

Circuit Court for Prince George's County
Case No. C-16-FM-23-007419

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2049

September Term, 2024

D. J.

v.

S. G.

Friedman,
Tang,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 22, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

In 2022, appellant D.J. (“Father”) and appellee S.G. (“Mother”) entered into a written agreement to undertake assisted reproductive technology to try to have a child and, if successful, to then co-parent that child by way of joint legal and shared physical custody.¹ Mother gave birth to W.N.J. in February 2023. Within months of W.N.J.’s birth, however, issues arose between Mother and Father, primarily related to increasing tension between Mother and Father’s spouse, W.J. Notwithstanding the co-parenting agreement the parties had crafted, Mother filed a complaint to establish custody, child support, and visitation.

Following a contested hearing, the Circuit Court for Prince George’s County granted Mother and Father joint legal and shared physical custody of W.N.J. but awarded Mother primary physical custody until the child reaches school age. The court further awarded Mother attorneys’ fees, on the ground that Father had continued litigation in bad faith after the parties had reached a settlement. In his timely appeal, Father asks us to consider whether the circuit court abused its discretion by (1) granting Mother primary physical custody, and (2) awarding attorneys’ fees to Mother. For the reasons that follow, we affirm the circuit court’s custody order but vacate the award of attorneys’ fees.

BACKGROUND

Mother and Father were never involved in a romantic relationship. Per the written agreement, Father’s spouse, W.J., was to be a legal, or, at a minimum, *de facto* co-parent “afforded the same parental rights and responsibilities” as the biological parents. The

¹ On the Court’s own motion, we have modified the case caption and throughout the opinion use the participants’ initials rather than their names in an effort to protect W.N.J.’s privacy.

agreement stated that the parties would share joint legal and physical custody, however, the child would reside with Mother in Maryland for the first four months of their life. After four months, Mother and Father, who resided with his spouse in Georgia, would come to an agreement as to custody, based on the child’s best interest.

In October 2023, Mother filed a complaint to establish custody, visitation, and child support. In that complaint, Mother sought primary physical and sole legal custody of the child. Mother asserted that she was W.N.J.’s primary caretaker, that the child had resided with her in Maryland since birth, and that she and Father had not reached an agreement as to custody, as contemplated by their written co-parenting agreement.

Father filed a counter-complaint, alleging that Mother had unreasonably withheld his access to W.N.J. unless it was in Maryland and supervised by her. He asserted that Mother’s “paranoid and aggressive behavior” made it difficult to communicate and co-parent with her. Father asked the circuit court to grant him and Mother shared physical and joint legal custody, or, in the alternative, to find that there had been a material change in circumstances and grant him primary physical and sole legal custody of W.N.J., with Mother to have supervised visitation.

Father also moved to join his spouse, W.J., as a necessary party to the litigation, on the ground that it would be improper for the court to establish custody without joining the intended co-parent. Mother opposed the joinder, stating that W.J. was not W.N.J.’s biological or adoptive parent and was therefore not a necessary party to the custody action.

The circuit court ultimately denied both Father’s motion to join W.J. as a necessary party and his subsequent motion to reconsider.²

The parties participated in a lengthy settlement conference on June 6, 2024. Although no settlement was placed on the record, the settlement judge and Mother believed that the parties had come to an agreement on all outstanding issues.³ As a result, on June 7, 2024, the settlement judge entered a written order stating that a full settlement had been reached and requiring counsel to prepare and submit a consent order incorporating the parties’ agreement by June 27, 2024. In addition, the settlement judge converted the previously scheduled July 2, 2024, trial to a ten-minute disposition hearing.

Following the settlement conference, however, a dispute arose between Mother and Father as to whether an agreement had, in fact, been reached. While Mother believed that a settlement had been reached, Father maintained that there was no formal agreement and informed Mother that he could not agree to a settlement unless it created a multi-parent family that included W.J. On June 20, 2024, Father’s attorney emailed Mother’s attorney to say that without language establishing W.J. as a *de facto* parent, Father was “not on board with the previously discussed settlement agreement.”

On June 26, 2024, Father requested that the disposition hearing scheduled for July 2, 2024, be converted back to a trial because the parties were unable to finalize a settlement

² On June 8, 2024, before the court ruled on Father’s motion to join W.J. as a necessary party, Father amended his counter-complaint to add W.J. as a co-defendant. Because the court later denied the motion, W.J. did not become a party to the action.

³ Because no settlement was placed on the record, there is no transcript of the settlement conference in the record.

agreement. Mother responded that it remained her understanding that the matter had settled at the pre-trial conference and that the settlement judge had ordered that a consent order should be filed by the next day. Father’s attorney replied that Mother’s attorney’s understanding was “inaccurate,” as “no formal agreement” was reached at the settlement conference. On July 1, 2024, Mother’s counsel filed a motion to enforce the settlement agreement along with a proposed written consent agreement.⁴ Mother also requested an award of attorneys’ fees, resulting from Father’s “bad-faith filings following the parties’ settlement agreement.”

At the July 2, 2024, hearing, Father informed the court that they were there for day one of a trial on the merits, whereas Mother again stated her position that the parties had reached a verbal agreement during the settlement conference. Father informed the circuit court that the notation in the record about reaching a settlement was incorrect and averred that he had clearly stated at the end of the settlement conference that he needed time to think about the proposed agreement and to confer with his spouse about the settlement terms. The circuit court noted that the parties were not “in a posture to move forward” and scheduled a merits hearing for October 1, 2024. The circuit court denied Mother’s motion to enforce the consent agreement in favor of addressing the terms of the agreement during the merits hearing.

⁴ The proposed order called for Mother and Father to have joint legal and shared physical custody of W.N.J. until school age, when the child would reside primarily with Mother and attend school in Maryland.

At the merits hearing, Mother maintained that she believed the parties had reached settlement at the June 6 settlement conference. Nonetheless, she informed the court that the settlement terms were no longer acceptable and she wanted to proceed to trial. Mother further explained that her motion for attorneys’ fees was based on Father’s “counsel’s bad faith and lack of discussion.”

Father reiterated his position that he had participated in settlement negotiations in good faith and that although the parties had indeed come to “a full global agreement,” at the end of the settlement conference he had needed more time to think about the suggested settlement terms and to discuss the remaining issues with his spouse.

The circuit court questioned Father as to why the settlement judge had entered a written order indicating that the matter had fully settled if it hadn’t. The circuit court noted that the settlement judge had decades of family law experience and would have noted if there were any outstanding issues and only a partial agreement had been reached. The court expressed doubt that Father had communicated his hesitation to the settlement judge at all.

After Father acknowledged that there may have been “a miscommunication” at the end of the settlement conference, the circuit court questioned why Father did not respond to correct the miscommunication when the settlement judge sent the written order stating that a settlement had been reached. Instead, the next day Father had filed a motion to extend time for discovery and a counter-complaint, which the circuit court considered “telling” that Father already intended to do so prior to the settlement conference. The circuit court observed that it “seem[ed] disingenuous” that Father failed at least to notify Mother’s attorney that he did not agree there was a settlement.

When the circuit court moved on to the substantive custody issues, Mother requested primary physical and joint legal custody of W.N.J., with visitation and access to Father, so long as there were provisions in place for Mother to communicate with Father and the child while he was in Georgia. Mother also sought child support in line with the guidelines and attorneys’ fees. Father asked the court to order that W.N.J. would live primarily in Georgia with him and W.J. In addition, Father sought a determination that W.J. was a *de facto* parent of W.N.J.

While acknowledging that Father is “a good dad,” Mother expressed her concern that while Father worked, W.N.J. was in the care of W.J., and W.J. was often not sober and acted erratically. She did not believe W.N.J. was safe in W.J.’s care.

W.J. denied ever having been intoxicated around W.N.J. and described to the court that his relationship with Mother began to deteriorate shortly after W.N.J. was born. Although they had all attended family therapy, nothing was resolved and W.J. stated that he no longer felt “comfortable talking to [Mother]” because she yelled at him for “always doing something wrong.”

Father agreed that communication between Mother and W.J. was strained and described that his communication with Mother had deteriorated as well. He added that Mother no longer permitted W.N.J. to travel to Georgia without her, but instead required Father and W.J. to travel to Maryland for visitation.

The circuit court held the matter *sub curia*. At the next hearing on November 20, 2024, the circuit court declined to consider the issue of W.J.’s *de facto* parenthood. The court explained that because Father’s motion to join had been denied, W.J. was not a party

to the case and thus the question was not properly before the court. The circuit court did note that Father and W.J. could file something with regard to *de facto* parenthood in the future, if appropriate.

The circuit court granted Mother’s complaint to establish custody and denied Father’s counter-complaint. The court awarded Mother and Father joint legal custody and shared physical custody of W.N.J., but with Mother to have primary physical custody. Mother and Father were granted 50/50 access to the child on a half-monthly basis until he reached school age, when the parties would be required to file for a custody modification, and a new schedule would be discussed. The court awarded Mother attorneys’ fees in the amount of \$20,198.00, based on its understanding that Father wrongfully backed out of the settlement agreed upon at the June 6 settlement conference and did not notify anyone of his dispute until June 27, 2024.

Father moved for reconsideration of the court’s award of attorneys’ fees to Mother, again asserting that attorneys’ fees were not warranted because no agreement had been reached at the settlement conference and he had reasonably and in good faith continued with the litigation. The circuit court denied the motion.

On December 18, 2024, Father noted his appeal from the court’s order “given by oral ruling on November 20, 2024.”⁵

⁵ Father noted his appeal from the circuit court’s November 20, 2024, oral ruling, but the written order and opinion was not entered until January 17, 2025. We accept his notice of appeal as timely. See MD. RULE 8-602(f) (“A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but

DISCUSSION

I. PHYSICAL CUSTODY OF W.N.J.

Father first contends that the circuit court abused its discretion in failing adequately to explain its basis for determining that he should not have primary physical custody of W.N.J., especially in light of: (1) the court’s rejection of Mother’s argument that he and W.J. were unfit parents; (2) the alleged detriment to the child of the exclusion of W.J. from decision-making; and (3) the court’s determination that he and Mother were unable to coparent or communicate effectively. Moreover, Father continues, the circuit court’s award of primary physical custody to Mother “failed to account for the parties’ written coparenting agreement, as well as the *de facto* joint custody arrangement that had been functioning up to the time of litigation.”

This Court conducts only a “limited review” of a circuit court’s custody decision. *Wagner v. Wagner*, 109 Md. App. 1, 39 (1996). “[A]n appellate court does not make its own determination as to a child’s best interest; the trial court’s decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion.” *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007).

We review the evidence in the light most favorable to the prevailing party, and if there is any competent, material evidence to support the circuit court’s factual findings, we cannot hold that those findings are clearly erroneous. *Hosain v. Malik*, 108 Md. App. 284,

before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.”).

303-04 (1996). Regarding the court’s ultimate decision on the custody matter, an abuse of discretion exists if “no reasonable person would take the view adopted by the [trial] court” or the ruling is “clearly against the logic and effect of facts and inferences before the court.” *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

In custody cases, the “court’s objective is not ... to punish” a parent, but “to determine what custody arrangement is in the best interest of the minor children[.]” *Burdick v. Brooks*, 160 Md. App. 519, 528 (2004) (quoting *Hughes v. Hughes*, 80 Md. App. 216, 231 (1989)). Although circuit courts are not limited to a list of factors in applying the best interest standard in each individual case, this Court and the Supreme Court of Maryland, beginning with *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977), have set forth a non-exhaustive list of factors that a circuit court must consider when making custody determinations:

- (1) The fitness of the parents;
- (2) The character and reputation of the parties;
- (3) The requests of each parent and the sincerity of the requests;
- (4) Any agreements between the parties;
- (5) Willingness of the parents to share custody;
- (6) Each parent’s ability to maintain the child’s relationships with the other parent, siblings, relatives, and any other person who may psychologically affect the child’s best interest;
- (7) The age and number of children each parent has in the household;
- (8) The preference of the child, when the child is of sufficient age and capacity to form a rational judgment;

- (9) The capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare;
- (10) The geographic proximity of the parents’ residences and opportunities for time with each parent;
- (11) The ability of each parent to maintain a stable and appropriate home for the child;
- (12) Financial status of the parents;
- (13) The demands of parental employment and opportunities for time with the child;
- (14) The age, health, and sex of the child;
- (15) The relationship established between the child and each parent;
- (16) The length of the separation of the parents;
- (17) Whether there was a prior voluntary abandonment or surrender of custody of the child;
- (18) The potential disruption of the child’s social and school life;
- (19) Any impact on state or federal assistance;
- (20) The benefit a parent may receive from an award of joint physical custody, and how that will enable the parent to bestow more benefit upon the child;
- (21) Any other consideration the court determines is relevant to the best interest of the child.

Azizova v. Suleymanov, 243 Md. App. 340, 345-46 (2018) (quoting Cynthia Callahan & Thomas C. Ries, *Fader’s Maryland Family Law* § 5-3(a), at 5-9 to 5-11 (6th ed. 2016)).

Maryland’s appellate courts have consistently affirmed custody determinations when the circuit court embarked upon a thorough, thoughtful, and well-reasoned analysis in line with the various custody factors. *See Santo*, 448 Md. at 646 (The court’s decision was “predicated on its thorough review of the *Taylor* factors, deliberation over custody award options, sober appreciation of the difficulties before it, and use of strict rules including tie-breaking provisions to account for the parties’ inability to communicate” and

“was rational and guided by established principles of Maryland law. No abuse of discretion occurred in this case.”); *Reichert v. Hornbeck*, 210 Md. App. 282, 308 (2013) (Even assuming the parents were unable to communicate, “the court articulated fully the reasons that supported the conclusion that joint physical and legal custody was appropriate through an extensive and thoughtful consideration of all suggested factors.” (cleaned up)).

Based on the record in this matter, we cannot say that the circuit court’s factual findings were clearly erroneous or that it abused its discretion in awarding joint legal custody of W.N.J. to Mother and Father and primary physical custody to Mother with “shared physical access” for Mother and Father. Over the course of a two-day hearing, the circuit court heard testimony from Mother and Father, and from their friends and family members, which tended to show that, despite Mother’s issues with W.J., whom the court likened to a stepparent in legal status, Mother, Father, and W.J. were all fit and loving parents who wanted the best for their child.

After extensively discussing the terms of the 2022 co-parenting agreement between Mother, Father, and W.J., and the required factors in making a custody determination—finding that both Mother and Father were fit, loving, of good character, sincere in their desire for custody of W.N.J., able to share in decision making regarding the child, able to maintain the child’s relationship with other family members, able to maintain a stable home for the child, and able to meet his developmental and financial needs—the circuit court ruled:

And so with regard to custody, it is the Court’s ruling today that primary physical custody will remain with [Mother]. However, we are going to revert back to the way things were where they will get to see the child.

* * *

So it seems to be about two to two and a half weeks is the schedule they had before, which is what we are going to do now. So two weeks out of the month is what I am going to say to make it clear.

If there are five weeks in a month, then it can be two and a half weeks, so it will be equal time. And I said earlier that I will keep the case because I believe in this decision I am making at this time for this time that the child is at this age. When the child becomes school-aged, it is going to be different, and we will have to make a decision at that time.

And then the Court will have more information to base that on as far as what should happen, what state the child should live in, or even if the parents are still living in different states. By that time, you all might be living in the same state. I don't know. But at this time, this will be the Court's order for now. It is going to say until the child reaches school age, and the parties will have to file for a modification at least a year before the child goes to school.

* * *

And the Court finds that this arrangement is what is in the best interest of the child according to the factors that I have just read because all things I read were even for all parties. There was nothing tilted to one side than another side.

In addition to that, I believe that is what the agreement—how it was set up. Although it said after four months, they were to make a different decision. But from the parents saying that they wanted to be together in the beginning and they would figure it out, that they would share responsibilities for the child, each of them wanted to be a parent, and the way that they have acted in the past before the visitation ceased. The Court finds that it will be shared.

Now, with regard to legal custody. I am not going to get a tie breaker. I don't think that is appropriate at this time. I believe that [Mother] and [Father] are able to communicate to one another. I think that it is normal to have different thoughts about different things...

* * *

And so, I am not going to set a tie breaking. Instead, I am going to say that you should fully discuss all issues and come to an agreement. I think you

have been able to do that in the past. Obviously, if that is not the case and a modification is warranted, your attorneys can both explain that to all of you, but I am not going to award a tie breaking authority in the case. (T. 11/20/24, 38-44).

Father argues that, by granting primary custody to Mother, the circuit court abused its discretion by declining to maintain “the functional *status quo* that reflected the best interest of the child—a shared custodial arrangement rooted in the child’s lived experience.” We disagree.

First, the court did consider the *status quo* and the custody arrangement as contemplated by the parties’ co-parenting agreement, along with numerous other factors, none of which tilted the court’s decision more toward either parent. From that consideration, the circuit court determined that primary physical custody to Mother with equal shared access to Father was in the child’s best interest. Given the equal fitness of each parent, but also the fact that they live in different states, we perceive no error in that practical determination.

Second, although the circuit court granted primary physical custody to Mother, it did, in practice, maintain exactly the *status quo* Father seeks, that is, equal time to each parent. The court’s order provided for a 50/50 split of access to the child until W.N.J. reaches school age. Thus, Father (and by extension, his spouse W.J., who lives in the home with Father) received the same amount of physical access he had achieved prior to the custody litigation, even if it is deemed primary custody to Mother. We see no abuse of discretion in the court’s award of physical custody on that basis.

Father also claims that, in declining to award him primary physical custody of W.N.J., the circuit court had failed to take into account the co-parenting agreement’s provision that W.J. would be considered a co-parent, or at least a *de facto* parent, with the same rights as Mother and Father. *De facto* parenthood recognizes that certain narrowly defined third parties who have a special parent-like relationship with a child can stand on equal footing with a biological parent. *See, e.g., Kpetigo v. Kpetigo*, 238 Md. App. 561, 570 (2018). Generally, *de facto* parenthood is ““a relationship resulting in bonding and psychological dependence upon a person without biological connection [and] can develop during an ongoing biological parent/child relationship.”” *Conover v. Conover*, 450 Md. 51, 76-77 (2016) (quoting *Monroe v. Monroe*, 329 Md. 758, 775 (1993)). Once established, a *de facto* parent is a legal parent with the same fundamental parental rights as a biological or adoptive parent. *Id.* at 71-72 (quoting *Smith v. Guest*, 16 A.3d 920, 931 (Del.2011)).

The standard to be recognized as a *de facto* parent is a stringent one. The *de facto* parenthood test our Supreme Court adopted in *Conover* was formulated initially by the Wisconsin Supreme Court in *In re Custody of H.S.H.-K.*, 533 N.W.2d 419, 435-36 (Wis. 1995), and measures the relationship between the potential *de facto* parent and the child against four factors:

- (1) that the biological or adoptive parent consented to, and fostered, the petitioner’s formation and establishment of a parent-like relationship with the child;
- (2) that the petitioner and the child lived together in the same household;
- (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child’s care, education and development, including contributing towards the child’s support, without expectation of financial compensation; and

- (4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

Conover, 450 Md. at 74 (quoting *H.S.H.-K.*, 533 N.W.2d at 435-36). A person seeking recognition as a *de facto* parent must petition the circuit court to make such a finding, based on that third party's existing role in the child's life. The standard for meeting the requirements is high, as it should be, and cannot be met, as Father asserts, through a contract made before the child is even born.

The circuit court denied Father's motion to join W.J. as a necessary party to the custody matter, and W.J. is therefore not a party to the action. Because W.J. is not a party, he cannot be designated a *de facto* parent with a right to claim custody and visitation, and he has no standing to contest the circuit court's order of custody and visitation, despite the parental role he plays to W.N.J.⁶ Under the facts of this matter, the court's decision not to consider W.J. as having the status of a co-parent with Mother and Father or as a *de facto* parent has no bearing on its award of custody between Mother and Father.

In sum, the circuit court explicitly analyzed the required custody factors before determining that it was in W.N.J.'s best interest to grant joint legal custody to Mother and Father, with Mother to have primary physical custody but with Father having equal access until W.N.J. reaches school age. The record supports the court's conclusion. We, therefore, hold that the circuit court did not abuse its discretion in its custody and access order.

⁶ The circuit court made clear, however, that W.J. may have cause to move to intervene in the matter as a *de facto* parent at some time in the future.

II. ATTORNEYS’ FEES

Father also argues that the circuit court abused its discretion in awarding Mother attorneys’ fees. He claims that the inaccurate belief the matter was settled at the settlement conference was based on miscommunication among the parties and the settlement judge, and, in the absence of a settlement, he was entitled to continue with his litigation. He therefore argues that the circuit court had no substantial evidence that he acted in bad faith to support an award of attorneys’ fees. Father further asserts that the court should not have awarded Mother attorneys’ fees without assessing the financial status of each party and his ability to pay, based on their financial disclosures. On this issue, we agree with Father.

In awarding attorneys’ fees to Mother, the circuit court determined that Mother reasonably believed that the parties had reached a settlement at the June 6, 2024, conference, only learning there was no settlement when she received Father’s amended counter-complaint and was forced to defend against it. The court noted that Father’s first notification to the court in a legal document that he did not agree to the settlement terms was by his motion to continue the July 1, 2024, hearing, filed three weeks after the settlement conference and just days before the scheduled hearing. The court therefore awarded Mother the \$20,198 in attorneys’ fees she had incurred since the June 6, 2024, settlement conference.

The circuit court had two avenues by which to award attorneys’ fees to Mother. Maryland Rule 1-341 provides remedial action in any civil action, and § 12-103 of the Family Law Article (“FL”), permits an award of fees in a child custody, support, or visitation case.

Maryland Rule 1-341(a) authorizes a court to assess attorneys’ fees after finding that a party acted in bad faith, such that an award of fees is appropriate:

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.

An award of attorneys’ fees under this rule “is an extraordinary remedy, and it should be used sparingly.” *Major v. First Virginia Bank-Central Maryland*, 97 Md. App. 520, 530 (1993).

Before awarding attorneys’ fees under the Rule, a circuit court must find explicitly “that the conduct of a party during a proceeding, in defending or maintaining the action, was without substantial justification or was done in bad faith.” *Christian v. Maternal-Fetal Med. Assocs. of Maryland, LLC*, 459 Md. 1, 20-21 (2018). Bad faith under Rule 1-341 refers to an action taken “vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.” *Id.* at 21-22 (quoting *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991)).

Our Supreme Court has explained that “some brief exposition of the facts upon which the finding is based and an articulation of the particular finding involved are necessary for subsequent review.” *Zdravkovich v. Bell Atl.-Tricon Leasing, Corp.*, 323 Md. 200, 210 (1991) (quoting *Talley v. Talley*, 317 Md. 428, 436 (1989)). Rule 1-341 does not mandate consideration of a party’s financial status, needs, or ability to pay fees.

FL § 12-103(a) has been construed to give circuit courts broad “power to award a fee at any time in child custody and support cases.” *David A. v. Karen S.*, 242 Md. App. 1, 34 (2019) (quoting *McCally v. McCally*, 251 Md. 735, 736-37 (1969)). FL § 12-103 provides:

- (a) The court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person:
 - (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or
 - (2) files any form of proceeding:
 - (i) to recover arrearages of child support;
 - (ii) to enforce a decree of child support; or
 - (iii) to enforce a decree of custody or visitation.
- (b) Before a court may award costs and counsel fees under this section, the court shall consider:
 - (1) the financial status of each party;
 - (2) the needs of each party; and
 - (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.
- (c) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees.

The circuit court’s broad authority under FL § 12-103(a) to award attorneys’ fees in a custody proceeding is subject only to the requirement that the court must first consider the financial status and needs of each party and whether each party was substantially justified in its position in the proceeding. *Henriquez v. Henriquez*, 413 Md. 287, 298

(2010). Substantial justification under § 12-103 requires the court to “assess whether each party’s position was reasonable.” *Davis v. Petito*, 425 Md. 191, 204 (2012).

Here, it is unclear from the circuit court’s ruling and written order whether the court awarded Mother attorneys’ fees under Rule 1-341 or FL § 12-103 or both. In either case, however, the court failed to make the predicate findings required by the Rule and the statute. The court did not explicitly consider the financial circumstances and needs of the parties or explain if and how Father was without substantial justification or acted in bad faith in continuing the litigation after the settlement conference.⁷ Accordingly, we must vacate the portion of the circuit court’s order that awarded attorneys’ fees to Mother. *See Petrini v. Petrini*, 336 Md. 453, 468 (1994) (“Consideration of the statutory criteria is mandatory in making an award and failure to do so constitutes legal error.”).

**ORDER OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY
AWARDING ATTORNEYS’ FEES TO
APPELLEE VACATED; ORDER
OTHERWISE AFFIRMED; COSTS TO BE
DIVIDED EQUALLY.**

⁷ Moreover, the record in this case does not support a determination that Father acted in bad faith or lacked justification in continuing the litigation after the settlement conference. Although there was evidence that Mother and the settlement judge reasonably believed that a full settlement had been reached and that Father may be faulted for not acting expeditiously to disabuse Mother and the settlement judge of his disagreement, he did notify Mother and the circuit court that there had not been a settlement before the scheduled disposition hearing. Although we cannot say that Father acted reasonably, we cannot say that this failure rose to the level of bad faith or lack of justification.