Circuit Court for Baltimore County
Case No. C-03-FM-20-004593

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 721

September Term, 2021

JOHN REDMOND

v.

GWENDOLYN CONLEY

Berger,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: June 2, 2022

John Redmond appeals from an order entered by the Circuit Court for Baltimore County granting physical custody of his two children to the children's mother, Gwendolyn Conley; joint legal custody to the parties, with Ms. Conley having tie-breaking authority; and Mr. Redmond to have specified visitation. Mr. Redmond appeals and presents the following questions for our review, which we have slightly rephrased:

I. Did the circuit court act unfairly toward him during trial for a variety of reasons?

II. Did the circuit court show bias against him when it allegedly decided to grant custody to the children's mother before he had put on any evidence?

III. Did the circuit court's ruling to grant custody to the children's mother violate his constitutional right to parent his children?

For the reasons that follow, we shall affirm the court's order.[1]

BACKGROUND FACTS

On December 24, 2018, Mr. Redmond (the "Father") and Ms. Conley (the "Mother") were married in Jonesboro, Arkansas, where the bride was raised and her family lived. The parties resided in Maryland where Father was raised and where their daughter, G., was born. The parties experienced marital difficulties. Although they tried pastoral and private counseling, on November 2, 2020, when Mother was about six months pregnant with their second child, the parties separated and Mother left Baltimore for Jonesboro with their daughter.

[1] Mr. Redmond has proceeded pro se at trial and on appeal. Ms. Conley has been represented by counsel. "[T]he procedural, evidentiary, and appellate rules apply alike to parties and their attorneys. No different standards apply when parties appear pro se." *Gantt v. State*, 241 Md. App. 276, 302 (2019) (quotation marks, citation and emphasis omitted).

Two days after the separation, Father filed motions in the Circuit Court for Baltimore County for a limited divorce and custody. About three weeks later, on November 23, 2020, Father filed a motion for an emergency hearing requesting custody of their daughter, which was denied because he had failed to file a certificate of service or an affidavit. Around Christmas 2020, the parties planned for Father to fly to Arkansas so he could spend a week with their daughter and go to several of her medical appointments. He stayed only one day, however, returning to Maryland with his daughter without notifying Mother.

Mother immediately flew to Maryland and filed motions for limited divorce and custody and an emergency hearing requesting custody of their daughter. An emergency hearing was held two days later, culminating in a temporary custody order granting Mother sole, physical custody of daughter. Father was granted visitation in Arkansas, and he was not to remove the child from Arkansas. He was also permitted to FaceTime his daughter every other day at 7:00 p.m. The parties' son, E., was born in Jonesboro on February 18, 2021.

Divorce and custody hearings were held on June 1, July 1, and July 7, 2021. The primary focus of the proceedings was custody of the children, with each party seeking sole, physical custody of the children. Mother and her older sister, Glenda Ross, testified in support of Mother's motion for custody. Father, his mother, and a former neighbor testified in support of Father's motion for custody. From the testimony and other evidence presented, the following was elicited.

Mother is 35 years old and works 40-hours a week from 8:00 a.m. until 4:30 p.m. as a licensed practical nurse in a hospital near Jonesboro, Arkansas. She grew up in Arkansas and lived about two years in Maryland while married. Mother and the children currently live in a three-bedroom house with her parents. Her parents sleep in one bedroom, Mother and baby sleep in one bedroom, and G. has her own bedroom, which has a crib in which the baby occasionally sleeps. Mother introduced pictures of the house, including the backyard.

Ms. Ross testified that she works as a child support specialist for the State of Arkansas for the past 13 years, and lives in Jonesboro with her two children, aged nine and six. Ms. Ross described her extended family as "close-knit" and testified that the family has a barbeque or potluck at least once a month. Ms. Ross testified that she sees Mother and her children three or four times a week, particularly on the weekend and Sunday when they meet at church and then have a family dinner. She testified that both children are very bonded to Mother, and they are well cared for and groomed. G. is particularly attached to her grandfather and loves her cousins.

G. attends a specialized school during the week about 20 minutes from their home from 7:30 a.m. to 5:30 p.m. Ms. Ross, who lives about two miles from Mother, has occasionally picked up G. from school when Mother was running late at work. E. is in daycare about 10 minutes from Mother's home and a few blocks from Ms. Ross's home. Mother is breastfeeding E., although he also takes a bottle.

Mother testified that she was concerned with their daughter's speech delays while she lived in Maryland but her pediatrician at the time did nothing. When Mother moved

to Jonesboro, she had their daughter evaluated for several disabilities and her new pediatrician gave G. a referral for a specialized school called Kids Spot, which G. started in March 2021. While at the school, G. receives speech therapy three times a week and occupational therapy twice a week. Both Mother and Ms. Ross testified that since attending Kids Spot, G.'s speech has greatly improved, from about 15 to now 100 words that can be understood. Mother also reviews for about 10-30 minutes each evening with G. what she has learned at school.

Mother testified she left Maryland for Jonesboro because Father was abusive and created a hostile environment; discouraged her from going to church and finishing nursing school; and tried to isolate her from her family. She also wanted the children to grow up in a safe and peaceful environment with strong relationships with their grandparents, aunts, uncles, and cousins. She testified that Father is close to his mother, who lives in Maryland and is legally blind, but he has a poor relationship with his siblings. Mother testified that since the separation she has kept her mother-in-law informed of the children's events and has sent pictures of them to her.

Mother testified to instances of abuse by Father, several of which G. witnessed. Sometimes the police were called, but Mother never filed a protective order against Father because she was afraid.

Mother and Ms. Ross testified about two instances of abuse that G. witnessed and the police were called. Ms. Ross testified that when G. was a few months old, Mother called her very upset. According to Mother, she, Father, and daughter were to go to church and then to the home of a relative of Mother's, which Father did not want to do. Father

grabbed daughter and an argument ensued. Ms. Ross could hear G. crying in the background, and Father yelling, "You cannot tell me what to do with my child." When Ms. Ross asked why G. was still crying, Mother said Father would not let her hold their daughter to calm her down. Ms. Ross then heard the police at the door and her sister said she needed to go. A month later, a second incident occurred. Mother again called her sister crying and upset, and Ms. Ross heard G. in the background crying. Again, the police were called and the call ended when they arrived. Mother admitted that she had hit and kicked Father but testified she only did so in self-defense.

Mother denied Father's suggestion that he was unaware that upon their separation, she planned to leave with their daughter for Arkansas. She also testified at length about Christmas 2020, when Father, as agreed, came to Jonesboro for a week to visit with their daughter and to attend her three medical appointments that Mother had arranged, but after one day, Father took daughter back to Maryland without informing Mother.

Father testified on his behalf. He testified that he is healthy, 40 years old, and for the last year has worked full-time from 8:00 a.m. until 4:30 p.m. in maintenance at the Housing Commission of Anne Arundel County. He showed the court pictures of the two-bedroom home in Ellicott City where he lived when he brought the parties' daughter back to Maryland, emphasizing the baby gates, toys, and car seats. He testified that he had "changed many diapers" and given their daughter "many baths[.]" He also took their daughter to many of her doctor appointments when she lived in Maryland and was present during his son's ultrasound. He testified that he has daycare lined up for the children and

stated that he wanted to enroll G. in a speech therapy class similar to what she currently attends in Jonesboro.

Father denied ever physically abusing Mother. He introduced text messages between Mother and her sister that he believed showed Mother's premeditated intent to raise their daughter in Jonesboro, not because of any abuse by him. He testified that Mother "tried to create many arguments," but he always walked away because that was how he was raised. It was elicited that Father had traffic offenses, specifically: attempting to flee an officer in 2010; not wearing a seatbelt in 2017; and operating an unregistered vehicle in 2020 and 2021.

Father testified at length about his effort to be present at the hospital in Arkansas for the birth of his son. He testified that even though he had flown to Arkansas during the middle of a snowstorm, when he arrived at the hospital, he was told that Mother was not there. When Mother texted him two days later that he could see their son at the Neonatal Intensive Care Unit of the hospital, he went to the Unit and held his son but for only about 15 minutes. He testified that while there he felt "harassed" and "overlooked." He also tried to see his daughter while he was in Jonesboro but testified that he was not allowed. Mother testified that she told the hospital personnel that she did not want Father present while she was giving birth to their son. She testified that Father had been hostile and disruptive to the nurses when their daughter had been born, and Father had told her while she was pregnant with their son that he had a dream that she had given birth to a dead baby.

Two additional witnesses testified on Father's behalf. A former neighbor testified that he did not see the family often but when he did, the daughter seemed happy with both

parents. The neighbor also testified that he had not seen or heard the parents argue. Father's mother testified that Father is a loving and caring father. She lives about an hour from Father.

At the end of the third day of trial, the court issued an oral ruling comprising over 16 pages of typed transcript. The court emphasized that custody decisions are "based on the best interest of the children" and went through each of the several factors outlined in *Montgomery County Dep't of Social Services v. Sanders*, 38 Md. App. 406, 420 (1978), and *Taylor v. Taylor*, 306 Md. 290, 303 (1986).[2] The court reviewed the parties' fitness as parents and their character and reputation. The court was concerned that Father "appear[s] to have issues with attempting to control situations," which causes him to become angry. The court stated that it found credible Mother's testimony regarding instances of physical abuse by Father. The court expressed concern about Father's ability to control his anger and his "judgment about how to conduct one's self in front of the children." She also found

[2] In *Sanders*, we set out the following non-exclusive factors for a circuit court to consider in child custody determinations: 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) the ability to maintain 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. *Sanders*, 38 Md. App. at 420. In *Taylor*, the Court of Appeals reiterated the *Sanders* factors and added several other factors it viewed as relevant in making joint custody determinations: 1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; 2) willingness of parents to share custody; 3) fitness of parents; 4) relationship established between the child and each parent; 5) preference of the child; 6) potential disruption of child's social and school life; 7) geographic proximity of parental homes; 8) demands of parental employment; 9) age and number of children; 10) sincerity of parents' request; 11) financial status of the parents; 12) impact on state or federal assistance; 13) benefit to parents; and 14) other factors. *Taylor*, 306 Md. at 304-11.

credible Mother's version of events around Christmas 2020, that although the parties had agreed for Father to come to Arkansas for a week so he could visit with their daughter and attend several scheduled doctors' appointments, instead, after one day, Father left for Maryland with daughter without informing Mother. Although there was no formal custody agreement in place, the court found that Father had broken the parties' informal agreement.

The court addressed maintaining natural family relations, noting that Mother and children have "a lot of family support" and stability in Jonesboro while it is unclear what support system, familial or otherwise, Father has in Maryland. Father had testified that he had arranged for day care, but the court "wasn't persuaded that that was a[s] firm as he referenced." The court recognized that the photographs introduced by the parties showed that the children love and enjoy being with both parents and that the parents love their children. The court acknowledged Father's frustration about not seeing his son since his birth, except for a short time while at the hospital.

As to material opportunities for the children, the court acknowledged that Mother had arranged for their daughter to receive special services through the State of Arkansas. The court noted that Mother breastfeeds son and had breastfed daughter until 18 months of age. Mother's current living situation was sufficient for the children while Father, who had recently moved, had not provided any pictures of his current living situation and had not provided Mother with his new address. The court noted that, after separating, Mother also did not share her Jonesboro address with Father, and then said to both parties, it's "not a good thing to withhold that information" and the "parties should've been forthcoming."

After reviewing the factors, the court concluded: "[T]hese children are very young, they're in a stable environment with a lot of structure and support." The court awarded primary physical custody to Mother and joint legal custody to the parties, with Mother having tie-breaking authority. The court awarded Father visitation in Arkansas on a party-chosen weekend once a month from 10:00 a.m. until 4:00 p.m. Father was permitted to FaceTime his children every other evening at 7:00 p.m. Father was also given seven consecutive days of access to the children in Arkansas over the summer of 2022, at a time agreed to by the parties.[3]

DISCUSSION

Standard of Review

In reviewing child custody determinations, we employ three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012).

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

Id. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). 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." *Lemley v. Lemley*, 109 Md. App. 620, 628 (citations omitted), *cert. denied*,

[3] The court also granted the parties a limited divorce and awarded child support to Mother. Because Father does not challenge on appeal the grant of limited divorce or the child support award, we shall not address those matters.

343 Md. 679 (1996). "Additionally, all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below." *Id*. (citation omitted). An abuse of discretion exists where "no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quotation marks and citation omitted).

I.

Father argues that the circuit court erred in denying his motion for custody because he was not given a "fair trial." Specifically, he argues that the judge "rushed the case" and gave him only 90 minutes to present his case, during which Mother's attorney constantly interrupted him, while Mother was given a day and a half to present her case. He also states that he was not allowed to present evidence but does not elaborate as to what that evidence was. He further states that Mother "committed perjury" but again does not specify any facts. Lastly, he states that on the second day of trial, the judge was prepared to "give the children to their mother" even though he had not put on his case. Again, Father points to no factual evidence to support that allegation.

Md. Rule 8-504(a) provides in pertinent part:

> (a) Contents. A brief shall comply with the requirements of Rule 8-112 and include the following items in the order listed:
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> * * *
>
> (4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. **Reference shall be made to the pages of the record extract . . . supporting the assertions.** If pursuant to these rules or by leave

> of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of testimony as contained in the record.

(Emphasis added.) As we have stated before, '"[w]e cannot be expected to delve through the record to unearth factual support favorable to [the] appellant."' *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 201 (2008) (quoting *von Lusch v. State*, 31 Md. App. 271, 282 (1976), *rev'd on other grounds*, 279 Md. 255 (1977)). We refuse to do so here.

We cannot address Father's claims regarding alleged perjury by Mother, that he was not allowed to present evidence, and a predetermination of custody by the court because Father has failed to provide any page references to the transcripts, which after three days of trial consists of over 450 pages.[4] As to Father's argument that the court rushed the case by giving him less time than Mother to present his case, we disagree with Father's assessment.

On the first day of the hearing, Father waived his right to proceed first so Mother began her case. On that day, the parties examined and cross-examined Mother's sister. We note that Father took nearly twice as long to cross-examine Mother's sister as the direct examination took. Mother then began her direct examination, during which much time was devoted to discerning what evidence the parties wished to introduce, what evidence had

[4] At one point during Mother's direct examination, the court spoke about a possible child support allowance for Mother, *if* she was awarded custody. If this is the situation to which Father suggests was a predetermination by the court of its decision, we do not read the court's statement that way. At this point in the proceedings, the parties had provided incomplete information as to child support and the court was attempting to advise the parties about the information before it. The discussion occurred during Mother's case in chief and during her direct examination, so it was logical for the court to speak about a child support allowance, if Mother was awarded custody. Contrary to appellant's argument, we see nothing nefarious in the court's statements.

been given to the opposing party, and the court's repeated, and at times lengthy, explanation about how evidence is admitted at trial. Father eventually admitted that he does not regularly check his emails and so did not have any evidence submitted by Mother's attorney prior to trial. Father at one point wanted to submit his phone, a flash drive, and various police reports into evidence, and the court spent time explaining to him why it could not admit those pieces of evidence as produced, eventually urging him to call the clerk's office for help on admitting evidence at trial. Near the end of the first day, the judge repeatedly asked *both* parties to "try to move things along."

On the second day of the hearing, which started late and ended early through no fault of the parties or the court, the court repeatedly asked Mother's counsel during the direct examination of Mother to "move this along," setting a time limit on Mother's examination and reminding her attorney of the time left. At the end of Mother's testimony on the second day, the court stated:

> It's gone on far too long. I recognize that, you know, there have been some challenges with the technology. I recognize that you [Father] are a lay person and you don't know the Rules of Evidence.
>
> I recognize that [Mother's trial attorney] has experienced … her own frustration with the technology and trying to access documents, and that she got involved in the case late, so she didn't get an opportunity to do discovery, but she's doing the best she can in time with certain evidence, but we're gonna get this done.

We note that Father's cross-examination of Mother was over a 1/3 longer than her direct examination.

On the third and last day of trial, Father and his two witnesses testified. During Father's testimony, the court encouraged his presentation of evidence. Over a half a dozen

times, the court repeatedly asked him what else he wanted to say and permitted him to ask leading questions. After he had been testifying with little interruption for an hour and a half, the court asked him "to wrap it up." The court further asked Mother's counsel during cross-examination of Father to shorten it up and "hit your salient points." When Mother's counsel complained on two different occasions that Father had been permitted more time, the court explained that they were not going to go "tit for tat."

Upon viewing the transcript as a whole, we see no unfairness toward Father as his broad claims state. On the contrary, we see a trial court trying to fairly and with compassion manage a trial where the parties are challenged with procedural and technological difficulties.

II.

Father argues that the circuit court erred in denying his motion for custody because the court was "biased." In support of this argument, Father says that the court did not hold Mother accountable for taking their daughter to Arkansas but "addressed" him for taking their daughter back to Maryland. Father alleges that the court "looked at me and asked me, '[D]on't you think the child needs her mother[?'"] He further argues, "I had a folder full of evidence the judge never allowed me to show any documents." Again, Father does not cite to any trial transcript pages where these claims of error occurred.

As stated above, we will not "delve through the record to unearth factual support favorable to [the] appellant." *Rollins*, 181 Md. App. at 201 (quotation marks and citation omitted). We cannot address the argument raised because Father has failed to provide any

page references to the transcripts. We again refuse to delve through three days of trial of over 450 pages of transcript to find the dialogue referenced by Father.

III.

Lastly, Father broadly states that the circuit court denied him his constitutional right to be a father and to be in his children's lives. As with his above two arguments, Father adds very little to no factual or legal underpinnings to support his broad statement.

Certainly, the right to rear one's child has been deemed an essential, basic civil right. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), and *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). However, courts are called upon to determine the best interests of the child when parents separate/divorce and cannot agree on who should have custody of their children. *Burdick v. Brooks*, 160 Md. App. 519, 528 (2004) (In custody cases, the "court's objective is . . . to determine what custody arrangement is in the best interest of the minor children[.]") (quotation marks and citation omitted)). *Sanders*, 38 Md. App. at 419 (Although "[t]he best interest standard is an amorphous notion, varying with each individual case," a fact finder should "evaluate the child's life chances in each of the homes competing for custody and then to predict with whom the child will be better off in the future.").

The court here made its custody decision after reviewing the *Sanders/Taylor* factors, none of which Father contests. Although he asserts that he is "the more fit and stable parent[,]" the court is the one that reviews the evidence presented and determines custody. After our review of the transcript and the evidence presented, we are persuaded that the court did not abuse its discretion in awarding physical and legal custody to Mother. Should

there be a material change of circumstances, Father may always petition the court to modify the custody arrangement.[5] *Santo*, 448 Md. at 639.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED.

COSTS TO BE PAID BY THE APPELLANT.

[5] Father makes several statements in passing in his appellate brief. To the extent that he argues that Mother in fact lives in a two-bedroom house in Jonesboro, not a three-bedroom house as she testified to during the custody trial, that was not the evidence before the court. To the extent that he argues that no psychological/psychiatric evaluation was done, there is no evidence that one was requested. To the extent that he argues that "[e]very request that the mother made to the courts was granted and every request I made to the court was denied[,]" and then cites to his request for an emergency custody hearing and his postponement request to obtain legal aid, those decisions are not before us.