

Circuit Court for Montgomery County
Case No. 175088FL

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1843

September Term, 2023

EMILY GUELBEOGO

v.

NOUFOU OUEDRAOGO

Wells, C.J.,
Friedman,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: May 3, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to MD. R. 1-104(a)(2)(B).

In February 2023, the Circuit Court for Montgomery County granted appellee, Noufou Ouedraogo (“Father”), an absolute divorce from appellant, Emily Guelbeogo (“Mother”), awarded Father primary physical custody and the parties joint legal custody of the couple’s minor child, and set forth Mother’s child support obligation. Mother appealed, challenging the circuit court’s physical custody and child support determinations.

In an unreported opinion, this Court determined that the circuit court had not sufficiently indicated on the record which factors it relied upon in reaching its custody decision. We, therefore, vacated the judgment with regard to physical custody and child support and remanded for further proceedings. *See Guelbeogo v. Ouedraogo*, Case No. 2268, Sept. Term, 2022 (unreported) (filed August 7, 2023) (“*Guelbeogo I*”).

Following the remand, the circuit court issued a written opinion and order detailing the specific factors it had considered in its custody determination, ultimately leaving its February 2023 order in full force and effect. Mother, representing herself, again appeals the award of physical custody with tie-breaking authority to Father.¹ For the reasons that follow, we affirm the order of the circuit court.

¹ Although Mother purports to appeal the “child custody and the tie breaker order,” she adds a two-sentence complaint to the body of her brief averring that the court’s child support order is “impossible for [her] to pay...[and makes] her life extremely difficult,” along with a brief assertion that “the appeal issues are legal and physical child custody, child support, and marital assets.” We will briefly discuss the issue of child support, below, but, as we pointed out in *Guelbeogo I*, and as remains true here, “the circuit court found that marital property claims were withdrawn after neither party presented evidence in support of those claims at trial. Moreover, the record reflects that Mother agreed to joint legal custody. Accordingly, the issues of marital property and legal custody are not properly before us.” *Guelbeogo I*, at 1 n.1 (citing MD. R. 8-131(a)).

FACTS AND LEGAL PROCEEDINGS

Mother and Father married in June 2017, and their only child, O., was born in July 2018. The parties separated in March of 2021. One month later, Father filed a complaint for divorce, asking for joint legal and shared physical custody of O. Mother filed a counter-complaint for divorce, seeking joint legal and primary physical custody of O.

In August 2021, Mother was deployed to Texas for military training with the U.S. Air Force. As a result, O. began residing exclusively with Father.

In October 2022, the circuit court entered a *pendente lite* order by consent of the parties. That order granted Father primary physical custody of O. and set forth a weekly video call access schedule for Mother, who was at that time stationed at Langley Air Force Base in Virginia. The court's order reserved the issue of child support until the custody merits hearing.

On February 2, 2023, the parties appeared before the circuit court for a contested custody hearing. Father appeared with counsel, while Mother represented herself. The testimony focused primarily on child support and the physical custody of O., who had been diagnosed with a speech delay and autism spectrum disorder. Mother and Father agreed that joint legal custody was appropriate. *See supra*, n.1

Father testified that he had relocated from Montgomery County, Maryland, to Pennsylvania so he could obtain employment in West Virginia. Father's flexible position permitted him to work from home eight of every ten business days and to set up O.'s developmental services in a structured daycare center.

Father said he had been caring exclusively for O. since August 2021. Since then, according to Father, O. had spent only two overnights with Mother in December 2021 and had one other visit with her in August 2022. Father also stated that Mother participated in video calls with O. approximately once per month, but she did not call regularly. Father expressed his willingness to “encourage and facilitate” a relationship between Mother and O., and asked the court for joint legal and primary physical custody, with Mother to have six weeks with the child during the summer and during some school breaks. In support of his request for child support, Father entered his financial and earning statements into evidence, along with the one earning statement Mother had produced during discovery when she had been represented by counsel.²

Mother testified that Father had kicked her and O. out of their home in September 2020. She said she joined the military because she had previously only been working on weekends and needed a way to earn more money. After joining the Air Force, Mother had relocated to Virginia. She testified that her military training precluded in-person visits with O. and that Father refused to let her communicate with the child by video. Mother also raised concerns about “scars” she had observed on O.’s body. Father explained that O.’s

² Mother, who had not filed a financial statement, claimed that the earning statement overstated her monthly income by \$1500. The circuit court gave Mother the opportunity to email it a December 2022 earnings statement, which showed approximately \$900 less compensation per month than the statement previously provided to Father’s counsel. The court admitted the 2022 earnings statement into evidence and permitted Father’s attorney to question Mother about the discrepancy in income, but counsel did not do so. It appears that the court utilized the lower income amount in Mother’s exhibit in calculating her child support obligation under the statutory guidelines.

doctor had diagnosed the marks as a viral rash and had prescribed medication, after which the rash went away. Mother also made an unsubstantiated claim of malnourishment because, she said, Father fed O. nothing but pizza and junk food.

The circuit court did not issue an oral ruling following the hearing. By written order entered on February 22, 2023, the court granted Father a judgment of absolute divorce based on a one-year separation. The court’s order granted Mother and Father joint legal custody of O. with Father to have tie-breaking authority. The court further awarded Father primary physical custody with Mother to have six consecutive weeks of visitation during the summer and on specified holidays. The order set Mother’s child support obligation at \$917 per month. Mother appealed.

In our unreported opinion in *Guelbeogo I*, we held that a remand was necessary because, although the circuit court’s custody determination may have been in O.’s best interests, the record did not indicate which factors the court relied upon in reaching its decision. *Guelbeogo I*, at 5-6. Indeed, neither the transcript nor the court’s written order mentioned the factors enumerated in *Taylor v. Taylor*, 306 Md. 290 (1986), or *Montgomery Cty. v. Sanders*, 38 Md. App. 406 (1977), nor set forth the facts and conclusions supporting the court’s custody determination. And, although we concluded that the record reflected that the circuit court properly used the incomes provided by the parties in calculating child support under the statutory guidelines, because we vacated the court’s order with respect to physical custody, we also vacated the order with respect to child support so that those issues could be addressed together on remand. *Guelbeogo I*, at 6-7.

On October 30, 2023, the circuit court issued its written opinion and order after remand. Therein, the court reiterated the background of the matter and provided a detailed explanation of the basis for its prior order, including its consideration and application of the *Taylor* and *Sanders* factors. The court further set forth its findings that Father was more credible than Mother, “particularly on areas where their testimony conflicted,” and that Father was “the more fit parent.” The court again concluded that the parties should have joint legal custody of O., with Father to have primary physical custody and tie-breaking authority. The court also left intact its child support determination.

Mother filed a timely notice of appeal of the court’s order.

DISCUSSION

As she did in *Guelbeogo I*, Mother contends that the circuit court erred in awarding Father primary physical custody and tie breaking authority and in setting her child support obligation. Specifically, she argues that the court did not take into consideration evidence supporting allegations that Father abused O., that Father took advantage of her entry in military training to obtain custody of O., and that it is extremely difficult for her to meet her child support obligation because it amounts to “half of her monthly pay.”

Father did not file a brief.

I. STANDARD OF REVIEW

When reviewing a circuit court’s ruling in child custody cases, we utilize three interrelated standards:

‘[First] when the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second], if it appears that the [court] erred as to matters of law, further proceedings in the trial court will

ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court’s] decision should be disturbed only if there has been a clear abuse of discretion.’

Kadish v. Kadish, 254 Md. App. 467, 502 (2022) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Further, when a child support order “involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are “legally correct” under a *de novo* standard of review.” *Walker v. Grow*, 170 Md. App. 255, 266-67 (2006) (quoting *Child Support Enforcement Admin. v. Shehan*, 148 Md. App. 550, 556 (2002)).

II. ANALYSIS

In resolving child custody disputes, Maryland courts focus on “the best interest of the child.” *Taylor*, 306 Md. at 303. The factors enunciated in *Taylor* and *Sanders* are the guiding principles for our courts to use in analyzing custody cases.

This Court’s decision in *Sanders* provided ten non-exclusive factors. They include: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference of the child; (6) material opportunities affecting the future life of the child; (7) age, health, and sex of the child; (8) residences of the parents and opportunities for visitation; (9) length of separation from the natural parents; and (10) prior voluntary abandonment or surrender. *Sanders*, 38 Md. App. at 420 (citations omitted).

In *Taylor*, the Supreme Court of Maryland provided an additional list of factors that include: (1) capacity of the parents to communicate and reach shared decisions affecting

the child’s welfare; (2) willingness of the parents to share custody; (3) fitness of the parents; (4) relationship established between the child and each parent; (5) preference of the child; (6) potential disruption of child’s social and school life; (7) geographic proximity of parental homes; (8) demands of parental employment; (9) age and number of children; (10) sincerity of the parents’ request; (11) financial status of the parents; (12) impact on state or federal assistance; (13) benefit to the parents; and (14) any other factor the court deems relevant. *Taylor*, 306 Md. at 304-11 (citations omitted). The *Taylor* factors work in tandem with the *Sanders* factors to aid the trial court in determining what is ultimately in the best interest of the child. *Taylor*, 306 Md. at 303 n.10.

In its opinion and order following remand in the present case, the circuit court examined the *Sanders/Taylor* factors and made the following specific factual findings:

The capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare.

The court determined that, despite “some difficulties at times,” Mother and Father have the capacity to communicate and reach shared decisions affecting O.’s welfare.

The fitness of the parents.

The court determined that, “[w]hile [Mother] appears to be a fit parent, it is clear to the Court, based on the evidence, that [Father] is the more fit parent.” The court based its finding on Father’s testimony about the care and attention he has given O. “especially given her special needs[.]” Moreover, while it was clear that Father had a “good relationship with the child,” the evidence regarding Mother’s relationship with O. “was scant.”

The character and reputation of the parties.

The court was “again impressed with [Father’s] care for, and attention [given to O.]” The court found that Father testified “forthrightly and honestly” but was concerned by what it perceived as Mother’s “lack of candor” at times.³

The requests of each parent and the sincerity of the requests.

The court acknowledged that both parents sincerely wanted custody of O. It found, however, that Mother had failed to avail herself of the access permitted by the *pendente lite* consent order. The court was also impressed by Father’s stated desire that O. maintain a strong relationship with Mother and found that the visitation scheduled proposed by Father was sound and clearly in O.’s best interest.

Any agreements between the parties.

The court pointed to the *pendente lite* consent order and the access it provided to each parent.

Ability to Maintain Family Relations; Child’s preference.

The court specified that these factors did not play a role in its decision, given the child’s young age and her special needs.

Material opportunity for the child.

Given Father’s flexible employment, his income, and the resources available in his community, the court found that the material opportunities affecting O.’s life were, “at this moment, far greater with [Father] having primary physical or residential custody than they would be if O[.] lived primarily with

³ Despite Mother’s claim that O. was “malnourished” because of Father’s choices in her diet, along with the allegation in her informal brief that Father abused O., she presented no evidence of abuse or malnutrition at the custody hearing. The court was justified in finding Father more credible in his testimony regarding his care of O. and in not considering abuse or malnutrition as a factor in its custody determination. *See Nouri v. Dadgar*, 245 Md. App. 324, 342 (2020) (credibility determinations are for the fact finder). To the extent that Mother claims she has “new evidence” of abuse, she retains the option of moving to modify custody.

her mother.” Additionally, the court found Father better able to meet the child’s developmental needs and to support her emotional and physical security, intellectual growth, and education.

Age, health, and gender of minor.

The court found that O.’s opportunities would be better with Father and that this “is particularly true given O[.]’s] health issues.” The court noted that O.’s age and gender did not play a significant role in its custody decision.

Geographic proximity of each parent.

The court stated that Father provided a suitable living arrangement for O. but that the evidence was not clear regarding a living arrangement offered by Mother. The court also noted that the geographical distance between the parties’ current homes in Pennsylvania and Virginia “presents challenges” but that the access schedule suggested by Father, and adopted by the court, was fair and allowed Mother ample time to spend with O. The court further noted that in the approximately 18 months O. had lived with Father, the child had only spent two nights and an additional three hours with Mother. Those visits and a few telephone or video calls were “the full extent of [Mother’s] contact with her daughter.”

Prior voluntary abandonment or surrender.

The court found there had been no voluntary abandonment or surrender by either parent.

Based on its analysis of these factors, the circuit court “found that none of them weigh against granting the parties’ request for joint legal custody.” The court further found that O.’s best interests were best served by awarding Father primary physical custody and tie-breaking authority in the event of an impasse. The court based the tie-breaking authority on the occasional communication difficulties between Mother and Father, Mother’s lack of engagement in O.’s life, and Father’s full engagement and day to day contact with O. The court left intact its visitation schedule, with Mother to have O. for six weeks during the summer, along with certain holidays and additional in-person visitation in Pennsylvania

so long as she gave Father at least two weeks’ notice. As for child support, the court found that its prior calculation of monthly child support, based on the statutory guidelines, remained appropriate, given its award of sole physical custody to Father.⁴

In our view, the circuit court did exactly what we asked it to do upon remand. The court neither erred nor abused its discretion in awarding custody and child support. The court carefully evaluated the appropriate factors, made factual determinations based on the testimony and evidence presented, and detailed its findings. The circuit court’s ultimate decision is in accord with the best interest of the child standard.

**ORDER OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**

⁴ As she did in her first appeal, Mother contends that the circuit court’s child support award makes her life extremely difficult because it amounts to half her salary. As we noted in our opinion in *Guelbeogo I*, however, Mother did not challenge the circuit court’s use of the guidelines, or the income and expenses used therein. Therefore, as we explained, “such an assertion does not amount to an abuse of the court’s discretion. Indeed, the record reflects that the court properly used the incomes provided by the parties in calculating child support under the Guidelines, and Mother makes no assertion that the court’s calculation was unjust or inappropriate.” *Guelbeogo I*, at 6.

Having made that determination in our previous decision, the issue of the propriety of the circuit court’s calculation of Mother’s child support has become the law of the case and is no longer open to Mother’s challenge. *See Holloway v. State*, 232 Md. App. 272, 279 (2017) (“The law of the case doctrine provides that, once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case. Furthermore, not only are lower courts bound by the law of the case, but decisions rendered by a prior appellate panel will generally govern the second appeal at the same appellate level as well, unless the previous decision is incorrect because it is out of keeping with controlling principles announced by a higher court and following the decision would result in manifest injustice.”) (Cleaned up).