Circuit Court for Harford County
Case No.12-C-15-001089 CT

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1545

September Term, 2017

CHRISTOPHER FERGUSON

v.

JANAY PARHAM

Wright,
Graeff,
*Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 25, 2018

* Davis, Arrie W., J., did not participate in the adoption of this opinion. See Md. Code, Courts and Judicial Proceedings, § 1-403(b).

*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.

Christopher Ferguson, appellant, appeals from the order of the Circuit Court for Harford County relating to the custody of the parties' minor child, C.F. The court granted Janay Parham, appellee, primary physical custody and shared legal custody, with Ms. Parham having tie-breaking authority on any decisions that cannot be jointly resolved.

On appeal**,** Mr. Ferguson presents the following four questions for this Court's review:

1. Were the findings upon which the trial court based its ruling supported by the record?

2. Did the trial court make a legal error in applying the best interest of the child standard by excluding the Material Opportunities, and Other Relevant Circumstances factors, and by failing to adequately consider The Capacity to Communicate and Ability to Maintain Relationships factors?

3. Did the trial court make an error that significantly harmed Appellant's case by failing to consider the issue of custody separate from the issue of relocation when Appellant testified that he would only relocate if he were allowed to take C.F.?

4. Did the trial court abuse its discretion by disregarding relevant factors of the best interest of the child standard, basing its decision on findings that are not supported by the record, failing to evaluate the issue of custody separate from the issue of relocation, raising objections on appellee's behalf, and issuing a ruling that is violative of fact and logic against the facts and inferences before the court?

For the reasons set forth below, we answer each of these questions in the negative, and therefore, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

C.F., the minor child, was born in January 2011. Mr. Ferguson and Ms. Parham were never married. In July 2011, when C.F. was six months old, they separated. At that

time, Mr. Ferguson commuted to work in Texas, departing on Monday mornings and returning Thursday nights to be with C.F. In April 2015, Mr. Ferguson filed for custody of C.F. On March 2, 2016, following a hearing, the court ordered shared legal and physical custody of C.F.

On July 11, 2016, after Ms. Parham and Mr. Ferguson could not agree on which school C.F. would attend for kindergarten,[1] they filed a joint motion for modification of custody, requesting that the court award primary custody to one of the parties, which would determine where C.F. went to school. They asserted that awarding one parent primary custody was warranted because they "anticipate[d] similar disputes in the future," which they hoped to avoid with modification of custody, and "it [was] not in [C.F.'s] best interest to continuously move between homes as [was] required by the current custody agreement."

On August 16, 2016, the circuit court ordered that C.F. attend Ring Factory Elementary, the school near Ms. Parham's home. It did not alter the initial shared custody order.

On September 23, 2016, Ms. Parham filed a "Petition for Contempt," asserting that, on September 19, 2016, Mr. Ferguson "picked up [C.F.] without permission from daycare," and when Ms. Parham requested that he bring C.F. to her home, Mr. Ferguson "did not comply." C.F. was returned to the daycare provider the next morning. Ms. Parham alleged

[1] The parties lived in different school districts, and Mr. Ferguson enrolled C.F. in the school near him, and Ms. Parham enrolled C.F. in the school near her. The parties went to mediation, but they could not reach an agreement on the issue.

that she contacted the police, but they informed her that she would have to report the issue to the courts. Ms. Parham requested that the court, "issue a show cause order [and] find [Mr. Ferguson] in contempt."[2]

On December 7, 2016, Mr. Ferguson filed a motion requesting an expedited order from the court for custody of C.F. for his wedding scheduled on December 18, 2016. Ms. Parham was scheduled to have custody of C.F. on the weekend of December 16 to 18, 2016, and she refused to allow C.F. to attend the wedding. On December 12, 2016, the court held a hearing, and it ordered that Mr. Ferguson have custody of C.F. from December 17 to December 20, 2016.

On December 20, 2016, Mr. Ferguson petitioned the court requesting a modification of custody. He alleged a material change in circumstances due to his recent marriage, his wife's residence in Dallas, Texas, and that he had received employment offers requiring his "relocation to either Plano, TX, Purchase, NY, or Chicago, IL." Mr. Ferguson requested that the court grant him primary physical custody of C.F., as well as permission to relocate with C.F.

On February 27, 2017, Mr. Ferguson filed a "Petition for Continuance of Custody Modification Hearing," which stated that, given his recent employment, "taking the day off would adversely affect his relationship with his employers." Mr. Ferguson requested that the court reschedule the hearing from March 21, 2017 to June 2017. On March 21,

[2] Ms. Parham testified that the contempt petition was not resolved because of Mr. Ferguson's "unwillingness to be served."

2017, the hearing for Mr. Ferguson's petition was held, and the magistrate's report noted that, although it had not ruled upon the request, Mr. Ferguson had failed to appear. As a result, the magistrate recommended that Mr. Ferguson's petition be dismissed. On April 3, 2017, the court dismissed the petition.

On March 27, 2017, Mr. Ferguson filed another petition requesting modification of custody, requesting primary physical custody of C.F. based on "recent changes in [his] circumstances," which included an employment offer requiring his relocation to Plano, TX. Ms. Parham objected, noting that Mr. Ferguson failed to appear at the March 21 hearing, and at the time, Mr. Ferguson's "circumstances [were] no longer recent and have remained the same since the initial petition filed on December 20, 2016."

Custody Proceeding

On September 20, 2017, the circuit court held a hearing on Mr. Ferguson's custody petition. The court informed Mr. Ferguson, who was self-represented, that there were two issues before the court that he needed to address: (1) the substantial change in circumstances; and (2) why changing custody would be in C.F.'s best interest.

Mr. Ferguson testified that he was anticipating relocating. At that time, he was working in a contractual position as a project manager, but he had two employment offers in Dallas, Texas, with salaries ranging from $125,000 to $130,000. He noted that he was recently married and that his wife was employed in Texas, where she was residing with

their child.[3] Mr. Ferguson stated that, if the court were to deny his request to relocate to Texas with C.F., he intended to remain in Maryland and his wife would quit her job in Texas to become a stay-at-home mother.

With respect to co-parenting with Ms. Parham, Mr. Ferguson stated that their relationship had "deteriorated to a level that ma[de] shared custody untenable." He stated that their "interactions are rife with animosity," and the parties often could not agree on resolvable matters, which created "significant strife" that was not in C.F.'s best interest. Their discord was further exacerbated because Ms. Parham and her boyfriend were "pressuring [C.F.] to interact" with the boyfriend in a manner similar to C.F.'s interaction with Mr. Ferguson, which Mr. Ferguson believed "interfere[d] with [his] role as [C.F.'s] father." In Mr. Ferguson's opinion, C.F. also was "subjected to the stress of frequently going between two very different environments" and being under the care of people with different values "who interact with her very differently."

Mr. Ferguson then testified why he believed it was in C.F.'s best interest that the court grant him primary custody. He stated that he had been C.F.'s primary caregiver, explaining that he enrolled C.F. in extracurricular activities, i.e., playing piano, soccer, and softball, and that he could "provide better living circumstances." With respect to extracurricular activities, the parties could not agree on which spring sport C.F. would play, which resulted in him signing C.F. up for softball, and Ms. Parham signing her up for

[3] Mr. Ferguson later testified that, although his wife lived and worked in Texas, she was on maternity leave through January 2018 and currently residing in Maryland.

lacrosse. When he suggested that C.F. could choose between the two sports, Ms. Parham was combative and maintained that C.F. would not drop either activity. This placed him in the position of having to explain to C.F. why she had to participate in both, but it also affected C.F. because Ms. Parham previously had declined to take C.F. to a softball game while in her custody.

Regarding C.F.'s standard of living, Mr. Ferguson stated that, whether in Texas or Maryland, C.F.'s standard of living would be "far superior" if she remained with him, as he and his wife could provide "a more enriched home and family life, . . . and greater access to material opportunities" because he and his wife were "college graduates and CPAs [certified public accountants]," and they had a greater source of income. He owned a four-bedroom home in Bel-Air, and if he stayed in Maryland, C.F. would attend "one of the highest ranked private schools." If he were to relocate to Texas, where he and his wife owned a five-bedroom home, C.F. would attend a "top-ranked private school for the gifted and talented."

By contrast, in Ms. Parham's custody, C.F. "would not have a dedicated space," as Ms. Parham had a two-bedroom apartment and C.F.'s room doubled as a guest room. Ms. Parham would end C.F.'s piano lessons because "she does not value . . . [such] activities." Mr. Ferguson expressed concern that "Ms. Parham [was] indoctrinating [C.F.] into a culture that is harmful," explaining that when C.F. returned from Ms. Parham's residence, "her demeanor, her speech and mannerisms . . . [were] very different." For example, on

one occasion, he "noticed [C.F.] chewing gum loudly and engaging with others in a very abrasive manner."

Mr. Ferguson testified that C.F. cherished her role as a big sister and had demonstrated a strong bond with his newborn daughter. While C.F. was in his custody, he ensured that he demonstrated respect to Ms. Parham, including ensuring that C.F. communicated with her and having pictures of Ms. Parham's family in C.F.'s room at his residence.

With respect to his communication with Ms. Parham, Mr. Ferguson testified that when C.F. was in her custody, Ms. Parham "seem[ed] committed to hindering [his] attempts to contact C.F.," and on multiple occasions, Ms. Parham would ignore his texts regarding C.F.'s school events or not allow C.F. to talk to him. Ms. Parham showed minimal respect to him and C.F. by her hostility. Although he supported Ms. Parham and her family's relationship with C.F., allowing Ms. Parham to bring C.F. to attend family reunions during his scheduled time, this flexibility was not reciprocated. Ms. Parham refused to allow C.F. to attend Mr. Ferguson's wedding in December 2016 because she had scheduled a birthday party for C.F. on the same weekend, and he had to get an emergency order for C.F. to be able to attend his wedding.

In September 2016, Ms. Parham contacted the police and filed a contempt motion after he picked C.F. up from daycare because he "had had not seen C.F. in over a week and would not have seen her for an additional two days." He stated that Ms. Parham had "no respect for [his] role as C.F.'s father."

Mr. Ferguson stated that C.F. would have a strong support system in Texas, noting that his wife's family lived there, and his brother and sister-in-law, as well as his mother, who would relocate with him, were present in the area. In Maryland, however, he and Ms. Parham had "little to no support . . . in the immediate area," and if an emergency were to arise, "there [was] no one besides [him]self, Ms. Parham, [a] niece or [his] wife" that could respond. Mr. Ferguson requested that the court take into consideration Ms. Parham's work-related travel, noting that he did not have the same requirement, and if he did, his wife would be available to care for C.F. in his absence. He also testified that, on days when C.F. is in Ms. Parham's custody, C.F. often was dropped off at before-school care between 6:00 a.m. and 6:30 a.m., whereas, if C.F. was in his custody, C.F. would not arrive until approximately an hour later. Mr. Ferguson stated that this hour difference would be a positive impact on C.F.'s wake up time.

On cross-examination, Mr. Ferguson testified that he had not been presented with an offer letter for the position mentioned in his petition. He acknowledged that he lost his job in April 2016, due to conflicts between his job and his responsibilities regarding C.F. He acknowledged that he had lived at three different places in the past six years.

Ms. Parham testified that she had been employed as an Army civilian for six years. Her job provided flexibility, and she had the ability to "take time off, bring C.F. to work in case of emergency, and telework." She provided for C.F.'s needs, including expenses related to childcare, medical, and school supplies, due to "Mr. Ferguson's extensive period of unemployment." Her involvement in C.F.'s life included attending medical and dental

appointments, as well as school-related parent-teacher conferences and extracurricular activities. She had arranged C.F.'s enrollment in a before and after care with Celebree Learning Center and was responsible for payment.

Ms. Parham testified that C.F. had lived in Harford County for five years and had a support system of family and friends, as well as involvement in extracurricular sports such as soccer, lacrosse, and softball, all which took place in Harford County. She noted C.F.'s intellectual curiosity with religion, and that C.F. attended a youth vacation bible school with two friends. Ms. Parham testified regarding C.F.'s schedule in her custody, explaining that she woke up C.F. at 5:30 a.m. to prepare her for school and had her go to bed at 8:30 p.m., following dinner and homework.

Ms. Parham agreed that there was discord between her and Mr. Ferguson. She explained one situation where, despite the provision in the parties' parenting plan, C.F. was not able to spend time with her on Mother's Day weekend. She did not reciprocate this behavior in June, and she allowed C.F. to spend Father's Day weekend with Mr. Ferguson.

Ms. Parham also testified to Mr. Ferguson's "attempts of verbal and nonphysical intimidation." For example, after she paid to get C.F.'s hair done, Mr. Ferguson insulted and threatened her, saying "this is ghetto and trash and I'm taking her hair out now," instead of having a civil discussion. During one parent-teacher conference, Mr. Ferguson "attempted to physically snatch [a] folder out of [her] hand," claiming that the folder belonged to him because he was the first to arrive at the conference. In May 2016, Mr. Ferguson arrived at her residence unannounced and requested C.F.'s birth certificate and

social security card so that he could enroll her in a school of his choice. He began "yelling loudly," causing her "neighbors to come to their doors."

Ms. Parham further testified that, when she and Mr. Ferguson were dating, "he threw a [television] in front of [her]," and in 2011, Mr. Ferguson "initiated an altercation with [her] sister's boyfriend and ran after him with a knife." On cross-examination, Ms. Parham testified that charges were filed for first and second degree assault, but she was unsure as to the result of the charges.

Regarding C.F.'s best interests, Ms. Parham testified that Mr. Ferguson was "requesting sole custody for a voluntary move that would eliminate several resources and the only support system [C.F.] has." She testified that Mr. Ferguson had a "trend of instability," noting that "[h]is pattern of moving locations and switching jobs is of great concern," and if he was "awarded primary custody, there is a possibility that [their] daughter may be subjected to the trend of movement and unemployment, which is not in her best interest."

In addressing Mr. Ferguson's alleged material change in circumstances, Ms. Parham stated that Mr. Ferguson had not presented any evidence to the court proving that he had a job offer in Texas. She stated that Mr. Ferguson sought to relocate to Texas mainly because "his spouse is gainfully employed," but pursuant to Maryland law, income is not based on the custodial parent's spouse's income because "[t]he spouse of the custodial parent is not legally obligated to support the parent's child." Ms. Parham stated that, "by law the only employment that should be considered" was her employment and that of Mr. Ferguson.

She did not think that the court should award primary custody to Mr. Ferguson because he had not proven that she was unfit or an incompetent parent, nor had he shown that a modification of custody was in the best interest of C.F. On cross-examination, however, Ms. Parham agreed with Mr. Ferguson that it would be in C.F.'s best interest to be in the primary custody of one parent and allow the other parent visitation.

In closing, Mr. Ferguson asked the court to award primary custody to him because of the "material impacts, the material benefits [C.F.] would be afforded" while in his and his wife's custody, as opposed to in Ms. Parham's custody, including that she would have a dedicated space in his home. He argued that it was in C.F.'s best interest to be in his custody because of his "willingness to communicate with Ms. Parham and [his] support for her relationship with [C.F.]" In addressing the allegations that he was physically threatening or intimidating, Mr. Ferguson denied that he chased after someone with a knife or that he threw a television, and he stated that he was a "professional" and did not have a criminal record.

In addressing C.F.'s best interest, Mr. Ferguson stated that, "from a material perspective, [C.F.] would be far better off [in Texas] than in Maryland," as evidenced by the family support in the area. He noted, however, that C.F.'s living situation would be better with him whether he lived in Texas or in Maryland, because he also has a home in Bel-Air. Additionally, he asserted that, if the court were to deny his request, he would "remain in Maryland" because he would "not leave the State unless [his] daughter is allowed to go with [him]." Finally, Mr. Ferguson noted that, in his custody, C.F.'s daily

routine would change to her benefit, and C.F. would be able to engage in extracurricular activities.

Ms. Parham argued in closing that it was in C.F.'s best interest to remain in Maryland where she had "a loving family and support system." She stated that there were "too many uncertainties and inconsistencies in [Mr. Ferguson's] request." She concluded by stating that, if the court granted Mr. Ferguson's request, she "would no longer be able to see C.F," and therefore, she requested that the court grant her primary custody.

Court Ruling

On September 25, 2017, the court issued its ruling. It noted that, in a request for a modification of custody, it must make two determinations: (1) whether there had been a material change in circumstances; and (2) the child's best interest.

The court initially found that there was a material change in circumstances, based on Mr. Ferguson's desire to move to Texas, and "the parties' obvious inability to effectively communicate and get along at the most basic level."[4] The court then moved to an analysis of the child's best interests.

The court discussed various factors in this analysis, addressing first the **fitness of the parents**. The court found that both parents were fit parents, but it proceeded to evaluate their levels of fitness. Mr. Ferguson was an "extremely involved father," although his

[4] The court noted that Mr. Ferguson was seeking custody of C.F. so that he could take her to Texas, but he also took the position that, even if he were not able to go to Texas, "because of parties' inability to reach agreements[,] . . . it would still be appropriate for the custody situation to be changed, and that he be granted primary physical custody."

focus on his daughter often came "to the exclusion of other things which may be also important," and it seemed to be "skewed towards material opportunities, status and competition." The court stated that Mr. Ferguson "ha[d] a tendency to monopolize the time with his daughter, even when that carries into Ms. Parham's time." With respect to Ms. Parham, the court found that she "sometimes pushes back and refuses things that Mr. Ferguson wishes to schedule even when his wishes are not inappropriate on their face, but do conflict with Ms. Parham's parenting time."

The court then moved to the next factor, the **character or reputation** of the parties, and it found that both parties were of good character and reputation. Mr. Ferguson, who the court found "deeply loves his daughter," appeared to be "someone more [] in need of having control over the show." The court found that Ms. Parham was "more inclined to allow Mr. Ferguson [to] do as he wants when [C.F.] is in his care, [h]owever, she bristles [] at his attempt to control C.F.'s schedule" when C.F. was in Ms. Parham's custody. The court found that "sometimes [Ms. Parham] pushes back even when those decisions are not in C.F.'s best interests," pointing to the parents' disagreement over choosing a spring sport and each parent's decision to sign C.F. up for a sport, noting that this was unfair to C.F. and the rest of the team.

With respect to the **desire of the natural parents and the agreement between the parties**, the court noted that Mr. Ferguson was seeking sole legal and physical custody and permission to relocate to Texas, whereas Ms. Parham sought sole custody, with C.F. remaining in Maryland. In addressing the ability of the parents to agree, the stated:

> Although Mr. Ferguson expresses a desire and willing[ness] to compromise and agree on things, I think the evidence indicates that Mr. Ferguson is willing to agree as long as we agree to do it his way and not to agree that there is going to be some sort of compromise or that Ms. Parham is going to have control over [C.F.'s] schedule when [she] is in her care**.**

The court viewed the next factor, the **potential of maintaining natural family relations**, as a significant factor due to Mr. Ferguson's expressed request to relocate. The court found that relocating C.F. to Texas "would effectively cut [Ms. Parham] out of the parenting relationship," and it noted that "[m]oving to Texas would . . . eliminate Ms. Parham's ability to effectively and meaningfully parent her child." The court stated that Mr. Ferguson's desire to relocate to Texas was a choice, not a necessity, noting that Mr. Ferguson had demonstrated the ability to obtain employment in Maryland. The court stated that, in balancing Mr. Ferguson's desire to relocate and C.F.'s ability to maintain a relationship with her mother, this factor "weigh[ed] heavily in favor of [C.F.] remaining in [the] state of Maryland."

The court then addressed the **preference of the child of sufficient age**. It found that, given C.F.'s age, six years old, that the factor was not applicable.[5]

With respect to the **material opportunities affecting the future life of the child**, the court found that each parent was able to provide for C.F. from a material perspective. The court noted that, although there is nothing wrong with private schools or participating in extracurricular activities, "Mr. Ferguson's emphasis is more on the things than the

[5] The court subsequently addressed the **age, health and sex** factor, finding that C.F. was a healthy six-year-old girl.

underlying value of those things." It stated that, "simply because he ha[d] the ability to potentially avail [C.F.] of more or different things," that was not "indicative that Ms. Parham is less appropriate a parent to have [C.F.] in her custody."

The court then addressed the **suitability of the residence** of the parents and whether the non-custodial parent would have adequate opportunity for visitation. Although Mr. Ferguson's house was larger, that did not "carry a lot of weight." Rather, the issue was whether the residences were appropriate for a six year-old child, and the court found that both Mr. Ferguson's and Ms. Parham's residences were appropriate for C.F. The court reiterated, however, that the relocation of C.F. to Texas would "effectively cut Ms. Parham out of the picture."

The court found that the factors involving **length of separation from the natural parent** who is seeking custody and **prior voluntary abandonment or surrender of the child** were not applicable.

The court then addressed factors associated with a joint custody analysis. With respect to the **willingness of the parents to share custody**, the court stated it was evident to the court that "the parties have . . . been unable to make joint decisions about [C.F.] in her best interest in the most basic of matters." With respect to the parties' **capacity to communicate**, the court stated that "the parties have been in regular disagreement and simply have not been able to figure out a way to resolve those disagreements in [C.F.'s] best interests."

The court next addressed the **parent's employment and time with the child**, noting that Mr. Ferguson previously had commuted from Texas to Maryland for purposes of remaining in C.F.'s life, but he had given up at least one job opportunity because it conflicted with his responsibilities as a father. The court stated that, although "on the one hand, that is admirable, there also needs be a balance between parenting and employment." It noted that there was no evidence that Mr. Ferguson could not find employment in Maryland, as he had done in the past. The court stated that it did not give a lot of weight to the testimony related to when C.F. was picked up and dropped off at daycare and after school care, noting that both parents were doing their best to provide for C.F., and this fact did not weigh on the appropriateness of the parent as a custodial parent. It found this factor, on balance, was relatively equal.

The court also considered C.F.'s **relationship with each parent**, noting that "nothing has been presented which would indicate that [C.F.] does not have an extremely strong relationship with both parents." In considering the **disruption of school and social life**, the court noted that C.F. had lived in Maryland all of her life, and she had "relationships through school and in the community through other activities." Although C.F. had ties to Texas, including her stepmother and new sister, the court was of the opinion that those ties were not as substantial.

The court concluded that, based on its consideration of all the factors, it would "decline Mr. Ferguson's request to modify custody to grant him primary physical custody

and to allow him to relocate to . . . Texas."[6] The court stated its concern that the parties had "not been able to function under joint custody of [C.F] and that a change needs to be made in that respect" because the current joint physical custody arrangement was "unworkable." Accordingly, given that situation, and after considering all of the factors involved, the court awarded Ms. Parham primary physical custody of C.F. It further ordered that the parties would maintain joint legal custody, with Ms. Parham having tie-breaker authority. Mr. Ferguson was awarded visitation every other weekend from Friday after school until 8:00 p.m. on Sundays, as well as a weekday dinner visit from 5:00 p.m. to 8:00 p.m. on Wednesdays, or at a time and date of the parties' choosing.

On October 3, 2017, Mr. Ferguson noted an appeal to this Court. Additional facts will be discussed as necessary in the discussion that follows.

STANDARD OF REVIEW

In reviewing child custody determinations, we employ three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). The Court of Appeals has explained these three levels of review, as follows:

> 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.

[6] The court recognized that Mr. Ferguson was free to relocate anywhere he desired, but it recognized that Mr. Ferguson had indicated that, if the court declined his request, he would remain in Maryland.

Id. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). "[A]n appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007). 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." *Lemley v. Lemley*, 109 Md. App. 620, 628, *cert. denied*, 343 Md. 679 (1996). *Accord Thomas v. Capital Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 453 (2009) (quoting *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005)). An abuse of discretion exists where "'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.'" *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

DISCUSSION

In custody disputes, the "'overarching consideration'" is the best interest of the child. *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 680 (2014) (quoting *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013)). *Accord Gordon*, 174 Md. App. at 636 (best interest of the child is of "'transcendent importance.'") (quoting *In re Adoption No. 10941*, 335 Md. 99 (1994)). As we have explained:

> The best interest standard is an amorphous notion, varying with each individual case ... [t]he fact finder is called upon to evaluate the child's life chances in each of the homes competing for custody and then to 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.

Karanikas v. Cartwright, 209 Md. App. 571, 589 (quoting *Montgomery Cty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 419 (1977)). The court must "evaluate each case on an individual basis in order to determine what is in the best interests of the child." *Gillespie*, 206 Md. App. at 173.

Custody determinations involve both legal and physical custody. As the Court of Appeals has explained:

> "Legal custody carries with it the right and obligation to make long range decisions" that significantly affect a child's life, such as education or religious training. "Physical custody, on the other hand, means the right and obligation to provide a home for the child and to make" daily decisions as necessary while the child is under that parent's care and control."

Santo, 448 Md. at 627 (quoting *Taylor v. Taylor*, 306 Md. 290, 296 (1986)). With joint legal custody, "'both parents have an equal voice in making [long range] decisions, and neither parent's rights are superior to the other.'" *Id*. (quoting *Taylor*, 306 Md. at 296).

In determining the best interest of the child in custody disputes, various factors are relevant. As this Court has explained:

> The criteria for judicial determination [of child custody] includes, but is not limited to, 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

Gordon, 174 Md. App. at 637 (quoting *Sanders*, 38 Md. App. at 420). *Accord Karanikas*, 209 Md. App. at 590 (explaining court's responsibility to utilize factors to "weigh the

advantages and disadvantages of the alternative environments."). Additionally, when the court is considering whether to grant joint custody, the following factors are relevant:

> (1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; (2) willingness of parents to share custody; (3) fitness of parents; (4) relationship established between the child and each parent; (5) preference of the child; (6) potential disruption of child's social and school life; (7) geographic proximity of parental homes; (8) demands of parental employment; (9) age and number of children; (10) sincerity of parents' request; (11) financial status of the parents; (12) impact on state or federal assistance; (13) benefit to parents; and (14) other factors.

Taylor, 306 Md. at 304-11. "'[N]o single list of criteria,'" however, "'will satisfy the demands of every case.'" *Santo*, 448 Md. at 630 (quoting *Taylor*, 306 Md. at 303). With this background in mind, we will address the specific contentions raised.

I.

FACTUAL FINDINGS

Mr. Ferguson contends that the trial court's ruling was "based on findings that were clearly erroneous and not supported by the record." As explained below, and in light of the highly deferential standard of review that an appellate court gives to the findings of the trial court, which saw and heard the witnesses, we perceive no error or abuse of discretion.

A.

Willingness to Compromise

Mr. Ferguson challenges the following findings by the circuit court: (1) "[a]lthough Mr. Ferguson expresse[d] a desire and willing[ness] to compromise and agree on things, . . . the evidence indicates that Mr. Ferguson is willing to agree as long as we agree to do it his way and not to agree that there is going to be some sort of compromise or that Ms.

Parham is going to have control over [C.F.'s] schedule when [she] is in [Ms. Parham's] care"; (2) Mr. Ferguson had "a tendency to monopolize the time with [C.F.], even when that carries over into Ms. Parham's time;" and (3) Mr. Ferguson demonstrated "that he is someone more [] in need of having control over the show."

The court's factual findings in this regard were not clearly erroneous. Ms. Parham testified that, after she paid for C.F. to her hair done, Mr. Ferguson threatened that he was going to "tak[e] her hair out now," instead of discussing the issue. Ms. Parham testified that Mr. Ferguson took C.F. during times that C.F. was supposed to be with her, including one Mother's Day weekend. The record indicates that he showed up at Ms. Parham's residence demanding C.F.'s social security card and birth certificate so that he could enroll her in the school of his choice, and he made a unilateral decision to sign-up C.F. for a sport without consulting Ms. Parham.

B.

Focus on Material Things

Mr. Ferguson next challenges the court's findings that: (1) "Mr. Ferguson's emphasis is more on the things than the underlying value of those things"; and (2) Mr. Ferguson's focus "seem[ed] to be somewhat skewed towards material opportunities, status and competition." The court acknowledged that, although "[t]here is nothing wrong with attendance at private schools" or "participating in a variety of extracurricular activities," it disagreed with Mr. Ferguson's premise that his "ability to potentially avail [C.F.] of more

or different things [than Ms. Parham] somehow cuts differently as to what the custodial arrangement of the parents should be."

Mr. Ferguson contends that these findings were "clearly erroneous and unsupported by the record." We disagree.

Mr. Ferguson began his testimony by stating that his wife earned a salary of $140,000 per year, and because the parties were a two-income household, he had more to offer C.F. Mr. Ferguson's testimony was that in his custody, C.F. would have an "improved standard of living and greater access to material opportunities," and he emphasized what he perceived to be the differences between his household and Ms. Parham's. In particular, Mr. Ferguson's testimony compared the sizes of their residences, noting that Ms. Parham lived in a two-bedroom apartment, in comparison to his homes, which featured multiple bedrooms and a backyard. Concerning status and material opportunities, Mr. Ferguson testified that, if C.F. were in his custody, whether in Texas or Maryland, she would receive her education from only "top-ranked" private schools. Mr. Ferguson testified that, if he were to have custody, C.F. would continue taking piano lessons, and he would get her involved in seasonal sports, skateboarding, chess, and computer programming. Although, as the circuit court acknowledged, there was nothing wrong with Mr. Ferguson's desire to avail C.F. of the opportunities he could afford, he did focus significantly on material opportunities. The court's findings in this regard were supported by the record.

C.

Exclusion of Other Important Things

Mr. Ferguson next challenges the court's finding that he "appears to focus his attentions on his daughter somewhat, in fact, to the exclusion of other things which may also be important." This finding related to a previous finding, supported by the record, that Mr. Ferguson had "given up . . . at least one job because it conflicted with his responsibilities as a father." The court noted that this was admirable in one respect, but employment was important. Indeed, the court concluded that there needed "to be a balance between parenting and employment." The court's findings in this regard were not clearly erroneous.

II.

Best Interest of the Child Factors

Mr. Ferguson contends that the circuit court "made a legal error that significantly harmed [him] by excluding, or failing to adequately consider, relevant factors of the best interest of the child standard." He asserts that the court erred by: (1) excluding "the material opportunities factor of the best interest standard"; (2) failing to consider the causes behind the parties' communication problems; (3) failing "to adequately consider the ability to maintain relationships factor"; and (4) excluding "'other relevant circumstances' affecting the best interest standard."

Ms. Parham disagrees. She contends that the "court did not abuse its discretion in the assessment and analysis of the record and the relevant factors of the 'best interests of the child' standard considered in the establishment of custody."

As set forth, *infra*, the circuit court specifically considered each of the requisite factors in determining custody. That Mr. Ferguson disagrees with the weight that the court gave each factor, or the conclusion the court reached, does not support a conclusion that the court erred or abused its discretion.

A.

Material Opportunities

Mr. Ferguson contends that the court erred in excluding the "material opportunities factor." The record indicates, however, that the court clearly considered that factor.

The court stated:

> *Both parents are well able to provide for [C.F.] from a material perspective*. I believe that Mr. Ferguson's emphasis is more on the things than the underlying value of those things. There is nothing wrong with attendance at private schools. There is nothing wrong with participating in extracurricular activities. But I don't agree that simply because he has the ability to potentially avail her of more or different things that that somehow cuts differently as to what the custodial arrangement of the parents should be. (Emphasis added).

The court did not, as Mr. Ferguson contends, exclude the material opportunities factor. It did not give it the same weight as Mr. Ferguson does, but the court clearly considered it.

B.

Capacity to Communicate

Mr. Ferguson contends that the "court failed to adequately consider the capacity to communicate factor." He recognizes that the court assessed this factor and found that "the parties' obvious inability to effectively communicate and get [along] on the most basic level makes revisiting the custody arrangement in this case appropriate," but he asserts that the court erred in failing "to make a determination of the causes behind the communication issues." In that regard, Mr. Ferguson asserts that the evidence demonstrated that Ms. Parham "is a significant hinderance to communication," as she "refuses to communicate" with him.

Mr. Ferguson cites no case requiring the court to determine who is the cause of the parties' inability to communicate. Rather, the Court of Appeals has stated:

> Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future.

Taylor, 306 Md. at 304.

Here, the court clearly considered the capacity of the parties to communicate, stating that it was "evidenced by the parties' actions" that they "have most unfortunately been unable to make joint decisions." We perceive no error or abuse of discretion.[7]

[7] We also note that the court found that Mr. Ferguson was at least partially responsible for the inability to agree on things, stating that the evidence indicated that Mr.

C.

Maintaining Natural Family Relations

Mr. Ferguson contends that the court "failed to adequately consider the ability to maintain relationships factor." He asserts that the court's consideration of this factor was limited to the impact of C.F.'s possible relocation, and it failed "to consider the harmful impact of [Ms. Parham's] conduct on [C.F.'s] ability to maintain relationships with her father, sister and paternal family members."

This contention is belied by the record. To be sure, the court focused, properly, on Mr. Ferguson's request to relocate. *See Braun v. Headley*, 131 Md. App. 588, 608-09 (discussing impact of relocation request on custody determination), *cert. denied*, 359 Md. 669 (2000), *cert. denied*, 531 U.S. 1191 (2001). It also found, however, that C.F. had a strong relationship with both parents, and it noted that she had a relationship "with her stepmother and with her new sister." We perceive no error by the court in this regard.

D.

Other Relevant Circumstances

Mr. Ferguson next contends that the court "made a legal error by excluding other relevant circumstances." Specifically, he asserts that the court improperly discounted C.F.'s "wake-up time." Again, we disagree.

Ferguson was "willing to agree as long as we agree to do it his way," as opposed to compromising.

Ms. Parham testified that, based on her employment, C.F. woke up at 5:30 a.m. to get ready for the day. She also testified that C.F. had a scheduled bedtime of 8:30 p.m. In his closing argument, Mr. Ferguson stated that, if C.F. was in his custody, she would not wake-up until 7:30 a.m., and he argued that the two-hour time difference supported his request for custody. The court addressed this argument and stated:

> I don't believe that one parent[] dropping the child off at daycare prior to school or picking up a child later after school weighs on the propriety of that parent's role in the child's life or their interest or their appropriateness of them as a custodial parent.

Although Mr. Ferguson disagrees with this finding, he cites no authority to support his argument that the court's finding in this regard was erroneous. We perceive no error or abuse of discretion in this regard.

III.

SEPARATE CONSIDERATION OF CUSTODY AND RELOCATION

Mr. Ferguson contends that the court erred in "failing to evaluate the issue of custody separate from the issue of relocation." He asserts that "the trial court erroneously treated the case as if [he] were definitively relocating with or without his daughter," and that this error significantly harmed his case because the court made "a custody determination based on findings that were not relevant to the custody issue," specifically, how Ms. Parham would be impacted by the relocation. In any event, he argues that, because "the court had the option of awarding [him] primary custody and denying [his] request to relocate," then "the court should have first addressed the issue of custody" before deciding on the issue of relocation, as he could not have relocated with C.F. without first

having primary custody.[8] We disagree with Mr. Ferguson's contention that the court should have considered custody separate from the issue of relocation.

In addressing a petition to modify custody, the court must engage in a "chronological two-step process." *Wagner v. Wagner*, 109 Md. App. 1, 28, *cert. denied*, 343 Md. 334 (1996). *Accord Braun*, 131 Md. App. at 610. The two-step process requires the court to determine whether a material change in circumstance exists, and if so, to then engage in a consideration of the best interest of the child "as if it were an original custody proceeding." *Braun*, 131 Md. App. at 610 (quoting *Wagner*, 109 Md. App. at 28). The issue of a custodial parent potentially relocating to another state, or one that has already relocated, has been viewed as a material change sufficient for the court to address a request to modify custody. *See id*. at 611.

Indeed, the Court of Appeals has stated that "changes brought about by the relocation of a parent may, in a given case, be sufficient to justify a change in custody" because "[t]he relocation of a parent having joint or primary physical custody may present serious questions concerning modification of a custody order." *Domingues v. Johnson*, 323 Md. 486, 501 (1991). This is because "a move of any substantial distance may upset a very desirable environment, and it may not be in the best interest of the child." *Id*. at 502.

[8] The circuit court noted that it could not "decline[] somebody's request to relocate," recognizing a person's constitutional right to travel to another state. *Braun v. Headley*, 131 Md. App. 588, 600 (2000).

Here, the court acknowledged that, because the petition was based upon Mr. Ferguson's request to relocate, it must engage in the two-step process to determine whether there was a material change in circumstances, and then assess the best interest of C.F. Mr. Ferguson advised the court that if it denied his request to relocate to Texas with C.F., his intention was to stay in Maryland, a point he reiterated during his closing argument, and he requested that the court consider granting him primary custody for this scenario as well.

The court acknowledged that Mr. Ferguson's position was that he would move to Texas only if the court granted his request for primary physical custody. It stated, however, that the court had no input on his desire to relocate, as the decision was his personal choice, but the court's focus was "whether he has custody in order to take [C.F.] along with him." The court found that Mr. Ferguson's request to relocate and for custody of C.F. represented a "legitimate material change in circumstances." It then properly proceeded to engage in its analysis of the child's best interest standard. Mr. Ferguson states no claim of error in this regard.

IV.

RULING VIOLATIVE OF FACT AND LOGIC

Mr. Ferguson contends that the circuit court abused its discretion by "issuing a ruling that is violative of fact and logic and against the facts and inferences before the court." In that regard, he reasserts many of the claims that we have already discussed and rejected. Based on our review of the court's custody determination, we conclude that the circuit court did not abuse its discretion.

Mr. Ferguson also argues that the court abused its discretion in raising objections on Ms. Parham's behalf on two occasions during the hearing. He points to two occasions where he sought to introduce affidavits into evidence, and although Ms. Parham did not object, the judge asked why the affidavits were not hearsay, and that it would not consider them because they were hearsay. Mr. Ferguson argues that the court's actions were "without regard to any guiding rules or principles and represent an abuse of discretion."

Initially, we note that Mr. Ferguson did not argue below that the circuit court's actions were improper. "Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears to have been raised in or decided by the trial court." Md. Rule 8-131(a); *Tretick v. Layman*, 95 Md. App. 62, 77, 82 (1993) ("[T]he rules of procedure and evidence apply to parties," whether self-represented or represented by counsel.). Accordingly, this issue is not preserved for appellate review.

Moreover, Mr. Ferguson has not cited any authority to support his proposition that the circuit court's actions demonstrated bias toward him. Accordingly, we decline to address this contention. *See Assateague Coastkeeper v. Md. Dep't. of the Env't*., 200 Md. App. 665, 670 n. 4 (2011) (declining to address an issue where appellant failed to adequately brief it), *cert. denied*, 424 Md. 291 (2012); *Conrad v. Gamble*, 183 Md. App. 539, 569 (2008) (declining to address issue because argument is "completely devoid of legal authority."); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1996) (failure to provide legal authority to support contention waives contention).

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