UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1600

September Term, 2016

BRIAN T. EDMUNDS

v.

JOVAN M. EDMUNDS

Eyler, Deborah S.,
Wright,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: May 16, 2017

Brian T. Edmunds ("Father") and Jovan Edmunds ("Mother") share 50/50 physical custody and joint legal custody of their twin minor daughters. The parties entered into a Consent Custody Order ("Consent Order") on August 28, 2015, in the Circuit Court for Montgomery County, which detailed, *inter alia*, that "[a]ny change in residence should be limited to a distance of approximately 30-35 minutes (taking traffic into consideration) drive time."

On June 28, 2016 Mother moved herself and the children to Frederick, MD, approximately thirty miles north of the North Bethesda neighborhood where both parties had previously resided within a short distance from each other. In response to Mother's move, Father filed a petition on August 1, 2016, to enforce the Consent Order in the circuit court. The court denied Father's petition on September 6, 2016. Father timely appealed, presenting a single question for review, which we have reworded for clarity:[1]

> Did the trial court err in holding that Mother did not violate the Consent Custody Order by moving approximately 20-50 minutes' drive from the parties' previous residences and changing the twins' school?

Finding no error, we affirm the decision of the circuit court.

Facts

Mother and Father are divorced parents of twin daughters. On August 28, 2015, the parties resolved custody of their children through a Consent Order entered by the

[1] In his brief, Father asked:

> Whether the trial court erred in holding that Mother had not violated the trial court's Consent Custody Order by moving to an area more than 30 to 35 minute's drive time away in traffic and changing the children's school?

circuit court. Pursuant to the Consent Order, the parties agreed to be bound by the recommendations of the custody evaluator, which were incorporated in and appended to the Consent Order as "the terms by which the Plaintiff and Defendant share legal and physical custody of the minor children," along with modifications and additions placed in the order itself.

Under the Consent Order, the parties share 50/50 physical custody under a 2/2/5/5[2] access schedule and joint legal custody. Under the "Decision Making" provision of the Consent Order, Mother has tie breaking authority with respect to impasses concerning decisions involving religion, education, or health care.

The Consent Order specifically places limitation on the parties' ability to relocate which are not subject to Mother's tiebreaking authority. The custody evaluator's recommendation, incorporated into the Consent Order, contains a "Changes in Residence" provision that provides:

> It is expected that one or both parents will change their residence in the near future. Any change in residence should be limited to a distance of approximately 30-35 minutes (taking traffic into consideration) drive time.

The custody evaluator clarified that the new residence should be approximately 30-35 minutes from the parties' residences at the time of the hearing. At the time of the hearing, both parties resided in the Montgomery County School District, and the twins attended Garrett Park Elementary School.

[2] In the 2/2/5/5 residential schedule, the children live with one parent for 2 days, the other parent for 2 days, then 5 days with the first parent followed by 5 days with the second parent.

On March 30, 2016, Mother communicated her desire to move to Frederick, Maryland, approximately 30 miles north of her current residence and enroll the twins in Urbana Elementary School. Father opposed the proposed move and change in schools. Mother moved to Frederick on June 18, 2015. The parties attended a mediation on June 20, 2016, but failed to reach any agreement about Mother's move or where the twins should attend elementary school.[3] On or about July 19, 2016, Mother enrolled the twins in Urbana Elementary School.

Father filed his Verified Petition to Enforce Custody Order on August 1, 2016. As relief, Father sought, *inter alia*, an order enjoining Mother from relocating the twins and an order enjoining her from enrolling them at Urbana Elementary School. The case was heard on August 29, 2016.

On the issue of distance, the circuit court heard testimony from Father that the drive to Mother's new residence took between 25 and 45 minutes. Mother testified that the drive may take anywhere from 30 to 60 minutes. The court found that the distance was "unlikely to be within 30 to 35 minutes, at certain times of the day or on certain days of the week" however, "it cannot be said that based on the testimony and the evidence . . . that the drive cannot at other times be made within the time prescribed." The court noted the language in the Consent Order is not absolute, and denied Father's petition. Father's timely appeal followed.

[3] In May, Father moved to Rockville, Maryland, and remained within the Garrett Park Elementary school area.

Standard of Review

As this Court has previously held, "[t]he parents of a minor child are generally free to enter into an agreement respecting the care, custody, education, and support of their child." *Ruppert v. Fish*, 84 Md. App. 665, 674 (1990). These decisions are often embodied in consent orders that are enforceable as contracts. *Kirby v. Kirby*, 129 Md. App. 212, 215 (1999) (quoting *A.H. Smith Assocs. Ltd. P'ship v. Maryland Dep't. of Env't*, 116 Md. App. 233, 243 (1997)).

The meaning of a consent custody order is a question of law that Court reviews *de novo*. *Hearn v. Hearn*, 177 Md. App. 525, 534-35 (2006). In so doing, the Court applies the ordinary principles of contract interpretation, including the principle that "[w]here the language of the consent decree is clear and unambiguous, all terms are to be given their plain meaning in construing the order." *Kirby*, 129 Md. App. at 216 (internal quotations and citations omitted).

Discussion

Father avers that the Changes in Residence provision in the Consent Order requires any new residence not be more than a 35 minute drive, considering traffic, from the prior residence.

In response, Mother avers that the provision is not absolute and that the circuit court did not err in determining that she did not violate the Consent Order. Mother contends that the parties intended to negotiate a provision that offers guidance, rather

than a mandate, and that her change in residence falls within the guidance of the provision.

We agree with Mother that the provision in question is not absolute but instead envisions some flexibility. Father wants us to read "should" and "approximately" out of the provision. To have the meaning desired by Father would require the Changes in Residence provision to read that any change of residence *must* be limited to no more than 30-35 minutes from a specified location. When the clear language of a contract is unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used. *Langston v. Langston*, 366 Md. 490, 506 (2001); *Wells v. Chevy Chase Bank*, F.S.B., 363 Md. 232, 250-51 (2001).

Testimony at the hearing was that the drive would take, at most, 25 minutes beyond the 35 minute approximation indicated in the agreement. In interpreting the provision, we apply the plain meaning of "should" and "approximately." *Kirby*, 129 Md. App. at 216. Extra driving time, averaging ten to fifteen minutes, does not violate the plain language of the Consent Order, which was drafted to be flexible rather than ironclad and rigid.

Father also avers that Mother violated the Consent Order by enrolling the children in Urbana Elementary School against his wishes. We decline to review this issue as this issue was not sufficiently briefed. *Van Meter v. State*, 30 Md. App. 406, 407-08 (1976). "[A]ppellant is required to provide argument in his brief to support his position." *Id.* at 407. "We cannot be expected to delve through the record to unearth

factual support favorable to appellant and then seek out law to sustain his position." *Id.* at 408 (citing *Clarke v. State*, 238 Md. 11, 23 (1965)). However, Mother and Father had reached an impasse on the issue and attended mediation with no success. Mother, pursuant to the agreement, had tiebreaking authority to make decisions about the twins' education and did so after her authorized move to Frederick. Father concedes as much when he states in his brief that with "respect to tiebreaking the change in public schools could only be accomplished if the children had a valid residential address in the school district into which Mother moved."

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