UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0061

September Term, 2015

ADAM SANTO

v.

GRACE SANTO

Kehoe,
Friedman,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 9, 2015

We are asked to determine whether the trial court erred in deciding that this is the "rare case" where joint custody is appropriate even though the divorced parents are unable to communicate due to their unvarnished hatred of each other. While we recognize that case law directs that joint legal custody should rarely, if ever, be awarded when parents are unable to communicate, we conclude that the trial court did not abuse its discretion by awarding joint custody in this case. We, therefore, affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties to this appeal, Adam Santo ("Adam") and Grace Santo ("Grace"), are divorced. They have two children. In April of 2011, the Circuit Court for Montgomery County (Scrivener, J.) entered an initial custody order, awarding the parties joint legal and physical custody and specifying access. The April 2011 custody order awarded tie-breaker authority to Adam for legal decisions about which the parties could not agree.

Disputes arose and motions for contempt, enforcement, and clarification were filed by both parties. After a hearing, the circuit court (Callahan, J.) issued a modified custody order in May of 2013, which continued joint legal and physical custody but additionally required the parties to employ a "parenting coordinator" to try to help them resolve difficulties. The order also specified where the children would attend religious services and in what extracurricular activities they would participate.

In late 2013, Grace filed a petition for contempt and a motion seeking to temporarily modify the joint custody arrangement, specifically as it pertained to medical decision-making for the children. Adam filed a cross-motion to modify the second order seeking

sole legal and primary physical custody. A three-day hearing was held in July of 2014. In the oral findings, Judge Callahan summed up why the parties were back in court:

> I think what's true about these parents is that they would be happier if each of them was able to parent alone. So, mother would like to be the sole parent and father would like to be the sole parent and I don't mean that in the terms of legal custody, I mean that in the terms of in life, in the lives of the children.

Testimony during the hearing revealed the extent of the parties' behavior toward each other and that the parenting coordination efforts were essentially useless.[1] Judge Callahan noted that "each is focused more on the war or the control [] the war is being fought over, than any concern over the children's relationship with the other parent."

Judge Callahan announced her oral opinion on August 11, 2014, and an order reflecting that opinion, complete with precise details, was entered on September 10, 2014. The September 2014 order specified that Adam and Grace would still have joint legal custody. The September 2014 order further parsed how far Adam's decision-making authority extended and in what circumstances Grace would have decision-making authority. Adam was given final decision-making authority regarding the children's

[1] The circuit court was explicit about the parties' bad behavior toward each other. Regarding Grace, the trial court specifically noted that she "refuses to allow the children to participate in activities on ["]her parenting time["], ignoring the children's right to a life unencumbered by parental bickering. … And it is more important for [Grace] to win the war with [Adam] then it is for the children to participate in activities they enjoy." Regarding Adam, the trial court noted that he "[i]s dictatorial and finds ways to make everything a final legal custody decision. He's disrespectful to [Grace], as is his [second] wife … [Adam] has humiliated [Grace] in public with his "Save Adam[']s Kids dot com" fundraising campaign, directed at [Grace's] mental health and his need to defeat her in court; posted at the mailbox service in community where the children go to school."

education, religious training, and medical care. Grace was given final decision-making authority regarding the selection of the children's therapist. Judge Callahan set a very specific schedule for the shared physical custody of the children, specifically taking into account school breaks and religious holidays. Judge Callahan ordered both Adam and Grace to be respectful and non-threatening in their interactions with teachers, coaches, and others involved in their children's lives, and to speak and act respectfully towards each other.

Both Adam and Grace filed cross-motions to alter or amend the September 2014 order. On February 5, 2015, Judge Callahan issued an amended order, which added even more details regarding the children's participation in therapy.[2]

Adam noted this timely appeal.

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[2] The February 2015 amended order required that:

> [Adam] shall have final decision-making authority regarding medical care which includes speech and physical therapy … for the Children. [Adam] must provide [Grace] with each child's medication when the children are with her, and provide full information to [Grace] about diagnoses and the name and prescribed dosage for each medication; and it is further
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> Ordered, that the Children shall continue to participate in therapy. [Adam] and [Grace] shall ensure that the Children attend therapy regularly. Therapy shall take precedence over other activities. In the event the parents are unable to agree, [Grace] shall have final decision-making authority regarding the selection of the therapist. [Adam] shall pay for one therapy session per week, and [Grace] may elect for the Children to attend an additional therapy session weekly, and shall fund the second session in its entirety, the amount not covered by the Children's insurance paid directly to the treatment provider. [Grace] and [Adam] shall each have the right to participate in the therapeutic process.

DISCUSSION

Custody modification is a two-step analysis. First, the trial court must establish that there was a material change in circumstances. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). If the court finds a material change, then the court proceeds "'as if the proceeding were one for original custody.'" *Id.* (quoting *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005)).

In this case, neither party challenges the trial court's determination that there was a material change in circumstance based on the loss of the children's school placement. Rather, the alleged errors occurred in the trial court's ultimate custody decision. The standard of review of ultimate custody decisions is whether the trial court abused its discretion in making its custody determination. *Petrini v. Petrini*, 336 Md. 453, 470 (1994). "There is an abuse of discretion where 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." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1998) (internal quotations and citations omitted) (noting that an abuse of discretion occurs when the decision is clearly against the logic and effect of inferences before the court).

The Taylor Child Custody Factors

The key question in child custody analyses is what is in the best interest of the children. *Taylor v. Taylor*, 306 Md. 290, 303 (1986). Courts have developed lists of factors to help guide and explain how to determine what placement will be in the best interest of the children. *Id*. Specifically, the major factors that a court will consider are: the capacity of the parents to communicate and reach shared decisions; fitness of parents; relationship

established between the child and each parent; preference of the child; potential disruptions of child's social and school life; geographic proximity of parental homes; demands of parental employment; age and number of children; sincerity of parent's request; financial status of the parents; and impact on state or federal assistance; and the benefit to parents. *Id*. at 304-311. All of these, however, are intended to guide the trial court's determination of what arrangements will be in the children's best interest.

At the hearing, the court addressed each of the *Taylor* factors, and some additional factors relevant to the case, each with corresponding evidence. The trial court also noted which factors were inapplicable. We briefly quote the trial court's discussion of each factor below except the first-listed factor, the capacity of the parents to communicate, which we will reserve to discuss in more detail, below.

- *Fitness of the parents*: "Each of the parents loves and is capable of providing for the children. However, their unvarnished hatred of each other leads them to do and say things that are contrary to the welfare of the children."

- *Relationship established between each child and each parent*: "There was no testimony about [Grace's] relationship with the [children], other than her own [testimony], which was that it was good. Several witnesses noted [Adam's] good relationship with the [children]."

- *Preference of the children*: There was no testimony regarding the children's preference.

- *Potential disruption of the children's social and school life*: "This was taken into consideration in formulating a schedule."

- *Geographic proximity of their homes*: "Mother recently moved about 15 to 20 miles from the boy's school"

- *Character and reputation of the parties*: Adam "had witnesses who say he is a fine citizen. The testimony about [Grace] was critical of her combative style and non-cooperative approach. Neither parent presented well in court."

- *The demands of parental employment*: There was no testimony regarding the demands of employment.

- *Age and number of children in each parent's household*: "[Grace] has no other children, [Adam] and his wife have a daughter who is an infant."

- *The request of each parent and the sincerity of those requests*: "The requests are simple, each one [wants] sole legal custody and primary physical custody and to minimize the other's role in the lives of the children. They are sincere."

- *Ability of each parent to maintain a stable and appropriate home for the children*: "Each of the parties has the ability to do so, [Adam's] resources are greater."

- *Financial status of the parties*: "[Adam] earns more than twice what [Grace] earns. [Grace] has filed for bankruptcy. [Adam] is soliciting funds for legal fees on public bulletin boards."

- *Agreements between the parties*: "None, other than the children's attendance at Westover."

- *Willingness of the parents to share custody*: "None."

- *Parent's ability to maintain the children's relationship with other parent, siblings, relatives, and other people*: "Neither parent has demonstrated skill in this category."

The trial court also noted that several of the *Taylor* factors were inapplicable to the Santo's case, namely: length of separation, voluntary abandonment, impact on state or federal assistance.

In our review of the record, we are persuaded that the trial court took into account each of the relevant factors when making her decision, a decision which was ultimately grounded in the best interest of the children. Her consideration of these factors, therefore, was not an abuse of discretion.

Ability to Communicate Factor

This case rests, however, as the parties recognize, on the trial court's consideration of the one remaining *Taylor* factor: "the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare." As the Court of Appeals has explained:

> *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.
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> > With few exceptions, courts and commentators agree that 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. *2 Child Custody & Visitation Law and Practice §* 13.05[2], at 13-14 (J.P. McCahey ed. 1985).
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> When the evidence discloses severely embittered parents and a relationship marked by dispute, acrimony, and a failure of rational communication, there is nothing to be gained and much to be lost by conditioning the making of decisions affecting the child's welfare upon the mutual agreement of the parties.
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> * * *

> Only where the evidence is strong in support of a finding of the existence of a significant potential for compliance with this criterion should joint legal custody be granted. Blind hope that a joint custody agreement will succeed, or that forcing the responsibility of joint decision-making upon the warring parents will bring peace, is not acceptable. In the unusual case where the trial judge concludes that joint legal custody is appropriate notwithstanding the absence of a "track record" of willingness and ability on the part of the parents to cooperate in making decisions dealing with the child's welfare, the trial judge must articulate fully the reasons that support that conclusion.

Taylor, 306 Md. at 304-07 (emphasis added).

The entirety of this appeal thus hangs on those first three words: "Rarely, if ever." The trial court determined that Adam and Grace's situation is the rare situation in which joint custody should be given to two parents incapable of communicating with each other.

Ultimately, Judge Callahan found that:

> This is a very difficult case. The children deserve better than what the court is able to give them, but only their parents can correct that.
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> The court *has considered a variety of options*, none of which is especially satisfactory. In the end the only way both of these parents can stay involved with their children's lives is with [a] strict set of rules about who does what and when.
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> The court has wrestled with the potential schedule and arrived at the conclusion that *the children will do best* if they see each parent regularly, on a schedule that separates their worlds so that no debates can occur.

(Emphasis added) To reach that outcome of how "the children will do best," the trial court proceeded to carefully parse each parent's decision-making authority and assigned a very specific schedule for the children's time at each parent's house.[3]

Throughout the trial court's decision are repeated references to Adam and Grace's inability to communicate and to the acrimony between them. The trial court determined that this acrimony was the major impediment to the success of the prior arrangements. Despite the parties' inability to agree, however, the trial court recognized that it was in the best interest of the children to maintain relationships with both of the parents.

Ultimately, the trial court did not simply sit upon "blind hope" that the joint agreement would function. Instead, the trial court carefully structured the modified order so that the parties would be in the best position to succeed. The trial court's arrangement addressed the concerns raised and existing points of conflict, but also set guidelines so that the parties would not have to communicate with each other any more than necessary. The

[3] Adam also takes exception to the trial court noting that it would ensure both Adam and Grace have access to information. During its ruling the trial court stated that "there is an overriding reason for the parents to continue to have joint legal custody. The reason for that is so that both of them have access to information about the children." Adam takes the trial court's statement to mean that access to information was the sole reason for maintaining joint custody. This argument is belied by the record. The trial court made clear that it was continuing joint custody so that the children would have a relationship with both parents, which the court determined was in the children's best interest. We, therefore, conclude that the trial court did not abuse its discretion by also ensuring that both parties had access to information about the children, as is their parental right. FL § 9-104 ("Unless otherwise ordered by a court, access to medical, dental, and educational records concerning the child may not be denied to a parent because the parent does not have physical custody of the child.").

best interests of the children, as recognized by the trial court, dictated that Adam and Grace both be in the children's lives. The order also attempted to make Adam and Grace a part of each other's lives as seldom as possible.

Given the care taken by the trial court to consider the *Taylor* factors and ultimately make a decision based on the children's best interests, as well as provide a structure to guide and control the parties' future communication, we are convinced that the trial court did not abuse its discretion in deciding that this is indeed the rare case in which parents who cannot communicate should have joint custody.[4]

CONCLUSION

Therefore, we decline to hold that the trial court abused its discretion and will not disturb the trial court's decision.

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

[4] As an additional basis for our decision, we note that it would be inappropriate and counterproductive for this Court to reward bad behavior. It would be a sad day if a parent could improve his or her litigation posture by refusing to communicate with an ex-spouse despite that this very communication is in the children's best interests.