Circuit Court for Prince George's County
Case No. CAD1851001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 92

September Term, 2020

VERONICA JONES

v.

JEROME BLACKWELL

Arthur,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: May 3, 2021

*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.

By order entered December 13, 2019, the Circuit Court for Prince George's County granted Veronica Jones, appellant ("Mother"), and Jerome Blackwell, appellee ("Father"), joint legal and shared physical custody of the couple's minor children and ordered Mother to pay Father child support in the amount of $142 per month. Mother, representing herself, timely appealed the order of the circuit court, raising the following issues for our consideration:

> 1. Whether the Mother's motion to Alter or Amend Judgment or Alternatively for a new trial, was properly denied when: A. The court erroneously excluded evidence of Mother's childcare expenses and failed to consider Mother's testimony regarding same [; and] B. The court miscalculated both parties' incomes when determining each party's child support obligation.
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> 2. Whether the court properly awarded the parties joint physical and legal custody of the minor children, with no tie-breaking authority, when: A. The court found that the parties did not have the capacity to communicate and reach shared decisions affecting the child's welfare [;]B. The court did not make a finding that the parties' ability to communicate was likely to improve upon resolution of the litigation.[1]

Because we agree with Mother that the circuit court erred in failing to consider work-related childcare expenses in its award of child support to Father, we vacate the child support order and remand for further findings of fact on that issue. We otherwise affirm the circuit court's order.

FACTS AND LEGAL PROCEEDINGS

Mother and Father began a romantic relationship in 2015. They lived together as a couple but did not marry. Mother gave birth to twin boys, K. J.-B. and J. J.-B., in July 2017.

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[1] Father did not file a brief.

After the boys were born, Mother and Father, who both had older children from prior relationships, undertook some discussions about a proposed parenting plan but did not enter into a formal custody agreement.

Mother and Father continued an on-and-off relationship until a 2018 altercation. On the evening of the altercation, Father left the parties' Prince George's County home, taking both children with him and returning to live at his parents' home in Baltimore County.

Approximately ten days later, Father agreed to meet Mother at Arundel Mills Mall, for a "visit" with the children and a discussion about custody. After visiting the bathroom with K. J.-B., Mother took him from the mall, leaving J. J.-B. with Father. The twins remained separated—one with each parent—for approximately six months.

Mother filed a complaint for custody of both children. She later amended her complaint to allege that Father had failed to provide financial support and stable housing for the children and to claim that he had acted "erratically and unpredictably." Father filed an answer and counterclaim for custody, claiming that Mother had suffered from post-partum depression since the birth of the twins and had failed to provide them with adequate care.

During a custody hearing on June 3, 2019, Mother requested sole legal and physical custody of the children, with visitation with Father, because she and Father could not agree on the best interests of the children or communicate effectively.[2] Mother explained that

[2] By the time of the hearing, Mother had retained an attorney. The attorney withdrew her appearance, however, shortly after the first day of the custody hearing, and Mother, an attorney, represented herself during the remainder of the litigation.

despite an initial agreement to share custody of the children, Father's "increasingly aggressive behavior" toward her and their inability to co-parent convinced her that joint custody was unworkable. The hearing was not completed, but the circuit court found that it was not in the children's best interest to remain separated from each other, so it ordered a 2-2-3 temporary custody schedule for both children—two days with Mother, two days with Father, and three days with Mother—to continue on a rotating schedule**.**

The custody hearing continued on September 19, 2019, October 1, 2019, and November 27, 2019, with the court's *pendente lite* order remaining in effect throughout the pendency of the matter. Mother testified that she and Father "don't communicate well at all" and that they could not be with the children at the same time because there was "too much distraction and drama." Father agreed that he and Mother do not communicate well, and the circuit court acknowledged, "it's almost an agreed-upon you cannot communicate." Mother also highlighted her and Father's disparate parenting styles.

In closing, Mother argued that joint custody was not appropriate because of her and Father's conceded inability to communicate effectively and maturely. Because she had been the children's primary caregiver since their birth, maintained a steady income (as opposed to Father's sporadic income driving for Uber and Lyft and from other part-time jobs), and lived 30 miles from Father's home, Mother contended that her sole legal and physical custody of the children would be in their best interest. Mother also sought child support and contribution from Father for past and present health insurance premiums for the children.

Father, in closing, denied that Mother had the children's best interests at heart because she intended to, and did, separate the twins from each other in 2018, and she kept them apart until ordered by the court to reunite them six months later. Claiming to be the better parent, Father also sought sole legal and physical custody.

In considering the required factors in making a custody determination, the circuit court found that: (1) both parents were fit and provided safe homes for the children; (2) neither parent had bad character; (3) both parents expressed a sincere desire for custody; (4) both parents were unwilling to share custody; (5) both parents had support systems; (6) effective communication between the parents was not possible; (7) the 30 mile distance between the parents' homes was not inhibitive of visitation; (8) the parents' current work schedules permitted them ample time to spend with the children; (9) the children were bonded with both parents (although perhaps K. J.-B. more with Mother and J. J.-B. more with Father, due to their six-month separation); and (10) there was no potential disruption to the children's school and social lives. The court found it to be in the children's best interest to continue with a 2-2-3 physical custody arrangement so both boys would have equal time with each parent. Again, acknowledging that the parties cannot effectively communicate, the court determined that it was in the children's best interest for Mother and Father to have joint legal custody, with no tie-breaking authority to either parent.

In addition, the circuit court ruled that Mother and Father would share equally in financial responsibility for the children, with Father paying $318 per month to Mother for child support. After Father's attorney raised a question about the accuracy of the court's determination of Father's income, however, the court decided it would reserve on the issue

of child support. The circuit court presented the parties with a written order, but after reviewing its notes regarding the evidence presented during the hearing, amended its order to state that Mother would be required to pay $142 per month to Father in child support.

Mother filed a motion to alter or amend the circuit court's judgment, or, in the alternative, for a new trial, averring that the circuit court's child support calculations did not take into account her work-related childcare expenses, for which she had submitted evidence at the custody hearings. Father opposed the motion, arguing that Mother had failed to proffer testimony of work-related childcare expenses during the custody hearing and had testified that she was then working from home, rendering childcare unnecessary. The court denied Mother's motion.

DISCUSSION

I. Child Support

Mother contends that the circuit court erred, or abused its discretion, in denying her motion to alter or amend, or, in the alternative, for a new trial, because it erroneously failed to consider evidence of her work-related childcare expenses and erred in calculating both her and Father's income in setting her child support obligation. Because Mother did not raise the issue of the circuit court's calculation of her and Father's income in setting child support, either during the custody hearing or in her motion, that issue is not properly before us, and we will not consider it. *See* MD. RULE 8-131(a) ("Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). *See also Cohen v. Cohen*, 162 Md. App. 599, 607 (2005) ("Appellant had ample opportunity to raise this issue when he filed his motion to alter or

amend judgment and raised unrelated objections[.]”).[3] Regarding error in the circuit court’s failure to consider her work-related childcare expenses in setting her child support obligation, however, we agree with Mother.

Generally, child support orders are left to the sound discretion of the circuit court. *Knott v. Knott*, 146 Md. App. 232, 246 (2002). We will not disturb a “‘trial court’s discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion.’” *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018) (quoting *Ware v. Ware,* 131 Md. App. 207, 240 (2000)).

Section 12-204 of the Family Law Article provides child support guidelines assigning child support obligations proportionate to the parents’ income. If, as here, the parents’ monthly combined adjusted income is less than $15,000, the use of the guidelines is mandatory. MD. CODE, FAMILY LAW, (“FL”) §12-204(a), (e); *Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018).

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[3] We point out that the circuit court orally issued its order on custody at the end of the custody hearing but reserved on the issue of child support, specifically because Father’s attorney had raised a concern about the court’s calculation of Father’s income. After reviewing the record and its notes, the court issued a second order addressing child support, specifically referencing its determination of Father’s income.

Despite the court’s acknowledgment of some uncertainty as to Father’s income during the hearing, and its specific determination of Father’s income as it related to child support in its order, Mother did not raise any perceived error or miscalculation in either Father’s or her income in her motion to alter and amend the child support order. We therefore decline to consider any alleged error in the parties’ income determination. Nonetheless, because we will remand the matter to the circuit court so it may consider work-related childcare expenses in the setting of child support, we leave it to the discretion of that court whether to give further consideration to Father’s (or both parties’) income in relation to the child support obligation.

In calculating child support, "actual childcare expenses incurred on behalf of a child due to employment or job search of either parent shall be added to the basic obligation and shall be divided between the parents in proportion to their adjusted actual incomes." FL §12-204(g)(1). Those childcare expenses generally "shall be determined by actual family experience[.]" FL §12-204(g)(2)(i). When there is undisputed evidence that the family's experience includes work-related childcare expenses, it is reversible error for the court simply to "eliminate" those expenses. *Krikstan v. Krikstan*, 90 Md. App. 462, 471 (1992).

Prior to the custody hearing, Mother filed a financial statement, which indicated that she paid an average of $847.45 per month for work-related childcare expenses. She attached receipts for those expenses covering the time period of February through April 2019.

At the start of the custody hearing in June 2019, Mother testified that she worked approximately 35 hours per week as a contract attorney. She explained that she and Father had both taken leave to stay home with the children until they were three months old. Upon their return to work, they paid Father's parents to care for the twins part-time. After the twins first birthday, Mother and Father enrolled them in a daycare facility for seven to eight hours a day, approximately four days a week, at a cost of $50 per day.[4] At the continuation of the hearing in September 2019, Mother further testified that she was then working

[4] Although Father did not dispute Mother's testimony, he did object when she attempted to admit into evidence the receipts from the daycare facility, claiming that there was a lack of foundation. The circuit court sustained the objection, and Mother's attorney did not make a further attempt to have them admitted.

indefinitely from home on a project but that the children were still in daycare between four and eight hours a day.

Father, in his response to Mother's motion to alter or amend, suggested that Mother did not require childcare for the children while working at home. If the COVID-19 pandemic has taught us anything, however, it is the difficulty of working from home with children in the house. We hold, most emphatically, that Mother's status as a work-from-home parent does not render childcare unnecessary.

Notwithstanding the undisputed testimony that Mother worked nearly full-time and placed the children in daycare so she could do so, the circuit court, in its child support obligation worksheet attached to its child support order, detailed that Mother's and Father's work-related childcare expenses were $0. It appears that the circuit court did not give proper consideration to work-related childcare expenses in accordance with FL §12-204(g)(2). Therefore, we remand to the circuit court with directions to vacate the child support award and re-calculate support. *See Walker v. Grow*, 170 Md. App. 255, 288 (2006) (remanding for recalculation of child-care expenses). In making the necessary finding, the court "may consider additional evidence," such as evidence of Mother's (and Father's, as pertinent) actual work-related childcare expenses incurred since the hearing. *Horsley v. Radisi*, 132 Md. App. 1, 29 (2000).

II. Custody

Mother also contends that the circuit court erred in awarding her and Father joint legal and shared physical custody of the children without tie-breaking authority. In her opinion, her and Father's "glaring lack of capacity to communicate and to reach shared

decisions regarding the children's welfare" should have been given additional weight by the court. And, in light of the parties' present inability to communicate, she concludes, the court should have made a finding "that the parties will be able to communicate in the future" before granting joint custody.

This Court conducts only a "limited review" of a circuit court's custody decision. *Wagner v. Wagner*, 109 Md. App. 1, 39 (1996). "[A]n appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon,* 174 Md. App. 583, 637-38 (2007).

We review the evidence in the light most favorable to the prevailing party, and if there is any competent, material evidence to support the circuit court's factual findings, we cannot hold that those findings are clearly erroneous. *Hosain v. Malik*, 108 Md. App. 284, 303-04 (1996). With regard to the court's ultimate decision on the custody matter, an abuse of discretion exists if "'no reasonable person would take the view adopted by the [trial] court'" or the ruling is "'clearly against the logic and effect of facts and inferences before the court.'" *Santo v. Santo,* 448 Md. 620, 625-26 (2016) (quoting *In re Adoption/Guardianship No. 3598,* 347 Md. 295, 312-13 (1997)).

In custody cases, the circuit court's objective is "to determine what custody arrangement is in the best interest of the minor children[.]" *Burdick v. Brooks*, 160 Md. App. 519, 528 (2004). In *Taylor v. Taylor,* the Court of Appeals explained that "[j]oint legal custody means that both parents have an equal voice in making … decisions, and neither parent's rights are superior to the other." 306 Md. 290, 296-97 (1986). "Joint

physical custody is in reality 'shared' or 'divided' custody," which "may, but need not, be on a 50/50 basis." *Id*. The authority to grant joint custody, the Court continued, "is an integral part of the broad and inherent authority of a court exercising its equitable powers to determine child custody" and is "but another option available to the trial judge. Thus, the factors that trial judges ordinarily consider in child custody cases remain relevant." *Id*. at 298, 303.[5]

In setting forth the necessary factors to be considered, the *Taylor* court held that the capacity of the parents to communicate and to reach shared decisions affecting the children's welfare is "clearly the most important factor in the determination of whether an

[5] The non-exhaustive list of factors a circuit court must consider when making custody determinations has been expanded over the years and now includes: (1) the fitness of the parents; (2) the character and reputation of the parties; (3) the requests of each parent and the sincerity of the requests; (4) any agreements between the parties; (5) willingness of the parents to share custody; (6) each parent's ability to maintain the child's relationships with the other parent, siblings, relatives, and any other person who may psychologically affect the child's best interest; (7) the age and number of children each parent has in the household; (8) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment; (9) the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; (10) the geographic proximity of the parents' residences and opportunities for time with each parent; (11) the ability of each parent to maintain a stable and appropriate home for the child; (12) financial status of the parents; (13) the demands of parental employment and opportunities for time with the child; (14) the age, health, and sex of the child; (15) the relationship established between the child and each parent; (16) the length of the separation of the parents; (17) whether there was a prior voluntary abandonment or surrender of custody of the child; (18) The potential disruption of the child's social and school life; (19) any impact on state or federal assistance; (20) the benefit a parent may receive from an award of joint physical custody, and how that will enable the parent to bestow more benefit upon the child; and (21) any other consideration the court determines is relevant to the best interest of the child. *Azizova v. Suleymanov*, 243 Md. App. 340, 345-46 (2018) (quoting Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 5-3(a), at 5-9 to 5-11 (6th ed. 2016)).

award of joint legal custody is appropriate, and is relevant as well to a consideration of shared physical custody." *Id*. at 304. The Court also stated that "[r]arely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future." *Id*.

Thirty years later, in *Santo v. Santo*, the Court of Appeals, recognizing that it had held in *Taylor* that the most important factor for a court to consider before awarding joint custody is the capacity of the parents to communicate and to reach shared decisions affecting a child's welfare, addressed whether a circuit court abused its discretion by awarding joint custody, in spite of undisputed evidence that the parents could not communicate and reach shared decisions for their children. 448 Md. 620, 624 (2016). In *Santo*, the father argued that a circuit court's award of joint legal custody *requires* that the parents be able to communicate effectively, or will be able to do so in the future. *Id*. at 626. Because he and the mother remained "at war with one another," the father contended that the circuit court abused its discretion in granting joint custody to parents it knew could not communicate effectively. *Id*. The mother disagreed, arguing that *Taylor* required the court to consider "all factors and options available" to determine "what is in the best interest of the children." *Id*.

The *Santo* Court, acknowledging that the *Taylor* Court had viewed the parents' ability to communicate and reach shared decisions affecting the children's welfare as "the most important factor" in deciding whether to award joint legal custody, held that

"elevat[ing] effective parental communication so that it becomes a prerequisite to a joint custody award would undermine the trial court's complex and holistic task." *Id*. at 628-29. The Court therefore declined to hold that, as a matter of law, a circuit court errs if it awards joint custody to parents who fail to communicate effectively with one another and emphasized that none of the factors in a custody case "'has talismanic qualities, and no single list of criteria will satisfy the demands of every case.'" *Id.* at 630 (quoting *Taylor*, 306 Md. at 303) (cleaned up). The *Santo* Court held that a circuit court ruling on a custody dispute "may, under appropriate circumstances and with careful consideration articulated on the record, grant joint legal custody to parents who cannot effectively communicate together regarding matters pertaining to their children. In doing so, the court has the legal authority to include tie-breaking provisions in the joint legal custody award." *Id*. at 646.

Based on the record in this matter, we cannot say that the circuit court's factual findings were clearly erroneous or that it abused its discretion in awarding joint legal and shared physical custody of the children to Mother and Father. Over the course of a multi-day extended hearing, the circuit court heard testimony from Mother and Father, and from their friends and family members, which tended to show that, despite their inability to communicate effectively, both parents were fit and loving and wanted the best for their children.

After specifically discussing the required factors in making a custody determination, the circuit court ruled:

> Considering all the factors, and I note that probably neither parent is going to be happy with this decision because it does take some adjustment and it takes a little bit of extra effort, but the Court as Counsel said, if

> something's not broken don't fix it, the Court is going to grant joint physical custody to both parents. This will be a 2/2/3 custody arrangement because it is in the best interests of those boys to spend equal amounts of time with the Mom and the Dad.
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> * * *
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> For purposes of legal custody, legal custody carries with it the right and obligation to make long range decisions that significantly affect the child's life. That's *Santo v. Santo*, 448 Md. 620, from 2016 and they're citing *Taylor*. Again, we go back to the *Taylor* factors. And as I indicated, the factors overlap, so we're not going to go back through those factors because my findings are the same.
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> And what *Santo* said, basically, is that the ability of the parents is not the end-all-be-all that it used to be because joint legal custody means that each parent has an equal voice in making long range plans and decisions and that neither parent's rights are superior to the other[']s in the decision making process. But I agree and I know that these parents can't communicate, but you're going to have to learn to because, quite honestly, there are two little boys that are 2 years old and they need both of their parents looking out for them.
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> And I do believe it is in their best interest for the parents to have joint legal custody because each parent should be able to give their opinion of what is going to happen with these children—what school to go to, what religion, their health care that needs [sic]—these are decisions that must—that both parties should have an equal voice in and the Court does find that it is in their best interest for the parties to have joint legal custody.
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> That being said, the Court is going to order joint legal custody. Neither parent will have tiebreaker authority, you're going to have to work it out.

The circuit court embarked upon a thorough, thoughtful, and well-reasoned analysis in line with all the various custody factors, before determining that it was in the children's best interest to grant joint legal and shared physical custody to Mother and Father. Obviously, the circuit court believed that the parties could share legal decision-making authority regarding their children, despite their perceived inability to communicate

maturely. There is no statutory authority requiring a circuit court to grant one parent tie-breaking authority, even if it finds that the parents do not communicate effectively, and we perceive no abuse of discretion or error in the circuit court's findings of fact and legal ruling in this matter.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY WITH RESPECT TO CHILD SUPPORT VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; JUDGMENT OTHERWISE AFFIRMED. APPELLANT TO PAY ONE HALF OF COSTS AND APPELLEE TO PAY ONE HALF OF COSTS.