Circuit Court for Montgomery County
Case No. 166577FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1576

September Term, 2024

ABDULLA DAMLUJI

v.

DIALA EL-MAOUCHE

Leahy,
Kehoe, S.
Sharer, Frederick, J.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 24, 2025

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

Cross-appellants divorced in 2016 and entered into a marital settlement agreement pursuant to which they agreed, among other things, to share legal and physical custody of their minor child, C. In 2023, the parents each filed the underlying cross-motions to modify custody and child support. Following a hearing, the Circuit Court for Montgomery County entered an order on September 26, 2024, modifying physical and legal custody, and child support. The parties filed timely appeals.

Appellant/Cross-Appellee Abdulla Damluji ("Father") challenges the circuit court's decision to modify legal custody on two fronts. *First*, Father avers the court erred "when it modified the parties' existing custody order without first determining whether there has been a material change in circumstances that affects the child's welfare." *Second*, Father contends the court erred and abused its discretion in awarding Mother tie-breaking authority "without conducting an appropriate and thorough best interest[s] analysis."

Appellee/Cross-Appellant Diala El-Maouche ("Mother") argues the circuit court "erred and abused its discretion in denying Mother before and aftercare costs when Father either agreed or unreasonably withheld his consent to such costs."

For the reasons explained in our discussion below, we affirm in part, and vacate and remand in part.

BACKGROUND

Marital Settlement Agreement

Divorce Proceedings and Judgment of Absolute Divorce

Mother and Father married in 2014, and C., their only child together, was born in

December 2016. Mother and Father are medical doctors. In December 2019, Mother filed a "complaint for limited divorce, child custody, child support, and other relief[,]" and Father filed a countercomplaint and answer. Mother later amended her complaint to seek absolute divorce.

On July 23, 2020, the parties entered into a comprehensive Marital Settlement Agreement (the "Agreement") that specified, among other things, their agreement as to legal and physical custody of C., child support, marital property, and alimony. The Agreement was then incorporated, but not merged, into the Judgment of Absolute Divorce ("JAD") entered in the circuit court on August 25, 2020.

The Agreement

The Agreement provided that the parties would have joint legal and shared physical custody of C., whom it referred to as "the Child." Specifically, regarding legal custody, the Agreement provided as follows:

> Legal Custody. **The parties shall have joint legal custody of the Child and shall jointly make the major decisions regarding the Child, including decisions regarding medical care, education, and religious upbringing.** Medical decisions shall be made jointly by the parties; however, in the event the custodial parent is unable to reach the other parent, then the custodial parent may make a medically emergent decision binding on the parties that the custodial parent believes is in the best interest of the Child (and the custodial parent shall inform the non-custodial parent as soon as possible thereafter). **If the parents reach an impasse on a legal custody issue, they shall first consult with parent coordinator, Gwen McCleod, Esq. (or another mutually agreed upon parent coordinator),** for no more than three (3) hours before seeking judicial relief, with the costs of the parent coordinator to be shared by the parties in proportion to their gross annual incomes at the time the expense is incurred.

(Emphasis added).

The Agreement also outlined a custody-sharing schedule, which consisted of three separate phrases: (1) Pre-Elementary School; (2) Early Elementary School; and (3) Elementary School. The initial, "Pre-Elementary School" phase, which concluded on August 1 immediately preceding C.'s first day at school in 2022, granted Father custody every other weekend—from Friday evening through Monday morning—and on Tuesday and Thursday evenings from 5:00 p.m. to 8:00 p.m. The schedule then transitioned to the "Early Elementary School" phase, which continued until the child entered fourth grade, providing Father with extended custodial time every other weekend—now Friday evening to Monday morning—and every other Tuesday and Thursday evenings from 5:00 p.m. to 8:00 p.m. During the final, "Elementary School" phase, which was intended to last until C. turns 18 years old, Father was awarded custodial time every other Monday evening from 5:00 p.m. to 8:00 p.m. as well as every other weekend—Friday evening to Monday evening—and every other Tuesday evening through Friday evening. The parties "agree[d] to maintain flexibility and good faith to make adjustments" to the custody-sharing schedule "as may be required by either party [due to] their professional and personal commitments as well as the needs of the Child."

Finally, regarding childcare expenses, paragraphs A(3) and A(4) of the Agreement provided as follows:

> A. Child Support From and after the first day of the first month following the date of this Agreement . . . the expenses for the Child shall be paid as follows:
>
> * * *
>
> 3. Education, Daycare, Summer School and Summer Camps.

> **Husband shall pay <u>any mutually agreed upon (in advance)</u> school tuition, licensed daycare, before and aftercare, summer school and summer camp expenses directly to the providers as such expenses become due (with neither party to unreasonably withhold his or her consent).** In the event that Wife advances the cost, Husband shall reimburse Wife within fifteen (15) days of being presented with a bill, invoice or receipt showing payment.
>
> <u>4. Child Care Expenses</u>. Child care expenses not specifically addressed in the preceding paragraph, to include a babysitter or nanny shall be the sole responsibility of the party contracting for or employing the child care provider.

(Emphasis added).

Motions for Modification

On July 27, 2023, Mother filed a motion seeking, among other things, to modify physical custody and to enforce the Agreement regarding childcare costs. Regarding physical custody, Mother claimed that Father's non-compliance with the custody schedule amounted to a material change in circumstances, and that it was in C.'s best interests to set a new schedule "that is more line with the actual amount of time that the child spends with his mother (on average, 28 days per month) and the actual time that he spends with his father (on average, 2 days per month)." In support of her request to modify child support, Mother alleged that Father's "annual income had increased substantially since the time of the parties' Agreement. In seeking to enforce the Agreement with regard to childcare costs, Mother claimed that Father failed to "fully pay for all of [C.'s] necessary work-related childcare[,]" accumulating arrears over $8,000. She emphasized that she "continues to incur additional childcare costs as [Father] does not regularly exercise his custodial

time[.]"[1]

Father filed a counterclaim and an answer. In his counterclaim, Father alleged that, "[s]ince entry of the JAD incorporating the [Agreement], substantial and material changes in circumstances have occurred, warranting a modification of legal custody, [C.'s] physical custody schedule, and child support." Father described the changes in circumstances to include: 1) C. was struggling in school and was "no longer able to handle French as the primary language instruction at the French School"; (2) Mother insists that C. continue in the French language school and the "parties have reached an impasse on the child's school enrollment"; (3) "Mother has repeatedly excluded Father from medical care decisions" for C., for example, by "tak[ing] the child to psychotherapy sessions without Father's knowledge or consent"; (4) "Mother makes unilateral decisions when the parties reach an impasse on legal custody issues"; (5) Mother "regularly subjected" Father to "disparaging and unproductive language" when communicating about C.; (6) C., now in the second grade, has "a more intense school curriculum" as well as homework and extracurricular activities; (7) Mother's "income from employment has increased from the date of entry of the JAD"; and (8) "Mother has hired an unlicensed au pair to provide household services at her home" and demanded Father to "pay for the costs of the au pair as 'daycare' for the child[,]" even though he had never agreed to do so. Father alleged that it was "in the child's best interests for the parents to have joint legal custody with the Father having tie-breaking

[1] In addition, Mother alleged that Father, having agreed to pay for C.'s French language tutor costs up to $100 per week, "abruptly stopped paying for the tutor" in April 2023. The issue of Father's payment for the French language tutor is not before this Court.

authority for educational and medical legal custody issues."

In response, Mother amended her motion for modification, requesting that the circuit court "[m]odify legal custody to provide [Mother] with tie-breaking authority for legal custody decisions." She alleged that Father was unable to make medical decisions that were in C.'s best interests because, among other reasons, he was opposed to C.'s neuropsychological assessment for ADHD. She also stated that Father "frequently ignore[d] her communications" regarding C. and his "consistent lack of involvement and lack of responsiveness about legal custody decisions for the minor child" constituted a material change in circumstances warranting modification of legal custody.

The Modification Hearing and the Circuit court's Ruling

On July 3, 2024, the circuit court conducted a hearing on the parties' respective motions for custody modification. At the time of the modification hearing, Mother had been living in Bethesda, near C.'s school, since October 2022. Father was living in Mclean, Virginia, and working as an interventional cardiologist for multiple hospitals in northern Virginia. Father's mother—C.'s paternal grandmother—was also living near Father's home. C. was seven and a half years old, starting his third grade. At the outset of the hearing, Father's represented that he no longer requested tie-breaking authority.

Mother's Testimony

Mother recounted Father's failure to follow the agreed-upon custody-sharing schedules. She claimed that Father never visited C. on weekdays and, except for every other weekend, did not spend time with the child during summer or spring breaks. Father

also consistently returned C. on Sunday evenings, even after his weekend custodial time was extended to Monday morning under the Agreement. According to Mother, Father's weekend visitation became even more sporadic when he started the MBA program, and as a result, his time with C. was reduced to "mostly one weekend a month" during the period between 2022 and 2023. Mother had to ask a babysitter, Ms. Vargas, to come and provide care for C. when Father failed to exercise his custodial time.

In addition to Father's non-compliance with the custody-sharing schedule, Mother detailed his lack of involvement in C.'s care over years. She claimed that she and Ms. Vargas were primarily responsible for taking C. to his extracurricular activities throughout the year—including skiing, baseball, soccer, swimming, karate, Arabic school, and summer camp. According to Mother, Father only took C. to tennis every other Sunday and "to a soccer one time" a few years prior. When C. graduated his kindergarten, Father did not come to his graduation. Mother also claimed that she was responsible for taking C. to medical appointments and attending parent-teacher conferences. She acknowledged that Father took care of C. when she traveled for work, but emphasized that it only "happened two times in the past four years." Mother urged that she be given tie-breaking authority because she was the "default parent" for C.

Mother denied that Ms. Vargas performed any unrelated household chores, emphasizing that she employs "a separate housekeeper" for weekly cleaning. Mother also denied ever having hired an au pair. Mother claimed that, although Father had asked Ms. Vargas to care for C. when he could not come during the week, he refused to fully

reimburse her for the childcare expenses. Mother testified, and evidence showed, that she sent the following email to Father in September 2023:

> 3rd reminder: for Saturday, September 9, you had agreed for [Ms. Vargas] to take [C.] to karate because you were on call. You owe her $60 which as of yesterday you still have not paid.
>
> For last week, you said you would pay for [Ms. Vargas], since you are unable to pick him up on Tuesday and Thursday, as of yesterday, you still have not paid her $140.
>
> - for today you had paid for soccer from 3-5, let me know if you want to pick him at five or you want to pay [Ms. Vargas] so she can do to 8.

Father responded to the email shortly afterwards:

> I will send her the $60 because I promised to pay it. That is it. I am not paying for the rest below. I paid for after school on my day. He will have to come to VA on my days. I can take him this coming weekend. More to come.

Despite this email exchange, Mother stated that Father did not make any arrangements for C. to come to his home in Virginia after school, and that she continued to incur afterschool childcare expenses on Father's custodial days during the week. A "summary chart," which Mother had created to summarize various expenses for C.'s care, was admitted into evidence without objection.[2]

Regarding C.'s ADHD evaluation, Mother testified that C. received good grades at school, but his teachers had raised "a lot of issues" regarding his behavior. In regard to C.'s need for ADHD assessment, Father maintained that C. was "fine," but Mother told Father that he was "only with [C.] on the weekend" and "not there in school or when

[2] We discuss the summary chart in further detail below.

homework is involved[.]" Mother took C. for neuropsychological tests and received a report back, but admitted that she did not provide it to Father. After the assessment, the school provided accommodations for C., and the child's behavior improved. Mother stated that she subsequently emailed Father, asking him to submit the invoices for assessment to insurance, but he did not respond.[3]

Mother acknowledged that Father began spending more time with C. during the six months leading up to the hearing, as he consistently exercised his overnight visitation every other Friday and Saturday. She stated that it would be in C.'s best interest to give Father custodial time every other weekend, but not on weekdays, given logistical challenges and C.'s need for a more "predictable schedule."

Mother also testified about the parties' communication issues, stating that Father spoke to her in a disparaging way when he was upset. Several text message exchanges illustrating this were admitted into evidence without objection. One text message exchange unfolded as follows:

> [MOTHER:] Per agreement you're supposed to be pick[ing] [C.] from school at 3:30. Is there a reason why you don't do that? You asked for it.
>
> [FATHER:] You said 530-60
>
> [MOTHER:] Not my problem really.[4] You asked for it.

[3] At the modification hearing, Father's counsel represented that he agreed to pay for the assessment, totaling $3,925.

[4] This message was sent in response to an earlier text message from Father that was not part of the exhibit.

> [FATHER:] Ok where is he now. So I can tell her. You only want money. (laughing emoji)

Mother explained that this conversation took place "on a Friday where [Father] was supposed to pick [C.] up at a certain time, and he was late, and [Mother] had a commitment at 7:00." In another text message conversation, Father called Mother "a lowly beggar" and in yet another string of messages, Father told Mother, "don't be an imbecile[,]" "We are driving you idiot[,]" and "I will never forgive you." When Mother replied, "Look who's talking. OK. Good[,]" Father stated, "F off malignant piece of crap[,]" "What a trash[,]" "F off now."

Mother also claimed that Father had spoken to C. about her disparagingly. For example, according to Mother, C. asked her, "Papa said you are taking him to court, and there will be a judge. Why are you doing that?" Mother also stated that on several other occasions, C. had told her, "Papa pays everything for me" and "Papa thinks . . . you're lazy . . . [Y]ou want to take money from him because you don't want to work." Mother denied ever making any disparaging statement about Father. Mother acknowledged that her communication with Father needs to improve and expressed her willingness to work with a parent coordinator.

Father's Testimony

Father acknowledged that he did not exercise all of his custodial time as provided under the Agreement. Although Father expressed his wish to spend more time with C., he identified several obstacles, including his work schedule and "pressures from [Mother] that she is not willing to . . . make modifications in terms of overnight custody of [C.]" Still,

Father stated that he often helped with C.'s homework and afterschool work during weekends. Father described C. as "hyperactive[,]" "engaging" and "sharp."

Father agreed that it would be in C.'s best interest to modify physical custody, but he proposed having C. with him from Thursday to Sunday for one week, and from Wednesday to Friday morning for another week. Father stated that he could pick C. up from aftercare program at school between 5:00 p.m. and 5:30 p.m. on Wednesday, Thursday, and Friday, as he has a flexible schedule on those days, and that he could drive C. to school on those days. Father acknowledged that he has to leave C. with his paternal grandmother when he receives a call from his hospital, but explained that "[i]t takes about an hour or two hours" and he does not "have to . . . be absent from [C.] for a long time."

Father related that Mother "makes a lot of decisions unilaterally without talking to [him]" and then "sends [him] a bill[.]" He stated that when he tried to improve his communication with Mother over various issues, including custody-sharing schedule, "the resistant [sic] was from her side . . . not mine." Father also explained that he had initially consented to hiring Ms. Vargas, but stopped bringing her for C.'s care in September 2023, after realizing that Mother was using her for household chores, not just childcare. Thus, he maintained that he was only willing to pay for C.'s aftercare at school.

Nevertheless, Father acknowledged that Mother is "an excellent mother" who is "involved in [C.'s] education" and "cares about him" both emotionally and physically. Regarding C.'s ADHD, Father stated that the parties are "eighty percent on the same page" and that they are "all in agreement on most medical decisions." He expressed his

willingness to work with a parent coordinator who he hoped would "listen to [his] side of the story" and facilitate "a bilateral discussion" between the parties. When asked if he ever discussed the ongoing litigation with C., Father explained that his statements "got perceived out of context" and that he only meant to tell the child that he "ha[d] to get . . . financial resources . . . for [C.'s] school and for other necessities of his living."

After the close of evidence, Mother's counsel requested that the court award tie-breaking authority to Mother, highlighting Father's "insulting texts and emails" to Mother and his lack of involvement in C.'s day-to-day activities. Regarding childcare expenses, counsel emphasized that Father initially consented to paying for the babysitter but then abruptly changed his mind without offering any other alternatives.

Father's counsel argued that joint legal custody—without tie-breaking authority—was in C.'s best interests. Counsel applied each of the factors articulated in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406, 420 (1978) and *Taylor v. Taylor*, 306 Md. 290, 296 (1985), and concluded that the parties were "pretty much on the same page with everything." Regarding childcare expenses, counsel represented that the costs of C.'s before- and aftercare program at school were $2,200 per semester. Counsel stated that "dividing that by 12, it's $335 a month to be included in the work-related childcare expensive [*sic*] line in the child support guidelines."[5] Following the

[5] Although the parties' combined income was above the level at which the Maryland Child Support Guidelines apply, they agreed that their child support obligations should be calculated by extrapolating the guidelines.

closing arguments, the circuit court directed the parties to submit proposed findings of facts and conclusions of law, and then took the matter under advisement.

Circuit Court's Ruling

On September 24, 2024, the circuit court announced its ruling, which, in relevant part, granted Mother tie-breaking authority but denied her work-related childcare expenses. The court issued a nearly identical written opinion and order two days later.[6]

The court began by summarizing the procedural and factual backgrounds of the case, including relevant provisions from the Agreement and the parties' finances. The court addressed the issues with communication between the parties:

> Both parties have admitted that their communication in co-parenting their son could be improved; however, [Mother] accuses [Father] of instigating many of these communication issues by being aggressive and dismissive in his interactions with [her]. Some specific examples of this include berating [Mother], accusing her of only wanting money from him, and disparaging [Mother] in front of their child. [Mother] testified that the child has made comments asking [her] why she is taking his father to court and that he supposedly pays for everything he (the child) and [Mother] have. [Mother] claims that [Father] tends to focus on finances whenever they discuss their child and his activities.
>
> [Father] does not deny many of these accusations, admits to some of them, and correspondence via email and text confirm [Father's] tendency to be aggressive towards [Mother] and uninvolved in several aspects of his child's life [sic] physical and legal custody.

The court then outlined the relevant legal framework as follows:

[6] The written opinion and order were nearly identical to what the court read into the record, except that, unlike the court's oral ruling, they specified the amount of child support and arrears Father was to pay. On the day the court announced its ruling, with the parties' consent, the court also entered an order appointing a parenting coordinator.

> In determining physical custody, the primary concern is the best interest of the child. *Azizova v. Suleymanov*, 243 Md. App. 340, 347 (2019), *cert. denied* (2020). In making that determination, the Court must consider the factors set forth in [*Montgomery County Department of Social Services*] *v. Sanders*, 38 Md. App. 406, 420 (1978). Those factors include:
>
> 1) fitness of the parents; 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 the parents and opportunity for visitation; 9) length of separation from the natural parents; and 10), prior voluntary abandonment or surrender. *Id.* (internal citations omitted)
>
> "Legal custody carries with it the right and obligation to make long-range decisions involving education, religious training, discipline, medical care, and other matters with major significance concerning the child's life and welfare." *Taylor v. Taylor*, 306 Md. 290, 296 (1985). Joint legal custody means that "both parents have an equal voice in making those decisions and neither parent's rights are superior to the other." *Id.* The most important factor for a [C]ourt to consider before awarding joint custody is the capacity of the parents to communicate and to reach shared decisions affecting a child's welfare. *Santo v. Santo*, 448 Md. 620, 624 (2016).

The court determined that continuing joint legal custody and awarding Mother tie-breaking authority were in C.'s best interests, reasoning as follows:

> This Court finds that both parents are capable and fit parents. The Court agrees with both parents that joint legal custody remains in the best interest of their child; however, the Court also finds the child would benefit from rewarding the [Mother] tie-breaking authority over legal custody matters.

The court further specified that "[b]efore tie-breaking authority can be exercised, the parties must meet with a Parent Coordinator, to be appointed in this matter in a separate order, for at least one session of no more than two (2) hours[.]"

Regarding physical custody, the court found Mother's proposed custody schedule to be in C.'s best interests and modified Father's visitation to every other weekend, from

Friday after school until 6:00 p.m. on Sunday. The court also noted that the parties agreed that the parent coordinator could assist with their communication and any custody dispute resolution.

Subsequently, turning to Mother's claim for work-related childcare expenses, the court stated:

> [Mother] claims that she has had to leave work early or retain child care and incur expenses on many occasions due to [Father]'s failures in adhering to the current custody schedule. Specifically, [Mother] specifies three time periods in which she claims to have retained private child care services due to [Father's] failure: (1) before and- aftercare provided between September 21 and September 22nd between 7:00 p.m. and 9:00 p.m. totaling $5,131; (2) before and- aftercare provided between September 2022 and September 2023 for care on Tuesdays and Thursdays during [Father's] custodial time, a remaining total of $1,710 ([Father] previously paid two-thirds of the total expense according to [Mother]); and (3) before and-aftercare provided between September 2023 and the present as of the trial for care on Tuesdays and Thursdays during [Father's] custodial time totaling $4,124. These work-related expenses total $10,965.[7]
>
> [Father] admits, and evidence revealed at trial support, that [he] routinely failed to adhere to current physical custody order and communicate with [Mother] regarding his availability to exercise his custodial time. However, [Mother] has failed to provide evidence sufficient that the three aforementioned work-related child care expenses totaling $10,965 is an accurate calculation of those expenses**. [Mother's] listed time frames of September 2021 through September 2022, September 2022 through September 2023 and September 2023 through present—as written, these timeframes are 13 months long or longer and overlap temporally; it is thus unclear whether [Mother's] calculations result in "double-dipping" of multiple Septembers between each timeframe. Given this ambiguity, the Court elects not to award [Mother] these work-related expenses.**

[7] This appears to be a mistake, as Mother's summary chart, which the circuit court appears to be referencing, shows "[b]efore/after care" expenses between September 23 and the time of the modification hearing as "$4,214.00[,]" not "$4,124."

(Emphasis added). A child support guideline attached to the court's order showed Father's obligation for work-related childcare expenses as $335.

Following the entry of the judgment, Father noted a timely appeal, challenging the circuit court's award of tie-breaking authority to Mother.

Mother's Motion to Alter or Amend

Within ten days after the circuit court entered the judgment, on October 7, 2024, Mother filed a "motion to alter or amend order" under Maryland Rule 2-534, requesting, among other things, that Father be ordered to pay Mother "$11,055 for work-related childcare expenses [she] incurred from September 2021 through trial" and that the court remove Father's obligation of "$335 for work-related childcare expenses . . . from the child support guidelines[.]" Mother asserted that "[p]aragraph A(3) . . . of the Agreement provides that [Father] shall pay the costs of all licensed daycare and before and aftercare" and that Father did not dispute his failure to pay these costs. Next, citing her summary chart, she argued that "there is no ambiguity in the time period and amounts that [she] incurred for work-related childcare from September 2021 through the trial." In the alternative, even if the summary chart lacked clarity in certain parts, she argued, "the underlying supporting exhibits confirm that there was no double counting of work-related childcare expenses during the time periods listed."

Following a non-evidentiary hearing on Mother's motion, the circuit court issued another written "opinion and order," denying, in relevant part, her request for childcare expenses that she had incurred. The court highlighted that the Agreement requires any

work-related childcare expenses to be "*mutually agreed upon (in advance)*." Thus, the court reasoned, requiring Father to "pay the costs of all licensed daycare and before and aftercare," regardless of whether he had consented, would undermine the plain language of the Agreement. The court further noted that it failed to find any "evidence of advanced mutual agreement in the record" or evidence that Father "unreasonably with[e]ld" his consent. As such, the court reasoned that "the amount of work-related expenses [Mother] incurred is irrelevant" and once again denied her request for such expenses.[8] Mother subsequently filed her notice of appeal.

Additional facts will be supplied in the discussion as necessary.

DISCUSSION

I.

MODIFICATION OF CUSTODY

Parties' Contentions

Father contends that the circuit court "clearly erred and abused its discretion" in modifying the parties' joint legal custody to award Mother tie-breaking authority. Father argues that the court erred by "proceed[ing] as if it were an original custody award without first determining whether any communication or other issues constituted . . . a material change[ ] of circumstances." Next, Father argues that even if the "court did not err regarding the requisite assessment of a material change in circumstances[,]" the court still

[8] The circuit court, however, granted Mother's motion to alter or amend a judgment in part, setting a deadline for Father to pay school-based childcare expenses going forward.

failed to engage in a proper "best interests" analysis before awarding Mother tie-breaking authority. Specifically, Father points out that the court's ruling does not indicate any consideration of factors outlined in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986), other than briefly mentioning "the capacity of the parents to communicate and to reach shared decisions affecting a child's welfare" as "the most important factor."

Mother counters that both parties alleged that material changes in circumstances supported their respective motions to modify; therefore, the court did not err by declining to address the issue based on the parties' stipulation. Next, Mother avers that not only did the court mention *Sanders* and *Taylor* in its ruling, but the parties' also proposed findings of fact and conclusions of law, submitted at the court's request, that "included analysis related to the *Sanders* and *Taylor* factors and how the evidence applied to each factor." Finally, Mother argues that "more than sufficient evidence" supported the circuit court's finding that it is C.'s best interests for Mother to have tie-breaking authority, as there was a "clear track record of Father being uninvolved or being aggressive towards Mother."

Legal Framework

Standard of Review

When reviewing a trial court's child custody determinations, we utilize three interrelated standards of review. *Kadish v. Kadish*, 254 Md. App. 467, 502 (2022) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). First, we apply the "clearly erroneous" standard of review to the court's factual findings. *See id.* (quoting *Yve S.*, 373 Md. at 586). Second,

where the court's custody determination "involves an interpretation and application of statutory and case law," we decide "whether the circuit court's conclusions are 'legally correct' under a *de novo* standard of review." *Barrett v. Ayres*, 186 Md. App. 1, 10 (2009) (quoting *Walter v. Gunter*, 367 Md. 386, 391-92 (2002)).

Finally, once we determine that the circuit court's "ultimate conclusion" was "founded upon sound legal principles and based upon factual findings that are not clearly erroneous," we do not disturb that conclusion absent a "clear abuse of discretion." *Kadish*, 254 Md. App. at 502. As we have instructed, "[a]n abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case." *B.O. v. S.O.*, 252 Md. App. 486, 502 (2021). We do not reverse the circuit court's decision just because we might have ruled differently. *Id.* (citing *North v. North*, 102 Md. App. 1, 14 (1994)). An abuse of discretion is found when "'no reasonable 'person would take the view adopted by the [circuit] court'" or the court "'acts without reference to any guiding principles.'" *Georgia v. Bimbra*, 265 Md. App. 505, 517 (2025) (quoting *Alexander v. Alexander*, 252 Md. App. 1, 17 (2021)).

Legal Custody and Tie Breaking Authority

The term "custody" includes both "legal" and "physical" custody. *Taylor v. Taylor*, 306 Md. 290, 296 (1986). Legal custody of a child "carries with it the right and obligation to make long[-]range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Id.* In turn, "[j]oint legal custody means that both parents have an equal voice in making those

decisions, and neither parent's rights are superior to the other." *Id.* This Court previously recognized that although joint custody is "often preferable to vesting sole legal custody in one parent," it may be challenging due to "unresolved marital issues, lingering anger and hurt about the divorce, conflicts with or over new partners, or fruitless power struggles that revolve only around efforts to 'win' over the ex-spouse, such 'wins' often being a Pyrrhic victory." *Kpetigo v. Kpetigo*, 238 Md. App. 561, 585 (2018) (quoting *Shenk v. Shenk*, 159 Md. App. 548, 559 (2004)).

In order to address these challenges, a court may award joint legal custody with a tie-breaker. *See Santo v. Santo*, 448 Md. 620, 632-33 (2016) (observing that tie-breaking authority "has unquestionably been recognized in Maryland"); *see also Kpetigo*, 238 Md. App. at 585 (noting that "tie-breaking authority 'proactively anticipates a post-divorce dispute'") (brackets removed). We have cautioned, however, that the tie-breaking authority should be exercised only when both "parties are at an impasse after deliberating in good faith[.]" *Kpetigo*, 238 Md. App. at 585 (citations omitted). The purpose of the tie-breaker is to "ensure[ ] each has a voice in the decision making process" by "requir[ing] a genuine effort by both parties to communicate[.]" *Id.* (quoting *Santo*, 448 Md. at 632-33).

Custody Modification and Best Interests of the Child

Section 1-201 of the Family Law Article of the Maryland Code ("FL") (1984, 2020 Repl. Vol. Supp. 2024) confers jurisdiction on an equity court over, among other things, "custody or guardianship" and "visitation of a child[.]" Section 1-201(c) specifies that:

> **(c) In exercising its jurisdiction over the custody, guardianship, visitation, or support of a child, an equity court may:**

> (1) direct who shall have the custody or guardianship of a child, pendente lite or permanently;
>
> (2) determine who shall have visitation rights to a child;
>
> (3) decide who shall be charged with the support of the child, pendente lite or permanently; [or]
>
> **(4) from time to time, set aside or modify its decree or order concerning the child[.]**

FL § 1-201(c) (Emphasis added).

Whenever a court exercises jurisdiction over a child's custody, the child's best interests must be the paramount consideration that guides the court's analysis. *See A.A. v. Ab.D.*, 246 Md. App. 418, 441-42 (2020); *Flynn v. May*, 157 Md. App. 389, 407 (2004).

When presented with a request for modification of child custody or child support, a circuit court must engage in the following two-step analysis: "First, the circuit court must assess whether there has been a 'material' change in circumstance." *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012) (quoting *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005)). This is the "threshold" inquiry. *See Wagner v. Wagner*, 109 Md. App. 1, 29 (1996). Second, "[i]f 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." *Gillespie*, 206 Md. App. at 170. (quoting *McMahon*, 162 Md. App. at 594). The party seeking custody modification must "show that there has been a material change in circumstances since the entry of the final custody order and that it is now in the

best interest of the child for custody to be changed." *Id.* at 171-72 (quoting *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008)).

Thus, "before modifying any agreement 'with respect to the care, custody, education support of any minor child of the spouses,'" a court must determine "if the modification would be in the best interests of the child[.]" *Kpetigo*, 238 Md. App. at 585. In *Kadish*, 254 Md. App. at 504, we delineated the two sets of factors, often collectively referred to as "*Taylor-Sanders*" (or "*Sanders-Taylor*") factors,[9] that the court should consider in assessing the child's best interests:

> In analyzing the best interests of the child, we are guided by the factors articulated in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406, 420 (1977), and, with particular relevance to the consideration of joint custody, *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986). In *Sanders*, this Court listed ten non-exclusive factors: (1) fitness of the parents; (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. 38 Md. App. at 420.
>
> In *Taylor*, the [Supreme Court of Maryland] enumerated thirteen specific, non-exclusive factors, including some that overlap with the Sanders factors: (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)

[9] In the 2025 Session of the Maryland General Assembly, child custody factors were codified for the first time in Maryland in Senate Bill 548, Chapter 484, to be codified at FL § 9-201. Because the new law is not effective until October 1, 2025, FL § 9-201 is not applicable to the issues presented in this appeal.

> sincerity of parents' request; (11) financial status of the parents; (12) impact on state or federal assistance; and (13) benefit to parents. 306 Md. at 304-11.

It is long held that the parents' ability to communicate and reach shared decisions "is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate[.]" *Taylor*, 306 Md. at 304; *see Santo*, 448 Md. at 528 ("*Taylor* stands for the proposition that effective parental communication is weighty in a joint legal custody situation"). When applying this factor, "the past conduct or 'track record' of the parties" is typically considered the "best evidence[.]" *Taylor*, 306 Md. at 307.

The Supreme Court of Maryland instructed that the *Taylor-Sanders* factors are "not intended to be all inclusive, and a trial judge should consider all other circumstances that reasonably relate to the issue." *Taylor*, 306 Md. at 311. We have recognized that it is advisable to leave "the delicate weighing process necessary in child custody cases" to the circuit court, so long as there are sufficient facts in the record to support the court's custody decision. *See McCarty v. McCarty*, 147 Md. App. 268, 273 (2002). We have also noted that "[c]ourts are not limited by any particular list of factors but are instead vested with wide discretion in making decisions concerning the best interests of children." *Kadish*, 254 Md. App. 504-05 (citing *Azizova v. Suleymanov*, 243 Md. App. 340, 345 (2019)).

Analysis

With these principles in mind, we consider whether the circuit court erred or abused its discretion in awarding Mother tie-breaking authority. As previously noted, Father alleges error *first*, because the circuit court modified the parties' legal custody and granted Mother tie-breaking authority "without first determining whether there has been a material

change in circumstances that affects the child's welfare[,]" and *second*, because the court did not "conduct[ ] an appropriate and thorough best interest analysis." Upon review of the record and the applicable law, we do not agree.

As we explained above, when modifying custody, the court must engage in a two-step inquiry, first assessing whether there has been a material change in circumstances and next, if so, what custody arrangement is in the best interests of the child. *See, e.g.*, *Santo*, 448 Md. at 639. However, courts may consider—and resolve—these two steps simultaneously, without making separate findings for each. *Velasquez v. Fuentes*, 262 Md. App. 215, 247 (2024) (quoting *Wagner*, 209 Md. App. at 28-29). We have recognized that the considerations related to the threshold finding of a material change in circumstances may frequently overlap with those pertaining to the ultimate best interests determination. In *Wagner*, we emphasized:

> Certainly, the very factors that indicate that a material change in circumstances has occurred may also be extremely relevant at the second phase of the inquiry—that is, in reference to the best interest of the child. **If not relevant to the best interest of the child, the changes would not be material in the first instance.**

109 Md. App. at 28. Similarly, in explaining the intertwined relationship between the finding of a material change and the best interests of the child standard, the Supreme Court of Maryland has instructed:

> In the limited situation where it is clear that the party seeking modification of a custody order is offering nothing new, and is simply attempting to relitigate the earlier determination, the effort will fail on that ground alone.

* * *

> In the more frequent case, however, there will be some evidence of changes which have occurred since the earlier determination was made. Deciding whether those changes are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child. Thus, the question of "changed circumstances" may infrequently be a threshold question, but is more often involved in the "best interest" determination, where the question of stability is but a factor, albeit an important factor, to be considered.

McCready v. McCready, 323 Md. 476, 482 (1991).

Applying this instruction to the instant appeal, we conclude that this case is not one of the "limited situation where it is clear that the party seeking modification of a custody order is offering nothing new[.]" *Id.* To the contrary, there is ample evidence of changes that followed the entry of the Agreement and JAD in 2020. Just to name a few: C. started a new level at school; Mother moved closer to C.'s school; Father's work schedule changed; and Father had not been able to exercise the custodial time allotted for him under the Agreement. Father does deny that his counterclaim "raised concerns about certain legal custody decisions[.]" Indeed, the counterclaim listed—in paragraphs "A" through "N"—all of the material changes that Father averred had occurred since entry of the JAD, including, that "[t]he parties have reached an impasse on [C.'s] enrollment and Mother refuses to meaningfully engage with the Father[.]"

Even after withdrawing his request for tie-breaking authority at the modification hearing, Father continued to argue, as stated in his brief on appeal, that "certain changes may have existed to warrant a modification of residential custody[.]" He argues on appeal, without citing any authority, that although there were material changes in circumstances sufficient to support a modification of *physical* custody, the court was required to find an

additional, separate, change in circumstances to support a modification of *legal* custody. Our cases do not countenance this restraint on the court's authority. In exercising its jurisdiction in a custody proceeding, the circuit court is granted the authority to exercise all equitable powers required to address the child's best interests under the circumstances presented. *See* FL § 1-201(c)(3) (specifying the circuit court's authority when exercising jurisdiction as an equity court over "the custody, guardianship, visitation, or support of a child[]"); *see e.g.*, *Matter of Marriage of Houser*, 490 Md. 592, 609-10 (2025) ("When custody of a minor child is presented as an issue to the circuit court, the issue of child support is, as a consequence, also properly before the circuit court—whether or not explicitly raised by the parties.") (quoting FL §§ 1-201(c)(3), 8-103(a)).

If, for example, a parent takes a job in a far-away state that spares little time for shared physical custody of their child, the distance and lack of involvement resulting from that change may well affect that parent's ability to maintain both physical and legal custody. *See Kadish*, 254 Md. App. at 507; *see also Touzeau v. Deffinbaugh*, 394 Md. 654, 658, 664 (2006) (holding trial court did not err in awarding "residential and legal custody" to father after father filed a motion for modification of custody alleging the mother's relocation constituted a material change in circumstances). Accordingly, the circuit court will be able to consider not only whether a modification of physical custody is required, but whether a change in legal custody is required as well.[10]

[10] We do not agree with Mother's argument that the circuit court did not need to find a material change in circumstances because "both parties agreed that there had been a (Continued)

Here, the court articulated the material changes in circumstances in its factual findings that supported its change in physical custody—which Father does not contest. With regard to the issue of legal custody, it is important to underscore that the court did not change the existing joint legal custody determination. The only change the court made was to give Mother tie-breaking authority, and that authority may only be exercised by Mother after a two-hour joint meeting with the parent coordinator. Importantly, the court did address the communication problems that had escalated between the parties. Although the court did not specifically state that the changes it addressed to support a modification of physical and legal custody were "material changes in circumstances[,]" it is clear from the court's opinion and order that the court was making that threshold determination.

Turning to Father's second assignment of error, we must determine whether the court failed to engage in "an appropriate and thorough best interest analysis." Father highlights that "[t]he trial judge did not mention any consideration of the *Taylor* factors" other than "the capacity of the parents to communicate and to reach shared decisions affecting a child's welfare." As such, Father argues, the circuit court's reasoning was

material change of circumstances[.]" In cases involving child custody, the circuit court serves a dual role "as both a protector of the child and as the resolver of a dispute between the parents." *McMahon v. Piazze*, 162 Md. App. 588, 593 (2005). The Supreme Court of Maryland has instructed that the requirement of a "material change" serves not just to save parties from the costs of relitigating the same issues but also to preserve stability for the child. *See Domingues v. Johnson*, 323 Md. 486, 498 (1991). Thus, even where parties agree that there is a material change in circumstances, their agreement does not bind the circuit court. *See Houser*, 490 Md. at 610 ("We . . . hold that parents cannot bilaterally agree to waive the issue of child support, thereby precluding the circuit court from considering that issue altogether.").

"sparse and inadequate to justify the award of the tie-breaking authority to Mother[,]" highlighting the Supreme Court of Maryland's caution that "none of the major factors has 'talismanic qualities.'" (Quoting *Taylor*, 306 Md. at 303). We disagree.

It is well-established that courts generally "need not articulate every step of the judicial thought process in order to show that it has conducted the appropriate analysis." *Gizzo v. Gerstman*, 245 Md. App. 168, 195-96 (2020); *see also Wagner*, 109 Md. App. at 50 ("[W]e presume judges to know the law and apply it, even in the absence of a verbal indication of having considered it."). Rather, "[a]t the heart of abuse of discretion review is the notion that the trial court errs when it issues an unreasonable order." *Bajaj v. Bajaj*, 262 Md. App. 435, 450 (2024). In the child custody context, this principle is typically understood to require that the trial court "articulat[e] the logical nexus between the court's factual findings regarding the best interests of the minor child and its custody order." *Id.*; *see also North v. North*, 102 Md. App. 1, 15 (1994) (finding an abuse of discretion where the trial court's restriction on a parent's overnight visitation "does not follow logically from the facts found by the court and has no reasonable relationship to its announced objective").

Here, the circuit court's factual findings, though perhaps not extensive, reasonably and sufficiently support its conclusion that awarding tie-breaking authority to Mother is in C.'s best interests. Specifically, the circuit court noted that while Mother "accuse[d]" Father of "instigating many of the[ ] communication issues" between the parties and "being aggressive and dismissive in his interactions" with her, Father did "not deny many of these accusations and "admit[ted] to some of them[.]" The court further found that

"correspondence via email and text confirm [Father's] tendency to be aggressive towards [Mother] and uninvolved in several aspects of his child's physical and legal custody." Given these findings—which Father does not contest before this Court—it is reasonable for the circuit court to "proactively anticipate[ ] a post-divorce dispute" and conclude that continuation of joint legal custody may become challenging without tie-breaking authority. *See Kpetigo*, 238 Md. App. at 585. As our decisional law instructs, when the court is evaluating the parents' ability to communicate and reach shared decisions, "the past conduct or 'track record' of the parties" is typically considered the "best evidence[.]" *Taylor*, 306 Md. at 307.

In sum, we hold that the trial court did not abuse its discretion in modifying legal custody to award Mother tie-breaking authority.

II.

DENIAL OF MOTION TO ALTER OR AMEND

Relevant Facts

As previously noted, during the modification hearing, the court admitted the summary chart that Mother had created to summarize various expenses for C.'s care. In relevant part, the summary chart contained a section for before and aftercare expenses, which was divided into three periods. For the period "09/2021-09/2022," the summary chart indicated that Father owed to Mother $5,131.00 at a rate of $200 per week, with a note stating, "[Mother] employed [Ms. Vargas] for care from 7:00 am to 9:00 am." Mother explained that because C. was attending kindergarten during this time, and because she had

to go to work at 7:00 a.m., Ms. Vargas came every day, cared for C. from 7:00 a.m. to 9:00 a.m., and took him to kindergarten. Mother denied that Father paid any portion of the childcare expenses for this period.

For the next period, "09/2022-09/2023," the summary chart provided that Father owed $1,710.00 to Mother at a rate of $147 per week, with another note stating that Mother hired Ms. Vargas for Father's (unexercised) weekday custodial time at his own request and "[Father] did not pay the entire cost, and only paid 2/3." Mother clarified that Father paid 2/3 of the childcare costs during this period. When asked whether the Agreement requires Father to pay for all costs, Mother responded, "basically the [A]greement says that he would pay for . . . aftercare" and "if he's not able to make it on his hours, he should arrange for something."

Finally, for the period "09/2023-present," the summary chart showed that Father owed $4,214.00 to Mother at a rate of $140 per week, and yet "[Father] did not provide any payments." Mother confirmed that even after Father had entirely stopped paying for the aftercare, she continued to employ Ms. Vargas because of her work schedule.

Parties' Contentions

Mother contends that the circuit court abused its discretion in denying her recovery of $11,055 for C.'s before- and aftercare expenses. First, she claims that the circuit court erred in finding that the childcare expenses were "not mutually agreed [to]" because Father had initially requested that Ms. Vargas provide care for C. during his scheduled custody during the week. Second, Mother asserts that the court erred in finding "no evidence" that

Father unreasonably withheld his consent. She claims that after Father withdrew his consent to pay for Ms. Vargas, he did not make any childcare arrangement for C., thus leaving her with only two untenable options: leaving C. home alone, or quitting her job to provide care herself. In addition, Mother claims that Father unreasonably refused to pay for the additional childcare costs she incurred for her own work-related needs, expenses she argues were necessary for her to maintain employment while also serving as the primary parent.

Father responds that the circuit court was correct in denying Mother's post-judgment request for work-related childcare expenses. Father observes that the trial court was initially correct in finding that Mother failed to meet her burden of proof regarding the $11,055 childcare expenses, as her evidence was "insufficient regarding accuracy, the timeframes overlapped temporally, there was a 'double-dipping' concern, and her presentation was not clear." Father highlights Mother's testimony that Ms. Vargas does C.'s laundry, folds the child's clothes, and takes him to extracurricular activities, claiming that "[m]any of these services are outside the usual purview of simple childcare services." Father also argues that the circuit court properly denied her motion to alter or amend the judgment to require Father to pay $11,055 because, as the court explained, the plain language of the Agreement does not support Mother's contention that Father was responsible for the expenses of "all licensed daycare and before and aftercare," and there was "no evidence of advanced mutual agreement in the record."

Legal Framework

Motion to Alter or Amend a Judgment

Maryland Rule 2-534, which governs motions to alter or amend a judgment, provides, in relevant parts, as follows:

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. We have emphasized that Rule 2-534 is not a "time machine" for parties to relitigate their cases "better with hindsight." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). We have also noted that trial judges have "boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have been raised earlier but were not." *Id.* Accordingly, a party challenging the denial of a motion to alter or amend a judgment must "carry a far heavier appellate burden on that issue than [the party] would carry" in appealing directly from the underlying judgment. *Id.*; *see also Rose v. Rose*, 236 Md. App. 117, 129 (2018) (noting that appellate review of a court's ruling on the Rule 2-434 motion "is typically limited in scope") (quoting *Schlotzhauser v. Morton*, 224 Md. App. 72, 84 (2015)). "Above and beyond arguing the intrinsic merits of an issue, [the appellant] must also make a strong case for why a judge, having once decided the merits, should in his [or her] broad discretion [have] deign[ed] to revisit them." *Steinhoff*, 144 Md. App. at 484-85.

Where, as here, a party appeals from the denial of a motion to alter or amend a judgment under Rule 2-534, "the standard of review is whether the [circuit] court abused its discretion in declining to revise th[at] judgment." *Bennett v. State Dep't of Assessments and Taxation*, 171 Md. App. 197, 203 (2006) (quoting *Green v. Brooks*, 125 Md. App. 349, 362 (1999)). We have explained that an abuse of discretion may be found "'where no reasonable person would take the view adopted by the [circuit] court' or when the court acts 'without reference to any guiding rules or principles.'" *Johnson v. Francis*, 239 Md. App. 530, 542 (2018) (quoting *Powell v. Breslin*, 430 Md. 52, 62 (2013)). Likewise, the Supreme Court of Maryland has defined abuse of discretion as "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) (quoting *Jenkins v. City of Coll. Park*, 379 Md. 142, 165 (2003)). In an appeal from the denial of a motion to alter or amend a judgment, reversal may be warranted only "where there is both an error *and a compelling reason to reconsider the underlying ruling*." *Schlotzhauser*, 224 Md. App. at 85 (citations omitted) (emphasis added).

Analysis

In determining whether the circuit court properly exercised its discretion in denying Mother's motion to alter or amend, we start with the plain language of paragraph A(3) of the Agreement, which provides as follows:

> 3. Education, Daycare, Summer School and Summer Camps. **Husband shall pay any mutually agreed upon (in advance) school tuition, licensed daycare, before and aftercare, summer school and summer camp expenses directly to the providers as such**

> **expenses become due (with neither party to unreasonably withhold his or her consent).** In the event that Wife advances the cost, Husband shall reimburse Wife within fifteen (15) days of being presented with a bill, invoice or receipt showing payment.

(Emphasis added).

Because the Agreement was incorporated but not merged into JAD, it "survives as a separate and independent contractual arrangement between the parties[,]" and therefore, the general rules governing contract interpretation apply. *Janusz v. Gilliam*, 404 Md. 524, 539 n.10 (2008) (quoting *Johnston v. Johnston*, 297 Md. 48, 56 (1983)). In other words, unless the Agreement is ambiguous, "we give effect to that language as written without concern for the subjective intent of the parties at the time of formation." *Ocean Petroleum, Co., Inc. v. Yanek*, 416 Md. 74, 86 (2010) (citing *Cochran v. Norkunas*, 398 Md. 1, 16 (2007)).

We conclude that the language of paragraph A(3) is clear and unambiguous, and Mother does not contend otherwise. Nor does she dispute the circuit court's reasoning that this paragraph plainly requires Father to pay for childcare services, including, but not limited to, "licensed daycare, before and aftercare," only to the extent that such services have been "mutually agreed upon (in advance)" by the parties. Instead, as we understand it, Mother now argues that because Father had initially agreed to hire Ms. Vargas for his own custodial time,[11] he should be responsible for *all* expenses she had paid to Ms.

[11] Evidence adduced at the modification hearing includes Father's text message on September 20, 2022, asking Ms. Vargas, "[F]or Tuesdays and Thursday's [*sic*] are we able to do 3-5 pm pls instead of 3-6 pm?" and another message on the next day, telling her that (Continued)

Vargas—namely $11,055—unless he offers a "reasonable" alternative.

We are not persuaded by Mother's argument that Father was responsible for *all* of the expenses that she incurred for the childcare provided by Ms. Vargas. Paragraph A(3) of the Agreement does not state that Father is required to propose an alternative childcare plan to avoid "unreasonably withhold[ing] his . . . consent[.]" *See WAMCO, Inc. v. Northeast 400, LLC*, 251 Md. App. 196, 207 (2021) ("[W]hen the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed.") (alterations in the original) (citations omitted). Moreover, Mother's argument ignores the very next paragraph of the Agreement—which states that each party is solely responsible for childcare expenses they incur:

> 4. Child Care Expenses. **Child care expenses not specifically addressed in the preceding paragraph**, to include a babysitter or nanny shall be the **sole responsibility of the party contracting for or employing the child care provider.**

(Emphasis added). Thus, under the Agreement, Father is only responsible for the portion of $11,055 in childcare expenses that he had either specifically agreed to pay for in advance or were incurred during his scheduled custodial time. Accordingly, we do agree with Mother that she is owed *some* reimbursement for childcare expenses, but only for the costs that she incurred during Father's scheduled custodial time when he failed to provide alternative childcare.

---

he "just spoke with [Mother]" and "we will keep the same arrangement from 3 to 6 pm." That, in our view, is clear evidence that the parties mutually agreed in advance to hiring Ms. Vargas to provide childcare during Father's custodial time on weekdays.

The evidence shows that Father withdrew his initial consent to hiring Ms. Vargas and refused to pay for her services in September 2023 after unilaterally telling Mother that C. would "have to come to VA on [his] days." At the modification hearing, Father repeatedly asserted that he stopped paying for Ms. Vargas because he "know[s] for a fact [the money is] being used for something else" and her duties were "not solely related to aftercare[,]" but he did not offer any independent evidence in support these claims. Significantly, Father did not present evidence that he made any arrangements to have C. transported to Virginia on "his days." By failing to provide alternative childcare for C. during Father's custodial time, Father unreasonably withheld his consent to Mother hiring Ms. Vargas to cover Father's custodial time. *See Susan A. v. Louis C.*, 32 A.D.3d 682, 683 (N.Y. App. Div. 2006) (explaining that where a child custody or child support agreement "provides that [a parent's] consent shall not be unreasonably withheld, [the parent] has the burden of supplying a reason for withholding consent") (quoting *Cohn v. Cohn*, 102 A.D.2d 859, 860 (N.Y. App. Div. 1984)); *see also Carpender v. Sigel*, 67 A.3d 1011, 1013-14 (2013) (finding that the mother "did not unreasonably withhold her consent to [her] son's enrollment" at a university, where she had identified other schools as alternative options for the son and explained that the son was not ready for college). In this respect, we disagree with the circuit court's finding that there was "no evidence" of Father's unreasonable withholding of consent.

Thus, to the extent that there is evidence that Mother incurred any childcare expenses due to Father's failure to exercise his custodial time, we cannot say that the circuit

court properly exercised its discretion in denying Mother's request for reimbursement of these expenses. *See Cagle v. State*, 462 Md. 67, 75 (2018) (stating that an abuse of discretion may be found where a court "fail[ed] to consider the relevant circumstances and factors of a specific case"). Therefore, we vacate the denial of Mother's motion to alter or amend a judgment and remand the case to the circuit court, so that the court can determine, based on the record presented to the court at the modification hearing, the specific amount of childcare expenses that Father had either specifically agreed to pay for in advance, or that were incurred during his scheduled custodial time on weekdays.

We note that, as the circuit court observed, Mother's summary chart shows overlapping time periods; and, as Father claims, does not show the extent to which she had incurred childcare expenses because of Father's failure to exercise his custodial time. In her appellate brief, Mother acknowledges the $11,055 figure includes not only "the aftercare expenses [she] incurred during what was supposed to be Father's custodial time," but also those incurred for her "own work-related child care needs." However, the record contains other evidence of childcare expenses—all admitted at the modification hearing—showing various payments made by Mother for Ms. Vargas's service on Tuesdays and Thursdays, the days that Father had agreed to bringing her. For example, Mother's bank statement shows that she paid Ms. Vargas $140 on October 2, 2023 "for Sept 26, 28, 2023" and another $140 on October 6, 2023 for "Oct 3, 5, 2023." (Cleaned up). Neither of the court's orders mentioned this evidence.

Conclusion

For the foregoing reasons, we affirm the circuit court's award of legal custody to Mother, but vacate the denial of her motion to alter or amend a judgment, and remand the case for further proceedings. We hold that the circuit court did not abuse its discretion in awarding Mother tie-breaking authority, as the court properly determined that doing so is in the best interests of the child. However, we found an abuse of discretion in denying Mother's recovery of the childcare expenses that she had incurred during the time that Father had failed to exercise his custody.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED, IN PART, AND VACATED, IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE DIVIDED EVENLY BETWEEN THE PARTIES.