

Circuit Court for Baltimore County
Case No. 03-C-17-008662

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0591

September Term, 2023

ARIF SYED AHMAD

v.

ELENA MARIE ALI

Nazarian,
Albright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: December 8, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Elena Marie Ali (“Mother”) and Arif Syed Ahmad (“Father”) were married in 2013 and had one child before separating in 2016. Since their separation, both parties have attempted continuously to obtain sole legal and physical custody of the child. Most recently, after a slew of motions and complaints from both parties, the Circuit Court for Baltimore County awarded sole legal and physical custody of the child to Mother. Father challenges this decision, claiming that the circuit court overlooked Mother’s violations of the parties’ marital settlement agreement and mis-weighed the evidence. We affirm.

I. BACKGROUND

Mother and Father married on January 11th, 2013. The following August, their daughter Z¹ was born. Two years later, the parties separated.

Mother filed a complaint for absolute divorce on September 12, 2017. The complaint sought sole legal and physical custody of Z. In early 2018, Father filed an answer and counter-complaint seeking, among other things, sole legal and joint physical custody, alimony, and child support. To narrow the disputes, the parties entered into a marital settlement agreement on September 20, 2018. In December 2018, Father filed the marital settlement agreement and an amended counterclaim. After Mother’s response to the counterclaim, the two were divorced on January 30, 2019. The divorce judgment incorporated the settlement agreement, in which the parties agreed to joint legal and physical custody of Z. The agreement also stated that neither party could “allow a significant other to move in and reside in the same household with [Z], unless such

¹ We refer to the child as “Z” to protect her privacy. The initial is chosen at random.

relationship has matured into marriage,” and that Z would be raised “in traditional Islamic faith.”

In July 2019, Mother met the man who would eventually become her fiancé. Soon after, in February 2020, the two got engaged and moved in together. In March 2020, the couple got married. When Mother learned she was expecting a baby, she filed a motion to modify custody on April 1, 2020. The next month, the fiancé changed duty station to Virginia Beach, so the couple relocated there with Z. Mother filed an emergency motion for child custody and other relief on June 18, 2020. The motion was denied.

On July 14, 2020, Father sought a protective order on Z’s behalf based on the belief that a drawing by Z indicated that the fiancé was abusing her sexually. In response, Mother “amended her Emergency Motion [for] Child Custody and other Relief” on July 27, 2020. A hearing on the protective order was held on July 31, 2020, and the protective order was denied while Mother’s amended motion was granted. The circuit court awarded Mother sole legal custody, *pendente lite*, because of its concern that Father was “manipulating” and making critical decisions for Z.

On October 1, 2020, Mother filed another amended motion for child custody and other relief and requested primary physical and legal custody. In November 2020, Father filed a motion to modify custody and sought sole legal and primary physical custody. Then, on August 10, 2022, Father filed a motion for an “Emergency Hearing Regarding Custody, or in the Alternative[,] for Temporary Custody.” The hearing was held, and the circuit court reaffirmed the July 31st disposition that granted Mother sole legal custody *pendente lite*.

The circuit court heard both Mother’s October 1 amended motion and Father’s November motion to modify custody on April 17 and 18, 2023. The hearing involved various witnesses and documentary evidence. On May 1, 2023, after considering the best interests of Z, the circuit court concluded that Mother should be granted sole legal and physical custody, with Father retaining the right to parenting time. Father appealed this judgment on May 21, 2023.

II. DISCUSSION

Father didn’t identify specific Questions Presented,² but we read his brief as contending that the circuit court erred in granting Mother sole physical and legal custody of Z. We conclude that the circuit court considered all the evidence and evaluated the best interest of the child properly.

Appellate courts review “a trial court’s custody determination for abuse of discretion.” *Santo v. Santo*, 448 Md. 620, 625 (2016). As we have stated before, abuse of discretion is defined as when:

no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court or

² Mother’s brief lists her Questions Presented as:

- A. Did the lower court properly consider all of the evidence and testimony in evaluating Father’s character and credibility and correctly award Mother sole legal custody?
- B. Did the lower court properly consider all of the evidence and testimony in evaluating Father’s character and credibility and correctly award Mother primary physical custody?

when the ruling is violative of fact and logic.

Sibley v. Doe, 227 Md. App. 645, 658 (2016) (cleaned up). “This standard of review accounts for the trial court’s unique ‘opportunity to observe the demeanor and the credibility of the parties and the witnesses.’” *Santo*, 448 Md. at 625 (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)). Thus, the standard is particularly deferential to trial courts.

A. The Circuit Court Did Not Err In Granting Mother Sole Physical And Legal Custody.

To modify a child custody order, the circuit court first must find that there was a material change in the family’s circumstances. *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005). If so, the court then moves on to evaluate custody itself, bearing in mind that “the paramount concern is the *best interest of the child*.” *Taylor v. Taylor*, 306 Md. 290, 303 (1986) (emphasis added). When evaluating custody in a divorce case, courts consider the factors set out in *Taylor*: (1) the “Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child’s Welfare” (the most important factor), (2) the “Willingness of Parents to Share Custody,” (3) the “Fitness of Parents,” (4) the “Relationship Established Between the Child and Each Parent,” (5) the “Preference of the Child,” (6) the “Potential Disruption of Child’s Social and School Life,” (7) the “Geographic Proximity of Parental Homes,” (8) the “Demands of Parental Employment,” (9) the “Age and Number of Children,” (10) the “Sincerity of Parents’ Request,” (11) the “Financial Status of the Parents,” (12) the “Impact on State or Federal Assistance,” (13) the “Benefit to Parents,” and, finally, (14) “Other Factors.” *Id.* at 304–11. The *Taylor*

factors aren't a rote checklist that courts apply woodenly, but they guide the court's analysis of where a child's best interests lie.

Father contends that the evidence adduced at trial demonstrates that Mother violated the marital settlement agreement and, as a result, that the trial court abused its discretion when it awarded her sole legal and physical custody of Z—in his view, the evidence simply doesn't match the court's conclusions. But whether or not Mother adhered fully to the settlement agreement (and in some ways she didn't), what matters is whether the circuit court considered the custody factors in determining Z's best interests. And it did.

1. The circuit court evaluated the custody factors fully and carefully.

In light of Mother's move from Maryland to Virginia with Z, everyone agrees that there was a material change in circumstances, and Father's counsel acknowledged as much at oral argument. The only question is what custody arrangement best serves Z's interests going forward, and the record reveals that the circuit court analyzed the relevant factors in deciding to grant sole legal and physical custody to Mother:

- **Capacity of Parents to Communicate:** “I find that they do not communicate, and they therefore cannot reach shared decisions.” This factor supports the court's decision to award sole legal custody rather than joint, and the circuit court cited multiple examples showing that the parties cannot agree. For instance, when Z was graduating from Pre-K, Father's family wanted to spend more time with her, but Mother refused and took Z to Portland. Mother did not provide any explanation and apparently refused to

communicate. As for Father, he once called Child Protective Services because he believed Z was left alone, which wasn't true. The court found this to be a strong response when "a phone call . . . would have taken care of the issue instead of escalating it."

- **Parents' Willingness to Share Custody:** "It's not acceptable to either one of them. They both are seeking sole legal custody." This position appears in both the motions and in the trial transcript, and again, counsel acknowledged the all-or-nothing choice at oral argument here.
- **Fitness of the Parents:** "I do find both parents are fit. I find that they love [Z] and are able to care for her." At trial, both parents established that they care about Z and her well-being.
- **Relationship Between Child and Each Parent:** "[Z] has a good relationship with both parents." This conclusion was supported by the testimony at trial. One witness testified, for example, that Mother "is a very kind mother I like the way she speaks to her children."
- **Preference of the Child:** "[Z] loves them both and is well loved by them in return." This conclusion was substantiated by the record as well. For instance, Mother conceded that "[Z] loves her Dad."
- **Potential Disruption of Child's Social and School Life:** "There is likelihood of a very significant disruption in [Z]'s life if Dad were to have sole legal custody." The circuit court was concerned about whether "Father,

if given sole legal custody, would continue to medicate [Z] for ADHD and growth deficiency He committed only that he—that if he thought she needed medication, he would administer it.” At trial, Father appeared to be hesitant to continue to Z’s medication, noting he would want her to get reevaluated. Also, the court found that Father’s traditional religious beliefs likely would disrupt Z’s life because she was not used to being religious. This is because Mother, with whom Z had been living primarily, believes that living a life that conforms to traditional Islamic beliefs and values isn’t “conducive to living in America.” Additionally, the fiancé described himself as “more of a progressive and moderate Muslim.”

- **Proximity of Parental Homes:** Mother lives in Virginia Beach, Virginia, while Father lives in Howard County, Maryland. Despite the 280-mile distance, Mother testified that she was willing to pay for Father’s travel expenses.
- **Demands of Parental Employment:** The circuit court stated that Mother has her own successful business, but that she “basically works from home.” Conversely, in light of Father’s vague and evasive answers to questions about his income and occupation, the circuit court didn’t know what he did for a living. During trial, the circuit court asked multiple witnesses about Father’s occupation, but each witness gave a different answer, and one witness wasn’t entirely sure what his occupation was, and the court found Father to lack

credibility on this issue.

- **Sincerity of the Parents’ Request:** “I find they’re both sincere in their request.” The testimony of the parties indicate that they both care about Z, thus bolstering the court’s finding.
- **Financial Status of the Parents:** The circuit court found that Mother’s business was thriving. As for Father, however, the circuit court found that “he was deliberately evasive about what he does for a living, and [it didn’t] know why.”
- **Impact on State or Federal Assistance:** “I have no information.”
- **Benefit to the Parents:** “Father testified he wants to teach [Z] his culture. He wants to meet with her healthcare providers. . . . All of those things he may do as a parent.”

After deliberately considering these factors, most of which favored Mother, the court concluded that it would be in “[Z’s] best interest she be in the sole legal custody of her mother.” The court went on to evaluate additional factors, some of which were considered previously, to determine which parent should be granted physical custody:

- **Fitness of Each Parent:** “I find they’re both fit.” Given the testimony at the hearings, the circuit court had the authority and ability to determine the credibility of each individual and reach this decision. *See Santo*, 448 Md. at 625.
- **Character and Reputation of Each Parent:** Despite concerns about

Mother’s decision to not inform Father about her relocation to Virginia and Father’s evasiveness about his profession, the circuit court found that both parents were well respected. Maria Reynolds, a witness for Mother, noted that she liked the “way [Mother] speaks to her husband. I like the way she speaks to her children. She teaches them to be kind and accepting and respectful of others.” Likewise, Stacy Snell, a witness for Father, stated; “I know he is [a] very dedicated father. I think he would probably move mountains for that child if he could I think he is [a] very dedicated, loving, compassionate father.”

- **Desire of the Parents and Any Agreement Between Them:** “I have nothing to add.”
- **Maintaining Natural Family Relations:** The court explained that each party has family near their residences.
- **Material Opportunities Affecting the Child’s Life:** The circuit court stated that Mother and her fiancé were financially successful, but that it didn’t know what Father did for a living. Again, even the witnesses provided were not entirely sure what he did.
- **Age, Sex, and Health of the Child:** The court stated that Z is eight years old and was diagnosed with ADHD and partial growth hormone and received medication for both. The court added that now that Z was attending school full time in Virginia Beach, she was happier and struggling much less. At

trial it was revealed that when Z would travel back and forth between Virginia and Maryland, this severely disrupted her progress and caused her to struggle in school. Father apparently would homeschool her every other week in Maryland, but the lack of consistency proved to be detrimental to Z's learning.

- **Residences of the Parents, Opportunity for Visitation:** Although there were differences in residences (Mother lives in a house, Father in an apartment), the circuit court found that Z could live in either place and would have friends wherever she went.
- **Impending Relocation of a Parent:** Neither parent planned to move from their current home.
- **Environment/Surroundings Where Child Will Be Reared:** The circuit court explained that the parents had differing plans for Z—Mother wanted Z to grow up in a flexible, diverse environment, while Father wanted Z to go to a traditional Islamic school.
- **Influences Likely to Be Exerted On Child:** The court stated that although there have been disputes between Father and Mother and her fiancé, it appears that neither party wants to sever Z's relationship with the other parent.³

³ The court also mentioned both the physical/spiritual/moral wellbeing of the child and the bonding between the parents and the child factors but had nothing to add.

After the circuit court walked through the various factors, it concluded that it was “in [Z’s] best interest to be in the primary physical custody of her mother.” The court considered and weighed carefully the testimony and evidence presented to it, while acknowledging the strengths and shortcomings of both parents. The evidence amply supports the court’s decision to award Mother sole custody.

To be sure, Father doesn’t see the record this way. The fact that he would weigh the factors and evidence differently, though, doesn’t mean that the circuit court abused its discretion in reaching the conclusions it did. Father argues that Mother has repeatedly violated the settlement agreement and continually “marginalized” him. And at oral argument in this Court, he urges that the circuit court did not place “sufficient weight” on Mother’s actions. Even so, he never rebuts the circuit court’s use of other evidence. He never explained, for example, how it would be in Z’s best interest for her to be in his sole custody. The circuit court found that Z was doing better, and was even happy, living in Virginia Beach with Mother. And given the circuit court’s findings that (1) Mother was in a better financial situation, (2) Mother stood ready to support and treat Z’s medical conditions, and (3) Z was not accustomed to a traditional Islamic life, the court found it would be better for Z to be in her mother’s sole physical and legal custody. Father disagrees with these conclusions, but the record supports them.

Appellate courts don’t re-weigh the evidence or second-guess the circuit court’s weighing process—we review the court’s decision to determine whether the court applied the correct law (no dispute there), whether the proceedings were fair procedurally (or

there), and whether the court’s conclusions fall within the range of outcomes supported reasonably by the record, and thus whether the court has exercised its discretion appropriately. We recognize that a decision to award sole legal and physical custody represents a more binary choice than is presented in many divorce cases. But these parties put this circuit court to exactly that sort of choice, and the circuit court did not abuse its discretion by awarding sole legal and physical custody to Mother under these circumstances. Indeed, the circuit court recognized that this case offered less-than-obvious options. The court even agreed with Father that Mother had sought to marginalize him—“I do find that [Mother] has tried to marginalize [Father]. She seems fed up, but that’s about them. That’s not about [Z]”—but found in the aggregate that Z’s best interests lay with her Mother as the decision-maker and primary custodian. Put yet another way, this was never a contest between the parents to see who won—it was a proceeding to determine the best option for Z.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**