Circuit Court for Montgomery County
Case No: 36417-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 935

September Term, 2020

YARED TERFASSA

v.

MARYAMAWIT G. WRIGHT

Nazarian,
Wells,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: April 15, 2021

Appellant, Yared Terfassa ("Father"), appeals from the September 30, 2020 order of the Circuit Court for Montgomery County ("Order") awarding appellee, Mayamawit G. Wright ("Mother")[1], sole residential and legal custody of their then 16-year-old daughter ("Daughter");[2] denying Father visitation "at this time;" ordering Father to pay Mother $392 per month in child support; ordering Father to pay Mother $5,096 in child support arrears; and denying "[a]ll other relief that has been requested by the parties, but not granted" in the decision. On appeal, Father presents the following questions for our review, which we quote:

> I. Did the circuit court not abuse its discretion when it made a custody determination without thorough examination of all possible factors as the mother willfully withheld relevant evidence duly requested during discovery as well as when it denied the father's motion to compel discovery?
>
> II. Did the circuit court not err or abuse its discretion when it proceeded directly to an analysis of the best interest of the child without first determining whether there has been a material change of circumstances?
>
> III. Did the circuit court not err or abuse its discretion when it denied a devoted father access or visitation to his daughter based on a finding that is violative of fact or logic?
>
> IV. Did the circuit court not err and/or abuse its discretion when it ordered the father to pay over ninety percent of the Best Interest Attorney's fees and then decline to rule on or deny the father's motion to adjust attorney's fees order?

[1] Some of the pleadings refer to Mother as Maryamawit Gudeta. It appears that after Mother married, she began using the name Maryamawit Wright.

[2] The child was 16 years old when the court issued its September 20, 2020 decision. The child turned 17 years old in January 2021.

For the reasons to be discussed, we shall affirm the judgment.

BACKGROUND

Father and Mother, who were never married to each other, have been litigating custody and related issues since Daughter's birth in January 2004. We shall not belabor the case history, but in its Order the circuit court stated that "[t]o say that the litigation has been protracted and contentious would be an understatement." For context, we note that, pursuant to an initial custody order entered in 2005, Mother and Father were granted joint legal custody, with Mother given primary residential custody and Father visitation rights.[3] On July 26, 2017, when Daughter was 13 years old, Mother and Father entered into a consent order which continued the joint legal custody, but gave Father primary physical custody and Mother visitation rights.[4] The consent order also included the following provision: "In the event that the minor child expresses her wish to primarily live with [Mother], physical custody will change to joint or sole, as appropriate. If [Mother] has sole physical custody, she will also have sole legal, if appropriate." The order was signed by Father, Father's counsel, Mother,[5] the Best Interest Attorney representing Daughter, and the presiding judge.

[3] The term "physical custody" in this case was used interchangeably with "residential custody."

[4] This change in residential custody was precipitated by Mother's marriage and the birth of a child with her new husband, something Mother claimed Daughter found difficult to adjust to. Mother also took the position that Father "manipulated the situation and bribed" Daughter to get her to live with him.

[5] It appears that Mother was self-represented at the time.

On July 30, 2019, Mother filed an "Emergency Motion For Custody" seeking sole physical and legal custody of Daughter, then 15 years old. Among other reasons, Mother alleged that, since living with Father, Daughter had become depressed, had contemplated suicide "multiple times," her school grades had fallen significantly, and she had numerous unexcused absences from school. Mother also alleged that Daughter had made known her desire to live with Mother and, in fact, had been living with Mother for about two weeks. The court declined to rule on an emergency basis and hearings were held on February 12 and 13, 2020. At Father's request, a Best Interest Attorney ("BIA") was appointed to represent Daughter. An additional hearing was held on September 11, 2020, which was limited to issues related to child support. Throughout this time, Daughter, who turned 16 years old in January 2020, resided full-time with Mother, attended public school in Mother's school district, and had cut off contact with Father.

We will discuss the evidence presented at the hearings as necessary to resolve the issues presented. For now, we note that, at the close of evidence following the February 13th hearing, Mother requested sole legal and residential custody and was not opposed to Father having some visitation with Daughter.[6] Father requested joint legal custody and, recognizing that Daughter was "resistant to seeing him," asked for "some graduated visitation" with Daughter. Father also requested that the BIA's fees "at least be split between" Father and Mother.

[6] The February 12 and 13, 2020 hearings were focused on the child custody issues. At the close of the February 13th hearing, the court noted that it would take the child custody issue "under advisement" and set a hearing date for the remaining issue, which was child support.

The BIA informed the court that Daughter "is very astute and far more understanding of the . . . toxicity that exists in the parenting relationship and the parenting dynamics between the parents than I actually think either parent is." The BIA also told the court that Daughter "absolutely" desired to live with Mother and she advocated for Mother to be given primary physical custody. Additionally, in accordance with Daughter's wishes, the BIA urged the court to "not order any structured contact" between Daughter and Father.

On September 30, 2020, the circuit court issued its Memorandum and Order and, among other things, awarded Mother sole residential and sole legal custody and denied Father visitation "at this time."

STANDARD OF REVIEW

"The guiding principle of any child custody decision, whether it be an original award of custody or a modification thereof, is the protection of the welfare and best interests of the child." *Shunk v. Walker*, 87 Md. App. 389, 396 (1991). When a party seeks a change in an established custody or visitation order, however, a trial court must employ a two-step analysis. First, the circuit court must assess whether there has been a "material" change in circumstance. *See Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). "If a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody." *McMahon v. Piazze*, 162 Md. App. 588, 593-94 (2005).

In making a best interests determination, the court must "evaluate each case on an individual basis[.]" *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013). This Court and the Court of Appeals have identified a multitude of non-exclusive factors that may be

pertinent in making that individualized analysis, including: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference of the child; (6) material opportunities affecting the future life of the child; (7) the age, health, and sex of the child; (8) residences of the parents and opportunity for visitation; (9) length of separation from the natural parents; (10) prior voluntary abandonment or surrender; (11) capacity of the parents to communicate and reach shared decisions affecting the child's welfare; (12) willingness of parents to share custody; (13) relationship established between the child and each parent; (14) potential disruption of the child's social and school life; and (15) demands of parental employment. *Montgomery County Dept. of Social Services v. Sanders*, 38 Md. App. 406, 420 (1977) and *Taylor v. Taylor*, 306 Md. 290, 304-09 (1986).

In assessing a trial court's determinations with respect to legal and/or physical custody, this Court applies three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). First, any factual findings are reviewed for clear error. *Id*. Second, any legal conclusions are reviewed *de novo*. *Id.* Finally, "when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion." *Id.* A decision will be reversed for an abuse of discretion only if it is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* at 583-84 (quotation marks and citations omitted).

The Court of Appeals has made clear that "in any child custody case, the paramount concern is the best interest of the child." *Taylor*, 306 Md. at 303. "The best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak." *Id*.; *see also Gizzo v. Gerstman*, 245 Md. App. 168, 199 (2020) ("The court's primary objective, when deciding disputes over child access, 'is to serve the best interests of the child.'") (quoting *Conover v. Conover*, 450 Md. 51, 60 (2016)).

Moreover, "[t]his Court has observed that there is no such thing as a simple custody case, and that a judge agonizes more about reaching the right result in a contested custody issue than about any other type of decision." *Gizzo*, 245 Md. App. at 200 (quotations marks and citations omitted). "Accordingly, trial courts are entrusted with 'great discretion in making decisions concerning the best interest of the child.'" *Id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 469 (1994)). "The appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the trial court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gizzo*, 245 Md. App. at 200 (quotation marks and citations omitted). "Because 'appellate review is properly limited in scope, the burden of making an appropriate decision necessarily rests heavily upon the shoulders of the trial judge.'" *Id.* at 201 (quoting *Taylor*, 306 Md. at 311). "Indeed, custody decisions are 'unlikely to be overturned on appeal.'" *Id*.

DISCUSSION

I.

Father first argues that the "circuit court abused its discretion when it made a custody determination without thorough examination of all possible factors as [ ] Mother willfully withheld relevant evidence duly requested during discovery as well as when it denied [ ] Father's motion to compel discovery."[7] He claims, generally, that Mother failed to "provide complete answers to Interrogatories and Requests for Production of Documents." Specifically, he points to the fact that Mother had failed to provide copies of "all written communication" between Mother and Daughter from the July 2017 consent order to the present, *i.e.* the February 2020 hearing, and he focuses on text messages between Mother and Daughter.[8]

[7] We assume that Father is referring to his motion to compel discovery, which he filed as a then self-represented litigant on August 11, 2020 after the February hearings addressing custody and visitation had concluded, but before the scheduled hearing on child support.

[8] Other than text messages between Mother and Daughter, Father does not indicate what documents Mother failed to produce or what interrogatories she failed to answer. The transcript from the February 12, 2020 hearing, however, indicates that Mother failed to produce federal and state income tax returns and certain other documents related to her income, but she had produced her most recent pay stub. The court admonished both Mother and Father for not producing all documents necessary for the court's review and directed them both to compile all "documents you're supposed to turn over" and bring them to court the next day. As for the missing text messages, Mother testified that it was difficult to print them because "one text is one page" and it's "pages and pages." The next day, Mother apparently produced the financial statements but not the text messages, saying it "extremely conversive" and she could only produce them "piecemeal" as the best way she found to do it was by taking a screen shot of the text and then saving it as a PDF. The court responded that "we're in the middle of the trial, so I don't know." Nothing more was said about the missing text messages as far as we can discern. But in any event, it is not our (continued)

Father maintains that the missing text messages between Mother and Daughter "were central to the determination whether [Mother's] oral testimony and allegations about the child's emotional health and preferences were actually true." Father asserts that these text messages "would have provided the court with evidence as to whether the alleged preference of the child was the product of parental persuasion and manipulation." We have no response from Mother or the BIA, as neither have filed briefs in this case.

Based on our review of the transcripts from the February and September 2020 hearings, we hold that the court did not err in ruling without the missing text messages. By the time of the February 2020 hearings, Daughter had been residing exclusively with Mother for seven months. The BIA attorney informed the court that Daughter's "actions speak louder than words, she has walked with her feet[.]" It was also the considered opinion of the BIA that Daughter was "incredibly astute" and that living with Mother and having no contact with Father was not only Daughter's choice, but in Daughter's best interest.

II.

Father next argues that the court erred "when it proceeded to consideration of the best interest of the child without first determining if there has been a change of circumstances." Rather than resolve that issue, he maintains that because Daughter was

role to search the record to support Father's contention. *Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 201 (2008) ("We cannot be expected to delve through the record to unearth factual support favorable to [the] appellant.") (Quotation omitted.)

then living full-time with Mother instead of him, the court "accepted the existence of a material change of circumstances as [a] given." Father contends, however, that there "was no material change of circumstances" when Mother "took the child on July 23, 2019." He characterizes the situation as Mother having "abducted the minor child first and then went to court" seeking a modification, which cannot be deemed a material change of circumstances.

We disagree with Father. The 2017 consent order, which gave primary physical custody to Father, provided that, if Daughter "expresses her wish to primarily live with [Mother], physical custody will change to joint or sole, as appropriate." The evidence before the court included the fact that in 2019 Daughter, at age 15 years, 6 months, chose to reside full-time with Mother. We also note that, during the time Daughter lived primarily with Father her grades declined significantly, as did her attendance at school. Hence, the circuit court did not err in concluding that there was a material change in circumstances which affected the best interest of Daughter and justified a consideration of a change in custody.

III.

Father maintains that the court erred or abused its discretion "when it denied a devoted father" access to or visitation with Daughter based "on findings that were violative of fact and logic." Specifically, he disputes five findings made by the court, which we shall address in turn.

A.

First, Father asserts that the court "presumed that [Daughter] was depressed, contemplated suicide, and had panic attacks while she was living" with him. Father's position is based on a statement in the following paragraph found in the "Background" section of the court's September 30th Memorandum and Order:

> According to her best interest attorney, [Daughter], now sixteen (16) and currently enrolled in and doing well at Seneca Valley High School in Montgomery County, has considered judgment. According to her best interest attorney, [Daughter] does not want to be court-ordered to visit her father and does not want visitation with him at this time. *During the time she lived with her father,* [Daughter] *was depressed, contemplated suicide, and had panic attacks.*

Emphasis added.

On appeal, Father maintains that there was no evidence before the court "showing the minor child was depressed, contemplated suicide, and had panic attacks while she was living with her father." Rather, Father asserts that the court "just copied" this allegation from Mother's Emergency Motion for Custody and presumed it was true.

Mother's emergency motion did allege that, since living with Father beginning in July 2017, Daughter "has become depressed, has contemplated suicide multiple times, and has had multiple panic attacks." Mother's motion included a "verification" swearing and affirming under the penalties of perjury "that the facts stated [therein] are true and accurate" upon her personal knowledge, information, and belief.

Father himself testified that Daughter had been in "individual therapy"; that he took her to therapy even though Daughter did not want to go; and he criticized Mother for making decisions regarding Daughter without consulting him, such as "taking her to

therapist, refusing to take her to therapist, changing her meds." Also, without objection from Father, the BIA submitted into evidence an email from Mother to Father dated August 27, 2019 regarding Father's opposition to Mother's enrolling Daughter at a school in Mother's school district. The email mentioned that Daughter "is suffering from depression and anxiety, at a minimum" and further stated: "You know she has contemplated suicide. I am worried that forcing her to attend a school she doesn't want to go to is extremely dangerous as it adds to her distress." Mother also testified that, prior to coming to live with her in July 2019, Daughter had been seeing a "mental health provider" for about two years. In addition, the court was privy to some of Daughter's medical records, which were admitted into evidence and placed under seal. In short, we are not persuaded that the court's statement regarding Daughter's mental health while living with Father was based on a mere presumption or simply copied from Mother's pleading.

B.

Father next claims that the court improperly "inferred" that he "verbally abused" Daughter. It appears that Father is referring to the following statement, again found in the "Background" section of the court's Memorandum and Order:

> In June 2019, [Daughter], then fifteen (15), informed mother that she wanted to live primarily with her, due to according to the child, maltreatment by the father. *Mother attempted to discuss the child's wishes with father on July 17, 2019, at which point father became verbally abusive towards the child*. [Daughter] has resided with mother since July 23, 2019.

Emphasis added.

Father first maintains that the court's "finding that the mother attempted to discuss the child's wishes with the father on July 17, 2019 is factually wrong." He insists that

Mother and Father "did not communicate, in person, text, email, or phone on that date[]" and that there "is nothing in the court's record that show that such a communication between the mother and the father had happened." He further asserts that "there is no competent evidence in the record to support the Circuit Court's conclusion that [Father] verbally abused his daughter."

Father acknowledges that the court "did not specifically state that verbal abuse was the factor used to deny the father access to his daughter," but he asserts that "it is a factor that goes into the court's reasoning that awarding visitation to the father would result in actual emotional harm to the child." And Father makes the broad and unsubstantiated claim that the court's "ruling on the particular issue of verbal abuse against the minor was based on personal bias and stereotypical beliefs, not fact or logic."

We agree with Father that there appears to be no evidence in the record before us that, on July 17, 2019 *Mother* reached out to Father to discuss Daughter's desire to reside with her. Rather, the evidence was that on that date *Daughter* initiated an in-person conversation with Father wherein she informed him that she wished to reside with Mother and that Mother had offered to send her to boarding school on the condition that Father give up legal and physical custody. When asked whether he had become "upset" when Daughter told him she wished to live with Mother, Father replied: "I wouldn't say upset, but I would say confused, surprised, trapped, and worried." He denied that he had become angry and threw Daughter's dog against a lamp. Father testified that Daughter was "upset" during the conversation on July 17th, but he claimed she was upset because it was the 6-month anniversary of the death of Father's mother and Daughter "said she doesn't

remember anything about her," and Daughter was upset "about me refusing to let her go to boarding school." Mother testified that she had received text messages from Daughter that evening and a telephone call from her the next day "crying" and at some point on July 18th Mother called the police and asked them to check on Daughter because, having experienced Father's "aggression and abuse" in the past, Mother was "concerned for [Daughter] too." Daughter began living with Mother full-time on or about July 23rd.

In short, although the court appears to have erred in stating that "Mother attempted to discuss the child's wishes [to reside with Mother] with father on July 17, 2019," that error is harmless. As for the court's statement that Father "became verbally abusive towards the child" upon hearing that Daughter wished to reside with Mother, we are not persuaded that that inference was unreasonable based on the evidence before the court. Moreover, when addressing the "parental fitness" factor, the court concluded that, "[w]ith respect to [Father's] parenting, the court finds his hearing testimony was lacking in candor." Finally, the court's decision not to award Father visitation rights "at this time," was based on its ultimate finding that it "would not be in [Daughter's] best interests and would result in actual emotional harm[,]" a conclusion supported by the record and most particularly by the then 16-year old's express desire not to have court-ordered contact with Father.

C.

Father maintains that the court "improperly found that there was a history of domestic violence wherein the father was the perpetrator."[9] Although Father admits that Mother had obtained a "peace order" against him in 2003, he characterizes it as a "consent order for a peace order." He also maintains that Mother's "statements of admissions (emails) as well as collaborating photograph" that he had submitted to the court "clearly show that the mother was the perpetrator of actual physical abuse against the father." And he insists that the court "stated that the father was the perpetrator [of domestic violence] despite compelling evidence to the contrary." Yet Father does not direct our attention to any evidence in the record to support his claim that Mother, not Father, was the domestic violence perpetrator. We also note that the court stated that it "did not find [Father] to be a credible witness."

In short, we are not convinced that the court's finding on the domestic violence factor is clearly erroneous. Mother testified that she had "experienced [Father's] aggression and abuse"; that she was a "victim of domestic violence from [Father]"; and while pregnant with Daughter she had obtained a protective order against him. But in any event, we are not persuaded that the court's finding on the domestic violence factor had a significant influence on its decision to award sole residential custody to Mother and to deny Father visitation with Daughter "at this time." As the record before us clearly establishes,

[9] Domestic violence is a factor courts consider when making custody decisions. Here, with regard to that factor, the court stated in its entirety: "There is a history of domestic violence. The plaintiff [Father] is the perpetrator."

and as previously noted, the court recognized that it was Daughter's desire to live with Mother and to have no court-ordered visitation between Father and Daughter – a position strongly advocated by Daughter's BIA.

D.

Next, Father takes issue with the following statement in the "Background" section of the court's Memorandum and Order:

> [Mother] is married and has another child that resides with the family. She lives in Germantown, Maryland. *Mother took* [Daughter] *to therapy in 2016, which was unilaterally terminated by father*, who threatened to sue the therapist if she did not stop seeing [Daughter]."

Emphasis added.

Father acknowledges that Mother testified she "had started family therapy with [Daughter] to overcome" the "challenges" Daughter was facing when Mother married and had a baby, "which [therapy] was unilaterally terminated by [Father]." But he claims that the court had sustained his counsel's objection to that testimony, and points to the following exchange:

> [MOTHER]: The consent order that was signed in July of 2017, where primary physical custody was transferred from me to [Father], arose because of change in family dynamics at my household. I got married and I had a child during this period. [Daughter] found this change to be challenging to adjust to. In addition, she was dealing with - - she was growing and becoming a teenager and seeking her independence. Noticing her challenge, I had started family therapy with [Daughter] to overcome these challenges, which was unilaterally terminated by [Father].
>
> [FATHER'S COUNSEL]: Objection.
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> THE COURT: Sustained, and the reason, ma'am, you're welcome to have the views and opinions that you have, but you cannot give basically expert opinion testimony. So, I heard it, but I sustain the objection.

In our view, the court sustained the objection to Mother's testimony regarding the reasons Mother believed Daughter needed therapy, not Mother's testimony that she took Daughter to family therapy, which was "unilaterally terminated" by Father.

Father points out that the July 2017 consent order provided that Daughter would "continue to see Michele Sarris for at least the next six months" and that Father and Mother "will ensure that [Daughter] attends the therapy sessions during his and her time with the child." The provision further provided that "[n]either party will unilaterally terminate the child's individual therapy." The consent order also permitted "a parent" to have "reunification therapy sessions" with Daughter and "that parent may work with a therapist of his or her choosing" with the understanding that such therapy "should only continue in consultation with the minor child's therapist at the time, if any, to determine whether it is in her best interest to see another professional for family therapy."

In his brief, Father attempts to explain his actions with regard to Daughter's therapy (for example, the therapist was "not the child's therapist") and to accuse Mother of refusing to take Daughter to reunification therapy. And he maintains that he had never violated the provisions of the consent order related to therapy. These are points which we need not address, however, because the issue before us is whether the court's statement that Father "unilaterally terminated" therapy initiated by Mother for Daughter was clearly erroneous. We conclude that it was not because it was testified to by Mother.

E.

The last finding that Father takes issue with to support his argument that the court erred in denying him visitations rights is that he sent Daughter's dog to Ethiopia in response

to Daughter's decision to live with Mother. He claims that the court's finding "was both factually wrong and illogical." We are not persuaded, however, that the court's finding was clearly erroneous.

There was significant testimony regarding Bubba the dog. It was undisputed that Father purchased Bubba for Daughter, at Daughter's request and, in his words, for her "well-being," when Daughter resided full-time with him. Father considered Bubba to be Daughter's dog. It was also undisputed that Bubba remained in Father's care when Daughter left Father's home in July 2019 and began residing with Mother, and that in September 2019 Father sent Bubba to Ethiopia without Daughter's knowledge or consent. Text messages between Father and Daughter in December 2019 were admitted into evidence which indicated that Father reached out to Daughter inquiring what she would like for Christmas and Daughter replied she wanted Bubba to live with her; Father responded that Bubba needed more care than Daughter could provide and that he loved the dog and he needed Bubba's "companionship."

At the February 12, 2020 hearing, Father admitted that he had not made any attempts to return Bubba to Daughter after she moved to Mother's home, but claimed it was due to the lack of communication he had with Daughter. He explained that he sent the dog to Ethiopia with his nephews because he could not accommodate a dog in his new living quarters. Father admitted that during their December 2019 text exchanges about Christmas gifts, he did not tell Daughter that her dog was in Ethiopia, explaining that he did not want to "cause her . . . another emotional distress." And he admitted that, unbeknownst to Daughter, Bubba was still in Ethiopia.

In the "Background" section of the September 2020 Memorandum and Order, the court stated: "In response to [Daughter's] decision to live with her mother, father sent [Daughter's] dog, which father had purchased while [Daughter] resided with him, to Ethiopia." We cannot conclude that the court's statement was clearly erroneous. Father did send the dog to Ethiopia after Daughter moved to Mother's home. Although Father points to his testimony that he sent the dog to Ethiopia because he could no longer care for the animal, the court was free to reject that explanation in light of the evidence that he made no attempt to give the dog to Daughter and for months thereafter kept hidden from her Bubba's true whereabouts.

IV.

Father's final argument relates to the court's July 13, 2020 order that he pay the lion's share of the BIA's interim fees. Because Father did not appeal the July 13th order or the September 10, 2020 entry of a money judgment in favor of the BIA, the only issue before us is the court's denial of his motion to reconsider the July 13th order. We find no abuse of discretion in the court's ruling. We explain.

After the court declined to treat Mother's July 2019 emergency motion for custody as an emergency, Father – in November 2019 – moved for the appointment of a Best Interest Attorney to represent Daughter and requested that the court order the parties to share the costs for the BIA's representation "proportionate to their incomes." Father also filed a motion seeking an expedited hearing on his request to order Mother to cooperate in enrolling Daughter in at least weekly therapy sessions. Mother, representing herself, filed

Answers opposing any order to force Daughter into therapy and opposing the appointment of a BIA.

By order entered on January 30, 2020, the court appointed Lindsay Parvis, Esq. as BIA for Daughter and ordered Father to place $5,000 and Mother $100 into the attorney's trust account "as an initial contribution towards the [BIA's] fees[.]"[10] The order also provided "that the court-appointed attorney may submit a motion for interim fees for services rendered and expenses advanced . . . which the Court shall order to be paid by a date certain, provided that the Court is satisfied as to the necessity of services rendered and expenses incurred[.]" And the order provided that "[f]inal allocation of fees shall be determined by the Court at a hearing on the merits of this case or upon the Petition of the court-appointed attorney." It does not appear that Father (or Mother) challenged the January 30th order or the court's allocation of the parties' initial contributions to the BIA's fees.

On April 1, 2020, following the conclusion of the two February hearings on the custody issues, the BIA filed a motion for payment of interim attorney's fees and costs, and on April 9, 2020 filed a supplement thereto, noting that Father had advanced the initial $5,000 contribution ordered by the court and Mother had yet to contribute her $100. The BIA informed the court that her fees in this case totaled $9,475 to date and she attached invoices to the motion documenting her services. She requested authorization to apply the $5,000 held in trust to the total fees owed and asked that the court allocate "as appropriate"

[10] The order did not explain the bases for its allocation of the initial contributions toward the BIA's fees.

between the parties the remaining balance of $4,475. She also requested that the court order that the $4,475 be paid within 30 days of the court's order. The BIA informed the court that she was not requesting an advance of fees for a three-hour hearing scheduled for later that summer. Neither Father nor Mother responded to the motion.[11]

More than three months later, by order entered on July 13, 2020, the court authorized the BIA to apply the $5,000 held in trust toward her attorney fees totaling $9,475 for services rendered and costs incurred through February 29, 2020. The court also awarded her "interim attorney's fees and costs" totaling $4,475, and allocated payment of those fees by ordering Father to pay $4,000 and Mother to pay $475. (The court did not explain the basis for its allocation.) Father and Mother were further ordered to pay their respective sums within 30 days, and it was ordered that if payment was not made within that time frame, the BIA would be entitled to judgment for any sums ordered and unpaid.

On August 8, 2020, twenty-six days later, Father filed a "motion to adjust attorney's fees order" – in essence, a motion for reconsideration of the July 13th order – in which he requested that the court reapportion the allocation of the BIA's fees, claiming that Mother's income was about three times greater than his and that the allocation of the BIA's fees was unreasonable. Father noted that he had already made an initial contribution of $5,000. Father asked the court to "adjust the apportionment between the parties of the attorney's fee payment in accordance with the principle of reasonableness" and cited *Gillespie v.*

[11] On June 1, 2020, Father (who was then self-represented), filed a motion to disqualify Ms. Parvis as BIA and to "assign another, independent, compassionate advocate" for Daughter. Ms. Parvis opposed the motion. On July 28, 2020, the court denied Father's request.

Gillespie, 206 Md. App. 146 (2012).[12] Father served a copy of his motion on Mother, but not on BIA Parvis. Father did not request a hearing on his motion.

On September 8, 2020, apparently unaware of Father's motion for reconsideration, the BIA requested a judgment against Father in the amount of $4,000 based on the fact that more than 30 days had elapsed since the July 13th order and Father had not made any payments towards the BIA's interim fees. A money judgment against Father in the amount of $4,000 was entered on the docket and the judgment index on September 10, 2020.

A hearing was held on September 11, 2020, which was intended to focus on child support issues. During this hearing, the BIA informed the court that she had just become aware of Father's motion to adjust attorney fees and noted that she had not been served with a copy of it. The court responded that a money judgment in her favor had been entered the day before. As far as we can discern, nothing else was said at the hearing regarding the September 10th money judgment in favor of the BIA, the July 13th order, or Father's motion for reconsideration of the July 13th order.

On September 30, 2020, the court entered its Order awarding Mother sole residential and legal custody of Daughter, denying Father visitation "at this time," ordering Father to pay Mother $392 per month in child support, ordering Father to pay Mother $5,096 in child

[12] In *Gillespie v. Gillespie*, 206 Md. App. 146, 178 (2012), we determined that the factors set forth in § 12-103(b) of the Family Law Article should be considered by a court when allocating costs for a best interest attorney. Those factors include the financial status of each party; the needs of each party; and whether there was substantial justification for bringing, maintaining, or defending the proceeding. *Id.*

support arrears, and denying "[a]ll other relief that has been requested by the parties, but not granted" in the Order. On October 26, 2020, Father filed a notice of appeal.

On appeal, Father maintains that the circuit court erred or abused its discretion by "declining to rule on or denying" his motion for reconsideration of the July 13th order directing him to pay $4,000 of the BIA's interim fees and ordering Mother to pay "a mere $475." Father also challenges the July 13th order itself and claims that the court did not address certain factors when it ordered him to pay the bulk of the BIA's fees. He requests that we remand the matter to the circuit court for a hearing on his motion.

Initially, we note that, although not captioned as such, Father's "motion to adjust attorney's fees order" was in substance a Rule 2-535(a) motion for reconsideration of the July 13th order. Because the motion was filed more than 10 days after the entry of the July 13th order, Father's motion cannot be deemed a motion to alter or amend the judgment pursuant to Rule 2-534. As such, Father's motion for reconsideration did not toll or extend the time for filing a notice of appeal of the court's July 13th order.[13] *See* Md. Rule 8-202(c) and *Stephenson v. Goins*, 99 Md. App. 220, 225-26 (1994). Consequently, the issue before us is limited to whether the circuit court abused its discretion in denying Father's motion for reconsideration. *Miller v. Mathias*, 428 Md. 419, 438 (2012). In other words, the

[13] Because the payment of the BIA's fees was collateral to the merits of the modification of child custody and child support issue, Father could have filed a notice of appeal from the July 13th order directing him to pay the $4,000 for the interim BIA's fees. *See Blake v. Blake*, 341 Md. 326, 336 (1996). Moreover, an order for the payment of money, such as attorney's fees in a domestic case, may be considered an interlocutory order immediately appealable under Courts & Judicial Proceedings Article, § 12-303(3)(v). *See Lieberman v. Lieberman*, 81 Md. App. 575, 582-83 (1990).

propriety of the July 13th order itself is not before us. *Estate of Vess*, 234 Md. App. 173, 204 (2017) ("An appeal from the denial of a motion asking the court to exercise its revisory power is not necessarily the same as an appeal from the judgment itself.") (quotation marks and citations omitted)).

On September 10th, the court entered and indexed the money judgment in favor of the BIA, which, in essence, subsumed the July 13th order. Father did not appeal or move to strike or vacate the money judgment. Accordingly, we hold that the court did not err in denying, pursuant to its September 30th Order, Father's motion for reconsideration of the July 13th order because his motion was then moot.

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