Circuit Court for Anne Arundel County
Case No. C-02-FM-15-003738

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1576

September Term, 2017

MELISSA MULLINS

v.

ZACHARY MULLINS

Meredith,
Arthur,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: November 16, 2018

On September 18, 2015, appellant Melissa Mullins ("Ms. Ouellette[1]") filed a complaint for limited divorce against appellee Zachary Mullins ("Mr. Mullins"). The Circuit Court for Anne Arundel County granted the parties a Judgment of Limited Divorce on October 19, 2016. In that judgment, the court granted the parties joint legal custody of their daughter, with Ms. Ouellette possessing tie-breaking decision-making authority, and awarded Ms. Ouellette primary physical custody, with Mr. Mullins having limited supervised visitation. On September 14, 2017, the court granted the parties a Judgment of Absolute Divorce, which modified the terms of the limited divorce by removing Ms. Ouellette's tie-breaking authority, and by expanding Mr. Mullins's visitation access. Ms. Ouellette filed a motion for reconsideration, which the court denied. Ms. Ouellette timely appealed and presents the following issues for our review, which we have consolidated:

1. Did the trial court err in modifying custody and visitation?[2]

2. Did the trial court err when the trial judge failed to recuse himself *sua sponte* due to his clear bias in favoring participants in methadone programs such as Mr. Mullins, or, alternatively, was [] Ms. Ouellette denied her due process rights due to the trial judge's bias?

3. Did the trial court err when it took judicial notice of matters outside the ken of the lay person?

[1] Ms. Mullins was restored to her maiden name in the Judgment of Absolute Divorce.

[2] We consolidated Ms. Ouellette's first two questions on appeal:

(1) Did the trial court err and/or abuse its discretion when it awarded unsupervised access to father despite his long history of substance abuse?

(2) Did the trial court err in finding a material change in circumstances?

4. Did the trial court err and/or abuse its discretion when it refused to reconsider the decision pursuant to Md. Rule 2-534 and/or 2-535 when it was presented with evidence that Mr. Mullins had an overdose occur in his home just days after the trial?

5. Did the trial court err when it deviated downwards from the Maryland Child Support Guidelines?

We answer the first four questions in the negative, but vacate and remand the child support award for proceedings consistent with this opinion.

FACTS AND PROCEEDINGS

Ms. Ouellette and Mr. Mullins were married on July 3, 2014. The parties' daughter, A.M., was born nearly four weeks later. During their marriage, the parties frequently disagreed about Mr. Mullins's participation in a methadone program for his heroin addiction. Ms. Ouellette wanted Mr. Mullins to exit the program because of methadone's side effects, which she claimed rendered him unable to operate a motor vehicle or perform everyday tasks, and made him constantly sleepy. Mr. Mullins, however, would vacillate between wanting to quit and wanting to remain on the program.

Eventually, at Ms. Ouellette's urging and against his doctor's orders, Mr. Mullins rapidly decreased his methadone dosage. Unfortunately, Mr. Mullins relapsed on heroin in April 2015, causing the parties to separate in May. From May 2015 to September 2015, Mr. Mullins had no contact with Ms. Ouellette or A.M.

On September 18, 2015, Ms. Ouellette filed a *pro se* complaint for limited divorce. She also filed a Motion for Emergency and Ex Parte Relief, seeking emergency custody of

A.M. That same day,[3] the circuit court held a hearing, at which Mr. Mullins did not appear, wherein the court granted Ms. Ouellette emergency custody. At some point shortly thereafter, the parties attempted to reconcile, with Mr. Mullins telling Ms. Ouellette that he wanted to keep the family together and receive help for his addiction. Unfortunately, Mr. Mullins relapsed on heroin in October 2015, causing Ms. Ouellette to leave him and proceed with the limited divorce.

On September 14, 2016, the matter came before a magistrate for a default hearing. Even though Mr. Mullins never filed a written response to Ms. Ouellette's complaint, the magistrate allowed him to "fully participate" at the September 14 hearing. Following the hearing, the magistrate filed a report and recommendation, dated September 19, 2016, stating that the parties had come to an agreement regarding legal and physical custody. The remaining unresolved issues included the limited divorce, Ms. Ouellette's request for alimony, and Mr. Mullins's access to A.M. Regarding custody and access, the parties agreed to joint legal custody with Ms. Ouellette possessing tie-breaking authority as to important decisions regarding A.M. The parties also agreed that Ms. Ouellette would have primary physical custody with Mr. Mullins having supervised visits with A.M. "on at least a short term basis." Nevertheless, Mr. Mullins expressed that "[a]t some point, [he]

[3] According to the record, Ms. Ouellette filed a request for waiver of prepaid costs on September 15, 2015, likely when she physically filed both her complaint for limited divorce and her motion for ex parte relief. The clerk's office did not docket the complaint or motion until three days later, on September 18, when the court ruled on the request for waiver of prepaid costs.

[wanted] to have unsupervised access with the child and for longer periods of access." The magistrate recommended that Mr. Mullins have limited contact with A.M. once a week for two or three hours at a time on either Saturday or Sunday, but did not recommend unsupervised access.

On October 19, 2016, the circuit court sustained the magistrate's findings and granted the parties a limited divorce. The court awarded the parties joint legal custody, and granted Ms. Ouellette tie-breaking authority on all major decisions concerning the child, contingent on her making a good faith effort to first consult with Mr. Mullins. The court also awarded Ms. Ouellette physical custody, but granted Mr. Mullins supervised access once a week on either Saturday or Sunday, or any other time agreed to by the parties. The parties were to arrange visits by e-mail on Monday the week of the visit.

On January 18, 2017, Ms. Ouellette filed a complaint for absolute divorce. Mr. Mullins answered the complaint and filed his own counter-complaint for absolute divorce. In April 2017, Mr. Mullins began e-mailing Ms. Ouellette in an effort to schedule supervised visits with A.M. pursuant to the Judgment of Limited Divorce.[4] On May 10, 2017, Mr. Mullins filed a Petition for Contempt, alleging that Ms. Ouellette had failed to obey the Judgment of Limited Divorce regarding visitation, and that he had seen his daughter only once since the judgment was entered. Mr. Mullins did eventually begin

[4] Mr. Mullins testified that he tried to contact Ms. Ouellette by phone following the Judgment of Limited Divorce in October 2016, but was unable to reach her. After retaining counsel, Mr. Mullins began e-mailing Ms. Ouellette, which that judgment required in order to facilitate visitation.

having regular supervised visitation with A.M, although the record does not clearly provide when this occurred.

On August 25 and September 13, 2017, the parties appeared before the circuit court regarding the complaint and counter-complaint for absolute divorce, as well as the contempt petition. The court denied the contempt petition, and issued its Judgment of Absolute Divorce on September 14, in which it granted an absolute divorce, and restored Ms. Ouellette to her maiden name. Of relevance to this appeal, the court maintained joint legal custody, but removed Ms. Ouellette's tie-breaking authority, and vastly expanded Mr. Mullins's access to include unsupervised visitation on alternating weekends, holidays, and summer weeks. Ms. Ouellette filed a motion for reconsideration on September 26, 2017, which the court denied on October 4 without a hearing. We shall provide additional facts as necessary to resolve the issues on appeal.

DISCUSSION

I. CUSTODY AND VISITATION

In her appellate brief, Ms. Ouellette first argues that the trial court erred in its best interest analysis by awarding unsupervised access to Mr. Mullins despite his long history of substance abuse, and that the court failed to find a material change in circumstance prior to modifying custody and visitation. As required by our case law, we shall first address whether the trial court erred in failing to find a material change in circumstance before we address whether the court erred in its best interest analysis.

A. Finding a Material Change in Circumstance

Ms. Ouellette argues that the trial court erred in modifying custody because the court never found a material change in circumstance. She correctly notes that, when presented with a request to modify custody, a court must engage in a two-step process. *McMahon v. Piazze*, 162 Md. App. 588, 593-94 (2005). "First, the circuit court must assess whether there has been a 'material' change in circumstance. If a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody." *Id*. at 594 (internal citations omitted). "A change in circumstances is 'material' only when it affects the welfare of the child." *Id*.

At the outset, we note that the court did not modify the designation of joint legal custody. Instead, the court slightly modified joint legal custody by removing Ms. Ouellette's tie-breaking authority. As to physical custody, the court maintained Ms. Ouellette as the primary physical custodian of A.M., but substantially expanded Mr. Mullins's visitation access. Even "minor" changes, however, require the court to find a material change in circumstance. *See id.* (stating that a material change in circumstance is required for a contested "minor" change in custody). Although the circuit court never explicitly used the words "material change in circumstance" in rendering its bench opinion, the record shows that the court correctly considered what had transpired from the time of the Judgment of Limited Divorce until the hearing on the Judgment of Absolute Divorce. As we will show, the court implicitly found a material change in circumstance prior to modifying custody and visitation.

In discussing its decision to remove Ms. Ouellette's tie-breaking authority, the court explicitly acknowledged the Judgment of Limited Divorce as the operative order, stating:

> I'll take judicial notice of the fact that . . . [Ms. Ouellette] was granted a judgment of limited divorce on October 19th, 2016. . . . That order provided that [Ms. Ouellette] have tie-breaking authority on the major decisions concerning the child after [she] had made a good faith effort to consult with [Mr. Mullins] regarding the issues before making any non-emergency decision.
>
> That date is of some note because it occurred on October 19th, 2016. And, of course, my hearing didn't occur until August 25th, 2017.

The court then went on to review what had transpired since the limited divorce. In reviewing legal custody, the court considered a series of e-mail exchanges between the parties wherein Ms. Ouellette appeared unwilling to cooperate with Mr. Mullins regarding his access to A.M. The court stated,

> A review of the e-mails suggest that -- [effective communication] at times is difficult. And the reason why Mr. Mullins would say it's difficult is because [Ms. Ouellette] has been controlling. She's attempted to control the decisions and that she, in fact, has kept [him] from being involved and deciding issues that [he] should have decided. *I'll point out that the custodial order says that these parties are joint legal custodians.*

(Emphasis added). As an example of ineffective communication, the court referred to an e-mail Ms. Ouellette sent Mr. Mullins on April 22, 2017, in which she refused to allow him access, writing "For the record, I have sole custody and I make the decision. Now, I'm done talking and the visit will not take place due to the rain. Try again next week and follow court order or a visit will not take place." The court noted that the e-mail was problematic, stating

> That e-mail was telling to me, and I think it -- what it tells me is that [Ms. Ouellette], *the mother in this case, one, did not understand the order that existed because at that point she did not have sole legal custody, she had joint legal custody. She had the ability to make decisions by way of a tie-breaker.* But as the order said, only after she had a reasonable discussion with whatever the issue was.

(Emphasis added). In removing Ms. Ouellette's tie-breaking authority, the court stated "I'm not giving tie-breaker [authority] because it's proven to be ineffective. It proved the tie-breaker was interpreted by [Ms. Ouellette] to be ['']I'm calling the shots so we're not even talking.['']" The court's decision to slightly modify joint legal custody by removing Ms. Ouellette's tie-breaking authority was based on a change in circumstance since the Judgment of Limited Divorce—Ms. Ouellette's misapprehension of the order and her inability to effectively communicate with Mr. Mullins. Accordingly, the court found a material change in circumstance sufficient to modify joint legal custody by removing Ms. Ouellette's tie-breaking authority.

The court also found a material change in circumstance to justify its modification and expansion of Mr. Mullins's visitation access. During the hearing, the court heard evidence that Mr. Mullins was progressing with his new addiction recovery program, and that his relationship with A.M. had improved with weekend visits. Specifically, Mr. Mullins's new methadone treatment program, New Journey, required his attendance every day except for Sunday whereas during the marriage, he only attended a methadone program once a week. According to a letter from New Journey, Mr. Mullins received favorable drug screenings dating from January 2017 to August 2017. Mr. Mullins received only a single infraction during that span, which was unrelated to his lab results.

In issuing its fact-findings from the bench, the court noted the material change regarding Mr. Mullins's addiction and recovery, stating,

> I looked carefully at Mr. Mullins. I've been doing this for a long time. And I think that if you know anything at all about an addiction, it is a very difficult, very difficult thing to deal with. So, I have great respect for someone who is able to do that. And I think Mr. Mullins is doing the right things. When I listen to his testimony about . . . some of his statements about his approach to detoxing . . . I think he has an understanding about his problem. That doesn't mean that he's always doing the right thing. . . .
>
> He certainly can see his daughter when he's on methadone because that's maintenance therapy.

In addition to his recent successes in recovery, Mr. Mullins's relationship with A.M. had improved since the Judgment of Limited Divorce. Mr. Mullins testified at trial that his relationship with A.M. had "gotten better," that he "had maybe one to two good visits that went really well," and that A.M. appeared to feel "[a] lot more comfortable" around him. Based on this evidence, the court was permitted to find that "[Mr. Mullins's] relationship [with A.M.] appears to be a good one." The growing relationship between Mr. Mullins and A.M. was another material change in circumstance that justified a modification in visitation access.

We acknowledge that the court never explicitly stated it had found material changes in circumstance to justify expanding Mr. Mullins's visitation access. Nonetheless, "It is a well-established principle that '[t]rial judges are presumed to know the law and apply it properly.'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (quoting *State v. Chaney*, 375 Md. 168, 179 (2003)). In deciding to expand Mr. Mullins's visitation, the trial court clearly relied upon material changes in circumstance following the limited

divorce. Having concluded that the court properly found a material change of circumstance, we next turn our attention to the second step in the modification procedure—the best interests of the child.

B. Best Interests Analysis

Ms. Ouellette also argues that the court erred in awarding Mr. Mullins unsupervised access because of his long history of substance abuse. She argues that the court erred by "fail[ing] to actually provide for safeguards against Mr. Mullins's opioid addiction and the dangers of his participation in a methadone program." She further claims that the court failed to properly consider the best interest factors relevant to a modification of custody found in *Montgomery Cty. Dept. of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977) and *Taylor v. Taylor*, 306 Md. 290, 304-311 (1986). We disagree.

In *In re Yve S.*, the Court of Appeals described the three interrelated standards of review for child custody determinations:

> [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. [Second,] [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.

373 Md. 551, 586 (2003). As the reviewing court, we give due regard "to the opportunity of the lower court to judge the credibility of the witnesses." *Id*. at 584. We also recognize that,

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

Id. at 585-86.

We shall address the contention that the court was required to provide safeguards against Mr. Mullins before we address the court's application of the *Sanders* and *Taylor* factors. Ms. Ouellette argues that the court was required to provide "safeguards against Mr. Mullins's opioid addiction and the dangers of his participation in a methadone program." She relies on *Hanke v. Hanke*, 94 Md. App. 65 (1992) to argue that unsupervised access was inappropriate. *Hanke*, however, is inapposite. In *Hanke*, following the parties' divorce, the Harford County Department of Social Services filed a Child in Need of Assistance petition based on reports that Mr. Hanke had sexually abused one of his stepchildren. *Id*. at 66-67. The trial court also heard evidence that Mr. Hanke had sexually abused the parties' daughter. *Id*. at 69. The court nevertheless awarded Mr. Hanke unsupervised visitation with the parties' daughter. *Id*. at 67. Around that time, Ms. Hanke took the parties' daughter and moved to Kentucky. *Id*. This Court, in reversing the trial court's grant of unsupervised visitation, stated

> It is obvious that the trial judge was annoyed because Ms. Hanke moved to Kentucky with the child and was unwilling to allow visitation. Even if the judge were correct that Ms. Hanke was not acting in compliance with the judge's orders, his primary responsibility was to protect this minor

> child, and not to punish Ms. Hanke by ordering overnight visitation. Then, when he could not enforce the overnight visitation order, the judge next removed the child from her custody with no provisions to protect the child. Where the evidence is such that a parent is justified in believing that the other parent is sexually abusing the child, it is inconceivable that that parent will surrender the child to the abuse parent without stringent safeguards. The fact that the judge does not agree with that parent's fear is immaterial. This is not a case in which there is no basis for the mother's belief. Past behavior is the best predictor of future behavior, and Ms. Hanke, while perhaps incorrect, is not unjustified in her belief that there may be some unresolved problems.

Id. at 72 (footnotes omitted).

In *Hanke*, the trial court clearly abused its discretion by allowing unsupervised visitation with Mr. Hanke despite numerous reports that he had sexually abused at least two of his children. Indeed, our opinion strongly implied that the trial court compromised its impartiality due to its frustration with Ms. Hanke, as well as her attorney. *Id*. n.5. *Hanke* is clearly distinguishable from the instant case.

Here, there were no allegations that unsupervised visitation would place A.M. at risk for anything resembling the dangers in *Hanke*. Although Ms. Ouellette attempts to equate Mr. Mullins's prior drug use with Mr. Hanke's sexual abuse, the evidence showed that Mr. Mullins had been clean and consistently on his prescribed doses of methadone for at least eight months. Furthermore, the trial court specifically stated "I don't believe that being on methadone . . . necessarily equates to unfitness. That's not the case at all. It could be depending on your approach to the treatment, but I don't find that Mr. Mullins, as a result, is unfit." The court specifically found that Mr. Mullins was fit to parent A.M. Accordingly, there was no reason for the court to provide additional safeguards.

Ms. Ouellette also claims that the court erred in its application of the *Sanders* and *Taylor* factors when determining the best interests of A.M. She first claims that "The trial court failed to include any meaningful consideration of the length of the separation. Perhaps more troubling, the court found that '[neither] side voluntarily abandoned this child.'" We reject these arguments. In determining whether a material change in circumstance had occurred, the trial court properly evaluated the relevant evidence between October 19, 2016 (the date of the Judgment of Limited Divorce), and the date of the modification hearing. In our view, the length of separation prior to the Judgment of Limited Divorce would have had minimal, if any, relevance to the modification calculus. Additionally, although the court heard evidence that Mr. Mullins went nearly a full year without seeing A.M., the evidence showed that that event also preceded the Judgment of Limited Divorce. Again, the period of time that Mr. Mullins did not see A.M. prior to entry of the Judgment of Limited Divorce would seemingly have little relevance to the court's evaluation of Mr. Mullins's claim that circumstances had changed vis-à-vis the child so as to warrant increased visitation.

Ms. Ouellette next argues that the court erred in considering Mr. Mullins's fitness. She claims that "the trial court never reconciled Mr. Mullins's substance abuse, methadone program, long separation from the child, and/or prior abandonment of the child with the bald assertion that Mr. Mullins was fit." The record belies this contention and shows that the court did consider Mr. Mullins's fitness. The court noted Mr. Mullins's success in the New Journey methadone clinic, and explicitly stated that the mere fact that Mr. Mullins

was on methadone did not render him unfit. Additionally, the court expressly found that Mr. Mullins did not voluntarily abandon A.M. when it stated, "I don't think either the father -- either side voluntarily abandoned this child." Regardless, any lengthy separation or abandonment prior to the last custody order bears little relationship to whether Mr. Mullins was "fit" at the time of the modification hearing nearly a year later.

Ms. Ouellette further asserts that the court erred when it found that the parties "have not reached any agreement in this case." She claims that "It is unequivocal that the parties had reached an agreement resolving issues of custody in September of 2016." Although Ms. Ouellette is correct that the parties reached an agreement which was incorporated into the Judgment of Limited Divorce, we construe the court's statement as meaning that the parties could not agree as to Mr. Mullins's request for increased visitation with A.M.

As to the court's removal of tie-breaking authority, Ms. Ouellette argues that "the trial court failed to make the required findings expressly related to legal custody. As is clear from the record, the parties have no ability to communicate or cooperatively parent, and Mr. Mullins's history of opioid addiction and methadone participation renders Mr. Mullins unable to participate in such decisions."

The court did find that, at times, effective communication between the parties was "difficult." It placed most of the blame for their lack of effective communication, however, on Ms. Ouellette. As stated above, the court found that Ms. Ouellette misconstrued the Judgment of Limited Divorce and used that misunderstanding to deprive Mr. Mullins of his legally granted visitation. Despite concluding that the parties had difficulty

communicating, the court expressly found that "it is in the best interest of [A.M.] that [the parents] remain joint legal custodians." Immediately after referring to A.M.'s best interest, the trial judge stated, "But at this point, I do not believe that a tie-breaker is appropriate." We see no error in that determination.

Finally, Ms. Ouellette claims that the court erred when it did not make an explicit finding, pursuant to Md. Code (1984, 2012 Repl. Vol.) § 9-101 of the Family Law Article ("FL"), that neglect was unlikely to occur in the future before awarding Mr. Mullins expanded access. That section states that, if a court has reasonable grounds to believe that a child has been abused or neglected, it must then determine whether that abuse or neglect is likely to occur if custody or visitation rights are granted. The court, however, never made a finding that Mr. Mullins abused or neglected A.M., and therefore FL § 9-101 was not implicated.[5]

II. *SUA SPONTE* RECUSAL

Ms. Ouellette next argues on appeal that the trial court erred when it failed to recuse itself *sua sponte* due to its bias favoring parties who participate in methadone programs. Alternatively, she argues that she was denied due process due to the trial judge's bias.

Ms. Ouellette recognizes that she failed to preserve this argument for appeal—she never moved to have the trial judge recused. She cites to *Surratt v. Prince George's Cty.*,

[5] Ms. Ouellette claims that because her testimony was apparently accepted as genuine, that the court inferentially "found" that Mr. Mullins neglected A.M. We see nothing in this record to indicate that the court made a finding of neglect, either explicitly or implicitly.

320 Md. 439, 468 (1990), however, and claims that this argument may be considered on appeal despite her failure to raise it below. *Surratt*, however, does not stand for that proposition. In *Surratt*, the appellants received favorable jury verdicts, only for the trial judge to grant the appellee's motion for remittitur. *Id*. at 461. Appellants then moved for the remittitur to be vacated, and, of significance here, also moved for the trial judge to recuse himself. *Id*. Nowhere in the opinion did the Court of Appeals state that a recusal argument would be preserved for appeal despite never being raised with the trial court. To the contrary, *Surratt* provides that,

> in order to trigger the recusal procedure we prescribe, *a motion must be timely filed*. To avoid disruption of a trial, or the possible withholding of a recusal motion as a weapon to use only in the event of some unfavorable ruling, the motion generally should be filed as soon as the basis for it becomes known and relevant.

Id. at 468-69 (emphasis added). Ms. Ouellette waived her recusal argument by failing to raise it during the trial. Md. Rule 8-131(a).

In claiming a violation of her due process rights, Ms. Ouellette simply cites to *Dinkins v. Grimes*, 201 Md. App. 344, 361 (2011) for the proposition that, "[T]he right to a fair and impartial trial is no less deserving of protection in a civil setting as it is in the criminal courts." We see nothing in the record to show that Ms. Ouellette received an unfair or partial trial. Furthermore, like her claim for recusal, Ms. Ouellette failed to preserve this argument for appellate review by not raising it below.

III. JUDICIAL NOTICE OF MATTERS OUTSIDE THE KEN OF THE LAY PERSON

According to Ms. Ouellette, in rendering its factual findings from the bench, the "trial court chose to take judicial notice of the trial judge's own personal 'expert' opinions on the topics of addiction and methadone management." She states that "the trial judge himself admitted that his personal opinions on the subject were not generally known because the trial judge alleged to have undergone advanced training on these topics." We assume she is referring to the court's statement:

> This [c]ourt has been involved in cases like this for 40 years, not only sitting where your lawyers are sitting in custody cases, but I've been involved in the criminal dockets for 22 years. I'm in my 22nd year.
>
> I think I understand addiction as well as anyone can. And the reason I do is because I have seen hundreds, thousands of people who are addicted. And I recognize -- I know and I've received training across the country, including at the National Institute[s] of Health from some of the top scientists who deal with addiction.
>
> And that issue is one of the most pressing issues that this country faces. We are in a crisis of -- of drug overdoses. And having received all of that training and you haven't, ma'am, and I think it might help -- it might have been helpful, it might still be helpful moving forward if you actually got some of that. Your instinct was that [']you need to get off it.['] And I believe that you were very correctly motivated, but the science doesn't support what you -- what you would like -- wanted him to do. And that is to simply go cold turkey.

The court did not need to take judicial notice of the fact that quitting a substance "cold turkey" could be therapeutically contraindicated because it heard evidence supporting that proposition. Mr. Mullins explained that dramatically reducing his methadone dose was a poor decision when he testified that he "went against the doctor's orders and . . . rapidly decreased [his methadone dose]." Additionally, Mr. Mullins agreed

with the court that he could not simply quit methadone without facing harmful side effects, and that he had, at the direction of professionals, gradually reduced his dose from 130 mg to 60 mg. The court did not take judicial notice of facts outside the ken of a lay person; the court heard evidence that abruptly quitting methadone would be detrimental to Mr. Mullins's health. Even assuming that the court had improperly taken judicial notice of facts regarding abruptly quitting methadone, those findings were immaterial to its conclusion that Mr. Mullins was a fit parent, that he was adhering to his recovery program, and that A.M. benefited from expanded access. We perceive no error.

IV. MOTION FOR RECONSIDERATION

Ms. Ouellette next argues that the trial court erred "when it refused to reconsider the decision pursuant to Md. Rule 2-534 and/or 2-535 when it was presented with evidence that [Mr. Mullins] had an overdose occur in his home just days after the trial."[6] In her motion for reconsideration and to suspend visitation, filed on September 26, 2017, Ms. Ouellette alleged that "an overdose from opiates had occurred proximate to [Mr. Mullins's] home" and that Mr. Mullins was friendly with the person who had overdosed. Without holding a hearing, the court denied Ms. Ouellette's motion.

Maryland Rule 2-534 governs the court's revisory power over judgments. That rule provides that:

[6] Although Ms. Ouellette filed her "Rule 2-534" motion for reconsideration twelve days after the court's Judgment of Absolute Divorce, Rule 2-535 allows a trial court to "take any action that it could have taken under Rule 2-534" if the action was tried before the court.

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Appellate review of a court's ruling on a 2-534 motion is typically limited in scope. *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015) (citing *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 397 (2010)). "In general, the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion. The relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse." *Id.* (internal citations omitted).

In her motion, Ms. Ouellette claimed that one of Mr. Mullins's friends, who lived with Mr. Mullins, overdosed on opiates shortly after the court entered its Judgment of Absolute Divorce. She claimed that this event cast doubt on Mr. Mullins's credibility, and caused concern for A.M.'s safety during her newly ordered visits with Mr. Mullins. Mr. Mullins responded to Ms. Ouellette's motion by claiming that he was unaware that his friend used drugs, that the friend did not live with him, and that A.M. was not near the friend when he was found unconscious. Also in his response, Mr. Mullins pointed out that Ms. Ouellette "filed a domestic violence (child-abuse) petition" against him in the District Court after she filed her motion for reconsideration, but before the court could rule on that

motion. Presumably, the domestic violence petition was based on the same events recited in the motion for reconsideration. Following a contested hearing, the District Court denied Ms. Ouellette's domestic violence petition.

Because the facts providing the basis for the motion were in dispute, and apparently rejected by the District Court following a contested hearing, and in light of the highly deferential standard afforded to trial courts on motions for reconsideration, we cannot conclude that the trial court erred in denying the motion.

V. DEPARTURE FROM CHILD SUPPORT GUIDELINES

Finally, Ms. Ouellette argues that the trial court erred by departing from the guidelines in its child support award. In her brief, she claims that "the trial court has made a bald assertion that a downward deviation is somehow appropriate to assist Mr. Mullins in having housing and continuing treatment – but there was no testimony to support that this was even necessary." We agree that the record does not support the court's reasoning for departing from the guidelines.

"F.L. § 12-202(a)(1) requires a court to use the child support guidelines 'in any proceeding to establish or modify child support, whether pendente lite or permanent.'" *Beck v. Beck*, 165 Md. App. 445, 449 (2005). "Child support orders ordinarily are within the sound discretion of the trial court." *Shenk v. Shenk*, 159 Md. App. 548, 554 (2004). Regarding the use of child support guidelines, "There is a rebuttable presumption that the amount of child support which would result from the application of the guidelines . . . is the correct amount of child support to be awarded." F.L. § 12-202(a)(2)(i). That

presumption, however, "may be rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case." F.L. § 12-202(a)(2)(ii). Regarding a departure from the guidelines, FL § 12-202(a)(v) provides that:

> 1. If the court determines that the application of the guidelines would be unjust or inappropriate in a particular case, the court shall make a written finding or specific finding on the record stating the reasons for departing from the guidelines.
>
> 2. The court's finding shall state:
>
> A. the amount of child support that would have been required under the guidelines;
>
> B. how the order varies from the guidelines;
>
> C. how the finding serves the best interests of the child; and
>
> D. in cases in which items of value are conveyed instead of a portion of the support presumed under the guidelines, the estimated value of the items conveyed.

In *Reuter v. Reuter*, we vacated and remanded a trial court's child support award where the record did not explain how the court arrived at its award. 102 Md. App. 212, 236 (1994). There, the trial court awarded $1,250 in monthly child support, but never made express findings regarding Mrs. Reuter's income, the cost of work-related child care, extraordinary medical expenses, school expenses, or Mr. Reuter's cost of health insurance coverage. *Id.* at 235-36. In other words, the court failed to make any express findings necessary to determine the appropriate amount of child support under the guidelines. *Id.* In vacating the child support award, we explained that "The record lacks a definitive basis for our review. We cannot determine whether the court's findings of fact were clearly

erroneous, nor can we determine whether the court properly made the required calculations." *Id*. at 236.

Here, to justify the downward departure to $550.00 per month in child support, the trial court provided the following in a footnote in the Judgment of Absolute Divorce:

> Pursuant to § 12-202(v) of the Family Law Article, this [c]ourt finds that [Mr. Mullins] is employed by MAXIMUS Heating & Cooling of MD LLC. [Mr. Mullins] makes $3,987.00 in gross monthly income and $2,198.52 in net monthly income. [Mr. Mullins] currently has a pre-existing child support obligation of $460.00 per month. The parties have one child, [A.M.], who is three (3) years old. [Mr. Mullins] suffers from drug addiction and is enrolled in the Head Start methadone program in Annapolis.
>
> Additionally, this [c]ourt finds that it is in the child's best interests for [Mr. Mullins] to make monthly child support payments in an amount which enables him to be financially capable of surviving, continuing his drug treatment program, and providing a suitable living environment and the appropriate care for the parties' minor child. A deviation from the guidelines is appropriate to ensure that [Mr. Mullins] is capable of acting in [A.M.'s] best interests.
>
> Accordingly, this [c]ourt concludes that the application of the guidelines in this case would be unjust. A downward deviation from the recommended guidelines amount of $829.00 to $550.00 per month as child support is just, appropriate, and in the best interests of the child.

As in *Reuter*, we cannot determine whether the trial court's findings of fact were clearly erroneous because the record lacks a definitive basis for our review. Here, the court found that a departure from the guidelines was appropriate to "[enable] [Mr. Mullins] to be financially capable of surviving, continuing his drug treatment program, and providing a suitable living environment and the appropriate care for the parties' minor child." The court, however, made no findings concerning: (1) the costs necessary for Mr. Mullins "to be financially capable of surviving[;]" (2) the costs associated with his drug treatment

program; or (3) the costs associated with "providing a suitable living environment" for A.M.

Aside from the court's failure to make explicit findings on these issues, the record is lacking as to what those costs actually were. For instance, the record does not reveal the cost of Mr. Mullins's methadone treatment at New Journey. Additionally, although Mr. Mullins testified that he was living with his mother and step-father, the record is silent as to his expenses associated with that living arrangement. Because the record does not support the reasoning that the trial court relied upon to depart from the guidelines, we "cannot determine whether the court's findings of fact were clearly erroneous." *Id.* Accordingly, we must vacate and remand the child support award for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED IN PART AND VACATED AND REMANDED IN PART. COSTS ASSESSED 75% TO APPELLANT AND 25% TO APPELLEE.