Circuit Court for Charles County
Case No. C-08-FM-23-001706

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1817

September Term, 2024

KELLY GIDWANI

v.

DEVEN GIDWANI

Arthur,
Shaw,
Zic,

JJ.

Opinion by Arthur, J.

Filed: July 3, 2025

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

This appeal involves a dispute between divorced spouses who share a child. Before trial, the parties resolved all property issues, mutually waived alimony, and agreed that the mother would retain primary physical custody and that the father would have access to the child twice per week. The Circuit Court for Charles County resolved the remaining issues: legal custody; the hours of father's access; and child support.

The mother has appealed, challenging the court's decisions on all three issues. For the reasons stated in this opinion, we affirm all three orders.

BACKGROUND AND LEGAL PROCEEDINGS

Ms. Kelly Gidwani ("Mother") and Mr. Deven Gidwani ("Father") were married in September 2015. Mother gave birth to a daughter in May 2019.

On November 22, 2023, Mother filed a complaint in the Circuit Court for Charles County, requesting an absolute divorce, sole legal custody, primary physical custody, and child support. In the alternative, Mother requested joint legal custody and tie-breaking authority. Father filed a counterclaim, requesting an absolute divorce as well as joint legal and shared physical custody of the parties' five-year-old daughter.

In the summer of 2023, Father moved into the basement of the marital home, at Mother's request, after he allegedly pushed her. On December 11, 2023, Mother obtained a temporary protective order, which required Father to vacate the marital home, gave Mother temporary custody of the child, and prohibited the parties from communicating until a final protective order hearing. Father moved out of the marital home and began renting a room in a friend's house.

After a hearing on January 2, 2024, the court, with the parties' consent, entered a final protective order, which reestablished Father's exclusion from the marital home and Mother's primary physical custody of the child. The final protective order granted Father access to the child every Sunday and Wednesday from 9:00 a.m. until 7:30 p.m. and limited the parties' communication to facilitating this visitation schedule.

Before trial, the parties entered a consent order. Through the consent order, the parties resolved all property issues, mutually waived alimony, and agreed that Mother would retain sole physical custody of the child, that Father would have access every Sunday and Wednesday, and that Father would have no overnights. The issues of legal custody, the hours of Father's access to the child, and child support remained pending before the circuit court.

The trial took place on two separate days over a five-month period: May 14, 2024, and October 7, 2024. The court delivered its rulings on October 8, 2024. The court's assessment of the evidence and rulings on legal custody, Father's access hours, and child support are outlined below.

Legal Custody

Mother requested sole legal custody of the parties' child. In case the court awarded joint legal custody, Mother requested, in the alternative, that she be awarded tie-breaking authority for decisions about the child's schooling, health, and religion. Father asked the court to grant joint legal custody. Based on the following evidence, the circuit court awarded joint legal custody and did not give tie-breaking authority to either party:

Mother testified that she is concerned that she and Father are incapable of communicating in the event they disagree about a major decision regarding their daughter. Mother also testified that, throughout the child's life, Father has not necessarily disagreed with her decisions about their daughter's care, but that he is not "engage[d] in the process." Father testified that he and Mother do "discuss things" that concern their daughter. Regarding the child's healthcare, Father testified that he has "trusted" and "rolls with" Mother's "decision-making" because she works in the healthcare field as an orthopedic nurse. Father believes that he and Mother could "continue to effectively communicate" in this way.

Mother said that she is "fearful of" Father, which makes decision making "difficult" and "uncomfortable." Mother testified that Father pushed her on one occasion, punched his sister on another, and kicked a door on another. She also testified about incidents in which Father engaged in self-harming actions or made statements about harming himself. Mother's sister testified that Father had "shared with [her] that he" "struggles to control his frustration" "and that he needed to get some help for that." Father testified three times that he does not believe that he has issues with anger management.

The court found a sufficient history of communication and decision making concerning the child's welfare to support an award of joint custody. The court pointed to various emails and text messages that show the parties' ability to communicate with one another about their daughter. The court described the parties' communication as "tense at

times," and attributed that to "the fact that [they] are coming out of a divorce" and were at "the beginning of . . . a protective order." But it found, at bottom, that the parties engage in "appropriate[,]" "clear[,]" and responsive communication about their child's well-being.

The court explained that Father's "going along" with Mother's decisions about the child's healthcare providers, instead of actively researching and finding providers himself, does not "mean that he's . . . not communicating" or that he is "hindering" the child's care. The court reasoned that there is nothing more "you could hope for" than that Father would trust Mother's judgment because of her nursing background.

Mother testified that the parties' daughter has a developmental delay. For example, the child did not begin speaking "until she was three and a half" years old, and she was diagnosed with echolalia.[1] Mother sought out "early child development services in Charles County[,]" and both parties attended the appointments. As of the second trial date, the child was awaiting an evaluation for autism spectrum disorder. Despite these concerns, Father testified that he believes the child's "development is age appropriate[.]" The court determined that Mother and Father are "both capable of" "meet[ing] the child's developmental needs," and it remarked that both parties' ability to care for their daughter

[1] Echolalia is the "[i]nvoluntary parrotlike repetition of a word or sentence just spoken by another person." *Echolalia*, *Stedman's Medical Dictionary* (28th ed. 2006). This "meaningless repetition" "is a salient speech disturbance characteristically described in children with autism spectrum disorder[.]" *Echolalia*, Nat'l Libr. of Med., https://www.ncbi.nlm.nih.gov/books/NBK565908/ (last updated Aug. 23, 2023).

may improve after they receive and learn about the results of her evaluation for autism spectrum disorder.

The court considered Father's employability and work history, hearing testimony that he had been fired from or had quit no fewer than nine jobs, primarily in the restaurant and automobile sales businesses, in the past decade. Father admitted that he has had conflicts with his coworkers and managers at several of these jobs, but the court reasoned that some of that conflict was attributable to the car sales industry's "oppressive work environment," which "is ripe [sic] with strife and competition." The court ultimately determined that Father is employable, as "he's always able to get another job rather quickly."

The court heard testimony about an incident where Father either "slapped" the child's face (according to Mother) or "tapped" her (according to Father) to "grab her attention" and to stop her from flailing in her car seat. The court did not find Mother's characterization of the incident or accusation of abuse credible.

The court found that Mother and Father are both fit parents. "[B]oth have a good relationship" with their daughter, "optimize" their time with the child, and are "committed to her . . . well-being[.]" The court found that the parties' requests for custody were sincere and that the consent order established a mutual willingness to share custody of their daughter.

Based on these findings, the court ordered joint legal custody and determined that tie-breaking authority for Mother was not necessary.

Child Access Hours

Because the consent order dictated that Mother would have primary physical custody of the child and that Father would have time with the child every Sunday and Wednesday, the court, in lieu of a custody or visitation schedule, determined only what daytime hours Father would have with the child. Based on the following testimony, the court ordered an access schedule mirroring the one set by the final protective order, save for some additions to facilitate the schedule.

The court heard that Father would often pick up and drop off the child at times inconsistent with the existing access schedule, i.e., that he would pick her up later than 9:00 a.m. and drop her off after 7:30 p.m. Father testified that he is sometimes late because he "might have stayed at work late and [is] just tired" in the morning and because "sometimes [he is] in traffic on the way back to drop her off." Mother testified that Father's late drop-offs on Sundays and Wednesdays—both school nights—affect their daughter on school mornings. For example, the second day of trial was a Monday, and Father had dropped the child off at 8:35 p.m. on Sunday night. Mother testified that the child was exhausted on the morning of trial because she came home "wired," "hyper[,]" and hungry.

The parties agreed to the access schedule set forth in the final protective order when their daughter was in pre-school and not yet in kindergarten. When the child was in pre-school, Father would pick her up between 9:00 a.m. and 10:30 a.m. to take her to pre-school on Wednesday mornings. But, by the second day of trial, the child had begun

kindergarten; Father could no longer pick her up and take her to school on Wednesdays because school begins before, or simultaneously with, his access time.

The child finishes the school day at 2:45 p.m. and attends aftercare. On Wednesdays, Father picks the child up from aftercare and is with her until the drop-off time, or until she finishes playing soccer at 6:30 p.m. during soccer season. Mother testified that—once home from aftercare (and soccer), and once finished with dinner, playtime, and bathtime—the child's bedtime is roughly 7:30 p.m., even though that is the agreed-upon drop-off time set by the final protective order.

On "two to three [Sundays] a month[,]" Father volunteers for his church's 10:00 a.m. service. On those days, he attempts to pick up the child by 9:45 a.m. On the Sundays on which he does not volunteer, Father takes the child to the 11:45 a.m. church service and picks up the child anywhere between 9:30 a.m. and 11:45 a.m., but is inconsistent about informing Mother about his ETA. When Father fails to communicate his intended pick-up time on Sundays, Mother has sometimes scheduled alternate plans for the child during Father's access hours.

Father requested that the access schedule remain the same, from 9:00 a.m. until 7:30 p.m. on both Sundays and Wednesdays. Mother asked the court to revise Father's access schedule so that his Sunday access begins at 11:00 a.m., his Wednesday access begins after school at 2:45 p.m., and his access on both days ends at 5:00 p.m. instead of 7:30 p.m.

The court commented that "it seems like [Mother] want[s] to take away" or "chip away at the limited access that [Father] has" under the existing access schedule, to which both parties had agreed. When asked by his own counsel and the court why he agreed to the limited access schedule with no overnights, Father explained that Sundays and Wednesdays are his only days off work and that he was temporarily renting a room in a friend's house.

The court ordered that Father would continue to have access to the child from 9:00 a.m. until 7:30 p.m. every Sunday and Wednesday, consistent with the final protective order. In addition to the access schedule, the court ordered that Father must communicate his ETA to Mother by 8:30 a.m. on his access days, that Father must pick up the child before noon, and that Mother must not schedule any plans for the child during Father's access hours.

Child Support

Mother requested child support from Father. The parties stipulated that Mother's monthly income was $12,126.00 and that she pays $415.00 monthly for the child's health insurance. Father testified that he paid $150.00 per week for the child's pre-school daycare and now pays $125.00 per week for her kindergarten aftercare.

Because of a change in Father's employment between the first and second days of trial, Mother argued that Father had voluntarily impoverished himself and asked the court to impute income to him for the child support calculation. Additionally, Mother requested that the court include the cost of private school tuition in its calculation.

A. Imputation of Income for Voluntary Impoverishment

On the first day of trial, May 14, 2024, Father was employed as a car salesman at Sheehy Lexus of Annapolis. He had been employed there for "[a] little over a year[,]" and pay stubs confirmed that he earned, on average, $9,108.00 per month.

In September 2024, before the second day of trial, Father was fired from Sheehy. Father testified that, when he had other customers waiting, he allowed a customer to take an extended test drive without signing an assumption of liability agreement. Father explained that not every company requires customers to sign this agreement. Although this was the first time that Father had allowed a customer to drive a car without first signing an assumption of liability agreement, Father testified that he did not believe that this was "an offense that would cause [him] to get terminated."

By the second trial date, October 7, 2024, Father had secured employment at Ourisman Volkswagen and Subaru of Waldorf, but had not yet received his first paycheck. He testified that he worked forty-four hours each week and that he earned $15.00 per hour. Father introduced a pay plan from Ourisman that corroborated this hourly wage and detailed a sales commissions scheme. Father testified that he has the potential to earn more money each month based on commissions from car sales, but, as of the second trial date, he had not sold any cars. The court calculated Father's average monthly income as $2,860.00 based on this evidence.

The parties did not dispute that Father's retroactive child support obligation from December 2023 (the first month after Mother filed for divorce) until August 2024 (the

last full month Father worked at Sheehy) should be calculated using Father's average monthly income of $9,108.00. Mother argued, however, that the court should impute the $9,108.00 in monthly income for purposes of calculating Father's ongoing child support obligation as well. Mother argued that, by getting fired from Sheehy, Father voluntarily impoverished himself because he had worked "in car sales for years and years" and had never before allowed a customer to drive a car without signing an assumption of liability. "It is preposterous," she argued, that "he didn't think he would get fired if he let this person take a car off the lot without signing a liability release." She insisted that "there's no reason for the [c]ourt not to impute that income to him" and "no reason not to draw on what we already know he's capable of earning historically in the same industry."

Father argued that the court could not impute his previous income for purposes of calculating his present and continuing child support obligation. Father contended that he did not voluntarily impoverish himself because he did not intend to get fired from his job. He argued that "he didn't even think what he did was a fireable offense[,]" and that he pursued new employment immediately after the incident. Father also argued that the court must use his "actual income," not a speculative amount, pursuant to § 12-201(b)(1) of the Family Law Article ("FL") of the Maryland Code (1984, 2019 Repl. Vol.).

The circuit court considered only Father's "actual income" at the time of the second trial date, and it did not look to his previous average income or record of selling cars to calculate his present and continuing support obligation. Although the court did not explicitly state that Father had *not* voluntarily impoverished himself, this finding is

implicit in the court's decision to use $2,860.00, and not "a guess[,]"as Father's monthly income instead of imputing $9,108.00.

B. Inclusion of Private School Tuition

FL § 12-204(i) provides that, "[b]y agreement of the parties or by order of court," "expenses for attending a . . . private . . . school to meet the particular educational needs of the child" may be proportionally divided between the parties. Mother requested that the court include the cost of the child's private school tuition in its support calculation pursuant to FL § 12-204(i).

The court considered the "circumstances and . . . conversations" about private school and was "on the fence about this issue." Ultimately, the court concluded that the child did not have a particular need to attend private school, so the cost of tuition would not be included in Father's child support obligation.

The parties had different recollections about their conversations concerning their daughter's schooling. Mother testified that she and Father never "had conversations about enrolling [their daughter] in public school at any time" and that "[i]t was never [Father's] interest to enroll her in public school." Mother also testified that she and Father "both agreed that [they] wanted [their daughter] to attend private school[,]" at least in part because of "her developmental differences."

Father testified that he and Mother had discussed enrolling the child in public school, that public school "was an option[,]" and that he "was open to it." Although Father could not recall the name of the public school in the child's neighborhood, he

knew where the school was located and told the court that he had researched the school "when [he and Mother] were living in the same household."

The parties considered two private schools for their daughter—St. Mary's School of Piscataway and St. Peter's School. In March 2024, Mother received an email from St. Peter's denying the child's application for enrollment. Mother forwarded this email to Father and said: "FYI glad we are going with St. Mary's." Father's response was: "Maybe that's a sign. Thanks for keeping me updated."

Mother testified that she and Father made a joint decision to enroll the child at St. Mary's. She testified that Father scheduled and attended tours of the school in the fall of 2023, that he was made aware of the enrollment period, and that he was "provided the full details of the tuition" and "enrollment fees[.]" Mother also testified, however, that she was the one to apply for enrollment and pay the associated fees in January 2024, when the parties no longer lived together.

The child began kindergarten at St. Mary's on August 27, 2024, between the first and second day of trial. Father testified that he was not made aware that the child was accepted into and would attend St. Mary's until "basically right before [school] started," when he received a text message from Mother in which she asked for help covering the costs of various school supplies, which were listed in an image bearing the St. Mary's logo. "[A] few days before school started[,]" Father asked about when the first day of school was.

On the second day of trial, Father testified that he had agreed with the idea of sending the child to St. Mary's "[w]hen [he] was in the marital home . . . because that was under the assumption that [Mother and Father] were sharing bills and . . . had dual income[s]." Father further testified that he no longer agreed that the child should go to St. Mary's, because "[he] can't afford it." Father testified that, at some point after March 2024 (when he learned that St. Peter's had denied the child's application) and after May 2024 (when he learned on the first trial date that Mother had paid the enrollment deposit for St. Mary's), he told Mother over the phone that he could not afford the tuition and that their child needed to go to public school instead. It is not clear whether this conversation occurred while Father was employed at Sheehy earning over $9,000.00 per month, or after he had been terminated from Sheehy and began making about $2,800.00 per month at Ourisman. Mother's counsel contended that Father did not "change his mind" about private school in May, when he found out that Mother had paid the enrollment fees, but only after the child had already started school and he had lost his job.

The child's kindergarten tuition at St. Mary's is $9,450.00 per year. Mother has been paying this expense alone.

Based on this evidence, the circuit court determined that the parties had no agreement to send their daughter to private school, as there was no "meeting of the minds" between the parties. The court focused on the language from the parties' March 2024 email exchange, finding it not "necessarily helpful." The court stated: "there really . . . needed to be[,] in order for [Father] to have to pay and commit to" private school for

the child, "a little bit more evidence or testimony that [the parties] had more in-depth conversations about this being where [they] want [the child] to be permanently."

The court accepted that Father cannot afford the tuition, acknowledged that the child was only in kindergarten, and found that there was insufficient evidence about whether the assigned public school would be inappropriate in light of the child's developmental needs.

Using the child support guidelines, the court considered the parties' past and current monthly income and expenses, but it excluded the cost of private school tuition from its calculations. The court calculated Father's retroactive child support obligation, using Father's previous average monthly income, as $8,469.00 and ordered him to satisfy that balance in $150.00 monthly installments. The court calculated Father's present and continuing child support obligation, using Father's average monthly income of $2,860.00, as $87.00 per month, making Father's monthly support obligation $237.00 until he satisfies the arrearages in full.

Court's Final Order

The court granted the parties an absolute divorce on the grounds of irreconcilable differences and a six-month separation. The court awarded joint legal custody, ordered Father's access hours, and calculated child support as outlined above.

Throughout its oral rulings, the court explained that "it just doesn't come across that [Mother] supports[,]" "acknowledges[,]" or "necessarily value[s] the father-daughter . . . bond that [Father] enjoys with" the child. The court also found "it[] clear" from the

testimony of Mother and her witnesses that there is "hostility" and "some resentment towards" Father.

The court anticipated that the parties would return to court to modify Father's child support obligation and access hours because Father's income would likely increase as he sold cars and because his living situation may change as he "get[s] re-established[.]" In addition, the court discussed the potential need to modify the support order because the parties failed to consider or present evidence on what the child would do during the summer and how the costs of that care would be divided.

QUESTIONS PRESENTED

Mother was the only party to file a brief in this case. She presents three issues for our review, which we quote:

1. Whether the trial court abused its discretion in awarding the parties joint legal custody when there was an established history of Father's emotional volatility, an active protective order in effect, and Father's own testimony demonstrated his potential to create conflicts on major decisions[.]

2. Whether the trial court abused its discretion in awarding Father access hours with the child when the evidence established the hours were not in the child's best interest and without establishing any set pick[-]up time for Father's Sunday access[.]

3. Whether the trial court, in determining child support, abused its discretion when it failed to impute income to Father based on voluntary impoverishment and when it failed to include the actual cost of private school tuition when the parties had an agreement to send the child to the private school[.]

STANDARDS OF REVIEW

Child custody, child access, and child support disputes share "'three distinct aspects of review[:]'" the court's findings of fact, its legal conclusions, and its ultimate

order. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). We examine those aspects "utilizing three interrelated standards of review." *Id.*; *accord Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013).

We scrutinize factual findings under the clearly erroneous standard set forth in Maryland Rule 8-131(c), giving due regard to the trial court's assessment of witnesses' credibility and accepting factual findings supported by competent, material evidence in the record. *Reichert v. Hornbeck*, 210 Md. App. at 304, 316; *Sieglein v. Schmidt*, 224 Md. App. 222, 249, 252 (2015); Maryland Rule 8-131(c). We review the circuit court's legal conclusions de novo for legal correctness. *Reichert v. Hornbeck*, 210 Md. App. at 304, 316. And we review the court's ultimate decisions—based on findings of fact that are not clearly erroneous and sound legal conclusions—for an abuse of discretion. *Id.* We will not disturb a decision unless it is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *In re Yve S.*, 373 Md. at 583-84, 586 (internal citation omitted); *see also Reynolds v. Reynolds*, 216 Md. App. 205, 219 (2014).

DISCUSSION

The trial court has the firsthand opportunity to evaluate witnesses' demeanor and assign their testimony the weight it feels is warranted. *See generally* Maryland Rule 8-131(c). With that standard in mind, we find no error or abuse of discretion in the circuit court's grant of joint legal custody, determination of Father's access hours, or calculation

of child support in this case. We address each ruling in turn and, ultimately, affirm each order.

Legal Custody

Child custody embraces two distinct but related concepts: legal and physical custody. *Taylor v. Taylor*, 306 Md. 290, 296 (1986). The parties agreed via the consent order that Mother would retain primary physical custody of the child, i.e., "the right and obligation to provide a home for the child and to make the day-to-day decisions required" when the child is with her. *Id.* The parties left the issue of legal custody to the court.

"Legal custody carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Id.* A court may grant joint legal custody, meaning "both parents [would] have an equal voice in making those decisions, and neither parent's rights are superior to the other." *Id.*

Mother argues that the court abused its discretion by failing to award her sole legal custody or by not giving her tie-breaking authority in an award of joint legal custody. Mother's argument hinges on her belief that the court erroneously found that the parties have the capacity to communicate effectively.

In determining legal custody of a child, "the power of the [trial] court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child." *Taylor v. Taylor*, 306 Md. at 301-02. Of the many factors that courts must consider in determining issues pertaining to child custody

(*see generally id.* at 304-11; *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977)), the parties' ability to communicate and reach shared decisions "is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate[.]" *Taylor v. Taylor*, 306 Md. at 304.

Generally, joint legal custody "'is a viable option only for parents who are able and willing to cooperate with one another in making decisions for their child.'" *Id.* (quoting 2 *Child Custody & Visitation Law and Practice* § 13.05[2], at 13-14 (J.P. McCahey ed. 1985)). The "best evidence" of parents' ability to communicate is often their "past conduct or 'track record[.]'" *Id.* at 307. When the record reveals "severely embittered parents and a relationship marked by dispute, acrimony, and a failure of rational communication," joint legal custody is inappropriate. *Id.* at 305. But because "the tensions of separation and litigation will sometimes produce bitterness and lack of ability to cooperate or agree[,]" the trial court must determine whether these conditions are temporary or permanent. *Id.* at 307.

Taylor advised that, "[r]arely, 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[.]" *Id.* at 304. However, the Court established in *Santo v. Santo*, 448 Md. 620, 646 (2016), that effective communication is not always a prerequisite for joint legal custody. "[U]nder appropriate circumstances[,]" a court may "grant joint legal custody to parents who cannot effectively communicate[.]" *Id.* at 646. This is in part because a court, within its

broad discretion, may award one parent tie-breaking "authority to make a decision about a matter affecting the child" "when the parties are at an impasse after deliberating in good faith[.]" *Id.* at 624, 632.

When delivering its ruling on legal custody, a court must carefully recite the facts and conclusions on which it relies. *Taylor v. Taylor*, 306 Md. at 311. Here, the circuit court sufficiently addressed each relevant factor on the record. Because Mother does not contest the court's findings as to any factor save for the parties' ability to communicate, we address only the court's evaluation of this "paramount" factor.

The circuit court found that the parties "have the capacity to . . . communicate[,]" as they engaged in "appropriate[,]" "clear[,]" and responsive discussions about their child's well-being both before and during the trial. The court reviewed numerous text messages and emails, which spanned months and involved sharing pictures, providing updates on private school admissions, and routinely coordinating pick-ups and drop-offs. The court acknowledged that "the substance of those communications [is] tense at times[.]" The court, however, "expect[ed]" tension and attributed it to the divorce proceedings and the protective order. The court remarked that, "at the core of it," "they do communicate."

Mother argues that the parties' inability to communicate and agree is illustrated by "Father's inconsistency on the issue of the child's school enrollment." She claims that Father's alleged switch in positions "makes plain the stalemate the parties would have on future decisions." However, as Father argued before the circuit court, Mother's contest

of joint legal custody is based on "what she believes might happen"—that Father will dispute one of her decisions to the detriment of the child. Mother offered no evidence about "past conduct" where Father impeded Mother's decision-making about the child's healthcare or hindered the child's ability to participate in school or other activities.

Mother also argues that Father's testimony made clear "that while he claimed to want to have a 'say so' in major decisions affecting the child's welfare, he was woefully disconnected from any reality in which he could functionally take steps to make such decisions." The court acknowledged that Father routinely acquiesced in Mother's decisions concerning the child's healthcare, but it clarified its finding by stating that "going along with" Mother's decisions "doesn't mean that he's . . . not communicating." Father's acceptance of Mother's decisions concerning the child's healthcare does not appear to be the result of a lack of interest in the child's life or a desire not to communicate with Mother. Rather, as the court found, Father's acquiescence in Mother's health-related decisions was reasonable in light of her professional nursing background.

Despite Mother's interpretation of the evidence, our review of the record confirms that there is competent, material evidence supporting the court's finding that the parties could communicate effectively. Based on that finding, and the court's findings as to the other *Sanders-Taylor* factors, the court determined that tie-breaking authority for Mother was unnecessary. We find no error or abuse of discretion in that decision either.

The court described the need for a tie-breaker as "a non-issue[,]" and explained that nothing has "been held up" because of Father's "refus[al] to do anything" or his

failure to "agree[] on something[.]" The record supports that characterization. For example, the record suggests that there is no need for Mother to have tie-breaking authority on decisions concerning the child's healthcare because Father has routinely trusted and deferred to Mother's choices. Additionally, there is no need for Mother to have tie-breaking authority regarding the child's religious upbringing because Mother has not challenged Father's decision to continue taking the child to his church. Lastly, there is no need for Mother to have tie-breaking authority over the child's education. As of the second day of trial, the child attends private school at Mother's sole expense. The record reflects that Father does not take issue with his daughter attending the private school save for his inability to help pay for it. If given tie-breaking authority on this issue, it seems that Mother would very likely keep the child in private school and continue paying the tuition, the very position she is in now.

In short, the circuit court's decision to grant joint legal custody without a tie-breaker was well within its broad discretion in how to fashion relief in custody matters. *Santo v. Santo*, 448 Md. at 637.

Child Access Hours

Child access, also known as parenting time or visitation, is intertwined with physical custody. Traditionally, a non-custodial parent, i.e., the parent without primary physical custody of a child, "has a 'reasonable' right to liberal visitation" with the child. *Jose v. Jose*, 237 Md. App. 588, 604 (2018). Here, as previously stated, the parties agreed that Mother would retain primary physical custody and that Father would have

access to the child only on Sundays and Wednesdays and would have no overnights. This agreement restricted the court's consideration of the *Sanders-Taylor* factors to determining the specific daytime hours on Sundays and Wednesdays when Father would have access to his child.

The circuit court recited its evaluation of the relevant factors on the record and ordered that Father would have access to the child from 9:00 a.m. until 7:30 p.m. on both Sundays and Wednesdays. The court's order mirrored the existing access schedule in the final protective order but added the following, additional responsibilities: (1) Father must inform Mother of his ETA by 8:30 a.m. on his access days; (2) Father must pick up the child before 12:00 p.m. on his access days; and (3) Mother must not schedule alternate plans for the child during Father's access time.

Mother argues that the circuit court erred in relying heavily on the existing access schedule in the final protective order. She argues that the access schedule and the court's additions to it are not in the child's best interest. Specifically, Mother contends that the decision to allow Father to have until 12:00 p.m. to pick up the child and the decision to start Father's access time at 9:00 a.m. on Wednesdays were both an abuse of discretion.

Regarding the former decision, Mother argues that she "never knew when Father would arrive" and that allowing Father a window of time to pick up the child "leaves wholly inconsistent any routine for the child and punishes Mother by making her wait until mid-day for Father to come get the child[.]" The court, however, attempted to alleviate this uncertainty and inconsistency by requiring Father to communicate his ETA

by 8:30 a.m. on his access days, giving him a strict three-hour window in which to retrieve the child, and requiring Mother to honor Father's access time. This solution is neither uncalled-for nor unreasonable, as it informs Mother of when to expect Father and obligates Father to be consistent. We can understand Mother's concern with not knowing when Father will come for the child on Sundays until that very morning. However, we cannot fault the circuit court for its well-reasoned attempt to balance her concern with Father's commitment to his church by requiring Father to pick up the child within a specific three-hour window.

Regarding Mother's latter concern, she argues that the child's school situation necessitated changing Father's access schedule. In her brief, Mother states that the child's school day begins at 9:00 a.m., so, she argues, starting Father's access time at 9:00 a.m. "leav[es] ambiguous the issue of whose obligation it is to pick up the child on Wednesdays and from where." This argument is illusive. If the child's school day begins at 9:00 a.m., it is Mother's continued obligation to get the child to school as she has, and does, on all other weekdays.

Furthermore, Mother's position—that Father's Wednesday access should not begin until 2:45 p.m., when school lets out—fails to consider the Wednesdays when school is closed and all the Wednesdays when the child is on summer break. The court commented on the parties' failure to consider the child's summer care. Its decision to give Father access from 9:00 a.m. until 7:30 p.m. ensures that the child will be in a parent's care when school is not in session.

Mother also requested that Father's access time on Wednesdays and Sundays end at 5:00 p.m. because Father frequently returned the child later than 7:30 p.m. and because, in her opinion, the child was not rested or prepared for school on Mondays and Thursdays. The court, however, saw no evidence that the child was more tired on those days than on Tuesdays, Wednesdays, or Fridays. Instead, the court believed Mother's requests were "disingenuous" attempts to "chip away" at Father's already limited access time. The court refused to "chip away" at Father's time, found no "reason to change the access schedule['s]" end time, and ordered that Father's time must end at 7:30 p.m., an order that Father must obey.

At bottom, the court heard testimony about Mother's complaints about the existing access schedule, but it found no compelling reason to alter the schedule to serve the child's best interest. Instead of overhauling the schedule as Mother wished, the court augmented it by patching the holes in ways that it thought would clear up the parties' obligations and ensure that the child had time with Father. Despite the court's surprise that the parties entered a pre-trial agreement under which Father had "such limited access" and "no accommodations for" overnights, weekends, or the ability for Father to take the child on any vacations, the circuit court honored the parties' agreement. Accordingly, the circuit court did not abuse its discretion in working from the existing access schedule.

Child Support

"Ordinarily, child support orders are within the sound discretion of the trial court." *Reichert v. Hornbeck*, 210 Md. App. 282, 316 (2013). A proper exercise of discretion includes the application of the statutory child support guidelines (*see* FL § 12-204(i)(1) and Md. Rule 9-206(c)), which were enacted, in part, "to improve the consistency and equity of child support awards, and to increase the efficiency in the adjudication of child support awards." *Petrini v. Petrini*, 336 Md. 453, 460 (1994). The circuit court's calculations of Father's retroactive and present child support obligations comport with the relevant provisions of the Family Law Article and Maryland Rules.[2] For the reasons discussed below, the circuit court's decisions not to impute income to Father and to exclude Father's proportionate share of the child's private school tuition from its support calculus were not inappropriate in this case.

A. Imputation of Income

Mother argues that the circuit court abused its discretion when it failed to find that Father had voluntarily impoverished himself and when it then declined to impute Father's previous income to him for purposes of calculating his present and continuing child support obligation. The court did not abuse its discretion in either respect. The court's

[2] The parties stipulated that Mother earns $12,126.00 per month and that Mother's health insurance premium for the child is $415.00 per month. The record reveals that, from December 2023 until August 2024, Father earned $9,108.00 per month and paid $600.00 per month for the child's daycare. As of the second day of trial, Father was earning $2,860.00 per month and paying $500.00 per month for the child's after-school care. With those figures computed, Father's retroactive obligation in the amount of $8,469.00 and his present and continuing obligation in the amount of $87.00 are both correct.

conclusion that Father did not voluntarily impoverish himself is supported by the record, so the court was not obligated to calculate and impute income to Father.

"'[I]mputed income' is a child support concept predicated on a finding of voluntary impoverishment[.]" *Reynolds v. Reynolds*, 216 Md. App. 205, 220 (2014). A parent is voluntarily impoverished when that "parent has made the free and conscious choice, not compelled by factors beyond the parent's control, to render the parent without adequate resources." FL § 12-201(q). The relevant question is "whether the parent . . . became impoverished with the intent of avoiding support payments." *Stull v. Stull*, 144 Md. App. 237, 247 (2002).

To determine whether a parent is voluntarily impoverished, the trial court must consider:

(1) the parent's current physical condition;

(2) the parent's level of education;

(3) the timing of any change in employment or other financial circumstances relative to the divorce proceedings;

(4) the relationship between the parties before the initiation of divorce proceedings;

(5) the parent's efforts to find and retain employment;

(6) the parent's efforts to secure retraining if that is needed;

(7) whether the parent has ever withheld support;

(8) the parent's past work history;

(9) the area in which the parties live and the status of the job market there; and

(10) any other considerations presented by either party.

See, e.g., *Lorincz v. Lorincz*, 183 Md. App. 312, 331 (2008); *accord Sieglein v. Schmidt*, 224 Md. App. 222, 248 (2015).

Although the court must consider these factors, it is not required "to articulate on the record its consideration of each and every factor when reaching its determination." *Stull v. Stull*, 144 Md. App. at 246. Here, the court made no express finding on the record about whether Father had voluntarily impoverished himself, let alone express findings on the above factors. However, we are convinced that the court's decisions to bifurcate its calculations of Father's retroactive and present support obligations, and to use Father's more recent monthly income of $2,860.00 for the latter obligation, establish that it found that Father had not voluntarily impoverished himself. We review this determination for an abuse of discretion, accepting the requisite factual findings unless clearly erroneous and unsupported by the record. *Sieglein v. Schmidt*, 224 Md. App. at 249.

There is no dispute that Father freely chose to let a customer take an extended test drive without requiring the customer to sign an assumption of liability agreement. Father testified, however, that not every company requires customers to sign this agreement and that he "didn't even think what he did was a fireable offense." Mother argues that Father's history in the industry, and his acknowledgment that he never previously allowed a customer to drive a car without signing an assumption of liability, support a finding of voluntary impoverishment because, she argues, "[i]t is preposterous" that "he didn't think he would get fired" as a consequence of his conduct.

In *Stull v. Stull*, 144 Md. App. at 249, which Father cited to the circuit court, this Court reversed a finding that a parent had voluntarily impoverished himself because he had been fired for falsifying documents. We found no evidence that the "conduct, which led to his discharge, was committed with the intention of becoming unemployed or otherwise impoverished." *Id.* We explained that "[t]he contention that the [father]'s unemployment should be considered 'voluntary' because he made the free and conscious choice to falsify records stretches the meaning of the word intentional beyond its acceptable boundaries. The [father]'s unemployment can only be said to be 'voluntary' if it was an *intended result* of his conduct." *Id.* (emphasis added).

This case is similar to *Stull*, in that Father's unemployment was not an intended result of his conduct. To conclude that Father's free and conscious choice to allow the customer to take the car on an extended test drive without first signing an assumption of liability agreement meant that he intentionally chose to lose his job is untenable. The record is devoid of evidence that Father's decision was motivated by anything other than his desire to attend to the other customers who were waiting for him. Father did not anticipate any adverse consequences from his conduct, let alone hope to be fired. Mother's argument to the contrary—that he had never done this before, so he should have known he would be, and therefore tried to be, fired—is not supported by any evidence that brings Father's mindset into question.

Similarly, no evidence suggests that Father purposely tried to reduce his income. On the contrary, Father almost immediately sought and secured new employment as a

salesman at a different car dealership, where he likely expected to earn similar pay once he had established himself.

Other evidence concerning the *Sieglein* considerations permits the finding that Father was not voluntarily impoverished. For example, although Father's work history shows that "he's hard to get along with in the workplace[,]" the court's reasonable finding that, nevertheless, "he's always able to get another job rather quickly" militates against a finding of voluntary impoverishment. And, as for the timing of the change in Father's employment relative to the divorce proceedings, no evidence suggests that Father strategically began new employment and failed to earn commissions with his potential child support obligation in mind.

When, as here, the court finds that a parent is not voluntarily impoverished, it may use only the parent's "actual income" in its child support calculations. "'Actual income' includes[,]" among other things, "(i) salaries; (ii) wages; [and] (iii) commissions[.]" FL § 12-201(b)(3). Evidence of a parent's "actual income" must be supported by "suitable documentation[,]" which "includes pay stubs[and] employer statements [that are] otherwise admissible under the rules of evidence[.]" *Id.* § 12-203(b)(2)(i).

The evidence about Father's "actual income" was presented on the second day of trial. Father produced pay stubs from Sheehy that established that he earned an average monthly income of $9,108.00 until August 2024. He then provided testimony about his hourly wage and hours worked, and presented a corroborating Ourisman pay plan that

allowed the court to calculate his average monthly income, as of the second day of trial, as $2,860.00.

Aside from confirming Father's hourly wage, the Ourisman pay plan outlined the scheme for the payout of earned commissions. Father was entitled to commissions as he sold cars, and those commissions would certainly be included in Father's "actual income." Nonetheless, Father could not possibly have provided any "suitable documentation" (FL § 12-203(b)(2)(i)) about what commissions he had made, was expecting to make, or may eventually make because, as of the second day of trial, he had not yet sold any cars, and there was no evidence of impending sales that would generate expected commissions.

The trial court voiced its expectation, based on Father's testimony and the Ourisman pay plan, that Father's actual income "would increase if he's going to keep that job and sell cars." It refused, however, to consider Father's previous average monthly income while working for Sheehy, or to "speculate" and "guess" any amount of income beyond the $2,860.00, for purposes of calculating Father's current support obligation. Accordingly, the court did not abuse its discretion when it considered Father's $9,108.00 monthly income only for purposes of calculating his retroactive support obligation. Likewise, the court did not abuse its discretion in determining Father's present and continuing support obligation based on Father's $2,860.00 average monthly income.

B. Private School Tuition

Mother argues that the circuit court abused its discretion by excluding the proportionate cost of the child's private school tuition from Father's child support obligation. Because the record contains competent, material evidence supporting the court's implicit determination that the child had no "particular education need[]" to attend private school, we will not disturb the exclusion of tuition from the support calculation.

Pursuant to FL § 12-204(i)(1), "[b]y agreement of the parties or by order of court," "expenses for attending a special or private elementary or secondary school to meet the particular educational needs of the child" "may be divided between the parents in proportion to their adjusted actual incomes[.]" Here, the parties disagreed about whether the child should attend private school, and the court concluded that no "particular educational need" warranted the inclusion of the costs of private school in its child support calculus.

Within its discretion, a court may require a parent to pay the proportionate share of a child's private school tuition if the court finds that the child has a "particular educational need" to attend the school. *Witt v. Ristaino*, 118 Md. App. 155, 169-70 (1997). A child need not "be laboring under some sort of disability or high ability" to establish a "particular educational need." *Id.* at 169. Instead, "a trial court should consider whether to attend or remain in a special or private school is in a child's best interest and whether and how parents are required to contribute to that expense." *Id.*

Courts should consider the following non-exhaustive list of factors when determining whether a child has a "particular educational need":

> (1) '[T]he child's educational history,' including how long the child has attended a school, the 'need for stability and continuity[,]' and the proportion of the parents' income the child would have received had the parents stayed together;
>
> (2) '[T]he child's performance while in private school';
>
> (3) The 'family history' of attending a particular school, particularly if it is religiously affiliated;
>
> (4) Whether the parents decided prior to the divorce to send the child to the private school;
>
> (5) Other facts specific to the case that may impact the [child]'s best interests;
>
> (6) '[T]he parents' ability to pay[.]'

Ruiz v. Kinoshita, 239 Md. App. 395, 429-30 (2018) (citing *Witt v. Ristaino*, 118 Md. App. at 169-71).

As with the considerations about whether a parent is voluntarily impoverished, the court is not required to refer explicitly to each *Witt* factor when it considers whether a child has a "particular educational need" to attend private school. *Id.* at 430 (citing *Durkee v. Durkee*, 144 Md. App. 161, 185 (2002)). So long as "the record reveals that the court heard evidence and considered several relevant factors relating to the child's enrollment in private school[,]" a court's failure to address certain factors in its ruling is not, by itself, an abuse of discretion. *Id.* at 431.

The record indicates that the court heard and considered evidence on nearly all the *Witt* factors—even if it did not refer to all of the evidence in its ruling. For example, the court acknowledged that the child had just begun kindergarten. It heard Father's

testimony that he "guess[ed]" the child was doing "[g]ood" so far in school, but he did not have any communication with the school or teachers to know for sure. Mother offered no testimony about the child's performance in school thus far. Similarly, neither party offered testimony about a "family history" of attending private school.

With regard to any "[o]ther facts specific to the case" that might affect the child's best interest, the court heard from Mother that the child may have "developmental differences," which, she claimed, are part of the reason the parties considered private school. The child was scheduled for an evaluation for autism spectrum disorder, but at trial the court could be certain only that the child started speaking at about three-and-a-half-years of age, engages in echolaliac vocal "stims,"[3] and has "sometimes explosive tendencies." The court commented on the lack of evidence establishing how the child's assigned public school would be unable or unfit to provide the child with a quality education despite these behaviors.

Related to the parties' ability to pay, Father testified that he no longer agreed that the child should go to St. Mary's, because "[he] can't afford it." It is not clear from the record *when* Father realized he could not afford the tuition, i.e., whether he realized it in

[3] A stim, or stimming, is a self-stimulatory behavior marked by repetitive actions like sounds, words, or body movements. A stim may be a protective response to less predictable or uncomfortable stimuli, an attempt to regulate emotions, or an exhibition of excitement. Stimming is often, though not always, associated with neurodevelopmental conditions, like autism spectrum disorder. *See What Is Stimming?*, Cleveland Clinic Health Essentials (May 25, 2023), https://health.clevelandclinic.org/what-is-stimming; *see also stimming*, *Merriam-Webster.com*, https://www.merriam-webster.com/dictionary/stimming (last visited June 30, 2025).

May, when Mother already paid the enrollment fees for St. Mary's, or in August, when Father testified that he became aware that the child would be attending St. Mary's. The court made no determination either way, but concluded, based on evidence about Father's income from Ourisman, that Father could not afford the tuition. The record supports the finding that, as of the date when the court calculated child support, Father did not have income sufficient to pay a portion of the private school tuition in addition to other expenses.

Mother argues that, under the fourth *Witt* factor, the parties had a pre-divorce agreement to send their daughter to private school, specifically St. Mary's. Although the record contains evidence that could allow a reasonable judge to agree with her and find that a pre-divorce agreement existed, the record also contains sufficient evidence to support the circuit court's contrary finding in this case. Accordingly, the court's finding on this factor is not clearly erroneous.

Father admitted that, when he and Mother still lived together, they agreed that the child should attend private school. *See Witt v. Ristaino*, 188 Md. App. at 171 (finding "a tacit agreement" where there was "a mutual choice by the parties at one time"). He scheduled and attended the St. Mary's school tours, and Mother's testimony suggests that Father knew both the enrollment costs and timeframe. And although Father testified that he had looked into the local public school, there was no evidence that the parties actively sought to enroll the child in the public school.

Father testified, however, that, although he agreed at one point to send the child to private school, he decided some time later that he could not afford the tuition, so the child should attend public school instead. Father also testified that he was unaware that the child had been accepted into and would be attending St. Mary's until about one week before school began, when Mother reached out for help in covering the cost of school supplies.

The court considered the parties' March 2024 email exchange and concluded that it did not support the finding that they had agreed to send the child to private school. Because Father's response lent itself more toward the parties' ability to communicate than toward a "meeting of the minds[,]" the court was left wanting for evidence that established that the parties had discussed and agreed to the long-term financial commitment of sending their daughter to a private school "permanently."

The circuit court admitted it "was on the fence about this issue[,]" but it ultimately concluded that the parties had no pre-divorce agreement to send the child to private school, or specifically to St. Mary's. Giving due regard to the circuit court's assessment of the parties' credibility and its interpretation of the evidence, we see no clear error in its conclusion that the parties were not on the same page, at the same time, about sending their child to private school.

Even if the circuit court's finding on this factor was clearly erroneous, meaning that the evidence compelled a finding that there *was* a pre-divorce agreement to send the child to private school, the balance of the evidence concerning all the other *Witt* factors

supports the circuit court's overall finding that the child had no "particular educational needs" to attend private school. The court's decision to exclude the costs of tuition in the child support calculation was, accordingly, well within its discretion.

CONCLUSION

The circuit court did not abuse its discretion by committing any legal error, relying on any clearly erroneous factual findings, or otherwise making a decision that was so "well removed from any center mark imagin[able.]" *In re Yve S.*, 373 Md. at 583. The court's orders regarding joint legal custody, Father's access hours, and Father's retroactive and present and continuing child support obligations are affirmed. Mother retains the right to request modification of each of these orders if she can establish a material change in circumstances affecting the child's best interest.

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