Circuit Court for Montgomery County
Case No.: C-15-FM-23-007978

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1519

September Term, 2024

ELIZABETH BURGESS

v.

KEITH BURGESS

Wells, C.J.
Leahy,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: June 25, 2025

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

Appellant, Elizabeth Burgess ("Mother"), appeals an order by the Circuit Court for Montgomery County granting sole physical and legal custody of her two minor children to Appellee, Keith Burgess ("Father"), and limiting her access with the minor children to three hours of supervised visitation every other weekend.[1] She presents two questions:

1. Whether the trial court erred when it excluded Mother's photographic evidence.
2. Whether the trial court erred when it restricted Mother's access to supervised visitation.

For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

Mother and Father are the biological parents of two minor children (T.B. and E.B.) and one adult child. The parties were married in Florida on May 28, 2011, and resided together in Montgomery County until they separated in October of 2023.

Father filed a Complaint for Custody and Divorce against Mother on December 15, 2023, seeking an absolute divorce, sole legal and primary physical custody of the minor children, and child support, as well as various other demands. In response, Mother filed a "Counterclaim for Absolute Divorce, Custody, Child Support, Alimony, Determination of Marital Property, Monetary Award and for Other Related Relief" on February 16, 2024.

The circuit court held a two-day hearing on September 16-17, 2024, to decide the custody issues. Over the course of the two-day custody hearing, the parties called nine witnesses, including both parties, Mother's daycare assistant, three of Father's friends,

[1] The circuit court's order also required Mother to pay child support to Father in the amount of $2,400 per month. However, Mother does not challenge the court's child support order in this appeal.

Mother's parents, and custody evaluator Jeanine Bensadon. They also offered several exhibits, including Bensadon's August 8, 2024, custody evaluation report. In the report, Bensadon expressed concern regarding Mother's mental health and a recent incident in which Mother pointed a rifle at Father in E.B.'s presence during a drop-off. Bensadon noted in the report that Mother will use her firearms against Father if she feels threatened by him, and that Mother has repeatedly refused to turn over her firearms despite Father's filing for a protective order against her.[2]

At one point during the hearing, Mother offered three photographs purportedly showing bruises that she had suffered at the hands of Father during alleged domestic violence disputes. The court questioned Mother as to each photograph, asking her for information such as when the photographs were taken and what happened to cause the bruises in each photograph. Unsatisfied with her answers, the court declined to receive the photographs into evidence. As its basis for excluding the photographs, the court explained:

> I do not believe that the defendant has a basis of knowledge for any of these photographs. You're guessing as to when they were taken. You're guessing as to what happened to cause the events. You're saying, well, it could have been this, it could have been that. . . . There has to – they have to be presented with some specificity for me to give them weight and for me to acknowledge them. You can't just, you know – throw stuff at the wall and see what will stick.

At the conclusion of the hearing, the circuit court awarded sole legal and physical custody of the minor children to Father. The court found that Mother could have supervised

[2] Father filed for the protective order on June 14, 2024. However, due to Mother's refusal to be served, the protective order case remained unresolved by the time of the custody hearing at issue here.

visitations with the minor children every other weekend but only after she completed a mental health evaluation. The court primarily based this decision on two findings. First, the court found that Mother not only had a firearm in her possession in front of one of the minor children during an exchange with Father, but that she also said repeatedly, on the record, that she would use the firearm on Father if she feels threatened. This gave the court "grave concerns for the safety of [Father] and the safety of these two children." Second, the court found that Mother suffers from a mental condition that has elements of paranoia, evidenced by her various allegations that people have tried to murder or poison her. The court found that these allegations were "irrational" and "not supported by fact," and that her mental condition "gives this Court tremendous concerns about the safety of these two children and [Father]."

The circuit court entered a Custody, Access, and Child Support Order incorporating its oral rulings on September 23, 2024, and this timely appeal followed on October 4, 2024.

STANDARD OF REVIEW

"Typically, we review evidentiary rulings for an abuse of discretion." *Reyes v. State*, 257 Md. App. 596, 615 (2023). "We have consistently held that whether or not a photograph is of practical value in a case and admissible at trial is a matter best left to the sound discretion of the trial judge.... A court's determination in this area will not be disturbed unless plainly arbitrary." *Mason v. Lynch*, 388 Md. 37, 48–49 (2005) (quoting *Johnson v. State*, 303 Md. 487, 502 (1985)). "A court abuses its discretion when it 'acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court.'" *Reyes*, 257 Md. App.

at 615 (quoting *Sibley v. Doe*, 227 Md. App. 645, 658 (2016)). Additionally, this Court will not consider an erroneous evidentiary ruling to be reversible error unless the error resulted in prejudice to the party by "likely affect[ing] the verdict below." *Brown v. Daniel Realty Co.*, 409 Md. 565, 584 (2009) (quoting *Crane v. Dunn*, 382 Md. 83, 91–92 (2004)).

"Custody and visitation determinations are within the sound discretion of the trial court, as it can best evaluate the facts of the case and assess the credibility of witnesses." *Boswell v. Boswell*, 352 Md. 204, 223 (1998). For that reason, "when the reviewing court concludes that the factual findings of the trial court are not clearly erroneous and that sound principles of law were applied, the trial court's decision will not be disturbed unless there has been a clear abuse of discretion." *Id.* at 225. "In almost every case, the [trial court's] decision regarding custody and visitation is given great deference 'unless it is arbitrary or clearly wrong.'" *Id.* (quoting *Hanke v. Hanke*, 94 Md. App. 65, 71 (1992)).

DISCUSSION

I. The Circuit Court did not Abuse its Discretion when it Excluded Mother's Photographic Evidence

Mother contends that the circuit court erred in excluding her photographic evidence as a discovery sanction, without first considering the best interests of the minor children, in violation of *A.A. v. Ab.D.*, 246 Md. App. 418 (2020).[3]

[3] Father argues that Mother is precluded from raising this issue on appeal because she indicated at trial, "If you want to toss it, you can toss it," in regard to the photographs. This statement, according to Father, clearly indicates that Mother withdrew her request for the court to consider the photographs. However, under Maryland Rule 8–131(a), "an appellate court 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) (emphasis added). (continued)

In *A.A.*, this Court held that a trial court may not impose a discovery sanction that prohibits a party from presenting testimony or evidence in a child custody hearing without first considering the impact that the sanction would have on the best interests of the children. *Id.* at 447. To hold otherwise, this Court found, would violate the child's "indefeasible right" to have his or her best interests considered. *Id.* at 448.

Here, the circuit court clearly did *not* exclude Mother's photographic evidence as a discovery sanction. To the contrary, the circuit court explained its reasoning for excluding the photographs as follows:

> [T]he reason they're not being received is not because they weren't produced in discovery. It is I do not believe that the defendant has a basis of knowledge for any of these photographs.

Thus, the circuit court apparently based its exclusion of the photographs *not* on a lack of discovery production, but on a lack of authentication.

Before they may be received into evidence, photographs must be authenticated. *See Washington v. State*, 406 Md. 642, 651–52 (2008) ("Courts [] require authentication of photographs, movies, or videotapes as a preliminary fact determination, requiring the presentation of evidence sufficient to show that the evidence sought to be admitted is genuine."). Maryland Rule 5–901(b) provides an inexhaustive list of examples by which photographic evidence may be authenticated, including testimony of a witness with knowledge and circumstantial evidence. No matter how the proponent chooses to authenticate their photographs, the ultimate question for the trial judge is whether there is

Here, the issue of the photographs' admissibility was decided when the circuit court excluded them from evidence. Therefore, we will decide this issue.

"evidence sufficient to support a finding that the [photographs are] what [their] proponent claims." Md. Rule 5–901(a). "An appellate court reviews for abuse of discretion a trial court's determination as to whether an exhibit was properly authenticated." *Mooney v. State*, 487 Md. 701, 717 (2024).

Here, we find no abuse of discretion by the circuit court. The court carefully led Mother—a pro se litigant—through each of the photographs she wished the court to consider. The court asked her questions about each photograph, attempting to ascertain information such as the dates the photographs were taken and the events depicted therein. Mother struggled to give straightforward answers to these questions. For example, the court asked when one photo was taken, and Mother responded, "That photo was taken during COVID." Asked to elaborate, Mother continued, "More like 2020 – maybe 2021." Then, when questioned about the date another photo was taken, Mother answered, "probably about five or seven years ago." Asked to elaborate again, Mother said, "20 – it's probably right around when [E.B.] was – [T.B.] was born in 2010, was 7 – like 2017. I would say around 2017 that happened." When the court asked what led to the bruises she allegedly suffered in that photograph, Mother testified, "That was – I believe happened in the kitchen. Another argument, probably over me not cooking what he wanted for dinner." The court responded, "So you don't remember what the argument was about?" and Mother answered, "That's – that is correct, ma'am. I – I do not recall; it was quite a while ago."

A trial court abuses its discretion

> where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding principles, and the

> ruling under consideration is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic.

Sibley, 227 Md. App. at 658 (cleaned up). Considering Mother's vague and inconsistent answers to the court's questions, we cannot find that no reasonable person would have taken the view, adopted by the circuit court, that Mother failed to present evidence sufficient to support a finding that the photographs were what she claimed they were.

We also reject Mother's argument that the circuit court excluded the photographs without considering the best interests of the minor children. "[W]e presume that trial judges know the law and correctly apply it." *Att'y Grievance Comm'n of Md. v. Jeter*, 365 Md. 279, 288 (2001). In announcing its judgment at the conclusion of the custody hearing, the circuit court reiterated that it was applying the best interest of the child standard:

> [T]he court must consider the best interests of [the minor children], and the best interests of the child is always the standard by which a court must be guided in reaching custody decisions . . . . It is not what is in [Father's] best interest. It is not what is in [Mother's] best interest. It is what is in the best interest of [the minor children].

Mother has provided no reason to believe that, despite clearly being aware of its obligation to consider the best interests of the children, the circuit court did not do so when it excluded the photographs.

Finally, even if the circuit court did err in excluding the photographs, such error did not prejudice Mother by "likely affect[ing] the verdict below." *Brown*, 409 Md. at 584 (quoting *Crane*, 382 Md. at 91–92). The circuit court was clear that it intended to give the photographs little, if any, weight in its determination. Thus, it is unlikely that admission of the photographs would have affected the verdict below.

II. The Circuit Court did not Abuse its Discretion in Limiting Mother's Access with the Minor Children to Supervised Visitation

Mother also contends that the circuit court abused its discretion in limiting her access with the minor children to supervised visitation. She asserts that her access to the minor children may only be limited by evidence that she abused or neglected the minor children, and since there was no such evidence in this case, she claims that "she should have been granted shared custody or at a minimum liberal unsupervised visitation[.]"

Mother incorrectly states the standard for granting supervised visitation. While a "non-custodial parent has a right to liberal visitation with his or her child 'at reasonable times and under reasonable conditions,' [] this right is not absolute." *Boswell*, 352 Md. at 220 (quoting *Myers v. Butler*, 10 Md. App. 315, 317 (1970)). Limitations may be placed on visitation so long as those limitations are "reasonable." *Id.* In determining whether a visitation restriction is reasonable, courts do not have to make a specific finding of abuse or neglect. Rather, courts must consider the best interests of the child and "look to see if the child is endangered by spending time with the parent[.]" *Id.* "[W]hen the child's health or welfare is at stake[,] visitation may be restricted or even denied." *Id.* at 221; *see also id.* ("In situations where there is evidence that visitation may be harmful to the child, the presumption that liberal unrestricted visitation with a non-custodial parent is in the best interests of the child may be overcome."). Thus, contrary to Mother's assertion, a court need only find that a minor child's health or welfare may be harmed by visitation to put limitations on that visitation.

In this case, the circuit court based its decision to award only supervised visitation to Mother on two findings of fact. "[W]e review a circuit court's factual findings for child custody orders for clear error." *Matter of Meddings*, 244 Md. App. 204, 218 (2019). First, the court found that Mother has a history of wielding a firearm in the presence of at least one of the minor children, and that she would use the firearm on Father in the future if she feels threatened. Second, the court found that Mother suffers from a form of paranoia that has led her to believe, irrationally, that at least twenty people have tried to poison or even murder her, including Father's parents. "If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *EBC Props., LLC v. Urge Food Corp.*, 257 Md. App. 151, 165 (2023) (quoting *Carroll Indep. Fuel Co. v. Wash. Real Est. Inv. Tr.*, 202 Md. App. 206, 224 (2011)). Since both findings are supported by competent evidence in the record, we find that the circuit court did not commit clear error.

First, the circuit court's findings regarding Mother's handling of firearms are supported by the testimony of Bensadon, Father, and Mother. Bensadon testified that around June of 2024, E.B. was "present . . . for a pickup or a drop off and at that time, [Mother] pointed a gun at [Father]." This type of behavior was apparently so common, Bensadon testified, that E.B. "just sort of nonchalantly kind of accepted the situation as normal." She added that Mother was "adamant about keeping her guns." Father also testified about the incident, explaining that he approached the front door of Mother's house with E.B. to drop E.B. off. Mother opened the door and Father stepped inside to set E.B.'s stuff down. When he looked up, Mother was pointing a rifle at him from about five feet

away. When questioned about the incident, Mother admitted to wielding the firearm in front of E.B., and she testified that she would shoot Father if he "threatens [her] life."

The circuit court's findings regarding Mother's paranoia are also supported by the testimony of Bensadon, Father, and Mother. According to Bensadon, Mother believes that Father has tried to poison both her and E.B. Father also testified about Mother's allegations that he has tried to poison or otherwise kill her and E.B., which he denied. When questioned about her allegations, Mother testified that various other people have also tried to poison or kill her, claiming that as many as twenty people have tried to poison her in the last eleven years. Additionally, in her closing argument, Mother claimed that Father included his family in attempts to "hurt and murder [her]." Mother did not present any proof of these claims.

Given that the circuit court's factual findings were not clearly erroneous, we also find that the court did not abuse its discretion in relying on those findings to limit Mother's access with the minor children to supervised visitation. It is not unreasonable to find that a person who suffers from untreated paranoia, has a history of wielding a firearm in front of a minor child, and has testified that she would use that firearm on the minor child's father, poses a great danger to the health and safety of that child. Thus, we hold that the circuit court acted within its discretion in imposing a reasonable limitation on Mother's visitation rights.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.