Circuit Court for Prince George's County
Case No. CAD22-21412

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 372

September Term, 2023

WILLIE J DANIEL, JR.

v.

JASMINE CURSEEN

Graeff,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: December 21, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case stems from a child custody dispute between the appellant, Willie J. Daniel, Jr., and the appellee, Jasmine Curseen, regarding their son, W.D.[1] On March 27, 2023, the Circuit Court for Prince George's County issued an order granting the parties joint legal and physical custody of W.D. and providing an access schedule.

On appeal, Mr. Daniel filed an informal brief presenting three questions,[2] which we have rephrased and consolidated as follows:

1. Did the court err in determining the access schedule?

2. Did the court err in failing to hold another hearing to address custody?

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

FACTUAL AND PROCEDURAL BACKGROUND

W.D. was born in March 2017. In July 2022, Mr. Daniel filed a complaint for custody, alleging that Ms. Curseen was denying him access to W.D.[3]

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[1] In the interest of privacy, we refer to the minor child using initials.

[2] Mr. Daniel presents the issues as follows:

> 1. Should the court have denied/refused one week on one week-off (e.g., alternating weeks) during the school year based on travel time of geographic proximity?
> 2. Did the court have a duty to hold another hearing and file another order as stated in the order to provide as close to 50/50 access?
> 3. Should the court have stated when school is not in session, the Parent whose access is starting with the Child is responsible for pick-up or picked a neutral location instead of [Ms. Curseen's mother's address]?

[3] In his initial complaint for custody, Mr. Daniel sought primary physical custody and sole legal custody of W.D. Later that month, Mr. Daniel filed an amended complaint for custody, seeking joint physical and legal custody. At trial, Mr. Daniel requested full

On August 18, 2022, Ms. Curseen filed a counter-complaint seeking sole legal and physical custody of W.D. With respect to visitation, Ms. Curseen asked the court to grant Mr. Daniel "supervised visitation every weekend for four (4) hours."

On October 4, 2022, Mr. Daniel filed a response to Ms. Curseen's counter complaint. Mr. Daniel sought "sole or joint legal custody" of W.D. with "reasonable rights of visitation reserved to" Ms. Curseen. In the alternative, Mr. Daniel asked the court to award the parties joint legal custody of W.D., with Mr. Daniel retaining primary physical custody.

On January 26, 2023, Ms. Curseen submitted a Parenting Plan, requesting that Mr. Daniel have access to W.D. every other weekend and for four hours on Tuesdays and Thursdays after school "on the weeks [Mr. Daniel] does not get [W.D.] for the weekend." She would retain custody of W.D. for all major holidays, with the exception of Father's Day, during which Mr. Daniel would have visitation from 1:00 p.m. to 4:00 p.m. Mr. Daniel did not submit a proposed parenting plan.

On February 16, 2023, the court held a one-day trial. Mr. Daniel testified that he, Ms. Curseen, and W.D. resided together in Alexandria, Virginia until May 2018, when Ms. Curseen left Mr. Daniel's house. At that time, Mr. Daniel had custody of W.D. "three to four nights a week." In June 2019, Ms. Curseen and W.D. temporarily moved back into Mr. Daniel's residence. On July 11, 2019, Ms. Curseen returned to her mother's residence

custody, or in the alternative: (1) joint legal custody, with tiebreaking authority to be given to him; and (2) joint physical custody, with "one week on, one week off, and I can make the decisions for" W.D.

in Upper Marlboro. Mr. Daniel continued to have "three to four overnights" with W.D. until early June 2022. At that point, Ms. Curseen began to prevent Mr. Daniel from having overnight access with W.D.

Mr. Daniel testified that he was seeking full custody. In the alternative, Mr. Daniel requested joint custody, alternating week-to-week, specifically "Friday at the end of school" to the next Friday. Mr. Daniel testified that he would ensure that W.D. was dropped off at, and picked up from, school during his assigned week. For summers, Mr. Daniel requested that the court award up to four weeks of custody, and that Ms. Curseen and he alternate holidays "throughout the year." Mr. Daniel testified that it was important for him to be involved in W.D.'s life and have contact with W.D., stating that he wanted to "do his homework with him," play with him, and "guide him along the lines of, you know, the male perspective of life."

Ms. Curseen testified that, after W.D. was born, she did all the childcare, and Mr. Daniel's role was limited to paying for food, clothes, rent, and other bills. Ms. Curseen testified that she left Mr. Daniel because he physically assaulted her on several occasions. Ms. Curseen and W.D. initially went to a domestic violence shelter in Virginia, and then they lived with her mother. Ms. Curseen returned to Mr. Daniel's residence in July 2018 after her mother assaulted her. Ms. Curseen stayed at Mr. Daniel's residence for a month, and then she returned to her mother's residence. In July 2022, Ms. Curseen prevented Mr. Daniel from continuing to have visitation with W.D. on weekends due to Mr. Daniel's repeated aggressions toward her through the years.

Ms. Curseen stated that she offered Mr. Daniel "supervised visitation." She testified that Mr. Daniel was not a "fit and proper parent to have primary custody." With respect to visitation, Ms. Curseen stated that Mr. Daniel had frequent visits with W.D., including every weekend. In response to Mr. Daniel's request for primary custody or alternating weeks, Ms. Curseen testified that she believed that his access to W.D. should be limited to every other weekend and Father's day. Mr. Daniel did not celebrate "other holidays," so W.D. should stay with her.

Following the trial, the court issued oral findings from the bench and addressed the relevant factors to determine custody of W.D. The court found that both parties were fit parents, and Mr. Daniel seemed "sincere in his request in needing to spend more time with his son." Although Mr. Daniel was willing to share custody, Ms. Curseen was unwilling to share custody. The court noted that "[b]oth parents have the ability to maintain the child's relationship with the other parent, relatives, any other person who may psychologically affect the child's best interest." The court found that the parties had the capacity to communicate and reach shared decisions affecting W.D.'s welfare.

With respect to other factors, the court made the following findings:

> Each parent is capable and able to maintain a stable and appropriate home for the child. Both are working. Their employment doesn't seem to really affect either relationship with the child. He's five, healthy, so there are no concerns about that. Each parent has a loving relationship with the child.
>
> The length of the separation of the parents is not really an issue [ ] here. I do not believe that [Mr. Daniel] voluntarily abandoned or surrendered the custody of his child. And there would be no disruption with the schedule that I've worked into the child's social and school life. There's no impact to state or federal assistance.

> Each parent has the ability to meet the child's developmental needs including ensuring physical safety, supporting emotional security, positive self-image, promoting interpersonal skills and promoting intellectual and cognitive growth. Both parents have their ability to meet the child's needs regarding education, socialization, culture and religion and mental and physical health. And both parties have the -- is able to consider and act on the needs of the child as opposed to the needs or desire of the party and protect the child from adverse effects of conflicts between the two of them.
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> The history and effort by one or the other parent to alienate or interfere with the child's relationship with the other parent, [Ms. Curseen] certainly did do that, made efforts to interfere with [Mr. Daniel's] relationship with the child. And the Court was concerned about the evidence of the exposure to domestic violence which appeared to be a combat. That's how I'll explain it.
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> Each parent has the ability to co-parent without disruption to the child's social and school life. And there's been no evidence of abuse to the child.

In an order dated March 17, 2023, and entered on March 27, 2023, the court ordered that the parties have joint legal and physical custody of W.D., and it provided for an access schedule where Mr. Daniel had W.D. "the first, second, and fourth weekends of each month beginning Friday pickup from school and Monday return to school," except as superseded by holiday and summer vacation time.[4] The court ordered that the case be continued to April 13, 2023, "for any remaining issues with respect to the access schedule to achieve as close to 50-50 access with the minor."

[4] Under the custody order's summer schedule, Mr. Daniel's "access shall be one week on, one week off, except [Mr. Daniel] shall have two consecutive weeks of access with the minor child during the summer vacation." The court granted access to Mr. Daniel on Father's Day and to Ms. Curseen on Mother's Day. With respect to other holidays, Ms. Curseen has access on Christmas and spring break during odd-numbered years. Mr. Daniel has access on Thanksgiving Day and the Fourth of July during odd-numbered years.

Mr. Daniels noted a timely appeal on April 26, 2023.

DISCUSSION

In reviewing child custody determinations, we employ three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). The Supreme Court of Maryland has explained these three levels of review as follows:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Where there is no clear error, we will uphold the court's findings unless there is an abuse of discretion, meaning that "'no reasonable person would take the view adopted by the trial court,'" or the court acts "'without reference to any guiding rules or principles.'" *Santo v. Santo*, 448 Md. 620, 625–26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)) (cleaned up). As we have explained:

> Such broad discretion is vested in the [circuit court] because only [the circuit court judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

In re Yve S., 373 Md. at 585–86.

"Decisions as to child custody and visitation are governed by the best interests of the child." *Gordon v. Gordon*, 174 Md. App. 583, 636 (2007). In determining the best

interests of the child in custody disputes, various factors are relevant. As this Court has explained:

> The criteria for judicial determination [of child custody] includes, but is not limited to, 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of 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 opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

Gordon, 174 Md. App. at 637 (quoting *Montgomery Cty. Dep't. of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977)). *Accord Karanikas v. Cartwright*, 209 Md. App. 571, 590 (2013) (explaining court's responsibility to utilize factors to "weigh the advantages and disadvantages of the alternative environments."), *cert. dismissed as improvidently granted*, 436 Md. 73 (2014). Additionally, when the court is considering whether to grant joint custody, the following factors are relevant:

> (1) capacity of the parents to communicate and to 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 or federal assistance; (13) benefit to parents; and (14) other factors.

Taylor v. Taylor, 306 Md. 290, 304–11 (1986). With this background in mind, we will address the specific contentions raised.

I.

The Child Access Schedule

Mr. Daniel makes two arguments related to the circuit court's imposed access schedule. First, Mr. Daniel contends that the court erred in denying his request for an access schedule of alternating weeks during the school year based on the travel time from his address in Alexandria, Virginia, to W.D.'s school in Upper Marlboro. Second, Mr. Daniel contends that the court erred in ruling that, when school is not in session, the exchange location shall occur at Ms. Curseen's mother's home in Upper Marlboro (instead of a neutral location).

At trial, Mr. Daniel testified that the commute from his house in Alexandria to W.D.'s school in Upper Marlboro was "[g]ive or take, 30 minutes." Counsel for Ms. Curseen interjected: "Your Honor, my client's position, it's one hour from Mr. Daniel's residence in Alexandria. It's not 30 minutes." In making its ruling, the court discussed the geographical proximity of the parties' residences as follows:

> The . . . geographic proximity of the parents' residence and opportunities for time with each parent, as I said before I got off the bench, I was concerned about [Mr. Daniel's] address. I looked it up. It said it was about a 35-minute drive, and that's without rush hour. So I would say that it's more of a 45-minute drive, and that gives the Court some concern.

Mr. Daniel argues that the court erred in relying on "mapping service or data" because no such evidence was presented at a trial, and the court improperly discounted the value of travel time as an opportunity to bond with W.D. Ms. Curseen did not file a brief in this Court.

With respect to the court's finding that the commute was a 45-minute drive, we note that this time period is between the parties' differing estimates of 30 minutes and one hour. The court was not required to credit Mr. Daniels testimony that the commute time from his house to W.D.'s school was 30 minutes. "In assessing credibility, the circuit court is 'entitled to accept – or reject – *all*, *part*, or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence.'" *C.M. v. J.M.*, 258 Md. App. 40, 61 (2023) (quoting *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011)). Moreover, to the extent that the court took judicial notice of a digital map, such as Google Maps, that was not erroneous. *See Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 442 n.7 (2003) (using MapQuest to compare travel time between a residence and courthouses); *Pahls v. Thomas*, 718 F.3d 1210, 1216 n.1 (10th Cir. 2013) (taking judicial notice of Google Maps and satellite images); *United States v. Perea-Rey*, 680 F.3d 1179, 1182 n.1 (9th Cir. 2012) (taking "judicial notice of a Google map and satellite image as a 'source[ ] whose accuracy cannot reasonably be questioned'"); *but see Reed v. State*, 595 S.W.3d 391, 395 (Ark. Ct. App. 2020) (Although there seems to be "consensus that courts can use Google Maps to establish the distance" between two points, there is "no consensus . . . among federal or state courts on whether Google's (or any other internet source's) estimated driving times may be judicially noticed.").

With respect to the court's concern regarding the driving time, we acknowledge that a parent's drive with a child may be a good time for conversation. A long drive, however, can be taxing, especially for a five-year-old child, when it happens two times a day, on a

daily basis. We cannot conclude that the court abused its discretion in its consideration of this factor in determining the best interests of the child.

Turning to Mr. Daniel's next contention, the court's order as to the custody exchange location was as follows: "When school is not in session the access exchanges shall be at [Ms. Curseen's mother's address]." Mr. Daniel contends that Ms. Curseen's mother's address "is not a neutral location," and "[t]he court should have had the Parent whose access with child is beginning to be responsible for pick-up because the drop-off travel reduces activity time with the Parent whose time is ending."

Although we understand that a different custody transfer arrangement may have been more convenient for Mr. Daniel, that is not the standard by which we review the circuit court's decision. *See Gizzo v. Gerstman*, 245 Md. App. 168, 206 (2020) (holding that the appellant's "arguments fail to show that any of the trial court's findings were unsupported by sufficient evidence or that the court's reasoning was irrational."). We perceive no error or abuse of discretion in the court's child access schedule.

II.

Lack of a Second Custody Hearing

Mr. Daniel's next contention is based on the court's statement in its March 17, 2023 order that the case be "be continued to April 13, 2023 at 9:00 a.m. for any remaining issues with respect to the access schedule to achieve as close to 50-50 access with the minor." Mr. Daniels argues that the court erred in failing "to hold another hearing and file another order . . . to provide as close to 50/50 access."

Prior to the scheduled hearing date, the court filed a memorandum stating that there was a scheduling conflict, and it postponed the hearing to May 12, 2023. Mr. Daniel filed his notice of appeal on April 26, 2023.[5]

Mr. Daniel contends that the court was required to hold another hearing pursuant to its initial order. The record reflects that the court intended to do that. After Mr. Daniels filed a motion to continue the hearing scheduled for May 12, 2023, the case was continued until June 23, 2023. On the date of that hearing, the court determined that Mr. Daniel's notice of appeal "stays everything" as it relates to the court's custody decision. Mr. Daniel cites no caselaw to support a claim that this ruling was erroneous, and we conclude it was not error. *See Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 65-66, *cert. denied*, 434 Md. 312 (2013) ("when an appeal is pending, the trial court retains its fundamental jurisdiction over the case, but its right to exercise such power is limited."); *Jackson v. State*, 358 Md. 612, 620 ("the trial court may not exercise jurisdiction in a manner that, 'in effect, precludes or hampers the appellate court from acting on the matter before it[.]'").[6] Mr. Daniel's contention in this regard is without merit.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[5] Mr. Daniel's appeal is permitted under Md. Code Ann., Cts. & Jud. Proc. ("CJ") § 12-303(x) (2020 Repl. Vol.) which provides as follows: "A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case: . . . (x) Depriving a parent . . . of the care and custody of his child[.]"

[6] Moreover, Mr. Daniels' appeal is from the March 2023 order, not the June 2023 order, so any error in the latter proceeding would not be properly before us in this appeal.