UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1179

SEPTEMBER TERM, 2015

MELISSA HARRISON,
f/k/a MELISSA GREENE

v.

ROBERT GREENE

Eyler, Deborah S.,
Arthur,
Kenney, James A., III
(Retired Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: February 1, 2016

This is an appeal from a judgment of the Circuit Court for Harford County granting a motion to modify custody and awarding sole legal and physical custody of the minor child ("the Child") to his father, Robert Greene, the appellee. The Child's mother, Melissa Harrison, the appellant, presents four questions for review, which we have combined and rephrased as follows:[1]

I. Did the trial court's mistake in attributing evidence submitted by Harrison to Greene materially affect the court's custody decision?

[1] The questions as posed by Harrison are:

I. Did the Circuit Court for Harford County err as a trier of fact by unduly attributing evidence and testimony to the incorrect parties and by substantially relying on this error in the court's decision, exhibit prejudicial misconduct by failing to competently perform its duties by lacking the knowledge, skill, thoroughness and preparation reasonably necessary as required by MD Rule 16-813 section 2 Code of Judicial Conduct?

II. Did the Circuit Court for Harford County err as a matter of law in failing to recognize a home instruction educational program operated under the supervision of a bona fide church organization as allowed under Md. Regs. Code tit. 13A?

III. Did the Circuit Court for Harford County err as a matter of fact in failing to recognize admitted evidence of the home school curriculum and by requiring institutional accreditation inconsistent with Md. Code Ann., Educ. § 7-301?

IV. Did the Circuit Court for Harford County err as a matter of law through an improvident exercise of discretion in its failure to weigh the relevant equities of the parties while it applied an equitable doctrine rendering a harsh and unjust result evidenced at the outset of the trial by a failure to maintain an open mind as required by Md. Code Ann., Rule 168-813 Code of Judicial Conduct (Section 2) Rules governing the performance of judicial duties, Rule 2.2 Impartiality and Fairness?

II. Did the trial court err or abuse its discretion in making certain findings about the Child's home school program?

III. Did the trial court engage in judicial misconduct throughout the proceedings?

We answer these questions in the negative and shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

Harrison and Greene were married on November 5, 1994. The Child was born on December 5, 2002. During the marriage, the parties lived in Street, Maryland. Harrison and Greene separated in January of 2005. Harrison filed for divorce on May 2, 2006, and a judgment of absolute divorce was entered on January 9, 2009. The judgment incorporated the parties' agreement that they would have joint legal custody and that Harrison would have primary physical custody. It gave Greene visitation every other weekend from Friday through Sunday, and Wednesday overnight visits.

Both parties remarried.

On July 11, 2011, Greene filed a petition to modify, alleging that Harrison had moved from Fallston, Maryland to Ocean City, Maryland. He sought additional visitation for summer vacations, birthdays, and a shared holiday schedule. On November 16, 2011, the court entered an order establishing a temporary holiday access schedule and directing the parties and the Child to be evaluated by Moira E. Ricklefs, MA, CAC-AD, of the Office of Family Court Services ("OFCS").

On May 5, 2012, a Master held a hearing, during which he reviewed Ricklefs's report of her evaluation. The report detailed disputes between the parties, the primary one being whether the Child is gluten intolerant. The Child had been suffering from gastrointestinal problems.

On June 7, 2012, the Master issued his report and recommendations, noting that

> [d]uring the hearing of this matter, it became evident to this Master that [Harrison] is uncooperative and unwilling to try to maintain a good relationship between [the Child] and [Greene]. . . . [W]henever the Master tried to ask [Harrison] a question, she was evasive and often argued and talked over him. It was clear to this Master that [Harrison] had had her own agenda and she was not going to deviate from it. What was most disconcerting to the Master was her insistence that she will follow a doctor's orders regarding [the Child]'s treatments only if they suited her. When the Master asked about visitation during the summer, [Harrison] was also evasive. . . .

On June 19, 2012, the court adopted the Master's recommendations. It ordered the parties to jointly meet with Anca Safta, M.D., the Child's gastroenterologist, to discuss the Child's medical issues; to follow his recommendations; and to provide the Child with a gluten free diet. It extended Greene's weekend visitation during the summer months to Thursday evening through Monday evening. On June 25, 2012, the court appointed Camilla Rogers, Esq., as the Child's Best Interest Attorney.

On August 15, 2012, Harrison filed a petition for contempt, alleging that Greene had violated the June 19, 2012 order by failing to provide the Child with a gluten free diet. Greene denied the allegations. A hearing was scheduled for March 14, 2013. On February 1, 2013, the court ordered a Developmental Needs Assessment of the Child by Pamela S. Baer, Ph.D., of the OFCS. In a March 1, 2013 memorandum to the court, Dr.

Baer stated that she had not been able to perform the assessment because Harrison had been non-compliant with scheduling an appointment.

At the hearing on March 14, 2013, the parties entered into an agreement, which was placed on the record and documented in an order ("2013 Consent Order"). The parties agreed that Harrison would continue to have primary physical custody and that the parties would have joint legal custody, but that Greene's weekend visits during the school year would increase to Friday through Monday morning (with Wednesday dinner visits continuing); he would have four weeks of visitation over the summer; and the parties would share holidays pursuant to an agreed upon schedule that would supersede the regular access schedule. The parties also agreed that they would discuss and agree on all of the Child's extracurricular activities; provide "reasonable unrestricted" telephone and electronic access to the Child while in the other party's custody; and that the Child would complete the Assessment by Dr. Baer and, should Dr. Baer recommend counseling or therapy, the parties would follow Dr. Baer's recommendation and share the cost.

On July 31, 2013, Dr. Baer submitted her Assessment to the court. It states in relevant part:

> [The Child] is overwhelmed with worry and anxiety. . . . Please get this child to a therapist that specializes in treating children with anxiety disorders. . . . Not only could the professionals . . . assist with [the Child's] anxiety issues, they could also evaluate and provide positive interventions for those behaviors of [the Child's] that may have a neurological basis.

The Assessment included referrals to specific providers. Neither parent arranged for counseling for the Child with a therapist specializing in pediatric anxiety disorders.

On November 6, 2014, Greene filed the petition to modify custody that gave rise to this appeal. He alleged that Harrison had abandoned her home in Fallston and had relocated the Child to Delaware without notifying him; that she had removed the Child from private school and had started home schooling him, without consulting him; that, as primary custodian, she was responsible for obtaining counseling for the Child pursuant to Dr. Baer's recommendation, but had failed to do so; and that she had refused to obtain the necessary medical treatment for the Child.[2] Greene alleged that this was a material change in circumstances and that it would be in the Child's best interest to grant him sole legal and physical custody.

On January 7, 2015, Harrison, *pro se*, filed an answer and counterclaim. In support of her counterclaim, she attached an affidavit attesting that she had removed the Child from private school and enrolled him in a home school program facilitated by the Churchville Christian School ("CCS"); that she had provided Greene with the Child's curriculum and Greene had approved it; and that "[t]his past September [of 2014] an opportunity presented itself to continue to reside in Rehoboth Beach[, Delaware] . . . where [the Child and] I have spent the majority of our time for the past three or four months." She further attested that, "[f]ollowing [Dr. Baer's recommendation, the Child] participated in numerous counseling appointments with the offices of Alfred J. Taylor,

[2] Harrison maintains that she has religious objections to the Child receiving immunizations.

MS, LCMFT[.]" Harrison asked the court to reduce Greene's weekend visitation to Friday through Sunday, eliminate the Wednesday dinner visit, limit summer vacation visits to two weeks, and revise the holiday schedule to rotate holidays annually. She also asked the court to "interview [the Child], in camera and keep said conference confidential."

In his answer to Harrison's counterclaim, Greene asserted that Harrison "direct[s] her energies toward interfering with and/or making the [time] that [the Child] spends with his father as difficult as possible"; that she "attempt[s] to constantly interfere with and places unreasonable conditions on [Greene's] visitation with [the Child]"; and that she "considers herself to be the only person capable of providing for [the Child]." Regarding the Child's education, Greene alleged that the curriculum plan Harrison provided him "was a plan [that Harrison] made up and [was] not done by" CCS, that CCS is not accredited in Maryland, and that the Child resides primarily in Delaware.

That same day, Greene filed a motion to reappoint Rogers as the Child's Best Interest Attorney. The court reappointed Rogers over Harrison's objection. On May 7, 2015, also over Harrison's objection, the court again referred the matter to Ricklefs for evaluation.

A three day trial began on July 13, 2015.[3] Greene was represented by counsel. Harrison appeared *pro se*. Rogers represented the Child.

In his case-in-chief, Greene testified and called six witnesses: Ricklefs, Dr. Donna Jannui and Robert Peck (Greene's childhood friends), Kim Smith (Greene's niece), Ruby Comer (Greene's wife), and Harrison.[4] Harrison testified in her own case and called Angela Boin (her childhood friend).

Greene stated that he is part owner of his family's construction company and that he and his wife reside in Darlington, Maryland. Greene testified that Harrison had moved to Rehoboth without consulting him. He stated that the Child had been attending St. Paul's School in Maryland. He received a notice from that school that the Child was no longer enrolled. He contacted Harrison, who informed him that she had enrolled the Child in the CCS program. He contacted CCS and learned that the Child had been registered under the last name "Harrison," which is not the Child's last name. He later saw the Child's home school curriculum and approved it only because the school year already had started.

[3] Greene filed a motion for Right-of-Way and requested that the court conduct a trial as soon as possible to resolve the issues before the 2015-2016 school year. The court entered an order granting Greene's motion, over Harrison's objection, on May 7, 2015. Harrison subsequently filed for a continuance, which the court denied.

[4] On rebuttal, Greene called Harrison's husband, David, to ask whether he had attempted to violate the court's sequestration order by trying to peer in and listen to the trial, which he denied.

On cross examination, Greene conceded that on occasion he consumed alcohol and drove, sometimes with the Child in the car.

Ricklefs was accepted as an expert in family services and counseling. She testified that she reviewed her 2013 evaluation, that she was familiar with Dr. Baer's recommendations in the Assessment, and that Harrison had not put the Child in counseling until February of 2015. She discussed her recent interviews with the Child, individually and with each parent. She testified that, when the Child was interviewed with Harrison, he said that visitation with Greene was too long; when the Child was interviewed with Greene, he did not say that.

Counsel for Greene asked Ricklefs whether she had any concerns about alienation. Ricklefs responded that she was concerned that, when the Child is with his mother, he "seems to verbally state his mother's position, sometimes word for word." Also, Harrison and her husband had discussed the court case with the Child and told him "that there are trick questions asked by the attorneys and the Court and . . . he needs to be careful what he says." Ricklefs also reported that Harrison had told the Child that Greene "had lying problems" and that the Child believes "[Greene] has been lying to [him his] whole life." Ricklefs did not have any concerns about alienation with respect to Greene. (At the court's direction, Rogers contacted Ricklefs outside of court and submitted an e-mail from her clarifying this point. Harrison did not object.)

On cross examination by Harrison, Ricklefs conceded that the Child told her he preferred to live with Harrison and that if Greene got custody it "would be bad."

Rogers asked Ricklefs if she was aware of any instances when Greene had lied to the Child. Ricklefs recalled the Child reporting one time when Greene lied about turning off the Child's cellular phone and hiding it to prevent Harrison from calling. Greene later admitted this and apologized to the Child. Ultimately, Ricklefs recommended that the Child spend more time with Greene.

Dr. Jannui, Peck, and Smith all testified that Greene and the Child have a positive relationship and discussed the Child's interactions with their children.

Ruby Comer testified that Greene and the Child have a very close relationship and that the Child has a bedroom and play area in their home. She testified further that the Child has difficulty interacting with his peers.

Harrison was called adversely by Greene. She testified that the Child's home schooling program is based in Maryland because, from September through December 2014, she had lived in Rehoboth and Fallston; and she did not move to Rehoboth permanently until January 2015. Harrison identified photographs of her Fallston home. Greene then showed Harrison a document describing the CCS home schooling program, which states that "Diplomas issued by [CCS] are not accredited by the Maryland State Board of Education [("MSBE")]." Harrison acknowledged she was familiar with it. Harrison testified that her sources of income are from her husband's yogurt shop and Greene's child support and that she had filed for bankruptcy. The bankruptcy case still was pending. Harrison denied discussing the court proceedings with the Child and that she had told the Child that Greene had lied. She reported that the Child began seeing

Taylor for counseling pursuant to Dr. Baer's recommendations. (Harrison did not identify when the counseling began or introduce evidence of those visits.) She stated that later, in February of 2015, the Child had started seeing Anthony A. Trader, LGSW. She conceded that Trader did not specialize in child anxiety disorders and had only seen the Child for a total of three-and-a-half hours over the previous five months.[5] She also testified that she brought the Child to previous hearings without discussing this with Rogers in advance.

On examination by Rogers, Harrison conceded that her house in Fallston is vacant and in foreclosure.

In her case, Harrison called Boin, who testified that they have been friends since childhood. Boin further testified that, since the 2013 Consent Order, she had seen the Child two or three times and that on those occasions Harrison was a good mother. Harrison testified, providing additional evidence about the Child's home school program, which we shall discuss, *infra*.

Greene testified on rebuttal, stating that he had met with officials at the Havre de Grace Middle School to discuss enrolling the Child.

[5] According to his biography, which Greene moved into evidence without objection, Trader is a counselor at Life Counseling Center. He focuses on "counseling men who struggle with the bondage of homosexuality and sexual addiction." *See* Life Counseling Center, *Our Therapists*, lifecounsel.org (2006), available at http://lifecounsel.org/therapists.html.

The court found that there had been a material change in circumstances, on several grounds, the primary one being that Harrison had moved the Child to Delaware, and had done so without discussing the move with Greene.

The court addressed the factors in *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery County v. Sanders*, 38 Md. App. 406 (1978):

> Fitness of the parents. I don't doubt that both parties before me are presumptively fit parents. They both are nice people. I think they both care very deeply for their son. And I think they both deep down inside, if you can get past the animosity between the two of them, want what is best for him. I always make that assumption in these kind of cases until proven otherwise.
>
> The character and reputation of the parties. There has been no adverse testimony about the character and reputation of the parties.
>
> The desire of the natural parents. Both of them want [the Child] to be in their sole custody.
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> Agreements between the parties. Now, there is another interesting fact because the ink . . . on the [2013 Consent Order] was hardly dry before the controversies picked up all over again.
>
> So yes, while on the surface we can look through the court file and see if the parties have reached some agreements from time to time, they have not stuck.
>
> The potentiality of maintaining natural family relations. I see no problem with that. No adverse information about that. The preference of the child. Well, we have had some anecdotal testimony as to where [the Child] would like to be. Anecdotal. Material opportunities affecting the future life of the child. They clearly favor Mr. Greene. Mr. Greene has a steady job. In fact, he is, as I recall, owner of a business, owns a home here. Has been in his home here for a long time. Business is located here. He has a new wife. Maybe she doesn't consider herself new but he has a new wife who is retired, has a steady home life. On the other hand, Miss Harrison, although she might not like to admit it, is a little bit transient. Miss Harrison filed for bankruptcy. I went through the bankruptcy petition. She said that she doesn't get paid working. Relies on her husband to support her.

Material opportunities favoring [the Child] are clearly in favor of Mr. Greene. Despite the fact that one of the items mentioned in the bankruptcy petition may have been modified by our Court of Special Appeals doesn't change the special nature of the things. I don't know what kind of condo she lives in. I'm going to assume it is okay. I know one thing from the photographs of the house in Fallston, I wouldn't let anybody live in it. So clearly material opportunities for [the Child] clearly favor Mr. Greene.

The age, health and sex of the child. He is about to become a teenager. Suitability of the residence of the parties. Well, clearly the photographs, Mr. Greene's residence is clearly very suitable, [the Child] has his own room, recreation area, et cetera.

Will the non-custodial parent have adequate opportunities for visitation? He is in Rehoboth where Miss Harrison plans to stay. She told us that. And she wants [the Child] to stay with her in Rehoboth. . . . [R]esidences are close enough that they would be able to -- there is adequate opportunity for visitation. There is one exception to that. An exception to that is that a Wednesday night visit is not going to work. That will require five hours of driving for a dinner. So that is not going to work.

But other than that, any prior voluntary abandonment or surrender of custody of the child. That doesn't exist here. None of that is present.

So we have a number of factors that are in equipoise but we have a number of other problems that need to be addressed. One is that there has clearly been alienation of [the Child] in this case. And I think that alienation primarily resides with Mrs. Harrison, not with Mr. Greene. We got that cleared up this morning. Remember, there was some question about what Miss Ricklefs said and we got that cleared up this morning. The idea of bringing a 12-year old to court when the 12-year old himself is the subject of the Court proceedings is something I really can't understand why any parent would do that and expose the child to it. And in fact we also know from this morning clarification that Mrs. Harrison and her husband have discussed the court case with [the Child]. Why Mr. Harrison would be involved in discussing that court case with [the Child] I don't know. But we also know from the clarification with regard to that, that Mr. Greene has not been. We also know that for the most part the parties simply don't communicate with each other.

* * *

It becomes obvious to me, especially when you hear the testimony about the visitation, and this is a bitter pill to swallow, but I have to play the cards that are dealt me and I explained to you what the appellate courts tell me to do. It is apparent to me that Miss Harrison would like [the Child] to spend as little time with Mr. Greene as possible. Everything points that

> way. Not overtly. She hasn't said that. But based on the testimony that we have heard . . . the parties here don't get along. They don't communicate. They don't cooperate. That is not in [the Child's] best interests.
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> ***
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> Financial status of the parties. We have already talked about that. The demands of parental employment. Well, they both work. The relationship between the child and each parent. That is a little bit rocky. The length of the separation of the parents. That is a long time. Potential disruption of the child's social and school life. He doesn't have any school life because he doesn't go to a regular school.

After assessing the various factors, the court granted Greene sole legal custody and primary physical custody; directed that the Child would be in Harrison's physical custody during the summer months, in Rehoboth, with Greene visiting once a week at times agreed upon by the parties; granted Harrison visitation on the first three weekends of the month during the school year; granted each parent telephone contact with the Child at least once each day between 7:00 p.m. and 7:30 p.m.; required Greene to notify Harrison of all medical appointments at least 48 hours in advance, except for medical emergencies; directed that Greene and Harrison both be listed as contacts when applicable; directed that each party be allowed to attend the Child's extracurricular activities when he is not in their custody; directed Greene to arrange for the Child to go to a licensed counselor specializing in childhood anxiety; directed that the Child have regular visits with a pediatrician; directed the parties not to disparage one another in front of the Child; ordered that Greene not consume alcoholic beverages while operating any motor vehicle in which the Child is a passenger; ordered that the Child be identified at all

times by the last name Greene; terminated Greene's child support obligation; and ordered Greene and Harrison to pay Rogers's attorney's fees.

The judgment was entered on July 22, 2015. Harrison noted a timely appeal on August 15, 2015.

We shall include additional facts as pertinent to the issues on appeal.

DISCUSSION

Standard of Review

We review a court's child custody determination "utilizing three interrelated standards of review." *Baldwin v. Baynard*, 215 Md. App. 82, 104 (2013).

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. 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.

Reichert v. Hornbeck, 210 Md. App. 282, 304 (2013) (alterations in original) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). "[A]n 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." *In re Andre J.*, 223 Md. App. 305, 323 (2015) (citations omitted; second alteration in original). Trial courts are awarded broad discretion in custody determinations "because only [the trial judge] sees the witnesses and parties, hears the testimony, and has the opportunity . . . to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Davis v. Davis*,

280 Md. 119, 125 (1977). Moreover, "[i]f there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Meyr v. Meyr*, 195 Md. App. 524, 545 (2010) (internal citations omitted).

With these principles in mind, we return to the instant appeal and the issues raised by Harrison.

I.

At trial, evidence was adduced that Greene scheduled a doctor's appointment for the Child two weeks in advance but then gave Harrison less than 24 hours' notice of the appointment. Harrison cross-examined Greene about a text-message exchange they had about that situation. Greene testified he had not informed Harrison about the doctor's appointment because he thought that, if he did, she would reschedule it. The document showing the text message exchange was moved into evidence.

In ruling that there was a material change in circumstances and that it was in the Child's best interest that his parents not have joint legal custody, the court noted that Harrison and Greene could not effectively communicate. The judge said:

> Now, this is an example. This is [a text-message] that was sent. Respondent's Exhibit Number 2. [The Child] has an appointment with an allergist tomorrow at 3 o'clock. The day before. To which [***Greene***] responds, "why are you only giving me 24 hours' notice?" Okay. There are tons and tons of examples of this all throughout the case.

(Emphasis added.) Actually, the text message showed that *Greene* (not Harrison) had scheduled the doctor's appointment without notifying *Harrison* until 24 hours in advance.

Harrison contends that this factual error by the court was the "cornerstone" of its finding of a material change in circumstances. She argues that the court abused its discretion by awarding sole legal and primary physical custody to Greene based on this factual error, and that, had the court not erred, it would not have changed legal and physical custody of the Child.

Greene counters that, although the court clearly erred, the error did not materially affect its custody determination. Greene citing *Lemley v. Lemley*, 109 Md. App. 620 (1996), argues that "[a] clearly erroneous factual finding which is not material does not affect the outcome of the case on appeal." *See id.* at 628–30.

We agree with Greene. Although the court erred by mistakenly attributing the late notice of a doctor's appointment to Harrison, instead of Greene, the text message was being used by the court as one example of the parties' inability to effectively communicate. As the court stated: "There are tons and tons of examples of this all throughout the case." Indeed, Ricklefs's testimony that Harrison had not cooperated in co-parenting further supports this conclusion.

> As it applies to major issues recently, the move to Rehoboth and the decision to take [the Child] out of his private school and home school, according to Mr. Greene he was not notified about either of those decisions, that those were just reported to him by Miss Harrison. Miss Harrison reported to me that she had spoken with Mr. Greene about these things and that he was in agreement with it. However, I did not see any documentation to that at all which in reviewing and going over the case surprised me because there are numerous e-mails that Miss Harrison has sent to Mr. Greene regarding information and changing things around or just getting information about [the Child]. There are quite a few e-mails. So I know that e-mail is a form of communication that she does use.

> But I saw no information regarding the home schooling issue or the decision to go ahead and stay in Rehoboth over the winter as opposed to returning to Fallston.

The court similarly noted that "the move to Delaware, the school issue; none of which were discussed with [Greene] before any of that happened," supported its determination that a material change had occurred. Any error in the court's misstatement with regard to the doctor's appointment was not material to its ultimate custody award and thus was harmless.

II.

It was undisputed that Harrison had unilaterally removed the Child from private school and enrolled him in home school. She acknowledged that she did not contact Greene and discuss home schooling the Child before she put the Child in a home school program.

Greene testified that he was not opposed to the concept of home schooling, but he objected to the CCS program because it was not approved by the MSBE and there was nothing to show it was in compliance with Delaware law. Ricklefs testified that, in the course of her evaluation, she called CCS, which did not return her call. Based on Harrison's telling her that CCS was approved by the Harford County Public School System, she contacted someone there who told her home schooling can be monitored by the Harford County Public School System or an "umbrella" program. When she had this conversation, she did not focus on the fact that the Child had moved to Delaware.

Harrison testified that her primary residence was in Fallston during the first half of the 2014-2015 school year, and CCS's home schooling program had been in Maryland for 20 years and was approved by the MSBE. The court found there was no doubt that the Child was living in Delaware and being home schooled there, and therefore the court needed to see evidence that the home schooling was being done "under the auspices of the rules of the State of Delaware." The court specified that for home schooling to continue, it had to see that the Child is in a home schooling program "approved by the State of Delaware, that there is a curriculum guide or curricula available, that there is some kind of progress monitoring of some kind."

In response, Harrison moved into evidence a typed curriculum that she created. On cross-examination, she acknowledged that she had not received any guidance in developing the curriculum, and that she had come up with it herself.

Harrison also introduced into evidence an application to the Delmarva Christian School ("DCS") that she completed on July 13, 2015—the first day of trial—for enrollment for the Child in the 2015-2016 school year. She testified that DCS had acquired a Delaware-approved home schooling program that would oversee the Child's upcoming school year. The court noted that the application was to attend the DCS campus and said nothing about home schooling. Harrison later provided the court with a document about the home school partnership. (The document was not moved into evidence.) The court noted that the document did not "provide verification to me and to

Mr. Greene about what I said, about the program being accredited, that there is some kind of measure of progress, that there is a curriculum guide or curricula guides."

In its final ruling, the court stated:

> I don't have any idea about how this program works. I'm not opposed to home schooling either. Don't take anything that I say as an attack on home schooling because it is not. It is that we are not left with any information, especially when the first time Miss Harrison intends to do anything about it is the first day of trial. Prior to that time how would we know whether there was even any plan? Maybe it was to send him back or try to use Harford County operation when he lives full-time in Delaware. That ain't going to work because any home schooling program has to be approved by the appropriate authorities. I'm not going to waive that. It is in his best interests. . . .

Harrison contends the court erred "by raising the issue of a lack of home school curriculum" after it had "accepted the evidence of a home school curriculum." Harrison maintains that Ricklefs's testimony showed that the CCS program was approved by the MSBE, and the curriculum she offered was approved by the MSBE. Harrison complains that the court completely ignored this evidence in making its factual findings. Harrison further maintains that the court abused its discretion by requiring her to show that the CCS program is accredited, arguing that "the court's focus on accreditation is arbitrary and inconsistent with the law." She cites the Code of Maryland Regulations ("COMAR") 13A, governing the Board of Education.

Greene counters that it was reasonable for the court to insist on evidence that the CCS program is accredited, and the evidence did not show that it was accredited in Maryland, and indeed showed the contrary. He points to CCS's own website, which Harrison acknowledged being familiar with, which states that "Diplomas issued by [CCS]

are not accredited by the [MSBE]." He asserts that the curriculum for CCS, which was moved into evidence, was rejected by the court because it lacked sufficient details about the program's supervision and curriculum. Moreover, Harrison failed to show that the program complied with Delaware law. The DCS application and information was equally deficient.

In an action tried without a jury, the trial court, as the fact finder, "receives and considers evidence on controverted issues of fact, assesses the credibility of the sources of the evidence, weighs the evidence, and, explicitly or implicitly makes findings of fact." *John Crane, Inc. v. Puller*, 169 Md. App. 1, 35 (2006). Here, the court considered the evidence Harrison produced and concluded that it did not establish that the CCS program was approved by the MSBE. As noted, CCS's own website made plain that its program was not approved by the MSBE. Moreover, the court found that the Child had been residing in Delaware, since January 2015, and Harrison had not produced evidence showing the Delaware home schooling requirements or that the CCS and DCS programs satisfied those requirements.[6] Thus, the court did not err in concluding there was no evidence to show that the Child's education complied with state regulations.

[6] In a post-judgment motion, Harrison provided two curriculum review sheets signed by a "Shelia Hooker," purportedly with the CCS, dated December 12, 2014, and May 28, 2015. She also produced a letter from the Harford County Public Schools dated September 23, 2014, acknowledging receipt of a Home Schooling Notification Form. These documents were not produced at trial and did not show that the program was approved in Delaware in any event.

It plainly is in the best interests of a child who is being home schooled for the schooling to be accredited. At the time of trial, the Child was living in Delaware, and Delaware law requires parents to adhere to specific guidelines in enrolling children in home school programs. *See* Del. Code Ann. tit. 14, § 2703A (defining home school programs as "Nonpublic Schools"); *see also* De. Dept. of Ed., *Nonpublic Schools*, Delaware.gov (2014), available at http://www.doe.k12.de.us/domain/191 (outlining the home school registration and curricula requirements). There was no evidence presented that these guidelines were met or that the CCS program was accredited in Delaware. Even if Maryland regulations applied, which they do not, the regulation that Harrison cites makes plain that the State has an interest in ensuring that "a child participating in a home instruction program is receiving regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age." COMAR 13A.10.01.01. The court did not abuse its discretion by considering the Child's education accreditation in making its custody award.

III.

Finally, Harrison contends the trial judge engaged in misconduct and displayed bias in favor of Greene. In support, she maintains that, with the court's encouragement, Greene abandoned his original theory of the case—that the Child's moving to Delaware and being home schooled were material changes in circumstances—and adopted the alternative argument that parental alienation was a material change in circumstances. She

also argues that the court's refusal to interview the child evidenced bias, as did the court's "[c]hoosing not to fully articulate its reasons in a written decision[.]"

There is no merit in any of these arguments. Greene alleged schooling issues and alienation issues in his petition to modify, before the trial ever took place. The decision to interview a child who is the subject of a custody proceeding is discretionary. *Karanikas v. Cartwright*, 209 Md. App. 571, 590 (2013) (citing *Marshall v.* Stefanides, 17 Md. App. 364, 369 (1973)). Even if the decision not to interview the Child was an abuse of discretion—and it *was not*—it was not misconduct. Finally, there was nothing whatsoever improper about the court's decision to rule orally from the bench instead of issuing a written opinion. A written opinion was not required, and the court adequately stated in its oral ruling the grounds for its decisions. The assertion of bias and misconduct are completely baseless.

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