Circuit Court for Baltimore County
Case No.: C-03-FM-22-005197

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 98

September Term, 2024

AMBER CLEMMONS

v.

JEAN-CHARLES CONSTANT

Wells, C.J.,
Albright,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: March 10, 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).

This is an appeal from a custody and child support order entered by the Circuit Court for Baltimore County in a suit between Amber Clemmons ("Mother"), the appellant, and Jean-Charles Constant ("Father"), the appellee, concerning their child ("Child"). Mother contends the circuit court erred by not including her work-related childcare expenses in its calculation of child support. Because we agree, we shall vacate the order with respect to child support only and remand for further proceedings on that issue.

FACTS AND PROCEEDINGS

Mother lives in Baltimore County, Maryland, and Father lives in Delaware. The parties were in a relationship for just over a year when, in May of 2022, Mother gave birth to Child. Father spent the first few weeks after Child's birth at Mother's home. In June of 2022, he returned to Delaware. Child remained with Mother.

In September of 2022, Mother filed a complaint seeking sole legal and primary physical custody of Child and child support. Father filed a counterclaim for joint legal and primary physical custody of Child and for child support. On July 27, 2023, the court entered a pendente lite order granting primary physical custody to Mother, establishing a visitation schedule for Father, and ordering Father to pay $1,727 per month in child support.

A merits hearing was held on January 29 and 30, 2024. Mother testified that she works roughly thirty-six hours per week as a Literacy Academic Content Liaison with the Baltimore City Public Schools, earning approximately $12,000 per month. She explained that she needs childcare in order to work. Since the beginning of the year, while she is at work, Child has been attending Celebree School ("Celebree"), a daycare center near her

home, which costs $466 per week. Mother moved into evidence a tuition and fee schedule from Celebree listing its tuition rates, from infant care to school-age before and after care, and a statement verifying that she had paid $466 for one week of childcare. The tuition and fee schedule showed that tuition would decrease to $373 per week upon Child's turning two years old in May 2024.

At the time of the hearing, Father was the CEO of Universal Health Services and ran a behavioral health hospital in Dover, Delaware.[1] In answer to the question, "Who would be watching [Child]" while he was at work, Father testified that when Child was in his custody and he was working, his parents "would be willing to watch" Child, and "in the event that that couldn't happen, there are some daycares that are around[.]"[2] He added that there is a Celebree in the area where he lives and another daycare center as well. Father did not introduce any evidence about their cost or that he had incurred daycare expenses for Child. Father was earning approximately $16,000 per month.

On February 8, 2024, the court held a hearing over Zoom in which it ruled orally on the record. The court decided that Mother and Father would share legal and physical custody, with Child being with each on a one week on/one week off schedule. Using the parties' incomes and adding Mother's payment for health insurance for Child, the court

[1] Docket entries show that, after the notice of appeal was filed, Father filed a motion for modification based on his having changed employment.

[2] Father actually testified that his grandparents (not parents) would be willing to watch Child, but that appears to have been a misstatement on his part.

calculated Father's child support obligation to be $407 per month. The court stated in its oral ruling that it "did not include childcare" as an expense in determining child support because:

> [N]umber one, the cost of it is going to change because [Child] is going to be with his dad every other week and, number two, it's going to change when [Child] turns 2, which is coming up in a few months. So, the parties are responsible for childcare expenses when [Child] is in their care and custody.

The court's custody and support order was entered on February 8, 2024. Mother filed a motion for reconsideration, arguing that the court erred by not including daycare expenses in determining child support. After the court denied that motion, she noted this timely appeal.

Mother challenges the court's decisions not to include the cost of work-related childcare in its child support calculation and to deny her motion for reconsideration.

STANDARD OF REVIEW

Generally, "child support orders are within the sound discretion of the trial court." *Reichert v. Hornbeck*, 210 Md. App. 282, 316 (2013). Accordingly, "[w]e will not disturb the trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002). The court abuses its discretion 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.'" *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations omitted) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)). In addition, a

court's ruling on a motion for reconsideration is reviewed for abuse of discretion. *Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016).

DISCUSSION

Mother contends the circuit court abused its discretion by not including her work-related childcare expenses in determining child support. Father responds that the court lacked evidence regarding Mother's childcare expenses and properly omitted such expenses after awarding the parties joint physical custody on a 50/50 basis.

The Maryland Child Support Guidelines ("Guidelines") are set forth at Md. Code (1984, 2019 Repl. Vol.), §§ 12-201–204 of the Family Law Article ("FL"). Use of the Guidelines is mandatory when the parties' combined adjusted monthly actual income is $30,000 or less. FL § 12-202(a)(1) ("[I]n any proceeding to establish or modify child support, whether pendente lite or permanent, the court shall use the child support guidelines set forth in this subtitle."); *see also Allred v. Allred*, 130 Md. App. 13, 17-18 (2000) ("It is mandatory that the statutory guidelines be used. No deviation from the cookbook methodology may be made." (cleaned up)). In this case, the parties' combined adjusted monthly actual income was less than $30,000, so use of the Guidelines was required.

Application of the Guidelines begins with a determination of the basic child support obligation, which is calculated "in accordance with the schedule of basic child support obligations in subsection (e) of this section." FL § 12-204(a)(1). Then, the "actual child care 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). The use of the word "shall" means that including actual childcare expenses in the child support determination is not discretionary. *Chimes v. Michael*, 131 Md. App. 271, 292-93 (2000) ("Because the Legislature used mandatory language *and* distinguished child care expenses from basic support obligations, we hold that childcare expenses always fall outside of the chancellor's discretion[.]" (footnote omitted)).

Childcare expenses are "determined by actual family experience, unless the court determines that the actual family experience is not in the best interest of the child[.]" FL § 12-204(g)(2)(i). Alternatively, "if there is no actual family experience or if the court determines that actual family experience is not in the best interest of the child[,]" childcare expenses either are the amount "required to provide quality care from a licensed source" or, if the obligee chooses child care that costs less than that required to provide quality care from a licensed source, "the actual cost of the child care expense." FL § 12-204(g)(2)(ii).

Finally, "[t]here is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines . . . is the correct amount of child support to be awarded." FL § 12-202(a)(2)(i). "If the court determines that the application of the guidelines would be unjust or inappropriate in a particular case, the court shall make a written finding or specific finding on the record stating the reasons for departing from the guidelines." FL § 12-202(a)(2)(v)(1). That finding must state:

> A. the amount of child support that would have been required under the guidelines;
> B. how the order varies from the guidelines;
> C. how the finding serves the best interests of the child; and

> D. in cases in which items of value are conveyed instead of a portion of the support presumed under the guidelines, the estimated value of the items conveyed.

FL § 12-202(a)(2)(v)(2).

Here, the court granted the parties shared physical custody on an equal basis. The evidence showed the actual family experience was when Child was in Mother's physical custody, he attended daycare at Celebree and for Mother to work, it was necessary for Child to attend daycare.

Mother's evidence about the cost of daycare at Celebree was undisputed. It showed Celebree cost $466 per week and that in May 2024, when Child turned two years old, the cost would change to $373 per week. There was no evidence that attending daycare at Celebree was contrary to Child's best interest. Mother testified that she was satisfied with Celebree; it was safe, the program was "tailored to [Child's] needs and his development[,]" and Child was adjusting well there. Father did not dispute that attending Celebree was in Child's best interest and even identified a Celebree in Delaware as an option for Child while in Father's custody, should Father's parents be unavailable. The court did not find that Child's attending daycare was not necessary for Mother to work; nor did it find that attending Celebree was contrary to Child's best interest. On the contrary, the court seemed to have specifically contemplated Child's continued attendance at Celebree when it noted that Child's tuition is "going to change when [Child] turns 2" – a fact established by the Celebree tuition and fee schedule Mother introduced in evidence.

Father argues that the court's decision not to include any work-related childcare expenses for the time Mother was at work in calculating child support "was necessarily a finding that continuing at Celebree . . . every week was not in [Child's] best interests." (Emphasis omitted.) We disagree. This position is at odds with the court's reasoning as stated in the record. The court gave two reasons for not including childcare expenses: physical custody was going to be shared, one week on, one week off; and in a few months the cost of childcare at Celebree would be changing (actually decreasing). Neither reason constituted a finding that attending daycare at Celebree while Mother was at work was not in Child's best interest.[3]

The evidence clearly established that Mother was working full-time and needed daycare for Child while she was at work; and, Mother enrolled Child in Celebree for daycare and he had attended there. She introduced evidence of the cost of daycare in January 2024 and beginning in May 2024, when Child would be two years old. To the extent there also was evidence that Father was working full-time, and therefore needed daycare for Child, Father's evidence was that his parents would care for Child during that time. If they were not available, he would use a daycare center, perhaps a Celebree in

[3] Even if the court's omitting work-related childcare expenses from its calculation of child support was tantamount to a finding that attending daycare at Celebree was not in Child's best interest, which it was not, the court erred by not including *any* daycare expense relative to Mother's work. Under FL § 12-204(g)(2)(ii), upon a finding that Celebree was not in Child's best interest, the court was required to include childcare expenses in an amount of either "the level required to provide quality care from a licensed source" or, if Mother had chosen quality licensed childcare at a lower amount, the actual cost of that childcare. The court did neither.

Delaware, but that had not happened. Father did not introduce evidence of the cost of daycare he might incur.

On this evidence, the court erred by eliminating Mother's proven work-related childcare expenses from its calculation of child support. *See* FL § 12-204(g)(1); *Krikstan v. Krikstan*, 90 Md. App. 462, 471 (1992) (noting that in calculating child support, "[i]t was error for the chancellor to eliminate child care"). Moreover, by doing so, the court deviated from the Guidelines without acknowledging that they deviated, without stating what the amount of child support would have been required under the Guidelines, and, most importantly, without explaining how it was in Child's best interest to deviate from the Guidelines. *See* FL § 12-202(a)(2)(v)(2).

We recognize that, notwithstanding that the parties do not live near each other, the court exercised its discretion to split physical custody of Child between Mother and Father equally on a week on/week off basis. Evidence showed that the driving distance between the parents' homes is almost two hours. Unlike the vast majority of cases where separated or divorced parents live close enough to each other that their children can attend a single daycare or school, that is not possible in this case. There does not appear to have been any inquiry into whether Celebree (or other daycare centers) where Mother lives accept children on a part time basis, that is, one week on, one week off. That is important because Mother needs daycare for Child in order to work. It is not sufficient, nor is it fair or logical, for Mother to bear these daycare expenses alone, without their being added into the child support calculation.

Accordingly, the child support determination shall be vacated and the case shall be remanded for further proceedings not inconsistent with this opinion. On remand, the court has discretion to hear and consider additional evidence on the issue of work-related daycare expenses.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED WITH RESPECT TO CHILD SUPPORT ONLY; CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID BY THE APPELLEE.