Circuit Court for Baltimore County
Case No.: C-03-FM-20-898
Case No.: C-12-FM-21-955

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1921, September Term, 2021

No. 1194, September Term, 2022

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TERRY GAMBLE

v.

HOLLY GAMBLE

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Shaw,
Ripken,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Meredith, J.

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Filed: February 23, 2023

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

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

In these consolidated appeals from divorce proceedings between appellant Terry Gamble ("Father") and appellee Holly Gamble ("Mother"), we review decisions by the Circuit Court for Baltimore County regarding child custody and marital property.

Father returns to this Court after his first appeal prematurely challenged a December 2020 ruling on Mother's petition for a limited divorce (the "Limited Divorce Order"). *See Gamble v. Gamble*, No. 1414, Sept. Term 2020, (filed Sept. 22, 2021) ("*Gamble I*"); *Gamble v. Gamble*, Circuit Court for Baltimore County, Case No. C-03-FM-20-898. The court granted Father a limited divorce; awarded Mother sole legal and primary physical custody of their biological son C.; denied Father de facto parent status for stepchildren E. and J.; required Father to pay $591 for C.'s child support; determined ownership of real and personal property; and made a marital award of $1,500 to Father.

While Father's appeal from the Limited Divorce Order was pending, Mother moved to Pennsylvania with all three children, and Father moved to Abingdon, Harford County, Maryland. On July 12, 2021, Father filed for absolute divorce in Harford County, then requested transfer of all proceedings to that county. *See Gamble v. Gamble*, Circuit Court for Harford County, No. C-12-FM-21-955. The Circuit Court for Baltimore County denied Father's motion to transfer, and the Circuit Court for Harford County granted Mother's motion to dismiss the action Father had filed in that venue.

On September 22, 2021, this Court dismissed Father's First Appeal challenging the Limited Divorce Order. *See Gamble I*, slip op. at 11. In doing so, we provided guidance for the circuit court to consider with respect to Father's rights as a de facto

parent to stepchildren E. and J., child support, and the disposition of real and personal property, before filing any final appealable order. *Id.* at 11-16.

In November 2021, Mother petitioned for absolute divorce in the pending Baltimore County case. In December 2021, Father filed a motion to alter or amend the Limited Divorce Order, asking the court to address the concerns identified by this Court, and Father also filed a motion to transfer the case to Harford County "on *forum non conveniens* grounds." When the circuit court denied those motions and ordered the case to be referred to the same judge "for a hearing on the final divorce[,]" Father unsuccessfully moved to reconsider, then noted a second appeal. *See Gamble v. Gamble*, No. 1921, Sept. Term 2021 (the "Second Appeal").

On June 23, 2022, after Father and Mother filed briefs, this Court stayed the Second Appeal because trial on Mother's petition for absolute divorce—which was expected to generate a final judgment superseding the Limited Divorce Order—was scheduled for August 8, 2022, in the Circuit Court for Baltimore County.

After a two-day trial, the circuit court entered a judgment of absolute divorce ("Absolute Divorce Judgment"): awarding Mother sole legal and primary physical custody of C., with Father continuing to have visitation with C. on Wednesdays and alternating weekends; declaring Father a de facto parent of E. and J. and ordering visitation coupled with reunification therapy; and requiring Father to pay monthly child support in an amount to be determined by the Office for Child Support Enforcement ("OCSE") based on the parties' updated financial information. Father timely noted this appeal from the Absolute Divorce Judgment (the "Third Appeal"), *see Gamble v.*

*Gamble*, No. 1194, Sept. Term 2022, which we have consolidated with his Second Appeal challenging the Limited Divorce Order. Appellant and appellee are both self-represented, and have both filed informal briefs in this Court.

Father presents issues that we consolidate, reorder, and restate as follows:

1. Did the Circuit Court for Baltimore County err or abuse its discretion in declining to transfer proceedings to the Circuit Court for Harford County?

2. Did the circuit court violate Father's right to due process by denying him an "opportunity to be fairly heard" on his challenges to the Limited Divorce Order or in denying him "access to" subpoenaed documents that were not produced before trial?

3. Did the trial court err or abuse its discretion in awarding Mother sole legal and primary physical custody of C.?

4. Did the trial court err or abuse its discretion in declining to make an additional monetary award to Father?

5. Was the trial judge prejudicially biased against Father?[1]

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[1] Father's informal brief in the Second Appeal from the Limited Divorce Order presents the following issues:

1. "Was the Circuit Court's reason for denying a modification of the [Limited Divorce O]rder clear judicial error?"

2. "Was the Circuit Court's reason for denying a motion to transfer jurisdiction in error?"

3. "Is the Circuit[] [Court's] refusal to modify the [Limited Divorce O]rder grounds for the order, as written, to be considered an appealable final order?" [Sic]

Father's informal brief in the Third Appeal challenging the Absolute Divorce Order frames the issues as follows:

(continued…)

For the reasons explained herein, we discern neither reversible error nor abuse of discretion, and we affirm the Judgment of Absolute Divorce.

## BACKGROUND

### *Gamble I: Proceedings Through the First Appeal*

We summarized the parties' family history as follows in our opinion in *Gamble I*:

> [Mother and Father] were married on March 7, 2013. A son, C., was born of the marriage. Mother left Mr. Gamble on February 15, 2020. C. was five years old at the time that his parents separated.
>
> Three days after the separation, Mother, *pro se*, filed in the Circuit Court for Baltimore County, a petition for limited divorce on the grounds of constructive desertion. Mr. Gamble, on May 8, 2020, filed, *pro se*, a counter-claim asking the court for a limited divorce on the grounds of abandonment and to grant him use and possession of the marital home for a period "not to exceed three years after a ruling of an absolute divorce has been entered." Mr. Gamble also asked the court to declare that he is the de facto parent (within the meaning of that term as set forth in *Conover v. Conover*, 450 Md. 51 (2016)) of two of Mother's children from another relationship. We shall refer to those children as "E." (born December 2008) and "J." (born April 2014). Mr. Gamble also asked that he be given primary

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1. "Whether the lower court erred and violated [Father's] due process rights and fundamental liberty interest in the care, custody, and control of the minor child in violation of the United States Constitution, the Maryland Declaration of Rights, and Maryland statutory and case authority when it failed to provide the equal access to evidence and an opportunity to be fairly heard, and all open matters disposed of before proceeding."

2. "Did the lower Court act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary?"

3. "Whether the Circuit Court's findings on child custody were erroneous and an abuse of discretion unsupported by the evidence."

4. "Was the judgment entered by the Circuit Court regarding the ownership, valuation, and distribution of marital property, clearly erroneous, an abuse of discretion, and contrary to the law?"

> physical custody of all three of the children and that the court grant joint legal custody to each parent with tie-breaking authority to him. Lastly, Mr. Gamble asked that the court award him "appropriate child support."

*Gamble I*, slip op. at 1.

> Prior to marrying Mother, Mr. Gamble and Angelina Wilcox were in a relationship that produced a daughter, H., born in September 2012. After H.'s birth, Ms. Wilcox had custody of the child. In the first seven years of H.'s life, her parents engaged in almost constant legal battles. Nevertheless, Mr. Gamble did have regular visitations with H. and paid Ms. Wilcox child support.
>
> During most of their marriage, Mother and Mr. Gamble lived in a four bedroom home located on Trappe Road in Dundalk, Maryland. That house was titled in Mother's name.
>
> Mother and the late Matthew Houff were the biological parents of a daughter, E., and a son, J. But from the time E. was approximately two and one-half years old, until February 15, 2020, when she was eleven, E. lived with Mother and Mr. Gamble continuously except for a short interlude in 2013 when Mother and Mr. Gamble separated. J. lived continuously with Mother and Mr. Gamble from the time of his birth in April of 2014 until Mother and Mr. Gamble separated. J. uses "Gamble" as his last name. E.'s surname is "Houff". Both children called Mr. Gamble "daddy" and, according to Mother's trial testimony, Mr. Gamble was a "great" step-dad to his two step-children.
>
> J. and E.'s biological father, Matthew Houff, paid child support to Mother until he died in October of 2019 due to a pulmonary embolism.

*Id*. at 3-4.

Following their separation, without a written agreement or court order, Father had primary physical custody of C. while Mother had custody of E. and J.

> J., E., and Mother went to live in a six bedroom house where Matt Houff's parents lived. That trio lived with the children's paternal grandparents from February 15, 2020 to December 2, 2020, the date of trial [on the petition for limited divorce].
>
> Between February 15, 2020 and the date of trial, C. lived with Mr. Gamble. According to Mother's testimony, the custody arrangement was a

> matter that Mr. Gamble forced on her. Mr. Gamble did allow Mother regular visitation with C. – but from February to December 2020, there was never any court approved custody and/or visitation schedule.
>
> Although Mother didn't ask for child support because, in her words, she "didn't need it," she introduced into evidence a financial statement showing that she currently made $3,800 per month ($45,600 per year) working as a hospice nurse. Before the COVID-19 pandemic, she worked one full-time job and two part-time jobs and earned $125,000 annually. At the time of trial, she was working only 32 hours per week. According to Mother, she cut back on her hours because previously she was working "24/7," which was exhausting. She also indicated that another reason she reduced her income was because of the COVID-19 pandemic, which caused J. and E. to be out of school.
>
> Mr. Gamble is employed by M&M Vending as an "IT" specialist. Because of the COVID-19 pandemic, he was furloughed from his job for about two months but he was back at work, full time, on the date of trial. According to the judge's calculations, based on pay stubs the judge reviewed, he earns $4,769 per month ($57,228 per year).

*Id.* at 7-8.

At the conclusion of a contentious hearing on Mother's petition for limited divorce on December 2, 2020,

> the trial judge delivered an oral opinion in which she denied Mother a limited divorce on the grounds of constructive desertion; granted Mr. Gamble a limited divorce on the grounds of desertion; denied Mr. Gamble's request for a finding that he was the de facto parent of E. and J.; granted Mother sole legal and primary physical custody of C.; and awarded Mr. Gamble access to C. every Wednesday evening from 4:00 p.m. to 7:00 p.m. and every other weekend from Friday at 4:00 p.m. until Sunday at 6:00 p.m. The judge also ruled that Mr. Gamble must pay Mother $591 per month for C.'s support. In addition, the judge made various oral determinations in regard to the disposition of personal and marital property belonging to the parties.
>
> Although Mr. Gamble had not asked for a marital award, the judge said that he was entitled to such an award in the amount of $1,500. Lastly, the court denied Mr. Gamble's request for use and possession of the marital home. At the conclusion of the court's oral opinion, the judge said:

> All right. That's my ruling. I'm going to prepare an order itemizing all of that. It should be available to you on MDEC as soon as I file it. So just keep checking MDEC so that you can download a copy of it as soon as it's available for you.
>
> All right. That concludes this matter.

> On December 7, 2020, the trial court signed a written order, docketed on December 9, 2020, that was basically in conformity with the court's oral opinion but with one major exception. The written order made no mention of Mr. Gamble's request that he be declared the de facto parent of E. and J.
>
> On December 18, 2020, Mr. Gamble filed a motion for reconsideration and later an amended motion for reconsideration. The motions were denied on January 25, 2021. Mr. Gamble filed a notice of appeal to this Court on February 16, 2021.

*Id.* at 1-3 (footnote omitted).

While Father's first appeal was pending in this Court, Mother and the three children moved to Pennsylvania, and Father moved to Abingdon. In June 2021, Father filed a complaint for absolute divorce in Harford County, then moved to transfer the pending case from Baltimore County based on lack of forum convenience. *See Gamble v. Gamble*, Circuit Court for Harford County, Case No. C-12-FM-21-955. The Circuit Court for Harford County granted Mother's motion to dismiss Father's complaint on August 18, 2021, because "the Circuit Court for Baltimore County . . . has properly asserted jurisdiction over the parties as to marriage dissolution and custody of the minor child and has denied [Father's] motion to transfer that case[.]"

The next month, on September 22, 2021, this Court dismissed Father's first appeal "because, thus far, no final appealable judgment has been entered." *Gamble I*, slip op. at 3. We explained that,

> [b]ased on what the trial judge said at the conclusion of the trial, she clearly did not intend that her oral ruling would constitute a final termination of the litigation insofar as the de facto parent claim (or any other claim) was concerned. Instead, the judge's words conveyed her intent that a judgment would be entered by a separate order signed by her. Because no separate order was ever filed that disposed of Mr. Gamble's de facto parent claim, no final judgment has been entered.
>
> This Court does not have jurisdiction over an appeal that is not from a final judgment unless it is otherwise permitted by law. *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 661 (2014). There are some narrow exceptions to the rule that an appeal may only be taken after the entry of a final judgment, but none of those exceptions is here applicable. We therefore have no choice but to dismiss this appeal.

*Id*. at 10-11 (citation omitted).

We acknowledged that, typically, "when an appeal is dismissed for that reason, the trial court will simply prepare and sign a final order in accordance with the findings set forth in the court's oral or written opinion and have the order docketed[,]" and "[w]e would then have jurisdiction to decide the appeal, assuming, of course, that a timely notice of appeal is filed." *Id*. at 3. In this instance, however, we pointed to "some parts of the court's order that the trial judge might want to re-evaluate before signing an appealable final order." *Id*. "[B]ecause child custody and support issues are involved in the subject case, time may be of the essence and it would make no sense to simply return the case to the trial court without comment" on three problematic issues we identified. *Id*. at 11.

First, we explained that "[t]he trial judge orally denied Mr. Gamble's request that he be declared the de facto parent of E. and J. on a legally incorrect basis. If another appeal is filed, we could not possibly affirm the denial of Mr. Gamble's request that he be declared the de facto father of E. and J. on the basis given by the trial judge." *Id*. at 11. In light of the evidentiary record, we stated that "the circuit court should carefully examine the *Conover* factors and determine in a written order whether Mr. Gamble has met his burden of proving each of the four factors." *Id*. at 14.

Second, we pointed out that the circuit court, "in calculating the guideline amount Mr. Gamble was required to pay to Mother for C.'s support, did not take into account the court ordered child support that Mr. Gamble was required to make to H.'s mother." *Id*. at 15. We directed "the court, prior to signing a final order in this case, [to] either grant Mr. Gamble credit for the pre-existing child support obligation or explain why no credit was given." *Id*.

Third, we advised the circuit court to "reconsider whether to grant a marital award or to resolve any dispute concerning real property in a case, such as this, where only a limited divorce was granted. *See* Md. Code (2019 Repl. Vol.), Family Law article [("FL")] sections 8-202(a)(2) and 8-203(a)." *Id*. at 15-16.

*Second and Third Appeals*

On November 10, 2021, in the Baltimore County case, Mother filed a complaint for absolute divorce based on a 12-month separation. Asking for the Limited Divorce Order to be incorporated into the judgment of absolute divorce, she sought primary physical and sole legal custody of C., plus child support. In December 2021 and January

2022, the circuit court denied Father's motions to transfer the Baltimore case to Harford County, as well as his ensuing motions to alter or amend the Limited Divorce Order in accordance with our opinion in *Gamble I*.

Father noted a timely appeal from those decisions, which is now before us as the Second Appeal. *See Gamble v. Gamble*, No. 1921, Sept. Term, 2021. In his brief on that appeal, Father challenges what he views as the court's wrongful refusal to amend the Limited Divorce Order and enter final judgment after dismissal of his First Appeal and the denial of his requests to transfer venue to Harford County.

In her brief in the Second Appeal, Mother points out that the circuit court had already scheduled trial on her petition for absolute divorce for August 8, 2022, which would address all of the matters identified by this Court in *Gamble I* and supersede the Limited Divorce Order. Mother cited "covid related" delays and the "multiple issues" raised by Father during "constant litigation" as "naturally" causing "delays like this" and "contributing to the need for an assigned judge[] and a full-day trial." She anticipated that the August trial would "grant [Father] the final order he needs to continue his litigation pursuits[,]" so that "[r]estarting this entire 2.5 year process . . . in another jurisdiction in front of another judge when the final court date is less than 60 days away further delays the 'justice'" that Father claimed to be seeking. On June 23, 2022, this Court issued an order staying Father's Second Appeal, moving the case submission date from July 7 "until September 6, 2022, to afford the circuit court the opportunity to issue a final appealable judgment[.]"

At a two-day evidentiary hearing on August 8 and 9, 2022, Mother and Father again represented themselves. The circuit court entered a Judgment of Absolute Divorce on August 15, 2022. In pertinent part, that judgment:

- Grants an absolute divorce based on a 12-month separation.
- Declares Father a de facto parent of E. and J.
- Awards Mother sole legal and primary physical custody of E., J., and parties' biological son C.
- Awards Father weekly "parenting time" with J. and C. every Wednesday from 4-7pm and alternating weekends (Fri-Sun).
- Orders Father's access to E. to begin 30 days from that Judgment, on alternating Sundays (10a-5p), subject to changes with approval of E.'s therapist and E.'s consent.
- Orders reunification therapy for E. through her therapist.
- Specifies schedules for holidays, vacations, and birthdays, on alternating schedules.
- Requires communications through My Family Wizard and mutual notice of addresses and cell phone number; specifies exchange locations.
- Orders Father to pay Mother child support "in an amount to be determined and collected by the Baltimore County [OCSE.]"
- Orders the parties to employ a Parent Coordinator and, before taking any legal action, to have at least two mediation sessions and undertake good faith efforts to resolve disputes.
- Requires exchange of basic itinerary, destination, and emergency phone numbers when traveling out of state with children.
- Requires that "each parent shall confer and discuss with the other parent decisions affecting the health, education, and welfare of the children" but can "make decisions regarding the day-to-day care and control" while they are residing with her/him.

- Prohibits disparagement and discussion of court-related or financial communications in the presence of the children.
- Requires reasonable access to the children by phone.
- Requires mutual notice of and support for school, sports, and extracurricular events.
- Grants mutual independent access to medical and school records, and consultations with professionals.

On August 22, 2022, this Court issued an order to show cause why the Second Appeal from the Limited Divorce Order should not be stayed or dismissed following entry of the Absolute Divorce Judgment. In opposition, Father tacitly acknowledged that the Absolute Divorce Judgment supersedes the Limited Divorce Order on the custody, de facto parent, and child support issues, but challenged those decisions and claimed that the trial court failed to address his complaint regarding the marital award. Father claimed that "both parties testified under oath" at the December 2, 2020 hearing that they wanted joint legal custody and "50/50 physical custody of 'C.'" With respect to the marital award and child support, Father contended that "[t]he trial court refused to modify the marital award stating on the record that she'd already given $1500" and that his "[c]hild support was not retroactively modified, a credit wasn't given, nor was an explanation as to why no credit given was provided on the record[,]" despite his allegation "that by all intents and purposes [Mother] committed perjury" concerning her annual income. Claiming that it took 614 days for the circuit court to "acknowledge the *de facto* parent aspect of the case[,]" Father argued that "being forced to rebuild the [parental] bonds which have been severely strained because of the trial court[']s constant delaying tactics

is beyond what a reasonable person might be able to believe to be fair and impartial." Finally, Father argued that the court erred or abused its discretion in refusing to transfer the case to Harford County.

In support of a stay, Mother asserted that the Absolute Divorce Judgment mooted Father's challenges to the Limited Divorce Order, and that Father could appeal from that final appealable judgment. With respect to venue, Mother argued that moving the litigation to Harford County would cause further delay, that Father did not appeal the denial of transfer when he could have done so in a previous appeal, and that Baltimore County has jurisdiction because the couple married and lived there.

On September 14, 2022, Father noted a timely appeal from the Absolute Divorce Judgment, which is now before us as the Third Appeal. *See Gamble v. Gamble*, No. 1194, Sept. Term 2022. Mother did not note an appeal. On September 30, 2022, this Court consolidated Father's Second and Third Appeals, ordering both to "proceed on the expedited appeal track pursuant to Maryland Rule 8-207(a)[.]"

**DISCUSSION**

In their informal briefs, Father and Mother agree that the Absolute Divorce Judgment superseded the Limited Divorce Order, but they debate venue, custody, and the marital award, along with the fairness of the proceedings. In his Second Appeal, Father decries the Circuit Court for Baltimore County's delay in reconsidering the terms of the Limited Divorce Order and entering "an appealable final order" from which he could obtain appellate relief, and Father also challenges the denial of his requests to transfer the case to Harford County. In his view, after *Gamble I*, "the only issue which the court

ultimately modified from the open appeals was the de-facto children[.]" Father again contends that the court erred: in awarding primary physical custody of C. to Mother rather than preserving "the status quo" of C. living with Father; in calculating child support; and in making the marital award.

In his Third Appeal from the Absolute Divorce Judgment, Father challenges the "[t]he factual findings underpinning the trial court's custody decision[,]" the fairness of the trial proceedings, and the trial court's refusal to make another marital award. He contends that the trial court should not have proceeded to adjudicate the absolute divorce without resolving both the venue and custody issues raised in his Second Appeal from the Limited Divorce Order or resolving his complaints that he did not receive subpoenaed documents. Father characterizes the trial judge as partial to Mother and unfair to him.

For reasons that follow, we hold that Father was not denied a fair hearing in Baltimore County and that the trial court did not err or abuse its discretion in determining custody and denying an additional marital award.

## I. Denial of Venue Transfer

Father contends that the Circuit Court for Baltimore County erred or abused its discretion in declining to transfer the case to Harford County after Mother, Father, and the children all moved away from Baltimore County. We disagree and explain why we do not find reversible error in the court's denial of a transfer of venue in this case.

### *A. Standards Governing Transfer of Venue*

Under Md. Rule 2-327(c), "[o]n motion of any party, the court <u>may</u> transfer any action to any other circuit court where the action might have been brought <u>if</u> the transfer

is for the convenience of the parties and witnesses and serves the interests of justice." (Emphasis added.) Any "party seeking transfer must present evidence weighing strongly in its favor, because when multiple venues are jurisdictionally appropriate, a plaintiff has the option to choose the forum." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 439 (2003). In evaluating a transfer request, a court should consider "the convenience of the witnesses [party and non-party] and those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of 'the interest of justice.'" *Id.* (quoting *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40 (1990)) (further quotation marks and citation omitted).

Once a circuit court exercises jurisdiction over a case, "another court of concurrent jurisdiction generally should abstain from interfering with the first proceeding." *State v. 91st St. Joint Venture*, 330 Md. 620, 628 (1993). This Court has stated:

> Merely because a court has subject matter jurisdiction does not mean it is proper for the court to exercise it, however. It long has been held that when two courts have concurrent jurisdiction over the same subject matter, and the actions are materially the same, **the court in which suit first was commenced should retain the case and another court should abstain from exercising its jurisdiction and interfering with the first proceeding**.

*Vaughn v. Vaughn*, 146 Md. App. 264, 278-79 (2002) (citing *91st St. Joint Venture*, 330 Md. at 628) (emphasis added).

"Absolute identity of all issues in both cases is not" required. *Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 21 (2017). Instead, "[t]he standard . . . is whether the question presented in the [second] action '*can be* adequately decided,' or '*may be* adjudicated,' in the earlier-filed, pending action." *Id.* (footnotes omitted).

This Court reviews the denial of a Rule 2-327(c) request to transfer venue for abuse of discretion. *See Univ. of Md. Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 401 (2017). Although we "do not rubberstamp the rulings of trial court judges," we are "'reticent' to substitute" our evaluation for the circuit court's unless we "identify 'clear abuse' of the wide latitude given to trial courts when ruling on Rule 2-327(c) motions." *Id*. at 401-02 (quoting *Urquhart v. Simmons*, 339 Md. 1, 17-19 (1995)). "The trial court must have acted unreasonably based on the facts before it for an appellate court to reverse under an abuse of discretion standard." *Id.* at 414. "Appellate courts must, therefore, judiciously approach reviews of Rule 2-327(c) transfers so as not to foist onto themselves the task designed for, and better left to, the trial courts." *Id.*

*B. Relevant Record*

As we have noted above, Mother filed for limited divorce in the Circuit Court for Baltimore County, and Father counterclaimed. While Father's first appeal from the Limited Divorce Order was pending in this Court, Father, Mother, and the children moved out of Baltimore County.

Father then filed a motion to transfer the case to Harford County, where he now lives. When the Circuit Court for Baltimore County denied Father's motions, he appealed that decision, which is before us in the Second Appeal.

Father then filed for absolute divorce in Harford County. Upon Mother's motion, the Circuit Court for Harford County dismissed Father's action, citing the pending Baltimore County case. Father did not appeal that decision.

After this Court dismissed Father's First Appeal, Mother filed for absolute divorce in the Circuit Court for Baltimore County, which eventually entered an Absolute Divorce Judgment. Father appealed that decision in his Third Appeal, which we consolidated with his second Appeal.

### *C. Analysis*

We hold that the Circuit Court for Baltimore County did not abuse its discretion in denying Father's requests to transfer venue to Harford County. When Mother initially filed for limited divorce in Baltimore County, venue was appropriate because both she and Father were living there. *See generally* Md. Code, § 6-201(a) of the Courts & Judicial Proceedings Article ("CJP") (providing that an action may be brought "in a county where the defendant resides"); CJP § 6-202(1) (providing that a divorce action also may be brought "[w]here the plaintiff resides").

When Father requested that the Baltimore County case be transferred, and filed a separate action in Harford County, both courts recognized that, for venue purposes, the Baltimore County and Harford County cases were the same. Following what has been described as the "typical scenario[,]" the limited divorce action evolved into an absolute divorce case based on a 12-month separation. *See* CYNTHIA CALLAHAN & THOMAS C. RIES, FADER'S MARYLAND FAMILY LAW § 4-2 (6th ed. 2016). [2]

[2] Whereas "[a]n absolute divorce is permanent, permits remarriage, permits the court to address marital property issues, and terminates all property claims—including real property[,]" a limited divorce does "not permit remarriage" or "terminate real property claims[,]" but merely "legalize[s] the separation and provide[s] for support." CYNTHIA CALLAHAN & THOMAS C. RIES, FADER'S MARYLAND FAMILY LAW § 4-2 (6th (continued…)

Although Mother, Father, and the children moved out of Baltimore County, the parties and issues remained the same—divorce, custody, de facto parent status, child support, and division of marital property with a monetary award. Mother opposed transferring the case to Harford County on the ground that a transfer would delay resolution. In the meantime, Father also complained about delay in reaching a final adjudication. Under these circumstances, the Circuit Court for Baltimore County did not abuse its discretion in denying Father's requests to transfer the case to Harford County. *See Hanover Invs.*, 455 Md. at 21.

### II. Pre-Trial Discovery and Disposition of Second Appeal

Father contends that the circuit court "erred and violated [his] due process rights and fundamental liberty interest in the care, custody, and control of the minor child" by adjudicating the absolute divorce before ruling on the issues he raised in the First and Second Appeals and by failing "to provide the equal access to evidence" that he requested in discovery. As we understand Father's due process concerns, he complains that the circuit court proceeded to try the absolute divorce before his challenges to the Limited Divorce Order were addressed by this Court in the Second Appeal, and before Father obtained all the documents he subpoenaed for trial. Applying due process

ed. 2016) (footnotes omitted). "The utility for a limited divorce today is as the basis for seeking temporary child support, alimony, custody, use and possession, etc.[,]" by "provid[ing] access to the court system, especially when parties are living separate and apart, but for less than 12 months." *Id.* As "[t]ime passes," however, "the complaint for limited divorce is usually amended to be one for absolute divorce, and the case goes to a trial or a hearing with an absolute divorce being granted. That is a typical scenario." *Id.*

principles, we address each contention in turn, explaining why neither merits the relief Father seeks.

### A. *Due Process Standards in Child Custody Proceedings*

This Court recently reviewed due process protections in the context of child custody proceedings:

> "The fundamental liberty interests of parents provide the constitutional context that looms over any judicial rumination on the question of custody or visitation." *Barrett v. Ayres*, 186 Md. App. 1, 17, (cleaned up), *cert. denied*, 410 Md. 560 (2009). "The rights of parents to direct and govern the care, custody, and control of their children is a fundamental right protected by the Fourteenth Amendment of the United States Constitution." *Conover v. Conover*, 450 Md. 51, 60 (2016) (cleaned up). *Accord Troxel v. Granville*, 530 U.S. 57, 66, 120 S. Ct. 2054 (2000) (Substantive due process protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children."). At the same time, "[t]he primary goal of access determinations in Maryland is to serve the best interests of the child." *Conover*, 450 Md. at 60. *Accord Taylor v. Taylor*, 306 Md. 290, 303 (1986) ("[I]n any child custody case, the paramount concern is the best interest of the child.").
>
> In custody disputes between parents, neither parent has a superior claim to the right to custody, and the issue is decided based on the best interests of the child. *McDermott v. Dougherty*, 385 Md. 320, 353 (2005).

*Caldwell v. Sutton*, 256 Md. App. 230, 264-65 (2022).

"[W]e review [a parent's] asserted denial of due process by an appraisal of the totality of the facts of the case." *In re Maria P.*, 393 Md. 661, 676 (2006). Due process "does not require procedures so comprehensive as to preclude any possibility of error." *Id*. at 674. Instead, "due process merely assures reasonable procedural protections, appropriate to the fair determination of the particular issues presented in a given case." *Id*. at 674-75.

*B. Resolution of Father's Challenges to the Limited Divorce Order*

Father contends that the trial court should not have tried the absolute divorce petition while his challenges to the Limited Divorce Order were still pending in his Second Appeal to this Court. In his view, "the trial judge violated [his] due process rights by attempting to moot out the previous appeals[.]" Father asks this Court to "grant [him] a De Novo trial[,]" adding that it should "be held in Harford County as requested by an unbiased judge and with a clear knowledge of the resolution of the prior appeals[.]"

Mother responds that she "is unclear as to what this appealable issue actually is" because Father's "objection to the hearing being held" on her petition for absolute divorce is "illogical" given that "the judge explained that we were in court in order to have a 'final order' and that the initial 'stay' . . . was because the final divorce hearing had not happened yet."

We conclude that the circuit court did not err or abuse its discretion by proceeding with trial on Mother's petition for absolute divorce. In *Gamble I*, we provided guidance regarding Father's complaints in the context of dismissing Father's premature First Appeal from the Limited Divorce Order, it being our hope that, before entering a final appealable order on a petition for absolute divorce, the circuit court would consider and address our concerns about de facto parent status, child support, and marital property. Father thereafter filed motions asking the circuit court to reconsider its Limited Divorce Order and to transfer the case to Harford County, and then filed the Second Appeal. We stayed that appeal pending trial on the petition for absolute divorce because a judgment of absolute divorce would supersede the Limited Divorce Order, and because that trial was

scheduled to occur just as we would be considering Father's assignments of error about the Limited Divorce Order and his requests to transfer venue.

As we have explained, progressing to a trial and judgment of absolute divorce was the "typical," necessary, and superseding progression in other divorce proceedings. *See Hanover Invs.*, 455 Md. at 21; CALLAHAN & RIES, *supra*, § 4-2. This Court, noting Father's complaints about delays in judicial decisions on custody and support orders, stayed proceedings in the Second Appeal (from the Limited Divorce Order), so that the circuit court could finally adjudicate all custody, support, and property disputes and we could then review that subsequent order simultaneously with any surviving issues raised in Father's Second Appeal that were not mooted or resolved by such a judgment of absolute divorce. Under these circumstances, the circuit court did not deny Father due process by proceeding to adjudicate his custody, support, and property claims in the Absolute Divorce Judgment.

*C. Father's Discovery Requests*

Father next contends that the trial court denied him due process by proceeding to try the case without resolving his pre-trial assertion that he had not received certain documents that he subpoenaed. The record does not support Father's claim. To the contrary, it shows that the trial judge reviewed each of Father's subpoenas, determined which documents Father was missing, then invited Father to identify anything he needed to present his case while assuring him that she would continue trial if additional discovery was necessary. Based on the record in the circuit court, we are satisfied that the trial court did not abuse its discretion in evaluating whether a postponement for

further discovery was necessary as trial progressed, or in ultimately determining that the documents Father sought were not reasonably likely to provide material support for his claims.

*1. Relevant Record*

On June 27 2022, Father subpoenaed documents from Mother, her current and prior employers, her bank, and the mother of her deceased ex-husband. On July 5, Mother filed written objections to producing certain of the subpoenaed documents, including the following:

- Mother asserted that the subpoenas to her employers were "overly invasive and a violation of [her] privacy as an employee" because "performance reviews, job applications, job resumes etc. have no relevance to the upcoming proceeding."

- As for her pay history and tax information, Mother objected that such information was "standard for a hearing when child support is in question[,]" so she could "easily print and bring to court" those documents, instead of Father proceeding via "a burdensome" and "intrusive" subpoena to her supervisors.

- Likewise, with respect to her "entire employment record dating back over ten years[,]" Mother expressed concern about mailing it to Father's "home for review by not only himself but anyone he chooses to allow to view the information."

- She also objected to his request "for over 7 years of itemized bank statements, credit card statements, cancelled checks, and records," with no assurances of confidentiality; to Father's inclusion of her name, date of birth, and social security number on the subpoenas; and to a subpoena to her credit union on the ground that she had not shared this personal account or other finances with Father for two years.

- Mother objected to subpoenas served on "the grandmother of [her] two older children," for "text messages from [Grandmother's] dead son, over two years after his death," which "borders on emotional abuse[,]" and to his demands on Coldwell Banker for information on the sale of the marital

> home, which "was exclusively in [Mother's] name," awarded to her in the December 2020 Limited Divorce Order, and sold in March 2021, with Grandmother serving as Mother's agent.

Mother asked the court to "dismiss" or limit these subpoenas.

In response, Father filed a written opposition on July 15, 2022. He argued that Mother "lacks standing to object" to subpoenas for relevant and discoverable information from "third parties[,]" that she "is the one who used all of the subpoenas as exhibits thereby providing her SSN, her date of birth, nursing license, etc., as part of the public record[,]" and that she "has pleaded false, improper, immaterial, impertinent, and frivolous information hoping to cause severe prejudice[.]"

On July 25, 2022, Greater Baltimore Medical Center, Inc., one of Mother's employers, produced documents, and Grandmother also filed a written response. In addition to stating that she would be in court on the scheduled trial date, Grandmother provided details about why she could not retrieve text messages and about Mother and the children staying with her through the pandemic. She also attached a copy of a settlement statement from the sale of Mother's home in March 2021, for which she acted as the selling real estate agent.

On August 8, 2022, at the outset of the trial, Father complained that he could not "proceed because I don't have my discovery that I have propounded upon Ms. Gamble. She has not returned it" and "has blocked subpoena requests from getting over to me so that I could get the discovery that I need." After noting "a motion before me that involves a subpoena which I'm going to get to[,]" the trial court asked whether Father

"file[d] a motion to compel discovery?" Father admitted he had not and then tried to "verbally file" one.

When Father then stated that "as long as my appeal is stayed and the Order is under appeal, I can't get anything ruled on while it's under appeal[,]" the court explained: "The reason it's stayed is because today's hearing has not happened yet. So once today's hearing has concluded and I issue an Order, that Order is appealable. And if there's any issue that you want to raise that you disagree with or you think I was wrong about, that would be the time to raise it."

Father reiterated that he "would still appreciate the opportunity to have the subpoenas that I have requested provided over to me [sic] so that I have time to go through them. They have been blocked. I don't have them." Father stated: "My understanding is [that] you have some of them here in the courthouse, but the rest I haven't received."

The court responded: "It sounds like you're asking for a postponement of today's hearing." When Father answered, "Yes[,]" the court asked whether the "discovery issues" were "the only reason[.]" Father then explained that his "notice of discovery" had come "back" to him after sitting "in her mailbox for who know[s] how long[,]" stating "that the house is vacant." The judge took Father's "word for it[,]" stating she had "no reason to doubt what you're telling me."

The court then asked Mother to respond to Father's "request for a postponement and his representation . . . that there have been problems with your not complying with his request for discovery." Mother explained that she was away "traveling for work" and

on vacation for two weeks, as she had advised Father. She did receive and sign for "one pile" sometime "in early July" and "file[d] some objections to several of those subpoenas." Mother opposed postponing the trial because "we've had this court date since January, so waiting until July to request discovery . . . knowing that I'm going to be out of town for two weeks" means Father "had plenty of time to do it before and didn't." When the court asked Father if he had "anything else . . . to say" about postponing the case, Father raised unrelated substantive issues and complained that the stay and the "passage of time" had "impacted everything."

The court declined to postpone trial, finding that "this case has been pending for a long time" and that Father's request was not "meritorious[.]" Nevertheless, the court told Father that,

> if during the course of the hearing it becomes apparent that there's information that I don't have that I need to make a final decision which I'm going to be doing today or hope to do, then I can always continue the matter to obtain that additional information or evidence.

The court then proceeded to discuss whether both parties had filed an updated financial statement, as requested by the court. When Father stated that he had not yet had time to complete the form supplied by the court, the judge suggested there would be time to do that during a recess. Noting "[t]here was a subpoena issued . . . for information regarding [Mother's] income[,]" the judge then asked whether she was "objecting to giving that information to" Father. Mother insisted, "No," explaining that she only "filed an objection" to "six or seven subpoenas" on the "relevance of the request[s] for . . .

things such as [her] resume" and "performance reviews," and other "information going back to what predates our first hearing[.]"

Mother then provided the court with a copy of all the challenged subpoenas. The trial judge carefully reviewed each in turn, inquiring about which documents were not produced and why Father needed those to present his case.

With respect to the subpoena to Grandmother, the court asked Father whether there was "any dispute as to what the proceeds were from" the sale of Mother's home. Father admitted that he obtained the settlement statement but insisted other communications and transactions between Mother and Grandmother were relevant because Mother "lived with [her] while she had left me" and stayed "for almost a year and a half[,]" so [i]t comes into the finances" about which Mother had "misled this Court dramatically and directly[.]"

The trial judge responded that "the finances that are relevant would be her income, any income from any source along with any debt that she has or payments that she's obligated to make and any other assets that she might have, like a home." The court also elicited Father's admission that he was not disputing the sale price of the home but rather, was seeking discovery regarding "what was the driving force to sell it at that price."

With respect to Father's request for "all communications" between Grandmother and her deceased son, Father claimed that he was seeking information about conversations revealing "how many times he's not able to see the children, how many times barriers are being created to see the children, everything of that nature." Although the judge recognized that Father was asking for documents, she noted that Grandmother

was “here” in court and available for questioning, so the court would “reserve on this” depending on whether Grandmother is “going to be testifying[.]” The court told Father he could “ask [Grandmother] any questions that you wish regarding any of these, and, . . . on a question by question basis we can decide whether or not the answer to those questions is relevant.” The court added: “And then if it turns out that there is additional information that one would need that’s somehow contained in a document, then I’m going to go ahead and I’ll continue the matter so that we can get that.”

When the court then asked Mother whether she was “objecting to” “any other subpoenas[,]” Mother answered that she “objected to the subpoena to my bank going all the way back to like 2010 or something[,]” about a solo account she had before they married. The court observed that “normally that wouldn’t keep the bank from sending somebody” or filing “a motion to quash a subpoena” because “the bank wouldn’t just ignore it.” After Father insisted that the subpoena was served on the bank, the judge stated that she was “going to reserve on this as well and we’ll see if there’s any relevant information that needs to be produced.”

The court continued, asking Father, “[w]ere there any other” subpoenas outstanding? Father answered, “there were three banks that I served” around the end of June. When the court asked whether “any of them reach[ed] out to you[,]” Father answered that Mother’s “leasing office,” real estate agent, and employers either “sent [him] their stuff” or “sent their stuff in directly to” court, but “[t]he banks never reached out to” him.

Observing that "it looks like they were served by certified mail[,]" the court explained that Mother's "objection would not cause a bank or financial institution to ignore a subpoena that's been properly served." The judge ruled that "at this point in time I'm going to go forward on what we have today and then we'll see where we are."

The court instructed the parties that, during a recess for the court to consider a probation violation case, they were to "fill out the new financial statement." When the case was recalled, Father questioned Mother, testified himself, called his fiancée as a witness, and recalled Mother as a witness. Only once did he complain that his case was hampered by lack of subpoenaed information.

When Father asked Mother how she was financially "able to support" a household that included up to five children (including her fiancé's two children), he questioned the veracity of her responses, citing what he viewed as her previous failure to produce "pay stubs" for two part-time jobs during the December 2020 litigation. Father then asked these questions relative to his belief that Mother had "hidden income":

> [Father]: How many jobs do you work?
>
> [Mother]: One.
>
> [Father]: How can I know that to be true?
>
> [Mother]: I work one job. I work for Bayada.
>
> [Father]: You worked one job on December 2nd, but you submitted two pay stubs and then neglected to submit a third one. How can I believe that veracity of any document that you proffer to the Court?
>
> [Mother]: You don't, obviously, so I don't know how to answer that question.
>
> [Father]: Okay.

> *And this is the reason I've asked for my discovery and I've asked for the bank statements.*

(Emphasis added.)

*2. Analysis*

On this record, we are not persuaded that Father was denied due process or that the trial court otherwise abused its discretion by proceeding with trial despite Father's claim that he had not received all documents he subpoenaed from Mother and others. To the extent Father contends that the trial court denied Father's motion to postpone trial in light of the discovery deficits, we conclude that the court did not abuse its discretion.

Under Maryland Rule 2-508(a), "[o]n motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require." This rule affords trial courts "wide latitude in determining whether to grant a continuance." *Das v. Das*, 133 Md. App. 1, 31 (2000) (quotation marks and citation omitted). "Generally, an appellate court will not disturb a ruling on a motion to continue unless discretion is arbitrarily or prejudicially exercised." *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011) (quotation marks, citation, and alteration omitted). We "will reverse only in exceptional instances where there was prejudicial error." *Prince v. State*, 216 Md. App. 178, 203 (2014) (quotation marks and citation omitted). Such instances arise "when the continuance was mandated by law," or when litigants are "taken by surprise by an unforeseen event" after diligently preparing for trial. *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006).

As we have noted above, the trial court examined, with admirable granularity, the nature of the subpoenaed information, the service attempts made by Father, what material was produced by whom, the relevancy of the requested information to Father's case, and the potential prejudice to Father in not having the documents that had not yet been produced. All along, the judge repeatedly assured Father that, if it later turned out that he *needed* additional discovery to present his case, she would reconsider whether a continuance was necessary because he was missing material documents.

To the extent there is any dispute over Father's third party subpoenas, Mother was not responsible for those responses, as Father pointed out when challenging her lack of standing to object to them. Although some records were produced, Father does not specify to this Court which missing responses he contends prejudiced his case.

At trial, he complained only that he wanted to review Mother's bank statements in order to check the veracity of her testimony that she held only one job and her financial statement, both of which were submitted under penalty of perjury.

Notwithstanding Father's skepticism regarding Mother's veracity, the trial court did not rely on Mother's testimony or financial statement to make findings regarding support. Instead, the court referred the determination of support to the OCSE based on updated financial information to be supplied by both parents.

Under these circumstances, the trial court did not abuse its discretion in proceeding with trial after affording Father ample opportunity to raise any discovery deficiencies that warranted a continuance. Indeed, the trial judge's patient consideration of Father's discovery complaints shows that she was prepared to conduct further

proceedings if Father identified a material issue that could be affected by the missing discovery material.

Mindful of the parties' desire to resolve outstanding custody, support, and property issues, the court declined to postpone trial. Under these circumstances, we conclude that the court did not deny Father due process or otherwise abuse its discretion by proceeding with trial.

## III. Custody

In both his Second and Third Appeals, Father contends that the trial court's "findings on child custody were erroneous and an abuse of discretion unsupported by the evidence." In his view, the court should have awarded joint legal custody and 50/50 physical custody after both Mother and Father agreed to that arrangement for the December 2020 hearing on the limited divorce petition.

For reasons that follow, we conclude that the record supports both the trial court's factual findings and its exercise of discretion in granting Mother sole legal custody and primary physical custody.

### *A. Standards Governing Child Custody*

In custody matters, the paramount and overarching concern is "the best interest of the child." *Taylor v. Taylor*, 306 Md. 290, 303 (1986). When determining the child's best interest regarding custody, the court reviews numerous factors bearing on "the child's life chances in each of the homes competing for custody and then [predicts] with whom the child will be better off in the future." *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 419 (1978). As Judge Lynne Battaglia explained, writing

for this Court in *Azizova v. Suleymanov*, 243 Md. App. 340, 345 (2019), "[a]lthough courts are not limited to a list of factors in applying the best interest standard in each individual case," cases "beginning with [*Sanders*] and [*Taylor*] have set forth a non-exhaustive delineation of factors that a court must consider when making custody determinations, which have been consolidated in *Fader's Maryland Family Law*, a veritable compendium of domestic relations law[.]" In *Azizova*, we quoted from that compendium these considerations that are commonly referred to as "*Taylor* factors" as follows:

> (1) The fitness of the parents;
>
> (2) The character and reputation of the parties;
>
> (3) The requests of each parent and the sincerity of the requests;
>
> (4) Any agreements between the parties;
>
> (5) Willingness of the parents to share custody;
>
> (6) Each parent's ability to maintain the child's relationships with the other parent, siblings, relatives, and any other person who may psychologically affect the child's best interest;
>
> (7) The age and number of children each parent has in the household;
>
> (8) The preference of the child, when the child is of sufficient age and capacity to form a rational judgment;
>
> (9) The capacity of the parents to communicate and to reach shared decisions affecting the child's welfare;
>
> (10) The geographic proximity of the parents' residences and opportunities for time with each parent;
>
> (11) The ability of each parent to maintain a stable and appropriate home for the child;

> (12) Financial status of the parents;
>
> (13) The demands of parental employment and opportunities for time with the child;
>
> (14) The age, health, and sex of the child;
>
> (15) The relationship established between the child and each parent;
>
> (16) The length of the separation of the parents;
>
> (17) Whether there was a prior voluntary abandonment or surrender of custody of the child;
>
> (18) The potential disruption of the child's social and school life;
>
> (19) Any impact on state or federal assistance;
>
> (20) The benefit a parent may receive from an award of joint physical custody, and how that will enable the parent to bestow more benefit upon the child;
>
> (21) Any other consideration the court determines is relevant to the best interest of the child.

CYNTHIA CALLAHAN & THOMAS C. RIES, FADER'S MARYLAND FAMILY LAW § 5-3(a), at 5-9 to 5-11 (6th ed. 2016) (footnotes omitted). FADER'S MARYLAND FAMILY LAW also delineates other factors that courts are encouraged to consider in custody determinations:

> (1) the ability of each of the parties to meet the child's developmental needs, including ensuring physical safety; supporting emotional security and positive self-image; promoting interpersonal skills; and promoting intellectual and cognitive growth;
>
> (2) the ability of each party to meet the child's needs regarding, *inter alia*, education, socialization, culture and religion, and mental and physical health;
>
> (3) the ability of each party to consider and act on the needs of the child, as opposed to the needs or desires of the party, and protect the child from the adverse effects of any conflict between the parties;
>
> (4) the history of any efforts by one or the other parent to alienate or interfere with the child's relationship with the other parent;

> (5) any evidence of exposure of the child to domestic violence and by whom;
>
> (6) the parental responsibilities and the particular parenting tasks customarily performed by each party, including tasks and responsibilities performed before the initiation of litigation, tasks and responsibilities performed during the pending litigation, tasks and responsibilities performed after the issuance of orders of court, and the extent to which the tasks have or will be undertaken by third parties;
>
> (7) the ability of each party to co-parent the child without disruption to the child's social and school life;
>
> (8) the extent to which either party has initiated or engaged in frivolous or vexatious litigation, as defined in the Maryland Rules; and
>
> (9) the child's possible susceptibility to manipulation by a party or by others in terms of preferences stated by the child.
>
> *Id*. at § 5-3(b), at 5-11 to 5-12 (footnote omitted).

*Azizova*, 243 Md. App. at 345-47.

Each factor is important, and courts do not weigh any one of them "to the exclusion of all others." *Sanders*, 38 Md. App. at 420.

When reviewing child custody determinations that have been made by circuit courts, appellate courts apply three interrelated standards. *See Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). First,

> "[w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] if it appears that the [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 [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion."

*Id*. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)) (brackets added in *Gillespie*)

"[A]ll evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below." *Lemley v. Lemley,* 109 Md. App. 620, 628, *cert. denied*, 343 Md. 679 (1996). And, "due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses." *In re Yve S.*, 373 Md. at 584 (quotation marks and citations omitted). We recognize that

> **it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion.** Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the trial judge] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

*Id*. at 585-86 (emphasis added).

Factual findings are "not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley*, 109 Md. App. at 628. And, when reviewing a court's exercise of discretion, appellate courts "ask[] whether the decision is off the center mark and beyond the fringe of what is deemed minimally acceptable." *In re Dany G.*, 223 Md. App. 707, 720 (2015). We will not reverse a custody decision for abuse of discretion unless there is a clear showing that it is either manifestly unreasonable, made for untenable reasons, or predicated on an incorrect legal premise or factual conclusions that are clearly erroneous. *Santo v. Santo*, 448 Md. 620, 625-26 (2016). *See Jenkins v. City of Coll. Park*, 379 Md. 142, 165 (2003); *Guidash v. Tome*, 211 Md. App. 725, 735 (2013).

*B. Relevant Record*

At the close of evidence and argument, the trial court recessed, then issued a bench ruling. After declaring Father "a de facto parent of" E. and J., the court considered each of "the *Taylor* factors . . . based on the evidence that [she] heard[,]" then again found that it is "in the best interest of the children" that Mother "be awarded sole legal and primary physical custody of" E., J., and C. The court granted Father "access to" J. and C. every Wednesday from 4-7 p.m. and "every other weekend from Friday at 4:00 p.m. to Sunday at 6:00 p.m." For E., the court awarded Father access beginning in 30 days, on "Sundays from 10:00 a.m. to 5:00 p.m. every other weekend[,]" when he "also has access to his daughter" H.

In support of these decisions, the court made the following factual findings regarding the child custody factors.

***"Fitness of the parents":*** The court found "that both parents are fit" even if "it may be that one parent is the more desirable parent to have legal and/or physical custody of the children."

***"The sincerity of the parents' request":*** The court found "both parents are sincere" about wanting custody.

***"The willingness of the parents to share custody":*** The court found "that's been very problematic from the beginning. I don't think that the parties at this point are able to fully engage in shared custody. While there may be a willingness to share custody, what shared really means to one party versus the other is not typically the same in this case. So it's become very apparent to the Court, especially since our last hearing that the Court

has to set forth a very precise schedule for the parties to avoid conflict to the extent that it's possible here."

***"Any agreements between the parties":*** The court found "[t]here are no agreements between the parties at this time."

***"Each parent[']s ability to maintain the child's relationships with the other parent, relatives or any persons that may psychologically affect the child's best interests":*** The court explained: "I've said before that I think they're capable of it, but it's a question of getting the parents to the point where they can do it without ongoing litigation and without very unfortunate conduct and language toward each other." The court was "unable to find that the parents are able to maintain the children's relationship with family members or friends of the other parent."

***"The preference of the child":*** The court found that although C. and J. "are too young to form a rational judgment in this regard[,] [E.] . . . is not and she's made very clear what her wishes are[.]" The court previously told the parties that, during a recorded in-chambers conference, 14-year-old E. referred to Father as "Terry" and "indicated . . . that she does not want to go to his home." When the judge "asked her why[,]" E. "relate[d] . . . things that he had said that upset her. Specifically things about her dad." She recounted that Father "said that he was glad that her dad was dead" and, while "arguing with her mom . . . turned to her and said see, this is what your dad had to go through." "What was most upsetting to her was several months after her dad died, . . . [Father] told her that her dad was not her dad." "She made it clear that she doesn't want

to live in his home and does not want to see him on holidays." She also "indicated that he played video games a lot and that when he did that she took care of" H., J., and C.

***"The capacity of the parents to communicate and reach shared decisions affecting the children's welfare":*** The court found "[t]hat's extremely poor. It's so poor that" she "require[d] that the parties do two things: Communicate through the use of My Family Wizard and engage the help of a parent coordinator." Although the judge "was hoping that that would not be necessary the last time they were before" her, it was "even more apparent now that it is necessary" and she was "hoping that that can diffuse some of the contention between the parties and limit, at least to some degree, any future litigation."

***"The geographic proximity of the parents' homes and opportunity for time with the children":*** The court found that although "[t]he parents' homes are quite some distance apart[,]" that had not yet had "a detrimental impact on the parties' ability to spend time with the children" and that "both parents . . . are adamant that they wish to exercise their opportunities for access with the children."

***"The length of and reasons for child separation from either parent":*** The court found that "other than what was already addressed at the temporary hearing," there had not been "a significant separation of the children from either parent with the exception possibly of" E.

***"[V]oluntary abandonment or surrender of custody of the children by either parent":*** The court found "[t]here has been" none.

***"The relationship that's been established between the children and each parent":*** The court was "persuaded that but for the relationship with [E.] that the parents' relationship with the other children is good."

***"The ability of each parent to maintain a stable and appropriate home for the children":*** The court found "[b]oth parents have the ability to do that."

***"The demands of parental employment and opportunities for time with the children":*** The court found that "[b]oth parents have sufficient time to spend with the children."

***"The potential disruption of the children's school and social life":*** The court found "no potential disruption" "[a]t this point going forward[.]"

***"State or Federal assistance":*** The court found "no evidence that any of the children are receiving State or Federal assistance that would be impacted by [the court's] decision[.]" Although E. and J. "are receiving benefits as a result of their father's death," those would not "be impacted by" the custody decision.

***"The willingness of the parents to share custody":*** The court found "[t]hat's been terrible" – "fraught with acrimony and contention and litigation."

***"The financial status of the parents":*** The court found "[b]oth parents" to be "financially stable" and that neither "has purposefully impoverished him or herself."

***"[A]ny other considerations that the Court determines are relevant to the best interest of the children":*** The court noted that the children "do have extended family" and found that "both parents are capable of maintaining the relationship with other family members and friends of theirs[.]"

*C. Analysis*

Conceding that "the trial judge discussed the relevant custody factors established by case law on the record," Father claims that the court's "discussion amounted to a blame of all things possible on [Father] to justify disturbing the status quo" of Father having primary physical custody or ordering shared 50/50 physical custody and joint legal custody, as Mother and Father both testified in December 2020 would be in C.'s best interest. In Father's view, "[t]he trial court ignored testimony and evidence which supported [his] testimony and relied on unsupported claims from [Mother]."

As we have summarized above, the court articulated its reasons for declining to award joint legal custody or equally shared physical custody, making findings with respect to each factor. We discern nothing unfair, unsupported, or unreasonable about those factual findings or the resulting assessment of which custody arrangements are in each child's best interest.

When determining whether joint legal and shared physical custody would be in a child's best interest, the most important factor is the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare. *Taylor*, 306 Md. at 303-07. As the Supreme Court of Maryland (then named the Court of Appeals of Maryland) explained in *Taylor*, the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare

> is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate, and is relevant as well to a consideration of shared physical custody. Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with

> each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future.
>
> * * *
>
> Blind hope that a joint custody agreement will succeed, or that forcing the responsibility of joint decision-making upon the warring parents will bring peace, is not acceptable.

*Id*. at 304, 307.

Here, the record amply supports the trial court's factual findings that Mother and Father's capacity for effective communication and shared decision-making was "poor" and that their willingness to share custody was "terrible." Their "animosity" and disagreements before and during the limited divorce proceeding had persuaded the court that they lacked both the willingness to share custody and the ability to communicate effectively enough to do so. And the court found "that the capacity of the parents to prioritize" the best interests of the children "above their own is another consideration that weighs heavily[.]" With respect to Father's capacity in this regard, the court cited evidence that Father told E. "that the man she thought was her father was not her father[,]" and the court observed that "[h]is refusal to allow [Mother] to retrieve belongings of the children, toys and other things from the marital home" was "behavior that reflects an inability to prioritize the children's best interests above his own."

During the months between the issuance of the Limited Divorce Order in December 2020 and the August 2022 trial on the petition for absolute divorce, there was little or no improvement in the parties' communication. At trial, both Mother and Father testified that their communications were combative, tense, and exhausting. They

recounted persistent disagreements regarding changes in the custody schedule, schools, custody exchanges, extracurricular activities, holidays, and household members. Mother described their relationship and course of dealing as a "very contentious, high conflict situation" and "a power struggle" with "the kids being in the middle of that [because] 50/50 custody involves a lot of custody exchanges and all of that. That's become a battle ground, the process servers and things like that." She testified that she felt that Father was "more out to get" her than he was concerned "about these kids right now[,]" and she asserted that "it's very hard to coparent in a situation where literally everything appears to be an angle for court." She denied having an agreement with Father to share physical custody evenly.[3]

Father countered that "the high conflict is 100 percent of the time initiated by" Mother, who "seeks out the escalation of dramas[.]" He claimed that Mother "has Google searched people," seeking "anything and everything that she can where she seeks out the conflict."

They agreed that working through a parent coordinator and My Family Wizard would be necessary to improve their communication.

The docket in this case, like Father's litigation history with the mother of H., indicates that he has been engaged in extensive litigation. Mother repeatedly

[3] As the Supreme Court observed in *Frase v. Barnhart*, 379 Md. 100, 111 (2003), decisions made on an interim basis *pendente lite* are "designed to provide some immediate stability pending a full evidentiary hearing and an ultimate resolution of the dispute[,]" but a *pendente lite* order "does not bind the court when it comes to fashioning the ultimate judgment."

characterized their conflicts and litigation as "exhausting" for her and stressful for the children. In view of the evidence in this case, we perceive no error in the court's conclusion that neither joint legal custody, nor shared 50/50 physical custody, is in any of the children's best interests.

When a trial court bases a custody decision on facts that are not clearly erroneous and on sound legal principles, this Court will not disturb that custody decision absent abuse of discretion or legal error. *See Barton v. Hirshberg*, 137 Md. App. 1, 24 (2001). We conclude that the court thoroughly reviewed the evidence with respect to each of the relevant legal factors, that the court's factual findings are supported by substantial evidence, and that the court did not abuse its discretion in awarding primary physical and sole legal custody to Mother.

## IV. Marital Property and Monetary Award

Father also contends that the circuit court's judgment "regarding the ownership, valuation, and distribution of marital property" was "clearly erroneous, an abuse of discretion, and contrary to law[.]" Asserting that the circuit court should not have ruled on marital property "until after this Court issued its ruling on the Appeal that was stayed[,]" Father claims that the court should have credited him for his monetary and non-monetary contributions over the eight-year marriage, including payment of school tuition for all the children and serving as the "primary caretaker for both marital and non-marital children[.]" Father contends the court should have adjusted the equities by granting him an additional monetary award beyond the $1,500 paid under the Limited Divorce Order.

Based on the record reviewed below, we are not persuaded that the court erred or abused its discretion in denying Father an additional monetary award.

*A. Standards Governing Marital Property and Marital Awards*

Marital property includes "property, however titled, acquired by 1 or both parties during the marriage." FL § 8-201(e)(1). "When the court grants . . . a limited or absolute divorce, the court may resolve any dispute between the parties with respect to the ownership of personal property." FL § 8-202(a)(1). "When the court grants . . . an absolute divorce, the court may resolve any dispute between the parties with respect to the ownership of real property." FL § 8-202(a)(2).

Marital property "does not include property" that is "acquired before the marriage" or is "directly traceable" to property acquired before marriage. FL § 8-201(e)(3)(i), (iv). Although "[p]roperty that is initially non-marital can become marital[,]" *Innerbichler v. Innerbichler*, 132 Md. App. 207, 227 (2000), "the burden of proof as to the classification of property as marital or non-marital rests upon the party who asserts a marital interest in the property, and that party must present evidence as to the identity and value of the property." *Murray v. Murray*, 190 Md. App. 553, 570 (2010). *See Noffsinger v. Noffsinger*, 95 Md. App. 265, 281 (1993).

"'Ordinarily, it is a question of fact as to whether all or a portion of an asset is marital or non-marital property. Findings of this type are subject to review under the clearly erroneous standard embodied by Md. Rule 8-131(c)[.]'" *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 269 (2021) (quoting *Collins v. Collins*, 144 Md. App. 395, 408-09 (2002)).

"[A]fter the court determines which property is marital property, and the value of the marital property, the court may . . . grant a monetary award, . . . as an adjustment of the equities and rights of the parties concerning marital property[.]" FL § 8-205(a)(1). In doing so, the court must consider the following factors:

> (1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
>
> (2) the value of all property interests of each party;
>
> (3) the economic circumstances of each party at the time the award is to be made;
>
> (4) the circumstances that contributed to the estrangement of the parties;
>
> (5) the duration of the marriage;
>
> (6) the age of each party;
>
> (7) the physical and mental condition of each party;
>
> (8) how and when specific marital property or interest in property . . . was acquired, including the effort expended by each party in accumulating the marital property or the interest in property . . . ;
>
> (9) the contribution by either party of property . . . to the acquisition of real property held by the parties as tenants by the entirety;
>
> (10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home; and
>
> (11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award[.]

FL § 8-205(b).

"The application and weighing of the factors is left to the discretion of the trial court." *Alston v. Alston*, 331 Md. 496, 507 (1993). When determining whether to make a

monetary award, "a judge is presumed to know the law, and is not required to enunciate every factor [the judge] considered on the record, as long as he or she states that the statutory factors were considered." *Malin v. Mininberg*, 153 Md. App. 358, 429 (2003) (quotation marks and citation omitted).

The purpose of a monetary award is "to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage, strictly in accordance with its title." *Ward v. Ward*, 52 Md. App. 336, 339 (1982). "When a party petitions for a monetary award, the trial court must follow a three-step procedure." *Malin*, 153 Md. App. at 428.

> First, for each disputed item of property, the court must determine whether it is marital or nonmarital. Second, the court must determine the value of all marital property. Third, the court must decide if the division of marital property according to title will be unfair; if so, the court *may* make a monetary award to rectify any inequity "created by the way in which property acquired during marriage happened to be titled."

*Innerbichler*, 132 Md. App. at 228 (internal citations omitted).

Although a monetary award is intended "to achieve equity between the parties; it **does not require an equal division of marital property**." *Randolph v. Randolph*, 67 Md. App. 577, 588 (1986) (emphasis added). Because "the court has broad discretion to reach an equitable result[,]" *Hart v. Hart*, 169 Md. App. 151, 161 (2006), the ultimate decision to grant or deny a monetary award, and the amount of such an award, is reviewed for abuse of discretion. *See Abdullahi v. Zanini*, 241 Md. App. 372, 407 (2019); *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008).

As noted previously in this opinion, when we review a circuit court's ruling that is alleged to have been an abuse of discretion, we "ask[] whether the decision is . . . beyond the fringe of what is deemed minimally acceptable." *In re Dany G.*, 223 Md. App. at 720. We will not reverse a discretionary decision unless there is "a clear showing" that it is "manifestly unreasonable," made "for untenable reasons," or predicated on "an incorrect legal premise" or "factual conclusions that are clearly erroneous." *See Jenkins*, 379 Md. at 165; *Guidash*, 211 Md. App. at 735.

### *B. Relevant Record*

At the December 2020 hearing, the circuit court found that the marital home, which was titled in Mother's name, as well as the "expenses that are attributed directly to the home itself," had been paid solely by Mother. Stating "[t]here's no evidence that [Father] provided any contribution financially to the maintenance of the home" or to "[i]mprovements that were made on the home," the court determined that the improvements "were paid for through loans in [Mother's] name for which she is financially responsible" and that "the mortgage and taxes . . . have all been paid by [Mother] throughout the years, including during the separation." The court awarded the marital home, that was titled in Mother's name, to Mother. Although Father "did not request a marital award[,]" but instead sought "use and possession of the home for a period of up to three years[,]" the circuit court denied that request and "grant[ed] him a marital award representing half of the deposit that was put down on the home[,]" which "amounts to $1500[.]"

In *Gamble I*, this Court commented that "the trial court on remand should reconsider whether to grant a marital award or to resolve any dispute concerning real property" in this case, "where only a limited divorce was granted." Slip op. at 15-16. We cited FL § 8-202(a)(2), which permits the court to resolve disputes over ownership of real property when granting an absolute divorce, and FL § 8-203(a)(1), which requires the court to "determine which property is marital property . . . when the court grants . . . an absolute divorce[.]"

At the conclusion of the second day of trial, after the court made its bench ruling, Father asked: "Am I denied a marital award?" The court responded that it had "already" given Father a marital award of $1,500 "[a]t the last hearing" in December 2020, and "testimony indicated" the award had been paid. "And there's been no evidence produced by you that you would be entitled to anything in addition to that."

Father countered that "[t]he Court of Special Appeals in the dismissal in their comments to the Court stated to have the marital award modified based off of – I don't remember if it was Statute or something else that they said in their dismissal." The trial court reiterated that it had "received no additional evidence on which I could base any further marital award than what you've already gotten."

### *C. Analysis*

As we recounted in *Gamble I*, the circuit court made its initial decision on use and possession of the marital home, which was titled solely in Mother's name, and made a marital award of $1,500 to Father as part of the Limited Divorce Order. Significantly, Father does not contest those decisions in his Second and Third Appeals. Instead, as we

understand his briefs, he complains that he did not get an additional monetary award as part of the Absolute Divorce Judgment, to compensate him for contributions he allegedly made for tuition and caretaking.

We discern no error or abuse of discretion in the denial of an additional monetary award. Based on our review of the trial record, we agree with the trial court that Father did not satisfy his burden of proving the identity and value of any additional contributions that warrant such an additional award.

Although Father states he paid tuition for both "marital and non-marital children," he does not cite for us where to find such evidence in the record. Nor did Father present additional evidence at trial to support that claim. To the extent Father contends that he paid tuition for E. and J., his successful petition to be declared a de facto parent undercuts any claim that such educational expenses were non-marital. And Father does not direct us to any evidence that the funds he used to pay such tuition were non-marital funds from sources other than Father's wages for work performed during the marriage. Nor does Father account for any countervailing contributions by Mother to the marital household, such as shelter provided by the non-marital home, to Father, their biological child C., Father's de facto children E. and J., and his biological child H.

In light of the lack of evidence supporting Father's claim, we cannot say that the trial court erred or abused its discretion in failing to make an additional monetary award.

## V. Allegations of Judicial Bias

Father alleges that the trial judge was unfairly biased against him. In support, he cites the court's decision to award primary physical custody and sole legal custody of C.

to Mother, even though Mother allegedly agreed to 50/50 physical custody and joint legal custody. Once the court changed the custody arrangement in December 2020, that remained the status quo through August 2022, which Father contends "emboldened [Mother] to do a dramatic change of circumstances, including changing everything about [C.'s] life, without any concern for how it impacts [C.'s] best interests." Pointing out that "[t]here was no finding of unfitness, there were no derogatory emails . . . , nor any other shred of evidence that could justify the entire disruption of the status quo," Father posits that the only possible explanation for such a decision is "a prejudicial Judge."

We disagree and explain.

### *A. Standards Governing Impartiality of Trial Judge*

Litigants have a right to a fair and impartial judge, and may request disqualification or recusal based on bias. But, as we explained *Karanikas v. Cartwright*:

> A "trial judge is presumed to know the law and apply it properly." *State v. Chaney*, 375 Md. 168, 180 (2003) (quotations omitted). [A] person seeking recusal bears a "heavy burden to overcome the presumption of impartiality." *Atty. Grievance Comm'n v. Blum*, 373 Md. 275, 297 (2003). *See also Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 556 (1999) (citing *Jefferson-El v. State*, 330 Md. 99, 107 (1993)) ("Maryland adheres to a strong presumption that a trial judge is impartial, thereby requiring a party requesting recusal to prove that the judge has a bias or prejudice derived from an extrajudicial-personal-source."). We review a trial court's recusal decision pursuant to an objective standard; namely, "[w]hether a reasonable member of the public knowing all of the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." *In re Turney*, 311 Md. 246, 253 (1987).

209 Md. App. 571, 579-80 (2013).

*B. Analysis*

Father does not contend that the judge, "by words or conduct, manifest[ed] bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation." Md. Rule 18-202.3. Rather, he views the judge's decision not to order shared custody as so inexplicable that it must have been the result of the judge's bias against him.

That the court did not rule the way Father wanted is not evidence of bias. Despite Father's assertion that there is no other plausible explanation for why the trial judge would fail to rule as Father requested, we have explained in Part III that the trial judge had a rational factual and legal basis for not awarding joint legal custody or 50/50 physical custody.

Nor is Father's accusation that the court "turn[ed] a blind eye to" Mother committing perjury regarding her income during the December 2020 proceedings on the limited divorce proof of disqualifying bias against Father. It is not the function of an appellate court to second-guess the trial court's credibility determination regarding Mother's testimony that she misunderstood what to include in line items on her financial statement.

Although Father now complains about instances of alleged bias during the December 2020 proceedings that led to the Limited Divorce Order awarding Mother sole legal and primary physical custody, he did not lodge a contemporaneous objection and did not ask the judge to disqualify or recuse herself.

Nor do we discern bias during the August 2022 trial on the absolute divorce petition conducted by the same judge. To the contrary, the record reflects that the judge afforded Father a full, fair, and respectful opportunity to present his arguments.

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

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

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