Circuit Court for Harford County
Case No. 12-C-16-000549

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2286

September Term, 2019

MARK ROBERT MICHAEL WOZAR

v.

GAYLE LYNN WOZAR

Graeff,
Leahy,
Beachley,

JJ.

Opinion by Graeff, J.

Filed: August 7, 2020

*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.

Mark Robert Michael Wozar ("Father"), appellant, a self-represented litigant, and his former spouse Gayle Lynne Wozar ("Mother"), appellee, are the parents of two sons, born in 2002 and 2004. On December 19, 2019, the Circuit Court for Harford County issued an order regarding Father's visitation rights and denying his petition to hold Mother in contempt for interfering with his visitation.

On appeal, Father raises two questions for this Court's review.[1] As explained below, based on our review of the contentions, we conclude that the one question that is properly before this Court is as follows:

[1] As set out in his brief, Father's original questions presented are as follows:

> 1. Does the December [19], 2019, Order in this case violate the cases cited in McDermott v. Doughty, 385 MD. 320, Meyer v. Nebraska, 262 U.S. 399-402, 43 S.Ct. 626-28, L.ED. 1042 (1923), citing to Meyer, supra Pierce v. Society of the Sisters of the Holy Names of Jesus and May, 268 US 510, 530, 45 S.Ct. 571, 572-73, 69 LED 1070 (1925) which states "After setting out the above facts, the Society's bill alleges that the enactment conflicts with the right of the parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of school…and is repugnant to the Constitution and void" or citing *May v. Anderson, 345 U.S. 528, 533, 73 S.Ct. 840, 97 L.ED, 1221 (1953)*, which in part states, the "care and nurture of the child[ren] resides first with the parents, whose primary function and freedom include preparation for obligations that state can neither supply or hinder" by making permanent the "temporary" restriction of the Appellant's contact [redacted] to one phone call or email – not allowing video chats text messages – based on an incomplete and biased evaluation with no allegations of being unit and "exculpatory" evidence has been excluded?
>
> 2. May the spirit of 2010 Maryland Code CRIMINAL PROCEDURE TITLE 10 – CRIMINAL RECORDS Subtitle 1 – Expungement of Police and Court Records Section 10-103.1 – Expungement of police record after release without charge and/or (Health Insurance Portability and

Did the circuit court err in restricting Father's visitation with his sons?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2016, Mother and Father were divorced. On August 30, 2016, they agreed to a Consent Order providing physical custody of the two children to Mother, with visitation by Father on the first Tuesday evening of each month and on Sunday mornings. Mother and Father agreed to joint legal custody and to present any parenting disputes to a family therapist.

In May 2018, after Father moved to New York for a new job, he petitioned the circuit court to modify visitation. In July 2018, he filed a petition to hold Mother in contempt for interfering with his visitation.

On October 25, 2018, a hearing took place before a Magistrate. On January 7, 2019, the Magistrate issued a Report and Recommendations ("Report") reviewing developments that had occurred since the 2016 Consent Order. The report acknowledged that, after Father moved out of state, his weekday visits stopped, but he "continued to visit with the children on Sundays except for when the children's soccer schedules intervened."

> Accountability Act of 1996) which is United States legislation that provides data privacy and security provisions for safeguarding medical information and/or Md. Code (1974, 1995 Repl. Vol.) § 9-109 of the Courts and Judicial Proceedings Article (CJ) be employed to remove inaccurate medical information that was submitted by Appellee's counsel to a police report which may have been gained by intimidating surveillance?

The Magistrate considered evidence presented by Mother and Father regarding an evaluation conducted by Kathryn Rogers, a custody evaluator retained by the Office of Family Court Services.[2] At the time of the hearing, problems had arisen with Father's response to Mother's new relationship. The Magistrate stated that Father "began experiencing difficulties from this, indicating that he was concerned that [Mother] and her boyfriend would do him harm." The children "reported that when they would spend time with their father, he was becoming more focused on asking questions about [Mother] and her boyfriend." As a result, Father's relationship with both children "began to deteriorate." Mother had also "stopped communicating with [Father] over difficulties in the quality of the communication." Father stressed the importance of the younger child's participation in a program leading to the sacrament of confirmation, and Mother "agreed to follow through with" that.

Ms. Rogers had made interim recommendations, but she "was not able to complete her evaluation in part because she had just received from [Father] over 400 pages of journaling concerning the case, including the alleged violations of the court order by [Mother]." Ms. Rogers reported "a substantial concern for the well-being of the minor children in light of the manner in which the custody and access dispute has been handled, primarily by" Father. Both children had reported to her that Father "utilizes his opportunity to spend time with them to interrogate the children as to the circumstances of" Mother. The older child had "been refusing to spend time with" Father, and the younger child

[2] Although her first name is spelled differently in the transcript, we shall use the spelling on Ms. Rogers's letterhead.

continued to spend time with Father but had started to experience some of the emotional fallout from this conflict.

Based on Ms. Rogers' conclusion that both children were under substantial stress, Ms. Rogers recommended "a reprieve." In addition, she "recommended that communication between the parties be conducted by way of email, pursuant to the email guidelines that she provided the parties[,]" under which Father's contact with the children "should be by way of telephone and written correspondence."

The Magistrate noted that Father's contentions had "been maintained with an emotionally charged vigor." Based on concerns about the stress on the children caused by the circumstances, the Magistrate recommended that visitation be suspended, stating as follows:

> The recommendations below include a provision that access to the minor children be suspended for a period of time in order to provide the children with the emotional reprieve recommended by Ms. Rogers. The communication between the parties should be limited to email as recommended by Ms. Rogers, utilizing the email protocol.
>
> . . . Given the struggles of the children and the conflict between the parties, extraordinary circumstances exist which warrant the issuance of an immediate order.

The Magistrate also recommended that the parties follow guidelines for preparing the younger child for the sacraments, that the record be sealed, and that visitation and access to the children by Father remain "suspended pending further proceedings." The Report proposed the following measures:

> 4. That, on a temporary basis, the parties continue to have the joint legal custody of the children but that decisions pertaining to the participation of

the children in counseling or any therapeutic intervention for the children be at the sole discretion of [Mother].

5. That the parties follow the email guidelines presented to the parties by the custody evaluator.

6. That [Father] be entitled to telephonic contact with the minor children, and further communication through letters and cards to be delivered by the United States Postal Service.

7. That the provisions hereof be deemed temporary in nature and subject to subsequent order of court.

On January 22, 2019, the circuit court issued a Temporary Order, providing that the case be sealed, and pursuant to the agreement of the parties, the youngest son would utilize church guidelines in his preparation for confirmation. The order further provided that Father's access to the minor children "shall be suspended except as otherwise provided for in this order pending further order of the court." The court directed that "the parties shall continue to have the joint legal custody of the minor children except that all decisions pertaining to the participation of the children regarding counseling or any other therapeutic intervention for the children shall be at the sole discretion of" Mother. In addition, the order provided that "[t]he parties shall follow the email guidelines presented to them by the custody evaluator," and Father would be entitled to contact each child by telephone and email "no more than once a day." During such contacts, Father "shall not question the children regarding any personal circumstances of the [Mother], including but not limited to any aspect of her relationship with her current significant other, any other individual or any and all aspects of her personal life."

On December 2 and 3, 2019, the court held a hearing on Father's motion to modify visitation and the contempt petition. On December 19, 2019, after hearing from the parties and other witnesses, the court issued the order and memorandum opinion at issue on appeal ("December 19 Order"). The court explained that it heard the testimony of Ms. Rogers, and the transcripts of prior hearings were offered into evidence. The court noted that, "significantly," Father declined to take the stand.[3]

When ruling on the issue of visitation, the circuit court found that Father's move to New York constituted "a material change in circumstances which could warrant a modification to the visitation schedule" and that "an ongoing relationship with both parents is in the best interest of the children." Mother testified, however, that the children had "concerns or outright objections to visitations with their father." The court noted "that, given the age of the boys, it becomes increasingly difficult for either the Court or [Mother] to require the boys to attend visitation." Father advised the court that he was seeking liberal visitation with his sons, as agreed upon between him and the children, and he stated "that he would accept the decision of his sons as to the extent and frequency of visitation, if any."

[3] On appeal, Father asserts that the circuit court prevented him from introducing relevant witnesses and other evidence. Father does not support this contention with record citations. The record does show the court attempting to control the flow of evidence by pointing out when Father was presenting evidence that was not relevant to establishing what was in the best interests of the children, and by encouraging stipulations that eliminated the need to present witnesses. *See Muhammad v. State*, 177 Md. App. 188, 272–74 (2007) ("To insure that a trial does not stray into distracting and confusing by-ways, broad discretion is entrusted to the trial judge to control the flow of the trial and the reception of evidence."), *cert. denied*, 403 Md. 614 (2008).

Based on Father's statements, and Mother's agreement with Father's request, the court ordered that Father "have liberal visitation with [the children], as agreed upon between [Father] and the boys." It ordered that Mother "continue to provide [Father] with monthly updates as to the boys' medical and educational status," subject to "[e]arlier or more frequent reports" if there were "significant changes to their health or education." The court denied Father's "request as to religious updates," stating that the boys were "of an age where that information can be readily obtained directly from them."

With respect to Father's contempt petition, the court accepted Father's claim that he had "regularly traveled from New York to Maryland seeking visitation with the boys and that, on many of those occasions, the boys have either not been home or [been] unwilling to participate in the scheduled visitation." Nevertheless, the Court found that Father "presented no evidence which would establish that [Mother] has done anything to discourage the boys' visits with their father, either physically or verbally." To the contrary, the court found that "activities in which the boys were involved, including soccer tournaments or preplanned sleepovers, had interfered with the visitation schedule[,]" and Father had advance notice of these conflicts, but he "ha[d] nevertheless appeared for visitation." Accordingly, the court declined to find Mother in contempt.

On December 27, 2019, Father moved to alter or amend the court's December 19 Order, arguing, among other things, that the liberal visitation as agreed upon between Father and the children should "be expanded to remove the Draconian and Stygian restrictions placed upon" his communications with them, stating that the order "was predicated on an incomplete evaluation from the County's evaluator and was buttressed by

false claims (medical diagnosis) of Plaintiff's counsel" and "further obfuscated by a Magistrate who refused to call properly subpoenaed witnesses who would have submitted evaluations that [he] was 'fit.'" According to Father, the court "deprecated [his] parental rights as [the Order] now gives the Plaintiff unilateral medical, religious, and education authority as she must merely report."

The court denied Father's motion. This appeal followed.[4]

DISCUSSION

In his prayer for relief, Father asks this Court to modify the court's order "in regards to contact with the minor children and decision making on medical and educational decisions" by removing "the communication and the medical and educational decision making restrictions." In addition, Father requests that "the charge of contempt be remanded to another Maryland Circuit Court for it to hold a hearing to consider [his] Motion Contempt of Court (Denial of Visitation)." In his questions presented, he also seeks expungement of medical information in a police report.

The rest of Father's brief discusses a range of grievances other than the restrictions on his communications with and about the children under the December 19 Order. Father's briefing, however, does not provide sufficient information and does not comply with the Maryland Rules governing appellate proceedings. Because Father's briefing deficiencies create procedural and substantive impediments to appellate review, we address them first, to provide context for our resolution of this appeal.

[4] Mother, who appeared with counsel at the circuit court proceedings, did not file a brief in this Court.

I.

Deficient Briefing

Md. Rules 8-504(c) and 8-602(c)(6) authorize dismissal of an appeal on this Court's own motion if the contents of an appellant's brief do not comply with Rule 8-504. Rule 8-504(a) provides that a brief must include "[a] clear concise statement of the facts material to a determination of the questions presented," with "[r]eference . . . to the pages of the record extract supporting the assertions." Rule 8-504(a)(3) provides that the brief shall provide "[a]rgument in support of the party's position on each issue." Md. Rule 8-504(a)(4)–(6).

Father filed a 32-page brief that does not meet these requirements. Initially, Father's factual assertions largely pertain to matters other than the Order on appeal, dealing with visitation and contempt. Father alleges wrongdoing by opposing counsel, court staff, a police detective, a social worker, and multiple judges. Many of Father's allegations are not supported by citations to his record extract, which exceeds 1,000 pages (not including two transcripts from December 2–3 hearing).

Moreover, Father's legal arguments focus on various grievances without explaining their relevance to the December 19 Order. These include allegations regarding a multitude of matters that occurred before the hearing on his petitions to modify visitation and for contempt, before other judges and a magistrate, involving personnel whom Father identifies as having wronged him in diverse ways. Father complains about failures to disclose material information/Brady violations, acts of intimidation, biased treatment, disclosure of his private medical information, consideration of inadmissible evidence,

restrictions on his presentation of argument and evidence, and being surveilled in the courthouse. In this section, there is only one citation to the record extract, pointing to a comment by a magistrate during a February 2019 hearing that occurred prior to the December 19 Order.

Father's briefing deficiencies are material in this case because they impede our consideration of his arguments. Father's failure to provide citations to the record supporting his arguments leaves us unable to discern, much less resolve, his wide-ranging complaints.

When an appellate brief lacks the essential components required by Rule 8-504(a), dismissal is justified under both Rule 8-504(c), providing that this Court may dismiss an appeal for noncompliance with the substantive requirements for appellate briefs, and Rule 8-602(a)(6), providing that this Court "may dismiss an appeal . . . on the court's own initiative" when the contents of a brief do not comply with Rule 8-504. *See Rollins v. Capital Plaza Assocs., L.P.,* 181 Md. App. 188, 201, 203 (dismissing appeal where appellant failed to provide sufficient reference to pages in the record extract supporting the facts asserted, noting that this Court **"**cannot be expected to delve through the record to unearth factual support favorable to [the] appellant"), *cert. denied*, 406 Md. 746 (2008). *Accord Reynolds v. Reynolds*, 216 Md. App. 205, 225–26 (2014) ("We therefore shall not comb through the 2,904 pages of extract in this case—much less the record itself—in order to find factual support for appellant's alleged point of error.").

Here, Father's deficient briefing creates a comparable impediment to appellate review. His failure to provide a "clear concise statement of facts material to a

determination of the questions presented" is compounded by the dearth of record or legal citations supporting his arguments. We cannot search more than 1,000 pages of record extract or the voluminous record itself to find factual support for Father's allegations, especially where so many involve matters outside the scope of the December 19 Order from which he appeals. We also decline to conduct the necessary legal research or compose the legal argument to support Father's challenge to that Order.

Although dismissal of Father's appeal is permissible under these circumstances, we shall consider Father's briefed claims to the extent they are discernible as challenges to the December 19 Order from which he noted this appeal. Accordingly, we shall limit our review to the December 19 Order modifying visitation.

II.

Visitation

Maryland recognizes that parents of a minor child "are jointly and severally responsible for the child's support, care, nurture, welfare, and education" and "have the same powers and duties in relation to the child." Md. Code (2019 Repl. Vol.), § 5-203(b) of the Family Law Article ("FL"). When "the parents live apart, a court may award custody of a minor child to either parent or joint custody to both parents." FL § 5-203(d)(1). Custody embodies the concepts of both physical and legal custody. *Taylor v. Taylor*, 306 Md. 290, 296 (1986). "Legal custody carries with it the right and obligation to make long

range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Id.*

In determining whether to modify the terms of a parent's access to his or her child, a circuit court engages in a two-step inquiry. *See Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). First, the court asks whether there has been a material change of circumstances, i.e., a change that affects the welfare of the children. *Id.* at 170–71. If so, the parent seeking modification must establish that the proposed change is in the best interest of the children. *Id.* at 171–72. In answering that question, the circuit court may consider the following non-exclusive list of factors:

> (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; and (10) prior voluntary abandonment or surrender.

Braun v. Headley, 131 Md. App. 588, 610–11, (quotation marks and citations omitted), *cert. denied*, 359 Md. 669 (2000), *cert. denied*, 531 U.S. 1191 (2001).

When reviewing a decision on a modification, an appellate court will not set aside the factual findings made by the circuit court unless such findings are clearly erroneous. *See In re Yve S.*, 373 Md. 551, 585 (2003). "If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Solomon v. Solomon,* 383 Md. 176, 202 (2004).

"Decisions concerning visitation generally are within the sound discretion of the trial court," and they will not be reversed "unless there has been a clear abuse of discretion."

In re Billy W., 387 Md. 405, 447 (2005). "There is an abuse of discretion 'where 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.'" *In re Caya B.,* 153 Md. App. 63, 74 (2003) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). *Accord Meyr v. Meyr*, 195 Md. App. 524, 550 (2010).

The Court of Appeals has recognized that

> there is a great deal of flexibility permitted in visitation orders. They run a gamut—a proper gamut. In the divorce, or post-divorce, setting, they may simply provide for "reasonable," but otherwise unspecified, visitation, or they may set out a rather detailed schedule with respect to times, places, and conditions, or they may be somewhere between those poles, depending on the circumstances and the ability of the parties to agree to a mutually acceptable arrangement.

In re Justin D., 357 Md. 431, 447 (2000).

Here, the court found that there were material changes in the circumstances since the Consent Order because Father had relocated to New York. Father does not contest this finding.

Father asserts, however, in his question presented, that the court erred in "making permanent the 'temporary' restriction of [his] contact with [the children] to one phone call or email - not allowing video chats [or] text messages." The court's order, however, did not so limit Father's contact with his children. Rather, it ordered, as Father requested, that Father have liberal visitation with his children, as agreed between him and his sons.

Given the record here, and the evidence of stress to the children, we conclude that the court did not abuse its discretion in its order regarding visitation.[5] Nor did it abuse its discretion in ordering that Mother provide Father with monthly email updates regarding the health and education of the children, in the absence of significant change. Accordingly, we affirm the judgment of the circuit court. [6]

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

[5] The parties' oldest son will turn 18 years old in November 2020, at which time he will no longer be subject to the court's visitation order. *See* Md. Code (2019 Repl. Vol.), § 1-201(b)(5) of the Family Law Article ("FL"); Md. Code Ann. (2019 Repl. Vol.), § 1-401(a) of the General Provisions Article ("GP").

[6] We further note that, although Father concludes his brief by requesting that the contempt petition be remanded "to another Maryland Circuit Court for it to hold a hearing" on that motion, he presents no argument in this regard. Accordingly, as with other claims not properly briefed, we decline to address that contention. Md. Rule 8-504(a)(6). *See Anderson v. Litzenberg,*115 Md. App. 549, 577–78 (1987) (declining to address claim made with no legal authority).