Circuit Court for Baltimore County
Case No.: C-03-FM-21-002192

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1275

September Term, 2022

RAFAEL JONATHAN DE GUZMAN

v.

KRYSTAL SMALLS

Berger,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: August 8, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

**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 case arises out of an action for absolute divorce and custody filed in the Circuit Court for Baltimore County by Appellant, Rafael Jonathan de Guzman ("Mr. de Guzman"), against Appellee, Krystal Smalls ("Ms. Smalls").[1] Mr. de Guzman filed a complaint and, later, an amended complaint seeking an absolute divorce from Ms. Smalls and custody of their minor child, R. Ms. Smalls filed a counter-complaint seeking sole legal and physical custody of R.

A pendente lite hearing was held on March 23, 2021. Thereafter, the circuit court entered a pendente lite order granting sole legal custody and primary physical custody of R. to Ms. Smalls. Mr. de Guzman was granted visitation with R. on a phased-in schedule.

A hearing on the merits was held from August 4 through 10, 2022. Among other things, the circuit court granted Mr. de Guzman an absolute divorce, awarded sole legal custody and primary physical custody of R. to Ms. Smalls, and granted Mr. de Guzman access to R. according to a specified schedule. Eight days after the court's order was entered, Mr. de Guzman filed a motion for new trial or, in the alternative, to alter or amend the judgment, which the court denied on September 21, 2022.

Ms. Smalls filed a timely appeal and Mr. de Guzman filed a timely cross-appeal. Ms. Smalls failed to file a brief. On our own initiative, by order dated March 7, 2023, we dismissed Ms. Smalls' appeal and changed the parties' designations to reflect Mr. de Guzman as the sole appellant and Ms. Smalls as the sole appellee. Pursuant to that order,

[1] Before the circuit court and on appeal, Ms. Smalls proceeded in proper person.

Ms. Smalls was required to file an appellee's brief on or before April 12, 2023, but she did not do so.

QUESTIONS PRESENTED

Mr. de Guzman presented six questions for our consideration, all of which challenge the court's decision to grant legal and primary physical custody of R. to Ms. Smalls. We have restated those questions as follows:

I. Whether the circuit court erred in admitting into evidence numerous third-party communications.

II. Whether the circuit court erred in finding that Mr. de Guzman's sisters greatly influenced his decision-making, thereby adding to the risk that he "would keep the child from" Ms. Smalls.

III. Whether the circuit court erred in finding that Ms. Smalls' inebriation and/or drug abuse did not affect the minor child.

IV. Whether the circuit court erred in determining that Mr. de Guzman's request for custody was not sincere.

V. Whether the circuit court erred in finding that Mr. de Guzman had diminished credibility.[2]

VI. Whether the circuit court erred in finding that Mr. de Guzman had not been denied access to R.

For the reasons set forth below, we shall affirm.

[2] In his brief, Mr. de Guzman questions whether the circuit court erred in finding that "Appellee" had diminished credibility. Based on the record before us and the arguments in support of that issue in his brief, we assume that the reference to "Appellee" was an error and that Mr. de Guzman is challenging the circuit court's ruling with regard to his own credibility.

BACKGROUND

The record in this case is extensive. We will begin with a non-exhaustive review of the evidence presented at trial and include additional facts as necessary in our discussion of the questions presented.

The Parties

The parties began a romantic relationship in either October 2014 or early 2015. They were married on February 18, 2020. They share one child, R., who was born on March 18, 2019. Ms. Smalls has two children from a prior relationship, and Mr. de Guzman has one daughter, A., also from a prior relationship with a woman we will refer to as S.T. Throughout the parties' relationship, Mr. de Guzman had physical custody of A. except for the period from April 2020 through July 2021, when A. lived with her mother, S.T.

Mr. de Guzman was employed at Booz, Allen, Hamilton, where he had a security clearance and worked on government projects. During her pregnancy with R., Ms. Smalls was diagnosed with a heart condition that required surgery in August 2019. She testified that she has been "disabled" since R.'s birth and that her application for social security disability benefits was on appeal. In January 2021, Ms. Smalls was fired from her job at a credit union. At the time of the hearing, she was not working, had no income, and lived on savings and child support.

In February or March 2015, Mr. de Guzman and A. began living in Ms. Smalls' home in Upper Marlboro, Maryland. The parties began to live separately in August 2018, when Ms. Smalls was about three months pregnant. Mr. de Guzman moved to an apartment

in Upper Marlboro, about five or six miles away from Ms. Smalls' home and lived there until August 2019. He then moved to a townhome in Virginia in order "to get some distance" from Ms. Smalls' residence and to be closer to an office where he was working at that time. Mr. de Guzman kept the townhome until about August 2020. During their separation, Mr. de Guzman engaged in an intimate relationship with his cousin,[3] K.S., and, in the Fall of 2019, he had a brief relationship with his ex-wife, S.T.

The Affair with K.S.

Ms. Smalls testified about an incident that occurred in July 2019, when R. was a few months old. At Mr. de Guzman's insistence, she took R. to his apartment at about 2:30 a.m. Mr. de Guzman claimed that Ms. Smalls arrived at about 9:00 or 10:00 p.m., but he acknowledged that K.S. was with him in the apartment when she arrived with R. Ms. Smalls stayed in the apartment for a while, thinking that R. would leave with her, but then left without the child because "it was two of them against me." Ms. Smalls claimed to be "an abused woman" and that if she did not do what Mr. de Guzman asked there would be "repercussions," such as being accused of being an alcoholic.

After leaving the child with her father, Ms. Smalls went to her car for a few minutes. She then got out of her car, approached a "balcony door" or window, and looked into Mr. de Guzman's first-floor apartment to check on R. She observed Mr. de Guzman and his

[3] In the record, K.S.'s first name is spelled in different ways, sometimes beginning with the letter K and sometimes beginning with the letter C. For consistency, we shall refer to her as "K.S." throughout. At the merits hearing, there was some question as to K.S.'s exact relationship to Mr. de Guzman and whether she was a first cousin or a first cousin, once removed. The court did not make a factual finding on that point.

cousin having sex on the couch while R. was "screaming." Ms. Smalls banged on the door and sent texts to Mr. de Guzman. She also took a video recording of the incident. About 25 minutes later, Mr. de Guzman called Ms. Smalls and asked what she saw. Ms. Smalls asked him if his family knew about "you guys" and why he would let R. scream and cry without attending to her. Mr. de Guzman told her that R. needed to learn how to self-soothe. The child was returned to Ms. Smalls the following day. Mr. de Guzman did not deny having sexual relations with K.S. but testified that R. was sleeping in her bassinet in the bedroom and was not crying or screaming.

A few days after the incident, Mr. de Guzman appeared at Ms. Smalls' house. She described him as appearing "suicidal." Ms. Smalls wanted R. to have her father in her life and "wanted a family." Mr. de Guzman said he was willing to do that. She told him that he needed to be honest. Ms. Smalls asked Mr. de Guzman if she could tell K.S.'s husband about the affair because if she was in his position, she would want to know. According to Ms. Smalls, Mr. de Guzman said he did not care. Thereafter, Ms. Smalls called K.S.'s husband and sent him "redacted images." Mr. de Guzman testified that Ms. Smalls also sent personal photographs of K.S. to K.S.'s parents and others including his sisters, Clarinda Islam and Catherine Birchall, and a brother-in-law, and threatened to send them to more people. Mr. de Guzman had intimate photos of K.S. on his cell phone, but he never saw the video Ms. Smalls took of him and K.S. having sex, and Ms. Smalls denied ever sharing that video with anyone.

K.S. and Mr. de Guzman's family members were upset about receiving the photographs "because they didn't know what was going on" and were not aware of the

relationship between Mr. de Guzman and K.S. According to Ms. Smalls, K.S., her husband, and Mr. de Guzman's sister, Ms. Birchall, started sending out emails that vilified her and referred to her as "crazy," "abusive to children," and a "liar."

Surgery and Data Deletion

In August 2019, while Ms. Smalls was in the hospital for open heart surgery, Mr. de Guzman accessed her personal cell phone and re-set it to the factory specifications. Ms. Smalls testified that he deleted everything on the phone including the video she had taken of him and K.S. Mr. de Guzman stated that he did this to prevent Ms. Smalls "from spreading any more of the personal photos of [K.S.] to [his] family members" or to other people. He also looked through Ms. Smalls' personal laptop computer but did not find any images of K.S. Mr. de Guzman acknowledged that he was strongly encouraged by K.S. to do those things, but he denied that he, K.S., and other family members "teamed up together" to call Ms. Smalls a liar. Ms. Smalls testified that while she was in the hospital, Mr. de Guzman told her that he was leaving her and moving to Virginia to be with K.S. He took A. out of school and enrolled her in a school in Virginia.

The Parties' Marriage

According to Ms. Smalls, in January 2020, Mr. de Guzman agreed that she could have full physical custody of R. Shortly thereafter, the parties discussed resuming their relationship and getting married. Mr. de Guzman promised not to see his cousin any more. He claimed that his affair with K.S. lasted from May to July 2019, and, at the time of his discussions with Ms. Smalls, his relationships with K.S. and S.T. had ended. Mr. de Guzman acknowledged that from August 2019 until January 2020, he had not admitted to

his family that he was having an affair with his cousin, as Ms. Smalls had been saying. According to Mr. de Guzman, "[o]ne of the stipulations of getting married included us completely resolving the [K.S.] issue and me admitting to my family that it happened[,]" and he did that. Ms. Smalls believed that if they were married, Mr. de Guzman would "be in R.'s life" which had not been the case when they were living apart.

The parties married on February 18, 2020. From that time until August 2020, Mr. de Guzman continued to go back and forth between his townhome in Virginia and Ms. Smalls' home in Upper Marlboro. In October 2020, Ms. Smalls purchased a residence in Cockeysville, Maryland. Mr. de Guzman did not move to that location because the parties had a falling out. Mr. de Guzman testified that Ms. Smalls "was being violent and I didn't feel safe with her." Instead, he moved into the home of his sister, Ms. Islam, in Glyndon, Maryland. In mid-December 2020, Mr. de Guzman moved into Ms. Smalls' home in Cockeysville, and he lived there until the parties separated on February 2, 2021. According to Mr. de Guzman, Ms. Smalls insisted that he leave the house and threatened him with a blade from a Leatherman tool.

Abuse, Neglect, and Substance Abuse

Ms. Smalls claimed that Mr. de Guzman was abusive toward her and that on one occasion in May 2019, he threw R.'s car seat "upside down in a car" because he was angry about being late for dinner with his cousin. On another occasion in July 2019, he shook R. because he was "mad and angry[.]" Ms. Smalls believed that Mr. de Guzman or someone associated with him punctured and slashed her tires, ran over her mailbox, placed a tracking device on her cell phone, and placed surveillance cameras in her home. She found some

surveillance cameras and the boxes for those cameras in her home. No evidence was presented to support those assertions.

Mr. de Guzman claimed that Ms. Smalls had a drinking problem. Ms. Smalls acknowledged that she drank alcohol, that she "had a drinking problem for a little bit" from April to June 2020, and that she was observed inebriated about once a week by Mr. de Guzman and about once a month by her sons during that three-month period. She testified that she received help for that problem from a therapist. Ms. Smalls claimed that Mr. de Guzman was "the only person that ever brought alcohol into the house" and that he was attempting "to manipulate and promote propaganda of alcoholism" and keep records to use in court.

Mr. de Guzman took several video recordings, one of which he took to show what Ms. Smalls "was like when she was drunk." He believed her drinking was occurring more frequently, "at least once a month," and he did not "think she understood what she was becoming after consuming alcohol." He claimed that between February and October of 2020, Ms. Smalls' older children witnessed her in a drunken state on "[m]ultiple occasions." He also observed Ms. Smalls' sons try to prevent her from drinking, hide liquor bottles, and pour liquor down the drain.

On one occasion, sometime after February 2020, he observed Ms. Smalls passed out on a sofa on the second floor of his townhome. A. and R. were there and Ms. Smalls had failed to barricade the stairs to the first level. He did not report the incident to anyone. On another occasion, sometime between February and June 2020, Mr. de Guzman observed Ms. Smalls "passed out" on a sofa with R. in her arms. He testified that he "was not aware

that she had been drinking." Mr. de Guzman could not recall any other incidents where he believed Ms. Smalls failed to provide proper care or guidance to R.

On May 25, 2022, Ms. Smalls was arrested in Anne Arundel County and charged with impaired driving. That case was pending at the time of the underlying hearing. Evidence was also presented that Ms. Smalls had been arrested for drunk driving in Baltimore County on November 6, 2020. That case resulted in a *nolle prosequi*.

With regard to the May 25, 2022 arrest, Officer Elyse Lapham of the Anne Arundel County Police Department testified that she responded to a call from "[s]everal citizens" that Ms. Smalls was "slumped behind" the wheel of a vehicle. The officer testified that Ms. Smalls swayed "back and forth," "had heavily slurred speech," failed certain field sobriety tests, and showed signs of impairment. The officer found a partially filled bottle of tequila in the vehicle and smelled alcohol on Ms. Smalls' breath. Ms. Smalls failed to complete a breathalyzer test. Officer Lanham testified that Ms. Smalls' car had the odor of marijuana "from prior usage" and that Ms. Smalls said she had a medical marijuana card, but she did not produce the card or "proper packaging." According to Officer Lanham, Ms. Smalls "was showing more signs of impairment on the alcohol side than of marijuana at the time."

Ms. Smalls explained that she had taken her car to a shop in Baltimore because she had 12 nails in her tires. She met a man who worked at the shop and took him to get food and alcohol and then drove him back to the shop. The man left an empty pint of alcohol, an Apple Orchard beer bottle, and his cell phone in her car. She then drove to Glen Burnie

where she "was throwing up from the fish and shrimp" when the police arrived. According to Ms. Smalls, Mr. de Guzman stalked her and he could have had people call the police.

With regard to the November 6, 2020 arrest, Ms. Smalls was given a breathalyzer test that showed a blood alcohol concentration of .19. Ms. Smalls testified that "it was a fraudulent arrest," that she was in a parked vehicle, and that the paper the police gave her showed a blood alcohol content of .08. Mr. de Guzman's sister, Ms. Islam, testified about events that occurred after Ms. Smalls' November 6 arrest. Prior to that date, Ms. Islam did not realize that Ms. Smalls had "an alcohol issue."

On November 6, 2020, at some time after 9:00 p.m., Ms. Islam went with Mr. de Guzman to the police station in Owings Mills to pick up Ms. Smalls, who had been arrested for driving under the influence. Mr. de Guzman drove, Ms. Islam sat in the front passenger seat, and Ms. Smalls sat in the back seat. Initially, they planned to take Ms. Smalls to her mother's house, but she did not want to go there. Ms. Smalls was "[e]xtremely talkative" and was "haranguing" Mr. de Guzman. Ms. Islam and Mr. de Guzman "tried to ignore her." As they were driving south on Interstate 795, Ms. Smalls became more belligerent and began hitting Ms. Islam, who attempted to restrain her hands "because it appeared . . . that she was still under the influence." When Ms. Smalls attempted to grab the steering wheel, Mr. de Guzman pulled onto the side of the road. Ms. Smalls exited the vehicle and started running down the side of the highway. The police were called, and an officer drove Ms. Smalls to her home in Cockeysville while Mr. de Guzman and Ms. Islam followed behind. They left after Ms. Smalls was dropped off. Ms. Islam took photographs of injuries she claimed she sustained during the incident with Ms. Smalls. She documented those

injuries because she thought she would pursue criminal charges, but she later decided against that. The charges against Ms. Smalls arising out of that incident were ultimately dropped.

Ms. Smalls acknowledged that the circuit court ordered the parties to undergo drug testing. She had three urinalysis tests for alcohol. One test she failed, one test showed a diluted sample, and the other she passed. She testified that Mr. de Guzman does not drink but that he smokes and uses edible marijuana to excess. She never wanted him to get medical attention for that problem because she was "scared he might lose his job."

Communications and Visitation

Mr. de Guzman testified that when he left the family home on or about February 2, 2021, he did not think about where R. was going to reside. Ms. Smalls claimed that from the time she and Mr. de Guzman separated until the day in May 2021 when she was served with documents in the underlying divorce action, Mr. de Guzman never inquired about R., asked how she was doing, or responded to videos or pictures of her.

There was quite a bit of testimony about whether Ms. Smalls ever denied Mr. de Guzman access to R. On direct examination, when asked if Ms. Smalls had ever denied him access to R. prior to the time he filed for divorce, Mr. de Guzman responded, "I don't remember." When the trial judge attempted to confirm that testimony, Mr. de Guzman stated that he was denied access to R. on or about Mother's Day 2019. He acknowledged, however, that he did not make any attempt to have a virtual or in-person visit with R. between September 25, 2019 and January 25, 2020 or between February 3, 2021 and May 2021. Later, he testified that he did not attempt any contact with R. between September

and November 2019. In still later testimony, Mr. de Guzman acknowledged that he did not make any attempt to see R. or check on her welfare from September 25, 2019 to January 2020, from October 6, 2020 through December 25, 2020, or from February 2021, when he left the family home, until May 2021 when his divorce case was filed.

Mr. de Guzman explained that between October 2020 and December 25, 2020, he did not initiate any contact with R. because he "was distraught from" complications of the marriage and "was not emotionally one hundred percent – I didn't know what to do." He also testified that "[r]eceiving phone calls and text messages from Mrs. Smalls created a lot of anxiety and it just made me shut down." When asked why he did not contact R. between September 2019 and January 2021, Mr. de Guzman replied, "[t]he only way to contact [R.] was through Mrs. Smalls and I was afraid to contact Mrs. Smalls because of the abuse and anxiety that I suffered from her." On cross-examination, Mr. de Guzman stated that he had communications with Ms. Smalls where "it sounded like the only way [he] could see [R. was] to get back" together with Ms. Smalls.

Prior to the pendente lite order, Mr. de Guzman had "sporadic" Facetime visits with R., but he had not had any in-person contact with her since 2021. After the pendente lite hearing on March 23, 2022, he kept a log of his virtual visits with R. The visits were supposed to occur on Tuesday and Thursday evenings, but calls on March 28 and April 11, 14, 19, and 21, 2022 did not occur. On July 14, 2022, he attempted to have a Zoom call with R. while she was playing in a park. The visit on July 28, 2022 was missed. Mr. de Guzman also had in-person visits with R. He testified that R. was comfortable with him and that although she had asked for her mother, he did not consider that unusual for a three-

year-old. He denied that R. did not know him, that he was a stranger to her, and that R. had stranger anxiety. He had no unsupervised visits with R. after the pendente lite order because Ms. Smalls refused to comply with the court's order.

Mr. de Guzman testified that Ms. Smalls was not a fit and proper person to have custody of R. Mr. de Guzman did not "trust" Ms. Smalls' communications "because of her abusive communication and her abusive language and ulterior motives," and that he "prefer[ed]" to speak to her during "the scheduled video chats." He stated, however, that if the court granted him full custody of R. he would be able to communicate with Ms. Smalls. He explained that in the five or six months prior to the hearing, with "physical space" away from Ms. Smalls, he had "recuperate[d]" and "learn[ed] how to tolerate" her.

Ms. Smalls acknowledged that she did not permit Mr. de Guzman to have unsupervised visits with R. as required by the pendente lite order. She claimed her exceptions to the Magistrate's Report and Recommendations were pending and that the merits hearing was scheduled at about the time such visits were set to begin.

Fitness to Parent

Mr. de Guzman's sister, Ms. Birchall, testified on behalf of Mr. de Guzman. Ms. Birchall acknowledged that she saw Ms. Smalls at holiday events over the last six years but did not know her well. She first learned about her brother's affair with K.S. in 2019 via a text message. She contacted her brother and K.S. about it. When asked what they decided to do about that situation, Ms. Birchall responded, "[n]othing." She acknowledged, however, certain electronic communications in which she told her brother to "clean up" his "mess," and wrote that she had had a yelling match with their parents in

which she told them that Mr. de Guzman said the affair did not happen so they should stop assuming that it did.

In the spring of 2020, Ms. Birchall had a couple of telephone conversations with Ms. Smalls that she described as "very unpleasant." The telephone conversations concerned Mr. de Guzman's affair with K.S., who Ms. Birchall stated was the daughter of her first cousin. According to Ms. Birchall, in their first conversation, Ms. Smalls slurred her words and appeared to be inebriated.

Ms. Birchall testified that Mr. de Guzman is "a great father" who is very responsible and attentive to the needs of A. She observed Mr. de Guzman with R. on two occasions in the summer of 2019 when R. was an infant. On both occasions, Mr. de Guzman attended to R.'s needs. Ms. Birchall had not seen R. since 2019. She believed Mr. de Guzman was a fit and proper parent.

A.'s mother, S.T., testified that Mr. de Guzman had physical custody of A. for most of her life, that he was a good and caring father, and that he was a fit and proper person to have custody of both A. and R. S.T. acknowledged that in 2014, Mr. de Guzman believed S.T. was using drugs and he went to S.T.'s home and took custody of the child with S.T.'s consent. The police were called because there was someone on the property that Mr. de Guzman did not want there. When asked if that person was S.T.'s drug dealer, S.T. said she did not recall.

A. lived with Mr. de Guzman from 2014 to April 2020. S.T. thought that the parties parented A. together, but that Mr. de Guzman provided more of the emotional care. A.

lived with S.T. from April 2020 to July 2021, but then returned to living with her father and was living with him at the time of the merits hearing.

When A. returned to live with Mr. de Guzman, A. began to have some behavioral problems. Mr. de Guzman took her to the Child Advocacy Center in Montgomery County and an investigation was conducted. According to S.T., there was never a finding. On cross-examination, Mr. de Guzman stated that the Child Advocacy Center made a suggestion that something might have happened to A. He denied that he molested A. and did not recall receiving an email from S.T. suggesting that someone in his family might have molested A. Mr. de Guzman acknowledged that in the past he had not co-parented successfully with S.T. and did not successfully co-parent with her until 2019.

S.T. testified that she and Ms. Smalls had an altercation in Mr. de Guzman's townhome in Virginia that involved Ms. Smalls putting her hands on S.T. and S.T. hitting her. On cross-examination, S.T. acknowledged that she observed Ms. Smalls with R. on two occasions and that on a weekend they spent together Ms. Smalls cared for R.'s needs.

Mr. de Guzman's sister, Ms. Islam, testified that she lives in Glyndon with her husband and their two children in a nine-bedroom house. Mr. de Guzman began living with them in January 2021, and A. started living with them in July 2021. In July 2021, a woman identified as Ms. Crawford and her minor daughter also began living in the house and paying rent for their rooms. Ms. Islam testified that she has no concerns about Mr. de Guzman supervising her children and she believes he is fit and proper to have custody of A. and R. She has only seen Mr. de Guzman with R. on one occasion, when Ms. Smalls was also present.

The Circuit Court's Decision

At the conclusion of the merits hearing, the trial court's decision was announced from the bench and later set forth in a written order. The court granted an absolute divorce in favor of Mr. de Guzman based on a 12-month separation. The court granted legal custody and primary physical custody to Ms. Smalls. It ordered Ms. Smalls to abstain from alcohol and any illegal controlled dangerous substances and the abusive use of prescriptions while R. was in her custody. Additionally, the court ordered that she undergo an alcohol and substance use evaluation and follow all recommendations. The court established a specific visitation schedule for Mr. de Guzman pursuant to which he would receive an increasing amount of unsupervised visitation with R. to include, ultimately, Wednesday evening visits and overnight visits every other weekend. Lastly, the court ordered child support, denied Ms. Smalls' request for alimony, and declined to make a marital property award.

We shall not set forth the court's specific factual findings here but will discuss them as necessary in our discussion of the questions presented.

STANDARD OF REVIEW

We review a circuit court's child custody determination utilizing three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Supreme Court of Maryland has described this review as follows:

> "[W]e point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly], [i]f 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 *Davis v. Davis*, 280 Md. 119, 122 (1977)).

Generally, "[a] trial court's findings are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628, *cert. denied*, 343 Md. 679 (1996)). Where there is no clear error, we will uphold the court's findings unless there is an abuse of discretion, meaning that "no reasonable person would take the view adopted by the trial court" or the court acts "without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (internal quotation marks omitted) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). "'Such broad discretion is vested in the [trial court] because only [the trial court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the trial court] 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." *In Re Yve S.*, *supra*, 373 Md. at 586 (quoting *Davis*, 280 Md. at 125). "In our review, we give 'due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses'" and recognize the discretion of the trial court to "'award custody according to the exigencies of each case.'" *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012) (quoting *In re Yve S.*, *supra*, 373 Md. at 584). "We will not

reverse simply because we would not have made the same ruling." *Jose v. Jose*, 237 Md. App. 588, 599 (2018) (citing *North v. North*, 102 Md. App. 1, 14 (1994)).

Custody and visitation decisions "are governed by the best interests of the child." *Gordon v. Gordon*, 174 Md. App. 583, 636 (2007). In assessing the best interests of the child, consideration is given to the guiding factors set forth in *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986). "Although courts are not limited to a list of factors in applying the best interest standard in each individual case," *Azizova*, *supra*, 243 Md. App. at 345, cases beginning with *Sanders* and *Taylor* have provided a checklist of more than twenty non-exhaustive factors, many with significant overlap, that a court must consider when making custody determinations. Those factors include: (1) the fitness of the parents; (2) the character and reputation of the parties; (3) the desires and prior agreements of the parents; (4) the potential of maintaining natural family relations; (5) the child's preferences; (6) material opportunities affecting the future life of the child; (7) the child's age, health and sex; (8) where the parents live and the opportunity for visitation; (9) the length of the child's separation from the parents; (10) either parent's voluntary abandonment or surrender; (11) the parents' capacity to communicate and reach shared decisions affecting the child's welfare; (12) the parents' willingness to share custody; (13) the established relationship between the child and each parent; (14) potential disruption to the child's social and school life; (15) the demands of each parent's employment; (16) the age and number of the children; (17) the sincerity of each parent's request for custody; (18) the financial status of the parents; (19) the impact the custody decision may have on any parties' state or federal assistance; (20) the benefit

to the parents in maintaining the parental relationship with the child; and (21) any other consideration the court determines is relevant to the best interest of the child. *See Jose*, *supra*, 237 Md. App. at 599-600 (citing *Taylor*, 306 Md. at 304-311 and *Sanders*, 38 Md. App. at 420).

When considering the *Sanders-Taylor* factors, the trial court "should examine the totality of the situation in the alternative environments and avoid focusing on any single factor" to the exclusion of all others. *Best v. Best*, 93 Md. App. 644, 656 (1992). "The light that guides the trial court in its determination, and in our review, is 'the best interest of the child standard,' which 'is always determinative in child custody disputes.'" *Santo*, *supra*, 448 Md. at 626 (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)).

DISCUSSION

I.

Mr. De Guzman contends that the circuit court erred in admitting defense exhibits 1, 2, 3, and 8, which consisted of text and e-mail messages. He argues that those exhibits contained inadmissible hearsay and violated the court's prior order barring Ms. Smalls from admitting evidence that had not been provided during discovery.

A. Defendant's Exhibits 1, 2, and 3

At the start of trial, the court ruled that Ms. Smalls would not be permitted to admit in evidence any documents that should have been turned over in discovery. Nevertheless, during Ms. Smalls' cross-examination of Mr. de Guzman's sister, Ms. Islam, Ms. Smalls asked to "submit" a copy of some text messages. Defense counsel asked if there were any additional text messages, and the trial judge responded, "Well, I guess what she is giving

you is the only thing." Ms. Smalls proceeded to show Ms. Islam a copy of some text messages and asked her about a reference to "Dez" and whether Ms. Islam's family "plans out schemes." The only objection lodged was to a compound question. Thereafter, the following colloquy occurred:

> [COUNSEL FOR MR. DE GUZMAN]: Your Honor, this third one that she handed me is entirely made up of text messages that Mrs. Smalls sent. She is not permitted to introduce her own statement.
>
> [MS. SMALLS]: He already introduced that. That is his own evidence that he submitted to the Court.
>
> THE COURT: All right. He didn't put that – he didn't offer that in evidence.
>
> [MS. SMALLS]: It is in evidence already from the last trial, from the Magistrate's trial. This is his –
>
> THE COURT: This is not the Magistrate's trial.
>
> [MS. SMALLS]: So he can use it for –
>
> [COUNSEL FOR MR. DE GUZMAN]: If that is the case.
>
> [MS. SMALLS]: But I can't Tuesday [(sic)]?
>
> [COUNSEL FOR MR. DE GUZMAN]: That is a correct statement. I don't recall using it, but I actually can use her text messages as evidence.
>
> THE COURT: No objection, then I will admit. It is admitted.
>
> [COUNSEL FOR MR. DE GUZMAN]: Well – I don't think – well.
>
> THE COURT: You are not objecting, right?

> [COUNSEL FOR MR. DE GUZMAN]: I am objecting to the third one, yes. The other two, if she wants to ask questions, I don't care.
>
> THE COURT: I misunderstood you. I thought you said since it was admitted.
>
> [COUNSEL FOR MR. DE GUZMAN]: I said I don't recall that.
>
> THE COURT: Okay. I see.
>
> [COUNSEL FOR MR. DE GUZMAN]: Every exhibit I put into evidence on 3-23 is in this box.
>
> THE COURT: I see what you are saying.
>
> [COUNSEL FOR MR. DE GUZMAN]: It is possible.
>
> THE COURT: All right. She says it is. You say it is possible. I will allow it.
>
> [COUNSEL FOR MR. DE GUZMAN]: It is doubtful I would have put that exhibit in evidence.
>
> THE COURT: Overruled. All three are admitted.
>
> (WHEREUPON, the Above Referred to Items Were Entered in Evidence As Defendant's Exhibit Number 1, 2, 3.)
>
> THE COURT: I'm not sure what purpose they are admitted, but it is admitted.
>
> [MS. SMALLS]: Okay.
>
> [COUNSEL FOR MR. DE GUZMAN]: I will just comment that the third one is also incredibly outside the scope.

Mr. de Guzman did not include in the record extract a copy of any of the defendant's exhibits. Our review of the record reveals that Defendant's Exhibit 1 consisted of text messages that appear to be between Ms. Islam and Ms. Birchall. Defendant's Exhibit 2A

through 2J consists of various text messages between Ms. Smalls, Ms. Islam, and Ms. Birchall, and one unidentified correspondence to a person identified as "Carmella." With respect to Defendant's Exhibits 1 and 2, the transcript shows that Mr. de Guzman acquiesced to the admission of those exhibits. *See Simms v. State*, 240 Md. App. 606, 617 (2019) ("[W]here a party acquiesces in a court's ruling, there is no basis for appeal from that ruling."). Moreover, except for certain issues of jurisdiction, we will not ordinarily decide an issue that was neither raised in nor decided by the trial court. Md. Rule 8-131.

Defendant's Exhibit 3 consisted of a "[d]raft response" from K.S. to Mr. de Guzman dated March 28, 2019. The exhibit appears to show that Mr. de Guzman forwarded the draft response to Ms. Smalls on February 16, 2020. The argument made below, that the exhibit "is entirely made up of text messages that M[s]. Smalls sent," does not appear to apply to Defendant's Exhibit 3. Mr. de Guzman does not argue in any detail which portion of the exhibit consisted of inadmissible hearsay or why he believes the court erred in admitting it. He merely asserts that "the bulk of these exhibits are inadmissible as a matter of law, as there is no exception available." We cannot be expected to search the record on appeal for facts that appear to support a party's position or search for the law that is applicable to the issue presented. *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 618 (2011). Nevertheless, our review of the record shows that Defendant's Exhibit 3 was admitted for a non-hearsay purpose and was not admitted to prove the truth of the matter asserted.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered to prove the truth of the matter asserted." Md. Rule 5-801(c).

"Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. Of primary concern here is "[o]ne of '[t]he threshold questions when a hearsay objection is raised,'" which is whether the evidence "'is offered for the truth of the matter asserted.'" *Battle v. State*, 252 Md. App. 280, 312 (2021) (quoting *Stoddard v. State*, 389 Md. 681, 688-89 (2005)).

The record shows that the trial judge admitted Defendant's Exhibit 3 for the purpose of determining whether Mr. de Guzman was making parenting decisions himself or whether someone else was making those decisions for him. As the exhibit was not admitted to prove the truth of the matters asserted in the subject email, the court did not err in admitting it in evidence. In admitting the exhibit, the court noted the acknowledgement by Mr. de Guzman's attorney that the exhibit was possibly admitted in evidence at Mr. de Guzman's request during the pendente lite hearing before the magistrate. Mr. de Guzman does not challenge that determination on appeal.

B. Defendant's Exhibit 8

Mr. de Guzman also contends that the trial court erred in admitting in evidence Defendant's Exhibit 8, which appears to be an email written by a person we shall refer to as "Dezz" who, the evidence showed, was the husband of K.S. The exhibit shows that on August 27, 2019, the email was sent to K.S.'s aunt, Carmella, who responded to it. In that response, Carmella copied a number of other people, including Mr. de Guzman. It also appears from the exhibit that, more than a year later, on September 23, 2020, Mr. de Guzman forwarded both the email and response to Ms. Smalls.

Mr. de Guzman did not direct our attention to the page in the transcript showing that Defendant's Exhibit 8 was admitted in evidence. Nor did he direct us to the place in the record where he objected to that exhibit being admitted in evidence or where the court overruled his objection. Again, we cannot be expected to search the record on appeal for facts that appear to support a party's position. *Ruffin Hotel Corp. of Md., Inc.*, *supra*, 418 Md. at 618. It appears from the trial court's exhibit list that Defendant's Exhibit 8 was admitted in evidence, although the reliability of that list is questionable because it contains inaccurate information with respect to Defendant's Exhibits 2 and 3, which are shown as not admitted when the transcript makes clear that they were, in fact, admitted in evidence.

Assuming that Defendant's Exhibit 8 was admitted in evidence, the record does not show that Mr. de Guzman lodged an objection to it on the ground of hearsay. In support of his argument that the trial court erred in admitting Defendant's Exhibit 8, Mr. de Guzman directs our attention to the trial judge's questioning of Mr. de Guzman about his failure to reveal to his family members his relationship with his cousin, K.S. During that line of questioning, the trial judge referenced Defendant's Exhibit 8 as follows:

> THE COURT: So obviously you did receive I guess it is Defendant's – second page of Defendant's Exhibit Number 8. It is this e-mail – it is two emails really. It is a long e-mail from Des to Carmella and then Carmella writes back to Des, "allow me to gather the information and respond to you."
>
> [MR. DE GUZMAN]: Yes.

The judge continued to question Mr. de Guzman about the email without objection. At one point, the court asked Mr. de Guzman if he knew that the allegations being made against Ms. Smalls were "incorrect," and he responded, "[y]es." At that point, counsel for

Mr. de Guzman stated, "I want to note, Your Honor, that whether they are true or not under the law, really, I'm not sure what relevance it has to the case." The trial judge responded, "I will get there[,]" and continued to question Mr. de Guzman. Thereafter, the judge questioned Mr. de Guzman about Defendant's Exhibit 2E. Counsel lodged an objection to that line of questioning on the ground that the exhibit was "wholly inadmissible," but the judge responded that the exhibit had been admitted. The judge then questioned Mr. de Guzman about when he finally told his family that he was, in fact, having an affair with his cousin. After Mr. de Guzman responded to those questions, the judge explained that he was not interested in exploring Mr. de Guzman's infidelity but was "concerned more about [his] credibility" and "the way you weigh your credibility in determining what weight to give to your testimony." After more questioning by the judge, the following occurred:

> THE COURT: From the middle of August – late August of 2019 and you didn't really clear – you allow them to think that [Ms. Smalls] was making it all up, right, for over – for almost two years, from August 2019 until when you wrote the letter in say February. So it is not really two years, but a year and a half. So am I correct in that? Is that a fair assessment of what happened?
>
> [MR. DE GUZMAN]: During that timeframe you reference I did not admit to my family that it occurred.
>
> THE COURT: And they were really trying to figure out how to deal with this whole situation, weren't they?
>
> [MR. DE GUZMAN]: At the beginning, yes. But once [Ms. Smalls] stopped with the communication, everybody just tried to go back to their business as usual.
>
> THE COURT: So – okay. Again, obviously you knew your sisters and your parents were I guess – the word vilify is in here

somewhere – were vilifying [Ms. Smalls] for making these statements, right?

[COUNSEL FOR MR. DE GUZMAN]: I'm going to object, Your Honor. I think that e-mail makes clear that they are unhappy with [Ms. Smalls] for a lot more than that.

[MS. SMALLS]: He said himself they lied in those e-mails to deflect.

THE COURT: I don't see that in this email.

[COUNSEL FOR MR. DE GUZMAN]: Well, if you read [Des's] e-mails, very clear that his dislike and unhappiness with Mrs. Smalls goes way before –

THE COURT: That may be but this e-mail –

[COUNSEL FOR MR. DE GUZMAN]: It is not – it is –

* * *

[COUNSEL FOR MR. DE GUZMAN]: I will save it for argument.

THE COURT: Des may have included other things in here.

[COUNSEL FOR MR. DE GUZMAN]: Yeah.

THE COURT: But the reason he is writing this is in the first sentence, I'm writing this, writing you this note due to the recent series of events that have occurred over the last week. So yes, maybe he has other issues.

[COUNSEL FOR MR. DE GUZMAN]: Okay. I will have a couple follow-up questions.

THE COURT: Okay.

[COUNSEL FOR MR. DE GUZMAN]: When you are done.

The record does not show that Mr. de Guzman objected to Defendant's Exhibit 8 on the ground that it was inadmissible hearsay. For that reason, his contention was not preserved properly for our consideration. *See* Maryland Rule 8-131(a)*;see also Bastian v. Laffin*, 54 Md. App. 703, 714 (1983) ("Objectionable testimony which is admitted without proper objection may be considered for whatever probative value it may have.").

C. Admission of Evidence After Prior Discovery Sanction

Mr. de Guzman contends that the trial court erred in failing to make a determination as to how the evidence, previously excluded as a discovery sanction, would help the court. We disagree. It is well established in Maryland that circuit courts have "the power to impose sanctions as part of the court's inherent power to control and supervise discovery. *A.A. v. Ab.D.*, 246 Md. App. 418, 443 (2020) (citing *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 596 (2010)). While a court may bar a party that withholds discovery documents from introducing that evidence at trial,

> in a child custody case, the court has an absolute and overriding obligation to conduct a thorough examination of all possible factors that impact the best interests of the child, as articulated in *Montgomery* [*Cnty.*] *Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420, 381 A.2d 1154 (1977), . . . This supreme obligation may restrain the court's broad authority to exclude evidence as a discovery sanction.

Id. at 444 (footnote omitted).

When questioning Mr. de Guzman about Defendant's Exhibit 8, the judge explained that his inquiries into the communications between Mr. de Guzman's family members, the acknowledged failure of Mr. de Guzman to tell his family about his affair with his cousin, and the alleged vilification of Ms. Smalls were not for the purpose of determining infidelity

but for the purpose of weighing Mr. de Guzman's credibility. The judge clearly felt that an exception to his prior order barring evidence not produced in discovery was necessary. As the credibility of the parties was relevant to the court's determination of custody and the best interests of R., we cannot say that the court abused its discretion in reversing, in part, its prior order barring Ms. Smalls from admitting evidence that was not produced in the discovery process. *Das v. Das*, 133 Md. App. 1, 15 (2000) (An abuse of discretion occurs "'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'") (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994))). Moreover, "discovery sanctions are not to operate as a windfall," *Watson v. Timberlake*, 251 Md. App. 420, 437 (2021), and "procedural defects should not be corrected in a manner that adversely impacts the court's determination regarding the child's best interests." *A.A. v. Ab.D.*, *supra*, 246 Md. App. at 446.

II.

Mr. de Guzman argues that the circuit court erred in finding that his sisters greatly influenced his decision-making, thereby adding to the risk that he "would keep the child from" Ms. Smalls. The court found that there was a risk that each of the parties would keep the child from the other. With respect to Mr. de Guzman, the court found that there was "incredible animosity" between Mr. de Guzman's sisters and Ms. Smalls. The court noted that "one sister just came out and said it, I don't like you or I hate you or something to that effect." The court went on to say:

> I do believe there is a risk that Dad would keep the child from Mom. And Dad's family would. I think there is such – the sisters despise her. I mean, the [vile] nature of some of these e-mails and texts, there is just such a hatred there. And you can say that Dad wouldn't, but Dad is living with one of the sisters and the Court finds that the sisters greatly influence his decision making. I mean, I will make a note that at least one sister and at times both were here during the entire four days of the case which in and of itself isn't dispositive of anything. But based on the texts and the evidence and the e-mails and the – just the whole – the myriad of facts, it does seem like [Mr. de Guzman] can be very easily influenced to keep the child away from [Ms. Smalls] who is basically hated by the family.

Mr. de Guzman maintains that:

> No reasonable person, particularly in view of the testimony of [S.T.] could possibly believe this. Despite the fact that [S.T.] acknowledges that after their separation her boyfriend may have sexually abused their daughter [A.], there was never a time that [Mr. de Guzman] did not maintain an excellent co-parenting relationship with [S.T.] and allow her all the access she wanted. Furthermore, and disturbingly, the Court makes this finding in the face of egregious disregard for the Court's order, to which [Mr. de Guzman] takes offense.

We disagree and explain.

Preliminarily, we reject Mr. de Guzman's argument that the court did not recognize Ms. Smalls' failure to comply with the pendente lite order. The court specifically found that there "is a risk [Ms. Smalls] will keep the child from Dad's family, and Dad. I find that based on what she has done with respect to the pendente lite order."

As for Mr. de Guzman, the court's finding that there was a risk he would keep R. from Ms. Smalls was not clearly erroneous. It was supported by the evidence including texts by one of Mr. de Guzman's sisters that said of Ms. Smalls, "I don't like you[,]" "I

don't want to be around you[,]" and "I will never like you." There was no dispute that Mr. de Guzman was living with one of his sisters.

Moreover, the evidence does not support Mr. de Guzman's claim that there was never a time he did not maintain an excellent co-parenting relationship with S.T. and allow her all the access she wanted. Evidence was presented that Mr. de Guzman did not voluntarily pay child support for his daughter A. when she went to live with her mother in April 2020. S.T. testified that Mr. de Guzman was a good financial provider for A., but also acknowledged that in April 2020, when A. started living with her, she filed a claim against him for child support. According to S.T., at some point she stopped pursuing the claim for child support and A. was returned to her father's care. On cross-examination, S.T. was questioned as follows:

> [MS. SMALLS]: Well, the e-mails that you sent [Mr. de Guzman] though says that, -- it is not true that your e-mails said that you are at a loss, you hit a brick wall, he is using your child against you, he knows you don't have enough money for a lawyer, you don't have money to go to visit your child and he is using your child as a weapon against you? Did you not put that in your email in writing?
>
> [S.T.]: It is possible that I put that in an e-mail, yes.

S.T. explained that after some therapy, she "realized that those feelings . . . were internalized feelings and it wasn't true." The court was free to weigh and consider that evidence. The court's determination was not clearly erroneous.

III.

Mr. de Guzman asserts that the circuit court's findings with regard to Ms. Smalls' "alcoholism stretch all credulity." The circuit court found that Ms. Smalls "had or has a

drinking problem" and ordered her to abstain from alcohol, any illegal controlled dangerous substances, and the abusive use of prescriptions while R. is in her custody. It also ordered Ms. Smalls to undergo a comprehensive drug and alcohol assessment and "follow any and all recommendations." The court considered Ms. Smalls' drinking problem when addressing two of the factors for a custody determination. When considering the character and reputation of the parties, the court stated:

> Mom says that Dad got her all of the alcohol. And that seems to be true. What difference it makes I'm not sure. But anyway, I do find there is a drinking problem there and – not drinking, some kind of substance abuse.

The court also addressed Ms. Smalls' drinking problem when considering the fitness of the parties. The court took note of Mr. de Guzman's testimony about Ms. Smalls' failure to secure a guard rail at the top of some steps and an occasion where Ms. Smalls "passed out on a couch with the baby [R.] around her arms." The court also noted the November 6, 2020 drunk driving arrest and the subsequent incident on the highway, which resulted in a nolle prosequi, and the May 2022 charge for "drunk driving and marijuana – she had a citation for marijuana" which was pending at the time of the merits hearing. As to each incident, the court determined that R. was not present, and the incident did not have an impact on her.

The court also addressed a video recording showing Ms. Smalls "definitely inebriated on the steps" in her home with one of her sons trying to balance her and keep her from falling over. The court found that Ms. Smalls was clearly intoxicated "in that one

instance." The court questioned Mr. de Guzman's motive in taking the video and his failure to take certain actions as follows:

> [T]he Court was looking at that video and surmising that I guess the purpose of the video is to show Mom in an intoxicated state unable to take care of the child. But my understanding is that the video was taken by the Plaintiff and that by virtue of him taking the video to preserve his claim that she is unfit, didn't take any efforts to, at least not during that scene, maybe before and after he did, but didn't take any efforts to take control of the situation; balance Mom; say to the ten year old son, go about your business, do your own thing, you don't have to see this. And the son – she saw him taking the video. Like I'm taking the video to preserve this incident for [c]ourt or for some proceeding down the road.
>
> Now, maybe Dad did try to do something beforehand or afterwards and I understand you want to have evidence for a case to show Mom is inebriated but if it was so injurious to the child that she was in a situation, why not intervene? Why just sit there and photograph it? But be that as it may, that is what we have. We do have her inebriated with respect to one of the older children. Nothing to do with [R.]. [R.] wasn't harmed at all.

The court went on to discuss Mr. de Guzman's testimony about incidents where he claimed Ms. Smalls was "drunk or violent." The court found that none of the incidents involved anything that was harmful to R. The court continued, stating:

> These parties have a lot of animosity, a lot of violent – there is allegations of domestic violence against each other. There is pictures. The testimony is in conflict as to who started it, who is responsible for it but there is no doubt that there was assaultive behavior going back and forth the Court finds. But again, none of it, zero of it that I can tell affected [R.].
>
> * * *
>
> And despite all of these allegations that Dad made about [M]om's unfitness, all these instances I just mentioned and

> those I didn't mention but were testified to, he was very clear that on no occasion did he ever call the Department of Social Services to investigate her. I asked him that. He said no. There is no safety plan in effect. There is no active investigation of her or of him. In short, there is no evidence that Mom has not been caring appropriately for [R.] since the Plaintiff left.

Mr. de Guzman first asserts that "the Court saw not one, but three videos of [Ms. Smalls] plainly drunk, stumbling and, in one case, unable to get up from the floor." He does not elaborate any further on that statement. We note that an appellant is required to articulate and adequately argue in his brief all issues he desires us to consider. *See Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241-42 (2004); Md. Rule 8-504(a)(6) (an appellate brief must contain "[a]rgument in support of the party's position on each issue."). Whether Mr. de Guzman's statement is an assertion that the judge should have commented on all of the videos or that the judge should have been persuaded by the number of videos presented, those claims are without merit.

The court was not required to comment on each and every piece of evidence. *Att'y Grievance Comm'n of Md. v. Ibebuchi*, 471 Md. 286, 299 n.8 (2020). Nor was the number of videos pertinent. In commenting on the video showing Ms. Smalls on the steps in her home, the court stated, "[s]he is clearly intoxicated and there is that one instance." The court was free to give weight to that particular video and to give less weight or no weight to the others. *See Edsall v. Huffaker*, 159 Md. App. 337, 342 (2004) ("'[T]he trier of fact may believe or disbelieve, accredit or disregard, any evidence introduced ....' A reviewing court may not decide on appeal how much weight should have been given to each item of

evidence.") (quoting *Great Coastal Express, Inc. v. Schruefer*, 34 Md. App. 706, 725 (1977)).

Mr. de Guzman next challenges the court's statement that "Mom says that Dad got her all of the alcohol. And that seems to be true." Mr. de Guzman claims the court's finding is "patently false, since two of the drunken incidents happened after the separation." We are not convinced that the timing of the "drunken incidents" leads to the conclusion that the trial court's determination was erroneous. There was no evidence about when the alcohol was brought into the home. Nevertheless, we note again that the court was free to believe or disbelieve, accredit or disregard, any evidence introduced at trial. *Great Coastal Express, Inc., supra*, 34 Md. App. at 725. The court clearly credited Ms. Smalls' testimony on this issue.

Mr. de Guzman's third challenge is to the court's criticism of him for taking the video recordings of Ms. Smalls while her son was present. He maintains that:

> [t]his completely ignores [Mr. de Guzman's] testimony. This video in the home was taken at a time when divorce and separation were not being contemplated in April 2020. Appellee testified that there were frequent incidents of drunkenness. The older children were frequently present and [one of Ms. Smalls' sons] in particular was involved by trying to take away his mother's alcohol and pouring it down the drain.

There is nothing in the record to suggest that the court ignored Mr. de Guzman's testimony about when he made the video recording. The court specifically commented that Mr. de Guzman's actions in video recording the event and failure to intervene to remove the older child from the situation were "[l]ike I'm taking the video to preserve this incident

for Court **or for some proceeding down the road**." With regard to Mr. de Guzman's testimony about the frequency of the incidents and the involvement of the older children, the court's comments were focused on Mr. de Guzman's failure to intervene and take steps to remove Ms. Smalls' son from the situation. The court also recognized the lack of evidence involving R. As the trier of fact, the court was free to accept all, part, or none of the testimony of any witness. *Edsall, supra*, 159 Md. App. at 342. "We may not – and obviously could not – decide on appeal how much weight must be given, as a minimum to each item of evidence." *Great Coastal Express, Inc., supra*, 34 Md. App. at 725.

Lastly, Mr. de Guzman asserts that "no reasonable person can conclude that the drinking did not or would not impact [R.] in the future." The record does not show that the trial court determined that Ms. Smalls' drinking problem would not impact R. in the future. As we have already recognized, the court clearly determined that Ms. Smalls "had or has a drinking problem," ordered her to abstain from alcohol and other substances when R. is in her custody and ordered her to undergo a comprehensive drug and alcohol assessment and "follow any and all recommendations." The court determined that none of the evidence of Ms. Smalls' inebriation involved R or any harm to her. On this point, it is important to note that "there is no litmus paper test that provides a quick and relatively easy answer to custody matters." *Sanders, supra*, 38 Md. App. at 419. "The best interest standard is an amorphous notion, varying with each individual case." *Id.* "The fact finder is called upon to evaluate the child's life chances in each of the homes competing for custody and then predict with whom the child will be better off in the future. At the bottom line, what is in the child's best interest equals the fact finder's best guess." *Id.*

IV.

Mr. de Guzman challenges the trial court's determination that he was not sincere in seeking custody of R. In support of his contention, Mr. de Guzman asserts:

> Other than a bedroom, see Exhibit 26, what would the Court like to prepare for a 3-year-old? [4] Plus, the Court seems to forget the fact that Appellant has custody of [A.]. The entirety of Appellant's testimony speaks to his desire for custody.

We are not persuaded.

With respect to the sincerity of each parent's request for sole legal and primary physical custody, the trial court made the following findings:

> So the next factor is requests of each parent and the sincerity of the requests. Dad states he wants sole legal custody and primary physical custody. He only filed this case when he was denied visitation. So I'm thinking more it strikes me that perhaps the immediate reason for it being filed was he was denied visitation, not so much that he wanted custody. So does that go to the sincerity of the request for sole custody? Perhaps. He also, when I asked him what plans he has made for [R.] to return, I asked him specifically about day care options or school option, he hadn't made any effort to look into those.
>
> And Mom says she wants sole legal and primary physical custody. I do find her request to be sincere. And I find Mister's sincere in terms of visitation. He wants more time with the child. That is entirely sincere. I can't tell for sure whether his request for sole legal custody and physical custody is genuine because he hasn't made any efforts to prepare for her to come live with him from what I can tell.

The evidence supported the trial court's findings. Mr. de Guzman left the marital home on February 2, 2021 and filed his initial complaint for absolute divorce and custody

[4] Plaintiff's Exhibit 26 consisted of photographs of the home of Clarinda Islam, where Mr. de Guzman and A. were residing at the time of the merits hearing.

on May 6, 2021. When asked if he made any requests to see R. during that time period, Mr. de Guzman testified, "[n]o, I didn't." When asked whether he made any attempts to access R., check on her welfare, or inquire about her during that timeframe, Mr. de Guzman testified, "I don't think so." He also testified that, with one exception in May 2019, prior to the time he retained counsel, he was not denied access to R. Ms. Smalls testified that from the day they separated until the day in May 2021 when she was served with the complaint, Mr. de Guzman never inquired about R., asked how R. was doing, or responded to videos or pictures of her.

The court questioned Mr. de Guzman about his plans for R. if he was to be granted sole or primary custody. Mr. de Guzman testified that he worked five days a week out of an office, that he typically worked from 7 a.m. to 3:45 p.m., and that he had the flexibility to adjust his hours. When asked who would be watching R. while he was at work, Mr. de Guzman stated that she would be at day care or preschool. When asked if he had looked into day care or preschools, Mr. de Guzman responded, "[n]othing specific, no." The court questioned Mr. de Guzman about how day care would work for R.:

> THE COURT: You haven't investigated any day care options?
>
> [MR. DE GUZMAN]: No.
>
> Q. And do you think it would be better for [R.] to have – to be cared for by a day care provider or her mother?
>
> A. She is getting to the point where she is preschool age. I think it would be beneficial for [R.] to start interacting with other children her age in a learning environment, yes.
>
> Q. Okay. How old is she now? Three?

A. Three and a half.

Q. Okay. And what are your work hours usually?

A. Typically 7 to 3:45.

Q. Seven to 3:45. What time do you leave work – you get to work at 7 o'clock. What time do you leave your home?

A. Around 6:15.

Q. Leave at 6:15. So if – so you would intend to drop [R.] off at day care in time to give you enough time to get to work by 7 o'clock?

A. I have flexibility when I start my day and end my day. So I can make adjustments.

Q. You can make adjustments?

A. Yes.

Q. If you start later, you end later, a flex schedule?

A. Yes.

Q. So if you kept the same schedule, 7 to 3:45, you would have to leave – you now leave at 6:15. So you would have to get [R.] to day care by like 6?

A. Possibly.

[COUNSEL FOR MR. DE GUZMAN]: You are referring to the current schedule?

[THE COURT]: You wake up around five?

[MR. DE GUZMAN]: Five thirty, something like that.

Q. Would you have to wake [R.] up at 5:30?

A. I would make adjustments to my schedule. I wouldn't want to wake her up that early.

Q. So you would make adjustments to your schedule?

A. Yes.

Q. So instead of leaving work at 3:45, maybe leave work at 4:45 or 5 o'clock?

A. Correct.

Q. Which means [R.] would be in day care until about six?

A. Possibly, yes.

Mr. de Guzman's history with respect to requests for access to R. and checking on her well-being combined with his failure to investigate available day care or preschool options in preparation for the child to come live with him supported the court's determination that Mr. de Guzman was sincere in his desire to spend more time with R., but that it was not certain his request for sole legal and sole physical custody was sincere.

V.

Mr. de Guzman challenges the trial court's determination regarding his credibility. According to Mr. de Guzman, "[t]o assess [his] credibility as diminished, especially compared to [Ms. Smalls'] credibility or rationality is shocking." In support of that contention, Mr. de Guzman argues that his resetting of Ms. Smalls' cell phone while she was in surgery was no more unseemly than Ms. Smalls actions of taking a video and obtaining photographs of him and/or K.S. and emailing them to Mr. de Guzman's family members.

When, as in the instant case, an action has been tried without a jury, we "review the case on both the law and the evidence." Maryland Rule 8-131(c). We "will not set aside

the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* We have noted that "in the arena of marital disputes where notoriously the parties are not in agreement as to the facts, . . . we must be cognizant of the [trial] court's position to assess the credibility and demeanor of each witness." *Keys v. Keys*, 93 Md. App. 677, 688 (1992). "The trial judge who 'sees the witnesses and the parties, [and] hears the testimony ... is in a far better position than the appellate court, which has only a [transcript] before it, to weigh the evidence and determine what disposition will best promote the welfare of the [child].'" *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020) (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)). The fact finder may believe or disbelieve, credit or disregard, any evidence introduced. *Qun Lin v. Cruz*, 247 Md. App. 606, 629 (2020) (and cases cited therein). "In this regard, [the fact finder] may believe part of a particular witness's testimony but disbelieve other parts." *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136 (2000).

Our role is neither to reweigh evidence nor to assess credibility. *Qun Lin*, *supra*, 247 Md. App. at 629 ("'[A] reviewing court may not decide on appeal how much weight must be given to each item of evidence.'") (quoting *Santiago v. State*, 458 Md. 140-156-57 (2018)). *See also Smith v. State*, 415 Md. 174, 185 (2010) ("Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.").

Instead, "[i]f there is any basis in the record for reaching a given finding, we allow that finding to stand." *Long v. Long*, 129 Md. App. 554, 567 (2000).

In the case at hand, the trial court made several findings concerning Mr. de Guzman's credibility. The court differentiated between Mr. de Guzman's affair with his cousin and the fact that he lied about it to Ms. Smalls and his family. The court stated, "[t]he lying about it to his family I think is something the Court takes into account because one of the factors" is whether the party will ensure a relationship between the child and the other party's extended family. The court found that Mr. de Guzman's lies allowed his family members to see the mother of his child "in a negative light for 18 months. . . . He could have ameliorated that and did not."

The court also addressed Mr. de Guzman's actions at the time Ms. Smalls was hospitalized as follows:

> THE COURT: In addition, [Mr. de Guzman] attempted to or did in fact go through [M]om's phone while she was undergoing surgery or at least under anesthesia or coming out. She was hospitalized. . . . He drove her to the surgery. He picked her up after surgery. And he goes through her phone during surgery. I just have a problem with that. That seems a little bit unusual and improper. It is almost like a ruse to take her to the hospital, pick her up from the hospital – it is a little deceitful, I think. Does it have any impact on the child? Um, not really. But it does go to his credibility in his testimony before the Court. And not only did he attempt to do this while she was undergoing – either in surgery or hospitalized or under anesthesia or coming out of anesthesia, it is unclear it happened before she went in or after she came out, but it was planned. The Court finds it was definitely planned.
>
> He was in constant contact during this time with a woman he was having an affair with, this cousin. He was texting her. She was saying how is she? What is the progress?

> He was giving her – he was telling her his progress almost contemporaneously with going through the phone, trying to find the phone and her progress, her medical, her progress in the surgical procedure. It just strikes me as, at a minimum, poor judgment and just a little deceitful. I understand the lie because she was putting all this stuff out there and he didn't want it out there but it has an element of deceit, I think. His wife is undergoing surgery and she is hospitalized and he is talking to his paramour about the progress is he making going through –
>
> [COUNSEL FOR MR. DE GUZMAN]: They were not married.
>
> * * *
>
> THE COURT: Fine. You are right, they were not married. They got married three days after he confessed.

The judge's ruling from the bench and the record before us make clear that there was a factual basis to support the court's findings with respect to Mr. de Guzman's credibility. Accordingly, the circuit court's findings stand.

VI.

Mr. de Guzman's final contention is that the trial court abused its discretion in awarding legal and primary physical custody of R. to Ms. Smalls. He argues that the court's decision "was predicated on multiple finding[s] of fact that stretch logic and rational assessment beyond the breaking point." Without any citations to the record, he argues:

> The Court granted custody to a mother who it factually found is a drug addict and/or an alcoholic, violated prior Court ordered access, has mental health issues and is not gainfully employed. The Court denied primary custody to a father who has custody of an older daughter from a prior marriage, who is gainfully employed and who lives in a stable home environment.

Specifically, Mr. de Guzman restates the arguments presented in Questions II through V regarding the potential for maintaining family relations and the risk that he would deny access to R., the court's findings with respect to Ms. Smalls' substance abuse and its impact on R., the sincerity of his request for custody, and the court's findings with respect to his credibility. The only novel argument raised in Question VI is that the circuit court's finding that Mr. de Guzman had not been denied access to R. "was against all the evidence." In support of that argument, he directs our attention to the following colloquy between the trial judge and Mr. de Guzman's attorney during closing argument:

> [COUNSEL FOR MR. DE GUZMAN]: I despise when I have to argue cases where my client has been denied access and that is the argument that the Court uses. Oh, well, I can't order shared custody because he hasn't seen the child in nineteen months. I'm sorry. I hate that conclusion. And I don't think that should be allowed to be used against my client under the circumstances of this case.
>
> * * *
>
> THE COURT: The testimony of your client was he wasn't denied visitation.
>
> [COUNSEL FOR MR. DE GUZMAN]: What do you mean?
>
> THE COURT: When was a request ever denied for visitation?
>
> [COUNSEL FOR MR. DE GUZMAN]: By Mrs. Smalls.
>
> THE COURT: He said one time.
>
> [COUNSEL FOR MR. DE GUZMAN]: He asked one time. But then – her testimony is very clear.
>
> THE COURT: Her testimony?

[COUNSEL FOR MR. DE GUZMAN]: That she was never going to allow it.

THE COURT: His testimony.

[COUNSEL FOR MR. DE GUZMAN]: I understand.

THE COURT: He said it never really happened based on his testimony.

[COUNSEL FOR MR. DE GUZMAN]: Well, before. We are talking about before the separation, Your Honor. After the separation there clearly –

THE COURT: Before you are brought into the case.

[COUNSEL FOR MR. DE GUZMAN]: They had mediation. It is clear from the pleadings. There is my e-mail. And plus, her testimony is absolutely clear it was never going to happen.

THE COURT: Your client's testimony.

[COUNSEL FOR MR. DE GUZMAN]: Are you saying you should have asked more often just to be told no?

THE COURT: I want to make sure the evidence supports your argument. You are saying he was denied access and his testimony was he wasn't denied access. I don't know.

[COUNSEL FOR MR. DE GUZMAN]: I don't know if I agree with you about that, Your Honor. I mean, are you suggesting that he should have made more overt requests just to be told no and that would have supported and firmed up the argument that he was denied access[?]

THE COURT: No. I'm saying his requests weren't rebuffed like I'm being told they are. He said it in his own testimony.

[COUNSEL FOR MR. DE GUZMAN]: Well, she absolutely refused – she testified that under no circumstances – we stopped asking because her own testimony makes clear why he stopped asking. But I even stopped asking. She made it clear, there was no circumstance she was going to agree to anything

> except supervised visitation under conditions that were just impossible.
>
> THE COURT: Okay.
>
> [COUNSEL FOR MR. DE GUZMAN]: So having said that, why do we keep asking? I guess that is my point.
>
> THE COURT: Okay.
>
> [COUNSEL FOR MR. DE GUZMAN]: If you don't want to call that denial, fine. But I do.

When announcing its decision on the record, the court addressed contacts with R., in part, as follows:

> In terms of the allegation by Mom that Dad is unfit because he has a lack of contact with [R.], she says that she offered him access to Dad, which he refused. Dad says it was only supervised contact that he was offered and he didn't want to be with the Defendant. He saw the child once – saw the child in December of 2020 over Christmas and then on February 2021 all in person contacts ended. He asked for contact – the next time he asked for contact was May 2021 and then this case was filed shortly thereafter.

As we noted in our review of the pertinent facts, *supra*, Mr. de Guzman acknowledged that during specified times, including between February 3, 2021 and May 2021, he did not make any attempt to have virtual or in-person visits with R. Prior to the pendente lite order, the only day Mr. de Guzman claimed he was denied access to R. was on or about Mother's Day 2019. With respect to contacts after the pendente lite order was entered, the court found that Ms. Smalls violated the pendente lite order, in spirit if not in fact, by not permitting Mr. de Guzman to have unsupervised visitation with R. The court's findings were supported by the record.

Mr. de Guzman suggests that we take judicial notice of post-judgment proceedings in the underlying case. We take notice that after the judgment in the instant case, Mr. de Guzman filed a third motion for contempt and requested a hearing on that motion. We also take notice that Mr. de Guzman filed a motion to modify custody and support, that an order of default against Ms. Smalls was entered on May 9, 2023 with respect to that motion, and that a hearing is scheduled for September 15, 2023. Those motions, and the issues raised in them, were not part of the judgment from which Mr. de Guzman appealed and do not affect our decision in the instant appeal.

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