Circuit Court for Washington County
Case No. C-21-FM-18-001196

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1266

September Term, 2021

AMBER T. ELLIS

v.

BRIAN J.M. ELLIS

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

JJ.

Opinion by Zarnoch, J.

Filed: May 27, 2022

Amber Ellis ("Mother"), appellant, and Brian Ellis ("Father"), appellee, are the parents of four minor children, whom we shall refer to as G., N., E., and B.[1] On October 25, 2019, the Circuit Court for Washington County entered a judgment of absolute divorce in favor of Father. Among other things, the court ordered shared physical custody of the minor children and joint legal custody with tiebreaker authority granted to Father. Shortly after the judgment of absolute divorce was entered, Mother filed the first in a series of petitions for contempt that were filed by both parties. In addition, both parties filed motions and supplemental motions to modify custody and Father sought a reduction in child support and alimony.

After a hearing on August 30 and 31, 2021[2], the court issued a memorandum opinion and order granting sole legal custody of N., E., and B. to Father. The court determined that there was no material change of circumstances to warrant a change in the joint physical custody that had been ordered for the two youngest children, E. and B. The court found that there had been a material change of circumstances with respect to the physical custody of N. The court granted primary physical custody of N. to Father during the school year,

[1] Amber Ellis, who is proceeding in proper person in this appeal, filed an Informal Brief. Brian Ellis did not file a brief.

[2] At the hearing, the court considered Mother's amended motion to modify custody filed on March 10, 2020; Father's motion to modify custody filed on January 31, 2020; Father's supplemental motion for modification of custody and petition for contempt filed on March 24, 2020; Father's petition for contempt filed on September 16, 2020; Mother's April 18, 2021 petition for contempt and request for a money judgment; and, Father's motion to modify child support and alimony filed on May 27, 2021. The remaining motions and petitions were dismissed.

with specified visitation with Mother, and shared physical custody during the summer recess from school. The parties and the court agreed that Mother would have sole legal and primary physical custody of their oldest child, G., and the court ordered that Father would have access as G. "might agree."

The court modified the parties' child support obligations, denied Father's request for a reduction in alimony, granted Father's request for the children to attend an annual vacation with his family, and struck its prior order regarding the children's church attendance. The court also noted that the parties had agreed that Father would pay an outstanding monetary award of $12,500 "at the rate of $500 per month until satisfied." This timely appeal followed.

ISSUES PRESENTED

In her Informal Brief, Mother presents six issues for our consideration, which we have rephrased as follows:

> I. Whether the circuit court erred in granting sole legal custody of N., E., and B. to Father;
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> II. Whether the circuit court erred in granting primary physical custody of N. to Father;
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> III. Whether the circuit court erred in its determination of child support;
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> IV. Whether the circuit court erred in ordering that the children be permitted to attend the annual vacation to Assateague with Father's family;
>
> V. Whether the circuit court erred in striking its prior order pertaining to church services and entering a new order allowing each parent to determine religious activity; and,

VI. Whether the circuit court failed to address Mother's request for child support arrears and "remaining marital property."

For the reasons set forth below, we shall vacate the order of child support and remand the case for further consideration of that issue as well as child support arrearages. In all other respects, the decision of the circuit court shall be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

We begin by highlighting some of the history and testimony given in the case at hand. From the time the judgment of absolute divorce was entered, the parties have had a contentious relationship. An interim consent order dated September 10, 2020 required that they "only have contact with one another in writing related to issues regarding the minor children and/or the family home and related personal property issues[.]" According to Father, the parties' differences of opinion concerning school and medical issues existed during the marriage and continued after they were divorced. Father described the parties' relationship as "high conflict" and acknowledged that he had not always responded to Mother's emails. Mother alleged that Father had assaulted her with his truck. According to Mother, Father abused the tiebreaker authority granted to him in the judgment of absolute divorce. She wanted to make decisions about where the children attended school and received medical care and she identified those as two big issues in this case.

At the time of the hearing on the parties' various petitions and motions, Mother was self-employed as a certified nursing assistant for a family in West Virginia. Her hours varied week to week, but she typically worked three to four hours in the mornings and an occasional evening shift. Father worked as a commercial real estate agent for a company

located in Frederick. He was an independent contractor and received commissions from sale and lease transactions. During the pandemic, he liquidated some assets, received unemployment benefits, and obtained a loan from the Paycheck Protection Program ("PPP").

Prior to the divorce, the children were home-schooled. After the judgment of absolute divorce was entered, the children began to attend public schools. Mother was not agreeable with the school choices. She testified that she attempted to discuss the issue of schooling with Father, but received little or no response and he made the decision to send the children to the local public schools using his tiebreaker authority. At the time of the hearing, E. and B. were enrolled in an elementary school near the marital home and they attended before and after-school care there. In 2021, N. entered 9th grade at a high school in the district where the marital home was located. During the prior school year, on the weeks she had N. in her care, Mother relied on a friend, Jocelyn L. Pennella Doyle, who allowed N. to get the school bus from her house and watched N. before and after school.

Doyle testified that the arrangement for N. began in January 2020. N. was dropped off at about 7:30 a.m. and Doyle watched her until the school bus arrived. Doyle also watched N. after school, sometimes for two to three hours. She prepared food and assisted N. with her homework.

Father testified that he was unaware that Doyle was supervising N. before and after school on a regular basis until he heard her testimony in court. He testified that on the days when the children were with him, he picked up E. and B. from the elementary school. The

children's paternal grandmother then watched those two children while Father drove 20 minutes to N.'s school to pick her up at the end of the school day. Father stated he did that in order to have some one-on-one time with N.

Mother was granted use and possession of the marital home for three years from the date of the divorce order. She claimed that as a result of a flood, there was mold in the basement that made the house unlivable. In about September 2020, she moved out of the family home and relocated to Huyett where, with assistance from the Washington County Housing Authority, she rented a house big enough to accommodate all four children. At some point after September 5, 2020, Father moved back into the marital home. At the hearing, Mother stated that the elementary school was a 49 minute drive from her new house, that the elementary school started at 7:30 a.m., and that N.'s school started an hour later. There was no dispute that G. and N. had attended counselling on a weekly basis from the time of the parties' separation in 2018. Mother complained that the long drive to school and the long days were inconvenient for her and the children particularly because it affected their sleep time. Mother testified that if she had sole legal custody, she would move the children to new schools.

The parties do not dispute that Father and G., who was born on November 28, 2004, were involved in an incident that led to Father consenting to the entry of a protective order against him. G. was placed in Mother's custody and enrolled in a high school near Mother's house and took classes at a local community college. G. was given a vehicle by her great-grandmother which she used to get to her classes. On September 10, 2020, the

parties entered into an interim custody order pursuant to which Mother would have primary physical custody of G.

Father testified that although he had an estranged relationship with G., they recently had begun communicating with each other via text message. Father agreed that Mother should have physical custody of G., but he requested the court to grant joint legal custody with tiebreaker authority given to him. As for the other children, Father requested that N. reside with him and visit Mother every other weekend and for mid-week dinners, and that the parties continue to have joint physical custody of E. and B. on a week on, week off schedule.

Mother testified that because Father had tiebreaker authority, they did not have meaningful conversations and she received negative feedback from him. She claimed that she made most of the children's medical appointments and cleared the dates with Father, but that he would cancel the appointments. In the time between the parties' divorce and the hearing, the children had four different pediatricians. In March 2021, Father received a letter from their pediatrician stating that the practice would no longer see the children. Mother acknowledged that Father had asked her to make medical appointments after school hours.

According to Father, the parties had differing opinions about vaccines and treatments for the children, particularly for B. Father did not believe that all of the medical appointments made by Mother were necessary. He testified that the children were "overall healthy" and that they did not need to see a doctor while in his care. He maintained that

Mother did not consult with him about medical appointments, but merely informed him about them a day or so in advance.

When the children were initially enrolled in public schools, they were not up-to-date on their vaccinations. According to Father, Mother had objected to the vaccines. Mother acknowledged that Father had the children brought up-to-date on their vaccinations when they enrolled in public schools, but asserted that he did not inform her in advance. At the time of the hearing, all of the children except B. were current on their vaccinations. According to Mother, B. had experienced reactions to certain vaccines and had been referred to Children's Hospital. Mother was awaiting a determination from a physician at Children's National regarding certain genetic information pertaining to B.'s receipt of the varicella vaccine. Mother did not think B. would need a hepatitis B vaccine because "his titers showed enough of an immune response."

At the time of the hearing, the children were seeing a pediatrician in Hagerstown that Mother had selected a couple of months before. Mother stated that she did not hear from Father about that choice. Father testified that he was not happy with the current pediatrician. With regard to dental care, Mother testified that Father had not taken the children to any dentist appointments since the judgment of divorce was entered. Mother maintained health insurance coverage for the children through Medicaid. Father testified that he thought his Blue Cross/Blue Shield coverage was better, but Mother wanted to keep the children on her plan.

The order granting the absolute divorce provided that Father would "take the minor children to church on Sunday or timely transport them to [Mother] for her to take the minor children to church[.]" Mother claimed that Father had failed to take the children to church and, despite her requests, did not call her to take them to church when he was unable to do so. Father's mother, Marla Anne Meier Ellis, acknowledged that Father did not take the children to church during the pandemic, but testified that he read the Bible and spoke to the children about it at home.

Mother refused to consent to the children's participation in an annual trip to Assateague Island with Father's family over Columbus Day weekend. Father's mother testified that for about 12 years, her family and some friends had gone to Assateague Island over the Columbus Day weekend. Beginning in October 2019, Father's mother requested that the children go on that trip, which they did in October 2020. Mother argued that the children should be permitted to go on the trip to Assateague Island only on an every-other-year basis. She wanted the children to be with her every other year to visit her grandmother whose birthday was in late September. Mother asserted that because the children were enrolled in public schools, there was no other time for them to visit their great-grandmother near her birthday.

We shall include additional facts as necessary in our discussion of the issues presented.

STANDARD OF REVIEW

Mother presents several challenges to the trial court's decision, including its determinations with regard to legal and physical custody. Before addressing those challenges, we shall examine the standard of review applicable to this case. When reviewing child custody determinations, including modifications of child custody, we apply three interrelated standards of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Gillespie v. Gillespie, 206 Md. App. 146, 170 (2012) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)) (quotation marks omitted).

When a motion to modify custody is filed, a trial court employs a two-step process to determine whether modification is warranted. *Jose v. Jose*, 237 Md. App. 588, 599 (2018); *Gillespie*, 206 Md. App. at 171. First, the court considers whether there has been a material change in circumstances since the previous custody order was entered. *A.A. v. Ab.D*, 246 Md. App. 418, 433 n.10 (2020) (quoting *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005)). A material change of circumstances is a change in circumstances that may affect the welfare of a child. *Gillespie*, 206 Md. App. at 171; *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). If no such material change has occurred, "the court's inquiry must

cease." *Braun v. Headley*, 131 Md. App. 588, 610 (2000) (citing *Wagner*, 109 Md. App. at 28).

In the instant case, the court determined that no material change in circumstances existed with respect to the physical custody of the two youngest children, E. and B. The parties do not challenge that determination, but Mother presents several arguments in opposition to the court's order that shared physical custody of E. and B. should continue. The parties reached an agreement with respect to the physical custody of their eldest child, G. Father sought joint legal custody of G. with tiebreaker authority, but the court denied that request and awarded Mother sole legal custody. That decision is not challenged in this appeal. The court determined that there had been a material change in circumstances and that a change in physical custody was warranted for N. The circuit court awarded primary physical custody of N. to Father during the school year and shared physical custody during the summer recess from school. Mother challenges that decision. The court also granted Father sole legal custody of N., E., and B. and Mother challenges that decision.

With regard to Mother's challenges to the custody determinations, we note that once a court finds that there has been a material change in circumstances, it proceeds to consider whether a change in custody would be in the best interests of the children. *Santo v. Santo*, 448 Md. 620, 639 (2016); *Jose*, 237 Md. App. at 599. Child custody determinations "must be made on a case-by-case basis due to the uniqueness of the fact patterns in such disputes[.]" *Petrini v. Petrini*, 336 Md. 453, 469 (1994). "Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interests standard, but

possess a wide discretion concomitant with their 'plenary authority to determine any question concerning the welfare of children within their jurisdiction[.]'" *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503 (1992) (quoting *Kennedy v. Kennedy*, 55 Md. App. 299, 310 (1983)) (internal citation omitted). "The best interest of the child is . . . not considered as one of many factors, but as the objective to which virtually all other factors speak." *Taylor v. Taylor*, 306 Md. 290, 303 (1986).

A trial court considers the best interests of the child using a non-exhaustive list of factors established in *Montgomery County Dep't of Social Servs. v. Sanders*, 38 Md. App. 406 (1977). Those factors include: the parents' fitness; the character and reputation of the parties; the desire of the natural parents and agreements between the parties; the potential of maintaining natural family relations; the child's preference; material opportunities affecting the future life of the child; the child's age, health, and sex; the parents' residences and opportunity for visitation; the length of separation from the natural parents; and any prior voluntary abandonment or surrender. *Id.* at 420.

In *Taylor*, the Court of Appeals provided additional factors, many of which overlap with the *Sanders* factors, that a trial court should consider when determining whether a joint custody arrangement is appropriate. Those factors include: the capacity of the parents to communicate and reach shared decisions affecting the child's welfare; the willingness of the parents to share custody; the fitness of the parents; the relationship established between the child and each parent; the preference of the child; any potential disruption to the child's social or school life; the geographic proximity of parental homes; the demands

of parental employment; the age and number of children; the sincerity of the parents' request; the financial status of the parents; any impact on State or Federal assistance; and the benefit to the parents. *Taylor*, 306 Md. at 304-11.

We have recognized that when considering those factors, circuit courts should examine the totality of the situation in the alternative environments and avoid focusing on or weighing any single factor to the exclusion of all others. *Jose*, 237 Md. App. at 600. Of course, the objective to which virtually all of the factors speak, and the primary goal of access determinations, is the best interest of the child. *Taylor*, 306 Md. at 303. We do not make our own determination as to a child's best interest. *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020). The trial court's decision governs, unless the factual findings "are clearly erroneous or there is a clear showing of an abuse of discretion." *Id.* (quotation marks and citation omitted). A "trial court's findings are not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Id.* (quotation marks and citations omitted). With regard to abuse of discretion, we have explained:

> On the ultimate issue of which party gets custody . . . we will set aside a judgment only on a clear showing that the [trial court] abused [its] discretion. Appellate courts rarely, if ever, actually find a reversible abuse of discretion on this issue. An abuse of discretion may occur when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court. This standard accounts for the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses. The trial judge who sees the witnesses and the parties, [and] hears the testimony . . . is in a far better position than the appellate court, which has only a [transcript] before it, to weigh the evidence and determine what disposition will best promote the welfare of the [child]. Because appellate review is properly limited in scope, the burden of making an appropriate

> decision necessarily rests heavily upon the shoulders of the trial judge. Indeed, custody decisions are unlikely to be overturned on appeal.

Id. at 201 (internal quotation marks and citations omitted).

With these standards in mind, we turn to the issues presented by Mother.

DISCUSSION

I.

Mother makes several challenges to the circuit court's decision to grant legal custody of N., E., and B. to Father. As a preliminary matter, we note that many of the arguments raised by Mother challenge the weight the circuit court gave to the testimony and to other evidence, including specific emails. For example, Mother argues about the weight the court gave to the fact that the parties communicated solely by text message and email; that the court failed to "acknowledge or recall" the "no contact" provisions of the consent interim order of September 10, 2020; that the court failed to acknowledge her "compassion" for Father's "situation" and her attempts to "be reasonable and peaceable" with regard to changes in plans; and, that the circuit court failed to comment on the protective order and "cite" her "hardship" with regard to medical appointments and "multiple school distances." Mother also complains that the court referenced Father's testimony and not other evidence that she highlighted with respect to health insurance cards, pediatricians, the scheduling of medical appointments, and whether the family home was livable.

With regard to all instances in which Mother challenges the weight the court gave to certain testimony or other evidence, we note that appellate review is not an appropriate

forum for a party to relitigate its case or to argue the weight of the evidence. "The weighing of the evidence and the assessment of witness credibility is for the finder of fact, not the reviewing court." *Terranova v. Bd. of Trs.*, 81 Md. App. 1, 13 (1989). This broad discretion is vested in the trial court "'because only [it] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [it] 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' child." *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) (quoting *Yve S.*, 373 Md. at 585-86). The trial court was not required to adopt Mother's interpretation of the emails or accept her version of events. "In its assessment of the credibility of witnesses, the [c]ircuit [c]ourt was entitled to accept – or reject – *all*, *part*, or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011). We shall not repeat these principles *infra* when addressing Mother's specific challenges to the court's award of legal custody of N., E., and B. to Father.

A. Communication

Mother challenges the circuit court's determinations with respect to the parties' ability to communicate effectively. In reaching its decision to grant legal custody of N., E., and B. to Father, the court reviewed the evidence and addressed the parties' inability to communicate, writing, in part, as follows:

> The emails demonstrate the parties' inability to effectively communicate. It is unfortunate that the parties have limited themselves to

> communicating solely by text message or email. Weighty issues involving legal custody need to be addressed and much nuance and thoughtful reconsideration of the parties' relative positions on matters is missed by their inability to communicate face-to-face regarding the well-being of their children.
>
> The Court's initial effort to encourage joint decision making has failed. Considering the testimony and the review of the emails, the Court is convinced that joint legal custody is no longer a viable option. The Court is satisfied that [Mother] has created this controversy; and, while [Father] could certainly have been more responsive to [Mother], the Court finds that [Father] should more appropriately be the sole legal guardian of [N., E., and B.].

The record before us makes clear that the trial court received and considered all the evidence, including sometimes conflicting testimony from the parties. The court's memorandum opinion demonstrates that the court was aware of the protective order and the interim consent order. The factual findings of the trial court, specifically that the parties limited themselves to communicating by text message and email and that they were unable "to effectively communicate[,]" were not clearly erroneous. With regard to the "no contact" provision of the protective order, the record shows that the order was effective only for a limited period of time. The agreement to continue communicating by email was a voluntary agreement made by the parties and included in their negotiated interim consent order. Those facts supported the trial court's conclusion that the parties limited their manner of communication, that they were unable to communicate effectively, and that the court's initial attempt to encourage joint decision making had failed.

B. Instigating Controversy

Mother challenges "various assertions" the court made in support of its conclusion that she "created this controversy[,]" specifically, the failure of effective communication.

As to Mother's complaints that do not challenge the weight the trial court gave, or did not give, to certain evidence, the record reveals that the circuit court's factual findings were not clearly erroneous. The evidence, including the testimony of the parties, the parties' inclusion of a provision in the interim consent order requiring communication in writing, and the emails themselves, supported the trial court's conclusion that the parties had limited their manner of communication, that they were unable to communicate effectively, and that the court's initial attempt to encourage joint decision making had failed.

That same evidence supported the court's determination that Mother had created the controversy, that is, the failure of effective communication. In reaching that determination, the court referenced the parties' emails, which began only four days after the divorce, and the parties' testimony. Clearly, the court discounted Mother's testimony and credited Father's testimony. The court specifically referenced Father's testimony that Mother's email activity was "exhausting" and his belief that Mother's "desire from day one has been to create a case that he is unresponsive and non-caring of the schooling issues and medical needs of their children which he denies." The court also referenced Father's testimony that Mother had scheduled medical appointments for times the children were with him, that "at least one pediatrician ha[d] declined to further treat the children as a result of [Mother]'s actions[,]" that Mother had failed to provide Father with the children's health insurance cards as he requested, and that Father "frequently does not respond" to Mother's emails "to avoid confrontation because he knows [Mother] is only looking for a fight." As the circuit court's factual findings were not clearly erroneous, reversal is not warranted.

C. Condition of the Marital Home

Mother contends that the circuit court erred in concluding that there was no evidentiary support for her assertion that the marital home was "unlivable." Mother asserts:

> The house was move-in ready outside of needing to replace several failed appliances (Emails: DEF'S 03712, 06835 DOCS), following [Mother]'s year-long work with multiple companies to reconstruct the entire basement living space after a flood. Email evidence citing mold, appliance failure, farm enclosure and fencing failures causing issues with livestock, suggest [Mother] made an imperative choice for the safety and best interests of the Children. The Court erred in presenting a one-sided argument as to the nature of [Mother]'s move, insinuating [Mother] acted without reason and thus created the controversy, failed to present [Father]'s involvement and illegal behavior concerning occupation of the marital home, and failed to consider the evidence corroborating [Mother]'s claims per the email evidence which the Court reviewed.

In its memorandum opinion, the court wrote:

> It must be noted, however, that [Mother] chose to leave the family home. While she testified her move was based on water damage and mold issues, [Father] denied there were problems as he is living there now, and there is insufficient evidence to support her claim that she was forced to leave.

The court concluded that the marital home was, in fact, "livable" because Father was living in it and denied there were problems with it. The record makes clear that the court reviewed the emails, considered the evidence and testimony of both parties, credited Father's testimony on this issue, and did not credit Mother's testimony. The court's conclusion was supported by the evidence and was not clearly erroneous.

D. Leaving the Family Home

In a related argument, Mother asserts that the court "suggested" that she "continued the controversy with her move and willfully vacated [the marital home] for no reason, stating 'Plaintiff chose to leave the family home[.]"' She argues that Father attempted to "take over the marital home by force and threat" while she had use and possession of it and that, in doing so, Father violated a protective order. According to Mother, Father changed the locks, set up surveillance cameras, and threatened her, and thereby attempted to block her from the home. Mother asserts that the interim consent order provided that her use and possession of the home would end on September 5, 2020 and thus, it was "the Court's own Order for [Mother] to leave the family home." Lastly, Mother argues that the court "fail[ed] to present evidence" that she "intentionally moved outside of the prior school district to 'create controversy' as [Mother] also testified to relying on housing assistance to find a home she could afford that was safe and accommodating all four Children, where no options were to be found near the parties' previous rural marital home located in a wealthier area."

The circuit court did not err in concluding that Mother "chose to leave the family home." Mother's reliance on the interim consent order is misplaced. The parties consented to the provisions of that order. Thus, the decision that use and possession of the home would end on September 5, 2020, was made voluntarily by the parties. The court did not determine that Mother created a controversy by moving outside the children's school district. It merely noted, correctly, the undisputed fact that Mother relocated to a new home

that was in a different school district. For those reasons, the court's finding that Mother chose to leave the family home was not clearly erroneous.

E. Health Insurance Cards and Pediatrician

Mother next challenges the following statements contained in the circuit court's memorandum opinion:

> [Father] also testified that at least one pediatrician has declined to further treat the children as a result of [Mother]'s actions. Additionally, he testified that [Mother] declined to provide [Father] with the children's medical cards as he requested.

Mother does not make any particular contention other than to point out that the court referenced Father's testimony and not the evidence she highlighted. Our review of the trial transcript shows that the court's description of Father's testimony was accurate. To the extent that the court's statements were factual findings, they were supported by Father's testimony and were not clearly erroneous.

F. Arrangement with Doyle

In its memorandum opinion, the circuit court stated that Mother "relies on a friend to provide bus stop help and occasional after school aid for [N.]" and that Mother "had not informed [Father] of this arrangement until it was disclosed at this trial." Mother contends that in an answer to an interrogatory, she identified Doyle as having provided "care for the minor children during [Mother's] custodial time for a period of two (2) hours or more since October 26, 2019[.]" Mother also contends that Father agreed that he and Mother may each select childcare providers without informing the other parent. According to Mother, the circuit court "erred in presenting this issue as part of its guiding assertion of [Father]'s

testimony regarding [Mother] causing controversy." She states that "[c]hildcare disclosures by either party have not been an interest nor Order of the Court in this parties' case outside Discovery and [Father]'s sudden mention in trial, two years after the fact." We find no error in the circuit court's findings.

The court's findings were supported by the evidence presented at trial. It was undisputed that Doyle provided before and after school care for N. Father testified that he was unaware that Doyle was supervising N. before and after school *on a regular basis* until he heard about it in court. Mother failed to provide this Court with a copy of her answers to interrogatories. Even assuming the correctness of the interrogatory answer as set forth in Mother's informal brief, it did not reveal specifically that Doyle provided before and after school care for N. on a regular basis. Notwithstanding any agreement the parties might have had with respect to the selection of childcare providers, the regular provision of before and after school care by Doyle was relevant to the issue of communication between the parties. The court's findings were not clearly erroneous.

G. Scheduling of Medical Appointments

In its memorandum opinion, the circuit court wrote that Father "testified that [Mother] is quick to schedule doctor's appointments at the slightest hint a medical issue may exist." Mother points to evidence she claims demonstrates Father's "lack of awareness concerning Children's medical matters." Mother argues:

> The Court erred in failing to present evidence supporting its stance that [Father] would be a fit and proper person regarding medical care for Children or that [Father] is correct in citing [Mother]'s creation of controversy through taking Children for medical care for "every small issue,"

> in light of the evidence to the contrary, including the fact [Mother], a Certified Nurse Assistant, has more authority in making adequate and appropriate medical decisions affecting the Children than [Father].

As previously noted, the circuit court was not required to accept Mother's version of the events or view of the evidence. To the extent that the court's statements were factual findings, they were supported by Father's testimony and were not clearly erroneous.

H. Informing Mother

In its order, the circuit court required that "notwithstanding [Mother]'s and [Father]'s sole legal custody of the minor children, each party shall quarterly advise the other of each child's medical issues, progress in school and extracurricular activities[.]" Mother directs our attention to *A.A. v. Ab.D*, 246 Md. App. 418 (2020), which she claims establishes a legal precedent "requiring a parent awarded sole legal custody to regularly and timely inform the other parent as to the care and health of his children[.]" Mother asserts that the circuit court erred in requiring Father to report on such matters only on a quarterly basis and abused its discretion by "disallowing [Mother]'s ability to be timely informed to maintain the health and well-being of the parties' minor Children while in her care half the time."

Preliminarily, we note that Mother's reliance on *A.A. v. Ab.D.* is misplaced. In that case, we considered whether the best interests of the child standard was the leading consideration for the court in deciding whether to preclude a party from introducing evidence as a discovery sanction in a child custody case. The circuit court granted the parties joint legal and shared physical custody and awarded the father tiebreaking authority.

246 Md. App. at 434. We vacated that judgment and remanded the case to the circuit court "to reassess the best interests of the children after a full presentation of evidence that the court finds relevant to that determination." *Id.* at 449. The statement relied upon by Mother is merely a factual statement of what the trial court ordered for the parties in *A.A. v. Ab.D*. Our decision in that case does not establish the legal precedent proposed by Mother in the instant case.

We have already held that the trial court did not err in finding that the parties were unable to communicate effectively. In light of that finding, the court did not abuse its discretion in ordering that the parties advise each other about the children's medical issues, progress in school, and extracurricular activities on a quarterly basis. Setting the time within which the exchange of information was to occur was a matter well within the circuit court's discretion and we find no abuse of that discretion here.

II.

Mother makes several arguments in support of her contention that the trial court erred in ordering joint physical custody of E. and B. and primary physical custody of N. to Father during the school year. As with legal custody, Mother's arguments with respect to physical custody include challenges to the weight the circuit court assigned to testimony and other evidence. For example, Mother argues that the circuit court failed to accept her view of various emails showing Father's "deceptions and refusal to communicate with or respond to" her; that the court "never cited" testimony about Father's violent tendencies; that the court rejected or gave little weight to Megan Biser's testimony; that the court failed

to consider Father's abusiveness; that the court did not consider that Father walked out on her and willingly surrendered physical custody of G.; and, that the court did not consider Father's medical and academic neglect of the parties' three youngest children.

Again, we note that appellate review is not an appropriate forum for Mother to relitigate her case or to argue the weight of the evidence. "The weighing of the evidence and the assessment of witness credibility is for the finder of fact, not the reviewing court." *Terranova*, 81 Md. App. at 13. The trial court was entitled to accept or reject all, part, or none of the testimony of any witness, whether that testimony was or was not contradicted by any other evidence. *Omayaka*, 417 Md. at 659. *See also Kremen v. Md. Auto. Ins. Fund*, 363 Md. 663, 682 (2001) (appellate court's function on appeal "is not to retry the case or reweigh the evidence"). We shall not repeat those principles when addressing, below, Mother's specific challenges to the court's physical custody awards.

A. Communication

Mother maintains that if, as the court "argued," the parties were unable to communicate from even before the judgment of absolute divorce was entered, then the court erred in its original order granting joint physical custody and continued to err in ordering joint physical custody of E. and B. We disagree.

When a motion to modify custody is filed, the court must first determine whether there has been a material change in circumstances since the previous custody order was entered. *Jose*, 237 Md. App. at 599. Thus, the focus of the hearing below was on changes in circumstances occurring since the entry of the prior custody order, which was the order

entered at the time of the judgment of absolute divorce as modified by the interim consent order. With regard to E. and B., the court did not change the joint physical custody order because it determined that there had not been a material change in circumstances with respect to those two children. The facts adduced at the hearing supported that conclusion.

B. Disruption of N.'s Social and School Life

Mother argues that the court's grant of primary physical custody of N. to Father during the school year was erroneous because it created a situation in which all of the children are together only once per month. In addition, it "disallows" N. from continuing to attend and see friends at the church youth group, maintain her 4-H project, spend time with longtime friends and "new friends made through" Mother that she does not see when she is with Father, and attend "various events and opportunities her siblings and their mutual friends attend" while she is with Father. Even assuming the truth of these observations, reversal is not required.

In reaching its decision to change physical custody for N., the court considered that she was just starting high school in the school district in which she had completed middle school. The court specifically noted that she had "friends at school[.]" There was no dispute that N.'s high school was in the school district for the home where the family had resided prior to the parties' divorce and where Father continued to reside. In addition, the court noted that there were some difficulties in interactions between N. and G., and that N. was already splitting her time between parents. The court took particular note of the long commute to school from Mother's new home and the fact that this required Mother to enlist

assistance from a family friend to provide before and after school care for N. while, on the other hand, Father was able to provide transportation to and from school. The court recognized that this allowed Father to spend one-on-one time with N. The court also noted that N. had missed the first two days of high school because Mother did not make arrangements for her to get to school. For those reasons, the court determined that it was in N.'s best interest to be in the physical custody of Father during the school year and to have visitation with Mother three weekends per month. Although the court's award of different physical custody schedules for each of the children will obviously result in some separation of the children, the court's ultimate decision with respect to N. was founded upon sound legal principles and factual findings that were not clearly erroneous. The court did not abuse its discretion in awarding primary physical custody of N. to Father during the school year.

C. Substance Abuse

Mother believes that Father "'continues to use illegal controlled dangerous substances.'" She argues that Father failed to provide her with a copy of a court-ordered substance abuse evaluation and quarterly reports of treatment progress, as required by the judgment of absolute divorce. Although Mother alleged in her March 10, 2020 motion that Father had not provided the evaluation and reports as required by the judgment of absolute divorce, she has not directed us to any place in the hearing transcript where that issue was raised and decided by the court. Ordinarily, we "will not decide any other issue unless it

plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). As a result, we shall not reach that issue.

D. Blocking Contact

Mother contends that, "in light of [Father]'s abusiveness[,]" the circuit court erred in awarding joint physical custody of E. and B. and primary physical custody of N. to Father. She maintains that the evidence showed that Father intentionally blocked her from having phone contact with the children, contact in public places, and contact at events during Father's weeks with the children. Mother's arguments are not persuasive.

Preliminarily, we note that it would be inconsistent for the circuit court to change the physical custody order pertaining to E. and B. after determining that there was no material change in circumstances as to those children. *Braun*, 131 Md. App. at 610 (if no material change has occurred, the court's inquiry must cease). The court's memorandum opinion demonstrates that the court considered the evidence and the pertinent factors, made factual findings that were not clearly erroneous, and ultimately determined that a change in custody was warranted for N. during the school year. On the ultimate issue of which party should have custody, we will not set aside a judgment absent a clear showing that the circuit court abused its discretion. *Gizzo*, 245 Md. App. at 201. The record before us does not support such a conclusion.

E. Willingness to Share

Mother argues that the circuit court failed "to apply the criteria of 'willingness to share' when Ordering joint physical custody of" E. and B. to continue. The trial court

determined that there had not been a material change of circumstances with respect to E. and B. since the prior custody order had been entered. Once a circuit court makes such a determination, its inquiry with respect to a custody change must ordinarily cease. *Braun*, 131 Md. App. at 610. Accordingly, we find no error on the part of the circuit court in failing to consider the parties' "willingness to share" with respect to a change in the existing physical custody order for E. and B.

F. Maintenance of Family Relationships

Mother contends that as a result of the award of primary physical custody to Father, N.'s time with her siblings will be reduced significantly. According to Mother, the court's desire to make transportation easier for one child rendered harm to all of the children, including N., for whose benefit it was intended. In support of her contention, Mother refers us to *Janice M. v. Margaret K.*, 404 Md. 661 (2008), *overruled on other grounds*, *Conover v. Conover*, 450 Md. 51 (2016), for the proposition that it is in the best interest of a child to be raised with his or her siblings. In that case, which involved a dispute between a natural parent and a third party, and whether the third party was entitled to visitation or custody rights over the objection of a fit legal parent without having to establish the existence of exceptional circumstances, the Court of Appeals noted "that it is ordinarily in the best interest of a child to be raised with his or her siblings." 404 Md. at 695.

In support of that statement, the Court of Appeals cited several Maryland cases. In one of them, *Sider v. Sider*, 334 Md. 512, 532-34 (1994), the Court also recognized that "it is ordinarily in the best interest of a child to be raised with his or her siblings." In *Hild v.*

Hild, 221 Md. 349, 359 (1960), the Court stated that "[o]rdinarily, the best interests and welfare of the children of the same parents are best served by keeping them together to grow up as brothers and sisters under the same roof. But when separation becomes necessary or inevitable, as it has in this case, there is no reason why it should not be done." (Internal citations omitted.) In another of the cited cases, *Melton v. Connolly*, 219 Md. 184, 190 (1959), the Court of Appeals recognized "that in most cases a child should be raised with his or her brothers and sisters, but we think the other factors and circumstances of this case must overbalance that desideratum." Similarly, in *Hadick v. Hadick*, 90 Md. App. 740, 751 (1992), we recognized the "generally stated preference for keeping siblings together[,]" but noted that "[t]hat is not to say that that preference is inviolate but only that it must receive its due consideration."

In the instant case, the court considered many factors and circumstances that led it to award primary physical custody of N. to Father during the school year and shared physical custody – on the same schedule as E. and B. – during the summer recess from school. Clearly, because G. is in Mother's physical custody, the children of this family were not growing up together, under the same roof, prior to the court's decision to change custody for N. Moreover, the court took note of the fact that N. and G. were "currently expressing difficulties in their interactions with each other" and that N. was already splitting her time between both parents. The court crafted N.'s physical custody to allow for time with Mother and her siblings while also addressing her other needs. We find neither error nor an abuse of discretion in the court's determination.

G. Award of Primary Physical Custody of N. to Father

Mother argues that the court abused its discretion in ordering "an obscure weekend custodial arrangement" with N. being in her care on the first, second, and fourth weekends of each month. She asserts that the change in primary physical custody during the school year "suddenly and drastically" removed Mother's time with N. for "no valid reason other than 'convenience' of [the c]hild." Mother asserts that the court failed "to apply the criteria" of *Hild v. Hild*, 221 Md. 349 (1960), and that "[i]t would be a tragedy to take [children] from their mother or 'split them up.'" Mother further asserts that the court "failed to present any evidence questioning [Mother]'s fitness to justify awarding [Father] primary physical custody of [N.], especially in light of the Court's assertion" that G. had been in Mother's sole physical custody for two years and was '"apparently thriving.'"

Mother's reliance on *Hild* is misplaced. In that case, which involved an allegation of adultery on the part of the mother in a divorce action, the chancellor heard testimony from a probation officer who, when asked by the court to express his opinion on the desirability of separating two children, "confessed that he was not an expert in that field and doubted his competence to comment thereon," but proceeded to testify that "from a 'physical standpoint' it would be a tragedy to take them from their mother or to 'split them up.'" *Hild*, 221 Md. at 354. The statement relied on by Mother was testimony in a case and not the holding of the Court of Appeals.

In any event, the court in the case at hand did not find that Mother was unfit and did not abuse its discretion in awarding primary physical custody of N. to Father during the

school year or in ordering weekend visitation with Mother on the first, second, and fourth weekends. Contrary to Mother's assertion, and as we have already stated, the court explained its reasons for awarding primary physical custody to Father and determined that doing so was in N.'s best interest. The court did not abuse its discretion in making that determination.

H. Transfer of Children

The Judgment of Absolute Divorce provides that "the non-resident party is entitled to time with the minor children on Christmas, Thanksgiving and Easter from 12:00 p.m. till 4:00 p.m." In dramatic fashion, Mother asserts that "the Court left a gaping hole in how the simultaneously custodial parties are supposed to be able to drop off respective Children to the simultaneously non-custodial parent, an oversight of grand proportions."

Mother has on numerous occasions throughout this case asserted that she has attempted to be reasonable and "peaceable," including changing plans for the sake of the children as well as Father's, denied that she created controversy, claimed to have acted with reason, and offered and encouraged the children's contact with their father while they were with her. Contrary to those assertions, she now argues that the court's "contention that the parties are unable to come to mutual agreements" has somehow made it impossible for them to arrange for the exchange of the children as required by the court's order. Mother's assertion is mere speculation. As there is no evidence of an actual controversy pertaining to the exchange of the children under the newly modified custody order, we do not address that issue at this time.

I. Preference of N. to be with Father

Based on statements set forth in her brief, we infer Mother's contention to be that the court erred in giving weight to the testimony of Father and Father's mother with respect to N.'s preference with regard to physical custody. Mother asserts that the circuit court failed to "cite" testimony from Doyle concerning N.'s "positive relationship" with Mother and refused to hear testimony from G. She also contends that, with respect to N., the court failed to consider the "lollipop syndrome," whereby one parent in a custody battle may shower a child with gifts and pleasant times, and impose no discipline in order to win the child's preference. We disagree.

Preliminarily, we note that there was no evidence or argument presented at the hearing with respect to the "lollipop syndrome" and the court did not make a ruling on it. Accordingly, that issue is not properly before us. Md. Rule 8-131(a). Moreover, in its memorandum opinion, the court did not explicitly comment on N.'s preference with regard to custody. Even if it had, a child's preference is one of many factors a court considers in making a custody determination and it is not determinative. The court had the discretion to interview one or more of the children, but was not required to do so. *Lemley v. Lemley*, 102 Md. App. 266, 288 (1994) ("While the preference of the children is a factor that *may* be considered in making a custody order, the court is not required to speak with the children."). The evidence presented at the hearing showed that G. had a difficult relationship with Father, that N. was only about 14 years old and just entering high school,

and that N. and G. had trouble in their relationship. Under the facts of this case, we cannot say that the court abused its discretion in deciding not to interview either G. or N.

It is important to note that "there is no litmus paper test that provides a quick and relatively easy answer to custody matters." *Sanders*, 38 Md. App. at 419. "The best interest standard is an amorphous notion, varying with each individual case, ... The fact finder is called upon to evaluate the child's life chances in each of the homes competing for custody and then predict with whom the child will be better off in the future. At the bottom line, what is in the child's best interest equals the fact finder's best guess." *Id.* The court was not required to comment upon each and every piece of evidence. The record before us does not support a finding that the court erred or abused its discretion with respect to a change in physical custody for N.

J. Prior Abandonment or Surrender of Custody

Mother argues that Father walked out on her, for the second time, on May 16, 2018, and willingly surrendered physical custody of G. "while insisting on retaining" tiebreaker authority. Mother asserts that the circuit court "failed to present [her] fitness as a factor concerning history of both prior abandonment and surrender of a Child, as well as [Father]'s odd request for retaining tiebreaker." We disagree.

This appeal arises from the grant of a motion to modify custody, which for two of the children, involved material changes in circumstances that arose after the entry of the prior custody order. The evidence established that Father consented to Mother having physical custody of G., but the parties agreed he would have access to her "as agreed upon

by the parties with [G.]'s input[.]" There was no assertion of child abandonment or the surrender of custody relevant to the issues presented below and the court did not find Mother to be unfit.

K. Protection of Victims of Abuse

Mother argues that the trial court failed to award her "more physical (*and legal*) custody of" the children in light of Father's abuse of Mother and G. and his medical and/or academic neglect of the parties' three youngest children. We disagree. The record makes clear that the circuit court was aware of the situation involving the protective orders and Mother's allegations of Father's hostile behavior and "medical and/or academic neglect[.]" For the reasons set forth in this opinion, we have concluded that the circuit court's decisions with respect to physical and legal custody of the children were based upon relevant, competent, and credible evidence and that the court did not abuse its discretion in entering the orders for physical and legal custody.

L. Change in Circumstances for N.

Mother argues that the circuit court erred in finding a material change in circumstances with respect to N., but not as to E. or B. She asserts that the only incident cited by the court was Mother's failure to send N. to the first day of school due to the hearing below. Mother maintains that she made arrangements to consistently get N. to school on time for two years "despite extensive drive times and distances[.]" She notes that although the court "argued" that it "was more convenient" for N. to live with Father "for school purposes[,]" the court did not "use the same criteria" to find a material change

in circumstances regarding E. and B. Mother asserts that the elementary school that E. and B. attend "is in fact twice as far from" her home as N.'s high school, which is located "halfway" between the elementary school and Mother's home.

In support of her argument, Mother points to the court's decision with respect to the children's trip to Assateague Island with their paternal grandparents. At the hearing, when asked whether the family vacation would require the children to miss time from school, the judge stated, "If they do, they do." Mother argues that the judge's statement created an appearance of impartiality because it permitted Father to allow the children to miss time from school but awarded primary physical custody of N. to Father because Mother had not taken her to school on the day of the hearing. We are not persuaded.

The evidence presented below established that, as a result of her relocation to a home located some distance from the children's school, Mother had difficulty with school drop off and pick up for N., so much so that she enlisted the help of her friend, Doyle, to provide before and after care for that child. Mother testified about the long drive from her house and stated that if she was granted sole legal custody, she would move the children to new schools. There was no evidence presented that a care provider was necessary to help Mother with school drop off or pick up for E. or B. Although Mother's failure to get N. and G. to school due to the underlying hearing was noted by the court, that was not the sole basis for the decision to grant Father primary physical custody of N. during the school year. The court found that Father was able to handle school drop off and pick up without requiring assistance from others and that doing so provided him with one-on-one time with

N. The court also noted that there were difficulties in the relationship between N. and G., but did not note any difficulties in the relationships between E. and B. and their siblings. For these reasons, Mother's claim that the court's decision with respect to the family vacation to Assateague Island created an appearance of impartiality is not supported by the record.

III.

Mother challenges the circuit court's order that she pay child support to Father in the amount of $384 per month during the school year and $323 during the summer recess. Because we are unable to discern the basis for the circuit court's determination of the parties' child support obligations, we shall remand the case for further proceedings on that issue.

A decision to modify an award of child support "is left to the sound discretion of the trial court, so long as the discretion was not arbitrarily used or based on incorrect legal principles." *Walker v. Grow*, 170 Md. App. 255, 266 (2006) (quoting *Tucker v. Tucker*, 156 Md. App. 484, 492 (2004)) (quotation marks omitted). We "will reverse a decision that is committed to the sound discretion of a trial judge if we are unable to discern from the record that there was an analysis of the relevant facts and circumstances that resulted in the *exercise* of discretion." *Maddox v. Stone*, 174 Md. App. 489, 502 (2007).

A review of the relevant court orders and evidence is helpful. In the judgment of divorce, the court ordered that Father pay Mother child support in the amount of $321 per month and rehabilitative alimony in the amount of $1,500 per month. The award of child

support was based, in part, on a child support worksheet that showed Mother to have monthly actual income of $869 and alimony in the amount of $1,500, for a total monthly adjusted actual income of $2,369. It showed Father to have monthly actual income of $5,250 and credit for payment of alimony in the amount of $1,500, for a total monthly adjusted actual income of $3,750.

In their September 10, 2020 interim consent order, the parties agreed that Mother would have physical custody of G., who had been in her mother's care since November 2019, and that Father would have reasonable access as agreed upon by the parties with input from G. Nevertheless, they agreed that Father would continue paying child support of $321 per month and "that any potential claims for child support arrearages" would be "reserved for determination at the Merits Trial[.]" The parties also agreed that Father would continue to pay alimony in the amount of $1,500 per month.

At the beginning of the modification hearing, counsel for Mother advised the court that there had been no modification of child support although on March 24, 2020, Mother had filed a request for such relief in her amended petition/motion to supplement her counterclaim for modification of custody. Counsel also noted that Mother had filed a request for modification of support with the Department of Social Services in December 2019, and a copy of that request was admitted in evidence as Plaintiff's Exhibit 6.

Prior to the hearing, the parties filed financial statements. Mother's financial statement showed gross monthly wages of $500, alimony of $1,500, and child support of $328, for a total of $2,328. That is the figure that the court used as Mother's monthly actual

income before taxes in calculating the modified child support. Father's financial statement showed gross monthly wages of $882.50 and other gross income of $431.59, for a total monthly income of $1,314.09. The court used $1,314 to calculate the modified child support.

During the course of the hearing, Father testified that the $431 in other gross income listed on his financial statement came from rental income he received from property he owned in California. Father stated that his prior financial statement listed other gross income of $2,848, but that included income from unemployment insurance and a PPP loan in addition to income from his rental property. Father testified that about $22,000 of his prior year's income had come from unemployment benefits and that he was allowed a deduction of $10,200. According to Father, his financial statement was amended to reflect the fact that his unemployment insurance and PPP income had ceased. Father acknowledged that he claimed roughly $6,000 per year in repairs for his vehicle, although he was "not sure [of] the exact number." He acknowledged that his 2020 tax return included adjusted gross income of $29,330, and testified that "the first three months of this year . . . are better." When asked if he was doing better financially, Father testified "[u]m, about the same. I mean I wouldn't say it's better. Work has been busier, yes." On his tax return, Father also listed $87,364 in gross rental income from a residential rental apartment complex in California. Father acknowledged certain deductions that were included on his tax return.

In closing argument, counsel for Mother addressed the need to determine Father's actual income and argued that it was "in excess of $40,000" because certain deductions were not "added back into his gross income." Counsel questioned "the fact that [Father] has $2,848 net income three months ago, and now he has $400." Counsel also pointed out that Father's amended financial statement did not reference either alimony or child support, both of which were included in calculating Mother's gross income.

In its September 20, 2021 order, the court addressed child support, stating:

> **ORDERED**, that commencing on October 1, 2021, [Mother] shall pay to [Father] $384.00 per month for child support during the school year and $323.00 during the summer recess from school, pursuant to Maryland Child Support Guidelines, copies of which are attached hereto, to be paid on or before the first day of each month; and it is further
>
> **ORDERED**, that in all other respects, the Judgment of Absolute Divorce, dated October 25, 2019, as amended by the Consent Interim Order, dated September 10, 2020, shall remain in full force and effect.

In its Memorandum Opinion, the court explained its decision to modify child support as follows:

> Finally, [Father] seeks a reduction in his child support and alimony obligations. Interestingly, [Mother] did not assert at trial that [Father] is in arrears on either obligation although the Consent Interim Order identifies alimony arrears and the parties' agreement the arrears would be satisfied. While it is unclear from where the money comes based on his most recent financial statement (Defendant's Exhibit #9), apparently he has been able to meet these two obligations even if not in a timely manner. Considering the Court's decision regarding physical custody of [G.] and [N.], and in consideration of the child support guidelines prepared by [Father], (Defendant's Exhibit #10), [Mother] has a net child support obligation to [Father] of $384 each month which will begin October 1, 2021 and $323 per month during summer access. The Court considered attributing income to each party because it is clear that neither [Mother] nor [Father] is working and earning to the level of their ability. However, the parties seem to manage on what they currently earn. Also, the Court ran guidelines using the alimony

> obligation to affect income. The Court determined that would essentially result in a wash of the alimony [Father] is required to pay and would be unfair to [Mother].

The court went on to discuss Father's request to reduce his alimony obligation and his reported income. The court stated:

> While [Father] seeks a reduction in his alimony obligation, the Court is not convinced that a reduction is appropriate. [Father] is a commercial real estate agent. Admittedly, his income has suffered from the pandemic, but he testified that currently his business is picking up. Further, he has made no effort to enhance his income by seeking to augment his real estate licenses by moving into the residential arena. Even a 40 hour a week job at minimum wage would be more income than what he listed on his financial statement. His expenses are also worthy of scrutiny. He claims vehicle repairs of $450 per month on a 2008 Toyota Tacoma. He also lists replacement of furnishings and appliances at $208 per month, repairs of $386 per month, vacation for himself of $47 per month, and car washes of $80 per month. Finally, by agreement of the parties at this trial, [Father] will pay the outstanding monetary award of $12,500 at the rate of $500 per month until satisfied. The Court finds that [Father] is not entitled to a reduction in his alimony obligation.

Mother challenges the circuit court's failure to scrutinize Father's claimed expenses after finding that they were worthy of scrutiny. She also questions the meaning of the court's statement that it "ran guidelines using the alimony obligation to affect income" and points out that both alimony and child support were included in calculating her income but neither was addressed with respect to Father. In addition, Mother points to Father's testimony that he earned $29,330, that the first three months of 2021 were better, and that business was picking up. She maintains that in addition to income from his employment, Father earned $87,364 in rental income but the court did not address "thousands in tax

deductions and regular monthly expenses far exceeding $1,314 [in] monthly income, many of which were questioned by the Court." We agree.

In making an actual income determination, "[t]he court must verify the parents' income statements 'with documentation of both current and past actual income.'" *Walker*, 170 Md. App. at 269. *See also* § 12-203(b) of the Family Law Article of the Maryland Code ("FL"). Suitable documentation to verify the parents' actual income includes "pay stubs, employer statements otherwise admissible under the rules of evidence, or receipts and expenses if self-employed, and copies of each parent's 3 most recent federal tax returns." FL § 12-203(b)(2)(i). "If a parent is self-employed or has received an increase or decrease in income of 20% or more in a 1-year period within the past 3 years, the court may require that parent to provide copies of federal tax returns for the 5 most recent years." FL § 12-203(b)(2)(ii).

"Adjusted actual income" is actual income "minus" the pre-existing child support obligations that are actually paid and the alimony or maintenance obligations that are actually paid. FL § 12-201(c). Section 12-204(a)(2)(ii) of the Family Law Article provides:

> (ii) If the court awards alimony or maintenance, the amount of alimony or maintenance awarded shall be considered actual income for the recipient of the alimony or maintenance and shall be subtracted from the income of the payor of the alimony or maintenance under § 12-201(c)(2) of this subtitle before the court determines the amount of a child support award.

From the record before us, we cannot discern the basis for the court's calculation of child support. It is not clear to us what the court meant when it stated that it "ran guidelines

using the alimony obligation to affect income" and determined "that would essentially result in a wash of the alimony [Father] is required to pay and would be unfair to [Mother]." It appears that the court added the alimony awarded as actual income for Mother but failed to subtract the alimony from Father's actual income. Father's actual monthly income before taxes was calculated as $1,314. The court noted that Father appeared to be able to meet his alimony obligation of $1,500 per month and his existing child support obligations, although the court did not explain how that was possible. The court did not address tax deductions taken by Father or inquire into the expenses included on his most recent financial statement after noting that they were "worthy of scrutiny." In addition, the court did not explain why it decided not to assign potential income to the parties after noting that "[e]ven a 40 hour a week job at minimum wage would be more income than what [Father] listed on his financial statement." Because we are unable to discern the basis for the court's determination of child support, we shall remand this issue for further consideration of that issue. As discussed, *supra*, we shall also remand for consideration of the issue of child support arrearages with respect to G.'s change of custody.

IV.

Mother argues that the circuit court erred in granting Father's request that the children be permitted to attend the annual trip to Assateague Island with his family over Columbus Day weekend. Mother argues that "it would be fair" to allow each parent to have the children for the holiday weekend on an every-other-year basis so that the children could also spend time with Mother's grandmother, whose birthday is around the same time,

and other relatives who live in New England. According to Mother, the court "erred in creating an appearance of partiality in awarding an entire holiday with all the Children to one parent every year, until the Children reach adulthood." We disagree.

The circuit court was not required to craft its order on a tit-for-tat basis. Our function on appeal is not to retry the case or reweigh the evidence. *Kremen*, 363 Md. at 682. Nevertheless, the court's order makes clear that Mother's time with the children will not be impacted because she "shall receive make up time for any time she loses with the minor children due to the trip[.]" The court was free to consider the benefits to the children of participating in the annual trip with their paternal relatives and did not abuse its discretion in permitting them to do so.

V. Church Attendance

Mother challenges the court's decision with respect to her motion for contempt based on Father's alleged failure to take the children to church. At the hearing, after the close of the evidence, the court stated:

> With respect to the contempt, it involves the failure to take the children to church or return them to Ms. Ellis so she can take them to church. I – I'm going to dismiss that. I do not find that clear and convincing evidence has been presented of [Father]'s failure to take the children to church or to return them to their mother and so the church could occur. There was evidence that there was Bible reading that took place. And as everyone understands, there certainly has been a tremendous difficulty. Churches were closed during the past year. And I don't find that a case has been made.

Section 12-304 of the Courts and Judicial Proceedings Article governs appeals from contempt proceedings. It provides, in pertinent part, that "[a]ny person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court

and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action." This language establishes that there must be an "order or judgment passed to preserve the power or vindicate the dignity of the court" and that the appeal must be prosecuted by the person adjudged to be in contempt. In Maryland, "a party that files a petition for constructive civil contempt does not have a right to appeal the trial court's denial of that petition." *Pack Shack, Inc. v. Howard Cnty.*, 371 Md 243, 246 (2002). "[O]nly those adjudged in contempt have the right to appellate review. The right of appeal in contempt cases is not available to the party who unsuccessfully sought to have another's conduct adjudged to be contemptuous." *Becker v. Becker*, 29 Md. App. 339, 345 (1975) (citing *Tyler v. Baltimore Cnty.*, 256 Md. 64, 71 (1969)).[3] As the court denied Mother's motion for contempt, the right of appeal is not available to her on that issue.

VI. Child Support Arrearages and Marital Property

Mother argues that the circuit court failed to address her claim for child support arrearages that arose after the parties' agreed to a change in the physical custody of G. Mother directs our attention to the consent interim order which provided that "any potential

[3] Although there is an exception to this rule where '"refusing to impose the order for civil contempt is so much a part of or so closely intertwined with a judgment or decree which is appealable as to be reviewable on appeal as part of or in connection with the main judgment[,]" *Becker*, 29 Md. App. at 345 (quoting *Tyler*, 256 Md. at 71). However, the Court of Appeals has cautioned "that exception very likely would not apply when the appeal is filed by a person who was not held in contempt, however closely related and intertwined it is with other orders or judgments also pending appeal." *Pack Shack*, 371 Md. at 260.

claims for child support arrearages are reserved for determination at the Merits Trial[.]" In his opening statement at the underlying hearing, Mother's counsel specifically requested that the court consider the request for modification of child support and child support arrearages as they pertain to the change in G.'s physical custody. Mother also testified that she was requesting child support arrearages for G. Although the court's calculation of modified child support acknowledged the change in custody with respect to G., the court did not address the issue of child support arrearages. We remand that issue for consideration by the circuit court.

Mother also argues that there are issues pertaining to marital property that were raised in the consent interim order that were not addressed by the court. The interim consent order provides that "the ninety (90) day period for the parties to agree on the personal property referenced in the parties' Judgment of Absolute Divorce shall end December 6, 2020" and that Mother "shall make arrangements with Pro Services LLC to have the personal property which was removed from the marital home available at Pro Services LLC's location for the parties to divide[.]" Mother has not directed our attention to any place in the record to show that either of those issues were raised at the hearing. We are not required to ferret out from the record verification of a parties' assertions or facts that appear to support a party's position. *See Ruffin Hotel Corp. of Maryland, Inc. v. Gasper*, 418 Md. 594, 618 (2011); *Miller v. Bosley*, 113 Md. App. 381, 391 (1997). Accordingly, because it has not been shown that the issues of marital property were raised in or decided by the trial court, we shall not address them. Md. Rule 8-131(a).

VII. Other Arguments

Mother makes several arguments that were not preserved for our consideration. First, Mother argues that her attorney "did not fully represent her wishes or beliefs[,]" that she "was not given sufficient opportunity to fully address all the matters of [d]omestic [v]iolence, abuse, and neglect" by Father, and that she "was not fully informed of everything she was signing concerning the dismissals her counsel submitted as it was done in a hurry, being presented to [her] only several minutes before trial commenced, to [her] shock and confusion." Mother also takes issue with a statement made by counsel for Father during opening argument. Mother describes the statement as "suspicious" and contends that it caused her to question the impartiality of the entire proceeding. Lastly, Mother argues that the record "reflects the appearance of certain biased opinions toward" her as well as the existence of gender bias by which '"battered mothers'" are blamed "'for any and all harm their children suffer[.]"'

None of these issues are properly before us because Mother did not raise them below. Md. Rule 8-131(a). Moreover, with respect to the trial judge's alleged lack of partiality, Mother did not ask the judge to recuse himself. To "preserve the recusal issue for appeal, 'a party must file a timely motion' with the trial judge that the party seeks to recuse." *Conwell Law LLC v. Tung*, 221 Md. App. 481, 516 (2015) (quoting *Miller v. Kirkpatrick*, 377 Md. 335, 358 (2003)). A timely motion for recusal is one that is filed "as soon as the basis for it becomes known and relevant" and not "one that represents the possible withholding of a recusal motion as a weapon to use only in the event of some

unfavorable ruling." *Id.* (internal quotation marks and citations omitted). For those reasons, "'a litigant who fails to make a motion to recuse before a presiding judge in circuit court . . . waiv[es] the objection on appeal.'" *Id.* at 516-17 (quoting *Halici v. City of Gaithersburg*, 180 Md. App. 238, 255 n.6 (2008)). As these issues were not raised in and decided by the circuit court they are not properly before us. Md. Rule 8-131(a). As for her request that we review the evidence, we remind Mother that it is not our function to retry the case or reweigh the evidence. *Kremen*, 363 Md. at 682.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY WITH RESPECT TO CHILD SUPPORT VACATED AND CASE REMANDED; IN ALL OTHER RESPECTS JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.