Circuit Court for Talbot County
Case No. C-20-FM-18-000138

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2227

September Term, 2019

MARY R. HONABLEW

v.

CHRISTOPHER D. HOLDEN

Graeff,
Arthur,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 2, 2020

By order dated November 8, 2019, the Circuit Court for Talbot County entered a judgment of absolute divorce between Mary Honablew ("Wife") and Christopher Holden ("Husband"). In addition, the court gave the parties joint legal custody of their minor daughter ("Daughter"), but awarded tie-breaking authority and primary physical custody to Husband. The court ordered Wife to pay Husband monthly child support and denied her request for rehabilitative alimony.

Representing herself, Wife appealed. She presents four questions, which we have recast as follows:

1. Did the circuit court abuse its discretion in awarding Husband primary physical custody of Daughter?

2. Did the circuit court abuse its discretion by granting Husband tie-breaking authority?

3. Did the circuit court err or abuse its discretion by ordering Wife to pay monthly child support?

4. Did the circuit court err or abuse its discretion by denying Wife's request for alimony?[1]

[1] Wife phrased her questions as follows:

1. Did the Circuit Court err in not providing as close to a 50/50 schedule as recommended by the Court Appointed Best Interest Attorney for the Minor Child?

2. Did the Circuit Court err in granting final legal authority to Christopher Holden, knowing that he has only recently been active in the child's life, since the separation occurred and not ordering a Parenting Plan instead?

3. Did the Circuit Court err by utilizing an incorrect income of the Appellant, to determine child support and whether child support is even needed and necessary to supplement the child to an upper class income

We see no error or abuse of discretion. Consequently, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Marriage

The parties were married on July 8, 2016. At the time of the marriage, Daughter was three years old. During the preceding four years, Husband and Wife had resided in Talbot County in a house owned by Husband.

In December 2016 (approximately five months after the wedding), the marriage had become so strained that the parties separated for a period of approximately four days. At that time, Wife left Daughter with Husband and resided on a farm in southern Prince George's County, which the parties jointly own. During a subsequent six-week separation in the summer of 2017, Daughter resided with Husband three days per week, with Wife two days per week, and with each parent on alternating weekends. During yet another separation in September 2017, Wife again left daughter with Husband while she resided at the farm in Prince George's County.

The parties' final separation commenced on October 22, 2017, after an altercation during which Wife, while intoxicated, struck Husband as he attempted to drive her and

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of the current primary custodian while improvising [sic] the other parent?

4. Did the Circuit Court err in denying any form of alimony to the Appellant?

Daughter home from a social function. The car was disabled, and Wife was arrested and charged with second-degree assault and reckless endangerment.

As a condition of Wife's pre-trial release, a district court commissioner ordered that she have no contact with Husband. During the ensuing months, Husband coordinated with third parties in an attempt to provide Wife with access to Daughter.

Wife ultimately pleaded guilty to assault and received probation before judgment. The State nolle prossed the reckless endangerment charge.

B. The Custody Dispute

Once the no-contact order was lifted, the parties agreed to an informal custody schedule. Under the schedule, Wife would have custody of Daughter on Sunday and Monday, Husband would have custody from Tuesday through Friday, and custody would alternate between the parties on Saturday.

In March of 2018, the parties discussed the school in which they would enroll Daughter the following fall. Husband expressed a preference that she attend a private parochial school in Easton, while Wife wanted to send her to a more expensive, private institution on the Western Shore. The parties were unable to reach a consensus.

In June 2018, Husband enrolled Daughter in the parochial school. Shortly thereafter, Wife made the unilateral decision to home-school Daughter in Prince George's County, where Wife had moved.

The dispute over schooling culminated when Wife reneged on the custody schedule on which the parties had agreed. When dropping Daughter off with Wife for the

Labor Day weekend, Husband requested confirmation that Daughter would be returned to him on Monday, so that she would be prepared for school the following morning. Wife replied, falsely, that her attorney had sent Husband an email addressing the issue. When Husband stepped away to make a call to confirm what Wife had said, Wife put Daughter in her car and drove away. Thereafter, Wife refused to comply with the terms of their custody schedule.

At Wife's request, the Circuit Court for Talbot County held a pendente lite custody hearing on September 28, 2018. Following that hearing, the court ordered that Daughter would remain in Wife's custody in Prince George's County and attend a school of Wife's choosing until 4:30 p.m. on December 24, 2018. The court granted Husband access to Daughter on three weekends per month. The court further ordered that at 4:30 p.m. on December 24, 2018, Husband would assume primary physical custody of Daughter and would determine where she would attend school, "until further order of this court." The court granted Wife access to Daughter on three weekends per month while Daughter was in Husband's custody.

In accordance with the court's order, Daughter participated in a cooperative home-school program in Prince George's County until December 24, 2018. Thereafter, she attended the parochial school in Easton. Daughter remained at the parochial school during the 2019-2020 school year. During that time, she bonded with her teachers and classmates and excelled academically.

C. The Divorce Proceedings

Meanwhile, on June 4, 2018, Wife had filed a complaint for absolute divorce, or in the alternative, limited divorce. In that complaint, she sought primary physical and joint legal custody of Daughter, permanent child support, and rehabilitative alimony. On July 3, 2018, Husband counterclaimed for divorce, primary physical and joint legal custody, and child support.

Following a two-day hearing in October 2019, the circuit court issued a thorough memorandum opinion and order. The court found that the parties had lived separate and apart without cohabitation or interruption for more than 12 months. Accordingly, it granted them an absolute divorce pursuant to Maryland Code (1984, 2019 Repl. Vol.), § 7-103(a)(4) of the Family Law Article ("FL").

After considering each of the applicable statutory factors,[2] the court declined to award Wife rehabilitative alimony. The court reasoned that Husband's monthly expenses exceeded his income, so that he could not pay alimony and still provide for Daughter. The court added that, although Wife claimed to earn only $15,000.00 a year, she had not adequately documented her income and expenses: she had produced only a limited number of bank statements, and she had "failed to file the long-form financial statement to inform the court of her income sources and her monthly expenses." Finally, the court observed that, although Wife had a four-year college degree and was clearly able to work, she was not maximizing her earnings potential.

[2] FL § 11-106(b).

The court awarded primary physical custody to Husband. In doing so, the court considered an array of factors relevant to Daughter's best interests, including those enumerated in *Montgomery County Dep't of Social Servs. v. Sanders*, 38 Md. App. 406, 420 (1977). Particularly pertinent to the court's decision was its finding that since she had been enrolled in the parochial school, "[Daughter] has excelled in her education and has made strong friendships with her classmates." Noting that Husband and Wife reside at least two hours apart on opposite sides of the Chesapeake Bay, the court determined that "[if] a custody arrangement would make attending [the parochial school] untenable, there would be a disruption to [Daughter's] current social and school life." Accordingly, the court concluded that Daughter's best interests would be served if she lived with Husband in Talbot County during the school year, while Wife had "parenting time with [Daughter] on the first, second, and fourth weekends of every month during the school schedule." The court ordered that "[t]he summer schedule will be the reverse of the school year schedule." Finally, the court ordered a thoroughly conventional schedule for allocating the parents' access to Daughter on holidays, such as Mother's Day, Father's Day, Thanksgiving, Christmas, and Easter.

In deciding the issue of legal custody, the court analyzed each of the factors enumerated in *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986). In its analysis, the court identified the parties' inability "to communicate in a co-parenting manner for the benefit of the child" as its greatest concern. The court found that Husband was willing to share custody, but that Wife was not. In support of its conclusion, the court cited Wife's

decision to renege on the agreed custody schedule and to enroll Daughter in a home-schooling program. These issues notwithstanding, the court found that Daughter's best interests would be served if she were permitted "to continue to foster . . . close, personal bond[s] with both of her parents." For those reasons, the court granted the parties joint legal custody and awarded tie-breaking authority to Husband.

When calculating Wife's child-support obligation, the court found that the nearly $694.00 per month that Husband had paid for Daughter's tuition and the $16.00 per month that he had paid for her health insurance were additional expenses for which he could be awarded child support under FL 12-204(h)(1) and FL § 12-204(i)(1).[3] Because Wife failed to produce adequate evidence corroborating her claim that she earned only $15,000.00 annually and because the evidence showed that she had made monthly bank deposits in excess of $3,000.00, the court imputed to Wife an annual income of $31,200.00. Applying the Maryland Child Support Guidelines, the court ordered Wife to pay monthly child support in the amount of $492.00.

DISCUSSION

I. Physical Custody

On the issue of physical custody, Wife neither disputes the circuit court's factual findings, nor challenges its interpretation of the applicable law. She principally contends

[3] FL 12-204(h)(1) pertains to the "cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible." FL § 12-204(i)(1) pertains to "expenses for attending a special or private elementary or secondary school to meet the particular educational needs of the child."

that the court abused its discretion by declining to implement as close to a 50-50 physical custody schedule as possible. In support of her contention, she cites the recommendation of the court-appointed best interest attorney, that the court should "try[] to get [Daughter] as much time with each parent as possible."

A. Standard of Review

"[T]his Court reviews child custody determinations utilizing three interrelated standards of review." *Reichert v. Hornbeck*, 210 Md. App. 282, 303 (2013).

> The appellate court will not set aside the trial court's factual findings unless those findings are clearly erroneous. To the extent that a custody decision involves a legal question, such as the interpretation of a statute, the appellate court must determine whether the trial court's conclusions are legally correct, and, if not, whether the error was harmless. The trial court's ultimate decision will not be disturbed unless the trial court abused its discretion.

Gizzo v. Gerstman, 245 Md. App. 168, 191-92 (2020) (citations omitted).

> An abuse of discretion may occur when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court.

Id. at 201 (citing *Santo v. Santo*, 448 Md. 620, 625-26 (2016)). "Appellate courts 'rarely, if ever, actually find a reversible abuse of discretion on this issue.'" *Id*. (quoting *McCarty v. McCarty*, 147 Md. App. 268, 273 (2002)).

B. The Best Interests of the Child

"The court's primary objective, when deciding disputes over child access, 'is to serve the best interests of the child.'" *Gizzo v. Gerstman*, 245 Md. App. at 192 (quoting *Conover v. Conover*, 450 Md. 51, 60 (2016)). In *Montgomery County Dep't of Social*

Servs. v. Sanders, 38 Md. App. 406, 420 (1977), this Court enumerated a non-exhaustive list of factors to guide custodial determinations.

In child custody cases, "'physical custody . . . means the right and obligation to provide a home for the child and to make' daily decisions as necessary while the child is under that parent's care and control." *Santo v. Santo*, 448 Md. at 627 (quoting *Taylor v. Taylor*, 306 Md. at 296). Although "reasonable maximum exposure to each parent is presumed to be in the best interests of the child," *Boswell v. Boswell*, 352 Md. 204, 214 (1998), that presumption does not require that a circuit court set what Wife wants: "as close to a 50-50 [custody schedule] as possible." A bright-line rule of that sort would frustrate the court's ability to assess, on the unique facts of each case, what custodial arrangement would best promote a child's welfare. *See Domingues v. Johnson*, 323 Md. 486, 501 (1991) (noting "the inherent difficulty of formulating bright-line rules of universal applicability in this area of the law"). "Shared physical custody may, but need not, be on a 50/50 basis, and in fact most commonly will involve custody by one parent during the school year and by the other during summer vacation months, or division between weekdays and weekends, or between days and nights." *Taylor v. Taylor*, 306 Md. at 297.

In this case, the court discussed the *Sanders* factors, as well as other factors relevant to Daughter's best interests. Chief among the court's considerations were Daughter's academic development and her social relationships. The court found that Daughter has excelled educationally and has "made strong friendships" since she began

attending the school in Easton. "If a custody arrangement would make attending [her school] untenable," the court continued, "there would be a disruption to the child's current social and school life." *See McCready v. McCready*, 323 Md. 476, 481-82 (1991) (identifying stability as an important factor when assessing the best interests of the child). Because of the sheer physical distance between Husband's residence near Easton and Mother's residence at least two hours away in southern Prince George's County, the court recognized that an award of primary custody to Wife would preclude Daughter's continued enrollment at the school in Easton. Based on these considerations, we conclude that the court soundly exercised its discretion in awarding primary physical custody to Husband.

We perceive no abuse of discretion in the court's decision not to award Wife more access than it did. Had the court ordered as close to a 50-50 custody schedule as possible, it would have eliminated much of Daughter's leisure time with Husband. During the school year, when Husband has primary physical custody, the greater part of Daughter's days are spent not with Husband, but at school. During summer vacation, by contrast, Daughter enjoys a great deal of unstructured time, potentially permitting her to spend a larger portion of each day with Wife than she would spend with Husband during the school year. For these reasons, we cannot come anywhere close to saying that the court abused its discretion.

II. Tie-Breaking Authority

Wife contends that the court abused its discretion in awarding joint legal custody, but granting tie-breaking authority to Husband. Rather than grant Husband tie-breaking authority, Wife asserts, the court ought to have implemented a "Parenting Plan."

"Legal custody" denotes "'the right and obligation to make long range decisions' that significantly affect a child's life, such as education or religious training." *Santo v. Santo*, 448 Md. at 627 (quoting *Taylor v. Taylor*, 306 Md. at 296). "[J]oint legal custody" means that both parents have "'an equal voice in making [long range] decisions [of major significance concerning the child's life and welfare], and neither parent's rights [are] superior to the other.'" *Id.* at 632 (quoting *Taylor v. Taylor*, 306 Md. at 296). By contrast, a parent with "sole legal custody" "has full control and sole decision-making responsibility – to the exclusion of the other parent – on matters such as health, education, religion, and living arrangements." BLACK'S LAW DICTIONARY 484 (11th ed. 2019).

As with physical custody, determinations of legal custody are primarily based on the best interests of the child. In addition to the *Sanders* factors, the circuit court should consider additional or related factors when assessing whether joint custody is appropriate. *See Taylor v. Taylor*, 306 Md. at 304-11. Of these factors, the parents' capacity to communicate and reach joint decisions regarding the child's welfare is of particular importance. *Id.* at 304.

Nonetheless, "a court of equity ruling on a custody dispute may, under appropriate circumstances and with careful consideration articulated on the record, grant joint legal custody to parents who cannot effectively communicate together regarding matters pertaining to their children." *Santo v. Santo*, 448 Md. at 646. "In doing so, the court has the legal authority to include tie-breaking provisions in the joint legal custody award." *Id.*

We review a trial court's custody determination for abuse of discretion. *Kpetigo v. Kpetigo*, 238 Md. App. 561, 585 (2018). We reverse only when the court's ruling is clearly against the logic and effect of facts and inferences before the court. *Id.*

In this case, Wife does not challenge the award of joint custody. Nor does she deny that the parties were unable to communicate effectively with one another, as the court expressly found. Consequently, we see nothing resembling an abuse of discretion in the court's decision to award joint legal custody with tie-breaking authority. The only question before us, then, is whether the court abused its discretion in granting tie-breaking authority to Husband (instead of to Wife).

In reaching its decision to grant tie-breaking authority to Husband, the court cited Wife's unilateral decision to enroll Daughter in a home-school program. The court also cited Wife's breach of the informal custody arrangement when she refused to return Daughter to Husband (just before Daughter was to enter the home-school program). The court inferred that Wife "was neither willing" to share custody nor inclined to "include [Husband] on important decisions like education." By contrast, the court found that

Husband was "willing to share custody," because he had "willingly entered in to [sic] a schedule and kept that schedule." In view of those findings, we can hardly say that the court abused its discretion in awarding tie-breaking authority to Husband.

III. Child Support

Wife claims that the circuit court erred in ordering her to pay monthly child support in the amount of $492.00, arguing that it erroneously attributed $31,000.00 in annual income to her.[4] In the alternative, she argues that an award of child support was unnecessary because Husband's salary alone was sufficient to sustain the standard of living Daughter enjoyed during the marriage.

FL § 12-204 sets forth child support guidelines, which allocate child support obligations proportionate to the parents' adjusted actual incomes. When applying those guidelines, a court must first calculate each parent's respective adjusted actual monthly income. "'Actual income' means income from any source." FL § 12-201(b)(3). In general, "adjusted actual income" means actual income, minus preexisting child support obligations that are actually paid and alimony or maintenance obligations that are actually paid. *See* FL § 12-201(c).

A trial court's determination of a parent's actual income is a factual finding that we review for clear error. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 180 (2016). We must affirm such a finding if the record contains competent evidence in support of it. *See id.* Absent a misinterpretation or misapplication of the governing statutes or case law, we

[4] More precisely, the court attributed an annual income of $31,200.00 to Wife.

review the court's ultimate ruling for abuse of discretion. *Knott v. Knott*, 146 Md. App. 232, 246 (2002).

We first address Wife's assertion that the court erred in attributing to her an annual income of $31,200.00 (based on a monthly income of $2,600.00). At trial, Wife testified that she derived her income primarily from marketing jobs, one of which might pay as much as $30.00 per hour. To supplement her income, Wife had obtained employment as a caregiver, earning approximately $13.00 per hour. Although Wife testified that she also worked as an unpaid employee at the farm on which she resides, she admitted that the farm (of which she is a co-owner) receives money through a PayPal account. During her rebuttal closing argument, she also admitted that she had reimbursed herself for expenses incurred in the course of her employment at the farm, such as hotel stays and mileage.[5]

Wife claimed that she earned only $15,000.00 annually, but she did not corroborate her claim, in part because she has not filed a tax return since 2015.[6] On the other hand, Husband introduced two monthly bank statements for Wife's personal checking account, which she had produced during discovery. The first statement reflected deposits totaling $3,181.09 between May 9, 2019, and June 10, 2019. The second reflected deposits totaling $3,489.65 between August 9, 2019, and September 10,

[5] To the extent that Wife's living expenses were reduced because she reimbursed herself for expenses incurred in the course of her self-employment, those reimbursements count as income under FL § 12-201(b)(3)(xvi).

[6] Wife produced IRS-issued wage and income transcripts for 2015, 2016, and 2017, but those documents were not admitted into evidence.

2019. Husband also introduced a record of Wife's transaction history from February 11, 2019, until April 8, 2019. That document reflected deposits totaling $7,269.01. According to those records, Wife deposited an aggregate of $13,939.75 in four months. Based on that evidence, Husband extrapolated that Wife's annual income was between $40,260.88 and $56,000.00.

Because Wife had deposited a total of $13,939.75 over four months (or a third of the year) and had secured supplemental employment earning $13.00 per hour, the court could have reasonably inferred that her actual adjusted income – or, at the very least, her earning potential – was $31,200.00. The court did not abuse its discretion in attributing that level of income to Wife.

Wife goes on to assert that the court erred in ordering her to pay child support because, she says, Husband's income was sufficient to provide for Daughter's needs and "maintain their child's standard of living while the couple was married[.]" As Wife acknowledges, however, the child support guidelines "are premised on the concept that '[children] should receive *the same proportion of parental income*, and thereby enjoy the standard of living, [as they] would have experienced had the [] parents remained together.'" *Allred v. Allred*, 130 Md. App. 13, 17 (2000) (quoting *Voishan v. Palma*, 327 Md. 318, 322 (1992)) (emphasis added). In other words, the guidelines are based on estimates of the percentage of income that each parent in an intact household would typically spend on the children. *Voishan v. Palma*, 327 Md. 322-23.

Every child is "entitled to a level of support commensurate with the parents' economic positions," regardless of whether one parent possesses sufficient resources to support that child without any contribution from the other. *See Smith v. Freeman*, 149 Md. App. 1, 33 (2002). Thus, we reject Wife's contention that a trial court should absolve one parent of the obligation to support a child merely because the other possesses the financial resources necessary to provide for the child's needs.

IV. Alimony

Finally, Wife challenges the court's denial of her request for rehabilitative alimony. Husband counters that, in addition to having failed to file a financial statement as required by Maryland Rules 9-202(e) and 9-203(a), Wife produced insufficient evidence to support an award of alimony.[7]

In divorce proceedings, the party seeking alimony bears the burden of presenting evidence from which the circuit court can render factual findings in support of an award of alimony. *See Walter v. Walter*, 181 Md. App. 273, 288 (2008). "We will not disturb an alimony determination 'unless the trial court's judgment is clearly wrong or an arbitrary use of discretion.'" *Ridgeway v. Ridgeway*, 171 Md. App. 373, 383-84 (2006) (citation omitted).

The principal purpose of alimony is to afford an economically dependent spouse the opportunity to become self-supporting. *St. Cyr v. St. Cyr*, 228 Md. App. at 185. A

[7] Wife ultimately filed a complete financial statement, but not until after the court had issued its memorandum opinion and order.

party is "self-supporting" if his, her, or their "income exceeds the party's 'reasonable' expenses, as determined by the court." *Id.* at 186 (citations omitted).

FL § 11-106(b) enumerates a non-exclusive list of factors that a court must consider when determining whether to award rehabilitative alimony, as well as the amount and duration of any such award. "[T]he law does not make any of the factors listed in section 11-106(b) determinative or mandate that they be given special weight." *Whittington v. Whittington*, 172 Md. App. 317, 341 (2007).

Here, the circuit court carefully considered each of the relevant factors. In so doing, it found that during their marriage the parties enjoyed a middle-class standard of living. Although Husband "was the main monetary contributor to the family," earning between $95,000.00 and $100,000.00 annually, the court found that Wife's income, coupled with her domestic contributions to the family, made the parties' respective contributions comparable.

On the issue of Wife's ability to support herself (FL § 11-106(b)(1)), the court observed that she had suffered from illnesses in the past, but the court found no indication that those illnesses interfered with her ability "to earn a living wage" or "to be self-sufficient." As further evidence of Wife's ability to support herself, the court noted that she had a four-year college degree in agricultural science, had begun a master's program in that field, worked on her own farm, and had marketing jobs.

On the issue of Wife's financial needs and resources (FL § 11-106(b)(11)), the court observed that she had failed to furnish adequate evidence of her income. On the

other hand, on the issue of Husband's ability to meet his needs while also meeting the Wife's needs, the court observed that, notwithstanding his annual salary, his monthly expenses exceeded his net monthly income. Thus, the court found:

> An award of alimony in this case would not only increase the deficit that [Husband] is experiencing, but it would take away from the care that [Husband] is providing to daughter. Therefore, [Husband] does not have the ability to pay an award of alimony to [Wife] and meet his own or [Daughter's] needs.

On the basis of these findings, the court ruled: "There is insufficient evidence that [Wife] would require temporary support from [Husband] so that she may attain gainful employment."

The court did not abuse its discretion in reaching that conclusion. The court's conclusion, based on its patient analysis of the evidence before it, was far from arbitrary. Moreover, it is almost impossible for a court to be clearly erroneous when it is simply not persuaded of something, which is what occurred here. *See*, *e.g.*, *Bricker v. Warch*, 152 Md. App. 119, 137 (2003).

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