Circuit Court for Prince George's County
Case No. CAD1337917

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 550

September Term, 2020

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J.C.

v.

R.M.

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Graeff,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Beachley, J.

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Filed: March 16, 2021

In this case, appellant J.C. ("Mother") challenges the Circuit Court for Prince George's County's award of joint physical custody of her son, R., to her and appellee R.M. ("Father"). R. was born in October 2010, and the parties lived together with him from his birth until October 2013. At that time, Mother came to believe that Father had sexually abused R. and she thereafter refused to allow Father to visit with him. The abuse allegations were ultimately unsubstantiated. Nonetheless, Father did not have any contact with the child from October 2013 to July 2020, when, after years of unsuccessful reunification efforts, the court granted the parties joint physical custody of R.

Mother presents the following questions for our review, which we have modified slightly:

I. Did the trial court abuse its discretion by granting Father shared physical custody after Mother had been the child's sole custodian for over 6 years?[1]

II. Did the trial court err in failing to recuse itself after reviewing *ex parte* information from an expert witness?

We answer both questions in the negative and affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Shortly after R.'s third birthday, Mother formed the conclusion that Father was sexually abusing R.. Mother filed for a protective order against Father on October 24, 2013, and was granted an interim protective order. On December 2, 2013, after a hearing,

[1] Mother's brief states that "Mother had been the child's sole custodian for over 9 years." However, Mother and Father were living together and caring for R. until October 2013.

the court denied Mother's request for a final protective order.[2]

Just a week later, on December 9, 2013, Father filed a complaint seeking sole physical and legal custody of R. Mother filed a counter-complaint in which she sought a determination of paternity, sole legal and physical custody, and supervised visitation between R. and Father. On February 27, 2014, the court appointed a Best Interest Attorney for R.

On August 18, 2014, the court appointed Patricia Cummings, LCSW-C, to facilitate reunification between R. and Father. On March 18, 2015, the parties agreed to a *pendente lite* consent order granting Mother sole legal and physical custody of the child and enjoining Father from any contact with the child "except as directed by Patricia Cummings[.]" The order was to remain in effect until Ms. Cummings determined that reunification was appropriate. Various other professionals were subsequently appointed by the court to perform psychological evaluations of R., facilitate reunification, and provide therapy to the child, culminating in the appointment of Dr. Steven Gaeng in April 2018. In the time between the appointments of Ms. Cummings and Dr. Gaeng, the case was continued multiple times, including a continuance pending the completion of a psychological evaluation of R. During that time, Father was not permitted any visitation with R.

[2] From what we can tell from the record, the Department of Social Services issued a "ruled out" finding as to the alleged abuse.

In April 2018, the court ordered Mother to schedule an appointment for R. with Dr. Gaeng. Dr. Gaeng promptly began therapy sessions with R. Dr. Gaeng terminated these sessions twice due to Mother's and R.'s refusal to cooperate with his recommendations. Both times, the court ordered that reunification therapy continue. When Mother failed to contact Dr. Gaeng or respond to his emails after the second such order, Dr. Gaeng sent a letter to the court. This letter and the court's response to it became the basis for Mother's motion for recusal, which we will discuss in more detail below. As we shall see, Dr. Gaeng testified extensively at trial.

On March 19, 2019, the court granted Father supervised visitation with R. at the Brandywine Access Center. However, the supervised visitation sessions never occurred. Mother took R. to the visitation center for all appointments, but he refused to exit the vehicle each time. Mother testified to R.'s behavior when they arrived at the center, stating, "he'll cry, he'll scream, he'll hold onto his seatbelt. He'll yell, his hands will start shaking. One time, he vomited. He bites his lips." Consequently, Mother filed a motion to suspend child access due to the child's "extreme emotional reaction" to the attempted supervised visitation. The Children's Rights Council, the entity which runs the Brandywine Access Center, sent a memorandum to the court recommending that the case be terminated from its program "due to inactivity of services." The court, however, refused to terminate the order requiring visitation at the visitation center, instructed Mother to continue to take the child to the center and, if he refused to leave the car, to sit with him in the car for the entire two-hour duration of the scheduled visitation to encourage R. to participate.

After several hearings spanning over a year, the court granted the parties joint physical custody with Mother to have sole legal custody. Because Father had not visited with R. for many years, the court ordered that R. reside with Father from the date of its custody order (July 20, 2020) to August 22, 2020.[3] Thereafter, the custody order required R. to reside with each parent on an alternating week basis. The court also ordered that Father arrange for individual therapy for R. and joint therapy for R. and Father, which was to take place during the weeks Father had custody. Mother noted this timely appeal.

## DISCUSSION

### I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY GRANTING JOINT PHYSICAL CUSTODY

Mother first argues that the court abused its discretion by awarding the parties joint physical custody. Mother asserts that "[t]he trial court abused its discretion when it removed the child from the only parent he had known for almost his entire life." She further argues that, although the court recognized "that the child's life would likely be disrupted by spending prolonged periods of time with his father," the court nevertheless "ordered a drastic change in custody." In Mother's view, the court had "only marginal and strictly theoretical evidence" that R.'s immediate reunification with his father would be in the child's best interest. She concludes that "the trial court's determination appears to have rested solely on blaming [Mother] for the inability of the treating professionals to advance the child through reunification, and not on the child's best interest."

[3] Mother was granted four hours of visitation on the Saturdays between July 20 and August 22, 2020.

Father responds that the court provided R. "with resources unparalleled by any other typical custody case" in an effort to promote the child's well-being. He further credits the court's reliance on Dr. Gaeng's testimony in fashioning a custody award that would promote R.'s best interest.

In an appeal of a non-jury action, we apply the standard of review expressed in Maryland Rule 8-131(c):

> 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.

Moreover, we review custody decisions for abuse of discretion. *In re R.S.*, 470 Md. 380, 397 (2020). A custody determination "will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994). Abuse of discretion occurs when:

> the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

*Devincentz v. State*, 460 Md. 518, 550 (2018) (quoting *North*, 102 Md. App. at 13–14).

Because of the complexity and serious consequences of child custody decisions, courts weigh an assortment of factors to inform their best interests analysis. *E.N. v. T.R.*,

247 Md. App. 234, 250 (2020). Two cases, *Montgomery Cty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986), provide relevant factors (some of which overlap) to inform the court's custody decision. This Court identified the following factors in *Sanders*:

> 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.

38 Md. App. 406, 420 (citations omitted). Nearly ten years later, the Court of Appeals enumerated thirteen factors in *Taylor*:

> 1) the capacity of the parents to communicate, 2) willingness to share custody, 3) fitness of the parents, 4) relationship established between the child and each parent, 5) preference of the child, 6) potential disruption of the child's social and school life, 7) geographical proximity of the parental homes, 8) demands of parental employment, 9) age and number of children, 10) sincerity of the parents' requests, 11) financial status of the parents, 12) impact on state or federal assistance, and 13) benefit to the parents.

*E.N.*, 247 Md. App. at 251 (citing *Taylor*, 306 Md. at 304–11).

In this case, the judge addressed nearly all of the *Sanders* and *Taylor* factors. The court recognized that both parents are financially and emotionally able to provide for the child, that both parents are committed to the child's success, and that both parents live in close proximity to one another and the child's school. Concerning other pertinent factors, the court reviewed the following *Sanders* factors:

> The primary issue that the father has with mother's fitness as a parent is his concern she needs help getting past her belief that the minor was

molested by him. Father has suggested that the mother attend therapy to address this. Mother has what appears to be a sincerely held belief that the minor was abused by the father and therefore has not provided the father access to the minor child for over six years.

Character and reputation of the parties. Both parents are gainfully employed. Father has a security clearance with the Pentagon indicating . . . at least some level of good character and responsibility.

Both parties' mothers testified to the good character and desire of the parties to parent the child.

All allegations of the mother against the father have been unsubstantiated.

The Court finds that there are no reasonable grounds to believe that abuse is likely to occur if the Court grants custody or visitation to the father. Evidence from the file and testimony supports this finding that the father is not likely to engage in acts of abuse toward the minor child. The Court finds no substantiated incidences of abuse by the father toward the minor child.

Factor number three, desire of the natural parents and agreement between the parties. Father expressed a strong desire to reestablish a relationship with the minor child. Mother states she will cooperate with whatever the Court orders.

The parties do not agree on custody. The mother sees this as a case about access and is seeking sole physical and sole legal custody. The father is similarly seeking sole physical and sole legal custody. Both parties seem adamant that they should be awarded sole custody.

Factor number four, potentiality of maintaining natural family relations. The minor child has a strong bond with his mother. This is from testimony from the mother, Doctor Gaeng and the minor child. The minor child also has a close relationship with his little sister. The parties live approximately twenty minutes apart, therefore natural family relations should be relatively easy to maintain.

Preference -- preference of the child. Testimony from the child and the mother indicates that the minor child has a strong bond with his mother and has bias toward his father. It should be noted that this estrangement seems to be less of a reflection on the father and rather is due to the prolonged separation of the father and minor child at the insistence of the mother.

* * *

Factor seven, age, health and sex of the child. The minor child was born [in October 2010] and is a nine year old boy. Based on testimony the minor child is physically healthy. The child does experience anxiety as witnessed by the Court and testified by his mother and Doctor Gaeng. Based on the evidence submitted, including the child's grade and progress report, the child struggles in school. The child is currently receiving tutoring.

Factor number eight, residence of parents and opportunity for visitation. The father lives . . . in Upper Marlboro, Maryland 20772. The mother lives . . . in Bowie, Maryland, 20721. There should be ample opportunity for visitation and for an easy exchange of the minor child.

Factor number nine, length of separation from the natural parents. The father has not seen the minor child since October 2013. And by that I mean the father has not had visitation with the minor child since October of 2013. Reunification has not been successful. According to expert testimony this has been in part due to the mother's unwillingness to encourage reunification between the father and minor child.

Factor number ten, prior voluntary abandonment or surrender. No evidence was presented of voluntary abandonment, rather [Mother] revoked [Father's] parental rights in October of 2013.

The court then separately considered the *Taylor* factors:

Number one is capacity of the parents to communicate and to reach shared decision affecting the child's welfare. The mother has been the primary care-giver for the past six years and has unilaterally made all decisions related to the child's welfare. The parents are currently at an impasse regarding decision making for the child. The mother has changed the minor child's schooling three times and the father believes the minor child needs more stability.

Both parents agree that child needs tutoring and therapy. However, it is not clear that they would be able to come to shared decisions regarding what is best for the child.

Factor number two, willingness of the parents to share custody. The father has expressed that he is willing to share custody but believes that the mother should attend therapy. The mother has stated that she will comply with any Order regarding custody.

> Factor number three, fitness of parents. Both parents are fit and proper to care for the minor child as previously indicated.
>
> Factor number four, relationship established between the child and each parent. As stated previously the minor child is very close to his mother and has not seen his father in over six years. [The Court finds] that it would be in the best interest of child to have a relationship with both parents. Considering the child's relatively young age, it is imperative that the father and minor child reestablish their relationship as soon as possible.
>
> Factor number five, preferences of the child. Again, the minor child is nine years old and he appears nervous while in court and anxious. The child expresses anxiety at the thought of visiting with his father. The minor child would like to be with his mother. He feels that no one believes him about the incident that allegedly occurred when he was three years old.
>
> Factor number six, potential disruption of child's social and school life. There will likely be an adjustment period for the minor child if he began spending prolonged time with his father. However, that in and of itself is not a reason to prevent reunification.
>
> The child has switched schools several times. The Court highly encourages the minor child to remain at [his current school], absent of written agreement by both parties to switch schools.
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> Factor number seven, geographical proximity of the parental homes. The parties live approximately 20 minutes apart.
>
> * * *
>
> Factor number ten, sincerity of parents' requests. The father is very sincere with his requests. This is further shown by the six year custody dispute that the parties have endured. The mother's request and concern about her child are also sincere.

We quote extensively from the trial court's opinion not because Mother has challenged the court's underlying findings of fact or its analysis of the relevant factors, but because it demonstrates the court's careful and thorough evaluation of the evidence. Mother instead argues that there was "scant evidence" that the court's custody plan would

not cause harm to the child. She argues that the evidence in support of "immediate reunification and shared custody" was "marginal and strictly theoretical" and not based on "clinical literature," but rather on "anecdotal observations." She also argues that there was no evidence "that *this* child would ultimately have a positive outcome[.]"

We reject Mother's argument because the court justifiably relied on competent expert testimony from Dr. Gaeng in arriving at its ultimate decision concerning custody. We shall not attempt to summarize all of Dr. Gaeng's extensive expert testimony, but rather focus on aspects of his opinion that the court either explicitly or implicitly relied on. Dr. Gaeng described in detail Mother's and R.'s actions during therapy sessions. During the first therapy session, Dr. Gaeng asked R. about his "dad." Mother interjected, "Biological father, who did things to him." Dr. Gaeng testified that R. became slightly upset at the mention of Father, and Mother told Dr. Gaeng that he "was re-traumatizing [R.] by asking about his father." Mother challenged Dr. Gaeng's credibility on "numerous occasions" in the presence of the child by saying Dr. Gaeng's explanations and suggestions "didn't make sense to her, or some other therapist had told her something else at some point in time[.]" Dr. Gaeng testified that Mother never "really [got] on board with this team effort that, . . . having [Father] in [R.'s] life, was a positive goal that we all needed to work towards." Dr. Gaeng opined that Mother "definitely" hindered the reunification process by making disparaging remarks about Father and undermining Dr. Gaeng's credibility in R.'s presence. Rather than the normal process where children quickly become less anxious with successive therapy sessions, R.'s anxiety increased; he was "very defensive" and did not

want to participate. Dr. Gaeng testified that "working with the parent" to overcome such difficulties "is really crucial." However, when Dr. Gaeng first started working with R. in 2018, Mother and Dr. Gaeng "were kind of getting into arguments" about whether reunification was in R.'s best interest. Dr. Gaeng testified that Mother told him she believed R. would be in danger with Father. By 2019, Mother was no longer arguing with Dr. Gaeng, but R. began refusing to enter Dr. Gaeng's office, instead remaining in the waiting room. Dr. Gaeng summarized Mother's comments and actions that led him to believe that she was obstructing the reunification process:

> I would raise up the importance of the reunification process and she would challenge that notion, that that was a good idea, or she would bring up notions why [R.] really shouldn't see his father. So some of it was just straight verbal where she would challenge even the process of why we were even doing what we were doing.
>
> Sometimes it was more behavioral, in the sense of either missing an appointment, coming late to an appointment. Or interfering with the process, in the sense -- let's say it was [Mother] and [R.] in the office, and I would ask [R.] a question. And she would start to answer the question, and I would make a motion like, no, let [R.] answer. This was early on when he was still coming in the office, and she refused to follow that direction.
>
> There was another occasion when she picked up [R.] and walked out of the office in the middle of the session while I was talking to him and attempting to talk to her.

Ultimately, Dr. Gaeng recommended that R. live with Father for "an extended period, . . . a couple of weeks, a month, whatever, where he can just experience who his dad is." Dr. Gaeng testified that a sudden change is "not the ideal way of going about" reunification, and "it would be much better to do that really gradually, but that's not what we're able to do." His only concern with sudden reunification was that the child would

experience "too high a level of stress" and "a lot of anxiety," but he opined that the anxiety would likely only be "in the short run." When asked if there was a chance that such a sudden reunification might not be beneficial in this case, Dr. Gaeng stated, "it probably would be good if a therapist would work with dad and R. once he's there and could address whatever's happening in the relationship." Dr. Gaeng explained that providing R. direct contact with Father was preferable to joint therapy sessions with R. and Father

> [b]ecause he can't escape it. In other words, [R.'s] learned that he can just sit in the waiting room and not come in. In other words, what I would see . . . is if I scheduled an appointment for dad and [R.], [R.] would sit in the waiting room. And he'd see dad walk in, and he might see dad talk to me, but [R.] wouldn't come in the room.
>
> Whereas, if you're living with somebody, you can only hold out so long. You need to eat, you need to sleep, you need things.

In addition to Dr. Gaeng's testimony, the court expressly relied on the *Sanders* and *Taylor* factors in determining what was in the child's best interests. Immediately before reading the very specific terms of the Custody Order into the record, the court stated: "The [c]ourt reminds the parties that this case is all about what is in the best interest of the minor child."

We conclude that there is ample evidence in the record to support the court's determination that a shared physical custody arrangement was in R.'s best interest. We shall not substitute our judgment for the judgment of the trial judge who has managed this case since December 2017, and who provided a thorough, well-reasoned opinion to support her ultimate decision.

Finally, Mother argues that the court's decision "appears to have rested solely on blaming [Mother] for the inability of the treating professionals to advance the child through reunification." Although the court did appear to place blame on Mother for the unsuccessful reunification efforts, Mother fails to acknowledge that Dr. Gaeng testified that Mother was consistently uncooperative with his efforts to promote reunification. That the court credited Dr. Gaeng does not render its decision an abuse of discretion.

In summary, the court expressly considered each of the *Sanders* and *Taylor* factors, appropriately weighed them in the context of the evidence, and rendered a custody decision that was neither untenable nor violative of logic and facts. *See Devincentz*, 460 Md. at 550 (quoting *North*, 102 Md. App. at 13–14). We conclude that the court's custody determination did not constitute an abuse of discretion.

## II. THE TRIAL COURT DID NOT ERR IN DENYING MOTHER'S MOTION FOR RECUSAL

Mother also argues that the court erred in denying her motion for recusal.[4] The motion was premised on an *ex parte* letter Dr. Gaeng sent to the trial judge, which Mother argues may have influenced the judge's ruling. We reprint Dr. Gaeng's August 15, 2019 letter to the court:

[4] To the extent Mother argues that the court erred in denying her motion to remove Dr. Gaeng, we decline to consider this issue because she does not cite any law in support of or expound upon this argument beyond a bare statement that the denial of the motion was error. *See* Rule 8-504(a)(6); *Impac Mortgage Holdings, Inc. v. Timm*, 245 Md. App. 84, 117 (2020) (noting that a party must provide argument in support of her position).

> Since the hearing and our phone conversation on 6/18/19 regarding the above captioned case,[5] let me use this letter as an update. Since agreeing to your request to be available to resume reunification sessions with [R.] [] and his father, I have not heard from [R.'s] mother regarding setting up any sessions. I reached-out to [Mother] most recently on 8/1/19 by email and have not received any response. It is my understanding that supervised visitation sessions with father are no longer being scheduled by the agency due to [Mother]'s inability to get [R.] to enter the facility to meet with [Father]. Regarding my reunification treatment plan's recommendation that [Mother] participate in individual therapy with a licensed therapist that would coordinate treatment with me, I have yet to hear from any therapist working with [Mother]. She has also not responded to requests to bring her account at this office current.
>
> It is my experience and professional opinion in this matter, that despite occasional lip-service to the contrary, [Mother] is not willing to support [R.] having a relationship with his father and in fact obstructs the process of reunification. I have been asked by father's counsel to provide documentation of such, as well as appear at the next scheduled hearing on 9/25/19. Is it appropriate to provide this information to counsel? Please advise.

The court responded to Dr. Gaeng by letter dated August 30, 2019:

> The Chambers of the Honorable Ingrid M. Turner is in receipt of your letter dated August 15, 2019 regarding the above referenced case. You may provide documentations to counsel.
>
> As a reminder, a hearing is currently scheduled for September 25, 2019 at 9:00am before Judge Turner, [mark] your calendar accordingly, as it is imperative that you appear.

[5] The June 18, 2019 phone conversation Dr. Gaeng referenced in his letter occurred with the knowledge and consent of the parties immediately after a hearing on Mother's Motion to Suspend Child Access. Dr. Gaeng left prior to the end of hearing, at which point some confusion arose concerning whether Mother had been paying for Dr. Gaeng's services. Consequently, the court, counsel for the parties, and the best interest attorney agreed that the court would call Dr. Gaeng on the phone off the record to discuss whether Mother had made payments as well as whether Dr. Gaeng "concurred with" the court's plan for future treatment. At the November 6, 2019 hearing, counsel for Mother stated that the phone call "was in no way anything that we point out as being improper in any way."

If you have any questions, please do not hesitate to call. Thank you.

The court sent copies of both letters to the parties' attorneys.

We note that, "The decision to recuse oneself ordinarily is discretionary and will not be overturned except for abuse. The party requesting recusal has a heavy burden to overcome the presumption of impartiality." *In re Elrich S.*, 416 Md. 15, 33–34 (2010) (quoting *Attorney Grievance Comm'n v. Shaw*, 363 Md. 1, 11 (2001)).

Under Maryland Rule 18-102.9(b), "If a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond."

Mother admits that the judge promptly notified the parties about Dr. Gaeng's letter, but argues that "[n]o opportunity was given by the trial court for the parties to respond." She further asserts that "the proper inquiry is whether the communication impacted upon the judgment of the trial court."

We can summarily dispense with Mother's argument that she had "no opportunity" to respond to Dr. Gaeng's letter. The court here ensured that both parties were made aware of Dr. Gaeng's letter and the court's response. Furthermore, the parties had several weeks to prepare a response to the letter before the first of two hearings at which Dr. Gaeng testified. Indeed, Mother's counsel briefly cross-examined Dr. Gaeng about his statements in the letter. While the letter itself was an inappropriate *ex parte* communication, the trial judge's response was appropriate and in accordance with Rule 18-102.9(b).

Mother also argues that recusal was required because Dr. Gaeng's letter may have given the trial judge a preconceived notion about Mother's cooperativeness, or lack thereof, with reunification therapy. She ostensibly relies on Rule 18-101.2(b), which states: "A judge shall avoid conduct that would create in reasonable minds a perception of impropriety."

In *In re Colin R.*, 63 Md. App. 684 (1985), this Court considered whether an improper *ex parte* communication required recusal. Colin R. was found to be a Child in Need of Assistance after his mother injected him with medication with the intent to cause him to become ill. *Id.* at 690–91. Pending a custody hearing, Colin was placed in foster care as Colin's mother had left Maryland and was living in North Carolina. *Id.* at 699. Based on a representation by the mother's counsel that the mother had no intention of returning to Maryland, the court allowed the father liberal visitation with Colin. *Id.* at 699–700. Nine days later, the attorney for the Department of Social Services learned that the mother intended on imminently returning to Maryland. *Id.* at 700. The Department's attorney relayed this information to the trial judge. *Id.*

> As a result of that conversation, [the Department's attorney] addressed a letter to the acting director of the appellee Department advising that [the trial judge] had insisted that "under no circumstances is [Colin] to be removed from the foster home by any of his family members while [his mother] is in this area." Copies of this letter were mailed to [the trial judge] and opposing counsel.

*Id.* (third alteration in original). Based on the *ex parte* communication between the Department's attorney and the trial judge, the attorney for the parents filed a motion for recusal, which was denied. *Id.*

On appeal, this Court assumed that the communication was improper, but held that there was "no abuse of discretion by the trial judge in refusing to recuse himself under the circumstances of the communication." *Id.* We noted that "nothing in the record below demonstrate[d] any hostile feeling against the appellants by the trial judge [that] prevented a fair trial."[6] *Id.* at 701. In short, there was nothing in the record to indicate that the *ex parte* communication influenced the trial court's judgment.

Against this backdrop, we turn to the instant case. At the June 16, 2019 hearing, Dr. Gaeng discussed Mother's inability to convince R. to participate in therapy sessions, stating:

> As of lately his mom will make some encouraging statements that like okay you should go in and talk to Dr. Gaeng, blah, blah, blah. And he just doesn't say anything, doesn't do anything. I go back in my office -- my expectation -- again I have been doing this for over 35 years. In 35 years, I have never had it go more than one session. Sometimes I have had a young child not come in the first session and I have worked with the mom or dad a little bit and by the second session they are in the office.
>
> So 35 years I have never had somebody who came to my office what is now been maybe eight times, come to the building and never walk in the office. Or just come in -- those few times he had come in and not say a word hardly. So my conclusion, I don't want to imply any motive but the behavioral observation is she can't get him to come to the office.
>
> And my experience is that it is really the parent's responsibility whether it is a therapist's office, a dentist office or school. They need to get their kid to come in to the building. And parents can do that. They do it all the time.
>
> . . .

[6] Indeed, the court ultimately returned custody of Colin to his parents. *Id.* at 701.

> [I]n my experience the parents who aren't able to do it, aren't clear that they really want the child to be in there.

Dr. Gaeng also indicated that Mother had not yet arranged for an individual therapist for herself, as required by the treatment plan.

It is therefore clear that the substance of Dr. Gaeng's letter had already been communicated to the court prior to its receipt in August 2019. Moreover, the parties had several weeks between the disclosure of the letter and the first hearing date to address or respond to the letter, and an additional four months before the final evidentiary hearing. Additionally, Dr. Gaeng testified extensively over the course of two days concerning his observations of Mother's behavior and the basis of the opinions he expressed to the court. Thus, the substantive content of Dr. Gaeng's August 15, 2019 letter came into evidence during the merits trial. There is no evidence that the trial judge in fact relied on Dr. Gaeng's two-paragraph letter in making her decision nearly one year later, and we see no indication that she was in any way influenced by its contents. Thus, in our view, Mother has failed to demonstrate any prejudice related to Dr. Gaeng's *ex parte* letter, and the trial court did not err in denying her recusal motion.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS. MANDATE TO ISSUE FORTHWITH.**