UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2054

September Term, 2015

RAYMOND SHAHVERDIAN

v.

YOGITHA SHAHVERDIAN

Kehoe,
Friedman,
Wilner, Alan M.
(Retired, Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: May 6, 2016

This is an interlocutory appeal from a *pendente lite* custody, visitation, alimony, and child support order entered in a divorce case by the Circuit Court for Montgomery County. Appellant complains that the court abused its discretion, after awarding appellee sole legal and primary physical custody of the three children of the parties, in denying him "significant overnight access" to the children and in determining appellant's income to be $410,000 per year for purposes of awarding child support and alimony. We find no abuse of discretion or other legal error and shall affirm the Circuit Court's order.

Were the relevant facts as appellant presents them in his brief, his case may be more compelling; but they are not. He ignores completely the evidence and findings by the court that persuaded it to enter the order that it did, including the court's announced disbelief of much of appellant's testimony.

The court announced its reasons for awarding custody of the children to appellee, and appellant does not take issue with that in this appeal. The hearing was a *pendente lite* one, and the court indicated that it was not going to go through the entire access schedule. The children were nine, five, and two years of age. The mother worked part time – about 25 hours a week. Appellant is a self-employed businessman. He is the sole proprietor of an automobile windshield repair service. He operated the business from his home but traveled a lot to actually service his customers. He was described as a workaholic but with a flexible schedule.

The court awarded overnight visitation every other weekend, from Friday after school to 7:00 p.m. on Sunday and for three non-consecutive weeks during the summer. Appellant would have the children with him for dinner each Tuesday and Thursday

preceding a non-custodial weekend and each Wednesday following a non-custodial weekend. He was to have a scheduled telephone call with the children, for up to one hour, every Monday and Wednesday. The parties were to agree on a sharing arrangement for the holidays and were allowed to make moderate temporary changes to the visitation schedule on their own.

Appellant argues that failure to order equal shared custody was an abuse of discretion. We do not agree. The court took into account the ages of the children, the fact that they all were in school, and that appellee had more time to spend with them because of her limited work schedule. It expressly found that 50/50 shared custody was inappropriate because it found appellant to be a bully and that shared custody would not work. The schedule it ordered was well within the bounds of its legitimate discretion.

With respect to the alimony and child support, the court had great difficulty in determining appellant's income. As noted, appellant was self-employed and did not have a salary as such. He said that he deposited all of his business and non-business income into one account and paid all expenses from that account. He claimed that his annual income was $96,000, which, based on the withdrawals from his master account, the court found not to be credible. The court said that it "really is having a hard time believing anything dad says about his income." It noted, in that regard, significant withdrawals to purchase a $1 million house in Miami, $60,000 to cover gambling debts, and significant gifts to his girlfriend.

In the absence of any credible evidence, the court looked to the fact that, in the most recent year, appellant deposited $410,000 into his account and treated all of that money as his, to spend as he liked and regarded that amount as his annual income. That may have been an exaggeration, as appellant complains, but, with no **credible** evidence of a lesser amount, we find no error in the court using that figure, which was the only documented one, as his income.

ORDER AFFIRMED; APPELLANT TO PAY THE COSTS.