

Circuit Court for Anne Arundel County
Case No. C-02-FM-15-000480

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2494

September Term, 2016

NICOLE WOOLF
f/k/a NICOLE NIXON

v.

MICHAEL SMITH

Woodward, C.J.,
Graeff,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 5, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Nicole Woolf, appellant, and Michael Smith, appellee, are the parents of two minor children, T.S. and C.S.¹ In 2015, Smith and Woolf filed counter-complaints for custody, with each parent seeking sole legal and physical custody of their minor children. Although both parties lived in Maryland when the complaints were filed, Woolf later married and decided to move to Arizona with her husband. Following a three-day hearing, the Circuit Court for Anne Arundel County entered an order awarding joint legal custody and granting Smith primary physical custody. Woolf appeals from that order raising four issues, which we rephrase for clarity: (1) whether the trial court erred in not crediting her testimony that Smith had assaulted her in 2011; (2) whether the trial court abused its discretion in not giving sufficient weight to the fact that she had always been the children’s primary caregiver; (3) whether the trial court erred by ignoring her constitutional right to travel; and (4) whether the trial court failed to properly apply the factors set forth in *Montgomery County v. Sanders*, 38 Md. App. 406 (1978) and *Taylor v. Taylor*, 306 Md. 290 (1986) in determining the best interests of the children. For the reasons that follow, we affirm.

The Court of Appeals had articulated the standard of judicial review applicable to child custody disputes:

We review a trial court’s custody determination for abuse of discretion. This standard of review accounts for the trial court’s unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.

Though a deferential standard, abuse of discretion may arise when no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles. Such an abuse may also occur when the court’s ruling is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative

¹ The parties were never married.

of fact and logic. Put simply, we will not reverse the trial court unless its decision is well removed from any center mark imagined by the reviewing court.

The light that guides the trial court in its determination, and in our review, is the best interest of the child standard, which is always determinative in child custody disputes.

Santo v. Santo, 448 Md. 620, 625–26 (2016) (quotation marks and citations omitted).

Applying this standard we find no merit to Woolf’s claims. Although Woolf testified that appellant assaulted her during an argument in 2011, the trial court did not find that testimony credible, noting that Woolf had never pressed charges against Smith and that Woolf was the party who had been arrested following the incident. That credibility finding was not clearly erroneous. Woolf contends that the trial court’s finding was “contrary to the holding in *Martens Chevrolet, Inc. v. Seney*, 292 Md. 328 (1982),” wherein the Court of Appeals determined that the trial court erred in allowing counsel to cross-examine a witness about specific acts of misconduct for which the witness had not been convicted. *Id.* at 540-41. However, Woolf does not claim that she was improperly cross-examined about the arrest. And the trial court did not find that she had committed misconduct as a result of the arrest. Consequently, Woolf’s reliance on *Martens* is misplaced.

Woolf next asserts that the trial court “failed to give sufficient weight to the children’s need for continuity,” noting that she had always been the children’s primary caregiver. However, the record demonstrates that the trial court specifically considered that factor in making its custody determination, but ultimately found that other factors weighed in favor of awarding primary physical custody to Smith. Although Woolf seeks

to elevate her status as the primary caregiver above all other factors, we have recognized that in determining the best interests of a child, courts should “generally not weigh any one [factor] to the exclusion of all others. [Instead] [t]he court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor.” *Montgomery County v. Sanders*, 38 Md. App. 406, 420-21 (1978).

Woolf nevertheless relies on *Levitt v. Levitt*, 79 Md. App. 394 (1998) for the proposition that custody should not ordinarily be changed when a child is doing well in a custodial environment. However, the issue in *Levitt* was whether there had been a material change in circumstances affecting the children that warranted a modification of a prior custody order. Unlike *Levitt*, the trial court in this case was making an original custody determination. Thus the court was not required to find that there had been a change in circumstances before awarding custody to Smith. *See Levitt*, 79 Md. App. at 402 (noting that when a trial court considers “the importance of the child’s need for continuity,” an original award of custody and a change of custody are “quite different situations”).²

Woolf also claims that the trial court “clearly ignored” her constitutional right to move to Arizona and “did not properly apply” the standard in *Braun v. Headley*, 131 Md.

² We note that, when discussing *Levitt* in her brief, Nixon states: “In [*Levitt*] where a proposed move by the primary caregiver to Florida was also at issue, this Court also directed that an attorney be appointed for the child. Nothing like that occurred in the trial court in the instant case.” However, Nixon does not specifically contend that the trial court erred in not appointing an attorney for the children or present any argument to support such a claim. Consequently, that issue is not properly before this Court. *See Diallo v. State*, 413 Md. 678, 692 (2010) (“[A]rguments . . . not presented with particularity will not be considered on appeal.” (citation omitted)).

App. 588 (2000) to her case. *Braun* did not set forth a new standard for determining child custody when one parent relocates to another state. Instead, it held that the constitutional right to travel is not violated in a child custody case so long as the trial court “gives the parent choosing to exercise that right an equal footing as the other parent with respect to the burden to show the best interests of the children.” *Id.* at 609.

Here, the trial court specifically acknowledged that Woolf had the right to move to Arizona, and nothing in the record suggests that the trial court presumed the best interests of the children would be better served by awarding custody to Smith because he was the non-moving parent. In support of her argument, Woolf notes that, during the hearing, the trial court twice instructed her not to take the children out of State until it had reached a decision. The trial court, however, only gave those instructions after Woolf’s husband testified that Woolf had packed the children’s things and was planning to move the children to Arizona the following weekend, regardless of whether the hearing had concluded. We are not convinced that those instructions violated Woolf’s right to travel under the circumstances of the instant case and, in any event, Woolf waived her right to raise that claim because her trial counsel agreed that there was “no doubt she should not have packed up before the court made its decision.”

Finally, Woolf contends that, in assessing the best interests of the children, the trial court failed to properly apply the factors set forth in *Montgomery County v. Sanders*, 38 Md. App. 406 (1978) and *Taylor v. Taylor*, 306 Md. 290 (1986). In support of this claim, Woolf points to various evidence in the record that she feels the trial court either ignored or failed to give sufficient weight, including testimony indicating that Smith had broken

into her home in 2009; that Smith had history of alcohol abuse and anger management issues; and that her family had a closer relationship with the children. There was, however, contrary testimony, which the trial court found to be credible, indicating that Smith had matured since the 2009 incident; that Smith did not drink excessively; and that he was a loving and involved father to the children. Moreover, there was evidence to support the trial court's findings that the children had strong family and social ties to Maryland that would be disrupted if they moved to Arizona. Based on that evidence, we cannot say that the trial court abused its discretion in finding that it was in the children's best interests to award joint legal custody and primary physical custody to Smith.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT**