Circuit Court for Wicomico County
Case No. C-22-FM-21-000946

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 0871

September Term, 2022

In the Matter of G.G.

Arthur,
Zic,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: February 27, 2023

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Desirae Guillot and Christopher Guillot were the parents of their minor daughter, G.G. Both Desirae and Christopher are now deceased. This case arises from a Petition for Guardianship of G.G. filed by Dennis and Rhonda Parkinson (the "Parkinsons"), who are Desirae's parents. Dennis Parkinson, Jr. ("DJ") and Kim Parkinson, appellees and G.G.'s maternal uncle and aunt, filed a Counter-Petition for Guardianship of G.G. Sam and Sarah Heck (the "Hecks"), appellants and G.G.'s paternal uncle and aunt, also filed a Counter-Petition for Guardianship, requesting that Thomas and Lynn Guillot (the "Guillots"), Christopher's parents, be appointed as co-guardians of G.G. and that the Hecks be named as alternate co-guardians of G.G. The Guillots have since expressed their support for the Hecks becoming guardians of G.G. while they themselves remain non-guardian grandparents of G.G. The court-appointed attorney for G.G., Heather Konyar, also joins this appeal.[1]

After a trial in the Circuit Court for Wicomico County, the circuit court appointed DJ and Kim as G.G.'s guardians. The court ordered that the Parkinsons, Hecks, and

[1] Because Ms. Konyar "adopts and affirms the facts and arguments set forth in [the Hecks'] Brief," we will refer primarily to "the Hecks" throughout this opinion but recognize that G.G.'s interests are being represented.

At trial, Ms. Konyar argued that the Hecks should be awarded guardianship. She argued that the "desire of the natural parents" weighed in favor of G.G. remaining in Maryland, and she concluded that the following factors were neutral: fitness of the potential guardians, character and reputation of the parties, preference of the child, and age and health of the child. She then argued that "maintaining natural family relations" and "residence of the parents and opportunity for visitation" were the most important factors here and that both factors weighed in favor of the Hecks.

Guillots have "reasonable and liberal" rights of visitation "at the discretion of [g]uardians." The Hecks now appeal.

QUESTIONS PRESENTED

The Hecks present five questions on appeal, which we have rephrased as follows: [2]

1. Whether the circuit court erred in finding that the natural parents desired that G.G. be raised in Wicomico County, Maryland or in considering such finding.

2. Whether the circuit court erred in finding that character and reputation was a "neutral" factor in determining guardianship.

3. Whether the trial court erred in finding that DJ and Kim were likely to communicate with non-custodial family members and to ensure their visitation with G.G.

[2] The Hecks phrase the questions as follows:

1. Did the trial court err in finding that the natural parents desired that the child be raised in Wicomico County, Maryland and in considering that finding in determining guardianship?
2. Did the trial court err in finding that the character and reputation of the Hecks and the younger Parkinsons was a "neutral" factor in determining guardianship?
3. Did the trial court err in finding that the younger Parkinsons were likely to communicate with non-custodial family members and to ensure their visitation with the child?
4. Did the lower court err when finding that it was "not concerned" about the significant differences between the material opportunities offered in the Heck household and the younger Parkinsons' household in determining guardianship?
5. Did the lower court err in finding that the child's as-yet non-existent "mental health issues" would be more effectively addressed in the younger Parkinsons' household the in the Hecks' household?

4. Whether the circuit court erred when it found the "material opportunities" factor was "neutral."

5. Whether the circuit court erred in finding that DJ and Kim would address G.G.'s potential future mental health issues better than the Hecks would.

BACKGROUND

Factual Background

This case concerns a guardianship dispute arising out of the tragic deaths of Christopher and Desirae Guillot. Christopher and Desirae met in August 2016 at Valor Christian College located in Columbus, Ohio, where they were pursuing music ministry degrees. Shortly after meeting, the two began dating. In December 2016, Christopher took Desirae to his hometown of Baton Rouge, Louisiana to meet his parents, the Guillots, his sister, Sarah Heck, and his brother-in-law, Sam Heck.

Desirae completed her degree in spring 2017 and returned to Delmar, Maryland to live with her parents, the Parkinsons. In December 2017, Christopher completed his degree. Upon completing his degree, Christopher spent the holiday season in Baton Rouge with his parents, and Desirae and the Parkinsons visited. In 2018, Christopher moved closer to Desirae near Maryland's Eastern Shore, renting homes in various locations. The couple became engaged in early 2018 and set a wedding date for April 2018. Throughout their relationship, Christopher and Desirae battled addiction. Prior to the April wedding, Christopher was hospitalized due to his drug use. As a result, the couple postponed the wedding until October 2018. Christopher was hospitalized a second time in 2018, prior to the October wedding date, causing the couple to postpone

the wedding until October 9, 2020. The couple was married on October 9, 2020, in Hebron, Maryland. After the wedding, Desirae and Christopher lived, rent-free, in a trailer owned by Rhonda Parkinson near the Parkinsons' home in Delmar.

Tragically, Christopher died of a drug overdose on December 22, 2020. The following day, Desirae informed the Hecks and other close family members and friends that she was pregnant with Christopher's child. Following Christopher's death, Desirae moved back in with her parents in Delmar. Throughout Desirae's pregnancy, the Guillots and Hecks helped her prepare for G.G.'s arrival. For example, they raised money through an online fundraiser to support Desirae and the baby.

G.G. was born in July 2021. Following G.G.'s birth, she and Desirae continued to live with the Parkinsons. Shortly after G.G.'s birth, the Guillots and Hecks visited Desirae and the Parkinsons in Delmar to meet G.G.

On October 22, 2021, Desirae left home to visit college friends in Ohio. She made the trip alone, and G.G. remained at home with the Parkinsons. Desirae left the following signed note with her parents: "Dennis Parkinson Sr. [and] Rhonda Parkinson (my parents) have my permission to seek medical attention for my daughter [G.G.]."

On October 25, 2021, Desirae was discovered deceased in an Ohio hotel room. Following Desirae's death, G.G. continued to reside at the Parkinsons' home in Delmar. The Hecks note that "[n]either DJ nor Kim met baby G.G. from her [July 2021] birth until the day of Desirae's October 28, 2021 funeral service."

The Parkinsons filed a Petition for Guardianship of Person and Property for G.G. on October 27, 2021. This filing created a strain on the relationship between the

Parkinsons and Guillots/Hecks. Upon the involvement of legal counsel, however, the Parkinsons permitted G.G. to travel from Maryland to Louisiana for a month-long visit with Christopher's side of the family. Subsequent filings for Guardianship were made, which are detailed below.

Procedural History

On December 10, 2021, the Guillots filed a Motion for Appointment of Attorney for G.G., which was granted on December 13, 2021. Heather Konyar was appointed as the attorney for G.G. On December 14, 2021, DJ and Kim filed a Counter-Petition for Guardianship of Person and Property. On December 20, 2021, the Guillots also filed a Counter-Petition for Guardian of Person and Property. On December 23, 2021, DJ and Kim filed an Answer to the Parkinsons' Petition. On January 3, 2022, the Hecks filed their Counter-Petition for Guardianship, requesting that the Guillots be appointed co-guardians of G.G. and that they, the Hecks, be named alternate co-guardians.

A court appearance was set for January 13, 2022. Subsequently, the court entered a Pendente Lite Consent Order placing G.G. in the shared, alternating two-week custody of the Parkinsons and the Guillots, with remote weekly visitation granted to the Hecks. On February 10, 2022, the Guillots filed an Amended Petition requesting that the Hecks be named co-guardians for G.G. and that they be named alternate co-guardians. Effectively, the Guillots supported the Hecks' Petition for Guardianship.

On April 8, 2022, the court entered a second Pendente Lite Consent Order. The Order maintained the first order's shared, alternating two-week custody between the

Parkinsons and the Guillots/Hecks, and it extended remote weekly visitations to DJ and Kim.

A hearing on the merits was conducted on March 28, March 31, May 31, and June 1, 2022, in the Circuit Court for Wicomico County. The trial judge then issued a 33-page written Opinion and Order on June 28, 2022. The Opinion included the facts the trial judge considered, and it applied to those facts the legal framework set forth in *Montgomery County Department of Social Services v. Sanders*. 38 Md. App. 406, 419 (1978).

In the Opinion and Order, the court appointed DJ and Kim as G.G.'s guardians. The circuit court's decision was that "DJ and Kim can be trusted to honor the legacy of [G.G]'s parents, care for [G.G.'s] family environment, and maintain contact and relationships with the rest of her family," and "it is in [G.G]'s best interest that the role DJ and Kim will take on will be that of her guardians."

In addition, the circuit court ordered that the Parkinsons, Hecks, and Guillots shall have reasonable and liberal visitation with G.G. at the discretion of DJ and Kim. It further ordered that G.G. is to visit the Hecks in Louisiana not less than one week every three months, and the Hecks are responsible for making arrangements for G.G.'s travel. G.G. must be accompanied by at least one guardian on her trips to Louisiana at the guardians' own cost. Similarly, an adult member of the Heck or Guillot family must accompany G.G. from Louisiana to Maryland at their own cost. The court left all holiday visitation to the discretion of the guardians. There must be reasonable and liberal access to video and telephone calls between the non-custodial parties and G.G. The guardians

are also required to file an Annual Report in accordance with Maryland Rule 10-206 within ninety (90) days of the issuance of the order, and annually thereafter in accordance with Maryland Rule 10-206(b).

The Hecks timely filed a Notice of Appeal on July 25, 2022. Neither the Parkinsons nor the Guillots appealed the circuit court's decision.

STANDARD OF REVIEW

When this Court reviews minor guardianship or child custody determinations, we utilize three interrelated standards of review. *Matter of Meddings*, 244 Md. App. 204, 220 (2019) (concluding that an appellate court should review adult and juvenile guardianship cases under the same standard as child custody cases); *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). First, this Court does not set aside factual findings of a trial judge within such proceedings unless they are clearly erroneous. *Sanders*, 38 Md. App. at 419. Second, we remand for further proceedings if the court "erred as to matters of law . . . unless the error is determined to be harmless." *In re Yve S.*, 373 Md. 551, 586 (2003). Finally, when the court's final conclusion rests on sound legal principles and factual findings that are not clearly erroneous, we do not set aside the decision "absent a clear showing of abuse of discretion." *Gillespie*, 206 Md. App. at 165-66.

DISCUSSION

This guardianship action is governed by § 13-705 of the Estates and Trusts Article of the Maryland Code. *See* Md. R. 10-205.1(a) ("In determining whether to appoint a guardian of the person of a minor or disabled person, the court shall apply the criteria set

forth in Code, Estates and Trusts Article, § 13-705."). As the circuit court noted in its Opinion, although the statute only uses the term "disabled person," the applicable rule permits the interchangeable use of "minor" and "disabled person." Md. R. 10-205.1(a). Section 13-707 of the Estates and Trusts Article details the priority structure that applies to guardianship actions, and the circuit court applied that priority structure, which the parties do not challenge on appeal. *See* Md. Code Ann., Est. & Trusts § 13-707(a)(7), (a)(9).

The circuit court was tasked with identifying the party "best qualified" to serve G.G.'s best interests:

> In . . . expressly recognizing the authority of circuit courts to appoint a guardian of the person of a minor, but without delineating the guardian's powers and duties, the legislature intended that circuit courts would exercise their inherent equitable jurisdiction over guardianship matters pertaining to minors, adopting standards with respect thereto as would be consistent with and in furtherance of the [child's] best interests.

Wentzel v. Montgomery Gen. Hosp., Inc., 293 Md. 685, 701 (1982) (citations omitted). Therefore, the proper standard to apply here is the same best-interest standard that applies to custody determinations, which this Court set forth in *Sanders*. 38 Md. App. at 420. *Sanders* identified a non-exhaustive list of factors for courts to consider when making best-interest 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) potentiality of maintaining natural family relations; (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.

Id. (citations omitted).

In this appeal, the Hecks challenge the circuit court's findings as to five of the eight factors that the court considered and argue that the circuit court committed clear error

> by choosing [DJ and Kim] as best suited to address and empathize with G.G., to preserve her relationship with other family members, and to cultivate an environment conducive to maintaining those good relations, which were the court's "announced objectives" along with its misplaced notion that G.G.'s parents desired her to be raised in Wicomico County.

The Hecks argue that the court improperly ignored evidence on some points while overlooking the lack of evidence on other points. We agree and hold that findings of fact as to the "desire of the natural parents" and "mental health" factors were clearly erroneous.

I. THE CIRCUIT COURT'S FACTUAL FINDINGS AS TO THE "DESIRE OF THE NATURAL PARENTS" AND "MENTAL HEALTH" FACTORS WERE CLEARLY ERRONEOUS.

The circuit court analyzed eight factors in its Opinion: (1) fitness of the parties; (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 and residences of the parties and opportunities for visitation; (5) material opportunities affecting the future life of the child; (6) the relationship established between G.G. and each party; (7) the ability of each party to meet G.G.'s needs regarding education, socialization, culture and religion, and mental and physical health; and (8) the ability of

each party to consider and act on the needs of G.G., as opposed to the needs or desires of the party, and protect G.G. from the adverse effects of any conflict between the parties.

The Hecks challenge the court's findings for factors 2, 3, 4, 5, and 8 on appeal. We conclude that the circuit court's findings as to the parties' characters and reputations (factor 2), the parties' likelihood to communicate with non-custodial family members (factor 4), and G.G.'s material opportunities (factor 5) were not clearly erroneous. We also conclude, however, that the court's findings as to the desire of the natural parents (factor 3) and G.G.'s future mental health (factor 8) were clearly erroneous—not supported by substantial evidence. We shall review each of the five challenged factors in turn.

A. The Circuit Court Committed Clear Error in Finding that the Natural Parents Desired that G.G. Be Raised in Wicomico County, Maryland.

The circuit court considered various factors, including the "desire of the natural parents," when it reviewed the evidence presented at trial. Under the "desire of the natural parents" factor in the court's Opinion, the court relied upon the note that Desirae had left authorizing her parents to seek medical care for G.G. in Desirae's absence when she went on a trip to visit friends in Ohio:

> [T]he note left by Desirae fails to comply with the statutory requirements [to be a last will and testament]. However, this [c]ourt would be remiss to not take this note into consideration as to what Desirae "desired" in terms of care for [G.G.] at that time. The October 22, 2021 note is enough for this [c]ourt to infer Desirae's desire that . . . [G.G.] remain in Maryland in her absence.

The Opinion went on to reiterate the following evidence:

> Further bolstering the notion that the intention was for [G.G.] to be raised in Maryland is the fact that Christopher and Desirae got married in Maryland, lived in and, for all intents and purposes, planned to stay in Maryland, and when Christopher died, Desirae remained in Maryland. Maryland was their home, and there is nothing to indicate it wouldn't have remained that way.

The court concluded by stating, "this [c]ourt weighs the 'desire of the natural parents' in favor of [G.G.] remaining in Maryland." At the end of the Opinion, the court reviewed the various factors it took into consideration in coming to its final conclusion and stated the following:

> Lastly, the [c]ourt took into consideration the factual predicate of this case. Christopher and Desirae began their lives together in Wicomico County, [G.G.] was born in Wicomico County, and Desirae's note—while not a valid will . . . —expressed a desire for [G.G.] to remain in Wicomico County.

The Hecks reject the circuit court's conclusion that G.G.'s parents intended for her to be raised in Maryland. They argue,

> this Court should note that not a single witness or document attested to either of the deceased parents expressing their intention that G.G. be raised in Wicomico County or their intention to make the County their permanent residence. Nevertheless, that vein of thinking undeniably runs through the lower court's Opinion. The court actually refers in the Opinion to the deceased parents' "desire for [G.G.] to remain in Wicomico County" after their deaths as the "factual predicate of this case." In so finding, the court relied heavily on a handwritten medical authorization containing no reference to Wicomico County or to "child-raising."

The Hecks argue that the court's inference, based on the note alone, that Desirae intended for G.G. to be raised in Maryland "is not supported by the evidence" and was

"clearly against the logic and effect of facts and inferences before the court." The note, according to the Hecks, was intended only to authorize the Parkinsons to seek medical attention for G.G. if a medical emergency arose during Desirae's brief "sojourn" to Ohio.

As to the additional facts that "bolstered" the court's inference of the intent of G.G.'s parents, the Hecks argue the following: "The other findings upon which the court based its 'Wicomico County' conclusion . . . are circumstantial only and can hardly be said to demonstrate an 'intent' on the part of either parent to make the County a permanent residence." The Hecks assert that Christopher and Desirae did not freely choose to stay in Maryland but rather were confined to living in Maryland, where they could live for free in Rhonda Parkinson's trailer, because of unemployment, battles with addiction, and the COVID-19 pandemic. The Hecks also contend that Desirae's remaining in Maryland with her parents after Christopher's death was a result of being pregnant and unemployed.

DJ and Kim, on the other hand, contend that it is "natural and appropriate to have G.G. raised where the trial court inferred that the mother of G.G. wanted the child to be raised." DJ and Kim highlight that Desirae and Christopher were married and remained in Maryland prior to their deaths. DJ and Kim argue that the note in combination with the couple's documented history in Maryland over the years provided proper grounds for the circuit court to conclude that "Maryland was their home, and there is nothing to indicate it wouldn't have remained that way."

When, in *Sanders*, this Court enunciated various factors for a court to consider within custody determinations, one factor was the "desire of the natural parents and

agreements between the parties." 38 Md. App. at 420. In *Sanders*, we cited a few Maryland cases, all of which discussed either the parents' attempts to gain custody of the child or a written, explicit agreement between the parents regarding custody of the child. *Id.*; *Breault v. Breault*, 250 Md. 173, 180 (1968) ("[T]he agreement between the parties specifically gave custody of the children to [the mother], with the privilege of visitation to be accorded [the father]."); *McClary v. Follett*, 226 Md. 436, 438 (1961) (explaining, for example, that "the [father] made 'repeated [but unsuccessful] efforts to locate the whereabouts of his wife,' in an attempt to obtain custody of his son"); *Colburn v. Colburn*, 20 Md. App. 346, 367 (1974) (explaining that no "written stipulation" between the parties appeared in the record and that any "oral stipulation" was "far from definite") (internal quotation marks omitted).

When considering the desire of the natural parents, courts look at the "express wishes of the [parents]," which often refers to the parents' custody requests or outward attempts to gain custody. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 254 (2021). This factor can also refer to the parents' statements or testimony relating to the custody arrangement. *In re Jessica M.*, 72 Md. App. 7, 13 (1987) ("Although there is no agreement between the parties, [the mother] desires that the foster parents retain custody of her children until she can get her 'act together.'"); *McCready v. McCready*, 323 Md. 476, 478-79 (1991) (discussing the parents' testimony at trial as to their existing custody agreement). In general, however, Maryland courts do not rely on documents other than agreements between possible custodians to infer what the parents' desires might be absent an explicit expression of their desires.

Here, the circuit court gave no weight to any agreements among the parties because those agreements were ordered by the court and provided for a visitation arrangement rather than a custody arrangement. Also, the parents were never engaged in custody disputes, so the record does not contain explicit evidence regarding custody requests or desires. Moreover, because neither parent was alive at the time of trial, we have no testimony as to the parents' desires. The circuit court, however, turned to the medical authorization Desirae wrote before leaving for her trip to Ohio to infer the parents' desire. The circuit court accepted that the note "fails to comply with the statutory requirements" to constitute a last will and testament under Estates and Trusts § 4-102. Furthermore, the note does not mention Wicomico County, Maryland, or custodial plans for G.G. Nonetheless, the circuit court went on to state that it would "be remiss to not take this note into consideration as to what Desirae 'desired' in terms of care for [G.G.] at that time."

On the contrary, although we afford significant deference to trial courts' factual findings within custody determinations, we find that the circuit court clearly erred here when it relied upon this note to find that the "desire of the parents" was for G.G. to be raised in Wicomico County. On its face, the note was intended as a medical authorization to be used during Desirae's brief absence. Maryland courts seek to understand the parents' desires through clear conduct such as attempts to gain custody or the parents' express statements, whether written or captured in oral testimony. *See J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 254 (2021). This medical authorization does not support the court's inference that Desirae desired for G.G. to remain in Maryland in the event of a

tragedy, nor does it support any inference of intent.

Additionally, we agree with the Hecks' assertion that the court's other findings regarding Desirae and Christopher's residence in Maryland "are circumstantial only and can hardly be said to demonstrate an 'intent' on the part of either parent to make the County a permanent residence."

It is this Court's role not to "substitute our judgment for that of the fact finder" but rather to decide "whether there was sufficient evidence to support the trial court's findings." *Oliver v. Hays*, 112 Md. App. 292, 306 (1998) (citation and quotation marks omitted). The circuit court's decision on this factor is not supported by substantial evidence; the record lacks any clear expressions of Christopher's or Desirae's intent and instead presents a story of a young couple who accepted stability where their family offered it, in Maryland. We find that it was unreasonable for the circuit court to consider this note under this factor and to infer an intent to raise G.G. in Maryland based upon this note or Christopher and Desirae's circumstances.

Trial courts are "entrusted with great discretion in making decisions concerning the best interest of the child," and "the trial court's decision governs, unless the factual findings made by the [trial] court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (citations and quotation marks omitted). Here, the court's factual findings were clearly erroneous.

Furthermore, in its conclusion, the circuit court stated that it "took into consideration the factual predicate of this case," that "Christopher and Desirae began their lives together in Wicomico County, [G.G.] was born in Wicomico County, and

Desirae's note—while not a valid will . . . —expressed a desire for [G.G.] to remain in Wicomico County." Although it is unclear whether the court intended to convey here that its final guardianship decision was founded upon these factual findings and related inferences, we agree with the Hecks' impression that this "vein of thinking undeniably runs through the . . . court's Opinion." Because any inference of intent related to G.G.'s custody based on the medical authorization or on Christopher and Desirae's circumstances is unsupported by the evidence, the court may not consider such findings or inferences as a factual predicate of the case.

On remand, the circuit court shall not consider the "desire of the natural parents" factor because the evidence in the record does not relate to this factor—neither the medical authorization nor the parents' history in Maryland support an inference of intent to raise G.G. in Maryland. Furthermore, the court shall not consider, in any respect, the medical authorization as evidence of the parents' intent.

B. The Circuit Court Did Not Commit Clear Error in Concluding that the Character and Reputation of the Parties Was a "Neutral" Factor.

In consideration of the parties' character and reputation, the circuit court stated the following in its Opinion: "While this [c]ourt takes what was said [by the parties] into consideration, it was the testimony of the non-party witnesses by which this [c]ourt is more persuaded." The court noted that the Hecks "have made it a point to raise their kids in their church and instilled in them the importance of service to one's community." The court then noted that a lifelong friend of Sarah Heck "described Sarah as someone who was sweet natured and a wonderful mother," and that the friend "was also impressed with

Sam's maturity when she met him as a younger man." Another friend similarly "labeled the Hecks as good parents." The court concluded that the Hecks "clearly have a reputation of community involvement, and both have sound moral character."

As to DJ and Kim, the court acknowledged that they "did not put forward any character witnesses," but then stated that the court was "able to glean from their testimony that the two of them are people of strong character":

> Specifically, the [c]ourt points to the decision the two of them made to foster two boys who come from a terrible situation, bringing them into their home. They were under no obligation to do so, but they felt a moral obligation to care for them simply because the children were family. That is something this [c]ourt cannot ignore, and something that speaks volumes to their character.

The court then concluded that "all of the parties are of good character and reputation in their community" and that "this factor is neutral."

The Hecks reject the trial court's conclusion that the parties' character and reputation was a "neutral" factor. The Hecks point to the court's statement that it was "more persuaded" by non-party testimony, yet the court "made an exception for [DJ and Kim] who produced no such third[-]party testimony." The Hecks argue that the testimony of their "non-party witnesses," in which they were described as "very loving," "very dependable," and "very involved," should have been more persuasive to the court than the first-hand accounts of character provided by DJ and Kim. Further, the Hecks point to their commitment to feeding the homeless, leading a Girl Scout troop, and fostering animals as reasons why the circuit court's finding of neutrality was "against the logic and effect of facts and inferences before the court." The Hecks concede that DJ and

Kim have extended "undeniable charity" to their foster boys, but they go on to assert that DJ and Kim have "intransigent and thin-skinned dispositions," which "routinely" leads to "cutting off" and "pushing away" their family members. As a result of these traits and behaviors, the Hecks maintain that the circuit court's conclusion as to this factor "was contrary to the court's 'announced objectives,' and was clear error."

DJ and Kim counter that the circuit court properly analyzed the credibility of the witnesses before coming to its conclusion on this factor. DJ and Kim contend that their history as foster parents, their pictures of a happy family and home, and their willingness to open their door again to another child in need, provided the circuit court with ample information to conclude that the character and reputation of the parties is a neutral factor.

The trial court "is in a far better position than [the] appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Davis v. Davis*, 280 Md. 119, 125 (1977); *Innerbichler v. Innerbichler*, 132 Md. App. 207, 229 (2000) (stating that appellate courts "will give due regard to the opportunity of the trial court to judge the credibility of the witnesses") (quoting Md. R. 8-131). Trial courts have the unique opportunity to directly observe and assess the character of the parties. *See Davis*, 280 Md. at 125. The trial judge sees and interacts with the parties, and she has the opportunity to gauge sincerity and analyze other indicators that a "cold record" simply does not contain. *Id.* As an appellate court, we do not have the luxury of observing the parties and witnesses to make credibility determinations. Particularly in child custody or guardianship cases, the "chancellor's findings of fact are to be given great weight since he has the parties before

him and has the 'best opportunity to observe their temper, temperament, and demeanor, and so decide what would be for the child[ren]'s best interest.'" *Sanders*, 38 Md. App. at 418-19 (quoting *Kartman v. Kartman*, 163 Md. 19, 23 (1932)).

"We also underscore that we may not substitute our judgment for that of the fact finder, even if we might have reached a different result. Instead, we must decide only whether there was sufficient evidence to support the trial court's findings." *Oliver*, 112 Md. App. at 306 (citation and quotation marks omitted). "In making this decision, we must assume the truth of all the evidence, and of all the favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the lower court." *Id.* (citation and quotation marks omitted).

Here, the circuit court heard four days of testimony and reviewed an extensive record evidencing the character and fitness of all the parties. The Hecks called several character witnesses to testify; DJ and Kim testified on their own behalf and did not call character witnesses. Despite the circuit court's statement that it was "more persuaded" by non-party witnesses as to this factor, and DJ and Kim did not present non-party witnesses, it concluded that this factor was "neutral." We acknowledge the Hecks' protest as to this contradiction and agree that the court's two statements cannot be perfectly reconciled, but we cannot go as far as concluding that the court's finding of neutrality on this factor was clear error; the court's factual finding is supported by substantial evidence. Although this Court may not have arrived at the same conclusion as the circuit court on this factor, we cannot say that the circuit court's findings were clearly erroneous.

C. The Circuit Court Did Not Commit Clear Error in Concluding that the Hecks Were Most Likely and DJ And Kim Were Second-Most Likely to Communicate with Non-Custodial Family Members and to Ensure Their Visitation with G.G.

In consideration of this factor, the court noted that it would simultaneously consider the "'residences of the parties and opportunities for visitation' because one certainly [affects] the other." The court began by stating that the attorney for G.G. "argued that the ability to maintain family relations was one of the more important factors to be considered in this case, and rightfully so, given the geographical distance between the parties." The circuit court's Opinion reviewed the relational dynamics among the parties:

> While there is a strong and open line of communication between the Hecks and Guillots, the same cannot be said about all parties, a fact only exacerbated by the geographical divide.
>
> . . . [The Parkinsons] have a strained relationship with DJ and Kim for reasons not exactly clear to this [c]ourt, and it is common for DJ and the Parkinsons to disagree and not speak for substantial lengths of time. . . .
>
> Turning to DJ and Kim, they have been handicapped with regard to access and communication with all parties from the outset of this case. . . . [C]ommunication with them and the Parkinsons is strained, and at times non-existent. Prior to the first day of testimony, DJ and Kim had not regularly communicated with the Guillots and the Hecks, and when communication did begin after the hearing, they were "cold shouldered" and felt they did not receive a warm reception. Since then, communication has increased, and Kim specifically has communicated with Sarah regarding [G.G.]. This [c]ourt does not weigh this factor against them for a multitude of reasons, the first being that they did not have an opportunity to communicate with, and build a relationship with, the Guillots or the Hecks prior to the start

> of litigation in this case. Unlike the Parkinsons, who established a relationship with the Guillots and Hecks while Desirae and Christopher were dating, DJ and Kim were not afforded such an opportunity.

The court further stated the following regarding DJ and Kim's ability to maintain natural family relations:

> This [c]ourt has no doubt that DJ and Kim will teach [G.G.] about her family and include them in her life, because that is exactly what they are doing as foster parents. DJ and Kim are the only parties that have experience bringing non-biological children into their home, and in doing so understand the importance of family, even to children that have been removed from their biological families. DJ reiterated this when he testified that if [G.G.] was in their care, they would not limit anybody's access to her, and any family member could come visit. This [c]ourt views this testimony as particularly credible. This more than demonstrates their ability to maintain relations with all of the parties regarding [G.G.].

The court then concluded that it viewed the weight given to this factor in the following order: "the Hecks, DJ and Kim, the Guillots, and finally the Parkinsons." The court also noted that the "families live relatively close to major international airports," which "has been an effective means of transportation to ensure visitation between the families in Maryland and Louisiana."

The Hecks[3] raise several challenges to the circuit court's finding that DJ and Kim

[3] G.G.'s attorney, Ms. Konyar, adopts the Hecks' arguments and refers to the position and recommendation she articulated at trial. At trial, Ms. Konyar argued that this factor "is the most important part of this case for [G.G]." She emphasized that G.G. "needs to have a relationship and deserves to have a relationship and the privilege of a relationship with every single person in this room," referring to the family gathered at trial. Ms. Konyar then explained that Sarah Heck "has demonstrated the greatest ability to be able to create that environment."

are likely to communicate with non-custodial family members and ensure their visitation with G.G. They first emphasize the court's announced objective to "appoint[] a guardian" who would "cultivate an environment conducive to maintaining family relations" and "ensure contact between the child and her family members." The Hecks then reiterate DJ's testimony that he is "not good at communicating with people," and his statement that he does not "feel comfortable texting with another man's wife" when asked about communicating with Sarah Heck regarding G.G.'s health. Kim merely stated, "we are willing to have a relationship with everybody." The Hecks further note that "the court agreed with [the attorney for G.G.] that Sarah had the 'greatest ability' to maintain contact between the family members," yet the court "expressed concern that Kim and DJ had felt 'cold-shouldered' by the Hecks and the Guillots." The Hecks contend that this perception by DJ and Kim was "yet another example of their thin skins."

Additionally, the Hecks identify seeming biases from the circuit court:

> The court also went out of its away to excuse the fact that DJ and Kim had forged no relationship with the Guillots or the Hecks by stating that "they were not afforded [] an opportunity" to do so. Again, there was no evidence in the record supporting any finding that DJ and Kim weren't given "an opportunity" to acquaint themselves with [the Guillots or Hecks]. They simply didn't make any effort.
>
> Further, although DJ's and Kim's "cutting off" of the [] Parkinsons and the child's parents was never disputed by them, the court declined to hold even that against them. After observing that [DJ and Kim's] communications with the [] Parkinsons is "strained and at times non-existent," the court nevertheless went on to find that "DJ's [reiteration] that if G.G. was in their care, they would not limit anybody's access to her" was good enough for the court . . . .

The Hecks contend that DJ and Kim's history of "cutting off" various family members is irreconcilable with this finding. The Hecks conclude that "[n]o reasonable person would have found as favorably toward [DJ and Kim] as did this trial court," and "[t]his was clear error."

DJ and Kim, on the other hand, argue that the circuit court did not err in determining that they are likely to communicate with non-custodial family members. They begin by stating that "[the Hecks] again want a reviewing court to superimpose their judgment on that of the trial court's ruling after only the trial court heard and got a feeling for the parties and witnesses in this case." DJ and Kim point to the circuit court's findings that they have not yet been afforded the opportunity to form a relationship with the Hecks or Guillots due to "cold-shouldering" from them during trial. Further, DJ and Kim highlight the circuit court's emphasis on their unique role as foster parents and their experience with instilling the "importance of family, even to children that have been removed from their biological families." DJ and Kim contend that the circuit court properly considered their experience as foster parents coupled with DJ's sworn testimony regarding other family members' access to G.G. and came to a reasonable conclusion based on that evidence.

The trial court "is in a far better position than [the] appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Davis*, 280 Md. at 125; *Innerbichler*, 132 Md. App. at 229 (stating that appellate courts "will give due regard to the opportunity of the trial court to judge the credibility of the witnesses") (quoting Md. R. 8-131); *In re Joshua David C.*,

116 Md. App. 580, 592 (1996) ("Indeed, we accept the facts as found by the hearing judge, unless clearly erroneous."). "We also underscore that we may not substitute our judgment for that of the fact finder, even if we might have reached a different result. Instead, we must decide only whether there was sufficient evidence to support the trial court's findings." *Oliver*, 112 Md. App. at 306 (citation and quotation marks omitted). "In making this decision, we must assume the truth of all the evidence, and of all the favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the lower court." *Id.* (citation and quotation marks omitted).

In the present case, the circuit court stated that the parties' abilities to effectively communicate with non-custodial family members is of the utmost importance due to the geographical distance between G.G.'s Maryland family and her Louisiana family. More than 1,200 miles separate the parties. Substantial evidence supports the court's conclusion that the Hecks are most likely to maintain natural family relations and DJ and Kim are second-most likely to do so. Under the pendente lite orders, G.G. spent prolonged periods with the Hecks and Guillots in Louisiana. On numerous occasions, Sarah Heck corresponded with DJ to offer him and Kim the opportunity to video chat with G.G. while she was in the Hecks' care. On most occasions, Sarah initiated the conversation and showed a willingness to accommodate DJ and Kim's schedule.

The court also found, however, that DJ and Kim were, at times, "cold shouldered" by the Hecks during trial. The court further concluded that, although the Hecks had established relationships with the Guillots and Parkinsons while Christopher and Desirae were alive, "DJ and Kim were not afforded such an opportunity"; the court, however, did

not cite specific testimony or evidence to support this conclusion. Through testimony, DJ and Kim revealed that they chose not to communicate with or extend hospitality to Christopher or Desirae during their lifetimes because, as DJ stated, their involvement with drugs posed a danger to DJ and Kim's family: "I would've never let somebody in my home that would jeopardize the safety of anybody in my home." DJ explained, "I guess you could say I'm slightly paranoid as being a former correctional officer, I don't want people that have, I limit the contact of people that have a record in my home." The court does not mention this testimony in its Opinion, but it placed significant weight on DJ's testimony that he and Kim would not limit anyone's access to G.G. if she were placed with them. The court also noted that "communication has increased" between DJ and Kim and the Hecks, and "Kim specifically has communicated with Sarah regarding [G.G.]."

The circuit court concluded that the Hecks are most able to maintain family relationships and DJ and Kim are second-most able to do so. Although this Court may not have arrived at the same conclusion as the circuit court on this factor, we cannot say that the circuit court's findings were clearly erroneous because substantial evidence, which the court discussed in its Opinion, supports the findings.

D. The Circuit Court Did Not Commit Clear Error in Finding the "Material Opportunities" Factor Was a "Neutral" Factor.

In its Opinion, the circuit court first noted that this factor required "the [c]ourt to determine what [G.G.]'s life may look like from a material aspect depending on who was granted guardianship." Citing to Maryland case law, the court stated that it "is to look

beyond just the financial and earning potentials of each party, and look at educational, social, and any other factors it deems necessary." The court then briefly noted that all the parties are either "employed, retired, or have chosen to stay at home due to a spouse being able to support the family on one income." In a footnote, the court reviewed the evidence presented as to each household's income:

> [DJ's] income was not elicited through testimony, however he is employed fulltime as a wastewater operator with the City of Fruitland. Kim Parkinson is a stay[-]at[-]home mom raising the five boys in their house. She testified that she earns money through what she called a "side-hustle." DJ and Kim receive $2,900 per month to supplement their income for serving as foster parents. Sarah Heck is employed full time and earns a salary of $59,000 per year. Sam Heck is also employed full time and earns a salary of $114,000 per year, pursuant to provided tax returns.

The court then considered G.G.'s educational opportunities with each of the parties:

> [T]he Hecks presented evidence about the schools and daycares that their children attend that [G.G.] could attend, and DJ and Kim spoke about the school their boys are enrolled in and the programs such as [Individualized Education Programs] and counseling available in public schools not provided in private schools. All of this testimony indicates to this [c]ourt that the parties intend to make education a priority over the course of [G.G.]'s life.

Next, the court reviewed G.G.'s social opportunities:

> From a social standpoint, the Hecks have chosen to involve their children the most in the community. They are involved in their local church, [G]irl [S]couts, daycare programs, and a multitude of other activities. Also, the Hecks are in close proximity to the city of Baton Rouge which has a population of over 222,000 which might provide more opportunities for programs not available in Wicomico County or the immediate

> vicinity. DJ and Kim involve their children in programs at school and summer programs, as well as other activities in the Salisbury area.

The court concluded that "this factor is neutral," stating that "this factor does not weigh in favor of any party, nor does it weigh to the detriment of any either."

The Hecks contend that the circuit court misapprehended the "material opportunities" factor in finding the factor to be neutral among the parties. The Hecks are both employed and have a combined household income in excess of $170,000 to support their family of five. Meanwhile, DJ and Kim are a single-income household supporting a family of nine, including G.G. The Hecks describe the unknown nature of DJ's income as "a critical missing element of proof."

Further, the Hecks highlight the difference in the environment and the quality of the rooms outfitted for G.G. in each household:

> While individual tastes in house design and decor can certainly differ, the Hecks offered a pleasant nursery already fitted out for G.G., complete with a home-made puzzle containing photos of her parents and her family members, as well as clean, attractive surroundings in which she can be raised to young adulthood alongside the Hecks' three children. . . .
>
> In [DJ and Kim's] household, G.G. is one of nine occupants, along with the five young boys, and her arrival in the home resulted in the displacement of the four-year-old [child] who now shares a bedroom with two other boys. Their neighborhood was left undescribed. . . . Their schools were identified by name and no other distinction. And excepting the TAG program and the Gen-X program next year for one boy and the undescribed "summer program" for the others, there was no evidence adduced by [DJ and Kim] regarding the kinds of activities and opportunities that G.G. would enjoy as part of their household.

The Hecks then state the following:

> Nevertheless, the court found this factor to be *neutral*, finding that "[o]verall, this [c]ourt is not concerned" about those material opportunities notwithstanding the extraordinary amount of evidence on the Hecks' side and the remarkable [scarcity] of evidence presented by [DJ and Kim].

The Hecks contend that the foregoing concerns should have been crucial to the circuit court's analysis and its failure to properly weigh this factor was clear error.

DJ and Kim, however, argue that "the trial court evaluated both the testimony and the parties and used its best judgment as to what will be best for the future of G.G." According to DJ and Kim, more "money and material wealth" is not a proper indicator in determining what is in G.G.'s best interest. Furthermore, DJ and Kim note that any of the five attorneys who represented the other parties at trial could have inquired about DJ's income, but none did so.

To determine which party offers the child the best material opportunities, the trial court must "examine the totality of the situation in the alternative environments and avoid focusing on any single factor such as the financial situation." *Sanders*, 38 Md. App. at 420-21 (citation omitted). Although economic advantages are important, they are "not decisive." *Pastore v. Sharp*, 81 Md. App. 314, 324 (1989) (quoting *Butler v. Perry*, 210 Md. 332, 341 (1956)). "Additionally, all evidence contained in an appellate record must be viewed in the light most favorable to the party prevailing below." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) (citing *Md. Metals, Inc. v. Metzner*, 282 Md. 31, 41 (1978)).

Here, upon weighing the evidence, the circuit court determined that it was "not

concerned about the material opportunities—financially, educational[ly], and socially—that could be provided by the parties." We acknowledge the Hecks' concern that DJ's income remains unknown; none of the parties inquired about it at trial, and the court did not exercise its authority to do so. *Johnson v. State*, 38 Md. App. 100, 107 (1977), cert. denied, 282 Md. 734 (1978) ("A judge has the right to ask questions in the course of a trial."); *McMillian v. State*, 65 Md. App. 21, 27 (1985) (explaining a judge's right to ask questions "to clarify testimony and bring out the full facts") (citations omitted). The circuit court properly considered more than the parties' financial means when evaluating this factor, but we note that G.G.'s guardians' financial situation will certainly impact her material opportunities.

Although this Court may not have arrived at the same conclusion as the circuit court on this factor, we cannot say that the circuit court's findings were clearly erroneous because the evidence, which the court discussed in its Opinion, supports the findings. Nevertheless, on remand, the circuit court may choose to elicit additional testimony regarding the parties' financial means.

E. The Circuit Court Committed Clear Error in Finding that DJ and Kim Would Address G.G.'s Potential Mental Health Issues in the Future Better Than the Hecks Would.

The circuit court chose to analyze "other factors" not specifically identified in *Sanders*, including "socialization, culture and religion, and mental and physical health." 38 Md. App. at 420 (identifying non-exhaustive factors for courts to weigh within custody determinations); *Taylor v. Taylor*, 306 Md. 290, 303 (1986) (stating that, in child custody matters, "no single list of criteria will satisfy the demands of every case"). The

court identified this factor as holding "particular importance" for G.G. The court noted that it was satisfied that all the parties would address G.G.'s needs with respect to socialization, culture, and religion, and, therefore, focused on G.G.'s mental and physical health. In consideration of this factor, the circuit court's Opinion provided an explanation of each party's ability to address G.G.'s emotional needs:

> [G.G.], in essence, is akin to a foster child. Both of her parents are deceased and—while she is not old enough to understand yet—she is bouncing around relatives' homes and living out of a baby bag, just like a child does through the foster system. The only parties who can even begin to understand the conversations and the emotional adjustments that come with raising a non-biological child are DJ and Kim. Both from a parent's standpoint, and that of the child. They are best suited to meet her mental and physical needs because of their training and status as foster parents, their experience raising two non-biological children who come from traumatic backgrounds, their experience raising children who require special education plans, and the fact that Kim stays home full time to address issues that may arise. This experience, as foster parents and the fact Kim is available at home full time, is an invaluable asset to [G.G.].
>
> This is not to say that the Hecks could not address issues of mental health as they arise, but they are simply not the best suited parties to address the issues that come with raising a non-biological child. In support of this finding, this [c]ourt points to Sarah's testimony when asked if she has ever had a non-biological child living in her home; her answer was "no." All the books on the subject do not equate to the experience gained by foster parents who raise non-biological children. Similar to the Hecks, the Guillots are more than capable of addressing [G.G.]'s needs—mental and physical—as they arise, however, the lack of experience raising non-biological children elevate DJ and Kim as the best suited party as to this factor.
>
> Another reason this factor weighs in favor of DJ and Kim, and away from the other parties—in particular the

> Hecks—is the additional experience DJ and Kim have with other areas of mental health such as ADHD, individual education plans, learning disabilities, and issues with inability to sleep. All of this broadens DJ and Kim's ability to recognize, seek treatment, and manage the mental and emotional health of their children, both biological and non-biological. Sarah nor Sam testified to having any experience with the above issues that could face [G.G.] in the future.

The court concluded its analysis of this factor with the following:

> [G.G.] will one day have to process the loss of her parents, and the steps that were taken to secure guardianship over her. DJ and Kim are best suited to address this because they are the only parties that, as foster parents, have experience raising and having conversations with nonbiological children in their home. When the time comes to have conversations about these difficult issues—and that time will come—it is in [G.G.]'s best interests to only have to wait until DJ gets off of work to have such conversation and wait until a visit can be arranged or over the telephone.

The Hecks take issue with a few of the circuit court's findings here. First, they question the court's "attribution to [DJ and Kim] of superior wisdom and experience in child-raising borne solely from the fact that they fostered two boys for 13 months." Second, they take issue with the court's projection of mental illness on G.G. in the future and its conclusion that DJ and Kim are "better able to respond because of their experience fostering . . . since April 2021." The Hecks object to this conclusion and argue the following:

> [T]he situations of those two boys are not remotely comparable to G.G.'s. The boys were reportedly victims of nasty abuse in their former surroundings whereas G.G. has been raised by two sets of loving grandparents and by Sarah and Sam since she was three months old; there is no hint of abuse in her background. According to everyone, she was a happy, healthy 16-month-old baby at trial. There was

> absolutely no proof that mental health illness probably awaits her, notwithstanding the trial court's premonitions.

In the event that G.G. does need therapy in the future, the Hecks contend that they are unequivocally qualified to serve G.G.'s needs. They state that the circuit court "completely discounted Sarah's education, training, employment and her dozen years [of] experience as a Licensed Clinical Social Worker." In her role, Sarah Heck "assists patients in finding the right therapy programs for mental health issues." Further, Sarah Heck has preemptively enlisted the help of Dr. Rhonda Norwood, a child psychologist, to help deal with mental health issues should they arise, which the Hecks contend the circuit court ignored.

The Hecks further argue that the court misapprehended DJ and Kim's ability to adequately address mental health issues. The Hecks highlight that the two foster boys were not in specialized learning programs at their schools at the time of trial and that Kim was unaware of the names of the drugs the boys were prescribed. The Hecks also express concern that DJ and Kim installed security cameras in their home to deal with one of the foster boy's sleep issues instead of pursuing therapeutic remedies. Finally, the Hecks question the exclusively positive treatment by the circuit court of DJ and Kim's role as foster parents. The Hecks argue that the trial court should have considered the toll it takes to raise two children who have been victims of severe abuse:

> Both of the boys continue in weekly psychotherapy, are both diagnosed with ADHD, and are both taking neurobehavioral prescriptions twice a day. They are both being evaluated for learning disabilities and apparently warrant camera surveillance at home. Recognizing that these boys are in no way to blame for their circumstances, one child suffering with

> emotional and/or learning disabilities can take a significant toll on a family. In this case, there are two children requiring extra attention in a household which includes three other boys and G.G. No reasonable person would conclude that this situation is not likely to burden the parents' time and resources to the detriment of the newly added child.

The Hecks conclude that the court "clearly erred in concluding that [DJ and Kim's] recent foster parent experience gave them any kind of advantage over the Hecks in dealing with G.G.'s as-yet non-existent mental health issues."

DJ and Kim, however, argue that the circuit court properly concluded that G.G. will likely experience some form of mental health issues and that DJ and Kim's experience as foster parents places them in a better position to manage such issues. According to DJ and Kim, the likelihood that G.G. will face mental health issues is far greater than the Hecks understand. Also, Kim testified that there will come a time when G.G. will be informed of her family's history, and Kim explained how, based on her experience with foster children, to approach these conversations.

The trial court "is in a far better position than [the] appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Davis*, 280 Md. at 125. A reviewing court's role is to "assess the sufficiency of the evidence, not embark on an independent fact-finding mission and substitute its [judgment] for that of the trial judge." *In re Adoption/Guardianship No. 3598*, 347 Md. at 331. For these reasons, "we accept the facts as found by the hearing judge, unless clearly erroneous." *In re Joshua David C.*, 116 Md. App. at 592. The court, however, must consider all the evidence and the totality

of the circumstances in drawing its conclusions. *Sanders*, 38 Md. App. at 420-21.

The circuit court placed great significance on this factor, yet it did not review all the relevant evidence in concluding that this factor weighs in favor of DJ and Kim. Despite its declaration that this factor was of particular importance to G.G., the court disproportionately considered the evidence that favored DJ and Kim without discussing the evidence that favored the Hecks. One omission in the court's discussion is Sarah Heck's professional training and experience with identifying, navigating, and treating mental health concerns. At the beginning of the Opinion, the court introduced the parties, which was the only time that Sarah's employment was mentioned: "Sarah is employed as a social worker, and has a schedule allowing flexibility to be at home." The court did not consider Sarah Heck's professional experience when analyzing this factor and instead focused nearly exclusively on DJ and Kim's experience as foster parents.

Similarly, the court did not mention within its discussion of this factor that Sarah Heck's work schedule allows "flexibility to be at home," but it did discuss the advantages of Kim's availability as a stay-at-home mom. Additionally, the court did not consider in its Opinion that the Hecks had already contacted a child psychologist in preparation for identifying, navigating, and treating any mental health concerns that may arise during G.G.'s life.

Given the significant omissions of relevant evidence in the court's Opinion, we hold that the factual findings on this factor are unsupported by substantial evidence. *See Oliver*, 121 Md. App. at 306. On remand the circuit court shall reevaluate this factor and, in doing so, must consider the following as well as that which the court discussed in its

Opinion: Sarah Heck's professional training and experience; the Hecks' preemptive consultation with a child psychologist; Sarah Heck's flexible work schedule that would allow her to be home; both the positive and negative implications of DJ and Kim's choice to foster two boys with trauma-filled backgrounds; and any other relevant evidence in the record.

II. BECAUSE THE CIRCUIT COURT RELIED, IN PART, ON CLEARLY ERRONEOUS FACTUAL FINDINGS, WE CANNOT AFFIRM ITS DECISION, AND WE REMAND FOR RECONSIDERATION OF G.G.'S BEST INTERESTS.

As the fact-finder, the court may weigh the factors as it sees fit, examining "the totality of the situation in the alternative environments" without exclusively "focusing on any single factor." *Sanders*, 38 Md. App. at 420-21. When, however, a court relies on clearly erroneous factual findings to reach its final conclusion, we will not affirm and will instead remand for the court to reconsider the relevant factors. *Fuge v. Fuge*, 146 Md. App. 142, 182 (2002); *In re Adoption/Guardianship No. 3598*, 347 Md. at 312 (citations and quotation marks omitted). Here, the circuit court considered five *Sanders* factors[4] and three additional factors, and we hold that the factual findings as to two of the eight factors—"desire of the natural parents" and "mental health"—were clearly erroneous. Additionally, the circuit court identified its findings regarding the "desire of the natural parents" factor as the "factual predicate" of the case. The "factual predicate" statement indicates that the court improperly focused on this single factor, which it cannot consider on remand.

[4] The circuit court found several *Sanders* factors inapplicable to G.G.'s situation, which the parties do not challenge on appeal.

Because the court's decision was based upon clearly erroneous factual findings and the court indicated that the "desire of the natural parents" factor was a "factual predicate" to its conclusion awarding custody of G.G. to DJ and Kim, we cannot affirm the circuit court's judgment. Instead, we shall vacate the judgment and remand for the court to reconsider G.G.'s best interests consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.