Circuit Court for Baltimore City
Case No. 24-D-23-003589

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2253

September Term, 2024

EBENEZER THOMAS

v.

CARLEIGH STEELE

Friedman,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: September 9, 2025

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

This is an appeal from a custody and child support order of the Circuit Court for Baltimore City. Appellant Ebenezer Thomas ("Father") appeals from the order that granted appellee Carleigh Steele ("Mother") sole legal and primary physical custody of the parties' minor children, among other things. He presents two issues for our review, which we quote:

> I. Did the trial court fail to consider the best interests of the children when it refused [F]ather's timely request for a continuance to acquire a replacement for counsel who had terminated representation two weeks prior to the custody hearing?
>
> II. Did the trial court fail to consider the best interest of the children when it precluded [F]ather from calling witnesses without first considering whether the evidence was relevant to the court's determination of the best interests of the children?

For the reasons that follow, we shall vacate the order and remand for further proceedings.

BACKGROUND

Father and Mother have two minor children together. Father filed a complaint seeking joint legal and shared physical custody of their children. Mother answered and filed a countercomplaint seeking sole legal and primary physical custody of the children and child support. The court scheduled a two-day merits hearing, commencing December 11, 2024.

In July 2024, after propounding discovery on Father, Mother moved to compel Father's discovery responses and/or for immediate sanctions. Therein, Mother stated that Father had not provided his answers to interrogatories. In August, Father served Mother with his answers to interrogatories but did not respond to Mother's motion to compel. In

November, about a month before the merits hearing, the court entered an order granting Mother's motion to compel discovery and ordering Father to answer any interrogatories not already answered within ten days.

In the meantime, Father's counsel sought to withdraw her appearance as counsel, and Father consented. On November 26, Father's counsel filed a consent motion to strike her appearance. The next day, the court granted the motion.

The same day (November 27), Father filed a motion to postpone the merits hearing. On December 3, the court denied Father's motion and instructed him to schedule a postponement hearing with the assignment office, which he apparently did not do.

On December 11, the parties appeared for the first day of trial. Father, *pro se*, asked the court for a continuance to seek a new attorney. After considering Father's arguments and his efforts to obtain counsel, the court denied the request.

Thereafter, Father indicated to the court that he would be the only witness to testify that day. He told the court that he "would like an opportunity to call witnesses" but that he did not have "anybody here currently[.]" Mother objected to his calling any witnesses because his answers to interrogatories did not identify any. Mother's counsel explained:

> I'm going to object because I have answers to interrogatories. And in his answers to interrogatories, he did not note any witnesses. He reserve[d] the right, but as of today I have not had supplemental answers to interrogatories, and no witnesses were identified in his initial answers.

The court deferred consideration of Father's request to call his witnesses, responding: "Okay. Sir, we're going to proceed. I will take your testimony, and then we'll go from there."

Father presented his case first. With the court's prompting and questioning, Father testified to facts pertinent to the *Sanders-Taylor* factors.[1] At the conclusion of his testimony, there was a discussion about whether Father would be allowed to call his witnesses on the second day of trial, since they were not present at the time. The following colloquy ensued:

> THE COURT: [J]ust so that I am clear and the record is clear, you indicated today that the only witness that you have here today for the purposes of testifying on the complaint that you filed is yourself. Correct?

[1] In *Montgomery County Department of Social Services v. Sanders*, this Court articulated factors for consideration by a court determining custody:

> The criteria for judicial determination includes, but is not limited to, 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[.]

38 Md. App. 406, 420 (1977) (internal citations omitted).

In *Taylor v. Taylor*, the Supreme Court of Maryland listed factors for courts to consider, including the capacity of parents to communicate and to reach shared decisions affecting the child's welfare, willingness of parents to share custody, fitness of parents, relationship established between the child and each parent, preference of the child, potential disruption of child's social and school life, geographic proximity of parental homes, demands of parental employment, age and number of children, sincerity of parents' request, financial status of the parents, impact on state or federal assistance, benefit to parents, and "all other circumstances that reasonably relate to the [custody] issue." 306 Md. 290, 304–11 (1986). The factors in *Sanders* and *Taylor* are colloquially known as the *Taylor-Sanders* (or the *Sanders-Taylor*) factors. *See*, *e.g.*, *Jose v. Jose*, 237 Md. App. 588, 600 (2018) (considering *Sanders-Taylor* factors together).

In May 2025, during the pendency of this appeal, the General Assembly passed SB 548/HB 119, which codified the *Sanders–Taylor* factors, effective October 1, 2025.

> [FATHER]: *That is here today. I'm allowed to bring witnesses tomorrow* (unintelligible).
>
> THE COURT: Well—
>
> [MOTHER'S COUNSEL]: I—
>
> THE COURT: *—I believe that [Mother's counsel] had objected to that previously noting that your prior counsel when you all were to exchange information as to what witnesses that you planned on calling that there were no witnesses disclosed.*
>
> So—but as of right now today, you have no other witnesses here with you to testify. Correct?
>
> [FATHER]: I have no witnesses here. Correct. But I would like to see information that wasn't disclosed because that's an egregious act by my previous counsel if that's the case.
>
> THE COURT: Okay.
>
> [FATHER]: 'Cause that information was sent over.
>
> THE COURT: Okay. *Well, [Mother's counsel] said she didn't get any notice that you planned on calling any witnesses. All right. So, in that case then, [Father], the [c]ourt will find that you are resting because you don't have any additional witnesses or testimony to provide to me today*. And we will turn over to [Mother's] case.

(emphasis added).

In her case, Mother testified and presented the testimony of other witnesses. The presentation of all evidence concluded at the end of the first day of trial. On the second day of trial (December 12), the court gave its oral ruling. The court granted Mother sole legal and primary physical custody of the children, it provided an access schedule during holidays and birthdays, and it ordered Father to make monthly child support payments. It established a child support arrearage to be paid monthly until satisfied. The court also

ordered Father to pay Mother's counsel fees of $6,500. On December 16, the court entered a Custody and Child Support Order to this effect.

DISCUSSION

We address Father's second question presented first. Father argues that the court erred in precluding him from calling witnesses without first considering whether the evidence was relevant to the court's determination of the best interests of the children as required under *A.A. v. Ab.D.*, 246 Md. App. 418 (2020). We agree.

"In a child custody case, the discretion of the trial court to exclude evidence is not only measured by the potential prejudice to the parties, but is constrained by a court's 'absolute and overriding obligation to conduct a thorough examination of all possible factors that impact the best interests of the child.'" *Kadish v. Kadish*, 254 Md. App. 467, 495 (2022) (quoting *A.A.*, 246 Md. App. at 444). "This supreme obligation may restrain the court's broad authority to exclude evidence as a discovery sanction" because "a child's best interests are best attained when the court's decision is as well-informed as possible." *A.A.*, 246 Md. App. at 444, 447. Thus, while we typically evaluate a trial court's discovery sanction in a civil case through the well-defined lens of abuse of discretion, in a child custody case, "we must be satisfied that the court has applied the best interests of the child standard in its determination." *Id.* at 441.

In *A.A.*, the father propounded discovery requests to the mother in connection with his motion to modify custody. *Id.* at 426. According to the father, the mother's responses were deficient, and he moved to compel further responses. *Id.* at 427. The father moved *in*

limine to exclude the testimony of the witnesses for whom the mother did not provide contact information as well as most evidence that the mother had not produced during discovery. *Id.* The court granted the father's motion and excluded such evidence. *Id.* at 428.

On appeal, we held that the court erred in imposing a discovery sanction that "effectively precluded [it] from considering potentially significant evidence directly relevant to the *Sanders-Taylor* factors in its determination of what custody arrangement would be in the best interests of the children." *Id.* at 447. We explained:

> We do not condone the behavior of discovery violators and do not intend that protecting minor children have the collateral effect of giving discovery offenders a pass. We encourage trial courts to be creative in finding sanctions other than precluding evidence, but recognize that, even where a court exhausts other remedial steps to enforce discovery, sometimes the failure by obstinate parties and their counsel to follow the rules make more extreme sanctions necessary. When this occurs in a child custody case, the court's independent obligation to the child[ren] requires that, before ordering the exclusion of evidence as a sanction, the court should take a proffer or otherwise ascertain what the evidence is that will be excluded, and then assess whether that evidence could assist the court in applying the *Sanders-Taylor* factors in its determination of the best interests of the child[ren]. When the court completes this assessment, we review any discovery sanction it imposes thereafter for an abuse of discretion.

Id. at 448–49. In other words, before a trial court can exclude testimony pertinent to the best interest of the child as a sanction for a discovery violation, the court must "take a proffer or otherwise ascertain" the substance of the proposed testimony. If the court has informed itself of the substance of the proposed testimony before ruling on an objection to the admission of the testimony, we review the court's evidentiary ruling for abuse of discretion. *Id.* at 449. Because the trial court in *A.A.* failed to apply the best interests of the child standard in this regard, we vacated the judgment and remanded the case for the court

to reassess the best interests of the children after a full presentation of evidence that the court found relevant to that determination. *Id.*

Turning to the instant case, we discern from the colloquy above that the discovery violation was part of the reason the court decided not to allow Father to call his witnesses. We hold that the court erred in prohibiting Father from presenting any testimony of his witnesses without considering what was required under *A.A.* The court's decision effectively precluded the court from considering "potentially significant evidence directly relevant to the *Sanders-Taylor* factors in its determination of what custody arrangement would be in the best interests of the children." *See id.* at 447.

Mother acknowledges that the court did not inquire into how Father's witnesses could assist in making a custody determination. However, she claims that the court never imposed any sanction upon Father that prevented him from calling his witnesses because his witnesses were not even present to testify on the first day of trial. We disagree. The discussion during the proceedings indicates that the court effectively barred Father from calling his witnesses and determined that he had rested his case, despite Father's suggestion that he could "bring witnesses tomorrow" (on the second day of trial).

Mother argues that the court safeguarded the children's rights when it questioned Father about matters relevant to the *Sanders-Taylor* factors. In essence, Mother claims that the exclusion of his witnesses did not prejudice Father. However, prejudice to the parties (or lack thereof) is not the sole measure by which to evaluate whether to exclude evidence. As we have explained, "[i]n a child custody case, the discretion of the trial court to exclude

evidence *is not only measured by the potential prejudice to the parties*, but is constrained by a court's 'absolute and overriding obligation to conduct a thorough examination of all possible factors that impact the best interests of the child.'" *Kadish*, 254 Md. App. at 495 (emphasis added and citation omitted).

Finally, Mother argues that Father did not provide the court with the identities of the witnesses he intended to call or explain the significance of their testimony concerning the children's best interests. She maintains that it was not the court's responsibility to assist Father in presenting his case. However, as we stated in *A.A.*, "*the court's independent obligation* to the child[ren] requires that, before ordering the exclusion of evidence as a sanction, *the court* should take a proffer or otherwise ascertain what the evidence is that will be excluded, and then assess whether that evidence could assist the court in applying the *Sanders-Taylor* factors in its determination of the best interests of the child[ren]." 246 Md. App. at 448–49 (emphases added).

For the reasons stated, the court erred in excluding Father's witnesses because he had not disclosed them in discovery. Accordingly, we vacate the judgment and remand the case for the circuit court "to reassess the best interests of the children after a full presentation of evidence" relevant to that determination.[2] *Id.* at 449. Until the circuit court

[2] We vacate the order in its entirety, even with respect to the intertwined issues of child support and counsel fees, so that those issues may be addressed together on remand. *See Ricketts v. Ricketts*, 393 Md. 479, 496 n.12 (2006) (explaining that the issue of child support is "ancillary and dependent" on an award of custody); *Sims v. Sims*, 266 Md. App. 337, 390 (2025) (where we vacate child support and other pecuniary awards, we shall also vacate the counsel fee award).

completes the proceedings required by this opinion, the existing Custody and Child Support Order entered on December 16, 2024 "will continue to have the 'force and effect of a *pendente lite* award.'" *See, e.g.*, *St. Cyr v. St. Cyr*, 228 Md. App. 163, 198 (2016).

Since we are remanding for further proceedings, it is unnecessary for us to address Father's claim that the court abused its discretion in denying his request for a continuance. *See, e.g.*, *Rogers v. Rogers*, 80 Md. App. 575, 594–95 (1989) (declining to address the appellant's assertion that the court erred in denying her request for a continuance upon reversing the judgment and remanding on other grounds).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. CUSTODY AND CHILD SUPPORT ORDER ENTERED DECEMBER 16, 2024 TO REMAIN IN FORCE AND EFFECT AS *PENDENTE LITE* ORDER PENDING FURTHER ORDER OF THE CIRCUIT COURT. COSTS TO BE PAID BY APPELLEE.