Circuit Court for Prince George's County
Case Nos. CADV10-08605 & CADV19-37307

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2103 & 2104

September Term, 2019

TANYA MAJIED

v.

ROBERT ANDERSON

Fader, C.J.,
Arthur,
Gould,

JJ.

Opinion by Fader, C.J.

Filed: June 12, 2020

The appellant, Tanya Majied, brought these consolidated appeals to challenge two orders issued by the Circuit Court for Prince George's County in favor of Robert Anderson, her former husband and the appellee.

In Appeal No. 2104, which we will refer to as the "Custody Appeal," Ms. Majied challenges the circuit court's order granting Mr. Anderson's motion to modify custody and granting him sole legal and physical custody of the parties' two minor children. Ms. Majied argues that the court erred in its award because Mr. Anderson sought only joint or primary physical custody of the children in his motion, and not sole legal or sole physical custody. Although the circuit court used the word "sole" in connection with its award of physical custody, it actually awarded primary physical custody to Mr. Anderson, with access to Ms. Majied. We discern no abuse of discretion in that determination generally, although we will remand for clarification regarding the court's award of summer access. We will, however, vacate the circuit court's order of sole legal custody to Mr. Anderson, and remand to permit the court to expressly consider all relevant factors and to explain its legal custody determination.

In Appeal No. 2103, which we will refer to as the "Protective Order Appeal," Ms. Majied argues that the circuit court erred in denying her request for a temporary protective order against Mr. Anderson. We decline to consider this issue, as it is moot.

BACKGROUND

The 2010 Consent Order

Ms. Majied and Mr. Anderson were married from 2003 to 2010. They had two children together during the marriage: a daughter, A., and a son, S. (together, "the

children"). At the time of the proceedings relevant to these appeals, A. was 12 years old, and S. was 11 years old.[1]

In September 2010, the Circuit Court for Prince George's County entered a consent custody and visitation order that awarded Ms. Majied sole legal and primary physical custody of the children, and granted Mr. Anderson access to the children, including alternating weekends, holidays, and four weeks each summer. The custody order was incorporated, but not merged, into the judgment of absolute divorce in November 2010. The custody order remained in place without change until 2019.

Ms. Majied Relocates the Children to Texas

In 2012 or 2013, Ms. Majied began a romantic relationship with Hasad Majied, and the two were married in 2018. At some point, the couple began discussing with each other a move to Houston, Texas. In April 2019, Mr. Anderson learned from one of the children that the Majieds were planning to move to Houston and intended to take the children with them. In August 2019, the Majieds purchased a home in Houston and relocated the children there. The children started school in Houston shortly thereafter.

The Motion for Modification of Custody

On May 6, 2019, shortly after learning of the impending move, Mr. Anderson filed a motion for modification of custody. In the motion, he alleged that Ms. Majied's plan to move the children to Houston and alter his access schedule constituted a material change in circumstances. He further alleged that he "has been an active father," and that the

[1] A. and S. are Mr. Anderson's only children. Ms. Majied has two other adult children.

children "have established friends and activities in Maryland." In his prayer for relief, he requested: (1) "That the court modif[y] the current agreement and award him shared and or primary custody of the minor children"; and (2) "That [Ms. Majied be] enjoined from relocat[ing] the minor children outside of the state of Maryland."

In June 2019, Ms. Majied filed a response to Mr. Anderson's motion in which she stated that "the relocation to Texas [wa]s necessitated by [Mr. Majied's] employment." Ms. Majied's response also stated that she planned on moving in July 2019 and that she "ha[d] reached out to [Mr. Anderson] to negotiate a revised access schedule." Ms. Majied asked that Mr. Anderson's motion be dismissed.

In July 2019, Ms. Majied filed a countermotion for modification of Mr. Anderson's visitation schedule. She alleged that her impending move to Houston "for work related reasons which will make the current visitation schedule untenable" constituted a "change in circumstances material to the minor children's welfare which necessitates a change in the visitation schedule." Ms. Majied asked the court to modify the existing visitation schedule to eliminate Mr. Anderson's access to the children on alternating weekends and replace it with additional holiday and summer access. She asserted that her proposed revised access schedule would leave Mr. Anderson with the same total number of days of visitation with the children.

The Custody Modification Hearing

On September 3, 2019, the court held a one-day evidentiary hearing on the motions for modification. The court first interviewed the children outside the presence of the

parties. The court reported that the children had said that while in Maryland they saw Mr. Anderson every other weekend, and that in Texas, they communicated with him every day by phone, text, and video chat. A. also told the court that their move to Texas was "excit[ing]," but that it was "[m]ore nerve-wracking" to leave friends and her school in Maryland. S. stated that he missed his friends and school in Maryland and was "[v]ery sad" that he could not see his father while residing in Texas. Neither child stated a preference to live with one parent over the other.

The court then heard testimony from several witnesses, including Mr. Majied, Ms. Majied, and Mr. Anderson. Mr. Majied testified that the family had decided to move to Texas because the company for which he previously worked had been sold and he had "received a job offer from Radio One of Houston," where he would "be starting within the next three weeks." He also testified, however, that as of the date of the hearing, he was still in "the interview process" with Radio One, he had not been "give[n] the okay" to start there, and it was possible that he would not start that position within the next three weeks. He acknowledged that he had "never had [a] conversation with [Mr. Anderson]" about the relocation.

Ms. Majied testified about her parenting of the children generally, including their education and the extracurricular activities that she had enrolled them in before relocating. Since moving to Texas, the children had made new friends and had enrolled in school. Ms. Majied stated that she moved to Houston "[b]ecause of the opportunities" there and, in particular, that she was "supporting [Mr. Majied's] dream and his business." As for her

own employment, Ms. Majied testified that before relocating she worked as a senior director for workforce development for Goodwill Industries of Greater Washington. She resigned that position upon moving, but was currently working remotely to facilitate the transition, and hoped to obtain a position with Goodwill in Houston in the near future. Ms. Majied testified that she was fully able to support the children without needing to depend on anyone.

Mr. Anderson testified that he works as an IT technician and also teaches television production at the school the children attended in Maryland. He cooks for the children, teaches them life skills and computer skills, studies world religions with them, and works with them on technology projects. He worried about the lack of a support system for the children in Texas, in contrast to Maryland. Mr. Anderson acknowledged on cross-examination that he had disciplined both of the children by "spank[ing] . . . [with] one hand," and that he had spanked them "maybe five times in their entire life." Mr. Anderson's request of the court was for "full custody of the children."

The Court's Modification of Custody

At the end of the hearing, the court issued an oral ruling. Agreeing with both parties, the court found that the relocation to Texas constituted a material change in circumstances. The court concluded that the 2010 custody order only works "if the parties [lived] in close proximity to one another," which was no longer the case. The court then made a number of findings that it treated as equally favorable to both parents, including: (1) both Ms. Majied and Mr. Anderson were fit parents; (2) the children loved and were loved by both

parents; (3) there was no concern with the children's health or well-being in either household; (4) adaptability was not a concern, as Ms. Majied had been caring for the children for years and Mr. Anderson "ha[d] been a very involved parent" and "seems to be very passionate when he is talking about his children."

The court stated that its biggest concern was for the children's stability, and in that regard the "biggest issue . . . was just the way that [the relocation to Texas] was handled and taking away Dad's relationship with the children." The court explained that it had heard no testimony "about why the kids needed to move" and that the move involved "no conversation about the children whatsoever." Indeed, the court observed, the children expressed "more sadness . . . about moving than . . . excitement." The court discredited Mr. Majied's testimony about his employment status as "a lot of double talk" and found that neither he nor Ms. Majied had supplied any "concrete evidence" that their job opportunities in Texas were "going to come to fruition at any point in time." The court concluded that the children "have just kind of been uprooted and have been moved down there [to Texas] with no real plans at this point," and that living in Maryland with Mr. Anderson would provide them more stability.

Based on these findings, the court announced that it would "modify the order to give [Mr. Anderson] sole legal and physical custody." The court did not impose an access schedule at that time, but directed the parties to discuss that subject after the hearing. The parties were unable to come to an agreement.

In a written order signed on November 26 and entered on December 6, more than two months after the hearing, the court granted Mr. Anderson's motion to modify and denied Ms. Majied's countermotion. The court's order, among other things, awarded "sole legal and physical custody" of the children to Mr. Anderson; ordered that Ms. Majied would have "reasonable access" to the children, including on specified holidays; ordered that both parties "shall have full access to all records pertaining to the children," including school and medical records; and directed the parties to "consult one another on any non-emergency medical procedures." With respect to summer access, the order provides that "[Ms. Majied] shall be entitled to four (4) weeks during the children's summer vacation in even years; and [Mr. Anderson] shall have the minor children for four (4) weeks during the children's summer break in odd years." The order does not state expressly what would happen during the other weeks of the summer, nor during the children's spring or winter breaks.

Ms. Majied timely appealed.

The Petition for a Temporary Protective Order

After the court's announcement of its custody decision at the conclusion of the September 3 hearing, and while awaiting a final judgment that could be appealed, Ms. Majied filed several motions, including a motion to alter or amend the judgment, a motion to appoint a best interest attorney for the children, a motion for sanctions against Mr. Anderson's counsel, a supplemental motion to alter or amend the judgment, and two motions to recuse the motions judge. All of those motions were denied, and none are at

issue on appeal. In addition, on November 25, Ms. Majied filed a pro se petition in the circuit court (1) seeking a temporary protective order on behalf of A., and (2) requesting custody of the children. During a hearing that occurred the same day, before the same motions judge, Ms. Majied alleged that A. had called her and told her that during an argument, Mr. Anderson had "pinned [A.] against the wall and scared her." Ms. Majied pleaded for the court to "hear from [the children] again" with respect to custody. The court denied the request for a temporary protective order on the ground that Ms. Majied had not met the required burden of proof to show abuse.

Ms. Majied timely appealed. For purposes of this opinion, we have consolidated that appeal with Ms. Majied's appeal of the custody modification order.

DISCUSSION

"When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). We review a circuit court's child custody determination for abuse of discretion. *In re Yve S.*, 373 Md. 551, 586 (2003); *Petrini v. Petrini*, 336 Md. 453, 470 (1994). A trial court abuses its discretion when its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons," *Levitas v. Christian*, 454 Md. 233, 243 (2017) (emphasis removed) (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring*, 418 Md. 231, 241 (2011)), or when it "acts 'without reference to any guiding rules or principles,'"

Santo v. Santo, 448 Md. 620, 626 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). "If there is any competent evidence to support the factual findings" of the circuit court, then "those findings cannot be held to be clearly erroneous." *Omayaka v. Omayaka*, 417 Md. 643, 652-53 (2011) (quoting *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002)). We review without deference the trial court's rulings as to matters of law. *See Jackson v. Sollie*, 449 Md. 165, 173-74 (2016).

I. THE CIRCUIT COURT DID NOT ERR OR ABUSE ITS DISCRETION IN GRANTING A MODIFICATION OF CUSTODY THAT AWARDED MR. ANDERSON PRIMARY PHYSICAL CUSTODY OF THE CHILDREN.

Ms. Majied's primary argument on appeal is that the circuit court's custody award must be reversed because it exceeded the relief Mr. Anderson sought in his motion for modification. She asserts that the grant of "sole" physical and legal custody went "outside the pleadings" and "was an error of law" because Mr. Anderson asked only for "shared or primary custody of the minor children." Mr. Anderson responds that Ms. Majied was "fully aware . . . of the court's authority" to change the custody arrangement and that the court did not abuse its discretion in its custody modification.

A. The Circuit Court Did Not Grant Mr. Anderson "Sole" Physical Custody of the Children or Deny Ms. Majied Access to the Children.

Before reviewing the court's custody determination, we first must resolve some confusion attendant to the use of the term "sole" as it concerns physical custody. Ms. Majied complains that the court awarded Mr. Anderson "sole custody" even though he had only requested "shared or primary custody" of the children in his motion. As set forth in the December 6 order, however, the court actually awarded Mr. Anderson primary

physical custody of the children.[2] The court's order expressly provides Ms. Majied with "reasonable access" to the children, including but not necessarily limited to certain holidays and—we think—for several weeks each summer. Thus, the premise of Ms. Majied's argument that the court awarded Mr. Anderson "100%" physical custody of the children is inaccurate.

With respect to physical custody, the term "sole custody" is used in the context of determining child support obligations. In a custody arrangement in which "each parent keeps the child or children overnight for more than 35% of the year," the child support guidelines give each parent credit against his or her child support obligation for the percentage of time the children spend with that parent. Md. Code Ann., Fam. Law §§ 12-201(n)(1) & 12-204(m)(1)-(3) (2019 Repl.). Such an arrangement is defined by statute as "shared physical custody" for child support purposes. *Id.* § 12-201(n)(1). Conversely, a parent with whom the children spend less than 35% of the year does not get any such credit. *Id.* § 12-204(l)(3). In that circumstance, the other party is deemed to have "sole" custody, but only for purposes of the child support guidelines. *See, e.g.*, *In re Joshua W.*, 94 Md. App. 486, 497 & n.4 (1993).

[2] When the court announced its custody decision on September 3, it did not provide any access to Ms. Majied. As a result, it appears that during the two-month period before entry of the December 6 order, Mr. Anderson did have sole physical custody of the children, at least legally. Although we do not know what access may have occurred "on the ground" during that time, Ms. Majied should not have been denied legal access to the children for more than two months, when all that remained to be done was the drafting of an order implementing the court's ruling. If more time was needed to fashion a final written custody order, then the court could have imposed an interim order that did not deny Ms. Majied all access to the children.

In the context of child custody more generally—not specific to child support guidelines—"'[p]hysical custody . . . means the right and obligation to provide a home for the child and to make' daily decisions as necessary while the child is under that parent's care and control." *Santo*, 448 Md. at 627 (quoting *Taylor v. Taylor*, 306 Md. 290, 296 (1986)); *see Black's Law Dictionary*, "physical custody" (11th ed. 2019) (defining physical custody as "[t]he right to have the child live with the person awarded custody by the court"). In "joint custody" arrangements, "the parents will share or divide custody of the child, but not necessarily 'on a 50/50 basis.'" *Santo*, 448 Md. at 627 (quoting *Taylor*, 306 Md. at 297; Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 5-4(c) (6th ed. 2016) ("'Joint physical' custody (shared parenting time) is, in reality, divided or shared custody, with the child in the physical custody of each parent for periods of time that may or may not be on a 50/50 basis."). The parent with whom a child spends a majority, but not all, of his or her time has "primary physical custody" of the child. *See Reichert v. Hornbeck*, 210 Md. App. 282, 345 (2013) (characterizing "primary physical custody" as one parent having "physical custody and care of the child for more than one-half of the calendar year").

Here, in spite of its use of the word "sole," the court awarded Mr. Anderson primary physical custody of the children, with Ms. Majied having access for what amounts to several weeks each year. *See Taylor*, 306 Md. at 297 ("[A] determination . . . to allocate physical custody between the parents may be accomplished . . . by granting legal custody to one parent and specified periods of physical custody to each parent."). Contrary to

Ms. Majied's argument, that is not at all inconsistent with the request Mr. Anderson made in his motion for "shared and or primary custody of the minor children," or his request at the hearing "for full custody of the children." Moreover, "[w]ith respect to a circuit court's authority in child custody cases, 'the power of the court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child.'"[3] *Santo*, 448 Md. at 627 (quoting *Taylor*, 306 Md. at 301-02).

B. The Court Did Not Abuse Its Discretion in Its Modification of Physical Custody.

We next consider whether the court abused its discretion in awarding primary physical custody to Mr. Anderson, with access to Ms. Majied. In determining whether a modification of custody is warranted, the circuit court "must engage in a two-step analysis." *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). "First, the circuit court must assess whether there has been a 'material' change in circumstance." *Id.* (quoting *McMahon v. Piazze*, 162 Md. App. 558, 594 (2005)). "In [the custody modification context], the term 'material'" means "a change that may affect the welfare of a child." *Gillespie*, 206 Md. App. at 171 (quoting *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996)). If no such material change has occurred, "the court's inquiry must cease." *Braun v.*

[3] Ms. Majied also complains that the circuit court failed to expressly consider her countermotion for modification of visitation because it did not mention that motion during the hearing. We find no merit in that contention. The subject of both motions was custody and visitation for the children going forward, which was also the entire subject of the hearing. Ms. Majied had the opportunity at the hearing to put on any evidence she wanted that was relevant to custody and visitation, and to make whatever arguments she felt were appropriate. There is no indication that the court failed to consider any of that evidence or those arguments and, in its December 6 custody order, the court denied Ms. Majied's countermotion at the same time it granted Mr. Anderson's motion.

Headley, 131 Md. App. 588, 610 (2000). If the court finds that there has been a material change in circumstances, "the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody." *Gillespie*, 206 Md. App. at 170 (quoting *McMahon*, 162 Md. App. at 594).

Here, both parties filed motions for modification that expressly pleaded that Ms. Majied's move to Texas with the children constituted a material change of circumstances. The circuit court agreed, as do we. Even if Ms. Majied could be permitted to retreat from her agreement on this point before the circuit court, we would find no abuse of discretion in the circuit court's finding that the 2010 custody arrangement was premised on the parties living in close proximity and, therefore, that Ms. Majied's move to Texas constituted a material change in circumstances. *See Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008) ("The burden is [] on the moving party to show that there has been a material change in circumstances since the entry of the [last] custody order and that it is now in the best interest of the child for custody to be changed.").

Once a material change in circumstances has been established, a trial court makes a custody determination "as if it were an original custody proceeding." *Braun*, 131 Md. App. at 610 (quoting *Wagner*, 109 Md. App. at 28). In such a proceeding, a court must consider the best interest of the child "on a case-by-case basis." *Petrini*, 336 Md. at 468-69; *see also Montgomery County Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 419 (1977). Because the best interest standard varies with each individual case, *see Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503 (1992), the court must predict the custody

arrangement best suited to the children's needs, *Karanikas v. Cartwright*, 209 Md. App. 571, 589-90 (2013) (observing that "[t]he best interest standard is an amorphous notion").

Although "[c]ourts are not limited or bound to consideration of any exhaustive list of factors in applying the best interest standard," *Reichert*, 210 Md. App. at 305 (quoting *Bienenfeld*, 91 Md. App. at 503), our courts have identified several factors that a court may consider in making a custody decision. One such formulation is:

> [A]mong other things, the fitness of the persons seeking custody, the adaptability of the prospective custodian to the task, the age, sex and health of the child, the physical, spiritual and moral well-being of the child, the environment and surroundings in which the child will be reared, the influences likely to be exerted on the child, and, if he or she is old enough to make a rational[] choice, the preference of the child.

Reichert, 210 Md. App. at 305 (quoting *Wagner*, 109 Md. App. at 39); *see Hild v. Hild*, 221 Md. 349, 357 (1960); *see also Gillespie*, 206 Md. App. at 173. Another formulation identifies the following non-exclusive considerations: (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 applying these factors, the court must "evaluate the child's life chances in each of the homes competing for custody and then [] predict with whom the child will be better off in the future." *Karanikas*, 209 Md. App. at 589-90 (quoting *Sanders*, 38 Md. App. at 419).

In this case, the circuit court discussed many of these factors expressly and applied the testimony elicited at the hearing in evaluating each factor. Based on the evidence, the court found that the children "appeared to be well-cared for," that both parents were "fit to take care of the children," and that both households were sufficient. The court deemed the stability of the children to be the "biggest issue" in its custody decision. *See McCready v. McCready*, 323 Md. 476, 482 (1991) (stating that "in the 'best interest' determination, [] the question of stability is . . . an important factor, to be considered"). In evaluating the parties' ability to provide stability to the children, the court focused primarily on Ms. Majied's decision to uproot the children from their lives in Maryland—and remove them from regular contact with Mr. Anderson—for reasons unrelated to the children; without consulting Mr. Anderson; and, the court found, without concrete plans in Houston. In contrast to the uncertainty the court perceived regarding the children's situation in Houston, and in spite of the need to change schools even if they were to stay in Maryland, the court believed that the children would be able to maintain more consistent routines in Maryland under Mr. Anderson's care.

"It is within the sound discretion of the trial court to award custody according to the exigencies of each case," *Gillespie*, 206 Md. App. at 171 (quoting *In re Yve S.*, 373 Md. at 585-86), particularly "because only [the trial court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child," *id.*; *see also Braun*, 131 Md. App. at 596-97 (because the trial court has the "opportunity to observe the demeanor and credibility of both the parties and the witnesses," "[t]he determination of which parent

should be awarded custody rests within the sound discretion of the trial court").[4] Given the record before us and the substantial deference we afford to the circuit court, we do not discern any abuse of discretion in its decision to grant primary physical custody to Mr. Anderson, with reasonable access to Ms. Majied.[5]

C. We Remand for Clarification of the Provision of the Court's Order Pertaining to the Parties' Summer Access.

Although the court did not abuse its discretion in awarding primary physical custody to Mr. Anderson generally, we will remand the Custody Appeal with instructions for the court to clarify its order regarding summer access. The order stated the following with respect to summer access:

[4] In reviewing another case in which a trial court was called upon to balance the stability of children staying under the "custody . . . [of] the primary caretaker" against the stability of "remain[ing] in an area where they have always lived," the Court of Appeals determined that the issue "cannot be determined as a matter of law." *Dominguez v. Johnson*, 323 Md. 486, 502-03 (1991).

[5] Ms. Majied also argues that the circuit court made various erroneous factual findings. Most of those allegedly erroneous findings relate to her and Mr. Majied's financial circumstances in Houston. As an initial matter, we think Ms. Majied misconstrues the role the findings played in the circuit court's analysis, in which it expressed concern less about the children's economic security in Houston and more about Ms. Majied's decision to uproot the children from Maryland for reasons unrelated to the children and without a concrete plan for their lives in Houston. To that extent, based on the evidence presented at the hearing, the court's findings were not clearly erroneous. Moreover, to the extent Ms. Majied challenges the court's acceptance of Mr. Anderson's testimony over hers and that of Mr. Majied, it is not our role to re-weigh the evidence before the trial court or come to a different conclusion regarding the credibility of the witnesses. *Keys v. Keys*, 93 Md. App. 677, 688 (1992) ("[E]specially in the arena of marital disputes where notoriously the parties are not in agreement as to the facts, . . . we must be cognizant of the court's position to assess the credibility and demeanor of each witness."). We discern no clear error in the findings underlying the court's decision to award primary physical custody to Mr. Anderson.

> **ORDERED**, that [Ms. Majied] shall be entitled to four (4) weeks during the children's summer vacation in even years; and [Mr. Anderson] shall have the minor children for four (4) weeks during the children's summer break in odd years.

The order does not state what access Ms. Majied would have in odd years or Mr. Anderson in even years. It became apparent at oral argument that the parties have been operating under different interpretations of what the court intended in this paragraph. Mr. Anderson interprets the order as providing (by implication) the balance of the summer—beyond the "four weeks" afforded expressly to each parent—to the other parent. Ms. Majied interprets the order as providing her with no access at all to the children in odd year summers, given that the default custody status under the order is with Mr. Anderson. We think that Mr. Anderson's interpretation is more reasonable, given the absence of any indication in the court's oral or written rulings of an intent to deprive Ms. Majied of all summer access to the children and the absence of any findings of fact that would support such a drastic result. We nonetheless agree that the provision is ambiguous and, therefore, will remand for clarification.[6] We will also expedite the issuance of our mandate, and instruct the circuit

[6] It is possible that the summer access provision originated from the summer access provision in the 2010 custody order. That order provided Mr. Anderson with four weeks of access each summer, two in June and two in July. If the parties disagreed as to which specific weeks Mr. Anderson would get, Mr. Anderson's preference would prevail in odd years and Ms. Majied's preference would prevail in even years. That issue of *which* specific weeks each party gets is, of course, different from the issue of *how many* weeks the non-custodial parent gets. In any event, the court should specify on remand both how many weeks of access Ms. Majied will have each summer and how the parties may determine which weeks they are.

Of course, in light of Mr. Anderson's stated interpretation of the summer access provisions of the court's order, the parties may themselves be able to come to a resolution to propose to the court on remand.

court to address this issue on remand as promptly as reasonably possible, in light of the fact that summer has already arrived.

II. THE CIRCUIT COURT'S AWARD OF LEGAL CUSTODY MUST BE VACATED BECAUSE THE COURT DID NOT ARTICULATE ITS RATIONALE FOR ITS AWARD OF SOLE LEGAL CUSTODY.

Although we affirm the circuit court's award of primary physical custody (subject to clarification of summer access) we will vacate the court's award of sole legal custody to Mr. Anderson and instruct the circuit court on remand to consider all relevant factors, enter a new award of legal custody, and explain its rationale for that new award. The court should specifically address whether it considered an award of joint legal custody to the parties—with or without tiebreaking authority to one party—in accordance with the Court of Appeals's decisions in *Taylor v. Taylor*, 306 Md. 290 (1986), and *Santo v. Santo*, 488 Md. 620 (2016).

In contrast to physical custody, "'[l]egal custody carries with it the right and obligation to make long range decisions' that significantly affect a child's life, such as education or religious training." *Santo*, 448 Md. at 627 (quoting *Taylor*, 306 Md. at 296); *see Black's Law Dictionary*, "legal custody" (11th ed. 2019) (defining legal custody as "[t]he authority to make significant decisions on a child's behalf, including decisions about education, religious training, and healthcare"). "In joint legal custody, 'both parents have an equal voice in making [long range] decisions, and neither parent's rights are superior to the other.'" *Santo*, 448 Md. at 627 (quoting *Taylor*, 306 Md. at 297). "Joint legal custody, or equally shared decisionmaking authority, is much more common [than joint physical

custody] and has become the norm in many jurisdictions." Jana B. Singer, *Bargaining in the Shadow of the Best-Interests Standard: The Close Connection Between Substance and Process in Resolving Divorce-Related Parenting Disputes*, 77 Law & Contemp. Probs. 177, 188 (2014).

As discussed above, once a material change in circumstances is found to warrant a modification, a trial court determines custody, including legal custody, "as if it were an original custody proceeding," *Braun*, 131 Md. App. at 610, and considers the best interest of the child "on a case-by-case basis," *Petrini*, 336 Md. at 469. In *Taylor*, the Court of Appeals found that an award of joint legal custody may be an appropriate "option available to the trial [court]" in its "overall consideration of a custody dispute." 306 Md. at 303. "[I]n determining whether joint custody is appropriate," in addition to the ordinary custody factors discussed above, a trial court should consider the following non-exclusive list of "major 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;
13. Benefit to Parents.

Id. at 304-11 (italics omitted). Although "none [of these factors] has talismanic qualities," the Court emphasized that the first consideration—"the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare"—"is clearly the most important factor" in determining whether joint legal custody is appropriate. *Id.* at 303-04. The Court further explained that the parties' "past conduct or 'track record'" is often "the best evidence of" their willingness to communicate with each another, *id.* at 307, and that joint legal custody is "[r]arely, if ever" appropriate "in the absence of . . . evidenc[e] [of] an ability to effectively communicate with each other concerning the best interest of the child," *id.* at 304.

In *Santo*, the Court of Appeals revisited and reaffirmed its decision in *Taylor*, but in the context of the "rare" scenario in which joint legal custody was awarded to parents who could not effectively communicate with each other. 448 Md. at 630. Despite extensive evidence of the parents' inability to cooperate, the trial court had determined that it was in the children's best interests to award the parents joint legal custody, with tiebreaking authority allocated primarily to one parent. *Id.* at 624-25. In upholding the award, the Court reaffirmed its statement in *Taylor* that the capacity of the parents to communicate and reach shared decisions about the child's welfare was "'the most important factor' in determining whether to award joint legal custody." *Id.* at 628 (quoting *Taylor*, 306 Md. at 304). The Court reasoned that "effective parental communication is

weighty in a joint legal custody situation because . . . parents are charged with making important decisions together that affect a child's future." *Santo*, 448 Md. at 628.

The Court then extensively explored the circuit court's decision to award tiebreaking authority to one parent, and ultimately determined that doing so was consistent with *Taylor* as well as applicable statutes. *Id.* at 646. Although observing that "[a] delegation of final authority" under a tiebreaking provision may "tilt[] power to the [parent] granted such authority," the Court nonetheless concluded that the tiebreaking provision was consistent with *Taylor*, because "the parents must try to work together to decide issues affecting their children." *Id.* at 633. Such an arrangement, the Court found, "ensures each has a voice in the decision-making process." *Id.* Because joint legal custody arrangements require a "genuine effort by both parties to communicate," the Court concluded that tiebreaking authority is "consonant with the core concept of joint custody." *Id.*; *see Shenk v. Shenk*, 159 Md. App. 548, 560 (2004) (characterizing the use of tiebreaking as one of "the 'multiple forms' of joint custody that can be tailored into solutions for each unique family" (quoting *Taylor*, 306 Md. at 303)); *see also Kpetigo v. Kpetigo*, 238 Md. App. 561, 587 (2018) (in affirming a joint legal custody award that gave one parent tiebreaking power, observing that "[t]ie-breaking authority is not a rare or extraordinary measure").

Importantly, the Court in *Santo* emphasized that, "[c]onsistent with *Taylor*, . . . a trial court should carefully set out the facts and conclusions that support the [custody] solution it ultimately reaches." *Santo*, 448 Md. at 630. The Court ultimately held that "a court . . . may, under appropriate circumstances and with careful consideration articulated

on the record, grant joint legal custody to parents who cannot effectively communicate together regarding matters pertaining to their children. In doing so, the court has the legal authority to include tie-breaking provisions in the joint legal custody award." *Id.* at 646.

Returning to the Custody Appeal, we will vacate the circuit court's decision to award sole legal custody to Mr. Anderson for two reasons. First, to the extent that the court considered awarding joint legal custody to the parties, the record does not reflect that the court considered the "most important factor," "the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare." *Taylor*, 306 Md. at 304. That is especially important here, where comments the court made in consideration of other factors suggest that the parties had exhibited the ability to communicate effectively and to place their disagreements aside in the interest of their children. For example, in considering the children's "moral well-being," the court remarked that it did not see in these parents the "level of animosity and spite" that parents sometimes bring into court. The court continued: "And what I feel . . . as well is that whatever issues you all have, you don't let it spill over into your children which is what a lot of people do." In discussing "[t]he influences likely to be exerted on the [children]," the court further remarked: "I get the feeling that you all try to keep the kids insulated from your own personal issues and it appears to me that up until this move that the families were pretty much getting along." On remand, in deciding whether to award joint or shared legal custody, the court should expressly consider whether the parents can communicate effectively "to reach shared decisions affecting the [children's] welfare." *See Taylor*, 306 Md. at 304.

Second, the court did not explain its rationale for awarding sole legal custody to Mr. Anderson, nor are we able to discern the rationale from the findings the court made. Again, we consider it notable that many of the findings the court did make—including those identified above regarding the parties' long history of cooperation and common support for their children—seem to point in the direction of an award of joint legal custody (with or without tiebreaking authority to one parent). By contrast, the court did not make any findings, at least not express findings, suggesting that the parties would be unable to communicate effectively or that Ms. Majied was not fit to have a voice in the long-range decisions regarding the children's lives. As a result, we are not able to effectively review the court's decision on appeal to determine whether it constituted an abuse of discretion. We will, therefore, vacate that decision and remand for further proceedings to consider the appropriate legal custody arrangements for the children. On remand, the court may, but is not required to, take additional evidence before reaching its final determination.

III. MS. MAJIED'S CHALLENGE TO THE DENIAL OF THE PETITION FOR A TEMPORARY PROTECTIVE ORDER IS MOOT.

In the Protective Order Appeal, Ms. Majied argues that the court erred in denying the "motion for a temporary protective order [filed] on behalf of the minor children." (emphasis removed). Mr. Anderson asserts that this issue is moot, and we agree.

This Court has discretion to "dismiss an appeal if . . . the case has become moot." Md. Rule 8-602(c)(8). An issue is moot "when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy." *Cabrera v. Mercado*, 230 Md. App. 37, 85 (2016) (quoting *O'Brien &*

Gere Eng'rs v. City of Salisbury, 447 Md. 394, 405 (2016)); *see also Robinson v. Lee*, 317 Md. 371, 375-76 (1989). Here, the temporary protective order sought by Ms. Majied would have expired long ago, *see* Fam. Law § 4-505(c), and Ms. Majied did not seek any more permanent form of relief. The issue is thus moot. Although in rare instances we will address the merits of a moot appeal, we do not think that any of them apply here. The circuit court's disposition of Ms. Majied's application for a temporary protective order was based on the specific facts presented, and so has no application beyond this case. *See Cabrera*, 230 Md. App. at 87 ("'[I]n rare instances . . . [an appellate court] may address the merits of a moot case if . . . the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct." (quoting *Coburn v. Coburn*, 342 Md. 244, 250 (1996))). And, because the protective order did not issue, we are not concerned with any collateral consequences that might have been associated with it. *See Piper v. Layman*, 125 Md. App. 745, 753 (1999). We will therefore dismiss the Protective Order Appeal as moot.

CONCLUSION

In sum:

1. We will affirm the circuit court's award of primary physical custody to Mr. Anderson, with access to Ms. Majied, except that we will remand for the court to clarify its order regarding summer access. The circuit court should clarify that order as promptly as reasonably possible;

2. We will vacate the circuit court's award of sole legal custody to Mr. Anderson, and remand for further proceedings consistent with this opinion; and

3. We will dismiss the Protective Order Appeal.

IN APPEAL NO. 2104: JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY (1) AFFIRMED AS TO THE AWARD OF PHYSICAL CUSTODY GENERALLY, BUT REMANDED FOR CLARIFICATION REGARDING SUMMER VISITATION; AND (2) VACATED AS TO THE AWARD OF LEGAL CUSTODY AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT EVENLY. MANDATE TO ISSUE IN SEVEN DAYS.

IN APPEAL NO. 2103: APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.