UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1046

September Term, 2014

ROSE C. MOORE

v.

MATTHEW J. MOORE

Graeff,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: December 8, 2015

We are asked to determine whether the circuit court improperly granted custody of the parties' minor children to Matthew Moore ("Father"). Rose Moore ("Mother") argues that: (1) the circuit court failed to make a specific finding about the likelihood of Father abusing the children, pursuant to § 9-101 of the Family Law ("FL") Article of the Maryland Code; (2) the circuit court erred in finding that there had been a material change in circumstances since the last custody order; and (3) the circuit court abused its discretion in awarding sole custody to Father.

BACKGROUND

Mother and Father divorced in 2008, while living in Hawaii. The parties have two minor sons, born during the marriage in 2003 and 2005.

On June 20, 2008, the Family Court of the First Circuit of Hawaii entered a voluntary consent order (the "Hawaii Order"), granting the parties an absolute divorce and awarding child custody. Pursuant to the terms of the Hawaii Order, Mother was awarded full physical and legal custody and Father was awarded visitation.

Shortly after the Hawaii Order was entered, Mother moved to Maryland with the children. Father, who was in the Army, was stationed in Arizona and then Kansas, before being deployed to Iraq. In January 2012, after retiring from the Army, Father also moved to Maryland.

On September 6, 2012, Father filed a motion to modify custody, visitation, and child support in the Circuit Court for Anne Arundel County. In his motion, Father argued that

Mother was limiting and frustrating his access to the children and, in turn, requested joint legal and physical custody

At the hearing, Mother argued that because, according to her, Father had sexually abused both the parties' children and two of Mother's nieces, the circuit court was required, pursuant to FL § 9-101, to make a specific finding that there was no likelihood of further abuse by Father.[1] Additionally, she argued that there had not been a material change in circumstances to warrant a modification of the custody arrangement laid out in the Hawaii Order.

Over four days, the circuit court heard testimony from the parties, Mother's family members, and a court-appointed custody evaluator, who also submitted a 19-page report. The report included the custody evaluator's recommendations based on first-hand observations of Mother, Father, and the children. The custody evaluator's report also incorporated a prior report by Chris Kraft, Ph. D., whom Mother had selected to perform a psychological evaluation of Father.

On October 1, 2013, the circuit court announced its opinion from the bench. The court found that there had, in fact, been a material change in circumstances. Then, the court

[1] Father denied the allegations that he had sexually abused their children. The circuit court found insufficient evidence to sustain the allegations. This finding is not challenged on appeal. Moreover, had it been challenged, we would certainly have given great deference to the circuit court's determination because it saw the witnesses and heard their testimony. For our purposes then, these allegations are unproven and irrelevant.

specifically addressed Mother's allegations that Father had abused their children and her minor nieces. The circuit court found that there had been no abuse and that Mother's allegations were false. Finally, the circuit court applied the *Montgomery County*[2] factors to determine the best interest of the children and granted physical and legal custody to Father. The court reserved on the issue of visitation until a hearing one month later. On November 1, 2013, the circuit court held a hearing on visitation and announced Mother's visitation schedule from the bench. Mother noted a timely appeal.

DISCUSSION

On appeal, Mother argues that: (1) the circuit court, pursuant to FL § 9-101, failed to make a specific finding that there was no likelihood of further abuse by Father; (2) the circuit court erred in finding that there had been a material change in circumstances since the last custody order; and (3) the circuit court abused its discretion when it awarded custody to Father. In response, Father argues only that Mother's appeal should be dismissed because she filed two appeals, the first of which was dismissed by this Court. Initially, we deny Father's motion to dismiss. Next, we address Mother's arguments, reject them, and affirm the circuit court's grant of custody.

[2] *Montgomery County v. Sanders*, 38 Md. App. 406 (1977) (listing the factors the court weighs in determining the best interest of the child for a custody decision).

I. Motion to Dismiss

Preliminarily, we address Father's motion to dismiss Mother's appeal. Father notes that Mother had previously filed an appeal of the circuit court's custody decision and had that appeal dismissed by this Court. Father argues, without citation to any authority, that this Court ought to dismiss Mother's current appeal because Mother does not have a right to a "second" appeal. A look at the timeline is instructive:

- On October 1, 2013, the circuit court concluded the hearing and announced from the bench that it was awarding custody to Father. The court reserved on the issue of visitation.
- On November 1, 2013, the circuit court announced its visitation decision from the bench. This judgment resolved all issues in the case between Mother and Father.
- On November 1, 2013, Mother noted her first appeal.
- On November 25, 2013, the circuit court's November 1 judgment was entered on the docket.
- On December 5, 2013, Mother filed timely post-trial motions, pursuant to Maryland Rules 2-533 and 2-534.
- On March 13, 2014, this Court dismissed Mother's first appeal, because Mother had failed to file an opening brief.
- On June 25, 2014, the circuit court denied Mother's post-trial motions (which, as noted above, she had filed on December 5, 2013).
- On July 25, 2014, Mother noted her second appeal.

After noting her second appeal, Mother filed her opening brief, and oral argument was scheduled for our July 2015 docket. In response to Mother's second appeal, Father

filed a brief—without a single reference to law, rule of court, or case citation—that argued that Mother's second appeal was precluded by her first. Father's brief did not address the merits.

This Court issued an order in which we informed the parties that we would treat Father's opening brief as a motion to dismiss Mother's second appeal and ordered Father to file a new brief addressing the merits. To give him time to comply with this order, we postponed oral argument from July until October. Despite this Court's explicit order, however, Father doubled down on his bad bet, and refiled the same brief, arguing again—and again without reference to *any* governing law—that Mother shouldn't be allowed her second appeal. Mother's reply brief, also without citation, argued that, in her counsel's experience, child custody cases were frequently appealed more than once to the appellate courts.

Despite the parties' apparent lack of familiarity, the rules governing appeals are subject to precise rubrics. No one needs to guess.

First, the proper method for Father to have moved to dismiss Mother's appeal was through Maryland Rule 8-603. Under the terms of that Rule, a party may choose to file

such a motion in advance or with that party's brief. The advantage of filing in advance is that if the Court grants the motion, the party is spared the expense of briefing on the merits.

Second, Father's decision not to address the merits of Mother's appeal, contrary to the explicit instructions of this Court, was a bad choice.[3] The law is clear: failing to address an issue in the brief both precludes oral argument and constitutes a waiver. Md. Rule 8-522(f) ("The Court may decline to hear oral argument on any matter not presented in the briefs."); *Klauenberg v. State*, 355 Md. 528, 552 (1999) ("arguments not presented in a brief … will not be considered on appeal. … Accordingly, this issue is waived."). If this appeal concerned Father's life, liberty, or property, we would have no hesitation to find a waiver here. But because the subject is the best interest of the parties' minor children, which it is our duty to protect, we nevertheless allowed Father's counsel to argue the merits at oral argument and will consider in this opinion the issues that Father failed to brief.

Third, Maryland Rule 8-202 governs the timing for filing notices of appeal. And, more specifically, subsection (c) of that Rule addresses the specialized timing rules when post-trial motions are filed. In pertinent part, the subsection provides:

> If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice of

[3] We make one further observation. At oral argument, Father's counsel argued, in effect, that he wrote a lousy brief because Father was unwilling to pay him to do a good job. That isn't how this works. Once a member of the Maryland bar agrees to represent a client, and absent permissible withdrawal, the lawyer is obligated to provide competent and diligent representation, and zealous advocacy. Md. Rule 16-812, Preamble, Md. Rules of Prof'l Conduct, 1.1, 1.3.

> appeal shall be treated as filed on the same day as, but after, the entry of … an order disposing of [the motion].

Md. R. 8-202(c). Therefore, when a party notes an appeal and then files post-trial motions, the appeal is tolled until the date that the trial court disposes of the post-trial motions. "[F]iling of post trial motions deprives an otherwise final judgment of its appealability until such motions have been resolved." *Waters v. Whiting*, 113 Md. App. 464, 471 (1997).

Thus, Mother's first appeal, which was actually filed on November 1, 2013, is, by rule, treated as if it was filed on June 25, 2014—the day the circuit court decided her post-trial motions. This Court's dismissal of Mother's first appeal, which took place prior to the circuit court deciding Mother's post-trial motions, was a nullity and does not operate to preclude Mother's second appeal. *See Unnamed Att'y v. Att'y Greivance Comm'n*, 303 Md. 473 (1985) (remanding to Court of Special Appeals with directions to dismiss the appeal because the circuit court's judgment was not appealable until the post-trial motions were decided). Therefore, we deny Father's motion to dismiss Mother's appeal.

II. The Merits

Mother contests the circuit court's grant of custody to Father. She makes three contentions, discussed below. We address Mother's contentions in turn, and in concluding that they are without merit, we will affirm the circuit court's decision.

A. Circuit Court's Preliminary Abuse Determination

On appeal, Mother argues that the circuit court erred in failing to make the finding—required by Section 9-101 of the Family Law ("FL") Article—either that there is "no

likelihood" of future "child abuse or neglect" by Father or, if the court could not make such a finding, that it could not grant Father custody. Mother's argument proceeds in three steps. *First*, Father admitted to three separate incidents involving Mother's nieces, who at the time of the incidents described were minors: (1) a brief cupping or touching of a niece's clothed buttocks; (2) masturbating while observing the niece sleeping; and (3) masturbating while another niece was bathing in another room. *Second*, Mother asserts that these incidents, separately or together, fulfill the definition of "sexual contact" in section 3-301 of the Criminal Law ("CR") Article.[4] And *third*, Mother contends that any conduct that constitutes "sexual contact" under CR § 3-301 is sufficient to trigger the application of FL § 9-101.[5]

Father, as we have noted, failed to respond to this argument at all.

[4] Mother's brief cites "Maryland Family Law Section 461(f)," which is wrong in two respects. First, she must have meant to refer to Art. 27, § 461(f). Second, that provision was moved to the "new" Criminal Law Article in 2002. Thus, we deduce that Mother intended to refer to CR § 3-301.

[5] Actually, the analysis requires a few more steps. FL § 9-101's definition of "abuse" is provided in FL § 4-501. When we turn to FL § 4-501, it states that "abuse" includes, among other actions, "rape or sexual offense under §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree." Of these, CR § 3-307, which codifies the crime of third degree sexual offense, states, among other prohibitions, that a person may not "engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim." Finally, CR § 3-301 defines "sexual contact" as it is used throughout the Criminal Law Article as "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party."

At the hearing, Father described the buttocks-touching incident: "[Mother's niece] and I were lying side by side, leaning down over and playing [a board] game. After some time, [the niece] fell asleep next to me. I placed my hand on her buttocks over her jeans for a brief moment. And that was it."

Father also testified about the two masturbation incidents:

[FATHER]:	[T]here happened to be an occasion where the same niece … was asleep on … one of the beds that we had set up in our downstairs. … And she went to sleep on her stomach, clothed. … and I masturbated from a distance while observing her lying there.
[FATHER'S COUNSEL]:	How far away from her were you?
[FATHER]:	More than ten feet.
[FATHER'S COUNSEL]:	Did she ever wake up?
[FATHER]:	No, sir.
	* * *
[FATHER]:	There was another incident with another niece … that I had disclosed to [Mother], that she was in the other room … taking a bath … . And I had pleasured myself.

On cross-examination, Father reiterated that the touching incident and masturbation incidents took place on separate occasions and that he had only touched not groped the niece's buttocks:

> [MOTHER'S COUNSEL]: And groping the private areas of a sleeping 13-year-old is also unacceptable behavior, isn't it?
>
> [FATHER]: Sir, the behavior, as I described it, which is not in concert as you are describing it,[6] is and was acceptable, yes sir. …
>
> I did not say that I groped her. I placed my hand on her buttocks.

Mother's own expert, Dr. Kraft, reported: "[Father's] disclosure to [Mother] about an attraction to post-pubescent girls is not considered a sexual disorder because most adult heterosexual males report the ability to be aroused to this population. … [Father] is not a pedophile. … [It] is unclear why [Mother] continues to allege child abuse … [Mother] may be engaging in this manner as a way to punish her ex-husband."

The court-appointed custody evaluator's report also described these incidents: "[Father] shares that in an effort to offer full disclosure, he shared that he cupped

[6] We understand from context that there was an initial suggestion from counsel that the buttocks-touching incident and the masturbation incidents were somehow contemporaneous events. We understand Father's "not in concert" comment as rejecting that suggestion.

[Mother's] niece's buttocks while she slept. He admits that he later observed the niece sleeping and masturbated in another room." The report noted that, while causing Mother discomfort, Father's actions were not illegal:

> This evaluator finds the need to comment about the disclosure of sexualized behavior by [Father] involving his niece. [Dr. Kraft, the psychologist Mother selected to evaluate Father,] is correct in reporting that it is not unusual. This evaluator is sensitive to recognizing that while not illegal or abnormal, that this causes some discomfort to [Mother].

The circuit court found that the three incidents did not satisfy the definition of abuse and, therefore, that FL § 9-101 was not triggered:

> There is no one … that is more concerned about what occurred with [Father] and those nieces. But at the end of the day, as it was explained, and the only way the nieces would ever know that it even happened, is if somebody in [Mother]'s family tells them about it. They were unaware of his sexual gratification while allegedly watching these girls. So, there is no correlation between what he did then and any [allegations regarding] the boys.
>
> * * *
>
> [Mother's] expert[, Dr. Kraft,] … came to the same conclusion, that there was no abuse.

Our review of the trial court's conclusion begins with FL § 9-101. That provision establishes a mandatory framework when there are allegations of child abuse. FL § 9-101 states:

> (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party …

The provision describes a two-step process—the court must determine (1) "whether there are reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding," and, only if there are reasonable grounds, (2) "whether it has been demonstrated that there is no likelihood of further abuse or neglect by the party." *Baldwin v. Baynard*, 215 Md. App. 82, 106 (2013).

Importantly, FL § 9-101's second step is required "only 'if *the court* has reasonable grounds to believe' that a child has been abused or neglected." *Volodarsky v. Tarachanskaya*, 397 Md. 291, 308 (2007) (emphasis in original) (quoting FL § 9-101). "The issue is not whether some other person or entity could reasonably believe [that a child was abused], but whether the court, from the evidence presented in that proceeding, has reasonable grounds to believe it is so." *Id.* at 307. "[T]o make that initial, critical determination," the court must "sift through the conflicting evidence, make credibility determinations, and determine the ultimate persuasiveness of the evidence bearing on the allegation of abuse." *Id.* at 307-08. If the court finds that the party did not abuse or neglect a child, "[t]hat necessarily means that [the court] was unable to find reasonable grounds for believing that such abuse occurred." *Id.* at 308.

As described above, Mother argues that the three incidents, separately or together, constitute "sexual contact," which is defined, pursuant to CR § 3-301, as "an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or

gratification, or for the abuse of either party." The mere fact of touching is insufficient to satisfy the definition. Rather, the circuit court was required to determine intent. As the Court of Appeals has said, "[w]hether the touching of a person's 'buttocks' would suffice as sexual contact is not clear. It might, however, *depending on the circumstances*, constitute sexual molestation or exploitation." *Cooksey v. State*, 359 Md. 1, 24 n.1 (2000) (emphasis added). It also might not.

As noted above, the circuit court found that none of the incidents described, alone or together, constituted "sexual contact" as defined in CR § 3-301. The circuit court found that Father did not touch Mother's niece's clothed buttocks for the purposes of "sexual arousal or gratification, or … abuse." CR § 3-301. That finding is supported in the record and is particularly in the province of the circuit court, which had the opportunity to observe Father's testimony about the incident. As to the masturbation incidents, the circuit court found that on neither occasion were Mother's nieces physically touched or in any way even aware of Father's activities. As a result, the circuit court found that neither of the masturbation incidents satisfied the definition of "sexual contact." Father's testimony supported these conclusions. Moreover, as the circuit court noted, Father's testimony was corroborated by *Mother*'s expert. In fact, there was no evidence to the contrary. Given all this, we cannot say that the circuit court's determination that Father did not engage in sexual contact with Mother's nieces was an abuse of discretion. As a result then, as a matter of law, FL § 9-101 was not triggered and the circuit court did not err in awarding Father

custody of the children without making the FL § 9-101 finding of "no likelihood of further abuse."

B. Circuit Court's Custody Determination

Mother next argues that: (1) the circuit court erred in finding that there had been a material change in circumstances since the last custody order, and (2) that the circuit court abused its discretion in awarding custody to Father. Because the circuit court did not err in finding a material change in circumstances and did not abuse its discretion in its custody analysis, we affirm.

Custody modification is a two-step analysis. First, the court must find that there has been a material change of circumstances since the last custody order. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). If the court finds a material change, then the court "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, 594 (2005). "The two analyses, however, often are interrelated." *Id.* Determining whether changes "are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child." *McCready v. McCready*, 323 Md. 476, 482 (1991). "[I]f a court concludes, on sufficient evidence, that an existing provision concerning custody or visitation is no longer in the best interest of the child and that the requested change is in the child's best interest, the materiality requirement will be satisfied." *McMahon*, 162 Md. App. at 596.

1. Material Change in Circumstances

Mother argues that the only change identified by the circuit court was that it disapproved of the Hawaii Order and found it to be legally insufficient. We disagree. While correct in her assertion that a court's disapproval of a previous custody order, without more, is probably not a material change in circumstance, the circuit court, while noting that the Hawaii Order would likely not "pass muster" in a Maryland court, also identified several other, more material changes that can satisfy the test. The circuit court's finding of these material changes was supported by the evidence and, therefore, was not clearly erroneous.

First, when Mother argued that there was no material change, the circuit court disagreed:

> THE COURT: I see at least six changes in circumstances so far and I have only heard one witness. So I don't know that that is going to be an issue in this case. This Hawaii order needs to be changed.
>
> * * *
>
> You know, subject to your argument, but the mere lapse of time, if nothing else, everything has changed. The parties were in Hawaii then, they are here now. It is just an abundance.
>
> * * *

It affects the well-being of the children.

Next, in evaluating Mother's motion for judgment—in which she argued that Father had not established a material change in circumstances—the circuit court suggested that the current order was not in the children's best interest:

THE COURT: These kids could do much better with a father in their life. Now, you may disagree. And that is the decision I ultimately have to decide.

* * *

But the status quo as it has existed since the Hawaii order is drastically different now. And it will not continue.

The circuit court next pointed to evidence that Mother was hindering Father's relationship with the children, which it suggested was a material change:

THE COURT: But I think the only way you are going to be successful in this motion is to convince me that there is no material change.

[MOTHER'S COUNSEL]: For the children, in terms of how the children are, I don't think that there has been any material change in circumstances when it comes to primary custody.

Now, the terms of the visitation--

THE COURT: Sir, they don't have a father in their life. And I have heard overwhelming evidence that [Mother] is doing things to antagonize him and to sever[] the relationship.

The circuit court then denied Mother's motion for judgment, finding that the children's well-being was affected by being deprived of their father in the current arrangement:

THE COURT: And it is not fair to the boys to be deprived of a father …

* * *

Your motion is denied.

Second, the circuit court made an explicit finding of a material change in circumstances when announcing its decision from the bench:

THE COURT: As I have indicated I have to determine before I move on whether there was a material change in circumstances from the previous Order. … That Order … need[s] to be changed. So I think that is—at [the] very least a material change in circumstances. Because we all know it was not working. The status quo that existed under that Order just simply is not working when I look

> through the eyes of these boys and figure out how involved their father is or is not in their lives.
>
> The parties lived in Hawaii at the time [of the Hawaii Order]. They both live in Maryland now. The children were much younger. …
>
> [The Hawaii Order] pretty much left the father's access issues to the boys unresolved. … So, I think that the record clearly would reflect that there is a material change in circumstances that affects the well-being of these boys.

The circuit court's finding that the custody arrangement was no longer in the best interest of the children was supported by sufficient evidence on the record, including, as a small sample, that Mother promised the children incentives if they skipped their scheduled visits with Father; that Mother told the children's school that Father is "dangerous and a poor role model" and that he is not allowed to participate in the children's school activities; and that Mother told the children that Father is a "bad guy," and that they "should pray that [Father] loses the [custody] case." Because the circuit court's finding that there had been a material change in circumstances was supported by sufficient evidence in the record, it was not clearly erroneous. *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). Therefore, we affirm.

2. Circuit Court's Ultimate Grant of Custody to Father

Mother next challenges the circuit court's ultimate grant of custody to Father. She argues that the circuit court abused its discretion by "merely going through the list of factors *pro forma*, and failing to actually consider *all* of the evidence relevant to the custody of the children." Because the circuit court's ultimate determination of custody, however, was not an abuse of discretion, we affirm.

"The guiding principle of any child custody decision … is the protection of the welfare and best interests of the child." *Shunk v. Walker*, 87 Md. App. 389, 396 (1991). "[T]he court examines numerous factors and weighs the advantages and disadvantages of the alternative environments." *Montgomery County v. Sanders*, 38 Md. App. 406, 420 (1977). The factors include, but are not limited to:

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) age, health, and sex of the child;

8) residences of parents and opportunity for visitation;

9) length of separation from natural parents; and

10) voluntary abandonment or surrender.

Id. at 420. Additionally, in *Taylor v. Taylor*, the Court of Appeals listed the factors particularly relevant to the consideration of joint custody. 306 Md. 290, 304-12 (1986).

The standard of review of ultimate custody decisions is whether the trial court abused its discretion in making its custody determination. *Petrini v. Petrini*, 336 Md. 453, 470 (1994). "There is an abuse of discretion where 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." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal quotations omitted).

Here, the circuit court addressed each of the *Montgomery County* factors, and one of the *Taylor* factors when making its custody determination. We briefly quote the court's discussion of each factor below:

> 1) *Fitness of the parents*: "A fit parent is a parent who promotes a relationship with the non-custodial parent. [Mother] abused the privilege that she had as the primary custodial parent under the Hawaii Order for the last five or so years, she was a psychological bully. … I have nothing to believe that [Father] would not promote a relationship to the best of his ability … ."
>
> 2) *Character and reputation of the parties*: "Well, character is believability, honesty, and that does not [bode] well for [Mother]. She is just not an honest person … . [Mother] had total disregard for the oath that she took to tell the truth."
>
> 3) *Desire of the natural parents and any agreements between them*: "[Mother's] motivation is tainted because of her desire and dislike of [Father]. I do not think at one time did she consider what is best for these

boys. … [Father] has good motives … . He wants to be involved with his boys."

4) *Potentiality of maintaining family relations*: "[Mother's family] will never accept [Father]. … I think [Mother's family] got so involved that the snowball started to roll down hill … . It was an easy out to explain [Mother's] irrational behavior regarding what is best for her boys. And [Mother's family] condoned it and the[y] enabled it. I have serious concerns as to whether any sort of relationship can exist after what I heard in this case."

5) *Preference of the child*: "We agree[d] that I was not going to speak to them."

6) *Material opportunities affecting the future life of the child*: "[W]hen someone comes to this Court and says I am the best person to have custody they have got to pretty much convince me that they can take care of themselves. [Mother] relies on her family. She is not even attempting to become independent of her family. … [Father] has got a steady job, he has got a retirement. And I think that the homes in both cases are otherwise acceptable … ."

7) *Age, health, and sex of the child*: "I have already stated the names, ages, and birth dates of the two boys. I heard some concerns about potty-training and this, that and the other, I do not think that these are anything for this Court to be concerned about, that would affect my decision in the long-run in this case."

8) *Residences of parents and opportunity for visitation*: "I have no concerns about either one of the residences … . But a suitable house is the environment itself. And these boys have been living in a poisonous environment when it comes to what is best for them and promoting a relationship with their father. ... [With Mother] they are not getting the psychological guidance that they need. It is a toxic environment, quite frankly."

9) *Length of separation*: "Whenever [Father] has been available he has wanted to see his boys."

10) *Voluntary abandonment or surrender*: "[D]oes not apply"

11) *Willingness of the parents to share custody*: "Does not exist here. Ability to communicate does not exist here."

In our review of the record, we are persuaded that the circuit court took into account each of the relevant factors when making its decision, considered them thoroughly and not merely in a *pro forma* way, and made a decision that was ultimately grounded in the best interests of the children. The circuit court's consideration of these factors, therefore, was not an abuse of discretion and we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLEE.