Circuit Court for Charles County
Case No. C-08-FM-21-001040

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1016

September Term, 2022

ISIS BENTON

v.

LEWIS BENTON, III

Berger,
Beachley,
Ripken,

JJ.

Opinion by Berger, J.

Filed: April 19, 2023

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

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

In August of 2021, Appellant, Isis Benton ("Mother"), and Appellee, Lewis Benton III ("Father"), sought to end their thirteen-year marriage. Ensuing from the adjudication of the couple's divorce, the dispute that brings the parties to this Court involves the trial court's rulings regarding the custody of the couple's three sons and the determination of child support. Following a one-day trial, the Circuit Court for Charles County granted primary physical custody to Father, who continued to reside with the couple's children in the marital home. Additionally, the court ordered Father to pay Mother $560.00 per month in child support. Mother appealed both of these rulings by the circuit court.

Accordingly, Mother presents two questions for our review, which we reorder and rephrase as follows:[1]

> I. Whether the circuit court erred by awarding primary physical custody to Father and not to Mother.
>
> II. Whether the circuit court erred computing Father's child support obligation.

[1] Mother presents the following two questions, verbatim, for our review:

> 1. Did the [circuit c]ourt commit clear error in its findings of Appellant's actual income when it computed Appellee's child support obligation?
>
> 2. Did the [circuit c]ourt abuse its discretion when it awarded Appellee primary physical custody of the minor children despite the fact that Appellant had been a stay-at-home mother from the birth of the parties first child on November 21, 2020 until the separation of the parties in May of 2021 and the Appellee was guilty of parental alienation.

For the reasons explained herein, we affirm the circuit court's ruling on the first issue, but we vacate the circuit court's determination of child support consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

The Benton Marriage and Children

Father is an officer in the United States Air Force. On December 9, 2009, while stationed in Honduras, Father and Mother wed in a religious ceremony. Father's military deployment brought the couple to Maryland, where they lived from 2012 to 2014. His next deployment brought them to Yokota Air Base in Japan, from 2014 to 2016, then onto Grand Forks, North Dakota from 2016 to 2018, then to Qatar for a year, before returning to Maryland in 2019, where they continue to reside.

Mother and Father's marriage produced three sons ("the Boys"): L.B., born in November of 2010; N.B., born in April of 2015; and M.B., born in January of 2017. The family lived and traveled together throughout Father's deployments, except for while he was stationed in Qatar. For that year, Mother returned to Maryland with the couple's sons, residing in Waldorf, Maryland, in a house the couple purchased in 2012 when Father was previously stationed in Maryland ("the marital home"). Upon Father's return from Qatar, the family lived together again, residing in the marital home.

Through nearly the entirety of the couple's marriage, Mother did not work and instead primarily ran the household and cared for the children. Mother testified that the couple never put the children in day care while Father was deployed. Father participated

in child rearing as well while he worked for the Air Force, though Mother served as the Boys' "primary caretaker."

In 2020, Mother and Father's roles regarding childcare began to shift. First, Mother started working the afternoon/evening shift, from 4:00 p.m. to 10:30–11:00 p.m., at a United Parcel Service ("UPS") facility. Then, with the onset of the COVID-19 pandemic, Father's parenting responsibilities appeared to grow. He began working from home, and, in so doing, he supervised the Boys' remote learning when Maryland schools shifted to online instruction due to the pandemic. Mother continued working at the UPS facility, at this point working more daytime hours that prevented her from being as engaged with parenting as she had been previously.

Upon the start of the following school year, Mother returned to working the evening shift, resulting in her often leaving for work prior to the Boys returning from school, and her returning home from work after the Boys had been put to bed. During this time, Father assumed a greater and greater role in parenting, taking primary responsibility in feeding the children, preparing them for school, and putting them to bed. He also kept the Boys engaged in numerous sports and extracurricular activities.

The End of the Benton Marriage: Separation and Eventual Divorce

Father testified that at some point in 2020, Mother began to be absent more often, spending additional hours besides those spent at her job away from the marital home. The

parties eventually separated in May of 2021. Mother moved from the marital home in Waldorf to a townhome, also in Waldorf, a short distance away.[2]

Following the separation, Mother and Father agreed that the Boys should remain in the marital home in an effort to maintain as much continuity as possible in their home lives and schooling. They also agreed that Mother would get the children every Saturday night, with this growing to Saturday and Sunday evening as well. During this time, Father continued in his role as primary caregiver, as he resided with the children, aided with schooling, and kept them involved in activities like basketball, swimming, track, and football. At some point, Father's father ("Grandfather") relocated from Texas to Maryland to aid Father with the children.

On August 10, 2021, Mother filed in the Circuit Court for Charles County a complaint for a limited divorce in which she sought -- both pendente lite and permanent -- primary physical custody and sole legal custody of the Boys, child support, and other relief the court deemed appropriate. The next day, Father filed a complaint in the same court for an absolute divorce, in which he also sought primary physical custody, joint legal custody

[2] Father assisted Mother with the purchase of the townhouse and continued to pay expenses such as credit card bills and car payments and insurance for the vehicle the family owned and Mother used and credit card loans. He agreed to continue being solely responsible for these obligations as the couple worked through the ensuing divorce. We note this only because the financial support factored into the trial court's ruling that Father did not owe any arrearages for child support. *See Benton v. Benton*, No. C-08-FM-21-001040, at 3 (Md. Cir. Ct. Charles Cnty. July 6, 2022).

with Father having tiebreaking authority, and sole possession and use of the marital home. On October 14, 2021, the circuit court consolidated the cases.

The Divorce Proceedings

On May 18, 2022, the circuit court held a trial on the merits. Counsel represented Father. Mother proceeded *pro se*. Father sought to maintain a custody arrangement similar to the arrangement in place during the separation, with the Boys primarily living with him and alternating between parents on every other weekend. Mother proposed a custody schedule where the Boys would live with her overnight Monday through Wednesday night and every other weekend, and Father would have the Boys overnight Thursday and Friday night and every other weekend.

At the ensuing divorce proceedings, a dispute arose between Mother and Father as to Mother's alleged waning involvement with the Boys following the separation. Father argued that not long after Mother began her job at UPS, in addition to her work schedule limiting her ability to actively parent the Boys, she began to electively participate in their lives less, as well. He testified that, though he took charge in aiding the Boys in schooling and arranging their participation in sports and extracurriculars following the separation, Father made efforts to keep Mother engaged. He said that he took the couple's youngest son, M.B., to Mother's house after M.B. finished his half-days at school and returned to pick M.B. up before Mother left for work. Father said he alerted Mother to the Boys' schedule of games and practices so that she could attend, and he often had to call her when she did not show up so that he could arrange meetings so she could have the Boys for her

assigned weekends. Father said he eventually asked Grandfather to relocate to Maryland so that he could assist in raising the Boys.

Mother countered that she tried to have her schedule changed to a day shift that would better align with the Boys' schedules, but her employer rebuffed her efforts. She said that Father would often rather have Grandfather watch the Boys than Mother. She argued that when she does come to the Boys' sporting events, Father will take the Boys before she has a chance to spend time with them, claiming Father was guilty of "parental alienation." Further, Mother routinely impressed upon the court that for the years prior to her taking the UPS job and the couple's later separation, she was the primary caregiver, never relying on day care, nannies, or others to watch the children.[3] She asserted that after raising the children as a stay-at-home parent through nearly all of the couple's thirteen-year marriage, she now barely got to see the Boys.[4]

The court called the parties back to court on June 9, 2022 to announce its oral ruling. The court memorialized its ruling in an order docketed July 14, 2022. *See Benton v. Benton*, No. C-08-FM-21-001040, (Md. Cir. Ct. Charles Cnty. July 14, 2022). The court granted the parties an absolute divorce based upon the voluntary separation of the parties. *Id.* at 2. The court granted neither party alimony. *Id*. at 3. Amongst the division of property

[3] Mother testified, "I never give my kids to nobody, just me. I always took care of my children."

[4] Mother testified, "I only get to see my children two times a month, after having, after raising these kids with [Father] and without him."

relevant to this dispute, the court awarded Father use and possession of the marital home in Waldorf through April 2025. *Id.* at 4. The court awarded Mother the townhouse in Waldorf titled in her name and which Father helped her acquire when the parties separated. *Id.*

Circuit Court's Determinations Regarding Custody of the Boys and Child Support

As to the matter of custody, the court awarded joint legal custody of the Boys, with neither Mother nor Father receiving tiebreaking authority. *Id.* at 2. The court awarded Father primary physical custody. *Id.* The court instructed the following parenting time schedule for the children: the Boys would live with Father and have parenting time with Mother three weekends a month during the school year; during the summer, the Boys would alternate weeks between Mother and Father's respective residences; and Mother and Father would enjoy parenting time with the Boys on alternating holidays, with the schedule of holidays also alternating every year.[5] *Id.* at 2–3.

[5] Specifically, the court stated that the "parties will maintain a week on[,] week of scheduling during summer vacation with [Mother], Mrs. Benton, having [the Boys] beginning the first full week of the summer after school is out[,] and the parties will exchange the children at 6 P.M. on Sundays." *Benton*, *supra*, No. C-08-FM-21-001040, at 2. During the school year, the Boys "will reside with [Father] with [Mother] having parenting time on the first, third, and [fourth] weekend of the month. *Id.* at 2. As for exchanging the Boys, "[Mother] will pick up [the Boys] after school on Fridays and return [the Boys] to school on Mondays unless Monday is a federal holiday, and in which case she will return them to school on Tuesday morning." *Id.*

During the winter holiday recess, Father "will have parenting time with [the Boys] from the time that school lets out until 12 noon on Christmas Day in even years beginning in 2022[,] and [Mother] will have parenting time until school resumes, and the parties will

The trial court ordered Mother and Father to give the other parent at least fourteen days notice "if either party intends to take the children out of the country." *Id.* at 3. Additionally, "if either party will be away from the children for more than two (2) hours they will give the other party the right to first refusal to have that parenting time with [the Boys]. . ." *Id.*

According to the figures entered into the Child Support Obligation Worksheet used by the trial court, the custody schedule works out to the children residing with Mother for 150 overnights and residing with Father 215 overnights through the course of a given year. Apportioning Mother and Father's monthly gross "actual income" of $3,617.00 and $8,542.00, respectively, according to the allocation of parenting time, "based upon the Maryland Child Support Calculator," the court ordered Father to pay $560.00 per month to Mother as Child support. *Id.* Further, the court denied Mother's request for retroactive support and found no arrearages "based upon [Father's] payments on the [automobile] for

reverse the schedule on odd number years." *Id.* at 3. Mother will have the Boys "the entirety of [the Boys'] spring break in addition to her scheduled weekend." *Id.*

Regarding the alternating holidays, the court instructed that Mother "will have parenting time with [the Boys] from the time school lets out before [T]hanksgiving until 4 p.m. on [T]hanksgiving day[,] and [Father] will have the rest of the holiday in even years beginning in 2022[,] and the parties will reverse the schedule in odd number years." *Id.* at 2. Mother will have the Boys on Mother's Day, and Father will have the Boys on Father's Day. *Id.* at 3. "All other holidays and dates will be spent with the parent who custody they are in at the time of said holiday or date." *Id.*

the benefit of [Mother]. . . ." *Id.* Mother timely appealed the circuit court's ruling to this Court on August 15, 2022.[6]

DISCUSSION

Standard of Review

When a matter is tried without a jury, like the divorce proceeding in this case, we review the trial court's ruling on both the law and the evidence, but we will not set aside that court's judgment "unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). "If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Friedman v. Hannan*, 412 Md. 328, 335–36 (2010). Because our review of the circuit court's decision "is properly limited in scope . . . the burden of making an appropriate decision necessarily rests heavily upon the shoulders of the trial judge." *Taylor v. Taylor*, 306 Md. 290, 311 (1986).

This Court reviews child custody determinations using three "interrelated standards[:]" (1) factual findings are considered under the "clearly erroneous" standard; (2) if we find the court erred as a matter of law, "further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless[;]" (3) if we view the trial court's ultimate conclusions to be based on "sound legal principles and based upon

[6] Mother's 30-day window in which she could file a timely appeal of the circuit court's order -- docketed on July 14, 2022 -- closed on Saturday, August 13, 2022. Md. Rule 8-202(a). Because this deadline fell on a weekend, it extended to the end of the following business day, Monday, August 15, 2022. Md. Rule 1-203(a)(1). Therefore, Mother's appeal was timely.

factual findings that are not clearly erroneous," the trial court's decisions should not be disturbed absent a finding of a clear abuse of discretion. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

"We have long held that 'we will not disturb a "trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion."'" *Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020) (quoting *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018)). "As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we may have reached a different result." *Id.* (quoting *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003)).

Though the abuse of discretion standard affords considerable deference to the trial court, an "abuse of discretion may arise when 'no reasonable person would take the view adopted by the [trial] court[,]' or when the court acts 'without reference to any guiding rules or principles[,]'" or where such a decision is "well removed from any center mark imagined by the reviewing court" or is "clearly against the logic and effect of facts and inferences before the court," or "violative of fact and logic." *Santo v. Santo*, 448 Md. 620, 625–26 (2016) (quoting *In Re Adoption/Guardianship No. 3598*, 347 Md. 295, 312–313 (1997)). "We will not reverse a ruling we review under the abuse of discretion standard simply because we would have made a different ruling had we been sitting as trial judges[; i]nstead," we ask "'whether justice has not been done,' and the judgment will be reversed

only if there is a grave reason for doing so." *Das v. Das*, 133 Md. App. 1, 16 (2000) (quoting *Wormood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999)).

I. The Circuit Court Did Not Abuse Its Discretion Nor Commit Clear Error by Granting Father Primary Physical Custody of the Boys.[7]

When ruling on the custody of a minor child, "[c]ourts have discretion to consider a variety of factors." *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 757 (2017). The landmark decisions in *Taylor v. Taylor* and *Montgomery County Department of Social Services v. Sanders* provide a library of more than twenty such factors, many with significant overlap, that a court must consider when making custody determinations, including: (1) the "fitness of the parents;" (2) the reputation and character of the parents; (3) the desires and prior agreements of the parents; (4) the potential of maintaining natural family relations; (5) the child's preferences (6) "material opportunities affecting the future life of the child;" (7) the child's age, health and sex; (8) where the parents live and the opportunity for visitation; (9) the length of the child's separation from the parents; (10) either parent's voluntary abandonment or surrender; (11) the parents' capacity to communicate and reach shared decisions affecting the child's welfare; (12) the parents' willingness to share custody; (13) the established relationship between the child and each parent; (14) potential disruption to the child's social and school life; (15) the demands of

[7] Because the custody determination factors into the calculation of child support, we begin our review by considering the circuit court's custody ruling. *See* Md. Code, (1984, 2019 Repl., 2021 Suppl.) § 12-204(m) ("In cases of shared physical custody, the adjusted basic child support obligation" is apportioned in relation to each parent's respective income, with each parent's "share" of that support obligation "multiplied by the percentage of time the child or children spend with the other parent. . .").

each parent's employment; (16) the age and number of the children; (17) the sincerity of each parent's request for custody; (18) the financial status of the parents; (19) the impact the custody decision may have on any parties' state or federal assistance; and (20) the benefit to the parents in maintaining the parental relationship with the child. *Jose v. Jose*, 237 Md. App. 588, 599–600 (2018) (citing *Taylor v. Taylor*, 306 Md. 290, 304–11 (1986); *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1978)).[8]

When considering these "*Sanders-Taylor* factors," trial courts must examine the "'totality of the situation in the alternative environments and avoid focusing on or weighing any single factor to the exclusion of all others," nor must courts weigh *all* potential factors. *Id.* at 600 (2018) (quoting *Best v. Best*, 93 Md. App. 644, 656 (1992)). "The light that guides the trial court" in its determination of custody, however, is "'the best interest of the child standard,' which 'is always determinative in child custody disputes.'" *Santo, supra*, 448 Md. at 626 (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)).

A. The parties' contentions regarding the circuit court's determination of custody.

Mother challenges the trial court's granting of primary physical custody to Father; she does not take issue with the court's ruling that Mother and Father enjoy shared legal

[8] Through the subsequent years in which courts have come to rely on these factors in making custody determinations, they have become known colloquially as "*Taylor* factors" or "*Taylor-Sanders* factors" or "*Sanders-Taylor* factors." *See, e.g., Jose v. Jose*, 237 Md. App. 588, 599–600 (2018).

custody with no tiebreaking authority.[9] Mother argues that the court abused its discretion by granting Father primary physical custody, despite her outsized presence in raising the Boys. Acknowledging the numerous factors the court considered in making its custody determination, Mother asserts that within this "totality of the circumstances" evaluation, the controlling factor is the "best interest of the child." She claims the court found nearly all relevant factors it considered neutral and not favoring either Mother or Father, but in so doing, the court failed to consider her role as a stay-at-home mother from the birth of the couple's first child in November of 2010, through the couple's separation in May of 2021, as well as Father's attempts to keep her alienated from the Boys following that separation.

[9] As explained in the seminal *Taylor v. Taylor* decision, in addition to providing numerous factors courts must consider when ruling upon custody, both legal and physical, the Supreme Court of Maryland distinguished these two custody concepts, as well:

> Embraced within the meaning of "custody" are the concepts of "legal" and "physical" custody. Legal custody carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare. . . . Physical custody, on the other hand, means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody. Joint physical custody is in reality "shared" or "divided" custody. Shared physical custody may, but need not, be on a 50/50 basis, and in fact most commonly will involve custody by one parent during the school year and by the other during summer vacation months, or division between weekdays and weekends, or between days and nights.

306 Md. at 296–97.

In reviewing the reasoning put forth by the trial court, Mother claims that the court did not sufficiently explain how so many factors could be found "neutral," or "not heavily weighted," yet Father could be granted primary physical custody despite her parental history. Mother asserts that "no reasonable person" would take the view adopted by the court in awarding primary physical custody to Father despite her history as the Boys' primary caregiver, and that such an arrangement is not in the Boys' "best interest." She seeks for this Court to remand the matter so that her role as the parent principally involved with the day-to-day tasks of raising the children may be properly weighed.

Father argues that no reasonable person could find an abuse of discretion in the trial court's sound reasoning, as sufficient evidence exists to support the custody determination. Father points to the court's clear and careful articulation of the numerous factors relevant to a custody determination, and the facts applicable to each, while noting that the court must consider "all other circumstances that reasonably relate to the issue" of custody. *Taylor*, *supra*, 306 Md. at 311. Father acknowledges Mother's prior role as primary caregiver, but he asserts that testimony sufficiently showed that both parents were active in raising the children throughout the marriage, and that immediately prior to the separation and thereafter, Mother's interaction with the Boys waned due to her spending less time at home.

Further, in the year or so prior to the trial, Father asserts that he essentially assumed the role of primary caregiver or "stay-at-home parent," living in the same house as the children, taking primary responsibility for their schooling, care, and supervision, keeping

them engaged in numerous activities, and providing support and encouragement in those endeavors. He disputes Mother's claims of "alienation," stating that he actively tried to keep Mother engaged with the children, informed her of their schedules and activities, encouraged her to attend games and practices, and attempted to facilitate her visitation. In looking to the "best interest of the child" standard, Father asserts that the court could see the Boys were healthy, performing well in school, and staying active, and that Mother points to no facts that dispute this. As such, ample facts support the circuit court's determination awarding Father primary physical custody, and no clear error or abuse of discretion could be found warranting disturbing the trial court's decision.

B. The trial court did not abuse its discretion by finding that the Boys' ability to maintain the stability and well-being enjoyed by their current living arrangement was most persuasive amongst its proper consideration of the relevant factors weighed in making its custody determination.

Acknowledging the deference we afford trial judges in these disputes -- who are present for divorce proceedings and thus are better equipped to judge the credibility and sincerity of relevant testimony -- we find no abuse of discretion or clear error in the circuit court's determination of custody. *See id.*; *Bienefield v. Bennett-White*, 91 Md. App. 488, 503 (1992). "We are not free to substitute our judgment for that of the chancellor. The determination of the best interests of the children was for him to make in the exercise of his discretion." *Bienefield*, *supra*, 91 Md. App. at 503.

To begin, the trial court properly weighed eleven factors relevant to "custody" and an additional nine factors related to "legal custody," with considerable overlap between

these lists. *See Jose, supra,* 237 Md. App. at 599–600.[10] In conducting its review of these factors in its oral ruling, trial court reasoned that nearly all of the factors were "equal on both sides" and thus did not tip the scales in favor of either parent.[11] What appeared

[10] The trial court acknowledged that, "[r]egarding the custody issue, the cases in Maryland indicate that the Court has to consider certain factors when determining which party gets primary physical custody."

[11] The trial court reasoned that, regarding whether "both parents are fit and proper[, i]n this case, it appears that both parents are fit and proper. Both parents appear to love their children very much. Both parents want the best for their children." As for the "character and reputation of the parties," the court found no issue "with the character or reputation of the parties." "There is no issue maintaining natural family relations on either side." The court found "[n]o significant differences on either side" regarding "[m]aterial opportunities affecting the future of the children." Considerations of the "[a]ge, health, and sex of the children" were "equal on both sides." Due to the distance between the parties, as they both reside in Waldorf, consideration of "[r]esidence of the parents and opportunity for visitation . . . weighs equally on both sides." Because the "[e]nvironment and surroundings in which the children will be raised" is "appropriate on both parties," it was "[n]ot really a factor."

The trial court proceeded to pivot to "factors for joint legal custody," though several such factors are often considered in awarding physical custody as well. He noted that the parties "appear to be able to communicate and work together since the separation, to some degree," thus the "capacity to communicate and reach agreed decisions affecting the child's welfare" is not a concern. Additionally, "the parties appear to be willing to share physical custody. "Geographical distance between the parties [is] not a major concern." Though Mother's work schedule created issues previously, she testified that she will be starting a new job with the Charles County Board of Education in the coming school year that will "allow her a different schedule," thus the "[d]emands of parental employment [are] not really a factor in this case." "Both parties seem sincere in their request" for custody. The "[f]inancial status of the parents [is] not really a factor [as b]oth parents are similarly situated." The "[i]mpact on federal assistance [is] not a factor." The "[b]enefit to both parties [is] equally weighted."

Though a reviewing court might appreciate a more thorough analysis, we cannot say that the trial court's swift appraisal constituted an abuse of discretion when it appears that court addressed and consider all relevant factors in its best interest determination.

dispositive in the trial court's ruling was the Boys' success and overall wellness in their current living arrangement with Father, and how this nudged a few factors into Father's side of the custody ledger, while no factors clearly cut in Mother's favor.

The trial court noted that the Boys preferred to be with Father, which Mother corroborated, however the court "did not give this factor a significant amount of weight based on the understanding and explanation [Mother] provided, that she has a smaller home and has not been able to afford video games." Though the "[l]ength and separation from the natural parents [was] not really a factor in this case," the court noted that Mother's brief separation from the family "was slightly in favor of [Father] in that regard."

More pertinent to the court, was the "[d]esire of the natural parents and agreement." The trial court referenced the parties' prior agreement that, following Mother leaving the marital home for her townhouse a short distance away, the Boys would stay with Father "so that the children could remain in their current school." The court noted that Father would like to maintain this arrangement, while Mother "desires to change the situation and have the children move in with her," which would result in the Boys needing "to change schools." Similarly, in weighing the "[p]otential disruption to the [Boys'] school and social life," the court noted that "[t]here would be some requirement to change schools if [the Boys] went to live with [Mother,]" though the court stated such concerns were "not really a factor in this case."

In awarding primary physical custody to Father, the trial court correctly prioritized the Boys success and wellness in the current arrangement in which they live with Father,

reasoning that a change in their situation would not be in the Boys' best interests. *See id.* at 600 ("The best interest standard is 'the dispositive factor on which to base custody awards.'" (quoting *Wagner v. Wagner*, 109 Md. App. 1, 38 (1996))). As the trial court stated in its oral adjudication of the dispute: "The bottom line in consideration of all the factors and in looking at how the children are doing currently in their current arrangement, is that the children are doing very well with their current arrangement. Therefore[,] I am not going to substantially change the custody agreement."

"[C]ompetent evidence" exists in the record to support the trial court's conclusion. *Friedman, supra*, 412 Md. at 335–36. The record is replete with photos, school awards, sports schedules, and graded assignments showing the Boys enjoying a busy calendar of activities and a productive time in school. Father testified regarding his active presence in the Boys life, which started prior to the separation as he assumed more of the primary-caregiving responsibilities when Mother began working outside the home and Father worked from home and oversaw the Boys' remote schooling. When Mother moved out, though she was still nearby and engaged, Father's share of parenting duties increased as the Boys resided with him in a now single-parent household for the majority of each week. Mother's argument that the court did not properly weigh her history as the primary caregiver through the first decade-plus of the Boys' lives is compelling, but not dispositive, particularly where Father was also an engaged parent at that time and remains so now. *See Jose, supra*, 237 Md. App. at 606 (stating trial court "did not expressly treat" Mother's

history as primary caregiver "in favor of Mother," when child had a history of living with Father "with no serious issues arising. . .").

We cannot say that "no reasonable person would take the view adopted by the [trial] court," nor that the court's custody ruling is "removed from any center mark imagined by the reviewing court" or is "clearly against logic" and facts presented in this record. *Santo, supra,* 448 Md. at 625–25. Therefore, lacking such an abuse of discretion, we affirm the circuit court's awarding of primary physical custody of the Boys to Father, and the awarding of joint legal custody to both parties, with neither enjoying tiebreaking authority.

II. The Circuit Court Erred When Determining Father's Child Support Obligation, Thus Requiring Remand on This Issue.

The determination of the "basic child support obligation" is governed by statute and "divided between the parents in proportion to their adjusted actual incomes." FL § 12-204(a)(1). "Adjusted actual income," in most cases, means "actual income" minus pre-existing child support, alimony, or maintenance obligations. FL § 12-201(c). "'Actual income' means income from any source," including "expense reimbursements or in-kind payments received by a parent in the course of employment . . . to the extent the reimbursements or payments reduce the parent's personal living expenses." *Id.* § 12-201(b)(1), (3)(xvi).

"The calculation of a child support award is governed by FL § 12-204." *Kaplan, supra,* 248 Md. App. at 386. In disputes such as the one at issue here, where Mother and Father's "combined adjusted actual income" is less than $30,000.01 per month, the statutory child support guidelines control the calculation of each parent's child support

obligation, without room for courts to make discretionary decisions outside these guidelines. *See id.*; *see also* FL § 12-202(a)(1) ("[A]ny proceeding to establish or modify child support, whether pendente lite or permanent, the court shall use the child support guidelines set forth in this subtitle."); FL § 12-204(e) (providing child support schedule guidelines for parents' combined adjusted actual income up to $30,000.00 per month).

In utilizing these guidelines, the trial court makes factual determinations related to each parent's income, expenses, and the percentage of time in a given year the child spends with each parent, then the court plugs these inputs into a formula that provides the ultimate dollar amount the obligor parent must provide the obligee parent each month. *See Horsley v. Radisi*, 132 Md. App. 1, 22–23 (2000). The resultant child support obligation produced by a correct application of the child support guidelines enjoys a rebuttable presumption of correctness, only overcome by evidence that the application of the guidelines would be "unjust or inappropriate in a particular case." *Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018) (quoting FL § 12-202(a)(2)).

A. The parties' contentions regarding the circuit court's determination of child support.

Mother asserts that the circuit court erred by failing to properly calculate the ultimate determination of child support based on Father's actual income. Because actual income includes reimbursement and in-kind payments that reduce a parent's living expenses, the court had to consider both Father's monthly income as well as the Basic Allowance for Housing ("BAH") afforded him as a member of the military living off base. *See* FL § 12-201(b)(3)(xvi). Mother argues that when the BAH stipend is added to Father's

salary, his annual income is actually $127,800.00, thus $10,650.00 per month. Mother asserts that the circuit court abused its discretion by failing to properly consider Father's BAH as part of his income, resulting in a child support determination that was clearly erroneous and less than what the guidelines would have calculated had the correct figures been used.[12]

Father argues that sufficient evidence exists in the record to support the circuit court's determination, and insufficient contradictory evidence exists that could result in a finding of clear error or abuse of discretion. He asserts that he provided all relevant financial documents to Mother during discovery, including tax returns, pay stubs, and information regarding his salary and allowances. He further maintains that Mother provided no evidence at trial challenging the evidence Father provided to the court regarding his income. Further, as Mother acknowledges, the trial judge asked Father about his BAH stipend and assumed additional income existed when making the ultimate child support determination. As such, he contends that the circuit court did not abuse its

[12] Mother bases her challenge to the trial court's determination of the support obligation squarely upon the court's failure to correctly establish Father's "actual income" by not computing an exact dollar amount of Father's BAH stipend and adding that to his monthly salary. As such, Mother does not otherwise challenge the court's use of the support guidelines, the tabulation of expenses or any other potential sources of income that could also factor into the final figure of Father's "actual income." Additionally, because we affirmed, *supra*, the court's custody ruling, there is no need to review the court's use of that custody allocation within the child support guidelines. Therefore, we limit our review strictly to the court's determination of income, and, upon finding this determination correct, we decline to double check the trial court's math as to the ultimate calculation of the support obligation produced by the presumptively correct usage of the child support guidelines.

discretion by making a reasonable ruling based on the evidence before it, with nothing in the record showing clear error in the support determination.

B. The circuit court committed clear error by failing to include Father's BAH in determining his "actual income," thereby deviating from the statutory guidelines used in determining child support obligations, resulting in an abuse of discretion that must be corrected upon remand.

Though the trial court attempted to account for income beyond Father's salary, the court failed to properly establish Father's military housing stipend in calculating his "actual income." Because insufficient "competent evidence" exists in the record to support the trial court's factual findings regarding Father's income, the subsequent determination of his support obligation was clearly erroneous.

Father's BAH constitutes "actual income." "Basic Allowance for Housing, or BAH, provides uniformed service members equitable housing compensation based on housing costs in local civilian housing markets within the Continental United States (CONUS) when government quarters are not provided." *Allowances: Basic Allowance for Housing*, Def. Travel Mgmt. Off., https://www.travel.dod.mil/Allowances/Basic-Allowance-for-Housing/ (last visited April 10, 2023, 10:45 A.M.). The amount a service member's BAH "will vary according to the pay grade in which the member is assigned or distributed for basic pay purposes, the dependency status of the member, and the geographic location of the member." 37 U.S.C. § 403(a)(1). Federal law categorizes the "basic allowance for housing" as "pay and allowances." 37 U.S.C. § 551(3)(D). Accordingy, such a stipend meant to mitigate housing expenses for military personnel living off base qualifies as an "expense reimbursement[] or in-kind payment[] received by parent in the course of

employment [that] . . .reduce[s] the parent's personal living expenses." FL § 12-201(b)(3)(xiv); *see supra* note 11.

Accordingly, the trial court was required to establish how Father's BAH added to his income, and then to use this "actual income" in calculating the support obligation. *See* FL § 12-204(a)(1); *Horsley*, *supra*, 132 Md. App. at 22–23. The trial court recognized Father earned additional income beyond his military salary and then used this higher income figure to establish his support obligation. Father reported a yearly salary of $87,000.00, which would result in monthly earnings of $7,250.00. Father's Financial Statement, tracking relevant expenses related to himself and the Boys as well as revenue generated by Father's work or other economic activities, shows a total net monthly income of $8,193.26, which would annualize to $98,319.12. It further reports gross monthly wages of $8,542.50 (net monthly income from wages of $7,113.26), including both wages and "other gross income" of $1,200.00 (net other income of $1,080.00).[13] Such gross wages annualize to a gross yearly income of $102,510.00. Nonetheless, the statement does not explicitly include a figure representing BAH.

A colloquy between the trial judge and Father regarding his BAH during the divorce proceeding attempted to address the stipend's effect on Father's income. The trial court confirmed that Father's "base salary" was $87,000.00, then the court asked if Father received "BAH?" Father affirmed that he did receive BAH, scaled to the Washington,

[13] The additional $1,200.00 of gross revenue comes from Father renting a house Father owns in Texas that he purchased while he was stationed at Dyess Air Force Base.

D.C. area since he worked out of Fort Belvoir, a military base in Virginia. The trial court proceeded to confirm that for an officer of Father's rank, with dependents, his BAH would be roughly "$3,420 a month."

At the oral disposition of the case, however, the trial court failed to connect these figures in its ultimate child support obligation ruling. The court noted that Father testified to making "$87,000 a year," though "[h]is financial statement showed $8,542.50 per month . . . [w]hich calculates to about $102,500 [per year]." The trial court next "assume[d] that monthly amount includes the benefit he receives in addition to his base salary," since otherwise dividing Father's reported $87,000.00 salary across the twelve months of the year "came out to less per month." The court then placed that $8,542.00 figure, representing Father's "actual income," into the child support calculator, along with relevant figures regarding Mother's salary and each parent's allotment of "overnights" with the Boys as dictated by the custody schedule we affirmed *supra*, "and it came out that [Father] owes $560.00 per month in child support."

Though the trial court recognized the monthly income Father's reported monthly income exceeded his $87,000.00 annual salary, the court failed to follow through and establish a dollar amount that actually included the additional income provided by Father's BAH. Inasmuch as Father did not include the exact BAH amount in his financial disclosure sheet, the only evidence in the record regarding this additional income was Father's confirmation that his stipend, scaled to the Washington, D.C. area, was $3,450.00 a month. Yet, when the trial court explained its calculations during the oral ruling on the support

obligation, it appears the court did not incorporate this $3,450.00 figure into Father's monthly income.

As such, we cannot say that "competent evidence exists [to] support [the trial court's] factual findings" regarding Father's income, resulting in a clearly erroneous determination of the ultimate child support figure. *Friedman*, *supra*, 412 Md. at 335–36. Further, the trial court's failure to include Father's BAH in the figures used to calculate child support, despite this stipend clearly meeting the definition of "actual income," represents a deviation from the "guiding rules or principles" -- as required by statute and the child support guidelines and worksheet -- governing child support determinations. *Santo, supra,* 448 Md. at 625. Accordingly, the trial court's ruling is "clearly against the logic and effect of facts and inferences before the court," thus constituting an abuse of discretion. *Id.* at 625–26.

Therefore, we remand back to the trial court the issue of determining Mother and Father's potential child support obligation, with instructions for that court to clearly establish Father's monthly BAH, and to include this housing reimbursement with Father's salary and any other revenue Father included in his financial disclosures when calculating Father's "actual income." Once established, the trial court must use this corrected "actual income" figure in calculating the child support obligation.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REGARDING THE DETERMINATION OF CUSTODY AFFIRMED. JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REGARDING THE

DETERMINATION OF THE CHILD SUPPORT OBLIGATION VACATED AND REMANDED FOR FURTHER PROCEEDINGS TO DETERMINE FATHER'S ACTUAL INCOME, INCLUDING FATHER'S BASIC ALLOWANCE FOR HOUSING AND ALL OTHER SOURCES OF INCOME. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.