Circuit Court for Baltimore City
Case No. 24-D-17-003182

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1851

September Term, 2021

M.G., SR.

v.

B.P.

Berger,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: July 20, 2022

In this case, a father has appealed from an order, entered by the Circuit Court for Baltimore City, granting sole physical and legal custody of his son to the child's mother and granting him supervised visitation. In an informal brief, the father, representing himself, presents the following questions:

> I. Did the Court err in failing to grant [him] a prompt trial in the Circuit Court?
>
> II. Did the Court err in failing to grant joint custody unto [him]?

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

PROCEDURAL AND BACKGROUND FACTS

In 2016, M.G. ("Father") had a brief relationship with B.P. ("Mother"). Their son ("Son") was born on December 22, 2016. Son has resided with Mother since his birth.

On September 25, 2017, Father, representing himself, filed a complaint for joint physical and legal custody of Son. According to a return of service filed on October 16, 2017, a sheriff had served the complaint and a summons on Mother six days earlier by delivering it to an adult who resided at Mother's address. On October 24, 2017, Mother, representing herself, filed an answer.

Even though Mother had been served and had filed an answer, the circuit court, for reasons that are unclear from the record, did not issue a scheduling order or take any other action to advance the case. Instead, a year later, on November 1, 2018, the court notified the parties that it would dismiss the case without prejudice for lack of prosecution, unless good cause was shown.

On November 19, 2018, Father moved to defer the dismissal. He stated that he did not know that he was required to file more paperwork after he had served Mother and that he "was waiting for a court date."

On December 11, 2018, the court issued an order granting Father's motion to defer dismissal. The court, however, seems not to have understood that Father had served Mother with the complaint and summons, as the order purported to require him to serve her within 45 days.

It is again unclear from the record why, but more than two years elapsed before anything else occurred in the case: on April 27, 2021, the court convened a scheduling conference, at which neither party appeared.

A week later, the circuit court dismissed the case. On that same day, Father filed a letter in the circuit court requesting a new hearing date. He explained that he had not received timely notice of the scheduling conference because the court had sent the notice to his old address, and not to the new address where he had lived for a year.

On June 2, 2021, Father moved to strike the court's dismissal and requested a new scheduling conference date. The circuit court granted Father's motion, but noted that Father failed to receive notice of the scheduling conference because he had failed to update his address with the court.

On August 4, 2021, the court held a scheduling conference and scheduled the trial for December 21, 2021.

At the scheduled bench trial, Father testified in support of his complaint. In his opening remarks, he advised the court that he was seeking joint legal custody of his son

and visitation, not joint physical custody. Mother, her aunt, and two other persons testified against the request for custody.

The testimony established that Father and Mother apparently had a brief sexual relationship in 2016. Mother discovered that she was pregnant and informed Father. Their son was born on December 22, 2016. Father affirmed his paternity on the child's birth certificate after DNA testing confirmed that he was the father.

"Ever since then," Father testified, Mother had been "erratic" and "disrespectful" and had been "keeping [his] son away from [him]." Father testified that although Son is almost five years old, he has seen Son only two or three times.

The court elicited that Father is 55 years of age, has a high school diploma, and has served in the military. When asked if he was employed, Father stated that he is on disability. He explained that in 2012 he was discharged from the military because he had post-traumatic stress disorder ("PTSD"). He testified that since his diagnosis he has been in treatment and takes medication. He stated that the medication does not affect his ability to think clearly, but that his PTSD causes him to have issues with "various things," like loud noises. He denied any drug or alcohol use.

Father admitted that he had several arrests in Maryland, but stated those had occurred over ten years ago. In response to questioning by the court, he said that he could not recall the crimes with which he had been charged, he could not describe the crimes, and he could not say whether his arrests led to convictions.

Father testified that he has lived with his elderly mother for about a year. He claimed, however, that he was only residing temporarily with his mother. He explained that he had sold his house and was looking for a new house to buy.

According to Father, his mother's house has three bedrooms. The bedrooms are occupied by Father, his mother, and his older brother, who is unemployed. Father explained that if Son were in his care, Son would sleep on Father's bed and Father would sleep on a cot.

Father testified that his mother has never been convicted of a crime, but Father professed not to know whether his brother has been convicted of a crime. Father explained that he is not close to his brother.

Father pays $240 a month in child support, which is automatically deducted from his disability benefits. He testified that he had not communicated with Mother sufficiently to know whether they hold similar views on Son's medical care, education, and religious upbringing.

Mother testified that she is 31 years old, has a high school diploma, and works for Lyft. She and Son have lived in the same home for his entire life. She has no other children. Since Son's birth, Mother's aunt has watched over him when Mother works.

Mother testified that she does not use any illegal drugs or alcohol, has never been convicted of a crime, and has no mental health issues.

Mother believes that Father "lost" his previous home and did not sell it voluntarily, as he suggested.

Mother testified that since Son was six months old, Father has called her only twice. On the first occasion, when the child was about six months old, Father asked her to bring Son to his house, which she did. Father did not reach out to her again until four years later, when he stopped by her aunt's house and asked her to give his telephone number to Mother. Mother said that she called Father and agreed to bring Son to a restaurant, so that Father could meet him.

At the meeting at the restaurant, Mother said, Father spoke mostly to her and engaged little with Son. Father asked Mother if he could take Son to church, and she agreed. Mother testified, however, that when she called to make those arrangements, Father declined to take Son. Since then, Mother testified, she has not heard from Father. Mother testified that she did not know if she and Father shared the same views on medical care, educational decisions, and religious decisions as to their son.

Mother's aunt testified that Father has never been present in Son's life. Another close family friend testified that he has never seen Father.

Another family friend, who assists Mother in filing her tax returns, testified that Mother had received a letter from the IRS. The letter reportedly stated that Father was claiming that Son lived with him, presumably to get a tax deduction. As a result, Mother was required to produce documentation showing that Son had lived with her during the entire period in question. The friend described Father as an absentee father. He affirmed that he had never seen Father at family gatherings, holidays, etc.

In closing, Father told the court that he wanted to be part of Son's life. He stressed that he wanted to build a relationship with Son, but expressed frustration at how

Mother had treated him. He seemed to assert that it had been stressful and perhaps even harmful to his health to fight Mother for access to Son. At one point, he suggested that he might give up his parental rights, stop paying child support, and allow Mother to raise Son.

In her closing statement, Mother reiterated her complaint about Father's failure to call and ask to see Son. She asserted that Father "do[es] not deserve any legal rights over [her] child." She asked that any court-ordered visitation be supervised, because, she said, her son is very "active" and Father has PTSD.

In an extemporaneous, oral ruling, the court found that Father had made little effort to reach out to Mother since about six months after Son's birth. The court saw no evidence that Father had attempted to work cooperatively with Mother to care for Son.

The court recognized that the law favors joint custody. In this case, however, the court concluded that joint custody was inappropriate. In this regard, the court observed that neither parent had communicated with the other about important issues, such as Son's medical or dental care, education, or religious upbringing.

The court found that Son is well-cared for in Mother's home. Indeed, the court observed, Father had asked that Son live with Mother.

On the basis of its observations of the parties' testimony and demeanor, the court expressed concern that Father's PTSD affects how he interprets events and his relationship with Mother.

Based on these findings, the court ordered that Mother would have sole legal and primary physical custody of Son. The court added that Father would have access to Son's medical, dental, and educational records.

As the court began to address the subject of visitation, Father walked out of the courtroom, saying "I don't want visitation with my child." He added: "Thank you, Your Honor. I'm done."

Despite Father's statements, the court proceeded to grant Father supervised visitation and said that it would refer him to the Baltimore City Supervised Visitation Center. The court advised Mother that because she has sole legal custody, she need not go through the supervised visitation center, but may make whatever visitation arrangements she feels are appropriate for Son.

On January 10, 2022, the court embodied its ruling in a written order. Father noted a timely appeal.

DISCUSSION

Standard of Review

Appellate review of custody decisions is governed by distinct but interrelated standards. *See In re Yve S.*, 373 Md. 551, 586 (2003). On questions of law concerning the application of cases or statutes, we ask whether the court's decision was legally correct and, if not, whether any error was harmless. *See id*. The appellate court will not set aside factual findings made by the trial court unless those findings are clearly erroneous. *See, e.g., McCready v. McCready*, 323 Md. 476, 484 (1991). The trial court's

ultimate decision will not be disturbed unless the court abused its discretion. *See, e.g.*, *In re Yve S.*, 373 Md. at 586.

These standards of review reflect "the trial court's unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Santo v. Santo*, 448 Md. 620, 625 (2016) (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)). A judge who "sees the witnesses and the parties, [and] hears the testimony . . . is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the [children]." *Davis v. Davis*, 280 Md. 119, 125 (1977).

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 (1996). An abuse of discretion occurs 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. at 625-26 (quotation marks and citation omitted).

I.

In Father's first issue on appeal, he complains that the court system delayed the resolution of his custody case for several years on the erroneous premise that he had not served Mother with a summons and a complaint. He argues that the delay interfered with his ability to forge a relationship with his son. He calls this "an obvious case of justice delayed and therefore, justice denied[.]"

At trial, Father and the trial court disagreed about what had caused the delay in bringing the case to trial. Father stated during cross-examination of Mother that because of a "clerk's error," he was not given a court date for three years after filing his complaint for custody. The court disagreed, stating, incorrectly, that the delay resulted from his failure to serve Mother. During closing, Father again stated that it had taken several years to get to trial.

Before issuing its ruling, the court stated that it "want[ed] to clear up one issue." The court acknowledged that Father had served Mother with the complaint in a timely fashion, but stated that after service "[Father] did not take the next necessary step to move his case forward." The court did not explain what the "next necessary step" was for these unrepresented litigants to take.

The court added that when the matter was set for a scheduling conference, "neither party showed up." The court concluded that the court was not responsible for the delay.

Although unmentioned by the court, the COVID-19 pandemic undoubtedly had some role in the multi-year delay in bringing this case to trial. The pandemic, however, cannot be blamed for the delay that occurred between October 2017, when Father served Mother and filed a return of service, and March 18, 2020, when the Chief Judge of the Court of Appeals issued the first of several emergency orders that limited the operations of the Maryland courts in response to the pandemic. Nor can the pandemic be blamed for the delay that occurred between December 2018, when Father moved to prevent the court from dismissing the case (on the erroneous premise that he had not served the complaint on Mother) and the onset of the pandemic in March 2020.

It is true, as the court observed, that, when the court finally set a scheduling conference in April 2021, both parties failed to appear. As a result, a few additional months of delay ensued. Nonetheless, we are at a loss to explain why it took more than three years to set a scheduling conference and more than four years to bring this simple custody case to trial. In the circumstances, it is difficult to resist the conclusion that the Baltimore City court system has failed these two unrepresented citizens and their child.

The question, then, is what is to be done? Father does not argue that the delay prejudiced his ability to present his case. He does not, for example, argue that important evidence was lost or destroyed, or that important witnesses died, left the jurisdiction, or forgot what they had seen or heard. Thus, we cannot say that the delay had a negative effect on the court's evaluation of Father's case, or on the ultimate legal conclusion that the court drew from that evaluation.

If Father is arguing that the court erred in not granting him joint legal custody because the court believed Father was responsible for the delay in bringing the case to trial, the record belies that claim. The court's decision was clearly prefaced on the facts before it and not on its understanding, or misunderstanding, of why the case was delayed.

Accordingly, we have no legal basis to set aside the judgment on the basis of the delay in bringing this case to trial, unfortunate as it is.

II.

Father argues that the circuit court erred in denying his motion for joint legal custody. He emphasizes that he never missed a child-support payment and that there was no evidence that he represented a danger to Son. Because of the absence of any evidence

that he represented a danger to Son, he argues that there was no evidence that he needed supervised visitation. He believes that the trial court held the evidence of his PTSD against him. Finally, he concludes that the trial court applied no rules in making its decision, and therefore its decision was unreasonable and not based on the evidence presented.

Although Father often uses the term "custody" without qualifying whether he means physical or legal custody, the only custody issue before us is the denial of his request for joint legal custody. Father abandoned and waived his right to appeal the court's award of physical custody to Mother because he conceded at trial that Mother should have physical custody. *See In re Nicole B.*, 410 Md. 33, 64 (2009) (a party "is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order"); *Grandison v. State*, 305 Md. 685, 765 (1986) ("[t]he right of appeal may be waived . . . by otherwise taking a position inconsistent with the right to appeal . . . [such as] [b]y dropping the subject and never again raising it").

The capacity of the parents to communicate and to reach shared decisions affecting the child's welfare "is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate[.]" *Taylor v. Taylor*, 306 Md. 290, 304 (1986). "Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child[.]" *Id.* Even then, joint legal custody should be ordered "only when it is possible to make a finding of a strong potential for such conduct in the future." *Id.*

The Court went on to state:

> Ordinarily the best evidence of compatibility with this criterion will be the past conduct or "track record" of the parties. We recognize, however, that the tensions of separation and litigation will sometimes produce bitterness and lack of ability to cooperate or agree. The trial judge will have to evaluate whether this is a temporary condition, very likely to abate upon resolution of the issues, or whether it is more permanent in nature. Only where the evidence is strong in support of a finding of the existence of a significant potential for compliance with this criterion should joint legal custody be granted. Blind hope that a joint custody agreement will succeed, or that forcing the responsibility of joint decision-making upon the warring parents will bring peace, is not acceptable. In the unusual case where the trial judge concludes that joint legal custody is appropriate notwithstanding the absence of a "track record" of willingness and ability on the part of the parents to cooperate in making decisions dealing with the child's welfare, the trial judge must articulate fully the reasons that support that conclusion.

Id. at 307.

After reviewing the transcript and the evidence presented, we are persuaded that the court did not abuse its discretion in denying Father's request for joint legal custody. The trial court found that Father had made little to no effort to see Son for most of the child's life. Moreover, the evidence showed that Mother and Father had not had even the most basic discussions about important issues affecting the child's upbringing, such as medical care, education, and religion. This failure shows an unwillingness to converse and plan with Mother about Son in any way, suggesting that joint legal custody would prove unworkable.

We agree that the court considered Father's PTSD, but the record reflects that it did so mainly in evaluating whether he accurately perceives and recounts his experiences. In other words, the court considered Father's PTSD in evaluating his credibility, which it

was entitled (and, in fact, required) to do. We see no indication that Father's PTSD had an improper effect on the court's analysis of the issue of joint legal custody. The court could and did properly consider Father's PTSD, particularly his susceptibility to loud noises, in deciding to order supervised visitation with Son, whom Mother described as "active."

Finally, although the court did not expressly articulate its analysis of each of the various factors that may pertain to issues of legal custody (*see Taylor v. Taylor*, 306 Md. at 303-11; *Montgomery County Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1978)), we are satisfied, both from the questions that the court posed and from the court's oral opinion, that it followed the law and considered the relevant factors.

In summary, we see no reason to conclude that the court erred or abused its discretion in reaching its ultimate decision on joint custody.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.