Circuit Court for Calvert County
Case No. 04-C-11-000118

CHILD ACCESS

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1928

September Term, 2021

SAMANTHA MUDGE

v.

EDWARD VERMILLION

Arthur,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 30, 2022

Appellant Samantha Mudge ("Mother") appeals from an order entered in the Circuit Court for Calvert County granting appellee Edward Vermillion ("Father"), among other things, primary physical custody of the parties' two daughters, subject to Mother's visitation rights. Mother presents ten issues for our review, which we have consolidated and recast as follows:[1]

[1] The questions as presented in Mother's brief are:

"1. Did the trial court err when granting the defendants [sic] extension to answer interrogatories and production of documents?

2. Did the trial court err when not imposing sanctions that were granted on February 24, 2021?

3. Did the trial court err when signing the Pendente Lite order that stopped arrear/child support payments and stated the defendant had primary residential custody?

4. Did the Best Interest Attorney represent the children equally or was there a conflict of interest?

5. Did the [c]ircuit court err when granting the motion to amended petition to modify custody?

6. Did the [c]ircuit [c]ourt fail to consider the best interest of the children by precluding a party from introducing evidence during trial?

7. Did the circuit court err when assigning Judge Chandlee to this Family Law case?

8. Did the [c]ircuit [c]ourt err in finding the mother to be unfit to have sole or joint custody of the children?

9. Did the [c]ircuit [c]ourt [j]udge use his personal bias believes [sic] to make the final judgment in the case?

10. Did the [c]ircuit [c]ourt conduct a fair trial for all parties involved?"

I. Did the circuit court err and/or abuse its discretion in granting Father's motion for additional time to respond to Mother's discovery requests or failing to impose sanctions for Father's failure to timely provide discovery?

II. Did the circuit court err and/or abuse its discretion in entering the 2021 Pendente Lite Consent Order by stopping child support payments and arrearages and granting Father physical and legal custody?

III. Did the children's best interest attorney fail to perform her duties properly?

IV. Did the circuit court err and/or abuse its discretion in allowing Father to amend his custody petition during trial?

V. Did the circuit court err and/or abuse its discretion when it precluded Mother from introducing certain evidence at trial?

VI. Did the circuit court err and/or abuse its discretion in finding a material change of circumstances and granting Father primary physical custody and Mother and Father joint legal custody of the children?

VII. Did the circuit court judge fail to perform his duties properly?

Discerning no error or abuse of discretion, we affirm the judgment of the circuit court.

BACKGROUND

Mother and Father began dating in 2004, moved in together in 2006, and separated when Mother moved back into her parent's house in Chesapeake Beach, Maryland, in August 2010. The parties have two daughters: one born in June 2008, and the other born in April 2011.

April 2012 Consent Order on Child Custody and Support

Approximately one year after their youngest daughter was born, the parties entered

into a consent order on April 16, 2012 ("April 2012 Consent Order"). The order granted Mother "sole legal and sole residential custody of the minor children" and granted visitation to Father.[2] The April 2012 Consent Order required Father to pay the sum of $789.00 in child support to Mother each month and obligated Mother to maintain health insurance coverage for the children. The order required Father to pay an additional $100.00 to Mother each month until his child support arrears of $2,750.00 were paid in full. Finally, Father was ordered to enroll in drug/alcohol counseling and to provide documentation of his weekly attendance to Mother.

Based on the record, child support has been a constant source of contention. Mother filed motions for contempt on September 6, 2013, March 24, 2014, and August 28, 2014 due to Father's alleged failure to pay child support. On March 24, 2014, Mother also moved to modify child support and averred that Father's income increased to "around $1,000 a week." The court held a hearing on January 6, 2015 on the related motions, and, on January 12, 2015, entered an order directing Father to pay child support in the amount of $454/month and assessing arrears at a minimum of $7,260 in arrearages.[3]

[2] The order contemplated, after a "transition period to overnight visitation," that Father would have visitation with the children on alternating weekends and an overnight on the weeks that he did not have weekend visitation with the children. The order contemplated that the parties would alternate time for Thanksgiving, Christmas, and the children's birthdays. During the summer, Father was granted a week of overnight visitation in 2012 and two non-consecutive weeks in 2013 and subsequent years.

[3] In its order, the court noted that it could not determine the arrearage but gave the parties until February 2, 2015 to submit further documentation. It does not appear that either Mother or Father complied with the court's order.

Mother was the primary caregiver for the first ten years of the children's lives. Father was involved in the children's lives as contemplated by the consent order, albeit it less frequently from 2014 to 2017, when he was trying to find employment in Ohio and Pennsylvania.

The precipitating event that brought about the underlying action occurred on the morning of November 15, 2020, when Mother sent a three-page suicidal note by text message to the oldest daughter while the children were at their Father's house visiting.[4]

2020 Emergency Petition for Custody

The next day, Father filed a pro se petition for emergency custody and a motion for emergency relief, seeking "sole residential and legal custody" of both children until Mother can "provide[] a safe environment for them[.]" In his petition for custody and emergency motion, he alleged that Mother had mental health issues, as evidenced by the suicide note, and that both children "have developed emotional psychiatric problems related to stress and anxiety."

On November 20, 2020, an emergency hearing was held at which both Father and Mother testified. Mother was represented by counsel, and Father appeared without an attorney. Father testified first and explained that he and Mother had worked out the visitation arrangements over the years, and that this was the first time he filed a motion to modify the 2012 consent order. Father related that his daughters were visiting him on the morning of November 15, 2020 when his oldest daughter showed him the text from Mother

[4] We will not include the disturbing text of the suicide text in the opinion.

threatening suicide. The daughter was upset, crying. Father drove immediately to find Mother and was able to reach her by phone before arriving. Once he arrived, he persuaded her to go to the hospital, and then followed her there in his car because Mother preferred to drive separately.

Father explained that the oldest daughter had already been seeing a psychologist for anxiety and that the situation greatly increased the stress and anxiety for the girls. Father wanted the girls to stay with him for a while, but, Mother, who was ultimately not admitted at the hospital, called the girls repeatedly, made repeat unannounced visits, and insisted that the girls return to her home where she lived with her parents. According to Father, this was upsetting the girls and that is why he filed the emergency motion. On cross examination, Father acknowledged that Mother had not exhibited any mental health issues prior to the recent event.

Mother testified that on the date that she sent the text she was feeling very depressed and that COVID had impacted her and her workplace significantly. She was examined at the emergency room and then released with instructions to follow-up with her primary care physician. Mother testified about her follow-up visits with her doctor and explained that once she was prescribed the medication that she needed, she started feeling much better – she felt "normal." The court asked Mother whether she had shown the doctors at the emergency room or her primary care physician the text message that she had sent her daughter, and Mother admitted that she had not.

The court found that, although Mother was by all accounts a good mother, it was concerning that Mother believed she was fine, despite the disturbing suicide note. The

court noted that all of the things that Mother claimed triggered her depression, which she described as temporary, were still present in Mother's life. The court noted that it did not have the necessary medical records to establish Mother's actual medical condition, and explained that "the concern the court has is that [Mother] could easily fall into the same reoccurring depressive state that she was in." Finally, the court noted that Father "clearly lets the mom see the girls whenever she wants. It's a good relationship there[.]" Accordingly, the court found that it was in the best interests of the children to live with Father.

The court issued a pendente lite order ("Emergency 2020 PL Order") granting Father temporary physical and legal custody of the children and Mother visitation, supervised by Father, at Father's house, for several hours on Fridays, Saturdays, and Mondays. The order also directed that "this matter shall proceed in due course once an answer has been filed or order of default has been issued.

Mother filed an answer to Father's petition on December 17, 2020 and a counter-motion to modify custody, visitation, and child support on December 18, 2020. In her counter-motion, she alleged that the parties' eldest daughter's grades had declined and that the children had not been taking their prescribed medication. In addition, Mother alleged that Father owed child support arrears in excess of $30,000 and that the parties' "circumstances have changed in that (a) the children have entered their adolescent years and their expenses have increased; (b) the cost of health insurance . . . has increased significantly; and ([c]) [Father] earns substantially more than he did in 2015." She asked the court to return the parties to the custody arrangement under the April 2012 Consent

Order; increase Father's child support payments; and award her reasonable attorney's fees. Mother also served discovery requests on Father.

In the beginning of February 2021, the court appointed Marie Palmquist as the children's best interest attorney ("BIA").

After Father failed to answer her counter-motion or respond to discovery, Mother filed a request for an order of default and a motion to compel and sanctions because Father had not responded to her discovery requests. The court granted the request for a default and entered default against Father but gave him 30 days to file a motion to vacate the order. The court also granted Mother's motion to compel and sanctions, ordering Father to provide discovery but reserving on Mother's request for attorney's fees.

An attorney subsequently entered his appearance on Father's behalf, and over the next several days, Father's counsel filed a motion to extend the discovery deadline; a response to Mother's counter-motion; and a motion to vacate the default order. The court granted the motion to extend the discovery deadline and vacated the default order on March 17, 2021.

In April and again in July, the court entered two pendente lite consent orders modifying visitation, among other things. We address these orders in further detail in our discussion below.

Hearing on Custody Petitions

The case proceeded to a trial on the parties' contested custody petitions on December 21, 22, and 23, 2021. Both Mother and Father testified at trial.

Mother testified that she had worked for the Transportation Security Administration at BWI airport for over 14 years. Her hours were from 3:30 a.m. to 12:00 p.m. She tried changing her schedule over the years, but concluded that that schedule worked best for her and the children when they lived with her because she could be home for dinner, homework, and bath time. Since Mother and Father separated in 2010, she and her children had lived continuously in Chesapeake Beach with her parents, who are retired and help with childcare. The house had three bedrooms: one that the girls shared, one for the grandparents, and another for Mother.

Mother explained the circumstances around the suicide text she sent in November 2020 to her oldest daughter, who was then 12 years old. She testified that, despite the text, she "had no plans" to take her own life and that she had since resolved the triggers that precipitated the event. She explained that she sought help within an hour of sending the suicide text by going to the emergency room and was discharged a few hours later with a packet of "names and numbers" to call. The next day, she went to the health department for an evaluation and was subsequently diagnosed with post-traumatic stress disorder; depression, which she first was diagnosed with when she was 16 years old; and anxiety. She began psychotherapy twice a week, which included a particular type of therapy called "eye movement desensitization reprocessing." At the time of the hearing date, she was seeing a therapist once a week, and a psychiatrist once a month.

Mother acknowledged that when she was admitted to the emergency room she did not show the suicide text to the medical personnel. She told the medical personnel, however, that she had suicidal thoughts because she was stressed as a single parent "having

to take care of her two elderly parents and feeling like everyone is disappointed in me." She admitted that she sent the suicide text for three different reasons. First, she had learned a few weeks earlier that the man she had been dating for three years was romantically involved with three other women. Second, when she was 14 years of age, she had been raped twice by the son of a family friend, and each year around the same time, she often felt depressed. Third, she was helping a co-worker through a recent sexual assault that the co-worker had experienced and, due to Mother's own sexual assault for which she received little clinical help, triggered a post-traumatic stress like reaction.

Mother admitted that she also did not initially share her suicide text during her mental health evaluation the day after her emergency room visit. Mother explained that she did not show the text in those situations because she was embarrassed, but since then she shared the text with her therapist.

Although Mother was taking her medication and working with her therapist to address her depression and anxiety, she admitted that she still did not like to be around groups of people. She admitted that she had missed two of the children's recent school events, explaining that she had "forgotten" about her oldest daughter's cheerleading banquet in November and missed her youngest daughter's winter concert because she was "stuck" at her therapist's office.

Mother testified that she did not want Father to have primary physical custody of their children because she did not "feel that he has the best judgment when it comes to the [children's] health." About a month after the emergency hearing in 2020, Mother asked the children if they were still taking their attention deficit hyperactivity disorder ("ADHD")

medication, and they said they were not. When she raised the subject with Father, he said they did not need it anymore, and that it was causing the oldest daughter to "space out." Mother did not pursue the conversation further because she felt there was nothing she could do, although she did advise the children's counselors.

Mother conceded that since stopping the ADHD medication, she had noticed positive changes in the oldest daughter's behavior and had not noticed any negative changes in the youngest daughter's behavior. According to Mother, her oldest daughter was diagnosed with asthma at around two years of age.

Mother also testified about Father's failure to communicate with her. She related that a couple of weeks before school started in the Fall of 2021, she learned from her youngest daughter that Father was enrolling her in a new school. She told him that it was not a good idea because their daughter has friends at her old school where she had only one more year before she graduated. Nevertheless, Mother admitted that the children were not doing well in school when they resided with her and were doing better in school since they have resided with Father. She believed the cause was that the oldest daughter had matured. She acknowledged that the then-current report cards for both girls showed they were passing all of their subjects.

Mother admitted that, even though she was told not to discuss the case with the children, when she learned that the oldest daughter had told the BIA she wanted to live with Father, Mother asked her daughter whether she in fact wanted to live with Father. The daughter began crying and was very upset by the conversation. Mother testified that the daughter recently told Mother that she wants to alternate each week at her Mother's and

Father's house. The BIA then asked Mother if "it would surprise you that . . . consistently through the time that I have represented your daughter that she has consistently told me she wants to reside with her dad and have visitation with you," and Mother replied "Yes."

Father testified that he lived with his fiancée and her daughter in a townhouse in North Beach, less than three miles from Mother.[5] His fiancée was pregnant at the time of the hearing and expected to give birth to his child about one month later. Father explained that his youngest daughter, who was ten years old, and his fiancée's daughter, who was 11 years old, slept in the downstairs bedroom. There were three bedrooms on the first floor: one for the new baby, one for his oldest daughter, and one for him and his fiancée. The children caught the bus in front of his home to Windy Hill Elementary and Windy Hill Middle, located 1.2 miles away. Their community had many children that go to those schools and with whom his daughters' played.

Then Father addressed the circumstances of Mother's suicide text. He explained that the children were visiting him that weekend when their oldest daughter, who suffers from depression and anxiety, received the text. Father repeatedly tried calling Mother before she eventually answered and reluctantly told him her location. When he arrived, Mother was sitting in her car very upset and crying heavily. Father convinced her to go to the emergency room and followed behind in his car. When they arrived, he walked her in, gave her a hug, "told her I got the girls, don't worry, take care of you," and then left. When

[5] Although the fiancée does not have primary custody of her daughter (her mother does), since the COVID-19 pandemic, the daughter has lived full time with Father and his fiancée.

Mother came to retrieve the girls at his house later that night, saying "I'm okay now," he told her that the girls needed more time to process what had happened. The next day, Father filed for an emergency protective order.

Father testified that when he and Mother were together, she did not like to be social and preferred to stay home. Before he gained custody of the children, Father and Mother both expressed concern about their oldest daughter's behavior, and Mother agreed that their daughter should spend more time with him because he was firmer about her not avoiding tough situations.

When Father gained custody of the children, he found them to be socially awkward and "incredibly moody." The oldest daughter did not have good eye contact and, when she was not moody, registered little emotion on her face. He explained that since the children had been living with him, the oldest daughter had become "way more" social, her eye contact had dramatically improved, and she was more animated. She was better able to handle rejection, and the number of her outbursts had decreased. Father noted that when the youngest daughter began living with him, she had more anxiety than he had realized. Additionally, although she was nine years old, she performed tasks at a much younger age level – for example, she still could not tie her shoes or get dressed in the morning. Since living with Father, she learned to get herself ready for the day.

Father explained that his daughters' grades had improved since living with him, but he continued to work with them because there was room for improvement. Originally, he was okay with the children taking ADHD medication, but when they began staying with him full time, he no longer believed it was necessary. After speaking with his oldest

daughter, her counselor, and her medical provider, who had prescribed the medication, he tapered her off the medication, and she was doing well. After what occurred with the oldest daughter, Father then tapered the youngest daughter off her ADHD medication as well.

Father admitted that the relationship between his fiancée and his children was "rocky at first" but had become "really good[.]" According to Father, his girls and his fiancée's daughter got along well, and his mother, who lived nearby, also had a "very good" relationship with the girls. He explained that he had four siblings who also lived in the area, and described his family as "pretty close-knit. We're always doing activities together." Father acknowledged that his fiancée was charged with theft in 2015, when she wrote a check on her mother's account without her mother's permission. He testified, however, that she is not on probation, has not committed any other crimes since then, and does not have a drug problem.

Father was employed as a contractor with the Veterans Administration in their information technology department and earned around $72,000 a year. He had worked for Amazon from March 2018 until January 2021 but testified that he was fired due the difficulty of balancing his work and home life. The court accepted a proffer that Father was $30,000 in arrears on child support. He also admitted that he had three "DUIs", the last occurring in 2015 in Ohio.

He acknowledged that Mother had subpoenaed him to produce documents, particularly his Federal and Maryland and tax returns, but he had failed to do so because he had not filed tax returns for the last five years. He admitted that he had Ohio motor vehicle tags on his car, even though he knew he was required to have Maryland tags. He

acknowledged that the tags were eventually confiscated from his car, but he has been unable to obtain Maryland tags because he has not paid his Maryland taxes and had allowed his car insurance to lapse. He was in negotiations to pay his Maryland taxes, and in the meantime, he and his fiancée drive her car, which is properly tagged and insured.

Kenneth Schlein, a former investigator with the Maryland Motor Vehicle Administration, testified next. He explained that, after receiving a complaint that Father had Ohio registration despite residing in Maryland for three years, he spoke to Father and gave him a 60-day warning to obtain Maryland title and tags for his vehicle and to pay for an insurance lapse. After Father failed to respond, he seized the tags.

At the conclusion of trial, the parties and the BIA presented their closing arguments. After recounting the evidence in support of each of the factors set out in *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986), Father's counsel argued that the evidence showed that since living with him, the children were doing better mentally, socially, and educationally. Mother's counsel argued that she has done very well in therapy, that Father has not been taking care of the children's medical needs, and that even if the children were doing better in Father's care, that change could not be attributed to Father. The BIA stated that when she last met with the children, both expressed that they wanted to reside primarily with Father but wanted regular and consistent contact with Mother. The BIA opined that this would be best for the children.

Ruling

The court issued its ruling from the bench. The court granted Father's petition to modify custody, finding a material change of circumstances because of Mother's mental

health issues. The court denied Mother's counter-motion. The court granted primary physical custody of the children to Father and joint legal custody to both parents with neither having tie-breaking authority. Mother was granted unsupervised overnight visitation during the school year on alternating weeks: from Thursday at 5:00 p.m. until Sunday at 5:00 p.m., and from Thursday at 5:00 p.m. until school resumes the next day for the other week. During the summer, the parties were granted alternating weeks, and the court delineated holiday visitations. The court denied Mother's request for attorney's fees and "reserved" on the issue of Father's child support obligation for 90 days to permit counsel for the parties to resolve that issue. The court further ordered that if the parties were unable to reach an agreement on child support, either party could ask for a hearing on that issue.

The judge memorialized his ruling in a written order entered on January 14, 2022. Mother noted a timely appeal. We supplement these facts wherever necessary in support of our discussion of the issues.

STANDARD OF REVIEW

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

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

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

Id. (cleaned up). "In our review, we give 'due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses'" and recognize the discretion of the trial court to "award custody according to the exigencies of each case." *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012) (quoting *In re Yve S.*, 373 Md. at 584, 585-86).

A trial court's findings are "not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (citations omitted), *cert. denied*, 343 Md. 679 (1996). An abuse of discretion exists where "no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quotation marks and citation omitted).

DISCUSSION

I.

Discovery Rulings

A. Background

In mid-December 2020, Mother's counsel filed a counter-motion for custody and served Father with interrogatories and a request for the production of documents. Despite two good faith letters to Father reminding him to promptly file his responses, he did not. On February 5, 2021, Mother's counsel filed a motion to compel and for sanctions. On February 24, 2021, the court granted Mother's motion and ordered Father to provide

answers to interrogatories and produce documents within 15 days of the order but reserved on Mother's request for attorney's fees.

On March 10, 2021, Father's attorney noted his appearance, and, the following day, Father's attorney requested a 10-day extension to file the discovery responses, explaining that Father's ability to respond had been hampered because he had lost his job. The circuit court subsequently granted an extension to file discovery documents until March 21, 2021. Father then responded to discovery.

In Mother's motion to compel and for sanctions, she requested that the court award "counsel fees incurred as a result of filing" her motion due to Father's failure to timely respond to her discovery requests. In its subsequent order, the court stated that it was granting Mother's "Motion to Compel and for Sanctions" but Mother's "request for attorney's fees and costs be and the same hereby are RESERVED." Father subsequently served discovery responses, and the issue does not appear to have been raised before the court again until months later during trial. During closing argument, Mother's counsel averred: "You know, [Father] also was Court Ordered to appear here with documents; never produced any of those records."

Before this Court, Mother argues that the circuit court twice erred in its discovery rulings. First, the circuit court erred when it granted Father's motion for an extension of time to respond to her interrogatories and request for production of documents. Second, the court erred when it authorized, but failed to impose, sanctions for Father's untimely discovery response. We address each contention in turn after setting out the standard for the administration of discovery disputes in child custody cases.

B. Discovery Disputes in Child Custody Cases

Pursuant to the Maryland Rules, a party has 30 days to respond to interrogatories or a request for the production of documents. *See* Md. Rule 2-421(b) (stating that a party shall have 30 days after service of the interrogatories to respond) and Md. Rule 2-422(c) (stating that a party shall have 30 days after service of the request for documents to respond). A trial court may impose sanctions if a party fails to comply with a discovery request in two ways. First, on the motion of a discovering party, the trial court may impose immediate sanctions if it finds a "failure of discovery." Md. Rule 2-433(a). A "failure of discovery" occurs when a party, among other things, "fails to serve a response to interrogatories under Rule 2-421 or to a request for production or inspection under Rule 2-422, after proper service." Md. Rule 2-432(a). Second, when a party fails "to obey an order compelling discovery," the trial court may impose further sanctions under Rule 2-433(c). *See* Md. Rule 2-433(c).

Further, "[e]ven if . . . the precise action taken by the circuit court is not specifically prescribed by a rule or statute, the court has the ability, in general, to definitively and effectively administer and control discovery, as the Maryland Rules contemplate." *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 596 (2010) (cleaned up). Courts have broad discretion to fashion remedies for discovery failures, *Rodriguez v. Clarke*, 400 Md. 39, 56 (2007), and appellate review correspondingly is "quite narrow," *Sindler v. Litman*, 166 Md. App. 90, 123 (2005); *see also Faith v. Keefer*, 127

Md. App. 706, 732, *cert. denied*, 357 Md. 191 (1999).

In exercising that discretion, a trial court should consider several factors, enunciated in *Taliaferro v. State*:

> whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

295 Md. 376, 390-91 (1983). The circuit court need not discuss each of the factors, which are interrelated and often overlap. *Muffoletto v. Towers*, 244 Md. App. 510, 542, *cert. denied*, 469 Md. 276 (2020). It follows that "[w]e do not look at each incident in isolation, but rather at the entire history and context of the case[.]" *Valentine-Bowers v. Retina Grp., Of Wash., P.C.*, 217 Md. App. 366, 380 (2014).

"The purpose of discovery is to eliminate, as far as possible, the necessity of any party to litigation going to trial in a confused or muddled state of mind, concerning the facts that gave rise to the litigation." *Warehime v. Dell*, 124 Md. App. 31, 48 (1998) (quotation marks and citation omitted). "Ultimately, discovery sanctions are not to operate as a windfall, but instead are intended to relieve the surprise or prejudice a party suffers when his opponent fails to abide by the discovery rules." *Watson v. Timberlake*, 251 Md. App. 420, 437, *cert. denied*, 476 Md. 281 (2021) (citations omitted). "The most accepted view of discovery sanctions is that in fashioning a sanction, the court should impose the least severe sanction that is consistent with the purpose of the discovery rules." *Thomas v. State*, 397 Md. 557, 571 (2007) (citations omitted).

As we have recently explained, "[i]n a child custody case, the discretion of the trial court to exclude evidence is not only measured by the potential prejudice to the parties, but is constrained by a court's 'absolute and overriding obligation to conduct a thorough examination of all possible factors that impact the best interests of the child.'" *Kadish v. Kadish*, 254 Md. App. 467, 495 (2022) (quoting *A.A. v. Ab.D.*, 246 Md. App. 418, 444, *cert. denied*, 471 Md. 75 (2020)). Accordingly, our standard of review concerning discovery sanctions is altered slightly in a child custody case:

> Normally, we evaluate a trial courts' discovery sanction in a civil case through a well-defined lens—abuse of discretion. *Rodriguez v. Clarke*, 400 Md. 39, 57 (2007); *see also Das v. Das*, 133 Md. App. 1, 15 (2000) ("Abuse of discretion occurs '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.'" (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994))). However, before we look through that lens in a child custody case, we must be satisfied that the court has applied the best interests of the child standard in its determination. When the custody of children is the question, "the best interest[s] of the children is the paramount fact. Rights of father and mother sink into insignificance before that." *Kartman v. Kartman*, 163 Md. 19, 22 (1932).

A.A., 246 Md. App. at 441.

C. Discovery Extension

Mother argues that the trial court erred in granting Father's request for an extension to file interrogatories and to produce documents because Father's request was filed the day *after* the court's deadline. She also argues that the court erred in granting the extension because it gave Father a total of 94 days to respond to her discovery requests, which was "3x the time limit[.]"

Father responds that while he "was in fact late in responding, the parties had nearly nine (9) months following the date discovery was [] responded to until their trial beginning December 21, 2021, and therefore, [Mother] was not harmed or unduly prejudiced in any way by [Father]'s failure to timely respond." We conclude that the circuit court did not abuse its discretion or err in granting Father's request.

First, Father's request for an extension was filed on the deadline, not the day after the deadline. On February 24, 2021, the court granted Mother's motion to compel, giving Father 15 days to respond. In computing the time to respond, Maryland Rule 1-203 provides, in pertinent part: "[B]y rule or order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included." Accordingly, the 15th day to respond to the order was March 11, 2021, which is the day Father filed his request for an extension.

Second, we find no abuse of discretion in the court's order granting Father a 15-day extension to file discovery. With exceptions not pertinent here, "Maryland law does not require a written statement of reasons for the court's decision." *Abrishamian v. Barbely*, 188 Md. App. 334, 351 (2009). As Judge Sharer outlined for this Court in *Cobrand v. Adventist Healthcare, Inc.*:

> The exercise of a judge's discretion is presumed to be correct, he is presumed to know the law, and is presumed to have performed his duties properly. Absent an indication from the record that the trial judge misapplied or misstated the applicable legal principles, the presumption is sufficient for us to find no abuse of discretion. Additionally, a trial judge's failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion.

149 Md. App. 431, 445 (2003). In his motion to extend his deadline to respond to Mother's discovery requests, Father explained that he had lost his job, which "slowed his ability to respond in a timely fashion," but, having just found employment and obtained counsel, requested a "short extension of ten (10) days." Thus, the court had a sufficient basis to grant Father's request. Further, the trial was many months away, and Mother does not explain how this short extension prejudiced her. Therefore, in light of these facts as well as the paramount consideration of the best interests of the children in a custody dispute, we discern no abuse of discretion.

D. Sanctions

Mother argues that the trial court erred when it granted her motion to compel but never imposed sanctions on Father, even though he never provided the requested documents. Specifically, Mother asserts that Father failed to submit a financial statement until the day before trial and failed to provide any financial information regarding his business in Ohio. We understand Mother to be arguing that the court erred in failing to impose an award of attorney's fees and costs.

Father responds that Mother is "simply wrong" and that the "trial court did impose sanctions," requiring Father to timely respond within 15 days. He avers the "issue of attorney's fees was reserved" and that the court "need not automatically impose an award of attorney's fees and costs."

According to the record, in resolving her motion to compel and for sanctions, the court compelled Father to respond to Mother's discovery requests, and then specifically

reserved on the issue of attorney's fees and costs. Father then responded, at least in part, to Mother's discovery requests. Mother did not seek to further compel Father's compliance with her discovery requests or otherwise seek additional sanctions from the court. Because Mother never pursued this issue after the court reserved on attorney's fees and costs, there is nothing before us to review. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

II.

2021 Pendente Lite Consent Order

A. Background

On February 5, 2021, Mother filed an expedited motion to modify the Emergency 2020 PL Order, which granted Father temporary physical and legal custody of the children and Mother visitation, supervised by Father. In her motion, Mother averred that the children's grades had declined, that the minor children expressed to Mother "that they have no clean clothes to wear," and that Father had not been requiring the children to take their "prescribed medication for anxiety and depression on a consistent basis." Mother explained in the motion that, since the entry of the Emergency 2020 PL Order, she had made "great strides in regards to her mental health status." Mother sought a return to the terms of the April 2012 Consent Order. The Best Interest Attorney responded to Mother's motion on March 31, 2021 and requested that the court maintain the Emergency 2020 PL Order. Father responded on April 7 and requested that the motion be denied.

On April 13, 2021, the court entered a pendente lite consent order ("April 2021 PL Consent Order"). Among other things, the consent order noted that the parties were working to reach a new visitation agreement, but if they were unable to do so within a two-week period, either party or the BIA could petition the court for an expedited hearing regarding visitation. The consent order directed that until the parties reached a new visitation agreement, Mother shall continue to have supervised visitation for several hours on Fridays, Saturdays, and Mondays as allowed under the earlier Emergency 2020 PL Order. The consent order further stated that the parties agree that Father is relieved of paying child support payments or arrearages until a separate hearing on that issue could be held.

Three and a half months later, on July 27, 2021, the court entered an amended pendente lite consent order ("July 2021 PL Consent Order"). The order set out a new visitation schedule, which granted Mother supervised overnight visitation with the children every other weekend from Thursday to Saturday, and several hours on Thursdays of the alternating week.

B. Parties' Contentions

Mother argues that the trial court erred in entering the April 2021 PL Consent Order. She avers that it was "a temporary order that was supposed to be for only 2 to 3 months." However, according to Mother, the order remained in effect for more than 13

months because Father prolonged the case, and "[c]hild support/arrears still hasn't been addressed."[6]

Father agrees that the April 2021 PL Consent Order was "intended to be temporary" but avers "by its meaning, *pendente lite* orders are designed to be in effect through the pending of the litigation to afford the parties temporary relief." According to Father, Mother "has presented no evidence that can support an argument that [Father] 'prolonged the case' and can present no evidence that can support an argument that the trial court's endorsement of the [April 2021 PL Consent Order] was clearly erroneous when [Mother] herself also endorsed the execution of the Order."

In her reply, Mother contends, among other things, that Father prolonged the case by waiting "until March 2021 to retain his current counsel, 4 months" and by not answering discovery.

[6] The April 2021 PL Consent Order provides:

> [Father's] child support is reduced to zero and no payment will be made toward the arrears until a final Order is entered in this matter. The [Mother] likewise shall not commence paying the [Father] child support at this time as both parties reserve on monies due to them or adjustments to the child support or child support arrearages at the hearing on the merits."

At the trial on December 23, 2021, the court explained: "What I'm going to do is what the attorneys have agreed to do, I'll reserve on the issue of child support." In his January 14, 2022 order, the judge reserved "on the issue of child support for 90 days" to permit counsel for Mother and Father to resolve the issue of adjustments but allowed that the issue "may be set in for a hearing upon request of either party."

Neither Father nor Mother requested a hearing on the issue of child support arrears after entry of the January 2022 order. We note that, since the appeal was filed, the court entered a "Consent Order," which notes that the parties "have reached an agreement to resolve all issues between them."

C. Analysis

As previously noted, on April 13, 2021, the circuit court entered a pendente lite consent order that continued the custody award and visitation schedule set forth in the Emergency 2020 PL Order. That order also stated that "the [Father's] child support is reduced to zero and no payment will be made toward the arrears until a final Order is entered in this matter." Mother, who was represented by counsel, agreed to the terms of the order and signed it. Mother never objected to the entry of the order.

"It is a well-settled principle of the common law that no appeal lies from a consent decree." *Suter v. Stuckey*, 402 Md. 211, 222 (2007) (noting in a footnote that the terms "judgment," "order" and "decree" are functionally interchangeable). *Cf. In re Nicole B.*, 410 Md. 33, 64 (2009) ("It is well-settled that a party in the trial court is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order."). The Court of Appeals has stated that there is a limited exception to this principle where the "judgment was coerced, exceeded the scope of consent, or was not within the jurisdiction of the court, or for any other reason consent was not effective[.]" *Suter*, 402 Md. at 224 n.10 (citations omitted).

None of these exceptions apply in the instant case. Mother has not alleged that the order was coerced or that the court lacked jurisdiction to enter the April 2021 PL Consent Order. To the extent Mother is contending that the order exceeded the scope of consent because it was in effect for longer than the parties, or Mother, intended, we see nothing limiting the time period of the April 2021 PL Consent Order, and Mother has not offered any evidence indicating that the April 2021 PL Consent Order was meant to expire before

entry of a final custody order or child support order. Indeed, Mother subsequently entered into the July 2021 PL Consent Order, which generally kept the provisions in the last order "in full force and effect." Accordingly, Mother cannot object on appeal to the order to which she consented.

III.

Best Interest Attorney

A. Parties' Contentions

Mother contends that the best interest attorney, Marie Palmquist, failed to adequately represent her children. Specifically, she argues that Ms. Palmquist failed to represent the "children equally," had "a conflict of interest," and formed a biased opinion about Mother without evidence. Mother then sets forth several factual allegations, which we have grouped below for clarity.

> **Therapy issues**. Mother argues that according to the April 2021 PL Order, Ms. Palmquist was required to find a therapist for the youngest daughter. Despite Mother contacting Ms. Palmquist on May 19 and June 28, 2021 about this matter, Ms. Palmquist did not respond until July 1, 2021, and the youngest daughter did not start therapy until July 21, 2021, four months after the April 2021 PL Order. Additionally, Mother argues that Ms. Palmquist did not check in with her daughters' therapist regarding their progress as often as she should have, and she checked in even less with the youngest daughter's therapist.
>
> **Failure to correct the April 2021 PL Order.** Mother argues that Ms. Palmquist failed to amend the April 2021 PL Order before the issuance of the July PL 2021 Order. According to Mother, the April 2021 PL Order granted her two overnight visitations. Even though the parties agreed a month later to three overnight visitations, the April PL 2021 Order was not amended until July to reflect that agreement. According to Mother, Ms. Palmquist's failure caused her to lose an extra overnight each week for three months.

> **Changing schools.** Mother argues that in June 2021, her daughters advised her that their Father was planning to change the school of the youngest daughter in the Fall of 2021. Mother twice advised Ms. Palmquist of this but did not hear back from her until August 11, 2021. At that time, Ms. Palmquist advised her that "this needs to be dealt with immediately" but nothing was done and the daughter's school was changed without Father ever advising Mother.
>
> **Father's abuse.** Mother argues that when she first met Ms. Palmquist in March 2021, she told her that her oldest daughter had texted her after camping with Father that Father "abused me last night" and that she was "scared of him." She showed Ms. Palmquist the text messages. When Mother's attorney tried to question Mother about the incident at trial, a bench conference ensued during which Ms. "Palmquist lied and said she knew nothing about any abuse."
>
> **Bias/Lack of Thoroughness/Unprofessionalism**. Mother makes several allegations that go to Ms. Palmquist's professionalism. Mother states that Ms. Palmquist failed to interview her parents, personnel at the children's school, or "health care providers"; failed to review Mother's mental health records even though Mother gave her authorization to do so; told the oldest daughter that "she does not think the girls should see [Mother] at all[,]" which upset the oldest daughter; blamed Mother a week before trial for the oldest daughter's social media postings on race and hate; and the youngest daughter told Mother she did not feel "heard" by nor did she trust Ms. Palmquist.

In opposition, Father avers that "Ms. Palmquist advocated on behalf of both minor children throughout this case." He concludes that Mother is "now arguing that the BIA was not fair for no reason other than her displeasure with the decision of the trial court."

B. Analysis

The court is authorized under the Maryland Code (1984, 2019 Repl. Vol.) Family Law Article ("FL"), section 1-202(a)(1)(ii) to appoint a BIA to represent a minor child whenever "custody, visitation rights, or the amount of support of a minor child is contested[.]" The BIA must "exercise ordinary care and diligence in the representation of

[the] minor child." FL § 1-202(b). The essential responsibilities of BIAs are outlined in "Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access." *See* Md. Rules, Attorneys, Chapter 300, Appendix 19-D. Section § 1.1, defines a child's best interest attorney as "a lawyer appointed by a court for the purpose of protecting a child's best interest, without being bound by the child's directives or objectives." The definition further provides that the BIA "makes an independent assessment of what is in the child's best interest and advocates for that before the court[.] . . . The best interest attorney should ensure that the child's position is made a part of the record whether or not different from the position that the attorney advocates."

We have recognized that "[b]ecause the BIA must advance a child's best interests in the midst of what are often bitter and contentious disputes between the child's parents, the BIA will frequently displease at least one, if not both, of the parties." *McAllister v. McAllister*, 218 Md. App. 386, 403-04 (2014). "If a parent believes (in good faith) that the BIA has injured the child through a breach of the standard of care, then he or she may assert a claim for negligence on the child's behalf." *Id*. at 404*; see also Fox v. Wills*, 390 Md. 620, 634 (2006) (rejecting the contention that BIAs have immunity from civil suit); and Md. Rule 2-202(b) (granting a parent with sole custody the exclusive right to sue on the children's behalf for a period of one year following the accrual of any cause of action).

At no time did Mother ask to replace or remove the appearance of the BIA. Moreover, Mother never brought any of her concerns about the BIA to the trial court's attention. As *McAllister* clarifies, if Mother believed the BIA was acting negligently, she

could have filed a separate cause of action against the BIA for negligence. We note that, from the record on appeal, it appears that the BIA advocated on behalf of the children throughout the case. Mother's allegations made for the first time on appeal cannot be substantiated on this record. Accordingly, because it does not "plainly appear[] by the record to have been raised in or decided by the trial court," mother's allegations that the BIA failed in performing her duties is not before us to review.[7] *See* Md. Rule 8-131(a).

IV.

Motion to Amend Petition

A. Parties' Contentions

Mother claims that the trial court erred when it granted, during trial, Father's motion to amend his petition from an emergency petition to one to modify custody. She adds that at the emergency hearing on November 20, 2020, the trial court failed to understand that the COVID-19 pandemic exacerbated her mental health problems, directs our attention to a World Health Organization report that many people experienced anxiety during COVID, and points out that she complied with all therapy recommendations.

[7] Even were we to address Mother's complaints, Mother has offered no evidence to support her specific contentions that Ms. Palmquist did not represent the children equally or had a conflict of interest. To the extent that Mother argues that the BIA failed to amend the April 2021 PL Order, the order specifically states that *any* party, including Mother, Father, or the BIA, could have requested a hearing if a new visitation schedule was not agreed upon. Mother never requested a hearing. Lastly, it is clear from the transcript that both parents and the BIA wished that the youngest could have seen a therapist sooner. Mother, however, has presented no evidence or argument to explain how the delay was due to a failure by Ms. Palmquist.

Father responds that his counsel only realized, as the trial date approached, that a separate Petition to Modify Custody had not been supplemented since the original filing for emergency custody. In the motion to amend, counsel explained that: "In an abundance of caution, undersigned counsel drafted a Supplemental Petition to Modify Custody which included the same exact allegations and facts that were contained in the Petition for Emergency Custody." According to Father, because the amended petition "included the same exact allegations and facts" and "did not result in an undue delay, . . . no error was committed."

B. Analysis

Maryland Rule 2-341 governs the amendment of pleadings and provides that a party may file an amendment to a pleading *after* the date provided in a scheduling order or within 30 days before trial, only with leave of court. The general rule is that "amendments to pleadings should be freely allowed in order to promote justice." *Walls v. Bank of Glen Burnie*, 135 Md. App. 229, 236 (2000) (quotation marks and citations omitted). "Amendments are allowed so that cases will be tried on their merits rather than upon the niceties of pleading." *Id.* (quotation marks and citation omitted). Although leave to amend rests within the discretion of the trial court, leave to amend should not be granted "if the amendment would result in prejudice to the opposing party or undue delay." *Id*. (quotation marks and citations omitted).

The day following Mother's suicide text, Father filed a pro se petition for emergency custody and a petition to modify custody. On the second day of trial, Father's attorney filed an amended petition to modify custody. The attorney explained that he was filing the

amendment out of "an abundance of caution." He explained that the amendment did not introduce any new facts or argument. He stated that the only change from the original petition was that in the original Father stated that joint custody could be agreed to once Mother was not a danger to herself or the children, whereas now he was seeking sole physical and legal custody. Mother's attorney stated that although the relief requested in the amended petition was a change from what was requested in the original pleading, the court "already knew that given the testimony." Nonetheless, Mother's attorney did object to the court granting the motion on grounds that the amended pleading was unnecessary. The court agreed that nothing new was alleged in the amended pleading and granted Father leave to amend the original pleading. The court then asked Mother's attorney whether he would like a continuance, and he said he would not.

We find no abuse of discretion by the trial court in granting Father leave to amend his petition to modify custody. Mother objected to the amended petition only on the grounds that it was not necessary. Mother never objected on the ground that she was prejudiced. Moreover, on appeal Mother does not argue that the amended petition caused her prejudice. *Walls*, 135 Md. App. at 236. Lastly, we fail to see how the trial court's ruling to allow the amended petition relates in any way to Mother's allegations that the emergency custody hearing judge failed to understand how large a part the pandemic played in her sending the suicide text to her daughter, and that she has done everything asked of her in therapy. To be sure, the COVID pandemic caused anxiety for many people, and we are sympathetic to the fact that it exacerbated Mother's own mental health

problems. However, none of her allegations relate to any prejudice she suffered as a result of the trial court granting Father leave to amend his custody petition.

V.

Admission of Evidence

Mother argues that the circuit court erred when it did not allow her to introduce certain evidence during trial. Specifically, Mother avers that the trial court erred when it denied her the opportunity to show that Father has a history of physical, verbal, and emotional abuse. She contends that she was denied the ability to: testify that Father was abusing the oldest daughter; introduce her notes that showed Father was engaging in parental alienation; and introduce Facebook messages between the parties that showed Father lied when he testified that he was consistently involved in their daughter's lives when he lived out of state. Father responds that the Mother's counsel withdrew the question on this issue and, accordingly, "the trial court did not rule the evidence was inadmissible thus, there was no ruling" for this Court to consider.

During the direct examination of Mother, the following colloquy occurred:

> [MOTHER'S ATTORNEY]: Ms., Ms. Mudge, have you ever, has Mr. Vermillion ever shared any experience with you that would cause you concern for domestic violence?
>
> [MOTHER]: Yes.
>
> [MOTHER'S ATTORNEY]: What –
>
> [FATHER'S ATTORNEY]: Objection.
>
> THE COURT: Is this going to relate that the children are in danger?
>
> [MOTHER'S ATTORNEY]: One, yes, and then the other –

> THE COURT: Well – I'll give you some limited questions in this regard, but it – come to the bench for a second.

A bench conference ensued, which was not recorded. After the bench conference, Mother's attorney stated on the record: "I had just asked a question about a specific domestic violence incident and after deliberating – or discussing at the bench and conferring with my client, I'm withdrawing the question, I'm going on to a different question." Mother's counsel then asked Mother questions about hiring an attorney after the November 2020 emergency hearing.

Because Mother's attorney withdrew the question, and stated he would ask a different question, Mother has failed to preserve on appeal her argument that the trial court failed to admit whatever evidence she had hoped would be admitted regarding Father's abuse. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"); *Nelson v. State*, 137 Md. App. 402, 419-20 (2001) (an issue is not preserved for appellate review when counsel withdraws his objection). Additionally, Mother has not directed us to any attempts she made at trial to introduce evidence regarding any of her other allegations, *i.e.*, parental alienation or lying by Father regarding his involvement in their children's lives. Accordingly, these arguments are not preserved for our review.

VI.

Custody Modification

A. Parties' Contentions

Mother asserts that the court erred found in concluding that she was unfit "to have sole or joint custody of the children." In support of her argument, Mother points to Father's failures. Specifically, she argues that Father has a history of alcohol abuse and "DUIs"; is over $30,000 in arrears for child support; moved away for three years and inconsistently visited; never took the children to their primary care physician while he had custody; testified that he did not know their oldest daughter has asthma even though she was diagnosed with asthma when she was two years old; never took their youngest daughter to the doctor when she was in a four-wheeler accident; failed to take their oldest daughter to orthodontist for her phase two braces; took the children off their medication; failed to file tax returns for five years; fraudulently filed forms to obtain motor vehicle tags in another State; and has history of physical, emotional, and verbal abuse.

In opposition, Father contends that the final custody order provides that the parties have "joint legal custody and neither parent has final say" and that Mother also has shared physical custody. Based on the order of the court, Father contends, Mother has "parental access with her children thirty-two percent (32%) of the time." According to Father, many of the issues that Mother raises are "old issues that . . . in fact contributed to her being awarded custody originally," and "the undisputed evidence was the children were doing very well in their new home environment and with the counseling." Father concludes by

specifying that "[t]here is nothing in the court's decision which indicates he did not consider all the evidence before it."

B. Analysis

When presented with a request to modify custody, a trial court engages in a familiar two-step process. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). "First, the circuit court must assess whether there has been a material change in circumstance." *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005) (quotation marks and citation omitted). "A material change of circumstances is a change of circumstances that affects the welfare of the child." *Gillespie*, 206 Md. App. at 171.

If the court finds there has been a material change, "the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody." *Id.* at 170 (quoting *McMahon*, 162 Md. App. at 594). Despite the broad discretion granted to the circuit court, "there are numerous factors the court must consider and weigh in its custody determination." *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 253 (2021). These factors include those articulated in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406, 420 (1977), and, with particular relevance to the consideration of joint custody, *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986). In *Sanders*, this Court provided ten non-exclusive factors: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference of the child; (6) material opportunities affecting the future life of the child; (7) age, health, and sex of the child; (8) residences of parents and opportunity for visitation; (9) length of separation from the

natural parents; and (10) prior voluntary abandonment or surrender. *Sanders*, 38 Md. App. at 420. In *Taylor*, the Court of Appeals enumerated thirteen specific, non-exclusive factors, including some that overlap with the *Sanders* factors: (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; and (13) benefit to parents. *Taylor*, 306 Md. at 304-11.

Mother cherry-picks evidence that reflects negatively on Father but ignores any evidence that negatively reflects on her. This is not the standard under which we review a trial court's determination of custody. As we stated earlier, the trial court is in the best position to weigh all the evidence and assess the credibility of the parties, and we shall not set aside those factual findings absent clear error. *Gillespie*, 206 Md. App. at 171. Moreover, we will not disturb the trial court's ultimate conclusion, unless there has been a clear abuse of discretion. An abuse of discretion exists where "no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles." *Santo*, 448 Md. at 625-26.

Here, after an extensive three-day trial, the trial court found that a material change in circumstance had occurred when Mother sent the suicide text to her oldest daughter. Mother does not argue that the court erred in that finding.

The judge took "into consideration the factors that . . . the [c]ourt is to consider," and explicitly referenced each of the factors enunciated in *Sanders* in rendering his decision. The court also considered the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare and the established relationships between the children and each parent. *Taylor*, 306 Md. at 304-11. Contrary to Mother's assertion, the court never found Mother unfit but found that it was in the best interests of the children for Father to continue to have physical custody of the children with the parties sharing legal custody. The judge ordered that Mother was to have visitation on alternating weeks: from Thursdays at 5:00 p.m. until Sundays at 5:00 p.m.; from Thursdays at 5:00 p.m. until school resumes the next day on the other week; and with alternating weeks over the summer.

Mother does not argue that the trial court erred in its factual findings regarding her or Father, but only that the court should have weighed the negatively elicited testimony concerning Father more heavily. We have reviewed the transcript and the facts elicited. Under the circumstances presented, we find no clear error by the trial court in its findings or abuse of discretion in its ultimate conclusion.

VII.

Fair Trial

Mother's final three sub-contentions concern whether Mother received a fair trial. Specifically, Mother argues that Judge Chandlee (1) was improperly assigned to sit for this family law case; (2) used his personal bias in rendering a decision; and (3) failed to conduct a fair trial. We address each in turn.

Assignment of Judge Chandlee

Mother argues that Judge Chandlee should not have been assigned to her case. She alleges that Judge Chandlee was not advised of her case until 4:30 p.m. the day before trial and argues that this was not enough time for him "to become familiar with this case." Mother also contends that Judge Chandlee is a criminal law judge who specializes in criminal law not family law. We disagree.

There is a strong presumption that judges are presumed to know the law and apply it properly. *State v. Chaney*, 375 Md. 168, 179-84 (2003). Moreover, all judges sitting on the circuit courts of Maryland "qualify under the constitutional provisions to serve as a circuit court judge" and are experienced practitioners of the law, not specialists in any one area. *See Ademiluyi v. Egbuonu*, 466 Md. 80, 90-91 (2019) (explaining the process for vetting judges sitting in the circuit court through the judicial nominating commission). Accordingly, this argument has no merit.

Personal Bias

Mother argues that Judge Chandlee "use[d] his personal bias" in reaching his decision. She explains that Judge Chandlee said during his ruling: "I'm a firm believer everything happens for a reason[.]" She then states that although the trial court stated that child support would be heard at a later date, "nothing has been filed for child support and arrears and still were not addressed." She lastly relates that her attorney asked the court to change the language of its order to "shared" physical custody because she would have the children for 119 overnights a year, but the trial court denied the request because it wanted the children to remain in the Father's school district.

Mother fails to explain, and we are unable to fathom, how any of the actions Mother attributes to Judge Chandlee is evidence of his personal bias. In Mother's reply brief, she directs us to a page where Judge Chandlee makes the statement about which she complains. Our review of the transcript shows that Judge Chandlee is speaking at that point about when Mother was admitted to the emergency room, and then he says: "things happen for a reason and I believe that it wasn't just the break-up of the boyfriend" but was also the "two terrible events that occurred to her when she was 14 years old that she had been dealing with for her entire life" and her co-worker's sexual assault situation. We fail to see how these statements evidence personal bias.

Mother provides only a recitation of facts and fails to put forth any argument as to how the court was personally biased. Had Mother believed that the judge was biased, she could have filed a motion asking the judge to recuse himself, but she never did. *See Jefferson-El v. State*, 330 Md. 99, 107 (1993) ("[T]here is a strong presumption in Maryland, and elsewhere, that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified." (citations omitted)); *Boyd v. State*, 321 Md. 69, 75-80 (1990) (recusal is required only where bias, prejudice, or knowledge derived from an extrajudicial source is personal but a court should also avoid "the appearance of impropriety"). In reviewing this case, we conclude that disqualification was not required to avoid bias, prejudice, extrajudicial knowledge, or the appearance of impropriety.

Unfair Trial

Lastly, Mother argues that the court failed to conduct a fair trial and lists several general complaints without citing to any transcript page. She states that she was not allowed to testify about events that occurred when she and Father were together, but Father was allowed to "bring up issues that had been heard in earlier cases." She states that Father was allowed to bring up her work schedule, and that Mother had obtained money from Father's father for child support arrearages. She surmises Father repeatedly lied during trial. She claims the trial court favored Father by advising him to speak to his attorney before he gave further incriminating testimony regarding his Ohio motor vehicle tags; and by giving Father an extension to file discovery responses. Mother adds that Father did not file a financial statement, and Father did not answer all the questions asked in her request for interrogatories. Lastly, she states that there were "many interruptions [during trial] due to the Judge hearing other cases in between and tending to administrative duties which caused myself and [Father] unnecessary legal fees."

To the extent that we have not already addressed these arguments earlier, these general allegations fail to a raise a reviewable issue for several reasons. First, the general allegations, to which Mother did not bring to the trial court's attention and to which she makes no reference to a transcript page, fail to rise to the level of an issue we can review. *See* Md. Rule 8-131(a). We are not unsympathetic that the adversarial process caused Mother to feel "badgered" and "humiliate[ed]." Adversarial proceedings are adversarial,

and they can be costly. However, for the reasons stated, we are unable to review Mother's unsupported allegations.[8]

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

[8] We further note that Mother's reply brief is replete with arguments and evidence that was not raised during trial or in her appellant brief. "The function of the reply brief is limited to responding to points and issues raised in appellee's brief which, in turn, addresses issues originally raised by appellant." *Mayor v. New Pulaski Co. Ltd, P'ship*, 112 Md. App. 218, 233-34 (1996) (citation omitted), *cert. denied*, 344 Md. 717 (1997). To permit otherwise may result in a "fundamental injustice upon the appellee, who would then have no opportunity to respond in writing to the new questions raised by appellant." *State v. Jones*, 138 Md. App. 178, 231 (2001) (quotation marks and citation omitted), *aff'd*, 379 Md. 704 (2004). Accordingly, we will not consider the many factual and legal challenges Mother raises for the first time in her reply brief. *Cf. Elder v. Smith*, 183 Md. App. 647, 651 n.4 (2008) (absent an issue on subject matter jurisdiction, we will not consider new arguments raised for the first time in a reply brief) (citation omitted), *aff'd*, 412 Md. 288 (2010) and *Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 535 (2004) (when an appellant failed to allege in his initial brief that appellee had committed fraud by failing to produce certain documents, the court declined to address the allegation because it was raised for the first time in appellant's reply brief).