>9</sup> In doing so, we keep in mind that certain evidence presented before the trial court related to deeply personal and potentially embarrassing aspects of the children’s lives. When possible, we attempt to discuss this evidence in general terms rather than in specific detail out of respect for the children’s privacy. Although we may not discuss certain aspects of the record in detail in this opinion, we have reviewed and considered the entire record. Our decision to avoid reciting specific factual details in this opinion should not be construed as a failure to consider these facts.

aside for their children especially puzzling and concerning.” The court found this factor to be neutral.

The court also considered the parties’ character and reputation to be neutral, finding both parents to be “of good character and reputation.” The sincerity of the parents’ requests was similarly considered to be neutral. The court found that each parent was sincere in requesting sole custody and “[e]ach believes this to be in the best interest of the children.” The court found that both parents “want to bring love and stability to their two beautiful children.” The court acknowledged that the parties had “previously had an agreement” but were no longer able to reach an agreement. The circuit court observed that “as long as [Father] remained really passive, things kind of went along fairly smoothly.” This was no longer the case.

With respect to the parties’ willingness to share custody, the court concluded that the parties “at the very least are not willing to share legal custody.” The circuit court found that the parents appeared “to be able to share physical custody, although they struggle with that primarily over dominating who makes the decisions.” The court “assign[ed] equal responsibility for the current impasse between the parties,” explaining that it found this factor neutral.

The circuit court considered the potential for maintaining natural family relationships, observing that “neither party currently demonstrates the ability to maintain these relationships.” The court found that each parent assigned blame to the other party and demonstrated “scarce, if any, insight into his or her own role in creating the current

impasse.” The circuit court observed that the children had many extended family members who loved them, but that “[t]hese two wonderful families aren’t able to interact the way they, ideally, would for these children.”

With respect to the age and number of children in the home, the court observed that in addition to G. and C., Stepmother’s two teenage sons resided in the home shared by Father and Stepmother. The court found this factor to be neutral. With respect to the preference of the children, the court found that the children were “not of sufficient age and maturity or capacity to form a rational judgment,” and this factor was considered neutral.

The circuit court addressed the parties’ capacity to communicate at length, as discussed *supra*, finding that the parties were unable to communicate effectively and weighing this factor heavily. The court observed that the parties resided in close geographic proximity, both parents were able to maintain a stable and appropriate home, neither parent had financial concerns, and both parents were “strong working parent[s] with commitments.” The court considered these factors to be neutral.

The court found the age and health of the children factor to be neutral but discussed this factor in some detail. The court observed that both children were “in counseling to address, among other things, the stress between their parents.” The court commented that C. had been diagnosed with a conduct disorder and had harmed a kitten. The court recounted additional problematic behavior by both children that had been observed by Father but not by Mother. The court found that Father “had great difficulty convincing [Mother] that the children, and [C.] in particular, needed counseling,” but that “[f]inally,

they were put in counseling with a counselor they appeared to like and trust.” The court found the children to be generally healthy physically but both had “a need for ongoing mental health treatment.”

With respect to the established relationship between the children and each parent, the court found that “[e]ach parent is important to and loved by the children” and each parent “tries to be a good, loving and appropriate parent.” When addressing the length of separation of the parents, the court observed that the parties had been separated since 2012 for “about six years.” The court found “that until some time in 2016, in their own way though with one dominant parent not on equal terms which it should have been, these parties somehow co-parented.” The court explained: “Thus, co-parenting did not really consist of the type of give and take that would result in joint decision-making. So this factor is not really neutral. It means this along with the communication concerns I had is what’s going to cause me to make some changes in the existing Order.”

The circuit court found no prior voluntary abandonment or surrender of custody. With respect to potential disruption of the child’s social and school life, the court found that “[n]o disruption would result upon modification of sole custody.” The court observed that there is “already disruption” of the children’s extra-curricular activities “because the parties can’t get together and agree on what these children should do and what activities they should be in.” The court commented that “there are good things about the current physical custody arrangement because the children get so much time with each side of their family.” The court found this factor to be “important.”



The circuit court found that there was no evidence of any state or federal assistance that would be affected by the court’s ruling. Finally, the circuit court considered any benefit a parent may receive from an award of joint custody and how that will enable the parent to bestow a benefit on the child. The court explained its reasoning for this factor as follows:

My understanding of this factor has always been that it concerns the benefit of children having the benefit of being parented by two parents, knowing both well, having time with extended families of both parents and all the other benefits of having two parents, benefits which flow . . . both to the parents and to the children.

Under the current [o]rder, these benefits exist at least potentially. However, because of the chaos that reigns because of the disputes between the parties, they don’t necessarily get the benefit that they should. Unfortunately the animosity between the parties undermines the benefits that ordinarily would result from a shared physical custody arrangement.

So this factor is important in my mind. What can I do to fix this? What can I do to help these parties and, more importantly, these children not have to suffer because of the inability of these parents to co-parent?

The court commented that it had “serious concerns about both of these parents.” The court found Mother to be “rigid in her views, unwilling to consider the very important point of view of the children’s father.” The court found that Mother is “suspicious of those who question her methods.” The circuit court further observed that Mother “simply refuses to accept what is right in front of her in certain instances,” commenting that “the need for the children to go to counseling was obvious, and yet [Mother] resisted this when it would clearly benefit her children.” The court cited C.’s “treatment of the kitten” as an example

of an incident “warranting professional intervention.”<sup>10</sup> The circuit court further found that “the behaviors of both children at [Father’s] home were a concern and should not be dismissed [by Mother] because she does not observe them at her home.” The court further found that Mother “is unwilling to consider any fact or conclusion that does not conform to the opinion she already holds and that this quality does not allow her to grow as a parent, effectively co-parent, and address the ongoing and changing needs of her children.”

The circuit court also expressed concerns about Father, finding Father to be “almost the opposite” in that “[i]nstead of clinging to fixed opinions, he is easily influenced and persuaded by individuals to accept drastic draconian conclusions.” The court found the influence Stepmother had on Father concerning, explaining:

For example, it is one thing for his new spouse who knows him well but does not know his ex-wife to convince him that he needed to be more assertive in co-parenting. It is quite another for [Father] to be so subject to influence that he would readily accept that his ex-wife is a dangerous sociopath when no such diagnosis has ever been made by an objective, competent professional.

The court explained that both parents were “in need of individual counseling.” Based upon its assessment of the factors and consideration of the evidence presented via expert testimony, the circuit court concluded that an award of sole legal custody to Father was appropriate.

---

<sup>10</sup> The court was referring to an incident that occurred in October of 2016 when C. threw a kitten several times causing severe injury to the animal.

Mother acknowledges that the circuit court considered the requisite factors but asserts that the circuit court erred by awarding sole legal custody to Father for four reasons: (1) Stepmother has interfered in the family’s dynamics and her influence on Father renders him unable to co-parent effectively; (2) the circuit court misunderstood and/or misrepresented the circumstances surrounding the parties’ dispute about obtaining counseling for the children; (3) Father has failed to communicate with Mother regarding developments with the children; and (4) the circuit court failed to give appropriate weight to the expert opinion of Dr. Hullinger and instead was persuaded by Ms. Beers. We address each contention in turn.

***Role of Stepmother and Stepmother’s Effect on the Parents’ Ability to Co-Parent***

Mother asserts that Stepmother has interfered in the family’s dynamics by communicating with Father’s attorney, telling Father what to write in emails, and giving Father her opinion on various decisions regarding the children.<sup>11</sup> Mother contends that Father has “been shown unable to control” Stepmother and that it is unreasonable to expect Father to prevent Stepmother from further interference in the future. Mother further asserts that she made many attempts to co-parent effectively with Father while Father “was not co-parenting,” in large part due to Stepmother’s influence.

The circuit court recognized that Stepmother had taken a larger than appropriate role in the past but found that Stepmother “has the ability to stand back” and “refrain from

---

<sup>11</sup> Other conduct by Stepmother that Mother points to as inappropriate includes Stepmother’s conversation with the children (then age seven) about tampons, an incident when Stepmother took G. for a haircut prior to school picture day without consulting

interjecting herself into the parenting difficulties of the parties.” There is evidentiary support for the circuit court’s conclusion on this issue. Ms. Kishen, the children’s therapist, testified that Stepmother had been receptive to her suggestion that it would be appropriate for Father, rather than Stepmother, to take the lead with respect to parental responsibilities. Ms. Kishen further testified that she had observed Father “taking more of an active role in parenting” while Stepmother was “taking a little bit of a step back.”

There is also evidentiary support for the circuit court’s conclusion that Father was more likely to consider Mother’s opinions if granted sole custody, despite the role played by Stepmother, than Mother would be to consider Father’s opinions if she were granted sole legal custody. Dr. Kishen testified that Father was more receptive to feedback regarding parenting decisions than Mother, who often “pushed back” against Dr. Kishen’s recommendations. Social worker Ms. Beers reached similar conclusions, explaining that Father was “the least non-cooperative” of the parents. Stepmother’s role certainly factored in the circuit court’s decision, and the circuit court expressed significant concern about Stepmother, but there is evidentiary support for the circuit court’s conclusion that Stepmother would be able to “stand back” and allow Father to take on the primary parenting role. We perceive no error in the circuit court’s consideration of this issue.

***Issues Relating to the Children’s Counseling***

---

Mother about G.’s hairstyle, and Stepmother “using her [social work] degrees in communications with” the children.

Mother further asserts that the circuit court’s finding that she was responsible for delaying the children’s counseling was clearly erroneous and instead the blame for the delay is properly attributable to Father.<sup>12</sup> Our review of the record reflects that while both played a role in causing the delay, the circuit court’s determination that the delay was primarily attributable to Mother is not clearly erroneous.

The record reflects that the children’s pediatrician, Dr. Francis Celeste, first suggested family counseling in 2015. Father testified that he contacted Mother numerous times about obtaining counseling for the children but she did not respond. Father testified that Mother agreed to counseling in February 2016, but Mother wanted to select the therapist and include Stepfather. After C. harmed the kitten in October 2016, both parents agreed that counseling would be appropriate, but Father wanted C. to see a psychiatrist while Mother wanted C. to see a psychologist. The parties ultimately had a meeting with Dr. Celeste, who recommended starting with a psychologist. At that point, both parents agreed with Dr. Celeste’s recommendation, but the parties were still unable to agree on a counselor. Finally, as the circuit court observed, it was the children’s appointed attorney who “was instrumental” in arranging for a therapist for the children.

---

<sup>12</sup> As we discussed *supra*, the circuit court specifically found that Father “had great difficulty convincing [Mother] that the children, and [C.] in particular, needed counseling.” The circuit court further expressed the opinion “that the need for the children to go to counseling was obvious, and yet [Mother] resisted this when it would clearly benefit her children.”

Mother maintains that she was seeking counseling for the children “as far back as 2016” and the delay is attributable to Father because he would not acquiesce to a psychologist rather than a psychiatrist. Father, on the other hand, points to his testimony that he began asking Mother to participate in identifying a counselor for the children as early as 2016. To be sure, the circuit court heard testimony as to both parents’ roles in causing the delay. Critically, it is the role of the circuit court to resolve any conflicts in the evidence presented and assess the credibility of the witnesses. *Smith v. State*, 415 Md. 174, 185 (2010) (“Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.”). The circuit court was entitled to credit the testimony of Father on this issue, and there is evidentiary support for the court’s finding that the delay was primarily attributable to Mother. We will not disrupt the circuit court’s consideration of this issue on appeal.

***Father’s Communication with Mother***

Mother asserts that Father’s inability to co-parent is demonstrated by his failure to keep Mother apprised of developments about the children. Mother identifies five examples of what she characterizes as Father’s failure to communicate.

First, Mother points to an incident that occurred on Monday, April 18, 2016 when she received a telephone call from the children’s school informing her that G. had a laceration on her head that had not occurred at school. G. had sustained an injury after

falling while riding her scooter in Father’s care. Mother testified that she went to the school immediately, and, when she arrived, she observed G. with “lacerations, abrasions, contusions, bruises on her forehead and down the side of her face, the side of her nose, her lip, her chin, and inside of her mouth.” Mother asserts that Father should have contacted her to inform her of the injury.

Father, however, characterizes the injury as a “scrape.” Kris Gosnell, the children’s school principal, testified that it was school protocol to notify Mother of the injury, which Ms. Gosnell characterized as “a bump.” Ms. Gosnell testified that G. “seemed fine when she came to school” but that “[t]he office just wanted [Mother] notified in case she wasn’t aware of it, because they didn’t want her to think it happened during the school day.”

Nonetheless, Mother elected to take G. out of school to have her evaluated by the pediatrician. Dr. Celeste did not consider the injury to be significant (and testified to as much), but following the doctor’s visit, Mother sent an email to the school with the subject line “[G.] and her Head – It’s a Concussion” in which Mother wrote that she had “been up every hour through last night and tonight checking on [G.] per the pediatrician.” Dr. Celeste testified that he told Mother that G. did not have a concussion. Furthermore, although Mother alleges that Father’s failure to communicate regarding G.’s injury is an example of his failure to co-parent, Father did communicate with Mother about the injury, albeit not immediately after it occurred. Father sent an email on Monday, April 18 at 11:11 a.m. informing Mother that G. “fell on the driveway yesterday at a friend’s birthday party which caused an abrasion on her forehead.” In our view, Father’s communication

regarding G.'s minor injury does not reflect an unwillingness or inability to co-parent effectively.

Other examples of Father's alleged failure to communicate include an incident when Father took the children out of school to take them to Disney World without informing Mother, Father's use of out-of-network medical providers, and Father's delay in notifying Mother about C.'s treatment of animals while in his care. Mother also points to an incident when G. was injured while swimming in Father's pool. Father took G. to the emergency room, where she received stitches. Father did not tell Mother about G.'s injury until after they left the hospital. Father responds that his decision not to inform Mother until after leaving the hospital was reasonable given Mother's previous "over-reaction" to G.'s scooter injury.

Father points to other incidents as examples of when Mother failed to communicate with him. G. suffered a forehead abrasion while at the maternal grandparents' pool, but Mother did not inform Father about it until three days later. Father testified that Mother told him that the injury "looks scary, but [G.'s] okay." On September 14, 2016, G. fell while in Mother's care and was diagnosed with a fracture on September 15. Mother did not notify Father until September 16.

The record reflects precisely what the circuit court concluded: that the parties struggle significantly with communicating effectively and that their communication difficulties have greatly reduced their ability to co-parent effectively. The record is replete with examples of both sides failing to communicate with each other, and we are



unpersuaded by Mother’s characterization of these specific incidents as reflecting poorly only on Father.

***Expert Opinions***

Finally, Mother asserts that when determining that Father was the proper party to be granted sole legal custody of the children, the circuit court failed to give appropriate weight to the expert opinion of Dr. Hullinger. Dr. Hullinger was appointed by the circuit court to conduct a custody evaluation. Her report totaled 104 single-spaced pages of findings, conclusions, and recommendations.

Both Father and child’s counsel objected to the admission of Dr. Hullinger’s report for various reasons, including the report’s sloppiness and that the report included unsubstantiated hearsay and inaccurate identifications of people, places, and events. Objections were also lodged on the basis that Dr. Hullinger exceeded the scope of what the evaluation should contain. The circuit court addressed the concerns about Dr. Hullinger’s report, explaining: “I see all these issues. I think that goes to how much weight I should give the report.”

The circuit court considered Dr. Hullinger’s report and specifically recounted certain aspects of Dr. Hullinger’s evaluation, including Dr. Hullinger’s recommendation of family therapy and Dr. Hullinger’s criticism of Stepmother. The court, however, found the testimony of social worker Catherine Beers “to be the most persuasive and credible expert testimony presented in this case.” The circuit court weighed the recommendations of Ms. Beers heavily, including Ms. Beers recommendation that Father was the more

appropriate parent to be granted sole custody because he was “the least non-cooperative” of the parents and was more likely to consider Mother’s opinions than Mother was to consider Father’s opinions.

The circuit court was entitled to consider the testimony of the experts and determine the appropriate weight to give each expert’s opinion. As we have discussed *supra*, it is the role of the circuit court to assess the credibility of the witnesses and determine which evidence to weigh more strongly. *Smith, supra*, 415 Md. at 185. The circuit court explained that it found the testimony of Ms. Beers to be persuasive because of her impressive “mastery, facts, objectivity, and . . . her ability to sit, listen patiently, [and] hear the testimony at the hearing and to modify her opinion.” We will not substitute our judgment for that of the circuit court that sits in a far better position to assess the weight and value of the various expert witnesses. *See Leavy v. Am. Fed. Sav. Bank*, 136 Md. App. 181, 199-200 (“[W]e may not reassess the credibility of this expert witness, or the weight of his testimony. That is quintessentially a job for the trial court sitting as a fact-finder in this bench trial.”).

### CONCLUSION

As the circuit court specifically commented, this case was “not an easy decision.” Indeed, both parents contributed to the deterioration of their co-parenting relationship. As the circuit court observed, each parent “has gone to his or her respective corner assigning all blame to the other party and demonstrating scarce, if any, insight into his or her role in creating the current impasse.” The circuit court was faced with determining what would

best serve the interest of two young children in a highly contentious, conflict-ridden situation. In doing so, the circuit court carefully considered the evidence presented, drew reasonable inferences based upon the evidence, and applied the evidence to the requisite factors. This is precisely what a trial court should do, and we will not disrupt the circuit court's ruling on appeal.

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