Circuit Court for Garrett County
Case No. C-11-FM-21-000097

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0152

September Term, 2023

TODD FEATHERS

v.

ABIGAIL FEATHERS

Arthur,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 1, 2023

* 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 case involves a dispute over child custody. Over the course of a two-day pendente lite hearing and a two-day trial, the court heard extensive testimony about the parents' relationship with each other and their relationships with their children. The court found that the parties had different work schedules and could not adequately communicate with each other to reach joint decisions about the children. Based on these findings, the court granted sole legal custody and primary physical custody of the children to the mother.

The father has appealed. Because there is no perceptible error or abuse of discretion, we will affirm the circuit court's custody determination.

FACTUAL AND PROCEDURAL BACKGROUND

A. Marriage

Doctors Todd Feathers ("Father") and Abigail Feathers ("Mother") were married on September 18, 2010. Father is an orthopedic surgeon. Mother is an obstetrician-gynecologist.

A daughter, R., was born in 2013. When R. was born, both parents worked long hours and shared parenting responsibilities for their infant child. However, after what the parties call the "Porch Incident"—in which Father left R. unattended on a porch at night in January 2014—the parties' practices changed. Mother became the dominant decision-maker in matters pertaining to child care. In addition, Mother sought employment that would allow her to work part time so that she could care for R. and any future children.

The parties moved to Garrett County in 2015. Thereafter, Mother worked part time for 18 hours per week and did not have on-call time. In other words, to care for her

child, Mother gave up a portion of her career responsibilities and adopted a schedule that would not require her to leave for work at unexpected times. Father worked full-time and was on call for 10 days each month.

The parties' son, E., was born in 2016.

B. The Demise of the Marriage and Initiation of Divorce Proceedings

Over the next several years, tensions between the parties simmered beneath the surface. After the Porch Incident, Mother did not trust Father to parent the children and made most of the decisions concerning their care. However, she simultaneously felt that Father should be more involved in the children's lives. Father, to avoid further conflict in the relationship, developed a pattern of acquiescing or submitting to whatever Mother decided. The parties' efforts to repair their relationship and ability to communicate proved unsuccessful.

Mother filed a complaint for divorce on June 1, 2021. Father moved out of the family home in August 2021 pursuant to a pendente lite ruling that gave Mother use of the residence. Father filed a counterclaim for divorce on September 3, 2021. The court appointed a best interest attorney ("BIA") for the children.

C. Interim Attempts to Share Custody

While the divorce action was pending, the parties had difficulty reaching a custody agreement for the children. Mother continued to act as the primary caregiver. The parties developed an informal schedule whereby Father had access to the children every other weekend in addition to after-school visits on Thursday evenings. However, disputes arose between the parties concerning the children's holiday schedule, Father's

access to the children, and changes in their medical appointments. Father argued that an interim custody order was needed to provide him with more access to the children, while Mother argued that the de facto custody arrangement adopted by the parties was sufficient and provided stability for the children.

D. Pendente Lite Hearing

Beginning on August 22, 2022, the circuit court held a two-day pendente lite hearing at Father's request to determine interim custody of the children. Several witnesses testified at this proceeding.

Father testified that the parties had different personalities and parenting styles. He testified that during the marriage Mother made essentially all the decisions concerning the children and cared for them on a day-to-day basis. To avoid conflict in the relationship, Father supported Mother's decisions and went along with them, even if he did not agree with them. He stated that although he had helped with childcare in the past, some of his "privilege[s]" were, in his view, gradually "lost," and he no longer performed those functions. Father testified that, after the divorce proceeding began, their ability to communicate was "not good." In Father's view, the parties' primary disputes concerning the children related to Father's requests for more time with the children and how to allocate vacations. Father did not believe that it was in the children's best interest to be "bouncing back and forth between homes on school days." He told the court that he would like to have physical custody of the children 50 percent of the time.

Father testified that the amount of time he worked varied substantially and was difficult to estimate. Father stated that when E. was first born, he likely worked up to 60

hours per week, but at the time of the hearing, he was working between 40 to 55 hours per week. Father testified that he typically performed surgery on Mondays and Wednesdays and saw patients on the other days of the work week. Father acknowledged that he was expected to work 10 on-call days per month, and that when he was on-call, he was on-call for 24 hours.

Father called several other witnesses, including R.'s counselor, Ms. Nallin. Ms. Nallin testified that she had been serving as R.'s counselor to help her deal with the separation and divorce. Ms. Nallin testified that on occasions over the course of her counseling R. or Mother would raise concerns about Father's parenting, and Ms. Nallin would relay these concerns to Father and educate him on how to parent, as he had not been a "single parent[]" before. Ms. Nallin also testified that R. told her about specific courses of Father's conduct that had contributed to R.'s emotional distress. Ms. Nallin testified that, after she brought up these problems with Father, he worked on his conduct and improved. Ms. Nallin also testified that some of her time was spent mediating Mother's "grievances" and attempting to resolve those issues with Father.

Father also called two of his former neighbors to testify concerning their observations of his parenting. Both testified that Father seemed to enjoy spending parenting time with the children outdoors and that he seemed like a good father. One of the former neighbors also testified that Father was a "hard-working guy" who at the time worked "10 to 12 hours every day and every other weekend."[1]

[1] Father also called his employer to testify that even though Father was required to work 10 days of on-call time per month, his schedule could still be flexible.

Opposing the pendente lite custody arrangement proposed by Father, Mother testified and called several witnesses. Mother testified that, after the Porch Incident, she had concerns about R.'s safety and felt she could no longer trust or rely on Father to provide overnight care. Mother testified that since the birth of the children she had acted as their primary caregiver and had fed them, bathed them, put them to bed, and arranged for their medical appointments, sporting activities, and childcare when needed. She testified that Father did not seek involvement in the children's lives and care until after the divorce proceedings began. She also testified that she did not prevent Father from being involved in the children's lives; in fact, she said, she had asked him to become more involved, but he did not, and the children's care fell to her.

Mother testified that she worked three days a week for a total of 18 hours per week and that Thursdays were her longest workday. She stated that during the marriage Father's schedule had not been flexible and that Father's suggestion that he could have the children for half the month and arrange his ten days of on-call time to fit within the other half of a month was neither feasible nor sustainable. Mother agreed with Father that "bouncing the [children] back and forth" during the school week was not helpful for them.

Mother testified that the parties had not been communicating well. She did not believe the parties could reach decisions together. Although she hoped that she and Father could communicate to reach joint decisions in the future, she did not believe that it was possible for them to do so at present.

Mother also called the children's former caregivers, who generally testified that, during their time working for the parties, they typically communicated with Mother concerning the children's care. The caregivers testified that during their employment they had not observed Father assisting with the children's routine care.

At the conclusion of the pendente lite hearing, the circuit court entered an interim order granting Mother primary physical custody of the children. The court granted Father access to the children every other weekend from Thursday after school until Sunday nights at 6:00 p.m. On weeks when Father did not have overnight visits, the court granted Father access to the children on Thursdays after school until 6:30 p.m. The circuit court reserved the issue of legal custody until after the trial.

E. Trial

The parties' two-day divorce trial began on October 3, 2022. To avoid the need for recalling witnesses and reintroducing evidence, the circuit court took judicial notice of the testimony and evidence introduced at the pendente lite hearing, which had occurred approximately six weeks before the trial.

Mother testified that, since the entry of the pendente lite order, the parties had continued to have difficulty communicating and reaching decisions concerning the children. Mother testified that, because of the Labor Day holiday, Father had kept the children for five weekends in a row and had refused to give her an adjustment. Mother testified that the parties' difficulty in reaching a simple decision about exchanging the children affected her position on whether the parties could realistically share legal custody of the children, and as a result she was seeking sole legal custody.

Father testified that, although the parties had minimized their communication, he believed that if the parties could not agree on decisions concerning the children in the future, they could reach joint decisions by using a mediator.

At the conclusion of the proceedings, the circuit court requested that the parties and the BIA submit briefs stating their positions regarding legal and physical custody.

F. Interim Custody Recommendations and Party Developments

In her memorandum, the BIA acknowledged that the parties could not currently communicate well. However, she believed that the parties would "likely" be able to make joint decisions after the divorce was over and therefore recommended the parties have joint legal custody. The BIA suggested that if the circuit court believed tie-breaking authority was necessary, it should be split into three areas and that Father should have tie-breaking authority in two areas and Mother in one. The BIA stated that the specific areas for tie-breaking authority did not matter—all that mattered was that Father had more tie-breaking authority than Mother. The BIA's rationale for this unbalanced division of authority was that, in the BIA's perspective, Mother had excluded Father from the children's activities. The BIA suggested that the parties share joint physical custody in accordance with the schedule Father proposed at trial. This would allow Father to have the children every Thursday for an overnight; alternating weekends from Thursday night through Monday morning; and one Wednesday evening visit each month with each child individually.

Father agreed that the parties' ability to communicate and co-parent was essential for the court to determine legal custody. Father argued that the parties' past pattern of

agreeing on decisions concerning the children was sufficient to support an award of joint legal custody. However, Father also suggested that if tie-breaking authority needed to be assigned, it should be awarded to him because, he said, there were no instances of him "disrupting the children's lives" or trying to make a decision about them "without including" Mother. As to physical custody, Father now requested a pure 50-50 split, under which Mother would have the children for overnights every Monday and Tuesday, Father would have the children for overnights every Wednesday and Thursday, and the parties would then rotate the remaining days every other weekend. Alternatively, Father requested the physical access he had proposed at trial and the one advocated by the BIA.

Mother took the position that parties were not able to agree on significant decisions about the children and would probably not be able to do so in the future, as exemplified by their recent inability to reach a joint decision about weekend exchanges. Mother sought sole legal custody, as the parent who had historically dealt with the children's care. Mother stated that she was seeking joint physical custody under a schedule in which the parties alternated weekends from Friday after school through Sunday evenings at 6:00 p.m. and Father had access to the children each Thursday after school. Mother contended that scheduling overnights with Father during the school week would disrupt the children's "otherwise stable schedule."

After the parties submitted their custody proposals for the court's consideration but before the court made its final custody determination, the parties found themselves unable to agree about access to the children during the Christmas holiday. Father filed a request for an emergency hearing, as the children's out-of-town trip with Mother

overlapped with Father's regularly scheduled overnight time. Mother offered alternative time to Father to make up for his missed time. The court denied the motion for emergency relief.

G. Custody Determination and Final Order

On January 27, 2023, the circuit court held a hearing to announce its findings of fact and final custody determination. The circuit court first addressed the custody suggestions of the BIA and the parties.

The court agreed with the BIA that the parties did not communicate well, but disagreed with the BIA's assumption that their ability to communicate was likely to improve in the future—particularly in light of the parties' visitation dispute during the December holiday. The court also disagreed that giving the parties what the court called "random" tie-breaking authority was practical or necessary. Finally, the court found that the BIA's physical custody recommendation would be too disruptive to the children's schedules. The court considered Father's proposed alternative schedules and found that both would "significantly" modify the children's historic and current schedules and would not be in the children's best interest.

The court next discussed the relevant factors under *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406, 420 (1978), and *Taylor v. Taylor*, 306 Md. 290, 304-08 (1986), to determine what custody arrangement would be in the children's best interests.

The court first found that both parents were intellectually, physically, and financially fit. It also found that the parents both had "outstanding" reputations and had

good character. The court found that the parties had different desires as to custody and no agreement, as Father wanted joint legal custody while Mother wanted sole legal custody, and the parties disagreed on parenting time. The court next found that both parties recognized and would foster the children's ties to the extended families of the other parent.

The court found that the children's preferences were not known, but were irrelevant because of their young ages. The court also found that material opportunities affecting the children's futures were outstanding with either parent. As to the age, sex, and health of the children, the court found that R. was a nine-year-old girl and that E. was a six-year-old boy. Both children were in good health, but R. had taken the separation of her parents "very hard." As to the parties' residences and opportunity for visitation, the court found that the parties live very close to each other and to the children's school, allowing "very good" opportunity for visitation.

The court turned to the length of the children's separation from the natural parents. The court found that before the separation the children had lived with both parents, but that during the past 17 months the children had been living primarily with Mother. The court found that Father had remained involved with the children's lives during that time. The court also found that, for "a long period of time," the children had spent every other weekend with Father and had had regular Thursday dinners with him. The court also found that there had not been any prior voluntary abandonment or surrender.

The court shifted its focus to the parties' ability to communicate and make shared decisions. The court "grade[d]" the parents' ability to communicate with "an F." The

court found that the parties communicated only when absolutely necessary. Although there were no significant conflicts concerning the children's care, the court found that much of this was because Mother made all the decisions while Father merely acquiesced. The court found that for the foreseeable future it was not likely that the parties would be able to reach joint decisions concerning the children.

The court went on to find that, based on these factors, it would not be in the children's best interests for the parents to share legal custody. It then considered other factors in determining what would be best for the children.

The court found that since the birth of the children Father had accepted the decisions that Mother made for the family. It also found that, when the children were young, Father was required to work very long hours, but that since the divorce action Father had "done his best" to become a good parent and sincerely wanted more time with the children. The court found that Mother had been the children's primary caregiver since their births and that she had specifically reduced her practice to an 18-hour work week in order to raise the children. It found that Mother had been "the steady hand" who planned and implemented decisions regarding the children and that Mother would foster the children's relationships with Father.

The court compared the parties' schedules. The court noted that Mother worked from Tuesday through Thursday, while Father worked from Monday through Friday—and that his work included surgery, charting, and on-call time each month. The court found that Father had some, but not much, flexibility in changing his schedule, particularly as there were only two other orthopedic surgeons in Garrett County.

On the basis of these findings, the court awarded Mother sole legal custody of the children, but stated that she was required to make a "good faith effort" to contact Father and to discuss major decisions that affect the children's welfare.

The court awarded Mother primary physical custody, but gave Father access to the children on alternating weekends from the end of the school day on Friday through 6:00 p.m. on Sunday and on every Thursday from the end of the school day until 6:30 p.m. The court ordered that each party would have the children for four full weeks during the summer and that the dates would be agreed by the parties (or assigned by Mother if the parties could not agree). The court also ordered an alternating holiday schedule that covered Christmas, New Year's, Spring Break, Thanksgiving, Mother's Day, and Father's Day. Finally, the court allowed for the possibility that Father might not have access to the children on Father's Day if the children were with Mother during one of her scheduled summer weeks.

The court's written order was entered on March 17, 2023. Father filed a timely notice of appeal on March 28, 2023.

QUESTION PRESENTED

On appeal, Father presents one question: "Did the trial court err by awarding [Mother] sole legal and primary physical custody of the minor children?"

STANDARD OF REVIEW

This court reviews child custody determinations using three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). First, when an appellate court scrutinizes factual findings, the clearly erroneous standard applies. *In re*

Yve S., 373 Md. 551, 586 (2003). Second, 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. *Id.* Finally, when the appellate court views the ultimate conclusion of the trial court, if that conclusion was "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." *Id.*

Abuse of discretion is a deferential standard of review that accounts for the trial court's opportunity to "observe the demeanor and the credibility of the parties and witnesses." *Petrini v. Petrini*, 336 Md. 453, 470 (1994). An abuse of discretion may occur when "no reasonable person would take the view" adopted by the trial court, or when the court acts "without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 626 (2016) (citing *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

DISCUSSION

Father argues, first, that the trial court erred in evaluating the parties' ability to communicate and in failing to consider other factors. Next, Father argues that the trial court improperly disregarded the possibility of any legal custody arrangement other than sole legal custody. Finally, Father argues that the trial court exhibited an improper bias and based its conclusion on personal opinions. None of Father's arguments are persuasive.

I. The Trial Court's Findings of Fact

Father argues that the trial court erred in its factual findings and in the weight that it allotted to different factors. He argues that the court erred in finding that the parties could not effectively communicate. He states that "all of the evidence" at the pendente lite hearing supported an award of joint legal custody. He essentially argues that at the pendente lite hearing both parties were requesting joint legal custody and that the absence of disagreement on important decisions like religion, school, and medical care suggested that they would be able to agree in the future. This record of agreement, according to Father, undermines the trial court's finding that the parties could not effectively communicate.

We review the judge's factual findings for clear error. The clearly erroneous standard is deferential and gives "great weight" to the trial court's findings. *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000). When scrutinizing factual findings, this Court must "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). Generally, a trial court's findings will not be found clearly erroneous "'if there is competent or material evidence in the record to support the court's conclusion.'" *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (quoting *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019)). An appellate court "does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the [trial] court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007).

The *Sanders* factors and *Taylor* factors serve as guiding principles for a trial court to consider in deciding what custody arrangement will be in the best interests of the children. *See Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. at 420; *see also Taylor v. Taylor*, 306 Md. at 304-11. Of these factors, the parents' ability to communicate and reach shared decisions is "clearly the most important factor in the determination of whether an award of joint legal custody is appropriate, and is relevant as well to a consideration of shared physical custody." *Taylor v. Taylor*, 306 Md. at 304. "Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future." *Id.*

Joint custody is a viable option only "'for parents who are able and willing to cooperate with one another in making decisions for their child.'" *Id.* (quoting 2 Child Custody & Visitation Law and Practice § 13.05[2], at 13-14 (J.P. McCahey ed. 1985)). Parents whose relationship is "marked by dispute, acrimony, and a failure of rational communication" are not appropriate candidates for holding joint custody. *Taylor v. Taylor*, 306 Md. at 305. The best evidence of parents' ability to communicate is their "past conduct or 'track record.'" *Id.* at 307. The trial judge must determine whether the lack of an ability to communicate is a temporary or permanent condition, and joint custody should be granted only where there is strong evidence of "significant potential" for the parties to effectively communicate in reaching joint decisions. *Id.* In the "unusual

case" where the trial judge determines that joint custody is appropriate even though there is no track record of the parents' ability to cooperate to reach joint decisions, the trial judge must explain why that arrangement is appropriate. *Id.*

Here, the trial court made a factual finding that the parties could not communicate well enough to make joint decisions regarding the children and that Mother primarily made the decisions, while Father simply acquiesced. There was evidence in the record to support these findings, including the written communications between the parties; the parties' own testimony that they did not communicate well and avoided communicating when possible; Father's testimony that Mother made decisions to which he "submitted"; and testimony from R.'s counselor that she often had to serve as an intermediary between the parents.

There was also evidence to support the trial court's finding that the parties' ability to communicate was not likely to improve in the foreseeable future. This included Mother's testimony about how the parties had failed to engage in meaningful discourse when attempting to reach a resolution concerning weekend access to the children. The court was not required to agree with Father that if the parties could not agree on decisions concerning the children in the future, they could reach joint decisions by using a mediator. The court's finding was consistent with events following the trial, when Father moved for a pendente lite order instructing the parties on how to handle the holiday schedule when they could not agree.

In summary, there was evidence before the trial court from which it could find that the parties could not effectively communicate and would not likely be able to do so for

the foreseeable future. Because there was "competent or material evidence" in the record to support the trial court's finding concerning the parties' failure to effectively communicate, the trial court's findings are not clearly erroneous. *Gizzo v. Gerstman*, 245 Md. App. at 200.

Father next argues that the court erred in making its custody determination because it did not acknowledge or give weight to the children's preferences. Although a child's preference "'is a factor that *may* be considered in making a custody order, the court is not required to speak with the children.'" *Karanikas v. Cartwright*, 209 Md. App. 571, 590 (2013) (quoting *Lemley v. Lemley*, 102 Md. App. 266, 288 (1994)) (emphasis in original). The court may consider a child's preferences only if the child "'is of sufficient age and capacity to form a rational judgment.'" *Karanikas v. Cartwright*, 209 Md. App. at 590 (quoting *Leary v. Leary*, 97 Md. App. 26, 30 (1993)). In addition, the child's preference is not dispositive in a custody determination, but is "simply one factor to be considered, within the context of all other relevant factors." *Boswell v. Boswell*, 352 Md. 204, 222 (1998). The trial court acknowledged that it did not know the children's preferences, but said that their preferences would not be relevant because of their ages.

Father claims there was evidence that the children wanted to "spend more time with him." This evidence consists primarily of Ms. Nallin's testimony concerning what she observed about R. spending time with Father and of the marriage counselor's observations that the children were sad when told that there would be a divorce. The

court was free to evaluate the testimony of those witnesses and assign them the weight it felt was warranted. *Petrini v. Petrini*, 336 Md. at 470.

Father also argues that there was no evidence to support the trial court's determination that mid-week overnights were disruptive to the children. To the contrary, both parties agreed that they did not believe it was in the children's interests to be "bouncing around" between homes on school days. Thus, the court was not clearly erroneous in finding that mid-week overnights would be disruptive.[2]

In addition to the factual findings with which Father takes issue, the trial court considered the *Sanders* factors[3] and *Taylor* factors[4] when making its custody

[2] Father takes issue with the trial court's focus on a routine for the children. He suggests that this focus was inconsistent with the court's decision to eliminate the Thursday overnight established in the pendente lite order. However, a pendente lite order "focuses on the immediate, rather than on any long-range, interests of the child." *Frase v. Barnhart*, 379 Md. 100, 111 (2003). A pendente lite custody order "does not bind the court when it comes to fashioning the ultimate judgment." *Id.*

[3] The *Sanders* factors include: 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. *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. at 420 (citations omitted).

[4] The *Taylor* factors include: 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; 13) Impact on State or Federal Assistance; 13) Benefit to Parents; and 14) Other Factors. *Taylor v. Taylor*, 306 Md. at 304-11.

determination.[5] Analyzing these factors, the court found that minimizing disruption to the children was important. The court determined that Mother had been the children's primary caregiver before the separation and that for the majority of the separation the children's schedule had been primarily in the care of their mother, except for Thursday dinners and alternating weekends spent with Father. This finding was well supported by the record, the parties' testimony, and the testimony of other witnesses.

Also important to the court's determination was the parties' work schedules. Based on the parties' testimony and the testimony of other witnesses, the court found that Mother worked three days per week, while Father worked five days per week, had ten days of on-call time per month, and was sometimes required to work after hours. Although the court recognized that Father's schedule allowed for some flexibility, the court also recognized that the amount of flexibility was small.

In summary, there was sufficient evidence before the trial court from which it could make the findings it did on each of the issues that Father disputes. Because there was "competent or material evidence" in the record to support the trial court's findings, the trial court's findings are not clearly erroneous. *Gizzo v. Gerstman*, 245 Md. App. at 200.

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[5] Father appears to take issue with the trial court's failure to make separate findings on the *Taylor* factors. Most of the *Taylor* factors overlap with the *Sanders* factors and were directly considered. The factors that do not directly overlap were also considered, as reflected in the trial court's oral opinion. These included the parents' ability to communicate; their willingness to share custody; the relationship between the children and each parent; the disruption to the children's social life and education; and the demands of parental employment.

II. Failure to Consider Other Forms of Legal Custody

Father contends that the trial court failed to consider any form of legal custody other than sole legal custody. Father bases this contention on the trial court's reference to the "random tie-breaking rights" suggested by the BIA. We are unpersuaded by Father's contention.

The trial court characterized the BIA's proposal as "random" because the BIA stated that "the actual areas" in which either parent had tie-breaking authority would not "matter as much." Notably absent from the BIA's proposal was any suggestion, other than a conclusory statement, that the unusual tie-breaking arrangement would be in the children's best interest. However, Father seems to interpret the trial court's remarks to mean the trial court was unfamiliar with the concept of tie-breaking authority.

"'[T]rial judges are presumed to know the law and to apply it properly.'" *Marquis v. Marquis*, 175 Md. App. 734, 755 (2007) (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007)). "[W]e presume judges know the law and apply it 'even in the absence of a verbal indication of having considered it.'" *Marquis v. Marquis*, 175 Md. App. at 755 (quoting *Wagner v. Wagner*, 109 Md. App. 1, 50 (1996)). "Absent an indication from the record that the trial judge misapplied or misstated the applicable legal principles, the presumption is sufficient for us to find no abuse of discretion." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003) (citing *Strauss v. Strauss*, 101 Md. App. 490, 511 (1994)).

The law recognizes multiple forms of joint custody, which can be adjusted to meet the needs and "'unique character'" of custody cases in light of the "'subjective nature of

the evaluations and decisions that must be made.'" *Shenk v. Shenk*, 159 Md. App. 548, 560 (2004) (quoting *Taylor v. Taylor*, 306 Md. at 303). The decision about what form of custody is in the best interests of the children is within the discretion of the trial court, to be determined in light of the guiding standards and principles of Maryland law. *See Santo v. Santo*, 448 Md. at 626. Where a trial court engages in a "thorough, thoughtful and well-reasoned analysis congruent with the various custody factors," its custody determination is likely to be affirmed on appeal. *Azizova v. Suleymanov*, 243 Md. App. 340, 347 (2019) (citing *Santo v. Santo*, 448 Md. at 646).

As discussed above, the trial court "embarked upon a thorough, thoughtful and well-reasoned analysis" consistent with the custody factors. *See Azizova v. Suleymanov*, 243 Md. App. at 347. The court's decision to award sole legal custody was based not only upon the parties' inability to communicate, but also upon the parties' usual method of reaching decisions (i.e., Mother making decisions and Father acquiescing) and Mother's historical role of caretaker for the children. The court was within its discretion to award sole legal custody.

Based on this record, there is no reason to conclude that the trial court was unaware of or failed to consider alternative forms of custody, such as joint custody coupled with a grant of tie-breaking authority to one parent or another. To the contrary, as is apparent from Father's brief, the trial court questioned Father at length concerning the potential for tie-breaking authority if the parties could not agree—a problem that Father proposed to solve with a mediator. In addition, the trial court considered the

parties' and the BIA's post-trial memoranda, each of which requested different arrangements for legal custody.

Father cites *Santo v. Santo*, 448 Md. 620 (2016), to support his position that even parents who do not communicate well can still be awarded joint legal custody when they are not "parents at war." However, *Santo* did not hold that joint legal custody *mus*t or *should* be awarded to parents who cannot communicate well; rather, it held that a trial court *could* grant joint legal custody to parents who cannot effectively communicate, if that decision is made "under appropriate circumstances and with careful consideration articulated on the record." *Santo v. Santo*, 448 Md. at 646. In addition, *Santo* involved the affirmance of a trial court's exercise of discretion, whereas in this case Father asks that the trial court be reversed. *Id.* at 646-47. It is far easier to conclude that a court did not abuse its discretion than to conclude that it did. In any event, the *Santo* Court reiterated that if parents were unable to make decisions concerning the children "because, for example, they are unable to put aside their bitterness for one another, then the child's future could be compromised," joint custody would be inappropriate. *Id.* at 628.

Father also cites *Santo* for the proposition that, even in cases where the parties disagree, an award of joint legal custody with individualized spheres of tie-breaking authority can be appropriate. Father suggests that the trial court could have relied on *Santo* to adopt a similar suggestion by the children's BIA attorney. *Santo* is distinguishable for two reasons.

First, as mentioned above, that case involved an affirmance of the trial court's exercise of broad discretion. By contrast, in this case Father asks that the trial court's

exercise of discretion be reversed, which is a far more daunting challenge. *Santo v. Santo*, 448 Md. at 646-47.

Second, the tie-breaker spheres in *Santo* involved specific realms for specific reasons pertaining to that family. *Id.* at 643-44. In that case, the father was awarded tie-breaking authority for educational, religious, and medical matters because there were specific facts in the record to support the need for tie-breaker authority on those issues and to support the trial court's decision that the father was the appropriate person to hold the tie-breaker authority to serve the needs of the children. *Id.* at 643-44. The mother was awarded tie-breaker authority on the issue of selection of a therapist because of her individualized expertise in that field. *Id.* at 644.

Here, the court was not obligated to accept the BIA's recommendation. The court considered the BIA's recommendation and rejected it, not because the court did not know about the concept of tie-breaking authority, but because the BIA's suggestion that the parties be awarded tie-breaking authority in areas that "did not matter" was not "practical or necessary to maintain a healthy parental balance." The BIA's statement that the areas of authority "did not matter" underscores this point and distinguishes these circumstances from those in *Santo*.[6]

The trial court considered available arrangements of legal custody and made its decision after engaging in a "thorough, thoughtful and well-reasoned analysis congruent

[6] The BIA may have been trying to devise a regime under which the parents might learn to communicate with each other because they would be required to communicate with each other. The court certainly could have accepted the BIA's proposal, but it was not required to do so.

with the various custody factors." *Azizova v. Suleymanov*, 243 Md. App. at 347. The record does not support Father's assertion that the court failed to consider any form of custody other than sole legal custody.

III. Existence of Bias

Finally, Father asserts that the trial court judge's custody determination was based on personal opinions and biases and should therefore be reversed.

In making a custody determination, a trial court must make "specific factual findings based on sound evidence in the record." *Boswell v. Boswell*, 352 Md. 204, 237 (1998). A ruling that is not based on factual findings, but on "personal bias or stereotypical beliefs" may result in reversal. *Id.* If a trial court relies on "abstract presumptions, rather than sound principles of law, an abuse of discretion may be found." *Id.* Conversely, a trial court that bases its decision not on a "gut feeling" but upon the appropriate factors, the evidence, and its own observations of the parties and witnesses acts within the broad discretion vested in triers of fact on custody issues. *See Petrini v. Petrini*, 336 Md. at 471-72.

Here, the trial court heard the testimony of the parties and their witnesses over the course of four days. It made findings of fact spanning 15 pages. The findings were rational, supported by the evidence, and specific to the parties (not generic biases or positions as Father asserts). The trial court's custody determination was not founded on biases, but was carefully considered, predicated upon sound legal principles, and based upon factual findings that are not clearly erroneous.

Father cites a variety of statements made by the trial court, taken out of context, to support the argument that the trial court exhibited bias.

The first example cited by Father is a comment in which, Father says, the trial exhibited a maternal preference. Father cites the following comment by the court to illustrate what he contends was evidence of a maternal preference:

> Now from a lot of guys['] point of view, because I am an expert on how some guys think, sometimes the kids aren't as much fun when they are little. They're kind of a pain in the neck sometimes, cute, fine, but let their mother deal with all of that.

This comment does not reflect a "maternal preference" in custody decisions; it concerns the court's observations of Father's interaction with the children before the separation. The court's surrounding statements reflected that Father had not been as involved in the children's early lives as he could have been and that Father had "a tendency to abdicate his role." In light of the surrounding context of the trial court's statements, we are not convinced that Father's interpretation accurately represents the trial court's intended meaning.

Father next claims that the trial court possessed a general preference for children to have a single decision-maker. As support for this claim, Father identifies the trial court's examination of Father at the trial, where the court questioned Father on how the parties would resolve disagreements when they arose in the future. Father believes that this questioning was inappropriate because, he says, considering the parents' unforeseen, future disagreements would necessarily result in an award of legal custody to one parent in all cases.

Father fails to recognize that the trial court *should* consider the children's future when fashioning an award of custody. *See Gizzo v. Gerstman*, 245 Md. App. at 199 ("[a]ssessing the child's best interests requires the court to evaluate the child's life chances in each of the homes competing for custody and then to predict with whom the child will be better off in the future") (internal citations omitted). Father also fails to recognize that the trial court's ultimate custody determination did not depend solely on the parties' ability to resolve disagreements, but on many factors, including the parties' history of decision-making, where Mother made decisions and Father acquiesced. Father's interpretation of the trial court's questioning does not accurately capture either the purpose or tone of the trial court's questions.

Finally, Father argues that the trial court was biased in favor of one party having primary physical custody. As evidence of this alleged bias, Father cites the trial court's statement that overnights during the school week were disruptive to the children—a statement with which Father disagrees even though it was supported by the evidence (as discussed above). As evidence of the court's alleged preference for a single parent to have primary physical custody, Father cites the court's reference to a "home base" at the pendente lite hearing. Father states:

> The Trial Court simply believes that children (not the children involved in this case, but all children) should have a "home base" with one parent. (E. 1792).

Father misinterprets the trial court's statement. The reference to "home base" was not about children in general, but to R. and E., the specific children whose custody was at issue in this case. The trial court's specific words at the conclusion of the pendente lite

hearing—after nearly a page of statements about the children's relationship to their parents and to their school—were that "[the court thought] the children should have one main home base on a temporary status, and [the court thought that the home base] should be with the mother."

Father also claims that the trial court's use of the terms "custodial" and "noncustodial" in the context of discussing summer access schedules meant that the trial court "normally awards custody to one party." As Father notes, the trial court clarified at the trial that its comments reflected where it was leaning "in a case like this," and confirmed that its decision about custody and summer schedules was dependent upon the facts of each case. We are not convinced that Father's interpretation of the court's words demonstrates a bias in favor of primary physical custody.

CONCLUSION

Here, the trial court made reasonable factual findings supported by competent evidence in the record, and its findings were not clearly erroneous. The trial court considered the custody options available and concluded that sole legal custody was in the children's best interest. The trial court's findings and ultimate conclusions were not based on personal biases, but were tethered to guiding rules and legal standards. Because a "reasonable person" could take the view adopted by the trial court, and the trial court's decision was tethered to guiding rules or principles and was not "clearly against" the logic and effect of facts and inferences before it, the trial court did not abuse its discretion in awarding sole legal and primary physical custody of the children to Mother. *Gizzo v. Gerstman*, 245 Md. App. at 201. On the facts of this case, another judge might have

reached another conclusion, but under the rules governing appellate review of custody decisions, we are constrained to uphold the exercise of discretion in this case.

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