

Circuit Court for Montgomery County
Case No. 133779FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 34

September Term, 2024

JESSE D. WERTJES

v.

TABBETHA L. WERTJES

Beachley,
Ripken,
Robinson, Dennis M., Jr.
(Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 18, 2025

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

Jesse D. Wertjes (“Father”) appeals a February 6, 2024 judgment issued by the Circuit Court for Montgomery County modifying a 2016 Consent Custody Order entered into by Father and Tabbetha L. Wertjes (“Mother”). Father presents four questions for review, which we have rephrased as follows:

1. Did the court abuse its discretion in ordering Father to refrain from the use of cannabis¹ eight hours before and during his visitation access with the children?
2. Did the court err or abuse its discretion in ordering Father to attend Alcoholics Anonymous meetings on a regular basis?
3. Did the court abuse its discretion in reducing Father’s access with the children by eliminating alternating Thursday overnight visitation?
4. Did the court abuse its discretion in awarding Mother \$25,000 as a contribution to her counsel fees?

For the reasons stated herein, we shall vacate the judgment and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

The parties are the parents of three children: an adult daughter and two minor sons born in February 2009 and April 2015. The only previous judgment governing custody and access was a “Consent Custody Order on the Merits” (“Consent Order”) entered on December 2, 2016. The Consent Order generally granted the parties joint legal custody

¹ Although the circuit court used the term “marijuana,” we shall refer to the substance as “cannabis,” in conformity with Maryland statutory language, except where we are directly quoting the circuit court. *See, e.g.*, Md. Code (2002, 2021 Repl. Vol.) § 5-101(e) of the Criminal Law Article.

with Mother having primary physical custody of the children. Relevant to the issues on appeal, Father's access schedule was delineated as (a) alternate weekends from Friday at 4:00 p.m. until Monday morning, and (b) alternating Thursdays from 4:00 p.m. until the children's return to school on Friday morning.² The Consent Order further provided that "neither party shall consume alcohol or any illegal drugs starting 12 hours prior to having the children and continuing for the entire time the children are with that party[.]"

The operative complaint in this litigation is Father's "Amended Complaint to Modify Custody and Child Support" filed on August 7, 2023. In his amended complaint, Father requested primary physical custody of the parties' two sons and a reduction in child support as a result of their daughter's emancipation. He also sought attorney's fees and costs. Mother's answer requested that the relief sought in Father's amended complaint be denied, but she affirmatively requested that Father's visitation be modified "so that he no longer has the children overnight before school days." She likewise requested counsel fees and costs.

A four-day trial was held on January 8-11, 2024. On January 18, 2024, the court delivered a comprehensive bench opinion. The court properly noted that the 2016 Consent Order represented the predicate order for evaluating whether a material change in circumstances existed to warrant a modification of custody. The court expressly recognized the parties' essential requests for relief, *i.e.*, Father's request for primary

² The Consent Order also provided for holiday and summer visitation.

physical custody and Mother's request to eliminate Father's overnight visitation before school days. The court acknowledged the "two-step process" in custody modification cases, noting that it must first consider whether a material change in circumstances had been proven and, if so, proceeding to a best interest analysis. The court found "several significant and material changes in circumstances" since the entry of the 2016 Consent Order: the children's ages are "markedly different"; the youngest child is now in school; Father is remarried and has a child from that marriage; Father "no longer lives proximate to the former marital home"; "[t]here have been periods when the children's relationship with [Father] has been strained"; and the children's medical conditions "require significant attention." Having found a material change in circumstances, the court proceeded to address well-established factors that inform a court's best interests analysis.³

The court ultimately denied Father's request for primary physical custody, concluding that a change in custody would be "disruptive." As for Father's visitation access, the court determined that the access schedule set forth in the 2016 Consent Order should "remain in effect, except that the Thursday overnight visits provided for therein should be discontinued and changed to a dinner visit." Nevertheless, the court rejected Mother's request that the Sunday overnight visits be discontinued, reasoning that "Mother has less than [a] stellar record regarding ensuring the children's attendance at school, and there's no evidence that the boys have been missing school or been late when [Father] has

³ Father does not challenge the court's finding of a material change in circumstances.

been the one to take them to school.”

Finally, the court felt compelled to address Father’s “issues with temperament and alcoholism.” The court concluded that it would be beneficial for both Father and the children for Father “to resume attending [Alcoholics Anonymous], and also to complete an anger management program.”⁴ The court further indicated that it was “continuing the prohibition that [Father] refrain from drinking any alcohol or consuming any marijuana within eight hours” prior to any visitation.⁵ Finally, as relevant to this appeal, the court awarded Mother \$25,000 as a contribution toward her counsel fees. The court reduced its decision to a written “Modification Order” entered on February 6, 2024.

Father noted this timely appeal.

DISCUSSION

We review child custody determinations using three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). We recently confirmed these three interrelated standards that have been adopted by our courts:

We point out three distinct aspects of review in child custody disputes. 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

⁴ Father does not challenge the condition that he complete an anger management program.

⁵ The court also ordered that Father obtain “Sober Link” and provide the results to Mother at least two hours before visitation. According to its website, Sober Link is an alcohol monitoring system which uses a portable breathalyzer to automatically send testing results to designated individuals. Sober Link, *FAQs*, <https://www.soberlink.com/faqs> (last visited May 8, 2025). Father has not challenged this condition, and we were advised at oral argument that this condition has expired.

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) (alterations in original) (quoting *Yve S.*, 373 Md. at 586).

I. The Restriction on the Use of Cannabis

The 2016 Consent Order provided that “neither party shall consume alcohol or any illegal drugs starting 12 hours prior to having the children and continuing for the entire time the children are with that party[.]” In its January 2024 bench opinion, the court stated that it was “continuing the prohibition that [Father] refrain from drinking any alcohol or consuming any marijuana within eight hours” prior to and during visitation with the children.

Father’s principal argument is based on the proposition that, because the 2016 Consent Order prohibited the parties from consuming “alcohol or any *illegal* drugs” prior to and during visitation, he was authorized to use medically prescribed cannabis, *i.e.*, a *legal* drug, under the express terms of that Order.⁶ Thus, Father contends that when the court stated that it was “continuing the prohibition” that Father refrain from consuming cannabis, it “misunderstood the parties’ prior prohibition against the use of ‘illegal’ drugs.”

Maryland law is clear that the court may order a parent to abstain from the use of

⁶ Father apparently has no objection to the restriction that he refrain from smoking cannabis and cigarettes in the presence of the children.

alcohol in exercising his or her custodial rights where such a restriction is reasonably related to the child's best interest.⁷ *Cohen v. Cohen*, 162 Md. App. 599, 612 (2005). Although *Cohen* only addressed the alcohol prohibition in the circuit court's order there, we note that the order also required the father to abstain from the "abuse of prescription or non-prescription drugs," *id.* at 606, and we see nothing in *Cohen* to suggest that such a prohibition would be improper as long as the restriction is reasonably related to the child's best interest. Nevertheless, Father's point in the case at bar that the 2016 Consent Order prohibited only the consumption of illegal drugs is well taken. We are unclear whether the court intended to "continue the prohibition of use of illegal drugs" from the 2016 Consent Order or whether the court intended to institute a new (and different) prohibition on the use of cannabis within eight hours prior to visitation. In addition, it is unclear whether the court's prohibition of the use of cannabis includes Father's use of medically-prescribed cannabis.⁸ Accordingly, we shall remand to afford the court the opportunity to clarify its intentions in this regard (and make additional findings, if appropriate). In doing so, the court should be cognizant that any restriction in this regard must be reasonably related to the children's best interests.

⁷ Father does not challenge the eight-hour-abstention requirement as it relates to the consumption of alcohol.

⁸ Father apparently obtained a medical prescription for cannabis at some point after issuance of the 2016 Consent Order. At oral argument, Mother's counsel conceded that the 2016 Consent Order did not preclude Father's use of medically-prescribed cannabis and that there was no direct evidence that such use affected the children.

II. The Requirement to Attend Alcoholics Anonymous Meetings

In the February 6, 2024 order, the court required Father to “attend Alcohol[ics] Anonymous meetings on a regular basis.” This provision did not appear in the 2016 Consent Order. The court justified this condition because of its concern about Father’s “temperament and alcoholism.” After finding that Father’s “temperament issues do compromise, or at least affect in some degree, his ability to provide appropriate care for the children when they’re with him[,]” the court ordered Father to (1) abstain from alcohol for eight hours prior to visits with the children and while the children are in his care, (2) attend anger management classes, and (3) regularly attend Alcoholics Anonymous meetings. The court found that his attendance at Alcoholics Anonymous meetings would be beneficial to the children.

Father argues that requiring Alcoholics Anonymous attendance as a condition of visitation is improper because such attendance is not related to the best interests of the children, and other provisions in the order effectively protect the children from the effects of Father’s alcohol use, including the use of Sober Link and the requirement that he abstain from alcohol before and during the children’s visits. He notes that there was no evidence that he ever violated the provision in the 2016 Consent Order requiring that he abstain from alcohol during visits with the children. Additionally, Father argues that the Alcoholics Anonymous requirement has no time limitation, and therefore effectively requires him to attend Alcoholics Anonymous meetings an unspecified number of times per month “in virtual perpetuity.”

A trial court has “broad discretion” to impose a condition on a parent’s visitation and custody rights, “so long as it is in the child’s best interest and there is sufficient evidence in the record to support the condition[.]” *Cohen*, 162 Md. App. at 608; *see also Kennedy v. Kennedy*, 55 Md. App. 299, 310 (1983) (A court may “impose such conditions upon the custodial and supporting parent as deemed necessary to promote the welfare of the children. We will affirm the imposition of such a condition so long as the record contains adequate proof that the condition or requirement is reasonably related to the advancement of a child’s best interests.” (citations omitted)).

Unequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child. *Boswell v. Boswell*, 352 Md. 204, 236 (1998). In between, a trial judge must determine whether a particular issue related to a parent presents harm to the health and welfare of a child or affects the child’s development, and whether there is a nexus between the parental issue and any adverse impact on the child’s overall well-being. *Id.* at 235-38[.]

Azizova v. Suleymanov, 243 Md. App. 340, 347 (2019).

We initially note that the requirement that Father regularly attend Alcoholics Anonymous meetings is exceedingly vague and thus practically unenforceable. For example, is Father’s attendance of one Alcoholics Anonymous meeting per month sufficient to comply with the Order? Or one meeting per week? Moreover, it is unclear who would enforce this obligation. Is Father required to report his attendance of meetings to Mother, the court, or some other third party? For these reasons, the provision requiring Father to regularly attend Alcoholics Anonymous meetings cannot be sustained in its current form.

As previously noted, a court may properly impose conditions that are reasonably related to a child's best interest. To that end, Father did not challenge the court's imposition of Sober Link or attendance of anger management classes. However, although there was evidence in the record to support a finding that Father's use of alcohol could be detrimental to the children's best interests, nothing in the record showed a connection between Father's attendance at Alcoholics Anonymous meetings and the children's best interests. Both Mother and Father testified that they attended Alcoholics Anonymous meetings several times per week during the entirety of their marriage, and that Father stopped attending the meetings when they separated. A few years after the divorce, Father began attending meetings again for a short time. There was no evidence showing a change in the children's well-being at times when Father was or was not attending Alcoholics Anonymous meetings. Additionally, there was no evidence concerning the effect attendance at Alcoholics Anonymous meetings had on Father's temperament. We note that Alcoholics Anonymous is premised on the notion that its members "are no longer able to handle alcohol in any form; they now stay away from it completely." Alcoholics Anonymous, *Frequently Asked Questions About A.A.*, 15 (2018), https://www.aa.org/sites/default/files/literature/p-2_0824_0.pdf.

In sum, we shall vacate the condition that Father resume attending Alcoholics Anonymous meetings. On remand, the court may order appropriate substance abuse treatment if it determines that such treatment is reasonably necessary to promote the

children's welfare and best interests.⁹

III. Elimination of Alternating Thursday Overnight Visitation

The 2016 Consent Order provided Father visitation in “alternate weeks from Thursday at 4:00 p.m. until Friday morning to school[.]” In its January 2024 bench opinion, the court eliminated Father's alternating Thursday overnight visitation, reasoning as follows:

The [c]ourt believes that the current schedule set forth in the 2016 order should remain in effect, except that the Thursday overnight visits provided for therein should be discontinued and changed to a dinner visit. I guess that would be from after school until 7 p.m. when they're to be returned by him to their mother's residence. However, the [c]ourt does find that the Thursday overnight visits should continue during the summer months when the school is not a factor.

Father challenges the court's elimination of his alternating Thursday overnight visitation, arguing that the court “did not explain the rationale for its decision” and that the court's removal of overnight visitation “contradicted its earlier findings.”

Mother responds that the court had “serious concerns” about Father's substance

⁹ Father also argues that requiring him to attend Alcoholics Anonymous meetings would violate his right to freedom of religion under the First and Fourteenth Amendments to the United States Constitution. During the testimony concerning Father's frequent attendance at Alcoholics Anonymous meetings in the past and decision to stop attending meetings, there was no indication that Father had any religious objection. “It is this Court's well-established policy to decide constitutional issues only when necessary[.] Even if a constitutional issue is properly raised and decided at the trial level, this Court will not reach the constitutional issue if it is unnecessary to do so.” *Md. State Bd. of Elections v. Ambridge*, 489 Md. 404, 456 (2025) (alteration in original) (citation omitted) (quoting *Blake v. State*, 485 Md. 265, 305 (2023)). It is not necessary to reach Father's constitutional argument in this case and we decline to do so.

abuse and his ability to care for the children. Mother concedes that the court's elimination of alternating Thursday overnight visitation "was not made relating to the ability of [Father] to get the children to school on alternating Friday mornings," but asserts that modification of the schedule was appropriate because the court had concerns about Father's "temperament and self-control and apparent addiction issues."

Although we are cognizant of the broad discretion afforded to trial courts in custody and visitation matters, we agree with Father that the court's decision to eliminate the alternating Thursday overnight visitation is illogical when viewed in the context of the court's other findings.

First, the court rejected Mother's request that Father's alternating Sunday overnight visitation be eliminated, reasoning as follows:

In terms of the weekend visits, [Mother has] asked that the children be returned Sunday night instead of coming back on Monday morning. The [c]ourt does not share that assessment. The [c]ourt does not feel that [Father's] visit should be shortened to Sunday nights, but instead will leave in place the requirement that they be brought to school by him, or that they be taken to their schools on Monday morning. The [c]ourt believes it might not be a bad idea to keep that Sunday overnight in place, since Mother has less than stellar record regarding ensuring the children's attendance at school, and there's no evidence that the boys have been missing school or been late when [Father] has been the one to take them to school. Given his concerns about the absences, he should be permitted, at least in the [c]ourt's view, some limited opportunity to get them to school on time. Having Sundays overnight on alternate weekends gives him two times per month to be the school morning parent.

In light of the court's express finding that Mother "has less than [a] stellar record regarding ensuring the children's attendance at school" and the lack of evidence that "the boys have been missing school or been late when [Father] has been the one to take them to school[.]"

we fail to see the logic in eliminating Father's Thursday overnight visitation. In short, despite the court's concerns about the children's "less than exemplary school attendance record," which it attributed to Mother "not handling that as well as she otherwise could[,]" the court illogically removed a school night visitation with Father. Moreover, the court's determination that "Thursday overnight visits should continue during the summer months when the school is not a factor[.]" suggests that the court may have eliminated Thursday overnight visitation because it felt that school *is* a factor. That determination, however, would be contrary to the court's other findings. We also note that the 2016 Consent Order expressly contemplated a scenario where Father could lose Thursday and/or Sunday overnight visitation: "If a child is late to school on the mornings [Father] is responsible for them, more than two times in any semester, then his Sunday overnight and Thursday overnight access with the children during the school year shall end and revert back to 7:00 p.m. the evening prior." Because the 2016 Consent Order provided the baseline for the court's assessment of a change in circumstances to warrant modification of visitation, it was incumbent upon the court to at least address this provision in some manner.

As previously noted, although Mother concedes that the elimination of the alternating Thursday overnight visitation was not related to Father's ability to get the children to school, she avers that the court's concerns about Father's substance abuse and ability to care for the children justified the modification of visitation. The short response to this argument is that the court otherwise maintained the visitation schedule set forth in the 2016 Consent Order. Thus, any concerns the court had about Father's substance abuse

and ability to care for the children were insufficient to restrict Father's alternating weekend visitation from Friday afternoons to Monday mornings or the three non-consecutive weeks of annual summer visitation (or any of the other visitation access provided in the 2016 Consent Order). We fail to see how the court's concerns about substance abuse would relate only to the Thursday overnight visitation. Accordingly, we shall vacate the court's elimination of Father's alternating Thursday overnight visitation.

IV. The Award of Attorney's Fees

Finally, Father challenges the court's award of \$25,000 as a contribution to Mother's attorney's fees. Father correctly notes that an award of counsel fees in a child custody proceeding is reviewed for abuse of discretion. *See David A. v. Karen S.*, 242 Md. App. 1, 23 (2019).

The governing statute here is Md. Code (1984, 2019 Repl. Vol.), § 12-103(b) of the Family Law Article ("FL"):

- (b) Before a court may award costs and counsel fees under this section, the court shall consider:
 - (1) the financial status of each party;
 - (2) the needs of each party; and
 - (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

We initially note that the court understood that it was required to consider the FL § 12-103(b) factors in determining an appropriate award. Although the court properly considered, pursuant to FL § 12-103(b)(3), Father's lack of success in obtaining primary residential custody, the court should on remand consider, in light of our opinion, whether Mother had substantial justification in requesting elimination of Father's alternating

Thursday overnights. Of course, in determining whether to award counsel fees on remand, the court should again consider “the financial status of each party” and “the needs of each party” as required by FL § 12-103(b)(1) and (2), respectively.¹⁰

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY VACATED. CASE
REMANDED FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION. COSTS
TO BE DIVIDED EQUALLY.**

¹⁰ Although the court found that Mother had \$478,000 in cash, it also stated that it had considered Mother’s financial statement. We note that her financial statement failed to identify any assets or liabilities. To the extent the court determines that additional financial evidence is required, it may in its discretion receive such evidence.