Circuit Court for Montgomery County
Case No.: 150016-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 105

September Term, 2019

MARVA COLE

v.

PAUL D. COLE

Berger,
Nazarian,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: March 16, 2020

This appeal stems from an order of a trial judge sitting in the Circuit Court for Montgomery County, who awarded appellant, Marva Cole ("Mother"), primary residential custody of Daughter,[1] awarded appellee, Paul Cole ("Father"), primary residential custody of Son, and provided Mother visitation of Son. Mother asks this Court to reverse and remand the circuit court's order, contending that the hearing judge erred by not ruling explicitly that she or Father had legal custody of Son and by not providing her with a specific holiday visitation schedule with Son. For the reasons that follow, we discern no error and shall affirm.

BACKGROUND

Father and Mother were married on June 8, 2002 and are the parents of Daughter and Son. In December of 2017, Mother filed a Complaint for Absolute Divorce, Custody, and Other Relief, in which she requested sole legal custody and primary physical custody of the children. In June of 2018, Father filed a Counter-Complaint for Limited Divorce, in which he also requested sole legal and primary physical custody of the children.

In a bifurcated proceeding, which took place before the issues of divorce and distribution of property were addressed, the circuit court took evidence regarding custody. Such evidence included the report of a custody evaluator who recommended that the parties share legal custody and that, in the event of an impasse, "they utilize the services of a parent

[1] Daughter has since reached the age of eighteen.

coordinator."[2]

[2] Rule 9-205.2 explains the role of a parent coordinator and, in part, provides:

(b) **Definitions.** (1) "Parenting Coordination" means a process in which the parties work with a parenting coordinator to reduce the effects or potential effects of conflict on the parties' child. Although parenting coordination may draw upon alternative dispute resolution techniques, parenting coordination is not governed by the Rules in Title 17, except as otherwise provided by this Rule.
(2) "Parenting coordinator" means an impartial provider of parenting coordination services.

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(f) **Appointment of Parenting Coordinator by Court.** In an action in which the custody of or visitation with a child of the parties is in issue and the court determines that the level of conflict between the parties with respect to that issue so warrants, the court may appoint a parenting coordinator in accordance with this section.
(1) Appointment During Pendency of Action. On motion of a party, on joint request of the parties, or on the court's own initiative and after notice and hearing, the court may appoint a parenting coordinator during the pendency of the action. Unless sooner terminated in accordance with this Rule, the appointment shall terminate upon the entry of a judgment granting or modifying custody or visitation.
(2) Appointment Upon Entry of Judgment. Upon entry of a judgment granting or modifying custody or visitation, the court with the consent of the parties and after a hearing, may appoint a parenting coordinator. The court may appoint the individual who served as a parenting coordinator during the pendency of the action. Unless sooner terminated in accordance with this Rule, the appointment of a post-judgment parenting coordinator shall not exceed two years unless the parties and the parenting coordinator agree in writing to an extension for a specified longer period.

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(g) **Services Permitted.** As appropriate, a parenting coordinator may:
(1) if there is no operative custody and visitation order, work with the parties to develop an agreed plan for custody and visitation;
(2) if there is an operative custody and visitation order, assist the parties in amicably resolving disputes about the interpretation of and compliance with the order and in making any joint recommendations to the court for any changes to the order;

(continued . . .)

At the custody hearing, however, both Mother and Father requested that they be awarded joint legal custody of the children. During opening statements, counsel for Mother stated, "[w]e are asking that Your Honor also grant joint legal custody to the parties. My client has historically always been the most involved in the children's education, extracurricular, major decisions involving the children. So we do ask that she be granted a tie breaking authority, Your Honor."[3] Counsel for Father agreed with joint custody but not with giving tiebreaking authority to Mother, stating that, "[w]e would stipulate to joint legal custody. If that's accepted we can take that issue off the Court's hands."

(continued . . .)

> (3) educate the parties about and making and implementing decisions that are in the best interest of the child;
> (4) assist the parties in developing guidelines for appropriate communication between them;
> (5) suggest resources to assist the parties;
> (6) assist the parties in modifying patterns of behavior and developing parenting strategies to manage and reduce opportunities for conflict in order to reduce the impact of any conflict upon their children;
> (7) in response to a subpoena issued at the request of a party or an attorney for a child of the parties, or upon action of the court pursuant to Rule 2-514 or 5-614, produce documents and testify in the action as a fact witness;
> (8) if concerned that a party or child is in imminent physical or emotional danger, communicate with the court or court personnel to request an immediate hearing; and
> (9) decide post-judgment disputes by making minor, temporary modifications to child access provisions ordered by the court if (A) the judgment or the post-judgment order of the court authorizes such decision making, and (B) the parties have agreed in writing or on the record that the post-judgment parenting coordinator may do so.

[3] In her closing statement, counsel for Mother reiterated that, "[y]es, we believe that joint legal custody is appropriate, but there will be situations in which decisions have to be made. And given that my client has been the one who has primarily steered the direction, we believe that my client should have tie breaking authority."

The hearing judge later orally ruled on the custody matter. She thoroughly analyzed the factors affecting custody developed by the Court of Appeals and this Court, *see Azizova v. Suleymanov*, 243 Md. App. 340, 345–47 (2019) (citing *Taylor v. Taylor*, 306 Md. 290 (1986) and *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977)), to the particular facts of this case and determined that:

> I have to say here that what I'm focused on at this juncture is the needs of the children. I think [Daughter] is entitled to finish high school at Richard Montgomery. And [Son] ought to have the opportunity to stay at Julius West for the remainder of this school year at least. It's clear to me that the parents can't continue to live in the same house. It's bad for them and it's bad for the kids.[4]
>
> So in the interim, this is going to require some inconvenience for the parents. I have to say I also struggled with several options, including leaving things as they are, a nesting arrangement, or a use and possession order designed to cover the period between the order and the divorce and economic issues resolution, which is in the summer.
>
> So I have concluded that the option that makes the most sense is to award use and possession of the [marital] house to mother for the period between today and the issuance of the divorce and property order unless the parents agree otherwise. Mother shall have primary residential custody of [Daughter] because it is [Daughter] whose education and graduation is most pressing and she has expressed the desire to live with mother.
>
> This is not a perfect solution. Given the many challenges the family faces, it seems the most rational. Father shall have primary residential custody of [Son]. Mr. Cole has more resources economically and otherwise. His family is local. And he has far better economic resources with which to secure temporary housing. Mother will have the right to parenting time with [Son] each week from Friday after school until Sunday at 6:00 unless the parents agree some other way.[5]

[4] At the time of the custody hearing, the parties both lived at the marital home with their children.

[5] The judge later clarified that visitation would be "Friday after school until Saturday at 6:00, unless they agree otherwise."

A written Custody Order followed which memorialized the hearing judge's oral ruling and, in relevant part, provided:

> **ORDERED**, that Mother shall have primary residential custody of [Daughter]; and it is further
> **ORDERED**, that Father may have parenting time as he and [Daughter] arrange, with notice to Mother; and it is further
> **ORDERED**, that Father shall have primary residential custody of [Son]; and it is further
> **ORDERED**, that Mother shall have parenting time with [Son] each weekend from Friday after school until Saturday at 6:00 PM, unless otherwise agreed upon by the parties[.]

The Custody Order also provided Mother with use and possession of the marital home during the pendency of the divorce and property proceedings.

Mother filed Plaintiff's Motion to Alter or Amend the Custody Judgment, asking that the court grant her primary residential custody of Son or, in the alternative, grant her a shared custody arrangement. Mother further requested that, without elucidation of specific times, the court "[e]stablish a holiday and summer schedule." Mother also asked for "a custody Review Hearing" and that the court strike the portion of the custody order allowing Father to perform weekly inspections of the marital home. Mother did not request a declaration as to legal custody in her motion, nor did she request that she be given tiebreaking authority. Father opposed Mother's motion and argued that the hearing judge properly awarded him physical custody of Son and that, although Mother "complains that there is no holiday schedule," she "offers nothing to the Court as a proposed schedule that she desires[.]" The hearing judge denied Mother's motion.

This timely appeal followed.

DISCUSSION

Mother argues that the hearing judge abused her discretion by not specifically ruling that she or her husband or both of them had legal custody of Son. She posits that a court must either grant sole legal custody to a party, joint legal custody to both, or joint legal custody with tiebreaking authority residing with one of the parents. Father submits that the hearing judge did not speak of legal custody and does not oppose a limited remand for such a determination to be made "consistent with the trial court's findings regarding the parties' inability to communicate" with, essentially, tiebreaking authority to reside with him.

We review a trial court's custody determination for an abuse of discretion. *Santo v. Santo*, 448 Md. 620, 625 (2016) (citing *Petrini v. Petrini*, 336 Md. 453, 470 (1994)). An 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 principles.'" *Id.* at 625–26 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations omitted)). 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 of fact and logic.'" *Adoption/Guardianship No. 3598*, 347 Md. at 312. We will not reverse a trial court's determination unless it is "'well removed from any center mark imagined by the reviewing court.'" *Id.* at 313 (citation omitted). "Unequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child." *Azizova*, 243 Md. App. at 347 (citing *Boswell v. Boswell*, 352 Md. 204, 236 (1998)).

Section 5-203(b) of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol.), establishes the presumption that parents share legal decision-making authority of their child and provides that, "[t]he parents of a minor child, as defined in § 1-103 of the General Provisions Article: (1) are jointly and severally responsible for the child's support, care, nurture, welfare, and education; and (2) have the same powers and duties in relation to the child." Subsection (d) of the same section further explains that, "(1) If the parents live apart, a court may award custody of a minor child to either parent or joint custody to both parents. (2) Neither parent is presumed to have any right to custody that is superior to the right of the other parent." *See also Boswell*, 352 Md. at 217 ("A parent has a fundamental right to the care and custody of his or her child."); *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 680 (2014). Essentially both parents have equal custodial rights to a child of theirs whether estranged or not.

In the present matter, we conclude that the hearing judge did not abuse her discretion or otherwise err by not explicitly giving legal custody to either parent or joint legal custody to both, with or without tiebreaking authority. In Maryland, parents share legal decision-making authority regarding their children and neither parent has a superior right to custody. There is no statutory authority requiring a judge to specifically articulate a legal custodian. Obviously, the hearing judge did not find facts sufficient to overcome the presumption of joint legal custody.

Mother further contends that the hearing judge erred, in the second instance, by not entering an alternating holiday schedule for her visitation with Son. Mother also posits,

for the first time, before us, that she should have been given visitation of Son on Mother's Day.

Mother, however, never requested a specific visitation schedule in any pleading nor any argument; during closing, counsel for Mother stated that, "[w]e believe that an alternating holiday schedule is appropriate, but we do believe that, Your Honor, should grant primary residential custody, at least during the school year, to my client[.]" Nor, for that matter, did she, after the judge ruled, request specific relief in her Motion to Alter or Amend the Custody Judgment but only requested "a holiday and summer schedule." Without more, Mother's request fails. *See* Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issues unless it plainly appears by the record to have been raised or decided by the trial court . . .").

In conclusion, we affirm the judgment of the Circuit Court.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.