Circuit Court for Prince George's County
Case No. CAD20-11773

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND**

No. 1360

September Term, 2022

GISELLE YOUNG

v.

RYAN VIEIRA

Beachley,
Tang,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 11, 2023

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

**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.

Appellant Giselle Young ("Mother") appeals an order issued by the Circuit Court for Prince George's County that denied, among other things, her motion to modify child custody and visitation of her son that she shares with appellee Ryan Vieira ("Father"). Mother properly raises[1] four questions,[2] which we have consolidated and rephrased as:

[1] Mother, self-represented in this appeal, raised 17 questions in her questions presented, but 13 of those questions are not addressed in her argument section. "An appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief." *Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241 (2004); *see also* Md. Rule 8-504(a)(5–6) (stating that an appellate brief "shall" include a "concise statement of the applicable standard of review for each issue"; and "[a]rgument in support of the party's position on each issue."). "[I]f a point germane to the appeal is not adequately raised in a party's brief, the [appellate] court may, and ordinarily should, decline to address it." *DiPino v. Davis*, 354 Md. 18, 56 (1999)) (citation omitted); *see also* Md. Rule 8-504(c) ("For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case"). We decline to consider the 13 questions that Mother did not properly brief.

[2] Mother properly raised the following four questions for review:

I. Whether the Appellant received procedural fairness at the Pendente Lite hearing on December 10, 2020 and the custody tr[ia]l on April 20, 2021 and April 22, 2021 pursuant [to] Rule 2-535 fraud, clerical error or mistake and 18 U.S. Code § 1038 - False information and hoaxes in this case?

III. Whether Judicial code of conduct was breached due to the court never preparing an order for the Contempt hearing held on November 29, 2021 as concluded on the records by the lower court?

XIII. Whether the lower court was negligent to the best interest of the child by and through the pattern of ignoring motions and assertions from the Appellant pertaining to supervised visitation and therapy together?

XIV. Whether Judicial code of conduct was breached for the lower court not including reunification therapy in the August 26, 2022 [order] to start at the time the therapist recommended as concluded on the records from the bench on 8/17/2022?

I. Whether the circuit court violated any rules of procedural fairness at the pendente lite hearing on December 10, 2020, or the custody trial in April 2021?

II. Whether the court erred by not issuing an order after the November 29, 2021 hearing requiring the parties to communicate using Our Family Wizard?

III. Whether the circuit court abused its discretion by not ordering supervised visitation and reunification therapy?

For the reasons that follow, we shall affirm the judgment of the circuit court.

BACKGROUND FACTS

The parties were in a long-term romantic relationship and had a son ("Child") in 2011. The parties never married, and the relationship ended in 2019. In 2020, both parties filed complaints for custody of their son. The cases were consolidated, and in January of 2021, the court entered a pendente lite order granting Father, with whom Child was living, primary physical custody and granted Mother supervised visitation for eight hours every other Saturday.

A two-day custody hearing was held in April of 2021. On April 22, 2021, the court rendered its decision from the bench. The court granted Father sole physical and joint legal custody and increased Mother's visitation access over the course of several months, from supervised, to unsupervised, to overnight visits. The court indicated that Child would spend every other week with Mother in the summer of 2022. Mother then interrupted the court's oral bench opinion, telling the court: "I would like to sign over all parental rights. I am not doing this," and "there is going to be a lawsuit." Although the court questioned Mother's decision, she remained adamant. The court proceeded to grant Father sole

physical and legal custody. The court added that, in light of Mother's comments, it would not order any visitation, but Mother would be permitted to talk to Child by telephone. Mother appealed, and we affirmed the court's judgment. *See Young v. Vieira*, No. 400, Sept. Term 2021 (filed Nov. 15, 2021).

On April 8 and July 23, 2021, Mother filed petitions for contempt, alleging that Father had not allowed her telephone access to Child. A hearing was held on November 29, 2021, at the conclusion of which the court denied Mother's contempt petitions because there had not been a telephone schedule. The court established a telephone/Facetime schedule for Mother as follows: Mother would Facetime with Child at 7:00 p.m. on the weekdays and between 9 and 10 a.m. and 4 and 5 p.m. on Saturday and Sunday. Mother was instructed not to record the conversations, but she was permitted to take screen shots of Child.

MOTIONS AND THE CIRCUIT COURT'S 2022 ORDER

Several months after the contempt hearing, Mother filed several motions: 1) a petition to modify custody to include reunification therapy once a week and supervised visitation once a week; 2) a third petition for contempt, alleging that Father was preventing her telephone/Facetime calls with Child; 3) a petition to modify child support; and, 4) a motion for a psychological evaluation of the parties and Child to assist the court in determining child custody and visitation. Father filed a counter motion to modify custody and a motion requesting other relief related to allegations of Mother's harassment: 1) by repeatedly calling the police requesting welfare checks on Child; 2) telling Child during

Facetime calls that "he is being recorded" and having him perform a surveillance of his room; 3) threatening police involvement if the calls were insufficient in length; and 4) refusing to turn on her camera despite directing Child to activate his camera.

The court held a two-day motions hearing on August 1 and 17, 2022. The court received testimony from Mother, Father, and Mother's character witnesses. Additionally, the court conducted a private interview with Child.

Father testified that he enrolled Child in therapy in April 2022. Acknowledging that the court had ordered therapy for Child in April 2021, Father explained that because of the pandemic, multiple therapists were "all booked up." He testified that Child was placed on a waiting list, and "when a spot opened up, that's when we started taking him." According to Father, Child sees a therapist weekly, and has been diagnosed with "traumatic stress disorder."

Father testified that, although Child's therapist employs reunification therapy as part of her practice, she did not currently recommend reunification therapy between Mother and Child. He explained that Child had completed four months of a specific, six-month therapy program. He asserted that, upon completion of the six-month therapy program, the therapist is willing to start reunification therapy with Child and Mother. Father further testified that he has noticed an improvement in Child's behavior since he began seeing the therapist, explaining that Child is better able "to articulate how he feels" and "cop[e] with situations."

After the parties' testimony, the court surmised that Child is "rude and nasty" to Mother, partly because "he is getting that from the surroundings [in Father's house], but also because [Mother is] making it difficult for" Child during her Facetime calls. The court spoke to Child in chambers, after which the court advised the parties:

> I really don't need a closing argument. I just -- my conversation with [Child] was disturbing and I can't order him right now to spend any time with you, ma'am. He's not ready. . . . [H]e's angry and I don't think that his father is helping the situation, but I can't order anything differently right now. He's just not in a place. He's just not. There's nothing -- for me to even order him to see you is really ordering him to be more angry, uncomfortable, and it's just going to create a worse situation.

The court and the parties then discussed the case for another nearly 75 pages of typed transcript.

During these discussions on the record, Mother did not ask for supervised visitation, but noted that the court had made clear that Child was not ready for visitation. Instead, she repeatedly requested that her and Child's Facetime conversations be monitored or supervised, stating that she did not believe "it's healthy for me and him to continue conversations in that household." When the court asked Mother who she would like to supervise the calls, she responded, "I would prefer someone . . . that has . . . honor. Like, you know, like an officer, like the law." Mother declined the court's suggestion to have Father take Child to a police station for telephone/Facetime calls, implicitly recognizing the impracticality of such a procedure.

As to reunification therapy, the court stated that it would not order Child to participate in additional therapy because, in the court's judgment, Child is "not ready."

However, the court recognized that "[Child] can't not be ready forever" and suggested that reunification therapy could begin after Child's therapist confirmed it was in his best interest. Father's attorney advised the court that Father was not opposed to reunification therapy and suggested appointment of a best interest attorney. The court agreed that such an attorney could be helpful to determine when reunification therapy would be appropriate.

Following the hearings, the court issued a written order on August 26, 2022 (that for unknown reasons was not docketed until October 6, 2022), denying: Mother's petition to modify custody and visitation; Mother's petition for contempt; Mother's petition to modify child support; and Mother's motion for a psychological evaluation. Pursuant to Father's motions, the court ordered the parties to comply with specific conditions regarding visitation.[3] The court also ordered Father to file a motion to appoint a "privilege attorney" to determine if Child's privilege from disclosure should be waived to allow Child's treating therapist to testify and disclose confidential information.

Mother filed this timely appeal. Additional facts will be included as necessary to address Mother's properly raised appellate questions.

[3] Specifically, the court ordered: Mother shall not call authorities for a welfare check unless there is visible injury to Child; neither party shall make disparaging comments to Child about the other party; neither party shall record the telephone conversations between Child and Mother; Mother shall not direct Child to do a surveillance of the room before/during/after scheduled telephone/Facetime calls; calls between Mother and Child shall remain the same during the week as previously ordered but on the weekends they are to begin at noon; all telephone communication shall not exceed 30 minutes; neither party shall discuss the case or politics with Child; and the parties shall communicate through Our Family Wizard.

DISCUSSION

I.

Mother argues that she did not "receive[] procedural fairness at the Pendente Lite hearing on December 10, 2020" and the April 2021 custody trial pursuant to "Rule 2-535 fraud, clerical error or mistake and 18 U.S. Code § 1038 - False information and hoaxes in this case[.]"

Mother's argument relates to the December 10, 2020 pendente lite hearing that resulted in the January 2021 pendente lite order, and the custody trial on April 20 and 22, 2021, which culminated in an April 2021 final custody judgment. Mother appealed that judgment and we affirmed in *Young v. Vieira*, No. 400, Sept. Term 2021 (filed Nov. 15, 2021). None of the hearings and orders about which she complains are before us in the instant appeal, which concerns only the judgment docketed on October 6, 2022. Accordingly, any procedural unfairness or other error in those earlier proceedings cannot be considered in this appeal. *See Martello v. Blue Cross & Blue Shield of Md., Inc.*, 143 Md. App. 462, 474 (2002) (stating "neither the questions decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal" (emphasis omitted) (quoting *Fidelity-Balt. Nat'l Bank & Tr. Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367, 372 (1958))). "If this were not so, any party to a suit could institute as many successive appeals as the fiction of his imagination could produce new reasons to assign as to why his side of the case should prevail, and the litigation would never terminate." *Fidelity-Balt.*, 217 Md. at 372.

II.

Mother argues that the court erred by not issuing an order after the November 29, 2021 contempt hearing. Again, we note that Mother has only appealed the judgment evidenced by the August 26, 2022 order. In any event, at the August 1, 2022 hearing, there was a discussion about whether the court had previously ordered the parents to communicate through Our Family Wizard. After reviewing the November 29, 2021 hearing transcript, the court acknowledged that there were discussions about requiring communications to be through Our Family Wizard. But the court noted that no order was issued in that regard because Mother stated she could communicate with Father through text messages. The court proceeded to state that it "may have been my mistake, because I did say I was going to order it. But then there's this discussion later, and I interpret that to be that you weren't going to need the order, so I didn't even -- I never even considered writing an order." Although the record confirms a potential misunderstanding between the court and Mother, the August 26, 2022 Order corrected any misunderstanding by providing:

> ORDERED, that the parties shall use Our Family Wizard for communication of the parties regarding the major and important issues on behalf of the minor child of the parties[.]

The issue is therefore moot. *See State v. Dixon*, 230 Md. App. 273, 277 (2016) ("A case is moot when there is 'no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant.'" (quoting *Suter v. Stuckey*, 402 Md. 211, 219–20 (2007))).

III.

Mother argues that "the lower court was negligent to the best interest of the child by and through the pattern of ignoring [Mother's] motions and assertions . . . pertaining to supervised visitation and therapy together[.]" Although she lists several motions/hearings/trials that occurred prior to the August 26, 2022 Order, as we stated above, only that order is before us. We shall also address an argument she raises but did not set out in her argument section: "Whether [the] Judicial code of conduct was breached for the lower court not including reunification therapy in the August 26, 2022 [order,] to start at the time the therapist recommended as concluded on the records from the bench on 8/17/2022[.]" Although not a model for clarity, we understand Mother is essentially arguing that the circuit court erred when it did not order supervised visitation and reunification therapy with Child.[4] We perceive no error by the circuit court.

Standard of Review

We review a circuit court's custody determination for abuse of discretion. *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020). An abuse of discretion arises when "no

[4] Mother summarily states twice in her brief that "[o]n August 1, 2022 the Appellee committed perjury[.]" These perjury allegations were not in her questions presented. *See* Md. Rule 8-504(a)(3); *Green v. N. Arundel Hosp. Ass'n, Inc.*, 126 Md. App. 394, 426 (1999), *aff'd on other grounds*, 366 Md. 597 (2001) (stating that "[a]ppellants can waive issues for appellate review by failing to mention them in their 'Questions Presented' section of their brief"). Furthermore, Mother makes this broad allegation with no further argument and only cites two pages in the record, one of which does not reference Father's testimony, and the other of which is missing from Mother's record extract. Therefore, we will not consider this inadequately briefed argument. *Klauenberg v. State*, 355 Md. 528, 552 (1999) (stating that "arguments not presented in a brief or not presented with particularity will not be considered on appeal").

reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles." *Id.* We apply the clearly erroneous standard to the circuit court's factual findings and review the court's decision for legal error. Md. Rule 8-131(c).

Mother's Arguments on Appeal

a. Supervised visitation.

Mother argues that the circuit court erred in denying her request to have supervised visits with Child in the presence of a therapist or officer. All of her references, however, are to motions or hearings that culminated in the court's April 2021 judgment, which we affirmed in the first appeal. As with Mother's argument regarding procedural fairness, *see* Part I., *supra*, any error in the April 2021 judgment cannot be considered in this appeal. *See Martello*, 143 Md. App. at 474.

b. Reunification therapy

Within her general reunification therapy argument, Mother makes two arguments. We shall address each argument in turn.

First, Mother argues that the circuit court erred because it "didn't request any evidence from [Father] to prove that the waitlist [for therapy] required a whole year." Although Mother includes this contention in her argument section on reunification therapy, this argument actually relates to Child's individual therapy. Essentially, Mother's argument is the circuit court erred by crediting Father's testimony, without further evidence, that he tried to comply with the April 30, 2021 Order to enroll Child in therapy,

but was unable to do so until April 2022 due to the pandemic. In *Gizzo*, 245 Md. App. at 203, we examined an argument by a father that insisted the mother's testimony lacked credibility and "that Mother needed to produce additional evidence to corroborate her testimony." We held that "[i]t is not our role, as an appellate court, to second-guess the trial judge's assessment of a witness's credibility" and the mother "was not required to meet some heightened evidentiary threshold." *Id.* at 203–04. Here, Father explained that Child was unable to begin therapy for one year because therapists were "booked up," and the circuit court was free to believe Father's testimony. We will not second-guess the circuit court's credibility assessment.

Second, Mother argues that the court erred by breaching the "[j]udicial code of conduct" when it failed to order that reunification therapy "start at the time the therapist recommended[.]" Mother presents no support for her argument, and we reject it.

The evidence elicited at the hearing was that the therapist was amenable to consider reunification therapy, but only after Child had completed a specific six-month individual therapy program. According to Father, the therapist had not yet recommended reunification therapy to commence. Father also stated he was not opposed to reunification therapy, and the court indicated that reunification therapy should not begin until Child was ready for such therapy. To that end, the court ordered Father to file a motion for appointment of a privilege attorney to determine when Child's therapist believed further

therapy related to reunification could begin. We find no error in the court's ruling.[5]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[5] Mother has not made any argument on appeal regarding a court-appointed attorney for Child. We note that approximately one week after the last hearing in August 2022, Father filed a motion to appoint a privilege attorney on Child's behalf. Mother filed a notice of appeal, after which Father filed a line withdrawing his motion to appoint a privilege attorney. The court held a review hearing on November 9, 2022, during which Mother complained about her ability to Facetime Child but neither party nor the court mentioned the motion for appointment of a privilege attorney. On November 29, 2022, the court granted Father's voluntary withdrawal of his motion to appoint a privilege attorney. Less than a month later, the court closed the case.