Circuit Court for Baltimore County
Case No. 03-C-18-008725

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2482

September Term, 2019

EMILY J. HAMMANN

v.

CHARLES HAMMANN, III

Graeff,
Arthur,
Zic,

JJ.

Opinion by Graeff, J.

Filed: October 26, 2021

This appeal arises from a Judgment of Absolute Divorce ending the marriage of Emily Hammann, appellant, and Charles Hamman, III, appellee. The judgment, issued by the Circuit Court for Baltimore County, after a four-day trial, awarded the parties shared physical custody of their minor children, T.H. and W.H., and established a visitation schedule. It awarded Ms. Hammann $1,539 per month for child support, along with $3,529 in child support arrears, payable in the amount of $500 per month.

On appeal, appellant presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err in calculating child support arrears by permitting Mr. Hammann to enter new evidence during his closing argument and then concluding that the new evidence reflected that Ms. Hammann agreed to a reduction in child support?

2. Did the circuit court err in awarding joint physical custody when such an award was against the weight of the evidence?

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

FACTUAL AND PROCEDURAL BACKGROUND

Mr. and Ms. Hammann met in 2001, and they got married in 2005. They purchased a home in 2006 (the "marital home"). At the beginning of their relationship, and prior to their marriage, Ms. Hammann attended law school at George Washington University. Ms. Hammann expected to be a partner at a law firm, and she desired to work in the medical malpractice field. Mr. Hammann worked for Oracle, which required him to work three to four days per week in New York and travel frequently. He later enrolled in business school in 2008, and he graduated with an MBA in 2011.

In December 2008, the parties welcomed their first child, T.H., and in November 2011, they welcomed their second child, W.H. The marriage became strained after the birth of T.H., however, due to the difficulty for Ms. Hammann to continue to strive for partner at her law firm while Mr. Hammann worked and took classes at business school. Mr. Hammann requested that Ms. Hammann stop working and take care of T.H. so Mr. Hammann could continue to work and attend business school full-time. Ms. Hammann did not want to stop working, and she asked Mr. Hammann to reduce the time spent at business school, but he declined. Ms. Hammann eventually left the law firm and found employment at an insurance company.

The marriage further deteriorated after the birth of W.H. On August 28, 2018, while Mr. Hammann was away on a business trip and the children were with Ms. Hammann's parents, Ms. Hammann moved out of the marital home.

On August 31, 2018, Ms. Hammann filed a Complaint for Limited Divorce in the Circuit Court for Baltimore County. Ms. Hammann alleged that Mr. Hammann "constructively abandoned and deserted [her] in that his cruel and vicious conduct toward her made the continuation of the marital relationship impossible." Ms. Hammann requested, among other remedies, a limited divorce, alimony and support pendente lite, permanent custody of T.H. and W.H. pendente lite, child support, and use and possession of the marital home. She also requested that Mr. Hammann pay the mortgage, tax, and insurance charges connected to the marital home.

On November 2, 2018, the parties entered into an Interim Consent Order Regarding Custody and Visitation. The Order provided that Ms. Hammann would have primary physical custody of T.H. and W.H., and Mr. Hammann would have parenting time every other weekend, from Friday night to Monday morning, as well as every other Wednesday evening for dinner. The parties had joint legal custody of the children, and in the event a consensus could not be reached regarding a "major life decision," the parties would consult a parent coordinator.

On June 19, 2019, the parties appeared before a Magistrate for a *pendente lite* hearing.[1] Ms. Hammann's counsel advised that the parties would reserve on the issues of legal custody and *pendente lite* alimony, but they had reached an agreement on several matters. They agreed that, based on the 2018 W-2 incomes of the parties, if custody remained primarily with Ms. Hammann, child support should be set at $2,829 per month.[2] Health insurance, which cost $306 per month for the children, remained Mr. Hammann's obligation. If the Magistrate recommended shared custody, the parties asked for a recommendation for child support extrapolated from the guidelines. Mr. Hammann would contribute $10,000 to Ms. Hammann's attorney's fees. Ms. Hammann and Mr. Hammann advised that they accepted the agreement. The Magistrate then asked counsel to draft a Partial Interim Consent Order and indicated that the parties were bound by that agreement.

[1] The record contains only a partial transcript of the *pendente lite* hearing.

[2] The monthly income was as follows: $7,988 for Ms. Hammann and $15,421 for Mr. Hammann.

Following a lunch recess, the Magistrate noted that the parties wished to make an addendum to their agreement. Counsel advised that they realized that the start date for the child support amount depended on the court's decision on custody, which would be delayed, so until a judge issued an order in that regard, Mr. Hammann would continue to make Ms. Hammann's car payments and pay her student loans and the mortgage. The terms of the addendum are discussed in greater detail, *infra*. The Magistrate noted that, even though the written order "might follow later," the agreement and addendum was "a contract effective now." No written consent order was filed.

On October 31, 2019, Ms. Hammann filed a Supplemental Complaint for Absolute Divorce and Other Relief ("Supplemental Complaint"), which noted that the parties had remained separate and apart for more than one year. In addition to the remedies Ms. Hammann sought in her initial Complaint for Limited Divorce, Ms. Hammann sought a monetary award to balance the equities and at least one-half of the interest in Mr. Hammann's retirement account.

On November 15, 2019, Mr. Hammann filed a response to Ms. Hammann's Supplemental Complaint, and requested that the court grant the parties an absolute divorce. Mr. Hammann, however, requested that the court award him shared physical and sole legal custody of the children, as well as use and possession of the marital home.

On December 13, 2019, three days prior to the merits hearing, the parties reached an agreement on the issues of alimony, marital property, and debt. The only issues remaining for the merits hearing were custody of the children, visitation, child support

arrears, and attorney's fees incurred subsequent to the agreement. The parties' investment and retirement assets were to be divided, Mr. Hammann was to pay off Ms. Hammann's automobile and then transfer ownership to her, Mr. Hammann was to pay Ms. Hammann $10,000 as a monetary award, Mr. Hammann would contribute $10,000 toward Ms. Hammann's attorney's fees, and Ms. Hammann withdrew her request for alimony.

On December 16, 2019, the court held a hearing. It noted that the parties had settled the financial issues, leaving only the issues of "absolute divorce, child custody, child access, and child support[.]" Counsel for Ms. Hammann stated that costs and attorney's fees for the trial also were at issue. Counsel for Mr. Hammann, during his opening statement, noted that "there was an agreement in place with respect to arrears," but he could not recall the exact details of the agreement and was waiting on a transcript from the court reporter's office.

Counsel for Ms. Hammann called Mr. Hammann as a witness. Mr. Hammann testified regarding his current occupation and salary, as well as his previous work history. He testified regarding several alleged altercations that led to Ms. Hammann filing for a protective order.[3] Mr. Hammann did not recall agreeing to a dollar value of child support at the *pendente lite* hearing, but rather, his understanding was that he would pay the

[3] A final protective order was issued, which lasted for six months, but it had expired by the time of the first day of the merits hearing on December 12, 2019. As part of the Term Sheet dated December 13, 2019, Ms. Hammann agreed to immediately rescind the protective order and consent to an immediate shielding of the order.

mortgage, Ms. Hammann's car payments, and Ms. Hammann's student loan payments in lieu of child support.

Ms. Hammann testified that, after T.H. was born, it was difficult to take care of him while working at a medical malpractice firm as an attorney. Because Mr. Hammann refused to cut back in his own career, she left the law firm and took a job at Health Providers Insurance Exchange ("HPIX") so she could devote more time and attention to T.H. HPIX closed its doors several years later, however, and Ms. Hammann returned, briefly, to the practice of law at another law firm. Ms. Hammann left that firm within a year, and she returned to her prior firm, where she worked for approximately two years. She subsequently left that firm again and found employment at The Doctor's Management Company ("TDC"), where she worked as a claims specialist. At TDC, Ms. Hammann enjoyed "pretty flexible" hours, and she was eligible for bonuses. Her annual salary at the time was "97 and change," plus a bonus of approximately $8,000.

Ms. Hammann described her inability to get along with Mr. Hammann, noting that they slept in separate bedrooms for several years prior to the separation, communicated via e-mail to avoid fighting in front of the children, and had very different parenting styles. Mr. Hammann would raise his voice with T.H., and Ms. Hammann believed a softer approach was more appropriate. The parties also disagreed regarding what sports T.H. should play.

She described herself as the "go-to parent for everything." She took the children to school, cared for them when they were sick, and arranged playdates. Although the children

had their own bedrooms, they would crawl into bed with Ms. Hammann at night, while Mr. Hammann slept in his home office or the basement.

With respect to child support, Ms. Hammann stated that, since the date of separation, Mr. Hammann "ha[d] not paid [her] directly any child support." When asked by counsel if she had received support of any kind from Mr. Hammann, Ms. Hammann stated:

> So initially when I moved out, Mr. Hammann would put his paycheck in the bank, in the joint account. I was very specific about taking money out of that account to pay for kid things such as uniforms for their school, money related to a doctor, money related to school supplies, [] sporting things for the kids, [and] groceries for the kids.
>
> You know, I would look at my grocery bill and divide it by three and multiply it by two and take that money out. I never took -- even though there were discussions about X amount of dollars a month as child support, I never took out a chunk. I was very careful to only take out things I could account for.

Additionally, Ms. Hammann acknowledged the various payments Mr. Hammann had agreed to make at the *pendente lite* hearing. Those payments however, benefited Ms. Hammann, not the children, and Ms. Hammann and her mother had been paying for the children's expenses without contribution from Mr. Hammann. Ms. Hammann estimated that her parents contributed more than $20,000 to support the children.

Regarding her financial statement, Ms. Hammann determined the expenses she incurred on behalf of the children by assigning two-thirds of the general expenses, i.e., "rent, gas and electric, water, cellphones," to the children, and the remaining one-third to herself. For food and dining out, Ms. Hammann calculated that she spent $1,450 per month on the children. She explained that W.H. preferred to eat lots of fresh fruit, T.H. liked

snacks, and they ate out on a frequent basis as a result of the children's extracurricular schedules. Ms. Hammann also listed a $333 per month vacation expense. She arrived at that figure by adding up the total spent on vacations throughout a given year, dividing that number by 12 to determine the cost per month, and then further dividing that number by four to account for each of the children.[4] Additionally, between the months of September 2018 and April 2019, Ms. Hammann withdrew $14,105.73 from the parties' joint account for the benefit of the children. She also produced Venmo records which showed various payments she made to individuals who had babysat the children.

With respect to Mr. Hammann's relationship with the children, Ms. Hammann stated that T.H. would "cry and work himself up to the point of vomiting on occasion because he [did] not want to go to his father's house for the weekend." Both T.H. and W.H. were "anxious and scared" while at Mr. Hammann's house, and they would hide in various places while calling Ms. Hammann on her phone via FaceTime.

Dr. Kathleen Burns, a family friend, testified on Ms. Hammann's behalf. Dr. Burns observed that Ms. Hammann spent more time with the children than Mr. Hamman, but she noted that she saw Mr. Hammann present with his children "on many occasions," such as "[b]irthdays, graduations, [and] lots of other just times that we were hanging out as families." Dr. Burns described Ms. Hammann as "a very devoted parent" who "loves her

[4] Ms. Hammann divided by four to determine the proportion attributable to her, Mr. Hammann, and the two children.

children very much." Dr. Burns would trust Ms. Hammann with her own children, and she "never had any concerns about [Ms. Hammann's] competency as a parent."

On cross-examination, Dr. Burns also described Mr. Hammann as a competent parent, noting that she would trust him with her children. Mr. Hammann was a "devoted father."

On December 17, 2019, the merits hearing resumed. Dorcas Hutton, a "family therapist," described the interactions she had with the parties. During the therapy sessions, Ms. Hammann would drop off the children and provide any necessary updates, at which point Ms. Hutton would talk with the children outside of Ms. Hammann's presence. Mr. Hammann, by contrast, did not appear in person but left voicemails requesting copies of the children's records. When Ms. Hutton was unable to release the records, Mr. Hammann became persistent in his request, and Ms. Hutton invited Mr. Hammann to meet with her directly so that they could discuss the children's therapy. Mr. Hammann declined.

Following Ms. Hutton's testimony, Ms. Hammann testified again. She stated that there was "absolutely no ability for any decisions to be jointly made" between her and Mr. Hammann. This was true prior to the separation, and the parties had disagreed on most parenting decision-making, including sports, religion, holidays, vacations, and what toys to buy the children. The parties communicated via text or e-mail, and their communication was always "aggressive."

When asked to characterize her relationship with the children, Ms. Hammann stated:

> Wonderful. I mean, I have done everything for those children since they were born. I have created who they are today. I have done everything from bathe

> them, put them to sleep, read them books, math, art projects, science projects. We made a giant prehistoric bird with [W.H.]
>
> I take them on hikes. I take them to all different locations, expose them to history, to different museums.
>
> You know, each child is different and each relationship is different. And I have different relationships with each child. But, you know, they are completely attached to me and they let me know it all the time.

Ms. Hammann added that she was the one who gave structure and support to the children. The children were attached not only to her, but to her parents.

Ms. Hammann proposed a "4 out of 10 night schedule," with Mr. Hammann having four nights and Ms. Hammann having the remaining nights with the children. Ms. Hammann did not want the court to grant Mr. Hammann greater access to the children than what he currently enjoyed, and she requested full legal custody, or, alternatively, tiebreaking authority. Although she acknowledged that she and Mr. Hammann ultimately reached an agreement regarding where T.H. would attend school, they communicated exclusively through counsel, and they spent approximately $20,000 in attorney's fees prior to reaching that agreement. Accordingly, she believed that awarding her sole legal custody or tiebreaking authority would be in the best interest of the children.

On cross-examination, Ms. Hammann described Mr. Hammann as being "unbalanced." "He was happy, giggling one minute, crying the next, yelling the next." She explained that she entered into the November 2018 Consent Agreement, which gave Mr. Hammann substantial access to the children, because she "had to agree to something or [else they] were going to go months and [they] would have to wait" for a court date to

resolve child access. Ms. Hammann did not dispute Mr. Hammann's love for the children, but she believed that he made financial success a priority in his life. Ms. Hammann stated that she considered Mr. Hammann's payments toward her student loans to be a form of alimony.

Hope Sachs, Ms. Hammann's friend, also testified on Ms. Hammann's behalf. Ms. Sachs "looked up to [Ms. Hammann] as a mom," "a mom who puts her kids above all else." Ms. Sachs had never observed Mr. Hammann parenting the children, but she conceded that she was not friends with Mr. Hammann and saw him infrequently.

Jane Levin, Ms. Hammann's mother, testified that she had a good relationship with Mr. Hammann prior to the parties' separation, and he would visit for Thanksgiving. She had "no doubt Mr. Hammann loves his children," but she felt that he favored T.H. to W.H. She explained:

> I have honestly racked my brain. I cannot recall a single instance of him doing something with [W.H.] other than, you know, talking to her. But not playing a game, taking her just somewhere for herself.
>
> It's just, you know, he's there. But he's not the one organizing the events. He's not the one doing the homework. He's not the one planning a birthday party.
>
> It's just, you know, [Ms. Hammann] is a very hands-on mom. And she seems to take over the majority of that sort of thing.

Ms. Levin noted that, in the years preceding the separation, Mr. Hammann seemed "increasingly withdrawn." Although he usually was "[p]leasant" with the children, "when they don't listen, he [would] get really mad."

When Ms. Hammann moved out of the marital home, the children were "shocked" and were "hanging on" Ms. Hammann. Both of the children were very close to Ms. Hammann. Ms. Levin and her husband, Richard Levin, provided between $20,000 and $25,000 in financial support to Ms. Hammann for the benefit of the children. This included paying the rent for Ms. Hammann's new residence, clothes for the children, and groceries. Ms. Levin explained, however, that she expected Ms. Hammann to pay back the amount, noting that it was "meant to be a loan."

The hearing resumed on December 18, 2019. Although Ms. Hammann had not yet rested her case, due to scheduling issues with several of her witnesses, Mr. Hammann began to present his case. Robert Horne, a lawyer and friend of the parties, testified that he met the parties in 2014 or 2015, and he had been friends with them since that time. He described Mr. Hammann as "a great dad" who "was always there and involved."

On cross-examination, Mr. Horne conceded that it had been several years since he was involved in any activities with Mr. Hammann and the children. He also admitted that he was in the middle of a divorce, and Ms. Hammann testified on behalf of his spouse.

Mr. Hammann testified on his own behalf. He first explained his work history and the high salaries he earned throughout the parties' marriage, noting that he typically earned more than $200,000 per year working in IT sales. His current job did not involve much travel, and therefore, he had the ability to have the children while he was working.

Mr. Hammann's relationship with his family suffered during the marriage because Ms. Hammann did not like to spend time with his family. Following the parties' separation,

Mr. Hammann's relationship with his family improved, and the children developed a relationship with their paternal aunt and paternal grandparents. W.H. had developed a healthy relationship with her paternal aunt and enjoyed doing arts and crafts with her. T.H. played tennis with his paternal grandfather.

Mr. Hammann described himself as "a very involved parent." He changed diapers, bathed his children, and played with them. Additionally, he coached several of the children's sports activities, attended their sporting events, and took T.H. to school. Mr. Hammann stated that it was "absurd" that Ms. Hammann and Ms. Levin would categorize him as "an absent dad," noting that such an allegation was frustrating.

Mr. Hammann's testimony was paused while Dr. Richard Levin, Ms. Hammann's father, testified on Ms. Hammann's behalf. Dr. Levin recounted several times where Mr. Hammann called to discuss problems with the parties' marriage. Mr. Hammann asked Dr. Levin to intercede on his behalf with Ms. Hammann, to "bring down the level of heat and tension that existed at that time" between the parties, but Dr. Levin declined, stating that it would not be appropriate to carry out Mr. Hammann's request. Mr. Hammann called Dr. Levin following the parties' separation to ask Dr. Levin to "bang some sense" into Ms. Hammann because "she was being wild in her requests," specifically, her request that she have full custody of the children.[5]

[5] Dr. Levin did not answer Mr. Hammann's phone call, and therefore, Mr. Hammann left Dr. Levin a voicemail. The voicemail was played for the court, but it was not transcribed into the record. On cross-examination, Dr. Levin explained that Mr. Hammann did not use the words "bang some sense" himself, but rather, that was Dr. Levin's characterization of Mr. Hammann's request.

Dr. Levin also observed several instances where Mr. Hammann lost his temper, and "[o]n occasion, there were more severe words as . . . the conditions of the marriage declined." Dr. Levin characterized Ms. Hammann as "a spectacular mom" who was "[d]edicated to not only [the children's] physical needs and their happiness, but anticipating what is next and always being available."

Following Dr. Levin's testimony, Mr. Hammann resumed his direct examination. He denied that he was an absent father, stating that he would watch cartoons with T.H. in the mornings, and after T.H. returned from daycare, the parties would work together to cook meals, do household chores, and take care of T.H. After the birth of W.H., Mr. Hammann spent more time taking care of T.H., and he would pick up T.H. from school while Ms. Hammann picked up W.H. from daycare. He also helped T.H. with homework and read with him before putting him to bed. As the children grew older, Mr. Hammann remained a part of their lives, taking them to birthday parties, sometimes without Ms. Hammann, helping them with homework, and going on family vacations.

Mr. Hammann testified that he often played soccer with W.H., and he would take W.H. out to dinner. Once Ms. Hammann moved out of the marital home, taking the children with her, he purchased them new bedroom furniture, but the children were still upset. Mr. Hammann requested an overnight visit the Wednesday following Ms. Hammann's move, but Ms. Hammann would only allow the children to visit for dinner. Mr. Hammann signed the Consent Order in November 2018 because it "doubled [his] time

with [his] children," but he did not believe the schedule was in the children's best interest because it did not allow the children to have overnight visits on the weekdays.

Mr. Hammann wanted "equal time" with the children. He proposed a week on, week off, schedule. He acknowledged that weekday visits were difficult "[b]ecause the children are there for a short period of time and they, you know, have to leave. And while they are there, [they] have to do homework and have dinner. It's not a lot of time for them to fully decompress." For the summer, Mr. Hammann proposed giving each of the parties three weeks of vacation with the children. Additionally, he specifically requested having the children for Thanksgiving, but he was willing to trade that holiday with Ms. Hammann for Christmas.

Regarding legal custody and the parties' ability to make decisions relating to education, religion, and medical care, Mr. Hammann noted that he came from a Catholic background, and Ms. Hammann was Jewish. Although the children had been raised in both faiths, T.H. attended a private Christian school, and they celebrated both Christmas and Hanukkah. Mr. Hammann believed that joint legal custody would allow the parties "to continue to expose [the] children to both of these faiths." With respect to medical issues, Mr. Hammann could not recall a medical issue that the parties were unable to resolve. With respect to education, he and Ms. Hammann eventually agreed to keep T.H., then in the fifth grade, enrolled in private school, while W.H. attended public school. He acknowledged that he and Ms. Hammann negotiated through counsel, but he disputed that it cost the parties $20,000 in attorney's fees. Although both parties agreed initially on where T.H.

would attend middle school, Mr. Hammann recognized that, based on Ms. Hammann's testimony, Ms. Hammann was open to sending T.H. to another school, and he wanted legal custody so that he could provide his input.

Discussing his finances, Mr. Hammann explained that he had been living with a $3,000 monthly deficit, which he covered by borrowing $51,000 from his father and using credit cards. He was obligated to repay his father, and he executed a promissory note in the amount of $37,000.[6] Mr. Hammann intended to refinance the marital home and purchase Ms. Hammann's interest.

On cross-examination, Mr. Hammann acknowledged that he had not updated his financial statement since June 2019. He testified that, although they had discussed the possibility of Ms. Hammann moving out of the marital home, he was shocked that Ms. Hammann followed through because it was not in the best interest of the children.[7] Mr. Hammann conceded that, between 2009 and 2011, when he was attending business school, Ms. Hammann primarily was responsible for the pick-ups and drop-offs of the children. He stated, however, that he had not asked Ms. Hammann to reduce her work hours, asserting that she made that decision on her own. He proposed that Ms. Hammann could work less as one of several solutions. The alternative solutions included: (1) both parties

[6] On cross-examination, Mr. Hammann stated that the amount of the promissory note was $35,000.

[7] Mr. Hammann had proposed "nesting," where he and Ms. Hammann would take turns living in the marital home with the children, and they would share an apartment "[o]n and off" when it was not their turn to be in the marital home.

work full-time and hire a nanny; (2) limit costs by placing the children in public school; or (3) Mr. Hammann would reduce his hours and take care of the children.

On December 19, 2019, Christine Hammann ("Christy"), Mr. Hammann's sister, testified that she recently had re-connected with Mr. Hammann. Prior to that time, Mr. Hammann devoted much of his time to Ms. Hammann, the children, and Ms. Hammann's family. Christy testified that Mr. Hammann was "extremely attentive to his children." He was "[i]nterested in playing with them and their well-being and their thoughts." The children appeared to be perfectly fine and happy when they were with Mr. Hammann, and they were "enamored with him."

Jane Hammann ("Jane"), Mr. Hammann's stepmother, testified that she viewed Ms. Hammann as a member of the family, but her relationship with Ms. Hammann drifted apart following the birth of T.H. Although she had five other grandchildren, Ms. Hammann did not let Jane see T.H. or W.H. as much as she would have liked. The children got along with their cousins, i.e., Jane's five other grandchildren, but the children had limited interaction with their cousins before the separation. Following the parties' separation, the children spent more time with Jane and her husband, their paternal grandfather.

Charles Hammann, Jr. ("Charles"), Mr. Hammann's father, testified that, "[o]ver the years, after the children were born, it became tougher and tougher to see them because [Ms. Hammann] didn't really feel that that was important to them. During the summer, Mr. Hammann and the children would, on occasion, come over to swim at their pool, but

Ms. Hammann did not attend. Following the parties' separation, however, he was able to spend significantly more time with the children.

Charles stated that Mr. Hammann was a "very involved dad," and the children were with Mr. Hammann "most of the time." Mr. Hammann was "active with both children," despite his frequent business travels. Charles asserted that both parties cared for the children, and despite Ms. Hammann's allegations, Mr. Hammann was present "on a regular basis" and "cared for [the children] at the same time as" Ms. Hammann.

Regarding the $35,000 promissory note, Charles had since provided Mr. Hammann with more funds, and the total Mr. Hammann owed as of the date of the merits hearing was $63,000. The money was used to pay Mr. Hammann's attorney's fees. Charles intended to get a new promissory note that reflected the increased amount that Mr. Hammann owed him.

On rebuttal, Ms. Hammann refuted Charles' and Jane's testimony regarding the drift in their relationship with the parties and the children, explaining that, because Mr. Hammann was frequently unavailable due to his traveling and business classes, Ms. Hammann and the children preferred to spend time alone with him when he was available, as opposed to time with Mr. Hammann's parents. Ms. Hammann felt that it was important for the children to have a relationship with their paternal grandparents, but Charles and Jane were too busy with their other grandchildren to attend outings with the children.

On January 13, 2020, counsel for the parties gave closing arguments. Counsel for Ms. Hammann highlighted that Ms. Hammann had been the primary caregiver for the

children throughout the marriage. Counsel argued that, based on the evidence presented, Mr. Hammann was not entitled to increased time with the children. She further asserted that Mr. Hammann had not paid any child support since the separation and rejected his argument that the mortgage payments constituted child support. Counsel also proffered that, because Mr. Hammann had not updated his financial statement, the document contained "substantial misrepresentations" regarding his expenses and income.

Regarding physical custody, counsel reiterated that Ms. Hammann was requesting primary physical custody, with Mr. Hammann to have visitation every other weekend from Thursday after school to Monday morning when school starts, as well as a Thursday evening visit on the week they were with Ms. Hammann. With respect to child support, counsel argued this was an "above guidelines case," but the guidelines for sole custody should be followed. Ms. Hammann's yearly income was $95,000 a year and Mr. Hammann's was approximately $223,000. She asked that Mr. Hammann be ordered to pay $3,357 per month in child support, as well as $39,744 in arrears.[8]

Counsel for Mr. Hammann argued that the evidence showed that Mr. Hammann was a good parent who was able and willing to care for the children. He asserted that Mr. Hammann was requesting an "equal [50/50] type of custodial arrangement." With respect to Ms. Hammann's request for child support arrears, the following occurred:

> [COUNSEL FOR MR. HAMMANN]: Your honor, the request for arrears was resolved at the pendente lite level. I've given [Ms. Hammann's counsel]

[8] This amount was calculated based on $3,357 for the 16 months that had elapsed since the parties' separation, for a total of $53,700. From that amount, counsel subtracted $14,000 that Ms. Hammann used from the joint account, resulting in arrears of $39,744.

> before a transcript, which I'm going to present to the [c]ourt at this time, which I believe confirms that agreement between the parties back in June of this past year, with respect to the arrearage issue. If I may?
>
> THE COURT: You may.
>
> [COUNSEL FOR MS. HAMMANN]: Well, Your Honor, this is not in evidence.
>
> [COUNSEL FOR MR. HAMMANN]: It's the record of this case.
>
> THE COURT: I don't think it has to be in evidence. Let's what's the, this is a pendente --
>
> [COUNSEL FOR MR. HAMMANN]: This is the agreement, Your Honor, with respect to arrears, yes. This is the *pendente lite* agreement.

In response to the court's request to see the order accompanying the *pendente lite* agreement, Mr. Hammann's counsel stated that there was no order, but the transcript showed the agreement reached by the parties.[9] The court then agreed with Ms. Hammann's counsel that the transcript should have been "put in as evidence." The following exchange then occurred:

> [COUNSEL FOR MR. HAMMANN]: Your Honor, I don't believe that needs to go in evidence if it's an agreement between the parties that was placed on the record in [c]ourt. This was their agreement with respect to arrears. I, I can't understand. If the, the [c]ourt, before [the Magistrate], her ability as a Magistrate, to consider the parties' agreement, that's what I have before you. It's embodied in this and it's inconsistent with her request for arrears.
>
> THE COURT: I think you should have, but I, I will allow it because there was testimony about what happ, that something happened at the *pendente lite* hearing and it didn't --

[9] The copy of the transcript included in the record before this Court states that the transcript was "only a portion of the hearing that was held" on June 19, 2019, "and not a complete transcript."

> [COUNSEL FOR MS. HAMMANN]: A number of things --
>
> THE COURT: -- and it didn't, the hearing didn't happen.
>
> [COUNSEL FOR MS. HAMMANN]: It didn't conclude and end. I totally disagree that there was any agreement on arrears. There was an agreement on certain payments that Mr. Hammann was going to make, it had nothing to do with arrears. Not on our side.
>
> [COUNSEL FOR MR. HAMMANN]: But, Your Honor, that agreement is part of the record before this Court.
>
> THE COURT: There's a difference between what's part of the record from the date this thing was first filed until what is in evidence in the [c]ourt. I base a decision based on the evidence that's presented to me.
>
> [COUNSEL FOR MR. HAMMANN]: But there was an agreement between the parties, Your Honor, that's what I'm trying to emphasize --
>
> THE COURT: Well, you should have had testimony to it, but I'll take a look at it.

Mr. Hammann's counsel then requested that the court reopen the case to receive evidence regarding the parties' agreement. The court agreed to reopen the case to admit the transcript into evidence.

Referencing the *pendente lite* transcript, Mr. Hammann's counsel argued that the parties agreed at the hearing that Mr. Hammann would pay for certain expenses "in lieu of child support" payments of $2,800/month, and therefore, there was "no arrears period." Counsel argued that the court had discretion whether to award child support arrears, and his position was that the court should not do that based on the agreement placed on the record, which he asserted showed that Mr. Hammann's payment of expenses was in lieu of child support and therefore, there was no arrearage. Counsel stated that the agreement was that he would make the payments listed until there was an order determining access, and if

that was sole custody, the agreement was he would pay $2,800. Counsel for Ms. Hammann reiterated her position that there was an agreement made during the *pendente lite* hearing for Mr. Hammann to make certain payments, but that was it.

Ms. Hammann testified that, prior to the *pendente lite* hearing, Mr. Hammann had been paying certain expenses such as her student loans and car payment (totaling approximately $1,100), and that her understanding from the hearing was that he would continue to make those payments. She proffered that it was her impression that the *pendente lite* hearing did not involve arrears, and that arrears "had to be a trial issue or something the parties discussed later," after a ruling on child support and custody. She stated those payments resolved her alimony claim. On cross-examination, Mr. Hammann's counsel directed Ms. Hammann's attention to the portion of the transcript in which her counsel proffered that their position was that Mr. Hammann would continue to make certain payments until there was a custody and support ruling. Ms. Hammann's counsel argued that, although some agreements were placed on the record at the *pendente lite* hearing, there was nothing in the transcript to show that the parties waived child support arrears.

The court said that the transcript did not support the argument that the payments were in lieu of alimony, noting that counsel stated at the hearing that they were reserving on *pendente lite* alimony. It stated that it was "pretty clear" that the agreement was that the payments he made were child support until there was a court order.

After additional argument, the court issued its oral ruling. The court initially granted Ms. Hammann an absolute divorce from Mr. Hammann. With respect to custody, the court reviewed all the pertinent factors. It found that both parties were fit parents, were "sincere in their desire to have the custody that they[] asked for and to be involved in the day to day lives of their children." It found that the potential for maintaining natural family relations was the same for both parties. With respect to the preference of the children, the court stated: "None were expressed, although M[s]. Hammann testified that the children have anxiety and stress over the visits with Mr. Hammann, especially on the Monday night vis[its], overnights." The court further found that, although Ms. Hammann was "very involved with the children" and had a "wonderful relationship" with them, Mr. Hammann also was involved with their day-to-day lives and had a good relationship with both children. The court found that it was "in the best interest of the children that the parties have shared custody," with a schedule where Mr. Hammann would have the children every other week on Tuesday starting after school until Monday before school, and Ms. Hammann would have them at all other times, except certain holidays and summer vacation.

With respect to legal custody, the court discussed the pertinent factors and granted the parties joint legal custody of the children, with tie-breaking authority awarded to Ms. Hammann. The court then addressed child support, stating that it accepted the incomes set forth by the parties, i.e., $97,000 for Ms. Hammann and $190,000 for Mr. Hammann. Based on 156 overnights for Mr. Hammann and 209 overnights for Ms. Hammann, and

giving Mr. Hammann credit for insurance, the court ordered Mr. Hammann to pay Ms. Hammann $1,539 per month in child support, beginning January 1, 2020.

With respect to the issue of arrears, the court found that, based on the *pendente lite* hearing transcript, the parties agreed at that hearing that Mr. Hammann would pay for Ms. Hammann's car payment and student loans in lieu of child support. Accordingly, it ordered Mr. Hammann to pay $3,529 in arrears, which reflected ten months of child support ($1,539/month) prior to the *pendente lite* hearing, as well as the six months following the hearing.[10] The court memorialized these rulings in a written Judgment of Absolute Divorce, entered on January 22, 2020.

On January 31, 2020, nine days after the judgment, Mr. Hammann filed a Motion to Alter or Amend Judgment of Absolute Divorce. In the motion, he argued that the judgment did not accurately reflect the parties' previous agreements regarding property

[10] Specifically, the court calculated that, for the ten months prior to the June 2019 *pendente lite* hearing, Mr. Hammann owed $1,539 per month for a total of $15,390. The court gave Mr. Hammann a credit for $14,105 that Ms. Hammann had used from his pay check deposits for the children, however, leaving Mr. Hammann with arrears for that period in the amount of $1,285.

For the six months between the *pendente lite* hearing until the trial, July to December 2019, the court found that, pursuant to the agreement, Mr. Hammann paid, in lieu of child support, $1,165 per month for Ms. Hammann's car payment ($460/month) and Ms. Hammann's student loans ($705/month), for a total of $1,165 per month. Subtracted from child support of $1,539, that left a shortage of $374 per month. That shortage for six months amounted to $2,224. Adding the two periods together ($1,285 for ten months prior to *pendente lite* hearing and $2,244 for July 2019 through December 2019), the court arrived at an arrears amount of $3,529.

distribution. Mr. Hammann also challenged certain aspects of the access schedule and Mrs. Hammann's tie-breaking authority on legal custody issues.

On February 7, 2020, Ms. Hammann filed a motion to alter or amend the judgment, arguing numerous access issues and challenging the court's calculation of arrears and child support. On February 20, 2020, while the motions to alter or amend were still pending, Ms. Hammann filed her notice of appeal to this Court.

On February 28, 2020, the circuit court issued a Consent Order. The Order stated that each party had filed motions to alter or amend the judgment, and the parties "believe[d] that some of the issues cited in their respective Motions are resolvable through mediation." Consequently, the court ordered that the parties attempt mediation. The Order further provided that, if the parties arrived at an "impasse" after making a good faith effort to resolve the outstanding issues, the court would "schedule a hearing to consider all open motions."

On April 10, 2020, the court entered a Family Law Settlement Court Order stating that the case was not resolved by mediation. Both parties requested a hearing on their motions to alter or amend the divorce judgment. The parties advise that a hearing is scheduled for November 30, 2021. After oral argument, Mr. Hammann withdrew his motion to alter or amend the judgment.[11]

[11] At oral argument, we asked the parties about the effect of Mr. Hammann's motion to alter or amend the judgment. Pursuant to Md. Rule 8-202, "when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant

DISCUSSION

I.

Child Support Arrears

Ms. Hammann contends that the circuit court erred in calculating child support arrears in the amount of $3,529. She argues that the record showed that the parties agreed that Mr. Hammann would pay $2,829 a month in child support, plus her car payments and student loans. Ms. Hammann asserts that the court should have awarded her arrears in the amount of "$2,829 per month for the sixteen months that she had sole custody from August 31, 2018 – January 13, 2020, or $45,264, less the $14,105 received from the joint account between August 29, 2018 and March of 2019, or total arrears of $31,159."

With respect to the court's reliance on the excerpted transcript of the *pendente lite* hearing in calculating child support arrears, Ms. Hammann alleges that the court erred in two ways. First, she asserts that the court erred in allowing Mr. Hammann to enter into evidence a portion of the *pendente lite* transcript because "[n]ew evidence cannot be presented by an attorney in closing arguments," and "without opportunity to offer the entire transcript, Ms. Hammann was essentially sandbagged, to her prejudice." Second, she

to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534." Md. Rule 8-202(c). "[W]hen a motion to alter or amend an otherwise final judgment is filed within ten days after the judgment's entry, the judgment loses its finality for purposes of appeal." *Green v. Hutchinson*, 158 Md. App. 168, 171 (2004) (quoting *Nina & Nareg, Inc. v. Movahed*, 369 Md. 187, 199 (2002)).

On September 14, 2021, this Court issued a show cause order for Ms. Hammann to show cause "why this appeal is properly before this Court for disposition at this time." On September 17, 2021, Mr. Hammann withdrew his motion to alter or amend the judgment. Accordingly, the issue regarding its effect on this appeal is moot.

argues that, even if properly admitted, "it is clear from the redacted portion submitted by counsel for Mr. Hammann, [that] there was simply no specific agreement by Ms. Hammann to accept a lesser amount of child support than $2,829 per month."

Mr. Hammann contends that the circuit court did not abuse its discretion in calculating child support arrears. He asserts that the record of the *pendente lite* hearing was before the court, and his request to submit the transcript into evidence "was akin to asking the lower court to take judicial notice," noting that the transcript was "essential" to his case and provided the court with a "fundamental and necessary understanding of the parties' prior agreements regarding financial matters." Mr. Hammann further argues that it was clear from the transcript that Ms. Hammann had agreed to accept payments of her student loan, her car loan, and the mortgage in lieu of child support payments. In any event, even if error, he argues that it was harmless error because he testified at the merits hearing that the agreement existed and that his payments were in lieu of child support.

We begin with Ms. Hammann's first argument that the court erred in reopening the case during closing arguments. A trial court has broad discretion to reopen a case to receive additional evidence. *Della Ratta v. Dyas*, 183 Md. App. 344, 374 (2008), *aff'd*, 414 Md. 556 (2010). To determine whether a court abused its broad discretion in this regard, we ask "whether the proffered evidence is 'essential' to a party's case or 'supplemental,'" as well as "whether a party will be improperly prejudiced," or "whether the omission was inadvertent." *Id.* (quoting *Cooper v. Sacco*, 357 Md. 622, 637–40 (2000)). Trial judges who grant a motion to reopen a case to prove an essential fact "generally act within their

discretion." *Cooper*, 357 Md. at 639. "When a party is not allowed to prove evidence that is essential to their case, generally . . . it would be unduly prejudicial for the trial judge not to give that party an opportunity to submit such evidence." *Id.* at 643.

Here, counsel for Mr. Hammann alluded to the agreement reached by the parties regarding child support.[12] Evidence of the earlier agreement regarding child support was critical to Mr. Hammann's argument regarding the amount of child support arrears. The court did not abuse its discretion in reopening the case to receive this evidence.[13]

Ms. Hammann next contends that the court's ruling on the merits was erroneous, stating that "[a] true reading of the transcript makes clear Ms. Hammann did not make any agreement to take less than the agreed upon monthly amount of child support." Mr. Hammann contends that the circuit court properly found that the transcript showed that Ms.

[12] Counsel stated:

> Your Honor, I am not going to dwell on the child support or child support arrears issue today, other than . . . that there was an agreement in place with respect to arrears. I don't recall the details right now, but I have had the court reporter's office make a transcript and we will, of course, deliver that to you.
>
> It is what it is. The Court may or may not decide to award arrears to Mrs. Hammann. With respect to child support going forward, I am asking you to take into consideration the agreement that was in place as well as the fact that the pie is only so big. And he was contributing as he could to pay for certain items that had to get paid for.

[13] Ms. Hammann also argues that the court erred in admitting a portion of the transcript into evidence without giving her the opportunity to offer the entire transcript. This argument, however, was not made below, and therefore, it is not preserved for review. *See Zellinger v. CRC Dev. Corp.*, 281 Md. 614, 620 (1977) ("A contention not raised below either in the pleadings or in the evidence and not directly passed upon by the trial court is not preserved for appellate review.").

Hammann accepted Mr. Hammann's payments of her student loan, car loan, and the joint mortgage obligation in lieu of direct child support payments.

In a situation, as here, where the case is an above guidelines case, where the parties' combined adjusted income exceeds the highest level of income specified in the child support guidelines set out in Md. Code Ann., Fam. Law Article § 12-204(e), "the trial court enjoys significant discretion in determining the amount of the basic child support award." *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018). "An abuse of discretion occurs '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.'" *Brass Metal Prods. v. E-J Enters.*, 189 Md. App. 310, 364 (2009) (quoting *King v. State*, 407 Md. 682, 697 (2009)).

Here, the transcript of the *pendente lite* hearing provides that the parties initially agreed to child support in the amount of $2,829 per month if Ms. Hammann retained sole custody, but if shared custody ultimately was awarded, they asked for child support extrapolated from the guidelines based on their agreed incomes. After a lunch recess, however, counsel advised that they had made an addendum to their agreement.

The colloquy that occurred was as follows:

> [COUNSEL FOR MS. HAMMANN]: I'm going to give it a shot. An issue came up about a start date for the child support. And **we realize that the Court can't necessarily enter a start date today because the child support amount depends on the Court's decision on custody** and there's a ten day exception period and all of that. **So, until the determination is made as to child access**, and there are some **payments that Mr. Hammann has been making** that pertain to Mrs. Hammann's car payment and student loan. And the agreement is that by July 6th any car payments that are due will be made by Mr. Hammann. And the student loan payments that are due will be paid into the joint account for Mrs. Hammann to disperse. And **that he**

will continue to make those payments until we get a ruling on custody and therefore child support. (PAUSE) - -

[THE COURT]: And by ruling, you mean an Order?

[COUNSEL FOR MS. HAMMANN]: An Order, correct.

* * *

[THE COURT]: Because if you get something from me you might be thinking okay, here it comes, but you don't know that. And so, I'm saying I guess the Order would be the, the pivotal time period once you - -

[COUNSEL FOR MS. HAMMANN]: And - - right - -

* * *

[THE COURT]: Does that sound like what you were expecting counsel?

[COUNSEL FOR MR. HAMMANN]: Yes, your honor.

[THE COURT]: All right. So - -

[COUNSEL FOR MR. HAMMANN]: There, there's more to it than that though. There's student loans and - -

[THE COURT]: Do you want to add something else?

[COUNSEL FOR MS. HAMMAN]: I said the student loans.

[COUNSEL FOR MR. HAMMANN]: You just said - -

[THE COURT]: And car payment.

[COUNSEL FOR MS. HAMMANN]: And the car payment.

[COUNSEL FOR MR. HAMMANN]: And mortgage.

[COUNSEL FOR MS. HAMMANN]: Oh, he'll continue to make the - - Yes. Very important. He'll continue to make the mortgage payment.

> [COUNSEL FOR MR. HAMMANN]: And then moreover your honor I think -- whenever you're ready?
>
> [THE COURT]: It, I'm ready.
>
> [COUNSEL FOR MR. HAMMANN]: Well, with respect to the mortgage, I, it was also Mr. Hammann's intention that, the [c]ourt be aware that he's not going to make any contribution claims because he's paying all the mortgage. And, and part of his -- and I'm happy to put that in the, the Order as well. He's not going to claim because he's paying the mortgage when we get to the merits, if we get to the merits that she shouldn't get a share of this because of his payment. That's all.
>
> [COUNSEL FOR MS. HAMMANN]: I understand.
>
> [COUNSEL FOR MR. HAMMANN]: It's in lieu of child support to the argument. (PAUSE) –
>
> [THE COURT]: And their car payments are being made directly to the loan provider, correct?
>
> [COUNSEL FOR MS. HAMMANN]: The car payment? Yes.
>
> [THE COURT]: Okay.
>
> [COUNSEL FOR MS. HAMMANN]: Correct.
>
> [THE COURT]: Anything else?
>
> [COUNSEL FOR MR. HAMMANN]: I, I think that covers it.

(Emphasis added).

Reviewing the addendum in its entirety makes clear, as the trial court found, that the addendum was intended to cover the time period until a final custody order was entered. The trial court ultimately found that shared custody was appropriate and set the amount of child support, going forward and for arrears, at $1,539 a month, based on the agreed income

of the parties. Based on this record, we cannot conclude that the court abused its discretion in its award of child support arrears.

II.

Custody

Ms. Hammann next contends that the trial court erred in awarding the parties joint physical custody. In support, she argues that the court "did not accurately cite the trial testimony of witnesses in its application of the law to its decision," "ignored much of the testimony on critical issues," and "failed to consider the children's preference and the sincerity of the parent's requests."

Mr. Hammann contends that the court "correctly awarded the parties joint physical custody" of the children. He argues that the court "thoroughly analyzed the relevant factors involved in custody determinations."

In reviewing a trial court decision on child custody, we review the court's factual findings for clear error. *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013). A trial court's findings are not clearly erroneous "if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628, *cert. denied*, 343 Md. 679 (1996). *Accord Thomas v. Capital Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 453 (2009) (quoting *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005)). We review legal conclusions *de novo*. *Kpetigo v. Kpetigo*, 238 Md. App. 561, 569 (2018).

With respect to a trial court's ultimate custody determination, we review that ruling under an abuse of discretion standard. *Barton v. Hirshberg*, 137 Md. App. 1, 24 (2001). As this Court has explained:

> [W]e acknowledge that "it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [it] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [it] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor" child.

Reichert, 210 Md. App. at 304 (quoting *In re Yve S.*, 373 Md. 551, 585–86 (2003)).

Ms. Hammann challenges the circuit court's determination regarding physical custody, which includes "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. 620, 627 (2016). "Joint physical custody is in reality 'shared' or 'divided' custody." *Taylor v. Taylor*, 306 Md. 290, 296–97 (1986).

In custody disputes, the "'overarching consideration'" is the best interest of the child. *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 680 (2014) (quoting *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013)). *Accord Gordon v. Gordon*, 174 Md. App. 583, 637–38 (2007) (best interest of the child is of "'transcendent importance.'"). As we have explained:

> The best interest standard is an amorphous notion, varying with each individual case . . . [t]he fact finder is called upon to evaluate the child's life chances in each of the homes competing for custody and then to predict with

> whom the child will be better off in the future. At the bottom line, what is in the child's best interest equals the fact finder's best guess.

Karanikas v. Cartwright, 209 Md. App. 571, 589–90 (quoting *Montgomery County Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 419 (1977)), *cert. dis'd as improv. granted*, 432 Md. 211 (2013).

To guide courts in making this determination, we have set forth several factors that are relevant for the trial court to consider in deciding what is in the best interest of the child:

> The criteria for judicial determination [of child custody] includes, but is not limited to 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.

Gordon, 174 Md. App. at 637 (quoting *Sanders*, 38 Md. App. at 420). These factors, however, are "not intended to be all-inclusive, and a trial judge should consider all other circumstances that reasonably relate to the issue." *Taylor*, 306 Md. at 311.

Here, the trial court discussed the relevant factors. With respect to the first and second factors, the court found that Mr. Hammann and Ms. Hammann were "loving and involved with their children and have been good parents." Regarding the third factor, the court found that Mr. Hammann and Ms. Hammann were sincere in requesting custody of T.H. and W.H. and in being "involved in the day to day lives of their children." The court accorded the fourth factor equal weight between Mr. Hammann and Ms. Hammann, finding

that "the potential for maintaining the natural family relations" was "the same with either party."

With respect to the fifth factor, the court found that no custody preferences of T.H. and W.H. were "expressed" at trial. It acknowledged Ms. Hammann's testimony that the children had a stronger relationship with her, but it found, and there was evidence to support the finding, that Mr. Hammann also had a good relationship with the children.

Regarding the sixth factor, the court found that "[b]oth parties can afford to support their children." With respect to the seventh factor, the court considered the age, health, and sex of T.H. and W.H. In so doing, the court noted that T.H. has "certain food allergies," namely, an allergy to tree nuts, that requires Mr. Hammann and Ms. Hammann "to have the Epi-pen available."

Regarding the eighth factor, the court found that Ms. Hammann's townhouse and the marital home, Mr. Hammann's current residence, were both in Sparks, Maryland, and they are approximately four to five miles away from each other. With respect to the ninth factor, the length of separation, the court noted that Ms. Hammann vacated the marital home on August 28 and 29, 2018. It concluded that the tenth factor was not applicable because "[t]here was no abandonment[] by anyone."

The court also expressly considered the totality of the circumstances analysis. In that regard, it commented further about "the relationship between the children and each parent." The court discussed the testimony and found that "the children are lucky to have two good parents who want to be involved and who are involved."

Based on our review of the record, we disagree with Ms. Hammann's contention that the trial court "ignored" evidence. Its ruling shows that it carefully reviewed all the evidence, and considered the best interests of the children, in making its custody determination. We perceive no abuse of discretion in the court's custody order granting Mr. Hammann and Ms. Hammann joint physical custody of T.H. and W.H.

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