Circuit Court for Montgomery County
Case No. 158289FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 255

October Term, 2020

SALLMON SOLTANI

v.

SOFIA SOLTANI

Arthur,
Reed,
Friedman,

JJ.

Opinion by Reed, J.

Filed: December 7, 2020

On December 26, 2018, Sallmon Soltani ("Appellant") filed a Complaint for Limited Divorce against Sofia Soltani ("Appellee") in the Circuit Court for Montgomery County. The complaint requested, *inter alia*, joint legal and physical custody of the parties' minor children and child support. Appellee filed a Counter Complaint for Limited Divorce against Appellee on May 15, 2019 and requested, *inter alia*, sole legal and physical custody of the parties' minor children. After appearing for a pendente lite hearing on September 27, 2019 regarding only child support, a pendente lite child support order was entered by the trial court on November 20, 2019. The parties then appeared for a hearing on January 9, 2020 regarding the issues of physical custody, legal custody, and child support. After presenting witnesses and submitting proposals for child support, the trial court took the matter under advisement.

On January 17, 2020 the trial court issued a custody and child support ruling which contained the following: "(1) primary physical custody to [Appellee], and alternating weekend access to [Appellant] with one additional visit during the week; (2) joint legal custody to the parties with tiebreaker authority to [Appellee] and; (3) an award of child support in the amount of $1820.00 per month from [Appellant] to [Appellee] commencing February 1, 2020, with an earnings withholding order." The trial court declined to enter a holiday schedule for the parties and entered the resulting Custody and Child Support Order on January 27, 2020. After Appellant's Motion to Alter or Amend the Judgment was denied

on March 11, 2020, he took this timely appeal and presents the following questions for appellate review, which we have rephrased for clarity[1]:

1. Did the trial court err or abuse its discretion in determining custody by applying factors under Maryland Rule 9-204.1(c) instead of the *Taylor-Sanders* factors?

2. Did the trial court err or abuse its discretion in determining child support when it did not provide detail on how it resolved the issue by including the parties' income and the underlying expenses of the child?

3. Did the trial court err or abuse its discretion when it declined to award a holiday schedule unless the parties could come to an agreement?

For the reasons outlined below, we affirm in part and reverse in part.

FACTUAL & PROCEDURAL BACKGROUND

A. Dissolution of Marriage

[1] Appellant presents the following questions:

1. Did the trial court err or abuse its discretion in determining primary custody for the Mother by applying Maryland Rule 9-204.1(c) and its own factors in a 'best interest of the child' analysis, instead of properly analyzing the factors of *Taylor-Sanders*?

2. Did the trial court err or abuse its discretion in determining joint legal custody and 'tie-breaking' authority for the Mother by applying Maryland Rule 9-204.1(c) and its own factors in a 'best interest of the child' analysis, instead of properly analyzing the factors of *Taylor-Sanders*?

3. Did the trial court err or abuse its discretion in determining child support by failing to explain in any way how it resolved the issue, including the parties' income and the underlying expenses of the child?

4. Did the trial court err or abuse its discretion in failing to award a holiday schedule for the parties unless they could come to an agreement?

Sallmon Soltani ("Appellant') and Sofia Soltani ("Appellee") married on November 2, 2009. The parties lived together in the marital home located at 9982 Lake Landing Road, Montgomery Village, Maryland from 2012 until their separation in 2018. Both parties were legally responsible for the mortgage. While it is unclear when the marital discord began, the parties disputed whether there was domestic violence. Appellant alleged that Appellee was verbally and physically abusive causing him to leave the marital home in December 2017. When the parties discovered that Appellee was pregnant, Appellant moved back into the marital home in March 2018.

Appellant testified that after reentering the marital home, Appellee's abusive behavior escalated to incidents in which Appellant alleged that he was physically abused by Appellant, forcing him to seek medical treatment in April 2018. Appellant specifically alleged that on one occasion Appellee attempted to stick him in the neck with a syringe, but he did not report the alleged abuse out of concern for his unborn children. Appellee testified that she was never abusive to Appellant, that although she was diagnosed with gestational diabetes she was never prescribed insulin and no syringes were kept in the marital home, and that Appellant ultimately left the marital home in 2017 and again in 2018 because he felt Appellee was controlling. The parties' twins were born on August 7, 2018. Appellant moved out of the marital home and permanently separated from Appellee in September 2018. Appellant testified that he never disclosed his address to Appellee because he was "afraid." Appellee testified that communication with Appellant became difficult after he left the marital home because he was hardly around.

B. Divorce Filing and Pendente Lite Hearing

On December 26, 2018, Appellant filed a Complaint for Limited Divorce against Appellee in the Circuit Court for Montgomery County which requested, *inter alia*, joint legal and physical custody of the parties' minor children and child support. Appellee filed a Counter Complaint for Limited Divorce against Appellant on May 15, 2019 and requested, *inter alia*, sole legal and physical custody of the parties' minor children. The parties appeared for a pendente lite hearing on September 27, 2019 regarding only the issue of child support pending trial. Appellee testified that from the time of separation to December 2018, Appellant visited the twins one to three times per month for four hours per visit. Appellee testified further that from January 2019 to September 2019, prior to the pendente lite hearing, Appellant visited the twins between one to seven times per month with each visit lasting a different amount of time. Appellant testified on cross-examination that prior to the hearing on September 27, 2019, he visited the twins "three to four times a week" for a "few hours" per visit.

At the conclusion of the pendente lite hearing, the magistrate recommended payment of $2962.00 per month from Appellant to Appellee commencing and accounting on September 1, 2019. The Pendente Lite Child Support Order was entered by the trial court on November 20, 2019. Appellee testified that after the pendente lite hearing, Appellant visited the twins every day and began requesting overnight visits. Appellant testified that Appellee or the nanny was always present if he took the children outside of the marital home and his visits inside the home were recorded. Appellant testified that he installed cameras outside the marital home and in the twins' bedroom in January 2019 for

safety purposes, but Appellee moved the front door camera inside the living room. Appellee testified that the camera was installed in the living room to monitor the nanny. Appellant testified that he often visited when the nanny was present. Appellee ultimately declined overnight visits because Appellant never provided Appellee with his address.

C. Child Support and Custody Merits Hearing

Custody

The parties then appeared for a hearing on January 9, 2020 regarding the issues of physical custody, legal custody, and child support. Appellant requested shared physical and joint legal custody of the parties' twins with the ability to have overnight visits outside the marital home. Appellant expressed concerns over Appellee's busy work schedule requiring that the parties' twins be "cared for by short-term nannies." Appellant testified that in October 2019 he moved into the house of his aunt Mina Izadjoo, uncle Parvis Izadjoo, and cousin ("Izadjoo Residence") about 15 minutes away from the marital home. Appellant testified that the seven thousand square foot Izadjoo residence is in a safe and quiet neighborhood near a community park, library, and "high quality" school district. In addition to the twins having their own bedroom and space to grow, Appellant testified that he intended to remain at the Izadjoo residence so that the twins could have the opportunity to know their extended family and learn about their father's culture. Appellant argued that with a more flexible work schedule and the assistance of his aunt Mina and Uncle Parvis, he could take care of the twins, eliminating Appellee's need for a nanny.

Appellant's aunt Mina and uncle Parvis each testified to their Ph.D. backgrounds and the absence of criminal history, substance abuse, domestic abuse, or any safety

concerns among those in the Izadjoo residence. Appellant's aunt Mina and uncle Parvis also testified about their positive experience raising their own children and interacting weekly with their five grandchildren, one of whom was the same age as the parties' twins. Appellant's uncle Parvis also testified that he had never met the parties' twins in person and before Appellant reached out to them in September 2019, his Uncle Parvis had not seen or spoken with him since he accidently ran into him two years prior.

Appellee testified that she met Appellant's aunt and uncle once, prior to the twins' birth, but she was not familiar with them and had never seen the inside of their home where Appellant was living. Appellee further testified that Appellant disclosed to her that he did not have a relationship with his aunt Mina and Uncle Parvis. Appellant was aware that Appellee had concerns about the twins staying with people that she was unfamiliar with. Appellant testified on cross-examination that he did not "correct" Appellee by informing her he does have a relationship with his aunt and uncle because "she would never believe" him.

Appellant also requested the court enter a holiday schedule for the parties that would require the parties to alternate physical custody of the children for Iranian holidays, American holidays, and birthdays.

Child Support

Appellant testified that he had been employed as a correctional officer with the Maryland Department of Correction since January 23, 2013. More specifically, Appellant was assigned to the transportation unit until he was transferred to the institution unit on December 6, 2019. Appellant testified that he worked 80 regular hours biweekly and 3

overtime hours biweekly, earning $2,133.00. Appellant further testified to fees associated with health and dental coverage and health insurance that he pays for himself, Appellee, and the twins.

Prior to Appellant's transfer to the institution unit in December 2019, he testified that he was in a car accident with his co-worker, Gwendolyn Williams, on September 14, 2019 that caused him to miss 30 days of work and required medical treatment which he was still receiving at the time of the hearing. Appellant testified that when he returned to work in the transportation unit after the accident, he had to wear a "really heavy" vest and "carry heavy restraints" which "really bothered" him physically. Appellant's co-worker testified that Appellant requested lighter duties months after the accident in September. Appellant's coworker further testified that the transportation unit is more physical due to the mandatory overtime hours since "you never know what time you're getting off because you [have] to wait until your job duties are complete." She also testified that correctional officers on the institution unit have a set shift with no mandatory overtime, making it less demanding. Appellant testified that because he was limited to three hours of overtime per biweekly pay period on the institution unit, his schedule was more flexible, allowing for joint physical custody of the twins.

Appellee testified that even before Appellant left the marital home in 2017, he worked overtime so much that he was working overnight, and Appellee barely saw him. Appellee also testified that Appellant worked for Uber during his paternity leave from 6:00am to 3:00am the next day and how his absence negatively affected their communication. In response to Appellant's claim that he was limited to three hours of

overtime per biweekly pay period, Appellee admitted into evidence Appellant's paystubs from July 2 to November 5, 2019 and November 19, 2019. Paystubs from the pay period ending September 24, 2019, which included the week of September 14, 2019 when the accident occurred, included a total of 40 overtime hours. Appellee argued that the paystubs "reflected a precipitous drop in overtime immediately following the pendente lite hearing on September 27, 2019" and not during the time when Appellant claimed to have taken off work for the accident.

Appellee testified to her employment as a preschool teacher at the Community Palisades Preschool 10 months per year and as a nanny for the Kashatus family throughout the year. She also testified that although she previously worked full time as a nanny, her hours decreased to part-time because the Kashatus children started attending school. Appellee further testified that her part-time hours as a nanny fluctuated but she anticipated her total annual pay for 2019 to equal her total annual pay for 2018. For these reasons, Appellee admitted into evidence her 2018 W-2 Statement, reflecting her annual earnings as a nanny around $16,000, and her paystubs from Community Palisades Preschool for the pay-period ending October 31, 2019, which reflected her year-to-date gross earnings as $27,480. Appellee also testified to the cost of utilities and childcare expenses, including $300 weekly payments plus room and board for a live-in nanny. Appellee also testified that from the time Appellant left in September 2018 to May 2019 he paid the mortgage, but she had been covering the mortgage payments from June 2019 to date. Appellant countered that Appellee's W-2 reflecting her pay as a nanny in 2018 was misleading because she took maternity leave that year.

Appellant testified that he planned on staying in the institution unit, working no more than three hours overtime, so that he could maintain flexibility in his schedule to take care of the twins. He argued the parties' current earnings should be the basis for child support and that his current earnings reflected a biweekly pay of $2133.00. Both parties submitted a proposed child support guidelines worksheet.

Order

On January 17, 2020 the trial court issued a custody and child support ruling which contained the following: "(1) primary physical custody to [Appellee], and alternating weekend access to [Appellant] with one additional visit during the week; (2) joint legal custody to the parties with tiebreaker authority to [Appellee] and; (3) an award of child support in the amount of $1820.00 per month from [Appellant] to [Appellee] commencing February 1, 2020, with an earnings withholding order."

The trial court first outlined the authority that guided its analysis of the facts and evidence to determine custody:

> Trial Court: The factors that we're instructed to consider are set out in Maryland Rule 9-204.1(c), which says in determining what decision-making authority and parenting time arrangement is in the best interests of the child, the parties agree [sic] may consider the following factors. The rule later says that these are what the court is to consider. And in this case, I specifically considered all of the factors that are set out in the rule.

> And to the extent that either the *Taylor*[2] or *Sanders*[3] case has, either has one or more factors that may still have some continuing relevance, I've considered those factors as well, so I want the record to be clear that I have considered all the relevant factors. But what I, I may not address every single one. Some of them have really less [sic] significance in the analysis in this case than others. So, I won't go through every single one of them, but I will address those that I think are of greater importance in this case.

Looking to the testimony and evidence of the parties, the trial court found that Appellant lacked credibility noting the fact that "[Appellant's] behavior with respect to parenting time and other related issues dramatically changed following the pendente lite hearing and order" is not a coincidence.

Particularly concerning to the trial court was Appellant's testimony about acts of domestic violence by the Appellee. When referencing that piece of testimony, the trial court

[2] The *Taylor* factors are best interest of the child factors outlined in *Taylor v. Taylor*, 306 Md. 290 (1986) to determine custody. The non-exhaustive list of factors usually considered in conjunction with the *Sanders* factors are: 1) capacity of the parents to communicate and reach shared decisions affecting the child's welfare; 2) willingness of parents to share custody; 3)fitness of parents; 4)relationship established between the child and each parent; 5) preference of the child; 6) potential disruption of child's social and school life; 7) geographic proximity of parental homes; 8) demands of parental employment; 9) age and number of children; 10) sincerity of parents' request; 11) financial status of the parents; 12) impact on state and federal assistance; and 13) benefit to parents.

[3] The *Sanders* factors are best interest of the child factors outlined in *Montgomery Cty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1997) to determine custody. The non-exhaustive list of factors usually considered in conjunction with the Taylor factors are: 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentially maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health, and sex of the child; 8) residences of parents and opportunities for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

explained "[it] has a very difficult time squaring the [Appellant's] testimony with that of the [Appellee], and frankly the court finds that testimony not believable." The trial court also reviewed its findings as to the relationship between the parties' and the children, the children and relatives, and other factors like the parties' occupations and maintaining stability for the parties' very young children. Finding Appellee as the primary caregiver of the children since birth, the presence of an established routine for the children, and Appellee's experience caring for children as a teacher and nanny weighed greatly in the trial court's determination that awarding primary physical custody to Appellee was in the best interest of the parties' children.

In ordering joint legal custody with tie-breaking authority to Appellee, the trial court reiterated Appellee "has the bulk of the time, the parenting time with the children, and she's been the primary caregiver…since their birth" so "she's in a better position to make those decisions because of that experience." When ordering child support, the trial court found that "the amount contained in [Appellee's] proposed child support guidelines more accurately reflect the facts in this case, and they're supported by the evidence in this case." The trial court declined to enter a holiday schedule for the parties noting "there's just too many days that the court cannot figure out reasonably at this point." The trial court determined that unless the parties can agree to a holiday schedule and submit to the court, then the parties will be required to follow the regular access schedule regardless of what day the holiday falls on.

The resulting Custody and Child Support Order was entered on January 27, 2020. Appellant filed a Motion to Alter or Amend the Custody and Child Support Judgment on

February 6, 2020. In his motion, Appellee requested the court to "amend its custody ruling as to the Father's access order, order a holiday and summer schedule, and calculate the child support determination in accordance with the actual income of the parties." Appellant argued in his motion that the custody order was contrary to the best interest of the parties minor children because Appellant's access "is not enough time for the children and Appellant to properly bond, [or] for [Appellant] to remain integrally involved in the children's lives despite no evidence of his unfitness."

Appellant also argued the trial court's decision not to enter a holiday schedule or a summer schedule was contrary to the children's best interest because requiring the parties to agree "incentivizes the [Appellee] to be uncooperative as failure to provide a holiday schedule will more than likely result in almost every holiday spent with [Appellee] since she has the children eight five (85%) percent of the time." Appellant noted that he sent a proposed holiday and summer schedule through counsel which Appellee rejected. Finally, Appellant argued in his motion that Appellee's 2018 W-2 and paystubs were outdated and could not be considered "actual income" for purposes of determining child support. Along those same lines, Appellant further asserted that reliance on his prior income was insufficient to account for his actual income evidenced by his current paystubs that showed his income "fixed at 83 hours biweekly."

Appellee filed an opposition to Appellant's motion arguing that Appellant failed to "state clearly specific grounds" for amendment or "articulate any error in the [c]ourt's evidentiary rulings." Appellee further argued in her opposition that Appellant failed to "detail [any] allegedly erroneous factual findings" and repeatedly "conflates the [trial

court's] credibility determination[s] with the best interest analysis." Appellee's opposition confirmed that Appellee declined Appellant's proposed holiday schedule as it suggested Appellant have the children for "*all* Persian holidays *plus* half of all United States federal holidays (including Christian holidays, such as Easter and Christmas)." Finally, Appellee's opposition argued that the trial court's calculation of child support was "corroborated by documentary evidence on the record" and that the trial court was well within its discretion to judge the credibility of the parties' testimony to properly rely on Appellee's 2018 W-2 and paystub as her actual income. Appellant's motion was denied on March 11, 2020 without a hearing.

DISCUSSION

A. Parties' Contentions

Appellant contends that the trial court erred or abused its discretion in applying the factors set out in Md. Rule 9-204.1(c) to determine physical and legal custody of the parties' twins. Specifically, Appellant argues that the "best interest of the child factors" outlined in *Montgomery Cty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1997) and *Taylor v. Taylor*, 306 Md. 290 (1986) are controlling in contested custody cases, whereas the factors outlined under Md. Rule 9-204.1(c) are solely to guide the parties, not the court, in independently assigning "decision making authority and parenting time."

Appellant also contends that the trial court abused its discretion in determining child support by finding the Appellee's proposed child support guidelines worksheet "more accurately [reflected] the facts in [the] case" and failing to make a factual determination of each party's income or child related expenses. Finally, Appellant contends that the trial

court erred and abused its discretion by not providing a holiday schedule at the request of the parties. Appellant argues that the trial court's decision to not enter an order unless the parties cannot agree to a schedule is conflicting because the fact that the parties came before the court "in a contested posture" established they could not agree to a schedule without the court's intervention.

In response to Appellant's argument against application of the factors under Md. Rule 9-204.1(c), Appellee contends that Appellant has failed to preserve this issue for appellate review. Appellee further contends that, even if the issue were preserved for appellate review, the factors under Md. Rule 9-204.1(c) are "similar and coextensive" with the factors outlined in *Sanders* and *Taylor* and the trial court correctly applied them to the evidence presented. Appellee also contends that the trial court was well within its discretion and did not commit error when it adopted the Appellee's proposed guidelines worksheet in determining child support. Appellee argues, contrary to Appellant, that the trial court did make factual findings as to the parties' income by relying on the "competent and material evidence in the record." Finally, Appellee contends that the trial court did not err or abuse its discretion in not entering a holiday schedule for the parties unless they could not agree to one together. Appellee argues that Appellant not only "mischaracterized" the order, but he also failed to offer legal support to explain why the trial court's decision was erroneous or an abuse of discretion. Due to the Appellant's failure to provide legal support for his argument, Appellee contends that this issue should be deemed waived for appellate review.

B. Standard of Review

As outlined by Md. Rule 8-131, "When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). Further, it has been established by the Court of Appeals that appellate review of a trial court's final judgment "founded upon sound legal principles and based upon factual findings that are not clearly erroneous" shall only be disturbed "if there has been a clear abuse of discretion." *Burak v. Burak*, 455 Md. 564, 617 (2017) (citing to *In re Yve S.*, 373 Md. 551, 586 (2003)).

> An abuse of discretion may occur 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, or when the ruling is clearly against the logic and effect of facts and inferences before the court.

Gizzo v. Gerstman, 245 Md. App. 168, 201 (2020)

When ruling on the sensitive subject of child support and custody, trial courts are granted "great discretion in making decisions concerning the best interest of the child." *Gizzo*, 245 Md. App. 168, 198-96 (2020) (quoting *Petrini v. Petrini*, 336 Md. 453, 469 (1994)). "Generally, even where the trial court must issue a statement explaining the reasons for its decision, the court need not articulate every step of the judicial process in order to show that is has conducted the proper analysis." *Id.* Accordingly, the appellate court will uphold the trial court's decision regarding child support and custody "unless the

factual findings made by the [trial] court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 638 (2007).

C. Analysis

Preservation for Appeal

As a preliminary point, Appellee asserts that Appellant did not preserve his argument against the trial court's application of Md. Rule 9-204.1(c) to determine the issue of custody for appeal. We begin our analysis with Md. Rule 8-131(a) which states in relevant part:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court to avoid the expense and delay of another appeal.

Appellee correctly notes that the trial court introduced and explained the application of Md. Rule 9-204.1(c) to determine decision making authority and parenting time between parties. The trial court then expressly provided the parties with the opportunity to challenge application of Md. Rule 9-204.1(c) and argue for additional or alternative guidelines:

> Trial Court: [W]e have a new rule that deals with custody and access…[w]e now call it parenting time and decision making authority , and its Rule 9-204.1, including some definitions, but in section C it discusses the factors that the parties may consider and each of the factors that the Court may consider. It[']s not clear whether this somehow supersedes the *Taylor* and *Sanders* factors…So I want to make sure that both of you know that that's what I'm considering unless either of you feel the need to try to persuade me that there's something else, and there are other – it['s] not an exhaustive list. There may be other factors, and if you believe that they [sic] are, you need to present evidence to me and tell me what those factors are that you want me to consider.

Failure to raise a claim before the trial court will result in an unpreserved argument that cannot be raised for the first time on appeal. *See DiCicco v. Baltimore County*, 232 Md. App. 218, 224 (2017). Further, "when a party fails to draw the court's attention to a claimed error and the court fails to decide the issue, the party is estopped from obtaining review of the issue on appeal." *Hiltz v. Hiltz*, 213 Md. App. 317, 330 (2013). It is clear from the record that Appellant failed to raise as issue the trial court's use of the factors outlined in Md. Rule 9-204.1(c) in any manner. Even after the trial court expressly encouraged the parties to present additional factors, such as the factors set forth in *Taylor* and *Sanders*, Appellant failed to do so. Appellant's Motion to Alter or Amend the Custody and Child Support Judgment reiterated that the

> "[trial] court announced that it considered many factors used by the [c]ourt to determine the best interest, including *Taylor v. Taylor*, 306 Md. 290 (1986) and *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1978) and Maryland Rule 9-204.1 Parenting Plans."

Appellant's failure to challenge the application of Md. Rule 9-204.1(c) factors, in addition to including the trial court's announcement that the *Taylor-Sanders* factors were included, suggests to this Court that Appellant believed the *Taylor-Sanders* factors were properly applied. Moreover, there was no objection, challenge, or assertion of any kind against the trial court's application of the rule during the hearing or in Appellant's Motion to Alter or Amend. The trial court specified that it was unclear if the factors under Md. Rule 9-204.1(c) "somehow supersede[d]" the *Taylor* and *Sanders* factors but acknowledgment of this is not a decision. There is nothing in the record to even remotely suggest that the trial court decided the issue. Thus, we agree with Appellee that Appellant failed to preserve this issue

for appellate review. However, this Court "may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a).

Appellee contends that this Court's review is unnecessary "to guide the trial court or [] avoid the expense and delay of another appeal" because " the trial court conducted the proper analysis and made well-supported findings under the *Taylor* and *Sanders* factors, which are merely reformulated and not superseded by Md. Rule 9-204.1." We agree.

As with any newly promulgated rule, there is currently a lack of case law to guide trial courts on the superiority or compatibility of Md. Rule 9-204.1 with the historical best interest factors established under *Sanders* and *Taylor*. Appellant argues that the rule explicitly states the factors are for the parties to consider in developing their parenting plan. Appellant also argues Md. Rule 9-204.2 requires the parties to complete a joint statement on decision making authority and parenting time in the event they cannot establish a comprehensive parenting plan. Md. Rule 9-204.2(d). Appellant correctly identifies that it is only under this provision that the rule discusses the trial court's use of the factors:

> Prior to rendering its decision, the court shall consider the entire Joint Statement. As to the provisions upon which the parties agree as well as those upon which the court must decide, the court may consider the factors listed in Rule 9-204.1(c).

Md. Rule 9-204.2(d). It is from this provision that Appellant asserts the parties did not complete a joint statement and thus, the trial court was in error when it applied the factors under Md. Rule 9-204.1(c), "abandoning" the *Taylor*-*Sanders* factors. While we agree with Appellant that the language of the rule is clear on when the court is to consider the factors

under Md. Rule 9-204.1(c), we disagree that the trial court abandoned the *Taylor-Sanders* factors in the process. To the contrary, the trial court made it clear that the *Taylor-Sanders* factors were analyzed in addition to the factors under Md. Rule 9-204.1(c):

> Trial Court: And to the extent that either the *Taylor* or *Sanders* case has, either has one or more factors that may still have some continuing relevance, I've considered those factors as well, so I want the record to be clear that I have considered all the relevant factors. But what I, I may not address every single one. Some of them have really less [sic] significance in the analysis in this case than others. So, I won't go through every single one of them, but I will address those that I think are of greater importance in this case.

Although there are some differences between the three sets of factors, the consistencies between them supports Appellee's contention that all the factors are "similar and coextensive" not "mutually exclusive." Moreover, the trial court did apply the factors Appellant argues it did not. We hold that review of Appellant's unpreserved argument is unnecessary to guide the trial court or avoid another appeal because the trial court properly applied both the factors under Md. Rule 9-204.1(c) and *Taylor-Sanders.*

Child Support

Factual findings of the trial court will not be disturbed unless such findings are clearly erroneous. *Gordon v. Gordon*, 174 Md. App. 583, 625 (2007) citing to *Noffsinger v. Noffsinger*, 95 Md. App. 265, 285 (1993). Factual findings that are not clearly erroneous should only disturbed if there has been a clear abuse of discretion. *Jose v. Jose*, 237 Md. App. 588, 598 (2018) (quoting *Wagner v. Wagner*, 109 Md. App. 1, 39-40 (1996)). Accordingly, "[w]e will not disturb the trial court's discretionary determination as to an

appropriate award of child support absent legal error or abuse of discretion." *Johnson v. Johnson*, 152 Md. App. 609, 615 (2003).

Appellant contends that the trial court failed to make findings of fact on the parties' income and childcare expenses rendering the child support order issued by the court an error or abuse of discretion. Appellant further argues that the trial court erred when it "failed to explain why it was commencing child support in February 2020 instead of retroactive" to Appellee's initial pleading for child support in June 2020. Appellee asserts that the child support order was not clearly erroneous "[b]ecause there was competent and material evidence in the record to support the [trial] court's conclusion as to the parties' income" and child-related expenses.

"Child support orders ordinarily are within the sound discretion of the trial court." *Shenk v. Shenk*, 159 Md. App. 548, 554 (2004). When exercising its discretion, the trial court "must balance the best interests and needs of the child with the parents' financial ability to meet those needs." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002) (quoting *Unkle v. Unkle*, 305 Md. 587 (1986)). Accordingly, "the central factual is the 'actual adjusted income' of each party." *Johnson v. Johnson*, 152 Md. App.609, 615 (2003) (quoting *Reuter v. Reuter*, 102 Md. App. 212, (1994)). "'Actual Income' means income from any source." FL §12-201(b)(1). "[D]ocumentation of both current and past actual income" must be verified. FL §12-203(b)(1). "[S]uitable documentation of actual income includes pay stubs, employer statements otherwise admissible under the rules of evidence, or receipts and expenses if self-employed, and copies of each parent's 3 most recent federal tax returns." FL §12-203(b)(2)(i).

Both parties submitted documentation of actual income through past and present paystubs and W-2 statements. Appellant argues that the trial court failed to make factual findings of the amounts provided in the child support guidelines worksheet. We disagree. The trial court noted the presence of "evidence that [was] conflicting on many of the issues concerning the appropriate amount of child support." The trial court then made a factual finding that "the amounts contained in [Appellee's] child support guidelines worksheet more accurately reflect[ed] the facts in this case" because the amounts were supported by "the evidence, the testimony, and the documentary evidence" presented between both parties.

We believe Appellant's argument that Appellee's prior paystubs and W-2 fail to constitute actual income is misguided. Appellee testified that her hours working as a nanny for the Kashatus family fluctuated from week to week, changing her earnings. Additionally, Appellee works fluctuating hours in the summer months when school is not in session. The trial court was well within its discretion to credit Appellee's testimony regarding her fluctuating earnings based on the evidence. Accordingly, we hold the trial court's child support order was not clearly erroneous or an abuse of discretion.

However, it is unclear from the record what inequitable result the trial court identified that warranted commencement of the child support order on February 1, 2020 instead of retroactive to the date of the pleading for child support as required under FL §12-101:

> (a)(1) Unless the court finds from the evidence that the amount of the award will produce an inequitable result, for an initial pleading that requests child

> support pendente lite, the court shall award child support for a period from the filing of the pleading that requests child support.

Appellee's Counter Complaint for Limited Divorce served as her initial pleading for divorce. Appellant asserts that a request for pendente lite hearing on child support was made by Appellee in June, resulting in the hearing held September 27, 2019. For this reason, we hold the trial court erred in not commencing payment of the child support award from the date of Appellee's initial pleading.

Holiday Access Schedule

Appellant contends that the trial court erred in declining to award a holiday schedule unless the parties can come to an agreement because the "contested posture" of the parties established they cannot come to an agreement and they require the court to set the schedule on their behalf. Appellee argues that Appellant misconstrued the trial court's order and, even more significant, failed to provide legal authority in support of this argument, thus requiring this Court to find the argument waived. We agree with Appellee and deem this issue waived for appellate review.

This Court has held "it is not our function to seek out the law in support of a party's appellate contentions." *Higginbotham v. Public Service Comm'n of Maryland*, 171 Md. App. 254, 268 (2006) (quoting *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997)). Appellant has failed to cite *any* authority in support of his argument that the trial court erred by not ordering a holiday schedule. Since Appellant's argument is "completely devoid of legal authority," we deem this argument waived and decline to address the issue

on the merits. *Anderson,* 115 Md. App. at 577-78 (discussing *Orian v. Allstate Ins. Co*., 62 Md. App. 654 (1985)); *see also Higginbotham*, 171 Md. App at 268.

CONCLUSION

Appellant failed to preserve the issue of Md. Rule 9-204.1(c)'s applicability to the trial court's determination on decision-making authority, parenting time, and tie-breaking authority. At no point during trial or in his Motion to Alter or Amend the Custody and Child Support Judgment did Appellant raise the issue of the trial court applying Md-Rule 9-204.1(c)'s factors instead of the best interest of the child factors outlined in *Taylor* and *Sanders*. Moreover, in Appellant's motion he acknowledged that the trial court announced consideration of the *Taylor-Sanders* factors and failed to argue otherwise, suggesting Appellant found application of all the factors proper, contrary to his argument before this court currently. Thus, we deem this issue waived and decline to extend appellate review over it.

Appellant's argument that the trial court erred and failed to provide factual findings in support of adopting Appellee's child support guidelines to determine child support is misguided. The trial court properly explained that Appellee's child support guidelines worksheet most accurately aligned with the facts of the case and this factual finding was supported by the evidence and testimony presented by both parties. For these reasons, we hold the trial court did not err or abuse its discretion regarding the child support calculation. However, we agree with Appellant that the trial court erred when it ordered payment of the child support order to commence February 1, 2020 instead of retroactively to the date of Appellee's initial pleading for child support without explanation of inequitable result under

FL §12-101(a)(1). Accordingly, we reverse and remand to the trial court to apply the retroactive payment of child support as required by the statute.

Finally, Appellant failed to cite any legal authority in support of his argument that the trial court erred in declining to order a holiday schedule for the parties. Accordingly, we deem this issue waived and decline appellate review of it.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND REVERSED IN PART; COSTS TO BE PAID BY APPELLANT.