Circuit Court for Montgomery County
Case No. 154623FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1322

September Term, 2019

HARSH PRAKASH

v.

BRIANA ADAMS

Graeff,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: December 1, 2020

This appeal arises from a custody dispute in the Circuit Court for Montgomery County. After a four-day trial, the court awarded sole legal custody to the mother and ordered an access schedule for the father.

The father has appealed. Because we perceive no error or abuse of discretion, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Separation, Protective Order, and Initial Custody Arrangement

Appellant Harsh Prakash ("Father") married appellee Briana Adams ("Mother") in 2014. The couple had one daughter, P., who was born in February of 2017. P. was two years old at the time of the custody hearing.

On June 14, 2018, the parties separated after Mother secured a temporary protective order against Father. The parties have lived apart since that date.

On July 2, 2018, the parties consented to a permanent protective order. That order gave Mother the use and possession of the marital home and custody of P. The order also set forth a schedule for Father's access to P.

At the time of the permanent protective order, Father's occupation allowed him to work from home. Father worked from the marital home's basement on Mondays, Wednesdays, and Fridays from 8:30 a.m. to 5:45 p.m. On those days, the order allowed Father to spend time with P. during his work breaks while she was home with the parties' nanny. The order also allowed Father to have access to P. on alternating Saturdays and Sundays from noon until 4:00 p.m.

On July 10, 2018, Father filed a complaint for a limited divorce, seeking joint physical and legal custody of P. On October 2, 2018, Mother filed a counterclaim for absolute divorce, or in the alternative, limited divorce, custody, child support, and other appropriate relief. Mother sought primary physical custody and sole legal custody of P.

On September 13, 2018, and December 18, 2018, Father filed petitions for peace orders against Mother and Mother's friend, A.N., respectively. Both petitions were denied.[1]

B. Custody Evaluation

Before trial, the circuit court ordered a custody evaluation. The custody evaluator presented her report at a January 11, 2019, status hearing.

According to the report, Mother indicated that Father had been manipulative and controlling early in the relationship. Mother claimed that Father became physically abusive towards her a few months after they were married. She claimed that he would sometimes push her or restrain her. On one occasion, Father reportedly hit her across the face after she left the room following an argument. After she became pregnant, Father reportedly became even more angry and controlling.

Mother claimed that Father was emotionally unstable and that he had difficulty controlling his emotions in front of the child. For example, Mother alleged that Father

[1] The September petition for peace order was denied because there were "no reasonable grounds to believe that abuse (as defined in the statute) occurred." The December petition for peace order was denied because there was "no evidence of [a] future prohibited act."

had thrown things at her while she was holding P. Mother claimed that Father did not seem fazed by the impact of his behavior on the child.

In Mother's view, Father does not believe that a schedule is important for P., because, she said, he had violated the protective order's access schedule. According to Mother, Father does not respect other terms of the protective order, because he had continued to contact Mother about issues unrelated to visitation and had said inappropriate things about Mother to P.

The custody evaluator interviewed professionals and the parties' family members and friends about Father's behavior. Mother's father was concerned that Father might unintentionally harm P. in one of his "fits" and observed that Mother was fearful and nervous when she had to confront Father about something. A neighbor stated that Father was manipulative and protective to the point of being controlling. One of Mother's friends was concerned about Father's mental health. The parties' nanny was unwilling to speak with the custody evaluator because she was fearful of retaliation by Father.

Mother's therapist, Julie Blum, thought that Mother was suffering from an adjustment disorder with anxiety. The therapist reported that Mother was seeking support from someone who was familiar with issues of domestic violence.

In her report, the custody evaluator expressed her own concerns about the unmeritorious peace orders that Father had sought against Mother and her friend. She opined that Father's behavior reflected difficulty in separating his feelings about Mother from what is in P.'s best interests. Ultimately, the custody evaluator believed that Mother was the parent better able to separate the adult conflict from what is best for P.

The custody evaluator recommended joint legal custody with tie-breaking authority in Mother's hands. She recommended that Mother be granted primary residential custody and that Father be granted access to P. on Tuesdays and Wednesdays from 6:00 p.m. to 7:30 p.m. and on Saturdays from 10:00 a.m. until 6:00 p.m. She also recommended that after one month Father's access should increase, so that he would have P. from Friday at 6:00 p.m. until Saturday 6:00 p.m. She believed that Father should participate in therapy.

The parties agreed that the access schedule outlined in the permanent protective order would remain in place until the conclusion of the litigation.

C. Trial

The Circuit Court for Montgomery County conducted a four-day trial in April and May of 2019.

At trial, Father depicted himself as a loving and devoted parent who had a safe residence for P. He stressed that, before the separation, he had taken care of P. when Mother traveled out of town for business.

Father complained that Mother had not exhibited flexibility when his work schedule changed and he was no longer able to telecommute (and thus to have access to P. on weekdays). He observed that he had far less time with P. than he did when he consented to the protective order.

In Father's view, shared legal custody was in P.'s best interests because both parents would be invested in the child's development. He believed that he and Mother

could reach shared decisions and share information. He claimed, however, that Mother was not sharing information with him about P.'s health.

Father acknowledged that there were problems in the marriage before Mother obtained the protective order. He cited sleepless nights with a newborn child. He believed that Mother was uneasy because his parents were immigrating to the United States. He acknowledged that he and Mother had argued about money and saving for P.'s education.

Father said that Mother became a "distant figure" before the separation. He claimed that she had "wiretap[ped]" him without his consent. He also claimed that she was prejudiced against his culture and that the prejudice came to the surface when she requested the protective order. He accused Mother of using a racially offensive term to refer to him.

On cross-examination, Father admitted that he had taken P. to the pediatrician on multiple occasions without first informing Mother. On one occasion, Mother had taken P. to a scheduled appointment only to learn that the child had already received the requisite care when Father had taken her without Mother's knowledge. Although the protective order gave Mother custody of P., Father disagreed that he was violating the order by taking P. to the pediatrician without Mother's knowledge.

Father also disagreed that he had done anything to warrant the need for the protective order, to which he had consented. He opined that the request for a protective order, though not the protective order itself, was motivated by racial prejudice against him.

Although Father complained that Mother had used derogatory terms to refer to him, he admitted that in "moments of frustration" he had called her various derogatory names as well.

Father agreed that, before the separation, he had said that Mother's mother was not welcome in his home. He had drafted a letter to that effect to Mother's mother. Mother persuaded him not to send the letter (or perhaps not to send the original draft), which apparently concerned what Father termed a "disagreement" about "parenting styles."[2]

Father testified about an incident in which he took his car from a parking lot while Mother and one-year-old P. were shopping, leaving them stranded with a load of groceries. Father evidently took the car because he believed that Mother had ignored his message not to use that car. He agreed that communications had broken down on that day. He also agreed that his "frustrations have sometimes gotten the better of [him]."

Father testified at some length about his unsuccessful efforts to obtain a protective order against Mother's friend, A.N., for allegedly abusing P. He admitted to telling the court that he had "de facto legal custody" of P. even though the final protective order gave custody to Mother. He denied knowing that A.N., whom Mother had called her best friend, was part of Mother's support system.

Father admitted that, although the final protective order prohibited him from communicating with Mother except by text message, he had used the nanny to send

[2] The disagreement involved the use of pacifiers.

messages to Mother. He also admitted that his actions toward the nanny could be construed as intimidating.

When Mother took the stand, she outlined Father's pattern of erratic behavior and the relationship's history of physical and psychological abuse. Mother testified that she sought the initial protective order against Father after an altercation in which Father began throwing clothes, toys, and other objects, one of which broke into pieces when it hit the wall. The event scared Mother and made P. scream hysterically, but Father, "blinded by rage," was undeterred by the child's cries. At one point, Father threw things toward Mother and P. Mother obtained the protective order the next morning.

Mother claimed that Father would often get angry and throw things around the house and yard, sometimes breaking them. She detailed the incident in which he took the car and left her and the child stranded, with their groceries. When he returned, she said, he forcibly took the baby from her and stormed off, leaving her worried about the child being with him in that angry state.

According to Mother, Father insisted that he needed to have access to her phone, so that he would know that she was not hiding anything. She said that when she refused him access to it, his anger and aggression increased. She claimed that Father would try to push her out of the bed, physically restrain her, push her into walls, and put his hands around her neck.

Previously, Mother said, Father had hit her in the face after she had walked away from him in an attempt to deescalate an argument. On another occasion, she said that he had hit her on the hip several times while they were lying in bed, after she told him to

turn down the volume on his tablet because the baby was sleeping. She claimed that he would frequently restrain her while P. was present, and even while she was holding the child. His anger and aggression, she said, would get worse "with every big life event" (marriage, buying a house, pregnancy).

According to Mother, Father would tell her that he needed to put fear in her to make her comply. From almost the beginning of the marriage, he reportedly said that "he would use divorce as a weapon." She claimed that when she eventually said that she would agree to a divorce, he became angrier, telling her that divorce is war, that he would ruin her, that he would make P. hate her, and that he would use P. as a pawn. Mother said that Father, who is eight inches taller than she, was "physically intimidating" and that he would "hover" over her and glare at her.

Mother testified that when she and Father fought, he would often block her phone calls and text messages. She would tell him that he needed to unblock her because she might need to get in touch with him if there was an emergency involving the child, but he would continue to block her.

Mother introduced emails showing that after the separation she had reached out to Father's parents to further their relationship with their granddaughter.

Mother agreed that Father has positive qualities: he is playful with P. and very interested in making sure that she succeeds academically. But Mother expressed concern about his emotional instability, about the prospect that he would turn P. against her, and about his unwillingness (in her words) to put P.'s needs first.

Among the other witnesses was Julie Blum, mother's therapist. Mother had sought treatment from Ms. Blum for mental health issues relating to domestic violence and its effect on her marriage, her separation, and child-rearing. Over an objection concerning the alleged inadequacy of Mother's pretrial disclosures, the court accepted Ms. Blum, a licensed clinical social worker, as an expert in the areas of social work and domestic violence.

Ms. Blum testified that Mother's mental health was "amazingly balanced" and that she was "very impressed" with Mother's "decision-making capabilities." She opined that, in co-parenting with Father, Mother faces formidable challenges in doing what she believes is best for the child without provoking him. According to Ms. Blum, Mother must decide when she must react to Father's conduct and when she needs to let it pass for the sake of calm and peace. The court sustained objections to questions about the impact that Father's behavior had on Mother and about whether Ms. Blum had expressed her opinions to a reasonable degree of probability.

D. Custody Determination

At the conclusion of trial, the court decided not to grant joint legal custody to the parties. In making this determination, the court considered the factors in *Taylor v. Taylor*, 306 Md. 290 (1986), including the ability of the parties to communicate to reach shared decisions regarding the child.

The court found that the parties have incredible difficulty communicating to reach shared decisions. The court noted that Mother "shows many of the class[ic] signs of someone who has been a victim of domestic violence" and that Father exhibits many of

the classic traits of an abuser. The court found that Father is controlling, has an uncontrollable temper, and goes into a rage when he is under stress. The court also found that Father would get violent with Mother even in the presence of P. Because of Father's behavior, the court found, Mother goes "out of her way to avoid provoking him."

The court doubted that "joint custody [was] even possible in this case" because the parties do not have "the ability to communicate to reach shared decisions." If Mother does not do what Father wants, the court found, "there will be retribution and there will be a penalty to pay." The court reasoned that Mother's fear of retribution from Father cannot be the basis for communicating to reach shared decisions regarding the raising of P.

After determining that joint legal custody is not appropriate in this case, the court awarded sole legal custody to Mother. In reaching that decision, the court considered the factors of *Montgomery County Dep't of Social Services v. Sanders*, 38 Md. App. 406 (1977). The court indicated that the "significant factors" were "the first four": (1) the fitness of the parents; (2) the character and reputation of the parties; (3) the desire of the natural parents and agreements between the parties; and (4) the potentiality of maintaining natural family relations. *Id.* at 420.

1. <u>The Fitness of the Parents</u>

The court determined that Father is not fit to have custody of P. The court found that Father does not have the ability to control his outbursts. Although "[Father] loves his child" and "would never intentionally hurt her," the court stated that Father has taken no steps to deal with his temper. Because it is impossible to determine what will set him off,

"[P.] may just be part of the fallout" when he gets angry and starts throwing things. The court agreed with the custody evaluator's recommendation that Father should attend therapy.

2. Character and Reputation of the Parties

The court stated that it trusts Mother's judgment and "believes she will make the right decisions that are in the best interest of the child at all times." The court stated, "I don't have that confidence in [Father]." The court was concerned by Father's history of disobeying the court, "even with domestic violence protection orders in place." The court had "doubts about [Father] doing the right thing when no one is looking" because "[h]e doesn't even do it when the Court is directing him to do certain things."

3. The Desire of the Natural Parents and Agreements between the Parties

This factor was relevant to the court only because the parties don't have an agreement.

4. The Potentiality of Maintaining Natural Family Relations

The court found that Father is not interested in maintaining relations between P. and Mother's side of the family. Father, the court found, does not like Mother and her family, and "he will make no effort whatsoever to include her family if he were to have custody." The court continued: "he would do anything possible to try to alienate [Mother's] mother from the daughter." Mother, on the other hand, had "gone out of her way to try to include family members of [Father] even though they've treated her pretty poorly in the past." Mother's conduct demonstrated to the court that "she's constantly thinking about the best interest of the child."

E. Order

On June 7, 2019, the court entered an order that granted sole legal custody and primary residential custody of P. to Mother and set an access schedule for Father.

The court accepted the custody evaluator's finding that Father and P. are "bonded" and found it important that they have regular contact. The court ordered an access schedule for Father of Mondays and Wednesdays from 5:45 p.m. to 7:30 p.m. and alternating Saturdays and Sundays from 10:00 a.m. until 6:00 p.m. The order required that all exchanges be made either at P.'s school or daycare or in the presence of a professional monitor. The order also set forth a holiday visitation schedule, specifically allowing Mother to have P. during winter break and Father to have access to P. during four Hindu holidays. It prohibited Father from having any hostile communication with Mother and required him to attend therapy for anger management and domestic violence issues.

On June 7, 2019, Father filed a motion to alter or amend, which was denied on July 31, 2019. On August 29, 2019, Father noted this appeal. We shall provide additional facts as necessary to our discussion.

QUESTIONS PRESENTED

On appeal, Father presents four questions, which we have rephrased:[3]

[3] The exact questions from Father's brief are reproduced below:

A. Whether the decreased access of the Appellant with the parties' minor child was inconsistent with the child's best interest and constituted an abuse of discretion.

1. Did the circuit court abuse its discretion in ordering an access schedule for Father that differed from the custody evaluator's recommendation?

2. Did the circuit court abuse its discretion in awarding sole legal custody to Mother?

3. Did the circuit court abuse its discretion in not adopting Father's requested access schedule for the Hindu holidays?

4. Did the circuit court abuse its discretion in admitting Judy Blum's expert testimony?

STANDARD OF REVIEW

Three of Father's four questions concern the circuit court's decision on child custody. "[T]his Court reviews child custody determinations utilizing three interrelated standards of review." *Reichert v. Hornbeck*, 210 Md. App. 282, 303 (2013).

> The appellate court will not set aside the trial court's factual findings unless those findings are clearly erroneous. To the extent that a custody decision involves a legal question, such as the interpretation of a statute, the appellate court must determine whether the trial court's conclusions are legally correct, and, if not, whether the error was harmless. The trial court's ultimate decision will not be disturbed unless the trial court abused its discretion.

B. Whether the award of sole legal custody to Appellee constituted an abuse of discretion, where the evidence established that joint legal custody or joint legal custody with tie-breaking authority was in the child's best interests.

C. Whether the Court abused its discretion or acted contrary to the child's best interest by not making accommodations for the Appellant to observe Hindu holidays with the minor child over the weekend when the child is required to attend school and/or daycare on the Hindu holidays.

D. Whether the Court abused its discretion or erred in permitting Julie Blum to be received as an expert and testifying when Appellee had failed to comply with expert disclosure requirements.

Gizzo v. Gerstman, 245 Md. App. 168, 191-92 (2020) (citations omitted).

> An abuse of discretion may occur when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court.

Id. at 201 (citing *Santo v. Santo*, 448 Md. 620, 625-26 (2016)).

"Appellate courts 'rarely, if ever, actually find a reversible abuse of discretion on this issue.'" *Id.* (quoting *McCarty v. McCarty*, 147 Md. App. 268, 273 (2002)).

Father's final question concerns the court's decision to admit expert testimony. In general, the admissibility of expert testimony is reviewed for abuse of discretion. *See, e.g.*, *Logan v. LSP Mktg. Corp.*, 196 Md. App. 684, 699 (2010).

DISCUSSION

A. Father's Access Schedule

For some time after the entry of the protective order, the parties were following the access schedule detailed in the protective order itself. That schedule provided Father with access to P. on Mondays, Wednesdays, and Fridays from 8:30 a.m. to 5:45 p.m. and on alternating Saturdays and Sundays from 12:00 p.m. until 4:00 p.m. As a practical matter, Father had access to P. for only a part of the day on Mondays, Wednesdays, and Fridays, while he was telecommuting from the basement of the marital home.

At some point before trial, that schedule effectively changed, because Father was no longer able to telecommute. Thus, he was no longer able to spend time with P. for part of the day on Mondays, Wednesdays, and Fridays.

After the trial, the court ordered a new access schedule. The new schedule provided Father with access to P. on Mondays and Wednesdays from 5:30 p.m. to 7:30 p.m. and on alternating Saturdays and Sundays from 10:00 a.m. until 6:00 p.m. Father complains that the order "decreased" his access to P. He is incorrect.

At the time of trial, Father had a theoretical right of access to P. during the day on Mondays, Wednesdays, and Fridays. He was, however, unable to exercise that theoretical right, because he was no longer able to telecommute from the basement of the marital home, where he had exercised it. Consequently, at the time of the trial, Father had access to P. only on alternating Saturdays and Sundays from 12:00 p.m. until 4:00 p.m. The court's order increases Father's access to P. in two ways: (1) it gives him access on Monday and Wednesday evenings, and (2) it increases the period of access from four hours to six hours on weekends.

Father contends that the court abused its discretion in setting the access schedule, because, he says, it "failed to give appropriate consideration" to factors pertinent to the analysis and did not give proper weight to the "track record of access" and history of his prior day-to-day interactions with child. We disagree.

In a custody decision, a trial court must consider the various factors delineated in *Montgomery County Dep't of Social Services v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986), concerning the best interests of the child.[4] "While

[4] The factors in *Sanders* are:

(1) fitness of the parents;

the court considers all the . . . factors, it will generally not weigh any one to exclusion of all others." *Montgomery County Dep't of Soc. Services v. Sanders*, 38 Md. App. at 420. The court "should examine the totality of the situation in the alternative environments and avoid focusing on any single factor." *Id.* at 420-21.

Father contends the trial court was "dismissive" of many of the pertinent factors, describing them as "neutral" and "wholly failing to analyze them." This claim is without

---

> (2) character and reputation of the parties;
> (3) desire of the natural parents and agreements between the parties;
> (4) potentiality of maintaining natural family relations;
> (5) preference of the child;
> (6) material opportunities affecting the future life of the child;
> (7) age, health and sex of the child;
> (8) residences of parents and opportunity for visitation;
> (9) length of separation from the natural parents; and
> (10) prior voluntary abandonment or surrender.

Montgomery County Dep't of Soc. Services v. Sanders, 38 Md. App. at 420.

The *Taylor* factors are:

> (1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare;
> (2) willingness of parents to share custody;
> (3) fitness of parents;
> (4) relationship established between the child and each parent;
> (5) preference of the child;
> (6) potential disruption of child's social and school life;
> (7) geographic proximity of parental homes;
> (8) demands of parental employment;
> (9) age and number of children;
> (10) sincerity of parents' request;
> (11) financial status of the parents;
> (12) impact on state or federal assistance; and
> (13) benefit to parents.

Taylor v. Taylor, 306 Md. at 304-11.

merit. The record clearly indicates a careful consideration of all the relevant factors. When the court described certain factors as "neutral," it meant that those factors did not favor one party over the other or had no bearing on the analysis. In this case, for example, the preference of the two-year-old child, if she could even be expected to have one, was irrelevant.

Father "acknowledges that some factors may not apply" to this case but asserts that no factor "should be considered neutral," because, he says, "that fails to give respect for the reason the factor is listed." The factors are listed because they may bear on the court's decision. But even if a factor bears on the decision in a particular case, it is accurately described as "neutral" if, in the court's judgment, it favors neither side.

Father further contends that the court should have considered other factors not enumerated in *Sanders* and *Taylor*. These include "the prior agreements of the parties, the track record of access, [and] the history of [Father's] involvement with the care of the minor child including the day-to-day care of the child." Although no legal authority requires the use of those factors, "courts are not limited to a list of factors in applying the best interest standard in each individual case." *Azizova v. Suleymanov*, 243 Md. App. 340, 345 (2019). *Sanders* and *Taylor* provide merely "a non-exhaustive delineation of factors that a court must consider when making custody determinations." *Id.*

Assuming that these additional factors are pertinent, the court did in fact consider them. The court properly found that agreements and mutual decisions between the parents were rare. The "track record of access" included Father's apparent violation of

the protective order when he took P. to multiple medical appointments without Mother's knowledge.

Father contends that the court failed to give proper consideration to the testimony of the custody evaluator. He claims that the custody evaluator had "no concerns" about Father's parenting style and that she recommended an access schedule that after one month would include overnight visitation once a week.

The record clearly demonstrates the circuit court's consideration of the court evaluator's report and testimony. The court found that regular contact between Father and P. was crucial, based on the evaluator's observations of their interactions. The order required supervised exchanges of P., based on the evaluator's recommendation. The order also required Father to begin therapy for anger management and domestic violence issues, also based on the custody evaluator's recommendation. The access schedule ordered by the court is substantially the same as the one recommended in the custody evaluator's report, absent the provision about overnight weekend access once a week. The court relied heavily on the custody evaluator's report, and we find no abuse of discretion for failing to adopt her recommendations in its entirety.[5]

[5] At the time of trial, Father had not participated in therapy, despite the custody evaluator's recommendation. Father also seems to have ignored the evaluator's conclusion that "some of the concerns [with his parenting style] were corroborated." In essence, Father faults the circuit court for not giving the custody evaluator's findings and recommendations full credit and deference – a task that even he is unwilling to undertake.

B. Determination of Legal Custody

Father argues that the circuit court abused its discretion when it awarded sole legal custody to Mother. In his view, the evidence established that the parties could effectively communicate with one another about matters pertaining to the child. But even if the parties cannot effectively communicate, Father contends that the court could still have awarded joint custody. We see no error or abuse of discretion.

In awarding sole legal custody to Mother, the court considered the so-called "*Taylor* factors." *See generally Taylor v. Taylor*, 306 Md. 290 (1986). Under *Taylor*, the capacity to communicate 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." *Id.* at 304.

While the presumption in custody disputes is that joint custody serves the best interest of the child, that presumption can be "rebutted by evidence indicating that the 'parties [are] unable to settle their differences amicably, or [are unable] to insulate the children from their battles.'" *Id.* at 305 (quoting *Turner v. Turner*, 455 So. 2d 1374, 1380 (La. 1984)).

> 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.

Id. at 304.

"With few exceptions, courts and commentators agree that joint custody is a viable option only for parents who are able and willing to cooperate with one another in making

decisions for their child." *Id.* (quoting 2 *Child Custody & Visitation Law and Practice* § 13.05[2], at 13-14 (J.P. McCahey ed. 1985)).

To determine the parties' capacity to communicate, "the best evidence . . . will be the past conduct or 'track record' of the parties." *Id.* at 307. Only where the evidence "is strong in support of a finding of the existence of a significant potential for compliance with this criterion should joint legal custody be granted." *Id.*

The record in this case indicates a pattern of aggression and abuse by Father. Citing that pattern, the circuit court found that the parties do not have "the ability to communicate to reach shared decisions."

In a challenge to that finding, Father cites several examples of his "capacity to communicate" with Mother, including the selection of a pediatrician, their cooperation in scheduling and attending medical appointments,[6] the selection of a nanny, and the agreement that P. would be raised in the Hindu faith. Even assuming that Mother freely consented in each of these matters, Father's isolated examples do not establish that the court was clearly erroneous in finding that the parties are unable to communicate to reach shared decisions.

It is unsurprising that people who have agreed to get married and to have a child might also have reached agreement on other lesser matters. The relevant question in this case is not whether the parents have ever succeeded in reaching an agreement; it is

[6] In view of the evidence that Father took P. to several medical appointments without Mother's knowledge at a time when the protective order gave Mother custody of P., it is unclear why Father would cite cooperation in scheduling and attending medical appointments as an example of shared decision-making.

whether the parents are likely to be able to reach shared decisions on matters pertaining to their child. In view of the extensive record of Father's abusive and coercive conduct in this case, the court was clearly correct, not clearly erroneous, in finding that he could not reach shared decisions with Mother on matters pertaining to their child.

Accepting that the parties are unable to communicate, Father contends that the court abused its discretion by denying joint legal custody. Father cites *Santo v. Santo*, 448 Md. 620 (2016), in which the Court of Appeals "decline[d] to hold as a matter of law that a court errs if it awards joint custody to parents who fail to communicate effectively with one another." *Id.* at 630. Father contends that a "court of equity ruling on a custody dispute may, *under appropriate circumstances* and with careful consideration articulated on the record, grant joint legal custody to parents who cannot effectively communicate together regarding matters pertaining to their children." *Id.* at 646 (emphasis added).

It is undoubtedly true that a court "may," in some "appropriate circumstances," award joint legal custody even when parents cannot effectively communicate. It hardly follows, however, that the circuit court was required to award joint legal custody in this case despite its finding that Mother and Father cannot effectively communicate. Shared custody is not appropriate if "the potential for cooperation in joint decision making [is] far outweighed by the evidence of power struggles and hostility." *Taylor v. Taylor*, 306 Md. at 305 (quoting *Kline v. Kline*, 686 S.W.2d 13, 16 (Mo. App. 1984)). On the record in this case, the court did not abuse its discretion in determining that the "appropriate circumstances" to grant joint legal custody without the capacity to communicate were not present. *Santo v. Santo*, 448 Md. at 646.

C. Consideration of Hindu Holidays

The court allowed Father to have additional access to P. on the major Hindu holidays (Rakhi in August, Diwali in October or November, Dassera in October, and Holi in March). If the holiday falls when school or summer camp is not in session and when Father is not required to work, he will have access to P. from 10:00 a.m. until 6:00 p.m. If the holiday falls when school or summer camp is in session, Father will have access to P. from the time when school or summer camp ends until 6:00 p.m.

Father argues that the court erred in not giving him additional weekend access during the Hindu holidays if the holiday falls on a weekday. The court can be forgiven for overlooking that detail because Father did not request additional weekend access in his argument to the court.

Even if Father had properly brought this request to the court's attention, we would find no abuse of discretion. The court ordered that Father would have access to P. on the major religious holidays in the Hindu faith. The court also ordered that Father would have access to P. on every weekend. We cannot say that no reasonable person would take the view adopted by the trial court, and Father cites no legal authority to the contrary.

D. Admission of Ms. Blum's Expert Testimony

Father contends that the court should have excluded Julie Blum's testimony because of Mother's alleged failure to comply with Maryland Rule 2-402(g)(1) when disclosing her expert witnesses. Rule 2-402(g)(1)(A) states:

> A party by interrogatories may require any other party to identify each person, other than a party, whom the other party expects to call as an expert witness at trial; to state the subject matter on which the expert is expected to testify; to state the *substance of the findings and the opinions to which the expert is expected to testify and a summary of the grounds for each opinion*; and to produce any written report made by the expert concerning those findings and opinions. A party may also take the deposition of the expert.

Id. (emphasis added).

On December 5, 2018, Mother submitted a timely disclosure of witnesses and experts. Regarding Ms. Blum, Mother stated:

> Ms. Blum is a Licensed Clinical Social Worker who provides therapy services to [Mother]. Ms. Blum also has expertise in the field of domestic violence, and may testify at trial and provide opinions regarding [Mother]'s decision-making abilities, mental health, parental fitness, co-parenting, relationship with [Father], and the impact of [Father]'s actions on [Mother]. Ms. Blum will base her opinions on her training, experience, research, observations, and documents provided in discovery in this matter. No report from Ms. Blum is available at this time.

Father did not challenge the adequacy of this disclosure by communicating with opposing counsel before trial or filing a motion to compel. Nor did Father seek to depose Ms. Blum in order to explore her opinions and grounds for those opinions.

On the second day of trial, Father objected to the admissibility of Ms. Blum's testimony on the grounds that Mother did not fully comply with Rule 2-402(g)(1). Father argued that Mother's expert witness designation did not state the substance of the findings and the opinions to which Ms. Blum was expected to testify and a summary of the grounds for each opinion. The court allowed Ms. Blum to testify, over Father's objection. Father contends that he was prejudiced. We disagree.

This situation has arisen before in Maryland courts, and the law is well settled. In *Food Lion, Inc. v. McNeil*, 393 Md. 715 (2006), Food Lion did not challenge the adequacy of an expert disclosure in discovery or in any pre-trial motions. *Id.* at 725. Later, at trial, Food Lion moved to prohibit its opponent's expert from testifying, "[n]oting Rule 2-402's requirement that disclosure of an expert's opinion must include the summary of the grounds of that opinion." *Id.* The Court held:

> [a] party who answers a discovery request timely and does not receive any indication from the other party that the answers are inadequate or otherwise deficient should be able to rely, for discovery purposes, on the absence of a challenge as an indication that those answers are in compliance, and, thus not later subject to challenge as inadequate and deficient when offered at trial.

Id. at 736.

Food Lion is directly on point. Father's failure to challenge the disclosure before trial resulted in the waiver of his right to challenge the disclosure at trial.

Despite Father's failure, the court nonetheless agreed to limit Ms. Blum's testimony to the topics mentioned in the disclosure. In accordance with this limitation, the court sustained both of the objections that Father made during Ms. Blum's direct examination. We cannot fault the court for allowing Ms. Blum to answer the other questions to which Father did not object.

Finally, Father directs this Court to *Taliaferro v. State*, 295 Md. 376 (1983), for a consideration of the factors used to determine the appropriate sanction for a discovery violation. *Taliaferro* and its factors do not warrant a lengthy discussion; Father could have avoided any prejudice or surprise by moving to compel a more complete expert

disclosure before the close of discovery, by deposing Ms. Blum about her opinions and the bases therefor, by moving in limine to exclude Ms. Blum's testimony because of the alleged inadequacy of the disclosure, or by any combination of these measures. The court did not err or abuse its discretion in its approach to Ms. Blum's testimony.

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