Circuit Court for Prince George's County
Case No. CAD-0834808

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0458

September Term, 2022

ZAKIYYAH ALI

v.

BRYAN C. HART

Wells, C.J.,
Nazarian,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: December 8, 2022

This appeal involves a challenge by Zakiyyah Ali ("Mother") to the Circuit Court for Prince George's County's grant of Bryan C. Hart's ("Father") Amended Motion for Modification of Custody. The court issued an opinion and order granting primary physical custody of the parties' child ("Child") to Father and joint legal custody to Mother and Father with tiebreaking authority to Father. Mother was ordered to pay child support to Father. For the reasons discussed below, we shall affirm.

ISSUES PRESENTED FOR REVIEW

We have rephrased the issues as follows:[1]

[1] Mother presented the issues as follow:

I. Did the trial court abuse its discretion and violate mother's constitutional right to make decisions regarding the child by imposing the trial court's personal views on discipline?
II. Did the trial court err in entertaining father's custody-related filings filed in violation of the mandatory mediation provision of the second consent order?
III. Did the trial court abuse its discretion in allowing father to file an amended complaint on the date of a long-scheduled merits hearing and in treating the amended complaint as an amended motion to modify custody?
IV. Did the trial court err in granting primary physical custody to father even though the child does not live with father?
V. Did the trial court abuse its discretion in failing to apply the legal standard applicable to the modification of consent orders?
VI. Did the trial court err in granting father's motion to quash mother's subpoena to [Father's counselor] on behalf of For Every Mountain Counseling?
VII. Did the trial court err in granting father's motion to quash mother's subpoena to [Child's therapist]?
VIII. Did the trial court err by allowing [Child's therapist] to testify that mother gave the child PTSD?
IX. Did the trial court err in awarding father child support?

Father presented an additional issue: Does this Court lack jurisdiction over an appeal noted

I. Whether Mother's notice of appeal was timely.

II. Whether the circuit court erred in considering Father's filing to modify custody.

III. Whether the circuit court erred in granting Father's motions to quash subpoenas to Father's counselor and Child's therapist and in permitting Child's therapist to testify about Child's mental health.

IV. Whether the circuit court erred in granting Father primary physical custody of Child.

V. Whether the circuit court erred in its calculation and order of child support to Father.

FACTUAL AND PROCEDURAL BACKGROUND

In 2008, Father filed a complaint in the Circuit Court for Prince George's County seeking joint custody of Child. Ten months later, Mother agreed to joint custody, resulting in a consent order.

In 2017, Father filed a Motion for Modification of Custody. The motion claimed that Mother deprived Father of his court-ordered access to Child by moving with Child from Maryland to Virginia. Father's motion was resolved through a consent order ("the second consent order"), to which both parties agreed. The second consent order contained a mediation provision stating that "both parties shall participate in at least one mediation session prior to filing any motion with the Court."

In 2020, the Virginia Department of Social Services ("DSS") investigated allegations that Mother had physically abused Child. Ultimately, DSS concluded that the

by the Appellant on the 35th day following the entry of the trial court's disposition of Appellant's Motion to Alter or Amend?

allegations of physical abuse were "[u]nfounded."[2]

During the pendency of the custody case, Father filed a petition for protection from domestic violence on behalf of Child, alleging abuse by Mother. At the initial hearing on the matter, the circuit court issued a Temporary Protective Order giving sole custody of Child to Father. Following the issuance of the order, Father maintained custody of Child and Child began to meet with a therapist ("Therapist").

The related final protective order hearing followed, wherein the court found that Mother had physically abused Child. The court issued a Final Protective Order, granting Father sole custody of Child and giving Mother access to Child through Skype[3] three times per week.

In 2021, Father filed a document titled Amended Complaint for Modification of Custody ("modification filing") in the custody case, requesting sole custody of Child. However, during a subsequent hearing in the custody case, the court refused to accept the modification filing as submitted because Mother had not been provided sufficient notice of the filing in advance of the hearing.[4] Father then requested leave to amend, rather than to

[2] An unfounded disposition does not mean that abuse did not occur; rather, the designation indicates that any evidence obtained did not amount to a preponderance.

[3] Skype is a software that enables remote video communication via computers or mobile devices.

[4] The modification filing was filed on February 26, 2021 and argued before the court in a March 1, 2021 hearing which had been set for a separately filed Motion for Modification and or Contempt. With respect to the separately filed motion, the court determined that it was effectively a motion for contempt and not also a motion for modification. The court

refile, the modification filing for the sake of judicial economy. Father contended that the expediency would lead to quicker stability for Child. The court permitted Father to amend the filing, treating it as a newly filed motion to modify custody ("amended motion").[5]

Next, Father filed a motion to appoint a best interest attorney who would decide whether to waive Child's privilege regarding Therapist. The court granted Father's motion to appoint a best interest attorney who waived privilege as to relevant information regarding Child's therapy.

Mother filed discovery, which included interrogatory questions to Father. One interrogatory asked Father if he had "sought or received treatment or therapy at any time during the past 10 years for any physical, mental, or emotional condition" and to "describe the condition and the treatment or therapy provided, state the date or dates of treatment or therapy, and identify all persons providing treatment or therapy." Father replied that he had received counseling from a professional counselor ("Counselor") at For Every Mountain Counseling Services from October of 2020 through March of 2021 "to seek assistance with his new circumstances following [Mother's] abuse of [Child]." Subsequently, Mother requested additional information regarding the dates of Father's counseling sessions and the opinions of Therapist.

As part of a *pendente lite* hearing later in 2021, the court ordered Father to provide

dismissed Father's motion for contempt for failing to set forth grounds for contempt with adequate specificity.

[5] Despite the court's order, Father's modification filing was docketed as an amended complaint instead of an amended motion.

the additional information Mother requested regarding Father's counseling and Child's therapy sessions. Following the hearing, the court issued a *pendente lite* order superseding the final protective order and granting Mother unsupervised visitation with Child on specified weekends.

Father provided additional details about his counseling and Child's therapy sessions. According to Father's correspondence, Father attended counseling every other week from October 31, 2019, until December 14, 2020, and subsequently as needed. Additionally, the correspondence indicated that Father had been originally diagnosed with a single major depressive episode.

With respect to Child's therapy, Father provided a question-and-answer sheet completed by Therapist. The sheet detailed Therapist's belief that Child was traumatized as a result of instances of physical discipline by Mother. Child was diagnosed as suffering from post-traumatic stress disorder (PTSD),[6] and Child's symptoms resolved once Child began to live with Father. Additionally, the sheet included Therapist's qualifications, such as training and experience, and the basis for Child's diagnosis.

Subsequently, Mother filed a motion *in limine* to prevent Therapist from testifying that Child suffers from PTSD resulting from physical abuse by Mother. Additionally, in light of contended discrepancies between the information that Father initially and

[6] Child was initially diagnosed with acute stress disorder, but the diagnosis was later changed to PTSD.

subsequently provided regarding counseling, Mother issued a subpoena to Counselor.[7] Mother also issued a subpoena to Therapist to provide documentation related to Child's therapy sessions.[8] In response, Father moved to quash Mother's subpoenas, claiming that the subpoenas sought privileged information.

In October of 2021, a hearing on Mother and Father's motions began. The court granted Father's motions to quash and denied Mother's motion to limit Therapist's testimony. Following the hearing, the court issued an opinion granting Father's Amended Motion to Modify Custody. The court granted primary physical custody of Child to Father and joint legal custody to Father and Mother, with tie-breaking authority to Father. Mother filed a Motion to Alter or Amend, which was denied. This appeal followed.

DISCUSSION

We use three interconnected standards of review in child custody cases. *In re Yve S.*, 373 Md. 551, 586 (2003). First, factual findings are reviewed for clear error. *Id.* "A trial court's findings are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). Second, matters of law are reviewed de novo, without deference to the circuit court. *In re R.S.*, 470 Md. 380, 397

[7] The subpoena sought documents relating to the terms under which Counselor provided services to Father, the dates of services, and any documents describing the content of each counseling session.

[8] Mother's subpoena to Therapist sought the terms under which services were provided, dates and costs for each service, therapy notes, journals, electronic printouts of information summarizing the areas covered in each session, and more.

(2020). Third, final decisions of the circuit court are reviewed for abuse of discretion. *Yve S.*, 373 Md. at 586. We reverse only where the court's decision was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Id.* at 583–84 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1997)).

I. MOTHER'S NOTICE OF APPEAL WAS TIMELY.

Father contends that this Court lacks jurisdiction over Mother's appeal because she did not file the Notice of Appeal within thirty days of the circuit court's order, entered on April 8, 2022, which disposed of Mother's Motion to Alter or Amend.[9] Originally, Mother noted her appeal on April 25, 2022, but her notice was incorrectly docketed because the case number was incorrect. On May 13, 2022, thirty-five days after the circuit court's order, Mother amended the case number so the appeal could be properly docketed.

Under Maryland Rule 8-201(a), "the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202." Maryland Rule 8-202(c) requires that, "[i]n a civil action, . . . the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule

[9] We note that "Rule 8-202(a) is a claim-processing rule, and not a jurisdictional limitation on this Court." *Rosales v. State*, 463 Md. 552, 568 (2019). "Despite this recognition, Maryland Rule 8-202(a) remains a binding rule on appellants, and this Court will continue to enforce the Rule." *Id.*

2-532, 2-534, or 11-218."[10] The "date that a pleading or paper is 'filed' is the date that the clerk receives it." *Lovero v. Da Silva*, 200 Md. App. 433, 442 (2011) (quoting *Bond v. Slavin*, 157 Md. App. 340, 351 (2004)) (internal quotations omitted). "Examples of deficiencies in a pleading or paper that have been held *not* to prevent the acceptance and filing thereof by the clerk include . . . the incorrect name of the court and docket number." *Lovero*, 200 Md. App. at 443 (emphasis in original) (citing *Cave v. Elliott*, 190 Md. App. 65, 76 (2010)).

Here, Father contends that Mother's filing was untimely because she noted the incorrect case number in her original filing. However, the clerk received Mother's Notice of Appeal within thirty days of the circuit court's order denying Mother's Motion to Alter or Amend. Thus, Mother's notice was effectively "filed" for purposes of Rule 8-202 within the thirty-day requirement. *See Lovero*, 200 Md. App. at 442–43. We shall not dismiss Mother's appeal as untimely.

II. THE COURT PROPERLY CONSIDERED FATHER'S FILING TO MODIFY CUSTODY.

We review the circuit court's decision to consider Father's modification filing for an abuse of discretion. *See Yve S.*, 373 Md. at 583. Accordingly, we shall uphold the circuit court's decision unless "no reasonable person would take the view adopted by the [circuit] court" or if the court acted "without reference to any guiding rules or principles." *Id.* (quoting *Adoption*, 347 Md. at 312). "Overarching all of the contentions in disputes concerning custody or visitation is the best interest of the child." *Hixon v. Buchberger*, 306

[10] Mother's Motion to Alter or Amend was made pursuant to Rule 2-534.

Md. 72, 83 (1986).

We find no abuse of discretion in the court's consideration of Father's modification filing, titled as an amended complaint, as an amended motion to modify custody. Mother argues that Father's filing did not meet the requirements to be considered a motion because the modification filing did not state its "grounds and the authorities in support of each ground."[11] Md. Rule 2-311(c). However, Father counters that the court acted within its discretion in its handling of Father's filing, particularly as the issue involved the best interest of Child.

Failure to meet technical requirements of the Maryland rules does not render a filing ineffective. *See* Md. Rule 1-201. "When a rule, by the word 'shall' or otherwise, mandates or prohibits conduct, . . . [and] [i]f no consequences are prescribed, the court may compel compliance with the rule or may determine the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule." Md. Rule 1-201(a).

Even though Father's filing was titled as an amended complaint and omitted citations to supporting legal authorities, the court could infer from the modification filing's content and context that it was a motion to modify custody. Specifically, Father's filing posited a material change in circumstances due to multiple instances of abuse and related

[11] Rule 2-311(c) reads in full:

> A written motion and a response to a motion shall state with particularity the grounds and the authorities in support of each ground. A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 2-303(d) or set forth as permitted by Rule 2-432(b).

shortcomings of Mother and then requested a new custody arrangement that would better serve Child's best interests. *See* Md. Rule 2-311(a) (stating that, generally, a motion "shall set forth the relief or order sought."). The modification filing provided the court with sufficient grounds to merit further inquiry and to make a determination regarding custody of Child. *See Wagner v. Wagner*, 109 Md. App. 1, 29 (1996) ("The threshold . . . issue is the existence of a material change."). That the modification filing was mislabeled as an amended complaint was also clear from the multi-year history of the custody case; there was no pending complaint to amend. Additionally, both parties desired an expeditious resolution of Father's allegations regarding abuse. Thus, in light of the totality of the circumstances, the court acted within its discretion in considering Father's filing as an amended motion to modify custody.

The circuit court also did not, as Mother contends, abuse its discretion in allowing Father to file the amended motion without first abiding by the mandatory mediation provision of the second consent order.[12] Per Father, Mother was not prejudiced by the court's acceptance of the amended motion. The amended motion alleged abuse affecting Child's health and safety and so the court's swift consideration of the motion was in the best interest of Child. *See Yve S.*, 373 Md. at 583 ("Because children and fundamental rights are at stake, . . . speed and stability are desirable where permanency plans are

[12] Mother argues that Father should not have been permitted to file any custody-related filings without first seeking mediation, including his petition for relief from domestic violence. However, our review is limited to the appeal before us, namely with respect to the circuit court's ruling on Father's motion to modify custody.

concerned[.]"). We discern no abuse of discretion in the court's consideration of Father's amended motion.[13]

III. THE COURT PROPERLY GRANTED FATHER'S MOTIONS TO QUASH AND PROPERLY ADMITTED THERAPIST'S EXPERT TESTIMONY.

"We review a circuit court's order denying a Motion to Quash under the abuse of discretion standard." *Morrill v. Md. Bd. of Physicians*, 243 Md. App. 640, 648 (2019). The court did not abuse its discretion in granting Father's motion to quash the subpoena to Counselor.

According to Mother, the circuit court granted Father's motion to quash by erroneously relying on a communications privilege, codified in section 9-109.1 of the Courts and Judicial Proceedings Article of the Maryland Code, titled "Client-psychiatric nursing specialist or professional counselor communications." Under section 9-109.1, a "client"−someone who receives psychiatric-mental health services from a "professional counselor"[14]–"has a privilege to refuse to disclose . . . communications relating to: (1) Diagnosis or treatment of the client; or (2) Any information that by its nature would show a medical record of the diagnosis or treatment exists." §§ 9-109.1(a)(2)–(3), (b). Neither

[13] Mother also argues that the circuit court should not have allowed Father to amend the date of the amended motion's filing. However, aside from the court's consideration of the filing as a motion, Mother never expressed any concern about the amendment to the lower court. Therefore, whether the amendment was proper is not preserved for our review. Md. Rule 8-131(a) ("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[.]").

[14] A "professional counselor" is "an individual who is certified … as a counselor under Title 17 of the Health Occupations Article." § 9-109.1(a)(3).

party disagrees that Counselor is a professional counselor. However, Mother contends that two exceptions, under (d)(3) and (d)(5) of section 9-109.1, apply to the privilege here.

We begin by examining the statute's plain language, and "[i]f the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written." *Jones v. State*, 336 Md. 255, 261 (1994). The plain language of sections 9-109.1(d)(3) and (d)(5) is clear. The privilege under section 9-109.1 is waived if either "[t]he client introduces the client's mental condition as an element of the claim or defense," (d)(3), or "[t]he client expressly consents to waive the privilege," (d)(5). Therefore, for the (d)(3) or (d)(5) exceptions to apply, the party with privileged communications must either introduce their own mental condition or expressly consent to waiver of the privilege.

On appeal, Mother contends that Father waived the privilege in response to Mother's request for more information by inviting Mother to directly contact Counselor. Additionally, per Mother, Father introduced his mental condition as an element of his claim by saying, in response to Mother's interrogatory, that he had sought therapy to help cope with Mother's abuse of Child. In reply, Father contends that there is no evidence that Father sought to introduce the counseling sessions as a part of his claim.

The circuit court agreed with Father that his counseling sessions were not an issue raised in Father's amended motion. Rather, the court determined that the counseling "was something that was mentioned in passing in discovery." The court noted that Father had not voluntarily provided additional information about his counseling sessions; to the

contrary, Father answered Mother's request for information in response to a court order. We cannot disagree with the court's reasoning.

Father did not introduce his mental health condition. Mother's interrogatory asked Father if he had "sought or received treatment or therapy at any time during the past 10 years for any physical, mental, or emotional condition." Father merely responded to Mother's introduction of his mental condition. In line with the plain language of the statute, we discern no abuse of discretion in the circuit court's determination that section 9-109.1(d)(3) was inapplicable.

Similarly, Father did not waive his section 9-109.1 privilege by expressly consenting to waiver under (d)(5). Mother's contention that Father expressly invited Mother to contact Counselor directly is not supported by the record. In response to Mother's request to Father for more information about his counseling sessions, Father replied that he "[did] not have in his possession any information" and that "[a]ny such documents would be in possession of For Every Mountain Counseling Services; [contact information]." Father's inclusion of contact information for his counseling provider was not an express waiver of his privilege. Instead, Father clearly invoked the privilege by filing a motion to quash Mother's subpoena for further information about Father's counseling. The evidence supports the trial court's conclusion that Mother did not meet her burden to show an express waiver by Father under section 9-109.1(d)(5). Accordingly, the circuit court did not abuse its discretion in granting Father's motion to quash the subpoena to Counselor.

The circuit court also did not abuse its discretion in granting Father's motion to quash the subpoena to Therapist. Neither party disputes that Therapist is a "professional counselor" whose communications with Child were at least initially privileged under section 9-109.1. However, Mother contends that the best interest attorney's waiver of Child's privilege should have permitted Mother to request any relevant information regarding Child's sessions with Therapist. Per Mother, without additional information from Therapist, Mother could not prepare to effectively cross-examine Therapist's testimony. Father counters that the circuit court did not rely on Therapist's testimony in determining Child's best interests.

In granting Father's motion to quash, the court noted that additional issues may have arisen that could have warranted the subpoena. However, the court's prior order to share more information about Therapist's expected testimony had been exhaustive and the best interest attorney had provided only a limited waiver of Child's privilege. Thus, the court explained, a "broad blanket disclosure" would not be in accord with the court's prior order or with the best interest attorney's limited waiver.

As a preliminary matter, we note that the best interest attorney did expressly waive Child's non-disclosure privilege regarding communications between Child and Therapist. However, the best interest attorney's waiver was limited to "relevant information." Pursuant to Maryland Rule 2-402(a),

> [a] party may obtain discovery regarding any matter that is not privileged, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, and tangible things and the identity and location of persons having knowledge of any discoverable

> matter, *if the matter sought is relevant* to the subject matter involved in the action[.]

(emphasis added). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401; *see Tempel v. Murphy*, 202 Md. App. 1, 16 (2011) (citing Rule 5-401's definition of "relevant" to explain the word's usage in Rule 2-402(a)). "Although relevant, evidence may be excluded . . . by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403.

Despite the aim of Mother's subpoena to explore additional relevant issues, the circuit court could quash the subpoena if it would lead to irrelevant information, cause undue delay, or prompt needlessly cumulative evidence. *See* Md. Rule 2-402(a); *see also* Md. Rule 5-403. The court explained that its prior order to provide more information about Therapist's opinions had been "exhaustive." The court had ordered Father to provide comprehensive answers to Mother's questions, and Father sent Mother multiple pages of relevant responses from Therapist. As part of issuing the prior order, the court asked Mother if Therapist should provide any additional details; Mother made no additional requests. Thus, the court had ample reason to conclude that a wide-ranging subpoena would lead to unnecessary, cumulative, or irrelevant information. Given the exhaustiveness of the court's prior order and in light of the best interest attorney's limited waiver, we discern no abuse of discretion in the circuit court's granting of Father's motion to quash the subpoena to Therapist.

In addition, the circuit court did not abuse its discretion by permitting Therapist to testify regarding the diagnosis of Child's mental health. "[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court, and its action in admitting or excluding such testimony will seldom constitute ground for reversal." *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020) (internal quotations omitted) (quoting *Roy v. Dackman*, 445 Md. 23, 38–39 (2015)). A ruling regarding admissibility of expert testimony "may be reversed on appeal if it is founded on an error of law or some serious mistake, or if the trial court clearly abused its discretion." *Id.* at 11 (internal quotations omitted) (quoting *Sippio v. State*, 350 Md. 633 (1998)).

Mother contends that the circuit court abused its discretion by permitting Therapist to testify about Child's PTSD diagnosis. Both Mother and Father agree that Therapist is a licensed family therapist under Maryland law. Md. Code Ann., Health Occ. § 17-101(t).[15] However, Mother argues that "mental illness," such as PTSD, may only be diagnosed by psychiatrists, clinical psychologists, or social workers. *See Yve S.*, 373 Md. at 614–15. In reply, Father argues that the trial court did not consider Mother's alleged abuse underlying Child's PTSD diagnosis in its ultimate custody determination.

[15] Section 17-101(t) defines a clinical marriage or family therapist as one who "engage[s] professionally and for compensation in marriage and family therapy and appraisal activities by providing services involving the application of therapy principles and methods in the diagnosis, prevention, treatment, and amelioration of psychological problems and emotional or mental conditions of individuals or groups." Health Occ. § 17-101(t). Generally, "an individual may not practice . . . clinical marriage and family therapy . . . in the State unless licensed by the Board." § 17-301(a).

From the plain language of section 17-101(t), it is clear that licensed family therapists may diagnose PTSD in a patient. The statute specifically grants licensed family therapists the ability to diagnose "psychological problems and emotional or mental conditions." Health Occ. § 17-101(t); *see Jones*, 336 Md. at 261 ("If the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written." (internal quotations omitted)).[16]

Both parties agree that Therapist is a licensed family therapist qualified under Title 17. Prior to first meeting with Child, Therapist had been certified as a trauma therapist for over a decade and specialized in the assessment and treatment of acute and post-traumatic stress disorders. Accordingly, we discern that the circuit court did not abuse its discretion by permitting Therapist to testify about Child's mental health diagnosis.[17]

[16] We note as well that Mother's assertion that "mental illness" may only be diagnosed by psychiatrists, clinical psychologists, or social workers is unconvincing. In *Yve S.*, relied upon by Mother, the Court of Appeals confirmed the ability of certain professionals to diagnose mental illnesses, as established in *In re Adoption/Guardianship No. CCJ14746*, 360 Md. 634, 649 (2000), and *State v. Bricker*, 321 Md. 86, 95–98 (1990). However, in both *Adoption* and *Bricker*, neither the Court nor the statutes upon which the Court relied used the term "mental illness" to describe the ability of psychologists and social workers to make such a diagnosis. *See Adoption*, 360 Md. at 649 (citing Md. Code Ann., Health Occ. § 19-101(f) (current version at (n)(5)(ii))); *see also Bricker*, 321 Md. at 95–98 (citing Md. Code Ann., Cts. & Jud. Proc. § 9-120). Nevertheless, psychologists and social workers may diagnose mental illnesses. *See Yve S.*, 373 Md. at 614–15.

[17] Mother contends in the alternative that Father impermissibly used Therapist's testimony as proof that the incident underlying Child's alleged trauma actually occurred. Per Mother, the court impermissibly relied upon Therapist's testimony as a basis for finding a material change in circumstances. However, Mother shares no evidence in support of her assertions. The only mention of Child's therapy sessions in Father's amended motion is Father's

IV. THE COURT PROPERLY GRANTED FATHER PRIMARY PHYSICAL CUSTODY OF CHILD.

The circuit court did not abuse its discretion by considering the risk of future harm to Child as the result of Mother's physical discipline. According to Mother, the circuit court violated Mother's Fourteenth Amendment due process right to make decisions regarding her child's welfare by letting bias towards Mother's disciplinary practices impact the court's determination.[18] Per Mother, the court's bias is evidenced by its: (a) issuance of the temporary protective order modifying a custody arrangement that had been substantially in effect for 12 years, (b) disregard of the legality of physical discipline of one's children in Virginia, where Mother and Child resided, (c) grant of primary custody to Father instead of simply instructing Mother to cease all physical discipline, and (d) failure to act in accordance with the DSS's investigative finding of "no pressing concerns of physical abuse or neglect" by Mother. In response, Father asserts that there is no evidence in the record to support that the circuit court considered Mother's disciplinary methods in its

statement that regular therapy sessions had greatly improved Child's mental health. Additionally, the circuit court did not base its finding of a material change in circumstances upon any proof of abuse by Mother. Instead, the court found a material change because two years had passed since physical custody of Child had changed and Child had since been diagnosed and treated through therapy. The single allusion to abuse by Mother in the court's opinion was the court explaining that Father had earlier been awarded custody of Child as a result of physical abuse by Mother independently found by the court in the domestic violence case. There is thus no indication in the record, as Mother contends, that Father put forth or the circuit court relied on Therapist's testimony as proof of the underlying incident in finding a material change of circumstances.

[18] "[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

determination. To the contrary, Father explains, the court determined that "both parties were fit and proper persons to have custody of [Child]" and "no testimony presented rais[ed] significant concerns regarding the character and reputation of the parties."

Where a circuit court judge is "guided by their personal beliefs in fashioning an outcome rather than by the evidence, we and our colleagues on the Court of Appeals have vacated that decision." *Azizova*, 243 Md. App. at 348. In this case however, the record does not suggest that the court was clouded by personal bias in its assessment of Child's need for protection from physical abuse. Assessing the risk of physical harm to a child, even by physical discipline, is essential to determining whether a custody arrangement serves the child's best interest. *See B.O. v. S.O.*, 252 Md. App. 486, 512 (2021) (weighing the chance of "improper or physical corporal discipline" in determining fitness of parent); *see also A.A. v. Ab.D.*, 246 Md. App. 418, 447–48 (2020) (determining that the trial court erred by excluding evidence regarding allegations of abuse in its assessment of the father's fitness to have custody of his children); *see also In re Dustin T.*, 93 Md. App. 726, 735 (1992) ("The court may find either neglect or abuse if the child is merely *placed at risk* of significant harm." (emphasis in original)).

Assessing the risk of physical harm to Child was an essential aspect of the best interest analysis with which the court was tasked. *See B.O.*, 252 Md. App. at 512. The court's factual findings linked specific evidence in the record to a risk of harm to Child under Mother's supervision. Specifically, the court noted the earlier temporary protective

order, which was issued because of a finding of physical abuse by Mother.[19] Accordingly, we discern no abuse of discretion in the circuit court's consideration of the risk of future physical harm to Child.

Additionally, we find no error in the circuit court's finding that Child resided with Father. The court's determination with respect to where Child resided is a finding of fact which we review for clear error. *See Azizova*, 243 Md. App. at 372. Mother contends that the circuit court incorrectly found that Child was living with Father since the issuing of the temporary protective order. According to forms from Child's school, Child resides with Child's grandparents. However, per Father, there is evidence in the record showing that Child has been living at Father's home. Father testified that he works during the day, and Child therefore gets on the school bus from Child's grandparents' home on school days. Father takes Child to and from grandparents' home before and after Father's workday. Father and Child usually have dinner together at Father's home and stay there each night. Thus, there was ample evidence to support the court's conclusion, and it was not clearly erroneous.

Likewise, we are unpersuaded by Mother's reliance on *Ruppert v. Fish* to argue that the circuit court should have presumed that the second consent order was in Child's best

[19] We note that the court's finding regarding physical abuse was made separately from the independent DSS investigation into alleged incidents of physical abuse by Mother. However, we are not tasked with determining whether the court's independent factual findings in the protective order hearings were based on "competent or material evidence." *See Azizova*, 243 Md. App. at 372. Accordingly, we are limited in our review to the circuit court's decision-making in the opinion before us for review.

interest. 84 Md. App. 665, 675 (1990). We agree with Father that "[a] trial court is presumed to know the law and apply it properly." *Wisneski v. State*, 169 Md. App. 527, 555 (2006) (citing *State v. Chaney*, 375 Md. 168, 181 (2003)). There is no requirement that the circuit court "spell out every step in weighing the considerations that culminate in a ruling." *Id.* at 556 (citing *Streater v. State*, 352 Md. 800, 821 (1999)). In considering whether a change in custody was warranted, the circuit court applied the two-step analysis articulated in *Wagner*. As explained in *Wagner*, there is a "presumption of continuity and stability in favor of the original custodial parent" that the moving party carries a heavy burden to overcome. 109 Md. App. at 33. We thus presume that the circuit court assessed whether Father overcame the presumption in favor of the second consent order.[20]

V. THE COURT PROPERLY ORDERED MOTHER TO PAY CHILD SUPPORT TO FATHER.

Mother laments a lack of opportunity to consider and be heard on the issue of voluntary impoverishment because Father's amended motion never asserted that Mother was voluntarily impoverished. However, Mother's argument is unconvincing. It is true that "the trial court's authority to grant relief to a party is circumscribed by the relief requested in that party's pleadings." *Huntley v. Huntley*, 229 Md. App. 484, 493–94 (2016). Nevertheless, Father did request child support; the issue of voluntary impoverishment was thereby encompassed.

[20] Mother also contends in the alternative that, had the presumption been applied, Father would not have been able to overcome such a presumption. However, because we conclude that the circuit court is presumed to have correctly applied the law, we need not speculate as to the outcome under Mother's preferred application of the law.

In determining income for purposes of child support, the circuit court assesses either the "actual income of a parent, if the parent is employed to full capacity; or . . . [the] potential income of a parent, if the parent is voluntarily impoverished." Md. Code Ann., Fam. Law § 12-201(i). The circuit court found, and Mother has never disputed, that Mother worked part time as a realtor. Thus, Mother was not employed to full capacity, and the court was statutorily permitted to consider, instead, Mother's potential income to calculate the amount of her child support obligation. *See* § 12-201(i). However, "[b]efore an award may be based on potential income, the court must hear evidence and make a specific finding that the party is voluntarily impoverished."[21] *Reuter v. Reuter*, 102 Md. App. 212, 221 (1994); *see* § 12-201(i). Therefore, prior to assessing Father's request for child support, the court properly considered whether Mother was voluntarily impoverished. In light of the statutorily prescribed process to determine income for child support, Mother had adequate notice that the circuit court would examine the record for evidence of voluntary impoverishment as part of its child support determination.

In addition, the circuit court did not abuse its discretion in determining Mother's potential income. Mother contends that the circuit court's projection of Mother's income was overly speculative, given the competitive real estate market, and did not properly account for her decision to devote her time to raising her children. Further, Mother asserts

[21] "A parent is voluntarily impoverished whenever the parent has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without resources." *Durkee v. Durkee*, 144 Md. App. 161, 797 (2002); *see Goldberger v. Goldberger*, 96 Md. App. 313, 327 (1993).

that the court's determination of potential income should have been based on the minimum wage in Virginia, $7.25 per hour, where Mother resides. However, per Father, competent evidence supported the court's award of child support. We agree with Father.

With respect to the calculation of a parent's income, "so long as the factual findings are not clearly erroneous, 'the amount calculated is "realistic", and the figure is not so unreasonably high or low as to amount to abuse of discretion, the court's ruling may not be disturbed.'" *Durkee*, 144 Md. App. at 187 (quoting *Reuter*, 102 Md. App. at 223). "[I]f there is any competent evidence to support the factual findings [of the trial court], those findings cannot be held to be clearly erroneous." *St. Cyr v. St. Cyr*, 228 Md. App. 163, 180 (2016) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)).

Prior to determining Mother's potential income for purposes of child support, the circuit court found Mother to be voluntarily impoverished. "Once a court determines that a parent is voluntarily impoverished, the court must then determine the amount of potential income,"—rather than actual income—"to attribute to that parent in order to calculate the support dictated by the guidelines." *Goldberger*, 96 Md. App. at 327. Notably, a determination of voluntary impoverishment, whether "for the purpose of avoiding child support, or because the parent simply has chosen a frugal lifestyle for another reason, doesn't affect that parent's obligation to [support] the child." *Id.* at 326. After considering nine factors relevant to determining potential income, the court imputed Maryland's minimum wage, $12.50 per hour, to Mother's potential income and ordered Mother to pay $281 per month to Father for child support.

Contrary to Mother's contention, the circuit court's determination of Mother's potential income was not overly speculative. As part of its analysis, the court noted that Mother is in good health, possesses both an associate degree and a real estate license, lives nearby the thriving Washington D.C. metro area job market, and is additionally supported by her husband's employment. Mother asserts, without supporting evidence, that the real estate market has been unusually competitive the last few years. This does not render erroneous the circuit court's factual findings regarding Mother's ability to find work and contribute child support. *See St. Cyr*, 228 Md. App. at 180. Moreover, given the court's factual findings, its order to Mother to contribute $281 per month in child support is neither unrealistic nor unreasonably high. We therefore discern no abuse of discretion in the circuit court's determination of Mother's potential income.

In addition, the circuit court's decision to award child support to Father was not an abuse of discretion. Mother contends that child support should not have been awarded to Father because it was a windfall to Father. However, the child support guidelines are not intended to prevent a financial benefit to a parent. *Smith v. Freeman*, 149 Md. App. 1, 18 (2002) ("[T]he guidelines are premised on the concept that a child should receive the same proportion of parental income, and thereby enjoy the same standard of living, he or she would have experienced had the child's parents remained together." (internal quotations omitted)). Instead, the guidelines revolve around the needs of the child. *In re Katherine C.*, 390 Md. 554, 570–71 (2006) ("A parent has both a common law and statutory duty to support his or her minor children," and that duty "does not disappear when a child is . . .

removed from parental custody and care."); *see* Md. Code Ann., Fam. Law § 5-203(b). Mother has an obligation to support Child, and the circuit court did not abuse its discretion in granting child support to Father.[22]

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

[22] Mother also contends that Father should not have been awarded child support, because Child resides primarily with Father's parents. However, as explained in Section IV, *supra*, there is material evidence in the record to support that Child resides with Father.