UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 559

September Term, 2016

MATTHEW W. SCHAEFFER

v.

JESSIQUE A. STEWART F/K/A
JESSIQUE A. SCHAEFFER

Woodward, C.J.,
Friedman,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, C.J.

Filed: June 5, 2017

On December 19, 2014, Matthew A. Schaeffer, appellant ("Father"), and Jessique A. Schaeffer,[1] appellee ("Mother"), entered into a Marital Settlement Agreement ("MSA"), which was incorporated the same day into the parties' Judgment for Absolute Divorce issued by the Circuit Court for Howard County. The parties agreed in the MSA that Mother would have primary physical custody and that both parties would have joint legal custody of their minor child, Juliette Schaeffer. On April 29, 2015, Mother filed a Complaint to Modify Custody and Visitation, alleging a material change in circumstances and requesting that the court award her sole legal custody of Juliette and modify Father's visitation schedule. Father filed a Counter Complaint requesting that the court award Father "primary physical custody, sole legal custody, and/or shared physical custody" of Juliette. After a two-day hearing, the court issued an Order for Modification of Custody, dated April 26, 2016, granting Mother sole physical and legal custody of Juliette and modifying Father's visitation schedule.

On appeal, Father presents two questions for our review, which we have slightly rephrased:[2]

1. Did the trial court err or abuse its discretion when it awarded

[1] As a result of the Judgment for Absolute Divorce, Mother's former name, Jessique A. Stewart, was restored to her.

[2] Father's questions presented in his brief are as follows:

I. Did the Court err when it awarded Plaintiff primary physical custody thereby allowing the Minor Child to move to Rhode Island?

II. Did the Court err in modifying shared legal custody and awarding Plaintiff sole legal custody?

Mother sole physical custody of the parties' minor child?

2. Did the trial court err or abuse its discretion in awarding Mother sole legal custody of the parties' minor child?

For the reasons discussed below, we conclude that the trial court did not err or abuse its discretion, and thus we shall affirm.

BACKGROUND

The parties were married by a civil ceremony on December 30, 2009, in Howard County, Maryland. One child, Juliette, was born during the marriage on April 13, 2012. Differences between the parties arose, and they began living separate and apart from one another on December 9, 2013. On December 19, 2014, the parties entered into the MSA. The same day, after a hearing, the circuit court granted the parties a Judgment for Absolute Divorce. The circuit court's Judgment for Absolute Divorce, entered on December 22, 2014, incorporated the parties' MSA, which sought, *inter alia*, "to settle all questions of custody of their Child, maintenance and support, [and] alimony . . . ."

In the MSA, the parties agreed that they "shall have joint legal custody of their Child; provided, however, that the primary residence of the Child shall be with [Mother]." The parties also agreed upon a visitation schedule, which awarded Father regular visitation with Juliette "every other weekend beginning on Saturday at 9:00 am and continuing until Sunday at 7:00 pm . . . [and] every Thursday from 2:30 pm until 7:00 pm."[3] The parties also agreed that they "shall have joint legal custody and joint decision-making power with

[3] The visitation schedule also included holidays (Thanksgiving, Christmas, Easter, and Father's Day), birthdays, and vacation.

each other regarding the emotional, moral, educational, physical and general welfare of the Child."

In March 2015, Mother was offered a job in Rhode Island near to where her parents resided, and as a result, she wished to move there with Juliette. On April 29, 2015, Mother filed a Complaint to Modify Custody and Visitation, alleging that a material change in circumstances had occurred due to her job offer in Rhode Island, and requesting that the circuit court award her sole legal custody and modify Father's visitation schedule set forth in the MSA. On June 23, 2015, Father filed a Counter Complaint to Modify Custody and Visitation, requesting that Father be awarded "primary physical custody, sole legal custody, and/or shared physical custody" of Juliette due to his change in work schedule.[4] After a two-day modification hearing that took place on February 18-19, 2016, the circuit court entered an Order for Modification of Custody on April 29, 2016, granting Mother sole legal and physical custody of Juliette and modifying Father's visitation schedule with Juliette. Father noted this timely appeal on May 25, 2016.[5]

Additional facts will be set forth as necessary to our discussion of the questions presented in the instant appeal.

STANDARD OF REVIEW

This Court has applied three interrelated standards of review when reviewing child

[4] At the modification hearing, Father testified that he was asking the trial court to award 50/50 joint custody to "[e]nsure that Juliet[te] has as close to equal time with the two of us as possible."

[5] Father filed another notice of appeal in this case on June 16, 2016. We note that this is a duplicative notice.

custody determinations, including modifications of child custody:

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

Gillespie v. Gillespie, 206 Md. App. 146, 170 (2012) (alterations in original) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

Further,

> [I]t is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the trial court] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

Davis v. Davis, 280 Md. 119, 125 (citations omitted), *cert. denied*, 434 U.S. 939 (1977).

DISCUSSION

At the time that the parties separated in December 2013, Father left the marital home and resided at the Howard County fire station where he served as a volunteer firefighter. Mother remained in the marital home located in Howard County with Juliette.

The parties' physical custody agreement set forth in the MSA states in relevant part:

> The parties shall have joint legal custody of their Child; provided, however, that the primary residence of the Child shall be with Wife.

> Husband shall have the right to have the Child with him at all reasonable times, including the right of Husband to have the Child overnight. Husband shall have the right to have the Child with him every other weekend beginning on Saturday at 9:00 am and continuing until Sunday at 7:00 pm. In addition, Husband shall have the right to have the Child with him every Thursday from 2:30 pm until 7:00 pm. The parties further agree to revisit the visitation schedule when there is a significant change in either parties' work or schedule or the Child's schedule.

At the time that the parties entered into the MSA, Father worked as a part-time employee for LifeStar Response, a private ambulance company. Father's shifts lasted eight to twelve hours and were consistently changing. Father worked for LifeStar until early June 2015 when he began training at the Fire Academy to become an EMT firefighter with the Baltimore City Fire Department, which was his job at the time of the modification hearing. Father's new work schedule consisted of a cycle of four days on and four days off, and after five cycles, twelve days off. Father explained that during the first two days of each cycle, he worked from either 5:30 a.m. to 7:00 p.m. or 5:30 a.m. to 3:30 p.m., and during the next two days, he worked from 3:30 p.m. to 5:30 a.m. At the time of the modification hearing, Father lived in an apartment in Baltimore City, Maryland with his fiancée, Isabelle Robinson. Juliette had her own room in Father's apartment. Father has family living nearby in Washington, DC and Maryland. Father earns approximately $30,000 per year as an EMT firefighter.

At the time that the parties entered into the MSA, Mother, a mathematician, worked for the Johns Hopkins Applied Physics Lab ("APL"). Mother earned $100,200 per year at APL. Mother sought promotions at APL, such as to Supervisor or Project Lead, but believed that she was not given a promotion due to her inability "to travel for work while

fulfilling her role as a single mother." Mother sought new employment and in December 2014, she was offered a job as a Senior Engineer at Marine Acoustics in Rhode Island, where her father also works. Mother declined this offer, but when Marine Acoustics offered her the position again in March 2015, she accepted. Mother's new salary at Marine Acoustics is approximately $115,000 per year, with company paid health and dental insurance.

At the modification hearing, Mother testified that she "ha[s] more opportunities" for advancement with Marine Acoustics, because "[i]t's a smaller company so [she] ha[s] more exposure to more opportunities and more challenging work." In addition to opportunities for advancement, Mother would "live next door to [her parents in Cranston, Rhode Island] and [she] would ask for occasional babysitting." Mother would also be able to go to family dinners, and her mother "would be around to provide before or after school care when Juliet[te] is in grade school." Mother described the apartment that she and Juliette would live in as "a third floor in a Victorian home. It [has] a big kitchen with a big living room and then two bedrooms and a bathroom and a fenced in yard. . . . [T]here's a large park nearby with a zoo and [ ] a carousel." In addition, there is a daycare center called "The Children's Workshop" nearby that is similar to the daycare in which Juliette was enrolled in Maryland.

A. Material Change in Circumstances

In *Wagner v. Wagner*, this Court set forth the framework for a trial court to analyze a motion for modification of custody:

A change of custody resolution is most often a chronological two-

> **step process. First, unless a material change of circumstances is found to exist, the court's inquiry ceases. In this context, the term "material" relates to a change that may affect the welfare of a child.** Moreover, the circumstances to which change would apply would be the circumstances known to the trial court when it rendered the prior order. If the actual circumstances extant at that time were not known to the court because evidence relating thereto was not available to the court, then the additional evidence of actual (but previously unknown) circumstances might also be applicable in respect to a court's determination of change. **If a material change of circumstance is found to exist, then the court, in resolving the custody issue, considers the best interest of the child as if it were an original custody proceeding.**

109 Md. App. 1, 28 (emphasis added) (citation omitted), *cert. denied*, 343 Md. 334 (1996).

In addressing the first step of the two-step process, the trial court in the instant case determined that there were two material changes in circumstances. The first material change was that "[M]other has accepted a job in Rhode Island, and the [second was that] [F]ather has become a firefighter and has a new job with extremely different hours and demands from his employment at the time of the last Court Order." Because neither party contends that the trial court erred in finding these material changes in circumstances, we shall proceed to a review of the second step in the court's analysis of the modification issue.

B. Modification of Custody

The second step in the two-step process requires the trial court to "consider[ ] the best interest of the child as if it were an original custody proceeding." *Id.*

"It is a bedrock principle that when the trial court makes a custody determination, it is required to evaluate each case on an individual basis in order to determine what is in the best interests of the child." *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013). "Courts are not limited or bound to consideration of any exhaustive list of factors in applying the

best interests standard, but possess a wide discretion concomitant with their plenary authority to determine any question concerning the welfare of children within their jurisdiction." *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503 (internal quotation marks and citation omitted), *cert. denied*, 327 Md. 625 (1992).

A list of factors, which we have reformatted, that trial courts are directed to use in rendering a custodial determination include, but are not limited to:

> (1) fitness of the parents;
> (2) character and reputation of the parties;
> (3) desire of the natural parents and agreements between the parties;
> (4) potentiality of maintaining 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.

Montgomery Cty. Dep't of Soc. Servs. v. Sanders, 38 Md. App. 406, 420 (1977) (citations omitted).

In *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986), the Court of Appeals identified factors that are particularly relevant to joint custody determinations:

> (1) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare; (2) the willingness of parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) the potential disruption of child's social and school life; (7) the geographic proximity of the parental homes; (8) the demands of each parents' employment; (9) the age and number of children; (10) the sincerity of the parents' request for joint custody; (11) the financial status of the parents; (12) the impact on state or federal assistance; (13) the benefit to the parents; and (14) any other relevant factors to be considered.

Reichert, 210 Md. App. at 305-06 (listing the factors considered by the Court of Appeals in *Taylor*).

At the conclusion of the two-day modification hearing on February 19, 2016, the trial court rendered a thorough and well-reasoned oral opinion. Included in the opinion is the court's consideration of both the *Sanders* and *Taylor* factors in reaching its decision on modification of custody. We set forth that portion of the court's opinion in its entirety:

> There's no question in my mind that these are both fit parents. No question in my mind that Juliet[te] has a close and loving relationship with both of her parents and that they're both very important in her life. They've both been very active in her life. I don't find any issues with character or reputation of the parties that would influence me.
>
> The parties have a custody arrangement at this time that was based on an agreement at the time that they separated. Although they didn't have an agreement, Juliet[te] with her mother and then about a year later when they made their written agreement, they agreed that Juliet[te] would live primarily with her mother and an access schedule was set up with [F]ather. The access schedule is every Thursday evening, alternate weekends from Saturday morning until Sunday evening. The parties each get, I think, two weeks of vacation.
>
> At this point, [M]other has accepted and started working a job that's based in Rhode Island and wishes to move there and take Juliet[te] with her. Father has a, a job where he works four days on, four days off. After five rotations, there's a 12-day off and once he takes leave time and then he might use up his Kelly days, and I'm not sure what that is. But I kind of understand the schedule. I totally do not understand the chart. I couldn't figure out from that what day. I really could not figure it out, and I had, I certainly hope [Father] can and I also hope [Mother] can.
>
> [F]ather is proposing a 50/50 shared. Mother's proposing a generous access schedule that would significantly increase the overnight visitation although decrease the frequency between father and Juliet[te].
>
> I, I think no matter what, when the parents live that far apart, there's going to be difficulty in maintaining natural family relations. And things are going to just plain be different.

I have no ability and I have no desire to make any ruling that could be interpreted as interfering with [Mother's] ability to locate wherever she chooses to in the United States. She is -- her custody is not under my jurisdiction. She is free to live wherever she would like to live and this Court has no jurisdiction over that.

Clearly, [M]other has higher income and higher earning potential than [F]ather does, at least at this time. She's making about $117,[000,] [Father's] making about $32,000 per year. And we have Juliet[te] who is going to be four years old in April. She's a young lady who's in good health and has a few allergies.

Both parents have concerns about, I guess, the crime, the schools, the, the sex offenders in the area where the other is proposing that Juliet[te] would live.

I don't find that there's been any significant separation between Juliet[te] and either of her parents in the past. There was -- according to something I had a period of time -- I think in the Custody Evaluation, Juliet[te] and [F]ather did not have time together but it was early on in the separation and certainly that hasn't been the case for a significant period of time. I certainly find that [M]other is allowing the visitation that was agreed upon and that was ordered by the Court, that [F]ather is exercising that. They do stub their toes from time to time, I think in large part because their communication is so abysmally poor.

They have terrible communication. I, I know that both parents are very involved with their churches and it seems like the Golden Rule might help both of you a whole lot. You need to be nice to each other. You need to be nice to each other. Your daughter would benefit so much if you would just be courteous to each other. And sometimes, you are. But sometimes, you're not. And, and that just makes things worse and it makes it difficult for Juliet[te] to get everything she needs because her parents aren't telling each other what's going on.

I have some real concerns. I -- it's not that I think a haircut is a big deal, but I think it's an extremely big deal when one parent has made it abundantly clear how she feels about it, and the other parent not only disregards that feeling but is documenting it with before-and-after pictures of each and every haircut, which maybe that's just something you do in your family for haircuts, I don't know. But I mean if it was done for court purposes, it kind of backfired because I didn't like it.

And I really didn't like the fact that where one parent is saying that she has a strong feeling, the other parent is not respecting that feeling or not at least respecting her enough to have discussions

about it. So although a haircut is not a big deal, doing something that the other parent finds distasteful and has told you about, and doing it continuously, I think, is kind of [a] big deal and is symptomatic of the really poor co-parenting relationship that exists between these two people.

And, and thank goodness, notwithstanding that, Juliet[te]'s doing great and wants both of her parents. I don't find that she has a preference, and even if she did, I would not take that into account because of her age. It would probably change in the next five minutes.

No matter what happens, when we have a parent relocating out of state, the child's schooling and social life and other life are going to be disrupted. When it's the custodial, the primary custodian as it is here, it's absolutely no matter what the Court does, there's going to be a disruption. She is a happy, successful child. She loves her daycare. She has friends. She gets to see her daddy every Thursday and alternate weekends. All of that would change under either parent's plan.

I understand [F]ather's proposal, and I understand why it would really work great for him, but I don't think that it really takes into account that [M]other works five days a week. She doesn't work four days a week. So if we were following [Father's] schedule, there might be weekends on weekends only because she doesn't have Juliet[te]. So she would get her at all on her days off. [Father's] schedule does not particularly take that into account.

Right now, you know the geographic proximity, I think the parents live a reasonable proximity to one another. It will not be the case as soon as the move to Rhode Island occurs.

I find both parents are sincere in their requests, very much so.

I understand that [M]other wants to move in order to advance her career, in order to have proximity with her parents. She didn't say it, but I gathered from her testimony that being a single mother without a lot of emotional support is difficult for her professionally and personally, and that this move is designed to address those two things.

I certainly understand that [F]ather's plan would give him the opportunity to have his daughter with him whenever he's not working and he would love to have that. There's no question about that.

Mother has, at least since the time of the last Court Order, has certainly been the primary parent. It was pointed out that it was [M]other who arranged the daycare. She's kept her in that daycare. She arranges the medical treatment, the daily activities. She's also

arranged the Google calendar. She set up the face time. She may not be flexible in varying from the schedule on request, but she follows the schedule. There have been a few blips on that radar but really not very many. And I also find that [F]ather uses his visitation and only cancels if he has to work.

Well I guess that either parent's plan is going to have an impact on Juliet[te]. Fortunately, she seems to be a happy, resilient child. She's met her developmental milestones. Either way, she's going to miss her friends at daycare and may have some difficulty transitioning into the new schedule. But at the age of three, almost four, it's probably less disruptive than it might be for an older child.

Mother's indicated a willingness to pay the cost of transportation for the visitation and it's going to be expensive, and to allow a generous amount of time for visitation in Maryland. I just, I really don't think that it's feasible for [Mother] to commute every four days and maintain homes in two different states.

Mother has demonstrated a pattern of conduct which I find promotes rather [than] thwarts the relationship of Juliet[te] with her non-custodial parent. She's never denied a schedule. There have been a couple disagreements about holiday kind of things. She keeps a picture of [F]ather in Juliet[te]'s room. She allows frequent phone contacts, sets up the face times, set[s] up the Google calendar.

I think that a relocation to Rhode Island will benefit [M]other. And I find that the arrangements that I've heard about for Juliet[te] in Rhode Island includes selecting a home near her parents. I guess by coincidence, they own it. A daycare for Juliet[te] with a similar curriculum and style to her current daycare. She's looked into the schools there even though I think it's not the best school in Rhode Island and it's certainly not a Howard County school but. Most people move here for schools.

The reason I find that [M]other accepted the job in Rhode Island I think I've already discussed. She had an increase in salary, feels she has opportunity for advancement there that she was not able to pursue here because of the demands on her being a single parent without a lot of family support. She'll be living next door to her parents and will have that help with Juliet[te]. And [F]ather opposes the relocation obviously because he does not want his daughter that far away from him.

Based on all of that, I find that it's in Juliet[te]'s best interest that physical and legal custody be granted to [Mother]. [Mother] is to keep [Father] informed of all daycare[,] school[,] extracurricular, religious and medical information via email. [Mother] is to maintain the Google calendar.

1. Physical Custody

Father contends that the trial court erred when it awarded Mother sole physical custody of Juliette. Father argues that, although the trial court "did address some of the required factors to be considered in custody disputes[, it] improperly applied the facts to the law." Specifically, Father claims multiple errors on the part of the trial court in its oral ruling. We will address each claim of error in turn.

First, Father contends that the trial court erred when it found that Mother has "demonstrated a pattern of conduct which promotes, rather than thwarts the relationship of Juliet[te] with" Father. At the modification hearing, Father testified that Mother prevented him from exercising visitation on a number of occasions, including Easter 2015, Juliette's birthday in 2015, a day in June 2015, Father's Fire Academy Graduation, a costume party in Fall 2015, and Thanksgiving 2015. Mother testified that Father received all of his court-ordered visitation with the exception of Juliette's birthday in 2015 and Thanksgiving 2015, which resulted from miscommunications between the parties, and that she had offered additional visitation on at least one occasion. Mother also testified that she kept a picture of Father next to Juliette's bed and a stuffed animal made by Father for Juliette, at Mother's home. In its oral ruling, the court stated: "I certainly find that [M]other is allowing the visitation that was agreed upon and that was ordered by the Court, that [F]ather is exercising that. They do stub their toes from time to time, I think in large part because their communication is so abysmally poor." The court clearly considered the testimony and evidence related to Father's contention. The court, however, did not err in finding that Mother did not thwart the relationship or visitation between Juliette and Father, because

there was competent evidence to support such finding.

Second, Father contends that the court erred when it considered the factor of the "potentiality of maintaining natural family relations[.]" *Sanders*, 38 Md. App. at 420. Specifically, Father claims that the court "failed to consider that Juliet[te]'s close relationship with her paternal family, would be non-existent with Juliet[te] moving to Rhode Island." Mother responds that with the relocation to Rhode Island, "Juliette will be better able to maintain a relationship with her maternal grandparents as she will be living next door[,]" and that Father's visitation will still "provide Juliette the ability to visit and interact with her paternal family." We agree with Mother.

The trial court stated that, regardless of whether physical custody remained with Mother, or joint 50/50 physical custody was granted to the parties, "there's going to be a disruption." Then, in creating the modified visitation order, the court awarded Father an increased amount of time with Juliette, and thus Juliette would have many opportunities to visit and interact with her paternal family. Specifically, the visitation order crafted by the court grants Father access to Juliette during winter break, every other Christmas, spring break, four weeks during the summer, "three-day weekends during the school year that coincide with his leave days[,]" and "[a]dditional time in Rhode Island with advance notice to [Mother]." The court stated that, "[Father] pretty much calls the shots on what the dates are going to be. He's just going to notify her." The court also acknowledged the fact that Juliette will be closer to her maternal family in Rhode Island, because she will be living next door to her maternal grandparents. Therefore, we conclude that the court properly considered the factor of maintaining natural family relations and made adjustments in the

visitation order to address any difficulty in maintaining Juliette's relationship with her parental relatives. Accordingly, there was no error.

Third, Father states that "the [trial c]ourt inappropriately focused upon the benefit to Mother, [ ] of the move to Rhode Island . . . rather than any benefit, if any, or detriment, to Juliet[te]." Father also complains that the court erred by finding relevance in Mother's testimony "that being a single mother without a lot of emotional support is difficult for her professionally and personally, and this move is designed to address those two things." We disagree.

Under *Taylor*, the trial court is to consider the benefit to the parents. *See* 306 Md. at 311. The court considered the benefit to Mother when it articulated that the relocation and acceptance of the new position would give her "an increase in salary, [that she] feels she has opportunity for advancement there that she was not able to pursue here because of the demands on her being a single parent without a lot of family support. She'll be living next door to her parents and will have that help with Juliet[te]." The court thus found that Mother would be benefitted both personally and professionally by moving to Rhode Island. The court also considered the benefit of the relocation to Juliette, because Mother would continue to be the primary physical custodian, Mother would have greater financial resources, and Juliette would live next door to her maternal grandparents. The court recognized that either parent's custody proposal would have an impact on Juliette, "[b]ut at the age of three, almost four, it's probably less disruptive than it might be for an older child." In our view, the court properly considered the benefit to Mother of the relocation to Rhode Island and thus committed no error.

Lastly, Father argues that the trial court failed to consider "that given [Father's] work schedule of four days on and four days off, his opportunity to visit for three day weekends in Rhode Island while he is not working, which is what the [c]ourt ordered, would be virtually impossible." Father also complains that his modest income would limit his ability to travel to Rhode Island to take advantage of the additional visitation time granted by the court. We are not persuaded.

The trial court stated that, regardless of its decision on modification of custody, "there's going to be a disruption." The court explained that, although it "underst[oo]d [F]ather's proposal" and that "it would really work great for him," the proposal did not take "into account that [M]other works five days a week." The court further stated that, if the court were to follow Father's schedule, Mother's weekends may not correspond with Father's four days off, and thus Mother would not "get [Juliette] at all on her days off." The court concluded that "I really don't think that it's feasible for [Mother] to commute every four days and maintain homes in two different states." In other words, the court found Father's proposal to be completely unrealistic. On the other hand, under Mother's proposed visitation schedule for Father, the court explained that Mother offered to pay the cost of transportation[6] and is permitting "a generous amount of time for visitation in Maryland." We see no error in the trial court's assessment of the competing proposals for

[6] The trial court's Order for Modification of Custody states "that [Mother] shall pay for the cost of transportation for the first six (6) visits per year. For any visits beyond the first six (6) the parties shall divide the cost of travel equally. [Mother] shall provide a chaperone to accompany the minor child to Maryland, and Father shall provide a chaperone to accompany the minor child to Rhode Island[.]"

custody and visitation.

After receiving evidence consisting of sixty-five exhibits and testimony of ten witnesses over the two-day modification hearing and considering the best interests of Juliette under the *Sanders* and *Taylor* factors, the trial court concluded that granting Mother sole physical custody of Juliette and modifying Father's visitation to provide for more visitation on a less frequent basis was in Juliette's best interests. We hold that the trial court did not err or abuse its discretion in making that decision.

2. Legal Custody

Under the Judgment for Absolute Divorce, the parties had joint legal custody of Juliette. Upon hearing the testimony and considering all of the evidence presented at the modification hearing, the trial court granted Mother sole legal custody of Juliette.

On appeal, Father's entire argument challenging the grant of sole legal custody to Mother is the following:

> Juliet[te] has never been deprived of any medical care, dental care, education or schooling, or the ability to participate in any activities while [Mother] and [Father] have had joint legal custody. Juliet[te] has had the benefit of everything she had because the parties have ensured that all of her needs were met. While they may have had some disagreements, Juliet[te's] health and educational needs have always been met. With fit and loving parents, an award of shared legal custody is proper. Awarding sole legal custody to [Mother], further removes Juliet[te's F]ather from her life.

We disagree with Father's argument and hold that the trial court properly considered all pertinent factors for legal custody in coming to the conclusion that Mother should be awarded sole legal custody of Juliette. The Court of Appeals in *Taylor* stated that the capacity of the parents to communicate and to reach shared decisions affecting the child's

welfare "is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate[.]" 306 Md. at 304. The Court elaborated:

> Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future.

Id.

Father appears to misunderstand "the most important factor" regarding whether joint legal custody should be granted to parents of a child. *See id.* That factor is not whether a child has been deprived of certain necessities such as medical care, dental care, education, or schooling, but rather the parties' "ability to effectively communicate with each other concerning the best interest of the child[.]" *Id.* In his argument, Father acknowledges the disagreements between the parties, but then goes on to in essence, create a new factor, namely, whether the child has been deprived of certain necessities due to the disagreements of the parties. Father cites to no legal authority to support his contention, and we have found none.

During the modification hearing, the trial court heard testimony concerning the parties' communication problems and disagreements. Mother testified that she believed that "[Father] sometimes inappropriately involves [Isabelle] in co-parenting discussions[.]" According to Mother, she told Father that she would prefer if he would not have Juliette's hair cut so that it could grow out. Despite Mother's request, Father continued having Juliette's hair cut. Mother began to notice that, when she and Father had a disagreement, Father would have Juliette's hair cut. In its opinion, the court stated, that "it's not that I

think a haircut is a big deal, but I think it's an extremely big deal when one parent has made it abundantly clear how she feels about it, and the other parent not only disregards that feeling but is documenting it with before-and-after pictures of each and every haircut[.]" The court elaborated: "[D]oing something that the other parent finds distasteful and has told you about, and doing it continuously, I think, is kind of [a] big deal and is symptomatic of the really poor co-parenting relationship that exists between these two people." The court concluded by stating that "thank goodness, notwithstanding that, Juliet[te's] doing great and wants both of her parents."

In addition, the trial court made a finding that geographic proximity would "not be the case as soon as the move to Rhode Island occurs." Mother is moving to Cranston, Rhode Island, and Father is living in Towson, Maryland. The distance between those two cities is approximately 364 miles.[7] The geographic distance between Father and Mother poses practical problems, which this Court believes will only enhance the parties' inability to reach shared decisions regarding Juliette's welfare. Further, the trial court noted that Mother "has certainly been the primary parent[:]" she (1) arranged Juliette's daycare, her medical treatment, and her daily activities, (2) set up FaceTime with Father, (3) followed the visitation schedule created by the parties, and (4) notified Father of all scheduled activities by Google calendar.

[7] Driving Directions from Towson, Md. to Cranston, R.I., Google Maps, https://www.google.com/maps/dir/Towson,+Maryland/Cranston,+Rhode+Island/ (follow "Directions" hyperlink; then search starting point field for "Towson, Md." and search destination field for "Cranston, R.I").

Finally, Father's contention that awarding Mother sole legal custody of Juliette will cause Juliette to be further removed from his life is without merit. Under the trial court's order granting Mother sole legal custody of Juliette, Mother is required to provide extensive information to "keep [Father] informed of all daycare[,] school[,] extracurricular, religious and medical information [about Juliette] via email. [Mother] is to maintain the Google calendar." Clearly, Father will not be removed from Juliette's life because of the change in legal custody. Therefore, we hold that the trial court did not err or abuse its discretion in awarding Mother sole legal custody of Juliette.

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