Circuit Court for Dorchester County
Case No. C-09-FM-23-000309

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1739

September Term, 2024

KATHERINE ALT

v.

HAMILTON GARCES

Berger,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: June 10, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises out of a custody dispute between Ms. Katherine Alt, Appellant, and Mr. Hamilton Garces, Appellee. The parties were in a romantic relationship but never married, during which time they had one minor child, S., who was born in 2019. They broke up in 2020 and agreed to a shared custody agreement without a court order.

In 2023, Ms. Alt filed a complaint for custody in the Circuit Court for Dorchester County ("trial court") because she was planning to relocate with S. to Texas. The complaint sought sole legal custody and shared physical custody under an arrangement whereby S. would fly back and forth from Texas to Maryland every two weeks. Mr. Garces filed a counterclaim and the parties appeared at a hearing before a trial magistrate who issued findings and recommendations. Ms. Alt filed exceptions to the findings and recommendations within the ten-day deadline. However, she did not properly order a transcript as required under the Maryland Rules until seventeen days later. Her exceptions were dismissed both due to her failure to order the trial transcript and because they did not state exceptions with particularity.

The trial court adopted the findings and recommendations of the magistrate. Joint legal custody was granted with Mr. Garces having tie-breaking authority. Primary physical custody was granted to Mr. Garces, with Ms. Alt having reasonable visitation for three weekends per month at a location within two hours of Mr. Garces' residence, and for one week every other month without a location requirement. On appeal, Ms. Alt challenges the trial court's adoption of the findings and recommendations by the magistrate and the dismissal of her exceptions.

The parties raise three questions for our review which we have rephrased as follows:[1]

1) Did the trial court err in dismissing Ms. Alt's exceptions?

2) Did the trial court abuse its discretion in granting Mr. Garces primary physical custody?

3) Did the trial court abuse its discretion in granting joint legal custody with Mr. Garces having tie-breaking authority?

As explained below, we answer these questions in the negative and affirm the decision of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Alt filed a complaint for custody in the Circuit Court for Dorchester County on October 27, 2023. The complaint requested sole legal custody and primary physical

[1] Ms. Alt presented the questions as follows:

1) Was the Trial Court clearly erroneous and committed an abuse of its discretion in dismissing the Appellant's exceptions?
2) Was the Trial Court clearly erroneous and committed an abuse of its discretion in granting the Appellee primary physical custody parenting time of the parties' minor child?
3) Was the Trial Court clearly erroneous and committed an abuse of its discretion when granting the Appellee tie breaking authority regarding legal custody?

Mr. Garces presented the questions as follows:

1) Did the trial court have authority to dismiss the Appellant's exceptions?
2) Was the trial court's decision to grant Appellee primary physical custody/parenting time of the minor child appropriate?
3) Was the trial court's decision to grant Appellee tie-breaking authority regarding legal custody of the minor child appropriate?

custody with Mr. Garces allowed reasonable visitation. Mr. Garces filed a counterclaim for custody on October 27, 2023, requesting joint legal and joint physical custody. After Mr. Garces discovered that Ms. Alt planned to move to Texas with S., he amended his counterclaim to request sole legal custody and primary physical custody with reasonable visitation for Ms. Alt.

A. The Magistrate's Findings and Recommendations

At a hearing held on June 12, 2024, the trial magistrate heard from Ms. Alt and Mr. Garces as well as Ms. Alt's mother, Karen Alt, and Ms. Alt's former employer, Joanne Brown. When the hearing concluded, the magistrate asked the parties to return the next day for a second hearing where she would place her findings and recommendations orally on the record. She concluded the second hearing by informing the parties about the process for filing exceptions.

The magistrate also issued written findings and recommendations which were filed with the court on July 17. The magistrate found the facts described below to be supported by a preponderance of the evidence.

Ms. Alt and Mr. Garces were never married and have one minor child. Born on October 11, 2019, S. was four years and eight months old at the time of the hearing. When S. was born, the parties resided together in Cambridge, Maryland. Ms. Alt claims their relationship ended in the summer of 2020 and Mr. Garces claims it ended in December 2020. Either way, Mr. Garces remained living with Ms. Alt and S. for a few months before moving out.

Over the ensuing months, Mr. Garces moved a few times before settling in Annandale, Virginia, in 2022 with his girlfriend. When Mr. Garces first moved to Virginia, Ms. Alt "would not allow him to have parenting time with [S.] in his home in Virginia" because Ms. Alt "raised concerns about stability and a visit in another state to support such denial of parenting time in Virginia." The magistrate considered these factors significant in light of Ms. Alt's planned move to Texas.

Sometime after his move, Ms. Alt did allow Mr. Garces parenting time in Virginia, and the parties adopted a weekly schedule whereby Mr. Garces had S. from Tuesday at noon to Thursday afternoon; S.'s maternal grandmother, Karen Alt, had S. from Thursday afternoon to either Friday or Saturday; and Ms. Alt had S. from Friday or Saturday to Tuesday at noon. The parties followed this schedule for over two years. Mr. Garces described the system of care for S. as a "triangle."

S. is in good health overall, but Ms. Alt testified that "she was concerned about repeated recent mild illnesses of [S.] and felt that the fact that [S.] spent four hours per week in a car for such transport may be playing a part in such repeated illnesses." The magistrate noted that Ms. Alt's concern about travel time is relevant to her best interest analysis in that it would be best "to avoid extended travel time due to her age."

At the time of the hearing, Ms. Alt planned to move to San Benito, Texas, to live with her fiancé, Logan Jones. Ms. Alt met Mr. Jones online in September 2023, became engaged to him in January 2024, and as of the hearing, had plans to marry him in July 2024. Ms. Alt has visited Mr. Jones and testified that the trip takes a minimum of ten and one-

half hours one-way from BWI and would cost approximately $1200 per month for one round trip for S. and two round trips for an accompanying parent. She also testified that she did not have the funds to cover the entire amount for these monthly trips. The court entered as an exhibit an unsigned sixth-month lease for an apartment in Texas that listed "Katherine Jones" and S. as occupants, but on which Ms. Alt was not listed as a tenant. When asked about the lease, Ms. Alt was unaware that she was listed with her soon-to-be-married name, calling it a mistake, and unsure of why the lease was only for six months.

Ms. Alt testified that she would not be able to rely on Mr. Jones for childcare because of his demanding work schedule of five to six days a week from six a.m. to four p.m. Ms. Alt also testified that Mr. Jones had suggested they could live in Maryland together but that she decided it was best for her family to live in Texas and that she intended to become pregnant within the year and have multiple children with Mr. Jones.

Karen Alt testified that she believed "'it would not be an improved situation' for [S.] to move to Texas" and that S. "does not like to communicate over the phone or on an electronic device." While Karen Alt also testified that she believed S. preferred to be with her mother, the magistrate noted that she did not consider this statement in her decision because of the child's young age.

Both Karen Alt and Mr. Garces testified that they believed they would be able to continue working together to care for S. In addition, the maternal grandfather of S. lives in Stevensville, Maryland, and Mr. Garces spends time with him and views him as a father figure. Other relatives of S. who live in proximity to Maryland include her paternal

grandmother, grandfather, aunt, and uncles who all live in New Jersey. Mr. Garces takes S. to New Jersey to visit about twice a year. The record reflects that S. also has friends in Cambridge and Annandale.

In comparison, Ms. Alt has two cousins and an aunt and uncle in Texas who live about five to six hours from San Benito. S. has never met these relatives. There are no other family or friends in Texas on whom Ms. Alt could rely for childcare or support.

Ms. Alt has been educating S. since her early months. At the time of the hearing, when S. was four years and eight months old, Ms. Alt worked with S. daily on subjects such as reading, writing, math, and languages. Mr. Garces worked with S. on art and music. The magistrate found evidence of the parties' willingness and ability to communicate in the parties' weekly texts coordinating lesson plans for S. However, the magistrate also noted that the parties do not agree on S.'s future education. Ms. Alt wants S. to either be homeschooled or to attend private school while Mr. Garces wants S. to attend either public or private school.

Ms. Alt testified about options for private schooling in Texas, including a school connected to her fiancé's work or a Montessori school close to her new home. However, she did not have clear information on the feasibility of these options including if S. was even able to attend or if they offered the drop-in care Ms. Alt desired. Mr. Garces testified that S. could attend a public elementary school two blooks from his apartment when she reached school age in September 2025.

Mr. Garces served in the Marine Corp for four years including seven months in Afghanistan. He testified about his post-traumatic stress disorder ("PTSD") diagnosis and that he has worked on his anger issues through therapy for one and one-half years. Ms. Alt testified that, during their relationship, Mr. Garces exhibited anger issues including punching holes in walls, screaming and cursing at her, and breaking her phone once when he found out she was in a relationship with someone else. Mr. Garces testified that they would yell back and forth at one another and that Ms. Alt had slapped him and told him to leave the residence which is when he complied and moved out. Ms. Alt is also concerned about Mr. Garces' use of Ayahuasca[2] at retreats, most recently in September 2023 and February 2024. The magistrate noted "[n]o evidence was presented that he had ever done so in the presence of [S.] or when [S.] is in his care."

The court also heard testimony from Ms. Alt's former employer, Joanne Brown, the owner of a store in Easton. While Ms. Alt testified that she left her position by mutual agreement, Ms. Brown testified that she fired Ms. Alt. Ms. Brown believed that Ms. Alt failed to properly deposit proceeds from online sales. In addition, she believed that Ms. Alt was improperly using the store address as a return address for Ms. Alt's own business.

[2] Ayahuasca is a psychoactive beverage containing dimethyltryptamine that produces hallucinations and euphoria and is used chiefly for religious, ritualistic, and medicinal purposes. ALCOHOL AND DRUG FOUNDATION, https://adf.org.au/drug-facts/ayahuasca/ (last visited June 6, 2025); AMERICAN PSYCHOLOGICAL ASSOCIATION, https://dictionary.apa.org/ayahuasca (last visited June 6, 2025); MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/ayahuasca (last visited June 6, 2025).

The magistrate found Ms. Brown credible but noted that it was "possible [Ms. Alt] interpreted her departure from employment as a mutual decision."

After presenting her findings of facts, the magistrate applied the law regarding the effect of a child's proposed relocation on custody including the *Sanders-Taylor* factors.[3] In addressing the fitness of the parents, the magistrate stated:

> I find that both parents provide appropriate care and there is no evidence that either of the parents is unfit. I am not particularly concerned about the occasional use of psychedelics by [Mr. Garces] alleged by [Ms. Alt] since the testimony was any such use was on a retreat, with [S.] not present, and [Ms. Alt]'s own proposal is for [Mr. Garces] to have parenting time with [S.] 50% of the time, which undercuts the concerns alleged.

In addressing the factor concerning character and reputation of the parties, the magistrate explained:

> I have concerns about [Ms. Alt]'s character and credibility. I found Ms. Brown's testimony credible that she believed that Ms. Alt was responsible for items missing from her store and that [Ms. Alt] was using Ms. Brown's address as a return address for "formulations" [Ms. Alt] mailed out. I did not find it credible that [Ms. Alt] accidentally put the wrong address on those packages. I also found [Ms. Alt]'s very vague responses to detailed questions about her business to be troubling, as well as her apparent lack of knowledge that her name was not on the Texas lease and that it was only for six months.

[3] These factors, collectively termed the *Sanders-Taylor* factors, are discussed in more detail *infra*. In short, they are a non-exclusive list of factors which trial courts should consider when determining the best interests of a child pursuant to a custody determination. *See Montgomery Cnty. Dep't of Soc. Services v. Sanders*, 38 Md. App. 406 (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986). In the 2025 Session of the Maryland General Assembly, child custody factors were codified for the first time in Maryland in Senate Bill 548, Chapter 484. While these statutory factors are not applicable in this case, they will be effective as of October 1, 2025, and will thereafter be found in Family Law Article 9-201.

The magistrate then addressed the sincerity of the parties' requests:

> [Ms. Alt] is asking for joint legal and physical custody on a 2 week on and 2 week off schedule, with her accompanying [S.] to [Mr. Garces] and returning home and then coming back to [Mr. Garces]' area and returning to her home in Texas with [S.]. [Mr. Garces] is asking for either sole legal custody or tie breaker authority and primary physical custody.
>
> I am concerned as to the viability of [Ms. Alt]'s proposal, considering her past concerns as to [S.]'s illnesses being due to being in the car for 4 hours per week for visitation transport, the cost for air for for [sic] transportation for [S.] and someone to accompany her to be $1200 per month when the parents jointly earn $3000 ($2300 [Mr. Garces] disability income plus $700 [Ms. Alt]'s net business income), and her plan to immediately have children which will cause issues in allowing her to travel.
>
> Also, it seems odd that [Ms. Alt] would not move into her fiancé's home in Texas since he had lived there for at least a year and ½, that they would both move to a newly-rented furnished rental home in Texas with a six month lease rather than plan to have [Ms. Alt] and [S.]'s belongings transported to Texas and moved into a new residence. This adds to the concern about the viability and stability of a move to Texas by [Ms. Alt] and [S.].

In evaluating the factor concerning each parent's ability to maintain the child's relationships with the other parent, siblings, relatives, and any other person who may psychologically affect the child's best interest, the magistrate stated:

> Up to this point, it appears that both parties have cooperated in ensuring that [S.] has time with the other parent and extended relatives. However, I do not see how [S.] will be able to maintain relationships with [Mr. Garces] and the maternal grandmother, in particular, at the level currently in place if [S.] moves to Texas. For at least two years, [Mr. Garces] has had parenting time with [S.] for at least two nights per week and the maternal grandmother has had time with [S.] one or two days per week. For a child of this age, such regular, consistent and timely contact creates close relationships. Electronic communication is not an appropriate substitution for in-person communication, particularly with a Child of this age. For this particular case, the maternal grandmother's testimony that [S.] is not very communicative on electronic communication, which I believe is typical of a Child of this age, further shows that there will be no way for [S.] to maintain such relationships

> with a move of this distance. A change to this extensive regular contact with [S.] and both parents and the grandparents would be detrimental to [S.].

Regarding the factor of the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare, the magistrate noted:

> From the end of their relationship until recently, the parents have been communicating effectively and I believe co-parenting effectively. Co-parenting necessarily results in compromise. They may not have both agreed on every decision, but they appear generally to be able to resolve issues, as revealed by the schedule in place for the past two years which is developmentally appropriate for a child of this age.

Next, the magistrate considered the geographic proximity of the parents' residences and opportunities for time with each parent:

> In this case, [Mr. Garces] has a very close relationship and strong bonds with [S.]. He had close to equal time with [Ms. Alt], if you do not consider time with the maternal grandmother as time associated with [Ms. Alt]. [S.] has spent substantial periods of time with each parent. The close relatives of [S.], maternal and paternal, with whom [S.] had enjoyed close contact, reside driving distance from Cambridge and [Mr. Garces]' residence in Virginia. It is not in [S.]'s best interests to have such significant travel time between the two residences and to change the schedule of contact with each parent from the current schedule.
>
> [Ms. Alt] could have chosen to agree with Mr. Jones that the two of them would need to live in Maryland when the [sic] married. She chose to agree to move to Texas with Mr. Jones. She is free to move, but [S.] should remain in an area where she has stability and close relationships with her Father and extended family.

In addressing the factor about the ability of each parent to maintain a stable and appropriate home for the child, the magistrate stated:

> I believe that the situation before [Ms. Alt] moved to Texas, both parents were providing stable and appropriate homes. I have concerns about [Ms. Alt]'s Texas move. She does not have a community in Texas to support her. For the past two years, [S.] has been with [Mr. Garces] two nights per week

> and [her grandmother] 1-2 nights per week. There would be no such respite in Texas. Her own testimony is that her fiancé will be working and unable to provide substitute care. She presented no credible information as to any child care options in Texas. I am also concerned that the Texas move is not a long-term move, since there was no adequate explanation as to why [Ms. Alt] and her fiancé are moving to a furnished rental home under a six-month lease rather than to the home of her fiancé.

Of the remaining factors, the magistrate either offered a brief statement of consideration or noted them as not relevant to this case. Based on the analysis referenced above, the magistrate recommended that the parties have joint legal custody with Mr. Garces having tie-breaking authority, that Mr. Garces have primary physical custody, and that Ms. Alt have parenting time for two weeks in July, three weekends per month within two hours of Mr. Garces' residence to avoid extended travel time for S., and one week every other month at a location chosen by Ms. Alt. In addition, Ms. Alt is responsible for all transportation of S. for her visitation.

B. Ms. Alt's Exceptions

After delivering her decision orally, the magistrate noted that a written decision would follow but that June 13 was the date that the decision was issued for the purposes of filing exceptions. She also explained that exceptions should be filed within ten days. On June 22, 2024, Ms. Alt filed exceptions to the Magistrate's Report and Recommendation. The substance of Ms. Alt's exceptions is contained in the numbered paragraphs listed below:

> 5. That the Magistrate was clearly erroneous and abused her discretion when she held that it was in the minor child's best interest to be in the primary care and custody of the Defendant.

6. That the Magistrate was clearly erroneous and abused her discretion when she held that the Plaintiff could only have access with the child while within an area close to the Defendant's home in Virginia.

7. That the Magistrate was clearly erroneous and abused her discretion when she held that the minor child could not visit with the Plaintiff in Texas where the Plaintiff will be residing with her husband.

8. That the Magistrate was clearly erroneous and abused her discretion when she held that the Plaintiff should not retain primary custody of the minor child as she has had since the child's birth.

9. That the Magistrate was clearly erroneous and abused her discretion when she made her findings of facts which were inconsistent with her previous findings on or about April 24, 2024 for the pendente lite report and recommendation, despite the same or similar facts were presented.

10. That the Magistrate was clearly erroneous and abused her discretion when she held that an admitted drug[-]using parent was to have primary custody of the minor child, despite there being no findings that the Plaintiff was unfit.

11. That the Magistrate was clearly erroneous and abused her discretion when she held that it was in the minor child's best interest to be taken away from the Plaintiff when it was not shown that the Plaintiff was an unfit parent.

12. That the Magistrate was clearly erroneous and abused her discretion when she held that the Defendant had a fit and proper home when it was admitted that the minor child did not have her own room and that she was to sleep on the floor while at the Defendant's home.

13. That the Magistrate was clearly erroneous and abused her discretion when she failed to properly apply the facts to law when determining that [it] is in the minor child's best interest to not remain in the custody of the Plaintiff.

* * *

16. That with the filing of this request, the Plaintiff has requested the cost of the transcript for this matter by placing an order with the Clerk's Office of this Court.

On the same day, June 22, Ms. Alt requested from the Court the cost of the transcripts from the June 12-13 hearing but did not order the transcripts at this time. On June 25, the judicial assistant to the trial court judge informed Ms. Alt that she had received her transcript request, provided the price estimate of $1,500, and instructed her to send a money order so that the court recording and payment could be sent to the transcriber.

Mr. Garces filed a response to Ms. Alt's exceptions on June 27 requesting the court deny the exceptions. On July 3, the circuit court issued an order stating: "Plaintiff must comply with Rule 9-208 and provide a transcript or an alternative within 30 days. [Set for hearing] on exceptions after 30 days; the hearing will be vacated prior if no transcript received or additional request made." On July 10, Ms. Alt filed an opposition to Mr. Garces' response which indicated that she had requested the cost of the transcript but had not received a transcript in time. She also stated that she did not have the funds for the $1,500 transcript until July 9, after which she sent a money order to the court for the full amount. In this July 10 motion, Ms. Alt requested that the court extend the time allowed for the receipt of the transcript. Ms. Alt also requested that the court give her leave to amend her exceptions should it find them deficient. The court responded to this motion on July 15 by stating:

> The Court refers counsel to the Maryland rules governing exceptions. No reason has been given to extend the time in which to file a transcipt [sic]. No other relief sought. Exceptions have not been dismissed and a hearing will be scheduled should a transcript or a legally sufficient pleading be filed upon which the Court had a basis to extend the time frame.

Mr. Garces filed a motion to dismiss the exceptions on July 24, noting that the thirty-day deadline to file transcripts had passed on the previous day and that no transcript had been filed. The court reporter provided the transcript to the court on August 5. That was followed by Ms. Alt filing a motion in opposition to dismissal on August 6 indicating that the transcript was now available. On August 23, 2024, the trial court judge dismissed the exceptions with the following explanation:

> Pursuant to Md. Rules 2-541(f)(2), the transcript shall be ordered at the time the exceptions are filed, and the transcript shall be filed within 30 days thereafter or within such longer time, not exceeding 60 days after the exceptions are filed. The court may extend the time for the filing of the transcript for good cause shown. The court may dismiss the exceptions of a party who has not complied with this section. Plaintiff filed Exceptions on 6/22. While Plaintiff claims she requested extension for the filing of the transcript, the record shows otherwise; Plaintiff never requested an extension. Furthermore, according to Md. Rule 2-541(f)(1), exceptions shall be in writing and shall set forth the asserted error with PARTICULARITY. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise. Plaintiff's assertion that the magistrate was "clearly erroneous and abused her discretion," coupled with a litany of comments does not comply with the particularity requirement. There is no way for the opposing party to even be on notice what Plaintiff claims.

Ms. Alt responded with a motion to reconsider the dismissal of the exceptions on August 25, 2024, which the court denied on September 3. The trial court judge issued the final custody order on September 16, adopting the recommendations of the magistrate.

Following the filing of the final order, Ms. Alt filed a motion to reconsider, or in the alternative a motion for a new trial on September 24. The trial court judge denied this motion on October 31 with this explanation:

> Plaintiff basically claims the late filing of transcripts was because the Clerk failed to schedule a hearing upon receipt of the transcripts despite the Court's July 15 Order. The Exceptions were filed on June 22 and the Court issued an Order on July 15. Transcripts were filed late on August 5. Plaintiff claims that she requested an extension for the filing of the transcript, but she neither requested nor did the Court order an extension. Moreover, until August 22, Plaintiff failed to file a specific argument or specific grounds for the exceptions. Plaintiff did not comply with the rules related to exceptions. Exceptions were denied and this second Motion to Reconsider is denied.

Ms. Alt filed a timely appeal on November 1, 2024.

STANDARD OF REVIEW

The principal consideration in custody cases is the best interests of the child. *Ross v. Hoffman*, 280 Md. 172, 174 (1977). This standard is "firmly entrenched in Maryland and is deemed to be of transcendent importance." *Id.* at 174-75; *see Azizova v. Suleymanov*, 243 Md. App. 340, 347 (2019) ("Unequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child."). The best interests of a child may take precedence over a parent's liberty interest should they be at odds. *Boswell v. Boswell*, 352 Md. 204, 219 (1998).

Maryland courts have established two sets of potential factors to consider before awarding custody. First, this Court's decision in *Montgomery County Department of Social Services v. Sanders* provides ten non-exclusive factors for a trial court to consider when determining custody: (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 opportunities for visitation; (9) length of separation from the natural parents; and (10) prior voluntary abandonment or surrender. 38 Md. App. 406, 420 (1977). A court should assess the totality of the circumstances and not narrow in on one specific factor. *Id.* at 420-21.

The second set of factors, from *Taylor v. Taylor*, outline specific considerations for awarding joint custody. 306 Md. 290, 304-11 (1986). Those factors are: (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) any other factor that reasonably relates to the issue. *Id.* These factors do not replace any considerations enumerated by *Sanders* or any other factors that a trial court might deem important to consider in custody evaluations. *Id.* at 303.

Appellate courts review child custody awards using three different standards. *Davis v. Davis*, 280 Md. 119, 125 (1977). First, factual findings are reviewed under a clearly erroneous standard. *Id.* at 125-26. Second, any errors as a matter of law will typically require further proceedings in the trial court . . . unless the error is determined to be harmless. *Id.* at 126.

Third, we review the ultimate conclusions in a custody determination under an abuse of discretion standard. *Id.* "There is an abuse of discretion 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." *Bord v. Baltimore County*, 220 Md. App. 529, 566 (2014) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). To constitute an abuse of discretion, the conclusions must be "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994). An appellate court should not reverse simply because it would have made a different ruling. *Id.* Lastly, the reviewing court gives "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Maryland Rule 8-131(c).

DISCUSSION

I. The trial court correctly denied Ms. Alt's exceptions to the magistrate's recommendations.

Maryland Rule 9-208 governs situations in which family law matters are heard by a magistrate. Upon referral of a matter, the magistrate is authorized to take testimony and to make a report to the court that includes a statement of the magistrate's findings and a proposed order. *O'Brien v. O'Brien*, 367 Md. 547, 554 (2002). After a magistrate has heard a case, the parties may take exceptions to their findings and recommendations, thereby requesting that a judge review the exceptions and make an independent judgment.

Maryland Rule 9-208(f) on exceptions provides:

> Within ten days after recommendations are placed on the record or served pursuant to subsection (e)(1)(B) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

The rule also provides requirements for the excepting party:

> At the time the exceptions are filed, the excepting party shall do one of the following: (1) order a transcript of so much of the testimony as is necessary to rule on the exceptions, make an agreement for payment to ensure preparation of the transcript, and file a certificate of compliance stating that the transcript has been ordered and the agreement has been made; (2) file a certification that no transcript is necessary to rule on the exceptions; (3) file an agreed statement of facts in lieu of the transcript; or (4) file an affidavit of indigency and motion requesting that the court accept an electronic recording of the proceedings as the transcript. Within ten days after the entry of an order denying a motion under subsection (g)(4) of this Rule, the excepting party shall comply with subsection (g)(1) of this Rule. The transcript shall be filed within 30 days after compliance with subsection (g)(1) of this Rule or within such longer time, not exceeding 60 days after the exceptions are filed, as the magistrate may allow. For good cause shown, the court may shorten or extend the time for the filing of the transcript. The excepting party shall serve a copy of the transcript on the other party. The court may dismiss the exceptions of a party who has not complied with this section.

Maryland Rule 9-208(g).

Ms. Alt argues that she correctly filed her exceptions within the ten-day deadline because the exceptions were pled with particularity and she "notified the Court that she had placed an order for [a] transcript with the Clerk of the Court." Ms. Alt notes that in response to Mr. Garces' opposition to her exceptions, she filed an Opposition to Defendant's Response to Plaintiff's Exceptions on July 10, 2024, attaching as exhibits proof of payment for the transcripts required in this matter.

The trial court judge was correct to deny Ms. Alt's exceptions because she did not comply with the requirements laid out in Md. Rule 9-208(g) as she did not timely order a transcript when the exceptions were filed. Md. Rule 9-208(g) is clear that "[t]he court may dismiss the exceptions of a party who has not complied with this section." Md. Rule 9-208(g) requires that at the time the exceptions are filed, the excepting party order the transcript, make an agreement for payment, and complete a certificate of compliance stating that the transcript has been ordered and the agreement made. Counsel for Ms. Alt did none of these things *at the time the exceptions were filed*, but instead waited seventeen days and did not order the transcript until July 9. While counsel claims the transcript was ordered within the ten-day deadline to file exceptions, the record reflects that counsel merely requested the cost of the transcript at that time. The proof of payments provided on July 10 were from July 9, not from the date when the exceptions were filed. This delay in payment caused the preparation of the transcript to be delayed until August 5.

Rule 9-208 requires that "[t]he transcript shall be filed within 30 days after compliance with subsection (g)(1) of this Rule or within such longer time, not exceeding 60 days after the exceptions are filed, as the magistrate may allow." Ms. Alt then contends that the trial judge should have granted her an extension to produce the transcript. On July 3, the trial judge advised counsel by a "ruling on exceptions" that compliance with Rule 9-208 was required. On July 15, the trial judge again provided counsel with an Order that referred counsel to Rule 9-208 and stated "[n]o reason has been given to extend the time in which to file a transcipt [sic]. No other relief sought." At this point, the judge also noted

that "a hearing will be scheduled should a transcript or a legally sufficient pleading be filed upon which the Court had a basis to extend the time frame." In the order to dismiss exceptions filed on August 23, the trial court noted, "[w]hile [Ms. Alt] claims she requested extension for the filing of the transcript, the record shows otherwise; [Ms. Alt] never requested an extension." Therefore, it was within the judge's discretion to refuse to grant an extension and to dismiss the exceptions because Ms. Alt did not comply with the rule to order the transcript when she filed her exceptions.

The trial judge also denied Ms. Alt's exceptions on the grounds that they lacked specific detail and particularity. In *Lemley v. Lemley*, 102 Md. App. 266 (1994), the Appellate Court interpreted the particularity language in the rules regarding exceptions.[4] This court explained: "If the court is reasonably able to rule on the exception, and the opposing party is reasonably able to frame a response, then the exception is sufficiently 'particular' to satisfy the requirements of the Rule." *Id.* at 276. *See also James v. James*, 96 Md. App. 439, 449 (1993) (abrogated on other grounds) (explaining that at least one exception was "specific enough to afford [the] appellant sufficient notice to respond and provided the degree of particularity required by law to allow the chancellor to review the findings of the master").

[4] *Lemley v. Lemley* discusses the particularity language of Rule S74A(d). This section has been superseded by identical language in Rule 9-208(f) at issue here. *See* FADER'S MARYLAND FAMILY LAW 16-3 (Cynthia Callahan & Thomas C. Ries eds., 7th ed. 2021) ("There are numerous references in case decisions to the former 'S' rules. The Rules presently in Title 9, Chapter 200 were formerly known as the 'S' rules as part of the Maryland Rules of Procedure. Effective 1/1/1997, the transfer was made from 'S' to what appears in Title 9, Chapter 200.").

While Ms. Alt's exceptions are not exceedingly specific, we do not agree that they were so vague as to render a court unable to rule on them or Mr. Garces unable to respond. She mentions specific facts in at least two exceptions that she felt should have disallowed Mr. Garces from being granted custody. These two exceptions read: "[t]hat the Magistrate was clearly erroneous and abused her discretion when she held that an admitted drug[-] using parent was to have primary custody of the minor child, despite there being no findings that the Plaintiff was unfit" and "[t]hat the Magistrate was clearly erroneous and abused her discretion when she held that the Defendant had a fit and proper home when it was admitted that the minor child did not have her own room and that she was to sleep on the floor while at the Defendant's home." It is clear enough from these exceptions that Ms. Alt was arguing that the magistrate incorrectly weighed the factors in establishing custody. Regardless, the trial judge properly dismissed the exceptions for Ms. Alt's failure to order the transcript when she filed the exceptions.

Mr. Garces argues that if we affirm the circuit court's denial of the exceptions, we cannot reach the merits of the custody issues here. "A party's failure to timely file exceptions forfeits 'any claim that the master's findings of fact were clearly erroneous.'" *Barrett v. Barrett*, 240 Md. App. 581, 587 (2019) (quoting *Miller v. Bosley*, 113 Md. App. 381 (1997)). "The party may still, however, challenge the court's 'adoption of the [magistrate's] application of the law to the facts.'" *Barrett*, 240 Md. App. at 587 (quoting *Green v. Green*, 188 Md. App. 661, 674 (2009)).

In response, Ms. Alt argues that "the Trial Court was clearly erroneous and abused its discretion in granting [Mr. Garces] primary physical custody / parenting time of the parties[']] minor child when the testimony heard by the Magistrate supported that the Court follow the Appellant's request to have primary physical custody of the minor child . . ." Because Ms. Alt did not timely file a transcript and never properly filed a request for an extension, her exceptions were properly dismissed, and we will not review the factual findings of the magistrate for clear error. We limit our review of the merits of this case to whether the magistrate's application of the law to the facts was properly adopted by the trial court.

II. The trial court did not err in granting Mr. Garces primary physical custody.

Ms. Alt alleges that the trial court abused its discretion in granting Mr. Garces primary physical custody. She argues that the magistrate improperly focused on her relocation to Texas instead of properly evaluating the *Sanders* factors. In her view, the magistrate did not give enough weight to Mr. Garces' Ayahuasca use, anger issues, or mental health issues, as well as the fact that Ms. Alt had been the primary caregiver for S. since birth. She also argues the magistrate was too concerned with Ms. Alt's alleged theft from her previous employer when there were no charges brought against her and was too focused on the magistrate's own opinion that travel back and forth from Texas to Maryland would be detrimental to S.

Ms. Alt primarily contends that her move to Texas is not a proper reason to grant Mr. Garces primary physical custody. She cites to *Jordan v. Jordan*, 50 Md. App. 437,

447 (1982), for the proposition that "[r]elocating as a result of remarriage, employment, and the like cannot of itself render a parent to whom custody has been granted unfit." Ms. Alt's reliance on this case is misplaced as this case has been overruled by *Domingues v. Johnson*, 323 Md. 486 (1991). In overruling *Jordan*, the Supreme Court of Maryland held that a mother's move to Texas might constitute a change in circumstance sufficient to justify a change in custody and explained:

> Continued custody in the mother, the primary caretaker in fact, certainly offers an important form of stability in the children's lives. However, permitting the children to remain in an area where they have always lived, where they may continue their association with their friends, and where they may maintain frequent contact with their extended family, also provides a form of stability.

Id. at 502-03.

Ms. Alt further argues that she should remain S.'s primary guardian to provide stability to S. She cites to *Levitt v. Levitt*, 79 Md. App. 394, 397-98 (1989), quoting *Sartoph v. Sartoph*, 31 Md. App. 58 (1976) (repudiated on other grounds), for the following:

> The custody of children should not be disturbed unless there is some strong reason affecting the welfare of the child. To justify a change in custody, *a change in conditions must have occurred which affects the welfare of the child and not of the parents*. The reason for this rule is that the stability provided by the continuation of a successful relationship with a parent who has been in day to day contact with a child generally far outweighs any alleged advantage which might accrue to the child as a result of a custodial change. In short, when all goes well with children, stability, not change, is in their best interest.

It is important to distinguish that the cases mentioned above and relied upon by Ms. Alt are custody reconsideration cases. The current situation is not a change of custody case because there had never been an initial custody order issued. In *Levitt*, this Court stated:

"We are dealing here not with an original award of custody, but with a change of custody. They are quite different situations. They should be different, recognizing the importance of the child's need for continuity." *Levitt*, 79 Md. App. at 397. In a change of custody case, a trial court must first determine if there has been a material change in circumstances that warrant a change in custody. However, in an initial custody determination, this is not required. *See Wagner v. Wagner*, 109 Md. App. 1, 28 (1996).

The trial court recognized that a status quo was established between the parents that will necessarily be disturbed by Ms. Alt's move to Texas. The parties operated under an informal joint custody arrangement since they broke up, about four years ago, with Ms. Alt having primary physical custody three to four days a week, Mr. Garces having custody two days a week, and S.'s maternal grandmother caring for S. on the remaining one or two days. The Supreme Court in *Domingues* discussed the bases for the principle that an existing custody order ordinarily should not be modified in the absence of a showing of changes affecting the welfare of the children. These bases are: "preventing relitigating of the same issue and, the preservation of stability in custody cases." *Domingues*, 323 Md. at 498 (citing *McCready v. McCready*, 323 Md. 476 (1991). While relitigating issues is not a concern here, the preservation of stability for S. is an important consideration, despite there not being an original custody order in this case.

However, we cannot say that the trial court was incorrect to favor the stability of S. staying in the Maryland/Virginia area, close to her relatives and her daily routine, over the stability of remaining primarily in her mother's care. Ms. Alt did formerly have S. for

more nights of the week than Mr. Garces did. However, S. also spent a substantial amount of time with Mr. Garces and her maternal grandmother. Her routine consisted of rotating between the care of all three.

Insofar as Ms. Alt argues that the trial court was improperly focused on her relocation as opposed to the *Sanders* factors, this is not supported by the magistrates' recommendations. Rather, the magistrate considered the effects of Ms. Alt's relocation within the *Sanders* factors and weighed them accordingly. The magistrate considered the relocation when discussing the sincerity of the parents' requests by noting:

> I am concerned as to the viability of [Ms. Alt]'s proposal, considering her past concerns as to [S.]'s illnesses being due to being in the car for 4 hours per week for visitation transport, the cost for air[fare] . . . and her plan to immediately have children which will cause issues in allowing her to travel.

In discussing each parent's ability to maintain the child's relationships with the other parent and relatives, the magistrate stated:

> I do not see how [S.] will be able to maintain relationships with [Mr. Garces] and the maternal grandmother, in particular, at the level currently in place if [S.] moves to Texas . . . A change to this extensive regular contact with [S.] and both parents and the grandparents would be detrimental to [S.].

The magistrate also considered the move under the geographic proximity of the parents' residences and opportunities for time with each parent:

> It is not in [S.]'s best interests to have such significant travel time between the two residences and to change the schedule of contact with each parent from the current schedule.
>
> [Ms. Alt] could have chosen to agree with Mr. Jones that the two of them would need to live in Maryland when the [sic] married. She chose to agree to move to Texas with Mr. Jones. She is free to move, but [S.] should remain in an area where she has stability and close relationships with her Father and extended family.

Under this factor, the magistrate also noted: "[Mr. Garces] had close to equal time with [Ms. Alt], if you do not consider time with the maternal grandmother as time associated with [Ms. Alt]. [S.] has spent substantial periods of time with each parent." Contrary to Ms. Alt's argument, the magistrate did consider the current division of time between the parents but did not come to the same conclusion that stability required granting Ms. Alt primary physical custody.

Lastly, concerning the ability of each parent to maintain a stable and appropriate home for the child, the magistrate noted:

> I have concerns about [Ms. Alt]'s Texas move. She does not have a community in Texas to support her. For the past two years, [S.] has been with [Mr. Garces] two nights per week and [her grandmother] 1-2 nights per week. There would be no such respite in Texas. Her own testimony is that her fiancé will be working and unable to provide substitute care. She presented no credible information as to any child care options in Texas. I am also concerned that the Texas move is not a long-term move, since there was no adequate explanation as to why [Ms. Alt] and her fiancé are moving to a furnished rental home under a six-month lease rather than to the home of her fiancé.

The magistrate here carefully considered the *Sander-Taylors* factors and concluded that traveling back and forth to Texas every month was not in the best interest of the child. Ms. Alt is incorrect that the magistrate merely focused on her own opinion that the travel back and forth would be detrimental to the child. The reasons outlined above—most notably the separation from her father and extended family, the lack of support and childcare in Texas, the significant travel time, Ms. Alt's concern that S.'s illnesses were linked to extensive travel, and the parties' inability to afford the airfare—all support the

magistrate's conclusion that Ms. Alt's proposed schedule was infeasible and would be detrimental to S.

Ms. Alt claims that "[a]bsent [her] going to Texas there are no other factors which would prevent the Court from granting [her] primary custody . . . while there are plenty of factors which would prevent [Mr. Garces] from having primary custody." To the contrary, Ms. Alt's move to Texas touches on many of the *Sander-Taylor* factors, as shown by the magistrate's thorough analysis. We cannot say it was an abuse of discretion to consider Ms. Alt's relocation through the lens of these factors.

Ms. Alt alleges that the magistrate failed to give adequate weight to the concerns that she raised over granting Mr. Garces primary custody including: Mr. Garces' occasional use of Ayahuasca, his anger and mental health issues, and adherence to the previous schedule maintained by the parties. We cannot say that the trial court was incorrect in adopting the magistrate's analysis of these specific facts.

Regarding Mr. Garces' use of Ayahuasca, there is evidence in the record through Mr. Garces' own testimony that he has taken Ayahuasca twice in the past few years and never in the presence of S. Ms. Alt does not refute these findings, but rather contends that this should weigh against Mr. Garces receiving primary custody. The magistrate noted that she was "not particularly concerned with the occasional use of psychedelics by the Father as alleged by the Mother since the testimony was any such use was on a retreat, with the Child not present." Furthermore, the magistrate noted, Ms. Alt's own proposal for custody provided for S. to be with Mr. Garces fifty percent of the time. The magistrate felt Ms.

Alt's willingness to have S. in Mr. Garces' care fifty percent of the time undercut her supposed concern over his rare use of psychedelic drugs. We cannot say that the trial court abused its discretion in finding Mr. Garces a fit parent despite the occasional psychedelic drug use and agree that Ms. Alt's willingness to propose a fifty/fifty custody plan highlights an insincerity in her concern over his infrequent drug use.

Ms. Alt also argues that Mr. Garces' anger issues and mental health struggles should prevent him from having primary physical custody of S. Mr. Garces testified that he has been diagnosed with PTSD resulting from his military service. He also testified that he has been in therapy for one and one-half years. The magistrate noted testimony that Mr. Garces had punched holes in walls and screamed and cursed at Ms. Alt. The magistrate also noted that there was testimony that the parties would yell back and forth and that Ms. Alt had slapped Mr. Garces and told him to leave their residence, with which he complied. Insofar as there is evidence of anger on both sides, evidence that Mr. Garces is in therapy for his mental health issues, and no evidence of what impact this may have had on S., we cannot say it was an abuse of discretion to grant Mr. Garces custody.

Ms. Alt also raises concerns over the magistrate's treatment of issues with her former employer. The magistrate, in considering the character and reputation of the parties, noted:

> I have concerns about [Ms. Alt]'s character and credibility. I found Ms. Brown's testimony credible that she believed that Ms. Alt was responsible for items missing from her store and that [Ms. Alt] was using Ms. Brown's address as a return address for "formulations" [Ms. Alt] mailed out. I did not find it credible that [Ms. Alt] accidentally put the wrong address on those packages.

Ms. Alt contends that these issues were minor as there were no charges brought against her. The magistrate considered the witness testimony as bearing upon Ms. Alt's character and credibility regardless of whether any charges were brought. This court must "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). The magistrate found the testimony of Ms. Brown credible and explained the rationale of the analysis.

Overall, the trial court did not abuse its discretion in adopting the recommendations of the magistrate on physical custody. The magistrate thoroughly considered the relevant *Sanders-Taylor* factors and came to a rational and feasible physical custody schedule given the physical distance between the parties after Ms. Alt's relocation.

III. The trial court did not err in granting Mr. Garces tie-breaking authority.

Ms. Alt argues that the trial court abused its discretion in granting Mr. Garces tie-breaking authority when the only issues in the parties' abilities to make joint decisions arose after the filing of the current custody dispute. Ms. Alt seemingly takes issue with the use of tie-breaking authority at all, given the parties' prior ability to communicate and reach shared decisions. She does not argue that she should have been given tie-breaking authority instead of Mr. Garces, but rather, that the trial court was incorrect to give tie-breaking authority to either party. Ms. Alt claims that tie-breaking authority "does not meet the requirements of *Taylor* as it places greater emphasis on [Mr. Garces] being able to make legal custody decisions should the parties reach [an] impasse in making such decisions."

The Supreme Court considered the issue of whether tie-breaking authority conforms with the requirements of *Taylor* in *Santo v. Santo*, 448 Md. 620 (2016). As recognized in *Santo*, "the *Taylor* Court defined joint legal custody as 'both parents hav[ing] an equal voice in making [long range] decisions [of major significance concerning the child's life and welfare], and neither parent's rights [being] superior to the other." *Id.* at 632 (quoting *Taylor*, 306 Md. at 296). The *Santo* Court rejected the idea that tie-breaking authority does not comport with *Taylor*'s definition of joint custody "[b]ecause this arrangement requires both parties to attempt to make decisions together" and "require[s] that the tie-breaker parent cannot make the final call until *after* weighing in good faith the ideas the other parent has expressed regarding their children." *Id.* at 633-34.

Ms. Alt attempts to distinguish *Santo* because Ms. Alt and Mr. Garces have been able to make joint decisions in the past, whereas in *Santo*, the parties were unable to communicate and make joint decisions. This distinction from *Santo* is irrelevant in two respects. First, Ms. Alt's contention that the parties "have acted together, from the birth of the minor child to the filing of this matter, in making decisions regarding the health, education, welfare, and religion issues related to the minor child," is not fully supported by evidence in the record. While the parties certainly were able to reach shared decisions on certain issues in the past, there were also issues which Ms. Alt unilaterally decided, such as her decision to deny Mr. Garces parenting time at his home immediately after his move to Virginia. Also, the parties currently do not agree on future education plans for S. or even on decisions regarding religious training for S.

Second, insofar as the magistrate did note that "[f]rom the end of their relationship until recently, the parents have been communicating effectively and I believe co-parenting effectively," there is no requirement that the parties' inability to communicate predate the filing of the custody dispute. Rather, *Santo* emphasizes, that "[f]or us now to constrain trial courts in fashioning awards in the best interests of the child . . . would be plainly inconsistent with our recognition in *Taylor* that such courts have 'broad and inherent power' as equity courts 'to deal *fully and completely* with matters of child custody.'" *Santo*, 448 Md. at 636-37 (quoting *Taylor*, 306 Md. at 301). The custody arrangement reached here takes into account the parties' ability to communicate in the past while giving Mr. Garces flexibility to decide issues in the event of an impasse given the parties' more recent disagreements and potential difficulties that may arise in light of the parties' new geographic distance apart. We will not constrain the trial court's ability to fashion an award in the best interest of the child, as has been accomplished here.

CONCLUSION

The trial court correctly denied Ms. Alt's exceptions because she did not order a transcript at the time she filed her exceptions, in violation of Md. Rule 9-208, and the record shows that a request for an extension was never properly filed. The trial court did not err in adopting the magistrate's recommendation that Mr. Garces have primary physical custody. The magistrate thoroughly analyzed the *Sanders-Taylor* factors to conclude that it was in the best interest of S. to remain primarily in Maryland and Virginia where she can most closely continue her daily routine and family relationships. Lastly, the trial court did

not abuse its discretion to adopt the magistrate's recommendation that the parties have joint legal custody with Mr. Garces having tie-breaking authority. Trial courts have broad authority to fashion custody awards, and neither *Taylor* nor *Santo* preclude an award of tie-breaking authority where the parties' disagreements stem primarily from after the filing of their custody dispute.

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