Circuit Court for Montgomery County
Case No. C-15-FM-22-000098

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND*

No. 428

September Term, 2023

MIHRET TEKLEMICHAEL

V.

HAILE SIDA

Wells, C.J.,
Shaw,
McDonald, Robert N.
(Senior Judge,
Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: November 8, 2023

When a child's parents engage in litigation over custody of their child and find themselves unable to resolve the dispute themselves, it falls to the circuit court to determine the arrangements that will serve the child's best interests. In this case, the Circuit Court for Montgomery County was called upon to decide a custody dispute that arose between a child's mother, Mihret Teklemichael, and father, Haile Sida. For simplicity's sake, we shall refer to them as "Parents" or "Mother" and "Father" and to the child as "Child." After a trial, the Circuit Court ordered, among other things, that Parents share physical custody, that Father have sole legal custody, and that Mother pay Father $50,000 in counsel fees, to be paid in installments.

Mother, the appellant here, challenges that order. She argues that the Circuit Court erred legally or abused its discretion in (1) its evidentiary rulings concerning the two witnesses whom she had identified as experts, (2) its determination that granting sole legal custody to Father served Child's best interests, and (3) its award of counsel fees to Father.

As explained below, the Circuit Court applied correct legal standards in this case. Further, as a general rule in child custody cases, an appellate court defers to a circuit court's evidentiary rulings, fact findings, and custody, access, and counsel fee determinations because the circuit court is best positioned to observe the witnesses, the proceedings, and the case as a whole.[1] The record in this case gives us no reason to depart from that general rule. Accordingly, we affirm the Circuit Court's judgment.

[1] *See, e.g., Petrini v. Petrini,* 336 Md. 453, 470-72 (1994).

I

Background[2]

Child Abuse Allegation and Investigation

Child was born in March 2017, while Parents were living together. Parents, who had not married, separated in 2019. They shared time with Child cooperatively until November 14, 2021, when Mother told Father that Child had said that Father had performed sexually abusive acts on her. Father denied abusing Child. Parents agreed that Child's statements should be reported to Child Protective Services ("CPS") for an investigation. Mother did so five days later, and CPS contacted Father that day. Mother also told Child's pediatrician that Child had said that Father had sexually abused her. The pediatrician also contacted CPS.

Father voluntarily stopped having unsupervised visits with Child pending the CPS investigation. Meanwhile, Parents agreed that Child should see a therapist. Beginning in mid-December 2021, Child began art therapy sessions with Laura Goss, a graduate art therapist working under supervision towards full licensure as a licensed clinical professional art therapist.[3] Mother told Ms. Goss that Child had told Mother that Father had sexually abused her and that Father had been "brainwashing" Child into "not speaking up of what happened."

[2] This summary does not purport to recount all of the procedural events in the case. Also, we do not need to specify the acts of sexual abuse that Mother said that Child had attributed to Father.

[3] The licensing requirements for the practice of clinical professional art therapy are set forth in Maryland Code, Health Occupations Article, §§17-304.1 and 17-309.

In January 2022, CPS issued a determination that it had "ruled out" sexual abuse.[4]

Father's Custody Complaint and Mother's Emergency Motion for Custody

When Mother continued to refuse to allow Father to see Child without supervision, Father filed a complaint for custody in which he again denied any wrongdoing and sought shared physical custody and joint legal custody of Child. Mother then filed an emergency motion for temporary custody that culminated in a *pendente lite* consent order requiring that Father's visits with Child occur only under the supervision of a custody supervisor in a neutral location.

Pretrial Ruling Limiting Testimony of Mother's Proposed Expert Witnesses

The parties conducted discovery. As detailed further in Part II of this opinion below, Mother disclosed that she expected to call Ms. Goss as an expert witness to opine, among other things, that Child had been sexually abused by Father, that Father should have no contact with Child until he had acknowledged the abuse and received treatment, and that there was no indication that Mother had coached Child to accuse Father of sexual abuse. Mother also disclosed that she expected to call Elizabeth Hoffman,[5] a retired social worker,

[4] Under Maryland law, an investigation of alleged child abuse or neglect can result in a finding of "indicated," "ruled out," or "unsubstantiated." *See* Maryland Code, Family Law Article ("FL"), §5-701 *et seq*.; *see also Volodarsky v. Tarachanskaya*, 397 Md. 291, 296 n.4 (2007) (listing the "three possible findings"). "Indicated" denotes "a finding that there is credible evidence, which has not been satisfactorily refuted, that abuse, neglect, or sexual abuse did occur." FL § 5-701(m). "Ruled out" denotes "a finding that abuse, neglect, or sexual abuse did not occur." FL § 5–701(w). "Unsubstantiated" denotes "a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out." FL § 5-701(y).

[5] Ms. Hoffman's full name is Elizabeth Anne Hoffman; she is frequently referred to as "Anne Hoffman" in the record.

as an expert witness to opine on various topics. Father moved *in limine* to exclude the testimony of both proposed experts. The Circuit Court conducted a hearing on that motion on March 30, 2023. It ruled that Ms. Goss did not qualify as an expert as defined by Maryland Rule 5-702 and limited the testimony of Ms. Hoffman.[6] The Circuit Court precluded Ms. Hoffman from basing her opinions on information that she had received from Ms. Goss.

Trial on the Merits

The Circuit Court conducted a bench trial on the merits of the case on April 3 and 4, 2023.

At trial, Mother argued that Father should have no contact with Child and that she should have sole physical and legal custody. Father sought joint legal custody with tiebreaking authority and shared physical custody.

Central to the case was the issue of whether Child had been sexually abused by Father. Both Father and Mother testified at trial at some length and both were cross-examined extensively. Father called as witnesses his sister, his brother, a former girlfriend, and a neighbor, as well as two independent custody supervisors who had attended his visits with Child. The testimony of Father's witnesses all supported the view that Child, in her contacts with him, exhibited no signs of having been sexually abused, was doing well, and had a healthy and loving relationship with him. Father also introduced the CPS finding, medical reports, day care reports and various text messages with Mother.

[6] In a separate ruling, the court granted Mother's motion to exclude an expert witness designated by Father. Father has not appealed that ruling.

By contrast, Mother testified at length that Child continuously described "horrific" acts of abuse to her, constantly had nightmares, had to sleep with Mother, and reacted to Father with fear. Mother called as a witness her own mother, who lived with her, to corroborate one instance in which she said that Child had reacted negatively to Father. Mother also presented the testimony of a former boyfriend, who had become a tenant in part of her house, to testify about his limited contact with Child – presumably to counter any suggestion that he had been responsible for any alleged abuse suffered by Child. Mother called Ms. Hoffman, whom the Circuit Court qualified as an expert in the field of sexual abuse and childhood trauma. Mother also submitted copies of medical reports and text messages with Father.

The Circuit Court permitted Ms. Hoffman to opine only on whether Child had suffered trauma. After reviewing various records and interviewing Child's teachers, Ms. Hoffman opined that Child had experienced trauma at a "very concerning" level. Ms. Hoffman stated that she could not identify the origin of that trauma or when or where it had occurred and that she could not state "within a reasonable degree of professional certainty" where the "concerning behaviors" originated.

Finally, both parties submitted financial statements and invoices from their attorneys to support their respective requests for an award of counsel fees against the opposing party.

Circuit Court Decision

At the conclusion of the trial, the Circuit Court issued a detailed oral opinion. The Circuit Court began by making findings as to each Parent's credibility and relationship

with Child. Stating that the sole evidence that Father had sexually abused Child had come from Mother and finding Mother "to be utterly not credible in her accusations," the court stated that it "[did] not find reasonable grounds that the father sexually abused this child." After reviewing the evidence in detail, the court described the sequence of events as a "setup" by Mother to gain custody of Child. In one example of Mother's testimony that it did not credit, the court noted the contradiction between Mother's description of Child's reaction to Father during the supervised visits of Child with Father and the testimony of the two custody supervisors, including a former police officer "with no agenda at all," who had testified that the child was "delighted" to see Father during those visits and "had no difficulty in separating from the [Mother]." Citing the supervisors' testimony that Child enjoyed being with Father and showed no signs of anxiety, the court stated that it did not believe Mother's report to Ms. Goss that Child was scared to go to her supervised visit with Father. The Circuit Court discounted Ms. Hoffman's testimony on the alleged trauma as not probative on the source of the trauma and as unsupported by a methodically-collected set of facts.

The Circuit Court then analyzed the factors that Maryland courts have found pertinent to the determination of custody in Child's best interests.[7] Addressing the factor for the relative "fitness of the parents," the court stated that it was "concerned about the damage that [Mother] has done to this child already" and that it "[found] it very, very, very difficult to find [Mother] to be a fit parent," given that Mother "has done her level best to

[7] *See* Part II.B.1 of this opinion below.

have this child make unfounded accusations against her [father]." The court further stated that it "is not at all concerned about the fitness of the father."

Addressing the factor for the ability of the parents to communicate, the court found that Mother did not communicate truthfully with Father. The court also found that the factor for the parents' willingness to share custody was not met, as Mother had asked the court to give her sole legal custody of Child and to order Father to stop seeing Child. The court found that the other factors, such as the suitability of each Parent's home and demands of their employment, did not weigh either way. The court concluded: "The Court does not find, after having weighed all of these factors, that joint custody is going to work."

Based on its findings, the Circuit Court announced its decision on the record and issued a written order reflecting the decision that was entered on April 5, 2023. The court granted sole legal custody to Father and set a schedule for each parent's access to the child, with special directions as to holidays and summer breaks. Father was ordered to pay child support to Mother in the amount of $1005.00 per month. The court accepted the parties' agreement to equally share Child's extraordinary medical expenses and school tuition. Finally, based on its finding that Mother had lacked substantial justification for her accusation that Father had sexually abused Child – which had triggered the custody litigation – the court ordered Mother to pay $50,000 towards Father's counsel fees, payable in four installments at four-month intervals.

We will include additional facts in the discussion below as the need arises.

II

Discussion

Mother raises three issues on appeal:

1 – Whether the Circuit Court abused its discretion by excluding the opinions of Ms. Goss and by limiting some of Ms. Hoffman's opinions.

2 – Whether the Circuit Court abused its discretion when it granted sole legal custody to Father.

3 – Whether the Circuit Court abused its discretion when it awarded counsel fees to Father.

Mother also argues that the Circuit Court erred legally in various respects as to these issues. Application of incorrect legal standards would itself be an abuse of discretion. As set forth below, we conclude that the Circuit Court applied correct legal standards and did not otherwise abuse its discretion as to each issue raised by Mother.

A. Whether the Circuit Court Abused its Discretion in Limiting Expert Testimony

Mother challenges the Circuit Court's rulings excluding expert testimony by Ms. Goss and limiting that of Ms. Hoffman.

1. Applicable Law on the Admissibility of Expert Opinion Testimony

Maryland Rule 5-702

Maryland Rule 5-702 governs the admissibility of expert testimony. As an overarching principle, the rule permits a trial court to admit expert testimony "in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." The rule directs a court

to consider three factors in making that determination: "(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony."

Expert's Qualifications

The first factor – qualification as an expert by knowledge, skill, experience, training, or education – goes to whether the expert is sufficiently qualified in the particular field that the expert's testimony would be helpful to the fact finder. *In re Adoption/Guardianship No. CCJ14746*, 360 Md. 634, 647 (2000); *see, e.g.*, *Univ. of Ms. Med. Sys. Corp. v. Waldt*, 411 Md. 207, 237 (2009) (trial court did not abuse its discretion in excluding testimony of expert who had "limited experience" in the particular field and had failed to disclose "any specific scientific or factual underpinnings" for his opinion). In making that assessment, the trial court may "consider any aspect of a witness's background in determining whether the witness is sufficiently familiar with the subject to render an expert opinion, including the witness's formal education, professional training, personal observations, and actual experience." *Massie v. State*, 349 Md. 834, 851 (1998).

Appropriateness of Testimony

The second factor is "the appropriateness of the expert testimony on the particular subject." Expert testimony is subject to "the general rule that one witness may not opine on the credibility of another witness' testimony in a case." *Fallin v. State*, 460 Md. 130, 160 (2018). Thus, expert testimony in a child sex abuse case may not embody the expert's conclusions about the truthfulness of the child's statements. *Id.* at 161. Criminal

convictions have been reversed in several cases in which testimony by expert witnesses intruded on the fact-finder's function in this way. *See id*. at 157 (expert opined that, based on her training and expertise, there were no signs that the victim had fabricated her story or had been coached); *Bohnert v. State*, 312 Md. 266 (1988) (social worker relied solely on the victim's statements as the basis for the social worker's opinion that sex abuse had occurred); *Hutton v. State*, 339 Md. 480 (1995) (expert opinions based on credibility assessments were inadmissible).

Hutton involved opinion testimony by a psychologist and a social worker. The psychologist opined that she had seen no signs that the alleged victim had faked her story. That testimony was inadmissible because it embodied a "credibility assessment, a matter outside [the expert's] area of expertise and one historically and appropriately entrusted to the jury." 339 Md. at 503, 505. The social worker, who had counseled the alleged victim, testified that she had assessed the victim's credibility by looking for consistency in the victim's statements and had concluded that the statements were consistent. That testimony, too, was impermissible; the witness had "indicate[d] her opinion of the victim's consistency and, indirectly, [the victim's] truthfulness." *Id*. at 505.

Factual Basis for Opinions

The third factor is whether "a sufficient factual basis exists to support the expert testimony" – that is, "whether the proffered expert testimony is sufficiently reliable to be provided to the trier of facts." *Abruquah v. State*, 483 Md. 637, 653-54 (2023) (citation omitted). This factor encompasses two sub-elements – "whether the expert had an adequate supply of data and whether the expert used a methodology that was reliable."

Oglesby v. Baltimore Sch. Assocs., 484 Md. 296, 327 (2023). If either is missing, the expert's opinion is "mere speculation or conjecture." *Rochkind v. Stevenson*, 471 Md. 1, 22 (2020) (citation omitted).

To assess the adequacy of the expert's supply of facts, the trial court must determine whether the facts on which the expert has relied are "sufficient to indicate the use of reliable principles and methodology in support of the expert's conclusions." *Sugarman v. Liles*, 460 Md. 396, 415 (2018) (citation omitted). A trial court may not "resolve disputes of material fact" in determining the sufficiency of the factual basis for an expert opinion. *Oglesby*, 484 Md. at 333. The expert's factual basis for the opinion "can come from facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions." *Frankel v. Deane*, 480 Md. 682, 700 (2022) (citation omitted). An expert may "express an opinion based upon facts assumed but not in evidence when the question is asked, if such facts are later proved in the case." *Id*. at 700-01 (citation omitted). The materials upon which an expert relies "need not be admissible provided that they are of the kind reasonably relied upon by experts in the particular field to form opinions or inferences on the subject." *Sugarman*, 460 Md. at 415.

To assess the expert's method, the trial court addresses factors bearing on the reliability of both the scientific theory or technique itself and the expert's application of it. Examples of the former include whether the method can and has been tested, has a known rate of error, and is "generally accepted." Examples of the latter include whether the expert developed the opinion "expressly for the purpose of testifying," and "adequately accounted

for obvious alternative explanations."[8] *Rochkind*, 471 Md. at 35-36. When applying the factors, "circuit courts are to act as gatekeepers" in the admission of testimony, such that, "for example, admitting expert evidence where there is an analytical gap between the type of evidence the methodology can reliably support and the evidence offered" would constitute an abuse of discretion. *Abruquah*, 483 Md. at 652.

Standard of Appellate Review

The admissibility of expert testimony is "largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute a

[8] The Supreme Court of Maryland, then known as the Court of Appeals of Maryland, has listed the following "flexible" factors:

> (1) whether a theory or technique can be (and has been) tested;
> (2) whether a theory or technique has been subjected to peer review and publication;
> (3) whether a particular scientific technique has a known or potential rate of error;
> (4) the existence and maintenance of standards and controls;[]
> (5) whether a theory or technique is generally accepted[;]
> (6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying;
> (7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;
> (8) whether the expert has adequately accounted for obvious alternative explanations;
> (9) whether the expert is being as careful as [the expert] would be in [the expert's] regular professional work outside [the expert's] paid litigation consulting; and
> (10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

Rochkind, 471 Md. at 35-36.

ground for reversal." *Clemons v. State*, 392 Md. 339, 359 (2006) (citation omitted). A trial court's ruling on the admissibility of expert testimony under Maryland Rule 5-702 is thus reviewed for abuse of discretion. *Frankel*, 480 Md. at 701.

2. Laura Goss

Qualifications, Retention as Expert, and Proposed Testimony of Ms. Goss

After Mother told Father that Child had described sexually abusive acts by Father, Mother and Father agreed that Child should be seen by a therapist. In December 2021, Mother retained Laura Goss, who began holding virtual art therapy sessions with Child that month. Ms. Goss had obtained a masters' degree in art therapy in 2016, but was not yet a licensed art therapist. Instead, she was a "licensed graduate professional art therapist," which meant that she had been approved by the State Board of Professional Counselors and Therapists "to practice graduate professional art therapy under the supervision of a Board-approved supervisor while fulfilling the supervised clinical experience" for licensure as a "licensed clinical professional art therapist." Maryland Code, Health Occupations Article, §§17-304.1 and 17-309. Based on what Mother had told her, Ms. Goss wrote a treatment plan to address "trauma" and create a "safe environment in which [Child] feels safe to disclose alleged abuse."

On January 13, 2022, CPS issued its determination that it had ruled out sexual abuse. On January 19, Mother told Ms. Goss that Father "[had] a way of killing all cps report[s]" and that Mother "would really appreciate it if you contact a NEW case worker and start a new case and not involve him in any of the cps process." Ms. Goss did so, in a report

where she "shared … what the mom shared with me."[9] On July 1, 2022, Mother informed Ms. Goss that Child had visited Father with a new custody supervisor. Mother stated that Child had cried "the whole time saying she was scared and the lady was very nice soothing her," but then, when Father approached, "wiped her tears quickly and begged me not to say anything after that." On July 5, Mother asked Ms. Goss to talk to Ms. Hoffman, who, Mother stated, "will be testifying about why [Child] is still playing happy and all in her visits regardless of the allegations and the fear she only expresses for me."

On July 18, 2022, Mother filed her designation of experts in this case. In it, Mother identified Ms. Goss as a witness whom she intended to call as an expert to render opinions at trial. Mother disclosed that Ms. Goss would give "findings and opinions … to a reasonable degree of professional certainty" on Ms. Goss's "treatment of the parties' minor child, her diagnoses, her impressions as to whether abuse on the part of [Father] toward the minor child occurred, interactions with each party and her impressions of them, treatment plan for the minor child, the relationship of trust she has developed with the minor child, and recommendations for the minor child's treatment going forward." Mother also expected Ms. Goss to opine on "whether and to what extent contact between [Child] and [Father] is appropriate" and "prognoses for the minor child."

As the basis for Ms. Goss's expected findings and opinions, Mother's expert designation stated "that Ms. Goss's testimony will be based on her interactions and therapy with the child, review of her treatment notes and plan, interactions and communications

[9] There is no indication in the record that CPS opened a new investigation.

with the parties, communications with third parties, as well as her education, experience and expertise in her field; specifically working with children who have suffered from trauma, including sexual abuse." The designation did not say what Ms. Goss's opinions and findings were, did not specify the facts on which she would rely, and did not describe a methodology employed by Ms. Goss.

Ms. Goss's resume was attached to the designation. Under the heading for "Qualifications," it stated that she had "[e]xperience providing intensive therapy to child, adolescent, adult, forensic and civil populations" and "group and individual therapy to individuals with developmental disabilities and/or chronic mental illness." The resume did not mention experience in diagnosis of child sexual abuse, investigation of child sex abuse, or custody evaluation.

Under the heading for "Education," Ms. Goss's resume showed that she had received a Masters of Arts degree in art therapy in 2016. Under "Relevant Experience" was a list of positions in which she had conducted individual and group art therapy sessions for patients with various conditions. Two entries pertained to the field of child sexual abuse: (1) Ms. Goss's then-current position, held since February 2021, as an art therapist at a therapy center where she provided therapy to adults, adolescents, and children "experiencing anxiety disorders, mood disorders, grief, and predominantly focusing on individuals with personality disorders, PTSD, and individuals who have experienced childhood trauma and/or abuse"; (2) for about 13 months beginning in 2016, a position for a psychiatric institute where she led group art therapy sessions for "individuals diagnosed with PTSD and Dissociative Identity Disorder surrounding themes of childhood sexual

trauma." For six months beginning in September 2019, she led individual art therapy sessions for children with "diverse issues and diagnoses, including developmental disabilities, Autism Spectrum Disorder, ADHD, and grief." That entry does not mention child sexual abuse.

Mother later supplemented the expert designation for Ms. Goss in October 2022 to add the "findings and opinions" to which Mother expected Ms. Goss to testify. First, "based on credible disclosures made by [Child]," Ms. Goss was expected to opine "that [Father] sexually abused [Child] and that [Child] requires ongoing treatment for the trauma she has experienced." Second, Ms. Goss would testify "that she … had no indication that [Mother] has coached or influenced [Child]" and that Ms. Goss's remote therapy sessions with Child had been "private," with "no indication that [Mother] [had] been in the room for those virtual sessions." Third, Ms. Goss would opine that Mother "is open to and has followed her recommendations regarding how to address disclosures [by Child]." Fourth, Ms. Goss was "expected to opine to her recommendation that [Father] have no contact with [Child] until [Child] undergoes additional treatment and until [Father] acknowledges his actions and receives treatment."

Father's counsel deposed Ms. Goss in February 2023. Asked to describe art therapy, Ms. Goss responded that it was "everything you think about in regular therapy and psychotherapy, with art as an added means of communication," and as "psychotherapy plus art." She stated that in graduate school she had had trauma coursework and "had to work in an in-house trauma clinic." She then stated, "I don't do trauma assessment." She also stated that she did not do forensic interviews of children, was not an investigator, did not

know whether her training was on a par with CPS workers as to training and assessing sexual abuse because she did not know what qualifications they needed, did not know whether she was qualified to be a custody evaluator in a case because she did not know either what that required or what a custody evaluator was, and "was not sure what one needs to be an expert on [evaluating access and custody]." She agreed that "the information [she] got was from [Mother]." Asked about disclosures that Child had purportedly made to her on January 18, 2022, Ms. Goss stated "it's not just about what she actually says. It's about the artwork – the themes in the artwork, the themes in her play. So it's more than just I – her saying this is what the direct experience was."

Asked what had occurred since the July 2022 designation of Ms. Goss and the October 2022 supplement to cause Ms. Goss to now opine that Father had sexually abused Child and that Child requires ongoing treatment for trauma, Ms. Goss responded: "So I didn't prepare this [document] .... So I can't definitively say this is what happened." Asked whether she would testify that Father abused Child, Ms. Goss responded, "I can't say that for certain."

It is unclear from the record whether Child made the purported disclosures to Ms. Goss in words; Child's artwork is not in the record. In support of her opinion that Child had not been coached to accuse Father of sexual abuse, Ms. Goss testified that she did not see Mother on the screen during Ms. Goss's virtual therapy sessions with Child and that Child would "run away" to ask Mother for water.

Father's Motion in Limine to Exclude Ms. Goss's Testimony

Shortly before trial, Father moved *in limine* to exclude the expert testimony of Ms. Goss and Ms. Hoffman. As to Ms. Goss, Father argued that there was no factual support in the record for Ms. Goss's opinion that Father sexually abused Child. Father further asserted that Ms. Goss lacked the qualifications, experience, or knowledge that would make her opinions useful to the trier of fact; that Ms. Goss was aligned with Mother's interests and thus not objective; and that Child's artworks had not been produced.

Circuit Court's Ruling

The Circuit Court conducted a hearing on Father's motion. During the hearing, the court asked Mother's counsel whether the grounds of the opinion that Ms. Goss was expected to express at trial "are what this purported expert believes is credible, from the child." Counsel concurred and added that Ms. Goss's opinion was based on her therapy sessions with Child since December 2021. After discussing with Mother's counsel the principle that an expert may not opine on a witness's credibility, the court noted that "testimony [r]egarding her treatment is fine." In that vein, the Circuit Court asked Mother's counsel whether Ms. Goss could be called "as a simple fact witness." Counsel responded: "I don't believe so, because I don't believe ... that I would be able to elicit those statements from the therapist without her being called as an expert."

As to Ms. Goss's qualifications to opine that Child had been sexually abused, the Circuit Court stated that "the fundamental problem that I have is that she really is an incredibly inexperienced person."

After taking the matter under advisement for a day, the Circuit Court granted Father's motion to exclude Ms. Goss's opinions and later elaborated on its reasoning on the first day of trial. Referring to Maryland Rule 5-702, the court noted that Ms. Goss was "still supervised in her work and cannot work without paying to be supervised," did not know what a custody evaluator was, and had had no experience in a contested custody case. The court further noted that Ms. Goss did not do trauma assessment, lacked "an understanding of what trauma assessment is," "doesn't do forensic interviews of children," "does not do an investigation of any sort," did not know what qualifications CPS workers had or what a CPS finding of sexual abuse "ruled out" meant, and had not asked her supervisors to explain the investigative process to her. The court then summarized, in part, as follows:

> This is a witness who has no understanding of basic components of child assessments, child investigations, and what a pivotal aspect of an investigation that was done by CPS entails. Furthermore, … there was a great deal of information about the witnesses' conversations with interested parties. There was a conspicuous absence of objectivity, nor any indication of a scientific method being utilized for the gathering of information for analysis. . . .
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> ***
>
> This witness has no concept that the art drawn by the child is the basis for her opinion and, as such, should be preserved. She has no knowledge at all about the pertinence of the actual items that she purported to interpret.
>
> ***
>
> Based on the information … the Court is not at all satisfied that that witness has the minimal qualifications necessary to be able to assist the trier of fact.

The Circuit Court further ruled that "[t]he actual opinion that was in the designation would not be admissible in any case." Citing *Hutton v. State*, 339 Md. 480 (1995) for the proposition that the assessment of a witness's credibility is inadmissible as a matter

properly within the fact finder's domain, the court noted that Ms. Goss's expected opinions about Child and Mother exceeded the bounds of proper expert opinion.

As to Ms. Goss's expected opinion that Child had not been coached, the Circuit Court found that the fact that Ms. Goss had not seen Mother on Ms. Goss's screen during the virtual therapy sessions with Child did not provide an adequate factual basis for an expert opinion.

At trial, Mother did not seek to introduce Ms. Goss as a fact witness to testify about her treatment and observations of Child.[10]

Analysis

The Circuit Court did not abuse its discretion when it concluded that Ms. Goss was not qualified under Maryland Rule 5-702 to give expert opinions on whether Father had sexually abused Child, whether Child had been coached, or whether all contact between Father and Child should cease. As to all of those anticipated opinions, Ms. Goss had not yet earned the credentials to practice art therapy without supervision by a licensed therapist, had no expertise in diagnosis of child sex abuse, had limited experience with sexually-abused children on an individual basis, and had no experience with custody evaluations.

Nor did the Circuit Court err legally in its application of *Hutton*. As noted by the Circuit Court, Ms. Goss's opinions hinged on her credibility assessment of Child and

[10] During oral argument in this Court, Mother's counsel asserted that Ms. Goss was "the only person who had direct therapeutic knowledge of the child." At the time of trial, Child had had sessions with at least two therapists at the Lourie Center for Children's Social and Emotional Wellness, part of Adventist HealthCare, which is located in Rockville, Maryland (see https://www.louriecenter.org/LC/). Mother did not identify any Lourie Center clinician as an expert, and none testified at trial.

Mother – a determination that lay within the fact finder's domain and thus was not an appropriate subject of an expert opinion.[11]

2. Elizabeth Hoffman

Expert Designation of Ms. Hoffman

Mother designated Ms. Hoffman as an expert who was expected to testify to her opinions and findings on whether Father sexually abused Child, whether contact between a child and an abuser is appropriate, whether Mother had addressed the sexual abuse allegations appropriately, whether Mother had been "forthcoming," whether Mother coached Child, and whether Mother had colluded with Ms. Goss. Mother's designation stated, "Ms. Hoffman is expected to testify that [Child] experienced a trauma and that there is no indication that [Mother] has coached or influenced [Child's] reporting. Ms. Hoffman is also expected to testify generally regarding sex abuse victims and how victims respond and interact with their abusers."

During her deposition by Father's counsel, Ms. Hoffman testified that "I am not at this point in a position to say that sexual abuse took place … I'm not going to testify that I know or that sexual abuse took place." Asked whether she had been retained to say that

[11] Mother attempts to distinguish *Hutton* on the ground that the issue in that case arose in the context of a jury trial. She cites no authority for the proposition that Rule 5-702 should be applied differently in a bench trial than a jury trial. While we may acknowledge that a trial judge in a bench trial may be able – in a way that a jury may not – to compartmentalize inadmissible testimony that it has heard from that which it may consider as a fact finder, nothing requires a trial judge in a bench trial to hear testimony that the judge has held to be inadmissible. In any event, a trial judge in a bench trial is perhaps even better positioned than a judge in a jury trial to know what would, in the language of the rule, "assist the trier of fact to understand the evidence or to determine a fact in issue."

CPS came to a wrong conclusion when it ruled out sexual abuse of Child, Ms. Hoffman responded "Absolutely not." On whether Child should have contact with Father, Ms. Hoffman opined that "if [Child] can see [Father] on a supervised basis and it doesn't cause her distress, it's great," but that "[t]he question is, where is the continued distress coming from." Asked what evidence Ms. Hoffman had for her opinion that visits should be supervised, Ms. Hoffman cited "[Child's] continued level of distress and her somatic symptoms, her nighttime complaints, her ongoing high level of distress." Asked "[w]here are you getting this information," Ms. Hoffman responded, "I got the information from the attorney who got it from [Mother]."

In response to Father's request for documentation regarding Ms. Hoffman's findings and opinions, Ms. Hoffman identified articles that she had read and produced seven pages of handwritten notes of conversations that she had had with Child's teachers and unnamed individuals. Describing the information on which she had relied to reach her opinions, she testified that she had spoken to Ms. Goss by telephone for about an hour with Mother's counsel on the line, had read Child's medical and therapy records, and had spoken to two of Child's teachers. Ms. Hoffman stated that she had not received answers to questions she had posed to a therapist at the Lourie Center, where Child was then receiving therapy, that she had not spoken to the custody supervisors who attended Child's visits with Father, and that she had not spoken with Father.

In her deposition, Ms. Hoffman testified that she based her opinions that Child had suffered a trauma and had not been coached to allege sexual abuse by Father on her "understanding [that] the Lourie Center has diagnosed her with PTSD." Additionally, Ms.

Hoffman testified that she had concluded that Child had not been coached because "the professionals," whom she identified as Ms. Goss, a pediatrician, and the Lourie Center, "do not appear to think that she's being coached."

Father's Motion in Limine as to Ms. Hoffman's Proposed Testimony

Father moved *in limine* to exclude Ms. Hoffman's testimony. He argued that she was not qualified to give opinions as an expert because she was no longer a licensed social worker. Noting also that Ms. Hoffman's deposition testimony did not correspond to the opinions that Mother had described in her expert designation, he further argued that Mother had failed to respond in discovery to Father's requests that Mother produce either the basis of those opinions or a summary of the grounds for them. Father asserted that Ms. Hoffman's testimony should be excluded because he had not been provided her "clear opinion and the basis for it" and that it would have "no probative value."

Circuit Court Ruling on Father's Motion in Limine

The Circuit Court initially granted Father's motion but then refined that decision shortly before trial, ruling that Mother could call Ms. Hoffman to testify, that the court would then determine if Ms. Hoffman was qualified to testify as an expert and whether Ms. Hoffman's opinions had a sufficient basis in fact, and that Ms. Hoffman could only opine as to whether Child had suffered a trauma.

Trial Testimony and Evidentiary Rulings

Before Ms. Hoffman testified as to her opinions at trial, the court permitted counsel to conduct a *voir dire* examination on her qualifications to testify as an expert in the matter – testimony that ended up encompassing much, if not all, of the substance of her testimony.

When Ms. Hoffman testified about the records on which she had relied, the court instructed her that "when you are actually rendering an opinion, … it cannot be based on anything ... that was in [Ms. Goss's report to CPS]" and that "nothing concerning the Goss records [is] admissible here." By then, the Circuit Court had ruled that Ms. Goss did not qualify as an expert, had inquired of Mother's counsel whether Ms. Goss would testify as a fact witness, and had been informed that she would not.

Also during the questioning of Ms. Hoffman, the Circuit Court focused on Ms. Hoffman's reliance on a record of the Child's visit to a pediatrician at which Mother first stated that Child had told her that Father had sexually abused Child. The court remarked that the notes were unclear as to whether Child herself had made any disclosures to the pediatrician or whether, instead, only Mother had made them. Remarking that "we don't even have the person who actually wrote [the notes] for the Court to understand," the court stated, "[y]ou're telling me that I have to make a connection that this doctor intended to incorporate all that was reported by Mom to him as saying the child confirmed that everything happened …." The court ruled that Ms. Hoffman could opine only on whether Child had suffered trauma.

Following the *voir dire* examination, the Circuit Court accepted Ms. Hoffman as an expert in the field of child sexual abuse but not childhood trauma. Ms. Hoffman stated her opinion that Child had suffered trauma:

> My opinion is that the child has suffered a trauma or traumas, event or events as is stated in the criteria, that have created a whole menu of physical symptoms and psychological distress. And according to what I read, of course from Mom; again, the Lorrie Center, teachers, the individuals involved; those physical symptoms have continued.

When asked whether she could testify "with a reasonable degree of professional certainty" as to the origin of the "concerning behaviors," Ms. Hoffman testified, as she had in her deposition, that she could not. Asked whether she had considered the absence of physical evidence in rendering her opinion, Ms. Hoffman said that she had. Mother's counsel then asked: "And what weight did you give that?" Ms. Hoffman responded: "Well, physical evidence in a child in sex abuse is considered a rare finding. For one thing, children heal very quickly, and for another thing, not every kind of sex abuse produces – – " At that point, the court interjected: "I'm sorry, we are going well beyond – – what you designated her for," as Father's counsel objected.

The Circuit Court examined Ms. Hoffman on what facts are needed to meet the clinical definition of post-traumatic stress disorder ("PTSD") in the American Psychological Association's Diagnostic and Statistical Manual of Mental Health Disorders.[12] Citing *Hutton*, the court ruled that Ms. Hoffman could not testify about PTSD; that diagnosis, the court stated, "necessarily requires the expert to specify what the source, the traumatic event is, that resulted in PTSD in order to then determine … whether or not there have been re-experiences of that trauma." The court also did not permit Ms. Hoffman to testify about how she would reconcile "a child enjoying time with a parent who [was] potentially the cause of the trauma[.]"

[12] The Court and Ms. Hoffman used the acronyms "APA" and "DSM."

Reference to Hoffman Testimony in Circuit Court Decision

The Circuit Court ultimately concluded that Ms. Hoffman's testimony was not useful to its determination of the case. In its oral opinion at the conclusion of the trial, the Circuit Court explained that Ms. Hoffman was unable to identify a source of the trauma that, in Ms. Hoffman's opinion, Child had suffered and, further, that Ms. Hoffman's method of fact-gathering was insufficient. The Circuit Court stated:

> The Court gives very little weight to Hoffman's testimony. Her opinion that the child suffered a trauma, unable to indicate the source. She can't say it's child abuse. Her actual work stands in contrast to … the type of work that the Court and [unintelligible] described as being more acceptable forms of fact gathering, where, in that case the doctors, based upon their independent investigation, [em]ployed more acceptable forms of fact gathering, such as, utilizing their own diagnostics testing and developing a more factual basis for their decisions by considering all sources of information, numerous contacts with all parties in order to give that expert witness, those witnesses, the opportunity to weigh and evaluate all of the information.
>
> Ms. Hoffman didn't even bother with the [custody] supervisors, the independent eyewitnesses to the only contact between child and father. They were the only ones that had direct, consistent, frequent contact to see what – – their job is to watch what the child was doing with the father and [Ms. Hoffman said, well, I don't care. … They said it's fine, so it's fine. Of course, let alone that she speaks to the mother for two and a half hours and zero to the father. Her testimony the Court gives little weight to.

Analysis

Mother argues that the Circuit Court abused its discretion when it did not allow Ms. Hoffman: (1) to base her testimony on the information she had received from Ms. Goss; (2) to opine that Child suffered from PTSD; (3) to explain that she had considered the lack of physical evidence of child abuse; and (4) to testify how a child could enjoy time with a

parent who had potentially caused the trauma. We conclude that the Circuit Court did not abuse its discretion in any of these respects.

As to Mother's first argument, Mother does not specify what fact from Ms. Goss would have given Ms. Hoffman a sufficiently reliable basis for Ms. Hoffman's opinions. According to Mother's trial counsel, Ms. Goss could not testify as a fact witness without including her expert opinions. However, as found by the Circuit Court and discussed in Part II.A of this opinion, Ms. Goss was not qualified to give expert opinions. Thus, it was evident to the Circuit Court that there would not be testimony from Ms. Goss to supply the requirement that an expert opinion be based either on evidence in the record or on facts posed in a hypothetical question that assumed that those facts would be admitted into evidence later. *See Frankel*, 480 Md. 700–01. Further, as found by the Circuit Court and discussed above, Ms. Goss could not have testified about her view of the credibility of either Mother's reports to her or Child's alleged disclosures through her artwork. The Circuit Court did not overstep its gatekeeping role when it precluded Ms. Hoffman from expressing opinions based on information from Ms. Goss.

Mother's second argument is that the Circuit Court abused its discretion by excluding Ms. Hoffman's testimony that Child suffered from PTSD. In doing so, the court relied on *Hutton*, where the then-Court of Appeals explained that "in order for an expert to make a diagnosis of PTSD, generally [the expert] must know what the recognized stressor is," that the existence of the stressor depends on the victim's credibility when the stressor cannot be objectively determined, and that, absent an objectively-determinable stressor, the expert's diagnosis of PTSD necessarily depends on the expert's own assessment of the

victim's credibility – a function that lies with the fact-finder. 339 Md. at 502-03. In this case, the record shows that Ms. Hoffman did not purport to make her own diagnosis of PTSD. Instead, Ms. Hoffman relied on a PTSD diagnosis of Child in records from a family therapist whom Child was seeing for therapy and to whom Mother had reported that Child had described sexually-abusive acts by Father. Whether Mother was attempting to introduce Ms. Hoffman's own opinion that Child suffered from PTSD or the Lourie Center therapist's diagnosis through Ms. Hoffman, the Circuit Court correctly excluded the diagnosis. The court did not err in its application of *Hutton*.

Mother's third argument is that the Circuit Court should have permitted Ms. Hoffman to testify to the weight she had given the lack of physical evidence. Ms. Hoffman answered the question partially, and the court did not strike that testimony. Her answer made clear that she did not give much weight to that fact. Even so, the usefulness to the Circuit Court of her opinion on that subject is unclear, given Ms. Hoffman's overall opinion that she could not conclude that Father had caused any trauma to Child or that sexual abuse had occurred.

Mother's fourth argument is that the Circuit Court abused its discretion by not allowing Ms. Hoffman to testify how a child could enjoy time with a parent who had potentially caused the trauma. That testimony, Mother states, was "critical" to support Ms. Hoffman's opinions and to show that Father's evidence did not rule out the allegation that he had sexually abused Child. Mother does not provide support for the proposition that a court, when sitting as trier of fact, must find that a particular expert opinion will in fact

assist the court in its determination of an issue. We defer to the Circuit Court's ruling as to this testimony.

B. Whether the Court Abused its Discretion in Awarding Legal Custody to Father

Mother argues that the Circuit Court abused its discretion when it granted sole legal custody to Father. In support of that argument, Mother notes that Father had not sought sole legal custody and that Parents had been able to cooperate with each other on logistical matters.

1. Applicable Law on a Circuit Court's Determination of Custody

A circuit court's "paramount consideration" in adjudicating a child custody or access case "is what will best promote the child's welfare." *In re Adoption/Guardianship No. 10941 in Cir. Ct. for Montgomery Cnty*., 335 Md. 99, 114 (1994) (citation and quotation marks omitted). That standard – the "best interests standard" – is "an amorphous notion, varying with each individual case." *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 419 (1978). In *Sanders*, this Court gave some form to that amorphous notion by listing factors that it and other courts had used to "weigh[] the advantages and disadvantages of the alternative environments" proposed for the child. *Id.* at 420.

The Court of Appeals, now known as the Supreme Court of Maryland, recognized the "*Sanders* factors" as ones that "trial judges ordinarily consider" and offered some additional considerations. *Taylor v. Taylor*, 306 Md. 290, 303-11 (1986). As recognized by this Court, still more have been compiled in a family law treatise. *Azizova v. Suleymanov*, 243 Md. App. 340, 345–47 (2019), *cert. denied*, 467 Md. 693 (2020)

(referring to l Cynthia Callahan & Thomas C. Ries, Fader's Maryland Family Law § 5-3(a)-(b), at 5-11 to 5-13 (7th ed. 2021)).

The factors are not exclusive, and not every factor will pertain to a child's particular case. *Taylor*, 306 Md. 311. Some factors pertain to the parents' circumstances and fitness; others to the suitability of the proposed living arrangements for the child; others to the workability of shared custody – notably, the parents' capacity "to communicate and to reach shared decisions affecting the child's welfare." *Id*. at 304-11.

The parents' ability to communicate and reach shared decisions, the *Taylor* Court stated, "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." *Id*. at 304. To apply the factor, the Court instructed, a court must consider the evidence regarding how the parents have interacted with each other: "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*. The "past conduct or 'track record' of the parties" is usually the "best evidence" regarding this factor. *Id*. at 307.

Regarding the factor for "fitness of the parents," the *Taylor* Court instructed: "The psychological and physical capabilities of both parents must be considered, although the determination may vary depending upon whether a parent is being evaluated for fitness for legal custody or for physical custody. A parent may be fit for one type of custody but not the other, or neither, or both." 306 Md. at 308.

2. Standard of Appellate Review

Three standards apply to the appellate review of a circuit court's rulings and decision in a child custody case. *In re Yve S.*, 373 Md. 551, 586 (2003). First, the circuit court's factual findings are reviewed for clear error and will not be disturbed "if there is competent or material evidence in the record to support the court's conclusion." *Azizova*, 243 Md. App. at 372 (citation omitted). Second, the circuit court's rulings on questions of law are reviewed *de novo*, without deference to the circuit court. *In re R.S.*, 470 Md. 380, 397 (2020). Third, the circuit court's final decision is reviewed for abuse of discretion. *Yve S.*, 373 Md. at 586. It will be reversed only if it was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Id*. at 583-84,586 (citation omitted).

3. The Circuit Court's Findings of Fact and Application of the Factors

As described in Part I of this opinion, the Circuit Court made detailed findings of fact and then applied the *Sanders/Taylor* factors to them. In awarding legal custody to Father, the Circuit Court looked to the factors bearing on whether Parents could likely cooperate in the future in making decisions concerning Child. Quoting extensively from contemporaneous text messages between the Parents, the Circuit Court found that Mother had not been truthful in her communications with Father and had not cooperated with Father in the past on matters such as whether Child could see Father's family or how to ensure that Child had meaningful conversations with Father, and that the parties could not agree on where Child should go to school.

In addressing the factor for "fitness of the parents" the Circuit Court found Father to be a fit parent. The Circuit Court stated that it was "very, very, very difficult to find [Mother] to be a fit parent," that "the Court is incredibly concerned about the damage that [Mother] has done to this child already," and that Mother "has done her level best to have this child make unfounded accusations against her [father]."

4. Analysis

The record demonstrates that the Circuit Court applied the *Sanders/Taylor* factors that it deemed applicable to Child and that it reached findings of fact on the undoubtedly important factors of Mother's fitness as a parent to have legal custody of Child and her ability to communicate and cooperate with Father regarding decisions about Child. The record contains evidence to support the Circuit Court's findings on those factors, and we perceive no abuse of discretion in the weight the Circuit Court chose to give them. The Circuit Court did not abuse its discretion in awarding sole legal custody to Father.

C. *Whether the Circuit Court Abused its Discretion When it Awarded Counsel Fees*

A circuit court may award counsel fees to a party in a child custody case after considering the parties' financial status, needs, and justification for the litigation. FL §12-103(b). In this case, the Circuit Court found that Mother lacked substantial justification for prosecuting her claim for sole physical and legal custody and for cessation of any contact between Father and Child. The court further found that Mother could afford to pay some of Father's legal fees and accepted Mother's statement of Mother's monthly expenditures for herself but not the entirety of her statement of her expenses relating to Child.

In appealing the Circuit Court's award of counsel fees, Mother argues that the court assessed her financial status incorrectly[13] and that she cannot afford to contribute to Father's counsel fees.

1. Applicable Law on the Award of Counsel Fees under FL §12-103

A circuit court that is presiding over a child custody case may award to a party counsel fees "that are just and proper under all the circumstances." FL §12-103(a). Additionally, if the court finds "that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees." FL §12-103(c). A circuit court thus "has discretion to base its award of attorney's fees on the fact that a litigant has engaged in conduct that produced protracted litigation." *Frankel v. Frankel*, 165 Md. App. 553, 590 (2005).

Before awarding counsel fees to a party, a court is to consider three factors: (1) each party's "financial status," (2) each party's "needs," and (3) "whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL §12-103(b). Although "discretion in awarding counsel fees rests with the circuit court," its award "must be based upon the statutory criteria and the facts of the case." *McDermott v. Dougherty*, 385 Md. 320, 432-33 (2005) (citation and internal quotation marks omitted).

[13] Additionally, Mother argues that the fee award should be vacated because the Circuit Court abused its discretion in its rulings with regard to her expert witnesses, whose testimony, Mother asserts, would have shown that Mother had a substantial basis for litigating her claims. However, as explained above, the Circuit Court did not abuse its discretion in making those rulings.

An award of attorney's fees "must be reasonable, taking into account such factors as labor, skill, time, and benefit afforded to the client, as well as the financial resources and needs of each party." *Petrini v. Petrini*, 336 Md. 453, 467 (1994).

2. Standard of Review

A trial court's award of counsel fees under FL §12-103 in a child custody case is subject to review for abuse of discretion. *David A. v. Karen S.*, 242 Md. App. 1, 23 (2019). An award "will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Id*. (citation omitted). An abuse of discretion occurs when a trial court bases its exercise of discretion on a legal error or issues an award that is clearly erroneous. *Id*. A court's failure to consider the required statutory factors constitutes legal error. *Ruiz v. Kinoshita,* 239 Md. App. 395,438 (2018).

The statute does not require the court to recite the evidence pertaining to each factor. *Cf. John O. v. Jane O.*, 90 Md. App. 406, 429 (1992) *overruled on other grounds by Wills v. Jones*, 340 Md. 480 (1995) (with regard to a marital property award, stating that "[t]he fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal"). Once the court has found that both parties have met the "substantial justification" factor, the court has "significant discretion" in applying the other two factors. *Ruiz*, 239 Md. at 438.

3. The Award of Counsel Fees to Father

Father requested an award of counsel fees. In ruling on that request, the Circuit Court noted that it had to "consider whether the parties had substantial justification in either prosecuting or defending the matters, and the Court must also consider always the financial

ability of the parties and the needs of the parties." The Circuit Court found that Mother lacked substantial justification to prosecute the matter, that Mother had the ability to pay counsel fees, and that Father's counsel fees exceeded $84,000. The court then ordered Mother to contribute $50,000 of that amount, payable in four installments at four-month intervals.

Only the facts on Mother's financial ability are relevant to her argument that she cannot afford to pay the fees that the Circuit Court assessed. The evidence on that issue consisted of exhibits that she authenticated at trial and supplemented with the court's permission after closing statements. They included a financial statement showing her calculations of her monthly expenses for herself and Child, income, assets, and liabilities as of the month before trial; a statement showing a loan she had taken from her retirement plan; credit card statements showing balances owed; and statements showing attorney's fees, as paid for past services and estimated for services during trial. Father's counsel neither cross-examined her about the amounts shown on the documents nor objected to their admissibility. Additionally, Mother's and Father's counsel jointly prepared and submitted a child support worksheet.

The Circuit Court referred to Mother's financial statement when the court addressed her financial status. The court did not question the amounts that Mother had entered for Mother's own monthly expenses. However, noting that it had "difficulty making sense of [Mother's] numbers," and that it "just [did not] think that Mother's statement of expenses for Child coincides with reality," the court did question the accuracy of other entries. For example, after comparing Mother's statement of her gross income on the child support

worksheet to the lesser amount stated in the financial statement, the court found that Mother had understated her income on the financial statement. The court also noted various entries for expenses related to Child that Father had shared or that the court did not find to be attributable to Child.

4. Analysis

The Circuit Court's oral ruling demonstrates that the court considered the three criteria stated in FL §12-103(a), fashioned an award that it found to be within Mother's means, and structured the payment of the award over a period that it deemed practicable for Mother. Arguing that the Circuit Court was "clearly confused" as to the amount of Mother's expenses, Mother primarily takes issue with the court's calculation of the amount that Mother could afford. However, Mother's argument acknowledges neither the effect of the Circuit Court's finding that she lacked substantial justification for seeking sole custody – a finding that provided the basis for a counsel fee award under FL §12-103(c) – nor the Circuit Court's skepticism about some of the figures that Mother had submitted – the basis of the Circuit Court's assessment of Mother's ability to pay under FL §12-103(a). *See David A.*, 242 Md. App. at 37-38 (concluding that the trial court had the authority to award counsel fees under either subsection).

Mother has not demonstrated that the Circuit Court abused its discretion when it ordered her to pay a portion of Father's counsel fees in installments.

III

Conclusion

For the reasons explained above, we conclude that the Circuit Court neither erred legally nor abused its discretion with regard to the evidentiary rulings, custody decision, and counsel fee award that Mother has challenged on appeal. We therefore affirm the Circuit Court's order.

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