Circuit Court for St. Mary's County
Case No. C12000361V02

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 673

September Term, 2016

JAMES A. REDMAN, JR.

v.

TRACY L. FLORA

Meredith,
Kehoe,
Thieme, Raymond G., Jr.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kehoe, J.

Filed: June 9, 2017

This is an appeal from a judgment of the Circuit Court for St. Mary's County Circuit Court modifying the terms of a consent judgment regarding the custody of a minor child (the "Child"). The parties to the appeal are the Child's parents.

In July 2012, the circuit court entered a consent order regarding custody of the Child. In pertinent part, the consent order provided that:

> (1) The parties were awarded joint custody.
>
> (2) Ms. Flora had final decision-making authority if the parties reached an impasse regarding the Child.
>
> (3) Ms. Flora had primary residential custody.
>
> (4) Mr. Redman had visitation with the Child at his residence on every Wednesday from 5:00 p.m. until Thursday at 5:00 p.m., and on alternating weekends from Friday at 5:00 p.m. until Monday at 5:00 p.m.
>
> (5) In the weeks that the Child did not have mid-week visitation with Mr. Redman, he could have a "date night" with the Child from 5:00 p.m. to 8:00 p.m.
>
> (6) The Child would spend every Spring Break with Mr. Redman, as well as three non-consecutive weeks each summer. Ms. Flora would have two non-consecutive weeks each summer with the Child.

This agreement was worked out in a proceeding before a family law master. At the time the parties entered into the agreement, the Child was two years old. Mr. Redman understood the master to suggest that he could file a motion to modify the agreement when the Child grew older.

In 2015, Mr. Redman filed a motion for modification in which he asked for an increase in visitation with the Child. In response, Ms. Flora requested that the court dismiss Mr. Redman's motion for modification. She also filed a counter-complaint asking the court to grant her sole legal custody and primary physical custody of the Child.

On October 10, 2015, the court conducted an evidentiary hearing on these matters. On February 16, 2016, the court filed an opinion and order which modified the terms of the parties' custody arrangements. Mr. Redman filed a motion for reconsideration, which Ms. Flora opposed. On May 6, 2016, the court issued revised findings and an order which addressed several issues, including, relevant to this appeal, Mr. Redman's visitation rights. It is clear that the court intended its second order to revise some, but not all, of the findings and conclusions contained in the earlier order. Reading the two orders together, the Court made the following relevant findings:

> (1) There was a material change of circumstances in the parties' situation that warranted a modification to the terms of the Consent Order.
>
> (2) Although the parties had experienced difficulties communicating with one another in the past, they were able to meet the needs and best interests of the Child.
>
> (3) It was in the Child's best interest that Mr. Redman be awarded "an increased amount of parental access."
>
> (4) It was in the Child's best interest "to begin to adapt to having more time with [Mr. Redman] at this stage in his life, and that [Ms. Flora] should encourage such time."
>
> (5) Mr. Redman was a fit and proper person to have increased parental access to the Child.
>
> (6) Ms. Flora's home was a proper place for the Child's primary residence.
>
> (7) Mr. Redman's residence was a proper place for the Child to reside during his parental access visits.

Based upon these premises, the court: (1) awarded joint legal custody to the parties without tie-breaking authority; (2) discontinued Mr. Redman's mid-week visitations; (3) awarded Mr. Redman visitation on alternating weekends with the Child commencing on Thursday after school and ending Monday morning; (4) eliminated Mr. Redman's right to

have visitation over Spring Break; (5) reduced the amount of the parties' summer holiday visitation to one week each; and (6) provided that the Child would spend holidays on an alternating basis with one or the other of his parents.

As we will shortly explain in more detail, this order had the effect of significantly reducing Mr. Redman's time with the Child. Unsatisfied with the outcome, he filed a motion for reconsideration. The court issued a revised order in May 2016 granting Mr. Redman one additional week in the summer. Mr. Redman has appealed and raises one issue, which we have reworded:

> Did the trial court abuse its discretion when it reduced Mr. Redman's access to the Child even though the court had found that it was in the Child's best interest for Mr. Redman to have increased parental access?

The trial court did not explain how reducing Mr. Redman's time with the Child was appropriate in light of its factual findings. In lieu of speculating as to what the trial court's reasoning might have been, we will vacate the court's judgment in part and remand the case to the circuit court for further proceedings.

Analysis

"On a motion for modification of custody, a trial court employs a two-step process: (1) whether there has been a material change in circumstances, and (2) what custody arrangement is in the best interests of the children." *Santo v. Santo*, 448 Md. 620, 639 (2016). The best interest of the child "is always determinative in child custody disputes." *Id.* at 626 (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977). An appellate court

reviews "a trial court's custody determination for abuse of discretion." *Santo*, 448 Md. at 625.

"A court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous." *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010). We will disturb a trial court's findings of fact only if they are clearly erroneous but we exercise *de novo* review over the court's legal conclusions. *Id.*

Finally, "a court can abuse its discretion by reaching an unreasonable or unjust result even though it has correctly identified the applicable legal principles and applied those principles to factual findings that are not clearly erroneous." *Guidash v. Tome*, 211 Md. App. 725, 736 (2013). For an appellate court to reverse a trial court's ruling under this scenario,

> [t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

North v. North, 102 Md. App. 1, 15 (1994).

After reviewing the record, we conclude that none of the trial court's relevant findings were clearly erroneous. It is also clear to us that the court correctly understood the pertinent legal principles. However, as we will explain, this is a case in which "the ruling . . . does not logically follow from the findings upon which it supposedly rests." The difficulties raised by the court's revised order are illustrated by the following chart:

	Consent Order	**First Order**	**Second Order**
Legal Custody	Parents have Joint Legal Custody.	Not modified	Not modified
Residential Custody	Ms. Flora has primary residential custody of the Child.	Not modified	Not modified
Tie-Breaking Provision	Ms. Flora has final decision making ability if the parties reach an impasse regarding the child.	No tie-breaking provision	No tie-breaking provision
Mr. Redman's Visitation during the schoolyear	(1) Alternating weekends from Friday at 5:00 p.m. until Monday at 5:00 p.m. (2) Midweek overnight visitation from 5 p.m. Wednesday to 5 p.m. Thursday in alternating weeks (3) A 5 p.m. to 8 p.m. "date night" for weeks that Mr. Redman does not have mid-week overnight visitation (4) Each spring break from Friday 5 p.m. "when school ends for spring break" until the Friday before Easter at 5 p.m.	(1) Alternating weekend visitation commencing on Thursday after school and ending Monday morning when the Child is returned to school (2) No mid-week visitation (3) No spring break visitation	(1) Alternating weekend visitation commencing on Thursday after school and ending Monday morning when the Child is returned to school (2) No mid-week visitation (3) No spring break visitation No mid-week visitation
Summer Visitation	(1) Mr. Redman has three non-consecutive weeks each summer. (2) Ms. Flora has two non-consecutive weeks each summer.	Ms. Flora and Mr. Redman each have one week.	Mr. Redman has two weeks. Ms. Flora has one week.
Holidays	As agreed by the parties	Federal holidays falling on a Monday: controlled by the weekend visitation schedule "with the additional Monday added"; All other federal holidays: alternating between parents	Not modified

By our calculations, and setting aside the variable holidays, Mr. Redman had 158 nights of overnight visitation with the Child under the consent order. After the evidentiary hearing, the court found that: (1) the Child would benefit from increased

access with Mr. Redman; (2) Mr. Redman was a fit and proper person for increased access; and (3) Mr. Redman's residence "was a proper place for the [Child] to reside during his parental access visits." These findings notwithstanding, the court reduced Mr. Redman's visitation by 40 nights, or just about 25%. The court did not explain its reasoning.

An appellate court may affirm a trial court's decision even if the court did not set out each and every step of its reasoning. *Davidson v. Seneca Crossing Section II Homeowner's Ass'n*, 187 Md. App. 601, 628 (2009); *John O. v. Jane O.*, 90 Md. App. 406, 429 (1992). In such cases, the appellate court "'will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court.'" *Bereano v. State Ethics Comm'n*, 403 Md. 716, 755 n.10, (2008) (quoting *United Steelworkers v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984)). This exercise does not get us very far in the present case.

There was evidence before the court that the midweek visitations interfered with Ms. Flora's efforts to prepare the Child for the next day's school, which is why removing that visitation makes sense. But the court also eliminated Mr. Redman's visitation over spring break and reduced Mr. Redman's summer visitation by one week.

In her brief and at oral argument, Ms. Flora posits that the trial court did in fact increase Mr. Redman's "parental access" because the trial court "award[ed] joint legal custody to the parties and . . . eliminat[ed] the tie-breaking authority previously held by

[Ms. Flora].” This argument is not persuasive. Mr. Redman has had joint legal custody since the consent order was entered on July 10, 2012; the trial court’s May 6, 2016 order did not change the status quo in that regard. Moreover, we agree with Mr. Redman that the trial court appeared to use the term “parental access” to refer to actual visitation.[1]

We recognize that there may be reasons why it would have been appropriate for the court to significantly reduce the amount of access between Mr. Redman and the Child even though it would otherwise be in the Child’s best interest to increase the amount of access. But those reasons, if they exist, are not clear from the court’s orders and we are unwilling to speculate as to what the court’s reasoning might have been.

We will vacate the custody provisions of the court’s February 12, 2016 and May 6, 2016 orders and remand this case to the circuit court for the court to explain its reasoning. The latter order also addressed child support and the Child’s health insurance. Neither party has challenged those aspects of the court’s order, so those provisions are unaffected by our decision and mandate. In light of the disruptions to the Child’s ability to prepare for school that are associated with Mr. Redman’s mid-week visitations, we hope that visitation arrangements can be resolved before the beginning of the next school year.

THE JUDGMENT OF THE CIRCUIT COURT FOR SAINT MARY’S COUNTY IS AFFIRMED IN PART AND VACATED IN PART AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.

[1] There appears to be no reported Maryland appellate decision on the meaning of the term “parental access.” However, in Cynthia Callahan *et al. FADER’S* MARYLAND FAMILY LAW 5-23 (5th ed. 2011), Judge Callahan and Mr. Ries use the term “access” to mean either visitation or physical custody.