

Circuit Court for Carroll County  
Case No. C15-069740

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2529

September Term, 2016

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DAVID HENNEGAN

v.

BOBBIE SUE HENNEGAN

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Woodward, C.J.,  
Friedman,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 30, 2017

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Prior to a December 14, 2016 hearing, David Hennegan (“Father” or appellant) and Bobbie Sue Hennegan (“Mother” or appellee) had agreed as to all matters concerning a divorce between them except for legal custody of the couple’s five minor children, who ranged in age from four to thirteen at the time of the hearing.<sup>1</sup> Following the hearing, the magistrate recommended that Mother be awarded sole legal custody of the children. In the January 9, 2017 judgment of absolute divorce, the Circuit Court for Carroll County adopted this recommendation and awarded Mother sole legal custody of the children, with a specific visitation schedule for Father. He noted this appeal, contending that the court abused its discretion in awarding sole legal custody to Mother. For the reasons stated below, we affirm.

Father contends that the court should have awarded joint legal custody, as he requested. He relies upon *Santo v. Santo*, 448 Md. 620 (2016), in which the Court of Appeals affirmed a joint legal custody arrangement between two parents who could not effectively communicate with each other. He maintains that joint legal custody with tie-breaking authority to one parent is an accepted custody arrangement – one that the circuit court should have ordered in this case. He also argues that the custody evaluator was biased against him. Father also contends that communication with Mother was difficult because of a protective order, and he believes that Mother was “determined” to exclude him from the children’s lives.

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<sup>1</sup> One other child was emancipated by age. Another child had committed suicide in 2015.

We review a child custody determination for an abuse of discretion. *See Santo*, 448 Md. at 625. In cases where a magistrate provides a report, such as this one, we defer to the magistrate’s factual findings and credibility determinations, unless clearly erroneous. *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014). Importantly, the overarching concern in any child custody consideration is the best interests of the children. *See Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013). This Court has explained that the magistrate is vested with such broad discretion because ““only he sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he 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.”” *Maness v. Sawyer*, 180 Md. App. 295, 312-13 (2008) (emphasis omitted) (quoting *Jordan v. Jordan*, 50 Md. App. 437, 442 (1982)).

As part of the recommended findings, the magistrate reviewed the *Taylor* factors in evaluating the custody determination.<sup>2</sup> In commenting on the ability of the parents to communicate with each other in order to reach decisions regarding the children, which the Court of Appeals has observed is a “weighty” factor, *Santo*, 448 Md. at 628, the magistrate observed that Mother and Father “have demonstrated no capacity to communicate with each other and reach shared decisions affecting the welfare of the children.” Indeed, there was a protective order in place for a year from November 2015 to November 2016, which barred communication between Mother and Father, and the parties did not resume

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<sup>2</sup> *Taylor v. Taylor*, 306 Md. 290 (1986).

communication when the order expired. The magistrate remarked: “[Father] uses opportunities to communicate with [Mother] as chances to denigrate, annoy, harass, and in the past physically abuse her. There is a history of violence between [Father] and [Mother] and a history of physical violence even involving some of the older children.” The custody evaluator testified that Father uses opportunities to communicate “to intimidate and control” Mother.

As to the fitness of the parties, the magistrate observed that Father may have a mental illness affecting his behavior. The parties had agreed that Father would undergo a psychological evaluation and complete any subsequently recommended treatment. Counsel for Mother states that Father has not undergone this evaluation. The magistrate also noted that Father was physically violent toward Mother and the older children, and he also instilled fear in the younger children.

Commenting on the relationships established between the children and the parents, the magistrate noted that the “children do not currently have an established, positive relationship with [Father]. [The oldest minor child] reported to the Custody Evaluator that he never had a relationship with [Father]. At least two of the girls . . . expressed that they did not feel safe with [Father].” The children, therefore, expressed a preference to be with Mother.

Turning to the potential disruption of the children’s social and school life, the magistrate noted that the custody evaluator’s report is “replete” with examples of Father’s disruptive behavior. The custody evaluator was concerned that Father would “coerce” and “intimidate” Mother if there were more opportunities for them to communicate. The

magistrate also noted that Father resided at the marital home in Lineboro, Maryland, but Mother had gone to live in Hanover, Pennsylvania.

As to Father’s sincerity in requesting joint legal custody, the magistrate was concerned that Father’s “desire for joint legal custody is, at least in part, motivated by a desire to be able to exercise control over [Mother].”

Ultimately, the magistrate concluded that joint legal custody was not in the best interests of the children. Specifically, the magistrate noted that Father “has shown a propensity to use the sharing of joint legal custody as a tool of manipulation against [Mother] to attempt to harass, annoy, and exercise control over” her. Furthermore, the magistrate observed, Father’s “failure to acknowledge his past behavior with respect to both his physical abuse of [Mother], as well as verbal and emotional abuse speaks to the depth of the problem.”

The circuit court adopted the magistrate’s recommendation and awarded Mother sole legal custody of the children. We are not persuaded that the court abused its discretion in doing so. Although Father is correct that joint legal custody with tie-breaking authority to one parent is an accepted custody arrangement, there is no law or statute establishing this as the “default” arrangement. Rather, the chancellor is vested with broad discretion to establish whatever custody arrangement fits the best interests of the children.

In this case, considering the testimony as to Father’s acts of domestic violence against Mother and the children, we perceive no abuse of discretion in the award of sole legal custody to Mother. We discuss one troubling episode as an example. Mother testified that the day after the funeral of the couple’s oldest child, she decided to allow their eleven-

year-old child to stay home and go to a friend’s birthday party, rather than visit with Father “due to her state of mind” and a fight the week before at her soccer game involving Father. Father was irate and “got into a really big fight with me, telling [me] I was messing with him. He got up in my truck and got in my face and was yelling at me.” Mother testified that the other children were “hyperventilating and crying.” Father verbally abused Mother and told her “that day that my son died because of me.” Mother testified, moreover, that she is afraid of Father, and he was verbally and physically abusive with the children.

The Court of Appeals has observed that the best evidence of the behavior of the parties is “past conduct or [a] track record of the parties.” *Santo*, 448 Md. at 628 (quoting *Taylor*, 306 Md. at 307). As such, it was not unreasonable for the court to believe that Father would use a joint legal custody arrangement to attempt to exert control over Mother and the children. The award of sole legal custody to Mother was within the discretion of the court, and we perceive no abuse of that discretion in this order.

**JUDGMENT OF THE CIRCUIT COURT  
FOR CARROLL COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**