UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2673

September Term, 2015

EVANS IHENACHOR

v.

PAIGE MARTIN

Krauser, C.J.,
Woodward,
Arthur,

JJ.

Opinion by Woodward, J.

Filed: December 9, 2016

Following a trial in the Circuit Court for Queen Anne's County to determine custody and child support, the court granted primary physical custody of the minor child, O., to appellee, Paige Martin, visitation to appellant, Evans Ihenachor, and joint legal custody to the parties. The circuit court also ordered appellant to pay $1,627 in monthly child support. In this timely appeal, appellant presents three questions for our review, which we have condensed and rephrased as follows:[1]

1. Did the trial court err or abuse its discretion in awarding primary physical custody to appellee and "limited visitation" to appellant?

2. Did the trial court err by awarding appellee $1,627 per month in child support?

For the foregoing reasons, we shall affirm the judgment of the circuit court.[2]

[1] Appellant's questions presented, as stated in his brief, are as follows:

> 1. Was the Judge's findings that all factors to be considered when awarding custody were neutral but for the fact that Paige Martin gave birth to and carried the minor child out of the hospital was the basis of awarding her primary physical custody of the parties' minor child was clearly erroneous[?]
>
> 2. Was the Judge's finding that because Paige Martin was the mother, that Evans Ihenachor was awarded limited visitation was clearly erroneous[?]
>
> 3. Was the Judge ordering Evans Ihenachor to pay One Thousand Six Hundred Twenty Seven Dollars ($1,627.00) per month in child support was [sic] clearly erroneous[?]

[2] At oral argument, appellee renewed her motion to dismiss this appeal because of multiple violations of the Maryland Rules 8-205, 8-501, 8-503, and 8-504 pertaining to the required information report, record extract, and briefs. In the exercise of our discretion under Maryland Rule 8-602, we deny this motion.

BACKGROUND

The parties have never been married. After dating for a short period of time, appellee became pregnant. On September 10, 2014, appellant and appellee's daughter, O., was born. After O.'s birth, appellee and appellant worked in concert to ensure that O. was able to bond with appellant, despite appellee living in Maryland and appellant living in Virginia. Unfortunately, by early 2015, the cooperative relationship deteriorated between the parties.

On March 2, 2015, appellant filed a complaint for custody seeking joint legal and physical custody of O. On April 8, 2015, appellant filed a letter requesting a modification of his complaint for joint custody to "sole custody," apparently meaning sole legal and physical custody. That same day, appellee filed a counter-complaint for sole legal custody of O., "primary physical custody" of O., and child support.

On June 25, 2015, the parties appeared before a magistrate for a *pendente lite* hearing. On July 2, 2015, the magistrate issued her report and recommendations, in which she recommended that the parties have "shared physical custody" of O. and that after an introduction period, appellant have O. on Mondays, Wednesdays, and Saturdays. The magistrate also recommended that appellant pay $852 in child support. On July 15, 2015, the circuit court issued a *pendente lite* order accepting the magistrate's recommendations.

On November 23, 2015, a trial on the merits commenced on the issues of physical custody, legal custody, and child support. Appellant testified that he was currently living in an apartment in Arlington, Virginia. Appellee testified that O. lived with her and her

mother in a four-bedroom house in Kent Island, Maryland and had done so since birth. Both parties called their family members to testify as to their respective fitness as a parent.

At the conclusion of the trial, the circuit court announced its decision, which reads in relevant part:

> In making a decision here today, the Court is concerned with one thing and, this is, the best interests of [O.] and it's up to the Court to come to that decision. These are some of the most difficult decisions judges have. What we have is a 14-month-old, beautiful little girl, who is in good health. The parents knew each other for a short time before conception and, at this point, I would have to say that there is a great deal of difficulty in effective communication between them. And communication is not just talking, but it's sending signals, typically oral or written, but they can be radio signals.
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> * * *
>
> In making the Court's decision, I'm concerned about the fitness of the parents. Quite simply, as I sit here today, both parents are fit as parents. Character and reputation of the parties, it's another neutral factor. Desire of the natural parents and agreements between the parties. They're both asking for primary physical custody. One of the reasons we're here today is there has been an inability for the parties to reach agreements. Potentiality of maintaining natural family relations, that's another neutral factor. **The parties live about sixty miles apart.** It appears that's what was indicated here and I have no reason to believe, I think, it was an argument, but I have no reason to believe it isn't about sixty miles. So, once again, that's another neutral factor. Whichever party would have primary physical custody or maintaining natural family relations is going to be the best it can be.
>
> Preference of the child, she's too young for that to be considered. Material opportunities affecting the future of the child. Both parties are employed. Both have very good jobs. Quite simply, no matter which side, it's another neutral factor. The fact that the father makes more money than the mother makes does not factor into this, I don't believe. Age, health, and sex of the child, 14 months, healthy female. Residence of the parents and opportunity for visitation and both parties live in what would be decent, safe, and

sanitary living conditions. The residences appear to be fine. Length of separation from the natural parents, I don't find any - - that to be a factor. Ten, prior voluntary abandonment or surrender, and I don't find that in this case.

So, basically, all those factors come out. Those are all neutral. The one thing which would - - I think it comes under the ninth factor, would be under possibly length of separation from the natural parents, but this is a situation which is not unusual. There's no maternal preference in the State of Maryland. But it's not unusual for the mother to be the *de facto* caregiver of a small child for a certain time and the child has been under the primary care of the mother for the 14 months. That was simply because the child was born to the mother at the hospital and she's the one that walked out of the hospital with the child, but that is something that I call *de facto*, the child was been under the care of the mother since birth.

In determining whether the child or whether there should be joint custody, the child or the Court considers the factors in *Taylor v. Taylor*. The capacity of the parents to communicate and to reach shared decisions affecting the child's welfare. That is a problem in this case. The willingness of the parents to share custody. Both have indicated that they want sole custody. Fitness of the parents, they're both fit. Relationship established between the child and each parent, quite simply, it appears the child loves both parents just from the testimony that I've had here today. She's happy with both. Preference of the child, she's too young for that to be a factor. Potential disruption of the child's social and school life. She's - - that's something that's going to have to be considered in the future, but it's not a consideration with a 14-month-old. She's not in school at this time.

Geographic proximity of the parental home. Sixty miles isn't Maryland to Texas, but it's some distance. It's not like being around the corner. In my, quite simply, cases where there have been shared custody, the times that it may work is when parents live in very close proximity to each other. Demands of parental employment. Both parties are fully employed. They do have vacation time. They have time they could take off. Age and number of children, it's just one child, 14 months old. The sincerity of the parents' request; I think both are sincere in this case. Financial status of the parents; father makes about $108,000 a year and the

mother makes about $36,000, I think it was. Impact on state and federal assistance; that's not a factor. Benefit to the parents. **I think the one thing that would benefit the parents is to have their driving time reduced. It would benefit [O.], as well,** and any other factors which I don't find in this case.

But taking all that into consideration, it's always been my position that it's in the child best interests that both parents take an interest in their life and, within reason, participate in the major decisions that need to be made. Healthcare, who the doctor shall be, the dentist, whether she has braces, where, you know, if there's a choice in schools, where she should go to school; things such as that. So because of that, I tend to favor joint legal custody.

In this case, I find it's in this child's best interests that the parents have joint legal custody. I do think it's appropriate, in this case, I find that it's appropriate for the mother to have primary physical custody with ample visitation to the father. I find, quite simply, actually, [appellee counsel's] suggestion for weekly visitation is reasonable. Father would have the child every other - - let's see, that was Thursday, Friday, Saturday, Sunday, and if there is a federal holiday on Monday, I would allow the child to stay over for that and then the other week it would be Tuesday and Wednesday. So there could be - - if there's a federal holiday, better than a week with the father.

Holidays are to be divided. Father should have Thanksgiving this year and then - - it's an even - - excuse me, an odd year. Even years to the mother. Christmas is divided by [appellee counsel's] suggestion and, quite simply, I'll ask that counsel to work out the holiday schedule based on the traditions of the families. There evidently is a tradition for Christmas. I don't know about the others. Each party is to have a minimum of two weeks in the summer at one time, written notice needs to be given. This is - - I've said that much, but I want to back up just slightly.

* * *

It's joint legal custody. The parties are to discuss the major decisions to be made for the welfare of the child in good faith with an attempt at reaching an agreement between the two of them; however, if they're unable to come to an agreement, the custodial parent, in this case, that would be the mother, has the tie-breaking authority, but

> failure by either side to negotiate in good faith could be a reason for change in custody. I think that's standard on a Judge Cawood's standard orders.

(Emphasis added).

On December 28, 2015, the circuit court issued an order consistent with its oral ruling, and this timely appeal followed. Additional facts are set forth below as they become necessary to our discussion of the questions presented.

STANDARD OF REVIEW

This Court has explained that, when findings of fact are challenged, we will only overturn a trial court's factual findings if clearly erroneous, because we give "'due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.'" *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) (quoting *In re Yve S.*, 373 Md. 551, 584 (2003)). Moreover,

> [o]rders 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. *See Walter v. Gunter*, 367 Md. 386, 391-92, 788 A.2d 609 (2002); *Beckman v. Boggs*, 337 Md. 688, 703, 655 A.2d 901 (1995). 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. *Walter*, 367 Md. at 391-92.

Barrett v. Ayres, 186 Md. App. 1, 10, *cert. denied*, 410 Md. 560 (2009). The above standard also applies to child support orders. *See Shenk v. Shenk*, 159 Md. App. 548, 554 (2004).

DISCUSSION

I. Custody

Appellant argues that the circuit court erred when it applied a maternal preference in awarding appellee primary physical custody of O. and appellant only visitation. Specifically, appellant asserts that the court found that all factors were neutral, but then applied a maternal preference when it stated that the appellee was the "de facto caregiver[,]" because "the child was born to the mother at the hospital and the mother walked out of the hospital with the child." According to appellant, such conclusion reveals that the circuit court found appellee's right superior to his solely because as a female, appellee was able to give birth to O.

Appellee counters by asserting that the circuit court made its "findings in the best interest of the minor child considering the factors of custody determinations in *Taylor v. Taylor*, 306 Md. 290, 508 A.2d [964] (1986)." According to appellee, the court stated in its opinion that there is no maternal preference in Maryland. Appellee contends that appellant takes certain parts of the court's "comments out of context to imply that this is a maternal preference case when there is no statement of maternal preference and a specific disavowment of any maternal preference by the [j]udge."

The maternal preference doctrine, at one time the law in Maryland, has been described by this Court as follows: "The so-called 'preference' for the mother as the custodian particularly of younger children is simply a recognition by the law, as well as by the commonality of man, of the universal verity that the maternal tie is so primordial that it should not lightly be severed or attenuated." *McAndrew v. McAndrew*, 39 Md. App. 1,

6-7 (1978). The Court of Appeals abolished the maternal preference doctrine as violative of statutory law in *Elza v. Elza*, 300 Md. 51, 59 (1984) and as prohibited by the Maryland Equal Rights Amendment in *Griffin v. Crane*, 351 Md. 133, 148-49 (1998).

In this case, we confront the issue of "whether the trial court did, *in fact*, consider gender [or sex] as a *determining factor* in its custody decision." *Id.* at 146 (emphasis added). In *Griffin*, the Court of Appeals held that the trial court unambiguously relied "on the respondent's gender as the decisive basis for modifying the custody order." *Id.* at 147. Similarly, in *Elza*, the Court determined that the trial court relied solely on maternal preference when a trial court stated:

> "Both parties being equal here, I can't find that either party is not entitled to have the child. **I suppose I am old fashioned in one sense . . . but it still seems to me that if it's a five year old . . . all other factors being equal . . . that in that case, the child should go with the mother.**"

300 Md. at 55, 60 (emphasis added) (stating that "the record establishes that [the above language] was the only reason expressed for awarding custody of Shannon to Mrs. Elza.").

In the instant case, appellant claims that the circuit court applied the maternal preference doctrine when it stated:

> But it's not unusual for the mother to be the *de facto* caregiver of a small child for a certain time and the child has been under the primary care of the mother for the 14 months. That was simply because the child was born to the mother at the hospital and she's the one that walked out of the hospital with the child, but that is something that I call *de facto*, the child was been under the care of the mother since birth.

Appellant, however, overlooks the context of the trial court's opinion. There is no indication that the court's use of the language "*de facto* caregiver" is synonymous with a

female. According to the court's own characterization, any caregiver, male or female, could be the "*de facto* caregiver" if he or she "walked out of the hospital with the child" and continued to care for the child. In this case, the caregiver happened to be appellee, a female. Nor does the court's reference to O. being "born to the mother at the hospital" and appellee walking "out of the hospital with the child" indicate a reliance on appellee's gender. Such language was used in the context of the court's undisputed finding that "the child [has] been under the care of [appellee] since birth."

In addition, the circuit court expressly stated, "[t]here's no maternal preference in the State of Maryland." "[A] judge is presumed to know the law and is presumed to have performed his duties properly." *Olson v. Olson*, 64 Md. App. 154, 159 (1985) (internal quotation marks omitted). Nothing in the court's opinion contradicts its statement rejecting the maternal preference doctrine. C*f. Elza*, 300 Md. at 55. For the aforementioned reasons, we conclude that the trial court did not apply a maternal preference in its determination that appellee should have primary physical custody of O., and thus did not commit legal error.

I. Visitation

Appellant argues that the circuit court abused its discretion in not awarding an equal amount of overnights to each parent. According to appellant, because the court found all of the factors neutral, appellant and appellee should have been given an equal amount of overnights instead of ordering thirty-five percent of overnights to appellant and sixty-five percent of overnights to appellee. We disagree.

As stated above, "[o]rders 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*, 186 Md. App. at 9. During closing argument, appellee's counsel stated:

> As a parent, I will tell you that with all due respect to [the magistrate], **given the geographic distances between these parties, every other day isn't going to work.** So I sat my client down and I said what kind of a shared schedule can we propose for the Court that would [ ] work. **Not only work for the parties, but make less back and forth, less traveling that, clearly, upsets the child.**
>
> We presented that to the Court and the schedule that I suggested was every other weekend from Thursday night to Sunday evening. The gives him four days in a row, three overnights and then the alternate week he gets Tuesday and Wednesdays overnight. That is almost the same thing that he has right now. It is a 35/65 split. It cuts down on the geographic travel.

During appellant's rebuttal closing argument, appellant's counsel stated:

> **I will be candid with the Court in that I think - - I agree with - - I know it's going to be shocking - - but I agree with [appellee's counsel] and that the schedule that [the magistrate] gave is a little overly travel intensive.**
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> * * *
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> Your honor, if the Court isn't inclined for primary physical custody, **any schedule that promotes extensive time with each parent is probably what's appropriate. I don't think the one suggested by [appellee's counsel] is.** I think that it is - - it pinches for no reason whatsoever, other than maybe a little bit of transportation. We could have those same two exchanged by expanding the visits by half a day anyway, which would put us back to where we are today, but even if the Court is inclined and thinks that this is a shared physical custody kind of situation, you know, Mondays and Tuesdays to Dad and Wednesdays and Thursdays to Mom and alternate weekends going back and forth, works for lots of

> famil[ies]. I don't know whether [appellant] would even like that, but that's sort of, from my perspective as a professional, minimizes the time that the child is away from either one of the parties. Under [appellee's counsel's] suggestion, there actually is a time period from Thursday until the following Friday that [O.] would go without seeing her dad, which is eight days, which is far too long under the circumstances.

After considering the parties' concerns about the *pendente lite* visitation schedule, the circuit court stated:

> **Sixty miles isn't Maryland to Texas, but it's some distance. It's not like being around the corner. In my, quite simply, cases where there have been shared custody, the times that it may work is when parents live in very close proximity to each other.** . . . Benefit to the parents. **I think the one thing that would benefit the parents is to have their driving time reduced. It would benefit [O.], as well,** and any other factors which I don't find in this case.

The court then accepted the appellee's proposed visitation schedule stating, "I find, quite simply, actually, [appellee's counsel's] suggestion for weekly visitation reasonable." We conclude that the circuit court's ruling on visitation was not an abuse of discretion.

II. Child Support

On the issue of child support, appellant testified at trial that Northrop Grumman was his current employer and submitted his pay stub into evidence. Appellant also testified that after filing for custody, he added O. to his health insurance plan costing $130 a month.

Appellee testified that she worked in the human resources department at the University of Maryland Medical System and submitted her pay stub into evidence.

Appellee indicated that she spent $128 a month for O.'s health insurance.[3] Appellee further testified that she paid $200 per week in child care expenses and provided the trial court with copies of several checks she had written to the daycare provider. Appellee acknowledged that O. did not spend the full week in daycare, but she explained that the daycare provider would only provide service if a full week was paid. Therefore, appellee was required to pay $200 per week to keep O. in daycare.

At the conclusion of the trial, the circuit court ruled as follows concerning child support:

> Child support is to be determined by the guidelines and, I guess, [appellee's counsel], it's - - I've added an extra couple days in there, but I'm not sure it changes the calculations, but the income of the parent is established. Mother has childcare of $200 per week. I believe the - - it's my determination that mother's healthcare, that she's permitted to have as the appropriate health care insurance. I think that covers all the major points. Any questions to this point?

In its December 28, 2015 order, the circuit court awarded appellee child support of $1,627 per month, which was consistent with the child support guidelines worksheet (shared custody) submitted by appellee. The guidelines used a monthly income of $3,000 for appellee and $9,000 for appellant. The overnights with O. for appellee totaled 237 (64.9%) and 128 (35.1%) for appellant. Appellee's expenditures of $800 for monthly work-related childcare and $128 for monthly health insurance for O. were added to the basic child support obligation and divided according to the parties' adjusted actual

[3] Appellee actually testified that she spent $129 per month for O.'s health insurance. The trial court, however, included only $128 per month for such insurance. There is no explanation for this discrepancy, other than the fact that appellee submitted a child support guidelines worksheet to the trial court with only $128 listed for O.'s health insurance.

incomes. However, appellant's expenditure of $130 per month for health insurance that covered O. was not included in the child support calculation.

A. Child Support Guidelines – Sole or Shared

Appellant argues that that the circuit court erroneously used a sole custody child support guidelines worksheet. Contrary to appellant's assertion, the court did use the shared custody child support guidelines worksheet in accordance with Maryland Code (1984, 2012 Rel. Vol.), § 12-204(m) of the Family Law Article ("FL"), because appellant was awarded visitation above thirty-five percent for the year. *See* FL § 12-201(m)(1) ("'Shared physical custody' means that each parent keeps the child or children overnight for more than 35% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support."). Accordingly, we find no error.

B. Number of Overnights

Appellant contends that the circuit court allotted an incorrect amount of overnights by allocating to him 128 overnights instead of 134. Appellant, however, has not provided this Court with any explanation as to how he reached the number of 134. Appellant thus failed to comply with Maryland Rule 8-504(a)(6) by not providing argument to support his position. *See Honeycutt v. Honeycutt*, 150 Md. App. 604, 618, *cert. denied*, 376 Md. 544 (2003). Appellant also failed to comply with Rule 8-504(a)(4) by not providing this Court with citations to the record to support his position. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 200-01, *cert denied*, 406 Md. 746 (2008). Accordingly, we decline to address appellant's argument regarding the number of overnights allocated to him.

C. Health Insurance Expenses

Appellant's next argument is that the circuit court erred by not including an expenditure in the child support calculation "for his monthly health insurance cost of $129.00 for the minor child." Appellant asserts that the child support calculation should have included expenditures for both parties' health insurance expenses. We again disagree.

FL § 12-204(h)(1) states,

> (h) *Extraordinary medical expenses.* – (1) **Any actual cost of providing health insurance coverage for a child** for whom the parents are jointly and severally responsible shall be added to the basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes.

(Emphasis added).

At the hearing, appellant's testimony concerning O.'s health insurance was as follows:

> [APPELLANT'S COUNSEL]: How long has [O.] been on your health insurance?
>
> [APPELLANT]: I started - - I left Booz Allen Hamilton, I believe that was in May, went back to Northrop Grumman because I left Northrop Grumman last year, so they wanted me back, made me an offer I couldn't refuse. **So I went back, started working with them and as soon as I started working with them, I got her under my health insurance**. . . . I was trying to start a dialogue with [appellee] so we could compare who had the best coverage for her and maybe, who knows, I could spark some kind of cooperative agreement - - arrangement for [O.'s] future. She, you know, had choice words for me, as well. **Told me she already had [O.] covered under her insurance, so I covered her anyway under mine. I mean, I don't know of anyone who has been hurt by two insurance coverages.**
>
> [APPELLANT'S COUNSEL]: Do you know how much you pay for that insurance coverage?

> [APPELLANT]: **For her it's about $130.** I also have - -
>
> [APPELLANT'S COUNSEL]: **Is that a month or pay period?**
>
> [APPELLANT]: **Pay period.** I also have a Health Savings Account set up, as well, for things like co-pays and stuff like that.

(Emphasis added).

Appellant's pay stub, however, shows deductions for "Dental – Basic" at "$18.92[,]" "Med – Basic" at "$40.77[,]" and "Vision – PreTax" at "$7.44[,]" for a total of $67.13. The pay stub thus indicates that appellant was only paying $67.13 per pay period, not $130. It was appellant's burden to clarify this discrepancy, but he did not offer any additional testimony or documents concerning O.'s health insurance expenses. In our view, the circuit court, by not including appellant's health insurance expenses to the child support calculation, found that appellant did not carry his burden to prove how much he actually paid for O.'s health insurance. Thus the circuit court did not err in declining to include appellant's health insurance expenditures in the child support calculation.

D. Child Care Expenses

Appellant contends that the circuit court erred in finding that appellee incurred $200 a week in work-related child care expenses, because O. was not in daycare with appellee's provider when O. was with appellant.[4] We are not persuaded.

We have held that a party seeking to include actual work-related child care expenses in the child support calculation has the burden to prove to the circuit court the amount of

[4] At the hearing, appellant did not claim that he incurred work-related child care expenses, and he did not request that the circuit court include any work-related child care expenses paid by him in the child support calculation.

actual child care expenses incurred on a monthly basis. *See Shenk*, 159 Md. App. at 554 ("The burden of proof as to the existence of the prerequisites to entitlement is upon the spouse who seeks actual child care expenses."). Appellee carried her burden by testifying that she had to pay $200 per week for child care expenses and providing the court with copies of checks that she had written to O.'s daycare provider. Moreover, appellee explained that she was required to pay the full amount for child care every week, because the daycare would not accept daily payments. As a result, appellee had to pay child care expenses for the days that O. was with appellant. Accordingly, the circuit court did not err or abuse its discretion by including the entire $800 paid by appellee every month for work-related child care expenses.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.