Circuit Court for Howard County
Case No. 13-C-15-105659

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1897

September Term, 2017

JUDITH FORRESTEL

v.

BRADLEY FORRESTEL

Nazarian,
Arthur,
Beachley,

JJ.

Opinion by Arthur, J.

Filed: October 9, 2018

This case principally involves a dispute relating to a divorce and to custody of the couple's only child. Appellant Judith Forrestel ("Mother") is self-represented. Appellee Bradley Forrestel ("Father") has no representation at all and has filed no brief.

In very brief summary, in an order that was docketed on September 19, 2017, the Circuit Court for Howard County granted the parties an absolute divorce, rather than the annulment that Mother sought. In addition, the court granted Father sole physical and legal custody of the child.

Mother appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We recount the facts in the light most favorable to Father, the party who prevailed below. *Green v. McClintock*, 218 Md. App. 336, 341 (2014); *L.W. Wolfe Enters., Inc. v. Maryland Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005). Some of those facts are set forth in *Forrestel v. Forrestel*, No. 2660, Sept. Term 2016, slip op. at 1 (filed Aug. 17, 2017), which concerned Mother's appeal from an earlier order on the issue of custody.

A. From Circa 2013 to August 2017

The parties met in Germany, when Mother was teaching English as a second language, and Father was working for an agency of the United States government. In February 2013, after Mother had returned to her home state of California, Mother and Father started communicating by email. They were engaged to be married, but in July 2013 Mother terminated the engagement. They resumed their engagement in August 2013, but Mother terminated it again in November 2013. Mother apparently changed her mind yet again, because on November 23, 2013, the parties were married.

After the wedding, the parties lived in Germany until June 2014, when Mother left and returned to California. Despite Mother's departure, the parties continued communicating through email, and Father visited Mother in California in October 2014. They conceived a child ("Son") during Father's visit.

When Mother learned that she was pregnant, she decided to try to make the marriage work. In December 2014 she moved into Father's residence in Howard County, Maryland. Son was born in June 2015.

"During a trip to Pennsylvania in October 2015, Father and Mother had an altercation." *Forrestel v. Forrestel*, No. 2660, Sept. Term 2016, slip op. at 1. The District Court of Maryland for Howard County "entered a temporary protective order that was dismissed when Mother failed to appear at a hearing." *Id.* at 2. Rather than attend the hearing, Mother left Maryland without notice, took Son, and went to California. *Id*. "Father did not learn of their whereabouts until eighteen days later, when he received notice of a court action and a temporary restraining order Mother sought against him in California." *Id.*

On November 15, 2015, Father filed for a limited divorce in the Circuit Court for Howard County. He sought custody of the child, who was about five months old at the time.

On January 7, 2016, a judge from the Circuit Court for Howard County and a judge from the Superior Court of the State of California for the County of Los Angeles held a simultaneous hearing on the issue of which state had jurisdiction over custody of the child under the Uniform Child Custody Jurisdiction and Enforcement Act, Md. Code

(1984, 2012 Repl. Vol.), §§ 9.5-101 to -318 of the Family Law Article (the "UCCJEA"). The judges decided that Maryland was Son's "home state," within the meaning of the UCCJEA and hence that Maryland had jurisdiction to decide the issue of custody.

The Maryland court granted Father "unsupervised visitation from 9:00 a.m. to 5:00 p.m. on Saturdays and Sundays, and at least one day per week of video conferencing" (*Forrestel v. Forrestel*, No. 2660, Sept. Term. 2016, slip op. at 2 n.3), "but the expense associated with weekly travel to California made this visitation plan unworkable, so he moved for a *pendente lite* hearing and sought a new custody plan." *Id.* at 2.

Meanwhile, Mother attempted to obtain another custody order from a different California court. It is unclear whether the California judge knew of the earlier ruling in which his or her colleague had decided that Maryland would have jurisdiction over custody issues.

On April 8, 2016, the Circuit Court for Howard County conducted a pendente lite hearing. "At the hearing, Mother sought sole custody so [Son] could remain with her in California, and Father sought joint custody and for [Son] to live in Maryland." *Id.* (footnote omitted). The court entered a pendente lite order that granted the parties joint legal and shared physical custody of Son; granted visitation rights to Father from 5:00 p.m. to 8:00 p.m. on Wednesdays and from Friday evenings to Monday mornings each week; gave Mother the exclusive use and possession of the family home and of one vehicle; and required Father to pay the mortgage as well as $1,150 per month in

additional support. The order required Mother to return to Maryland with the child within a period of days.[1]

In violation of the order, Mother failed to return the child to Maryland within the specified time. Hence, on Friday, April 29, 2016, Father travelled to California and, with the help of the police, retrieved the child. On May 1, 2016, Father returned to Maryland with the child.

By Monday May 2, 2016, Mother had come back to Maryland. Apparently because Father's visitation period had come to an end with the beginning of the new work week, he returned the child to her.

Mother noticed bruises on Son's face and took him to an urgent care clinic and to the police. The police declined to pursue any charges against Father,[2] so Mother went to a district court commissioner to seek an interim protective order and to apply for criminal charges against Father. The district court denied the request for a protective order, and the State dismissed the criminal charges.

[1] In the opinion that accompanies that order that is on appeal in this case, the trial court wrote that Mother was to return Son within 21 days. In the opinion in Mother's earlier appeal, however, this Court wrote that Mother was to return Son within 15 days. *Forrestel v. Forrestel*, No. 2660, Sept. Term 2016, slip op. at 3. We are unable to rectify the contradiction, because the record on appeal does not contain the pendente lite order.

[2] According to Mother's brief, a police officer wrote that the bruises were "'yellowing' rather than purple." Similarly, in the earlier opinion in this case, this Court wrote: "The Police Report stated that the bruises were old, not new." *Forrestel v. Forrestel*, No. 2660, Sept. Term 2016, slip op. at 3 n.8. According to the circuit court, the police officer wrote that, based on his training, knowledge, and experience, the injuries were "several days old." Mother asserts that the police report is "not accurate."

On May 5, 2016, the circuit court ordered that the child not be removed from Maryland. On the following day, however, Mother took the child to California and went into hiding. While in hiding, Mother used false names for herself and for Son.

After Mother failed to respond to efforts to arrange the exchange of Son for Father's weekend visitation, and after the police were unable to find Mother and Son in order to conduct a wellness check, Father requested and obtained a child abduction order under §§ 9-301 to -307 of the Family Law Article. *Forrestel v. Forrestel*, No. 2660, Sept. Term. 2016, slip. op. at 4. In addition, Father persuaded the court to modify the pendente lite order to grant him sole custody of the child and use and possession of the home and to terminate his child support obligation.

Mother remained on the West Coast, with Son, from May 2016 to September 2016, hiding from Father. Mother testified that during that time she did not stay with friends or family members. Instead, she attempted to stay in homeless shelters or domestic violence shelters. Mother admitted that it was difficult to locate shelters with available space and that she had concerns that it was not safe for her or Son to be around some of the residents in the shelters.

Father's attorney sent copies of the child abduction order to Mother's known contacts in California, including her aunt. Cellphone records show that Mother communicated with her aunt after Father had sent copies of the order to her. Mother testified, however, that she did not know of the order and that none of her friends or family members mentioned the order to her when they spoke. The circuit court found that her testimony was "not credible."

As the result of the efforts of a police detective, the National Center for Missing and Exploited Children, and a social media campaign waged by Father, Mother was arrested in Tacoma, Washington, on or about September 16, 2016. Mother called Father from jail, blaming him for her arrest. At that time, Father had not seen his child and had received no information about him for five months.

Father travelled to Washington State to retrieve the child and brought him back to Maryland. Mother remained in jail in Washington for a month, until she was able to afford bail.

Mother returned to Maryland, where a jury found her not guilty of child abduction. By July 2017, Mother had supervised access to Son for two, three-hour periods each week.[3]

B. The August 2017 Hearing

The court held a four-day hearing on the issues of divorce and custody in August 2017. Father sought an absolute divorce on the grounds of cruelty of treatment and one year of separation. Mother sought an annulment on the grounds of fraud and duress, as well as a monetary award. Both parties sought sole legal and physical custody of Son,

[3] Mother's brief refers to limitations on her access to Son that the court has imposed since the date of the order that is the subject of this appeal. The brief also refers to subsequent proceedings, including contempt proceedings. None of those matters are before us in this appeal. The only issues in this appeal concern the final judgment regarding divorce and custody on September 19, 2017, and any rulings that preceded it, other than the rulings that were the subject of a prior appeal. *See* Md. Rule 8-131(d) ("[o]n an appeal from a final judgment, an interlocutory order *previously* entered in the action is open to review by the Court unless an appeal has previously been taken from that order and decided on the merits by the Court") (emphasis added).

who was two years old at the time of the hearing. Father requested use and possession of the family home and of family-use property. Father also sought the transfer of the home to him and requested that the court deny Mother's request for a monetary award in light of the amount of his counsel fees, which exceeded $230,000.

At the hearing, both parties agreed that they had a volatile and dysfunctional relationship. Each party admitted to initiating physical contact against the other. The court opined that neither party was free of fault.

Mother introduced numerous emails in which she interpreted Father's statements as admissions of physical abuse. After examining the emails, however, the court found that Father admitted to nothing more than restraining Mother and covering her mouth during various altercations. More important, the court noted that the emails did not contain the entire string of certain conversations, were missing pages, and had been redacted. The court found that the highlighted portions of the text sometimes omitted words that would have changed the context and meaning of the evidence. The court expressly found that, in editing the emails, Mother made an intentional effort to mislead the court.

Mother alleged that Father had abused Son, but the court was unimpressed by her proof. The court observed that Mother did not allege child abuse until May 2016, immediately after the court had issued the pendente lite order. It pointed out that, after Mother took Son to an urgent care clinic for treatment of the bruises on his face, the healthcare providers made no report to Child Protective Services ("CPS"), even though they are required by law to make such a report if they suspect abuse. The court also

pointed out that, after Mother went to the police, the police neither pursued criminal charges nor made a referral to CPS, even though they too are required by law to make such a report if they suspect abuse.

The court found that Mother's unfounded allegations of child abuse were impulsive and irresponsible. Furthermore, the court found that Mother had failed to take responsibility for the harm that she inflicted on Son by fleeing to California, removing him from his home and family, and exposing him to danger by housing him in homeless shelters.

Before the hearing, the court had ordered that both parties submit to an independent psychological evaluation by Dr. Gina Santoro, but Mother did not immediately submit to the evaluation, because she had left Maryland and gone into hiding. Dr. Santoro eventually evaluated Mother after her return to Maryland, and the court considered both Dr. Santoro's report and a report by Dr. Neil Blumberg, a psychiatrist who had evaluated Mother at the request of the attorney who represented her in the criminal trial for child abduction. The court declined to consider a third report that Mother had procured from a psychologist in California.

Upon reviewing the reports of Drs. Santoro and Blumberg, the court noticed significant differences in the history that Mother had provided to each. The differences involved the number of her prior marriages and pregnancies, her history of prior mental-health treatment, her history of anorexia and bulimia, and the existence of prior diagnoses. Most notably, it appears that Mother had previously been diagnosed with Borderline Personality Disorder, but that she did not inform Dr. Santoro of that diagnosis.

Notwithstanding the earlier diagnosis, Mother testified at trial that she had *not* been diagnosed with Borderline Personality Disorder.

The court had other concerns about the accuracy of the information that Mother had given to Dr. Santoro. According to Dr. Santoro, Mother gave her a copy of an investigative report by the State Department that related to her claims of abuse while she and Father lived in Germany.[4] Mother claimed that the report "substantiated" her claims of abuse. In fact, the report substantiated an allegation that "both parties have admitted to being physical with each other during the relationship," but it did not substantiate the allegation that "both individuals physically assaulted one another."

Dr. Santoro opined that Father's psychological test scores "fell entirely within normal limits," that he approached the testing "in an honest, open and cooperative manner," that he was "likely to be outgoing, happy, sociable, and gregarious," and that "[h]e has healthy self-esteem and is likely to be optimistic about the future." By contrast, Dr. Santoro testified that the deception scores were elevated for both of the personality tests administered to Mother. Dr. Santoro suggested that Mother may blame others for her challenges, act impulsively, and have turbulent relationships with friends and family members.

The court observed that Mother's in-court demeanor was sometimes odd. She would giggle at times and at other times take on an angry or aggressive tone. Mother

[4] Mother attempted to enter this report into evidence at trial, as support for her contention that she had suffered a history of physical abuse by Father. The court did not accept the report.

accused the court of yelling at her and stated that she sensed hostility from the bench. The court observed that, at one point, Mother put her head down on her arm and seemed to withdraw from the case, but was later giggling nervously again.

C. The Trial Court's Decision

The trial court was unpersuaded by Mother's attempt to annul the marriage on grounds of fraud or duress. The alleged fraud evidently consisted of Father's promises to change his ways. The duress evidently related to some $30,000 that Mother had given to Father before the marriage: Mother claimed to believe that she would not get the money back unless she married him. In concluding that this evidence did not suffice to prove fraud or duress, the court observed that Mother had ended the engagement twice and was obviously capable of doing so again. Citing *Hall v. Hall*, 32 Md. App. 363, 381-82 (1976), the court also observed that annulment is not a favored remedy. Thus, rather than annul the marriage, the court granted Father an absolute divorce on the ground of one year of separation.

On the issue of custody, the court expressly found that Father "is a fit and proper person to have custody." The court also found that Mother "cares deeply for her son," but that she had "made decisions that are in her interest, not his, [and] that have placed him in danger." When Mother took Son to California, she had no money and no place to stay. She lived on public assistance and stayed in shelters, where even she did not feel safe. She admitted that she had no long-term plan. Yet had she stayed in Maryland, she would have had use and possession of the family home, use and possession of a car, and

$1,150 per month in child support, as well as the ability to ask CPS to investigate her claims of child abuse.

The court expressed its concerns about Mother's character, citing discrepancies in her reports to the psychologists who examined her. The court specifically found that her editing of emails "was intentionally deceptive."

Mother had called two character witnesses who had known her for less than a year. The court questioned the witnesses' credibility. By contrast, Father offered witnesses who had known him for a lifetime, were family members, and thought highly of him.

The court found that Father will ensure that Son maintains relationships with family members. It remarked that Father comes from a large family that assembles each year for a reunion and that many of his family members are in close proximity to him. Mother, on the other hand, "is estranged from many of her family members."

The court considered the financial situation of both parties. The court found that Father makes $120,000 per year, graduated from college, and has worked for the same employer since 2004. By contrast, the court found that Mother would struggle to support herself and the child in her job as a preschool teacher making $14 per hour. On the basis of those findings, the court decided that Father is better suited to provide for the minor child's material needs at this time.

The court expressed concern about Mother's likely influence on Son. It said that she had "shown herself to be impulsive by moving to California with the minor child with no plan for the child's safety and welfare." It was skeptical about her claim to have

fled to California to protect herself and the child from abuse. In this regard, the court noted that, in a long email to Father on the day when she observed Son's bruises, Mother did not mention his injuries, but instead complained about having to drive an older Hyundai rather than a new Subaru. The court also noted that, when Mother first went into the police station after Father had returned Son to her, she complained that a bank statement was missing from his diaper bag, not that her child had been injured.

Citing Mother's testimony, the court expressed concern about her stability and decision-making abilities. Mother had admitted that, when she left for the West Coast with Son in May 2016, she had no plan. "She was praying for a miracle," the court wrote, "and looking for someone to tell her what to do." Although Mother insisted that she would not do the same thing again, she based that assertion on the existence of a "support system," which, the court observed, "is two women who have known her for less than a year, and a job," in which she earns only $14 an hour.

The court found it significant that in May 2016, when she claims to have been concerned about Father's alleged abuse of Son, Mother did not consider the option of remaining in Maryland, where she had the use and possession of the family home and a car, and complaining to CPS. The court also found it significant both that Mother failed to mention Son's injuries to Father before she left and that the healthcare providers and police officers made no report to CPS even though they are required to make a report if they suspect abuse. The court concluded that Mother's decision to leave Maryland and "conceal [Son's] whereabouts from [Father] was impulsive, unwarranted, and contrary to the child's best interests."

The court had "serious concerns that [Mother] will again take [Son] and leave the [S]tate, concealing their whereabouts." She had left twice, with no prior notice to Father. Furthermore, in the two months during which Mother had had supervised visitation, she had taken photographs of bruises on Son, presumably for the purpose of documenting them if she thought the need arose.

Ultimately, the court found that Father is in the best position to address Son's physical, spiritual, and moral well-being. In the court's view, it was in the best interest of the child to be in the sole legal custody of Father and for Mother to have only supervised visitation. The court granted Father use and possession of the family home for three years after the divorce, ordered a marital award to Mother in the amount of $30,000, and relieved Mother from the obligation of paying child support because of the financial hardship that it would impose. Finally, the court denied Father's request for attorneys' fees.

Mother filed a timely motion to alter or amend, which the circuit court denied. She then filed a timely notice of appeal.

QUESTIONS PRESENTED

Mother raises the following questions,[5] which we have consolidated and rephrased for clarity and concision:

I. Did the circuit court err in exercising subject-matter jurisdiction over the interstate custody dispute?

[5] Because Mother is self-represented, her questions are at times argumentative, redundant, and difficult to understand. We have listed Mother's specific questions in an appendix to this opinion.

II. Did the trial court conduct itself with a lack of impartiality, independence, and integrity?

III. Did the trial court err in not appointing counsel for Mother?

IV. Did the trial court err in not prosecuting Father for fraud and perjury?

V. Did the trial court err in not admitting a federal report concerning Mother's claims of domestic violence and a psychological report concerning Mother's fitness as a parent?

VI. Did the trial court err in not requiring a psychologist to testify at a hearing on access to the child, so that Mother's limited-appearance attorney could cross-examine her?

VII. Did the trial court err in granting Father an absolute divorce as opposed to granting Mother an annulment?

For the reasons set forth below, we affirm the judgment.

DISCUSSION

A. Jurisdiction in Maryland

Mother asserts that the circuit court erred in exercising jurisdiction over the custody dispute. She argues that Father's alleged misconduct required Maryland to decline jurisdiction and to give California jurisdiction over the case. We disagree.

The UCCJEA controls which state has subject-matter jurisdiction over child custody cases. We conduct a de novo review of a trial court's interpretation of a jurisdictional statute, like the UCCJEA. *Pilkington v. Pilkington*, 230 Md. App. 561, 581 (2016).

The UCCJEA provides, in pertinent part, that Maryland has jurisdiction to make an initial child custody determination if it "is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months

before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State[.]" *See* Md. Code (1984, 2012 Repl. Vol.), § 9.5-201(a)(1) of the Family Law Article. In this case, the undisputed facts in the record establish that the child was born in Maryland in June 2015, that he continued to live in Maryland until Mother suddenly took him to California in November 2015, and that Father continued to live in Maryland thereafter. Father commenced the proceeding within days of when Mother left with the child.

In short, Maryland had been Son's home state within six months before the commencement of the proceeding in November 2015 – in fact, Maryland had been Son's home state for his entire life before Mother left without warning and took him to California on the morning on which a Maryland court was to consider her request for a protective order. Father continued to live in Maryland despite Son's absence. Therefore, Maryland qualified as Son's "home state" under § 9.5-201 of the Family Law Article. Accordingly, Maryland had jurisdiction to decide the question of custody.

Mother assails the circuit court's reasoning, charging that it did not consider what she characterizes as Father's "unjustifiable conduct," which would afford a ground for Maryland to decline jurisdiction under § 9.5-207 of the Family Law Article. It is, however, "solely within the home state's discretion to decline jurisdiction based on the resident-parent's unjustifiable conduct." *Pilkington v. Pilkington*, 230 Md. App. at 589. A trial court abuses its discretion when its 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.'" *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)). To amount to an abuse of discretion, "'[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Id.* (quoting *North v. North*, 102 Md. App. at 14).

The record reflects that the circuit court read and considered a 14-page memorandum on the issue of unjustifiable conduct, which was prepared and filed by an attorney who represented Mother at the time. During the conference call with the California judge, in which Mother and her attorney participated, the court stated that it "disagree[d] with all of the assertions and allegations in this memorandum." Mother's brief contains nothing to suggest that the court's assessment was illogical, untenable, or otherwise outside the bounds of its discretion. The circuit court, therefore, did not err or abuse its discretion in concluding that Maryland should exercise subject-matter jurisdiction over the custody dispute.

B. Alleged Lack of Impartiality, Independence, and Integrity

Mother claims that the trial judge acted with a lack of impartiality, independence, and integrity. In the section of her brief that is devoted to argument, however, Mother says nothing about that claim. The absence of any argument on that issue would, in itself, afford an adequate ground to reject Mother's claim. Md. Rule 8-504(a)(6); *Klauenberg v. State*, 355 Md. 528, 552 (1999) ("arguments not presented in a brief or not presented with particularity will not be considered on appeal"); *accord Anne Arundel County v. Harwood Civil Ass'n, Inc.*, 442 Md. 595, 614 (2015). We consider the claim

only because Mother is self-represented, and the basis for it is discernible from her factual allegations.

In brief, Mother complains that the trial court believed Father rather than her, disagreed with her interpretation of the evidence, entered orders that she disagreed with, asked Mother whether she was surprised that Father was angry about her disobedience of a court order, commented that Mother's observations were inconsistent with those of independent medical and law enforcement personnel, remarked that Mother had taken no responsibility for the harm that she inflicted on Son by abducting him in violation of a court order and hiding him from Father for five months, and rejected her request to order another psychological examination after the court-ordered examination by Dr. Santoro had resulted in conclusions that Mother did not like. In other words, she complains that the court ruled against her and asked questions that probed potential weaknesses in her case. As the sole authority for her assertion that the trial judge was required to disqualify herself, Mother cites Md. Rule 18-101.2(a), which states that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary."

It is unclear from Mother's brief whether she ever actually raised the issue of partiality with the trial judge and made a *timely* motion that the judge disqualify herself. *See Miller v. Kirkpatrick*, 377 Md. 335, 361 (2003) (holding that recusal motion was untimely because party did not assert it until after unfavorable jury verdict); *see also Surratt v. Prince George's County*, 320 Md. 439, 469 (1990) (stating that a recusal motion "generally should be filed as soon as the basis for it becomes known and

relevant"). Consequently, we cannot tell whether Mother has adequately preserved this issue for appellate review. *See* Md. Rule 8-131(a).

Nonetheless, even if Mother had made a timely motion for disqualification on her stated grounds, we do not think that the judge's critical comments required her to exercise her discretion in favor of recusal. *Jefferson-El v. State*, 330 Md. 99, 107 (1993) ("[t]he recusal decision, therefore, is discretionary"); *see Surratt v. Prince George's County*, 320 Md. at 465 (in general, "[w]hen bias, prejudice or lack of impartiality is alleged, the [recusal] decision is a discretionary one"); *Goldberger v. Goldberger*, 96 Md. App. 313, 318 (1993) ("[r]ecusal is a discretionary matter, and the judge's decision denying recusal should not be overturned unless clearly wrong").

"The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards" a party. *Liteky v. United States*, 510 U.S. 540, 550 (1994). "But the judge is not thereby recusable for bias or prejudice, since his [or her] knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task." *Id.* at 551.

> Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he [or she] could never render decisions."

Id. (quoting *In re J. P. Linahan, Inc.*, 138 F. 2d 650, 654 (2d Cir. 1943)).

In this case, the trial judge was not only entitled to form an opinion about the merits; she was required to form an opinion and to express it in her findings and decision.

The judge's adverse decision, and her expression of the grounds for it, are not a basis for disqualification or recusal.[6]

C. Failure to Appoint Counsel

Mother claims that she was denied equal protection of the laws because the court did not appoint counsel for her. In a civil proceeding, however, a person has a constitutional right to court-appointed counsel only in a civil contempt case in which she faces the possibility of incarceration, and even then only if she is indigent. *See Rutherford v. Rutherford*, 296 Md. 347, 363 (1983) (holding only that "under the due process requirements of the federal and state constitutions, an indigent defendant in a civil contempt proceeding cannot be sentenced to actual incarceration unless counsel has been appointed to represent him or he has waived the right to counsel"); *but see Turner v. Rogers*, 564 U.S. 438, 448 (2011) (holding that "the Due Process Clause [of the Fourteenth Amendment] does not *automatically* require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration (for up to a year)").

Mother did not face the threat of incarceration for civil contempt. Therefore, the court had no obligation to appoint counsel to represent her.

[6] On the issue of impartiality, it is worth noting that the trial judge ruled in Mother's favor on a number of key issues: she exempted Mother from the obligation to pay child support; she ordered Father to pay $30,000 to Mother in a marital award; and she rejected Father's request for an order requiring Mother to pay the several hundred thousand dollars in attorneys' fees that he claimed to have incurred to enforce his rights with respect to his child.

D. Failure to Prosecute Father for Perjury or Fraud

Mother claims that the court erred because it failed to prosecute Father for fraud and perjury. In our adversarial system of justice, however, courts do not conduct investigations or bring charges against individuals. *See Smith v. State*, 64 Md. App. 625, 634 (1985). Instead, courts are impartial tribunals that preside over disputes that are prosecuted or defended by competing parties. The court did not err in failing to do something that it had no ability to do – charging a litigant with fraud and perjury.

E. Excluding Evidence

Mother complains that the trial court excluded an investigative report by the State Department that related to her claims of abuse while she and Father lived in Germany. She also complains that the trial court excluded a report by one of the psychologists who examined her. Although her brief contains no legal argument concerning the basis for the court's ruling, we can discern that it excluded both documents because they are hearsay – i.e., because they are "statement[s], other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c).

"Maryland Rule 5-802 prohibits the admission of hearsay, unless it is otherwise admissible under a constitutional provision, statute, or another evidentiary rule." *Wallace-Bey v. State*, 234 Md. App. 501, 536 (2017). "Unlike many rulings on the admissibility of evidence, which are reviewed for abuse of discretion, the issue of '[w]hether evidence is hearsay is an issue of law reviewed *de novo*.'" *Id.* (quoting *Parker v. State*, 408 Md. 428, 436 (2009)).

The court excluded the federal report because it was "an out-of-court declaration from a third party" who was not present at trial to be cross-examined. Because Mother does not dispute that she offered the report for the purpose of proving the truth of the factual assertions that it contained, the court correctly concluded that the report was hearsay. Because Mother did not establish that the report falls within one of the exceptions to the general prohibition against hearsay (*see generally* Md. Rules 5-803 and 5-804), the court correctly excluded the report.[7]

The same is true of the first psychological evaluation: it is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted" (Md. Rule 5-801(c)) – specifically, to prove the state of Mother's mental health and her fitness as a parent. Neither at trial nor on appeal did Mother argue that the report falls within one of the exceptions to the general prohibition against hearsay. Therefore, the trial court correctly excluded the evaluation.

F. Requiring Dr. Santoro to Appear at a Hearing on Access to Son

On July 17, 2017, a month before the trial on the merits, the trial court conducted a hearing to decide the terms on which Mother would have access to Son. Although we have no transcript of that hearing to confirm what did or did not occur,[8] Mother asserts

[7] We add that Mother presented the report to Dr. Santoro during her psychological evaluation. Dr. Santoro stated that the report did not substantiate Mother's allegations of abuse.

[8] *But see* Md. Rule 8-501(c) ("[t]he record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal").

that the court considered Dr. Santoro's report. The hearing resulted in an order under which Mother gained supervised access to Son.

Mother says that she was represented by a limited-appearance attorney[9] in matters pertaining to access or visitation. She says the limited-appearance attorney's engagement ended when the court entered the order concerning visitation. She complains that when Dr. Santoro testified at the merits hearing six weeks later, she was unable to conduct an effective cross-examination, because she is not an attorney. She seems to argue that the court should have required Dr. Santoro to appear and testify, apparently about the merits of the case, at the hearing on visitation on July 17, 2017.

It is difficult to discern how it could possibly have been appropriate, let alone obligatory, for the court to require Dr. Santoro to testify about the merits of the custody dispute at a hearing that concerned Mother's access to the child pending a final determination on the merits. In any event, we see nothing to suggest that Mother or her her limited-appearance attorney either requested that Dr. Santoro be present at the hearing on July 17, 2017, or that they took any steps (such as subpoenaing her) to compel her attendance. We cannot fault the trial court for failing to do something that it was not asked to do.

[9] See Md. Rule 2-131(b), which permits an attorney, acting pursuant to an agreement with a client for limited representation that complies with Rule 19-301.2(c) of the Maryland Attorneys' Rules of Professional Conduct, to enter an appearance limited to participation in a discrete matter or judicial proceeding.

G. Divorce vs. Annulment

Mother contends that she was entitled to an annulment on the grounds of fraud or duress and that the court erred in granting Father an absolute divorce. The short answer to her contention was that the circuit court was unpersuaded by her contentions of fraud or duress. "Although it is not uncommon for a fact-finding judge to be clearly erroneous when he [or she] is affirmatively **PERSUADED** of something, it is, as in this case, almost impossible for a judge to be clearly erroneous when he [or she] is simply **NOT PERSUADED** of something." *Bricker v. Warch*, 152 Md. App. 119, 137 (2003) (emphasis in original).

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; APPELLANT TO PAY COSTS.

APPENDIX

Mother's brief poses the following questions:

1. Was the Howard County Circuit Court's January 7, 2016 jurisdiction order an abuse of discretion? Was its subsequent custody order a violation of due process?

2. Has the Circuit Court conducted itself with a lack of impartiality, independence, and integrity to interfere with Mother's fundamental right to raise her son?

3. Did Mother have right to counsel as the indigent defendant, and did the Circuit Court violate that right after Mother requested to exercise it and be appointed counsel?

4. Has the Circuit Court abused its discretion contrary to the best interest of Minor Child?

5. Has the Circuit Court erred in not prosecuting Father for fraud and perjury?

6. Was Mother's right to equal protection of the laws violated in this case?

7. Should the trial court have admitted into evidence the federal investigation report?

8. Should the trial court have admitted into evidence the first psychological report?

9. Did the trial court error in admitting into evidence a third-party statement without the party being present?

10. Was Judge Mary M. Kramer's refusal to disqualify herself a violation of the Maryland Code of Judicial Conduct?

11. Was Mother entitled to an annulment?