Circuit Court for Baltimore County
Case No.: 03-C-17-011451

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0117

September Term, 2019

NIKEETA WILLIAMS

v.

DEVIN BEVERLY

Arthur,
Wells,
Gould,

JJ.

Opinion by Gould, J.

Filed: January 6, 2020

Devin Beverly filed a complaint in the Circuit Court for Baltimore County against Nikeeta Williams, seeking increased visitation with their two-year-old son Brayden. Ms. Williams opposed his request and counter-claimed for child support. After a hearing, the court set an access schedule in which Brayden would be with Mr. Beverly on weekdays during the daytime (while Ms. Williams is at work), on two overnights per week (corresponding to his days/nights off), and every other weekend. The court also determined that the financial responsibilities (including child support) and tax benefits relating to Brayden would be shared equally.

Ms. Williams appealed, challenging the court's order on substantive grounds as well as for its lack of specific factual findings. Ms. Williams contends that the court erred in its visitation determination because it impermissibly granted visitation to third parties during times when she is available to care for Brayden. She also argues that the court's child support analysis was incorrect for several reasons, but primarily because the circuit court deviated from the Child Support Guidelines (the "Guidelines") without the requisite findings and analysis. And she contends that the court erred by ordering the parties to alternate claiming a tax dependency exemption on their respective tax returns.

For the reasons that follow, we rule as follows: (1) we affirm the court's judgment as to visitation; (2) we vacate the court's judgment as to child support and the allocation of medical expenses not covered by insurance; (3) we vacate the judgment as to the tax dependency exemption; and (4) we remand for further proceedings as set forth below.

BACKGROUND

Ms. Williams and Mr. Beverly had been dating, but were not married, when their now two-year old son Brayden was born.[1] They lived separately but decided to raise Brayden together. At first, Mr. Beverly stayed at Ms. Williams's house so that they could both take care of Brayden. After Ms. Williams went back to work, they settled on a routine: Mr. Beverly, who worked nights, would watch Brayden from approximately 7:30 a.m. to 3:30 p.m. (while Ms. Williams was at work); Ms. Williams would then have Brayden during the evenings and nights. Ms. Williams would also have Brayden on the weekends.

At some point, disagreements arose about certain aspects of Brayden's upbringing—specifically, whether Brayden should be allowed to sleep over at Mr. Beverly's house on the nights he did not work. Mr. Beverly filed a complaint for custody in the Circuit Court for Baltimore County, requesting three overnight visits per week. Ms. Williams filed a counter-complaint, asserting that: 1) she should be granted primary physical custody of Brayden; 2) the parties should share joint legal custody; 3) Mr. Beverly should pay child support (including retroactive payments); and 4) the court should determine an access schedule consistent with Brayden's best interests. She later amended her counter-complaint to ask for either sole legal custody or joint legal custody with tie-breaking authority.

[1] There was some confusion in the transcripts as to the spelling of the son's name. Because that is the spelling used by the parents, we will refer to him as "Brayden," even when quoting parts of the transcripts in which the name is misspelled.

Both parents, as well as several other witnesses, testified at the hearing. Mr. Beverly testified about his desire to co-parent Brayden. He explained that he works five nights per week from 4 p.m. until midnight. His two nights off per week rotate every 28 days. For instance, he may have Monday and Tuesday nights off one month, then Tuesday and Wednesday nights off the next.

Mr. Beverly watches Brayden during the daytime on weekdays. They enjoy recreational and educational activities together. He pays for whatever Brayden needs while in his care, and Brayden has his own fully furnished room in Mr. Beverly's home. Mr. Beverly also pays for Brayden's health and dental insurance. He testified that neither party had ever sought child support from the other; instead, each paid their share of Brayden's needs.

Mr. Beverly testified that he believes Brayden would benefit from sleeping at his house—even when he is working for part of the night—because Brayden could get accustomed to his home and get to know Mr. Beverly's side of the family. On the nights he works, his mother or brother could watch Brayden until he comes home. That way, Mr. Beverly would be able to see his son when he comes home from work and be there when Brayden wakes up the next morning. Mr. Beverly sought overnight visits with Brayden two nights per week (corresponding to his nights off from work) and for visitation on alternate weekends.

Ms. Williams testified that she had never opposed Mr. Beverly keeping Brayden overnight; she simply believed that, because she was breastfeeding Brayden, the overnight visits should not begin until he was one year old. She agreed to overnight visits on the two

nights per week that Mr. Beverly does not work. But she opposed Mr. Beverly having Brayden on nights that he worked, saying:

> . . . I don't agree with that for the fact that, again, Brayden has a mother. Brayden already has care for him. Again, it's about stability. It's about structure. We have a routine. We have a schedule. Nobody else knows that schedule but the person that is with Brayden on a daily basis. That's important to me. The time at home with my children, that is very important to me. The fact that you're trying to introduce multiple people to take care of Brayden while Mr. Beverly is not able to do so, I don't understand that. I don't understand that.

She had no issue with Mr. Beverly taking Brayden every other weekend during the day, so long as he returned to her house to sleep.

The court issued an eleven-page Opinion and Order (the "Order"), resolving issues of physical custody, legal custody, child support, and attorneys' fees. The court recounted the evidence adduced at the hearing and found, first and foremost, that both parties were terrific parents. The court granted physical custody to Ms. Williams, but granted Mr. Beverly his requested visitation schedule—7:30 a.m. to 3:45 p.m. on weekdays, two nights per week corresponding with his time off from work, *and* every other weekend. The court awarded joint legal custody to the parents, with Ms. Williams having tie-breaking authority. The court also provided a schedule for visitation during holidays and vacations.

As to financial support, the court stated that it "considered the totality of the evidence as well as FL § 12-202" and decided that Mr. Beverly and Ms. Williams would be charged generally with child support. Explaining its reasons for deviating from the Guidelines, the court explained:

> FL § 12-202(a)(2)(i) states "there is a rebuttable presumption that the amount of child support which would result from the application of the child support

> guidelines set forth in this subtitle is the correct amount of child support to be awarded."
>
> This Court finds that there is evidence that application of the guidelines would be inappropriate in this particular case. Under the guidelines, the amount of child support required would be $90.00.
>
> Plaintiff shall keep Brayden on his health insurance. Prior to Brayden starting school, both parties shall be charged generally with child support. The Court finds that this is in the best interests of Brayden since each party in this case is caring for Brayden every day. The parties may need to revisit this issue once Brayden is in preschool or kindergarten.

The court also stated that "[t]he parties shall equally pay for all of Brayden's medical costs not covered by insurance" and that they shall alternate claiming him as a dependent on their tax returns.

Ms. Williams filed a motion to alter or amend and reconsider the Order, raising several issues. The court denied the motion but, as requested by both parties, attached the version of the Guidelines it used in its Order. The court used the *shared* child custody form which showed that Mr. Beverly made 55% of their combined adjusted actual income, while Ms. Williams made 45%.

Ms. Williams timely appealed the court's decision.[2]

[2] Mr. Beverly argues that because Ms. Williams's motion to alter or amend was filed late, it should be treated as a motion to reconsider, thus removing from our consideration several issues that were not addressed in the court's Order. This argument is premised on the notion that the motion was untimely because it was filed one day late. However, as Ms. Williams points out, the day that the motion was due was a court holiday, thus allowing Ms. Williams to timely file it on "the next day that [was] not a Saturday, Sunday, [or] legal holiday," Md. Code Ann., Gen. Prov. § 1-302 (2014), as she did. As such, we reject Mr. Beverly's timeliness argument.

DISCUSSION

On appeal, Ms. Williams makes the following five contentions:

1) The court awarded de facto visitation and access to Mr. Beverly's relatives over Ms. Williams, thus erring by valuing the rights of third parties over those of a natural parent.

2) The court erred by ordering both parties to equally, instead of proportionally, pay for Brayden's uncovered medical costs.

3) The court erred by not awarding Ms. Williams retroactive child support.

4) The court erred by generally charging both parties with the obligation to support Brayden, rather than awarding child support according to the Guidelines.

5) The court erred by ordering the parties to claim Brayden on their tax returns in alternate years.[3]

We address each issue below.

Visitation

Ms. Williams argues that the circuit court abused its discretion by granting overnight visitation on nights when Mr. Beverly is working. Ms. Williams contends that Mr. Beverly requires a family member (usually his mother) to watch Brayden while he works.[4] As Ms.

[3] Ms. Williams also asks us to "strike" the circuit court's factual finding that the parties had been adhering to a specific access schedule (giving Mr. Beverly overnight visitation) since shortly after Brayden's birth, noting that said schedule actually started over a year after Brayden was born. Ms. Williams has not articulated what practical consequence would come from "striking" such an inconsequential finding, and we can perceive none. Regardless, because we are remanding the case for further proceedings, Ms. Williams can take the issue up with the circuit court if she so chooses.

[4] When we review the circuit court's award of visitation rights, our standard of review varies depending on whether the challenge is to the court's finding of fact, determination of law, or simply the exercise of its discretion. Boswell v. Boswell, 118 Md. App. 1, 27 (1997), aff'd and remanded, 352 Md. 204 (1998). Here, both parties agree that the proper standard of review on this issue is whether the court abused its discretion.

(continued)

Williams sees it, the court impermissibly granted "visitation and access to third parties" without the benefit of evidence to determine that such an arrangement would serve Brayden's best interests. Ms. Beverly argues that granting such visitation rights to third parties violates her fundamental constitutional right to raise her child.[5]

The premise of Ms. Williams's argument is incorrect. Only Mr. Beverly was granted visitation. The fact that his family members may supervise Brayden at times to assist Mr. Beverly is not equivalent to an award of visitation rights to those family members, nor does it lessen Mr. Beverly's obligations and responsibilities to Brayden during those visits.

Moreover, as Ms. Williams acknowledges, the paramount goal of any visitation analysis is to safeguard the best interests of the child. Boswell, 118 Md. App. at 26. The evidence at the hearing supported the court's determination that Brayden's best interests would be served by spending nights with his father, even if a family member would have to watch Brayden for several hours (most of which would occur after he had gone to bed). Mr. Beverly explained that this visitation schedule would allow Brayden to become more comfortable at Mr. Beverly's house and foster his relationships with his grandmother, aunts, uncles, and cousins on Mr. Beverly's side.

[5] Ms. Williams also argues that it is unfair to award Mr. Beverly "parenting time" during hours in which she is at work but to essentially deny her such time when Mr. Beverly is at work. This argument is a red herring, as it's Brayden's best interests—not fairness to his parents—that matters. Notably, Ms. Williams has not contended that it would be contrary to Brayden's best interests for Mr. Beverly to continue to watch him while she is at work.

As Ms. Williams would have to concede—given her desire to put Brayden in daycare at some point—there is more to parenting than being a physical presence in a child's life. For example, decisions about who the child spends time with, which TV shows, if any, the child watches, and which books are read to him are all part of parenting a child. Mr. Beverly does not need to be with Brayden every minute or hour in order to properly and effectively parent him, any more than Ms. Williams does. Given the evidentiary support for the court's finding, we are in no position to second-guess the court's determination of a visitation schedule that it determined would serve Brayden's best interests.

Child Support and Medical Costs

"Child support orders are generally within the sound discretion of the trial court." Knott v. Knott, 146 Md. App. 232, 246 (2002). Though we review a child support award for an abuse of discretion, the factual findings underpinning an award are reviewed for clear error and will be upheld where any competent evidence supports them. Reynolds v. Reynolds, 216 Md. App. 205, 218-19 (2014); Fuge v. Fuge, 146 Md. App. 142, 180 (2002); Md. Rule 8-131(c).

In 1989, the General Assembly enacted the Guidelines to compute child support obligations "based on specific descriptive and numeric criteria." Voishan v. Palma, 327 Md. 318, 322 (1992) (quotation omitted). To use the Guidelines, the court must first determine the adjusted actual income of each parent, as well the expenses incurred in raising the child, and then apply those numbers within its framework. See Reuter v. Reuter, 102 Md. App. 212, 235 (1994).

Maryland law favors using the Guidelines to calculate child support obligations. But its use is not mandatory. Md. Code Ann., Fam. Law ("FL") § 12-202 (1984, 2012 Repl. Vol.) provides:

> (a) (1) Subject to the provisions of paragraph (2) of this subsection, in 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.
>
> (2)(i) There is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines set forth in this subtitle is the correct amount of child support to be awarded.
>
> (ii) The presumption may be rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case.
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> * * *
>
> (v) 1. 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.
>
> 2. The court's finding shall 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.

If the court fails to state its reasons for departing from the Guidelines, we vacate and remand the case to enter an order consistent with the Guidelines or make the specific findings necessary to depart from them. In re Joshua W., 94 Md. App. 486, 504 (1993).

The court found that the application of the Guidelines would result in a child support amount of $90.00. The court further found that adherence to the Guidelines would "be inappropriate" and that general support by both parents would be "in the best interests of Brayden since each party in this case is caring for Brayden every day." As noted above, FL § 12-202(A)(2)(v) requires that if deviating from the Guidelines, the court must state its reasons for doing so and explain how it serves the best interests of the child. Here, the court's explanation is too cursory to satisfy these requirements. Moreover, the Order does not explain why the court used the *shared* custody worksheet to calculate the required child support figure. Without an explanation, we cannot determine whether the court's use of the shared custody worksheet was proper, or whether it was another deviation from the Guidelines that would have required further explanation under FL § 12-202. Accordingly, a remand is required. See, e.g., Tannehill v. Tannehill, 88 Md. App. 4, 15 (1991). On remand, the trial court should augment its findings by explaining why it used the shared custody worksheet, identifying any deviation from the Guidelines, and explaining how any such deviation would be in Brayden's best interests.[6]

[6] We reject Ms. Williams's contention that Mr. Beverly did not request a deviation from the Guidelines. At the time the litigation arose, both parties had been generally paying for their child's expenses (with the exception of health insurance, paid for by Mr. Beverly). Ms. Williams injected the issue of child support into the proceedings by asking for it in her counter-complaint. In his answer, Mr. Beverly *specifically asked the court to deny her* (continued)

Ms. Williams also argues that the trial court erred in ordering "that both parties shall equally pay for all of Brayden's medical costs not covered by insurance." Ms. Williams contends that under FL § 12-204(h)(2), medical expenses should have been allocated in proportion to the parties' adjusted actual incomes.

FL §12-204(h)(2) provides:

> Any extraordinary medical expenses incurred on behalf of a child shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted actual incomes.

As an initial matter, Ms. Williams's reliance on § 12-204(h)(2) is partially misplaced, because the court's Order addressed "all medical expenses" not covered by insurance, which by definition includes both ordinary and extraordinary medical expenses. In contrast, § 12-204(h)(2) applies only to *extraordinary* medical expenses. So to the extent the court's ruling applied to ordinary uncovered medical expenses, § 12-204(h)(2) does not apply.

Nevertheless, the allocation of medical expenses is inextricably linked to the Guidelines in at least two respects. First, ordinary medical expenses are accounted for in the Guidelines, and any further imposition of ordinary medical expenses impermissibly requires the parties to pay such expenses twice. See Bare v. Bare, 192 Md. App. 307, 314-

requested relief—including child support. Additionally, as the best interests of Brayden take precedence over alleged discovery violations, we reject Ms. Williams's contention that Mr. Beverly's use of the short form financial statement instead of the long form as required under Maryland Rule 9-203(a) bars him from requesting a deviation from the Guidelines. See, e.g., Flynn v. May, 157 Md. App. 389, 410 (2004). On remand, the trial court will have the discretion to determine whether either party's financial statements complied with the rules and if not, what if anything should be done as a result.

317 (2010). Second, under § 12-204(h), extraordinary medical expenses are in addition to "the basic child support obligation" which in turn is based on the Guidelines. FL § 12-204(a)(1) ("The basic child support obligation shall be determined in accordance with the schedule of basic child support obligations in subsection (e) of this section."). Accordingly, any deviation from the Guidelines should take into consideration, and provide for, the allocation of any uncovered medical expenses. Because we are remanding this case for the court to make additional findings as to its deviation from the Guidelines, the court should address and explain its allocation of uncovered medical expenses as well.

To be clear, we are not requiring the court to reconsider its initial decision to deviate from the Guidelines, but rather we are remanding for the trial court to make the required findings to explain how and why it deviated from the Guidelines. In the process of making such findings, the court will have the discretion to amend its decision if it deems it in Brayden's best interests to do so.

Retroactive Child Support

Ms. Williams claims that the hearing court erred by failing to award her child support retroactively from the date of her initial counter-complaint. "[T]he law does not require that awards be retroactive." Krikstan v. Krikstan, 90 Md. App. 462, 472 (1992). The determination "rests in the sound discretion of the trial court." Otley v. Otley, 147 Md. App. 540, 562 (2002); FL § 12-101(a)(3) ("For any other pleading that requests child support, the court may award child support for a period from the filing of the pleading that requests child support."). Here, there was no child support awarded, so there was nothing for the court to apply retroactively. Because we are remanding the case for further findings

regarding any deviation from the Guidelines, this issue can also be revisited on remand if need be, although we see no apparent reason to do so.

Tax Returns

Ms. Williams argues that the hearing court erred by ordering the parties to alternate claiming Brayden as a dependent on their tax returns. Specifically, Ms. Williams contends that 26 U.S.C.A. § 152(e) establishes that the primary custodial parent shall be entitled to the tax exemption for the child at issue.[7] Ms. Williams explains that, although this provision provides an exception where the custodial parent signs a declaration stating that she will not claim the dependent on her tax returns, the allocation of such an exemption may only be made where the circuit court expressly finds that "the allocation would result in an increase in after-tax spendable income of the family as a whole" or where, because of other exceptional circumstances, it would be in the best interest of the child.[8]

We review a circuit court's allocation of tax dependency exemptions for an abuse of discretion. See Reichert v. Hornbeck, 210 Md. App. 282, 348 (2013). In Reichert, we held that when a court grants a non-custodial parent the right to claim a tax exemption, it must consider whether doing so is in the child's best interest. Id. at 341. It is presumed that the child's best interest is served by allocating the exemption to the parent with whom it

[7] For purposes of that statute, "custodial parent" means "the parent having custody for the greater portion of the calendar year." 26 U.S.C.A. § 152(e)(4)(A).

[8] Ms. Williams also argues that the trial court erred by awarding the dependency exemption despite the fact that Mr. Beverly never requested the exemption. That is not entirely accurate, as both parties addressed the issue in their respective closing arguments. On remand, the court will have discretion to determine whether the issue was properly raised.

would result in an increase in "after-tax spendable income of the family as a whole." Id. at 343. Thus, we concluded, that "it would be an abuse of discretion" for a court to grant a non-custodial parent the right to a tax exemption absent a finding that doing so "would result in an increase in after-tax spendable income of the family" or a finding of "other exceptional circumstances making it in the best interest of the parties and their child[ren]." Id. at 344.

We also found in Reichert that "when both parents share joint physical custody of the child on an essentially 50/50 basis," the tax exemption must be allocated "to the parent with the highest adjusted gross income." Id. at 346. Notably, we distinguished such a situation from "instances where the parents share joint custody but one parent still attains primary physical custody and care of the child for more than one-half of the calendar year." Id. at 345. In those cases, a court still has the discretion to allocate the tax exemption.[9] Id.

The court's ruling as to the allocation of the tax deduction did not reflect the analysis or make the findings required by Reichert. Moreover, there does not appear to be sufficient evidence in the record for the court to have made any such findings. Nevertheless, as any such analysis implicates other issues on which we are remanding, the court will have the discretion to address this issue as it sees fit on remand. We leave it to the trial court's discretion whether to allow further evidence on this (or any other) issue.

[9] We also note that where a trial court's order requires one parent to execute the waiver of their right to claim the child as a dependent, it must do so explicitly. Wassif v. Wassif, 77 Md. App. 750, 761 (1989).

CONCLUSION

In sum: 1) we affirm the judgment with respect to its determination of Mr. Beverly's visitation schedule; 2) we vacate the judgment with respect to the trial court's determinations as to child support, medical expenses, and tax exemptions; and 3) we remand for the purposes set forth in this opinion. On remand, the trial court shall have the discretion to determine the nature and scope of any further proceedings, including whether additional evidence should be taken and if so, the format and process for doing so.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND VACATED IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE DIVIDED EQUALLY BY THE PARTIES.