Circuit Court for Calvert County
Case No. C-04-FM-20-000580

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 872

September Term, 2022

MYRON DOWELL

v.

LEIGH BLACKBURN

Shaw,
Ripken,
Meredith, Timothy E.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Meredith, J.

Filed: March 9, 2023

*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.

**This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Myron Dowell ("Father"), appellant, appeals from an order entered July 14, 2022, by the Circuit Court for Calvert County denying his motion to modify custody and child support and granting, in part, a cross-motion to modify custody and child support filed by his former wife, Leigh Blackburn ("Mother"), appellee. The order granted Mother sole legal custody of the parties' daughter and ordered Father to pay child support but did not modify physical custody or the access schedule. Father presents five questions, which we have combined and rephrased as three:

> I. Did the circuit court err or abuse its discretion by not allowing the parties and their counsel to obtain a copy of a child protective services investigatory report and by not admitting that report at the custody trial?
>
> II. Did the circuit court err or abuse its discretion by denying Father's motion to exclude the court appointed custody evaluator's testimony and report or in its weighing of her testimony?
>
> III. Did the circuit court abuse its discretion in reaching its ultimate custody determination?[1]

[1] The questions as posed by Father are:

> A. Did the lower court err by prohibiting the parties and their counsel from having copies of the CPS Report?
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> B. Did the lower court err when it did not admit the CPS Report into evidence?
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> C. Did the lower court err or abuse its discretion when it denied the Father's Motion in Limine to exclude the custody evaluator's testimony and report?
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> D. Did the lower court err when it relied on lay opinions as if they were expert opinions?
>
> E. Did the lower court abuse its discretion in reaching its ultimate conclusion on custody?

For the following reasons we answer those questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

The parties married in 2010. Their daughter, W, was born in October 2011. Mother and Father separated in 2014 and executed a marital settlement agreement ("MSA") on October 6, 2015. They were divorced in the Circuit Court for Montgomery County on February 24, 2016, and the MSA was incorporated, but not merged, in the divorce judgment.

A. The MSA

Under the terms of the MSA, Mother and Father shared joint legal custody of W; Mother had primary physical custody, and Father had regular access subject to a phased schedule, culminating in alternating weekend access and weekly Wednesday overnights. The MSA also set out a detailed holiday and summer access schedule. The parties agreed to meet with a "parenting professional" in the summer of 2016 to assess whether the physical custody access schedule should be modified.

Paragraph 3.3 of the MSA, titled "Dispute Resolution," provided that, if the parties were at an impasse regarding any decision regarding W's best interest, "the implementation of the custody provisions" of the MSA, "legal custody decisions[,]" or parenting issues, the parties would "meet with a mutually agreed upon trained professional[] in the field of impasse resolution for parenting-related issues . . . to address the impasse." They were obligated to meet with the parenting professional until the

impasse was resolved or at least two times, whichever occurred first. If the parties remained unable to reach an agreement after completing dispute resolution sessions, they could seek court intervention to resolve the dispute.

The parties agreed that neither would pay child support, but that they would share in any extraordinary medical expenses for W. At that time, W, age 4, was attending preschool at a private school near where Mother lives. The parties agreed to equally share the tuition and fees for the preschool.

B. Father's First Motion to Modify Custody

In the summer of 2016, Father filed a motion in the Circuit Court for Montgomery County for an immediate order to enroll W for kindergarten at a private school in Virginia, near where Father was then living. Thereafter, Father and Mother filed cross-motions to modify custody.

The circuit court held a two-day evidentiary hearing in February 2017, and, by order entered March 17, 2017, denied Father's motions and granted Mother's motion in part. The court modified Paragraph 3.3 of the MSA governing dispute resolution to provide that, after the parties engaged with a parenting coordinator over disputed issues and the parenting coordinator made his or her recommendation, Mother would have tie-breaking authority. Father was granted tie-breaking authority if the parties were unable to agree on the choice of a parenting coordinator.

In July 2017, the parties executed an addendum to the MSA providing that W would enroll in and attend the private school in Virginia near Father's residence through the eighth grade. Father agreed to pay "the entirety of the cost" for that school.

C. Post-Modification Educational Disputes

W attended the school in Virginia for two years, completing kindergarten and first grade. During her second year there, Father grew dissatisfied with the school because W was reading below grade level, and he did not believe the school was adequately addressing her needs. Father told Mother he no longer would pay tuition for that school. The parties' parenting coordinator, Carlotta Miles, M.D., referred W for an educational and clinical evaluation, which was completed in May and June 2019. The evaluator diagnosed W with a reading disorder, "Mixed Dyslexia." Because prior cognitive testing revealed W's verbal comprehension skills and other measures of intelligence to be above average, she is considered twice exceptional.[2]

Meanwhile, the parties worked with Dr. Miles to choose a new school for W for second grade. They applied for W to attend two private schools but she was not accepted. The "fall back" choice was a public school in Arlington, Virginia. In the summer of 2019, Father moved from Alexandria, Virginia, to Arlington, Virginia, so that W could attend the school in Arlington. Around the same time, Father and Mother agreed to a

[2] Richard Weinfeld, a special education consultant hired by Father during the litigation, testified at a *pendente lite* hearing that a "twice exceptional student" is a student who is both gifted and has an educational disability.

modification of Father's access schedule to allow him access twice monthly from Wednesday after school through Sunday evening.

In early 2020, W stopped attending the Arlington school in-person due to the COVID-19 pandemic, but it was Mother's expectation that she would continue there in her third grade year. In the summer of 2020, however, Father told Mother—during a meeting with Dr. Miles and W's then-therapist, Dr. Karimah Ware—that he intended to move from Arlington County because he was not comfortable living in a high-rise apartment building during the pandemic. Father moved to an apartment in Calvert County. As a consequence, W no longer could attend the public school in Arlington for third grade. Mother pursued an appeal with Arlington County Public Schools, but it was unsuccessful.

At the same time, the parties considered other educational options for W in sessions with Dr. Miles. Father initially supported enrolling W at a private school in Calvert County. After W applied, but was not accepted, at that school, Mother enrolled W at a public school in Fort Washington. Father and Dr. Miles objected to that choice because they viewed the school as a low performing school, and they advocated for W to be homeschooled instead.

D. Father's Second Motion to Modify Custody

On November 11, 2020, Father filed the motion to modify legal and physical custody of W that gave rise to this appeal. Because he was then living in Prince

Frederick, he filed the motion in the Circuit Court for Calvert County.[3] He alleged that, subsequent to the 2017 custody order, there had been four material changes of circumstances. First, Father had "permanently" relocated from Arlington, Virginia, to Calvert County, Maryland. Second, Father was no longer regularly traveling to Nashville for work and was able to work from home. Third, the parties were at impasse over selection of an appropriate school for W and Father opposed her enrollment at the public school where Mother had enrolled W. Fourth, Mother refused to coparent W with Father. Father asked the court to modify custody and to: (1) grant him sole legal and primary physical custody of W; (2) order Mother to pay child support; and (3) order Mother to reimburse him for her share of extraordinary medical expenses he incurred.

Simultaneous with the filing of his motion to modify, Father moved for appointment of an independent psychologist to conduct a custody evaluation and a mental health evaluation, for the appointment of an attorney for W, and for expedited relief relative to W's school placement for the remainder of the 2020-2021 school year. In his motion for expedited relief, Father asked the court to grant him temporary sole legal custody for the purpose of enrolling W in a homeschooling program for the remainder of the academic year and to be granted additional access to W to facilitate academic instruction at Father's home.

Mother answered Father's motion for modification and filed a counter-motion to modify custody and child support. She alleged several material changes in circumstances,

[3] Mother unsuccessfully moved to transfer venue to Montgomery County.**]**

including: Father's failure to adhere to the custody access schedule, both by not returning W on time and by missing or rescheduling access periods; Father's frequent relocations; Father's repeated attempts to change W's school placement; and Father's abusive and/or threatening behavior toward W's treatment providers, teachers and school administrators, as well as Mother, and W. In her counter-motion, Mother asked the court to award her sole legal custody of W and to order Father to pay child support and to reimburse her for certain extraordinary medical expenses.

In March 2021, the court held a hearing and denied Father's motion for expedited relief. By order entered March 22, 2021, the court appointed Maureen Vernon, Ph.D., to conduct a custody evaluation, and the court directed her to submit her report no later than 30 days before trial, which was then scheduled to commence in July 2021.

In June 2021, the court postponed the merits hearing until February 2022. At the same time, the court scheduled a one-day *pendente lite* hearing for August 25, 2021, to address W's school placement for the 2021-2022 academic year. At that hearing, Mother and Father agreed that W should not continue to attend the public school where Mother had enrolled her for the fourth grade. Father asked the court to grant him tie-breaking authority over educational decisions so that he could enroll W at a Montgomery County public school that specialized in educating twice exceptional students. Father testified at

the hearing that he would secure housing in Rockville to allow W to enroll at that public school.[4]

On the other hand, if Mother retained tie-breaking authority, W would attend a private school in Edgewater, Maryland, that specializes in educating students with dyslexia. W had been admitted to that school, and the school year had begun two days before the hearing, but Mother had not yet finalized the contract because she was waiting for the court's decision.

The court also heard testimony from Rich Weinfeld, a special education consultant hired by Father. Mr. Weinfeld produced a 35-page report comparing seven schools, which was admitted at the *pendente lite* hearing and again at the merits hearing. Mr. Weinfeld opined that three schools were the best options for W, in ranked order: 1) the public school in Montgomery County proposed by Father; 2) a private school in Silver Spring, Maryland; and 3) the private school in Anne Arundel County proposed by Mother.

The court denied Father *pendente lite* relief, concluding that, although there *had* been a material change of circumstances since the prior custody order—given that both parties agreed that W should change schools—it was in W's best interest for Mother to retain tie-breaking authority until the merits hearing.

[4] His attorney proposed that Father and Mother could share an apartment in Rockville in a "nesting arrangement[,]" whereby W would live permanently at that location and the parents would split their time there based upon the physical custody schedule.

The next month, Father moved to an apartment in Rockville, Maryland, where he continued to live throughout the proceedings.

An incident occurred on October 15, 2021, when Father began to take W on a road trip to North Carolina even though W did not wish to go. According to Father, by the time they had traveled a short distance, W became enraged, and even attempted to turn off the car. He pulled into a gas station, and W attempted to flee. He then took her to the Children's National Hospital in Washington, D.C., where she was evaluated but not admitted.

As we will discuss later in this opinion, shortly after the October 15, 2021 incident, Mother filed a petition in the District Court of Maryland for Prince George's County seeking a protective order on behalf of herself and W. But Mother voluntarily dismissed the petition at the final protective order hearing. Prior to the petition being dismissed, however, the Prince George's County Department of Social Services ("PGDSS") had investigated Mother's allegations and had produced a report of its investigation ("the CPS Report") that Father and Mother were permitted to review. That report is the subject of issues Father raises on appeal.

E. Father's Second Motion for Expedited Relief

By order dated December 13, 2021, granting Father's motion to postpone the trial due to a scheduling conflict, the court rescheduled the merits hearing for May 6, 2022.

On December 29, 2021, Father filed a motion for expedited relief, seeking to have W undergo "psychiatric and medication evaluation and testing ('projective testing')" due to "serious and alarming behaviors" displayed by W during the October 15 incident.

Mother opposed Father's December 29, 2021 motion for expedited relief. The court denied Father's motion by order entered January 12, 2022. Father's motion for reconsideration likewise was denied.

F. The Motion in Limine

Before the scheduled hearing on the motions to modify, Dr. Vernon filed her custody evaluation report ("the Custody Evaluation") on April 11, 2022, and it was made available to the parties for review in person or on MDEC. Dr. Vernon recommended that Mother be granted sole legal custody and that Father's access be reduced, to alternating weekend visits beginning Friday after school (instead of Wednesday), with a weeknight dinner.

In anticipation of the May 6 hearing, Father subpoenaed the CPS Report from the Prince George's County protective order proceedings. In response to the subpoena, a copy of the CPS Report was sent to the Calvert County Family Services Division and received on April 20, 2022. On April 28, 2022, the circuit court entered an order in this case stating that it would conduct an *in camera* review of the CPS Report and then make it available for the parties to review in person at the Family Services Office during normal business hours.

On May 1, 2022, Father moved *in limine* to exclude any opinions offered by Dr. Vernon, arguing that her "proposed testimony [was] incompetent, prejudicial, and unnecessary[.]" In addition to taking issue with her methodology, he argued: that her report was untimely, having been submitted five days late (25 days before trial instead of 30); and that she failed to provide the collateral reports of the parties' mental health evaluations—which were conducted in May and June 2021—until she filed her report.

Father also moved *in limine* to preclude W from testifying at the merits hearing. Mother, in turn, moved for the court to conduct an *in camera* interview with W. Mother ultimately withdrew her motion, and W was not interviewed by the court.

G. The Merits Hearing

Beginning Friday, May 6, 2022, the court held a four-day merits hearing. On the first day of the hearing, the court denied Father's motion to exclude the Custody Evaluation and Dr. Vernon's testimony, ruling that his arguments went to weight, not admissibility.

Father testified himself, and called eight witnesses in his case, including Dr. Miles; David Eddy, Ph.D. (a family therapist working with both Father and W); Katherine Killeen, Ph.D. (a clinical psychologist who was accepted by the court as an expert in psychology, custody evaluations, and related custody matters); and friends and family members of Father.

In her case, Mother testified, and called four witnesses: Dr. Vernon; Lesley Sanders, Ph.D. (W's current individual therapist); and two of Mother's friends. Father testified in rebuttal.

At the time of the merits hearing, W was 10 years old and had attended the private school in Anne Arundel County—where she was doing well—for almost a full academic year. Mother was living in Fort Washington in a single-family home. She was working as an analyst for an independent federal agency within the Department of Homeland Security. Father was living in a two-bedroom apartment in Rockville. During the marriage, Father started his own business as a real estate developer in Nashville, Tennessee, which he continued to own and operate successfully. When Father started the business, the job required significant travel, but by the time of trial, he was running his business primarily from Maryland.

By agreement, Mother was permitted to call Dr. Vernon out of order as the first witness at the hearing. Her Custody Evaluation was admitted into evidence. Dr. Vernon testified that W was caught in the middle of a high-conflict, dysfunctional relationship between her parents. Though Father believed that Mother was engaging in parental alienation, Dr. Vernon concluded that Father was unintentionally "self-sabotaging his relationship with [W]" due to his inability to control his anger and his "aggressive, confrontational interactions" with people in W's life, including educators, therapists, and Mother. W's "meltdowns" occurred more frequently with Father than with Mother and reflected her difficulty in articulating intense feelings.

Dr. Vernon concluded that Father and Mother were unable to work together to make joint decisions in the best interest of their child. Dr. Vernon made ten recommendations, including that Mother be granted sole legal custody of W, with a requirement that Mother notify Father of any major decisions in advance, seek his input in writing, and respond to the input before making a final decision, and further, that Father's visitation time with W be reduced to every other weekend from Friday night through Sunday evening, with a weeknight dinner during the off weeks.

There was significant evidence about instability in W's life. She had attended five daycare centers and five primary schools during her lifetime. Some of the changes in childcare and schools were initiated jointly by both parents, but the evidence showed that most of the changes were initiated by Father. Mother testified that, even after she was granted tie-breaking authority on legal custody decisions, Father used the threat of litigation to force her to relent and accept his choices. There also was evidence that, since the parties separated, W had seen three different individual therapists. Father terminated the services of the first two therapists over Mother's objection. Father had moved six times since the parties separated, including his move that caused W to lose eligibility to attend the Arlington school, and a move during the litigation that would make her eligible to attend Father's current preferred school in Montgomery County.

Father's position was that Mother was engaging in parental alienation. He pointed to recent changes in W's behavior toward him as evidence that Mother was attempting to prejudice W against him.

He testified about the October 15, 2021 incident (when he attempted to take W on a road trip to North Carolina). He explained that W "went into a rage" in his car and began kicking and screaming. After Father was unable to calm W down, he pulled into a gas station, and she started to flee. But Father denied restraining W or having any physical contact with her. He then transported her to Children's National Hospital to be evaluated. W remained at the hospital for 12 hours, during which time she spoke with an ER physician and a social worker.

The medical records, which were admitted into evidence, show that during that psychiatric evaluation, W acknowledged yelling at her Father in the car and trying to turn the car off. She explained that she did so because she did not want to go on the road trip with Father. She reported that her "relationship with [Father was] not okay," that he "sometimes yells and says mean stuff[,]" and he "doesn't always tell the truth." She reported having had suicidal ideation on two occasions, but she denied that she had considered acting on it. She was not admitted to the hospital and was released with instructions that the parents follow up with her pediatrician and her therapist.[5]

Mother testified that Father used abusive and demeaning language toward her that amounted to emotional abuse and made it difficult to coparent W with him. She introduced documentary evidence of Father's use of pejorative language in email communications with Mother, most of which he also sent to Dr. Miles and other

[5] At that time, W did not have an individual therapist because Dr. Ware had terminated her services in September, and Mother and Father had not been able to agree on a new therapist.

professionals working with W. She characterized Father as "obsessively focused on what he determines to be [W]'s best interests[,]" and opined that his personality was "past difficult." In her view, W needed stability above all, and she believed that it would be "profoundly detrimental" to W to change schools again at that point in time.

On the subject of Mother's petition for a protective order that she filed in the District Court for Prince George's County shortly after the road trip incident, Father testified that none of Mother's allegations were true. Mother stood by her allegations, explaining that W reported to her "several incidents of physical altercations" between her and Father on October 15, 2021, and that Mother believed that they had a physical fight in the car and that Father "restrained [W] forcefully."

The parties' respective arguments about the admissibility of the CPS Report will be discussed more fully later in this opinion.

Dr. Miles testified that she met with Mother and Father once a month, typically, to resolve parenting disputes. She had only met W in passing and had never observed either party parenting her. She explained that the parties have different approaches to decision-making that make it difficult for them to work together. She characterized Father's approach as pursuing what he believed to be in W's best interest "no matter how difficult it is" and "not giv[ing] up," whereas Mother appeared more passive, but actually chose to do nothing as a "form of resistance[.]" Father was "very assertive" and sometimes "raised his voice" during sessions, but she did not agree that his behavior was verbally abusive

toward Mother. She acknowledged on cross-examination that Father had called Mother a pathological liar.

Dr. Eddy testified that he had been working as a family therapist with Father and W in family counseling since December 2021, and he had conducted approximately ten sessions. During that time, W became more comfortable in the therapeutic setting and more forthcoming with Father about her point of view and her feelings. Dr. Eddy had not met with Mother.

He also testified about a joint conference call he had with Dr. Vernon, Dr. Miles, and Dr. Sanders to provide input into the custody evaluation. Dr. Eddy mistakenly believed that Dr. Vernon had not spoken to Father for the evaluation, but, in fact, she had met with him at least 9 times, both alone and with W and/or Mother. Dr. Eddy left the conference call early because he was uncomfortable with what he perceived to be Drs. Vernon and Sanders's improper bias against Father.

Dr. Sanders testified that she began providing individual therapy to W on January 17, 2022. Prior to that session, Father had contacted her by telephone to inform her that he did not consent to her working with W because she was "not a competent clinician" to serve in that role. According to Dr. Sanders, Father was "yelling at [her]," and Dr. Sanders told him that if he did not stop, she would have to hang up, and eventually, she ended the call. During the first session, W asked for Mother to be present. Dr. Sanders observed Mother and W to have "comfortable and easy-going and free-flowing

communication with one another." Dr. Sanders testified that W was "incredibly distressed about the ongoing parental discord and contentiousness."

H. The Circuit Court's Ruling

At the conclusion of the four-day hearing, the court took the matter under advisement. A little over two months later, on July 13, 2022, the court held a remote hearing and announced its rulings.[6] After summarizing the evidence presented, the court found that Mother had satisfied her burden of showing a material change affecting W's welfare because "the current legal custody situation [was] untenable and [was] causing significant harm to the child." The court rejected Mother's allegation that Father was physically or emotionally abusive, though the court found that Father's "relentlessness" in pursuing his objectives had worn Mother down and Mother perceived this as abuse. The court also rejected Father's allegation that Mother was engaging in parental alienation, finding that W's preference for Mother's parenting style was not due to any manipulation by Mother, but, as Dr. Vernon found, was caused by Father's self-sabotage. In the court's view, all the evidence confirmed that Mother and Father were unable to "coparent and to reach joint decisions[,]" even with the assistance of therapists and parenting coordinators. The court found that the parties' current dispute-resolution mechanisms were ineffectual, and in support of that finding, the court pointed to evidence that W had changed schools nearly every year since the parties' divorce. The court found

[6] The cover page of the transcript mistakenly states that the remote hearing was held on July 25, 2022, but the docket entries and the court's order both confirm the date as July 13, 2022.

that these changes were detrimental to W's welfare, and the court found that Father was "primarily" responsible for the changes.

The court reviewed the best interest factors that were enunciated in *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1978). We briefly summarize the court's relevant findings:

1) that Mother and Father's communication is "poor," that they "disagree on just about everything[,]" and that they cannot reach shared decisions;

2) that Mother had not abused her tie-breaking authority;

3) that they are unwilling to share legal custody, as both were seeking sole legal custody, but were willing to share physical custody to a certain extent;

4) that both parties were fit;

5) that both parents love W and she loves them, though W has a stronger bond with Mother at this point in time;

6) that Father's desire to change W's school placement again based on his move to Montgomery County would "constitute a significant disruption to her social and school life" and that she was doing well at her current school; and

7) that W expressed a preference to Dr. Vernon to spend less time with Father because he made her feel bad about herself.

The court also considered additional factors unique to this case, including that Father had moved several times over the years while Mother maintained a stable residence; that W needed educational stability and stability in her therapeutic

relationships; and that the "Team W" approach to decision-making was not working and was causing harm to W.[7]

After considering all the factors, the court denied Father's motion to modify custody, and granted Mother's motion to modify custody in part, but also denied it in part. Based upon the court's finding that joint legal custody was no longer serving W's best interests, the court modified custody and granted Mother sole legal custody. In support of that decision, the court observed that past attempts at a collaborative approach were exacerbating the parties' conflict, noting as an example that the "quest to find the perfect school [had] gotten in the way of keeping [W] at a school that [could] meet her needs." Likewise, the conflict over the best therapist for W had resulted in her being unable to be "open and honest" in a therapeutic setting because of fear that the person would be fired or forced to resign. The court ruled that, though Mother would be the decisionmaker, she would remain obligated to consult with Father prior to making a decision, and was to give him the opportunity to provide input. The court struck Paragraph 3.3 from the parties' MSA to accomplish this result.

The court denied Mother's motion to modify physical custody, ruling that the regular custody access schedule, as previously modified by agreement of the parties, would remain unchanged, and that the summer and holiday visitation schedules would remain governed by the MSA.

[7] "Team W" referred to Mother, Father, Dr. Miles, and an educational consultant that Father had brought in to consult on educational matters for W.

The court further ordered both parties to use Our Family Wizard for communication going forward, and to engage in coparenting sessions through the Promise Resource Center. The court further ordered: for W to continue in counseling with Dr. Sanders or another therapist selected by Mother; for W and Father to continue in family therapy with Dr. Eddy, and; that Mother be allowed to participate as well, as directed by Dr. Eddy.

The court ordered Father to pay $650 per month in child support and to pay 46.8 percent of the cost of tuition and fees for W's current private school, an amount which was his proportionate share based upon their incomes.

The court entered its final order encompassing these rulings on July 14, 2022. This timely appeal followed.

STANDARD OF REVIEW

This Court's review of child custody determinations requires consideration pursuant to "three interrelated standards of review." *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). First, "'[w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies.'" *Id*. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)) (second alteration in *J.A.B.*). 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." *Id.* (quotation marks and citation omitted) (alteration in *J.A.B.*). Third, the court's "ultimate conclusion[,]" if "based upon factual findings that are not clearly erroneous" and the application of "sound legal principles[,]"

"should be disturbed only if there has been a clear abuse of discretion." *Id.* (quotation marks and citation omitted).

Generally, "[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." *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quotation marks and citation omitted). "Such broad discretion is vested in the [trial court] because only [the trial court] sees the witnesses and the parties, [and] hears the testimony, . . .; [the trial court] is in a far better position than is an 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." *In re Yve S.*, 373 Md. at 586. "We will only disturb a decision made within the discretion of the trial court 'where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.'" *J.A.B.*, 250 Md. App. at 247 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

DISCUSSION

I.

CPS Report

A. Background

As noted above, Mother filed a petition for protection from child abuse in the District Court of Maryland for Prince George's County on October 25, 2021. Referring to the ill-fated "road trip" of October 15, 2021, Mother alleged that, on October 15, 2021, Father had pushed, shoved and threatened W; that he was neglecting her mental health

needs more generally; and that he was emotionally abusive to Mother. Mother was granted a temporary protective order and the matter was referred to the Child Protective Services division of PGDSS to investigate, as mandated by Md. Code, Family Law Article ("FL") § 4-505(e). That statute provides, in pertinent part:

> (e)(1) Whenever a judge finds reasonable grounds to believe that abuse of a child, as defined in Title 5, Subtitle 7 of this article, . . . has occurred, the court shall forward to the local department a copy of the petition and temporary protective order.
>
> (2) Whenever a local department receives a petition and temporary protective order from a court, the local department shall:
>
> (i) investigate the alleged abuse as provided in:
>
> 1. Title 5, Subtitle 7 of this article;
>
> * * *
>
> (ii) by the date of the final protective order hearing, send to the court a copy of the report of the investigation.

As required by FL § 4-505(e)(2)(ii), prior to the final protective order hearing, PGDSS submitted a 5-page report to the District Court detailing the findings of the department's investigator. Father and Mother, along with counsel, were permitted to review the CPS Report but were not permitted to keep a copy.

The CPS Report reflects that a social worker investigated the allegation of abuse by interviewing W, Mother, and Father. The report summarizes the substance of those interviews, and concludes that "relational conflict between all parties" and the "ongoing conflict within this family" were negatively impacting W. The report made four recommendations, including that W immediately be enrolled in individual therapy and be evaluated by a psychiatrist.

At the time of the final protective order hearing on November 17, 2021, Mother voluntarily dismissed her petition.

Thereafter, in the Calvert County case that is the subject of this appeal, Father's counsel subpoenaed the CPS Report in advance of the merits hearing. PGDSS sent a copy of the report to the Circuit Court for Calvert County with an attached business records certification. The report was secured in the "in-camera review file cabinet" in the circuit court's Family Services Office.

On April 28, 2022, eight days before the merits hearing commenced, the circuit court issued an order advising the parties: that the court would conduct an *in camera* review of the CPS Report; that "following the in-camera review, the records w[ould] be made available for counsel and parties to access in person at the Family Services Office at the courthouse during normal business hours"; and that the information in the report was to be "held in the strictest confidence."

The merits hearing commenced on Friday, May 6, 2022. During Father's counsel's opening statement, she discussed the October 15, 2021 incident and the CPS investigation, noting that the CPS Report had been "delivered to [the circuit court] under seal" and that the court had stated that it intended to conduct an *in camera* review of that report. The court interjected that it had completed its review of the CPS Report and that it was available for the parties to review in the Family Services Office during the lunch recess, should they desire to do so. Father's counsel responded, "Thank you, Your Honor."

During Dr. Vernon's testimony, which began before the lunch break on the first day of trial, she was asked by Father's counsel whether she was aware of recommendations made by the social worker who authored the CPS Report. Dr. Vernon replied that she had not reviewed a copy of the CPS Report.

Later, Father's witness, Dr. Miles, who also testified on the first day of the hearing, referred to the CPS investigation, noting that she was aware that the social worker who authored the CPS Report recommended that W be seen by a psychiatrist, which had not occurred. But Dr. Miles later testified that she had not seen a copy of the CPS Report.

Father's counsel first sought to move the CPS Report into evidence during Father's testimony on the third day of the hearing. On direct examination, Father's counsel inquired about Father's "understanding of what CPS ultimately recommended[.]" Father began to respond by saying, "They recommended –." Mother's counsel objected on the ground that Father's counsel was eliciting hearsay.

The court asked Father's counsel to explain why Father's testimony would not be hearsay. Counsel initially replied that the CPS Report already was "part of this case" because it had been reviewed by the court *in camera*. The court responded that its review of the CPS Report did not make it admissible. The court commented that it recalled that a "DSS Report" could come in "as a specific [hearsay] exception in a final protective order hearing[,]" *see* Rule 5-803(b)(8)(A)(iv), but the court noted that this was a custody modification hearing, not a final protective order hearing.

Father's counsel responded that the CPS Report should be admitted as a business record under Rule 5-803(b)(6). Mother's counsel countered that, even if the CPS Report were admissible, it would speak for itself and Father should not be permitted to testify to its contents. But Mother's counsel further argued that the CPS Report was not relevant in any event because Mother withdrew her petition for a protective order.

The court then asked Father's counsel for a second time to explain how the CPS Report was admissible under Rule 5-803(b)(8), given that the language of the rule specifies, in subsection (A)(iv), that a report created under the authority of FL § 4-505 is admissible "in a final protective order hearing conducted pursuant to [FL §] 4-506." The court also asked counsel to clarify if statements made by the parties and W to the social worker were admissible under the business record exception.

Father's counsel responded by reiterating that the CPS Report was a business record and, in any event, that it could be admitted under the catch all hearsay exception in Rule 5-803(b)(24). Father's counsel argued that the report was highly relevant for several reasons: because the findings bore upon Mother's motives in filing her petition for a protective order; because Dr. Vernon did not request a copy of or consider the report; and because the substance of the report was relevant to W's best interests.

The court ruled that, although the CPS Report might be admissible as impeachment evidence, it did not "come[] in directly under the hearsay exception to the rule[,]" and the court said there also was a "relevance issue" given that Mother's petition for a protective order never was finally adjudicated.

During cross-examination of Mother, Father's counsel asked her about her petition for a protective order and the resulting CPS investigation. Mother testified that she spoke to a social worker at PGDSS because she believed that there was a "physical altercation" between Father and W on October 15, 2021, and it was her understanding that Father pushed W and that he "restrained [her] forcefully." Based on the information provided by Mother and W, the social worker advised Mother to file for a protective order. Mother testified that she reviewed the CPS Report before she withdrew her petition at the final protective order hearing. Father's counsel then renewed her motion to admit the report, arguing that Mother's testimony about her communications with the social worker put the CPS Report "at issue." The court denied the renewed motion, stating that it had "thought about it and considered it."

During Father's closing argument, his attorney noted that, even though the CPS Report was not in evidence, the court had reviewed it and it was important for the court to consider that Father "fought to follow those recommendations" and Mother did not, despite having precipitated the investigation.

After the court delivered its oral rulings at the close of the case, Father's counsel asked whether the court had "consider[ed] the recommendations from Child Protective Services?" The court responded that it had not considered any evidence that was not admitted at trial.

B. Copy of the CPS Report

Father contends that the trial court erred by not permitting him and/or his counsel to obtain a physical copy of the CPS Report and that this error *presumptively* prejudiced his ability to prepare his case and rebut Mother's evidence. Mother responds that Father failed to preserve this issue for appellate review, and, alternatively, that he has not articulated how he was prejudiced on this record. We conclude that this issue is not properly before us and, in any event, Father has made no showing of probable prejudice.

Father relies upon the decision of the Supreme Court of Maryland, then known as the Court of Appeals, in *Sumpter v. Sumpter*, 436 Md. 74 (2013).[8] There, that Court considered the application of a then existing policy in the Circuit Court for Baltimore City that set limits on the ability of litigants and their counsel to obtain copies of court ordered child custody evaluations. *Id*. at 79-80. As that policy was applied by the circuit court in *Sumpter*, a mother and the best interest attorney appointed to represent her two children were not allowed to obtain a copy of a 161-page child custody evaluation report prepared by the circuit court's adoption and custody unit. As a consequence, mother did not have a copy of the lengthy report to use in preparation for, or during, the parties' two-day divorce hearing, in which custody was a contested issue. *Id*. at 80-81. Counsel were denied copies of the report, supposedly because it was the court's "policy" not to permit counsel to have copies, even though the memorandum summarizing the court's policy

[8] In the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

expressly stated: "Attorneys may obtain copies of a report with an Order of the Court." *Id*. at 80. At the outset of the hearing to determine custody, the mother moved *in limine* to either exclude the report or to obtain a copy. *Id*. The court denied her motion but did allow counsel to review the court copy during breaks and while examining witnesses. *Id*. at 80-81. After the court granted the father sole legal and physical custody of the children, the mother appealed, arguing that the circuit court's policy, as applied, had "inhibited her ability to prepare for trial, frustrated her ability to retain an expert, and ultimately, prevented her from challenging the [custody evaluation report] as she would any other piece of evidence." *Id*. at 81.

The Supreme Court reasoned that a child custody evaluation typically contains summaries of investigatory interviews and observations, the evaluator's subjective impressions, mental health records, and school and medical records, all of which is "fertile ground for content that is biased, subjective, and contestable." *Id.* at 83-84. The denial of the mother's request for a copy of the report prevented her from presenting it to an expert and may have hampered her ability to retain an expert. *Id*. at 84. As a consequence, the Supreme Court agreed with the mother's contention that she could not prepare a "vigorous rebuttal" to the custody evaluation report. *Id*. The Court held that the circuit court abused its discretion by not exercising any discretion because it had misapplied the policy "without considering the particular circumstances at hand." *Id*. at 86. The Supreme Court held that, by denying the attorneys a copy of the 161-page custody evaluation report in the case where custody was to be decided, the circuit court

had "applied a misconceived, hard and fast rule to a matter that required the exercise of its discretion." *Id.* at 87.

Turning to whether the court's error in failing to exercise discretion caused any prejudice, the Court observed: "Generally, the complaining party must show that prejudice was probable, not just possible." *Id*. But the Court also stated: "For particularly acute errors, this Court will employ a presumption of prejudice." *Id.* at 88. The Court held that the circuit court's error in *Sumpter* was particularly egregious and acute, stating:

> [W]e are faced with the practical impossibility of determining whether Mother was prejudiced by the trial court's error. **Here,** the trial court's error so hamstrung the defense that **every aspect of the trial was affected. This error so infected the trial proceedings that it can only be characterized as egregious.** Indeed, we cannot know how that infection might have contaminated the outcome of the case. Because determining prejudice is practically impossible, we will presume it in this case.

Id. at 88-89 (emphasis added) (footnotes omitted).

We do not agree with Father's assertion that a similarly egregious error was committed by the circuit court in his case. Unlike in *Sumpter*, Father did not request a copy of the CPS Report despite being made aware in advance of the merits hearing (by the court's order of April 28, 2022) that his access to the CPS Report would be limited. The record does not disclose that Father or his counsel ever asked the circuit court to permit them to make a copy of the CPS Report. And Father had been permitted to review the 5-page CPS Report months earlier in connection with the case in the District Court of Maryland for Prince George's County.

Consequently, even if we perceived that the circuit court made a ruling that was in error, which we do not, we would nevertheless hold that, unlike the circumstances in *Sumpter*, this was not the type of egregious error that would justify a presumption of prejudice in place of the rule normally applicable in civil cases that requires the party complaining of error to establish that prejudice was probable.

The circuit court's failure to provide Father with a "reference copy" of the 5-page CPS Report, without being asked to do so, did not "infect" every aspect of the merits hearing, and is not comparable to the denial in *Sumpter* of the mother's request for a copy of the 161-page custody evaluation report that was at the heart of that case. There, the report at issue was highly relevant to the court's ultimate decision and the mother's attorney was only able to review it for 90 minutes before the merits hearing. Here, in contrast, Father and his counsel first reviewed the CPS Report in November 2021, nearly six months before the merits hearing. They were given the opportunity to review it again prior to the merits hearing, when the court issued its April 28, 2022 order advising the parties that the CPS Report was being held at the Family Services Office.[9] The report likewise was made available for the parties to review during breaks in the merits hearing.

[9] At oral argument in this Court, Father's appellate counsel maintained that his trial counsel had been under the impression that the CPS Report could not be reviewed until the court advised the parties that it had completed its *in camera* review. Appellate counsel conceded that the record did not reflect any attempt by trial counsel to review the report during the five business days between the issuance of the April 28, 2022 order and the start of the merits hearing. As mentioned, the court *sua sponte* advised the parties that the CPS Report was available for review during the morning of the first day of the merits hearing. The record does not reflect that it was unavailable up until that point in time, however.

Father's testimony made clear that he was familiar with the report and was prepared to testify about the substance of it. On this record, Father has not demonstrated any prejudice flowing from the alleged error.

C. Exclusion of the CPS Report at the Merits Hearing

Father challenges the trial court's ruling denying his request to admit the CPS Report at the hearing. He argues that it was admissible as a public record under Rule 5-803(b)(8), and that the circuit court erroneously construed that rule to only allow admission of a report made under the authority of FL § 4-505 in a final protective order hearing. Noting that the trial court expressly declined to rely upon the report in reaching its decision because it was not in evidence, Father asserts that he was prejudiced by its exclusion.

Mother responds that Father never advanced this argument in the circuit court and, consequently, has waived it. If not waived, she argues that we should affirm the court's decision to deny admission of the CPS Report on the alternative basis given by the court: that it was not relevant. Mother further asserts that, in any event, Father has not shown that he was prejudiced by the court's exclusion of the CPS Report.

"Generally, 'whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court' and reviewed under an abuse of discretion standard." *Perry v. Asphalt & Concrete Servs., Inc*., 447 Md. 31, 48 (2016) (quoting *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011)). With regard to hearsay determinations, however,

> the trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review. Accordingly, the trial court's legal conclusions are reviewed de novo, but the trial court's factual findings will not be disturbed absent clear error.

Gordon v. State, 431 Md. 527, 538 (2013) (citations omitted).

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "Except as otherwise provided by these [Maryland R]ules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. *See Bernadyn v. State*, 390 Md. 1, 8 (2005) ("**Hearsay, under our rules, *must* be excluded as evidence at trial, unless it falls within an exception to the hearsay rule** excluding such evidence **or is 'permitted by applicable constitutional provisions or statutes**.' Md. Rule 5-802. Thus, **a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility**." (bold emphasis added)).

Under the pertinent provisions of Rule 5-803, the following is not excluded from evidence as hearsay:

> [A] memorandum, report, record, statement, or data compilation made by a public agency setting forth
>
> * * *
>
> (ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report,
>
> (iii) in civil actions . . ., factual findings resulting from an investigation made pursuant to authority granted by law; ***or***
>
> (iv) in a final protective order hearing conducted pursuant to [FL] § 4-506, factual findings reported to a court pursuant to [FL] § 4-505,

> provided that the parties have had a fair opportunity to review the report.

Md. Rule 5-803(b)(8)(A) (emphasis added).

Father argues on appeal that the trial court improperly limited its analysis to Rule 5-803(b)(8)(A)(iv), and did not consider whether the CPS Report was admissible under Rule 5-803(b)(8)(A)(iii) as "factual findings resulting from an investigation made pursuant to authority granted by law[.]" But Father did not argue at trial that subsection (iii) of Rule 5-803(b)(8)(A) provided a basis for admission of the CPS Report. Because that argument was not raised in or decided by the circuit court, that argument was not preserved for appeal. *See* Rule 8-131(a). And, as set out above, Father's counsel never argued in the circuit court that the CPS Report was admissible as a public record, but instead asserted that it was admissible as a business record, a position he does not advance on appeal. Though the circuit court *sua sponte* raised the public records exception, it clearly referred only to subsection (iv) of Rule 5-803(b)(8)(A), and correctly concluded that the CPS Report was not admissible under that exception because it was not being introduced at a final protective order hearing. Under the circumstances, Father was obligated to make his position that the CPS Report was admissible under subsection (iii) of the Rule known to the court if that was the applicable hearsay exception upon which he was relying. His failure to do so is fatal to his claim of error. *See Scott v. Prince George's Cnty. Dep't of Soc. Servs.*, 76 Md. App. 357, 384 (1988) (explaining that the purpose of Rule 8-131(a) "is one of judicial economy – counsel must bring his or her

client's position to the attention of the trial court so that it can pass upon and possibly avoid or correct any errors in the proceedings" (citation omitted)).

Even if reliance upon Rule 5-803(b)(8)(A)(iii) had not been waived, we still would hold that only portions of the CPS Report were admissible under that exception, and Father did not demonstrate to us how he was prejudiced by the exclusion of those portions. In *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581 (1985), which was decided under the common law before the adoption of Rule 5-803, the Maryland Supreme Court considered the breadth of the public records exception. It held that, when a public officer is under "a statutory duty to investigate and record or certify facts ascertained . . . other than [by] personal observation[,]" the facts recorded become admissible as an exception to the rule against hearsay unless the party opposing their admission establishes that the findings otherwise lack trustworthiness. *Id.* at 604-05 (citing 5 J. Wigmore, *Evidence* § 1635, at 531 (3d ed. 1940)). The Court emphasized, however, that, under this hearsay exception, the term "'factual findings' will be strictly construed and that *evaluations or opinions contained in public reports will not be received* unless otherwise admissible under this State's law of evidence." *Id*. at 612 (emphasis added).

This Court applied this analysis in *In re H.R.*, 238 Md. App. 374, 405-06 (2018), to hold that "Court Reports" prepared by social workers in Child in Need of Assistance cases properly were admitted under the public records exception because they were prepared pursuant to a duty imposed by law, and compiled factual findings about the children's schooling, medical appointments, and other routine data. To the extent that the

reports also contained "the social workers' conclusions and opinions[,]" which may have been inadmissible under the exception, we concluded that their admission was harmless in the context of that particular case. *Id*. at 407.

In the instant case, the CPS Report was created by PGDSS, a public agency, and contained "matters observed pursuant to a duty imposed by law," here FL § 4-505. The PGDSS social worker's summaries of her interviews with Mother, Father, and W, though plainly hearsay, fell within the category of "factual findings" of the investigation which could have been admitted as such at the merits hearing. But the report also included hearsay statements consisting of conclusions the social worker drew from her interviews—conclusions and opinions about the family dynamics at play in this case and the impact that those dynamics were having upon W. And the report included four recommendations the social worker made regarding steps the parties could take to help W manage the turmoil. The social worker's conclusions and recommendations contained in the CPS Report were not admissible under the public records exception.

The admissible factual findings contained in the report largely were cumulative of other evidence that came before the court during the merits hearing. Father testified extensively about the events of October 15, 2021, and Mother testified about what she believed happened on that date and why she filed for a protective order. W's medical records from her evaluation at Children's National Hospital on that date were admitted in evidence and, as noted, contain W's contemporaneous statements to healthcare providers. Father was permitted to cross-examine Mother about whether anyone at Children's

National Hospital, W's teachers, her therapist, or Dr. Vernon—all of whom would be mandatory reporters of child abuse—ever made a report that Father had abused W. Father was allowed to argue in closing that, despite instigating the CPS investigation, Mother declined to follow the recommendations resulting from it. Given this record, Father has not persuaded us that exclusion of any admissible portions of the CPS Report prejudiced him.

II.

Custody Evaluation

A. Background

Dr. Vernon testified that she is a psychologist and a certified parenting coordinator, custody evaluator, and mediator.[10] During her evaluation, she met with Mother and Father individually; met with W individually; met with Mother and Father together with W; met with Mother and W; met with Father and W; conducted home visits where she observed W with each parent; spoke to collateral contacts, including W's therapists and school personnel; and conducted a joint teleconference with Dr. Miles, Dr. Eddy, and Dr. Sanders. Dr. Vernon performed, and extensively analyzed, psychological testing conducted with both parties to assist her in making her recommendations. As discussed, Dr. Vernon's ultimate recommendations were (1) that Mother should be granted sole legal custody of W because the parties were unable to make decisions jointly

[10] In denying Father's motion *in limine* to exclude Dr. Vernon's testimony, the court explained that she was testifying as a "court-appointed expert[.]" Father does not challenge her qualifications to do so.

and Mother was better suited to be the decisionmaker, and (2) that Father's access periods with W should be reduced.

Father called Dr. Killeen as a rebuttal expert to testify about model standards for conducting child custody evaluations. Dr. Killeen opined that Dr. Vernon's Custody Evaluation was missing data that was crucial to assessing the basis for her conclusions and recommendations. Specifically, the report did not include any discussion of her observations of parent-child interactions or the history of "parent decision-making and the history of the interpersonal relationship with the child[.]" According to Dr. Killeen, those were "[t]he guts" of a custody evaluation and they were absent from Dr. Vernon's report. Dr. Killeen also criticized Dr. Vernon's failure to contact collateral witnesses identified by Father, particularly a witness he identified as having interacted with W the day after the October 15, 2021 incident.

B. Denial of Motion *in Limine*

On appeal, Father contends the court erred by denying his motion *in limine* to exclude Dr. Vernon's testimony and the Custody Evaluation for two reasons. First, Dr. Vernon filed the Custody Evaluation five days late, which he asserts prejudiced his ability to prepare for trial and, more specifically, hampered Dr. Killeen's ability to review it and to form her opinions. Second, he argues that the Custody Evaluation was inadmissible under Rule 5-702 because Dr. Vernon failed to employ generally accepted techniques and standards for evaluating custody and visitation.

With respect to the lateness of the report, the order appointing Dr. Vernon as the custody evaluator directed that her report be produced no later than 30 days before the scheduled trial, consistent with the then governing version of Rule 9-205.3.[11] Dr. Vernon produced her report on April 11, 2022, which was 25 days before trial commenced on May 6, 2022. Father's written motion *in limine* stated that the report was untimely but did not identify how he was prejudiced by the 5-day delay in receiving it. In arguing his motion, counsel asserted that Dr. Killeen had not had sufficient time to review the Custody Evaluation.

In the circuit court's ruling denying the motion *in limine*, the court commented that Rule 9-205.3 required that a custody evaluator produce a written report at least 30 days before trial, but also empowers the court to permit a custody evaluation report to be filed as little as 15 days before trial for good cause shown. Given that the delay here was only 5 days, the complexity of the case, and the changes that had occurred in W's life since Dr. Vernon was appointed, including a change in schools and a change of therapist, the court found "good cause" to shorten the time to produce the report. We perceive no abuse of the trial court's discretion in so ruling.

[11] Rule 9-205.3(i)(B) was amended subsequent to the date of the order appointing Dr. Vernon, and now requires a written custody report to be furnished 45 days before trial, but the circuit court retains the authority to shorten that time to as little as 15 days before trial.

Turning to the substance of Dr. Vernon's testimony and her Custody Evaluation, we are guided by Rule 5-702, which governs the admission of expert testimony. That Rule states:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> > (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
> >
> > (2) the appropriateness of the expert testimony on the particular subject, and
> >
> > (3) whether a sufficient factual basis exists to support the expert testimony.

Md. Rule 5-702. The circuit court's determination of whether to admit expert testimony is reviewed with great deference and may only be reversed for an abuse of discretion. *Rochkind v. Stevenson*, 471 Md. 1, 10-11 (2020); *see also State v. Matthews*, 479 Md. 278, 305-06 (2022).

Father argues that the Custody Evaluation and Dr. Vernon's testimony about it should have been excluded because Dr. Vernon 1) failed to interview collateral witnesses he identified; 2) "refus[ed] to review information provided by the Father because it was provided through his counsel"; 3) provided advice to Mother on October 15, 2021, when W was at Children's National Hospital, and remained "in constant contact" with Mother on that date; and 4) took on an advocacy role for Mother during a meeting with W's professional treatment team. None of these challenges to the methodology employed by Dr. Vernon obligated the court to exclude the report.

With respect to collateral witnesses, the order appointing Dr. Vernon and the version of Rule 9-502.3 in effect during her custody evaluation both made contact with collateral witnesses optional. Md. Rule 9-205.3(f)(2)(A) (adopted June 20, 2017, eff. Aug. 1, 2017). Nevertheless, Dr. Vernon interviewed Dr. Miles, Dr. Eddy, and Dr. Sanders. This was consistent with the current version of the Rule, which mandates contact with "high neutrality/low affiliation collateral sources of information," but makes contact with other collateral sources optional. *See* Rule 9-502.3(f)(1)-(2) (adopted Feb. 9, 2022, eff. April 1, 2022). A "Committee Note" to the Rule explains that "high neutrality/low affiliation collateral sources" are those persons who are "impartial, objective collateral sources[,]" and gives the example of a child's treating physician. Dr. Vernon's decision not to contact Father's (or Mother's) friends and family members comports with Rule 9-205.3 in its prior and current form.

The other three bases for exclusion offered by Father were contested at trial, the subject of rigorous cross-examination, and, in some cases, the subject of rebuttal testimony by Dr. Killeen. These arguments addressed the weight to be accorded to Dr. Vernon's testimony and report, not its admissibility. Dr. Vernon was qualified to perform custody evaluations by her experience and training, which was vetted by the court. Her testimony was relevant to the disputed issues at trial, and the trial court found that it would be helpful to the court. The court did not abuse its discretion by admitting her testimony and the Custody Evaluation.

C. Reliance upon Dr. Vernon's Opinion on Educational Matters

Father contends the court erred by relying upon an opinion Dr. Vernon offered about W's need for educational stability because Dr. Vernon was not qualified as an expert on educational matters. More specifically, he argues that Dr. Vernon's opinion that "school is a safe place for a child who is going through the various struggles of a fractured family, and sometimes the school becomes their place of safety and neutrality" should have been excluded upon Father's counsel's objection to it.

This contention lacks merit. Dr. Vernon's opinion that school offers a child stability when her family is in turmoil plainly is within the realm of her expertise on child psychology and contested custody matters and did not require that she be qualified as an education expert.

III.

Father contends that the court erred or abused its discretion in reaching its ultimate determination. In awarding custody, "the power of the court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child." *Taylor*, 306 Md. at 301-02. Because '"it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case,… a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion."' *In re Yve S.*, 373 Md. at 585-86 (quoting *Davis v. Davis*, 280 Md. 119, 125 (1977)).

In this case, the court granted Mother's motion to modify legal custody, but denied her motion to modify physical custody. "'Legal custody carries with it the right and obligation to make long range decisions' that significantly affect a child's life, such as education or religious training." *Santo v. Santo*, 448 Md. 620, 627 (2016) (citation omitted). At the time of the merits trial, Mother and Father shared joint legal custody and were obligated to engage in dispute resolution with a parenting coordinator on contested decisions, though Mother then had tie-breaking authority to make the final decision. Father retained tie-breaking authority to select the parenting coordinator.

Father does not challenge any of the court's findings for clear error. Instead, he contends that the court's decision is "overreaching in its limitations on the Father's involvement in decision-making for the child and parenting time with the child." He asserts that the court failed to tailor its order granting Mother sole legal custody to allow for continued joint decision-making about subjects outside of schooling and W's therapeutic relationships.

We conclude that the court's determination that an end to joint legal custody was in W's best interest plainly was supported by evidence: that Mother and Father were unable to make joint decisions; that the "dispute resolution" process had become a forum for Father to exert his influence, rather than reach consensus; and that W was harmed by this process. The court did not abuse its broad discretion by so ruling.

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

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0872s22cn.pdf