Circuit Court for Howard County
Case No. 13-C-17-112910

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0142

September Term, 2021

AMANDA TRACY PARHAM

v.

SAMUEL FRIEND

Graeff,
Reed,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: October 28, 2021F

This case concerns a custody/visitation dispute between Amanda Tracy Parham ("Appellant") and Samuel Friend ("Appellee"). The custody/visitation dispute relates to their child, R.F. ("minor child"). Following a two day trial, the circuit court's final custody order ("Final Order") granted the Appellee sole legal and physical custody of the minor child with overnight visitation rights for the Appellant every other weekend, with "make-up time" in the summer, and midweek dinner visits. The circuit court also ordered the Appellant to pay child support to the Appellee in the amount of $328.00 per month. The Appellant timely appealed the circuit court's Final Order.

The Appellant presents the following issue on appeal, restated as followed:[1]

I. Did the Circuit Court for Howard County err in awarding the Appellee sole legal and physical custody of the minor child, with visitation to the Appellant?

For the following reasons, we hold that the Circuit Court for Howard County did not err and affirm their decision.

FACTUAL & PROCEDURAL BACKGROUND

The Appellant and Appellee are the parents of the minor child, who was born on November 30, 2015. At the time of the trial proceedings, the Appellant was a homemaker

[1] The original questions presented in the Appellant's brief is stated as followed:

> 1. Did the Circuit Court for Howard County err in awarding the Appellee sole legal custody of the minor child?
>
> 2. Did the Circuit Court for Howard County err in awarding the Appellant [sic] sole physical custody of the minor child, with limited access to the Appellant?

working on her Associate of Arts degree in Nursing. The Appellee is a full-time anatomist and biological skills technician for the Anatomy Gift Registry. The parties were never married and ended their relationship in 2017.

Following their separation, the Appellant entered a long-term relationship with an unnamed boyfriend, which ended in May of 2019. Two months later, the Appellant married Ryan Parham ("Mr. Parham"). Mr. Parham had been convicted of sexual solicitation of a minor in 2017 and placed on tier two of the Sex Offender Registry. The Appellant testified that she lived with her mother until late 2020 and later moved into in a two-bedroom apartment in Ellicott City with Mr. Parham.[2]

The Appellee also entered a new relationship with a different partner following the parties' separation. At the time of the circuit court's holding, the Appellee was leasing a single-family home in Severna Park with his girlfriend, Melissa Myers, ("Ms. Myers") from Ms. Myers's parents. The Appellant and Ms. Myers have been in a relationship for two and a half years.

A. Initial Custody Order

On February 13, 2018, the Circuit Court for Howard County entered an initial custody order ("Initial Order"), awarding both parties joint legal custody and shared physical custody of the minor child. About five months after the Initial Order, both parties filed multiple cross petitions seeking modification of the Initial Order.

B. Cross Petitions Seeking Modification of the Initial Order

[2] The circuit court later found this testimony not credible because it was "contrary to other evidence".

On July 12, 2018, the Appellee filed a *pro se* Motion to Modify Custody requesting full custody of the minor child. On July 29, 2018, the Appellee filed a second *pro se* Motion to Modify Custody and Visitation. The circuit court denied the motions on November 13, 2018.

In August 2019, the Appellee filed four motions through his attorney, including a Motion to Modify Custody and Visitation and Request for *Pendente Lite* Hearing and a Petition for Emergency and *Ex Parte* Relief for Custody asking for sole custody of the minor child and stating the Appellee's contention that the Appellant had married a convicted tier two sex offender who is "forbidden from having, 'unsupervised contact with children under 16 years except [his] own.'" On September 4, 2019, the parties appeared before a magistrate in a Temporary Custody and Access Hearing. Following the hearing, the magistrate ordered: (1) the minor child be returned to the Appellee's care for the three days as a result of the Appellant withholding the minor child from the Appellee; (2) the original custody schedule be resumed the following week; (3) the minor child may not be left alone with the Appellant's husband; (4) the parties continue to share legal custody and must keep one another informed about the minor child's location and caregiver(s); and (5) the Appellee has tie-breaking authority with regard to day-care arrangements.

On September 27, 2019, the Appellant responded to the Appellee's Motion to Modify Custody and Visitation and Request for *Pendente Lite* Hearing. Shortly thereafter, on October 17, 2019, the Appellant filed a Counter Complaint to Modify Custody, Access, Child Support, and for Related Relief based on problems between the parties concerning communication conflicts during the minor child's pick up and drop offs between both

parties, disputes about the minor child's educational enrollment, and changes to the minor child's medical care. On October 29, 2019, the court ordered both parents to attend parenting seminars given by the National Family Resiliency Center and mandated mediation regarding a parenting plan for the minor child.

On October 31, 2019, Appellee filed a Motion to Amend Order that included: (1) tie-breaking authority for the minor child's school arrangements (in addition to tie-breaking authority for day care arrangements); (2) the child to be returned to the Appellee because the Appellant had not been adhering to the visitation schedule; (3) a note that the mother had unilaterally enrolled the minor child in a pre-kindergarten program. The motion was denied by the court.

On April 13, 2020, the Appellant filed a Motion for Postponement, which was granted by the court on April 15, 2020. The rescheduled modification proceeding was set for November 16-17, 2020, which was further delayed by the COVID-19 pandemic partial court shutdowns. On September 28, 2020, the Appellant filed a Motion for Contempt. On February 16, 2021, the Appellee filed a Motion to Compel and for Sanctions to compel discovery, which the circuit court denied as moot because the Appellant filed the answer to the discovery requests on the same day that the Appellee filed the Motion to Compel.

C. Final Order

On March 22nd and 23rd, 2021, the parties appeared before the circuit court for Howard County for a two-day trial on the Appellee's Motion to Modify Custody and Visitation and the Appellant's Counter Complaint to Modify Custody, Access, and Child

Support. At the time of the trial, the minor child was five years old and had a history of speech problems, which both parties had worked to address.

Due to the COVID-19 pandemic and partial court shut-downs, the matter took almost eighteen months to go to trial. As a result, additional conditions of concern arose that the circuit court believed adversely affected the minor child, citing: (1) both parties moving to different parts of Maryland; (2) the parties' dysfunctional relationship and strained communications exhibited in the child's presence; and (3) the minor child living with the Appellant and Mr. Parham, who is on the Sex Offender Registry for sexual solicitation of a minor child.

The circuit court noted that both parties have moved since the Initial Order. The Appellee moved from Glenelg, Maryland, to Severna Park, Maryland, which the Appellant alleged "caus[ed] hardship and a material change in circumstances." However, the court noted the Appellant also moved from Catonsville, Maryland to Ellicott City, Maryland. The court stated the parents' moves are a material change of circumstances between the parties. Moreover, the circuit court stated the "significant dysfunction that has festered in the relationship between the father and mother" is its "greatest concern". The court noted they:

> exchange toxic texts and emails. They film one another at custody transitions in front of [the minor child]. [The Appellant] has withheld [minor child] from [Appellee] more than once . . . [n]otwithstanding the [c]ourt [o]rdered Custody Access Schedule. [Appellant]'s threatened to call the police or CPS and has actually done some of those things on [Appellee] and on his significant other. [Appellee] has told [minor child] that [Appellant] is bad and that her husband is bad. [Appellee] films [Appellant]'s FaceTime visits with [minor child]. There's been conflicts and sometimes shouting at the transitions for access. The parties have refused to disclose home addresses to

> one another. And all of this conduct is contrary to [the minor child]'s best interest.

Lastly, the circuit court noted the serious nature of Mr. Parham's conviction. As previously mentioned, the Appellant married Mr. Ryan Parham in July of 2019. Mr. Parham was convicted in 2017 of sexual solicitation of a minor and placed on tier two of the Sex Offender Registry. As a stipulation of his conviction, Mr. Parham is not permitted to have unsupervised contact with minors that are not his own children.

Based on evidence presented at trial and the material changes in circumstance, the circuit court explained its reasoning for the custody/visitation decision in its Final Order. The court considered the relevant joint custody considerations outlined in *Taylor v. Taylor*, 306 Md. 290 (1986) ("*Taylor* factors") to determine if joint custody was in the minor child's best interest.[3] *Taylor*, 306 Md. at 307-311. After analyzing the *Taylor* factors in light of the evidence and facts presented in this case, the circuit court held that the Appellee would have sole legal and physical custody of the minor child with overnight visitation rights for the Appellant every other weekend, with "make-up time" in the summer, and midweek dinner visits. The circuit court also ordered the Appellant to pay child support to the Appellee in the amount of $328.00 per month.

On March 31, 2021 the Appellant filed her timely Notice of Appeal.

STANDARD OF REVIEW

[3] To note, the circuit court did not specifically cite the *Taylor* case, but discusses the factors considered in making their decision. The factors discussed by the circuit court can be matched up to those outlined in *Taylor v. Taylor*, 306 Md. 290 (1986).

The standard of review for custody cases before the appellate court is whether the circuit court abused its discretion in making its custody determination. *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 311 (1997). The "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). An abuse of discretion may arise when: (1) no reasonable person would take the view adopted by the circuit court; (2) the court acts without reference to any guiding rules or principles; (3) or when the circuit court ruling is logically implausible given the facts and inferences. *Santo v. Santo*, 448 Md. 620, 625-6 (2016).

This standard of review "accounts for the trial court's unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020) (citing *Santo v. Santo*, 448 Md. 620, 625 (2016) (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)). "The trial judge who 'sees the witnesses and the parties, [and] hears the testimony . . . is in a far better position than the appellate court, which has only a [transcript] before it, to weigh the evidence and determine what disposition will best promote the welfare of the [child].'" *Id.* (citing *Viamonte v. Viamonte*, 131 Md. App. at 157 (quoting *Davis v. Davis*, 280 Md. at 125)). Because "appellate review is properly limited in scope, the burden of making an appropriate decision necessarily rests heavily upon the shoulders of the trial judge." *Id.* (citing *Taylor*, 306 Md. at 311). Custody decisions are "unlikely to be overturned on appeal." *Id.* (citing *Domingues v. Johnson*, 323 Md. 486, 493 (1991)).

DISCUSSION

"Embraced within the meaning of 'custody' are the concepts of 'legal' and 'physical' custody." *Taylor*, 306 Md. at 296. Legal custody allows and obligates a parent to make "long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Id.* Physical custody allows and obligates a parent to house the child and make day-to-day decisions when the child is in the physical care of the parent. *Id.* at 297. Joint custody is the shared right and responsibility of both parents in making physical and legal decisions for the child, where neither parent's rights are superior to the other. *Id.* at 296.

On February 13, 2018, the Circuit Court for Howard County entered the Initial Order, awarding both parties joint legal custody and shared physical custody of the minor child. However, the circuit court granted the Appellee sole legal and physical custody of the minor child with overnight visitation rights for the Appellant every other weekend, with "make-up time" in the summer,[4] and midweek dinner visits in their Final Order. The circuit court also ordered the Appellant to pay child support to the Appellee in the amount of $328.00 per month.

A. Parties' Contentions

The Appellant contends that the circuit court erred in granting the Appellee sole legal and physical custody of the child because the trial court "rel[ied] primarily on

[4] The circuit court later clarified that each party's week of summer vacation included that party's weekend, but not the other party's weekend. *Friend v. Tracy*, No. 13-C-17-112910 (Md. Cir. Ct. Howard Cnty. 2021).

evidence that the parties often have difficulty communicating effectively." The Appellant relies on the decision in *Santo v. Santo,* 448 Md. 620 (2015), where the Court of Appeals held that the circuit court could grant joint legal custody to parents who cannot effectively communicate with one another on matters regarding their children. *Id.*, at 646. The Appellant also contends that the circuit court also based its decision on physical custody solely on the Appellant's husband being a tier two registered sex offender, convicted of sexual solicitation of a minor.

The Appellee contends that the circuit court did not abuse its discretion in granting sole legal and physical custody to the Appellee. The Appellee argues that the circuit court's decision was based on competent evidence. In their brief, the Appellee cites: (1) the parties' inability to consistently communicate civilly with one another in the child's presence; the dysfunction of the parties' relationship; (2) how the Appellant has withheld the child from the Appellee; (3) the court's concern about the minor child living in the house with a person who is not permitted to have unsupervised access to minors that are not his own children; and (4) that the Appellant did not appreciate the seriousness of her husband's offense. Moreover, the Appellee also notes that the circuit court had doubts about the Appellant's honesty, credibility, and judgement in statements about the Appellant's marriage and living situation with Mr. Parham.

B. Analysis

On a motion for modification of custody, the circuit court must employ a two-step process of analysis in its decision to modify a custody arrangement. First, the circuit court considers whether there has been a material change in circumstances. *Santo v. Santo*, 448

Md. 620, 639 (2016); *see also In re Deontay J.*, 408 Md. 152, 166 (2009); *Nodeen v. Sigurdsson*, 408 Md. 167, 175 (2009). A change in circumstances is material when it affects the welfare of the child. *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005).

If the circuit court finds that there has been a material change in circumstances, then the court proceeds to determine what custody arrangement is in the best interest of the child. *McMahon*, 162 Md. at 593 (citing *Wagner v. Wagner*, 109 Md. App. 1, 2 (1996)). For the circuit court in any child custody case, the paramount concern is what is in the best interest of the child. *Taylor*, 306 Md. at 303; *see also Conover v. Conover*, 450 Md. 51, 60 (2016). The best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak. *Taylor*, 306 Md. at 303.

The Appellant contends that the circuit court erred in granting the Appellee sole legal and physical custody of the child because the Appellant asserts that the circuit court relied solely on communication issues and the Appellant's husband's prior conviction in their custody decision. For the reasons stated below, we disagree.

I. Material Change in Circumstances

The first issue the circuit court addressed in its decision to modify custody was the issue of a material change of circumstances. In this context, the trial court must decide if a change in circumstances since the original custody order is material. *Wagner*, 109 Md. App. at 28 ("[T]he circumstances to which change would apply would be the circumstances known to the trial court when it rendered the prior order.") A change in circumstances is material when it affects the welfare of the child. *McMahon*, 162 Md. App. at 594. However,

the circuit court need not find that the change in circumstances cause "identifiable harm to the child[. . .]" *Domingues v. Johnson*, 323 Md. 486, 499 (1991).

Our Court has noted factors weighed by the circuit court in both the material change in circumstances and best interest of the child standards "are often interrelated." *Id.* Moreover, the Court of Appeals has expressly stated that a material change of circumstances is the "threshold – but not paramount – issue." *In re Deontay J.*, 408 Md. 152, 166 (2009) (quoting *Wagner*, 109 Md. App. at 29). "Once a material change, if any, is established, the further relevance of that evidence depends upon how it related to the best interest of the child . . . " *Wagner*, 109 Md. App. at 29. Stated in another way, if the circuit court finds any material change in circumstances, the circuit court can proceed to determine what custody arrangement is in the best interest of the child. *McMahon*, 162 Md. at 593 (citing *Wagner*, 109 Md. App. at 2).

Following the Initial Order for joint custody of the minor child, the parties filed for changes to the joint custody order citing material changes in both parties' lives and their relationship with one another that affected the minor child. The Appellee originally sought modification of the joint custody order because of Appellant's marriage to Mr. Parham. The Appellant's countercomplaint was rooted in problems at pick-up and drop-off of the minor child. At trial, the Appellant contended that the Appellee's move from his prior home to a new county was a material change in circumstance that caused her some hardship.

The circuit court held that there were several material changes in circumstances that adversely impacted the well-being of the minor child. First, the circuit court considered the Appellant's marriage to Mr. Parham. A parent's marriage can be considered by the court

as a factor determining if a material change of circumstances has occurred. *See Domingues*, 323 Md. 486, 498 (1991). The circuit court stated that the Appellant is "now married to a man who is on the sex offender registry for sexual solicitation of a minor child." The circuit court was concerned that the minor child is "living in a home with a person that is not permitted to have unsupervised access with minors."

Next, the circuit court noted that as a result of the COVID-19 pandemic partial court shut-downs, the matter took almost eighteen months to go to trial. Since the initial filings for a modification in custody, both parents moved to different parts of Maryland. A parent's residential move can be considered by the court as a factor determining if a material change of circumstances has occurred. *See Domingues*, 323 Md. 486, 498 (1991). The Appellant moved from Catonsville to Ellicott City, while the Appellee moved from Glenelg to Severna Park. The Appellee and the Appellant live forty minutes away from one another. Although the court stated it is a material change in circumstances affecting the minor child, the court acknowledged it would not prevent the minor child from having a relationship with both parents.

Finally, the circuit court also noted that the material change of "greatest concern to the [c]ourt . . . was the significant dysfunction that has festered in the relationship between the [Appellee] and [Appellant]."

> They exchanged toxic texts and emails. They film one another at custody transitions in front of [the minor child]. [The Appellant] has withheld [minor child] from [Appellee] more than once . . . [n]otwithstanding the [c]ourt [o]rdered Custody Access Schedule. [Appellant]'s threatened to call the police or CPS and has actually done some of those things on [Appellee] and on his significant other. [Appellee] has told [minor child] that [Appellant] is

> bad and that her husband is bad. [Appellee] films [Appellant]'s FaceTime visits with [minor child]. There's been conflicts and sometimes shouting at the transitions for access. The parties have refused to disclose home addresses to one another.

These communication issues and conflict between the parties are a change in the way that the parents interact, which has arisen as an issue affecting the minor child after the Initial Order. The Appellant raised the communication issues and conflict between the parties as an issue in their original counterclaim and for the reasons stated above, the circuit court held that the dysfunction festering between the two parties is a material change in circumstances.

Considering the circumstances that the circuit court weighed stating that a material change has occurred, we hold that the circuit court did not err in stating there were material changes in circumstances affecting the welfare of the child.

I. ***Best Interest of the Child***

After determining that there were material changes in circumstance affecting the welfare of the child, the circuit court weighed what legal and physical custody arrangement was in the minor child's best interest. In *Taylor v. Taylor*, 306 Md. 290 (1986), the Court of Appeals outlines custody factors to determine if joint custody is in the minor child's best interest. The Court stated the major considerations that the circuit court should consider in their decision to award joint custody, are:

> (1) the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; (2) the willingness of parents to share custody; (3) the fitness of parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) potential disruption of child's social and school life; (7) the geographic proximity of parental homes; (8) the demands of parental employment; (9) the age and number of

> children; (10) the sincerity of the parents' request; (11) the financial status of the parents; (12) the impact on state or federal assistance; (13) the benefit to parents; (14) and any other factors as appropriate.

Id. at 304-312. As explained in the case, these factors are weighed to see if joint legal custody is appropriate because:

> [w]hen the evidence discloses severely embittered parents and a relationship marked by dispute, acrimony, and a failure of rational communication, there is nothing to be gained and much to be lost by conditioning the making of decisions affecting the child's welfare upon the mutual agreement of the parties. Even in the absence of bitterness or inability to communicate, if the evidence discloses the parents do not share parenting values, and each insists on adhering to irreconcilable theories of child-rearing, joint legal custody is not appropriate.

Id. at 305.

a. Applying the Taylor Factors

Though the circuit court does not mention the *Taylor* factors specifically, the circuit court does discuss each of the factors mentioned in the opinion and that it considered in reaching its child custody/visitation determination. The factors are discussed below.

Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child's Welfare.

*"*The capacity of the parents to communicate and reach shared decisions is 'the most important factor in the determination of whether an award of joint legal custody is appropriate.'" *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 250 A.3d 254, 267 (2021) (quoting *Taylor,* 306 Md. at 304). In this case, the circuit court stated its "greatest concern to the [c]ourt . . . was the significant dysfunction that has festered in the relationship between the [Appellee] and [Appellant] . . . [the minor child has] been exposed to serious conflict

between his parents that takes place often in his presence." After reviewing the communications between the parties, the circuit court noted that the Appellant is "often manipulative," and "[Appellant will] put conditions on her consent, she dismisses [Appellee]'s concerns with name-calling, vulgarity, or accusing him of lying." The circuit court acknowledged that:

> [b]oth parties agree that their communication is very bad. They are not able to discuss issues. They are not able to reach agreements. They occasionally have civil interactions and sometimes they can cooperate. Both accuse the other of doing things unilaterally, and I think that both are right [-] that each of them has done things unilaterally.

The Appellant argues that the circuit court "award[ed] sole legal custody of the minor child to the Appellee in this matter relying primarily on evidence that the parties often have difficulty communicating effectively." In *Santo v. Santo*, 448 Md. 620 (2015), the Court of Appeals held that it is permissible for a trial court to award joint custody to parents who fail to effectively communicate. *Id.* at 630. While the circuit court is permitted to allow for joint custody in such cases where parents cannot communicate effectively, the circuit court under *Santo* is still given the discretion to decide whether joint custody is appropriate. However, it is rare and unusual to award joint custody in cases where the parents cannot cooperate in making decisions dealing with the minor child's welfare and best interest. See *Taylor*, 306 Md. at 307 ("*In the unusual case* where the trial judge concludes that joint legal custody is appropriate notwithstanding the absence of a 'track record' of willingness and ability on the part of the parents to cooperate in making decisions dealing with the child's welfare, the [circuit court] judge must articulate fully the reasons that support that conclusion." *Id.* (emphasis added)). The circuit court declined to hold that

this was a particularly rare or unusual case to allow for joint custody in the absence of a track record of willingness for the parties to work together.

Willingness of Parents to Share Custody.

Regarding the willingness of parents to share custody, the circuit court stated:

> . . . They film one another at custody transitions in front of [minor child]. [Appellant] has withheld [minor child] from [Appellee] more than once[, n]otwithstanding the [c]ourt [o]rdered Custody Access Schedule. [Appellant] has threatened to call the police or [child protective services] and has actually done [so] to [Appellee] and his significant other. . . [Appellee] films [Appellant]'s FaceTime visits with [minor child]. There's been conflicts and sometimes shouting at the transitions for access. The parties have refused to disclose home addresses to one another. And all of this conduct is contrary to [minor child's] best interest.

Moreover, the circuit court later notes that witnesses corroborated the Appellee's testimony that the [Appellant] has withheld the minor child from the Appellee. Withholding a child from the other party does not indicate a willingness of the withholding party to share custody. When the Appellant and Appellee did transition custody from one another, the parties would get into contentious conflicts during the custody transitions, which also do not provide evidence supporting the assertion that the parties are willing to share custody. Finally, the circuit court stated that,

> despite the parties having shared custody of [the minor child] for three years, they have not been supportive of his relationship with the other parent. This would indicate that it would be difficult for [the minor child] to maintain natural family relations in the future. Shared physical and legal custody is not working.

Fitness of Parents.

"The psychological and physical capabilities of both parents must be considered . . . " *Taylor*, 306 Md. at 308. "The trial judge who 'sees the witnesses and the parties, [and] hears the testimony . . . is in a far better position than the appellate court, which has only a [transcript] before it, to weigh the evidence and determine what disposition will best promote the welfare of the [child].'" *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020) (citing *Viamonte v. Viamonte*, 131 Md. App. at 157 (quoting *Davis v. Davis*, 280 Md. at 125)).

The circuit court noted concerns about the Appellant's disposition and mental health. The court recognized the Appellee's concerns about the Appellant's attempted suicide in 2017, citing evidence of suicide notes the Appellant wrote, which would have left the minor child without a parent. The court had concerns about the impulsivity and dishonesty of the Appellant stemming from her break-up with her unnamed boyfriend in May of 2019 and marriage to Mr. Parham two months later. The circuit court stated that it found some of the Appellant's testimony regarding her living situation not credible and, "contrary to other evidence. The [c]ourt believes it's more likely that she indeed lived with Mr. Parham's parents at their home in Columbia and that she was not honest about it to [Appellee] or to the [c]ourt at the time of the Emergency Hearing or [during the two day trial]." Moreover, as previously mentioned, the circuit court stated Appellant is "often manipulative[. S]he'll put conditions on her consent, she dismisses [Appellee]'s concerns with name-calling, vulgarity, or accusing him of lying." Finally, the circuit court noted that the Appellant has made criminal complaints against the Appellee and failed to show up to court on the court date to testify.

Relationship Established Between the Child and Each Parent and Preference of the Child.

"The reasonable preference of a child of suitable age and discretion should be considered." *Taylor*, 306 Md. at 308. The circuit court stated that the minor child was five years old, and as a result, the court was unlikely to place a great deal of weight on this issue. However, regarding the minor child's preference and the relationship between the child and each parent, the circuit court stated, "from what I hear, [minor child] loves both of his parents and probably wants to be with both of them as much as humanly possible."

Geographic Proximity of Parental Homes.

The Appellee moved from Glenelg, Maryland to a home in Severna Park, Maryland in which his girlfriend, Ms. Myers's, parents own and plan to stay long term. The Appellant moved from Catonsville, Maryland to Ellicott City, Maryland, into a luxury apartment with her husband, Mr. Parham. During trial, the Appellant argued that the Appellee's move from Glenelg, Maryland to Severna Park, Maryland caused undue burden. The Appellant stated:

> [A] significant change has occurred since the initial order was entered . . . Mr. Friend made the decision to move over forty minutes away from Ellicott City to Severna Park in Anne Arundel County. [The Appellant] lives in Ellicott City. [The Appellee's] parents live in Ellicott City. [The minor child's] stepbrother and his uncles live in Ellicott City.

The Appellant further argued that because the Appellee "chose to move forty minutes away from where his core family was living," there was a substantial geographical distance now between the two homes. The Appellant further argued that the Appellee moved, "a distance away that becomes extremely difficult when you have a five-year-old who's going to be in kindergarten who has to be at school on time."

The Appellee stated his move to Severna Park was due to Ms. Myers's parents' decision to purchase a home for the Appellee, Ms. Myers, and the minor child to live long-term. The Appellee testified that his decision was driven by how sizeable of a home and how nice of an area Severna Park is - offering nice parks, schools, and recreation areas. The Appellee stated he would not have had the same opportunity to provide the minor child with "such a nice place for the [minor child]" in Ellicott City. The Appellee also stated that the geographic proximity of the homes is "a challenge . . . [but] it's not great[. I]t's about thirty miles, thirty to forty minutes depending on traffic . . . " The Appellee contended that the distance between the two homes was not great enough to prevent the parties from coordinating a drop-off exchange of the minor child on Mondays for school.

The circuit court held that the parties live approximately forty minutes apart, so the distance would not be a burden or hindrance to the minor child having contact with both parties. The circuit court also arranged for a neutral location between the two counties for transitions of access to the minor child.[5]

Demands of Parental Employment and Financial Status of the Parents.

The circuit court weighed the demands of parental employment and the financial status of the parents simultaneously, so we will evaluate the courts statements on both *Taylor* factors in this section. The Appellee "works as a full-time anatomist. His year to

[5] The circuit court ordered that the transitions of access to the minor child to happen at the Walmart in Arundel Mills in Hanover, Maryland.

date paystub indicates his income is $4,528.00 per month."[6] At the time of the trial proceedings, the Appellant was a twenty-six-year-old, pregnant stay at home parent studying for her Associate of Arts degree in Nursing. The circuit court also noted for the record that "[t]here are no physical or mental disabilities that prevent her from working full-time . . . The [c]ourt finds that [Appellant] is capable of full-time employment and could earn minimum wage[,] which is currently $11.75 per hour [and would make] her monthly income $2,027."

Age and number of children.

The circuit court stated at the time of the trial, the minor child was five years old. The Appellant has a step-son from Mr. Parham's previous relationship and was pregnant with a due date in July 2021.

Sincerity of Parents' Request.

Regarding the sincerity of their requests, the circuit court held that both parties were sincere in their request for sole legal custody, and primary physical custody with tie breaking authority of the minor child, noting that both parties have attorneys working on their behalf. The circuit court also noted that, "neither party has abandoned the child and there's not been a significant separation between either party and [the minor child]."

Impact on Federal Assistance and Benefit to Parents.

The benefit to a parent and impact on federal assistance factors are intertwined based on the facts in this case and in the circuit court's examination of both factors, so we will

[6] The Appellant also mentioned that he works as a "bio skills technician" for the Anatomy Gift Registry, which is the same organization in which he is employed as an anatomist.

evaluate the circuit court's statements on both *Taylor* factors in this section. In child custody cases, although the best interest of the child is the primary focus of such considerations, benefits to parents are "worthy of consideration" by the circuit court. *Taylor*, 306 Md. at 311. The circuit court, under *Taylor* is also permitted to consider the financial impact custody would have on government assistance. *Id.*

The minor child has a history of speech problems. The Appellant was receiving disability assistance benefits as a result of the minor child's speech problems. Based on witnesses' testimony during trial, the minor child's speech problems have been resolved. During trial, the Appellee discussed an interest in getting the minor child reevaluated based on the child's developmental speech improvements. However, "[i]n an e-mail, [Appellant] asked [Appellee] to exaggerate the extent of [the minor child]'s speech problem so that [Appellant] could get a financial benefit." Based on the Appellant's financial gain from federal assistance received while having joint custody of the minor child, it was proper for the circuit court to examine this factor in their custody decision.

Other Factors as Appropriate.

The circuit court also weighed the parties' partners' character and fitness. As stated in *Taylor*, "a trial judge should consider all other circumstances that reasonably relate to the issue." *Taylor*, 306 Md. at 311. Analysis of the parties' partners' fitness is helpful in painting a holistic picture of what is in the best interest of the child. In determining what is in the best interest of a child, a circuit court looks not to one determinative factor, but to the totality of the circumstances surrounding the child's life in the parent's care. "[T]he

best interests of the child standard is always the starting – and ending – point." *Boswell v. Boswell*, 352 Md. 204, 236 (1998).

Ms. Myers is the Appellee's non-marital partner and they have been dating for two and a half years. The Appellee leases a single-family home with Ms. Myers in Severna Park, Maryland. After Ms. Myers testified at the hearing and the court weighed the evidence presented at trial, the circuit court concluded that Ms. Myers "seems to be a fit person to live with and assist in the care of [minor child]."

Mr. Parham is a marital partner of the Appellant. Mr. Parham is convicted of sexual solicitation of a minor. He is registered as a tier two sex offender and is not permitted to have unsupervised contact with children under 16 years old besides with his own children. The circuit court stated Mr. Parham's 2017 conviction of sexual solicitation of a minor, which placed him on the Sex Offender Registry, was "very serious," citing the twenty-five years Mr. Parham would remain on the registry.

> The court is concerned that [minor child] is living in the home with a person who is not permitted to have unsupervised access with minors. [Appellant] minimizes this very significant concern, indicating Mr. Parham was addicted to drugs at the time and even suggesting in closing that he was, 'trapped', by the police officer who posed as a minor in the case. The [c]ourt has grave concerns that [Appellant] does not appreciate the seriousness of Mr. Parham's offense. To compound that concern, when [Appellee] texted to [Appellant] about a statement [minor child] made about his penis and about Mr. Parham telling him it was dirty, [Appellant]'s only response is, "you're an idiot."

Mr. Parham did not appear and testify, so the circuit court could not judge his credibility as a stepparent to the minor child. However, as the Appellant's marital partner, the minor child would be potentially exposed to Mr. Parham in more consistent intervals

of interaction than a non-marital partner during the Appellant's time with the minor child. As such, it was reasonable that the circuit court would examine the evidence before it and the possible adverse effect Mr. Parham could have on the minor child's mental health and wellbeing and Mr. Parham's conviction of sexual misconduct. The circuit court did not err in weighing what is in the minor child's best interest.

CONCLUSION

We hold that the circuit court did not err or abuse its discretion in reaching its custody/visitation decision under the Final Order. The circuit court was well within its discretion in making its custody modification. The circuit court's holding was based upon sound legal principles and factual findings that were clearly not erroneous. Accordingly, we affirm the decision of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.