Circuit Court for Frederick County
Case No. C-10-FM-24-000842

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2322

September Term, 2024

JUSTIN BARTLETT

v.

KIMBERLY J. DEGEN, ET AL.

Beachley,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: August 11, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In the Circuit Court for Frederick County, Kimberly and Steven Degen, appellees, filed a petition for visitation seeking access to the four children of their deceased daughter, Ashley Bartlett ("Mother"), and her former husband, Justin Bartlett ("Father"), appellant. The circuit court denied Father's motion to dismiss the visitation petition and, following a three-day *pendente lite* hearing, ruled that the Degens made a threshold showing of exceptional circumstances and that it was in the best interest of the children to grant the Degens four three-hour access periods prior to the merits hearing, scheduled for December 2025. Father noted this immediate appeal,[1] presenting two questions, which we rephrase:

> I. Did the trial court err or abuse its discretion by awarding the Degens visitation over the objection of a fit parent where the evidence did not support a finding of exceptional circumstances as a matter of law?
>
> II. Did the circuit court err or abuse its discretion by denying Father's request for reasonable attorneys' fees under Rule 1-341?

Because we conclude that the Degens failed to satisfy their burden to make a threshold showing of exceptional circumstances, we reverse the visitation order. We will vacate

[1] Father filed in the circuit court both a notice of appeal and an application for leave to appeal. After the circuit court granted the application, the Degens filed in this Court an "Opposition to Application for Leave to Appeal," seeking dismissal of the appeal. By order entered February 1, 2025, this Court denied the Degens' motion, which we treated as a motion to dismiss the interlocutory appeal.

The appeal is permitted by Md. Code (1974, 2020 Repl. Vol.), § 12-303(3)(x) of the Courts & Judicial Proceedings Article, which authorizes interlocutory appeals from orders that deprive a parent of the care or custody of their child. Plainly, the order granting the Degens twelve hours of access with the children deprives Father of the care of his children during those access periods.

the order denying attorneys' fees for reconsideration on remand in light of our merits disposition of this appeal.

BACKGROUND

Father and Mother had four daughters: M, age 15, K, age 14, B, age 11, and T, age 9. They divorced in 2020 and thereafter shared custody of the children. In January 2022, Mother died of complications of hypothermia.

Since Mother's death, the children have lived with Father and his fiancée, Jennifer Wolfrey, in Middletown, Maryland.[2] Father and Ms. Wolfrey also share a daughter, now age 3.

A little over two years after Mother died, the Degens filed the instant complaint for visitation. They alleged that prior to Mother's death, they were "very involved" in the children's lives and "regularly spent significant time with them." They further alleged that the children were "extremely close" with their maternal aunt and her children, whom they saw at regular gatherings of extended family.

Immediately after Mother died, the Degens continued to transport the children to weekly cheer practices and to other events. They alleged that beginning in the summer of 2022, Father began decreasing the Degens' access with the children and, "by the summer of 2023, [the Degens] were virtually denied all access with the children." In 2023, they had access with the children on four occasions: in March, July, August, and at Christmas.

[2] Father and Ms. Wolfrey are not legally married but held a wedding ceremony in 2023.

Father did not permit the children to travel with the Degens to the beach in 2023 and refused to provide the Degens information about the children's sports schedules.

The Degens alleged that their "close relationship" with the children before Mother died and the "emotional harm" it would cause to the children if their relationships with maternal relatives were "cut off" constituted exceptional circumstances. They asserted that it was in the best interests of the children to grant the Degens visitation with the children.

Father answered the complaint, denying that he was prohibiting all access between the children and the Degens and denying that the children were suffering emotional harm occasioned by any decrease in access. Father asserted that there was no legal basis for the complaint and asked that it be dismissed with prejudice.

Father subsequently moved to dismiss the complaint for failure to state a claim upon which relief could be granted. He argued that to prevail on their complaint for visitation, the Degens, as third parties, were obligated to make a threshold showing of either parental unfitness or exceptional circumstances. The Degens did not allege that Father was unfit. Assuming the truth of the facts alleged in their complaint, he asserted that the Degens had not alleged facts rising to the level of exceptional circumstances justifying an intrusion upon Father's constitutional right to control the upbringing of his children.

The Degens opposed the motion to dismiss, arguing that it was improperly filed

after Father's answer[3] and reasserting their position that Mother's death, coupled with the cessation of contact between the children and the Degens, amounted to exceptional circumstances.

The court denied the motion to dismiss that same day.[4]

The court held a *pendente lite* hearing over three days in November 2024. Ms. Degen was present at the hearing, but Mr. Degen was not due to a seriously ill family member. In the Degens' case, Ms. Degen testified and called two witnesses: her daughter, Ashley Holzberger, and Ms. Degen's mother, Linda Rowe. At the close of the Degens' case, Father moved for judgment, which was denied. In his case, Father testified and called the following witnesses: his mother; Ms. Wolfrey; Ms. Wolfrey's sister; Ms. Holzberger's ex-husband, Brian Holzberger; and Mother's best friend, Danielle Parsley.

In the Degens' case, the evidence generally showed the following. Prior to Mother's death, Ms. Degen was a "hands-on grandma." She attended their sports events and generally saw them two to three times each month. They also spent some major holidays together, including Thanksgiving, Christmas, and Easter.

[3] We note that Md. Rule 2-322(b) specifies that the defense of failure to state a claim upon which relief may be granted may be raised in a motion to dismiss filed before the answer, in the answer, and/or by a later filed motion to dismiss.

[4] Father moved for reconsideration. He argued that decisions of this Court and the Supreme Court of Maryland establish that third parties must overcome a "formidable barrier" before an indisputably fit parent should be forced to litigate over access with their children. The motion for reconsideration was denied by order entered November 1, 2024.

M and K accompanied the Degens to the beach for a week in 2013 and again in 2017. M, K, and B went to the beach with the Degens in 2018. All four children accompanied Ms. Degen on a weekend beach trip one year.

There was a period after Mother and Father separated when Mother was not allowing the Degens to see the children and Father facilitated access between the children and the Degens.

In 2022, after Mother died, the Degens continued to see the children regularly. Father allowed the children to vacation with the Degens on their beach trip.

In 2023, the Degens saw the children less frequently. Ms. Degen testified that she and her husband saw the children "a couple of times in the beginning of the year." The children did not go to the beach with the Degens that summer. Father told Ms. Degen that the children did not want to go, but Ms. Degen disbelieved him. The Degens spent time with the children in July 2023, on Ms. Degen's birthday and again at Christmas. Since Christmas 2023, the Degens had seen the children only at sports events where they were spectators.

Ms. Holzberger and her ex-husband share custody of four children ("the maternal cousins"), ages 7 through 14. The children and the maternal cousins were "super close" prior to Mother's death. Their contact had been "non-existent" since approximately the spring of 2024, which is when the Degens filed the instant complaint. Ms. Holzberger had not reached out to Father directly to allow the maternal cousins to visit with the children because she and Father were "estranged" and because she was "dealing [with

her] own . . . divorce and things like that."

The children's maternal great-grandmother also saw the children several times each month prior to Mother's death. In the prior two years, Ms. Rowe had seen the children "less than five times." The most recent time she saw them was around Christmas in 2023.

Ms. Degen acknowledged that she had posted negative comments about Father on social media. She could not recall the details of her posts, but believed she had commented on Father not allowing the children to go to the beach with her in 2023.[5] She also had written Father an 11-page single-spaced letter in April 2023 in which she addressed her lack of access with the children, challenged Father's decision not to allow the children to have cell phones, and questioned whether Ms. Wolfrey was trying to replace Mother.

In Father's case, Ms. Wolfrey testified about the children's busy schedules, their academic performance, and their personalities. M was in 9th grade, played field hockey, and was planning to try out for indoor track. K played softball year-round. B and T each played soccer year-round. All four girls were succeeding academically, and their report cards were introduced into evidence. M, K, and T attended therapy weekly.[6]

[5] The social media posts were not in evidence. There was testimony that Ms. Degen often deleted her social media posts soon after she made them.

[6] T started therapy immediately after Mother died. M began therapy in the spring of 2023. K started therapy at the beginning of 2024.

Father testified that the children are "thriving" and are "big into sports." They have many friends and are excelling academically. Father's mother also testified that the children are happy and thriving. She observed that T, in particular, had struggled after Mother died, but recently her "spark" was back.

Father's case also focused upon Ms. Degen's difficult personality and boundary issues. When Mother died, Ms. Wolfrey and Ms. Degen had "no relationship" because Ms. Degen had "cut [them] off[.]" In the immediate aftermath of Mother's death, however, Ms. Wolfrey and Ms. Degen resumed a largely cordial relationship. They exchanged text messages about plans for the children to travel to the beach with the Degens in the summer of 2022 and about the children's sports events. Ms. Wolfrey invited the Degens to Christmas Eve dinner at their house, but when she learned that Ms. Degen had plans with Ms. Holzberger, she coordinated for the girls to spend Christmas Eve day with the Degens, Ms. Holzberger, and the maternal cousins.

Ms. Wolfrey and Ms. Degen had a falling out in mid-December 2022, however, after Ms. Degen posted a negative public comment on a photograph of the children and their half-sister shared by Ms. Wolfrey's father on Facebook. Ms. Degen apologized, but Ms. Wolfrey told her she needed some time to calm down before they could speak again. A few months later, Ms. Degen sent Ms. Wolfrey a series of angry text messages around midnight rehashing the argument from December 2022 and accusing her of suggesting that the children were better off without Mother. Ms. Wolfrey responded by telling Ms. Degen not to contact her again and to only communicate with Father going forward.

There also was evidence that the Holzbergers had temporarily cut off contact with Ms. Degen after the birth of their son, who was critically ill and later died, because of her disrespectful behavior at the hospital. Ms. Degen later engaged in an angry screaming match with Ms. Holzberger and tried to force her way inside the Holzbergers' house.

Mother's best friend, Danielle Parsley, also terminated contact with Ms. Degen in October 2023 for her own "mental health" because Ms. Degen texted her very frequently, wanted to rehash the details of Mother's tragic death, and became angry when she learned that Ms. Parsley had styled the children's hair for Father and Ms. Wolfrey's wedding ceremony.

Father testified that after Mother died, he was happy for the children to spend time with Ms. Degen. He began observing, however, that the children returned from the visits behaving unusually and that it would take a day or two for them to get back to normal.

Father and Ms. Degen communicated frequently by text message. These messages reflect that Ms. Degen requested significant access with the children in 2022 and 2023.[7] Although Father permitted some access, he also questioned Ms. Degen about her social media activity targeting Father, Ms. Wolfrey, Ms. Wolfrey's family members, and on one occasion, a client of Ms. Wolfrey.[8] Father took issue with many statements made by Ms.

[7] For example, in November 2022, Ms. Degen asked Father if it would be possible for the Degens to "get[] the girls every other weekend" so that they could spend more time with their maternal cousins. Father replied, "No sorry[.]"

[8] The record is not clear as to Ms. Wolfrey's occupation.

Degen in her lengthy letter. In early 2024, he told Ms. Degen she needed to "go and talk to someone about whatever you got going on" and then he would be "more than happy to let [her] hang out with the girls[.]"

Father testified that he incurred attorneys' fees defending this action. His attorney's billing records were admitted into evidence.

At the close of the evidence, counsel for the Degens argued that Mother's sudden and unexpected death was a "huge loss" for the children and, standing alone, was sufficient to meet the Degens' burden to show exceptional circumstances. He analogized the facts of this case to *Best v. Fraser*, 252 Md. App. 427 (2021), which also involved maternal relatives seeking access to a child after the death of the child's mother. Counsel addressed the third party custody factors drawn from *McDermott v. Dougherty*, 385 Md. 320, 418 (2005), and set out in *Best*, asserting that the only relevant factor in this case was "the nature and strength of the ties between the child and the third-party[.]" He emphasized that there was testimony that there was a "long history" of the children spending time with the Degens, their maternal aunt, their maternal cousins, and their maternal great-grandmother. Ms. Degen had been "very, very involved in their lives, up until this tragic death of their mother."

Counsel argued that having demonstrated exceptional circumstances, the court could proceed to consider the best interests of the children and that it was in their best interests to continue their bond with the maternal family, particularly Ms. Degen. He asserted that the Degens did not seek significant access—they wanted "time at

Thanksgiving, time at Christmas, time at Easter" and "a week in the summer to go to the beach or somewhere with the girls together with their cousins." Additionally, they sought a weekend every four months.

Father's attorney argued that the Degens had failed to present any evidence of current or future harm to the children occasioned by "any lack of visitation with Ms. Degen." Conversely, counsel asserted that there was evidence that Ms. Degen's obsession with discussing Mother's death had caused Mother's best friend to cease contact with her for her own mental health. Counsel emphasized that the court was not permitted to speculate about harm to the children and that the burden of proving harm rested solely on the Degens. The evidentiary burden was intended to be high because a fit parent, like Father, is presumed to make decisions in the best interests of the children.

Turning to attorneys' fees, counsel argued that the complaint for visitation was unjustified because the Degens did not allege any facts sufficient to show exceptional circumstances and none were proved at the hearing. Father argued that the money spent defending the Degens' action was money taken away from the children.

The Degens' attorney responded that the evidence that three of the children were in therapy showed that they were "not doing well." He argued that it was "not a leap to think that they're in therapy because they've been wrenched away from their mother's family."

The court took the matter under advisement. Two months later, the court issued its ruling from the bench. The court found that the children had experienced a "tragedy"

and a "terrible loss" with the sudden death of Mother.[9] Prior to Mother's death, the maternal family members "had a bond with these children." After Mother's death, Ms. Degen "vigorously pursued maintaining a relationship with the children." Ms. Degen's "access clearly ceased sometime in 2023" and "began to cease . . . mid-2022[.]"

The court found that Ms. Wolfrey had embraced the children as her own and that she and Father were juggling the schedules of their five children. Ms. Wolfrey's "disdain" for Ms. Degen was apparent in her testimony, however. There was evidence that both Father and Ms. Wolfrey felt that Ms. Degen was "intruding in their personal life." The court found that Ms. Degen's communications could be "perceived" as "annoying," but that they were not "as offensive" as counsel for Father had argued.

There was some evidence that the children reacted negatively when they encountered Ms. Degen at sports events. The court reasoned that the enmity between Ms. Wolfrey and Ms. Degen could cause the children to feel uncomfortable when they see Ms. Degen in Ms. Wolfrey's presence. The court also considered the evidence that Ms. Degen had displayed "inappropriate grief" or "oversharing" with the children. That was "not ideal," and the court considered it in the "totality of circumstances."

The court concluded that its obligation at the *pendente lite* stage was to provide "immediate stability pending a full evidentiary hearing[.]" In order to prevail on their

[9] The court mistakenly believed that Mother had primary physical custody of the children prior to her death. Counsel for Father corrected the court, explaining that the parties had shared joint physical custody after they divorced.

petition, the Degens were obligated to show a "significant deleterious effect upon the children that would result from a lack of visitation." The court found that the children had suffered two losses: the loss of Mother and the loss of "the maternal side of their family who loved these children a lot." Awarding the Degens visitation would "likely be the best way for the children to maintain a connection to their mother and her family" because there was "no evidence presented that the children would be able to foster a connection to [their deceased Mother] without visitation." The court attributed significance to the fact that the children all were girls, and that Ms. Degen was a female role model who was most closely connected to Mother. "Given the importan[ce] of strong female relationships in a girl's life, the facts indicate that the children would benefit from such grandparent visitation."

The court found that because of the extent of the contact between the children and Ms. Degen (and other maternal family) prior to 2023 and the positive nature of that relationship, it would "have a deleterious effect on the children to not have this connection with their maternal family." It reasoned that court-ordered visitation could help to "mend the rift between the children and [Ms. Degen]" and "relieve some stress from the children" if the decision is taken away from them.

The court ordered that the Degens would receive "four three-hour visits between [January 2025] and the merits [hearing in December 2025]." The visits would occur between 4 p.m. and 7 p.m. on February 1, 2025, May 31, 2025, August 30, 2025, and

November 22, 2025. The Degens were prohibited from smoking or drinking alcohol during the visitation periods.

The court denied Father's request for attorneys' fees, finding that the Degens were substantially justified in pursuing visitation with the children.

On January 27, 2025, the court entered an order memorializing its rulings and ordering the parties to attend mediation. Father noted this timely appeal.

STANDARD OF REVIEW

"Orders related to visitation or custody are generally within the sound discretion of the trial court, not to be disturbed unless there has been a clear abuse of discretion." *Barrett v. Ayres*, 186 Md. App. 1, 10 (2009). "However, where the order involves an interpretation and application of statutory and case law, the appellate court must determine whether the circuit court's conclusions are 'legally correct' under a *de novo* standard of review." *Id.* (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)).

DISCUSSION

I.

a.

"[C]ontained within the bounds of the federal Due Process Clause is a fundamental liberty interest bestowed upon parents concerning the 'care, custody, and control' of their children." *Koshko v. Haining*, 398 Md. 404, 421 (2007) (citing *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000)). It follows that "[p]arents and grandparents do not stand on the same legal footing with respect to visitation." *Brandenburg v. LaBarre*, 193

Md. App. 178, 186 (2010). Parents are "invested with the fundamental [constitutional] right . . . to direct and control the upbringing of their children[.]" *Koshko*, 398 Md. at 422-23 (2007). By contrast, "any right to visitation possessed by grandparents 'is solely of statutory origin.'" *Brandenburg*, 193 Md. App. at 186 (quoting *Koshko*, 398 Md. at 423)).

The Grandparent Visitation Statute ("GVS"), codified at Md. Code (1984, 2019 Repl. Vol.), § 9-102 of the Family Law Article, was enacted in 1984. It provides that "[a]n equity court may . . . consider a petition for reasonable visitation of a grandchild by a grandparent; and . . . if the court finds it to be in the best interests of the child, grant visitation rights to the grandparent." In *Koshko*, the Supreme Court of Maryland considered a facial challenge to the GVS. To save it from facial invalidity under the federal constitution, the Court read into the statute a "presumption that parental decisions regarding their children are valid." 398 Md. at 425. It likewise held that Article 24 of the Maryland Declaration of Rights provides heightened protections to the fundamental rights of parents to control the upbringing of their children and that the GVS failed to accord sufficient weight to parental decisions. *Id*. at 439-40. Rather than striking down the GVS, however, the Court applied a gloss, holding that a grandparent seeking visitation must make a showing, *before the court reaches a best interest analysis*, "of either parental unfitness or exceptional circumstances indicating that the lack of grandparental visitation has a significant deleterious effect upon the children[.]" *Id*. at 441. When courts apply "the exceptional circumstances test," they may draw from the

factors enunciated in third party custody cases but the test "is inherently fact-specific" and "defies a generic definition." *Aumiller v. Aumiller*, 183 Md. App. 71, 80-81 (2008).

b.

With this legal context in mind, we set out the parties' contentions. Father contends that the trial court committed legal error because it failed to make "any constitutionally required threshold findings" before turning to a best interest analysis. He emphasizes the lack of evidence that the children had or would suffer harm caused by a lack of visitation between them and the Degens. In Father's view, the court's finding that a lack of connection with the children's "maternal family" would have a "deleterious effect" was conclusory and unsupported by the evidence.

The Degens respond that the circuit court applied the correct legal standard and found that they met their burden to show a significant deleterious effect on the children occasioned by the cessation of visitation.[10] They reiterate their argument that the evidence that three of the children are in therapy supported an inference that they "are having difficulties[.]" Having made that threshold showing, the court was permitted to assess whether court-ordered visitation was in the children's best interests, and it did not abuse its broad discretion in ruling in favor of the Degens.

[10] The Degens also contend that "the intrusion of four three-hour periods of visitation in a nearly one-year period can hardly be claimed to be 'substantial' enough to offend due process." This assertion is directly contradicted by *Koshko*, which held that though visitation amounts to a "lesser *degree* of intrusion on the fundamental right to parent" than an award of third-party custody, "it is not a difference of constitutional magnitude." 398 Md. at 430-31.

c.

Several cases decided after *Koshko* are instructive. In *Aumiller*, 183 Md. App. 71, we affirmed the circuit court's denial of a complaint for grandparent visitation based upon the failure to show parental unfitness or exceptional circumstances. Like this case, the paternal grandparents sought visitation with their two grandchildren over the objection of their deceased son's ex-wife. *Id*. at 73. Unlike this case, the grandparents maintained "only a limited relationship" with their grandchildren before and after their son's death. *Id*. at 85. In this factual context, we held that a trial court is not permitted to speculate about potential future harm to the children without "solid evidence in the record" to support such a finding. *Id*. at 81. We rejected the grandparents' arguments that the mother's refusal to share information about the children's father with them and her "unjustified withholding of contact" between the children and the paternal family was evidence from which a court could infer future harm to the children. *Id*. at 82. To so hold would render the threshold showing "superfluous and allow third parties to reach the best interest analysis in virtually every case." *Id*. Although we recognized the unique circumstances presented by the death of the children's father, we nevertheless concluded that how the mother chose "to inform the children about their father, and who [she] allow[ed] her children to associate with, are the type of matters within the fundamental rights of parents that *Koshko* painstakingly sought to protect." *Id*.

In *Barrett*, 186 Md. App. 1 (2009), we held that a parent's motion to modify a pre-*Koshko* grandparent visitation order must be granted absent a showing by the

grandparents that the parent was unfit or that exceptional circumstances existed. There, the child's father had been in a coma for more than a year when the paternal grandparents were initially granted visitation two weekends per month with mother's consent. *Id.* at 7. A year later, mother moved to modify the visitation because of acrimony between her and the grandparents and their constant pressure to increase the visitation. *Id*. at 7-8. Mother further noted that *Koshko* had been decided after the issuance of the initial consent order and therefore the rebuttable presumption in favor of parental decisions adopted in *Koshko* controlled her request for modification. *Id.* at 8. We agreed that *Koshko* applied "to subsequent judicial modification of existing GVS orders." *Id.* at 17. Despite there being no evidence of unfitness, we remanded the matter to the circuit court to determine if the grandparents could demonstrate exceptional circumstances:

> To the extent that the [grandparents] might contend that there are exceptional circumstances in this case, we note the observation of the Court of Appeals in *McDermott* that "it is a weighty task . . . for a third party . . . to demonstrate 'exceptional circumstances' which overcome the presumption that a parent acts in the best interest of his or her children and which overcome the constitutional right of a parent to raise his or her own children."

Id. at 20 (last two alterations in original) (quoting *McDermott*, 385 Md. at 424).

In *Brandenberg*, 193 Md. App. 178, this Court considered whether a trial court erred in awarding paternal grandparents visitation with their four grandchildren over the objections of their indisputably fit parents. The evidence showed that the grandparents had cared for their grandchildren regularly over a four-year period, including providing regular overnight care for several of the grandchildren. The evidence further

demonstrated that "they had had a loving, bonded relationship with the grandchildren." *Id*. at 182. Shortly before the grandparents filed their petition for visitation, the parties became involved in a personal dispute unrelated to the children, resulting in the parents cutting off contact between the grandparents and the children. *Id*. at 181. The evidence showed that the children were thriving socially and academically since the cessation of visitation. *Id*. at 182.

The circuit court granted the grandparents' petition. *Id*. It found that the children plainly were harmed when they were "swiftly and abruptly denied any contact with close and loving relatives whom they had grown accustomed to seeing, for hours at a time, on a daily basis over a period of several years." *Id*. at 184. The grandparents were "ever-present adult figures" in the children's lives and their absence necessarily harmed the children. *Id.* The court rejected the parents' assertion that the grandparents had to present direct evidence of harm to the children, emphasizing that because they were denied contact with the children, this was impossible. *Id*.

On appeal, we held that "the trial court erred as a matter of law in concluding that the [grandparents] proved the existence of exceptional circumstances necessary to overcome the [parents]' right to control access to their children." *Id*. at 191. Accepting the factual findings as correct, we concluded that the absence of any evidence of harm to the children caused by the cessation of visitation was nevertheless fatal to the grandparents' claim. *Id*. To the contrary, the only evidence before the court showed that the children were thriving. *Id*. We explained:

> Although the trial judge was free to reject [the parents'] evidence, he was not free to speculate about the children's actual condition. To be sure, if there had been some facts in the record concerning the condition of the children after contact ceased, reasonable inferences could have been drawn from those facts to conclude (if the facts supported it) that they had suffered or were suffering harm by the cessation of contact. The trial court was not permitted to draw an inference from the mere amount of time the children once had spent with the grandparents and the generally loving and bonded relationship they had had with them that the cessation of contact between the [grandparents] and the children had harmed the children.

Id. at 192. We therefore reversed the visitation order and remanded the case for the court to enter an order denying the petition for visitation. *Id*. at 193.

More recently, this Court vacated an award of visitation to maternal relatives in *Best*, 252 Md. App. 427 (2021), and remanded for the court to make additional findings. There, two half-brothers—ages 6 and 15—lived with their mother until she died of cancer. *Id*. at 431-32. The mother's brother and his wife moved to the United States from Guyana to help care for mother and both children until after mother's death. *Id.* at 432. Soon after the mother's death, the younger child moved in with his father. *Id*. The uncle and aunt petitioned for third-party custody of the younger child, but later amended their petition to seek only visitation. *Id*. at 431-32.

At a merits hearing, there was evidence establishing the father's fitness and demonstrating the younger child's bond with his half-brother. *Id*. at 432-33. Ultimately, the trial court ruled that it was in the child's best interests to maintain his relationship with his half-brother and his maternal family and ordered visitation. *Id*. at 433.

On appeal, we vacated the order and remanded for additional proceedings because the trial court made no finding of exceptional circumstances. *Id*. at 437. We instructed

the court to "engage in the requisite analysis as to whether exceptional circumstances exist and, if so, whether awarding visitation between [the brothers] would be in [the younger child's] best interests."[11] *Id*.

d.

We return to the case at bar. Accepting the facts found by the trial court,[12] the evidence showed that Ms. Degen had a close relationship with the children prior to Mother's death, which continued in the year after Mother's death. She provided some childcare and some transportation for the children to attend practices and events. Some of the children had accompanied the Degens to the beach for a week, along with their maternal cousins, three times prior to Mother's death and one time after Mother's death, in 2022. The children also had spent time with the Degens around Thanksgiving, Christmas, and Easter prior to Mother's death. After Mother's death, Father and Ms. Wolfrey facilitated access with the children and the Degens around Christmas in 2022 and 2023. The record does not reflect whether the Degens received any access around

[11] We also noted that the older child had since turned 18 and was not a party to the visitation petition. *Id*. at 437, n.3.

[12] Although we generally accept the facts found by the trial court for purposes of our analysis, we note two departures. First, the trial court found that Ms. Degen's access with the children "clearly ceased sometime in 2023" and "began to cease" in "mid-2022." Neither finding is supported by the record. In 2022, the Degens spent significant time with the children, including a week at the beach in July 2022, a weekend in November 2022, and Christmas Eve. The evidence showed that the Degens saw the children at least four times in 2023, with the most recent visit at Christmas. The Degens' access with the children certainly decreased during this timeframe, but it did not cease.

the other holidays. There was no evidence presented about the children's relationship with Mr. Degen.

The only evidence bearing upon the children's wellbeing was adduced by Father and his witnesses. That evidence showed that the children were active in sports with busy practice and game schedules. They were succeeding academically. Three of the children were in therapy "for their grieving." Since each had entered therapy, the frequency of their therapy had neither increased nor decreased. They were described as happy and loving children.

On the evidence, the court's finding that there would be a deleterious effect on the children if visitation ceased was not supported as a matter of law. The evidence of the history of routine contact between the children and Ms. Degen, and evidence of their positive relationship with her is legally insufficient to sustain a finding of exceptional circumstances. *See Brandenburg*, 193 Md. App. at 192 (A trial court is "not permitted to draw an inference from the mere amount of time the children once had spent with the grandparents and the generally loving and bonded relationship they had had with them that the cessation of contact between the [grandparents] and the children had harmed the children.").

To be sure, Mother's tragic death was a fact the court could consider in assessing whether the Degens had met their threshold burden. The court was not permitted to speculate, however, that the children were or would be harmed by the cessation of visitation between them and their maternal grandparents without solid evidence

supporting such a finding. *See Aumiller*, 183 Md. App. at 84 ("We do not mean to suggest that the death of one parent could not contribute to a finding of exceptional circumstances, but the lack of visitation, without other evidence of future harm, does not support such a finding."). The only evidence relied upon by the Degens to support their argument that the children were being harmed was that three of the children were in therapy. The evidence showed that two of the three children started therapy prior to the cessation of contact between the children and the grandparents and there was no evidence showing that the children's counseling related to any decrease in contact with the grandparents or the extended maternal family.

"The bar for exceptional circumstances is high precisely because the circuit court should not sit as an arbiter in disputes between fit parents and grandparents over whether visitation may occur and how often." *Brandenburg*, 193 Md. App. at 192. Father, as a fit parent, enjoys a presumption that he acted in the best interest of his children when he decided to limit or restrict their access with the Degens. Because there was no evidence to overcome this presumption, we reverse the *pendente lite* order granting them visitation with the children and remand for further proceedings not inconsistent with this opinion.[13, 14]

[13] We recognize that two visits already have occurred—on February 1, 2025, and May 31, 2025. The future visits scheduled for August 30, 2025, and November 22, 2025, may not proceed, however.

II.

Attorneys' Fees

Father sought attorneys' fees under Rule 1-341, which governs awards of fees where the court finds that "the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification[.]" Md. Rule 1-341(a). An award of attorneys' fees under the rule "is considered an 'extraordinary remedy,' which should be exercised only in rare and exceptional cases." *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 19 (2018) (quoting *Barnes v. Rosenthal Toyota, Inc*., 126 Md. App. 97, 105 (1999)). Before imposing sanctions under Rule 1-341(a), "a court [must] make two separate findings[.]" *Id*. at 20. First, the "court must make an explicit finding that a party conducted litigation either in bad faith or without substantial justification." *URS Corp. v. Fort Myer Constr. Corp*., 452 Md. 48, 72 (2017). Second, upon a finding that the predicate for an award of sanctions exists, a court must make a separate finding of "whether the party's conduct merits the assessment of costs and attorney's fees[.]" *Id*. Nevertheless, courts have discretion not to award fees even

[14] Father asks this court to remand with instructions to dismiss the visitation petition. Father's brief is devoid of any argument on the merits of the denial of his motion to dismiss, however, and, consequently, this issue is not before us on appeal. The circuit court may, of course, exercise its discretion to revisit that motion on remand. *See Bennett v. Ashcraft & Gerel, LLP*, 259 Md. App. 403, 457 (A court order that is not a final judgment is "an interlocutory order that the court [i]s free to revise and reconsider at any time before the entry of a final judgment."), *reconsideration denied* (Nov. 30, 2023), *cert. denied*, 486 Md. 246 (2023), and *cert. denied*, 487 Md. 51 (2024).

where the claim was brought in bad faith or without substantial justification. *Christian*, 459 Md. at 30.

At the *pendente lite* hearing, Father argued that the Degens' petition for visitation was filed and maintained without substantial justification because they had not alleged facts or adduced evidence to meet their threshold burden of exceptional circumstances. He introduced evidence that he had accrued $6,717.50 in attorneys' fees prior to the three-day pendente lite hearing. The court denied the request for fees, finding that it was "reasonable" for the Degens to pursue the action and for Father to defend it.[15]

In light of our reversal of the *pendente lite* visitation order, the court on remand should reconsider Father's request for attorneys' fees. We express no opinion on the merits of Father's fee request or whether the court should exercise its discretion to award Rule 1-341 fees.

ORDER OF THE CIRCUIT COURT FOR FREDERICK COUNTY GRANTING VISITATION PENDENTE LITE REVERSED. ORDER DENYING ATTORNEYS' FEES VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.

[15] The court noted that it lacked any financial information that would permit it to determine the Degens' ability to pay. Rule 1-341 does not mandate consideration of a party's financial status, needs, or ability to pay fees, however.