Circuit Court for Baltimore County
Case No. C-03-FM-20-002053

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1834

September Term, 2021

JAIME L. MILLER

v.

ANTHONY J. MILLER

Shaw,
Albright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: November 3, 2022

On October 23, 2019, Anthony Miller filed for divorce in the Circuit Court for Baltimore County from his wife of five years, Jaime Miller. Ms. Miller filed a cross-complaint. The litigation comprised several issues: the validity of the parties' premarital agreement; custody of their two children; and the divorce. Following several days of trial, the court ruled that the premarital agreement was largely enforceable; awarded primary physical and sole legal custody of the parties two children to Mr. Miller with Ms. Miller to pay child support; and granted Mr. Miller an absolute divorce. The court also awarded Mr. Miller certain attorney's fees. Ms. Miller raises the following questions on appeal:

I. Did the circuit court err in finding the premarital agreement largely enforceable?

II. Did the circuit court err in awarding primary physical and sole legal custody of the children to Mr. Miller?

III. Did the circuit court err in ordering Ms. Miller to pay Mr. Miller $971.00 in child support?

IV. Did the circuit court err in ordering Ms. Miller to pay Mr. Miller $96,676.70 in attorney's fees?

For the following reasons, we shall affirm the circuit court's decision, except we shall vacate the circuit court's child support judgment and remand for proceedings consistent with this opinion.

BACKGROUND FACTS

Mr. Miller and Ms. Miller met in 2009 when Mr. Miller was around fifty-one years old and operated a successful, family-owned construction and refrigeration companies he had started thirty years earlier. Mr. Miller and his four adult children from his twenty-five-year first marriage worked in those companies. Ms. Miller was around twenty-nine years

old, was employed at an adult entertainment establishment, and had a general education diploma. Within a month of their meeting, Mr. Miller began supporting Ms. Miller and her then twelve-year-old daughter financially, giving Ms. Miller a weekly allowance and a car, and renting a townhouse for them to live in. In 2010, the parties stopped seeing each other briefly, during which time Ms. Miller became pregnant and married the father of her son, who was born on October 9, 2011. Mr. Miller emotionally and financially supported Ms. Miller during this time, and when Ms. Miller's husband died of a drug overdose, Ms. Miller and her infant son moved in with Mr. Miller.[1]

In November 2014, the parties became engaged while Ms. Miller was pregnant with the parties' biological son, who was born in June 2015. Shortly after their son was born, Mr. Miller approached Ms. Miller about signing a premarital agreement. About five weeks of negotiations followed with each party represented by independent counsel for which Mr. Miller paid.

Premarital Agreement

Four days before the parties were married on September 6, 2015, the parties signed a premarital agreement (the "Agreement") to resolve various financial issues. The Agreement began with a paragraph stating that the parties were contemplating marriage, they have children from previous relationships and one child together, and both parties were in good physical and mental health. Each party made a "full[] and complete[]"

[1] At the time of Ms. Miller's son's birth, her son had cocaine in his system and he was removed from her custody by child protective services. After Ms. Miller successfully completed a drug treatment program, the child was returned to her custody.

disclosure of the real and personal property each owned, their income, assets, and liabilities, and two charts of their property and net worth were attached to the Agreement. The charts reflected that Mr. Miller had a net worth of roughly a million dollars, and Ms. Miller had a net worth of roughly $120,000. The Agreement continued:

> Prior to entering into this Agreement both parties retained and consulted with independent counsel of their own selection. Each party has been advised and has full knowledge of all rights conferred by law upon him or her by virtue of the proposed marriage, but it is their desire that their respective rights be determined and fixed by this Agreement. They further acknowledge that they have ascertained and weighed all the facts, conditions, and circumstances likely to influence their judgment in entering into this Agreement and are entering into this Agreement freely, voluntarily and with full knowledge of its consequences.

The Agreement provided, among other things, for a sliding scale of financial benefits depending on the number of years the parties were married. Specifically, the Agreement provided:

1. **Life Insurance.** In the event of divorce, Mr. Miller shall maintain a life insurance policy for Ms. Miller's benefit for a stated amount and for a period of 10 years from the date of divorce, and a life insurance policy for their biological child's benefit for a stated amount.

2. **Real/Personal property.** No property acquired prior to or after their marriage shall be deemed marital property but any personal property purchased by the parties after marriage shall be titled jointly and shall be divided equally in the event of divorce.

3. **Educations trusts for the children.** Mr. Miller shall pay the private high school and college tuitions for both Ms. Miller's son and the parties' son.

4. **Houses.**

    a. **Boca Raton, FL house**. Although purchased by Mr. Miller prior to their marriage, if the parties remain married for more than five years, Mr. Miller shall transfer a 50% ownership of the house to Ms. Miller.

b. Lutherville house. Mr. Miller shall retitle this property from his name to tenants by the entirety. If the parties divorce, Mr. Miller shall buy out Ms. Miller's interest in the property and pay her one half of the net equity in the house.

c. Ocean City Condominium. If the parties divorce, Mr. Miller shall buy out Ms. Miller's one-half net equity in the condo the parties expect to purchase.

d. Other real property. If Mr. Miller purchases any real property in his name while married, Ms. Miller shall receive one-half of the net value of the property.

e. Purchase of a house. If the parties divorce after three or more years of marriage, Mr. Miller shall pay Ms. Miller $350,000 to purchase a house.

5. **Car.** If the parties divorce, Mr. Miller shall transfer title to Ms. Miller of any car that Ms. Miller is then driving.

6. **Retirement assets.** Each party waives any interest in the other's pension or retirement plans. Mr. Miller shall pay Ms. Miller $10,000 for each year they are married for her to place into a retirement account of her choosing.

7. **Alimony and Child Support.** In the event of divorce, Mr. Miller shall pay Ms. Miller a sliding scale of alimony depending on how long they are married.

8. **Health Insurance.** Mr. Miller shall pay Ms. Miller's health insurance for three years after divorce.

9. **Attorney's fees.** Any party who disputes the enforceability of the Agreement shall pay the other party's reasonable attorney fees related to enforcement of the Agreement. In a divorce proceeding, Mr. Miller shall pay up to $15,000 of Ms. Miller's legal fees related to divorce, custody, or child support.

The Agreement also included paragraphs in which each of the parties acknowledged that they have been informed by their separate and independent counsel of their legal rights as to the property of the other, the right to alimony, and the legal effect of the Agreement.

Additionally, the parties stated the Agreement was not the result of duress or undue influence. Lastly, the Agreement provided for severability of any provision found void.

By all accounts, the parties had a tumultuous relationship both prior to and during their marriage, although they engaged in both couples and individual counseling. Ms. Miller was not employed during their marriage, and her only source of income was from Mr. Miller. The parties utilized the services of a nanny and a housekeeper. In 2019, Mr. Miller adopted Ms. Miller's son from her previous marriage. On May 15, 2020, the parties separated. Ms. Miller and the two children remained in the family house in Phoenix, Maryland; Mr. Miller returned to the Lutherville house.

Legal proceedings

On June 1, 2020, Mr. Miller filed a complaint for custody and a motion for immediate temporary custody of the two children. On the same day, Ms. Miller filed an answer and counterclaim. Over the next several months, Ms. Miller filed protective orders and a statement of charges against Mr. Miller, all of which were dismissed for failing to meet the applicable burden of proof.[2] In July 2020, Mr. Miller filed a motion for

[2] On June 13, 2020, Ms. Miller sought a protective order against Mr. Miller, alleging that he attempted to run her off the road while her daughter and one of their sons was in her car. A temporary protective order was issued but the case was dismissed when Mr. Miller obtained video footage from surveillance cameras of several businesses in the location that showed Ms. Miller's vehicle speeding past Mr. Miller's vehicle, which made no attempt to interfere with her vehicle in any way. During the term of the temporary protective order, Mr. Miller sent the children's lacrosse equipment to Ms. Miller by way of an Uber and Ms. Miller filed criminal charges against him for violating the no contact provision of the protective order. The State declined to prosecute.

(continued)

emergency custody hearing. Following an evidentiary hearing, the court ordered the parties to have joint legal and shared physical custody with Mr. Miller to have tie-breaking authority on matters related to the children's education. The court ordered both parties to be evaluated by court psychiatrist Stephen Siebert, M.D., M.P.H.

On November 12, 2020, Ms. Miller filed a motion to set aside the Agreement. In her motion, she argued that there was a confidential relationship between the parties, and the Agreement was void because it was unconscionable and procured while she was under duress and undue influence. She also argued that the provision that capped attorney's fees was unjust.

On January 12, 2021, an evidentiary hearing on the validity of the Agreement was held. Among others, both parties and their respective attorneys who had negotiated the Agreement testified at the hearing. The following day, the court issued its ruling from the bench denying Ms. Miller's motion to rescind the Agreement. The court ruled that the parties were not in a confidential relationship when they signed the Agreement because each was represented by counsel and engaged in negotiations. The court ruled that the Agreement was not unconscionable and that there was insufficient evidence to prove duress or undue influence. Lastly, the court struck the provision setting a $15,000 cap on

The same day that Ms. Miller sought the protective order, she also applied for a statement of charges against Mr. Miller, alleging that he had assaulted her. The next day, Mr. Miller was arrested for second-degree assault and taken into custody in Ocean City where he and the children had traveled to celebrate his birthday. Ms. Miller videotaped the arrest, which she then posted to her Facebook page. She also sent the video to Mr. Miller's largest customer with the message "DO NOT DO BUSINESS WITH THIS MONSTER TONY MILLER MILLER REFRIGERATION[.]" When the criminal matter came to trial, the State nol prossed the case.

attorney's fees for litigating custody, visitation, and child support, because it was contrary to the best interests of the children. Finding that Ms. Miller lacked the financial ability to litigate custody, the court ordered Mr. Miller to pay Ms. Miller $35,000 in attorney's fees for the portion of litigation that had so far involved custody.

On January 19, 2021, the court appointed a best interest attorney ("BIA") for the children.

Around February 2021, Mr. Miller filed an emergency custody motion based on an event when he arrived at Ms. Miller's house for his court ordered visitation and was met by armed guards in "mock" police cars, who had been hired by Ms. Miller. On March 4, 2021, the circuit court awarded Mr. Miller primary physical and sole legal custody of the children; changed the location for drop-offs and pickups to the Cockeysville Police Station; and granted Ms. Miller visitation on the weekends from Saturday morning until Sunday evening.

A four-day trial, from June 28 through July 1, 2021, was held to determine the issue of custody. On September 29, 2021, the circuit court entered an order and accompanying written memorandum granting primary physical and sole legal custody to Mr. Miller with Ms. Miller to have the children every other weekend from Friday at 5:00 p.m. until Sunday at 7:00 p.m. and the alternate Wednesday evening during the school year; alternating weeks during the summer; and designating a holiday schedule. The court denied Ms. Miller's request for attorney fees but granted Mr. Miller's request for attorney's fees of $96,676.70.

On January 13, 2022, the trial court issued a judgment of absolute divorce that incorporated but did not merge the Agreement and custody order. The court also entered a child support order.[3]

Ms. Miller timely appealed. As related above, Ms. Miller contests the circuit court's rulings upholding the Agreement, awarding Mr. Miller physical and legal custody, and ordering her to pay child support and attorney's fees. We shall address each argument in turn, providing additional facts below where necessary.

DISCUSSION

I. Premarital Agreement

A. The parties' contentions

Ms. Miller argues that the circuit court erred in upholding the Agreement and sets forth two contentions. First, the court erred in requiring her to shoulder the burden of proof regarding the validity of the Agreement and in ruling that the parties were not in a confidential relationship when the Agreement was signed. Second, the circuit court erred in finding the Agreement enforceable because it was unconscionable; she was not competent when she signed it; and the Agreement was the product of duress and undue influence. Mr. Miller responds that the court properly found that no confidential

[3] On March 17, 2022, the court entered a corrected child support order requiring Ms. Miller to pay Mr. Miller $971 a month in child support.

relationship existed between the parties when the Agreement was signed, and there was insufficient evidence of unconscionability, incompetence, duress, or undue influence.[4]

B. Standard of review

In an action tried without a jury, we will not set aside a trial court's factual findings "unless clearly erroneous," giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). We view the evidence in the light most favorable to the party who prevailed at trial, and we resolve all evidentiary conflicts in their favor. *Brault Graham, LLC v. Law Offices of Peter G. Angelos, P.C.*, 211 Md. App. 638, 660 (citations omitted), *cert. denied*, 434 Md. 312 (2013). In contrast, we review whether "the [trial] court's conclusions are legally correct under a *de novo* standard of review." *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (quotation marks and citations omitted).

[4] After Ms. Miller filed her appellate brief, Mr. Miller moved to dismiss her first issue, arguing that because Ms. Miller has accepted benefits under the Agreement, she was barred from arguing on appeal that the Agreement should not be enforced. We disagree. There are exceptions to the general rule that acquiescence in a judgment acts as a waiver. *See Abdullahi v. Zanini*, 241 Md. App. 372, 402-04 (2019). The Court of Appeals in *Lewis v. Lewis*, 219 Md. 313, 317 (1959), held that "if applicable at all in a divorce case, the [acquiescence doctrine] cannot be raised where the benefits accruing to the wife, by reason of the award, provide necessary support until the final adjudication of the case." In *Dietz v. Dietz*, 351 Md. 683, 688 (1998), the Court of Appeals held that an exception to the general acquiescence doctrine exists where the judgment was "for less than the amount or short of the right claimed." (quotation marks and citation omitted). Here, the Agreement has provided Ms. Miller with necessary financial support during the pendency of litigation, and she continues to claim that she is due more than what was allowed under the Agreement. Because the acquiescence doctrine does not apply in the situation before us, we shall deny Mr. Miller's motion to dismiss Ms. Miller's first issue.

C. Confidential relationship

In *Cannon v. Cannon*, 384 Md. 537 (2005), the Court of Appeals stated that "we review antenuptial agreements under the objective law of contract interpretation" and a party seeking to invalidate a premarital agreement may argue that the agreement was procured by "fraud, duress, coercion, mistake, undue influence, or a party's incompetence." *Cannon*, 384 Md. at 553-54 (citations omitted). A party may seek to prove "unconscionability at the time the contract was entered." *Id*. at 554 (citation omitted). A party attacking the validity of a contract bears the burden of proof, and "a party seeking to invalidate a contract who demonstrates that a confidential relationship existed between the parties thrusts the burden of proof to establish the validity of the contract on the party attempting to enforce the contract." *Id*. at 554-55 (citations and footnote omitted).

In reviewing the validity of a premarital agreement, the court held "a confidential relationship is presumed to exist as a matter of law[,]" but that presumption "may be rebutted . . . by the party seeking enforcement of the agreement. If the party seeking enforcement can prove that a negotiation took place between the parties—an actual give and take occurrence, then a court properly may treat the contested agreement as a contract between equals." *Id*. at 572 (citations omitted). *See also Harbom v. Harbom*, 134 Md. App. 430, 441 (2000) (explaining the inequality present in a confidential relationship "may be cured by the access to legal counsel by the party in the less advantageous bargaining position.").

At trial, Ms. Miller testified that she chose Ms. Gold to represent her in negotiating the Agreement. Ms. Gold was one of five attorneys suggested to her by Mr. Miller's

attorney, when she asked for recommendations. Ms. Gold, an attorney specializing in family law with over forty years of experience, testified that as part of her practice she has negotiated over a dozen premarital agreements.

The evidence presented at trial showed that the parties engaged in negotiations for about five weeks before signing the Agreement on September 2, 2015, and the negotiations were substantial and detailed. Ms. Miller testified that she had an initial consultation with Ms. Gold on July 27, 2015, had telephone conversations with her on July 31, August 3, 4, 10, 14, and 15th, and met with her in person on August 6. During the negotiations, Ms. Miller secured more favorable outcomes on the Florida home; the provision regarding a life insurance policy on Mr. Miller; $350,000 for housing upon a divorce; and alimony.

In determining that the parties were not in a confidential relationship when they signed the Agreement, the circuit court reasoned as follows:

> The first threshold question is whether or not there was a confidential relationship between the parties. Wherever marriage is a consideration for a Premarital Agreement, there is a presumption that there's a confidential relationship. That relationship then would shift the burden to the party who is seeking to enforce the agreement.
>
> The presumption is rebutted by evidence that the parties were represented by counsel and that negotiations took place.
>
> If the [c]ourt finds that the presumption has been rebutted, then the [c]ourt may find that a confidential relationship does not exist, and the burden would therefore shift to the party seeking to set aside the Agreement.
>
> In this case the [c]ourt finds that there is ample evidence that there were negotiations that took place, and both parties were represented by counsel.

> Therefore, the presumption of a confidential relationship has been rebutted, and the burden remains with the party seeking to set aside the Agreement, that being Mrs. Miller.

On this record, we find no error by the circuit court. The court correctly set forth the law, the testimony elicited at trial showed ample evidence of full negotiations between the parties as to the terms of the Agreement, and both parties were represented by skilled and experienced counsel. The presumption of a confidential relationship was rebutted and the circuit court correctly shifted the burden of demonstrating the Agreement was unenforceable to Ms. Miller.

D. Unconscionability

A contract is void if it is unconscionable, a term that encompasses both procedural and substantive unconscionability. *Freedman v. Comcast Corp*., 190 Md. App. 179, 207-08 (2010). Both aspects – procedural and substantive – "must exist for a court to decline to enforce" a contract. *Rankin v. Brinton Woods of Frankford, LLC*, 241 Md. App. 604, 621-22 (2019) (citation omitted).

Procedural unconscionability generally is where one party lacks meaningful choice *in the formation* of the contract, and substantive unconscionability is where the *terms* are "so one-sided as to shock the conscience of the court." *Li v. Lee*, 210 Md. App. 73, 112 (2013) (quotation marks and citation omitted), *aff'd*, 437 Md. 47 (2014). We have explained further:

> Procedural unconscionability "concerns the process of making a contract and includes such devices as the use of fine print and convoluted or unclear language, as well as deficiencies in the contract formation process, such as deception or a refusal to bargain over contract terms." *Stewart v.*

> *Stewart*, 214 Md. App. 458, 477 (2013) (internal quotations and citation omitted).
>
> Substantive unconscionability, on the other hand, "refers to contractual terms that are unreasonably or grossly favorable to the more powerful party and includes terms that attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law[.]" *Stewart*, 214 Md. App. at 477-78 (internal quotations and citation omitted). They are "provisions that seek to negate the reasonable expectations of the nondrafting party, and terms unreasonably and unexpectedly harsh . . . having nothing to do with . . . central aspects of the transaction." *Id*. at 478.

Rankin, 241 Md. App. at 622.

"The burden of establishing the presence of both is on the party challenging the [] agreement." *Stewart*, 214 Md. App. at 478. Unconscionability is "determined as of the time the contract was entered." *Id.* (quotation marks and citation omitted). *See also Martin v. Farber*, 68 Md. App. 137, 144 (stating "[T]he fairness of an agreement is to be determined as of the time it was made, not on the basis of conditions occurring subsequently.") *cert. denied*, 308 Md. 237 (1986).

Ms. Miller argues the court erred in not finding the Agreement unconscionable. Her arguments fail to delineate whether there was procedural and substantive unconscionability---nor did she before the circuit court. Nonetheless, she seems to argue that the Agreement was procedurally unconscionable because there was a "limited disclosure of income" and Mr. Miller was the "financially superior partner," who refused to bargain over contract terms. Ms. Miller seems to argue that the Agreement was substantively unconscionable because the terms were grossly favorable to Mr. Miller. We find no error.

The circuit court found that, despite Ms. Miller's protestations to the contrary, she did not lack meaningful choice in signing the Agreement. On the contrary, the parties engaged in extensive negotiations that resulted in changes to the Agreement that benefitted her. The court found that the terms of the Agreement were "more than fair to Mrs. Miller, and in fact, awarded to her property to which she would not have been entitled without the [A]greement." The court further found that there was "a fair and full disclosure of Mr. Miller's assets to Mrs. Miller[,]" and although both parties threatened to call off the wedding at times and could have walked away from the marriage, neither chose to. We find no error by the circuit court.

On appeal, Ms. Miller alleges broadly that Mr. Miller "fail[ed] to disclose details of all assets" but she fails to explain what assets Mr. Miller did not disclose. The circuit court did not find any evidence of deception or a refusal to bargain over contract terms. On the contrary, Ms. Miller successfully negotiated the right to guaranteed alimony (even though she was an able-bodied mid-thirty-year-old); obtained long-term educational and financial security for their children; gained an interest in pre-marriage owned property of Mr. Miller; and secured, among other things, $350,000 toward a house, health insurance, and retirement benefits in the event of divorce. Under the circumstances, we do not find the terms of the Agreement unreasonably harsh. Accordingly, we find no error by the court in ruling that there was no unconscionability, either procedurally or substantively, in the procurement of the Agreement.

E. Undue influence/duress/mental incapacity

Although Maryland courts "have not created a bright-line test to detect the existence of undue influence," *Anderson v. Meadowcroft*, 339 Md. 218, 229 (1995), the Restatement (Second) of Contracts provides: "Undue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that that person will not act in a manner inconsistent with [her] welfare." Restatement (Second) of Contracts, § 177 (1981). Additionally, Williston on Contracts describes "undue influence" as follows:

> If a party in whom another reposes confidence misuses that confidence to gain an advantage while the other has been made to feel that the party in question will not act against its welfare, the transaction is the result of undue influence. The influence must be such that the victim acts in a way contrary to its own best interest and thus in a fashion in which it would not have operated but for the undue influence. Undue influence is equivalent to that which constrains the will or destroys the free agency of the person and substitutes in its place the will of another. The characteristics which play a role in establishing undue influence include pressure "of whatever sort which overpowers the will[.]" The pressure is applied "by a dominant subject to a servient object." The will of the servient person is actually the will of the dominant party.

28 Richard A. Lord, Williston on Contracts § 71:51 (4th ed. 2020) (footnotes omitted).

Duress, like undue influence, has lack of free will as a central component. "In order to establish duress, there must be a wrongful act which deprives an individual of the exercise of his free will." *Eckstein v. Eckstein*, 38 Md. App. 506, 512 (1978). Quoting from *Central Bank v. Copeland*, 18 Md. 305 (1862), we stated the rule as follows in *Eckstein*:

> "The element of obligation upon which a contract may be enforced springs primarily from the unrestrained mutual assent of the contracting

> parties, and where the assent of one to a contract is constrained and involuntary, he will not be held obligated or bound by it. A contract, the execution of which is induced by fraud, is void, and a stronger character cannot reasonably be assigned to one, the execution of which is obtained by duress. Artifice and force differ only as modes of obtaining the assent of a contracting party, and a contract to which one assents through imposition or overpowering intimidation, will be declared void, on an appeal to either a court of law or equity to enforce it. The question, whether one executes a contract or deed with a mind and will sufficiently free to make the act binding, is often difficulty to determine, but for that purpose a court of equity, unrestrained by the more technical rules which govern courts of law in that respect, will consider all the circumstances from which rational inferences may be drawn, and will refuse its aid against one who, although apparently acting voluntarily, yet, in fact, appears to have executed a contract, with a mind so subdued by harshness, cruelty, extreme distress, or apprehensions short of legal duress, as to overpower and control the will."

Eckstein, 38 Md. App. at 512-13.

In sum, three elements must exist: "1) that one side involuntarily accepted the terms of another; 2) that circumstances permitted no other alternative; and 3) that the circumstances were the result of the coercive acts of the opposite party." *Id*. at 514 (quotation marks and citations omitted).

Whether a person has the lack of mental capacity "is determined by a consideration of his external acts and appearances. It must appear that at the time of making a[n instrument] he had a full understanding of the nature of the business in which he was engaged[.]" *Zook v. Pesce*, 438 Md. 232, 247 (2014) (quotation marks and citation omitted). *See also* Restatement (Second) of Contracts § 15 (Am. Law Inst. 1981) (A contract is voidable due to mental incapacity if the party is "unable to understand in a reasonable manner the nature and consequences of the transaction, or . . . act in a reasonable

manner in relation to the transaction and the other party has reason to know of his condition.").

The circuit court ruled as follows on the issue of duress/lack of mental capacity:

> The next allegation is duress. The Court finds that there is insufficient evidence that Mrs. Miller was under duress or lacked the mental capacity to enter into the [A]greement freely and voluntarily, with a complete understanding of all of its terms.
>
> There was no expert testimony to support her claim and credible evidence that was introduced [] contradicted her testimony with regard to her mental state.
>
> The [c]ourt finds that her acceptance of the terms of the [A]greement was voluntary. She was not in a position where she had no other alternative but to sign the [A]greement and there was no coercion on the part of Mr. Miller.
>
> Again, Mrs. Miller's claims that Mr. Miller's generosity to her and her children in some way manipulated her into signing the [A]greement is inconsistent with the totality of the evidence in the, the case and is not credible.

The court ruled as follows on the issue of undue influence:

> The next claim is that there was undue influence. The [c]ourt finds that the difference in the financial status of the parties did not result in undue influence on Mrs. Miller in this case. There was communication between the parties that was admitted into evidence that reveals that, in fact, Mrs. Miller did not hesitate to assert her ability to secure revisions to the [A]greement, which she received.
>
> At one point during the course of the hearing, it was noted that Mr. Miller had, at some point, threatened to call of[f] the, the wedding if the parties could not agree. The evidence, however, reveals that, in fact, both parties threatened to call off the wedding during the course of their negotiations at different points in time.
>
> It is clear to the [c]ourt that those threats had no impact on the ability of either party to make a competent decision to enter in the [A]greement, with a complete understanding of all of its terms.

Ms. Miller argues on appeal that the court erred in finding insufficient evidence of undue influence or duress or mental incompetence when she signed the Agreement. She argues the court erred in its findings because she was "vulnerable and subject to [Mr. Miller's] coercion and control due to her mental state, financial dependence, and other medical issues she was experiencing" at the time she signed the Agreement.

There was no evidence presented at the hearing that Ms. Miller was unable to understand the Agreement or executed the Agreement without fully understanding its consequences. Ms. Miller admitted to sending a text message to Mr. Miller shortly after they separated that stated: "I signed that prenup knowing it was horrible to sign my marital rights away I'm [n]ot stupid I know what I was doing." As the trial court found, both parties at various points threatened to call off the wedding during the negotiations. Notwithstanding that Ms. Miller testified that she was suffering from self-diagnosed postpartum depression, was in severe pain due to three root canals, and her hormones were unbalanced, Ms. Miller was represented by competent counsel at all times during the negotiation. Ms. Miller has not once suggested that Ms. Gold was professionally lacking in representing her. Ms. Gold testified that she would have counseled Ms. Miller not to execute the Agreement if she had been aware of any incompetency, and neither Ms. Gold nor her legal assistant identified any concerns as to Ms. Miller's state of mind or ability to sign the Agreement. We agree with the trial court that Ms. Miller has failed to meet her burden of proof that she was under duress, undue influence, or had a mental incapacity when she signed the Agreement.

II. Custody

A. Law

In any custody determination, the paramount and overarching concern is "the best interest of the child." *Taylor v. Taylor*, 306 Md. 290, 303 (1986). *See Burdick v. Brooks*, 160 Md. App. 519, 528 (2004) (In custody cases, the "court's objective is . . . to determine what custody arrangement is in the best interest of the minor children[.]") (quotation marks and citation omitted). Although "[t]he best interest standard is an amorphous notion, varying with each individual case," a fact finder should "evaluate the child's life chances in each of the homes competing for custody and then to predict with whom the child will be better off in the future." *Montgomery Cnty. Dept. of Soc. Servs. v. Sanders*, 38 Md. App. 406, 419 (1977). The Maryland appellate courts have encouraged the circuit courts to look to several factors in considering child custody determinations.[5] *See Sanders*, 38

[5] In *Sanders*, we set out the following non-exclusive factors for a circuit court to consider in child custody determinations: 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) the ability to maintain 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. *Sanders*, 38 Md. App. at 420. We stated that a trial court will generally not weigh any one factor to the exclusion of others. *Id.* In *Taylor*, the Court of Appeals reiterated the *Sanders* factors and added several other factors it viewed as relevant in making custody determinations: 1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; 2) willingness of parents to share custody; 3) fitness of parents; 4) relationship established between the child and each parent; 5) preference of the child; 6) potential disruption of child's social and school life; 7) geographic proximity of parental homes; 8) demands of parental employment; 9) age and number of children; 10) sincerity of parents' request; 11) financial status of the parents; 12) impact on state or federal assistance; 13)

(continued)

Md. App. at 420 (where we set out ten non-exhaustive factors for a trial court to consider in any custody award) and *Taylor*, 306 Md. at 304-11 (where the Court of Appeals added several additional factors for a trial court to consider).

In reviewing child custody determinations, we employ three interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012) (citation omitted).

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion."

Id. (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)) (brackets added in *Gillespie*). A trial court's findings are "not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (citations omitted), *cert. denied*, 343 Md. 679 (1996). "Additionally, all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below." *Id*. (citation omitted). An abuse of discretion exists where "no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quotation marks and citation omitted) (brackets added in *Santo*).

B. The parties' contentions

benefit to parents; and 14) other factors. *Taylor*, 306 Md. at 304-11. The most important factor to consider in determining legal custody is the parents' capacity to communicate and to reach shared decisions affecting the child's welfare. *Id.* at 304.

Ms. Miller contends that the court erred in its custody determination, and she puts forth several arguments. She argues the court ignored evidence in her favor, and she urges us to reweigh the evidence and reach a different conclusion than the court. She argues the court found her to be a fit parent. She argues the court's ruling contradicted itself because the court awarded her parenting time despite questioning her choice of mental health treatments yet awarded Mr. Miller parenting time even though he had mental health issues. She also argues the court's award was in contravention of the court-ordered custody evaluator, who recommended that Ms. Miller have primary custody; the Best Interest Attorney, who recommended that Ms. Miller have 2-3 overnights a week during the school year; and the parties' proposal that they split custody 50/50. She also states that she has never "actually caused injury to" the children. Mr. Miller argues that the court thoroughly and thoughtfully addressed the *Sanders*/*Taylor* factors and properly determined that the best interests of the children were served in granting him primary physical and sole legal custody.

C. Background

Following a four-day custody hearing, the circuit court issued a custody order and accompanying written memorandum, granting primary physical and sole legal custody to Mr. Miller with Ms. Miller to have the children every other weekend from Friday at 5:00 p.m. until Sunday at 7:00 p.m. and the alternate Wednesday evening during the school year; alternating weeks during the summer; and designating a holiday schedule. In its memorandum, the court reviewed the factors listed in *Sanders* and *Taylor* and applied them to the facts before it.

As to the fitness of the parents, the circuit court found:

> [T]hat Mother has the capacity to be a fit parent, but is not currently capable of doing so. Her failure to adequately address her underlying mental health needs has left her with impaired judgment, impulsivity, and an inability to control her emotions. Her behavior has been marked by conduct which is not only detrimental to the wellbeing of the children, it has jeopardized their safety. For example, video footage of one of Mother's episodes depicted her throwing the boys' ipads at Father's car while yelling at him, followed by her speeding off in her Porsche with the children, unbelted, in the back seat, and the right rear door open. Given Mother's volatility, the [c]ourt has serious concerns for the safety of the children when in her care.

Notwithstanding Ms. Miller's "current mental state, the [c]ourt is persuaded that, with appropriate treatment, she is capable of being a fit and proper parent to the children." The court also was concerned about Ms. Miller's potential for drug relapse given Dr. Siebert's opinion that she is at risk for relapse and Ms. Miller's testimony that she continues to take Subutex, which was contradicted by her own expert. The court stated: "Dr. Siebert's opinion that Father is the more stable parent has been supported by the evidence in the case, which included evidence that the children's academic performance has improved while in his care. The [c]ourt finds that Father is a fit and proper person to have custody."

The court found no "credible evidence" of Mr. Miller's negative character but found Ms. Miller's negative behavior compromised her character. The court noted that "[t]hroughout the litigation Mother has disparaged the character of any person who acts in a way that Mother deems to be contrary to her personal interest[.]" The court found each parties' request for custody was sincere, but the parties were "incapable" of reaching any agreement. Although Mr. Miller "has shown a willingness to share custody[,]" Ms. Miller's "conduct prior to and during the course of the litigation reflects otherwise." The

court found that the children had relationships with family members other than their parents, but Mr. Miller was better able to meet this need given his "large, close[-]knit family." The court noted that the parties were incapable of communicating and making shared decisions, even though they lived close to each other. The court noted that Mr. Miller had the demonstrated "ability to maintain a stable and appropriate home for [the children]. Mother's mental health needs render her less able to do so at the present time." The court found that the parties financial status factor does not weigh in favor of either party and as they were on equal financial footing given the resources provided Ms. Miller in the parties' Agreement, coupled with Mr. Miller's continuing obligation to provide financially for the children's needs. The court noted that Ms. Miller was unemployed and Mr. Miller has demonstrated an ability to adjust his work schedule to maximize time with the children. The court noted that both parents have a good relationship with the children.

D. Analysis

We cannot say that the circuit court's legal and physical custody determination was not soundly grounded in the best interests of the children. The court explained its reasoning on the record as to the relevant *Sanders/Taylor* factors. Ms. Miller appears to ask us to re-weigh the evidence, looking to only the evidence favorable to her without any regard for the court's findings. That is not the standard by which we review a trial court's award of custody. *Cf. Gizzo v. Gerstman*, 245 Md. App. 168, 206 (2020) (holding that father's "arguments fail to show that any of the trial court's findings were unsupported by sufficient evidence or that the court's reasoning was irrational.").

Testimony elicited at trial was replete with evidence that Mr. Miller was the more stable parent, and that it was in the best interest of the children for him to have primary physical and sole legal custody. Dr. Seibert, who was admitted as an expert in forensic psychiatry and custody evaluations and who was court-ordered to perform psychological assessments on both parents, expressed his opinion that Mr. Miller was the "more stable parent" and that Ms. Miller's actions negatively affected the children's best interest because of her "personality vulnerabilities," i.e., her lack of insight into her actions and her tendency to blame others. He opined that the parties were involved in a "pathological co-dependent relationship" that "will continue after their divorce" and recommended that Mr. and Ms. Miller have no interaction without the presence of a third party. On this record, we are unpersuaded that the circuit court's findings were clearly erroneous or that the court abused its discretion in its custody award. *See Lemley*, 109 Md. App. at 627-28 (holding that a trial court's decision in a contested custody case "founded upon sound legal principles and based upon factual findings that are not clearly erroneous will not be disturbed in the absence of a showing of a clear abuse of discretion.") (citations omitted).

As to Ms. Miller's argument that the court "ignored" the recommendation of the court-ordered Custody Evaluator, who allegedly recommended that Ms. Miller have primary custody, Ms. Miller neither produced the custody evaluator's report into evidence nor called the custody evaluator to testify. *See* Md. Rule 9-205.3(k)(1) (limiting a circuit court's ability to review a child access evaluation "only if the report has been admitted into evidence at a hearing or trial in the case."). Accordingly, this argument is not properly before us as it was never raised before the circuit court. *See* Md. Rule 8-131(a).

("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). *See DiCicco v. Baltimore Cnty.*, 232 Md. App. 218, 224-25 (2017) (a contention not raised or considered below is not properly before the appellate court).

As to her argument that the court's custody award was in contravention of the BIA, who recommended that Ms. Miller have two to three overnights a week during the school year, three or four times a month, we find no error. First, the court ordered Ms. Miller to have two overnights a week, twice a month, which is very close to the BIA's recommendation. Second, a BIA is to make an "independent assessment of what is in the child's best interest and advocate[] for that before the court[,]" but the BIA "shall not testify at trial or file a report with the court." *See* Appendix 19-D: Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access 1.1 and 2.2. It is the circuit court who must synthesize all of the evidence and information presented in making its decision, and we are persuaded that the circuit court properly carried out its duties. Should Ms. Miller believe that there has been a change of circumstances that requires a change in custody or visitation, she may petition the court for a modification. *See McMahon v. Piazze*, 162 Md. App. 588, 594-96 (2005).

As to her argument that the court ignored the parties' proposal to split custody 50/50, she is wrong. Contrary to Ms. Miller's argument, Mr. Miller did not propose a 50/50 custody split. Instead, he testified that it was in the best interest of the children for him to have sole legal custody. He also testified that if Ms. Miller received proper mental health treatment, he could "see" the parties sharing physical custody in the future. As to Ms.

Miller's suggestion that she should have custody because she has not physically injured the children, she has not directed us to any law (nor could she) that states that a court must give custody to a parent, unless that party physically injures a child.

III. Child support

A. Background

Following the trial on custody and divorce, each of the parties prepared a child support worksheet. Ms. Miller's worksheet listed no income, and in her accompanying letter, she argued that because of the large disparity between the parties' wealth and because she has no income, she should not be responsible for any child support obligation. Mr. Miller's worksheet listed Ms. Miller's monthly alimony award as her monthly income and determined Ms. Miller's monthly child support obligation. In Mr. Miller's accompanying letter, however, he stated that "it would not be in the best interest of the Minor Children for" Ms. Miller to pay child support. He elaborated that he "has been and will continue to contribute $5,000 per month to Mother for the benefit of the Minor Children – in addition to all of the other expense[s] that he pays for the boys [– including their schooling, health care, extraordinary medical expenses, and camps]."[6]

On January 13, 2022, a final child support worksheet was done by the court. The worksheet listed the parties' monthly income before taxes, using Mr. Miller's stated

[6] In its custody order, the circuit court ordered Mr. Miller to pay the children's camp expenses, health insurance, and uninsured health expenses, including extraordinary medical expenses and therapy.

monthly income from his worksheet, and Ms. Miller's monthly income as $4,200, which is her monthly alimony. The worksheet found Ms. Miller's income to be 4% of their combined monthly income and Mr. Miller's income to be 96% of their combined monthly income. The worksheet listed the children's monthly child support needs as $19,712, from Mr. Miller's worksheet, adding $650 in medical expenses (therapy and speech therapy) and $3,906 in educational needs (tuition, books, uniforms, and tutoring). Multiplying the total child support needs by the parties above percentages, the worksheet listed Ms. Miller's monthly child support obligation at $971 and Mr. Miller's monthly child support obligation at $23,297. The court then entered an order requiring Ms. Miller to pay Mr. Miller $971 in monthly child support.

B. The parties' contentions

Ms. Miller contends the court erred in ordering her to pay $971 a month in child support because the court failed to explain its reasoning or the factors it considered in arriving at this award. Ms. Miller argues that because Mr. Miller has an annual income of almost $2,000,000 a year and her income consists only of her monthly $4,200 alimony award, the court abused its discretion in ordering her to pay child support. Lastly, she argues that the court erred in not making any factual findings as to Mr. Miller's "potential income," as most of his income came from his investments. Mr. Miller argues that the court committed no error: the court properly included Ms. Miller's monthly alimony award in her monthly income, and the court considered several factors in making its child support determination.

C. Law

By statute, Maryland uses a monetary schedule to calculate a child support obligation, which is then "divided between the parents in proportion to their adjusted actual incomes." Md. Code Ann., Family Law ("FL"), § 12-204(a)(1). The statute provides that alimony awards "shall be considered actual income for the recipient of the alimony . . . and shall be subtracted from the income of the payor of the alimony[.]" FL § 12-204(a)(2). "If the combined adjusted actual income [of the parents] exceeds the highest level specified in the schedule . . . , the court may use its discretion in setting the amount of child support." FL §12-204(d). This was an above the guidelines child support case as the parties' combined income exceeded the highest level on the guidelines schedule.[7] *See* FL § 12-204(e).

In an "above the guidelines" case, the trial court in the exercise of its discretion "may employ any rational method in balancing the best interests and needs of the child with the parents' financial ability to meet those needs." *Kaplan v. Kaplan*, 248 Md. App. 358, 365 (2020) (quotation marks and citations omitted). However, several factors are relevant in an above the guidelines case: "the parties' financial circumstances, the reasonable expenses of the child, and the parties' station in life, their age and physical condition, and expenses in educating the child." *Walker v. Grow*, 170 Md. App. 255, 266 (quotation marks and citations and bracket omitted), *cert. denied*, 396 Md. 13 (2006). In

[7] At the time of the award, the highest combined adjusted actual income listed on the statutory schedule was $15,000 a month. The schedule has been amended, effective July 1, 2022, to $30,000 a month. *See* FL § 12-204(e).

an above the guidelines case, the rationale of the statutory guidelines still applies: "The conceptual underpinning of [the statutory guidelines] is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had the child's parents remained together." *Voishan v. Palma*, 327 Md. 318, 322-23 (1992) (citations omitted). *See Walker*, 170 Md. App. at 289 ("[a] child is entitled to a standard of living that corresponds to the economic position of the parents.") (quotation marks and citation omitted). In keeping with the principles underlying Maryland's child support law, if it is in the best interest of the children, a trial court may award child support to the non-custodial parent. *Kaplan*, 248 Md. App. at 390.

D. Analysis

Here, the court worksheet properly included Ms. Miller's alimony as "actual income" in calculating a child support award. *See* FL § 12-201(b)(3)(xv). *See also Malin v. Mininberg*, 153 Md. App. 358, 412 (2003) (a trial court is required to consider alimony payments to wife both as an addition to wife's income and as a subtraction from husband's income so as to be in a position to determine their proportional share of appropriate child support obligation). We find no merit to Ms. Miller's argument regarding "potential income" as she again makes only a broad argument and fails to set forth any detail.

We find merit, however, in Ms. Miller's argument that the court failed to consider certain factors in exercising its discretion in ordering an award of child support. Neither of the parties directs us to any hearing on the issue of child support, and the trial court's order contains no findings of fact or conclusions of law. Although trial courts are presumed to know the law and need not spell out every step of their reasoning, *see Beales v. State*,

329 Md. 263, 273 (1993), because we cannot tell whether the court in fact exercised its discretion in determining a child support award, we find that the court abused its discretion in ordering Ms. Miller to pay child support in the amount of $971. This omission is particularly glaring given the large discrepancy between the parties' incomes and the fact that Mr. Miller has never sought child support from Ms. Miller.

Mr. Miller responds that the court did explain its reasoning and directs our attention to the court's custody memorandum in which the court analyzed the parties' respective finances in determining whether an award of attorney's fees was appropriate. We fail to see how the court's decision regarding attorney's fees is relevant to a child support determination, and in any event, the court never considered the child support factors in any above the guidelines case in its attorney's fees analysis. Thus, we shall vacate the court's child support award and remand to the court for proceedings consistent with this opinion.

IV. Attorney's fees

A. Law

Maryland follows the common law American Rule on the award of attorney's fees following litigation. *Nova Research, Inc. v. Penske Truck Leasing Co., L.P.*, 405 Md. 435, 445 (2008) (quotation marks and citation omitted). That rule provides:

> [G]enerally, a prevailing party is not awarded attorney's fees unless (1) the parties to a contract have an agreement to that effect, (2) there is a statute that allows the imposition of such fees, (3) the wrongful conduct of a defendant forces a plaintiff into litigation with a third party, or (4) a plaintiff is forced to defend against a malicious prosecution.

Id. (quotation marks and citation omitted).

Maryland allows for an award of attorney's fees in some family law matters. FL § 12-103(a) provides that a trial court "*may* award to either party the costs and counsel fees that are just and proper under all the circumstances" in which a person petitions for custody, support, or visitation. By using the word "may," a trial court is permitted in its discretion to award attorney's fees and that discretion is "to be exercised liberally in favor of awarding fees, at least in appropriate cases." *Thornton Mellon, LLC v. Adrianne Dennis Exempt Tr.*, 250 Md. App. 302, 322 (quotation marks and citations omitted), *cert. granted*, 475 Md. 701 (2021). An abuse of discretion occurs when a "ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks and citation omitted).

The statute further provides, however, that before exercising its discretion and awarding attorney's fees, the court "*shall* consider: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b) (emphasis added). "Consideration of the statutory criteria is mandatory in making an award and failure to do so constitutes legal error." *Ledvinka v. Ledvinka*, 154 Md. App. 420, 432 (2003) (quotation marks and citation omitted). Additionally, the statute provides: "Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding [related to application for or modification of a decree concerning custody, support, or visitation], and absent a finding by the court of good cause to the

contrary, the court *shall* award to the other party costs and counsel fees." FL § 12-103(c) (emphasis added).

B. Background

At the end of the court's custody memorandum, it began its attorney's fee analysis by citing FL §12-103(a) and (b), which as stated above, requires the court to consider three factors before awarding attorney's fees in a case involving custody. The circuit court first analyzed Ms. Miller's request for attorney's fees, finding that although she had repeatedly stated she could not afford attorney's fees, Mr. Miller had already paid her $35,000 in attorney's fees and paid many of her living expenses as required under the Agreement. The court noted that Ms. Miller flies first class to and from Florida to spend weekends with her children in Maryland but had made "virtually no effort to become employed," even though she is in good health and able to work. The court found that under the terms of the Agreement, Ms. Miller was not entitled to any attorney's fees related to her effort to invalidate the Agreement. Moreover, the court found that "much of the fees generated in this matter have been the result of Mother's actions for which there was no justification, and which often involved flagrant disregard for orders of the [c]ourt." Accordingly, the court denied Ms. Miller's request for attorney's fees.

The court then analyzed Mr. Miller's request for attorney's fees, which he had broken into three areas: Ms. Miller's challenge of the Agreement; discovery violations by Ms. Miller; and the third emergency motion and hearing. Mr. Miller attached detailed affidavits from his attorneys regarding their services, fees, and billing, including detailed invoices. The court reasoned that under the terms of the Agreement, Ms. Miller had an

obligation to pay Mr. Miller's attorney's fees related to his defense of the Agreement, which the court had found enforceable. The court reviewed the invoices submitted by Mr. Miller in defending the Agreement and found them to be "fair, reasonable and necessary." Accordingly, the court awarded Mr. Miller $58,698.20 in legal fees related to the enforcement of the Agreement.

As to the discovery violations, the court found that Ms. Miller repeatedly refused to produce documents in discovery requiring Mr. Miller to seek redress in court, and on two separate occasions the court ordered her to produce discovery, which she subsequently failed to do. The court stated that it had reviewed Mr. Miller's invoices for services regarding discovery and found them to be "fair, reasonable, and necessary." Accordingly, the court awarded Mr. Miller $14,119.50 in legal fees related to litigation resulting from discovery violations by Ms. Miller.

Lastly, the court addressed the third emergency motion filed by Mr. Miller. The court recounted that Ms. Miller had hired armed men to prevent Mr. Miller from obtaining court ordered access to his children. The court noted that Ms. Miller's actions were "unjustified" and "created an inherently dangerous situation[,]" which caused Mr. Miller to seek redress in court. The court stated it had reviewed the invoices submitted by Mr. Miller related to the third emergency matter and found them to be "fair, reasonable and necessary." Accordingly, the court awarded $23,859.00 for attorney's fees related to the third emergency hearing. In sum, the circuit court ordered Ms. Miller to pay Mr. Miller a total of $96,676.70 in attorney's fees, to be paid directly to Mr. Miller from the sale of the parties' marital home.

On appeal, Ms. Miller argues that the trial court erred in not awarding her attorney's fees and in ordering her to pay $96,676.70 in attorney's fees to Mr. Miller. She makes a several prong attack, which we shall address as best we can although we find her arguments difficult to discern. Mr. Miller argues that the circuit court did not err in its attorney fee award.

C. Analysis

i. Generally

In denying her an award of attorney's fees, Ms. Miller seems to take issue with the court's finding that she had "made virtually no effort to become employed" and that she flew first class every weekend to visit with her children in denying her an award of attorney's fees when the parties had agreed that she should be a "stay at home" mother. The court's findings as to her financial spending is relevant to her claim that she had no money to pay attorney's fees incurred as a result of the parties' custody dispute. The court's finding in this regard was not an abuse of discretion.

ii. Challenging the validity of the Agreement

The Agreement set out the parties' agreement as to attorney's fees. The Agreement provided:

> 14. **FEES**.
>
> A. The parties hereby waive the right to seek professional fees (legal, accounting, etc.), fees for valuation or any similar expenses from the other with respect to the negotiation and execution of this Agreement, and, except as provided in the following sentence, any matter arising out of this Agreement, their marriage or in any proceeding arising out of their of [sic] marriage. Since the parties enter into this Agreement in good faith, if either

> party challenges or disputes the validity or enforceability of this Agreement or any part thereof in any proceeding that party shall pay the legal fees and costs of the other party reasonably related to the enforcement or defense of this agreement.
>
> B. In any proceeding for divorce, Tony shall pay up to a maximum of Fifteen Thousand Dollars ($15,000.00) towards Jaimie's fair and reasonable attorney fees in connection with a divorce, custody and child support. Jaimie waives any other claim to attorney fees, cost and suit monies.

(Emphasis added). This provision falls within the exception to the American Rule that allows for the parties to contract for payment of attorney's fees.

Md. Rule 2-705, titled "**Attorneys' fees to a prevailing party pursuant to contract**" provides that the Rule applies "to a claim for an award of attorneys' fees attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys' fees to the prevailing party in litigation arising out of the contract." Md. Rule 2-705(a). The Rule further provides "a finding by the court in favor of a party entitled to attorneys' fees as a 'prevailing party,' the court shall determine the amount of an award in accordance with section (f) of this Rule." Md. Rule 2-705(e). Rule 2-705(f) provides that a court "*shall* consider the factors set forth in Rule 2-703(f)(3) and the principal amount in dispute[,]" and "*may* consider . . . any other factor reasonably related to the fairness of an award." The factors listed in Rule 2-703(f) include: 1) the time and labor required; 2) the novelty and difficulty of the questions presented; 3) the skill required to perform proper legal services; 4) whether acceptance of the case precluded other employment by the attorney; 5) the customary fee for similar services; 6) whether the fee is fixed or contingent; 7) any time limitations imposed by the client or the circumstances; 8) the amount involved and the results obtained; 9) the experience, reputation, and ability

of the attorneys; 10) the undesirability of the case; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases.

Ms. Miller argues that because she was "successful" in challenging the Agreement she should not be required to pay Mr. Miller's legal costs in defending the suit. Her reasoning goes like this: because the court ruled that the $15,000 attorney's fees cap in the Agreement was not enforceable as to custody litigation, she was successful in challenging the Agreement. We find no merit to this argument. In *Plank v. Cherneski*, 469 Md. 548, 621-22 (2020), the Court of Appeals affirmed a trial court's ruling that prevailing on "minor" claims that are "insignificant in comparison" to the main claim does not render a party "a prevailing party" for purposes of awarding attorney's fees. Ms. Miller's success in invalidating that part of the attorney's fees provision of the Agreement as to custody litigation, does not render her a prevailing party in any way on her main claim that the Agreement itself was invalid.

Ms. Miller also argues that the provision capping attorney's fees Mr. Miller will pay at $15,000 in a child custody context should also act as a cap on any award requested for defending the Agreement. The plain language of the Agreement does not support such an interpretation. By the plain language of the Agreement, if a party challenges the Agreement, the challenging party shall pay the reasonable fees to defend the Agreement and contains no cap. Ms. Miller also argues that because the plain language of the Agreement fails to mention the "prevailing party," we "must determine that the first exception to the American Rule is not applicable here. We do not understand the logic of this argument.

Lastly, Ms. Miller argues that the Agreement stated she was to only pay Mr. Miller's "reasonable attorney fees" if she challenged the Agreement and the court failed to explain how the award was "reasonable." Mr. Miller submitted detailed invoices and affidavits from his attorney's that discussed their hourly rates, the services provided, and their experience. The court specifically stated that it reviewed all the invoices submitted by Mr. Miller on this issue and found them to be reasonable. Accordingly, we find no abuse of discretion by the court in awarding these fees.

iii. Discovery violations in custody litigation

Ms. Miller argues that the court erred in awarding attorney fees to Mr. Miller for her discovery violations because Mr. Miller also engaged in contentious and overzealous discovery. Additionally, Ms. Miller argues that the circuit court erred in failing to explain its rationale in awarding fees to Mr. Miller or why the award was "reasonable" given the statutory factors of FL § 12-103(b). These arguments are without merit.

The court's attorney fee's award for discovery violations was granted under the exception to the American Rule that allows for the imposition of fees when permitted by statute. Here, FL § 12-103(b) provides for the imposition of attorney's fees for litigation concerning child custody. The circuit court explained in detail the many discovery violations by Ms. Miller and court orders that she ignored during this phase of litigation. There were no allegations that Mr. Miller engaged in any sort of similar behavior. And, contrary to Ms. Miller's argument, the circuit court in its custody memorandum stated the correct standard of law, cited the statutory factors of FL § 12-103(b), and discussed the

factors in depth throughout its memorandum. Accordingly, we find no abuse of discretion by the circuit court in awarding these fees.

iv. The second emergency custody litigation

Ms. Miller sets forth no specific argument explaining why this award should be reversed.[8] As such, we find no abuse of discretion by the court in awarding the fees.

In sum, we uphold the circuit court's award of attorney's fees.

JUDGMENTS AFFIRMED EXCEPT JUDGMENT AS TO CHILD SUPPORT VACATED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID 3/4 BY THE APPELLANT AND 1/4 BY APPELLEE.

[8] We note that these attorney's fees are also permitted under the exception to the American Rule that allows for the imposition of fees when permitted by statute. FL §12-103(b) provides for the imposition of attorney's fees for litigation concerning child custody. To the extent that Ms. Miller argues that the court erred because it did not discuss the three statutory factors of FL § 12-103(b) in making this award, Ms. Miller is incorrect. The court stated the correct standard of law, cited the statutory factors, *i.e.*, the parties' financial status, their needs, and whether there was a substantial justification for bringing the suit, and discussed them in depth throughout its custody memorandum.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1834s21cn.pdf