Circuit Court for Howard County
Case No. C-13-FM-19-000711

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 863

September Term, 2020

S.N.

v.

L.C.

Kehoe,
Leahy,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 8, 2021

S.N. ("Father") and L.C. ("Mother") spent close to twenty years together. Though they never married, the two had a daughter, Z.N., in 2007. Their on-again off-again relationship finally came to a screeching halt in 2018. Communication dissolved, and Mother filed a complaint seeking sole legal custody and primary physical custody of Z.N. Father responded, seeking joint legal custody. The parties went to trial in September 2020, and the court granted Mother sole legal custody and primary physical custody of Z.N. The trial court reduced Father's visitation.

Father presented us with one question on appeal:

> Whether the trial court erred when it reduced Appellant's visitation with the minor child?

We affirm for the reasons below.

FACTS AND PROCEDURAL HISTORY

Mother and Father met in 1999 and moved in together in 2000. Things were not always happy: shortly after they moved in, Mother began to notice Father's "sporadic behavior[.]" They discussed it, and Mother encouraged him to begin mental health treatment. Father did not begin treatment until "the first protective order" Mother obtained against him, in which "the Court had mandated his ongoing treatment." To counteract his behavior, Mother—a doctor—"prescribe[d] medications, antidepressants for him." Despite the ups and downs, the two welcomed their daughter, Z.N., into the world on April 10, 2007.

Their relationship hit its final breaking point in early 2018. In a long series of events, Father was arrested for failing to register as a sex offender in Maryland.[1] Father had no choice but to close down his primary source of income—his jujitsu school—shortly after his arrest. Later, in April 2018, Mother took Z.N. to New York for Z.N.'s birthday. On April 11, while the two were away, Father took a variety of items from the house, including the majority of Z.N.'s possessions, and burned them in a bonfire in the backyard. A mental health emergency team took him under emergency petition to a hospital.

After the bonfire, Mother sought and was granted a protective order against Father, which provided a custody and access schedule. The order granted Father "supervised visits . . . twice a week." A mutual friend, Cing Morgan, began supervising the visits in the summer of 2018. Mother paid Morgan for her supervision.

Mother filed a complaint in April 2019 seeking sole legal custody and primary physical custody of Z.N., with supervised visits for Father. Father was unable to initially obtain an attorney in the matter. In his answer and subsequent counter-complaint, Father requested "joint custody" and for the court to "allow both parents . . . to work out a schedule that works best for the family." He saw "absolutely no reason why [he] should have supervised visits" with Z.N.

[1] Years before, in Tennessee, Father was accused of inappropriately touching his daughter from a prior relationship. Father stated that he "felt pressured, but [he] chose to take the *Alford* style plea." An *Alford* plea is "a guilty plea containing a protestation of innocence." *See Bishop v. State*, 417 Md. 1, 19 (2010) (cleaned up).

Father moved for a BIA in July 2019. In this motion, Father alleged that Mother "suffers from malignant narcissism disorder," and that she was "constantly inappropriately influencing and manipulating" Z.N. Father alleged that he "suffered financial loss due directly to actions taken by [Mother] to strategically hamper [his] ability to be able to pay for his own attorney in this case . . . [and] it is the very reason why [he] cannot afford an attorney" and sought a BIA for Z.N. Father additionally requested sole custody of Z.N. in his motion for a BIA. The court appointed a BIA, Tracey Perrick, in August 2019.

In another blow, Father lost his housing in the summer of 2019 and became homeless. He lived in a tent in the woods, close to a library. Father still remained dedicated to his visitation with Z.N. He met with Z.N. and Morgan in public places.

After her appointment in August, the BIA "made it [her] first order of business to get [Z.N.] into therapy" after meeting with her in September 2019. Therapy was easier said than done. Z.N. first met with a therapist in October 2019, but Father would not provide consent for treatment, so the therapist terminated services. The parties tried again: Z.N., Mother, and Father attended an intake with another potential therapist in November 2019. Both parents filled out intake paperwork, and Father became upset after Mother would not show him what she wrote. Mother and Z.N. left, while Father stayed behind to speak with the therapist's office. Father again withdrew his consent. Mother tried to reschedule, but the office did not return her calls.

Finally, a few weeks later, Mother and Father agreed on Carrie Campbell for Z.N.'s therapy. Father requested to see Campbell's psychotherapy notes, which she denied.

Campbell's office terminated services shortly after intake. Mother "wrote a heartfelt appeal," and the office agreed to provide services to Z.N. again. Father "gave [his] consent for therapy because of pressure from the BIA mainly."

In the midst of this battle, Father was still without housing. In December 2019, Mother helped him with the first month's rent and security deposit for an apartment in Howard County. Things continued to look up—Mother began letting Father have unsupervised visits with Z.N. starting on December 25, 2019. Father requested overnight visits, but Mother did not yet feel comfortable about it. The parties eventually worked out a regular access schedule of 11 A.M. to 6 P.M. on Friday and Saturday, which continued up until trial.

A week before trial, Mother found "some very disturbing memes, photographs basically . . . in [Z.N.'s] phone around suicide." Although Mother was concerned that Z.N. had suicidal ideations, she did not notify Father. Mother did, however, involve the BIA, who discussed the memes with Z.N.'s therapist.

At trial, Mother testified at length about the disagreements the two have when it comes to Z.N. She expressed worry about Z.N., saying that "there's been a change in her behavior," and that there "[h]as definitely been kind of a shift[,] more sort of quiet and angry." Mother noticed that Z.N.'s attitude began to change around Z.N.'s "paternal grandfather . . . [Mother's] brother and sister in law, pretty much anything that [Father] doesn't agree with or . . . doesn't like, somehow becomes translated into her opinion." She speculated that Father had a negative influence on Z.N., noticing a shift in her demeanor

after visits: "I sometimes feel like there's some negativity and then I have to kind of get her back to who she is[,] some kind of ground zero." She did not believe that Father would ever physically harm Z.N., though. Mother did express concern about a codeword Z.N. and Father used in texting—"pineapple"—which she believed meant that Z.N. needs to delete the texts because the conversations are inappropriate.[2]

Mother detailed her past negative experiences with Father. She testified that disputes come up when he believes strongly in something: "if [Father] believes in something then, and if he wants somebody else to believe in something, he will, you know, continue to push for [this] evidence[.]" He would not consent to Z.N. getting a passport because "[h]e didn't want her to go out of the country. Especially didn't want her to go to Italy" because of his beliefs that "the Vatican is filled with pedophiles and part of the whole illuminati[.]"

Their disagreements were not always verbal. After an argument escalated, Father "put his hand on [her] throat and pushed [her]," which led to her obtaining a protective order. According to Mother, Father once told Z.N. "that Satan was working through mommy[.]" She described repeated instances of violence: "[h]e obviously you know, put his hands on me, my throat, pushed me several times, he's torn my clothing, he's touched my private parts in a way that was very disturbing."

[2] In his testimony, Father stated that the codeword "pineapple" meant that Mother was watching Z.N.'s phone.

Father, in his testimony, saw things differently. In one instance, Mother "half tripped herself" and then pulled him down on top of her. In another, he "wasn't trying to choke her. [He] was pushing her back which was [his] PTSD coming out and the situation then unfolded. And she lost her balance and fell down[.]"

For his sex offender conviction, Father "chose to take the *Alford* style plea" but "[w]asn't quite told the full story until after [he] agreed to that style plea[.]" He stated that the court in Tennessee "never explained to [him] how" to register as a sex offender. He said he did not know that he had to register in both Tennessee and Maryland. Father suspected that Mother "may have made some phone calls" shortly before his arrest for failure to register as a sex offender.

Father stated he did not fully recall the bonfire: "I mean I was definitely hallucinating and felt delusional." He primarily remembered that he was "piling things up in the backyard and butting them in bags," and "went outside and set it on fire." He was then taken to a hospital; days later, he "didn't trust why [he] was there. [He] thought [Mother] was behind it and [he] didn't really have enough of the facts." At the time of trial, Father was "on no medications" and was not currently seeing a psychiatrist or therapist.

On cross-examination, Father revealed that he was against Z.N.'s therapy from the very beginning: "I didn't understand from Day 1 and made that clear through many text messages that I did not think [Z.N.] needed therapy." He indicated that, given tie-breaking authority, he would revoke consent unless he "knew what was going on with her therapy

and was informed about what's going on[.]" Father did not believe that anyone "could really give [him] a good answer" on why Z.N. needed therapy to begin with. He did not see himself as the cause of Z.N.'s trauma: "the incident of me having a PTSD moment before the fire while I was most likely hallucinating from the substances I was on, if you want to refer to that [as trauma], yeah."

When making its findings, the court praised Mother's presentation and how much she was truly dedicated to Z.N.'s best interests, while still accommodating Father. It expressed frustration that Father refused to take accountability for any of his actions, believing that it "permeate[d] every aspect of his testimony." It found that Mother and Father "can't make joint decisions." It expressed its worries for Z.N. and credited her suicidal ideations to Father's "negative influences and to his efforts to try to [cajole] her into supporting his position."

The court expressed skepticism when Father said that he did not think he traumatized Z.N. when he burned "everything that she possessed in the backyard[.]" It believed Father was trying to influence and coach Z.N. It repeatedly found that he was the aggressor in physical altercations with Mother.

The court found that Mother was "extremely fit as a parent" while Father "quite frankly [was] not." While it found that Mother and Z.N. "enjoy a very constructive loving relationship," it thought that Father's relationship with Z.N. had "some toxic qualities to the detriment of" Z.N. It ultimately granted Mother primary physical custody with some access for Father, but did so "with some reservation because [it] think[s] he is toxic to

[Z.N.] and has the potential for facilitating her suicide to put it quite simply and with his manipulation and pressure and insistence on getting his way and . . . insisting on her agreeing with her positions." Father would have access every Friday from 5 P.M. to 8 P.M. and every other Saturday from 11 A.M. to 6 P.M.; the court held off on overnights because Fathers "doesn't have an apartment that lends itself to a young lady sharing the apartment with him."

The court did, however, give Father an opportunity to adjust its visitation award. It stated that if Father wanted to "present in a way where he can belay [the court's] concerns for [Z.N.'s] well-being, he can take steps to take care of himself and get himself into therapy, he can get himself medicated if that's what's needed, he can take steps to dissuade [the court] from being very seriously concerned about [Z.N.'s] well-being under his influence," it would be willing to revisit its decisions. This appeal followed.

STANDARD OF REVIEW

For the ultimate custody order, we look to see whether the trial court was within its discretion: "orders concerning custody and visitation are within the sound discretion of the trial court, not to be disturbed unless there has been a clear abuse of discretion." *Gizzo v. Gerstman*, 245 Md. App. 168, 199 (2020) (cleaned up). A court abuses its discretion "when 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, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Id.* at 201. At the heart of the trial court's decision is the best interests of the child. *Id.* at 199.

We evaluate the court's underlying factual findings to see whether they were clearly erroneous. *Id.* at 200. In doing so, we must "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c).

DISCUSSION

Findings of Fact

Father first contends that the trial court erred in reducing his visitation because it "ignored all of the evidence [Father] presented" and made incorrect findings of fact.[3] Mother responds that the court did not err because Father's "argument hinges on the credibility determination made by the trial court," which is well within the court's purview.

In alleging erroneous factual findings, Father points to a few statements made by the court. First, he calls it erroneous that the court "found that [Father] burned only the minor child's belongings," because he also burned items not belonging to Z.N. The trial court mentioned that Father burned "not all of the contents [of the house], but all of the contents apparently that is most related to [Z.N.]." Mother calls that "a matter of semantics." We agree; we hardly see how this finding was clearly erroneous—or even relevant—to the trial court's ultimate findings.

[3] In his supplemental briefing, Father presented us with additional facts not presented at trial, and thus not a part of the record. Although we were willing to allow supplemental briefing after his attorney withdrew her appearance, we cannot consider facts outside of the record. *See Mulligan v. Corbett*, 426 Md. 670, 682 n. 6 (2012) (declining to evaluate documents not introduced as evidence during trial and otherwise not part of the record); Md. Rule 8-413 ("The record on appeal shall include (1) a certified copy of the docket entries in the lower court, (2) the transcript required by Rule 8-411, and (3) all original papers filed in the action in the lower court[.]").

Next, Father contends that the trial court erred by "fail[ing] to mention the most neutral witness, Cing Morgan[.]" Again, we see no clear error in the court's discussion of witnesses in its findings—especially witnesses limited to impeachment testimony like Morgan. We give due regard to the trial court's opportunity to observe witnesses and determine credibility. *See* Md. Rule 8-131(c).

The rest of Father's argument regarding the court's factual findings carries on in the same manner; saying that it ignored his testimony or evidence. He goes so far so to say that the court "incorrectly concluded that the relationship between [Father] and the minor child was toxic when the last person to observe the visitation was Cing Morgan, who testified that [Father] and the minor child had a loving bond." However, there was testimony to the contrary presented at trial. It is the role of the trial court to decide what evidence is more persuasive. Nothing in Father's contentions of factual errors convinces us that the trial court was clearly erroneous in its factual findings.

Perceived Risk of Harm

Father next contends that the trial court failed to find "a nexus between the perceived risk of harm to the minor child and [his] behavior." Mother disagrees, saying that the visitation only had to be reasonable.

Father cites *Boswell v. Boswell*, 352 Md. 204 (1998) for his contention that the trial court had to make a finding of harm before restricting his visitation. *Boswell* arose after a trial court restricted a father's visitation with his children in the presence of his non-marital same-sex partner. *Id.* at 209. The Court of Special Appeals vacated the trial court's

judgment, and the mother appealed the part of the order "vacating the prohibition on visitation in the presence of [the father's] non-marital partner." *Id.*

The Court of Appeals agreed with other jurisdictions that have held "that the primary consideration in visitation and custody proceedings is not the sexual lifestyle or conduct of the parent, but whether the child will suffer harm from the behavior of the parent." *Id.* at 229. It specifically acknowledged that it "narrow[ed] the focus to proceedings involving proposed visitation restrictions in the presence of non-marital partners[.]" *Id.* at 237. The Court explained the trial court's role going forward: "[o]nce a finding of adverse impact on the child is made, the trial court must then find a nexus between the child's emotional and/or physical harm and *the contact with the non-marital partner*." *Id.* (emphasis added).

Father's reliance on *Boswell* is inapposite. The Court of Appeals expressly narrowed its focus to situations involving visitation restrictions in the presence of non-marital partners. Regardless of Father's contentions, the trial court was under no requirement to find a nexus of harm because the restrictions were not based on any non-marital partners. The trial court was required to analyze the relevant factors for the best interests of the child and reasonableness of the visitation.

The trial court stated its reasoning for the visitation award—it was worried about Z.N. It found that Father had a "negative influence" on Z.N. and that "his efforts to try to [cajole] her into supporting his position" contributed to her suicidal ideation. The court thought that Father traumatized Z.N. through the bonfire and was concerned that he did not

see it that way. The court found that there was "a toxic worrisome quality to the relationship that [Father] enjoys with his daughter." It worried that Father "has the potential for facilitating [Z.N.'s] suicide to put it quite simply . . . with his manipulation and pressure and insistence on getting his way[.]"

Because the trial court believed that extended visitation with Father would have an adverse impact on Z.N.'s best interests, it reduced his visitation from the parties' agreed upon schedule. We evaluate the court's visitation order for abuse of discretion, to which we give great deference. *See id.* at 225 ("In almost every case, the chancellor's decision regarding custody and visitation is given great deference 'unless it is arbitrary or clearly wrong.'") (citing *Hanke v. Hanke*, 94 Md. App. 65, 71 (1992)). A court abuses its discretion "when 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, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo*, 245 Md. App. at 201. We do not see that the trial court abused its discretion here. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.