

Circuit Court for Carroll County
Case No. 06-C-16-072011

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1339

September Term, 2021

Joseph Alphonse Dumonchelle

v.

Melinda Ann Dumonchelle

Wells, C.J.
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: August 4, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Joseph Alphonse Dumonchelle, Appellant (“Father”), and Melinda Ann Dumonchelle, Appellee (“Mother”), are the biological parents of L¹, born on July 11, 2011. Father and Mother were divorced on October 31, 2017. According to the divorce decree, the parents were ordered to have joint legal and shared physical custody of L, and Father was ordered to pay \$100 in child support every month.

As reported by Mother and L’s third-grade teacher, Ms. Deborah Thompson (“Ms. Thompson”), L endured substantial emotional, mental health, educational, and learning challenges. Notably, L needed to repeat his kindergarten year. Ms. Thompson also testified that though L is in third grade, his reading skills are at a first-grade level and L’s school made substantial accommodations for L to aid with his learning difficulties. Mother brought L to a physician, Dr. Manuel Datiles, MD, at Liberty Pediatrics and Family Medicine, who diagnosed him with attention deficit hyperactivity disorder (ADHD) and started medication to help manage L’s ADHD symptoms.

However, Father disagreed with L’s medical diagnosis and use of medication. On April 19, 2019, Father moved to modify L’s custody order because he believed L’s diagnosis with ADHD was “inaccurate” and his ADHD prescription medication (“medication”) was “unnecessary”. Father sought sole physical custody of L, denying that L had any issues other than that he needed focus. Father accused Mother of medicating L “in order to sedate [L] during her social gatherings.”

¹ L’s full name is withheld for privacy purposes.

On June 3, 2019, Mother filed a counter-complaint for sole custody of L. The Circuit Court for Carroll County held the scheduling hearing on November 12, 2019. After the hearing, the court appointed a Best Interest Attorney (“BIA”), Ms. Amy Feldmen, Esquire, on January 2, 2020.

The Circuit Court for Carroll County scheduled trial for March 25, 2020 but had to significantly delay the trial due to the COVID-19 pandemic. An interim consent order for custody was entered on March 16, 2020, which continued the joint legal custody, but changed the physical custody to Monday through Thursday with Mother and Thursday through Monday with Father. Moreover, the court ordered: (1) a parent coordinator with tie-breaking authority over decisions for L; (2) a comprehensive educational/psychological/psychiatric evaluation for L; (3) compliance with therapy and medication for L following the findings of the medical evaluation; and (4) family therapy. The circuit court held the rescheduled trial over the course of three days due to the COVID-19 pandemic: May 4, 2021, August 12, 2021, and August 13, 2021.

During the modification hearing on May 4, 2021, Father asserted that L was without any learning disabilities.² Father believed L’s attention, concentration, and memory were worse when L was on his medication and Father would not administer them.

² During the modification hearing on May 4, 2021, Father and his counsel engaged in this dialogue on the issue:

[Counsel]: And then – I mean, as far as you know, does [L] have any learning disabilities?

[Father]: No. Right now he has a problem focusing and that focus is caused by anger due to us.

[Counsel]: What about the ADHD diagnosis?

The circuit court filed its oral decision on August 20, 2021 and a subsequent written order was entered on September 27, 2021. The circuit court first determined that there was a material change in circumstances since the original child custody order due to L’s change in medical diagnosis stating he has, inter alia, ADHD³ and educational challenges, as reported by the staff at L’s school.

After determining there was a material change in circumstances, the circuit court weighed whether a change in custody was in L’s best interest. Although the circuit court did not explicitly enumerate and match up the best interest factors on the record, it is clear to this Court that the circuit court considered factors such as: communication and shared decision-making abilities between the parents, fitness of parents, the ability of the parents to appreciate the severity of L’s learning and mental health issues, the ability of the parents to address, respond, and appropriately help L navigate his learning and mental health issues, and the parents’ ability to follow the curriculum of L’s schoolwork. After weighing these best interest factors, the circuit court awarded Mother full physical and legal custody of L with modified visitation to Father throughout the year.

[Father]: I have yet to see any kind of ADHD. My neighbor’s boy is ADHD. I had a nephew who is ADHD. He is not like that.

...

[Father]: Yeah, I don’t believe he’s ADHD.

³ L was reported to be experiencing anxiety, low self-esteem, and “adjustment disorder with mixed disturbance of emotions and conduct, [ADHD], . . . inattentive presentation, [and a] specific learning disorder with impairment in reading . . .”

Following the custody determination, the circuit court increased Father's child support payments.⁴ Additionally, the circuit court found that child support arrears had accrued from the date of entry of the divorce judgment on October 31, 2017 through September 9, 2021. Father was ordered to pay back arrears monthly until the balance was paid.⁵

Both parties were ordered to pay half of BIA's unpaid fees. Mother filed a motion to reconsider the fees on December 3, 2021, asserting that Mother consistently paid the BIA fees throughout the course of litigation, while Father stopped making payments due to his disagreements with the BIA, resulting in Mother paying a larger amount of BIA fees. The circuit court granted Mother's motion and reassessed the fees. Finally, Mother requested attorney's fees, which totaled \$29,000. After considering both parties' incomes, Mother was awarded \$15,000 in attorney's fees.

In bringing his appeal, Father presents two questions for appellate review, rephrased for clarity:⁶

⁴ Father was ordered to pay \$429 monthly to Mother for child support.

⁵ Father had accrued \$4,630 in child support arrears from October 21, 2017 through September 9, 2021. Father was ordered to pay back the arrears in the amount of \$200 per month until it was paid off in full.

⁶ Father, in his brief, presented the two following questions:

1. Did the trial court err by awarding attorney's fees without explicit consideration of the required factors?
2. Did the trial court err by awarding full legal and physical custody to the Mother and allowing only alternate weekend visitation during the school year, without consideration of many of the applicable factors?

- I. Did the circuit court err in awarding Mother full physical and legal custody of L, with visitation rights to the Father?
- II. Did the circuit court err in awarding Mother’s attorney’s fees?

Based on the circuit court’s decision considering L’s medical diagnosis and records, the extensive clinical study, Ms. Thompson’s testimony regarding L’s educational obstacles, and the family therapist’s testimony, all of which are outlined in more detail below, we find no abuse of discretion in the circuit court’s order awarding full custody to Mother. However, because this Court is unable to fully discern the basis of the award of counsel fees by the circuit court, we vacate the decision and remand for recalculation and explanation of the attorney’s fees by the circuit court.

i. L’s Medical Diagnosis, Records, and Clinical Study

L’s ADHD medical diagnosis is the main contention at issue between Father and Mother. Thus, this Court finds it important to outline L’s medical history, records, and court-ordered clinical study in detail since it serves as the cornerstone in the circuit court’s decision in awarding Mother full custody.

On April 29, 2019, L was diagnosed with ADHD following several rounds of the Vanderbilt Assessment Scale and the American Academy of Pediatrics’ approved surveys for diagnosis of ADHD, and prescribed Concerta, an ADHD medication.⁷ Following the Interim Consent Order, L did a clinical evaluation at Mount Washington Pediatric Hospital

⁷ L also suffers from acute sinusitis, diagnosed on March 14, 2014, and childhood obesity, diagnosed on August 3, 2020.

on December 3, 2020. The findings were compiled in a twenty-nine-page medical report and psychological evaluation (“Report”) extensively outlining and reconfirming L’s ADHD diagnosis.

According to the Report, L had ADHD inattentive subtype, adjustment disorder with mixed disturbance of emotions and conduct, and a reading learning disorder. The diagnosis in the Report was made using a series of clinical tests performed by medical specialists to evaluate L’s demeanor, reasoning skills, cognitive and executive function, and displayed behaviors.⁸ The Report recommended therapy, academic accommodations through the Individualized Education Program under the Individuals with Disabilities Education Act, and extensive structural and communication measures to aid with L’s ADHD, anxiety, impulsivity, and low self-esteem. The Report stated

[Mother] noted subclinical levels of inattention and hyperactivity for [L], while [Ms. Thompson] endorsed that he does not seem to listen when spoken to, is easily distracted, acts as if “driven by a motor,” blurts out answers, and interrupts others’ conversations and activities. In contrast [Father] did not endorse any clinically significant challenges with attention or

⁸ The following assessments were used to diagnose L at Mount Washington Pediatric Hospital: (1) Adaptive Behavior Assessment System, Third Edition (ABS-III), Parent Form; (2) Beck Youth Inventory, Second Edition (BYI-Z), Self-Form; (3) Betsy-Buktenian Test of Visual Motor Integration, Sixth Edition (VMI); (4) Behavior Assessment System for Children, Third Edition (BASS-3), Parent and Ms. Thompson Forms; (5) Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2), Parent and Ms. Thompson Forms; (6) L and Adolescent Memory Profile (CHAMP); (7) Children’s Sentence Completion Test; (8) Connors’ Continuous Performance Test, Third Edition (Connors CPT-3); (9) Gray Oral Reading Test, Fifth Edition (GORT-5); (10) Pediatric Behavior Rating Scale (PBRS); (11) Screen for L Anxiety Related Disorders (SCARED), Parent and Self Forms; (12) Wechsler Individual Achievement Test, Third Edition (WIAT-III), select subtests; (13) Wechsler Intelligence Scale for Children (WISC-V); Information and history from personal history forms and clinical interview; (14) Behavioral observations.

hyperactivity/impulsivity, though endorsed that [L] sometimes had a short attention span, is easily distracted, acts without thinking, interrupts others, and is overly active. Based on clinical observation, performance on evaluation measures, and parent and [Ms. Thompson] report [L] demonstrates clinically significant symptoms of inattention as well as subclinical hyperactivity/impulsivity.

The Report outlined that L also suffered from anxiety and low self-esteem, both in personal and academic life. Further, L becomes “obstinate when he does not understand information, which leads to arguments, and then apathy and giving up . . .” Finally, the Report concludes that although L is in third grade, L’s current reading abilities are consistent with abilities at a first-grade level.

Following the clinical medical evaluation and Report, on December 29, 2020, Dr. Datiles prescribed L Adderall, a different ADHD medication than originally prescribed, to help with side effects L was experiencing from his original medication. During that visit, Dr. Datiles noted the parents’ conflicting views on medication. Father stated that L’s attention, concentration, and memory were worse on his medication, which is “in direct contradiction with mom’s report as well as school’s report and the [V]anderbilt [Assessment Scale] completed by Ms. Thompson and mom, as well as report from Pediatric Psychology Doctor’s report . . .” Additionally, Dr. Datiles noted that Ms. Thompson’s “reports have been consistent with diagnosis of ADHD and been positive while on his medication.” Dr. Datiles included in his notes that L

states he would not like to be on medicine, but appears to make [the] statements if they make his dad happy. (In [the] past[,] when [Dr. Datiles saw] him for [appointments,] he states medication helped him at school and does not have any side effects including headache, stomach ache, (sic) sleep disturbance, mood swings, [or] irritability.)

Finally, Dr. Datiles noted that L “has reported he likes being at dad[']s place better because he can ‘drive his dirt bike as fast as a car’, [and] does not have to wear a helmet when driving his [four]-wheeler ATV.”

In balancing the conflicting opinions from the parents, Dr. Datiles tried to compromise with both parents and devised a medical plan for the coming weeks. Dr. Datiles instructed both parents that regardless of whether L is with Father or Mother, L would take his medication for three weeks, then L would stop taking his medication for three weeks. The medical plan was devised to see if there is a clear “superior situation” for L regarding medication. During this period, Father and Mother were instructed by Dr. Datiles to observe his grades and Ms. Thompson was asked to fill out the Vanderbilt Assessment Scale while L is on his medications and while L is off his medications. Ms. Thompson’s observations and Vanderbilt Assessment Scale reports are outlined in the next section.

ii. L’s Educational Reports

Mother testified that L needed to repeat his kindergarten year. Ms. Thompson also testified that he had serious academic deficits that were concerning, and the school made substantial accommodations for L. Ms. Thompson stated that the Report’s assessment of L’s comprehension was consistent with her observations and that L was reading at a first-grade level. Ms. Thompson further explained that Father was not following the curriculum and created further academic confusion for L. She also underscored the importance of both parents helping L with his homework and consulted both parents in setting up an educational plan for L.

Ms. Thompson testified that she completed the two Vanderbilt Assessment Scale Forms per Dr. Datiles's instructions. While L was on medications, Ms. Thompson completed the Vanderbilt Assessment Scale Form and reported no behavioral or social issues.

About three weeks later, Ms. Thompson completed the Vanderbilt Assessment Scale while L was not taking his medications. Ms. Thompson explained that she saw an increase in behavior problems for L when he was off his medication and commented that he showed a marked difference in demeanor, including an increase in frustration when learning and aggressive actions. On the form,

[Ms. Thompson] noted that [L] was extremely irritable, impatient, and doesn't want to take his time to do his work or follow instructions. He was also much more physically active at his seat. [He was p]ulling at his skin [and] picking at his arms and fingers. [A few days later] he was struggling with a math equation, throwing out irrational numbers and while trying to get him to focus he threw himself back against the wall, grumbling/growling [indiscernible] and threw the paper down.

Earlier that week on two separate days he had verbal altercations with students during recess. This is highly unusual, and these students were some of his closest friends. [L's] grades did not fare well, as there seemed to be a serious issue with focus and comprehension during the school day. [Ms. Thompson] was having to repeat instructions, step by step, multiple times a day, and [was] met with anger, frustration, and contempt each time. There was absolutely no resolve on his part to try to understand the work.

However, in contrast, Ms. Thompson noted that L showed much improvement when on his medications.

iii. Family Therapist

The circuit court also heard testimony from the family's therapist, Dr. Esther Finglass, PhD. Dr. Finglass noted that there was a great deal of conflict between the

parents, which negatively affected L’s mental health. She explained that L’s diagnosis of a learning issue and ADHD present specific conditions that require unified support from both parents, but instead L receives conflicting and negative messages about the other household member from the other parent. Those differing messages were difficult for L to navigate given his learning issue with comprehension. Dr. Finglass stated that it was her belief that Father “reinforces for [L] that he hates his Mother,” based on her conversations with Father, but that L loves both parents. Moreover, Dr. Finglass stated that Mother

appreciates the magnitude of the disabilities and is receptive to working with [L] in the ways that the experts have advised her to do. I think that [Father] has different opinions . . . he expressed to me that he doesn’t really . . . believe that [L] has learning issues, and he doesn’t believe that he requires medication for his ADHD.

Dr. Finglass stated there were long term effects for L if the recommendations were not followed and implemented,⁹ explaining that there are

risks to his academic achievement, his ultimate academic attainment, his ability to function in school, his ability to learn. There [are] definitely challenges to his maintaining his self-esteem. Currently I’ve heard from multiple sources that [L] believes that he’s not smart and that he feels bad about it, and it’s attributed, according to Ms. Thompson, to some peer interaction problems. So there [are] problems that are related to academics, there [are] problems related to self-esteem and children with untreated ADHD tend to have more interpersonal conflict and problems with peer relationships. And peer relationships [are] highly predictive of ultimate emotional functioning as an adult.

iv. Circuit Court Orders

⁹ During trial, Counsel inquired, “If the recommendations are not followed and implemented, is there, to a reasonable degree of certainty within your profession, an opinion about the long-term effects of what can happen to L when these kinds of issues are not addressed as is being recommended?”

On August 20, 2021, the circuit court held a hearing (“Hearing”) and filed an oral decision in the case. On September 27, 2021, the circuit court entered a written order (“Order”). The circuit court first determined that there was a material change in circumstances due to L’s change in medical diagnosis and educational challenges, based on L’s ADHD diagnosis, Ms. Thompson’s testimony, and the extensive clinical report. After determining there was a material change in circumstances, the circuit court decided that access needed to be reconsidered by the court to determine what was in L’s best interest, noting the best interest factors outlined in Fader. JOHN F. FADER, II & RICHARD GILBERT, MARYLAND FAMILY LAW (2016).

First, the circuit court noted the breakdown in communications and decision-making abilities between the two parents, citing how the parents are nearly unable to communicate or agree on anything concerning the child. Then, the circuit court weighed the fitness of the parents and their ability to appreciate the severity of L’s learning and mental health issues. The court noted Father’s denial that L has any mental health issues or learning disabilities and Father’s belief that L just needs to focus, which was dispelled by the Report. In considering the Report, the court stated that L’s problems were “extensive,” “not routine,” and “most serious.”

Further, the circuit court noted that while the bond between Father and L is close, Father “treats L more like a buddy” and is “willing to act to a degree [to] over look (sic) or not accept the realities of what [] needs to occur for [L]’s best interest.” The court also weighed the ability of the parents to address, respond, and appropriately help L navigate his learning and mental health issues, and the parents’ ability to follow the curriculum of

L’s schoolwork. The court was concerned about: (1) Father’s refusal to accept that L had ADHD; (2) Father’s refusal to give medication to L; (3) L already struggling academically;¹⁰ and (4) Father not following the educational curriculum.

After weighing what legal and physical custody arrangement was in L’s best interest, the circuit court awarded Mother full physical and legal custody of L with modified visitation for Father throughout the year, alternating birthdays, and summer break between Mother and Father.

The circuit court gave detailed orders to the parents regarding their communication, considering the harmful implications that the combative communications between the two parents had on L.¹¹ Regarding L’s medical treatment, the circuit court ordered Mother to keep Father appraised of medication, counseling, and treatment. Both parents were ordered to timely administer medication or supplements prescribed for L from experts or medical professionals. Both parents were to cooperate with family therapy and participate as directed by Dr. Finglass.

¹⁰ The circuit court noted the Report’s findings that L was a third grader reading at a first-grade level.

¹¹ The parties were ordered to only communicate through the “Co-Parenting App” phone application recommended by Dr. Finglass. The parents are only to text message one another directly in emergency or other unusual circumstances, so that in most communications Dr. Finglass is appraised of exchanges between the parents. Notably, the circuit court ordered the parties to refrain from: (1) using L as a messenger to deliver messages to the other parent; (2) asking L to keep secrets from the other parent; (3) questioning L about the other parent’s household or friends; (4) encouraging L to challenge the authority of the other parent, requesting a change of custody, or resisting spending scheduled time with the other parent; (5) communicating any thoughts that may reduce L’s love, respect or affection for the other parent or allowing friends or relatives to do so.

The circuit court ordered both parties to equally share the costs of tuition for school, tutoring, counseling, and family therapy. Following the custody determination, the circuit court increased Father's child support payments to \$429. The circuit court found that child support arrears had accrued from the date of entry of the divorce judgment on October 31, 2017 through September 9, 2021 in the amount of \$4,630 and Father was to pay back child support arrears monthly, in the amount of \$200 per month until the balance was paid.

Mother also requested attorney's fees, which the court found to be over \$29,000. The court deemed the attorney's fees reasonable because of the unforeseen, extended timeframe of the litigation due to COVID-19. Father was ordered to pay \$15,000 towards Mother's attorney's fees, in the amount of \$500 per month until the award of attorney's fees is satisfied.

After the BIA turned in their counsel fees earned between January 1, 2020 and September 30, 2021, the court found the BIA fees of \$22,000 fair and reasonable in a separate order filed on November 23, 2021. Mother and Father were instructed to pay the outstanding BIA fees in the amount of \$6,150 in equal parts. Mother filed a motion to reconsider the fees on December 3, 2021, asserting that Mother consistently paid the BIA fees throughout the course of litigation, while Father stopped making payments due to his disagreements with the BIA. Mother paid \$9,300 toward the BIA's fees, while Father paid \$6,550 toward the BIA's fees, which left the remaining balance in the amount of \$6,150. The circuit court granted Mother's motion and reassessed Mother's outstanding fees to \$1,700. Father's outstanding BIA fees were reassessed to \$4,500.

DISCUSSION

I. CUSTODY OF L

A. Parties' Contentions

Mother contends that the circuit court did not err in granting her sole legal and physical custody. First, Mother cites the material changes of circumstances in L's mental health and educational needs since the initial custody order two years prior. Mother then states that after weighing best interest factors including communication issues, parents' inability to come to joint decisions regarding L, disagreements regarding L's medical diagnosis and treatment with evidence and testimony presented at trial, the court reached a sound conclusion in awarding Mother full custody.

Father contends that the circuit court erred in awarding full legal and physical custody of L to Mother without explicitly explaining the best interest factors it used to make such determination. Father states that the circuit court did not "recite the factors to be considered on modification of custody and only addressed [the] fitness of the parents in a limited and speculative manner . . ." For the following reasons, we disagree with Father.

B. Standard of Review

We review child custody determinations utilizing three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Court of Appeals has described these standards as follows:

We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [MD. RULE §8-131(c)] applies. [Second], if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly

erroneous, the [court’s] decision should be disturbed only if there has been a clear abuse of discretion.

Id. at 586 (cleaned up) (citations omitted). We give “due regard to the opportunity of the trial court to judge the credibility of the witnesses.” MD. RULE §8-131(c).

C. Analysis

When considering a child custody modification order, this Court explained the circuit court’s guiding analytical framework in *Wagner v. Wagner*, 109 Md. App. 1 (1996):

[a] change of custody resolution is most often a chronological two-step process. First, unless a material change of circumstances is found to exist, the court’s inquiry ceases. In this context, the term ‘material’ relates to a change that may affect the welfare of a child. *See McCready v. McCready*, 323 Md. 476, 480-481 (1991) . . . If a material change of circumstance is found to exist, then the court, in resolving the custody issue, considers the best interest of the child as if it were an original custody proceeding . . . Because of the frequency with which it occurs, this two-step process is sometimes considered concurrently, in one step, *i.e.*, the change in circumstances evidence also satisfies – or does not – the determination of what is in the best interest of the child . . . Thus, both steps may be, and often are, resolved simultaneously.

Id. at 28-29. This two-step process is to prevent relitigating earlier determinations by litigious or disappointed parents upon the same facts. *See McCready*, 323 Md. at 481; *Wagner*, 109. Md. App. at 30.

i. Material Change in Circumstances

During the Hearing, the circuit court began its analysis with weighing if a material change of circumstances exists, which would then trigger analysis of the best interest of the child. The circuit court first cited a diagnosis and psychological evaluation of L, who was experiencing “adjustment disorder with mixed disturbance of emotions and conduct, [ADHD], . . . inattentive presentation, [and a] specific learning disorder with impairment

in reading . . . ” The diagnosis and evaluation were corroborated by Ms. Thompson, who testified about L’s educational needs, as well as her and the school’s additional efforts to help L. Based on these factors, the circuit court found a material change of circumstances existed that warranted consideration of what legal and physical custody arrangement is in the best interest of the child.

ii. Best Interest of the Child

After determining that there were material changes in circumstances affecting the welfare of L since the original custody arrangement was ordered, the court weighed what legal and physical custody arrangement was in L’s best interest. The standard that was used in determining what is in the best interest of a child, states that

[w]hile a trial court must look at each custody case on an individual basis to determine what will serve the welfare of the child [] involved, *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503 (1992), factors that *can* be used to assist in the trial court’s determination include, “among other things, the fitness of the persons seeking custody, the adaptability of the prospective custodian to the task, the age, sex and health of the child, the physical, spiritual and moral well-being of the child, the environment and surroundings in which the child will be reared, the influences likely to be exerted on the child, and, if he or she is old enough to make a rational choice, the preference of the child.” *Hild v. Hild*, 221 Md. 349, 357 (1960).

Wagner, 109 Md. App. at 39 (emphasis added). The Court of Appeals clarified that courts may consider other factors and explicitly cited the best interest factors in JOHN F. FADER, II & RICHARD GILBERT, MARYLAND FAMILY LAW, as referred to by the circuit court in the Hearing for the case at bar. See *Boswell v. Boswell*, 352 Md. 204, 223 (1998). In *Taylor v. Taylor*, 306 Md. 290 (1986), the Court of Appeals explained,

[f]ormula or computer solutions in child custody matters are impossible because of the unique character of each case, and the subjective nature of the

evaluations and decisions that must be made. At best we can discuss the major factors that should be considered in determining whether joint custody is appropriate, but in doing so we recognize that none has talismanic qualities, and that no single list of criteria will satisfy the demands of every case . . . The best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak.

Id. at 303.

Father contends that the circuit court did not recite aloud or explicitly list best interest factors during the hearing. However, this Court finds it abundantly clear from the record that the best interest factors outlining its determination are discussed. The circuit court considered various factors to determine a custody arrangement that would be in the best interest of the child, citing (1) the breakdown in communications and joint decision-making between the parents, (2) Father's initial refusal to accept L had ADHD; (3) the clinical study and Report; (4) Father failing to administer L his prescribed medications; and (5) Father not following the curriculum of the schoolwork. *See, e.g., Gillespie v. Gillespie*, 206 Md. App. 146, 174 (2012).

First, the circuit court discussed the issue of communication and decision-making abilities between the parents for L. The capacity of the parents to communicate and reach shared decisions is one of the most important factors in the determination of a custody arrangement. *See Taylor*, 306 Md. at 304. The circuit court stated in the Hearing that

whatever ability these parties had to communicate with each other has broken down. I say to the extent that it existed, I think it was fragile all along and as things have progressed since the judgment of the absolute divorce and perhaps even since the parties['] separation, it has deteriorated gradually to a point where the parties are nearly unable to communicate.

The circuit court then noted how Mother and Father are virtually unable to agree on

anything concerning the child, and how that “bears on the fitness of the parties to parent” The court stated that while Mother’s refusal to cooperate with Father is “minimal,” Father’s refusal to cooperate with Mother is “characterized by [F]ather’s initial refusal to accept the child had ADHD” until it was later confirmed during this dispute over the child’s medications.

On the issue of L’s mental health condition, the circuit court discussed the ability of the parents to appreciate the severity of L’s learning and mental health problems. The circuit court stated while Mother was concerned and sought help for L’s mental health issues, Father denied that his child had any issues “other than he needs focus,” and that L was “just a boy.” However, the circuit court cited that L’s health report and the diagnosis, “completely dispels that [L simply needs focus,] although that was not fully known to anyone until the report was created . . . the [learning disabilities] outlined in this report . . . are extensive and are not . . . routine. They are most serious.”

In light of the clinical study and Report, the court found Father’s response to Mother’s efforts to help the child concerning. The court cited Father’s initial refusal to acknowledge L’s substantial learning and mental health issues until after the court-ordered clinical study, which help illustrate Father’s lack of adaptability in making decisions for L’s well-being and the ability of the parents to address, respond, and appropriately help the child navigate his learning and mental health issues. *See generally Hild*, 221 Md. at 357.

The circuit court characterized the relationship between Father and L as a friendly one, where Father treats L “more like a buddy than a parent.” The circuit court assessed that Father is

willing . . . to overlook or not accept the realities of what . . . needs to occur for the child’s best interest. There [is] also . . . based on all of the evidence, a refusal of the Father to cooperate with the Mother . . . it is basically a dispute over what the child needs.

The circuit court was also concerned with Father not following the curriculum of L’s assigned schoolwork, considering Ms. Thompson’s testimony that L was extremely behind in his coursework, and was a third grader reading at a first-grade level. Given the record, evidence, and testimony before the circuit court, we find that the circuit court did not abuse its discretion and affirm the circuit court’s holding.

II. ATTORNEY’S FEES

Mother requested attorney’s fees, which the court found to be over \$29,000. The court deemed the attorney’s fees reasonable because the unforeseen extended timeframe of the litigation due to COVID-19. After considering the timeframe of the litigation and both parents’ financial situations through evidence adduced during trial, the circuit court ordered Father to pay \$15,000 of Mother’s \$29,000 in attorney’s fees.

A. Parties’ Contentions

Father contends that the circuit court erred in awarding attorney’s fees without explicitly explaining the factors it used to make such determination, citing *Gillespie*, where “the trial court made no explicit findings or consideration of the statutory factors and the award was vacated . . .” Father explains, citing *Ledvinka v. Ledvinka*, 154 Md. App. 420 (2003), that a trial court must lay out its reasoning to allow for an award of fees. *Id.* at 433. Father asserts that the circuit court only noted that the sole reason it awarded attorney’s fees was because Father had the ability to pay. Finally, Father requests a remand for proper

consideration of the statutory factors for an award of attorney’s fees.

Mother, in contrast, states that Father made it difficult to assess his financial situation. Although it was May of 2021, Father did not file his 2020 statements, and though requested, did not provide his 2019 statements. However, Mother asserts that the circuit court considered the tax documents that were available and considered the financial status of both parties in determining the award of attorney’s fees. Moreover, Mother argues that MD. CODE, FAMILY LAW §12-103(c) applies because there was an absence of substantial justification for pursuing a proceeding since the evidence at trial rebutted allegations made in Father’s motion to modify custody. Thus, Mother asserts that the circuit court in weighing the evidence available and awarding Mother’s attorney’s fees, did not err.

B. Analysis

This Court’s analysis begins with the statutory framework regarding attorney’s fees in domestic cases. Father correctly asserts that the applicable statutory law in this case is MD. CODE, FAMILY LAW §12-103, which states

Award of costs and fees

- (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; or
 - (2) files any form of proceeding:
 - (i) to recover arrearages of child support;
 - (ii) to enforce a decree of child support; or
 - (iii) to enforce a decree of custody or visitation.

Conditions for award of costs and fees

- (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.

Whom cost and fees awarded to

(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.

Father cites *Gillespie* in support of his contention that the circuit court abused its discretion in failing to “consider the applicable factors.” In *Gillespie*, the circuit court explicitly declined to hear any testimony on financial issues during the custody modification trial, expressly stating the circuit court was to hold a separate hearing on financial issues to determine the payment of attorney’s fees. *Gillespie*, 206 Md. App. at 176-77. Each party submitted financial documentation. *Id.* at 177. However, the court never held a hearing on the financial issues and there was no indication that the court considered the factors in MD. CODE, FAMILY LAW §12-103 in its holding. *Id.* at 179. Thus, because there was no basis for the circuit court’s determination on the record, the Court of Special Appeals could not properly review the decision. *Id.* (citing *Ledvinka*, 154 Md. App. at 432-33 (2003); *Painter v. Painter*, 113 Md. App. 504, 528-29 (1997)). This Court remanded the determination of the attorney’s fees back to the circuit court. *Id.*

Like *Gillespie*, it appears the circuit court may have received the financial documentation for the incomes of both parties. Father’s 2018 “Profits or Loss From Business” tax form from his business as a general contractor was discussed during Trial

and entered into evidence.¹² Father’s 2020 “Profits or Loss From Business” tax form was also before the circuit court. Mother’s 2018, 2019, and 2020 Individual Tax Returns, as well as her 2019 and 2020 Corporation Tax Return for her cleaning business were also discussed and entered into evidence during trial.

Additionally, the circuit court addressed the reasonableness of the attorney’s fees and the needs of Mother. *See, e.g., Painter*, 113 Md. App. at 529. However, this Court is unable to discern whether the circuit court decided whether there was substantial justification for bringing, maintaining, or defending the proceeding. Absent the court stating the basis for its determination, this Court cannot properly review the decision. *See id.* (“In a case in which bills for legal services are challenged, [the trial court] ought to state the basis for his decision so it can be reviewed, if necessary, on appeal.” (quoting *Randolph v. Randolph*, 67 Md. App. 577, 589 (1986))). For that limited reason, we shall vacate only the award of attorney’s fees and remand for the circuit court to reconsider its award of counsel fees in light of MD. CODE, FAMILY LAW §12-103.

CONCLUSION

This Court holds that the Circuit Court for Carroll County did not err in its decision to award full legal and physical custody of L to Mother. Accordingly, we affirm the judgment regarding custody. We vacate only the award of counsel fees and remand to the circuit court its award of counsel fees to align with MD. CODE, FAMILY LAW §12-103.

¹² Father stated that he provided and filed his 2019 tax return during trial. This Court was not able to locate that document within the record.

**JUDGMENT OF THE CIRCUIT COURT
FOR CARROLL COUNTY REGARDING
ATTORNEY'S FEES VACATED;
JUDGMENT OTHERWISE AFFIRMED;
CASE REMANDED FOR A
RECONSIDERATION OF ATTORNEY'S
FEES ONLY; COSTS TO BE PAID BY
APPELLANT.**