Circuit Court for Harford County
Case No.: 12-C-15-003264

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 1191 & 1798

September Term, 2022

KIMBERLY BARTENFELDER

v.

THOMAS BARTENFELDER

Leahy,
Friedman,
Gill Bright, Robin D.
(Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: November 13, 2023

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

In these consolidated appeals,[1] appellant Kimberly Bartenfelder ("Mother") challenges the order of the Circuit Court for Harford County awarding Thomas Bartenfelder ("Father") sole physical custody of the parties' four children.[2] These parties have been engaged in litigation since at least 2017 regarding their children, their pending divorce, and their respective interests in the businesses they own. In the following opinion, we address whether the circuit court erred in denying Mother's motion to postpone the custody trial, erred in excluding expert testimony and reports on the parties' mental health, or abused its discretion in rendering its custody decision. For the reasons to be discussed, we affirm the judgments.

[1] After the conclusion of the custody trial but before the circuit court issued its decision, Mother appealed pre-trial orders denying her request to postpone the custody trial or, in the alternative, to render the custody decision *pendente lite* rather than final, and prohibiting the parties from offering any expert testimony on the parties' mental health and excluding any previously prepared experts reports. Mother also appealed an October 12, 2022 order denying her motion for an "Emergency Immediate Order" compelling Father to pay certain medical bills "to enable her to see her physicians and to have surgery on October 13, 2022." This Court docketed these appeals as No. 1191, Sept. Term, 2022. After the circuit court issued its custody decision and denied Mother's motion to reconsider that decision, Mother appealed the judgment. This Court docketed the appeal as No. 1798, Sept. Term, 2022. By order dated March 3, 2023, this Court consolidated the appeals. Subsequently, by order dated August 23, 2023, this Court granted Father's motion to dismiss Mother's appeals, other than the custody decision, as non-appealable interlocutory orders. We also, on our own initiative, dismissed Mother's challenge to the court's August 23, 2022 award of alimony *pendente lite* because of a lack of a final written order. *See infra* note 3.

[2] At the time of the custody trial held on August 24 and 25, 2022, the four children were 15 years old (daughter born in 2006), 14 years old (daughter born in 2008), 13 years old (son born in 2009), and seven years old (daughter born in 2014).

BACKGROUND

Mother and Father married in 2003. They first separated in 2015 because, in Father's words, Mother "was drinking pretty heavily" and it "was a very tumultuous situation at the time." He claimed that Mother's mixture of prescription drugs and alcohol has "pretty much been her MO since I've known her." The parties reconciled for a time, but separated again in early 2017 and have remained separated since then.

Upon separating in 2017, Father and Mother agreed that the children would live with Mother. According to their arrangement, which was set forth in a consent *pendente lite* order filed on April 4, 2017, Father had overnight visitation every other Wednesday and every other weekend.[3]

In December 2017, Father filed an emergency motion to modify the *pendente lite* custody order, alleging that Mother had been engaging in "behavior" that "is physically and emotionally damaging for children," asserting, among other things, that Mother drove the children while drinking alcohol. Pursuant to an order dated January 30, 2018, the court amended the *pendente lite* custody and visitation arrangement by giving Father primary custody and Mother visitation rights. Initially, Father and the children lived with Joanne Sagliani, Mother's mother ("Grandmother"), but he later rented a townhouse for himself and the children while Mother remained in the marital home.

[3] The Latin phrase "*pendente lite*" means during litigation and refers to the temporary award ordered until the final conclusion of the merits hearing. *Maynard v. Maynard*, 42 Md. App. 47, 49 (1979) (citing *Black's Law Dictionary* (4th ed., 1951)).

In October 2018, the Best Interest Attorney ("BIA") for the children filed an emergency motion seeking a further modification of the *pendente lite* custody order, specifically requesting that Mother's access to the children be limited to supervised visitation. On November 13, 2018, following a hearing and upon "good cause having been shown," the court entered a *pendente lite* custody order giving Father sole legal and physical custody of the children. The Order allowed Mother supervised visitation at the Harford County Visitation Center, and directed Mother to submit to a 14-panel hair follicle test to include an alcohol panel and submit to individual therapy. Mother initially refused to participate in the supervised visitation schedule, but later agreed to it.[4] The location of the supervised visitation later changed from the visitation center to the home of Mother's parents where Grandmother supervised the visits.

In 2019, Father moved for exclusive use and possession of the marital home. The court granted Father's request and around December of 2019 he and the children moved back into the marital home and continue to reside there. At the time of the custody trial, Father's girlfriend, whom he had been dating for three years, also resided with Father and the children. Mother resides with her parents.

Pursuant to a Pre-Trial Order dated July 9, 2021, trial in the parties' divorce case was scheduled to commence on August 22, 2022. On March 3, 2022, Mother filed a motion to postpone the trial due to a change in counsel, a delay in a separate case related to the

[4] In response to questioning at the merits hearing, Mother testified that she could not recall whether she had any contact with the children from November 2018 to October 2019.

businesses the parties own, and because the judge who had been assigned to the cases had recently been appointed to the Supreme Court of Maryland. Father opposed the postponement, asserting that, upon Mother's request, the merits trial in the divorce action had been rescheduled five times since its initial 2019 trial date, that Mother "has switched representation in this matter to her tenth attorney," and that the resolution (or not) of the companion case regarding their businesses had no bearing on the ability of the divorce and custody proceedings to move forward. Although a ruling on Mother's motion to continue the trial does not appear on the docket, the circuit court later ruled that the divorce proceeding would be bifurcated and a merits trial on the custody issue would begin on the previously scheduled August 2022 date.[5]

On August 8, 2022, Mother filed another motion requesting a continuance, incorporating her previous grounds and further asserting a need to hire mental health experts for trial. Mother requested that the court "convert the [upcoming] custody trial on the merits to a custody trial, *pendente lite*, and allow the merits of the custody claims ... to be adjudicated at the divorce hearing." Mother claimed that she would suffer "extreme prejudice" if she had to proceed with a merits hearing on custody "without having the benefit of a psychiatrist to offer testimony that may refute the testimony of at least one expert witness that [Father] intends to call."

[5] In a written Order entered on August 9, 2022, the circuit court, among other things, ordered that the divorce and custody trial "shall be bifurcated and the parties shall proceed on custody issues only" and the court "shall also hear as part of the custody matter any Pendente Lite support issues (i.e. child support and alimony)." A hearing on Mother's request for alimony *pendente lite* was held on August 23, 2022.

Following a hearing held on August 10, 2022, the circuit court denied Mother's motion to postpone the trial on the merits of the custody claims. In its written order, the court further ruled that, "for the reasons stated on the record" at the August 10th hearing, "the parties are prohibited from offering into evidence any expert testimony as to the mental health of the parties on the merits of the custody issues" and that the court, therefore, would "not consider any report prepared by Dr. Michael W. Gombatz nor Kathryn Rogers."[6] The written order did not address Mother's alternative request to treat the upcoming merits hearing on custody as *pendente lite*, but at the start of the custody trial the court rejected that request.

At the merits hearing, Father testified that during much of the marriage, he ran the couple's businesses while Mother was the primary caretaker of the children. Mother obtained her bachelor's degree around the time of their first child's birth, and then continued with graduate school studies while pregnant with their second child. According to Father, when the parties lived together, Mother was "not taking proper care of the children." He claimed that he would return home and "she'd be passed out sometimes" and the "children would be across the street at the neighbor's house."

Father also presented the testimony of Kelly Powers, who stated that she had known Mother since grade school and remained friendly with Mother until about 2015 or 2016.

[6] It does not appear that the August 10, 2022 hearing has been transcribed and, therefore, the circuit court's reasons for excluding the expert testimony and reports are unclear. At the start of the merits hearing on August 24th, however, Mother's counsel reminded the court that it "struck Dr. Gombatz and Ms. Rogers because their evidence was stale." The court responded: "That's correct." It appears that Dr. Gombatz's and Ms. Rogers' reports were prepared in 2017.

She met Father after he and Mother began dating. Ms. Powers testified that there were times when Mother would appear at Ms. Powers' home and "then say she couldn't drive home because she had been drinking." On most of these occasions, Mother had driven to the Powers' home with the children. In addition, Ms. Powers testified that in the "2015/2016 timeframe," Mother would sometimes ask her to babysit the children. Ms. Powers related that, because Mother was "always vague," she "never really fully understood" where Mother was going. Mother would be gone for "hours," even when she told Ms. Powers she would return within an hour. On those occasions when Mother did not return when expected, Mother did not respond to Ms. Powers' phone calls or text messages.

During her own testimony, Mother described that Father verbally and physically abused her throughout the marriage. Mother spoke of numerous instances of abuse, and she claimed that Father's violence towards her occurred in the presence of the children. In addition to her testimony, Mother submitted into evidence various photographs depicting bruises and marks on her body, which she asserted she incurred at Father's hands.

Mother also presented testimony from several witnesses. Myra Kourey, who worked for Mother and Father as a nanny after their first child was born in 2006 and continued until about 2012, testified that she thought both parents "did well" with the children. According to Ms. Kourey, after the birth of their son in 2009, Mother was "severely depressed," and Father had "no patience" with Mother. Ms. Kourey described Mother and Father's relationship as "toxic," and multiple times she observed Father being verbally aggressive and physical with Mother.

Rachel Price, Mother's best friend since middle school, described Father as "very verbally aggressive" with Mother and "[t]he longer they were married, the worse it got." Ms. Price had not seen Mother with the children since 2018, but she described her as an "excellent mother."

Joanne Sagliani, Mother's mother ("Grandmother"), testified that she worked as the office manager for the parties' businesses from 2004 until her retirement in 2018 and had a good working relationship with Father. Grandmother described Father's relationship with Mother as controlling. Grandmother testified that both Mother and Father "confide[]" in her and she "used to tell them to work it out, you know, get into counseling" because she believed that "both needed to work on their marriage and ... there could have been issues with both" which she had hoped "they would work ... out." Grandmother stated that she believed the children clearly love both parents and were upset when the parents separated, but otherwise "seemed happy."

Father and Mother both testified about a verbal and physical confrontation between Father and Mother's then-boyfriend, Robert Yurth, in March of 2022 when Father and Father's girlfriend dropped the children at Grandmother's house for a visit with Mother. Father claimed that, when they pulled up to the front of the house two of the children did not want to go in because they noticed Mr. Yurth's vehicle in the driveway. Mother then became upset when the children went into the house and asked if the boyfriend would leave. Although Mr. Yurth walked out of the house and entered his vehicle, he remained on the premises because, in his words, he "was absolutely sure that [Father]was going to fight with [Mother]." Mother came out of the house to retrieve the children and Mr. Yurth

exited his vehicle and approached Father because Father had exited his vehicle and "grabbed" Mother and "started pulling" her "up the driveway." Father and Mr. Yurth then became physical with one another and were on the ground "rolling around hitting each other." Mother engaged verbally with Father's girlfriend—whom Mother claimed was filming the incident—grabbed her phone and took it into the house and damaged it. The police arrived on the scene after the parties' son called 911.

Following this incident, mother no longer had visitation with the children and did not see them at all during the five months between the incident and the custody trial. Father asserted that the two oldest daughters and the son "have expressed that they do not want to see their mother." He claimed, however, that he "ask[s] them weekly, if not every other day, if they want to speak with their mom." Father also testified that the children have maintained a good relationship with Grandmother, which he supports. He described her as a "great" grandmother to the children.

Mother testified that, prior to the March 2022 brawl, her visits with the children were going very well. She described and submitted photos of family dinners at Grandmother's house, outings to the bowling alley, dinner at restaurants on special occasions, and various activities they engaged in at Grandmother's house. She claimed that the children "loved" spending time with her. Mr. Yurth, Mother's boyfriend at the time, was present during some of these visits. Mother asserted that he treated the children "very, very wonderfully" and the children "thought he was very nice."

Mother acknowledged that since the March 2022 incident, her relationship with the children had become "distressed." She claimed that she had not seen them and "hadn't been

able to talk to them or communicate with them at all, not even on the phone" because Father "put a protective order in place[.]"[7] Mother misses the children very much and is pained by the inability to see and communicate with them. Mother believes that Father is influencing the children's desire to distance themselves from her.

Grandmother testified that Mother's visits with the children "were great" and that Mother would plan activities, such as arts and crafts and baking. Grandmother did admit that, at the end of the visits, sometimes Mother "would become angry that [the children] would have to leave" and "she would act up" because she did not want the children to go and felt she should have more time with them. On those occasions when Mother could not "[calm] down," Grandmother would just "end" the visit by taking the children out of the house. Grandmother further testified that although the children generally enjoyed a "nice relationship" with Mother, that changed after the March 2022 incident and now the children "do not want to see her at all."

On cross-examination by Father's counsel, Grandmother admitted that she had requested an "emergency evaluation" of Mother in December 2018 and that Mother was ultimately admitted for mental health treatment, but insisted it was a voluntary admission. Grandmother also acknowledged that in August 2019 she called the police when Mother's "behavior was a little out of control," which at the custody trial Grandmother attributed to

[7] On or about March 8, 2022, the court granted a temporary protective order in favor of Father and against Mother. The order prohibited Mother from contacting Father and the two youngest children. A hearing on the issuance of a final protective order was postponed multiple times at Mother's request, and a final protective order was never granted. On March 7, 2023, the circuit court dismissed the petition for a protective order.

the "medications" Mother had been given while at Ashley House, where she had spent 30 days for what Grandmother believes may have been alcohol or prescription drug issues.

Grandmother also expressed concerns about Mother's use of alcohol while taking prescription drugs, acknowledging that when Mother drinks there is a "bad change" in her personality. Grandmother stated that Mother does not react "well at all" to stress and "gets angry" when stressed. Grandmother acknowledged that in March 2022 her husband (Mother's father) initiated a wrongful detainer action against Mother to have her removed from their home, where she resides. Grandmother explained that Mother would blame her "a lot of times if things weren't the right way" and one day Mother became "very belligerent, called [her] names" and she and her husband asked Mother to leave their home. They ultimately changed their mind, however, and allow Mother to live with them because Mother did not have any money.

Mother informed the court that she has refused to submit to a hair follicle test because a lawyer once advised her that she "would never get [her] kids back" because she takes drugs prescribed by a doctor and a psychiatrist. With regard to physical custody, Mother believes that "the children should have both parents in their lives[,]" but she asserted that Father is unwilling to "share the children." Mother asked for legal custody because Father "has made poor decisions." As an example, she cited Father traveling by air with the children "at the height of COVID." In closing, Mother's counsel argued, among other things, that Mother is clearly a "victim of abuse" and urged the court to extend the *pendente lite* custody order to enable Mother to "get the mental help that she needs" and

"to bring in maybe an expert witness to help explain what happened and explain" Mother's behavior.

Father requested that he retain sole physical and legal custody, and that Mother's access to the children be limited to supervised visitation. Although he asserted that Mother "has the capacity to be compassionate and a good mother[,]" in his opinion she "has outstanding problems that need to be addressed" before she should be allowed "anything outside of supervised visits[.]" Given that Mother has failed to comply with the court order to submit to a hair follicle test (first ordered in November 2018), Father believes that Mother has an on-going problem mixing prescription drugs and alcohol.

In closing arguments, the BIA recognized that Mother needs "help" and her lack of financial resources has interfered with her ability to get the help she needs, and "[t]hat ship needs to be corrected." The BIA pointed to Grandmother's testimony that Mother does not react well in stressful situations and counsel felt strongly that the children should not "be exposed on an unregulated basis to what may not be an appropriate response" to "disagreements." The BIA noted that, even in the courtroom throughout the two-day trial, Mother had exhibited "just some inability to self-regulate here" and asserted that "[y]ou can't have kids just unconditionally exposed to that." The children's counsel expressed to the court that "BIAs don't really do recommendations anymore," and that he would not reveal "what the children specifically said to [him] for confidentiality reasons." Nonetheless, the BIA advocated that Mother engage in reunification therapy with the two oldest children, undergo "a new updated psychological evaluation," and receive therapy "consistent with whatever the psychological evaluation is." The BIA also recommended

that Mother's visitation with the children continue, but it should be supervised visitation with supervision by a third-party licensed clinical social worker, and that Mother's submission to the hair follicle test ("every 90 days for a period of time") should "be a component of her visitation[.]" The BIA suggested to the court that, if Mother "does all these things," a modification of the custody order could perhaps be appropriate in the future.

Following the merits hearing, the circuit court issued a detailed Memorandum Opinion summarizing its findings under factors related to both legal and physical custody, and setting forth its ultimate custody determination. *See Taylor v. Taylor*, 306 Md. 290, 311 (1986); *Montgomery County Dept. of Soc. Services v. Sanders*, 38 Md. App. 406, 420 (1978). In that opinion, the circuit court found that Mother and Father had "little or no capacity … to communicate with each other to reach shared decisions affecting the children's welfare" and that neither Mother or Father "[appear] to be willing nor able to share a custodial relationship." The court found there to be "plenty of blame to go around in the relationship between" Mother and Father. Although it was clear to the court that "[Mother] has been abused by [Father], both verbally and physically," Mother was currently under a Protective Order herself "because of her prior conduct." The circuit court further described that

> At the present time, [Mother] is not a fit and proper person to have physical custody of the children. She is currently under a Temporary Protective Order which is set for a hearing on March 7, 2023 at 9 a.m. [Mother] is prescribed various medications. On occasion, she has imbibed alcohol while taking prescription medication against the advice of medical doctors. This behavior has resulted in [Mother's] unpredictable and irrational conduct. … She is currently unemployed.

> [Mother] has a history of cancer and received extensive treatment because of it.
>
> [Father] currently operates the parties' various businesses, namely Bartenfelder Sanitation Service, Inc. and Bartenfelder Landscaping. Despite his previous questionable behavior, he has not presented any evidence of psychological conditions.
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> * * *
>
> [Father] demonstrated a generally good character and reputation. Meanwhile, [Mother's] character and reputation presents problems. [Mother] has had a series of male friends and has introduced them to the children during her visits with them at her parent's home. The children have clearly expressed to her that they do not want those male friends to be present during their visits, but nevertheless she has continued to have them present. The presence of one of them led to the scene at her parent's home when [Father] took the children there for a visit with their Mother. The behavior of both parents was not in the best interests of the children, but [Mother's] poor conduct clearly outweighed the conduct of [Father]. [Mother] has not been employed, in part, due to health issues, but for the last few years she should have been employed.

With regard to the time each party had spent with the children, the court found that

> [Mother] had visitation at the Harford County Visitation Center. Her Mother became the supervisor of the visitation, but she testified she is no longer agreeable to continue in that role. [Mother] currently does not visit with the children because of the Protective Order of March 2022. [Mother] has not seen the children in months. It is essential for the welfare of all of the children to resume supervised visitation with their Mother.

After setting forth these findings, the court rendered its decision awarding sole physical custody of the children to Father. The court stated in its Memorandum Opinion that "[t]he fitness of [Mother] at this time prevents the court from granting her request for sole legal and sole physical custody of the children." The court granted the parents joint

legal custody, with tie-breaking authority given to Father, with the stipulation that Father could exercise tie-breaking authority after the parties engaged in at least two mediation sessions.

In addition, the court ordered Mother to submit to a 14-panel hair follicle test including an alcohol panel within 14 days and quarterly thereafter until further order by the court, and ordered both Mother and Father to submit to a child access assessment to be conducted by Kathryn Rogers, Licensed Master Social Worker (LMSW). The court further ordered Mother to begin Reunification Therapy with all four minor children within 30 days. Upon successful completion of that therapy, Mother would be awarded supervised visitation at the Harford County Visitation Center. Finally, the court ordered Father to pay for any costs associated with the aforementioned directives.

DISCUSSION

I. DENIAL OF MOTION TO POSTPONE CUSTODY TRIAL

We first address Mother's contention that the circuit court abused its discretion by denying her request to postpone the custody trial.

The decision to grant or deny a motion for continuance is within the sound discretion of the circuit court, and we review the court's decision for an abuse of that discretion. *Serio v. Baystate Properties, LLC*, 209 Md. App. 545, 554 (2013). Only in "exceptional instances where there was prejudicial error" will we reverse the circuit court's ruling. *Id*. (quoting *Thanos v. Mitchell*, 220 Md. 389, 392 (1959)).

Prior to 2022, the trial on the merits of this case had been postponed multiple times. Pursuant to a Pre-Trial Order dated July 9, 2021, the trial was set to commence on August

22, 2022—thus giving Mother over a year to prepare her case. Mother's March 3, 2022 motion for a continuance of that trial date did not mention the need for additional time to secure or prepare any expert witnesses related to the mental health of the parties and their fitness to parent the children. On August 8, 2022, Mother filed a second request for a continuance in which she asserted a need to postpone the trial in light of her belief that Father "intends to introduce evidence from Dr. Michael Gombatz, including evidence as to [Mother's] mental health." She further alleged a need for funds to pay her psychiatrist's outstanding bill in order to secure her attendance at trial to offer an opinion as to Mother's mental health and to assist in the preparation of the cross-examination of Dr. Gombatz.

Following a hearing on August 10, 2022, the circuit court denied the motion to continue the custody trial in a written order. The record before us does not, however, include a transcript of the August 10, 2022 hearing on Mother's motion for a continuance. That transcript could have informed this Court of the trial court's reasons for its decision to deny the postponement request. The burden is on the appellant to provide this Court with "a transcription of any portion of any proceeding relevant to the appeal[.]" MD. R. 8-411(a)(2). This Court has previously explained that the party asserting an error has the burden to show "by the record" that an error occurred. *Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993). "Mere allegations and arguments ... unsubstantiated by the record, are insufficient to meet that burden." *Id*. Hence, "[t]he failure to provide the court with a transcript warrants summary rejection of the claim of error." *Id*. (citations omitted). Accordingly, we reject Mother's contention that the circuit court abused its discretion in denying her motion to continue the custody trial.

II. EXCLUSION OF EXPERT TESTIMONY ON THE PARTIES' MENTAL HEALTH

Next, we address whether the circuit court erred in excluding expert testimony on the parties' mental health. Mother asserts that, in addition to offering expert testimony on the parties' mental health, she "had the right to call medical experts, including her own physicians, to testify whether a hair follicle test was appropriate."

In the same order denying Mother's motion for a continuance, the circuit court also ruled that Mother and Father were "prohibited from offering into evidence any expert testimony as to the mental health of the parties at the trial on the merits of the custody issues[.]" The order further stated that the court would therefore "not consider any report prepared by Dr. Michael W. Gombatz nor Kathryn Rogers." Significantly, the order states that its decision was based on "the reasons stated on the record" at the August 10, 2022, hearing.

Whether to admit expert testimony is a matter within the discretion of the circuit court, and we review the court's decision only for an abuse of that discretion. *Abruquah v. State*, 483 Md. 637, 652 (2023) (citing *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020)). As noted with regard to Mother's request for a continuance, the record before us does not include a transcript of the August 10, 2022 hearing. Because the record is silent with regard to the circuit court's reasons for excluding expert testimony on the mental health of the parties and the reports of Dr. Gombatz and Ms. Rogers, there is no evidence to support Mother's contention. *See* MD. R. 8-411(a)(2); *Kovacs*, 98 Md. at 303. Accordingly, we reject Mother's contention that the circuit court abused its discretion in excluding expert testimony on the parties' mental health and on the reliability of hair follicle tests.

III. CUSTODY DECISION

Finally, we address Mother's assertion that the circuit court erred in making its custody determination. Mother argues that the circuit court's custody decision was an abuse of discretion because the circuit court was biased against her and the evidence did not support the court's factual findings. Mother further argues that the court erred in ordering her to submit to a hair follicle test and in ordering her to undergo a new psychological exam after, rather than before, the court issued its custody decision. We shall attempt to address each of Mother's relevant concerns.

When a case like this one is tried without a jury, this Court reviews the circuit court's ruling on both the law and the evidence. We will not, however, set aside that court's judgment "unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." MD. R. 8-131(c). "If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Friedman v. Hannan*, 412 Md. 328, 335-36 (2010) (cleaned up). Because this Court's review of the circuit court's decision "is properly limited in scope ... the burden of making an appropriate decision necessarily rests heavily upon the shoulders of the trial judge." *Taylor*, 306 Md. at 311.

We review child custody determinations using three interrelated standards: we review factual findings for clear error; we review legal conclusions without deference; and we review the juvenile court's ultimate decision for an abuse of discretion. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). In making a custody determination, "the power of the court is very broad so that it may accomplish the paramount purpose of securing the

welfare and promoting the best interest of the child." *Taylor*, 306 Md. at 301-02. Thus, "it is within the sound discretion of the [trial court] to award custody according to the exigences of each case, and … a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion." *In re Yve S.*, 373 Md. 551, 585-86 (2003).

Although the trial court is vested with broad discretion, "there are numerous factors the court must consider and weigh in its custody determination." *J.A.B.*, 250 Md. App. at 253 (citing *Sanders*, 38 Md. App. at 420). In the final analysis, however, the factors a court considers are simply tools to assist it in determining what is in the best interests of the children. "In all family law disputes involving children, the best interests of the child standard is always the starting—and ending—point." *Azizova v. Suleymanov*, 243 Md. App. 340, 349 (2019) (cleaned up).

A. Bias

We first address Mother's allegation that the circuit court was biased against her and that the "bias permeates the [c]ourt's memorandum opinion and order" on custody. In support of her contention that the court was biased against her, she relies on the following excerpt from a July 18, 2022 hearing addressing an apparent prohibition against Mother entering the parties' business premises.

> [FATHER'S COUNSEL]: The reason that we can't have [Mother] on the property is because she – her behavior and the way she interacts with the staff. This business is trying to run and to be professional. If [Mother] shows up at this property, and [Father] can testify to this today, he will no longer have a functioning business.
>
> THE COURT: I understand.

> [FATHER'S COUNSEL]: Majority of the employees will leave.
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> THE COURT: The business is going to shut down.
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> [FATHER'S COUNSEL]: Exactly.
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> THE COURT: There will be no pickup for trash and recycling. There will be no landscaping services being provided to anyone in Harford County, because – sit down, [Mother's counsel], because there won't be a licensed person on the premises to conduct the business.

A judge "is required to recuse himself or herself from a proceeding when a reasonable person with knowledge and understanding of all the relevant facts would question the judge's impartiality." *In re Russell*, 464 Md. 390, 402 (2019) (cleaned up). A party attempting to demonstrate that a judge is not impartial faces a high burden because there is a strong presumption in Maryland "'that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified.'" *Nathans Assocs. v. Mayor & City Council of Ocean City*, 239 Md. App. 638, 659 (2018) (quoting *Jefferson-El v. State*, 330 Md. 99, 107 (1993)). We have previously explained:

> To overcome the presumption of impartiality, the party requesting recusal must prove that the trial judge has "a personal bias or prejudice" concerning him [or her] or "personal knowledge of disputed evidentiary facts concerning the proceedings." *Boyd* [*v. State*, 321 Md. 69, 80 (1990)]. Only bias, prejudice, or knowledge derived from an extrajudicial source is "personal." Where knowledge is acquired in a judicial setting, or an opinion arguably expressing bias is formed on the basis of information "acquired from evidence presented in the course of judicial proceedings before [her]," neither that knowledge nor that opinion qualifies as "personal." *Boyd*, 321 Md. at 77[.]

Id. (quoting *Jefferson-El*, 330 Md. at 107). When bias, prejudice, or partiality is alleged, this Court reviews a trial judge's decision on a motion to recuse for abuse of discretion. *See Scott v. State*, 175 Md. App. 130, 150 (2007).

We note that at no time did Mother raise the issue of bias during the circuit court proceedings. For an issue to be preserved for appellate review, it must "plainly [appear] by the record to have been raised in or decided by the trial court." MD. R. 8-131(a). This preservation requirement includes allegations of judicial bias. *Joseph v. State*, 190 Md. App. 275, 289 (2010); *Scott v. State*, 110 Md. App. 464, 486 (1996). Thus, in the absence of "very extenuating circumstance," a party should raise the issue in the lower court. *Scott*, 110 Md. App. at 486. Accordingly, the issue is not preserved for appellate review.[8]

B. Factual Findings

Mother's argument that the custody decision was an abuse of the court's discretion appears to rest on her position that the circuit court's "findings are nothing but arbitrary and capricious" and based on the judge's "subjective impression of [her] rather than objective evidence[.]" We shall attempt to address each of Mother's relevant claims.

[8] We also note that, even if Mother had made a motion for the trial judge to recuse herself, nothing in the record suggests that the judge was biased against Mother. Any opinions that the judge formed or expressed "were based on the evidence, *i.e.*, were derived in the course of a judicial proceeding, and hence were not 'personal.'" *Corapcioglu v. Roosevelt*, 170 Md. App. 572, 604 (2006). Moreover, "[r]are are the cases in which a … judge should grant a motion for recusal on the ground that, as a result of prior rulings in an ongoing domestic relations case, the judge has become "prejudiced" against the party who has moved for the judge's recusal. In "family law" cases, however, parties are often overcome by emotion when they are disappointed by an adverse custody or visitation ruling." *Koffley v. Koffley*, 160 Md. App. 633, 645 (2005). Adverse decisions are not, however, evidence of bias or impartiality. *S. Easton Neighborhood Ass'n,. v. Town of Easton, Md.*, 387 Md. 468, 501 (2005).

We begin with the circuit court's finding regarding her ability to parent the children. When discussing the "fitness of the parents" factor, the court found, in relevant part:

> At the present time, [Mother] is not a fit and proper person to have physical custody of the children. She is currently under a Temporary Protective Order which is set for a hearing on March 7, 2023 at 9 a.m. [Mother] is prescribed various medications. On occasion, she has imbibed alcohol while taking prescription medication against the advice of medical doctors. This behavior has resulted in [Mother's] unpredictable and irrational conduct.

Mother contends that there was "no evidence at trial" to support these findings. We disagree. Mother acknowledged at trial that in March 2022 Father had obtained a temporary protective order barring her from contacting him and the two youngest children. She admitted at trial that she takes prescription drugs. Grandmother expressed concerns related to Mother's use of alcohol while taking prescription drugs and testified about Mother's "very belligerent" behavior towards her on various occasions and that she would sometimes "act up" when it was time for the children's visit to end. Medical records from a December 2018 stay at Anne Arundel Medical Center, which prompted Mother's hospital admission for mental health treatment, were also admitted into evidence. The evidence at trial also included the fact that Mother participated in a 30-day inpatient program at Ashley House for substance abuse issues. And Grandmother acknowledged that she had once called the police and made efforts to obtain a protective order against Mother after Mother, while holding a knife, "jabbed" her during an argument.

In considering the "Demands of Parental Employment" factor, the circuit court found that Father "has large demands of time in his employment, but his testimony is that his employment has not interfered with his ability to care for the children." Mother asserts

that this finding is "inconsistent." We disagree. Father testified that, despite running two businesses, he is able to take care of the children who are doing well in school, involved in sports, and current with medical check-ups and vaccinations. Mother has not pointed to any evidence in the record that Father has not properly cared for the children in the years (beginning in January 2018) he has had primary physical custody.

In discussing the "relationship established between the child and each parent" factor, the circuit court found: "There is no doubt that at one time [Mother] was a loving parent. Evidence at trial including family photographs show that the children obviously love her. Likewise, the children love [Father.]" Mother asserts that "[t]he clear evidence was that [she] continues to be a loving parent" and "[t]here is absolutely no evidence that [she] is not now a loving parent." We believe that Mother is misconstruing the circuit court's finding. The court found that the children love both parents and it appears to us that the court treated this factor as neutral. The court was also aware from the evidence before it that Mother's parenting role had been significantly limited in recent years—primary custody had transferred from her to Father in 2018 and since 2019, Mother's access to the children had been limited to supervised visitation. Moreover, the evidence before the court was that Mother had not seen or interacted with the children in the five months leading up to the August 2022 custody trial. In short, we are not persuaded that the circuit court's finding is clearly erroneous or that the court implied that Mother does not love the children.

When considering the "character and reputation of the parties" factor, the circuit court found:

> [Father] demonstrated a generally good character and reputation. Meanwhile, [Mother's] character and reputation presents problems. [Mother] has had a series of male friends and has introduced them to the children during her visits with them at her parent's home. The children have clearly expressed to her that they do not want those male friends to be present during their visits, but nevertheless she has continued to have them present. The presence of one of them led to the scene at her parent's home when [Father] took the children there for a visit with their Mother. The behavior of both parents was not in the best interests of the children, but [Mother's] poor conduct clearly outweighed the conduct of [Father].

Mother asserts that there was no evidence before the circuit court that she "had a bad reputation, and any finding as to character was purely subjective." She further asserts that the "court also effectively holds that [she] is not permitted to have male friends, but [Father has a] girlfriend and lets her take care of [the] children in the marital home." And she maintains that "[a]ll the parties" in the March 2022 brawl "exhibited poor conduct, and the clear evidence was that [Father] physically caused that incident, by assaulting [her] in front of the children[.]"

In essence, it appears that Mother maintains that the court holds her to a different standard than Father, at least with regard to their companions or friends. She also clearly takes issue with the court's view of the March 2022 incident. We are generally sympathetic to Mother's complaints and reiterate that personal bias and stereotypical assumptions have no place in a court's ruling on the best interest of a child. *Azizova*, 243 Md. App. at 350 (citing *Boswell v. Boswell*, 352 Md. 204, 236-37 (1998)). There is no indication in the record here, however, that the circuit court's findings were based on sex-based stereotypes. Rather, the findings are supported by evidence and testimony about specific instances of conduct.

Mother next complains that the circuit court failed to support its finding that "[a] custodial arrangement that restores natural family relations is not possible in this matter" when considering the factor "potentiality of maintaining natural family relations." Mother asserts that "the parties effectively co-parented the children for multiple years. Although Mother is correct that the circuit court did not expand on its finding, we cannot say it was clearly erroneous. The record is replete with evidence that, since separating in 2017, Mother and Father barely tolerate each other and exchanges of the children were often difficult.

In addressing the "preferences of the children" factor, the court found that the "BIA did not present any preferences of the children." Seizing on that finding, Mother maintains that it "is totally inconsistent with the trial court's unsupported opinion that [she] is not a fit mother." She maintains that the BIA "does not hold the opinion that [she] is an unfit parent" and that the court "gives no weight to the BIA's key position."

The circuit court's finding that the "BIA did not present any preferences of the children" is not clearly erroneous. The transcript reflects that the BIA chose not to reveal the preferences of the children for confidentiality reasons. Moreover, the BIA recognized that Mother has "some inability to self-regulate" and informed the court that "[y]ou can't have kids just unconditionally exposed to that." The children's attorney, noting that "BIAs don't really do recommendations anymore," nonetheless expressed his opinion that Mother should submit to "a new updated psychological evaluation" and should receive therapy "consistent with whatever the psychological evaluation is." The BIA also advocated for Mother to have supervised visitation with the children, with the visits supervised by a third-

party licensed social worker, and he suggested that Mother should submit to hair follicle tests as "a component of visitation." In short, we are not persuaded that the BIA took the position that Mother was fit to assume custody or have anything other than supervised visitation at this time.

C. Hair Follicle Test

Mother asserts that the circuit court "held that a condition of [Mother] even seeing the children was to undergo an invasive hair follicle test." She maintains that "[s]cientific evidence clearly shows that hair follicle tests have a substantial risk of false positive results."[9] Moreover, she contends that she "had the right to call medical experts, including her own physicians to testify whether a hair follicle test was appropriate."

First, based on our reading of the circuit court's order, completing the hair follicle test was not a prerequisite to Mother's access to the children.[10] Rather, Mother's visitation with the children was conditioned only upon her completion of Reunification Therapy.

Moreover, the hair follicle test was not something new, but was first ordered in November 2018 when, upon emergency motion of the BIA, the *pendente lite* custody order

[9] In support of her position, Mother cites *Boston Police Dep't v. Civil Serv. Comm'n*, 133 N.E. 3d 322, 327 (Mass. 2019). We are not persuaded, however, that the Massachusetts Supreme Judicial Court held that hair follicle tests are unreliable or have a substantial risk of false positives. Rather, the Court concluded that there was enough conflicting evidence that both a decision to rely on the test or a decision to reject the results of the test could be supported by substantial evidence. *Id*. at 333 n.23. Mother has not cited any Maryland cases (nor are we aware of any) that call into question the reliability of hair follicle tests.

[10] We certainly do not mean to imply that Mother is free to disregard the order. In fact, the order states that "failure to comply with the terms of this Order may be considered a positive test[.]"

was amended to restrict Mother's visitation to supervised visitation at the Harford County Visitation Center. A transcription of the hearing on that motion does not appear to be in the record before us, but the BIA's motion was based on concerns regarding Mother's alleged alcohol abuse. Mother has failed to abide by that longstanding order, explaining at the August 2022 custody hearing that a lawyer once advised her that she "would never get [her] kids back" because she takes "two prescription drugs" prescribed by a doctor and a psychiatrist. When her lawyer then asked her to confirm that is why she has not taken the hair follicle test, Mother responded, "That's correct." Mother did not assert that the test is unreliable or has a "substantial risk of false positive results."

Second, we shall not address her contention on appeal that she should have been permitted to call medical experts to address the appropriateness of the test. Mother has not pointed to anywhere in the record where she had made that specific request and, as previously discussed, she has not produced the transcript from the August 10, 2022 hearing at which the circuit court announced its reasons for excluding medical experts.

D. New Psychological Evaluation

Finally, while Mother does not take issue with the circuit court's order that she submit to a new psychological evaluation, she asserts that the evaluation should have occurred prior to the final custody decision, not afterwards. She maintains that it was "illogical" and an abuse of the court's discretion for the court to rule on custody and make a determination as to her fitness to parent without this evaluation.

Had this been the parties' first appearance before the circuit court on custody, Mother's point may have been well taken. But the parties have appeared before the court

numerous times on a variety of motions since this case was initiated. The consent *pendente lite* custody order filed in April 2017 giving Mother primary custody was twice modified by the court prior to the August 2022 trial. Following an emergency motion filed by Father, pursuant to an order entered on January 31, 2018, the court gave Father primary custody of the children and Mother visitation rights. Among other things, that order also directed Mother to attend outpatient treatment for mental health and ordered both parties to refrain from the consumption of alcoholic beverages four hours prior to custody with the children and during their period of custody with the children.

Less than a year later, in October 2018, the children's BIA filed an emergency motion to limit Mother's access to the children to supervised visitation, a request the circuit court granted pursuant to an order entered on November 17, 2018. That order also directed Mother to submit to the hair follicle test and to commence individual therapy. As noted, at the August 2022 custody trial, Mother admitted that she had not undergone the hair follicle test and she expressed no intention of doing so.

Although transcripts from the hearings on the modification of the *pendente lite* custody orders do not appear to be in the record before us, it is clear from the orders issued by the circuit court that Mother's behavior, as it relates to her care and custody of the children, has been a longtime concern. Moreover, at the August 2022 custody trial, Grandmother testified that there is a "bad change" in Mother's personality when she consumes alcohol while taking prescription drugs, that Mother does not react "well at all" to stress and "gets angry" when stressed, that Mother has needed treatment for mental health and alcohol abuse issues, and that there were occasions when Mother would

"become angry" and would "act up" when it was time for the children to leave, prompting Grandmother to end the visit by taking the children out of the house. Grandmother also admitted that her husband had sought to evict Mother from their home because of Mother's belligerent behavior towards Grandmother and that Grandmother had called police on one occasion because of Mother's assaultive actions towards her.

In light of the history of this case and the evidence before the court at the August 2022 custody trial, we cannot say that the court abused its discretion in ordering a new psychological evaluation of Mother—something that the BIA in fact advocated for at the close of the custody proceeding. Although Mother maintains that the new evaluation should have been ordered prior to the custody decision, we note that Mother had over a year to prepare for the trial, which was adequate time for her to submit her own updated psychological evaluation.

CONCLUSION

For the reasons discussed above, we reject Mother's claims and affirm the judgments of the circuit court as to custody.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED AS TO CUSTODY. COSTS TO BE PAID BY APPELLANT.