Circuit Court for Carroll County
Case No. 06-C-17-073079

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1118

September Term, 2023

KRISTIAN SANDOR

v.

HUYEN THANH TRUONG

Graeff,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 24, 2024

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

This appeal arises from competing motions to modify child custody filed in the Circuit Court for Carroll County by appellant, Kristian Sandor ("Father"), and appellee, Huyen Truong ("Mother"). On November 10, 2022, at the conclusion of Father's case-in-chief, the child's BIA moved for an emergency temporary custody order, requesting that the court grant Mother temporary legal and physical custody, with Father having supervised access to the minor child. The court, finding Father's conduct harmful to the child, granted the request pending final resolution of the case. On July 17, 2023, following Father's request for a postponement and two additional hearing dates, the court entered an order modifying custody and child support and ordering Father to pay the Best Interest Attorney's (BIA) fees and a portion of Mother's attorney's fees.

On appeal, Father presents the following questions for this Court's review, which we have modified slightly, as follows:

1. Did the circuit court commit reversible error and violate Father's constitutional due process rights by issuing an order requiring supervised child access in the middle of a merits hearing prior to giving Father an opportunity to cross-examine the Mother?

2. Did the circuit court commit reversible error by incorrectly calculating child support and misapplying *Kaplan v. Kaplan*?

3. Did the circuit court commit reversible error by ordering Father to pay all the BIA's legal fees and a significant portion of the appellee's attorney's fees?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Events Leading to Court Hearing

Father is self-employed as a medical doctor and the sole owner/CEO of Frontline Physicians. Mother works part time as a nail technician. Father and Mother are the biological parents of M.S., born September 2015.[1] They never married.

On June 29, 2017, the parties agreed to a consent order addressing custody and child support. Pursuant to their agreement, Mother had primary custody of M.S., with Father having access every other Friday from 3:00 p.m. through Sunday at 7:00 p.m., and every Tuesday and Thursday evening from 3:00 p.m. until 7:00 p.m. The parties were granted joint legal custody. The court ordered Father to pay child support in the amount of $2,500 per month.

On February 16, 2022, Father filed a Motion to Modify Custody and Other Related Relief, alleging "several material changes of circumstances warranting a modification of child custody and access." He alleged, among other things, that Mother was engaging in a "course of conduct that [did] not permit effective communication between the parties," and she was attempting to degrade his relationship with M.S. Father alleged further that Mother had told M.S. his father and extended family did not love him. He asked the court to award him sole legal and primary physical custody.

[1] In the interest of privacy, we refer to the minor child by the initials, M.S.

On February 17, 2022, Mother filed a Petition to Modify Custody and Child Support, alleging "a material change in circumstances such that the legal custody agreement the parties made in 2017 is no longer in the child's best interests." She alleged that Father refused to permit her to register M.S. for school at Hanover Hills Elementary School and was "attempting to force [Mother] to enroll [M.S.]" at a school "over thirty (30) miles away." Father "incessantly" involved M.S. in the parties' custody dispute and consistently attempted to bully Mother into making decisions that were not in M.S.'s best interest. She alleged that Father's regular video recording of M.S. was "having severe impacts on [his] health and welfare, resulting in [M.S.] suffering from anxiety and gastrointestinal issues." With respect to child support, Mother alleged that there had been a material change of circumstances affecting M.S., which required the court-ordered child support to be modified. Specifically, the income of the parties had changed and support expenses impacting M.S. had increased. She asked the court to award her sole legal and primary physical custody.

On February 23, 2022, Father filed a Motion for Appointment of a Best Interest Attorney. On April 12, 2022, the court issued an order appointing counsel for M.S.

II.

The Merits Hearing

A.

Merits Hearing: Day One

On November 9, 2022, the court began the merits hearing on the parties' motions. Father's brother, Charles Sandor ("Charles"), testified that he spent time with M.S. while the child was in Father's custody. He described his brother's relationship with M.S. as "inseparable." He stated: "They are carbon copy of each other." M.S. was enthusiastic, loving, and "absolutely full of joy"; he was never fearful. Charles had observed Father record videos of M.S., and M.S. did not appear to be uncomfortable. Father never instructed M.S. on what to say in the recordings, and Charles believed it was "perfectly fine" for Father to record his own son.

Charles had concerns with respect to M.S.'s care when he was with Mother. She had told M.S. that he was not allowed to see Father, who was "terrible," and that Father's family "gang[s] up on her" and does not welcome her into the family. He testified that Mother "spread lies" about Father, who did "not have arguments" with Mother in front of M.S. He also characterized the communications between Father and Mother as "poor" and noted that Mother often directed Father to contact her attorney.

Father's mother, Beatrix Sandor, testified that she spent "every other weekend" with her son while M.S. was in his custody. M.S. was a "very loving boy," and "very smart." He was not scared of his father or other members of the family. Ms. Sandor believed,

however, that M.S. feared Mother because M.S. got anxious when it was time for him to leave Father's home. It was impossible for Father to co-parent with Mother, and she was incapable as a mother. Father had never raised his voice or said anything negative towards Mother.

On cross-examination, Ms. Sandor stated that Mother's behavior reminded her of a "whore," but she never said anything to M.S. about Mother. Father had to record M.S. because he "cannot prove his innocence without [the recordings]." After testifying that Mother had sent "malicious e-mails" to M.S.'s school that contained lies, Ms. Sandor told Mother: "Shame on you." The court ordered her not to direct any response to the parties.

Father testified that he and Mother renewed their romantic relationship after they entered into the initial consent order. His desire to maximize time with M.S. was a factor in "rekindl[ing]" his relationship with Mother, and he spent a "lot more time" with Mother and M.S. Their relationship ended in September 2021 because Mother suspected that he was being unfaithful, no longer loved her, and did not want to marry her. Father offered to marry Mother in exchange for her agreeing to sign a prenuptial agreement, which she refused to do. Around this time, M.S. began to question whether Father's family "love[d] him or not," based on suggestions from Mother.

Father routinely discussed the pending custody case with M.S. He explained to M.S. he and Mother were "romantically involved" and questioned why Mother would not allow him to spend more time with M.S. He told M.S. that he and Mother "would probably have to go to court and it would be very hard on mommy . . . [and] himself."

Father testified that, since September 2021, Mother had been unwilling to provide additional time for him to spend with M.S. He was "[c]ompletely cut off." M.S. was not allowed to call him, and he could not call M.S. He never spoke negatively about Mother in front of M.S., but Mother spoke negatively regarding him in front of M.S.

Father initiated discussions with Mother with respect to M.S.'s future education. He informed Mother that M.S. wanted to "go to school with me where I live" in Carroll County.[2] Father was concerned about Mother's ability to provide for M.S.'s education, stating that Mother was not a "native English speaker," and as a result, M.S. had developed "certain accents and pronunciations" that Father "ha[d] to correct." Father testified extensively regarding the parties' inability to communicate on issues related to M.S., including medical appointments, potty training, diet, pre-school education and training, and COVID-19 vaccinations.

In late 2021, M.S. began having reflux issues. Acting on a recommendation from M.S.'s primary physician, Mother scheduled an evaluation for M.S. with MPB Group, Inc.,

[2] On August 10, 2022, Father sent the following e-mail, in relevant part, to Mother:

> **<u>[M.S.] will attend Sandymount Elementary School as he wishes to be with me despite your berating him with statements of him not being able to attend school where his father lives!</u> The evidence is clear in this matter[,] and I will not have [M.S.] enrolled into a place less superior than where I would like him to go and to continue to be with a parent who will not give access to our son to be with his father; not even a phone call or vacation with me! It would fundamentally destroy [M.S.] to not see me!**
> **[M.S.] has made it abundantly clear to all parties that he wants to live and go to school in Carroll county with his father!**

to determine whether he required therapy related to his reflux condition. On February 3, 2022, Father provided informed consent to M.S.'s evaluation and treatment with MPB Group, Inc. Father testified that the doctor who completed M.S.'s initial evaluation did not provide a diagnosis, but the report completed by MPB Group's assigned therapist indicated that M.S. was diagnosed with adjustment disorder with anxiety.

In May 2022, a therapist with MPB Group made a Child Protective Services ("CPS") report related to statements made by M.S. during his scheduled therapy session. M.S. had made comments about Father and Ms. Sandor instructing M.S. "to touch [Mother] in her private place." M.S. informed his therapist that Father and Ms. Sandor told him to "drink his mom's pussy," and M.S. told Ms. Sandor "that is bad." Ms. Sandor told M.S. that "he must do it right away when he gets home." CPS investigators determined that M.S. was safe in Mother's custody. Although M.S. told CPS investigators that Father and Ms. Sandor were instructing him to "touch [Mother] sexually," and CPS noted that Father's behavior was disturbing, it ruled out sexual abuse. Following MPB Group's report to CPS, Father revoked his consent for M.S. to continue one-on-one therapy sessions.[3]

B.

Merits Hearing: Day Two

On November 10, 2022, the hearing continued. The parties agreed to go out of turn and allow the BIA to examine her witness, Mollye Kellman, to accommodate Ms.

[3] Father did not revoke his consent for M.S. to continue therapy with Mother.

Kellman's schedule. Ms. Kellman, an expert in mental health therapy, testified regarding M.S.'s "individual treatment, diagnostic impressions, and clinical assessments."[4]

On June 15, 2022, Ms. Kellman began therapy services for M.S. She diagnosed him with adjustment disorder with anxiety. She created an individualized treatment plan for M.S. and met with him approximately once per week for one hour. As part of her evaluation, Ms. Kellman identified several stressors that were impacting M.S.'s anxiety. The custody case was one stressor. M.S.'s parents and his paternal grandmother were "outside factors" that influenced his stressors, specifically, being "recorded by both parents for his behavior" and "his feelings about . . . where he wanted to live." Ms. Kellman advised Mother and Father that "the multitude of videos could affect [M.S.'s] anxious behavior," and she had observed M.S. "feeling anxious or looking anxious" in Father's recordings. She warned Father about the effect the recording was having on M.S.'s anxiety. Following that feedback, Father continued to record M.S.

Ms. Kellman testified regarding other factors impacting M.S. Father and his mother "wanted [M.S.] to tell the truth," however, M.S. expressed that he "doesn't want to say bad things." Ms. Kellman interpreted Father's statement that M.S. should see Mother naked "as the bad things." M.S. was "scared of his father," and he did not want Father "to go to [his] school." She recalled one conversation in which M.S. expressed that he did not want

[4] Father hired Ms. Kellman following his decision to terminate services with M.S.'s previous therapist, MPB Group, Inc.

to visit his father stating: "Four days, three nights with daddy. I don't want to." M.S. stated that he did not want Father and his grandma to tell him "bad things."

After a disruption to M.S.'s therapy session in October 2022, when Father came to the office, Ms. Kellman e-mailed Father and Mother and stated that, because Mother had custody of M.S. on Wednesdays, only she would be allowed at Ms. Kellman's office for M.S.'s one-on-one therapy sessions. Several e-mail exchanges took place, with Father stating, among other things, that Ms. Kellman's "professional opinion is not in the best interest of [M.S.'s] wishes." He stated: "Shame on you for making such a recommendation Mollye. You are only facilitating with this recommendation severing my time with [M.S.] and regarding [Mother's] deplorable behavior!" Ms. Kellman explained to Father and Mother that her role was to "work with [M.S.] on his anxiety, . . . not family therapy for this case." She noted that continuing to have "both parents in the waiting room has created a distraction for [M.S.]," and it increased his anxiety. Father ignored Ms. Kellman's instruction, stating: "I will stop by to see [M.S.] and wait for him in a neutral place."[5]

Ms. Kellman stated that "certain pieces" of Father's e-mail correspondence undermined the professional work that she had done with M.S. She was "distraught . . . [and] felt uncomfortable." After Ms. Kellman informed Father and Mother that only one

[5] Father's e-mail also stated:

> I am the one also paying for the therapy sessions!! So, [Mother] can wait in the car after dropping [M.S.] off for therapy and I will be there waiting for him because even the 5 minutes we get to see each other means the world to me and [M.S.]!

parent should bring M.S. to the therapy sessions, Ms. Kellman observed Father in the parking lot of her facility. Although Father did not leave his car, Ms. Kellman felt "uncomfortable and intimidated." On October 24, 2022, she terminated services for M.S., stating that, based on various factors, M.S.'s "needs are not able to be met in this current environment."

Buithi Hong, M.S.'s maternal grandmother, testified that she lived with Mother and M.S. Mother was "a fit and proper person" to have custody of M.S., and her job was "flexible enough that she could take time off . . . to spend time with [M.S.]." Father would come to Mother's home on Tuesdays and Thursdays to pick up M.S. Ms. Hong would facilitate the "hand off" because Mother wanted to "avoid any contact" with Father and did not "want to argue in front of [M.S.]." M.S.'s anxiety increased when Father arrived at their home to retrieve M.S, and on several occasions, M.S would vomit "prior to [Father] coming to pick him up."

Father then resumed his testimony on cross-examination. He discussed his finances, including that, in 2021, Frontline Physicians' K-1 indicated the company made $434,797.[6] Father took distributions from the company totaling $359,288, but he could choose to take "whatever distribution" he wanted. Father's work schedule was flexible, and he could keep his own hours.

[6] A Schedule K-1 (Form 1120-S) is used by corporations to report income and expenses, and includes information related to distributions. *See* 33 Am. Jur. 2d *Federal Taxation* ¶ 5810 (2024).

At the close of Father's case, the BIA asked the court for a temporary modification of custody in light of the testimony that had been presented that day. As explained in more detail, *infra*, the court issued an emergency temporary order granting Mother sole physical and legal custody, with Father having supervised access for two hours per week.

The hearing was set to continue on December 23, 2022. On December 2, 2022, Father filed a motion to postpone the continued merits hearing, requesting extra time to procure additional evidence to ensure the court "has all of the evidence necessary to render a long-term decision about [M.S.'s] care and custody." Father noted that all parties, including the BIA, were available to continue the hearing on May 22 and 23, 2023. On December 8, 2022, the court granted Father's motion to postpone.

C.

Merits Hearing: Day Three

On May 22, 2023, the hearing continued. Mother testified that, after the parties entered into the consent agreement, she and M.S. spent "a lot of time" at Father's home, until their relationship ended in 2021.

M.S. was currently seeing a therapist at the school. Mother believed that M.S. required therapy because he was suffering mentally and physically, stating: "Whatever happened between this broken co-parenting has caused our son [to] have a lot of anxiety and GI problem[s]." Mother testified that Ms. Kellman terminated her services because Father came to every appointment to intimidate her "and make trouble" at the office. She stated that Father insisted on discussing issues in front of other people in Ms. Kellman's

office, and when Mother would step outside, he would follow her. Mother testified that Father and Ms. Sandor threatened to hurt her and M.S. He previously told Ms. Hong: "[I]f you and your daughter make it difficult for me to access our son, we will all die on the street."

Prior to therapy sessions with Ms. Kellman, M.S. attended therapy with MPB Group. Father only consented to therapy after a lawyer got involved. M.S. stopped therapy at MPB Group after Father terminated services due to MPB Group contacting CPS. Father made Mother agree to another therapist of his choice, and he selected Ms. Kellman.

Mother testified with respect to M.S.'s previous pediatrician, Dr. Padder, who treated M.S. for the first five years of his life. Mother and Father would attend appointments together; the appointments were never peaceful. Father would talk over Mother, stating that, because he is a doctor, he knows what is best for M.S. He blamed any issues with respect to M.S.'s well-being on Mother and told Dr. Padder that Mother did not know "how to deal with M.S." Father ignored Dr. Padder's recommendations and demanded she refer M.S. to specialists who he believed were more appropriate. Mother testified that Dr. Padder grew tired of Father's insistence that M.S. be referred to specialists of his choosing, and "she dismissed [M.S.]" from her care.

M.S. went to school at Hanover Hills Elementary School. Father did not want M.S. to attend that school because he believed M.S. "should go to the school where he live[d]," and he had filed an emergency petition to keep Mother from enrolling M.S. in school. Mother believed it was in M.S.'s best interest to continue school at Hanover Hills

Elementary. Prior to the circuit court's November 2022 order, Father would show up to the school "[a]t least three times a week." His presence made Mother and M.S. nervous.

Mother had concerns related to M.S. spending time with Father, stating that M.S. was nervous because he had to please his father and grandmother. M.S. loved his Father, but he also was scared of his dad, just like she was. Mother also had concerns because Ms. Sandor had taught M.S. to "go home and touch [Mother's] private part[s]." Mother testified that it was in M.S.'s best interest that she maintain primary physical custody because she had a lot of concerns related to M.S.'s safety. She stated that Father should only have supervised access to M.S.[7]

In the Summer of 2022, Father sent M.S. home with a recording device hidden in a toy. M.S. told Mother that Father had placed a recording device in a toy. She did not report it to the police, stating: "I didn't want to do that because I know it's going to harm my baby father, and I didn't want to do that."

As explained in more detail, *infra,* Mother testified with respect to her employment and earnings. With respect to money she received from friends and family in 2022, Mother stated that, without them, she would not have been able to survive the court battle and support herself and M.S. Mother had received approximately $18,850 in assistance, which

[7] Mother testified that M.S. had improved "physically and mentally" since the temporary custody order and supervised visitation were put in place. M.S. was happier, less nervous, and calmer. She stated that M.S.'s health had improved, and he had gained weight. The custody order allowed her to establish a routine for M.S. that allowed him to go to bed early and to wake up early in the morning.

she intended to pay back. Based on her current salary, she was seeking more than $5,000 per month in child support to cover her costs.

On cross-examination, Mother testified that Father threatened her "many times." She did not notify the police because she and Father were "back and forth in the relationship," and he was the "father of [her] son." She had not obtained a protective order against Father.

Mother testified extensively to the parties' inability to communicate, which she attributed to Father. For example, when Mother attempted to discuss enrolling M.S. in school, Father told her that he would do "everything in [his] power" to prevent Mother from registering M.S., and she should prepare for court. Ms. Sandor asked Mother: "Do you have enough money to keep up with us?"

Mother testified that Father manipulated her into providing him extra time with M.S. On his scheduled days of visitation, Mother would drive M.S. to Father's home so they could spend time together. Father would intentionally keep M.S. late and not "give [M.S.] back until very late at nighttime." M.S. would fall asleep, and occasionally Mother and M.S] would be forced to stay overnight. Father sent Mother numerous e-mails asking for extra time, and if she did not give it to Father, he and Ms. Sanders would be upset with her. "They team up on me many, many times." Father's scheduled visitation was set to end at 7:00 p.m., but he would purposely fix M.S. dinner late so that Mother and M.S. could not leave his home until 10:00 p.m.

The court permitted Father to reopen his case to update the court on events alleged to have taken place since the November 2022 hearing and admit visitation records from the Carroll County Visitation Center. The court also permitted Father to call an expert witness to testify regarding child custody and parental alienation. Counsel for Father requested that Father's expert testify out of order, prior to completing Mother's cross examination. The court granted counsel's request.

Ken Lewis, an expert on child custody and parental alienation, testified that he reviewed approximately 2,150 pages of documents provided to him by Father for indicators suggesting parental alienation. He described parental alienation as a medical syndrome and a strategy of behavior involving "poisoning the mind of a minor." Dr. Lewis identified alienating behaviors from Mother here, including denying Father access to M.S., blocking M.S. from using the phone, and telling M.S. that Father and his family did not love M.S.

On cross-examination, Dr. Lewis stated that his assessment was based on papers he was given, including motions filed by Father. He agreed that incessantly involving a minor child in a custody dispute would be considered alienating behavior. Dr. Lewis said that some of the behaviors alleged to be taken by Mother, if true, would be alienating behaviors, but he did not know whether they rose to the level of alienating M.S. If Father was harming the child, there could not be parental alienation.

Mother's testimony on cross-examination then continued. She denied telling M.S. that Father or his family did not love him. She had multiple conversations with Father about enrolling M.S. in a pre-kindergarten program. She told Father that, because she had

"primary physical custody . . . [M.S.] will go to school here." Father did not consent to Mother enrolling M.S. in the pre-kindergarten program of her choice.[8]

Mother stated that Father confronted her several times concerning bruising he observed on M.S. when he began walking and running. Father took M.S. to the hospital, alleging Mother and Ms. Hong were abusing M.S.

D.

Merits Hearing Day Four

On May 23, 2023, the court held its final day of hearings. Mother testified that, in August 2019, she recorded a video of M.S. for Ms. Kellman. She stated that it was the only video recording she had taken, and it was for the purposes of documenting M.S.'s statements because she believed that M.S. was suffering, and she "wanted the therapist [to] understand how" Father scared M.S. Father was not a proper and fit parent, and based on his previous conduct, Mother wanted "[M.S.] to continue to have supervised access with" Father.

M.S was receiving one-on-one therapy services through his school every other week. Mother and M.S. participated in family-style therapy with the school therapist on weeks M.S. did not have one-on-one therapy. M.S. also was involved in several afterschool activities, including a Lego Club and Young Artist's Club, and at the time of the hearing,

[8] On August 12, 2022, the Circuit Court for Carroll County ordered Mother to "immediately enroll [M.S.] at Hanover Hills Elementary School." Mother's home was located approximately two minutes away by car or a seven-minute walk.

M.S. was scheduled for two summer camps. Mother testified that each of the summer camps cost between $300 and $350.

Cori O'Donnell Bock-Miller, a supervisor at the Carroll County Visitation Center, testified that, on occasion, Father broke the visitation center's rules. Although Father was polite to Ms. Bock-Miller, she stated that, on an "almost weekly basis," her staff reported "feeling intimidated" when interacting with Father. Specifically, Father's visits would frequently run over, and he would not respond to redirection by staff.

Father testified that supervised visitation taught him not to video-record M.S. He stated: 'I won't do it again." Father believed supervised access was never warranted, and he stated that he had "never" harmed M.S. Father testified that, despite the court-ordered visitation, he believed he was a fit parent. Mother was not a fit parent because she was trying to sever the relationship between him and M.S. His position was that M.S. should have equal time with each parent.

In closing argument, Father requested primary physical and sole legal custody, or in the alternative, tiebreaking authority. Mother requested that she retain primary physical custody and Father's access to M.S. remain supervised.

The BIA stated that M.S. did not want her to say anything regarding his position, and she was bound by that directive. She did state that "[t]his is the worst case of mental injury that I have seen that there is documentation of and a parent who continues to engage in behaviors that are not in the best interest of a child, even when he is in a visitation setting." She also stated that she was happy to hear Father say that he would no longer

record M.S., but she was hesitant to believe that because Father requested recordings of M.S. at the visitation center to present in court. She stated that M.S. needed both parents, but "in a safe, healthy, environment."

III.

Circuit Court Opinion

On July 14, 2023, the circuit court issued an oral opinion granting Mother "sole legal custody and primary physical custody," with Father to have "strictly supervised access" to M.S. The court further addressed child support and allocation of attorneys' fees.

With respect to custody, the court issued a lengthy and detailed ruling on the record. The court found that there had "been a material change in circumstance[s] since the prior order" and noted that it had considered each of the factors enumerated in *Taylor v. Taylor*, 306 Md. 290 (1986)[9] and *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1978).[10] In total, the court considered thirty-one factors in crafting its decision.

[9] In *Taylor v. Taylor*, 306 Md. 290 (1986), the Supreme Court set forth the following factors: (1) willingness of parents to share custody; (2) fitness of parents; (3) relationship established between the child and each parent; (4) preference of the child; (5) potential disruption of child's social and school life; (6) geographic proximity of parental homes; (7); demands of parental employment; (8) age and number of children; (9) sincerity of parents' request; (10) financial status of the parents; (11) impact on state or federal assistance; and (12) benefit to parents. *Id.* at 307–11.

[10] In *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1978), this Court established the following factors: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference of the child; (6) material opportunities affecting the future life of the child; (7) age, health and sex of the child; (8) residences of parents and opportunity for visitation; (8) length of separation from the natural parents; and (10) prior voluntary abandonment or surrender. *Id* at 420.

Regarding the first factor, fitness of the parents, the court found that Father was "not a fit and proper parent," and Mother was a fit and proper parent. The court stated:

> [A]s I will fully set forth shortly, there is a great deal of behavior that has been presented . . . that persuades this [c]ourt that [Father] is not a fit and proper parent as of now. I will outline in greater detail why I reached this conclusion as we go through the factors.

With respect to the character and reputation of the parties, the court found that the testimony of Father and his family that he was not difficult or combative was not "remotely credible." It found Father's character and reputation to be "confrontational, controlling, intimidating and aggressive in [ ] approach." The court noted testimony from Ms. Kellman that Father's "demeanor and conduct during their interactions made her feel very uncomfortable and intimidated." She had concerns for M.S.'s safety at Father's house, and she warned Father that recording M.S. made M.S.'s anxiety worse, yet he continued to record M.S. M.S. told her that Father tried to get him to say bad things about Mother and wanted M.S. to see Mother naked. The court discussed what happened after Ms. Kellman told Father that only one parent, Mother, should come to therapy, as follows:

> He doesn't just abide by the request, but tells her his son adores him and wants him to stand there and wait for him, that her professional opinion is not in his son's best interest, that he is being discriminated against, reminds her he is the one paying for the therapy sessions, and in the same terms used by [Father's] mother at trial toward [Mother] tells Ms. Kellman, shame on you for making such a recommendation.
>
> It was noteworthy to me that the "shame on you" was the same way [Father's] mother talked to [Mother] during her testimony in court and the same terminology [Father] used in chastising [Mother] in Defense Exhibit 20's email and in the Defense Exhibit 26 email. All of this to this [c]ourt lends credibility to [Mother's] testimony as to how she is treated by [Father] and his family and how she is talked to about [M.S.].

The court stated: "When independent providers do not submit to [Father's] wishes or offer opinions to his liking, he attacks their professional judgment and abilities" and becomes aggressive and intimidating.

The court also noted Father's insistence that M.S. be placed in first grade, even after the school said he was not ready to be advanced. The court found that Father continued his pattern of intimidating behavior at the visitation center. The court noted that Father sent a toy that had a recording device with M.S. to Mother's house, which M.S. showed her but said he could not say anything because it was recording. The court found this to show that Father engaged in dishonest behavior and was willing to involve his son "to execute his plan."

The court found Mother to be "cooperative and kind." It noted that when Mother was upset on the stand discussing difficult topics, Father was at times "smirking during that."

Examining the third factor, the request of each parent and the sincerity of the parent, the court found Father's desire to be with M.S. sincere, but it found that Father coached and attempted to manipulate M.S. to do what Father wanted. The court found Mother sincere in her request for custody of M.S. Mother's concern for M.S. "when he is with [Father] and the paternal grandmother" were concerns "shared by other providers."

Regarding the fourth factor, any agreement between the parties, the court noted the June 28, 2017 consent agreement, "where there was joint legal custody and [Mother] had primary physical custody." With regard to the fifth factor, willingness of the parties to

share custody, the court stated that Mother is "fearful of [Father] and finds [his] behavior when they have attempted to share custody to be untenable." Although neither party expressed a desire for shared legal custody, Father requested tiebreaking authority if not given sole legal custody. The court stated that, given the parties' inability to communicate, granting Father tie-breaking authority "would be the same as just granting sole legal" custody.

In evaluating factor six, each parent's ability to maintain the child's relationship with the other parent, siblings, relatives and any other person who may psychologically affect the best interest of the child, the court found that neither party "is particularly more suited than the other on this as neither has a relationship with the other family members that are healthy." Ms. Sandor was a "source of contention and concern" for Mother and the therapists who had treated M.S. Moreover, "[M.S.] shared with Ms. Kellman that he [was] scared to be at [Father's] because they make him say and do bad things." Father's family had not attempted to see M.S. while the temporary custody order was in place. The court found that Mother was better at fostering relationships "with others beyond family who may psychologically affect [M.S.'s] best interest . . . whether that is medical providers, therapists, or teachers."

Turning to factor seven, the age and number of children that each parent has in the household, the court stated that M.S. was the only child present in the household. With respect to factor eight, the preference of the child, the court noted that, although M.S. was six years old, there was "overwhelming evidence of manipulation of [M.S.] to get him to

express certain preferences," and any input by M.S. "would be unreliable and unhelpful" and would only cause more harm.

Addressing factor nine, the parties' ability to communicate, the court stated: "I find there is absolutely no capacity for the parents to communicate" and share decisions affecting M.S.'s welfare. Although Father stated that "he would let [Mother] see [M.S.] whenever she wanted and would always allow her to have extra time with him," the court did not find Father's testimony credible with respect to a joint-physical custody arrangement based on his testimony and behavior. It did find that "[b]oth parents have homes that are suitable for M.S."

Regarding factor ten, the geographic proximity of the parents' residences and opportunities for time with each parent, the court noted that Mother lives in Hanover, Maryland, and Father lives in Carroll County, approximately 30 miles away. With respect to factor 11, the ability of each parent to maintain a stable and appropriate home for the child, the court stated: "Both parents have homes that are suitable for [M.S.]."

The court briefly noted factor 12, the financial status of the parents, stating: "I will discuss in more detail the financial aspects later as to [M.S.'s] support for child support which I considered under this factor." As more thoroughly discussed, *infra*, the court extensively reviewed the financial status of both parents. For the purpose of setting child support, the court found Father's income to be $434,797, and Mother's income to be $46,800. It noted that the "matter [was] an above-guidelines case for the purposes of child support given the combined income of $40,133 monthly between the parties." Although

Father was "more financially well off," Mother had been able to provide sufficient financial resources for M.S.

The court next addressed factor 13, the demands of parental employment and the opportunities for time with the child. The court noted that both parties had work schedules. Regarding factor 14, the age, health, and sex of the child, the court noted M.S.'s age and that he had been diagnosed by two different therapists with adjustment disorder with anxiety.

With respect to factor 15, the relationship established between the child and each parent, the court had "no difficulty believing that [M.S.] loves both parents very much." The court, however, noted that the relationship between Father and M.S. was "unhealthy for several reasons," stating:

> First, this very young child is being treated by [Father] in this [c]ourt's opinion like he is 17 years old. . . . [Father] describes his young child being, quote, very capable of picking what he wants to do. He has repeatedly noted that [M.S.] should say where he lives and where he goes to school, and that should be honored as though this very young child is in any position to know what is best at this point.

The court further noted Father's intent on making [M.S.] "age faster than he is socially able," and that "[Father] seems more intent on making [M.S.] demonstrate his brilliance than permitting normal social and intellectual development." The court stated that Father's "over-exaggerated view of his relationship with [M.S.] . . . places enormous pressure on [M.S.] to please [Father's] wishes and demands beyond that of a normal parent-son relationship. It is unhealthy." The court cited several examples of Father's "controlling and obsessive behavior as to [M.S.]."

Addressing factor 16, the length of separation of the parents, the court noted the parties' on-again, off-again relationship. The court found factor 17, whether there was a prior voluntary abandonment or surrender of custody of the child, not to be at issue. With respect to factor 18, the potential disruption of the child's social and school life, the court noted that Father is "consistently urging the school to move [M.S.] to the first grade," even though the school had evaluated M.S. and determined he was "not ready for advancement." The court did not have any notable evidence regarding the nineteenth factor, any impact on state or federal assistance, or factor 20, the benefit a parent may receive from an award of joint physical custody and how that would enable the parent to bestow more benefit upon the child.

The court considered factors 21 and 22 together, each addressing the ability of the parents to meet a child's needs. The court found that Father did not "have the ability to meet [M.S.'s] developmental needs beyond limited educational aspects." Mother had "done well on these issues under sometimes difficult circumstances." M.S. was "doing well in school," and he had improved "since being in [Mother's] exclusive care."

Regarding factor 23, the ability of each party to consider and act on the needs of the child, as opposed to the needs or desire of the party, and protect the child from the adverse effects of any conflict between the parties, the court found Father incapable of placing M.S.'s "needs above his own desires or an ability to protect [M.S.] from adverse effects of conflict among the parties." The court noted that Father "is a huge source of conflict," and "the constant recording and attempts to get [M.S.] to say things he desires ends up putting

th[e] child directly in the conflict." The court stated that Mother, at times, has "let the conflict overcome her prioritization of [M.S.'s] needs," but it found that Mother "overwhelmingly . . . tr[ies] to keep him from conflict and prioritizes [M.S.'s] needs."

With respect to factor 24, the history and efforts by one or the other parent to alienate or interfere with the child's relationship with the other parent, the court noted Dr. Lewis's testimony and accepted his opinion that "extreme alienation should be considered emotional child abuse." The court noted Mother's tendency to "unnecessarily . . . pre-warn providers and the school" regarding Father. It stated that Charles and Ms. Sandor "seem perfectly content . . . in supporting [Father] in his alienating actions, including recordings and discussing legal matters with [M.S.]." The court did not find Dr. Lewis's opinion on parental alienation in the matter persuasive because "the information he reviewed was cherry-picked and [consisted of] self-serving statements made by [Father]." The court stated that Father's "selective submission to the expert demonstrates . . . an attempt to conceal and diminish his own behavior." The court found Father and his family's behavior to be alienating, "extensive and repeated."

Addressing factor 25, evidence of a child's exposure to domestic violence, the court found "no evidence of physical abuse as to [Mother]," but it did find evidence of mental abuse of M.S by Father. Regarding factor 26, the parental responsibilities and particular parenting tasks customarily performed by each party, the court noted that both families assist in the care of M.S. in the absence of the parents. Turning to factor 27, the ability of each party to co-parent the child without disruption to the child's social and school life, the

court found that "there is absolutely . . . no ability to co-parent without major disruption to [M.S.'s] life."

Addressing factor 28, the extent to which either party has initiated or engaged in frivolous or vexatious litigation, the court did not find the factor relevant to its custody decision. It noted, however, that it did have concerns with this factor related to attorneys' fees. Factor 29, involving siblings, was not at issue.

The court then turned to factor 30, abuse. The court noted "overwhelming evidence, far beyond more likely than not," that Father had abused M.S. In November 2021, M.S. made "multiple attempts to grab [Mother's] breasts and buttocks" after Ms. Sandor instructed the child that it is "okay to touch [Mother's] breasts because he loves her." On May 7, 2022, MPB Group's therapist made a referral to CPS after M.S. told his therapist that Father and Ms. Sandor "told him to drink his mom's pussy." The therapist also reported M.S. "was being told to touch his mother's private area." M.S. later told investigators that Father and Ms. Sandor "tell him to touch [Mother's] privacy, which he identified as the crotch area, and force him to do things, but he knows they are bad, and that they make him say the opposite of what is true."

The court noted that M.S.'s anxiety "becomes significant and serious as a result of [Father's] conduct." Father engaged in conduct that caused mental injury and significant anxiety, and it aggravated underlying medical issues that M.S. experienced related to vomiting. Specifically, Father continued to film M.S because "he thinks he needs to protect himself," despite instructions from social workers and Ms. Kellman regarding the effect it

was having on M.S. The court agreed with the DSS assessment that Father's attempts to get M.S. "to engage in sexual behavior with [Mother]" were "not for sexual gratification," but Father "was trying to create a situation where he could report [Mother] to DSS for inappropriate sexual conduct with [M.S.]."

With respect to future abuse, the court noted that Father, who had abused M.S., had the burden to show no likelihood of future abuse, but he did not meet that burden. The court found that, even after the court ordered supervised visitation, with observers watching, Father still engaged in alienating behaviors that harmed M.S. and created anxiety. The court stated: "I truly had hoped when I ordered supervised visitation last November that [Father] would be able to go, focus on spending time with [M.S.] and desist from the behaviors toward [M.S.] that had led this matter to this point." The visitation records, however, showed continued concerns.

For example, during his first visitation, Father asked M.S. if Mother "had told him why he can't see him." M.S. told his father no, and Father "asked if he wanted to know why, and [M.S.] again indicated he didn't want to know." Father continued to make comments regarding M.S.'s anxiety and inquired if "it [was] because he can't see him." In another incident, Father told M.S. that "a video was sent to him of [M.S.] saying that [Father] and Grandma were beating him up and how that really hurt him and how he was crying." Father told M.S. "that he shouldn't lie or say things that aren't true." M.S. denied making these statements. The court characterized the evidence as showing "an unhealthy relationship" between M.S. and Father. The court noted that, even in the closing argument

that Father gave, he was unwilling to recognize the harm he was causing to M.S. Not only did Father not meet his burden to show that abuse was unlikely to occur again, but the court was "sure that the abuse would continue to occur, especially if it was unobserved or unsupervised."

The court found that it was in the best interest of M.S. to award sole legal custody to Mother. With respect to Father's access to M.S., the court found it in the best interest of M.S. that Father be granted strictly supervised access.[11]

This appeal followed.

DISCUSSION

I.

Custody

Father contends that the circuit court erred by issuing the temporary emergency order for supervised access in the middle of the merits hearing without giving him an opportunity to cross-examine Mother. He argues that the court did not have the legal authority to order supervised access because Mother, who had asked for supervised access in her motion to modify, had not yet testified or met her burden of proving a material change in circumstances. Father asserts that he was prejudiced because the court's temporary ruling "for all intent and purposes both end[ed] the trial and create[d] a new

[11] The record extract provided by the parties contains documents relating to Father's supervised visitations after the court's order. Although these records do not involve the propriety of the court's ruling here, we note that they indicate Father's questioning of M.S., which made the visitation center's staff uncomfortable, and that Father ended all visitation with M.S. on August 18, 2023.

prejudicial dynamic between the parents. Once the court issued the order for supervised access, the trial was over." He requests a new trial before a different trial judge.

Mother contends that the court properly exercised its discretion in entering an emergency temporary order. She asserts that the order "was necessary to protect M.S.'s welfare and did not violate Father's right to due process." She also argues that the temporary order "did not predetermine the outcome of the trial."

A.

Proceedings Below

On November 10, 2022, prior to the final ruling on July 17, 2023, the circuit court granted an Emergency Temporary Order, providing that Father would have supervised access. The order, which was issued at the end of the second day of the hearing, following Father's presentation of his case-in-chief, was issued in response to the BIA's oral motion to the court for a temporary custody order that day. Counsel stated that she had concerns, asserting that it was "almost beyond reasonable doubt . . . that this child is being abused and has suffered mental injury at the very least." She noted Ms. Kellman's testimony that, in her professional opinion, M.S. was not safe in Father's care. The BIA further noted that the medical records in evidence showed that M.S.'s psychological well-being was "manifesting itself in terms of gastrointestinal issues. This is a six year old little boy."

The BIA noted that CPS records in evidence indicated that Father and his mother told M.S. "to touch [Mother's] privacy." M.S. knew that the things Father (and his mother)

told M.S. to do were "bad," and he understood that Mother's "privacy is . . . the crotch area." The BIA continued:

> On top of that, we have multiple professionals who have requested that Father not record [M.S.] and that it is a stressor for him. [M.S.] has already received at six years old a diagnosis of adjustment disorder with anxiety.
>
> The recording is exacerbating it. This custody litigation is exacerbating it.
>
> The only thing that I can request, Your Honor, at this point, is that there be supervising access for Father. I don't know what else I can request. It has been requested of him that he stop doing these things. And it has continued even though he has been involved in custody litigation.

The BIA stated: "This is the worst case of documented mental injury I have ever seen, Your Honor. And it has not been shown that there is no likelihood that it will not continue moving forward."

Father's attorney noted that, pursuant to Md. Code Ann., Family Law ("FL") § 9-101 (2019 Repl. Vol.), when there is a finding of abuse, custody is appropriate only if there is "a showing that there is no likelihood of future harm." Counsel argued, however, that there had not been any finding of abuse. Father had been "evaluated at least five times . . . as to whether or not he is abusing [M.S.], . . . and they have not made a finding." Counsel further stated:

> [F]or this Court to substitute that and not take into account this serious evidence that dissuades any finding of abuse, particularly in the middle of litigation to make such a substantial change without hearing any testimony and cross of the other parent in this case who by all accounts, in every set of medical records that the Court hasn't had the opportunity to review, is engaged in the exact same kind of behavior, is engaged in mutual arguments, is engaged in disparaging [Father] in front of [M.S.], is engaged in showing emotions and discussing this case and [Mother's] allegations in front of

> [M.S.], because we haven't gotten there yet, but it is part of all of these medical records.
>
> To change the custody based on that, even temporarily, is improper and it does give rise to the absolute impression that this Court has made a pre-determination without hearing all the evidence and without the opportunity to review any of these records that are now being referenced, except the CPS records.

Counsel asserted that there was "absolutely no justification for [Father] to have supervised access," and "[t]here is no reason to believe that he poses a danger to [M.S.]."

Mother's attorney agreed with the BIA's assessment and argued that "[n]othing is going to stop the recording." Mother had recorded M.S. one time "because M.S. was so terrified[,] and [Mother] wanted the therapist to see." Counsel argued that an admonishment or order issued by the court would likely not stop Father from recording M.S., and the court need only have "reasonable grounds" under the relevant statute to find abuse.

In response to Father's attorney's comments regarding the CPS records, the BIA attorney stated: "CPS did specifically note, as recently as May 24th of this year, 'This case will be closed as a rule out, though the actions of [Father] are disturbing. There was no sexual gratification to note.'"

The court then addressed whether there were reasonable grounds to believe that M.S. had been abused or neglected. It stated that abuse can be mental injury, which

manifests as physical harm to the child. In the court's view, the BIA's motion fit within FL §§ 5-701 and 9-101.[12]

The court considered Ms. Kellman's testimony with respect to the "effect between the recordings and the physical effect it was having on [M.S.]," and the "mental injury that was happening." Father had made it clear that he did "not see a reason to stop" recording, and the court believed that Father would continue to record M.S. because he thought it would help "his cause." The court stated that the recording was harming M.S. and causing him injury. Based on the court's assessment of Father's demeanor, the court did not think that was going to change.

The court continued:

> [C]onsistent with [FL §] 9-101, the Court is going to order the following. The Court is going to award [Mother] in this matter temporary sole legal and physical custody of [M.S.].

[12] Md. Code Ann., Family Law ("FL") § 9-101 (2019 Repl. Vol.) provides, in relevant part, as follows:

> (a) *Determination by court.* – 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) *Specific finding required.* – 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, and emotional well-being of the child.

The term "abuse" means: "the physical or 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." FL § 5-701(b)(1)(i).

> I am going to give [Father] supervised visitation now twice per week, one hour each session.
>
> * * *
>
> I made this ruling mindful of what [Father's] counsel pointed out, which is predetermining the case. And I will just indicate that it is not.
>
> I understand there is going to be more that is going to be presented and the Court is willing as far as the ultimate permanent custody decision. This is not reflective of what that will be.

Father and Mother had indicated that legal custody was "completely unworkable," and M.S. was not receiving necessary care. The court stated: "[T]his is the resolution of the [c]ourt based on the reasonable grounds it has before us, pending ultimate permanent resolution. But that will be the emergency order I submit."

B.

Analysis

Prior to argument, we requested the parties to address whether Father's challenge to the temporary emergency order issued on November 10, 2022, was moot, given that the court subsequently issued a final custody order in July 2023. Mother argues that, because the temporary emergency order is no longer in existence, any challenge to this order is moot. Father argues that the challenge to the temporary order is not moot because that ruling tainted the final ruling.

"A case is deemed moot when 'there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.'"

State v. Crawford, 239 Md. App. 84, 112 (2018) (quoting *Powell v. Md. Dep't of Health*, 455 Md. 520, 539 (2017)). "Courts generally do not address moot controversies." *Id.*

This Court addressed a similar claim in *Wagner v. Wagner*, 109 Md. App. 1, *cert. denied*, 343 Md. 334 (1996). In that case, the court issued a temporary order giving Mr. Wagner custody of the child after a 1992 hearing during which Ms. Wagner was not present. *Id.* at 8, 13. It issued a final custody order in 1994. *Id.* at 20.

On appeal, Ms. Wagner argued that her due process rights were violated when the court entered the 1992 order in her absence. *Id.* at 22. This Court noted that, although "interlocutory orders in domestic cases may, in most instances be appealed after a final order, in some circumstances, the final order moots the issues that might have existed earlier in the proceedings." *Id.* We noted that the circuit court made a final ruling in 1994, and this Court "lack[ed] the power to reverse time in order to transfer the child's custody between 1992 and 1994 to Ms. Wagner, even were we to desire to do so," and therefore, "no remedy [was] now possible." *Id.* at 22–23.

Similarly, here, we cannot do anything to reverse time to address custody between November 2022 and July 2023. Accordingly, no remedy is possible, and the first issue raised by Father is moot.[13]

[13] Father contends that the temporary order tainted the final order and essentially ended the trial. We disagree. As shown in the facts set forth, *supra*, the court expressly stated that the temporary order did not predetermine the final order, the court heard two more days of testimony after the temporary order, and it made detailed findings of fact in its final ruling, based on evidence received before and after the November 2022 temporary order. Moreover, it is with ill grace that Father now argues the delay in the final ruling was

II.

Child Support Modification

Father contends that the circuit court erred by "incorrectly calculating the child support calculation and misapplying *Kaplan v. Kaplan*, [248 Md. App. 358 (2020)]." Although the court stated that, based on the child support guidelines, Father should pay child support in the amount of $4,695, it determined that an upward deviation of $305 was appropriate, "making [Father's] total child support obligation to be $5,000 a month." Father argues that the "record reflects little to no analysis as to why" the court ordered "an upward deviation of $305," and the court's decision "does not provide an analysis of the relevant factors; that is what the parties' financial circumstances are or the financial needs of the child, to name a few." He contends that, "without an analysis specifying what facts the court considered," the court's decision should be reversed, with a "mandate that all child support calculations that are above-Guidelines require an analysis specifying what facts the Court considered."

Mother contends that the circuit court "acted within its wide discretion when it fashioned an above-guidelines child support award based on the parties' disparate financial status and the needs of the child." She asserts that the "record reflects the court's thorough consideration of the parties' financial circumstances prior to setting its child support award."

prejudicial when the delay primarily was due to the court granting FATHER's motion to postpone the continuation of hearings after the court issued the temporary order.

A.

Proceedings Below

Father provided testimony with respect to his earnings between 2015 and 2021. In 2019, Frontline Physicians received $446,050 in earnings through its contract with Veterans Evaluation Services, Inc., and Father reported individual income totaling $344,877. In 2020, Frontline Physicians reported income totaling $434,525, and Father reported $387,595 in income. In 2021, Frontline Physicians' income reflected earnings in the amount of $434,797, and Father received distributions totaling $359,288.

On March 16, 2022, Father filed a short-form Financial Statement indicating his monthly income (before taxes) was $15,000.[14] On April 22, 2022, a month later, Father filed a long-form Financial Statement reporting his monthly income (before taxes) as $12,000. The court found that his evidence showed a "lack of credibility and candor to the Court." It also found that the evidence showed that Father began hiding money starting in 2022.

On October 18, 2022, Mother filed a long-form Financial Statement reporting her monthly income to be $4,336.72, including $2,500 in child support she was receiving from Father. Additionally, in 2022, Mother's family had provided approximately $18,500 in loans to assist her.

[14] Between January 3, 2022, and October 17, 2022, Frontline Physicians received $353,145 in deposits from Veterans Evaluation Services, Inc. Father did not dispute this figure during his testimony.

In assessing Father's income, and the court's assessment that Father lacked credibility, the court noted that, in 2022, Father's company received payments from January through mid-October totaling $353,145. Considering all the evidence presented, the court found Father's income to be $434,797.

With respect to Mother's income, the court noted her long-form Financial Statement filed in October 2022, which listed monthly wages of $2,209. For purposes of calculating child support, the court used the "statement of her income for purposes of her mortgage in 2021 of $46,800" as an accurate figure regarding Mother's income.

In making a child support determination, the court considered several other factors. The court noted Mother's concern that M.S. "may not be eligible for health care through the State if her income . . . is too high." Although no evidence was submitted with respect to costs associated with health insurance, the court did note that it "was a concern that was raised." The court stated: "Several factors were relevant in setting child support, including the parties' financial circumstances, the reasonable expenses of the child and parties' station in life, their age and physical condition, and expenses in educating the child."

Based on Father's annual income amounting to $434,797, and Mother's annual income amounting to $46,800, the court found that the combined monthly income of the parties was $40,133, making this case an above-guidelines case. The court stated that a guidelines approach would provide monthly child support in the amount of $4,695. The court then stated:

> Having considered the guidelines and the general principles underlying them, all of the financial income and assets of the parties, as well as importantly

> the medical, education and social needs of [M.S.], as well as the expenses I reasonably anticipate to provide for him, considering all of the evidence before me[,] I will order [Father] to pay child support to [Mother] in the amount of $5,000.

B.

Analysis

The determination of child support is made pursuant to FL § 12-204. *Accord Kaplan*, 248 Md. App. at 386 ("The calculation of a child support award is governed by FL § 12-204."). "The statute includes a schedule for the calculation of child support, commonly referred to as the 'Guidelines,' when the parties' combined adjusted actual income ranges from $15,000 to $180,000."[15] *Kaplan*, 248 Md. App. at 386. "[I]n cases where the 'combined adjusted actual income exceeds the highest level specified in the schedule . . ., *the court may use its discretion in setting the amount of child support.*'" *Id.* (quoting FL § 12-204(d)). In these "above-Guidelines case[s], 'the court may employ any rational method that promotes the general objectives of the child support Guidelines and considers the particular facts of the case before it.'" *Id.* at 387 (quoting *Malin v. Mininberg*, 153 Md. App. 358, 410 (2003)).

A decision relating to a child support award is made by balancing "the best interests and needs of the child with the parents' financial ability to meet those needs." *Voishan v.*

[15] "Combined adjusted actual income" is defined as "the combined monthly adjusted actual incomes of both parents." FL § 12-201(f). When the motion to file custody was filed in February 2022, the highest level specified in the guidelines was $180,000. *See* FL § 12-204(e) (amended by 2020 Md. Laws 1959–86, as amended by Acts 2021, Ch. 305, § 1). Although the General Assembly subsequently expanded the guidelines to $360,000, effective July 1, 2022, the changes applied only to cases filed after the effective date of the Act. *See* FL § 12-204(e) (2023 Supp.); 2020 Md. Laws 1986.

Palma, 327 Md. 318, 329 (1992) (quoting *Unkle v. Unkle*, 305 Md. 587, 597 (1986)). The court should consider factors such as "the financial circumstances of the parties, their station in life, their age and physical condition, and expenses in educating the child[]." *Id.* (quoting *Unkle*, 305 Md. at 597). *Accord Kaplan*, 248 Md. App. at 387. "[T]he guiding principle in family law cases that involve children is the children's 'indefeasible right' to have their best interests fully considered." *Id.* (quoting *Flynn v. May*, 157 Md. App. 389, 410 (2004)).

Father does not dispute that this is an above-guidelines case, in which the court has significant discretion in the award of child support. As we have explained, on appeal in such a case:

> "[W]e will not disturb a 'trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion.'" *Ruiz v. Kinoshita*, 239 Md. App. 395, 425, 197 A.3d 47 (2018) (quoting *Ware v. Ware*, 131 Md. App. 207, 240, 748 A.2d 1031 (2000)); *see also Frankel v. Frankel*, 165 Md. App. 553, 587–88, 866 A.2d 136 (2005); *Rock v. Rock*, 86 Md. App. 598, 607, 587 A.2d 1133 (1991). "As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we may have reached a different result." *Malin*, 153 Md. App. at 415, 837 A.2d 178 (quotations and citation omitted).

Kaplan, 248 Md. App. at 385.

Here, the court determined that Father's annual income was $434,797 and Mother's annual income was $46,800, resulting in a combined adjusted monthly income of $40,133. Father does not dispute these findings. Rather, his contention is that the court abused its discretion in awarding monthly child support of $5,000, as opposed to an amount of

$4,695 following the guidelines, without explaining why the upward deviation of $305 a month was warranted.

He cites no case, however, in support of his argument that such a detailed analysis was required. Rather, as indicated, our review is limited to determining whether the circuit court's decision was clearly erroneous or arbitrary. *See Kaplan,* 248 Md. App. at 385. Given the broad discretion the statute affords a court in setting the amount of child support in above-guidelines matters, and the discussion by the court setting forth its reasoning, we cannot say that the court abused its discretion in ordering Father to pay child support in the amount of $5,000 a month.

III.

Legal Fees

Father next contends that the circuit court erred in ordering him to pay all of the BIA's legal fees in the amount of $22,579.66, and $19,650 of Mother's attorney's fees. He argues that the court "incorrectly determined [Mother's] income," and that it "wanted [Mother] to win big and [Father] to lose big," so it "created its own conclusion without reference to the facts of the case."

Mother contends that the circuit court's "ruling regarding BIA fees and attorney's fees met the requirements of [FL] § 12-103(b)." She argues that the court properly considered the required factors and exercised its discretion in determining Father's appropriate contribution toward the fees. She asserts that the court's "factual findings regarding [Mother's] income [were] not clearly erroneous and should not be disturbed."

A.

Proceedings Below

In assessing the BIA's request for legal fees, as well as Mother's request for an award of attorney's fees, the court noted that it considered the factors set forth in FL § 12-103, which provides that a court "may award costs and counsel fees that are just and proper under all the circumstances." The court noted that it had to consider: (1) "the financial status of each party"; (2) "the needs of each party"; and (3) "whether there was substantial justification for bringing, maintaining or defending the proceeding." The court noted that it had considered and discussed the parties' financial status and needs in addressing child support.

With respect to the BIA's fees, the court noted that the BIA was appointed at Father's request. Father agreed to "pay for the costs of [the] best interest attorney subject to any potential reallocation at trial," but he did not do so, stating that he did not have the money. The court stated that it did not find Father's explanation credible and believed that he stopped paying because he was angry at the BIA for recommending that M.S. attend school near Mother.

The court stated that it had considered the financial status and needs of the parties. It noted that Father requested the BIA and agreed to pay, but he did not pay even though he had the means. The court found that Father's conduct "has and will continue to create a great deal of work for the BIA," noting Father's disruptions with Ms. Kellman and the "extra effort . . . expended by the BIA" having to address those disruptions, and Father's

"abuse and alienating behavior" relating to M.S. which "added even more demands on [the BIA's] time." The court found that Father's behavior "created much of the work" the BIA had done, noting Father's "disruptions with providers, issues at the Visitation Center and his aggressive communication with [the BIA]."

In assessing the BIA's legal fees, the court found them to be "reasonable and appropriate." It issued a money judgment against Father in the amount of $22,579.66 in favor of the BIA.[16]

With respect to Mother's request for attorney's fees, the court noted that there were total fees of $29,412.50. Father had paid $9,000, leaving an outstanding balance of $20,412.50. The court found that Father's conduct "unnecessarily increased the legal fees for [Mother] given his approach and behavior," and it did not find good cause to the contrary. The court stated: "[J]ust as I described in discussing the BIA, I do believe the same conduct of [Father] likewise unnecessarily increased the legal fees for [Mother] given his approach and behavior." The court also noted that it believed Father had assets other than what had been disclosed. In considering all the factors and what was "just and proper," the court ordered Father to pay Mother $10,000 "toward the attorney fees expended in this matter which is in addition to the previous [$]9,000 already paid."

[16] In its order, the circuit court ordered $22,579.66 "be reduced to a Money Judgment against [Father]" in favor of the BIA. Father challenges this order, but not the further order for Father to pay $10,650 "for legal services rendered by the [BIA]" from February 1, 2023, through May 23, 2023.

B.

Analysis

"We review an award of attorney's fees in family law cases under an abuse of discretion standard." *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 756 (2017). This Court "will not disturb a circuit court's award of attorney's fees 'unless a court's discretion was exercised arbitrarily[,] or the judgment was clearly wrong.'" *Id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 468 (1994)).

The award of expenses in a family law case is governed by FL § 12-103 which, in relevant part, states:

> (a) The court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person:
>
> (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties;
>
> * * *
>
> (b) Before a court may award costs and counsel fees under this section, the court shall consider:
>
> (1) the financial status of each party;
> (2) the needs of each party; and
> (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.
>
> (c) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees.

"To determine whether a court abused its discretion, we examine the court's application of the statutory factors to the unique facts of the case." *Sang Ho Na*, 234 Md. App. at 756.

Father contends that the court's award of fees was erroneous because it "incorrectly determined [Mother's] income." We disagree. The court noted that there was inconsistent evidence regarding the parties' income, but it determined that the income Mother reported for her mortgage application, $46,800 per month, was an "accurate figure, as to what [her] income truly is." Noting Mother's assets and liabilities, the court found credible Mother's testimony that she had borrowed money from friends and family to assist with legal fees. The court's finding in this regard was not clearly erroneous. *See Best v. Fraser*, 252 Md. App. 427, 434 (2021) (we review factual findings for clear error).

Moreover, the court found that Father's actions "unnecessarily increased the legal fees" for Mother and the BIA. The court heard testimony from Mother that Father was attempting to bankrupt her through the various court actions. She stated: "[H]e knows that I can't afford the court fee or the lawyer, but he still put me through court because he intentionally know that I can't afford." The court found Father's behavior warranted an order requiring him to pay the fees. Given the broad discretion afforded to the circuit court to make a determination with respect to the allocation of legal fees, we conclude that the court did not error or abuse its discretion in its award of fees.

JUDGMENTS OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1118s23cn.pdf