Circuit Court for Queen Anne's County
Case No. C-17-FM-19-000300

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0895

September Term, 2020

BRIDGET LOAR

v.

CHRISTOPHER LOAR

Berger,
Shaw Geter,
Wells,
JJ.

Opinion by Wells, J.

Filed: August 18, 2021

This appeal arises from a two-day bench trial in the Circuit Court for Queen Anne's County. On May 29, 2018, the District Court of El Paso County, Colorado entered a Decree of Dissolution of Marriage and Final Order between Bridget Loar ("Mother"[1] or "Appellant") and Christopher Loar ("Father" or "Appellee"). The Decree was enrolled in Maryland on September 27, 2019. Less than three months later, on December 17, 2019, Mother moved to modify custody and visitation alleging that material changes had occurred in the lives of their three children. She ultimately filed an amended motion to modify, adding a request to also modify the amount of child support that Father paid to her. Specifically, she sought to modify the custody agreement from joint to sole custody for her, restrict Father's access to the children, and increase the amount he paid in child support.

The trial court, citing Md. Rule 10-350(a)(2), declined to hear the issue of child support as Father was not a Maryland resident. After a hearing, the circuit court found that Mother "failed to prove a material change in circumstance that affected the well-being of the children" and denied the motion to modify custody and visitation. The court also awarded attorney's fees to Father. Mother timely appealed.

On appeal, Mother raises four questions for our review, which we slightly rephrase:[2]

[1] In simply referring to the parties as "Mother" and "Father" due to their shared last names we mean no disrespect to either.

[2] Mother's verbatim questions read:

1. Did the trial court commit reversible error and fail to make the necessary findings in declining to modify custody and access schedule?

1. Did the trial court err when it declined to modify the custody and access schedule without conducting the two-step analysis for custody modifications?
2. Did the trial court err by awarding Appellee counsel fees?
3. Did the trial court abuse its discretion by failing to interview the parties' fourteen-year-old daughter or consider her preference?
4. Was Appellant deprived of her right to a fair and impartial trial because the trial court had a predetermined bias against her?

For the following reasons, we perceive no error and affirm the circuit court's rulings.

FACTUAL BACKGROUND

Mother and Father divorced in May 2018. At that time, the couple lived in Colorado. After the divorce, Mother moved to Maryland and Father moved to Ohio.

The parties have three children: K[3], who, at the time of the September 2020 hearing, was fourteen years old, C, who was then twelve years old, and J, who was then eleven years old. At the time of the divorce, the parties agreed on a custody arrangement where the children would spend Christmas and President's Day with Father on odd years and Thanksgiving and spring break with him on even years. During the summer, the children

2. Did the trial court err by awarding Defendant/Appellee counsel fees?
3. Did the trial court abuse its discretion by failing to interview and to consider the parties' fourteen-year-old daughter's preference about the access schedule?
4. Was Mother deprived of her right to a fair and impartial trial because of the trial court's apparent predetermined view of teenage girls and biased attitude against her?

[3] For the children's privacy, we have used simply an initial to identify them.

would stay with Father in Ohio from the second full week after school ended until the two weeks prior to the start of school in the fall.

A. Father's Life in Ohio

Father moved to Ohio with his then-girlfriend and current wife, Jen Greth ("Jen"), along with her three children. Mother alleges that Jen and Father were together before Mother and Father's divorce was finalized. Father denies this, however, claiming there is no evidence to support Mother's assertion. Mother claims that Father neglected to tell the children about his living arrangements with Jen until they were on their way to Ohio in the summer of 2019. Father argues that he waited to explain this news until he was alone with the children because he "can't have a conversation with the kids without Mother intervening when she disagrees."

Father and Jen became engaged in October 2019, and Father's next scheduled visitation was Christmas of that year. Because, according to Mother, Father had "plenty of time" to inform the children of Jen becoming their stepmother but failed to do so, Mother decided to tell them herself, despite Father explicitly asking that she not tell the children. Father explained that because Christmas is a hectic time, he did not have the time to tell the children about his engagement. Father did not tell the children about his marriage until the summer 2020 visitation. Father claims that he wanted to tell the children sooner, but that he could not have a FaceTime or Skype chat with the children without Mother being present and injecting herself into the conversation. None of the children were a part of the wedding ceremony, because, Father claims, they told him they were not interested in participating.

B. Father's Alleged Lack of Commitment to Visitation

Father has never returned the children late after his visitation. However, Mother kept track of the times Father returned the children early from visits with him. For example, in the summer of 2018, Mother claims Father asked her if he could return the children early so that he could go on a vacation with Jen, but at trial Mother "could not remember if the children came back early or not." For Thanksgiving 2019, Father brought the children back two days early because "K had an argument with her aunt." On President's Day Weekend 2020, Father returned the children on Sunday night instead of Monday morning. For Father's Day 2019, Mother claims she offered Father extra time, but he declined. Father, however, explained that he planned to pick the children up on Father's Day. Due to snow, school was cancelled for that Monday, but was open the next day, which, according to Mother, the children could not miss. In summer 2020, Father returned the children one week early. But Father said he agreed to the early return because C was scheduled to tour his new school. The tours were later canceled due to the COVID-19 pandemic. Even though the tours were canceled, Father still returned the children early because he "was scared that [Mother] was going to manipulate the situation with the kids and make it into [him] keeping the kids when they're suppose *(sic)* to be with their mother."

C. Father's Participation in the Children's Lives

Mother alleges that Father does not participate in any of the children's daily activities. Father, however, argues that traveling roundtrip from Ohio to Maryland costs nearly $1,000 and requires roughly eighteen hours of driving, which hinders his ability to visit more often. Mother claims Father's life in Ohio always takes precedence, as he spends

his money on items other than his children. Father counters that he is involved as much as possible, but that Mother always interferes and rarely allows him to speak privately with the children.

D. Mother's Concerns for the Children's Health and Safety

Mother also highlighted her concerns about the children's health and safety when they are with Father, specifically regarding C's condition.[4] Mother asserted that after spending the summer with Father, C's speech and pronunciation regressed and he re-adopted bad habits, such as biting his fingernails. However, Father pointed out that Mother's witness, Molly Melvin, concluded that C's speech had not regressed during the summer. Additionally, C needs to use hearing aids. The parents agreed to follow certain rules regarding use of the hearing aids, but Mother believes Father disregards those rules.

Further, Mother also identifies several incidents where she had concerns about the children's health and safety. First, there was an incident where the children were severely sunburnt, which Mother argues is a health and safety issue. Second, Father left the children with Jen's teenage children for a short time while attending to an emergency. Third, one evening during a visit, the children called Mother from a closet in Father's house. Mother claims the children were "crying uncontrollably" whereas Father claims that the children were playing in what the children refer to as "their secret hideout." In response to the phone call, Mother called the police. The trial court stated that this was a "completely inappropriate" response.

[4] C has Down syndrome and has speech and some physical difficulties.

Mother and other witnesses testified that the children are "clingy" when returning from Father's home and are reluctant to leave her house to visit him, but she provided no evidence to show this behavior would change if the agreement was modified.

E. Extended School Year ("ESY") Summer Services for C

The parties disagree on whether C required ESY summer services. Mother attempted to qualify Ms. Melvin, the speech pathologist, as an expert witness, but the trial court only accepted her as a fact witness. In her brief, Mother asks this Court to view Ms. Melvin as an expert witness. In September 2018, the parties met with Ms. Melvin. She wanted to do a cognitive assessment of C, but Mother rejected the assessment without discussing the matter with Father. Ms. Melvin first assessed C in December 2018. She did not notice any speech regression, but this was also the first time she had met with him. In her 2018 report, Ms. Melvin indicated C was not eligible for the ESY service. In April 2019, C was recommended for ESY, but Father declined the service.

In fall 2019, Ms. Melvin reported C's language intelligibility was "somewhat reduced," but the deficit was quickly corrected. While Ms. Melvin admitted C did not truly regress, she still recommended C for ESY in summer 2020. C's paternal aunt, Deana Strudwick ("Deana"), testified as an expert in special education. As an expert, Deana confirmed that speech services during the summers would be beneficial. Deana explained there were likely more resources available for C in Maryland rather than Ohio, but there was no evidence provided as to whether Ohio would be able to accommodate C's needs. C participated in virtual speech therapy during the height of the COVID-19 pandemic.

Mother claims the sessions were not beneficial because they occurred while Father was working, so he could not sufficiently help C during his therapy.

F. Father and K's Relationship

Both parties admit that Father and K's relationship is strained. K often "goes weeks without wanting to talk" to Father. Father argues that K's silence toward him is due to Mother's consistent attempts to argue with him in front of K. Additionally, Father testified that the way Mother talks to the children about him adds to the already strained relationship between him and K.

K sees a therapist, and Mother claims Father leaves it up to K to call the therapist herself. Father explained that there was no scheduled therapy for summer 2019 or 2020. Still, Mother claimed that Father's attitude was that if K needed to talk to her therapist, K had the therapist's phone number and could call herself.

Mother additionally alleges that Father called K a liar. Father responds that during a "heated" argument with Mother, he told her K had lied to him, but he never directly called K a liar. Mother's attorney requested that the trial court interview K or allow her to testify, but the trial court denied the request.

G. Parties' Financial Information

Father sought counsel fees from Mother because he had "approximately $18,000 in outstanding counsel fees." There was no direct testimony about Father's ability to pay counsel fees or his income and expenses. But the trial court took judicial notice of the parties' financial statements. In fact, Mother entered Father's financial statement into evidence to demonstrate his alleged unwillingness to spend his money on their children.

STANDARD OF REVIEW

For child custody cases, the Court of Appeals has identified an interrelated standard of review:

> We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. [Secondly,] [i]f it appears that the chancellor erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003); *see also Reichert v. Hornbeck*, 210 Md. App. 282 (2010); *Brockington v. Grimstead*, 176 Md. App. 327 (2007) (applying the standard set forth in *In re Yve S.*). Abuse of discretion occurs "when [a trial court's decision] is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash v. State*, 439 Md. 53, 67 (2014) (citing *Gray v. State*, 388 Md. 366, 383 (2005)).

DICUSSION

I. The Court Did Not Abuse Its Discretion in Declining to Modify Father's Access Schedule Because Mother Did Not Prove a Material Change in Circumstances

In order for a court to modify a custody or visitation order, the judge must complete a two-step analysis. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). The moving party bears the burden of establishing sufficient facts needed under the two-step analysis. *See Sigurdsson v. Nodeen*, 189 Md. App. 326, 344 (2008); *McMahon v. Piazze*, 162 Md. App. 588 (2005). First, the moving party must show a material change in the

circumstances since the last custody order. *Id.* A "material change" is one that affects the welfare of the child, but not merely "any change." *Gillespie*, 206 Md. at 171. If the moving party fails to establish a material change in circumstances at this first step, then no further analysis is required, and it is unnecessary for the judge to proceed to the second step of the analysis. *McCready v. McCready*, 323 Md. 476 (1991).

Should the trial court find that a material change in circumstances exists at the first step, the moving party must then show that the proposed modification would be in the best interest of the child. *Sigurdsson*, 189 Md. App. at 344; *see also McCready*, 323 Md. at 482 ("[D]eciding whether those changes are sufficient to require a change in custody necessarily requires consideration of the best interest of the child."). When conducting a best interest analysis, the Court considers a large, non-exhaustive list of factors. *See Taylor v. Taylor*, 306 Md. 290 (1986).[5]

A. The Parties' Contentions

1. Mother's Argument

Mother contends that the trial court erred because it failed to consider the second prong of the two-step analysis set forth in *Gillespie, Sigurdsson* and *McMahon*. According to Mother, the trial court initially found that a material change in circumstances existed as

[5] The factors identified in *Taylor* include: the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; willingness of the parents to share custody; fitness of the parents; the relationship established between the child and each parent; preference of the child; potential disruption of the child's social and school life; geographic proximity of the parental homes; demands of parental employment; age and number of children; the sincerity of the parents' request; financial status of the parents; the impact on state or federal assistance; and the benefit to the parents.

Father's new marriage placed Mother in a "state that is affecting her children." Mother argues that the trial court thereafter did not proceed to the second prong of the analysis as it was obligated to do. At the conclusion of the trial, in Mother's view, the trial judge "explicitly stated that there was a material change in circumstances." However, the trial court signed a one-page order stating Mother "failed to prove a material change in circumstances that affected the well-being of the children." Mother claims that no justification for the alleged change of the trial court's decision exists. Mother contends that there was "overwhelming evidence" that the trial court clearly erred by failing to conduct the best interest of the child analysis.

2. Father's Argument

Father relies on the holding in *McMahon*[6] and argues that the trial court properly denied the request to modify the agreement due to Mother's alleged failure to prove a material change in circumstances. Therefore, according to Father, the trial court needed no further analysis and the trial court did not err in declining to proceed to the second step of the analysis. Father contends that the trial judge was simply unpersuaded that a material change occurred.

Further, Father contends that Mother misinterpreted the trial court's language to "explicitly stat[e] a material change in circumstances occurred." Father believes that the

[6] In *McMahon*, the court dismissed the petition to modify the custody agreement because the father failed to plead a material change in circumstances. This Court concluded that the dismissal was not erroneous, but it vacated and remanded the trial court decision because the trial court abused its discretion when it denied the father the opportunity to amend his pleading.

context around the statement cited by Mother, however, indicates the trial court had decided that a modification was improper because a material change did not in fact exist.[7]

B. Analysis

Mother concedes in her brief that it is only necessary for a court to conduct the second step of the analysis from *McMahon* when the court finds at the first step that a material change in circumstances occurred:

> When a party requests a modification of child custody, the court must conduct a two-step analysis. *See generally McMahon v. Piazze*, 162 Md. App. 588 (2005). The first step is to determine whether there has been a material change in circumstance, and, **if there is a finding of a material change in circumstance, the court then goes to the second step of doing a best interest of the child analysis** as in a proceeding for original custody. *Id.* at 594 (citations omitted) (emphasis supplied).

Therefore, we must first decide whether the trial court found that there was a material change in circumstances. Mother centers her argument on the idea that the trial judge, at the conclusion of the second day of trial, orally ruled that a material change in circumstances occurred, but then issued a contradictory written order stating that there was no material change in circumstances. The trial court's error, according to Mother, is that "[h]aving found a material change in circumstance, the court was obligated to apply the evidence to the *Taylor* [best interest analysis] factors."

We may quickly dispose of Mother's first argument. We disagree with Mother's assertion that the trial court orally ruled that she had proven a material change in

[7] In its statements at the conclusion of trial, the trial court stated (1) that the "big change" was in Mother's behavior, (2) but that this change never affected the parties' ability to make decisions concerning the children, and (3) that it would not modify the agreement because of Mother's actions.

circumstances. Mother directs us to the following statement by the trial judge as her sole evidence that the trial judge orally found that a material change in circumstances had occurred: "Material change in circumstances regarding physical custody, I think as when [counsel for Father] described it as something big, I think the something big was [Father's] relationship and ultimate marriage with his new wife that has [Mother] in a state that is affecting her children."

Rather than focus on this lone sentence to determine whether the trial court found a material change in circumstances, as Mother claims, it is helpful to put the sentence in its appropriate context. We reprint the trial court's observations on this point in full:

> THE COURT: Couple of the Court's observations. Certainly, we are talking about material change in circumstances and I concur with [counsel for Father] that there is no basis to change legal custody. These parents do communicate, although sometimes not effectively and, certainly, sometimes not appropriately. It has not affected their ability to make decisions for these children, which is really what legal custody is all about. So the Court will not be granting a change in legal custody.
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> Material change in circumstances regarding physical custody, I think as when [counsel for Father] described it as something big, I think the something big was [Father's] relationship and ultimate marriage with his new wife that has [Mother] in a state that is affecting her children. And what I have heard about her behavior in front of the children calling the police, screaming at Dad, screaming at the new wife, over top of the children, is completely inappropriate. So I will not grant a change in the physical custody schedule. His time with those children is limited enough living in another state and for him to be a part of their -- an effective part of their life, they need to be able to be with their dad and experience the good things that he can bring to their life. The rest I will do by written opinion.

Looking at the trial court's statement as a whole, we do not see how the trial judge's comments might be construed as orally ruling that a material change of circumstances occurred. Rather, we read the initial sentence of the second paragraph quoted directly

above to (1) set forth that the trial judge was addressing *whether* a material change in circumstances had occurred and (2) that the most relevant point in addressing this issue involved Father's new marriage. Looking at the remainder of the trial judge's statements, nothing indicates that the trial judge found that a material change had occurred. To the contrary, the trial judge discussed the inappropriateness of Mother's actions with relation to the new marriage, the already-limited amount of time that Father was able to spend with the children, the need for the children to be with Father, and that she would not grant a change in physical custody at this time.

Because we do not agree with Mother's factual assertion that the trial judge found a material change in circumstances, we will not address the remainder of Mother's argument that the trial court erred by inappropriately changing its oral ruling in the written order. As we view the court's comments, the trial court's written ruling is consistent with its comments from the bench.

Still, even if the trial court initially found a material change in circumstances existed, we would not be able to find an abuse of discretion. Although Mother argues the trial court "does not have the authority" to change its original finding, she fails to identify any case law supporting this claim. The authority we have found suggests the opposite: trial judges are permitted to change their minds. "[W]hile the trial judges may choose to respect a prior ruling in a case, they are not required to do so." *Ralkey v. Minn. Mining & Mfg. Co.*, 63 Md. App. 515, 522-23 (1985). Here, although we believe the trial judge's decision to be entirely consistent with her statements from the bench, we nonetheless point out that the court had discretion to alter a prior ruling in the case. Therefore, if we had

considered Mother's remaining argument, we would not conclude that the court had abused its discretion if it had departed from its oral ruling from the bench.

In conclusion, Mother, as the moving party, failed to establish the existence of a material change in circumstances. Consequently, the trial court was not required to conduct any further analysis and did not err by not doing so. *See McCready*, 323 Md. at 476. Further, the trial court did not alter its ruling from the bench in its written order as Mother asserts. But even if that were true, trial judges have the discretion to disregard their own prior rulings in a case. *See Ralkey*, 63 Md. App. at 522-23.

II. ATTORNEY'S FEES

Pursuant to Annotated Code of Maryland, Family Law ("FL") Article, § 12-103, a trial court may award attorney's fees and costs to a party in a custody or visitation case. When doing so, the trial court must consider "(1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." *Id.* at § 12-103(b).

This Court has said that while a "trial judge is vested with a high degree of discretion in making an award of fees[,]" the trial court "must apply all the statutory factors . . . in determining whether or not to award attorney's fees." *Liberman v. Liberman*, 81 Md. App. 575, 600 (1990); *Barton v. Hirshberg*, 137 Md. App. 1, 33 (2001). If the trial court fails to consider all the statutory criteria in making an award, then its decision "constitutes legal error." *Petrini v. Petrini*, 336 Md. 453, 468 (1994). At the same time, "the fact that the court did not catalog each factor and all the evidence which related to each factor and all the evidence which related to each factor does not require reversal." *John O. v. Jane O.*,

90 Md. App. 406, 429 (1992). Separately, Rule § 1-341 allows a party to request an opposing party pay the costs of the proceeding and reasonable expenses if the court finds the case was brought in "bad faith or without substantial justification."

A. The Parties' Contentions

1. Mother's Argument

Mother contends that scant evidence exists regarding Father's financial situation. A brief line of questioning took place during which Father testified that he felt an attorney was necessary, but that he could not afford to pay the outstanding costs. Mother argues that other than this brief line of questioning and the court taking judicial notice of the financial statements, no other evidence was provided as to Father's financial situation. Given the alleged lack of evidence, Mother maintains the trial court erred by failing to properly consider the statutory criteria of awarding fees. Specifically, Mother argues that the trial court inappropriately awarded Father $5,000 in attorney's fees. And, Mother asserts, she did not bring the case in bad faith or without justification. For these reasons, she argues, the court had no basis upon which to make an award of attorney's fees under Rule 1-341.

2. Father's Argument

Father asserts the trial court took judicial notice of the parties' financial statements, which were signed under oath by both parties. The existence of these statements, as well as testimony regarding the financial situations of he and Mother, provided the court sufficient evidence to properly award him attorney's fees in the amount of $5,000.00. At

the heart of Father's argument is the presumption that trial judges know and follow the law; they do not need to articulate each factor considered in reaching their decisions.

Moreover, Father argues that the financial statements prove that he was in a much worse financial situation than Mother. And, Father argues, the trial court heard a day-and-a-half of testimony about whether Father's visitation should be reduced, thus necessitating his appearance in the preceding. Lastly, Father notes that while he requested $18,000.00 in attorney's fees, the judge awarded him only $5,000.00 in attorney's fees, showing that the court considered the factors necessary before making the award.

B. Analysis

At trial, Father entered his Second Amended Financial Statement into evidence, which showed that he had a net worth of -$248,177.76. Mother also entered into evidence her Amended Financial Statement, which showed she had a positive net worth of $57,686.97. Similarly, as evidenced by both parties' financial statements, Father had a monthly deficit of $890.59 while Mother was comparatively better off, having a monthly deficit of $356.03.

Father's counsel suggested that the circuit court take judicial notice of the financial statements and Mother's counsel had no objection, responding that she had "no issue with that." Significantly, the circuit court's decision to take judicial notice of the financial statements was motived by a timing issue because the judge had an upcoming phone conference scheduled for 12:15 p.m. and another docket scheduled for 1:30 p.m. As the parties were coming to the end of their allotted trial time, the judge reminded counsel to keep an eye on the clock:

THE COURT: I was wondering what you were doing. I assume you are keeping an eye on the time.

[COUNSEL FOR FATHER]: Yes, I am very much keeping an eye on the time. Exhibit 28, please, Madam Clerk, if I may. Your Honor, if you could just take judicial notice of his financial statement in the file.

THE COURT: Uh-huh.

[COUNSEL FOR FATHER]: As it relates to his expenses and income.

[COUNSEL FOR MOTHER]: I have no issue with that.

THE COURT: All right. Court will take judicial notice of both of their financial statements, for that matter.

Immediately upon taking judicial notice of both financial statements, Father testified as follows:

[COUNSEL FOR FATHER]: [Father], have you been happy with the services that my firm has provided to you during this case?

[FATHER]: I absolutely have been.

[COUNSEL FOR FATHER]: Did you feel that it was necessary to retain counsel to help you with this case?

[FATHER]: Yes.

[COUNSEL FOR FATHER]: Did you have the finances to pay for an attorney during this past year?

[FATHER]: No.

. . . .

[COUNSEL FOR FATHER]: My hourly rate is $400 an hour?

[FATHER]: Yes, ma'am.

[COUNSEL FOR FATHER]: And you've incurred, looking at Exhibit 28, just over $27,000 in attorney's fees?

[FATHER]: Correct.

[COUNSEL FOR FATHER]: And you have an outstanding balance of almost 18,000?

[FATHER]: Sounds right.

[COUNSEL FOR FATHER]: Do you have the finances to pay the outstanding balance?

[FATHER]: Straight out, absolutely not.

[COUNSEL FOR FATHER]: Are you asking that [Mother] contribute to the cost of this?

[FATHER]: I do.

[COUNSEL FOR FATHER]: Why is that?

[FATHER]: Because I don't believe we should even be here today.

[COUNSEL FOR FATHER]: Do you find that my fees are fair and reasonable?

[FATHER]: Yes.

[COUNSEL FOR FATHER]: I'm still waiting for somebody to say heck no to that.

[FATHER]: Yes.

[COUNSEL FOR FATHER]: Your Honor, I'd like to offer Exhibit 28.

[COUNSEL FOR MOTHER]: No objection.

THE COURT: It's admitted.

Family Law § 12-103, as well as Maryland appellate cases interpreting the statute, provide that in order to award attorney's fees in a case such as this, "the court shall consider: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b); *see also Petrini v. Petrini*, 336 Md. 453, 468 (1994) ("Consideration of the statutory criteria is mandatory in making the award and failure to do so constitutes legal error"). At the same time, trial judges are afforded substantial deference in determining awards of attorney's fees under FL § 12-103(b). *Lieberman v. Lieberman*, 81 Md. App. 575, 600 (1990) ("A trial judge is vested with a high degree of discretion in making an award of fees") (citation omitted).

Balancing the high degree of deference afforded to trial judges in awarding attorney's fees with the need for trial judges to consider the requirements of the statute, we look to the particular facts of this case. Here, the trial judge took judicial notice of both parties' financial statements. We place importance on the fact that (1) the trial judge took judicial notice of the financial statements, but also (2) the content of those financial statements, (3) Mother's decision to not object to the court taking judicial notice, and (4) the time limitations of the trial. By taking judicial notice of the statements, we understand the trial court accepted as true the contents of those statements and the parties' consent for the judge to consider the financial situation of each party. The financial statements revealed the financial status and the needs of the parties. This information satisfies the first two factors of FL § 12-103(b).

Moreover, we believe the trial judge also considered the final statutory factor, "whether there was substantial justification for bringing, maintaining, or defending the proceeding[,]" based on the judge's comments at the close of trial. For example, we have considered these comments when discussing whether there was evidence of a material change in circumstances. The same passage also reveals the court's assessment of Mother's behavior and her justification for bring the suit:

> THE COURT: . . . I think the something big was [Father's] relationship and ultimate marriage with his new wife that has [Mother] in a state that is affecting her children. And what I have heard about her behavior in front of the children calling the police, screaming at Dad, screaming at the new wife, over top of the children, is completely inappropriate.
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> So I will not grant a change in the physical custody schedule. His time with those children is limited enough living in another state and for him to be a part of their -- an effective part of their life, they need to be able to be with their dad and experience the good things that he can bring to their life.

The first paragraph the court's comments reflect whether Mother had substantial justification to bring the suit. The second paragraph reveals the trial court's reasoning that Father had a substantial justification in defending the suit. *See* FL § 12-103(b).

The court's other comments also reflect that the court did not think highly of Mother's behavior and her reasons for moving to modify Father's access to the children. For example, when the children were playing in "their secret hideout" at Father's house and called Mother over some concern, rather than making a greater effort to calm the children or call Father to figure out what was going on, Mother, instead, called the police. The trial judge found Mother's extreme reaction "totally inappropriate." And, Mother's

concerns about Father's care of C, specifically, her concern about his supposed speech regression were disproved by her own witness, Ms. Melvin.

Although the trial court did not expressly mention when it took judicial notice of the parties' financial statements, nor in its oral comments at the close of trial, such an omission does not warrant reversal. Because the parties were before the court only on Mother's request to modify custody -- and not, for example, a "money issue," such as a request for alimony or child support -- the most obvious use of the financial statements would be to assess the possibility of awarding attorney's fees. And we note that the "trial court does not have to recite any 'magical' words so long as its opinion, however phrased, does that which the statute requires." *Horsley v. Radisi*, 132 Md. App. 1, 31 (2000) (citation omitted). Here, the record shows that the trial court understood (1) the financial status of the parties, (2) their respective needs, and (3) whether Mother was justified in bringing the suit and Father in defending it. *See id.* The record is sufficiently developed for us to conclude that the court reviewed the parties' finances and assessed the strength of Mother's case in seeking a modification. Coupled with the fact that the evidence indicated Father's far-worse financial situation and the need for him to defend the suit, the trial court was within its discretion in awarding $5,000.00 in attorney's fees out of the $18,000.00 he requested.

III. INTERVIEW WITH DAUGHTER

A. Parties' Contentions

Mother contends that the trial court abused its discretion when it declined to interview the parties' 14-year-old daughter, K, about her living preferences. Mother argues

that it was uncontroverted that K and Father had a strained relationship because several witnesses testified regarding their observations of K and Father, and Father testified regarding the strained nature of the relationship. Mother's attorney requested that the court speak with K to ascertain her living preferences and how she felt about her father. Father argues that Mother failed to demonstrate how the judge's refusal to interview K was an abuse of discretion and thus, Mother cannot meet the relevant standard of review.

B. Analysis

Maryland case law is settled that a trial court has discretion "both as to whether to consult the child and, if so, as to the weight to be given [their] preference to a custodian." *Lawrence v. Lawrence*, 74 Md. App. 472, 478 (1998); *Karanikas v. Cartwright*, 209 Md. App. 571, 590 (2013); *Marshall v. Stefanides*, 17 Md. App. 364 (1973). The trial court's authority is discretionary, thus they are "not required to speak with the child" as the child's preferences are only one factor in analyzing the best interests of the child. *Karanikas*, 209 Md. App. at 590 (citing *Lemley v. Lemley*, 102 Md. App. 266, 288 (1994)); *see also Lawrence v. Lawrence*, 74 Md. App. 472, 478 (1998) ("[T]he purpose of consulting the child's preference as to a custodian is . . . to assist the court in its exercise of discretion." (citing *Ross v. Pick*, 199 Md. 341, 353 (1952))).

Here, Mother requested that the judge speak with K towards the end of the trial. The judge declined by stating:

> I'm not going to meet with her. I mean, quite frankly, I haven't heard anything – any concerning issues that I would need to address with the children. Sounds like they have already been brought into this unnecessarily. So, at this point, I would deny your motion.

Although Mother contends that this was an abuse of discretion given the evidence that was introduced regarding K's relationship with her father, we disagree. The judge was not required to speak with the child to determine the child's preferences. *Karanikas*, 209 Md. App. at 590. As explained above, Maryland case law does not require a judge deciding a custody or visitation issue to interview a child to determine the child's preferences. *Lawrence*, 74 Md. App. at 478. In *Lemley*, this Court explicitly noted that "[w]hile the preference of the children is a factor that *may* be considered in making a custody order, the court is not required to speak with the children." 102 Md. App. at 288; *Levitt v. Levitt*, 79 Md. App. 394, 403, *cert denied*, 316 Md. 549, 560 (1989).

While it may have been helpful to the court to understand K's preferences through an interview, it was not required, nor was it "essential" in rendering a legally valid decision. Reviewing the transcript, the trial court judge considered the request and explained her reasons for denying the request. The trial judge articulated that the situation had already been tough on the children, and she did not want to introduce more stress into their lives. For these reasons, we conclude that the trial court properly exercised its discretion. The court's rationale is not "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash*, 439 Md. at 67.

IV. FAIR AND IMPARTIAL TRIAL

A. Parties' Contentions

Mother contends that the trial court exhibited a bias towards her throughout the trial and that this bias denied her the right to a fair and impartial trial. Mother requests that the

judge recuse herself and that on remand, a new judge be assigned to the case. Father contends that Mother has failed to preserve this issue for appellate review because she did not make a motion for recusal below, thus she has no basis to demand a new judge be assigned should the case be remanded. He argues that even if this Court reviews Mother's complaints on the merits, the comments made by the judge and the complained-of acts do not indicate that the trial judge displayed bias or prejudice that would have deprived Mother of her right to a fair and impartial trial.

B. Analysis

In both the civil and criminal settings, Maryland case law has established that the right to a fair and impartial trial is as important in the civil context as in the criminal context. *Dinkins v. Grimes*, 201 Md. App. 344 (2011). If a party, however, alleges that the trial court judge is acting with bias, prejudice, or impartiality, then the party may initiate recusal procedures by filing "a timely motion with the trial judge that the party seeks to recuse." *Conwell Law LLC v. Tung*, 221 Md. App. 481, 516 (2015) (quoting *Miller v. Kirkpatrick*, 377 Md. 335, 358 (2003)) (internal quotations omitted). The recusal motion must be "timely filed" meaning "as soon as the basis for it becomes known and relevant." *Id.* (quoting *Miller*, 377 Md. at 358). The objection is waived on appeal if the party fails to make a recusal motion before the trial judge. *Id.* (citing *Halici v. City of Gaithersburg*, 180 Md. App. 238, 255 (2008)); *see also Traverso v. State*, 83 Md. App. 389, 394 (1990) (holding that the issue of recusal was not preserved for appellate review because the defendant "never asked the trial judge to recuse himself"); Md. R. 8-131(a) ("Ordinarily,

the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court.").

Like in *Traverso* where the defendant never asked the trial judge to recuse himself, here, neither did Mother. At no point during the trial did she object to the judge's comments, nor did she file a motion for recusal. Accordingly, the issue of recusal based on the court's perceived bias has not been preserved for appeal, and we will not address it.

Even if we were to address Mother's contention, we have reviewed the transcript of the trial and find nothing alarming. While the trial transcript is devoid of anything such as an inflection in the tone of voice or the judge's body language,[8] we read nothing in the record that causes us to think that the trial judge was biased against Mother. To the contrary, the record shows that the judge listened to the evidence and made her decision based solely on the evidence. Comments that the judge made at the conclusion of the evidence and after counsels' arguments reflect the judge's opinion about the weight of the evidence and nothing more. Evidentiary decisions that the judge made during the trial, as far as we can tell, followed the law. Which side the court's rulings might have favored does not reflect bias, but rather, the court's interpretation of the rules of evidence based on the circumstances presented at trial. If we were to consider Mother's allegation that the trial judge was biased against her, we would conclude that her claim is without merit.

THE JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.

[8] And we note that Mother makes no allegations of bias based on the judge's tone of voice or her body language.