

Circuit Court for Prince George's County
Case No. CAD21-09779

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 0924

September Term, 2022

SHAUNTICE SKYE, et al.,

v.

JONATHAN PATTON

Berger,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Shaw, J.

Filed: August 14, 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 it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis. However, unreported opinions issued on or after July 1, 2023, may be cited for persuasive value, but only if no reported authority adequately addresses the issue before the court. Md. Rule 1-104.

Appellants, Shauntice Skye and Maiya Skye, appeal from an order of the Circuit Court for Prince George’s County determining that Appellee, Jonathan Patton, is the father of a baby born to Shauntice Skye, as a result of artificial insemination, and granting joint custody of the baby to Appellant Shauntice Skye and Appellee Jonathan Patton. Appellants originally presented three questions for our review.¹ However, during oral argument, Appellants withdrew their argument as to one of those questions and, as a result, we do not review that question. Appellants’ two remaining questions have been reorganized for clarity:

1. Did the Circuit Court for Prince George’s County err by concluding and fashioning an Order in accordance with its determination that a Co-Parenting Agreement involving the birth of E.S. by artificial insemination overcomes the presumption of legitimacy under Md. Code Ann., Estates & Trusts Article Section 1-206(b)?
2. Did the Circuit Court for Prince George’s County err by decreeing the Order of Court dated July 22, 2022 without according any parental rights to [Maiya Skye]?

¹ Appellants’ questions verbatim were:

1. Did the Circuit Court for Prince George’s County err by decreeing the Order of Court dated July 22, 2022 without according any parental rights to M.S.?
2. Did the Circuit Court for Prince George’s County err by ordering M.S. to execute all documents necessary to identify Appellee as the father on the minor child’s birth certificate?
3. Did the Circuit Court for Prince George’s County err by concluding and fashioning an Order in accordance with its determination that a Co-Parenting Agreement involving the birth of E.S. by artificial insemination overcomes the presumption of legitimacy under MD. Code Ann., Estates & Trusts Article Section 1-206(b)?

BACKGROUND

Shauntice Skye and Maiya Skye, Appellants, are a same-sex married couple who entered into an agreement with Appellee Jonathan Patton, wherein he would provide his sperm for the artificial insemination of Shauntice Skye. The agreement, dated September 25, 2020, was titled “Co-Parenting Agreement” and describes their rights and obligations.

It states, in part²:

This agreement is made this 25th day of September, 2020, by and between Shauntice Wyatt Skye [biological parent], Maiya Nicole Skye [nonbiological parent] of . . . Landover Hills, MD 20784, hereafter referred to as [“Party 1”]³ and Jonathan Iules Patton [biological parent], of . . . Washington D.C. 20019, hereafter referred to as [“Party 2”]. Both Parties are prepared to set our rights and obligations regarding our child who will be born to us, hereafter referred to as [“our child^[1]”]. In the spirit of good faith, cooperation, and mutual respect, we have come together jointly and equally to share parental responsibility.

Our child will have the last name Skye-Patton. The child’s name will be . . . if a boy or . . . if a girl or . . . if a boy. All parties shall be named on the birth certificate. We understand the law and Birth Certificate will recognize Shauntice Wyatt Skye and Jonathan Iules Patton as mother and father of the child. Maiya Nicole Skye shall be named a Parent, pursuant to the Maryland stepparent/second parent adoption law, and same sex married spouse of Shauntice Wyatt Skye.

5. **Regular Weekday and Weekend Schedule.** Both parties shall alternate every other Sunday with the child. The child will be with [“Party 1”] Monday, Tuesday, and Wednesday from 12 a.m. to 11:59pm. The child will be with party [“Party 2”] Thursday, Friday, and Saturday from 12 am to

² Bracketed material appears as is in the original agreement. Any substitutions we made appear as ellipses.

³ Appellants are identified as “Party 1” in this paragraph, however, the signature line at the end of the agreement identifies only Shauntice Skye as “Party 1.”

11:59pm. Both parties acknowledge emergencies happen and will accommodate reasonable changes that are timely requested.

In November 2020, Appellee provided his sperm and a child (“Baby Skye”) was born on August 6, 2021 to Shauntice Skye. In the months preceding the baby’s birth, communications between the parties became tense and eventually ceased. When Baby Skye was born, Appellee was not notified, and the paperwork for the birth certificate was signed by Shauntice Skye and Maiya Skye, identifying them as the parents. The baby’s last name was listed only as Skye.

On August 19, 2021, Appellee filed a Complaint for Custody in the Circuit Court for Prince George’s County, requesting joint physical and legal custody of Baby Skye with Appellant Shauntice Skye.⁴ Appellants filed a motion to dismiss and a counter complaint, arguing that Appellee violated the Co-Parenting Agreement and that he financially abused and manipulated them. Appellant Shauntice Skye sought primary physical and sole legal custody naming herself and Maiya Skye as Co-Plaintiffs.

The court entered a pendente lite order in December 2021, giving Appellee access to the child pursuant to the Co-Parenting Agreement. A merits hearing was conducted in June 2022, where the parties presented testimony and other evidence. On June 27, 2022, prior to the court’s ruling, the parties reached an agreement as to shared physical custody, the use of a parenting coordinator, and child access. The court then issued its opinion and order on July 22, 2022, that determined that Appellee is Baby Skye’s father, granted joint

⁴ Maiya Skye was joined as an intervenor on February 4, 2022.

physical and legal custody to Appellant, Shauntice Skye, and Appellee and incorporated the parties’ Co-Parenting Agreement to the extent that it did not conflict with state or federal law.

The court’s order stated:

ORDERED, that day-to-day decisions concerning the Minor Child are the responsibility of the custodial parent the child is with at the time. These daily decisions shall maintain and reinforce the major life decisions made by the Parties; it is further,

ORDERED, that the parties shall engage a parenting coordinator to facilitate communication between the parties in the event of disagreement over a major decision involving the Minor Child. The parties shall evenly split the costs of the parenting coordinator with the Father paying 50% and the Spouses⁵ paying 50%. Thirty (30) days from the entry of this Order, the parties shall select parenting coordinator and submit a consent order reflecting that appointment to chambers; it is further,

ORDERED, that the Defendant and Intervenor shall cooperate with Plaintiff and execute all documents necessary to identify Plaintiff as the Father on the Minor Child's birth certificate; it is further,

ORDERED, that the Plaintiff Jonathan I. Patton shall be recognized as the Minor Child's biological father, and the parties shall cooperate to execute all required documentation to reflect this status within thirty (30) days from entry of this Order; it is further,

ORDERED, that the Court reserved on the issue of whether the Father shall reimburse the Spouses for healthcare insurance expenses; it is further,

ORDERED, that within thirty (30) days from the entry of this Order, the Defendant and/or Intervenor may submit documentation of expenses they incurred as to healthcare insurance.

Appellants timely appealed.

DISCUSSION

Standard of Review

Maryland Rule 8–131 (c) states:

⁵ The court used “Spouses” to refer to “Mother” and “Wife” jointly. “Mother” is used to identify Shauntice Skye, and “Wife” is used to identify Maiya Skye.

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

“This court reviews child custody determinations utilizing three interrelated standards of review.” *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). “When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies.” *Id.* (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). “Where a case involves the application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a de novo standard of review.” *Plank v. Cherneski*, 469 Md. 548, 569 (2020) (quoting *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 338 (2017)). “The trial court's ultimate decision will not be disturbed unless the trial court abused its discretion.” *Gizzo v. Gerstman*, 245 Md. App. 168, 192 (2020).

I. The Court did not err in finding that the presumption of parentage and legitimacy under the Maryland Estates & Trusts Article was properly rebutted.

Appellants argue the court erred in recognizing Appellee as the father because, under Md. Code Ann., Est. & Trusts § 1-206, there is a presumption that a child born and conceived during a marriage or conceived by artificial insemination is a child of the spouses. They contend the court improperly denied parental rights to Maiya Skye, as the spouse of the biological mother, and based its decision that the rebuttal evidence was sufficient, on the parties’ execution of a Co-Parenting Agreement. Appellee argues that Maiya Skye’s statutory presumption of parentage was properly rebutted by evidence that

it was in the child’s best interest to consider additional evidence. Appellee further argues he is the biological father, and his undisputed status as biological father supersedes Appellant’s claim.

Section 1-206 of the Estates and Trust Article provides:

(a)(1) A child born or conceived during a marriage is presumed to be the legitimate child of both spouses.

(2) Except as provided in § 1-207 of this subtitle, a child born at any time after the child’s parents have participated in a marriage ceremony with each other, even if the marriage is invalid, is presumed to be the legitimate child of both parents.

(b)(1) A child conceived by means of assisted reproduction during the marriage of the child’s mother with the consent of the mother’s spouse is the legitimate child of both spouses for all purposes.

(2) Consent of the mother’s spouse is presumed.

(3) A child conceived by means of assisted reproduction after the death of the mother’s spouse and using the genetic material of the mother’s spouse is the legitimate child of both spouses if the child qualifies as a child of the mother’s spouse under § 1-205(a)(2) of this subtitle.

Md. Code Ann., Est. & Trusts § 1-206.

A court, when faced with parentage and legitimacy issues, must first consider the presumption and then weigh “the various interests of the parties and, in particular, considers whether blood or genetic testing [to establish or disestablish parentage] would be in the best interests of [the child].” *Sieglein v. Schmidt*, 224 Md. App. 222, 239 (2015) (quoting *Evans v. Wilson*, 382 Md. 614, 629 (2004)). The best interest of the child is the paramount consideration and “it is the objective to which virtually all other factors speak.” *Taylor v. Taylor*, 306 Md. 290, 303 (1986). Courts evaluate the best interest of the child by considering the following non-exhaustive factors: (1) capacity of the parents to communicate and reach shared decisions affecting the child’s welfare, (2) willingness of

parents to share custody, (3) fitness of parents, (4) relationship established between the child and each parent, (5) preference of the child, (6) potential disruption of child’s social and school life, (7) geographic proximity of parental homes, (8) demands of parental employer, (9) age and number of children, (10) sincerity of parents’ request, (11) financial status of the parents, (12) impact on state or federal assistance, and (13) benefit to parents. *Id.* at 304-11.

Upon a finding that it is in the best interest of the child, the presumption set forth in § 1-206 may be rebutted by:

- (1) Evidence of blood or genetic testing; (2) Testimony of the mother, the presumed parent, or another individual, that the presumed parent did not have access to the mother at the time of conception; or (3) Any other competent evidence that the presumed parent is not the father of the child.

Md. Code Ann., Est. & Trusts § 1-208.

Following the June hearing, on July 22, 2022, the court issued an opinion and order, holding that Appellee had “[d]emonstrated that [r]ebutting the Wife’s [p]resumption of [p]arentage is in the [m]inor [c]hild’s [b]est [i]nterest[.]” The Court examined the following *Taylor v. Taylor* factors in making its determination. *Taylor*, 306 Md. at 304-11. The Court’s opinion stated:

A. The capacity of parents to communicate and to reach shared decisions affecting the child’s welfare; and the willingness to share custody

The [c]ourt considers both factors regarding the parents’ capacity to communicate and their willingness to share custody together by reviewing the promises contained in their Agreement. The Father argues that Agreement should govern this matter because it reflects the Parties’ intent to be co-parents. The Parties agree that this Agreement was drafted without assistance of counsel and is not without holes. For example, if the Father must be on the Minor Child’s birth certificate to provide health insurance,

the Spouses cannot take steps to exclude him and then argue he breached the Agreement for failure to provide that health insurance. From the outset, the Agreement explicitly discusses the Parties’ obligations as a set of three parents. The Agreement states: “[i]n the spirit of good faith, cooperation, and mutual respect, we have come together jointly and equally to share parental responsibility.” Additionally, the Agreement states how all three Parties will achieve legal parenthood status over the Minor Child:

All Parties shall be named on birth certificate. We understand the law and [b]irth certificate will recognize Shauntice Wyatt Skye and Jonathan Iules Patton as mother and father of the child. Maiya Nicole Skye shall be named as a Parent, pursuant to the Maryland stepparent/second parent adoption law, and same-sex married spouse of Shauntice Wyatt Skye.

The Parties all testified and agreed that the Agreement reflects that they consented for the Minor Child to have three parents. The Parties also testified that the relationship of a blended family fell apart before the Minor Child was even born. The Spouses argues [sic] that the Father failed to be involved with them during the Mother’s pregnancy. After not being informed of the Minor Child’s birth and after being cut out of family activities, the Father questioned whether he was the Minor Child’s true biological parent. As a result, the Father testified that he did not financially contribute to any of the Minor Child’s expenses as outlined in the Agreement. The Parties all similarly testified that communication between them is superficial at best. The Parties testified that the Spouses sometimes cut off communication with the Father, and the Father expressed little interest in communicating with the Spouses even when presented with the opportunity to do so. The Spouses emphasized that the Father breached the Agreement, which entitled them to then deny him access with them or the Minor Child. The Court finds that the Parties contractually agreed to joint custody between the Father and Spouses, but the Spouses reneged on their promises when they were not satisfied with the Father’s relationship with them.

B. Fitness

This [c]ourt finds that all the Parties are fit and proper parents for the Minor Child. All Parties showed a willingness and capacity to be involved in the Minor Child’s development. Since the Pendente Lite Order (“PL Order”), all three Parties (Mother, Wife, and Father) successfully demonstrated their ability to properly care for the Minor Child.

C. Relationship established between the child and each parent

The Father had limited access with the Minor Child from the Minor Child's birth until the PL Order. The Father testified that he did not know of the Minor Child's birth until he heard about it on social media. The Spouses acknowledge that their communication with the Father was limited through this period. In fact, the Father did not have access with the Minor Child until this Court issued its PL Order on December 16, 2021. Until December, the Spouses cared for the Minor Child without interruption or incident. The Court will not negatively construe the Father's limited access with the Minor Child when the Spouses withheld that access until the PL Order. Since December, the Father successfully cared for and healthily interacted with the Minor Child. Moreover, there is no evidence that any party abandoned the Minor Child. The [c]ourt finds that the Spouses intentionally kept the Father from the Minor Child. However, the Spouses have fully followed the PL Order access schedule.

D. Preference of the child

The Minor Child is less than a year old and cannot express a preference.

E. Potential disruption of child's social and school life

Any change in custody from the Spouses to the Mother and Father will not disrupt the Minor Child's current family structure. The [c]ourt recognized and enforced the Agreement through its PL Order. The Spouses currently communicate well with each other and have a stable, loving relationship based on their five years of marriage. The Father also demonstrates a willingness to communicate and be involved with the Minor Child. This [c]ourt recognizes that the Parties had different visions for how this custodial arrangement would manifest after the Minor Child's birth, but a difference in expectations does not erase the Agreement. By all accounts, the Minor Child is doing well under his Father's and the Spouse's [sic] care.

F. Geographic proximity of parental homes

The Father lives in Washington D.C., while the Spouses live in Landover Hills. The Parties live approximately 6.5 miles apart, which is roughly a 20-minute drive. There is no question that this short distance presents ample opportunity for the Father to have plenty of access with his Minor Child.

G. Demands of parental employment

The [c]ourt received little testimony on this factor. The Father testified that he currently works with the Federal Government as a contractor and that he is well-equipped to provide for the Minor Child's needs. The Spouses both testified that they are financially stable with a flexible schedule. The Father's job is demanding and occasionally renders him unable to enjoy his full access time under the PL Order. These demands can be mitigated with a more flexible access schedule that defaults custody back to the Spouses whenever the Father cannot cover his access time.

H. Age and number of children

The Minor Child is less than a year old, and he is the only Minor Child involved in the matter.

I. Sincerity of parents' request

This [c]ourt finds that the Father and Spouses are sincere in their request for custody. The Parties differed in how they envisioned the custodial arrangement, but the Parties' testimony at trial, evidence presented, and the Agreement all show that they wish to provide and care for the Minor Child. The Father based his sperm donation upon the expectation that he be involved in his Minor Child's life. The [c]ourt also recognizes that the Spouses love their son and wish that he develop in a healthy and loving environment.

J. Financial status of the parents

The [c]ourt received little testimony regarding this factor. The Parties all testified that they were financially stable. It appeared the Father was the superior wage earner. Neither the Father nor the Spouses disputed their claims of financial stability. This [c]ourt finds that all parties are financially stable and capable of providing for the Minor Child's needs. The Minor Child will have greater financial and emotional support, as well as a more robust family with all three parents involved. Lastly, the Minor Child should have his Father present in his life to ensure he has the life-long opportunities the Father can financially support.

K. Impact on state or federal assistance

Neither party testified or introduced evidence regarding this factor. Thus, it was not considered.

L. Benefit to parents

The [c]ourt finds that both the Father and Spouses would benefit from being involved in the Minor Child’s life as a family of three. The Father obviously benefits because he has access to his son as provided in the Agreement, which allows him to build a lifelong relationship. The Spouses benefit because their Minor Child will have a strong relationship with them and be a part of their family.

The court announced its holding on the second page of the opinion and again, on the third, stating:

Based upon the pleadings, testimony and evidence presented at trial, and the record herein, this [c]ourt finds that it is in the best interest of the child for the [c]ourt to consider rebuttal evidence, such as: (1) the detailed Agreement between the three Parties; (2) the Father’s uncontested status as a biological parent; (3) the Father’s demonstrated ability to care for the Minor Child and contribute to childcare expenses; (4) DNA test confirming the Father’s biological relationship with the Minor Child. After applying the best interest of the child standard under *Taylor v. Taylor*, this Court further finds that the Father successfully rebuts the Wife’s presumption of parentage, which entitles him to custodial rights.

In its conclusion, the court stated the following:

[] based upon the Agreement, the Father’s status as a biological parent, and Spouses’ efforts to exclude Father from the Minor Child’s life, this [c]ourt finds that the Father has rebutted the presumption of parentage, and it is appropriate and in the Minor Child’s best interest to consider rebuttal evidence (i.e., that the Father is a biological parent). Additionally, the Parties all agree that the Father is, in fact, the Minor Child’s biological Parent. Here, the Father submitted a court-ordered DNA test result confirming his status as a biological parent. As such, this [c]ourt will award the Father custodial rights so that he may develop and raise his Minor Child with the Mother, as provided for in the Agreement.

Appellants contend that the court erred by “concluding and fashioning an Order in accordance with its determination that a Co-Parenting Agreement . . . overcomes the

presumption of legitimacy.” In their brief, however, Appellants argue the court’s analyses under the Estates and Trusts Article and the cited case law are “the primary reasons upon which the Court made its decision together with the reasoning behind the best interest standard.” Appellants then refer to several of “the factors utilized by the [c]ourt.” Appellants do not contend that the court’s factual findings are erroneous nor do Appellants contend that the best interest standard is not applicable. Instead, Appellants argue that Maiya Skye’s marriage to the biological mother gives her parentage status.

As we see it, the court did not err in either its findings or its legal conclusions. The court carefully examined and weighed the proper factors in determining that it was in the best interest of Baby Skye to consider Appellee’s rebuttal of Appellant, Maiya Skye’s presumption of parentage and to consider additional evidence. The court acknowledged the DNA test results confirmed that Appellee is the biological father. The court also recognized the Co-Parenting Agreement as a valid agreement between the parties where they specified that Appellee would be recognized as the father. The court also found that Appellee had a demonstrated ability to care for the child and to contribute to the child’s wellbeing. While we agree that the court’s conclusion includes the phrase, “based upon the Agreement,” the court did not rely on the Agreement alone and provided a detailed recitation of the facts, analysis of the best interest factors, case law, and statutory interpretation at the beginning of the opinion.

We hold the court neither erred nor abused its discretion in determining that Appellee is the father of Baby Skye. The court’s order considered the Co-Parenting

Agreement only after it determined that the presumption set forth in § 1-206 had been properly rebutted and the court properly determined that the genetic testing concluded that Appellee was the biological father.

II. The Court did not err in denying parental rights to the spouse of the biological parent.

In *Troxel*, the Supreme Court of the United States reaffirmed the long-standing principle that the Due Process Clause of the Fourteenth Amendment “protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (citing *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535, (1925)). The Court observed that this interest is “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Id.* at 65. As stated by our Court in *Basciano*, “Maryland courts, in turn, have ‘consistently echoed the Supreme Court, declaring a parent’s liberty interest in raising a child a fundamental one that cannot be taken away unless clearly justified.’” *Basciano v. Foster*, 256 Md. App. 107, 131 (2022 (quoting *In re Yve S.*, 373 Md. 551, 566 (2003))). Under Maryland law, the right to rear one’s children is deemed essential and among a parent’s basic civil rights. *In re Yve S.*, 373 Md. at 566.

Maryland law recognizes two types of legal parentage: biological and adoptive. A biological parent is generally defined as “the woman who provides the egg or the man who provides the sperm to form the zygote that grows into an embryo,” and the Maryland Legislature has expanded the concept of biological parentage to include artificial insemination and in vitro fertilization. *Biological Parent*, Black’s Law Dictionary 1144

(8th ed. 2004); Md. Code Ann., Est. & Trusts § 1-206. An adoptive parent is “an individual who completes adoption of another individual,” and has appeared at a hearing before a court. Md. Code Ann., Fam. Law § 5-101; Md. Code Ann., Fam. Law § 5–3A–32. In Maryland, a child has two parents and one “parent is the sole natural guardian of the minor child if the other parent: (i) dies; (ii) abandons the family; or (iii) is incapable of acting as a parent.”). Md. Code Ann., Fam. Law § 5-203.

In their brief, Appellants argue the Circuit Court erred by not affording any parental rights to Appellant Maiya Skye. Initially, Appellants contended that Maiya Skye is entitled to parental rights because she is the spouse of the biological mother or, alternatively, because she could be designated a *de facto* parent. During oral argument, Appellants, however, conceded that they have no claim for *de facto* parentage. Appellee argues that Appellant is a third-party who is not entitled to parental status.

We agree. As previously noted, Maryland recognizes two types of parentage; biological and adoptive and Appellant Maiya Skye does not fit in either category. In addition, the biological parents have not consented to nor have the parties sought the termination of either’s parental rights. There also is no claim that adoption proceedings have been initiated and Maryland does not have a “second parent” adoption law, as referred to in the parties’ Co-Parenting Agreement.

Assuming arguendo that the parties could enter into an agreement contrary to established law, the parties here agreed that “the law and [b]irth certificate would recognize Shauntice [] Skye and Jonathan [] Patton as mother and father of the child.” In fact, the parties stated that the baby was to partially have Appellee’s last name, Skye-Patton, and

that Appellee would be “mentioned as ‘DAD or ‘Daddy’” to the child in all private public and social settings. Appellant Shauntice Skye would “be mentioned as ‘Mother, Mom, or Mommy,’” and Maiya Skye would “be mentioned as ‘Yaya.’”

Appellants have not argued that the Court erred in its custody or visitation determinations, only in its parentage finding and its determination of the division of costs for the parenting coordinator. We observe that in the context of custody and visitation cases, Maryland courts do recognize third parties, such as step-parents and *de facto* parents. Nevertheless, “the duty of parents to provide for the maintenance of their children, is a principle of natural law; an obligation laid on them not only by nature herself, but by their own proper act, in bringing them into the world” *Warren v. Warren*, 336 Md. 618, 629 (1994) (quoting *Knill v. Knill*, 306 Md. 527, 531–32 (1986)). “No such duties are imposed upon step[-]parents by law. Step[-]parents are authorized to take certain action in regard to children as opposed to being *obligated* to act as are natural parents.” *Id.* (emphasis in original). “Step-parents generally have stood in the same shoes as other non-parental third parties.” *Kpetigo v. Kpetigo*, 238 Md. App. 561, 570 (2018).

De facto parents are characterized as non-related adults “who claim[] custody or visitation rights based upon the party's relationship, in fact, with a non-biological, non-adopted child.” *Janice M. v. Margaret K.*, 404 Md. 661, 680-81 (2008). The test “used to determine *de facto* parenthood was narrowly tailored to avoid infringing upon the parental autonomy of a legal parent.” *Conover v. Conover*, 450 Md. 51, 74 (2016). In *E.N. v. T.R.*,

the Supreme Court of Maryland⁶ held that a “prospective *de facto* parent must demonstrate that both legal parents consented to and fostered a parent-like relationship with a child, or that a non-consenting legal parent is an unfit parent or exceptional circumstances exist.” *E.N. v. T.R.*, 474 Md. 346, 355 (2021).

It is clear that while a third party may be awarded custody, without other circumstances, the status of the biological parents is not extinguished. “Our [Supreme Court] has explained that, in custody cases, ‘unfitness means an unfitness to have custody of the child, not an unfitness to remain the child’s parents.’” *Basciano*, 256 Md. App. at 132.

Here, we hold the court did not err in declining to grant parental rights to Appellant Maiya Skye. The biological parents are present, there has been no termination of their rights or adoption and a step-parent cannot override the rights of the natural parents. The court’s legal conclusions, therefore, are in accord with Maryland law, which does not recognize a spouse as a parent where the biological father has not consented, there are no exceptional circumstances, and it is in the best interest of the child to recognize the parentage of Appellee and grant joint custody to the father.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED; WE REMAND FOR THE
LIMITED PURPOSE OF CLARIFYING
WHETHER THE COURT’S ORDER
SHOULD REFLECT THAT THE**

⁶ On December 14, 2022, by subsequent gubernatorial proclamation, the name of the Court of Appeals was changed to the Supreme Court of Maryland. We shall use the current appellation of that court throughout this opinion.

**PARENTS, SHAUNTICE SKYE AND
JONATHAN PATTON, RATHER THAN
THE “PARTIES” SHALL SPLIT THE
COSTS OF THE PARENTING
COORDINATOR AND OTHER
CHILDCARE EXPENSES.
COURT COSTS TO BE PAID BY
APPELLANTS.**

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

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0924s22cn.pdf>