Circuit Court for Montgomery County
Case No. C-15-FM-22-002447

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2052
September Term, 2024

&

No. 1783
September Term, 2025

ASHLEE SMITH TURNER

v.

BLAIR ABELLE-KISER

Wells, CJ.
Nazarian,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 28, 2026

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

This appeal arises from a custody dispute between appellant AshLee Smith Turner ("AST") and appellee Blair Abelle-Kiser ("BAK") over custody of their minor child, Z.[1] AST appeals from two orders of the Circuit Court for Montgomery County: the *first* modifying and establishing legal and physical custody and the *second* denying reconsideration of that custody order. She challenges the court's legal custody decision, and especially the decision to grant tiebreaking authority to BAK, the denial of AST's motion for reconsideration, and the decision to award attorney's fees to BAK. We affirm.

I. BACKGROUND

The members of this family have lived complicated and challenging lives in recent years. The circuit court record reflects the details, but for present purposes, and in the interest of protecting everyone's privacy as best we can, we recount only the portions relevant to the issues before us in this appeal.

The parties are parents to Z, a minor child. They married before they had Z and were granted a judgment of absolute divorce in June 2022. AST is cisgender, and BAK is transgender. After a series of cross-state moves by AST out of, then back into, Maryland, the parties were operating under an interim consent order for physical custody and access that they signed in May 2024. BAK then filed a petition to modify custody. The parties stipulated that there had been a material change in circumstances warranting modification

[1] We will refer to the parents by their initials and have selected the random initial "Z" for the child to protect everyone's privacy. We will use the singular "they" pronoun to refer to Z, but purely for privacy and neutrality. We mean no disrespect to anyone involved in this case and express no views on Z's gender identity.

and disagreed only on the terms of a new custody order. The court held a two-day hearing in which it took testimony from AST, BAK, AST's current spouse, BAK's current spouse, and a court evaluator. The court received into evidence various pieces of documentary evidence, including a report from the court evaluator. Among the facts raised during the modification hearing, the evaluator's report brought to the court's attention that Z had begun exploring their gender identity, had requested that they be referred to by a new name and pronouns, and that BAK had supported this exploration.

At the end of the hearing, the circuit court ruled from the bench and, on the record, made findings of fact, explained its reasoning, and applied the best interest factors in formulating a custody order. The court issued and entered a detailed written order memorializing the ruling soon after. In that order, the court awarded joint physical custody, child support, a portion of BAK's attorney's fees, and, most relevant to this appeal, joint legal custody with conditional tiebreaking authority vested in BAK.

AST filed a timely motion to reconsider. AST asked the circuit court to carve out the issue of Z's gender identity from BAK's tiebreaking authority and to reconsider its decision to award attorney's fees. The court first held a hearing on the motion in February 2025, continued that hearing to July, continued it again to September, then denied the motion. AST noted timely appeals from both the modification order and the denial of reconsideration.

We will supply additional facts as necessary below.

II. DISCUSSION

AST presents two questions in her brief that raise three substantive issues that we have rephrased as follows:

1. Did the circuit court abuse its discretion when setting legal custody?
2. Did the circuit court abuse its discretion denying the motion to reconsider?
3. Did the circuit court abuse its discretion awarding attorney's fees? [2]

We hold that the circuit court exercised its discretion properly in connection with all three issues. The court evaluated the relevant factors for legal custody, made factual findings that were supported by the record, and applied the factors reasonably to the facts.

[2] AST phrased the Questions Presented as:

- Whether it was an abuse of discretion for the custody court to award joint legal custody to divorced cisgender and transgender parents, subject to plenary final decision-making authority reserved to the transgender parent, in the absence of any explanation or mention on the record as to why it was in the best interests of the parties' prepubescent [child] to exclude [their] cisgender parent from sharing decision-making authority concerning [their] transgender parent's ongoing efforts to promote the child's adoption of [opposite] gender identification markers at school and other settings.
- Whether the custody court abused its discretion and/or otherwise erred in awarding attorney's fees in the absence of the predicate findings required under Family Law Article §12-103(b) and the relevant case law.

BAK phrased the Questions Presented as:

- Did the trial court act within its discretion when it awarded the parties joint legal custody with tiebreaking authority being vested in Ms. Abelle-Kiser?
- Did the trial court act within its discretion when it ordered the Appellant to contribute $25,000.00 to Ms. Abelle-Kiser's attorney's fees?
- Did the trial court act within its discretion when it denied the Appellant's Rule 2-535 motion?

The motion to reconsider, meanwhile, sought to expand the litigation significantly. And although the court found both parties had substantial justification in pursuing their positions, the court had an adequate record of the parties' finances to ground a discretionary award of attorney's fees under Maryland's statutory fee-shifting regime for family law matters.

First, we employ a three-part standard when reviewing custody decisions:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. If it appears that the [trial 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 [trial court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [trial court]'s decision should be disturbed only if there has been a clear abuse of discretion.

Davis v. Davis, 280 Md. 119, 125–26 (1977) (footnote omitted), *cert. denied*, 434 U.S. 939 (1977), *reh'g denied*, 434 U.S. 1025 (1978). An abuse of discretion occurs when a trial court acts beyond the bounds of minimally acceptable choices:

> An abuse of discretion arises when no reasonable person would take the view adopted by the [trial] court, when the court acts without reference to any guiding rules or principles, when the court's ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is violative of fact and logic, or when its decision is well removed from any center mark imagined by the reviewing court.

Jose v. Jose, 237 Md. App. 588, 598–99 (2018) (cleaned up) (citation omitted). *Second*, we review the denial of a motion to reconsider for an abuse of discretion. *Das v. Das*, 133 Md. App. 1, 15–16 (2000). *Finally*, we review an award of attorney's fees for an abuse of discretion as well. *David A. v. Karen S.*, 242 Md. App. 1, 23 (2019) (*citing Petrini v.*

Petrini, 336 Md. 453, 468 (1994)).

A. The Circuit Court Exercised Its Discretion Properly In Granting Joint Legal Custody With Qualified Tiebreaking Authority.

AST argues that the circuit court abused its discretion when setting legal custody. Specifically, she claims that the circuit court gave BAK "unilateral" and "plenary" power. She complains that because Z has begun exploring their gender identity, because BAK is trans, and because BAK has been supportive in that exploration, the circuit court abused its discretion by establishing legal custody as the court did. Importantly, AST does not challenge BAK having tiebreaking authority generally, but asks instead that the court carve gender identity-related parenting decisions out of the tiebreaker. She contends, in essence, that allowing a trans parent to have tiebreaking authority when a child has begun exploring their gender identity is inherently an abuse of discretion. We disagree.

"[I]n any child custody case, the paramount concern is the best interest of the child." *Taylor v. Taylor*, 306 Md. 290, 303 (1986). Legal custody refers to a parent's authority to make "long-range decisions" regarding things like education, health, and "other matters of major significance concerning the minor's life and welfare." Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 5-4(b), at 5-19 (7th ed. 2021) (footnotes omitted). Over the years, Maryland courts have assembled a non-exhaustive list of factors trial courts must consider in determining custody. *See Taylor*, 306 Md. at 304–11 (collating factors); *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977) (collating additional factors). Although custody courts must consider the factors and state their reasoning on the record, "the court need not articulate every step of the judicial thought

process in order to show that it has conducted the appropriate analysis." *Gizzo v. Gerstman*, 245 Md. App. 168, 195–96 (2020).

First, we disagree with AST's characterization that the circuit court granted BAK "unilateral" or "plenary" authority. It didn't. To the contrary, the circuit court granted joint legal custody with tiebreaker authority vested in BAK, then conditioned BAK's tiebreaker on two things: (1) good faith engagement with AST on the issue that reaches an impasse and (2) a mandatory two-hour mediation to try and resolve the disagreement. We have long endorsed tiebreakers as a way to facilitate joint custody, *see, e.g.*, *Shenk v. Shenk*, 159 Md. App. 548, 560–62 (2004), and have rejected any argument that tiebreaker authority is unilateral in nature: "[T]ie-breaking authority does not eliminate the voice of the parent without that authority. Rather, such measure[s] pragmatically reflect[] the need for *some* decision to be made *for the child* when parents themselves cannot agree." *Santo v. Santo*, 448 Md. 620, 634–35 (2016). The conditions on BAK's tiebreaker go well beyond the minimum set by our Supreme Court, *see id.* at 632–33 (exercise of tiebreaking authority requires good faith engagement first), by adding mandatory mediation. The additional process may slow decision-making and, if the parents disagree, add cost. But these conditions defeat any notion that BAK's tiebreaker operates unilaterally, even in the context of parents who disagree.

Second, we see no legal error or clear factual error in the court's custody decision, nor an abuse of discretion in its final formulation. Although not required to perform a rote checklist of the required factors, *see Gizzo*, 245 Md. App. at 196, the court devoted

considerable time elaborating on its rationale from the bench—the explanation and ruling consumed fifteen pages of transcript. The circuit court considered all the custody factors and explained on the record how it applied each to reach its conclusion. *See Taylor*, 306 Md. at 304–11, *and Sanders*, 38 Md. App. at 420 (best interest factors). Although the court expressed hope at one point that the parties wouldn't end up mired in conflict over parenting decisions, the court's decision to award joint custody with this conditional tiebreaker reflects the reality that the parents might disagree, and the court created a mechanism that keeps everyone involved while allowing decisions to get made. This decision represented a well- and deeply-considered exercise of the court's custody discretion.

Finally, the circuit court didn't abuse its discretion in deciding not to separate decisions relating to gender identity from the rest of the custody structure. The court had the opportunity to consider the testimony of AST, BAK, BAK's current wife, AST's current husband, and the court evaluator. The court received various documents admitted into evidence, including the court evaluator's report. AST relies most heavily on the evaluator's report on appeal, but the court was entitled to, and did, give that report the weight it thought best, and in any event the report's conclusions weren't so one-sided as to undermine the ruling. It may be that the evaluator suspects that BAK might have allowed a quicker progression of Z's gender exploration than AST would, and perhaps that they were moving too quickly. But in the same breath, the report criticizes AST for moving too quickly to integrate her new husband into Z's life. The custody plan ordered by the court

recognizes the complexities and fluidity of parenting and retains the opportunity and incentives for the parents to work together to make all the decisions Z will need them to make.

Moreover, the court evaluator interviewed multiple therapists, including those treating Z. As the evaluator noted, "[b]y all accounts, [Z] made [the decision to explore their gender identity] independently." And Z's therapist "recommended that the parties follow [Z]'s lead in terms of using [their] preferred pronouns and whatever name [they] wanted to be called on a daily basis." The report never suggests that supporting Z in their gender exploration is not in their best interest. Indeed, at least according to their therapist, *supporting* Z's gender identity formation and exploration is affirmatively in their best interest. The circuit court considered and weighed the report appropriately, and well within its considerable discretion, in establishing custody.

Although not in so many words, we sense from AST's arguments on appeal that she would prefer a rule that a transgender parent should not be awarded tiebreaking authority over a cisgender parent on matters of gender identity and expression. AST has not identified, and cannot identify, any individual or specific reason why BAK is unfit or less qualified to exercise tiebreaking authority on these issues than she is, nor has she challenged the tiebreaker in any other dimension. But although our courts no longer recognize the law/equity distinction of old, custody decisions are quintessentially equitable in nature and not an appropriate setting for *per se* rules—especially *per se* rules that could be grounded in stereotypes, prejudice, and the like. *Cf. Royall v. Dicks*, ___ Md. App. ___,

No. 597, Sept. Term 2024 (filed April 3, 2026) (rejecting argument that false statements about sexual orientation are defamatory *per se*). We affirm the circuit court's decision to award joint custody with a conditional tiebreaker in favor of BAK.[3]

B. The Circuit Court Denied The Motion To Reconsider Reasonably.

AST also contends that the circuit court abused its discretion in denying her motion to reconsider under Maryland Rule 2-535. We see no abuse of discretion here either.

Under Rule 2-535, "[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534." Md. Rule 2-535(a). Under Rule 2-534, ". . . the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment." But "a post-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better in hindsight," *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484

[3] After oral argument, AST filed a "Rule 8-502(e)(1) Notice of Supplemental Citation to 'Rule 9-205.1 – Appointment of Child's Attorney.'" In that filing, she argues for the first time that we should remand the case to the circuit court "with a directive to appoint a best interest attorney with an opportunity for discovery, but with an expedited date for an evidentiary hearing to consider the appropriateness of including a tiebreaking provision in the custody order." Although it purports to respond to a question from this Court at oral argument, this is not an appropriate use of the Notice of Supplemental Citation rule. Indeed, Maryland Rule 8-502(e) does not allow for new argument that requests relief not previously requested in briefs, *i.e.*, a directive to appoint a best interest attorney. We will, therefore, strike this filing on our own motion.

(2002), and "[l]osers do not enjoy *carte blanche* . . . to replay the game as a matter of right." *Id*. In fact, "[w]ith respect to the denial of [post-trial motions], . . . the discretion of the trial judge is more than broad; it is virtually without limit." *Id*.

AST's motion sought exactly such a do-over. The evidence admitted at trial exposed more than adequately the parties' disputes over Z exploring their gender identity, between the witnesses' testimony and the court evaluator's report. AST had every opportunity to proffer or examine an expert or put on any relevant testimony or evidence she wanted during the original trial but didn't. And the issue barely registered in her closing argument. Moreover, as the circuit court found distressing at the last reconsideration motion hearing, this motion had ballooned into a request to put on six to ten witnesses offered by AST, a late-disclosed expert trying to testify remotely from California (whom BAK moved *in limine* to exclude), and more, all in a half-day hearing. At that point, we could imagine a party arguing that it was more unreasonable to *grant* the motion than to deny it. Perhaps AST realized after the final order issued that she should have put on a stronger or different position on legal custody as it pertained to Z's gender identity, but a post-judgment motion is not an opportunity to try again with more evidence. The circuit court's well-considered decisions were supported by a sound record, and the court was well within its discretion to deny a motion to try again. *Id*. AST is free, of course, to seek a modification of custody if circumstances change materially and if a different arrangement would serve Z's best interests. But that is a different question for another time and would require an appropriate

record.[4]

C. The Circuit Court Exercised Its Discretion Properly In Granting Attorney's Fees.

Finally, AST challenges the circuit court's decision to award BAK a portion of her attorney's fees. AST's attack is two-pronged: *first*, she challenges whether a circuit court has discretion to award fees when it finds that both parties were substantially justified in pursuing their legal positions, absent "compelling evidence of substantial asymmetry in the parties' financial status and/or needs"; and *second*, she asserts that without an official long-form financial statement for BAK, the circuit court lacked adequate evidence to rely on when evaluating the discretionary factors. We agree with the circuit court on both arguments.

Section 12-103 of the Family Law Article establishes a fee-shifting regime for custody cases. Md. Code (1999, 2019 Repl. Vol.), § 12-103 of the Family Law Article ("FL"). The decision to award fees is discretionary, FL § 12-103(a) ("The court *may* award to either party . . . costs and counsel fees . . . .") (emphasis added), but "[b]efore a court

[4] This may well be where the family is headed. Not only does AST disagree with the legal custody decision, her opening brief on appeal states that she wants to re-open *physical* custody as well:

> Finally, given the apparent relationship (i.e., cause and effect) between [Z]'s full time residence with [BAK] and the gender identification issues having likely arisen from it, enhanced by the lack of any meaningful counterbalance under a six night per month access schedule afforded [AST], should the matter be remanded, Appellant asks that the custody court be directed and authorized to reconsider not merely [BAK]'s plenary tiebreaking authority, but all interrelated custody issues, including physical access.

may award costs and counsel fees . . . the court shall consider: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b).

AST contends *first* that courts cannot award fees when they find both parties' positions were substantially justified. According to *Davis v. Petito*, 425 Md. 191 (2012), though, the issue is not so binary:

> Essentially, substantial justification, under . . . subsection[] (b) . . . of Section 12-103 relates solely to the merits of the case against which the judge must assess whether each party's position was reasonable. A judge, after finding substantial justification, then must proceed to review the reasonableness of the attorney's fees, and the financial status and needs of each party before ordering an award under Section 12-103(b).
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> * * *
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> The only time that the relative amounts of the parties' attorneys' fees should be considered is when both are determined to have a substantial justification for their positions[.]

Id. at 204, 206 (footnote omitted). *Davis* instructs that the statute allows for awards of fees even when both parties were substantially justified in their positions, which makes sense—the statute's text does not indicate whether any of the three factors are given dispositive or heavier weight than the other two. *Id.* at 206; FL § 12-103(b). The court should consider the relative amounts of fees when both sides' positions are justified, but shouldn't dismiss a fee request altogether.

As to the *second* prong of her attack, AST doesn't cite, and we haven't found, any authority for the black-and-white proposition that a long-form financial statement is strictly required in order to assess ". . . the financial status of each party . . . [and] the needs of each

party . . . .” FL § 12-103(b). And we decline the invitation to hold as much here. To the extent that AST argues further that the circuit court had insufficient evidence to determine the financial status and needs of each party, we disagree there as well. As the circuit court noted from the bench, it did have before it evidence of the parties’ finances, including BAK’s testimony about her financial situation:

> Looking at the financial conditions of the parties, I did take note of the testimony from [BAK] about, first of all, how much she’s incurred in attorney’s fees. She’s, essentially, gone into debt. She testified that her savings are tapped out, her wife's savings have been used, she took money out of her retirement account, and used her credit cards heavily to try to pay the mounting legal expenses in this action.

The circuit court, as the finder of fact, was free to give BAK’s financial testimony as little or as much weight as it found appropriate. Testimony is as much evidence as financial documents are. We’re satisfied, as was the circuit court, that there was enough there to support adequately any underlying factual findings, and therefore that the circuit court had enough evidence to weigh the statutory factors guiding its discretion to award fees.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.