

—Unreported Opinion—

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1061

September Term, 2015

N. CRISMAN BOGGAN

v.

REBECCA MOHR

Meredith,
Nazarian,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: April 14, 2016

—Unreported Opinion—

This case returns after we remanded most of it to the Circuit Court for Baltimore City. That court's original judgment of absolute divorce for N. Crisman Boggan and Rebecca Mohr, issued in February 2013, assigned sole custody of the couple's children to Ms. Mohr and awarded her alimony, a portion of her attorney's fees, and a monetary award stemming from the division of marital property. We affirmed the custody decision, but vacated and remanded the financial awards so that the circuit court could clarify the basis for its counsel fee award.

In the interim, Mr. Boggan accepted new employment (and took a substantial pay cut) in Tennessee, prompting him to file a complaint to modify custody, access, and child support. In May 2014, the circuit court held a two-day hearing, at which it issued an order and memorandum reinstating the remanded monetary and counsel fee awards, then heard evidence on the custody and child support issues. In May 2015—exactly a year later—the court issued an order and memorandum agreeing that Mr. Boggan's new employment created a material change in circumstances and modifying his access schedule, but declining to modify its original grant of sole custody to Ms. Mohr. And although the new order eliminated Mr. Boggan's alimony obligation, it increased his child support obligation by \$205 per month. Mr. Boggan appeals again, and argues that the circuit court abused its discretion by reinstating the monetary and counsel fee awards, by declining to award joint custody, and by increasing his child support obligation. This time, we affirm.

I. BACKGROUND

Mr. Boggan and Ms. Mohr were married on May 6, 2000, and shortly thereafter had their first child. They agreed that Ms. Mohr, who entered the marriage with assets worth approximately \$450,000, would stay home and care for the children, while Mr. Boggan, who entered the marriage with no assets and considerable debt, worked as a portfolio manager. They eventually moved to Baltimore for Mr. Boggan's work, and had three additional children. Mr. Boggan worked his way up to a financial analyst position earning \$275,000, and Ms. Mohr inherited several large sums of money. They also purchased, largely with Ms. Mohr's assets, a property in Nantucket and an accompanying club membership.

The marriage ultimately deteriorated, and after extended proceedings, the circuit court issued a Judgment of Absolute Divorce on February 1, 2013. The court awarded sole legal and sole physical custody of the children to Ms. Mohr, and visitation and access to Mr. Boggan. The court further ordered Mr. Boggan to pay \$4,000 per month in child support, as well as \$3,000 per month for five years as rehabilitative alimony, and \$1,000 per month thereafter in indefinite alimony. Finally, the court awarded Ms. Mohr a \$200,000 monetary award and counsel fees of \$150,000. Ms. Mohr was permitted to retain the Nantucket house as her exclusive property, but the court ordered the club membership be sold and the proceeds divided equally. Mr. Boggan filed a timely notice of appeal on February 12, 2013.

On July 10, 2013, while we considered the appeal but before any decision had been issued, Mr. Boggan filed a complaint to modify custody, visitation, child support, and alimony. His complaint alleged that he had lost his job in Baltimore and taken another one in Tennessee, and had taken a fifty percent pay cut in the process. He argued that these events represented a material change in circumstances and warranted a modification of the custody and child support orders. He requested joint legal custody, a modification to his access schedule so that the children could travel to Tennessee, and a reduction in child support obligation that reflected his new income. Ms. Mohr agreed in her answer to modify Mr. Boggan's visitation schedule, but requested that that Mr. Boggan's complaint otherwise be dismissed.

Before the circuit court ruled on these motions, we issued our opinion on November 1, 2013, affirming in part and vacating and in part the February 2013 Judgment for Absolute Divorce. We affirmed the circuit court's custody order as well as the \$4,000 child support award, but vacated and remanded the case because we could not find, either in the circuit court's order or the accompanying memorandum, any reasonable explanation for its decision to award Ms. Mohr \$150,000 toward her counsel fees. And because the factors underlying counsel fees, alimony, and marital awards are so interrelated, we vacated the alimony and marital property awards as well. We noted, however, that the court had not erred in granting rehabilitative and indefinite alimony, nor in granting Ms. Mohr a monetary award of \$200,000. We remanded for the single purpose of clarifying the

analysis behind the counsel fee award; outside of that issue, we held that “the circuit court reached decisions that fell well within the proper exercise of its discretion.”

After our opinion was issued, Mr. Boggan discontinued his child support payments and on February 28, 2014 filed an amended complaint to modify custody, visitation, child support, and alimony. A four-day hearing was scheduled. Ms. Mohr then filed a motion to specially assign the case to the judge who had overseen the initial divorce proceedings. The motion was denied, but that judge subsequently took over the case and presided over the hearing on May 19 and 20, 2014.

At issue were *first*, the remanded counsel fees, alimony award, and marital property award, and *second*, the issues Mr. Boggan raised in his new complaint to modify custody, child support, and alimony. As such, during the first day of the hearing, the court issued an order and accompanying memorandum (the “2014 Order” and “2014 Memorandum”) reinstating the counsel fees and monetary award in their original values of \$150,000 and \$200,000, respectively.¹ After the two-day proceeding, the court ruled on Mr. Boggan’s complaint to modify custody, child support, and alimony in an order and accompanying memorandum issued exactly one year later (the “2015 Order” or “2015 Memorandum”).

In the 2015 Memorandum, the court agreed that Mr. Boggan’s new employment and move to Tennessee constituted a material change in circumstances, and it adjusted Mr.

¹ The original version of the 2014 Order contained a clerical error, listing the monetary award as \$250,000 rather than \$200,000. Mr. Boggan filed a motion to correct the error on October 9, 2014, and the court granted his motion in an order issued May 19, 2015.

Boggan's access schedule to allow the children to travel to Tennessee several times each year. The court denied Mr. Boggan's request for joint legal custody, modified the child support award to \$4,205 per month, and eliminated the alimony award, instead crediting certain alimony payments toward his by-then-considerable child support arrearage. Mr. Boggan filed a timely appeal.

II. DISCUSSION

Mr. Boggan presents several questions on appeal² and we address each of them, although we have rephrased and reordered them to reflect the posture on which the case

² Mr. Boggan stated the appellate issues as follows:

- A. The lower court erred when it awarded the Plaintiff \$4,205 in monthly child support, without explanation or analysis, when it individually found the parties' total income to be an amount within guidelines but then stated that the case was above guidelines and then awarded child support as if it were.
- B. The lower court abused its discretion entering a child support order without analyzing the balance between the children's needs and best interests and both parents' financial ability to meet those needs.
- C. The lower court erred when it failed to consider all sources of income to the Appellee, including the potential income to be earned from the significant monetary award and non-marital assets.
- D. The lower court erred when it classified the sale of stock by the Appellant as income and then made a retroactive child support award.

(continued...)

has returned. *First*, Mr. Boggan takes issue with the substance of the circuit court's decision to reinstate its initial counsel fees and monetary award upon remand. *Second*, he argues that the court's failure to address these issues in the May 2014 hearing violated his Constitutionally protected right to due process of law. *Third*, Mr. Boggan contends that the court abused its discretion in failing to grant joint legal custody, and that its child support award failed to account adequately for Mr. Boggan's decrease in salary and Ms. Mohr's assets and family wealth.

A. The Circuit Court Did Not Abuse Its Discretion In the Attorney's Fee And Monetary Award On Remand.

In our November 2013 opinion, we vacated the \$150,000 counsel fee award and remanded with instructions that the court articulate its analysis of the factors set forth in

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- E. The lower court erred when Judge Bryant, *sua sponte*, inserted herself back into the case after the motion to specially assign her was denied and then decided the remanded monetary and legal fees awards without having a proceeding or gathering evidence before issuing her ruling, which violated the Appellant's 14th Amendment Right to Due Process.
 - F. The lower court erred when it awarded the Appellee \$150,000 in legal fees and abused its discretion by clearly awarding an amount that was pre-determined and by continuing to fail to undertake proper analysis required by Maryland Rule 2-302.
 - G. The lower court abused its discretion in denying shared legal custody to the Defendant despite clear significant changes in circumstances.
 - H. The lower court abused its discretion in awarding the Plaintiff a \$200,000 monetary award.

Md. Code (1999, 2012 Repl. Vol.), §§ 7-107, 8-214, and 11-110 of the Family Law Article (“FL”). Because counsel fees, alimony, and marital property awards are inextricably linked, *see Doser v. Doser*, 106 Md. App. 329, 335 n.1 (1995), we vacated those awards as well, although we found that the circuit court made no error in granting indefinite and rehabilitative alimony or in granting Ms. Mohr a monetary award of \$200,000. In the May 2015 Order and Memorandum, the circuit reaffirmed its original awards. Mr. Boggan challenges this decision.

1. Legal Fees

In our November 2013 opinion, we explained that the circuit court’s analysis relating to the attorneys’ fee award was conclusory, and that “the record [wa]s totally silent on whether the fees she incurred, or the \$150,000 the court awarded, represents a reasonable litigation expense.” Mr. Boggan argues now that the new award was a pre-ordained amount, and that the circuit court erred by failing to support its decision with an analysis of the award’s reasonableness and necessity. We disagree.

In family law cases where divorce, marital property, alimony, and custody are at issue, trial courts may award attorney’s fees so long as the award is a reasonable and necessary expense. FL §§ 7-107; 8-214; 11-110; 12-103. In assessing a potential fee award, the court must consider the financial status of each party, the needs of each party, and whether there was substantial justification for prosecuting or defending the proceeding.

Davis v. Petito, 425 Md. 191, 200 (2012); *Petrini v. Petrini*, 336 Md. 453, 467-68 (1994).

Other indicators of reasonableness include: “(1) whether the [amount of fees] was

supported by adequate testimony or records; (2) whether the work was reasonably necessary; (3) whether the fee was reasonable for the work that was done; and (4) how much can reasonably be afforded by each of the parties.” *Lieberman v. Lieberman*, 81 Md. App. 575, 601-02 (1990). We review the circuit court’s fee award for abuse of discretion, “determined by evaluating the judge’s application of the statutory criteria . . . as well as the consideration of the facts of the particular case.” *Petrini*, 336 Md. at 468.

The 2014 Memorandum addressed both steps thoroughly. The Memorandum detailed the court’s findings as to the financial resources and needs of both parties, as well as Mr. Boggans’s and Ms. Mohr’s (substantial) justification for bringing and defending the proceeding. In terms of the parties’ financial needs and resources, the court noted that at the time of the initial trial, Mr. Boggan was employed with a salary of over \$275,000 per year, and had the means to pay the fees ordered. Even after he was notified that his job would be phased out, Mr. Boggan continued to receive his salary, and he had expressed confidence that he would find new employment with similar pay. In contrast, the court noted that Ms. Mohr’s salary was less than \$40,000, that she had limited liquid assets, and that she was responsible for housing and caring for their four children. Although the court acknowledged Ms. Mohr’s substantial non-liquid assets (in the form of the Nantucket property), the court took the value of that property into account when calculating the alimony award. The court also found that both Mr. Boggan and Ms. Mohr were justified in pursuing a divorce action; that Ms. Mohr was substantially justified in pursuing an alimony claim given her exit from the job market during the marriage; that Mr. Boggan

was within his rights to challenge that request; and that both parties were justified in seeking sole custody of the children, as well as having the court divide their marital property.

We agree with the court’s conclusion that the \$150,000 award is reasonable. In arriving at the award, the court examined each party’s legal bills in their entirety, concluding that “[t]he hours expended were actual hours necessary to prepare for and try the case,” and that “[t]he fees charged for trial preparation and attending trial are reasonable.” The court included only amounts billed for trial preparation, legal research, and hearing hours, and did not include billings for clerical tasks, such as file organization or deliveries to the clerk’s office. Both parties’ legal fees each exceeded \$150,000, but the court only ordered Mr. Boggan to pay \$150,000 because “given the other economic responsibilities Defendant was facing in paying child support and alimony . . . \$150,000 was all that Defendant could bear.”

Mr. Boggan argues that Ms. Mohr incurred legal fees exploring issues at trial he deemed irrelevant. Her attorneys were, in his estimation, unprepared, and the case was, as he put it, “out of control.” We disagree. Even if Ms. Mohr’s legal fees were higher than they might have been, and we make no such finding, Maryland law requires Mr. Boggan to pay only a *reasonable* portion of them. *Petrini*, 336 Md. at 467; *Ridgeway v. Ridgeway*, 171 Md. App. 373, 390 (2006). While the court acknowledged that Ms. Mohr’s legal bills are “staggering,” it combed through each individual charge and ordered Mr. Boggan to pay only a fraction of the total. The court also refused to award any further attorney’s fees

following Mr. Boggan’s motion to modify custody and child support and the May 2014 hearing.

Finally, and although Mr. Boggan contends that the billed hours listed in the 2014 Memorandum have a value of \$106,000 rather than \$150,000, the court indicated those hours were merely an example of the parties’ legal bills, not an exhaustive accounting of the total. We find that the court answered the questions we asked in our earlier opinion, and we discern no error in its answers.

2. Monetary Award

The May 2014 Order also reinstated the \$200,000 monetary award, and found that Mr. Boggan owed Ms. Mohr a net sum of \$51,190.³ Mr. Boggan doesn’t dispute this

³ The court got to this total by netting the award against other assets or credits Ms. Mohr had retained or received:

[Mr. Boggan] shall be entitled to the following credits against the court’s original Two Hundred Thousand Dollar (\$200,000) monetary award: a credit in the amount of One Hundred and Ten Thousand Dollars (\$110,000) to account for [Ms. Mohr]’s retention of [Mr. Boggan]’s share of the Westmoreland Club sales proceeds and a credit in the amount of Eighty-Eight Thousand, Eight Hundred and Ten Dollars (\$88,810) to account for the financial benefit [Ms. Mohr] received in the form of debt relief from the Suntrust Bank Heloc indebtedness

....

[A]ccounting for the credits to [Mr. Boggan]’s monetary award obligation, [Mr. Boggan] owes to [Ms. Mohr] a net monetary award in the amount of Fifty-One Thousand, One Hundred and Ninety Dollars (\$1,190) [sic]

settling of the accounts in this appeal, though. Rather, he re-hashes his old arguments that the \$200,000 monetary award was inequitable, “one-sided,” and left him with no assets. Among other problems, he argues that in valuing his assets to arrive at the award, the court failed to take into account certain tax liability; that the court should have classified the Nantucket home as marital property in its entirety; and that the court failed to take into account the home’s appreciation in value. He also takes issue with the court’s classification of Ms. Mohr’s Fidelity bank account as non-marital property.

We evaluated the circuit court’s monetary award in our November 2013 opinion, and found it adequately supported by the record and by each of the FL § 8-205 factors.⁴ In

⁴ In determining the amount of a monetary award, FL § 8-205(b) requires the court to consider:

- (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- (2) the value of all property interests of each party;
- (3) the economic circumstances of each party at the time the award is to be made;
- (4) the circumstances that contributed to the estrangement of the parties;
- (5) the duration of the marriage;
- (6) the age of each party;
- (7) the physical and mental condition of each party;
- (8) how and when specific marital property . . . , was acquired, including the effort expended by each party in accumulating the marital property . . . ;
- (9) the contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;
- (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and

(continued...)

reinstating its original award, the circuit court properly bound itself to the findings set out in its Judgment of Absolute Divorce. *See, e.g., Doser*, 106 Md. App. at 348 (“in a proceeding for absolute divorce, the value of marital property must be decided as of the date on which divorce is actually entered.”). Our earlier analysis still holds, and we won’t repeat it here.

On remand, the circuit court *was* required to reconsider the amount of the monetary award in light of any new evidence concerning the value of the parties’ assets and any modification to the alimony and attorney’s fees’ awards. *Id.* at 351. And the May 2014 Memorandum reveals that the court did just that. It reversed its original rehabilitative and permanent alimony awards, finding that Mr. Boggan “is not in a financial position to pay any alimony at this time” It found, based on new evidence, that Mr. Boggan’s salary had decreased substantially since the entry of divorce, and the court considered the “total burden placed upon [Mr. Boggan] by the various economic decisions made in this case.” The Memorandum and accompanying order demonstrate that the court undertook a cumulative analysis of the parties’ finances in arriving at a monetary award on remand, and we see no clear or legal error in the court’s conclusions.

(11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award

B. The Circuit Court Did Not Violate Mr. Boggan’s Due Process Rights.

Mr. Boggan claims *next* that the circuit court violated his right to due process, guaranteed by the 14th Amendment of the Constitution. He argues that the judge who presided over the original divorce proceedings displayed bias and favoritism in violation of the Maryland rules governing judicial integrity and prevented him from receiving a fair decision when she took over the case from another judge post-remand. Moreover, he argues that the court’s “two-tiered” approach, in which it first issued a memorandum addressing the remanded issues, then heard arguments on Mr. Boggan’s complaint to modify custody, child support, and alimony, was inconsistent with this Court’s mandate upon remand. We disagree on both points.

First, the judge did not create an appearance of impropriety by taking the case after it was assigned to a different judge. The judge explained that she took the case in order to capitalize on her existing knowledge of its voluminous record:

I agreed that for purposes of judicial economy and to save another judge from having to watch 12 days of trial, if my calendar permitted, I would certainly hear it . . . I’m hearing the case but it’s not because I have any particular desire to control this case. It just made the most sense.

We are satisfied by this explanation. Courts have inherent authority to control their dockets, subject only to the Chief Judge of the Court of Appeals. *Wynn v. State*, 388 Md. 423, 437 (2005); Md. Rule 16-103. This judge is the Judge-In-Charge of the Family Division on the Circuit Court for Baltimore City, and was free to take over the case, even after Ms. Mohr’s motion to specially assign her was denied. Rather than showing bias or

favoritism, the record reveals that the motion to specially assign was denied for appropriate administrative reasons, then reconsidered for similarly appropriate reasons.⁵

Second, we see nothing inappropriate in the court’s “two-tiered” approach to resolving the issues inconsistent with the instructions this Court issued on remand. To the contrary, the court dealt with the issues appropriately given the posture it received them. Our directive in vacating and remanding the initial judgment of absolute divorce was narrow: we affirmed the overwhelming bulk of the court’s decisions, and remanded only for the court to articulate the basis for its \$150,000 counsel fee award. Although we vacated the alimony and marital property awards along with the counsel fee award, we held that the court’s analysis and conclusions on those points were sound. Our mandate on remand did *not* order a retrial, and the circuit court was not required to hold one if it already had

⁵ The judge explained further during the hearing why Ms. Mohr’s motion to specially assign the case was denied, an explanation we find not only to be sensible, but that shows no appearance of impropriety:

Before [the Administrative Judge] ruled on the motion to specially assign me, he asked whether or not I intended to stay on the case because it had consumed so much of the Court’s time, and I was already familiar with the facts of the case because that was going to guide his decision on whether or not to grant the Motion to Specially Assign.

He likely would have granted it. The only issue for this Court is that because we rotate dockets and because I would have rotated out of this docket at the end of December, I would have been bound to come back in this case every time something happened. And so the motion was denied to keep the Court from having to sacrifice me back into this docket from another docket and future cases, but it was assigned to me because of judicial economy.

all the information it needed to evaluate the parties' attorney's fees and decide on a reasonable award. *See* Md. Rule 8-604(d) (providing that the circuit court need only conduct further proceedings on remand when it is necessary to determine the action in accordance with an appellate court's order).

Finally, the court was not required to consider any change to the parties' financial circumstances when considering the attorney's fee or monetary award on remand. As we have already explained, the value of marital property must be decided as of the date on which divorce is actually entered, *Doser*, 106 Md. App. at 348, and the attorney's fee award was based solely on fees Ms. Mohr incurred prior to the initial absolute divorce.

C. The Circuit Court Did Not Abuse Its Discretion In Refusing To Grant Mr. Boggan Joint Custody, Nor In Its \$4,205 Modified Child Support Award.

While the initial divorce order was on appeal, Mr. Boggan filed a complaint to modify custody, visitation, child support, and alimony. He alleged that his decrease in salary and move to Tennessee created a material change in circumstances that rendered the existing custody and access schedule inappropriate. In addition, he argued that his new income required a change in the child support award (then set at \$4,000) as dictated by the Child Support Guidelines. After the May 2014 hearing, the court agreed that a material change in circumstances had occurred and made some modifications to his access schedule, but refused to award joint custody. And although the Court eliminated Mr. Boggan's alimony payments, it increased his child support obligation to \$4,205. Mr. Boggan characterizes each of these decisions as an abuse of the court's discretion.

1. Custody

In his amended complaint, Mr. Boggan requested joint legal custody and modifications to his visitation schedule, including weekend access during the school year and spring break and winter break. He argued that since the custody determination, there have been “dramatically changed circumstances” and the parties now exist “in peace and stability” as opposed to the earlier “extreme drama.” He also expressed hope that he and Ms. Mohr would one day be able to have dinner together. After the modification hearing, the circuit court found that Mr. Boggan’s move to Tennessee was in fact a material change in circumstance that warranted revisiting the access schedule, but that did not warrant a change to legal or physical custody. The court reasoned that Mr. Boggan failed to demonstrate that he and Ms. Mohr are capable of working jointly to benefit the children, and we find no error in that conclusion.

The proponent of the change in custody has the burden of demonstrating *first* the existence of a material change in circumstances that would warrant modification of the prior order, and *second* that modification is in each minor child’s best interests. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). In the context of child custody, a material change is “a change that may affect the welfare of a child.” *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996) (citing *McCready v. McCready*, 323 Md. 476 (1991)). Where a proponent fails to demonstrate a material change in circumstances, the inquiry ends and custody will not be modified. *Id.* If a material change in circumstances *does* exist, the

court may only modify the custody arrangement if it finds that the minor children's best interests warrant modification. *Id.* at 29.

In evaluating whether joint custody is in the children's best interest, the capacity of the parties to communicate and reach shared decisions regarding the children's welfare is of paramount concern. *Taylor v. Taylor*, 306 Md. 290, 303 (1986). Other factors that can inform the circuit court's decision whether to grant joint custody include the relationship between each child and each parent; the children's preference; potential disruptions to each child's school and social life; the geographic proximity of the parties' homes; the parents' employment demands; the ages and number of children; the sincerity of the parents' requests for custody; the parents' financial status; and the benefit of joint custody to the parents. *Id.* at 307-11. However, there is no standard formula for determining the children's best interests—it will depend on the facts of each case. *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) ("[W]hen the trial court makes a custody determination, it is required to evaluate each case on an individual basis in order to determine what is in the best interests of the child." (citing *Gillespie*, 206 Md. App. at 173)); *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503 (1992) ("Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interest standard . . ."). The trial judge "who has had the parties before him, has the best opportunity to observe their temper, temperament, and demeanor, and so decide what would be for the child's best interest . . ." *Kartman v. Kartman*, 163 Md. 19, 23 (1932). Mr. Boggan is correct, then,

that we evaluate the circuit court’s decision to deny his request for joint custody against an abuse of discretion standard. *Taylor*, 306 Md. at 311; *Reichert*, 210 Md. App. at 304.

Even so, we see no abuse of discretion here. The circuit court conducted a detailed analysis of Mr. Boggan’s and Ms. Mohr’s ability to serve the children’s best interests, and ample evidence supported its decision to leave sole legal and physical custody with Ms. Mohr. In particular, the court found that the two had a limited ability to communicate, and that Ms. Mohr purposely refused to answer Mr. Boggan’s phone calls. The court found that Ms. Mohr in particular is not willing to share custody, due in part to the fact that Mr. Boggan “does not regularly support the children or even contribute to their extracurricular expenses unless he is facing consequences” The court also pointed out that Mr. Boggan makes ample money to support his children but has not offered meaningful support since August 2013, when he paid a lump sum a day prior to a contempt hearing. These concerns outweighed the fact that the children have a good relationship with both Mr. Boggan and Ms. Mohr, that both parties were sincere in their requests for custody, and that both were fit to care for and make legal decisions on behalf of the children.

In response, Mr. Boggan highlights testimony from his employer suggesting that he is an effective communicator willing to listen to opposing opinions, though he also concedes that Ms. Mohr is unwilling to communicate and reach shared decisions. However, the fact that Mr. Boggan cannot currently even share dinner with Ms. Mohr (he hopes they might be able to do so in the future) supports the conclusion that the parties lack the capacity to communicate effectively. “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.” *Taylor*, 306 Md. at 305. The record before the trial court is entirely consistent with its conclusion that these parents could not communicate for the purpose of determining the children’s best interests and sharing custody.

Similarly, we find no abuse of discretion in the circuit court’s decision regarding Mr. Boggan’s access schedule. The court found that the children will spend each Thanksgiving and Christmas with Mr. Boggan, and will share holiday time with Ms. Mohr every other year. The court also decided that the children would stay with Ms. Mohr during Spring Break, while Mr. Boggan would have the children from July 1st until one week before the start of the school year, as well as the week of Mr. Boggan’s birthday. On appeal, Mr. Boggan requests some official access to the children on weekends during the school year, requests access to the children over Spring Break, and asks that we require that his access over the holidays start when the children are dismissed from school for winter break. Mr. Boggan does not offer any argument for *why* the circuit court’s conclusions on access are in error, however; he merely disputes the result.

“Decisions concerning visitation [and access] lie within the sound discretion of the trial court, and are not to be disturbed unless there has been a clear abuse of discretion.” *In re Billy W.*, 387 Md. 405, 447 (2005). The law provides a great degree of flexibility in developing an access schedule that serves the children’s best interests. *Meyr v. Meyr*, 195

Md. App. 524, 550 (2010). In this case, the circuit court considered an array of factors—including the frequency and regularity of contact between the children and each parent; the potential benefits of the children spending adequate time with each parent; the effects of visitation on family dynamics; and the stability of the children’s living arrangements—in establishing an access schedule that served the best interests of these children. *See Fairbanks v. McCarter*, 330 Md. 39, 50 (1993) (listing factors for the court to consider when deciding on an access schedule that is in the best interests of the children), *rev’d on other grounds by Koshko v. Haining*, 398 Md. 404 (2007). The record in this case could have supported a range of possible schedules, and we see no abuse of discretion in balance the circuit court struck in this complex case.

2. Child Support

Finally, Mr. Boggan objects to the circuit court’s decision to amend the child support award from \$4,000 per month to \$4,205 per month, effective July 2013. He contends that the award exceeds the statutory guidelines of FL § 12-204(d), and that the court lacked the authority to make such an award given the parties’ incomes. Moreover, he argues that the circuit court’s award fails to balance the needs of his children with his ability to meet those needs, and calls the award “grossly inequitable” given the relative financial situations of both parties. But as with other decisions we review in this case, the decision whether (or not) to modify child support “rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily used or the

judgment was clearly wrong.” *Cutts v. Trippe*, 208 Md. App. 696, 711 (2012) (quoting *Ley v. Forman*, 144 Md. App. 658, 665 (2002)).

And again, we find no abuse of discretion or legal error. The Maryland Child Support Guidelines establish the proper child support award for parties with combined adjusted monthly incomes not exceeding \$15,000. FL § 12-204(d). If, however, the parties’ combined monthly income exceeds \$15,000, the court may exercise its discretion in setting the child support award, so long as that discretion is exercised in a manner consistent with the rationale underpinning the guidelines. *Id.*; see also *Voishan v. Palma*, 327 Md. 318, 328-29 (1992); *Malin v. Mininberg*, 153 Md. App. 358, 411 (2003). The court may modify the award later only if there has been “a material change in circumstances, needs, and pecuniary condition of the parties from the time the court last had the opportunity to consider the issue.” *Petitto v. Petitto*, 147 Md. App. 280, 306 (2002) (quoting *Kierein v. Kierein*, 115 Md. App. 448, 456 (1997)); FL § 12-104(a). Indeed, we have found that loss of employment is a material change in circumstances that entitles the payor to a modified award. *Rivera v. Zysk*, 136 Md. App. 607, 619 (2001); *Sczudlo v. Berry*, 129 Md. App. 529, 538 (1999).

To determine the amount of a new award after a material change in circumstances, the court must apply the FL § 12-204 Guidelines. *Cutts*, 208 Md. App. at 710. As it does when it makes an original award, the court may depart from the Guidelines when the parties’ combined monthly adjusted incomes exceed \$15,000. *Voishan*, 327 Md. at 325-26. To ensure that the children’s standard of living is altered as little as possible, “the trial

judge should examine the needs of the child[ren] in light of the parents' resources and determine the amount of support necessary to ensure that the child[ren]'s standard of living does not suffer because of the parents' separation." *Id.* at 332. And in setting the amount of child support in an above-Guidelines case, the circuit court may consider several factors, including "the parties' financial circumstances, the reasonable expenses of the child, and the parties' station in life, their age and physical condition, and expenses in educating the child." *Walker v. Grow*, 170 Md. App. 255, 266 (2006) (internal citation and quotations omitted).

Here, the circuit court made the preliminary finding that Mr. Boggan's new employment in Tennessee constituted a material change in circumstances that justified modification of the child support award. The court also found that Ms. Mohr earned \$54,312 in 2013, while Mr. Boggan earned \$111,000 from his employment and \$54,312 from an Ameritrade account. Although Mr. Boggan argues that the court abused its discretion by treating the case as above-Guidelines, he's wrong: the record reveals that the court correctly credited Mr. Boggan with an annual income of \$165,779 (\$111,000 + \$54,779) when it calculated the parties' adjusted combined monthly income. *See* FL § 12-201(b) (defining actual income as including dividend and interest income). His income added to Ms. Mohr's easily raised their collective income above the Guidelines, and afforded the circuit court discretion to establish child support via § 12-204(d).

From there, we disagree that the circuit court's balance of the needs of the children against the parties' ability to pay was deficient, as Mr. Boggan contends. The

Memorandum demonstrates that the court took into account each party’s financial capacity in the backdrop of their respective roles in the marriage: The court explained that while the parties were married, Ms. Mohr was the primary caretaker for the children and Mr. Boggan was the “breadwinner.” She cooked, cleaned, cared for the children, and moved several times to allow Mr. Boggan to pursue career opportunities. She also contributed a portion of her inheritance to provide for the family. The court analyzed Ms. Mohr’s annual and monthly employment income, and noted that she holds no assets besides her current home, a Toyota minivan, and the Nantucket property. The court noted Mr. Boggan’s (substantially greater) annual and monthly employment income, and the significant funds he holds in an Ameritrade account, as well as two retirement accounts. And the court recognized that Ms. Mohr provided health insurance, and would incur significant expenses to provide a nanny to assist with childcare and transportation while she is at work. Mr. Boggan is correct that the court’s order on the issue of child support merely states that the court “considered Plaintiff’s alleged needs for the minor children,” and we concede that more detail regarding the children’s needs would have aided our review. But we can see from examining the Memorandum and Order that the court undertook the right analysis, and the outcome is supported by the record.

Mr. Boggan contends that the award is inequitable because the court failed to consider specific assets, including the sale of two properties in Georgia and a diamond necklace, in calculating Ms. Mohr’s income. More generally, he argues that the award is inequitable because he is “insolvent for all practical purposes,” while Ms. Mohr “has

significant assets” and is receiving aid from her mother on the mortgage payment for her new home and on her legal bills. But unlike an alimony award, the child support calculation is based on *income* rather than assets. *Barton v. Hirshberg*, 137 Md. App. 1, 16-21 (2001) (rejecting the plaintiff’s argument that the trial court erred by declining to consider defendant’s “significant assets” and thus, what plaintiff alleged was his “true financial circumstances” when assigning a child support award.) Mere ownership of non-income-producing assets, like a diamond necklace, is not in itself a basis to include those assets when determining child support. *Id.* at 20. As for the Georgia properties, the circuit court found that Ms. Mohr no longer owns nor receives income from them. And although the court might have considered the support from Ms. Mohr’s mother as a gift and included it in the income calculation under FL § 12-201(b), whether a particular gift should or should not be included is left to the trial court’s discretion. *Frankel v. Frankel*, 165 Md. App. 553, 588 (2005). Our review of the record reveals no reason to conclude that the circuit court abused its discretion by choosing not to include it here.

Finally, we can reject Mr. Boggan’s argument that the circuit court erred in modifying his child support obligation retroactively. It’s true that FL § 12-104 allows a court to modify a child support award only after a motion for modification is filed, and that any modification prior to the date of filing is considered retroactive and is prohibited. But

here, Mr. Boggan filed his original complaint to modify custody, visitation, child support, and alimony on July 10, 2013, and the circuit court’s modification took effect in July 2013.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE SHARED
EQUALLY BY THE PARTIES.**