Circuit Court for Somerset County
Case No. 19-C-15-017683
Case No. 19-C-16-017847

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1860

September Term, 2016

RALPH N. EVANS, II

v.

JENNALEE EVANS
n/k/a JENNALEE AUSTIN MURRAY

Kehoe,
Leahy,
Alpert, Paul E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 31, 2017

Appellant Ralph N. Evans, II ("Father") and Appellee Jennalee Evans n/k/a Jennalee Austin Murray ("Mother") filed for, and on October 3, 2016, were subsequently granted, a judgment of absolute divorce in the Circuit Court for Somerset County. Father appeals from that order, disputing the court's physical custody and voluntary impoverishment determinations. He argues that the circuit court erred in both respects by failing to apply, on the record, the proper multi-factor tests that the Court of Appeals has set out to determine awards of physical custody and for imputing income based on voluntary impoverishment. Finding no error, we affirm the judgments of the Circuit Court for Somerset County.

BACKGROUND

The parties in this case were married in Princess Anne, Maryland, on August 12, 2006. During the marriage, the parties had two children: R.E. and B.E., who were ages nine and four at the time of the initiation of the underlying action. On May 26, 2015, the parties separated. Father filed a complaint for limited and/or absolute divorce on February 23, 2016. On March 15, 2016, Mother filed an answer to the complaint as well as a counter-complaint for absolute divorce. On June 15, 2016, the parties appeared before a family magistrate in the circuit court for a *pendente lite* hearing. Based on the magistrate's recommendations, the parties formalized a temporary *pendente lite* consent agreement on July 1, 2016.

The circuit court consolidated the parties' actions and they appeared before the court for an absolute divorce proceeding on August 12, 2016. Prior to trial, the parties resolved

the issues of legal custody, a holiday schedule, alimony, marital property and attendance and payment for private schooling. Physical custody, transportation, child support, and attorney's fees remained at issue going into trial.

A. Circuit Court Proceedings

1. Testimony

Father sought physical custody "50 percent of the time . . . [on] whatever schedule as long as it's shared in [the children's] interest." Mother proposed that, during the school year, Father have custody "every other weekend from Friday to Monday morning . . . and perhaps a Wednesday evening from when [Father] gets off work." Mother requested the court award "shared physical custody . . . in the summertime." For transportation during exchanges, Father sought an arrangement where the receiving party would be responsible. Mother did not set out a clear transportation arrangement. Father requested that the court impute minimum wage to Mother "because she is not disabled [and] she's made no effort to seek employment." Mother asked the court not to impute income.

In regard to physical custody, both parties introduced evidence about their fitness, character, and ability to communicate for the purpose of maintaining familial relations. For the issue of voluntary impoverishment, the parties introduced evidence regarding the Mother's level of education/certification, her past work history, and ability to obtain and maintain employment. At trial, both parties testified in addition to Mother's aunt, father, and mother.

Father testified that from May 2015 to February 2016, Mother permitted him to visit

the children only "under strict conditions" in Mother's home or his own mother's home "at [Mother's] discretion and time." Pursuant to the *pendente lite* order, Father was permitted to see the children two nights a week for two hours, and every alternate weekend. Father attested that he provided appropriate accommodations for the children at his mother's house, and that he continued to maintain appropriate accommodations at his current home. Despite Father's full time employment, he testified that there would be no reason he could not transport the children where they needed to be, either through his own volition or through the assistance of his girlfriend and mother. Father offered two explanations for tardiness when returning the children under the *pendent lite* order: 1) he waits "ten to 15 minutes" for the girls to get ready to go and 2) "I find it hard to, if we're having fun, just cut [visitation] off right there and say all right, stop, we've got to go home or daddy's going to get in trouble."

Father also testified that Mother was physically capable of working during the marriage, despite her eye condition. Mother explained, during her testimony, that she suffers from pigment paravenous chorioretinal atrophy with nystagmus and strabismus, which means she struggles to see distances due to pigmented scarring on her retinas, and that she suffers from rapid eye movement that makes it difficult for her vision to remain in focus. As a result of this condition, her vision is 2/400 in her right eye and 2/100 in her left eye, and she testified that she is legally blind.

Father testified that Mother "always made it clear that she was able to drive and [Mother] found it absurd that the State of Maryland would not let her get a license because

of her visual acuity." During the marriage, Mother attended Wor-Wic[1] twice for nursing but did not complete the program either time. On cross-examination, Father admitted Mother was the primary caregiver of the children during the marriage and Mother and her family took the children to the doctor. Father works approximately 25-30 minutes away from his home from 8:00 a.m. to 5:00 p.m. Father also admitted that, on separate occasions during the marriage, he had punched a hole in the wall because he was angry and pulled a door off the hinges. He admitted he "was angry a lot," and at times the children may have been present.

Mother then testified that immediately prior to the separation, Father's behavior towards Mother was "hostile at best" and she became "very nervous and uncomfortable at times and in fear for [her] safety." Mother continued, "[h]e's even threatened to make me disappear and what not at times . . . [s]o I definitely feared him." Mother also testified that, in front of the children,

> [Father] has sort of come at me with his hands up yelling at me and so forth. He has thrown containers of mega blocks at me, he's thrown a binder at me and it hit the wall and put a hole in the wall, he has punched holes in the wall. He actually obliterated a smoke detector that was in the wall and it . . . put a hole in the wall in the kitchen and put a hole all the way through the wall in my bedroom. He also put his knuckle imprints in my refrigerator door above the – on the freezer side above the controls from punching it.

In regard to her ability to work, Mother testified to her participation in a modified driving program, through the MVA, in which she has a permit and is

[1] Wor–Wic Community College is a public community college that serves Somerset, Wicomico, and Worcester Counties. The school's main campus is located in Salisbury, Maryland.

attempting to be rehabilitated so that she may be eligible for a driver's license one day. She explained that her EMT certification was current, barring a protocols update. Regarding employment in this line of work, Mother stated:

> I have inquired about it in the past, not lately because I was -- well, I'll say I was made aware or I became aware that to gain employment as an EMT-B anywhere they expect you to be a BLS provider and driver so that if there is a serious nature call the patient could be transferred to a paramedic and I could be the driver, which means I cannot be employed with that certification.

On cross-examination, Mother testified that she was not currently enrolled in any educational programs, but that she hoped to re-enroll at Wor-Wic. When asked if she could obtain and keep a minimum wage job, Mother said "sure."

Mother's aunt, father, and mother, D. Schrader, J. Murray, and B. Murray, all testified on Mother's behalf supporting her version of the events. Ms. Schrader testified that Mother has always been the primary caregiver of the children. Ms. Schrader, having observed Father and children together "lots of times," also testified that Father and the children were not close.

Mr. Murray testified that Mother was the primary caregiver of the children "without a doubt." He also noted his concern for his daughter's wellbeing in light of Father's anger. He acknowledged that Mother had never been employed, nor applied for work since the separation.

Mrs. Murray testified about Mother and Father's interactions since the separation:

> [MOTHER'S COUNSEL]: Have you watched her interact with her husband since he left the home and attempting to co-parent with him?

[MS. MURRAY]: It's been minimal and it's not been pleasant.

***

[MOTHER'S COUNSEL]: . . . Since separation, since [Father] left the home, let me first ask you, did you observe their interactions in terms of – in particular [Mother's] attempts to co-parent with him?

[MS. MURRAY]: In the beginning I think she tried, but he seemed to be angry a lot of the time.

[MOTHER'S COUNSEL]: Okay.

[MS. MURRAY]: And then here of late I think she avoids interacting with him to avoid a conflict.

[MOTHER'S COUNSEL]: Okay. Have you observed conflicts between the two of them in the past?

[MS. MURRAY]: Yes.

Ms. Murray further testified about an incident in which Father "was fussing at [R.E.], the oldest daughter . . . and he was very angry at her and he actually scared me because he pulled the door off of her bedroom with his bare hands."

2. Custody Arguments and Findings

Father's counsel argued in closing that Mother adduced no evidence that she was more fit as a parent, and that Father should not be penalized with less time with his children just because he has a fulltime job. His counsel argued further that there was no "evidence provided that [Father] should be an every-other-weekend father, even during the school year. And I don't think there's certainly any evidence why the summer shouldn't be equal time and the school year some type of equal time schedule so that the children have the benefit of both of their parents."

Mother's counsel began closing argument by going through seven factors that the court "needs to consider in custody disputes and asked the court to award shared physical custody in the summers in a three-to-four-day rotation between the parents, and to limit Father's visitation during the school year limited to every other weekend.

In delivering its findings, the court began by noting that "[p]hysical custody requires the Court to go through a number of factors." The court then analyzed each of the factors set out in *Montgomery County DSS v. Sanders*, 38 Md. App. 406 (1978).[2] The court determined that "both parents [were] fit and proper," and "[n]othing negative" reflected on the character and reputation of the parties. In regard to discerning the desire of the natural parents and agreements between the parties, the court noted that Mother's "decision to limit [Father's] contact with the children did not serve the best interest[s] of the children." The court found, however, that Father acquiesced to Mother's limitation by failing to object. In regard to the potentiality of maintaining natural family relations, "the proximity of the parties' homes, [allows] great potential of maintaining natural family relations." The court noted that the preferences of the children were "not material in this case." Referencing the material opportunities affecting the future life of the children, the court observed that the "parties have struggled financially through the course of the marriage and especially after

[2] The factors are: (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 (10) prior voluntary abandonment or surrender. *Sanders*, 38 Md. App. at 420.

the separation." The court continued, stating "it is time [for Mother] to seek employment so that . . . some of these financial shortfalls can be addressed." Considering the age, health and sex of the children, the court reiterated "there are no identified shortcomings in [the] educational, physical health, or mental health" of the children." As to the residences of parents and opportunity for visitation, the court stated "[b]oth of the homes seem to be perfectly appropriate." Additionally, "because of the proximity[,] there is opportunity for regular visitation." Lastly, the court noted the length of separation from the natural parents and prior voluntary abandonment or surrender were not relevant factors.

Based on this, the court awarded primary physical custody of the children during the school year to the Mother and visitation every other weekend to the Father. The court awarded the parties equal physical custody during the summers, but instructed that Father's 50% visitation time during the summer should include at least three weekends (Saturdays and Sundays) per month because of his work schedule.

3. Voluntary Impoverishment Arguments and Findings

Father contended that the court should impute minimum wage to the Mother when considering the child support guidelines. Father argued that there was no evidence to suggest Mother was incapable of earning minimum wage (*i.e.*, she is not disabled), and, he pressed that she had taken no action to seek employment.

Mother's counsel did not present much argument on voluntary impoverishment but did touch on the issue as it related to Mother's ability to maintain an appropriate home. Her counsel argued that "[S]he was in this predicament physically when she was married,

she has been in this predicament, she has unsuccessfully for whatever reason attempted to pursue different educational goals. . . . The fact of the matter is, I don't think you've heard anything that suggests that she's voluntarily impoverished herself."

The court declined to impute income to Mother, finding that

> [i]n the absence of any employment history whatsoever, even over [Mother's] statement that she could go out and get a minimum wage job, I'm taking everything that I've heard into consideration, I don't think that there's a justification to impute income.[3]

The court then ordered that each party pay its own attorney's fees and ordered Father to take an anger management course. Lastly, the court granted the parties absolute divorce. The court's order was docketed on October 3, 2016.

Father noted a timely appeal on November 2, 2016, presenting two questions for our review:[4]

1. "Whether the circuit court erred in granting the Appellee primary physical custody of the children?"

2. "Whether the circuit court erred in not finding the Appellee voluntarily impoverished and therefore erred in not imputing income to the Appellee for the purposes of calculating child support?"

DISCUSSION
I.

Primary Physical Custody

[3] In closing argument, Mother's counsel urged the court not to place so much significance on her pursuit of a driver's license even though "she's in a special program. "I'm not a witness here and I've dealt with that program before. I don't think we have any testimony that suggests that it means she's going to get a license. People can attempt to be rehabilitative and try to push themselves as far as they can go."

[4] Mother did not file a brief on appeal.

Father argues that the circuit court erred by failing "to consider or review the requisite factors for consideration of joint custody," as set out by the Court of Appeals in *Taylor v. Taylor*, 306 Md. 290, 304–11 (1986). Father contends that because joint physical custody was at issue—rather than joint legal custody—and because he made a "credible and sincere" request for shared physical custody, the trial court should have considered the *Taylor* factors "over and above" the *Sanders* factors.

The Court of Appeals has identified three aspects to our standard of review in child custody disputes:

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131] applies. [Secondly,] [i]f it appears that the chancellor 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 chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion."

In re Yve S., 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 125–26 (1977)).

This Court has observed that "it 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 [it] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [it] 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." *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) (quoting *In re Yve S.*, 373 Md. at 585-86).

In custody disputes, "the power of the court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child." *Taylor*, 306 Md. at 301–02. As the Court of Appeals observed recently, "rather than looking to codified rules, the factors courts consider in making a 'best interests determination' are found in case law." *Conover v. Conover*, 450 Md. 51, 84 (2016) (citing *Taylor*, 306 Md. 290, 303–12).

In 1977, this Court enumerated 10 factors for a trial court to consider in rendering a child custody determination:

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
10. Prior voluntary abandonment or surrender

Sanders, 38 Md. App. at 420. After setting out this non-exhaustive list, the Court continued, "[w]hile the court considers all the above factors, it will generally not weigh any one 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.* at 420–21.

Then, in 1986, the Court of Appeals addressed the issue of joint legal and physical custody for the first time in over 50 years. *Taylor*, 306 Md. at 302. The Court explained

that joint custody may be appropriate in some instances, reasoning that "proper practice in any case involving joint custody dictates that the parties and the trial judges separately consider the issues involved in both joint legal custody and joint physical custody, and that the trial judge state specifically the decision made as to each." *Id*. at 297. Moreover, "[a] court faced with a question of child custody upon the separation of the parents may continue the joint custody that has existed in the past, or award custody to one of the parents, or to a third person, depending upon what is in the best interest of the child." *Id*. at 301. The Court set out 14 considerations for determining whether joint custody is appropriate:

1. Capacity of the parents to communicate and to reach shared decisions affecting the child's welfare;
2. Willingness of parents to share custody;
3. Fitness of parents;
4. Relationship established between the child and each parent;
5. Preference of the child;
6. Potential disruption of child's social and school life;
7. Geographic proximity of parental homes;
8. Demands of parental employment;
9. Age and number of children;
10. Sincerity of parents' request;
11. Financial status of the parents;
12. Impact on state or federal assistance;
13. Benefit to parents
14. Other factors.

Id. at 304–11; *see also Queen v. Queen*, 308 Md. 574, 588 (1987) (stating the considerations in *Taylor* were "factors a trial court should consider in awarding joint custody").

Despite enumerating this list of factors, the Court in *Taylor* cautioned:

> Formula or computer solutions in child custody matters are impossible because of the unique character of each case, and the subjective nature of the evaluations and decisions that must be made. At best we can discuss the major factors that should be considered in determining whether joint custody is appropriate, but in doing so we recognize that none has talismanic qualities, and that *no single list of criteria will satisfy the demands of every case.*
>
> ***
>
> *The best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak.*
>
> The question of whether to award joint custody is not considered in a vacuum, but as a part of the overall consideration of a custody dispute. The availability of joint custody, in any of its multiple forms, is but another option available to the trial judge. Thus, the factors that trial judges ordinarily consider in child custody cases remain relevant. The following discussion of factors particularly relevant to a consideration of joint custody is in no way intended to minimize the importance of considering all factors and all options before arriving at a decision.

306 Md. at 303 (emphasis added).

The Court then cited this Court's list of considerations in *Sanders* and stated that these "factors that trial judges ordinarily consider in child custody cases remain relevant." *Id.* at 303 & n.10.

Consistent with the teachings of *Taylor*, this Court has observed:

> 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[.]" This authority clearly empowers courts applying the best interests standard to consider any evidence which bears on a child's physical or emotional well-being.

Bienenfeld v. Bennett-White, 91 Md. App. 488, 503–04 (1992) (internal citations omitted).

And more recently, we reiterated: "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*, 210 Md. App. at 304.

Therefore, whether or not a trial court applied all or some of the factors from *Sanders* and *Taylor* is not determinative in our deferential review of a court's custody decision made in the best interests of the child. The Court of Appeals and this Court alike have upheld repeatedly the teaching of *Taylor* that custody determinations cannot be reduced to talismanic or formulaic, one-size-fits-all solutions.

This makes sense considering the substantial overlap between the factors in *Sanders* and *Taylor*. For example, both sets of factors discuss the fitness of the parents and the age and preference of the child. *Taylor*, 306 Md. at 308; *Sanders*, 38 Md. App. at 420. Other factors, while not identical, are substantially similar: *Taylor* lists the parents' willingness to share custody while *Sanders* includes the desires of natural parents and agreements between the parties. *Taylor*, 306 Md. at 307-08; *Sanders*, 38 Md. App. at 420. Further, *Taylor*'s fourteenth consideration is "other factors." 306 Md. at 311. In explaining this, the Court reasoned that its "enumeration of factors appropriate for consideration in a joint custody case is not intended to be all-inclusive, and a trial judge should consider all other circumstances that reasonably relate to the issue." *Id.* Therefore, if those *Sanders* factors that do not overlap with the *Taylor* factors, "reasonably relate to the issue," then those *Sanders* factors would fall within *Taylor*'s catch-all fourteenth factor. In sum, a trial court does not necessarily abuse its broad discretion by considering those *Sanders* factors it determines to be relevant to the case before it.

Returning to our case, the circuit court below correctly applied the best interest of the children standard. The court considered the evidence and testimony presented by the parties in the context of the *Sanders* factors relevant to its custody determination. The court ultimately concluded that physical custody should remain with Mother. Because no two custody cases will fit the same mold, we afford trial courts greater latitude to resolve cases in the best interests of minor children. *See Taylor*, 306 Md. at 303. Accordingly, we hold that, based on the evidence and testimony offered at trial, the circuit court's findings were abuse of discretion.

II.

Voluntary Impoverishment

Father argues that the circuit court erred declining to impute income to Mother. Father contends that the court failed to consider the voluntary impoverishment factors and, instead, relied solely on the fact that Mother did not have a work history as a basis for not imputing income. Moreover, Father argues that Mother made the "conscious choice not to work outside the home during the marriage . . . [and] had done nothing in the fifteen (15) months since the parties separated to seek employment [or] retraining."

"A trial court's factual findings on the issue of voluntary impoverishment of a parent, for child support purposes, are reviewed under a clearly erroneous standard, and the court's ultimate rulings are reviewed under an abuse of discretion standard." *Sieglein v. Schmidt*, 224 Md. App. 222, 249 (2015) (citations omitted), *aff'd,* 447 Md. 647 (2016). "Under that standard, "[i]f there is any competent evidence to support the factual findings

[of the trial court], those findings cannot be held to be clearly erroneous." *St. Cyr v. St. Cyr*, 228 Md. App. 163, 180 (2016) (quoting *Solomon v. Solomon,* 383 Md. 176, 202 (2004)). And "'the amount of a child support award is governed by the circumstances of the case and is entrusted to the sound discretion of the trial judge, whose determination should not be disturbed unless he has acted arbitrarily in administering his discretion or was clearly wrong.'" *John O. v. Jane O.*, 90 Md. App. 406, 423 (1992) (quoting *Gates v. Gates*, 83 Md. App. 661, 663 (1990)), *abrogated on other grounds by Wills v. Jones*, 340 Md. 480, 494 (1995).

Maryland Code (1999, 2012 Repl. Vol.), Family Law Article ("FL"), § 12-204(b), governing voluntary impoverishment, provides, in relevant part:

> (b) *Voluntarily impoverished parent*. --
> (1) Except as provided in paragraph (2) of this subsection, if a parent is voluntarily impoverished, child support may be calculated based on a determination of potential income.
> (2) A determination of potential income may not be made for a parent who:
> (i) is unable to work because of a physical or mental disability; or
> (ii) is caring for a child under the age of 2 years for whom the parents are jointly and severally responsible.

The Court of Appeals has established that "[v]oluntary impoverishment 'ask[s] whether [an individual's] current impoverishment is by his . . . own choice, intentionally, of his . . . own free will.'" *Sieglein*, *v. Schmidt*, 447 Md. 647, 656 n.7 (2016) (quoting *Wills*, 340 Md. at 496). "[F]or purposes of the child support guidelines, a parent shall be considered 'voluntarily impoverished' whenever the parent has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or

herself without adequate resources." *Goldberger v. Goldberger*, 96 Md. App. 313, 327 (1993). "But, as [this Court] recognized in *Goldberger*, [] a parent who has become impoverished by choice is 'voluntarily impoverished' regardless of the parent's intent regarding his or her child support obligations." *Wills*, 340 Md. at 494. In *John O.*, this Court enumerated the following factors to determine voluntary impoverishment:

1. his or her current physical condition;
2. his or her respective level of education;
3. the timing of any change in employment or financial circumstances relative to the divorce proceedings;
4. the relationship of the parties prior to the divorce proceedings;
5. his or her efforts to find and retain employment;
6. his or her efforts to secure retraining if that is needed;
7. whether he or she has ever withheld support;
8. his or her past work history;
9. the area in which the parties live and the status of the job market there; and
10. any other considerations presented by either party.

90 Md. App. at 422; *accord Goldberger*, 96 Md. App. at 327.

The Court of Appeals recently reaffirmed that a trial court should consider these ten factors "to aid in its determination of whether a parent had freely and voluntarily impoverished himself." *Sieglein*, 447 Md. at 671–72. "Although the various factors set forth in *John O.* must be considered by the trial court," this Court has made clear repeatedly that "neither we, nor the statute, require the trial court to articulate on the record its consideration of each and every factor when reaching its determination." *Stull v. Stull*, 144 Md. App. 237, 246 (2002); *see also Long v. Long*, 141 Md. App. 341, 351 (2001) (same); *Dunlap v. Fiorenza*, 128 Md. App. 357, 364–65 (1999) (same) (citing *Lapides v. Lapides*, 50 Md. App. 248, 252 (1981) ("The exercise of a judge's discretion is presumed

to be correct, he is presumed to know the law, and is presumed to have performed his duties properly.")). The "mere lack of an explicit discussion of each of the factors on the record by the trial court does not necessarily mean that the trial court erred in concluding that appellant was voluntarily impoverished." *Long*, 141 Md. App. at 351.

A trial court does not err merely by failing to articulate each of the *John O.* factors on the record. The court noted in its ruling that it "[took] everything that [it] heard into consideration." We presume that the trial court "knows the law" and "performed [its] duties properly." *Lapides*, 50 Md. App. at 252. Coupling this presumption with the deference we grant trial courts on its decisions regarding voluntary impoverishment and child support more generally, we will only perceive reversibly error if we determine the trial court acted arbitrary or was clearly wrong. *John O.*, 90 Md. App. at 423.

Here, the trial court heard testimony regarding Mother's history of unemployment, level of education, and visual impairment. On these bases, the trial judge found that there was not sufficient evidence to impute income to Mother. In making its finding, the trial court explained that in the absence of any employment history whatsoever, "I don't think that there's a justification to impute income. I do believe, personally, that it is time for [Mother] to gain employment, but I don't think that that I have enough evidence to impute income, even at a minimum wage basis."

Although the trial court did not make explicit findings as they pertained to Mother's disability, it made clear that it took into consideration all of the evidence before it, including mother's complete lack of employment during the marriage, and determined that there was

no justification to impute income at that time. We conclude that, given the evidence adduced at trial, the circuit court's conclusion was not so arbitrary or clearly wrong as to amount to an abuse of discretion. *See John O.*, 90 Md. App. at 423 (citation omitted).

Our own analysis of the *John O.* factors supports this conclusion. Mother testified extensively regarding her medical condition, pigment paravenous chorioretinal atrophy with nystagmus and strabismus. She described her condition as having "pigmented spots on [her] retina that are scarring" and rapid eye movement, causing her to struggle seeing distances and focusing on objects such as road signs. She also testified that she is legally blind.

Father admitted that Mother was the primary caregiver of the children during the marriage and Mother and her family took the children to the doctor. Both parties agreed that Father's employment provided the family with its only source of income.

Rather than evincing an intent to voluntarily impoverish herself, Mother's testimony demonstrates her desire to obtain a driver's license and earn a wage. Still, it was entirely reasonable if the court was also persuaded by her counsel's argument that Mother's desire to get a driver's license does not necessarily mean she will be able to. During the marriage, Mother attended Wor-Wic twice for nursing but did not complete the program either time. Mother also testified that she does possess a valid EMT certification, but discovered that she is not eligible for employment as an EMT because the position requires a valid driver's license.

Viewing this evidence in light of the deference we afford the trial court, we conclude that the circuit court did not abuse its discretion by declining to impute income to Mother. Accordingly, we affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR SOMERSET COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.