

Circuit Court for Prince George's County
Case No. CAD2010099

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1132

September Term, 2021

MARIE F. LOMBARDI

v.

KEVIN M. LOMBARDI

Graeff,
Nazarian,
Zic,

JJ.

Opinion by Graeff, J.

Filed: April 22, 2022

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

This appeal arises from a judgment issued by the Circuit Court for Prince George's County granting the parties, Marie F. Lombardi ("Mother") and Kevin M. Lombardi ("Father"), an absolute divorce and resolving the custody dispute regarding their minor child, K. The court granted Father primary physical custody of K., and it granted Mother access to K. every other Friday evening through Sunday evening, plus four weeks during the summer.

On appeal, Mother presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the trial court err in allowing testimony regarding K's privileged mental health and treatment records?
2. Did the trial court err in not making any findings of fact in its custody determination?
3. Did the trial court abuse its discretion by putting "extreme emphasis" on specific custody factors not supported by the evidence?

For the reasons set forth below, we shall vacate the judgment of the circuit court awarding appellee primary physical custody and remand for further proceedings consistent with this opinion. Otherwise, we shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The parties met in 2010 in Haiti, where Mother lived and Father was volunteering. On February 28, 2011, the parties were married in Haiti. On November 14, 2011, K. was born in Haiti, while Father was in college in the United States. In January 2012, Mother and K. moved to Massachusetts to be with Father. In 2015, the family moved to Maryland so Father could attend medical school at George Washington University.

The events leading to the parties' eventual separation were disputed. Mother testified that, in April 2019, she went to Haiti as an employee of Father's organization, YourStory International ("YourStory"), which provided medical services to individuals in Haiti. When she was finished with her work, Father refused to pay for her to come home. In October 2019, Mother got money for the flight from friends and came home to find her things packed.

Father alleges that Mother traveled to Haiti because they had separated, and Mother went to Haiti to visit her boyfriend. He did not send money to Mother to come home because they were no longer together, and therefore, he was not obligated to send money. K. was with Father for the months that Mother lived in Haiti. He agreed that he had packed Mother's things.

In February 2020, the parties stopped living together. At that point, the parties shared custody of K. In May 2020, however, Father withheld Mother's access to K., alleging that Mother had abused K.

On June 11, 2020, Mother filed a complaint in the Circuit Court for Prince George's County, requesting an absolute divorce, or in the alternative, a limited divorce, alimony, and sole legal and physical custody of K., both *pendente lite* and permanently. She alleged that Father had "physically, verbally, psychologically, and emotionally abused" her throughout the marriage. She alleged that she had been K.'s primary caretaker since her birth and was responsible for meeting K.'s physical and emotional needs.

The complaint alleged that, in the beginning of May 2020, Father began living with another woman, “unilaterally” relocated K., and terminated Mother’s access to K. Mother asserted that she was the proper person to have sole legal and physical custody of K., and Father was fit and proper to have access to K.

Father subsequently filed his answer to Mother’s complaint, alleging that it was in K.’s best interest for him to be awarded sole legal and physical custody. Father agreed that the parties separated on February 10, 2020, and he left the parties’ home on this date. He denied all allegations of abuse and that Mother was the primary caregiver to K. He admitted that he had K. in his custody, but he denied that he refused Mother access to K. He requested that the court dismiss Mother’s complaint.

On April 1, 2021, Father filed a counterclaim for absolute divorce and related relief, alleging that, in May 2019, Mother abandoned Father, and the parties separated. He requested an absolute divorce, sole legal custody, and primary physical custody, with Mother given reasonable access to K.

On February 17, 2021, after a *pendente lite* hearing, a magistrate recommended that Mother have access to K. on “the first, second, and fourth weekends of each month, from Wednesday at 4:00 p.m. until Sunday at 4:00 p.m., commencing February 24, 2021.” Mother, however, did not have a driver’s license, and Father did not have a vehicle. Father lived in Dry Fork, Virginia, and Mother lived in Clinton, Maryland, approximately four hours away from each other. The magistrate recommended that the drop-off location be “equal distance from the parent’s homes,” noting that it was “not going to map that out.”

The court held a merits hearing over three days, May 3, June 22, and August 27, 2021. Counsel for Mother requested that Mother be granted primary physical custody because she had been K.'s primary caregiver for "practically her whole life," and she requested joint legal custody, with tie-breaking authority. She also requested "four months of uninterrupted make-up time to be with her daughter" for the time in the last year when she was denied access. Counsel for Father requested that Father be granted primary physical custody and joint legal custody with tie-breaking authority.

The court ordered Tarianda Ruston, a Circuit Court Custody/Adoption Investigator, to conduct an investigation to aid in the custody determination and to file a report. Ms. Ruston's report was submitted into evidence, and she testified consistent with it, as set forth below.

Ms. Ruston testified that she spoke with each parent, individually, for approximately one and a half to two hours, and she spoke to K. at each of the parent's homes for approximately 15 to 20 minutes. She met with Mother twice, once at the home where Mother was babysitting and once at her residence in Clinton, Maryland, where she lived with her friend and her friend's family.

Ms. Ruston's report noted that Mother described her marriage to Father as "hell," stating that she felt like a slave when she was married to him. Father physically abused her by pushing her down the stairs, spitting on her, and pushing her against a dryer. Mother said that she sought help for depression during the marriage, and a doctor gave her a phone number to call for women in abusive marriages. Mother told Ms. Ruston that Father had

multiple affairs during the marriage and made false divorce decrees for his girlfriends “to make them believe that he was no longer married.” She also stated that Father had a substance abuse problem, noting that one day she noticed a white powder under Father’s nose, and then, while cleaning Father’s room the next day, she found a bag of white powder with a strong smell. Father often got intoxicated, vomited, and then slept in the vomit. She stated that Father did not take care of her and K. financially during their marriage, specifically stating that he did not give her “sufficient money to buy food,” often giving her only \$50 for the week, and she often depended on friends for help with food.

Starting in May 2020, Father denied her access to K. Father moved out of the house to live with his girlfriend, took K. for a Mother’s Day visit, and then “made up the allegations” that Mother abused K. “so that he could keep her.” Mother denied all allegations of abuse, although she acknowledged that she disciplined K. by spanking her on the bottom. She never, however, beat K., hit her in the head, or gave her bruises. Father only allowed her to see K. once before Mother went to basic training with the National Guard. On that occasion, she and K. played together for 45 minutes with Father present. Mother wrote K. letters, sent her gifts, and attempted to call her, but Father did not allow any contact.

Ms. Ruston noted in her report that Father alleged that Mother was violent toward him during the marriage and threatened him with knives. He believed that Mother had undiagnosed mental health issues, such as post-traumatic stress disorder (“PTSD”), depression, anxiety, and schizophrenia, and she generally had “disproportionate responses

to stimuli” and believed that everyone was out to get her. Father alleged that Mother abused K. by leaving bruises on her arm and by slamming K.’s head into a wall. As a result of this abuse, K. suffered from PTSD, nighttime enuresis, general anxiety, and major depression, and she also was generally fearful of Mother and adults. Father told Ms. Ruston that he decided that Mother could not see K. anymore until the “abuse she experienced could be settled.” He alleged that he was K.’s primary caregiver during the marriage, and Mother stayed in her room and did not interact with K. much at all.

Father was a first-year medical resident. He worked overnight, and during this time, a coworker watched K. After his shift, he dropped K. off at a babysitter so he could sleep. He was in a relationship with a woman who had three children, and K. got along with these children.

Ms. Ruston interviewed K. at the parties’ residences. Ms. Ruston noted in her report that, at Father’s residence, K. had a bedroom, but her closet had “very little clothes,” including just two shirts, and her drawers contained only sweaters, pants, and “little underwear, socks, or pajamas.” Ms. Ruston testified at trial that Father told her that he was doing laundry, but she did not see any baskets of laundry. She testified that Mother’s residence did not have a separate bedroom for K., and K. did not have any clothes in the closet other than the bag K. brought for visitation.

Ms. Ruston observed in her report that, during K.’s interview at Father’s house, K. was “dressed appropriately,” but K. had done her own hair, and it was not neat. At trial, Ms. Ruston testified that this was not a “negative strike,” nor did it render Father unfit, but

“parents should assess whether their children are capable of doing their hair and if they are not, then they should insure that an adult is able to do their hair.” K. stated that she was angry with Mother because Mother took her shopping to buy dresses, and she liked to wear pants. Moreover, Mother made K. “uncomfortable because she treat[ed] her like a baby and like[d] to do her hair and get her dressed,” all of which she could do herself with Father. K. stated that Mother used to spank her, mostly on the bottom, but she once smacked her in the face. Mother sent her letters, but they “were all about her mother.” She clarified that Father told her what was in the letters and K. did not want to read them.

Ms. Ruston interviewed K. virtually at the house where Mother was babysitting and later that night at Mother’s home. K.’s hair was neat and in a ponytail in the virtual meeting. K. again stated that Mother fixed her hair and treated her like a baby. She stated that she wanted to live with Father in Maryland. Mother did not live in Maryland; she lived in a state that started with a “P.” K. then began crying. Mother came to the door and asked if everything was okay. Mother told Ms. Ruston that Father spoke with K. before the interview and told her to tell Ms. Ruston “what has been going on.” Ms. Ruston noted that Mother gave K. a hug, told her there was nothing to be upset over, and stated that she loved her.

During her testimony at the trial, Ms. Ruston stated that, during this interview, K. appeared to be anxious. She would give statements that did not relate to questions asked, which raised concerns that “she may have been rehearsed in what she was saying.” Ms.

Ruston was concerned that Father spoke to K. prior to her interview with her at Mother's house, "especially since she appeared to be so rehearsed in [their] interview."

Ms. Ruston noted in her report that, the following day, Mother texted a picture of K. to Ms. Ruston because a three-year-old boy whom she babysat threw a toy and hit K. in the head, leaving a bump. Ms. Ruston testified at trial that she was unsure whether Mother told Father about this incident.

Regarding K.'s mental health records, Ms. Ruston wrote in her report that K. attended therapy with clinician Dominique Morean at Families First Counseling and Psychiatry after being referred there by Park Pediatrics "to address symptoms of traumatic stress due to recent history of physical and verbal abuse by [Mother]." Father reported that K. was afraid of loud noises, afraid of people touching her, refused to eat, and struggled in school. In May 2020, K. told him that Mother had been physically abusive towards her, pushing K. against the wall, hitting K.'s face, and yelling at her very loudly, so he decided that K. would live with him full time.

Ms. Ruston testified that she reviewed the psychological evaluation performed in June 2020 and took that into consideration. As discussed in more detail, *infra*, Ms. Ruston testified, over objection, that K. said in these mental health records that she thought Mother was mean to her, and she preferred to live with Father.

Ms. Ruston recommended that the court award primary physical custody to Mother. Although K. appeared to be comfortable with both Mother and Father during her interview, Ms. Ruston was "concerned by the allegations of child neglect and abuse reported in this

case,” noting that these allegations came only after Father relocated and the parties separated. Father was the “main historian” for the therapy and doctor visits, and he made contradictory statements in the records. Child Protective Services (“CPS”) ultimately made no findings of substantiated abuse. Father’s work as a resident doctor led him to be away from home often, leading K. to be supervised by babysitters and Father’s coworkers. Mother would be able to provide additional care to K. because she is often with other caregivers. She further testified at trial that K.’s reasons for not wanting to live with Mother were superficial.

After Ms. Ruston’s initial report, Father sent her an email regarding K.’s mental health records and allegations of abuse. He admitted to calling K. before her interview at Mother’s house because “he wanted to make sure that she was calm, prepared, and that she told [Ms. Ruston] what really happened.” He also admitted to knowing that K. went to Pennsylvania with Mother because he tracked K.’s location through her iPad. He believed that K. visited Mother’s boyfriend while in Pennsylvania.

Ms. Ruston then submitted a Report Addendum, noting that she had reviewed K.’s medical records, for which Father was the historian. On May 26, 2020, Father expressed concerns about abuse and alleged that K. came home with bruises on her arm and abdomen, but the doctor wrote that “no acute distress was visible through the video platform.” Father told the doctor he was worried about K.’s weight, but K. was in an appropriate weight percentile for her age. The doctor referred K. to counseling and gave her “a score of 1 for Minimal Depression.” On October 1, 2020, Father told K.’s doctor that she saw a therapist

once per week and had been diagnosed with PTSD, generalized anxiety disorder, and major depressive disorder, but had been improving since starting therapy. He told the doctor that the therapist recommended that K. no longer have visits with Mother because K. would refuse to eat and have significant anxiety during bedtime. Subsequently, K. began gaining weight and no longer had difficulties with eating, but the doctor noted that she began to experience nocturnal enuresis likely due to stress, anxiety, and depression. Father again noted that the therapist recommended that K. not have contact with Mother.

Ms. Ruston was also provided a letter dated June 25, 2020, from Dionna Casey, K.'s former therapist, to K.'s doctor, advising that she had diagnosed K. with PTSD. Ms. Ruston attempted to contact K.'s current therapist, but the therapist replied that she could not speak to Ms. Ruston without approval from Father. Ms. Ruston told the therapist that she had a signed approval from Father, but she had still been unable to speak with the current therapist. At trial, Ms. Ruston testified that Father confirmed that the therapist would not speak with Ms. Ruston.

Ms. Ruston testified that she noticed that some of the medical information articulated in the records did not match what Father had told her during their interviews. Father told a doctor that K. lived with Mother for two years in Haiti, with Mother as the primary caregiver. At another point, he told the doctor that he and Mother were divorced. She also noticed that there had been no reports of any bruises or child abuse prior to the parties' separation.

Michael Bertram-Maccarone, a co-founding member of YourStory, testified that Mother essentially was the head of operations; she hired translators, provided food, and managed the cleaning and equipment staff. Father was the head of the organization, managing everyone, securing funding, and facilitating medical aspects. Mr. Bertram-Maccarone traveled to Haiti approximately one or two times per year, and usually Father, Mother, and K. all traveled together. Mother spoke English to the volunteers. She often left the area where the organization stayed, and he was aware that Mother was working on her music career while in Haiti.

Mother testified that she met Father in 2010 when she was 18 and living in Haiti. At that time, she spoke primarily Haitian Creole, and she spoke English poorly. The parties married on February 28, 2011, when she was 19 years old, and Father was 24 years old. She and Father did not live together when they were first married because he was in college, and she was not a citizen of the United States, but he visited approximately once every six weeks. After she gave birth to K., she and K. lived in Haiti for several months until they moved to Cape Cod, Massachusetts to live with Father. This was Mother's first time leaving Haiti. She stated that her English did not improve for two to three years, after she learned from the people who spoke English around her.

When she first moved in 2012, Father was working as an EMT. In 2013, Mother started working as a certified nursing assistant ("CNA"). She gave her paychecks to Father's mother, Sonia Lombardi ("Sonia"), who would put them into an account. Father told Mother that he was using her checks to support them and pay the bills. She was not

given access to the bank accounts, and Father denied her access every time she asked. He provided her with an allowance for “food and stuff like that,” and she tried not to pressure him because she thought he was doing what was best for the family.

They split the responsibility of taking care of K. There were times where Father had a long shift and Mother had to care for K. alone, but “whenever he was there, he was playing his role.” She worked night shifts, and when she came home, she took care of K. Sonia helped watch K. and played with her.

On April 1, 2014, when K. was two years old, the family moved to Medford, Massachusetts because Father was attending Brandeis University. Mother started to speak English better during this time, and she continued to work for the same company as a CNA. Father did not work because he was attending school full time. Mother and Father still split the responsibility of taking care of K. Father was gone for most of the day, but he would take care of K. when he was there, and he played with her and changed her diaper. Mother also fed and entertained K.

In 2015, the family moved to Maryland so Father could attend medical school at George Washington University. He attended school from 6:00 a.m. to 4:00 or 6:00 p.m. almost every day of the week. Mother woke K. up, dressed and fed her, took her to school, and helped her with her homework. She and Father split taking K. to school and picking her up.

During this time, Mother started giving more of her time to Father’s organization, YourStory, taking care of all the logistics for transporting and housing volunteers, although

she was not paid for her work. As part of her work, she traveled to Haiti approximately two times per year, and she stayed there with K., sometimes for months. Father occasionally came as well, but he left early because he was in school. Father never had a problem with her and K. staying in Haiti for the organization, and he purchased the airline tickets. After she finished her work for the organization, she often pursued her music career while in Haiti, making music videos and performing. Father was aware and supportive of her career.

In 2018, Mother asked Father for a divorce because she was miserable, and he suggested an “open marriage” as a solution. She agreed to this arrangement. During this time, which ended in 2019, she and Father dated other people, and they both were okay with it. She dated a man who lived in Port-au-Prince, Haiti, her hometown, in 2018. Sometime in 2019, she found a document in Father’s closet that indicated in French that he and Mother were divorced.

On May 29, 2019, Mother left for Haiti for two months to coordinate the volunteer work for YourStory. At the end of these two months, after the volunteers left, she contacted Father to tell him that she needed to come back. He originally told her that she could take some vacation for herself, but then, every time she called, he told her that he did not have the money for her flight. After four months of being in Haiti, she told him that she would have problems with immigration if she stayed in Haiti, and he promised to send her tax papers to prove she lived in the United States. After five months of being in Haiti, he still told her that he did not have the money.

In October 2019, she borrowed \$600 from a friend to buy a plane ticket. She did not tell Father that she was returning. When she came home, K. was playing outside with some other children, and she was “very happy” to see Mother. Mother knocked on the door for 20 minutes, and when Father finally answered the door, he was shocked to see her and asked how she got there. She told him that, although he did not want to buy her a ticket, she was able to get another person to buy her a ticket to return. Father yelled at her, asking how “dare [she] come to [his] apartment without telling [him].”

When she walked into the apartment, she saw that her closet was empty, and she could not “see any trace of [her] in the house.” K.’s room was a mess, with boxes and dirty laundry everywhere, and Mother noticed that her own things were packed in boxes. She saw other items that did not belong to her, such as oversized pants, sandals, and adult underwear that did not belong to her. She stayed in K.’s room that night. A woman named Shane came to the apartment and was surprised to see Mother there. Shane and Father argued, and she remembered that Shane was “dragging him, punching him . . . and screaming.” Mother testified that Father told her that Shane was a “hooker.”

In February 2020, Father started to move out of their house gradually. K. lived with Mother at the apartment. Father visited by coming home on Monday and staying until Wednesday, when he left again, and then returned on weekends. They did not have a custody agreement during this time. Father eventually told Mother that he was living with another woman. He occasionally took K. to spend nights with him, and Mother later learned that they were staying in Virginia.

On May 24, 2020, Father “kicked [her] out.” Father told Mother that he was taking K. to Boston to see his parents. When Mother asked when K. was coming back, Father responded that he could not bring her back because of concerns due to COVID-19. He would not allow her to speak with K. on the phone. She told him that he had to bring K. back or she would begin “some legal process.”

Mother was contacted by CPS that same week. Father declined her requests to see K., saying that he would not allow K. to be around Mother while she still had an open charge against her. Father did offer to let her see K. twice after initially denying access, but he said that he would let her see K. only if she signed over all of her parental rights, which Mother refused to do. Mother received a letter from CPS detailing the results of the investigation and informing her that they did not find Father’s claims of abuse to be accurate and were closing the case against her.

On June 20, 2020, Father let Mother see K. for approximately 45 minutes at a playground near the apartment. On June 24, 2020, Mother left for basic training with the National Guard. She told Father multiple times about basic training and that she was leaving on June 24th. She called Father twice from basic training. In the first call, Father allowed her to speak with K. for only two minutes, and in the second, Father yelled at her and would not allow her to talk to K. Father then blocked her on his phone and did not provide an explanation.

After basic training ended on November 13, 2020, Mother went to Haiti, and she came back on December 2, 2020. She missed her daughter and asked the court for make-

up time with K. for the time she was away. She went back to Haiti on January 1, 2021, and she returned on January 22, 2021.¹

Father did not tell Mother where K. was receiving medical care, despite Mother asking him. She asked Father for K.'s medical records, but Father told her to "find out [her]self." She stated that she reached out to the doctors Father told her K. was seeing, but she was unable to speak with them. In the time that Father had not allowed her to see K., Mother sent K. face masks, Christmas and birthday gifts, and letters.

Mother stated that Father threatened to report her to United States Citizenship and Immigration Services ("USCIS"), although she was unsure of his basis for doing so. On May 12, 2020, Father said that he would be "happy to report you to USCIS and to the Government special agent doing your background check." He also threatened to call the IRS. Father did, however, sign a document with the National Guard stating that there was nothing wrong with Mother, and he would recommend her for clearance to the National Guard.

Mother occasionally spent the night at the man's house for whom she babysat in Pennsylvania, T. Thomas. Mr. Thomas had two sons and was not married. She started babysitting for him in approximately February 2021, when he went on an overnight trip. She did not tell Father that she was taking K. out of state when she took K. with her to

¹ Mother's passport was not consistent with her testimony. She testified that she must have accidentally missed a page of her passport when she produced it.

babysit. She described Mr. Thomas as a friend and denied having a romantic relationship with him.

Mother testified that she was worried for K.'s safety with Father because he was "very manipulate and deceptive." Father had abandoned Mother twice, and she worried that Father was "brainwash[ing]" K. She worried that Father's work schedule did not allow him to take care of K. When K. saw her after being with Father, she was "not well groomed," "dirty," and "unclean."

Mother denied hitting Father, threatening him with a knife, or yelling at K. She did spank K., but she did so to discipline her. Mother denied having mental health problems, saying that she had to undergo an evaluation to be in the National Guard and was not diagnosed with anything.

Mother testified that, since the *pendente lite* hearing, she had problems getting access to K. because, although the parties were supposed to meet halfway, Father would make her go all the way to Danville, Virginia, to pick up K. Mother had a learner's permit, but she did not have her driver's license, and she did not have a car. She did not "have any consistent method of vehicle transportation" and also did not "have the financial means to do it." She cancelled one visitation because she had an obligation with the National Guard, but Father agreed to let her have make-up time from Sunday to Thursday from this incident.

At the time of the May 2021 hearing, Mother had received orders from the National Guard, and she typically worked from 9:00 a.m. to 5:00 p.m. on Monday through Friday. She lived in Clinton, Maryland, in a four-bedroom house with three other people, but she

had to leave soon. When Father asked her to leave their apartment, she had nowhere to go, and her only friend, Vanessa Kuh, a prior neighbor, let her stay with her without paying rent. By the time of the August hearing, Mother had moved to North Carolina to be closer to Father and K., but one month after Mother moved, Father moved to Fairfax County, Virginia, near the suburbs of Washington, D.C. She testified that she would not have moved to North Carolina if she knew that Father was going to move back to northern Virginia. Since she moved, she had seen K. only once, although she had asked Father to see her “a couple times.” K. was happy during their visit.

Ms. Kuh testified that she had seen Mother interact with K. “once or twice” in the past year, and she “admire[d] the way she takes care of her daughter and the relationship and the bonding they have.” Father also had a “very good relationship” with K., but she had not seen Father within the past year. She testified that Mother took K. “like everywhere she’s with her or even when she travels, she goes with [K.] because [Father] was very abusive.” When they were neighbors, she mostly saw Mother take K. to school. She saw Mother wash K.’s clothes, cook for her, take her shopping, and take her for walks while K. was with her.

Jean-Philippe Beaudet, co-founding member of YourStory, testified that, in May 2014, he was in Haiti with Mother and K. During another trip, in winter of 2014, Mother, Father, and K. all attended. On the third trip in 2015, Mother, Father, and K. all attended again, but after the business was wrapped up, Father and K. returned to the United States, and Mother stayed behind to attempt to grow her music career and film music videos.

Mother traveled throughout Haiti to places that YourStory was not involved with to start her music career.

Mr. Beaudet saw threatening behavior from Mother toward Father during their trips to Haiti. On the first trip, he and Father had gone on a walk, and when they returned, Mother was upset with Father because they had not informed anyone where they were walking, and she pulled him to the back of the house and hit and punched him in the back, chest, and arm. Father reacted “passively” and tried to diffuse the situation. On the second trip, Mother “pull[ed] a kitchen knife and point[ed] it at him in kind of a threatening way” in response to a comment that Father had made. He stated that Mother did not yell or scream; her voice was somewhat raised, but her tone sounded deliberate. He also saw Mother grab K. on the arm and spank her after K. attempted to poke a pig that they were going to eat. He frequently saw Mother yell at K. when she misbehaved. He never saw Father engage in any of these behaviors.

Mr. Beaudet last saw Mother, Father, and K. in November 2019 during his trip to Maryland. K. was in school on Friday, but when K. returned, Mother was not at the house. He described Father as a “loving and caring” father to K., and he testified that Father was “absolutely” fit to have custody of K.

Sonia testified that she met Mother in January 2012 when Mother moved to the United States and K. was six or seven weeks old. For approximately two years, Father, Mother, and K. lived in her summer rental home during the year and then with Sonia and her husband during the summer. During this time, Father worked as an EMT, and Mother

worked as a CNA. Sonia's house was approximately two miles away, and she visited them a few times per week. She spoke with Mother frequently before 2019, and she considered their relationship to be friendly.

When Sonia visited, Mother was either on her computer at the table, or, if it was before noon, often sleeping. K. would either be sleeping with Mother in the bed or in her highchair while Mother was online. K. had a playpen in the house, but it was usually "loaded with . . . clothes and stuff, blankets," and Sonia never saw the playpen empty. She once found Mother sleeping in the truck in the driveway in late fall or early winter, and another time she found Mother sleeping with K. in the closet with the door closed.

Mother's shifts often were overnight. Sonia drove Mother to work and looked after K. during the day so Mother could sleep. During the summers, when the family lived at Sonia's house, Sonia cooked for K., fed her, dressed her, played with her, bathed her, and prepared her for bed. Mother was on her computer or watching television during this time.

In 2016, during the summer and continuing until Thanksgiving, K. stayed with Sonia because Father was in school full-time and Mother was in Haiti. Mother occasionally called Sonia to check on K., and she also called to ask for money. Sonia's name was on Mother and Father's bank account because she was doing their banking and helping them with bills, and she transferred money to Mother in Haiti. During this time, she saw Mother on YouTube doing "[r]isque videos and . . . dance videos." Father came to visit K. when he was able to do school online.

Mother told Sonia that, while they were in Haiti, K. tried to kill a chicken because she was hungry. K. was four years old, and she had a knife in her hand. Mother was not upset by that incident, but instead, “she thought it was a little funny.” Mother told Sonia that, while she was in Haiti working on her music career, two individuals, who were 10 years old and 12 years old, respectively, watched K.

Sonia stated that, when the parties moved to Medford, Massachusetts for Father’s schooling, the apartment was “always messy,” and she saw K. eating crackers directly off the floor, which she said was “disturbing.” K.’s changing table was always filled with clothes.

She only saw Mother and Father once in Maryland after they moved. The parties visited her a few times in Massachusetts. Mother and Father visited for “a short period of time,” and then they left K. with her for the entire summer and returned home.

Mother often got angry with K., and when K. was four or five years old, Mother struck K., who got very stiff and nervous. Mother got irritated if K. tried to get attention from Mother when she was busy. She had never seen Father strike or yell at K. Sonia also witnessed Mother strike Father on the arm.

Since May 2020, Sonia had been talking to K. through Messenger and video chats. K. had become very introverted and quiet, where she previously had been very bubbly and talkative. Father and K. visited in July 2020, and K. was wetting the bed during this visit, which she had not been doing previously.

Sonia testified that Father was fit and proper to have custody of K. Father's relationship with K. was "great," and they had a "very nice, comfortable relationship." He taught her how to swim and play the mandolin.

Father testified that he and Mother met in Haiti in 2010 and were married in 2011. K. and Mother lived in Haiti alone until they moved to Massachusetts with Father in January 2012. He and Mother had a "general disagreement" over most topics and started having "[s]ubstantial marital problems" "almost immediately after the marriage, but particularly when [they] began living with each other." Mother hit him with her fists and kitchen ladles, and she attempted to stab him with a kitchen knife on 15 to 20 occasions. The triggers for these physical assaults were "different every time."

Father alleged that Mother was physically violent toward K. He had witnessed Mother hit and slap K. with her hands, not as corporal punishment. He intervened when Mother did this. He stayed with Mother throughout the abuse because it was "disorienting and difficult" to deal with it and medical school, and he was hopeful that things would change. He did not want to report Mother to the authorities because Mother would have lost her green card, and he did not want to take K.'s mother away from her.

Mother going to Haiti was a "consistent issue" from when she first arrived in the United States. She wanted to go to Haiti "all the time," and when she returned from a trip, she was "plotting her next trip back." Mother told him she had "no intention" of living in the United States and frequently told him that "she would take [his] child to Haiti with her." He estimated that she went to Haiti for half of the year, every year, over multiple

trips. While Mother was in Haiti, he was responsible for K., except during the summer when Sonia was responsible. Mother did not always tell him what she was doing in Haiti, but “the most common was that she had business in her music stuff she wanted to do.”

Father denied suggesting that they have an open marriage. He did admit to falsifying a Haitian divorce decree to maintain a relationship with a woman he was dating, but he alleged that he and Mother were separated at that point. He apologized for doing so, and he testified that he had never fabricated a legal document before the divorce decree.² Father stated that he made the decision to end their marriage after Mother’s infidelity.

The timing of the breakup “worked very well” because Mother “happened to have an expedition coming up” with YourStory, and they agreed that they would discuss getting their divorce paperwork in Haiti.³ Mother packed all of her belongings and took with her all documents relating to their marriage. She did not indicate that she was coming back. During this time, K. stayed with Father until June, went to spend the summer with Sonia, and returned to him in early September. Mother contacted Father occasionally to ask for money, but she did not explain why she needed it; “she just demanded it.” Mother did not ask him to pay for transportation home.

² We note that Father testified that Mother’s signature was on the Articles of Incorporation for YourStory, but Mother testified that this was not her signature, and her counsel introduced her signature on the interrogatories and complaint to compare the two. The court noted, when it discussed the bifurcation of issues, that there appeared to be a “discrepancy in the signatures.”

³ According to Ms. Ruston’s report, Father told Ms. Ruston that Mother’s trip in 2019 “was not to do work for his company” but “to be with her boyfriend.”

In October 2019, after she returned from Haiti, Mother knocked on the door of their house with no prior notice. He was “shell-shocked” when she returned. She stayed in K.’s room, and he stayed in another room. He told her that she could stay there until she found a place to stay.

Father testified that they started sharing custody in January 2020 by doing “one week on, one week off” and exchanging weeks. He withheld Mother’s access to K. in April 2020 because he noticed changes in K., including “bruises on her arm and chest,” as well as a “severe change in her demeanor,” from being “bubbly and happy” to “withdrawn, scared and depressed.” She refused to eat or allow any adult to touch her, “in particular she did not like being touched by adult women.” She lost ten percent of her body weight, often cried, and wet her bed. In response to these changes, Father contacted CPS, refused to send K. to Mother, and signed K. up for therapy.

K. first saw Ms. Morean as her therapist from Family First, but at the time of trial, she was seeing Tiarra Abu-Bakr. She had been going to therapy weekly since May. Father told Mother that K. was going to therapy and provided “molecular level detail as to why and to who [he] was choosing,” but Mother never engaged with him about K.’s therapy. He did not believe that Mother ever contacted K.’s therapists, even though he told them that Mother “should have full access to [K’s] information.”

Regarding childcare, when they were still together, Father was responsible for helping K. with her schoolwork, and when Mother tried to help, he was “forced to intervene” because Mother became frustrated and yelled at K. He filled out the paperwork

for K. to attend school, and the only event Mother ever attended was K.'s kindergarten graduation. They split the responsibility of taking her to school. When Mother did not take K. to school, she woke up at approximately 11:30 a.m. to 12:00 p.m., but she could sleep as late as 3:00 p.m. When Father asked Mother to take K. to school, she yelled at Father and became aggressive. They cooked their own dinners, and K. picked which meal to eat. In 2015, when Father began medical school, he attended school primarily remotely partly because of the commute, but also because he "had substantial responsibilities at home caring for [K.] and helping her with her schoolwork." The parties still split the parenting responsibility, but he had the "primary parenting responsibility," as Mother traveled out of the country frequently, at one point for approximately three months and another time for seven months.

Since the parties had separated and K. lived with Father, Father woke up K. in the morning, had her shower, fix her hair, and walk the dog. They made breakfast together. He then dropped her off at her caregiver's house to attend virtual school, and he went to work. When he arrived home, he and K. gardened, played lacrosse together, played with the dog, cooked dinner together, played the mandolin, and played video games. He put her to bed at 9:00 to 9:30 p.m. on weekdays.

Regarding Ms. Ruston's report, Father testified that he "may have" talked to K. before her interview with Ms. Ruston. He frequently spoke with K. while she was with Mother. Regarding Mother visiting Pennsylvania, Father testified that he tracked K. via her iPad when she visited with Mother, and he knew that Mother once took K. directly to

BWI Airport to the international ticket counter. Father called the State Department. They then stayed in York, Pennsylvania, for the week.

At the time of the August 27, 2021 hearing, Father had moved to Centreville, Virginia, in the D.C. metropolitan area of Fairfax County. He and his girlfriend had rented a house together, with her children, who K. considered her own family. The new house was not “a new community” for K. because his girlfriend had lived there for as long as they had been dating. K. gained “significant social and community connections” with “quite a few friends,” and she was able to see her medical care providers.

He also had resigned from his residency at Sovah Danville Hospital. The hospital initially granted him scheduling accommodations for his parenting responsibilities, but it later informed him that, due to staffing issues, they could no longer accommodate his schedule, and he would be immediately terminated if he missed a day or arrived late. Father chose to resign. He was unemployed at that point, and he did not intend on completing his residency and obtaining his medical license. Instead, he planned to work as a consultant or in a health or government job, and he was looking for such a job.

He did not consult Mother about his move to Fairfax County, but he emailed Mother advising that he moved because the jobs were better for him in northern Virginia. He acknowledged that was the second time he moved K. in less than 14 months, and K. had to change schools, making this her third school in two years. He agreed that Mother should be consulted regarding K.’s schooling, but he stated that he did not “have the time” to consult with Mother about it. He testified that Mother did not tell him that she was moving

to Gastonia, North Carolina, but he found out because she provided him with the address where K. would be staying.

Regarding Mother's visitation after the *pendente lite* hearing, Father testified that, during the next 16 weeks, Mother saw K. for only two extended weekends, even though she was offered three extended weekends a month during that time. Father offered Mother make-up days, but Mother either canceled or did not show up, and she once canceled when he was on the way to Mother. Mother did not drive, and he did not own a car, but he occasionally had access to one. Father testified at the hearing on August 27, 2021, that Mother had missed the "vast majority of the visitation," and when she did have visitation, he had to make accommodations for her. He described the visitations as "extremely contentious," and K. returned upset and cried for days.

Mother spoke to K. on the phone "a couple times a week," and Mother emailed Father the times she wanted to speak with K. Father monitored these calls by putting Mother on speakerphone, and there were "often very forceful interrogations," which upset K. Mother asked whether Father hit K., about Father's girlfriend, if K. missed her and loved her, and then got angry over K.'s answers.

Father testified that his sister invited K. to attend her bridal shower as a junior bridesmaid on August 22, 2021, which was Mother's visitation date. Mother agreed that K. could attend, and they agreed to switch weeks. After Father moved to Fairfax County, however, Mother reneged her consent and demanded that Father bring K. to see Mother that week. He drove to the drop-off location, waited for one hour and called Mother, and

Mother told him that she was not coming. On another occasion, Father received Mother's permission for K. to spend time in Massachusetts with Sonia, which was K.'s routine. Mother originally consented, but she then withdrew her consent because he was unable to "accommodate a last minute change that she requested two days after the supposed drop-off time" because he did not have a car. Mother again did not exercise her visitation.

K. was very upset over both of these events. She cried and refused to eat several meals. Father texted Mother that she ruined K.'s summer. Mother called K. to tell her that she was not allowed to go both times, and both times Father was monitoring the phone call while Mother was on speakerphone.

During rebuttal testimony, Mother testified that she at first agreed that K. could go to the bridal shower, but when it came time for her exchanged week, she was not able to make the drive to K. because Father had moved to northern Virginia and she lived close to South Carolina. Because she did not get access on the exchanged week, she wanted to have her own week back. She told Father that she did not have a ride to the pick-up location to meet at 4:00 p.m., and he offered to meet at 1:00 or 10:00 p.m. She told him that she could do 12:00 p.m., at the latest, and he responded that he could "accommodate the court appointed time of [4:00 p.m.] only." She again said she could only do 12:00 p.m. The next day, at approximately 5:30 p.m., she received a message from him asking if she was going to show up, and she responded that he did not tell her whether he was bringing K.

During this phone call, Father told her that she was selfish and evil and that she verbally abused and bullied K. She called K. about it, and she could hear Father in the

background. Father told K. that Mother was lying, and he took the phone from K. to yell at Mother. She believed that K. was still in the room.

Mother testified that she did not remember exactly what happened regarding K.'s summer vacation with Sonia, but she believed that she told Father that she still wanted visitation during the summer because she had not seen K. for so long, and she wanted to make up for their lost time.

On August 30, 2021, the court made its oral findings. It found that the parties had voluntarily separated on February 10, 2020, and there was no hope for reconciliation. The court granted a judgment of absolute divorce. With respect to physical custody, the court listed the applicable factors and noted that it had placed "extreme emphasis" on the "the agreements and current custody and access that exists involving [K.]," K.'s preference as expressed "in the custody investigation report dated March 25th, 2021," the residences of both parents, "and the amount of contact and bonding between K. and her parents within the last three years." Based on all of those factors, and the court's evaluation of the evidence, the court found that it was in K.'s best interest that primary physical custody be awarded to Father, with access to Mother "every other weekend from Friday evening until Sunday evening," as well as certain holidays and four weeks during the summer. It further ordered that each parent have daily phone access to K. The court required the parties to negotiate the exchanges, given the distances between their households. The court ordered that the parties have joint legal custody.

This appeal followed.

STANDARD OF REVIEW

The Court of Appeals has recently explained the standard of review as it relates to child custody disputes:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Maryland Rule 8-131(a)] applies. [Second], if it appears that the [hearing court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [hearing court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [hearing court's] decision should be disturbed only if there has been a clear abuse of discretion.

Burak v. Burak, 455 Md. 564, 616–17 (2017) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

DISCUSSION

I.

Mental Health Records

Mother contends that the circuit court erred in allowing Ms. Ruston to testify about information contained in K.'s mental health records. She asserts that those records are privileged, and in the absence of the appointment of a child privilege attorney to address the waiver of the privilege, the court did not have the authority to waive K.'s privilege.

Father contends that the circuit court did not err in allowing Ms. Ruston to testify regarding the June 2020 diagnostic assessment that she reviewed and considered in making her custody assessment. He argues that the information elicited did not reveal K.'s mental health information, and it was relevant "to explore Ms. Ruston's credibility," noting that Ms. Ruston failed to mention any of the statements that K. made that were negative

regarding Mother. Father additionally contends that, even if the patient-therapist privilege was implicated, that privilege was waived because both parents signed a release for Ms. Ruston to speak to K.'s therapist. Finally, Father suggests that any error in admitting evidence from the diagnostic assessment regarding K.'s statement that she preferred to live with Father was not prejudicial because there was evidence that K. told Ms. Ruston the same thing.

A.

Proceedings Below

On cross-examination of Ms. Ruston, counsel for Father established that, in making her custody evaluation, Ms. Ruston took into consideration the diagnostic assessment that was performed on K. on June 18, 2020. When counsel asked questions about what K. said during that assessment, Mother objected, arguing that it was inadmissible hearsay. Father responded that the information was not being admitted for the truth of the matter asserted, but to examine Ms. Ruston's credibility regarding her recommendation, suggesting that Ms. Ruston's determination that Mother was a stable person could be impeached by documentation indicating that was not true. The court ruled that it would give counsel "a little leeway on this and allow it."

Counsel for Father then asked Ms. Ruston about specific statements that K. allegedly made, and when Ms. Ruston could not recall, counsel attempted to refresh her recollection by showing her the records. Counsel for Mother objected, asserting the patient-therapist privilege, and the court sustained the objection.

Ms. Ruston then testified, over objection, to some statements that K. made during that assessment. The questioning continued, as follows:

[FATHER’S COUNSEL]: And [K.] said in the mental health records you reviewed that she preferred to live with her father, correct?

[MS. RUSTON]: That’s correct.

[MOTHER’S COUNSEL]: Your Honor, I’m going to object again. This is just an end-around *Nagle v. Hooks*.

[THE COURT]: Yeah, it’s getting – I agree, at this point you’re really not – he’s right, you’re doing an end-around and I appreciate the effort, but I’m not going to allow that

[MOTHER’S COUNSEL]: I move to strike that testimony, Your Honor.

[THE COURT]: Well, motion to strike denied, but I’m not going to let it go any further.

B.

Analysis

Maryland Code Ann., Cts. & Jud. Proc. Article (“CJ”) § 9-109(b)(1) (2022 Repl. Vol.), which addresses communications between a patient and a psychiatrist or psychologist, provides that a patient has the privilege “to prevent a witness from disclosing” “[c]ommunications relating to diagnosis or treatment of the patient.” CJ § 9-109(a)(3) defines a patient as “a person who communicates or receives services regarding the diagnosis or treatment of his [or her] mental or emotional disorder from a psychiatrist, licensed psychologist, or any other person participating directly or vitally with either in rendering those services in consultation with or under direct supervision of a psychiatrist or psychologist.” In the circumstances where a person, such as a minor, is incompetent to

waive his or her patient-therapist privilege, “a guardian shall be appointed and shall act for the patient.” CJ § 9-109(c). In *Nagle v. Hooks*, 296 Md. 123, 129 (1983), the Court held that “when a minor is too young to personally exercise the privilege of nondisclosure,” the court is required to appoint a guardian to act in the best interests of K., and “the parents, jointly or severally, may neither agree nor refuse to waive the privilege on K.’s behalf.”

We will assume, arguendo, that the circuit court erred in allowing Ms. Ruston to testify regarding K.’s mental health records without appointing a guardian for K.⁴ That, however, is not the end of the inquiry. To obtain reversal, Mother must show error *and* prejudice resulting from the error. See *Burak*, 455 Md. at 617 (In custody disputes, errors of law by the hearing court will require further proceedings “unless the error is determined to be harmless.”). “[W]hat constitutes prejudice warranting reversal in the erroneous admission or rejection of evidence is to be determined on the circumstances of each case.” *In re Yve S.*, 373 Md. at 617. “An error which does not affect the outcome of the case is ‘harmless error.’” *Id.* (quoting *I.W. Berman Prop. v. Porter Bros.*, 276 Md. 1, 11–12 (1975)).

Here, at oral argument, counsel for Mother referenced “six statements” from K.’s mental health records that were improperly referenced by Ms. Ruston. In Mother’s brief,

⁴ The record refers to the mental health therapist only as a licensed clinician, and the parties do not address the requirement in the statute that the privilege applies only to communications to a “psychiatrist, licensed psychologist, or any other person participating directly or vitally in rendering those services in consultation with or under direct supervision of a psychiatrist or psychologist.” Md. Code Ann., Cts. & Jud. Proc. Art. (“CJ”) § 9-109(a)(3).

however, she discusses prejudice with respect to only one statement, i.e., that K. preferred to live with Father. Accordingly, we consider the issue of prejudicial error only with respect to Ms. Ruston's testimony that K. said in her diagnostic assessment that she preferred to live with Father.

We conclude that any error in the admission of this evidence was harmless error. Two things are significant in our analysis. First, it is significant that the evidence of K.'s preference was already in evidence; Ms. Ruston stated in her report that K. told her that she preferred to live with Father. Second, this was a bench trial, and the court stated the factors it considered in making its decision. The court explicitly stated that it gave "extreme emphasis" to, among other things, "the preference expressed by [K.] *in the custody investigation report dated March 25th 2021.*" (Emphasis added). The court did not mention any preference expressed by K. contained in her mental health records. Under these circumstances, we conclude that any error in admitting evidence in violation of the patient-therapist privilege did not affect the outcome of the case, and as such, it was not prejudicial. Mother is not entitled to reversal on this ground.

II.

Findings of Fact

Mother next challenges the court's decision granting Father primary physical custody. She contends that the trial erred in failing to make factual findings before making its custody determination, asserting that the court merely "recite[d]" the factors it considered, without making any specific findings to support the four factors on which it

placed “extreme emphasis.” In the alternative, Mother argues that, if this Court concludes that the circuit court made findings of fact, the evidence did not support those findings.

Father contends that the court’s custody order should be upheld. He asserts that the court made findings of fact and its ruling was supported by the evidence.

A.

Court’s Ruling

On August 30, 2021, the parties attended a virtual hearing where the court rendered its decision regarding the judgment of absolute divorce, custody, and child support.⁵ The court found that the parties were married in Haiti on February 28, 2011, that Mother was 19 and Father was 24 at the time of the marriage, that K. was born on November 14, 2011, and that on February 10, 2020, they entered into a “voluntary separation,” with no hope for reconciliation. The court granted the parties a judgment of absolute divorce.

Turning to the issue of custody, the court stated that it had looked at the applicable factors regarding physical custody. It stated:

Those factors including the fitness of each parent, the character of each parent, the current agreements that are in place regarding custody and access, the maintenance of the natural family relations, the preference of the child, the material opportunities affecting the child’s future, the age, sex, health of the child, the respective residences of the parents, the recent relocation of both parents, the environs and surroundings of each parent, the influences likely to be exerted on the child and the amount of contact and bonding between the child and her parents.

⁵ The court planned to address marital property, a monetary award, and alimony on a different date. An interlocutory order regarding custody is an appealable order. *See* CJ § 12-303(3)(x).

In going through this list, the [c]ourt has placed extreme emphasis on, number one, the agreements and current custody and access that exists involving [K.], the preference expressed by [K.] in the custody investigation report dated March 25th, 2021, the current residences of each parent and the amount of contact and bonding between [K.] and her parents within the past three years.

As a result of all these factors and the evidence and the [c]ourt's evaluation of that evidence, it is the [c]ourt's determination that it is in the best interests of [K.] that physical custody be awarded to [Father], the primary physical custody, that is.

The court then granted an access schedule for Mother. It then discussed the factors for legal custody and granted the parties joint legal custody.⁶

B.

Analysis

As indicated, Mother challenges the court's order granting Father primary physical custody, arguing that the court failed to make findings of fact to support its ruling. As Mother notes, Maryland Rule 2-522(a) provides: "In a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages." This rule requires a court to give the reasons for its decision. *Viamonte v. Viamonte*, 131 Md. App. 151, 162 (2000). The court is required to "provid[e] adequate factual support

⁶ Mother's brief discusses the portion of the court's order that granted Father primary *physical* custody; she did not mention the award of legal custody in her discussion of error. She does state in her conclusion that this Court should reverse the circuit court's decision and grant her "sole legal and sole physical custody" of K. Because her brief did not present any legal arguments on the issue of legal custody, however, we will not address it. *See Klauenberg v. State*, 355 Md 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.").

for the inferences [it] drew that affected [its] custody decision,” and “all inferences upon which the custody decision is based must have factual support on the record.” *Id.* at 161.

In determining custody, the ultimate concern is the best interest of the child. *Azizova v. Suleymanov*, 243 Md. App. 340, 347 (2019), *cert. denied*, 467 Md. 693 (2020). In making that determination, the court must consider the factors set forth in *Montgomery Cnty. Dep’t of Social Servs. v. Sanders*, 38 Md. App. 406, 420 (1978). Those factors include:

- 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 the natural parents; and 10) prior voluntary abandonment or surrender.

Id. (internal citations omitted).

Here, the court specifically stated that it looked at these factors. It explained that, in assessing them, it placed “extreme emphasis” on several factors, including: K.’s preference, which Ms. Ruston said was to live with Father; the current custody and access that existed at the time, which the evidence made clear was primarily with Father; the current residences, which included Father living with his girlfriend and her children in an area with which K. was familiar, and Mother living in North Carolina, a totally new place for K.; and the amount of contact and bonding between K. and her parents, with the evidence showing more contact and bonding with Father. The court’s findings in this regard were limited, and it would have been better for the court to give more detail on these

factors and discuss how it factored into its decision Mother's assertion that Father withheld access to K. and was not a credible witness.

The bigger problem here, however, is that the first factor that the court stated it was placing "extreme emphasis on" was "the agreements," but it is not clear to what the court was referring in that regard. The only time that the parties "agreed" on custody was when they shared custody informally in January 2020, and both parties indicated that this was informal, with Mother saying that they did not have an agreement and Father testifying that they did "one week on, one week off." Father argues that "the agreements" referred to the two weekends during which Mother initially agreed that K. could visit Father's family, but then later reneged her consent. That may be, but it is not clear from the ruling whether that is the case or how that factored into the court's analysis. Given that the court stated that it gave "extreme emphasis" to "the agreements," and it is unclear what evidence the court considered in that regard, we vacate the judgment awarding primary physical custody to Father and remand for the trial court to reconsider the case and issue a decision that sets forth its factual findings with more specificity.⁷

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AWARDING APPELLEE PRIMARY
PHYSICAL CUSTODY VACATED; CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH**

⁷ To avoid further challenge on another appeal, the court may want to discuss and explain its factual findings for each of the *Sanders* factors.

**THIS OPINION; JUDGMENT
OTHERWISE AFFIRMED. COSTS TO BE
SPLIT EVENLY BETWEEN APPELLANT
AND APPELLEE.**