

Circuit Court for Prince George's County
Case No.: CAD20-11034

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 216

September Term, 2021

M. T.

v.

G. T.

Kehoe,
Nazarian,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: February 9, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

M. T. (“Mother”), appellant, appeals from a judgment of the Circuit Court for Prince George’s County granting a judgment of absolute divorce to G. T. (“Father”), appellee, and awarding sole legal custody and primary physical custody of the parties’ three minor children to Father. Mother presents four questions,¹ which we have consolidated and rephrased as follows:

¹ The questions as presented by Mother are:

1. Whether there was any material evidence or substantial material evidence in the record to support the trial court’s findings of fact, where a significant portion of appellee’s testimony did not relate to the minor children, another portion consisted entirely of appellee’s displeasure with his wife, and the remainder of the findings had no basis in the record?
2. Whether the trial court erred as a matter of law when the court mentioned one *Taylor* [v. *Taylor*, 306 Md. 290 (1986)] factor, capacity of the parents to communicate and reach shared decisions affecting the child’s welfare; did not analyze a single *Taylor* factor, including the factor mentioned; and concluded that the single factor was determinative of the best interest of the children?
3. Whether the trial court abused [its] discretion when the court found that it was in the best [interest] of the minor children to award their sole legal custody to their father when the court, without analysis, concluded that it did not appear that the parties were able to communicate with one another regarding the long range care of the minor children, failed to explore or consider any other factors under *Taylor*, and failed to explore or consider joint custody and any of its variations?
4. Whether the trial court may, in a child custody trial, without considering the best interest of the minor children, exclude witnesses, solely because counsel for appellant did not disclose those witnesses in a timely manner and counsel for appellee did not have an opportunity to either interview the witnesses or otherwise obtain any information as to what these witnesses would testify?
5. Whether the judgment of the trial court awarding sole legal custody and primary physical custody to [appellee] was in the best interest of the three minor children?

1. Did the trial court abuse its discretion in awarding Father sole legal custody and primary physical custody of the children?
2. Were the trial court’s critical findings of fact clearly erroneous?
3. Did the trial court abuse its discretion when it excluded witnesses who were not disclosed in discovery?

For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND

The parties married on August 20, 2008 and had three minor children together: “J,” age eleven, “K,” age nine, and “L,” age four.² On April 2, 2020, Father filed a complaint for absolute divorce. Mother filed an answer but did not file a counter-complaint. On December 3, 2020, a *pendente lite* hearing was held and the court awarded the parties joint legal custody of the children and awarded Father primary physical custody.

A three-day merits trial was held remotely via Zoom in February of 2021. Both parties were represented by counsel. The following facts were elicited at the trial: Mother was employed as a tax examiner and field agent for another state. She had worked from home full-time for twelve years. Father was an attorney, employed by a non-profit organization in Washington, D.C. In 2012, the parties had purchased a six-bedroom family home in Prince George’s County.

Father testified that Mother began exhibiting troubling behavior in 2018, threatening suicide on several occasions in the presence of the children. He further testified that Mother began “barricading” herself and the children in the master bedroom at night and that she

² To protect the children’s privacy, these initials are chosen at random.

had placed a lock on the door, denying Father access to the room. During the day, Mother acted as if she feared Father, avoiding contact with him in the house. Father testified that Mother had physically abused him by hitting him, pushing him, and throwing things at him.

According to Father, Mother had petitioned for multiple protective orders against him and shared the allegations in the petitions with the children to influence their opinions of Father. On at least one occasion, Mother brought the children with her to the Commissioner's Office at 4:00 a.m. while seeking a protective order against Father. Father testified that Mother had called police to the home on at least six occasions in the presence of the children. Specifically, on December 19, 2019, Mother called police to the home because Father had failed to pay the mortgage. Father stated that the children cried and appeared anxious during these episodes of conflict. The children were also present when Father called police to the home on one occasion on March 16, 2020, after Mother had “shoved” and “grabbed” him in an attempt to get him to give her mail that he had collected from the mailbox.

In April of 2020, Mother changed the locks on the house and denied Father access. In August of 2020, Father obtained a court order to regain access to the house. During the months that Father was locked out of the house, Mother did not let the children contact him freely, occasionally blocking them from calling him. Mother also prevented the children from calling extended family, including their grandmother. Father testified that this period of separation from the children negatively impacted the children and they “are not the same

“kids” that they once were, both physically and mentally. Father also indicated that one of the children is in therapy.

Father testified that Mother had been diagnosed with depression and prescribed medication, but that she had stopped taking the medication because she did not like the side effects. Father described Mother’s behavior as “erratic” and stated that she parents the children inconsistently, denying certain things to one child but not others for no reason.

Father complained that Mother had denied him access to the children’s online school portals and healthcare portals, and failed to communicate with him regarding doctor or dentist appointments. Father further testified that the parties were unable to communicate regarding the children’s education. Father stated that the parties had always discussed the children attending private school and that he had applied to private school for J. He had also applied for one of the children to attend a Spanish immersion school that his siblings had attended. Father testified that Mother refused to participate in the application process and had informed J’s current school that the parties were in the midst of a divorce and she was unaware that Father had submitted an application for one of the children to attend private school. Father introduced copies of the two older children’s standardized testing scores. The children’s test scores were below average. He testified that he had attempted to help the children with homework but that Mother interfered and made it “difficult” for him to help them. He was able to help the children with their classwork during remote learning.

– Unreported Opinion –

Father has a flexible work schedule, allowing him to be free during weekdays. He works three weekday nights and full time on the weekends. Father plays board games and bakes with the children. He also takes them to the park, plays basketball with them, takes them to the beach, and goes skiing with them. Mother had not taken the children to sports activities in recent years. During the course of the marriage, Father prepared meals, specifically breakfast.

Mother testified that she has a flexible work schedule that allows her to work from home and that she prepares the children for school and brings them home after school. During remote learning periods, she helped them log on to their classes and resolve technological issues. She helps the children with homework, prepares dinner, and bathes them before bed. Mother has been primarily responsible for the children's doctor and dentist appointments. She testified that throughout the marriage, she has always taken care of her children and the home and that she has always been available for her children. She stated that throughout the marriage, Father was not available to the children. He routinely worked from morning until late at night, working on cases.

Mother denied abusing Father and threatening suicide. She asserted that it was Father who had been verbally abusive to her. Mother initially denied being diagnosed with depression. However, she later acknowledged that she had been diagnosed with depression in 2012 and had stopped taking the prescribed medication that same year.

According to Mother, Father has access to the children's school portals and records. Mother testified that the two older children have passing grades and have made honor roll

every year. They have also received awards for the science fair, the STEM fair, and reading achievement. Mother acknowledged that the children’s standardized test scores were low at the beginning of the school year. She believed that the children were tested two additional times during the school year and that their scores had improved. Mother explained that the test scores improved because she had worked with the children, though she acknowledged that she had also worked with the children prior to low standardized test scores.

Mother did not believe that it was in the children’s best interest to be placed with Father because he was unavailable to them. She testified that he traveled frequently while leaving the children with her. She testified that “[e]ven with this pandemic and during this divorce process, he’s not available.” According to Mother, Father did not become involved with the children until the divorce proceedings. Mother testified: “I’m not contesting the divorce. I want the divorce.” Mother had attended a co-parenting class and was prepared to work together with Father making decisions for the children.

Mother and Father both made video recordings of the other’s behavior in the home. Mother stated that she placed a camera in the master bedroom to record Father’s behavior “for her own safety.” Father introduced a photograph of one of the children using a cell phone, at Mother’s direction, to video Mother giving eye drops to another child so that Mother would be protected from any potential allegations of abuse.

On the third day of trial, after reviewing the evidence and testimony of the parties, the court indicated that it had found grounds of constructive desertion and would grant a

judgment of absolute divorce. Relevant to this appeal, the court decided to award sole legal custody and primary physical custody of the minor children to Father. The court instructed the parties to collaborate and prepare an access schedule for the court, and, in the event that the parties were unable to agree upon a schedule, the court would make a determination based on each party's proposed schedule. In reaching these conclusions, the trial court made it clear that it found Mother's testimony to be lacking in credibility in some respects.

On March 18, 2021, the parties appeared before the court and advised that they had been unable to agree upon an access schedule. The court responded that although Father would be awarded primary physical custody, the parties should attempt to devise a schedule in which the parents have equal, or nearly equal access, accounting for the parties' respective work schedules. The parties conferred and reached an agreed upon schedule, providing each parent access on alternating weekends and providing Mother access every Wednesday evening. The parties' agreed access agreement was approved by the court and incorporated into the custody order. We shall provide additional facts as necessary.

THE STANDARD OF REVIEW

There are three ways in which a trial court can commit reversible error in custody disputes. *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010).

First, a trial court can make findings of fact that are clearly erroneous. *Id.* In reviewing for clear error,

[t]he appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed. The trial court is not only the judge of a witness'

credibility, but is also the judge of the weight to be attached to the evidence. It is thus plain that the appellate court should not substitute its judgment for that of the trial court on its findings of fact but will only determine whether those findings are clearly erroneous in light of the total evidence.

Ryan v. Thurston, 276 Md. 390, 392 (1975) (cleaned up). In this context, “substantial evidence” means evidence that either directly or by reasonable inference supports the conclusion drawn from it by the trial court.

Second, a judge can apply incorrect legal standards. Appellate courts review the trial court’s legal reasoning without deference to the trial court’s decision-making process. *Ta’Niya C.*, 417 Md. at 100.

Finally, trial courts often make decisions based upon consideration of multiple factors about which reasonable minds can and do differ. Judgments resolving child custody disputes falls into this category. *Santo v. Santo*, 448 Md. 620, 625 (2016). Accordingly, when we review a court’s ultimate custody decision, we apply the abuse of discretion standard. *Ta’Niya C.*, 417 Md. at 100. Review for abuse of discretion is highly deferential to the trial court. Appellate courts do not reverse a discretionary ruling by a trial court simply because the appellate judges think that they would have made a different decision. Instead, appellate courts should affirm a discretionary decision unless it is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *In re Adoption/Guardianship of C.A. & D.A.*, 234 Md. App. 30, 45 (2017). To put it another way, a trial court abuses its discretion only 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.” *Santo*, 448 Md. at 625–26 (cleaned

up). This standard “accounts for the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses. 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) (cleaned up).

The best-interest-of-the-child standard is “of transcendent importance” and is “the sole question” for judicial resolution in child-custody disputes. *Boswell v. Boswell*, 352 Md. 204, 219 (1998) (cleaned up). That same standard is “[t]he light that guides” this Court in its review of the trial court. *Santo*, 448 Md. at 626.

As this Court has observed, “there is no such thing as a simple custody case,” and judges often “agonize more about reaching the right result” in child custody disputes than they do in “any other type of decision.” *Gizzo*, 245 Md. App. at 200 (quoting *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 502-03 (1992)). For this reason, “trial courts are entrusted with ‘great discretion in making decisions concerning the best interest of the child.’” *Id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 469 (1994)).

THE PARTIES’ CONTENTIONS

Mother argues that the court abused its discretion in awarding Father sole legal custody and primary physical custody of the children. Mother contends that the court failed to apply

the factors set forth in *Taylor v. Taylor*, 306 Md. 290, 303 (1986),³ and erred in making its custody determination based upon its factual findings, specifically that the parties were unable to communicate. Mother argues that the trial court’s negative credibility assessment of her was based upon the court’s misunderstanding of her testimony and was clearly erroneous. She characterizes the court’s credibility findings as having “no basis in the record” and “a complete and unfair distortion of [her] testimony.” She argues that “there was no competent, material evidence to support the court’s findings [in Father’s favor] and the court’s findings were clearly erroneous.” She argues that the trial court’s “ultimate decision to award sole legal custody and primary physical custody to [Father] was a clear abuse of discretion.” Finally, Mother contends that the trial court failed to properly apply the *Taylor* factors.

For his part, Father contends that the court did not abuse its discretion, as it addressed the relevant factors in making its determination that Father should have sole legal and primary physical custody, and the court’s findings were supported by evidence in the record.

ANALYSIS

The Custody Determination

“[I]n any child custody case, the paramount concern is the best interest of the child[,]” which is “‘of transcendent importance’ and the ‘sole question.’” *Taylor*, 306 Md. at 303.

³ In *Taylor*, the Court identified considerations that typically figure in shared custody cases. We will discuss the so-called “*Taylor* factors” in our analysis.

For this reason, “[t]he 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.” *Id.* The best interest standard is “the dispositive factor on which to base custody awards.” *Wagner v. Wagner*, 109 Md. App. 1, 38 (1996).

While “[c]ourts are not limited or bound to consideration of any exhaustive list of factors in applying the best interest standard,” there are certain key factors that trial courts may consider in making custody determinations. *Reichert v. Hornbeck*, 210 Md. App. 282, 305 (2013) (citing *Bienefeld v. Bennett-White*, 91 Md. App. 488, 503-04 (1992)).

In *Montgomery County v. Sanders*, 38 Md. App. 406, 420 (1978), this Court set forth the following guiding factors to be considered in custody determinations: (1) the fitness of the parents; (2) the character and reputation of the parties; (3) the desire of the natural parents and any agreements between the parties; (4) the potentiality of maintaining natural family relations; (5) the preference of the child; (6) any material opportunities affecting the future life of the child; (7) the age, health, and gender of the child; (8) the residences of parents and opportunity for visitation; (9) any length of separation from the natural parents; and (10) any prior voluntary abandonment or surrender.

In *Taylor*, the Court of Appeals expanded on these criteria, specifically with respect to considering whether joint custody is in the child’s best interest: (1) the capacity of the parents to communicate and reach shared decisions affecting the child’s welfare; (2) the willingness of the parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) any

potential disruption of the child’s social and school life; (7) the geographic proximity of the parental homes; (8) the demands of the parents’ respective employments; (9) the age and number of children; (10) the sincerity of the parents’ requests; (11) the parents’ financial status; (12) any impact on state or federal assistance; (13) the emotional and psychological benefit that might accrue to the parents because of shared custody; (14) and any other factors as appropriate. 306 Md. at 304-11.

The Court further explained that, although these are “the major factors” that a court should consider in determining custody, none of them “has talismanic qualities, and that no single list of criteria will satisfy the demands of every case.” *Id.* at 303. The Court emphasized that the non-exhaustive list of factors, though specifically relevant to a consideration of joint custody, was not intended to minimize the importance of considering all factors and options before arriving at a decision. *Id.* Though no single factor is dispositive, the parties’ capacity to communicate is “of paramount importance” in deciding whether to award joint custody. *Reichert*, 210 Md. App. at 306. Importantly, “[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.” *Taylor*, 306 Md. at 305.

In this case, the trial court considered the *Taylor* and *Sanders* factors, and evaluated those factors based on the testimony and evidence elicited at trial. With respect to the first

Taylor factor, the capacity of the parents to communicate and reach shared decisions affecting the children’s welfare, the court found:

[W]hat is concerning to the [c]ourt is the parties’ inability to communicate. ... Based on the testimony that the [c]ourt has heard, it does not appear as if the parties are able to communicate with one another or ... [have] the potential to communicate with one another regarding the long range care of these minor children.

The court noted that “both parents for whatever reason have recorded the actions and interactions with the other parent . . . sometimes . . . in front of the minor children.” The court noted that Mother had recorded Father primarily because she was in fear and felt that she needed to make those recordings for her protection. Father had recorded Mother to avoid future criminal or civil action against him because she had made numerous calls to law enforcement and filed for protective orders. The court noted that Mother had admitted calling police to the home because Father was not paying the mortgage, and found that Mother had told the children that Father had lied during court proceedings and alleged that Father was abusive. The court accepted Father’s testimony that Mother discussed these matters with the children and the parties’ ongoing disputes had negatively affected the children.

With respect to the fitness of the parents, the court considered Father’s testimony regarding Mother’s mental health and determined that Father’s allegations of Mother’s threats of suicide were not credible. The court also considered the evidence regarding Mother’s history of depression and determined that it was “not an issue” for the court and denied Father’s request for a medical evaluation of Mother. The court had problems,

however, with “the credibility and veracity” of Mother’s testimony regarding her history of depression.

The court noted that, at the time of trial, the children’s ages were eleven, nine, and four. Regarding the demands of parental employment, the court noted that both parents were employed with different work schedules, but because those schedules did not interfere with either party’s availability to the children, they were not dispositive as to custody.⁴

The court considered the relationships between the children and each parent and the sincerity of the parents’ requests. The court stated, “As far as the parents’ desire, it is clear that the parents both love the children and they both have expressed a strong desire for the children to be with them.” The court also considered “the influence that is likely to be exerted on the minor children, the environment and surroundings in which they would be reared, along with the physical, spiritual, and moral wellbeing of the children.” The court noted concerns about Father’s testimony that the children seem “completely different,” that they had become hesitant around him, and that his previously healthy relationship with them had “disintegrated.” The court noted Father’s testimony that Mother keeps him from helping the children with their studies. The court also expressed concern regarding Mother’s involvement in the children’s schoolwork. The court noted that Mother did not

⁴ Mother contends that the court’s finding that “[Father] has a flexible work schedule and [Mother] works evenings” was contrary to the evidence, and that it was she who had the flexible work schedule and he who worked evenings. Because the court indicated that this factor was not dispositive in its determination of custody as both parties were available to the children, we conclude that any error in this summary of the evidence did not affect the court’s ultimate finding as to custody.

dispute that the children’s grades were poor on the September exams, but did not appear to be concerned about the test results.

Regarding the character and reputation of the parties, the court explained that it was troubled by Mother’s interactions with the children and her efforts to negatively influence their opinions of Father. The Court expressed its concerns about statements that Mother had made to the children, specifically statements she had made in the videos the court reviewed and how she had “involved” the children in the parents’ conflicts.

Mother contends that the circuit court failed to evaluate whether the parties’ inability to communicate was a temporary condition brought about by the tensions of the divorce litigation. She asserts that the court ignored evidence that the parties had cooperated successfully in their twelve years of marriage, pointing to Father’s testimony that he and Mother had always discussed their oldest child going to private school and placing their youngest child in Spanish immersion school. She argues that the court failed to consider her testimony that she took a co-parenting class and that she had expressed her willingness to cooperate with Father to raise their children.

There was certainly evidence that the parties had cooperated in the past and that Mother intended to cooperate in the future. However, there was also evidence that the parties’ current ability to cooperate and communicate had been significantly compromised by the breakdown in their relationship with one another. “Ordinarily the best evidence of compatibility with [the ability to communicate] criterion will be the past conduct or ‘track record’ of the parties.” *Taylor*, 306 Md. at 307. The court addressed the parties’ history of

conflict and arguments, noting that “these interactions and ongoing disputes among the parties” negatively impacted the children, and that “they have suffered.” “Only where the evidence is strong in support of a finding of the existence of a significant potential for compliance with this criterion should joint legal custody be granted.” *Id.* In this case, the evidence showed that the potential for conflict continued to dominate the parties’ relationship and they had difficulty communicating effectively. Based on the court’s evaluation of the evidence, and in light of the factors set forth in *Sanders* and *Taylor*, we perceive no abuse of discretion in the court’s determination that the parties were unable to communicate effectively and that awarding joint legal custody and primary physical custody to Father was in the best interest of the children.

The trial court’s factual findings

Mother argues that the circuit court made various erroneous factual findings that were unsupported by the evidence or contrary to the evidence presented at trial. Mother further contends that the court misconstrued her testimony with respect to the children’s academic performance and erroneously accepted Father’s version of events over Mother’s testimony. These contentions are not persuasive. For the reasons that we have explained, appellate courts typically defer to a trial court’s assessment of a witness’s credibility. *See Gizzo*, 245 Md. App. at 201. We see no reason why we should not defer to the trial court’s findings and credibility assessments in the present case. *See Keys v. Keys*, 93 Md. App. 677, 688 (1992) (“[E]specially in the arena of marital disputes where notoriously the parties are not

in agreement as to the facts, . . . we must be cognizant of the court’s position to assess the credibility and demeanor of each witness.”).

The trial court found that the parties’ ongoing conflicts were well documented and concluded that it was in the children’s best interest to award primary physical custody and sole legal custody to Father, as he was better-equipped to provide the stability and consistency that the children required. “[A]n appellate court does not make its own determination as to a child’s best interest; the trial court’s decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion.” *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007). “If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.” *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002). Here, the court’s ultimate determination that awarding Father sole legal custody and primary physical custody of the children was in the children’s best interests was supported by the competent evidence in the record.

The excluded witnesses

The trial in this case began on February 10, 2021. The deadline for completion of discovery was January 10, 2021. On the day before trial, Mother’s counsel emailed Father’s counsel to inform her that she intended to call four witnesses who had not been disclosed in discovery: one of the parties’ children, a friend of Mother, Mother’s aunt, and one of Mother’s nephews. On the first day of trial, Father’s counsel informed the court of this development and argued that none of these witnesses should be permitted to testify. In

response to the court’s inquiry as to why the witnesses had not been disclosed sooner, Mother’s counsel responded that “there was some discussion that needed to occur” but provided no further explanation.

The trial court correctly observed that it had “a little bit more leeway” in dealing with discovery violations in cases involving the best interests of the minor children. The court then asked for a proffer of the witnesses anticipated testimony. According to Mother’s counsel, the witnesses were expected to testify as to “the parties’ interactions,” Mother’s mental health, her behavior with respect to parenting, her work ethic, and Father’s support of the children. After considering Mother’s proffer, the court ruled that Mother’s proposed witnesses were excluded from testifying.

To this Court, Mother argues that the trial court abused its discretion in so ruling. She relies on *A.A. v. AB.D.*, 246 Md. App. 418, *cert. denied*, 471 Md. 75 (2020). She contends that the court’s exclusion of her proposed witnesses without first analyzing whether their testimony was relevant to the best interest analysis was an abuse of discretion. Mother’s invocation of *A.A.* is not persuasive.

In *A.A.*, Ab.D., the father, had propounded discovery requests to A.A., the mother, in connection with his motion for modification of custody. 246 Md. App. at 426. Prior to the modification hearing, Ab.D. moved to compel further responses, arguing that A.A.’s discovery responses were deficient, as she had “barely produced anything in th[e] case.” *Id.* at 427. At the modification hearing, Ab.D.’s counsel requested that the court exclude the testimony of witnesses for whom A.A. had failed to provide contact information and

certain documentary evidence. *Id.* The court granted Ab.D.’s request, ruling that any witness for whom information was requested, and not disclosed, would not be permitted to testify. *Id.* at 429.

On appeal, we determined that the trial court erred in failing to inquire as to the content of the testimony before excluding it. *Id.* at 447. We explained that “[b]ecause the court did not explore what evidence [A.A.] intended to offer, the court could not have known the significance of the proscribed evidence and its potential impact on its ability to determine the best interests of the children.” *Id.* at 448. As a result, the evidence at the hearing focused on A.A.’s failure to keep Ab.D. apprised of issues pertaining to the children. *Id.* We noted that because A.A. was precluded from introducing evidence regarding a protective order, domestic violence, and potential abuse, the trial court was unable to assess Ab.D.’s fitness for custody. *Id.* at 447. We noted that, had the trial court assessed the proposed testimony or evidence, any discovery sanction the trial court imposed would be reviewed for an abuse of discretion. *Id.* at 449.

Returning to the case before us, the trial court did exactly what the court did not do in A.A., that is, the court inquired as to the expected testimony of the proposed witnesses. Based on the proffers made by Mother’s counsel, the court certainly did not abuse its discretion in deciding that one of the parties’ minor child should not testify. Nor did the court err in deciding that the adult witnesses should not testify. The last-minute disclosure of the witnesses deprived Father’s counsel of the opportunity to interview them or to otherwise learn of their proposed testimony. Permitting them to testify under the

circumstances would have been unfair to Father. Moreover, we agree with the trial court that the testimony from the adult witnesses would not have been as “critical” as Mother suggested. This is because the subject matter of the testimony would have been cumulative to other evidence Mother was permitted to present, including Father’s fitness for custody. We perceive no abuse of discretion in the court’s exclusion of the evidence as a discovery sanction.

CONCLUSION

It is clear from the record that both Mother and Father love their children and are deeply concerned about their welfare. But it is also clear that the parties’ relationship with one another was deeply dysfunctional, and that their inability to cooperate and communicate effectively was negatively affecting their children. The trial court’s focus in this case was on the best interests of the children, and appropriately so. As we observed in *Gizzo*, “there is no such thing as a simple custody case,” and the decision-making process can be agonizing both for judges and parents. This case is certainly no exception. But we can see no reason to second-guess the trial court’s resolution of the very difficult issues presented to it.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY IS AFFIRMED.**

COSTS TO BE PAID BY APPELLANT.