Circuit Court for Howard County
Case No. C-13-FM-21-00749

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2010
September Term, 2022

&

No. 148
September Term, 2023

LOREN ANTOINETTE EVANS

v.

SCOTT ANTHONY JONES

Berger,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: August 14, 2023

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

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland and the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

This matter stems from a divorce and child custody matter in the Circuit Court for Howard County. The appellee, Scott Anthony Jones ("Husband"), filed a complaint for absolute divorce against the appellant, Loren Antoinette Evans ("Wife"). After a three-day trial that ended in January 2023, the court entered a judgment of absolute divorce that granted Husband sole legal and primary physical custody of the parties' three-year-old daughter ("Child"). The court also ordered Wife to pay child support. In this appeal, Wife, representing herself,[1] presents eight "issues," which we rephrase and reformat as follows:

1. Did the trial court err in awarding primary physical and sole legal custody[2] of Child to Husband?

2. Did the trial court err in awarding Husband child support?

3. Did the trial court err in denying Wife exclusive use and occupancy of certain property?

4. Did the trial court err in overruling Wife's objection to testimony as to how the family home was titled?

5. Did the trial court err in upholding the validity of the marital settlement agreement?

6. Did the trial court err in denying Wife's motion for recusal?

7. Did the trial court err in starting the second day of the trial without Wife, who was over ten minutes late?

8. Did the trial court allow inadmissible hearsay into evidence?

[1] Husband was represented by counsel at trial. Wife was *pro se* at trial. Husband did not file a brief in this Court.

[2] Wife states that the court awarded sole custody of Child to Husband. The court awarded primary physical and sole legal custody of Child to Husband.

9. Did the trial court err in denying Wife's motion for revisory power and a hearing?[3]

For the following reasons, we shall affirm the judgment of the circuit court.

BACKGROUND

The parties were married in May 2019 in Ellicott City. They separated in June 2021. At the time of the trial, Husband was 42 years old and Wife was 35 years old. Child was three years old at the time of the judgment of absolute divorce. Husband resides in Clinton in a single-family home that his father owns (the "Foxcroft home"). The court noted that

[3] Wife phrased the "issues" as follows:

> 1. Did the trial court abuse its discretion and or err as a matter of law when it awarded Appelle[e] sole custody of [Child]?
>
> 2. Did the trial court abuse its discretion and or err as a matter of law when it awarded Appelle[e] child support in the amount of $414 per month?
>
> 3. Did the trial court err and or abuse its discretion when it denied Appellant exclusive use and occupancy of the Smooth Meadow home, Foxcroft homes, and or use of the BMW?
>
> 4. Did the trial court abuse its discretion when it precluded Appellant from introducing evidence about any and all property?
>
> 5. Did the trial court err when it upheld the validity of the MSA?
>
> 6. Did the trial court abuse its discretion when it refused to recuse himself?
>
> 7. Did the trial court abuse its discretion when it started the hearing without the Appellant and allowed objectionable hearsay as it relates to the custody of [Child]?
>
> 8. Did the court improperly delegate its decision making authority and subsequently abuse its discretion in denying Appellant's motion for revisory power and request for a hearing under Maryland Rule 2-535?

Husband "currently works from home for [the United States Department of Homeland Security], and . . . with his mother's assistance, he's been able to be more available to [Child]." Husband made $120,000 per year, and he paid $376 per month for Child's health and dental insurance. Husband had a condominium titled solely to him in Columbia, Maryland, that he purchased around 2009 (the "Smooth Meadow" home). The court noted:

> [Husband] testified that he does have a condo that's for sale in hopes of paying off the $60,000 that he owes to his parents for attorney's fees [i]n this case. Although he doesn't expect it will generate proceeds sufficient to allow for that and then he owns no other real property.

Wife "lives in Gaithersburg in a two-bedroom apartment that has quite a few people living in the apartment." The court determined that Wife "has been able to make significant amounts of money in the past." At the time of the trial, Wife had an online clothing boutique, which earned about $5,000 over the previous twelve months.

Husband testified that some of the parties' marriage difficulties stemmed from Wife's litigation involving her other child's ("M.'s") father. Here, the court addressed that situation in its ruling as follows:

> [T]o me it's clear that, that [Wife's] report that was submitted concerning [M.'s father] and any abuse of [M.] was unsubstantiated. . . . There was a suggestion that [Wife] . . . made approximately 10 sexual and physical abuse complaints against [M.'s father] through Child Protective Services. *And none of them were substantiated*.

(Emphasis supplied.)

In April 2021, the parties signed a Marital Settlement Agreement ("MSA"), which was prepared by Wife. Both parties were *pro se* at the time of the signing. The MSA stated

that Husband would pay Wife alimony in the form of her monthly health insurance for two years. The MSA also stated that the parties had not acquired any marital property.

The court observed that Wife had several episodes, which impacted the court's analysis involving the best interest of Child. For example, Wife became upset with Husband and threw a hammer into a television within earshot of Child, and she threatened to drive her car through the garage door if Husband changed the locks at the house where they resided. During one child custody exchange, Wife yelled at Husband: "Calling him a faggot and a liar. In front of [Child]." Moreover, Wife would appear up to an hour late for child custody exchanges, and she would fail to appear for some child custody exchanges with no notice.

Additional facts will be included as they become relevant to the issues.

DISCUSSION

I. Child Custody Determinations

Wife challenges the court's custody determinations. She argues that the trial court "failed to make an express finding based on the evidence as to whether [Wife] was unfit or how her 'misbehavior' impacted [Child]." Moreover, Wife asserts that the court abused its discretion as to the factors it considered to determine custody.

In all custody determinations, the paramount and overarching concern is "the best interest of the child." *Taylor v. Taylor*, 306 Md. 290, 303 (1986). 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.*

Dep't of Soc. Servs. v. Sanders, 38 Md. App. 406, 419 (1978). The Maryland appellate courts have encouraged the circuit courts to examine several factors when determining child custody.[4] *See id.* at 420 (setting out ten non-exhaustive factors for trial courts to consider when awarding custody). *See also Taylor*, 306 Md. at 304-11 (adding several additional factors for a trial court to consider).

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

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. 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

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[4] 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 Supreme Court of Maryland, then known as 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) 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.

> 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, *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*. 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*).

Here, the circuit court issued a custody order that granted primary physical and sole legal custody to Husband. The court ordered that Wife would have access with Child on alternating weekends from Friday at 3:30 p.m. to Sunday at 6:30 p.m. and for two "dinners on the alternate weeks when [Wife] does not otherwise have access with the minor child, with those dinners occurring on alternate Tuesdays and Thursday evenings from 6:00 p.m. until 8:00 p.m." The court also designated a holiday schedule. In its ruling, 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 court found as follows:

> Truthfully, I'm very impressed with [Husband]. He presents in this courtroom as a gentleman who keeps his cool pretty much no matter what so far. At least what I've been able to discern from the testimony and the way he presents here in this courtroom. I am worried about [Wife's] seemingly -- her propensity for conflict and misbehavior [i]n ways that are invariably

> going to adversely affect [Child]. If she doesn't get a grip on herself. And start asking herself first and foremost what is in the best interest of [Child].
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> * * *
>
> In terms of parental fitness again I have to give a wink a nod to the – to [Husband] he just seems to be able to keep things in perspective, keep a cool head and focus primarily on [Child].

As to Wife's character and reputation, the court found that Wife "has demonstrated a proclivity for volatility." The court determined that both parties were "sincere in their request to have sole custody." The parties' ability to communicate was "on life support," and they were "essentially not willing" to share custody. As to parental employment, Husband "worked out almost an ideal situation where he has a position of significant responsibility but he can work from home where [Child] is with [Husband's] mother." "In terms of disruption of the child's life[,] . . . the parties don't live so far apart that access isn't promoted."

The court found that Husband "generates significant financial income that allows him to provide for [Child]." Although Wife is "very talented, very smart, [and] educated[,]" she "[came] up empty in her efforts to find employment." Wife testified that she had exerted ample effort to find employment, but the court determined that testimony was not credible.

Turning to our analysis, the court's legal and physical custody determination was soundly based on factual findings that were not clearly erroneous. The court explained its reasoning on the record under the relevant *Sanders/Taylor* factors. In essence, Wife asks us to re-weigh the evidence adduced at trial and examine only the evidence favorable to

her without any deference for the circuit court's findings.[5] But that is not our role as an appellate court reviewing the trial court's custody determination. Indeed, "trial courts are entrusted with 'great discretion in making decisions concerning the best interest of the child.'" *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (quoting *Petrini v. Petrini*, 336 Md. 453, 469 (1994)).

The evidence at trial established that Husband was the more stable parent, and that it was in Child's best interest for Husband to have primary physical and sole legal custody. The court's finding that Wife had a "propensity for conflict and misbehavior" was not clearly erroneous. Husband testified about several incidents that supported that finding.

After Wife was served with the complaint for absolute divorce, Wife screamed at Husband within earshot of Child. Husband testified as follows: "[Wife] was telling me how she was going to fuck me up, I'm wrong, I'm fucking with the wrong person, . . . she went to the point of throwing everything she possibly could." Later that evening, Wife repeatedly threw a hammer at a television, and then she threw a can of beans at the television. Wife candidly admitted to that act during her testimony at trial: "I felt like I needed to take my frustration out on the t.v. Uh, and I did that." During another incident, Wife screamed at Husband, kicked the front door, and removed shrubs outside the house. Husband then drove

[5] For example, Wife argues that the court's custody award was unwarranted because "[Wife] testified that [Child] was returned with a red mark on left cheek and when she inquired[,]" she learned "that [Child] ran into the door frame. . . . On cross examination, [Husband's mother], whom the circuit court found watches [Child] while [Husband] works[,] stated, '*I don't remember her running into a door frame. Um, she's very active. I don't know*.'" (Emphasis added in Wife's brief.) The court did not appear to place weight on this testimony elicited during Wife's cross-examination. Moreover, that testimony merely revealed that Husband's mother did not remember Child running into a doorframe.

with Child to Upper Marlboro and obtained a temporary protective order against Wife. Wife returned to the house later that day, and she threatened to drive a car through the garage door. As to those incidents, the court found as follows:

> [Wife] admits to smashing the television with a hammer. And that she did pull out the shrubs but that's on video. She said it's all she can do under the circumstances. Well, there were a lot of things you could have done under the circumstances. The vast majority of them would have reflected good judgment, would have not included yanking out the shrubs and threatening to drive your car through the garage.

The evidence also established that Wife screamed at Husband and called him a homophobic slur in front of Child.

We find no merit in Wife's argument that the court "failed to make an express finding based on the evidence as to whether [Wife] was unfit or how her 'misbehavior' impacted [Child]." The court expressly found that Wife had a "propensity for conflict and misbehavior [i]n ways that are invariably going to adversely affect [Child,] [i]f [Wife] doesn't get a grip on herself. And start asking herself first and foremost what is in the best interest of [Child]."

Wife argues that the circuit court clearly erred in finding that Husband's alcohol consumption was not problematic. We disagree. Wife testified that Husband's alcohol consumption started to become excessive between 2020 to 2021. The court, however, found as follows: "Based on the testimony of [Husband] and testimony of [Wife,] I do not find -- I do not have a concern about alcohol consumption being problematic." The court thus did not credit Wife's testimony that Husband's alcohol consumption was problematic. Indeed, although Wife claimed that Husband "drinks to excess[,]" the court found "no

evidence establishing that." Giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses[,]" we find no error in the court's lack of concern about Husband's alcohol consumption. Md. Rule 8-131(c).

The court properly based its physical and legal custody determinations on the best interest of Child. For all these reasons, the court did not err in adjudicating the parties' custody rights.

II. Child Support Determination

Next, Wife argues that the court erred when it determined that she had an imputed income of $15 per hour for purposes of determining her child support obligation. In addition, Wife claims that the court "erred as a matter of law when it did not count [Husband's] income from his bracelet business and his music streaming sales."

"Child support orders are generally within the sound discretion of the trial court." *Knott v. Knott*, 146 Md. App. 232, 246 (2002). "'As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we may have reached a different result.'" *Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020) (quoting *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003)).

A parent's support obligation typically is determined by their actual adjusted income. Md. Code, Family Law ("FL") § 12-204(a). But "if a parent is voluntarily impoverished, child support may be calculated based on a determination of potential income." FL § 12-204(b)(1). "'Voluntarily impoverished' means that a parent has made the free and conscious choice, not compelled by factors beyond the parent's control, to render the parent without adequate resources." FL § 12-201(q). To determine whether a

parent is voluntarily impoverished, the court must "inquire as to the parent's motivations and intentions." *Wills v. Jones*, 340 Md. 480, 489 (1995). The court must consider additional factors related to the parent's circumstances:

> (1) his or her current physical condition;
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> (2) his or her respective level of education;
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> (3) the timing of any change in employment or other financial circumstances relative to the divorce proceedings;
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> (4) the relationship between the parties prior to the initiation of divorce proceedings;
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> (5) his or her efforts to find and retain employment;
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> (6) his or her efforts to secure retraining if that is needed;
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> (7) whether he or she has ever withheld support;
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> (8) his or her past work history;
>
> (9) the area in which the parties live and the status of the job market there; and
>
> (10) any other considerations presented by either party.

Lorincz v. Lorincz, 183 Md. App. 312, 331 (2008) (citing *John O. v. Jane O.*, 90 Md. App. 406, 422 (1992), *abrogated on other grounds by Wills*). "The trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision." *John O.*, 90 Md. App. at 429.

"Once a court determines that a parent has become voluntarily impoverished, the court must determine the amount of 'potential income' to attribute to that parent, in order

to calculate support under [FL] § 12-204." *Durkee v. Durkee*, 144 Md. App. 161, 184 (2002). FL § 12-201(m) defines "potential income" as follows:

> (m) "Potential income" means income attributed to a parent determined by:
>
> (1) the parent's employment potential and probable earnings level based on, but not limited to:
>
> (i) the parent's:
>
> 1. age;
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> 2. physical and behavioral condition;
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> 3. educational attainment;
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> 4. special training or skills;
>
> 5. literacy;
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> 6. residence;
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> 7. occupational qualifications and job skills;
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> 8. employment and earnings history;
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> 9. record of efforts to obtain and retain employment; and
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> 10. criminal record and other employment barriers;
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> (ii) employment opportunities in the community where the parent lives, including:
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> 1. the status of the job market;
>
> 2. prevailing earnings levels; and
>
> 3. the availability of employers willing to hire the parent;
>
> (2) the parent's assets;
>
> (3) the parent's actual income from all sources; and

> (4) any other factor bearing on the parent's ability to obtain funds for child support.

Our review of the court's order shows that the court properly considered the evidence and factors to determine that Wife was voluntarily impoverished. Although Wife testified about her numerous unsuccessful attempts to secure employment, the court did not find that testimony to be credible.

With respect to the calculation of a parent's income, "so long as the factual findings are not clearly erroneous, 'the amount calculated is "realistic[,]" and the figure is not so unreasonably high or low as to amount to abuse of discretion, the court's ruling may not be disturbed.'" *Durkee*, 144 Md. App. at 187 (quoting *Reuter v. Reuter*, 102 Md. App. 212, 223 (1994)). And "[i]f there is any competent evidence to support the factual findings [of the trial court], those findings cannot be held to be clearly erroneous."' *St. Cyr v. St. Cyr*, 228 Md. App. 163, 180 (2016) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)).

Contrary to Wife's assertions, the court's determination of Wife's potential income is supported by the record. In 2008, Wife obtained her bachelor's degree in communications from the University of Maryland, College Park. Around 2015, Wife held employment as an "inside sales rep with Doctor First." Before that, Wife worked for Vocus and earned $90,000 in 2014. At the time of the trial, Wife ran an online clothing boutique, which earned about $5,000 over the previous twelve months. Under these circumstances, imputing a salary of $15 per hour was neither unrealistic nor unreasonably high. Thus, the court did not err in determining Wife's potential income based on her voluntary impoverishment.

Wife also argues that the court erred when it calculated Husband's income because the court "did not count [Husband's] income from his bracelet business and his music streaming sales." Section 12-204 of the Family Law Article provides child support guidelines proportionate to the parents' income. If, as here, the parents' monthly combined adjusted income is less than the highest level specified in the guidelines schedule, the use of the guidelines is mandatory. FL § 12-204(a), (e).

Section 12-204 of the Family Law Article provides child support guidelines assigning child support obligations proportionate to the parents' income. The guidelines require the circuit court first to determine each parent's monthly adjusted actual income. *Voishan v. Palma*, 327 Md. 318, 323 (1992). "Actual income" is "income from any source." FL § 12-201(b)(1). FL § 12-201(b)(3) enumerates sixteen sources of "actual income" including: "salaries;" "wages;" "bonuses;" and "commissions[.]" And "[f]or income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, 'actual income' means gross receipts minus ordinary and necessary expenses required to produce income." FL § 12-201(b)(2).

Husband testified that his bracelet business made no money in the last twelve months, and he received about $25-$30 at the end of the previous year for his music production. Husband testified that he was "not getting any royalties at the moment" and that his music was not commercially successful. Under these circumstances, we cannot say that the court's apparent omission of this nominal, speculative, and uncertain amount of additional income constituted error. *Cf. Brown v. Brown*, 119 Md. App. 289, 295 (1998)

(holding that "[d]ecisions that bring overtime pay into child support calculations stress that this additional income must not be speculative or uncertain").

For all these reasons, the court did not err in calculating Wife's child support obligation.

III. Use and Possession of Property

Wife next argues that the court erred when it denied her request for exclusive use and occupancy of certain real and personal property: the Smooth Meadow home, the Foxcroft home, and Husband's BMW. As to Wife's request for exclusive use and occupancy, the court ruled as follows: "it's all part and parcel of the Separation Agreement that was entered into by the parties and took all that off the plate for me."

Under FL § 8-206, the court can exercise its power to "enable any child of the family to continue to live in the environment and community that are familiar to the child" and "to provide for the continued occupancy of the family home and possession and use of family use personal property by a party with custody of a child who has a need to live in that home." The court did not err in denying Wife's claim for at least three key reasons.

First, Husband was granted primary physical custody of Child. *Cf. Bussell v. Bussell*, 194 Md. App. 137, 159 (2010) (holding that FL § 8-206 "provides trial courts with the discretion to award exclusive use and possession of the family home *to the custodial parent*" (emphasis added)).

Second, the Foxcroft home — where Husband resided with Child — was owned by Husband's father and titled in Husband's father's name. Under FL § 8-201(c)(1), "family

home" is defined in part as "property in this State that: . . . (ii) is owned or leased by 1 or both of the parties at the time of the proceeding[.]"

Third, the court did not err in determining that the MSA precluded Wife from obtaining exclusive use and occupancy. The MSA, which Wife prepared, presented to Husband, and signed, states as follows: "This agreement represents a fair resolution of all issues in our marriage." The MSA, however, made no mention of any claim for exclusive use or possession of any property.

Notably, we do not foreclose the possibility that a court has the authority to override an agreement as to exclusive use and occupancy of property under certain circumstances, (*e.g.*, when it would be in the best interest of the child). But we need not decide that issue in this case. Here, the court, in its ruling, emphasized that its judgment was rooted in deciding what was in the best interest of Child: "[M]y primary reason for being here is to do my best to secure the best interests of [Child]. She is our reason for being here[.]" Under these circumstances, the court properly enforced the MSA.

For all these reasons, the court did not err in denying Wife's claim for exclusive use and occupancy of the Smooth Meadow home, the Foxcroft home, and the BMW.

IV. The Court's Rulings on Wife's Testimony About Certain Property

In a similar vein, Wife briefly argues that the court erred by excluding her testimony — and testimony that she attempted to elicit — about real and personal property. In that section of her brief, Wife cites to one sustained objection from the trial transcript in support of her argument. We decline to compose the legal argument necessary to support Wife's challenge to every excluded portion of testimony about property. *See Rollins v. Cap. Plaza*

Assocs., L.P., 181 Md. App. 188, 201, 203 (dismissing appeal where appellant failed to provide sufficient reference to pages in the record extract supporting the facts asserted, noting that this Court "cannot be expected to delve through the record to unearth factual support favorable to [the] appellant" (quotation marks and citation omitted)), *cert. denied*, 406 Md. 746 (2008). *Accord Reynolds v. Reynolds*, 216 Md. App. 205, 225-26 (2014) ("We therefore shall not comb through the 2,904 pages of extract in this case—much less the record itself—in order to find factual support for appellant's alleged point of error."). Instead, we shall consider Wife's claim to the extent that it is readily discernable. Accordingly, we shall limit our review to the ruling that Wife specifically challenges within her brief.

Wife's challenge centers on the following exchange, which occurred during her testimony as part of her case-in-chief:

> [WIFE:] [T]he condo was in need of additional repairs, and it did not have enough bedrooms for everyone. We also wanted to have a larger family, so we made a decision to move. However, our credit scores combined was not that good, so we were gifted the use of my father-in-law's VA loan and credit to use marital funds to purchase the [Foxcroft home]. Three thousand nine hundred dollars was used to secure the earnest money deposit. And that was directly from my husband's account. And I have what I would like to turn the Court's attention to [Wife's Exhibit 7.]

Wife's Exhibit 7, which was marked but not admitted, was a printout reflecting a wire transaction for $3,900 from Husband to a title company. The following exchange then occurred.

> [HUSBAND'S COUNSEL]: Your Honor, I'm going to object. It remains my position that the Marital Settlement Agreement resolved all the issues regarding marital property. I am aware of the Court's position with regard to use and possession.

THE COURT: I don't know that I've actually taken a position.

[HUSBAND'S COUNSEL]: Well, I'm aware of what was done yesterday with regard to, from an evidentiary standpoint. Um, the evidence that she is trying to introduce is only relevant should there have been a marital property related issue. There isn't because it's been resolved pursuant to a Settlement Agreement. I would ask as such that who paid whatever for the marital home is not relevant to today's matter.

[WIFE]: You just heard [Husband] testify that he does not own the home, that he just stays there. Um, it does go to his credibility. It directly contradicts that testimony.

THE COURT: Ma'am, how is the home titled?

[WIFE]: My husband has made payments and the --

THE COURT: No, ma'am. Answer my question. How is the home titled?

[WIFE]: The home is titled in his father's name.

THE COURT: Okay. I'll sustain the objection.

Shortly before this exchange, Husband testified that his father owned the Foxcroft home and that his father purchased the Foxcroft home during the parties' marriage.

Evidence is relevant if it makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Irrelevant evidence is inadmissible. Md. Rule 5-402. We review the court's determination of relevance under a *de novo* standard of review. *State v. Robertson*, 463 Md. 342, 353 (2019). As noted above, the MSA stated that the parties agreed that they had no marital property. Moreover, as explained above, the court did not err in denying Wife's claim for exclusive use and occupancy of the Foxcroft home.

Wife's reliance on *Hughes v. Hughes*, 80 Md. App. 216 (1989), is misplaced. In *Hughes*, this Court ruled that the trial court had the authority to award possession and use to the wife of a home that was titled in the husband's name when "over one-quarter of the payments on the . . . home came from marital funds[,]" and the wife "contributed $4,000.00 of her funds plus labor in the construction of and improvements on the property." *Id*. at 227-28. In contrast, here, Wife conceded that the Foxcroft home was titled in Husband's father's name. The court properly sustained Husband's counsel's objection to Wife's Exhibit 7 and her accompanying testimony.

V. The Validity of the MSA

Wife next argues that the court erred in upholding the validity of the MSA. On July 7, 2021, the court held a hearing on Wife's motion to withdraw the MSA. From the hearing sheet in the record, it is apparent that the court heard testimony, stated its findings, and denied Wife's motion to withdraw the MSA. At trial, Wife unsuccessfully attempted to relitigate the validity of the MSA, and the court responded: "Well ma'am, the Court's already ruled on that."

Wife claims that the MSA was induced by fraud because, according to Wife, Husband allegedly induced Wife to sign the MSA by telling her that he would permit her to live in the home for about a year while she attempted to find a job. The MSA, which was prepared by Wife, contained no provision as to where Wife would reside. Wife claims that the MSA was unconscionable.

Our ability to review Wife's claim is constrained because she did not supply this Court with the transcript of the July 7, 2021, hearing on her motion to withdraw the MSA.

See Md. Rule 8-411(a)(2) (requiring appellant to provide this Court with "a transcription of any portion of any proceeding relevant to the appeal"). Appellants are required to ensure that the record on appeal contains the transcripts necessary for this Court to issue a decision. Md. Rule 8-413(a) (listing the required contents of the record on appeal); Md. Rule 8-602(c)(4) (granting this Court the discretion to dismiss an appeal when the record does not comply with Rule 8-413). It was Wife's burden "to put before this Court every part of the proceedings below which were material to a decision in [her] favor." *Lynch v. R. E. Tull & Sons, Inc.*, 251 Md. 260, 262 (1968). Wife has not done that.

In *Kovacs v. Kovacs*, 98 Md. App. 289 (1993), this Court held that the party asserting error has the burden to show "by the record" that an error occurred. *Id*. at 303. "Mere allegations and arguments . . ., unsubstantiated by the record, are insufficient to meet that burden." *Id*. Moreover, "[t]he failure to provide the court with a transcript warrants summary rejection of the claim of error." *Id*. As a result, because Wife failed to provide a transcript (as required by Md. Rule 8-411) of the hearing on her motion to withdraw the MSA, we reject Wife's argument that the circuit court erred in denying that motion. *Id*.

VI. The Denial of Wife's Motion for Recusal

Wife argues that the court erred in denying Wife's motion for recusal on the second day of trial. According to Wife, the court was required to recuse itself because it presided over another civil case filed by Wife. That case stemmed from Wife's negligence claim against the Howard County Department of Social Services ("DSS").

Wife sued the DSS for allegedly failing to disclose a statement that her other daughter, M., made during a forensic interview with the DSS Child Advocacy Center. Wife

made multiple reports alleging that M.'s father was physically and sexually abusing M. None of those reports were substantiated. The DSS filed a motion to dismiss for failure to state a claim upon which relief can be granted. That motion to dismiss was granted by the same judge who presided over the trial in this case.

On the second day of trial in this case, Wife moved to recuse the judge after the judge questioned Wife about her testimony that she was concerned about Husband's new friendship with M.'s father:

> [WIFE:] Um, after learning that my husband and [M.'s father], um, became friends of sorts, I immediately had concerns, uh, because in my mind, birds of a feather flock together, and, um, if -- Once again, I didn't understand that alignment.
>
> * * *
>
> [HUSBAND'S COUNSEL:] I asked you to respond to me about the offer of continuation of the two-two-three access schedule, did I not?
>
> [WIFE:] You did.
>
> [HUSBAND'S COUNSEL:] And I asked -- I implored you to let us work out a temporary access schedule for [Child], did I not?
>
> [WIFE:] You did.
>
> [HUSBAND'S COUNSEL:] And you didn't respond to that letter either to me, did you?
>
> [WIFE:] I responded to my husband, not to you.
>
> [HUSBAND'S COUNSEL:] And you told him that he wasn't getting access until the Pendente Lite Hearing, didn't you?
>
> [WIFE:] That's not what I said.
>
> [HUSBAND'S COUNSEL:] What did you say, ma'am?

[WIFE:] I said that, um, I did not -- I had several concerns and, um, until the Court could, uh, order some type of custody arrangement, which is what the PL hearing was for --

THE COURT: Is this because of the birds of a feather flock together thoughts?

[WIFE]: No, Your Honor. No.

THE COURT: What were your several concerns?

[WIFE]: I had a concern that if I dropped off, she would not be returned. That there would be some type of issue at drop off. There were several concerns because of my husband's actions prior to, um, me being kicked out of the house, and I mentioned that through testimony.

THE COURT: But you already said it was your concerns about birds of a feather flocking together.

[WIFE]: That was one concern.

THE COURT: So, you were concluding that he would be a sex offender because you thought [M.'s father] was a sex offender?

[WIFE]: At this time, Your Honor, I am questioning whether you can move forward.

THE COURT: Ma'am, I'm not asking you if you think I can move forward.

[WIFE]: I don't believe you can considering that you did preside over another case that I had. . . . And it's causing me to question your impartiality and if you have any type of implicit basis.

THE COURT: Well, ma'am, I'm sure you have all sorts of concerns about everybody.

[WIFE]: And I'm going to ask that you recuse yourself from the case.

THE COURT: Ma'am, I wish you had brought that up initially.

[WIFE]: It didn't become apparent to me until now, and especially you --

THE COURT: Now it's apparent.

[WIFE]: It is very apparent.

THE COURT: Oh, it is.[6] Well, I'd have to decline your request. I'm not saying it's the easiest thing in the world to have a case with you, ma'am, I don't have reasons to recuse myself.

Generally, a judge "is required to recuse himself or herself from a proceeding when a reasonable person with knowledge and understanding of all the relevant facts would question the judge's impartiality." *In re Russell*, 464 Md. 390, 402 (2019). Maryland Rule 18-102.11(a)(1) provides that a judge must "disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned," including when the "judge has a personal bias or prejudice concerning a party[.]"

The Maryland Code of Judicial Conduct "has not been interpreted to require a trial judge, who has presided over a prior case, involving the same defendant or incident, automatically to recuse him or herself from presiding over a subsequent trial involving the defendant." *Jefferson-El v. State*, 330 Md. 99, 106-07 (1993). A party attempting to demonstrate that a judge is partial faces a high burden because there is a strong presumption in Maryland "'that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified.'" *Nathans Assocs. v. Mayor & City Council of Ocean City*, 239 Md. App. 638, 659 (2018) (quoting *Jefferson-El*, 330 Md. at 107) (further quotation marks and citation

[6] To be clear, based on the context of this colloquy, we do not believe that the court was agreeing with Wife about the alleged apparentness of the court's partiality. Rather, the court was repeating Wife's opinion on that matter.

omitted). Hence, the party requesting recusal "has a heavy burden to overcome the presumption of impartiality[,]" and "[t]he decision to recuse oneself ordinarily is discretionary and will not be overturned except for abuse." *Att'y Grievance Comm'n v. Shaw*, 363 Md. 1, 11 (2001).

Here, Wife failed to make a showing that the court had any personal bias or prejudice. Despite Wife's claim, judges are not required to recuse themselves simply because they presided over a case involving one or more of the parties in the past. *Jefferson-El*, 330 Md. at 106-07. Wife also claims that the court abused its discretion by misinterpreting Wife's use of the proverbial phrase "birds of a feather flock together." However, "[i]n assessing credibility, the circuit court is entitled to accept – or reject – *all*, *part*, or *none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." *C.M. v. J.M.*, 258 Md. App. 40, 61 (2023) (quotation marks and citation omitted). Based on our independent review of the record, the court did not err in denying Wife's motion for recusal.

VII. Wife's Late Arrival on the Second Day of the Divorce Hearing

Wife claims that the court erred in starting the hearing before Wife arrived on the second day of the divorce hearing. In essence, Wife's claim stems from the principle that "a party to civil litigation has a right to be present for and to participate in the trial of his/her case." *Green v. N. Arundel Hosp. Ass'n, Inc.*, 366 Md. 597, 618 (2001). This constitutional right, however, is not absolute; there are circumstances in which a trial court, in its discretion, "may proceed without the attendance of a party[.]" *Id.* at 619.

At the end of the first day of the divorce hearing, the court told the parties that trial would resume at 10:00 a.m. the next day. The court stated: "So you are held harmless until 10:00 tomorrow to give me an opportunity to try to make progress on my criminal docket." The next day, the divorce hearing resumed at 10:11 a.m., and Wife had not arrived. The court then noted: "Well, I note that [Wife] has not arrived. She's over now eleven minutes late." The court consulted the courtroom clerk and confirmed that no messages had been received from Wife. Trial then resumed as Husband's counsel called the next witness. Wife arrived at 10:16 a.m. and apologized for being late. Wife was afforded the opportunity to be present and she waived that right by "absenting [her]self and thereby implicitly assenting to the court's proceeding without [her] presence." *Exxon Corp. v. Yarema*, 69 Md. App. 124, 143 (1986). Under these circumstances, the court properly exercised its discretion by proceeding without Wife's attendance.

VIII. Wife's Hearsay Challenge

Wife contends that the court erred in admitting hearsay during the time when Wife was absent due to her lateness. Wife alleges that inadmissible hearsay was admitted into evidence during Husband's counsel's direct examination of Husband's mother:

> [HUSBAND'S COUNSEL:] Do you notice any differences in [Child] when she comes -- when the day before she was with [Wife] compared to when the day before she was with [Husband]?
>
> [HUSBAND'S MOTHER:] When she knows it's time to go, she does everything to delay going, like trying to make me keep playing with her. *She's even at times said I don't want to go*. Um, but yes.

(Emphasis added.) Because Wife failed to timely object to this testimony, her hearsay challenge is unpreserved for our review under Md. Rule 8-131(a). For the reasons stated

above, the court did not err in resuming the trial before Wife arrived late. And Wife, as a *pro se* litigant, is held to the same rules of preservation as attorneys.[7] *Gantt v. State*, 241 Md. App. 276, 302 (2019).

IX. The Denial of Wife's Motion for Revisory Power Without a Hearing

Lastly, Wife claims that the court erred when it rendered its oral ruling from the bench, requested Husband's counsel to draft an order consistent with the court's ruling, and denied Wife's "Motion for Revisory Power and Request for a Hearing[.]"

We review a trial court's decision to deny a motion for reconsideration for abuse of discretion. *See, e.g.*, *Bennett v. State Dep't of Assessments & Tax'n*, 171 Md. App. 197, 203 (2006). In her motion for revisory power and request for a hearing, Wife claimed that the court ordered a summer access schedule during its oral ruling and Husband's counsel failed to include that access schedule in the proposed judgment of absolute divorce, which

[7] Even if Wife's complaint about this testimony were preserved for our review, Wife's claim is unpersuasive. Hearsay 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). Hearsay is inadmissible "[e]xcept as otherwise provided by [the Maryland] rules or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802. One exception to the rule against hearsay is the exception for statements of a declarant's then existing state of mind. Md. Rule 5-803(b)(3). The Rule provides:

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

The statement that Wife challenges is a statement admitted as evidence of Child's state of mind offered to prove Child's then existing mental feeling, *i.e.*, that Child did not desire to leave Husband's residence.

the court signed. On appeal, Wife abandons that argument, stating as follows: "Appellant abandons her contention that the summer access schedule was placed on the record- it was not."

Wife's motion for revisory power alleged the following:

- Husband's counsel unilaterally determined that the exchange point for Wife's weeknight access would occur on alternate Tuesday and Thursday evenings from 6:00 p.m. to 8:00 p.m. in Clinton.
- The court stated on the record that the holiday access schedule should alternate, but the court did not define what is meant by a "holiday" or specify the time periods for the holiday access schedule, and Husband's counsel unilaterally decided this provision.
- The judgment lacked a provision on FaceTime calls.
- The judgment contained a provision that addressed how child support and arrears payments are to be secured through a wage lien with payments made through the Maryland Child Support Account.

Wife echoes these arguments on appeal. Despite Wife's contentions, the provisions in the judgment that she challenges are consistent with the court's ruling.

First, as to the exchanges in Clinton, Husband's counsel told the court that Husband works until 4:45 p.m., and thus he has difficulty traveling after work to the previous meeting point, which was the IKEA in College Park. The court proposed that the meeting point could be the house where Husband resides. Husband's counsel proposed a McDonald's in Clinton as a potential meeting point. As to the McDonald's, the court asked

Wife if "that work[s]" and Wife agreed: "That's fine." Although this colloquy occurred primarily within the context of determining the exchange point for Wife's weekend access, it was consistent with the court's ruling — and Wife's agreement on the record — to extend this provision to Wife's weekday access as well.

Second, the court orally ruled that there would be alternating holidays for Thanksgiving, Christmas, Easter, the Fourth of July, and Child's birthday. Moreover, the court ruled that Wife would have parenting time with Child every Mother's Day and Husband would have parenting time with Child every Father's Day. The judgment of absolute divorce embodies the court's oral ruling from the bench.

Third, the court's ruling did not address FaceTime calls. Thus, the omission of a provision for FaceTime calls in the judgment of absolute divorce was consistent with the court's ruling.

Fourth, the court ruled that Wife's child support obligation would be "payable if there is employment through a wage attachment but also payable through the child support division of Child Support Enforcement." The judgment of absolute divorce ordered that "child support and arrears payments are to be secured through wage lien and are to be made through the Maryland Child Support Account[.]"

As to Wife's argument that the court improperly delegated its duty to draft the judgment of absolute divorce consistent with its ruling, Wife's reliance on *In re Justin D.*, 357 Md. 431 (2000), is unpersuasive. In *In re Justin D.*, the juvenile court's order directed the Department of Social Services to determine the appropriate amount of visitation for children in need of assistance. *Id.* at 438, 441-43. The Supreme Court of Maryland held

that the orders were overbroad: "the court may not delegate its responsibility to determine the minimal level of appropriate contact between the child and his or her parent or other guardian" and that the court must determine, "at least the minimal amount of visitation that is appropriate . . . as well as any basic conditions that it believes, as a minimum, should be imposed." *Id.* at 449-50. In contrast, the court's ruling here explained in detail the parameters of the relevant issues: child custody, access, and support. And the court's ruling was consistent with the judgment of absolute divorce. Thus, the court did not improperly delegate its decision-making authority.

Wife also claims that the court erred in denying her motion without first holding a hearing under Md. Rule 2-311(f). That rule provides in relevant part: "Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section." Md. Rule 2-311(f). However, this Court has explained: "By denying the motion for reconsideration, the court merely refused to change its original ruling which had disposed of appellant['s] claims. That ruling was not 'dispositive of a claim or defense,' and thus no hearing was mandated[.]" *Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 75 (1986). Similarly, here, by denying Wife's motion for revisory power, the court merely refused to change its original ruling. No hearing was required.

For all these reasons, the court did not err in denying Wife's motion for revisory power without a hearing.

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. THE COSTS ARE TO BE PAID BY APPELLANT.