UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1180

September Term, 2016

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AHMAD T. TAHIR

v.

ROKSHAN A. JAHAN

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Woodward,
Leahy,
Friedman,

JJ.

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Opinion by Woodward, J.

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Filed: March 7, 2017

On October 29, 2015, appellant, Ahmad Tahir ("Father"), filed a complaint for absolute divorce against appellee, Rokshan Jahan ("Mother"), in the Circuit Court for Montgomery County. Among other things, Father sought sole physical custody and joint legal custody of the couple's son, who at the time of the filing of the complaint was two-years-old. Mother also requested an absolute divorce, and she contested the issues of child support and child custody. On July 5, 2016, following a hearing, the circuit court granted joint legal custody to the parties and primary physical custody of the son to Mother. Father noted this appeal raising one question, which we rephrase for clarity as two questions: [1]

> 1. Did the trial court err in ordering Father to pay child support in the amount of $1,278/month?
>
> 2. Did the trial court abuse its discretion in awarding primary physical custody of the child to Mother?

For the reasons stated below, we lack the jurisdiction to address the first question. We answer the second question in the negative and affirm the judgment of the circuit court.

## BACKGROUND

Mother and Father were married in December 2012. One child was born as a result of the marriage in September 2013. The couple resided at a townhome with Father's parents, sisters, and brother. Father worked various jobs during the marriage, including as

[1] Father's question presented reads:

> Was the trial court's denial of the Appellant's Motion for full child physical custody or shared physical custody not granted because of favoritism to the woman and to have the Appellant Ahmad T. Tahir pay more in child support? When in reality the child is in danger residing with the Appellee, Rokshan A. Jahan who is obviously emotionally and mentally unstable.

a convenience store employee, a Fed Ex driver, and a commercial truck driver. Mother worked at Edible Arrangements, where she is now a manager. Due to the parents' work schedules, the paternal grandparents often assisted the couple in caring for the child. Indeed, Shahita Tahir ("Mrs. Tahir"), the paternal grandmother, testified that the whole family helped care for the boy, and Father stated that Mrs. Tahir quit her job to do so.

In 2014, the couple experienced marital difficulties. On July 3, 2014, Mother's father visited the family and witnessed what Mrs. Tahir called a "verbal argument." Father demanded that Mother return a ring which was a gift from Father's grandmother. Mother refused, and testified that Father threatened to kill the child if she did not return the ring. Father and his parents disputed this version of events. Mother testified that on another occasion, Father choked her to the point of unconsciousness. Mother stated that in September 2014, the couple went through an "Islamic divorce," which Mother explained as follows: "It's like . . . Islam only . . . he didn't want me to stay in his room. I mean, he told me, get out from my room, my life, and don't forget to take your baby."

In October 2014, Mother left the marital home and took the child with her. She rented a room from a friend and testified that she now rents two rooms from the friend in order to provide a room for the child. Mother continued to pay Mrs. Tahir to care for the child during the day. In early 2015, Mother filed for a protective order from Father, which was ultimately denied. Father claimed that Mother blocked access to the child and testified at the custody merits hearing that from the time Mother left the marital residence to a *pendente lite* hearing in March 2016, she permitted him to visit or see the child just four times for a total of two hours.

As indicated above, on October 29, 2015, Father filed a complaint for an absolute divorce from Mother. Because the child primarily resided with Mother, Father requested *pendente lite* access and Mother requested *pendente lite* child support. The parties appeared for a hearing before a Family Magistrate on March 29, 2016. On April 22, 2016, the circuit court adopted the recommendation of the magistrate and ordered Father to pay $1,278 per month in child support and established a child support arrearage of $5,112. Furthermore, the court granted Father's request for *pendente lite* access and ordered that Father have regular access to the child every Thursday and every other Sunday. Neither party noted an appeal from this order.

In the custody merits hearing on June 27, 2016, Father testified that the visits went poorly following the *pendente lite* proceeding. He asserted that at one visit, Mother spent most of the time set aside for the visit screaming at him about a child car seat. At other visits, Father claimed that a man that he assumed to be Mother's boyfriend was aggressive toward him, and even tried to run him down in a vehicle. Accordingly to Father, he stopped visits because he was afraid of what the boyfriend would do to the child.

Mother responded that she did not have a boyfriend: the man Father saw was a co-worker that Mother paid for rides. Mother testified that Father stopped coming to visits, without any explanation, and he failed to respond to her phone calls and text messages.

In a proceeding on July 5, 2016, the trial court orally placed its findings on the record and also issued a written order, which was entered on July 13th. The court awarded joint legal custody to the parties and primary physical custody of the child to Mother. The court also set forth a visitation schedule for the parties, which included regular overnight

visits with Father every other weekend and weekly Thursday visits. Father, acting *pro se*, timely noted this appeal.

## DISCUSSION

Preliminarily, Rule 8-202(a) requires, with certain exceptions inapplicable to this case, that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." In this case, Father noted his appeal on August 11, 2016. Father's notice of appeal, therefore, encompasses the court's July 13th custody order, but not the court's April 22nd order requiring Father to pay *pendente lite* child support.[2] The 30-day rule is "'jurisdictional, and if the appeal is not timely noted, we must dismiss the appeal.'" *Scarborough v. Altstatt*, 228 Md. App. 560, 565 (2016) (quoting *Carter v. State*, 193 Md. App. 193, 206 (2010)), *cert. denied*, 450 Md. 129 (2016). We, accordingly, do not have jurisdiction to review on the trial court's *pendente lite* child support order, and we dismiss the portion of the appeal concerning child support.[3]

[2] In *In re Katherine C.*, 390 Md. 554, 557 n.4 (2006), the Court of Appeals noted that although *pendente lite* orders concerning child support are interlocutory – and interlocutory orders are ordinarily not appealable as they are not final, *see* Maryland Code (1973, 2013 Repl. Vol.), § 12-301 of Courts & Judicial Proceedings Article ("CJP") they are immediately appealable pursuant to CJP § 12-303(3)(v), because they involve "the payment of money."

[3] We note that, although Father appears to raise child support in his question presented, he fails to present any argument or cite any authority in his brief addressing child support. Even if we had jurisdiction to consider the court's *pendente lite* child support order, we would dismiss that portion of the appeal for Father's failure to include argument and legal authority. *See* Rule 8-504(a)(6); *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 80 n.18 (2015), *cert. denied*, 446 Md. 293 (2016).

## Child Custody

Turning, then, to the portion of the appeal that is properly before us, Father contends that the trial court erred in awarding primary physical custody of the child to Mother. Father asserts that the court should have awarded him sole physical custody or shared physical custody. According to Father, the court's order is not in the best interests of the child, because Mother presents a danger to the child, presumably because at the hearing Father alleged that Mother had once admitted to him that she tried to commit suicide in 2010, and he alleged that Mother kept a knife underneath the child's crib, which she used to cut herself.

Mother urges this Court to affirm the circuit court's custody ruling as in the best interests of the child. Mother contends that the court properly analyzed child custody considerations as set forth in Maryland case law, specifically in *Taylor v. Taylor*, 306 Md. 290 (1986), and ample evidence supports the court's findings. Mother asserts that Father has levelled "unsupported bare allegations" in an "outrageous" attempt to call into question her mental health and suitability to parent. Furthermore, Mother urges this Court not to permit Father another attempt to retry the case.

### *Standard of Review*

"It is a bedrock principle that when the trial court makes a [child] 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); *see* Md. Rule 8-131(c). [4] We have described the best interests standard as

> "an amorphous notion, varying with each individual case . . . [requiring the court] to 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. At the bottom line, what is in the child's best interest equals the fact finder's best guess.'"

*Karanikas v. Cartwright*, 209 Md. App. 571, 589-90 (2013) (quoting *Montgomery Cnty. Dep't of Social Servs. v. Sanders*, 38 Md. App. 406, 419 (1978)).

Because the trial court has the "opportunity to observe the demeanor and credibility of both the parties and the witnesses[,]" "[t]he determination of which parent should be awarded custody rests within the sound discretion of the trial court." *Braun v. Headley*, 131 Md. App. 588, 596-97 (2000), *cert. denied*, 531 U.S. 1191 (2001). We have recognized the deference accorded to trial courts in these matters

> "'because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the judge] is in a far better position than the appellate court . . . to weigh the evidence and determine what disposition will best promote the welfare of the minor.'"

*Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000) (quoting *Davis v. Davis*, 280 Md. 119, 125 (1977).

*Analysis*

In considering the best interests of the child, a trial court should examine "numerous factors":

[4] Rule 8-131(c) provides: "When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses."

> "The criteria for judicial determination includes, but is 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 . . . ."

*Karanikas*, 209 Md. App. at 590 (quoting *Sanders*, 38 Md. App. at 420). We have noted that the court "'will generally not weigh any one [factor] to the exclusion of all others. The court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor [ .]'" *Id.* (quoting *Sanders*, 38 Md. App. at 420-21).

In considering whether joint custody of the child is appropriate, a trial court should consider many of the same factors:

> Indeed, there are specific factors particularly relevant to a consideration of joint custody: (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.

In the July 5th proceeding, the trial court clearly addressed the above factors as follows:

> The standard to be applied in determining whether to grant one parent sole custody, or rather to grant the parties joint custody, and

the extent of visitation is what is in the best interest of the child. The Court will apply the factors set forth in [*Sanders*] for physical custody and visitation.

One. Fitness of the Parents. Both parents are fit.

Two. Character and reputation of the parties. The only adverse information regarding either party's character came largely from the opposing party, which the Court does not find to be credible.

Desire of the natural parents and agreement between the parties. Both parents desire sole physical custody. The parties have agreed [to] joint legal custody.

Potentiality of maintaining natural family relations. [Father] lives in a home in Clarksburg, Maryland with his parents, two sisters, and a brother. The family is very close, and [the child]'s grandparents are devoted to him. He is their only grandchild. [Mother] rents rooms from a friend in Montgomery Village. [Mother]'s only relative that lives near her is an uncle who lives in Montgomery Village. [Mother] did not have a good relationship with her uncle at first, but it appears better now because she sometimes visits his family on the weekends, and the uncle has been with her during some of the exchanges.

Preferences of the child. That's not applicable here due to the age of the child.

Material opportunities affecting the future life of the child. There was no evidence as to this factor.

Age and health of the child. [The child] will be 3 in September and is in good physical health.

Whether the non-custodial parent will have opportunities for visitation. Yes.

Length of separation from the natural parent who is seeking custody. [Father] voluntarily stopped the visits over a month ago.

Prior voluntary abandonment or surrender of custody of the child. Although [Father] voluntarily stopped the visits, the Court does not consider this to be voluntary abandonment or surrender of custody.

Relationship established between the child and each parent. There was testimony that the child has a good relationship with both parents.

Potential disruption of the child's social and school life. The parties live close enough that [the child] could continue with this preschool, if the parties are granted shared physical custody.

Geographic proximity of parental homes. The parties live 15 to 20 minutes away from each other.

Suitability of the residences of the parents. [Father] lives in a 4-bedroom townhouse with his family. He has his own room, and [the child] would stay in the room with [Father]. [Mother] is renting space in a 4-bedroom townhouse. Although her landlord provided a note saying that [Mother] paid $500 a month, which she testified was to rent 1 room. [Mother] testified that the arrangement was recently changed, so that she would also be renting the basement or to give her son space.

Demands of parental employment. [Father] works as a truck driver for a Forell Gas, delivering propane tanks. His schedule varies, and he works three or four days per week in hours ranging from 11 to 16. Looking at [Father]'s Exhibits 1 and 2, which are his work logs, there does not seem to be a pattern in his schedule. The only day that he is always off is Sunday. [Mother] is a manager at Edible Arrangements, and her hours are from 9:00 to 5:00 p.m., Monday through Friday.

Sincerity of parents' requests. The Court finds that both parents are sincere.

Financial status of the parents. Both parents are financially stable.

Ability of the parties to communicate and reach shared decisions. Both parties acknowledge that this ability is lacking in this case. The Court finds that the fault lies more with the [Father], who wouldn't even pick up the phone when [Mother] calls about whether he was going to exercise his parental access rights.

Considering all the relevant factors, and looking at each of the parents, and their individual situations based on the testimony of the

> witnesses, and the Court's own observations of the parties, the Court finds it is in the best interest of the minor child that [Mother] be granted primary physical custody of [the child]. Although the [Father]'s attorney and [Father]'s mother advocated for a shared custody arrangement, the Court does not find this to be in the best interest of the minor child for several reasons.
>
> As I indicated, I reviewed the logs for [Father]'s job and there is no discernible schedule, which is a relevant factor in shared custodies. Although [Father]'s parents would be available to take care of [the child] when [Father] will be working, the grandparents' care should be supplemental to what the father does, not be the primary care. There are some days that [Father], based on his March and April 2016 log, there are some days that he works 16 hours. And it would be one thing if those were the same days on a regular basis, such as every Monday through Wednesday. Or even on a rotating basis. But the logs show no specific days that [Father] works, and no consistent days off except for Sunday.
>
> Additionally, for a shared custody arrangement to work, the parties need to be able to communicate and be flexible, if necessary. [Father] didn't exercise the visitation that [the *pendente lite* order] awarded him. His reasons for not doing so don't make sense, and I don't find him credible. [Father]'s refusal to communicate with [Mother] and let her know he wasn't coming, and ignoring her calls, show immaturity and a desire to punish [Mother] for her alleged boyfriend. [Father] cut off visitation with his son, and cut off communication with [Mother], rather than explain his concerns about [Mother]'s friend and try to resolve them.

We are not persuaded that the trial court abused its discretion in its ruling. The court explained its findings as to the child custody factors set forth in *Sanders* and *Reichert.* Moreover, the court provided its rationale as it related to these factors. Father asserts that the court showed favoritism to Mother and that Mother poses a danger to the child, but we see no credible evidence of either. Accordingly, we affirm the judgment of the trial court awarding joint legal custody to the parties and primary physical custody to Mother.

**APPEAL ADDRESSING *PENDENTE LITE* CHILD SUPPORT ORDER DISMISSED. JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AS TO CHILD CUSTODY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**