Circuit Court for Montgomery County
Case No. 133244-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1539

September Term, 2016

JESSE COLGROVE

v.

LINAH COLGROVE

Kehoe,
Berger,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: June 21, 2017

This is an appeal from a child custody order of the Circuit Court for Montgomery County, the Honorable Karla N. Smith, presiding. In addition to other relief, the court:

> (1) granted the parties joint legal custody of their minor child (the "Child");
>
> (2) awarded Ms. Colgrove tie-breaking authority if the parties are unable to agree on a matter involving the Child's education, health, and general welfare; and
>
> (3) ordered that the Child should attend a specific school (the "School") located in Montgomery County, unless the parties agree to a different arrangement in writing.

Mr. Colgrove raises two issues on appeal, which we have reworded:

> (1) Did the trial court abuse its discretion in awarding Ms. Colgrove tie-breaking authority?
>
> (2) Did the trial court's order that the Child will attend the School infringe upon Mr. Colgrove's constitutionally-protected parental rights?

Our answer to these questions is "no," and we will affirm the trial court's judgment.

Background

The parties and their counsel are, of course, completely familiar with the facts of this case. We set out a bare summary in the light most favorable to Ms. Colgrove as the prevailing party. *See Fitzzaland v. Zahn*, 218 Md. App. 312, 322 (2014); *Chestnut Real Estate P'ship v. Huber,* 148 Md. App. 190, 200 (2002).

The parties were married in 2010 and had a child two years later. The parties' relationship deteriorated; it appears that Mr. Colgrove's problem with alcohol was a significant factor in their breakup. In 2015, Ms. Colgrove left the family home and moved to a separate residence. Shortly thereafter, she filed an action for divorce and sought, among other relief, sole custody of the Child. Mr. Colgrove filed a counter

complaint for divorce, and sought sole legal, and shared physical, custody. The circuit court entered a pendente lite consent custody order, but this did not fully resolve the custody disputes.[1] Eventually, the court conducted a four-day custody hearing, and thereafter entered the order which is the subject of this appeal. In addition to addressing issues that typically arise in child custody cases, e.g., holidays and drop-off/pick-up times, the order stated that:

> [T]he parties shall share joint custody of [the Child] and shall consult with each other, in good faith, as to all decisions regarding the education, health and general welfare of [the Child]. If the parties are unable to come to a consensus, [Ms. Colgrove] shall have tie breaking authority[.]
>
> . . . .
>
> [The Child] shall attend the [School], unless both parties, in writing, consent to a change and agree on a school.[2]

To this court, Mr. Colgrove asserts that the trial court abused its discretion in granting Ms. Colgrove tie-breaking authority and ordering that the Child attend the School.

[1] The consent order also required Mr. Colgrove to undergo periodic drug and alcohol tests.

[2] This order required Mr. Colgrove to undergo a substance abuse evaluation and to comply with all treatment recommendations.

The Standards of Review

In child custody disputes, the best interest of the child "is always determinative[.]" *Santo v. Santo*, 448 Md. 620, 626 (2016) (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. "This standard of review accounts for the trial court's unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)).

"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).

Analysis

I. Joint Custody and Tie-Breaking Authority

In its landmark decision in *Taylor v. Taylor*, 306 Md. 290, 298 (1986), the Court of Appeals definitively held that Maryland courts have the authority to order joint custody as part of "the broad and inherent authority of a court exercising its equitable powers to determine child custody." In its analysis, the Court developed a non-exhaustive list of thirteen considerations which should guide courts in deciding whether to award joint custody. *Id.* at 303–11. The most important of the *Taylor* factors is the "capacity of the parents to communicate and to reach shared decisions affecting the child's welfare." *Id.* at 304 ("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[.]").

The Court of Appeals recently revisited the relative importance of effective inter-parental communication in the joint custody context and concluded that joint custody may be appropriate even when the past history was not encouraging. *Santo*, 448 Md. at 630. In such cases, it may be appropriate to grant one parent tie-breaking authority. The Court explained:

> In a joint legal custody arrangement with tie-breaking provisions, the parents are ordered to try to decide together matters affecting their children. When, and only when the parties are at an impasse after deliberating in good faith does the tie-breaking provision permit one parent to make the final call. Because this arrangement requires a genuine effort by both parties to communicate, it ensures each has a voice in the decision-making process.

> To be sure, the *Taylor* Court's definition of joint legal custody places parents' decision-making rights on an equal footing; indeed, it characterizes their voices as being equal. A delegation of final authority over a sphere of decisions to one parent has the real consequence of tilting power to the one granted such authority.
>
> But such an award is still consonant with the core concept of joint custody because the parents must try to work together to decide issues affecting their children. . . . We require that the tie-breaker parent cannot make the final call until *after* weighing in good faith the ideas the other parent has expressed regarding their children.

Id. at 632-633 (citations omitted; emphasis in original); *see also Shenk v. Shenk*, 159 Md. App. 548, 559–60 (2004) (A court may grant tie-breaking authority to one parent in a joint custody case as an appropriate "proactive provision" to resolve "probable continued conflict[.]").

Returning to the case before us, Mr. Colgrove asserts that the trial court abused its discretion by granting Ms. Colgrove tie-breaking authority because the parties have agreed on most matters regarding the Child. We do not agree for two reasons.

First, there is nothing in *Santo* that suggests that tie-breaking authority should be restricted to those cases in which the parents cannot communicate with one another yet joint custody is nonetheless appropriate. Second, Mr. Colgrove overlooks evidence that, on two occasions, he agreed to something regarding the Child and later reneged. In the first instance, he agreed that Ms. Colgrove could take the Child to visit family in Florida but then filed a petition to hold her in contempt for doing so. In the second, he agreed with Ms. Colgrove that the Child should attend the School but then abruptly changed his

mind.[3] The evidence establishes that Mr. Colgrove's decision-making regarding important issues relating to the Child has been inconsistent at times.

At oral argument, Mr. Colgrove contended that the trial court abused its discretion because the Child was only two years old when the order was issued and the tie-breaking provision effectively grants Ms. Colgrove ultimately decision-making authority for the next sixteen years of the Child's life. This contention is unpersuasive because the order provides that Ms. Colgrove can exercise her tie-breaking authority only after the parties "consult with each other, in good faith" as to important decisions regarding the Child. This provision protects Mr. Colgrove and, more importantly, the Child, from an arbitrary exercise of the tie-breaking power. *See Santo*, 448 Md. at 663 ("[T]he tie-breaker parent cannot make the final call until *after* weighing in good faith the ideas the other parent has expressed regarding their children.") (emphasis in original).

In order for us to set the tie-breaking provision of the custody order aside, we must conclude that the trial court's decision was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North*, 102 Md. App. at 15. On the record before us, we cannot reach this conclusion.

[3] Mr. Colgrove asserts that he had good reasons, or at least understandable excuses, for each of his actions, but the trial court was not obligated to accept his version of events.

II. School Attendance and Mr. Colgrove's Parental Rights

Mr. Colgrove contends that the circuit court exceeded its authority by ordering that the Child would attend the School. Ms. Colgrove disagrees, asserting that the trial court's decision was within the ambit of the court's broad authority to fashion a remedy in the best interest of the Child. She is correct.

In a child custody case, "the paramount concern is the best interest of the child. . . . [which] is not considered as one of many factors, but as the objective to which virtually all other factors speak." *Taylor*, 306 Md. at 303. Md. Family Law Article § 1–201 is "'declaratory of the inherent power of courts of equity over minors, and [which] should be exercised with the paramount purpose in view of securing the welfare and promoting the best interest of the children.'" *Holbrook v. Newell*, 231 Md. App. 451 (2017) (quoting *Ricketts v. Ricketts*, 393 Md. 479, 498 (2006)). Furthermore, courts "possess a wide discretion concomitant with their plenary authority to determine any question concerning the welfare of children within their jurisdiction[.]" *Reichert v. Hornbeck*, 210 Md. App. 282, 305 (2013) (citations and quotation marks omitted).

While Mr. Colgrove concedes that courts have the plenary authority to determine any question concerning the welfare of the child within its jurisdiction, he asserts that education falls outside the boundaries of the court's authority.

To support this contention, Mr. Colgrove relies on three Supreme Court decisions relating to the rights of parents to rear their children. None of these assist him.

The issue in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), was whether a state could mandate attendance at public, as opposed to private or parochial, elementary and secondary schools. The Court held that the state could not. *Id.* at 530. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Court held that a state could not prohibit the use of a foreign-language religious textbook in a parochial school. *Id.* at 404. Finally, in *Troxel v. Granville*, 530 U.S. 57, 71 (2000), the court held that a non-parental visitation statute violated the fundamental right of parents to raise their children. These cases deal with attempts by *third parties* to supplant decisions traditionally made by parents. None of these cases address the scope of the court's authority to resolve disputes between *parents* as to the upbringing of their children. In that context, the authority of the court is plenary. *See, e.g.*, *Ricketts*, 393 Md. 498. In short, the parties' constitutionally-protected parental rights were not offended when a court resolved the dispute between them as to the appropriate school for the Child.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.