Circuit Court for Baltimore County
Case No. C-03-FM-19-002733

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 196

September Term, 2024

MASON INKO-TARIAH

v.

PATIENCE OKEREKE

Nazarian,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: September 6, 2024

*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).

This is an appeal from a judgment entered in the Circuit Court for Baltimore County granting Patience Okereke ("Mother") an absolute divorce from Mason Inko-Tariah ("Father") and establishing a custody schedule for the parties' three minor children. Father has appealed from that judgment and has filed an informal brief, raising 12 "issues." For clarity, we have rephrased those issues and consolidated them into the following questions[1]:

[1] Father phrased the issues as:

> 1. Whether the averments in Appellant's amended pleading are admitted by Appellee, since Appellee did not deny said averments in Appellee's responsive pleading, and did not generally deny Appellants averments.
>
> 2. Whether the trial Court erred by dismissing Appellant's amended complaint without a merits trial on the ground that the complaint was not accompanied by sufficient evidence to proceed to trial.
>
> 3. Whether the judgment signed by the trial court is valid, since it is materially different from the judgment announced by the court.
>
> 4. Did the trial court err by allowing Appellee to raise a defense against the relief for annulment of marriage sought by Appellant in his amended complaint after the limitation time for Appellee's response had expired?
>
> 5. Did the trial Court abuse its discretion by refusing to grant Appellant's partial summary judgment?
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> 6. Whether the trial Court acted inappropriately when it had a secret *ex parte* meeting with Appellee and her counsel before signing the judgment.
>
> 7. Whether this Court would give deference to the trial court's finding of facts in light of the trial court's established dishonesty, and whether the overtly biased judgment of the trial court is valid.
>
> 8. Did the trial court abuse its discretion when it ordered that the parties' eleven-year-old minor children should have adult supervision at all times?

(continued…)

1. Did the trial court err or abuse its discretion in refusing to grant Father's request for an annulment?

2. Did the trial court err or abuse its discretion in entering the judgment of absolute divorce?

3. Did the trial court err or abuse its discretion in making its custody determination?

4. Did the trial court err or abuse its discretion in denying Father's pretrial request to have two witnesses give testimony remotely from Nigeria?

Finding no error or abuse of discretion, we affirm.

BACKGROUND

Mother and Father were married in 2011. Three children were born as a result of the marriage: twins, M.S. and M.O., born in April 2012, and a third child, N.S., born in April 2018.

Divorce Proceedings Initiated

On June 21, 2019, Father filed a complaint for limited divorce, alleging constructive desertion. Father asked for sole physical and joint legal custody of the minor children. In

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9. Did the trial court abuse its discretion with respect to [one of the minor children's] custody?

10. Whether the credibility finding of the trial court can be relied upon, or given deference, by this Court.

11. Whether it is equitable to modify the parties' consent *pendente lite* custody judgment.

12. Did the trial court abuse its discretion for denying Appellant's witnesses in Nigeria remote participation during trial?

September 2019, Mother filed an answer to Father's complaint. Shortly thereafter, Mother filed a counter-complaint for limited divorce. Mother asked for primary physical and sole legal custody of the minor children.

On October 15, 2019, the trial court issued a scheduling order. The court ordered that all discovery, including disclosures regarding expert witnesses, be completed by June 2, 2020.

In January 2020, the parties filed a list of witnesses that each party expected to call at trial. In April 2020, Father filed a "Designation of Expert Witnesses." In that filing, Father stated that he reserved the right to call, as expert witnesses, the minor children's "treating healthcare providers" and "treating school educators and counselors[.]"

On August 7, 2020, the trial court entered a *pendente lite* consent order, to which the parties had previously agreed, regarding custody of the minor children.[2] In that order, the parties agreed that Mother would have primary custody of the minor children and Father would have visitation pursuant to an access schedule.

Father Files Amended Complaint

On December 28, 2020, Father filed an amended complaint in which he sought an annulment of the parties' marriage. Father alleged that, prior to the marriage, Mother had presented him with a divorce certificate from Nigeria, which stated that Mother had obtained a divorce from her first husband in May 2010. Father maintained that he had

[2] Father subsequently noted an appeal from that order, arguing, among other things, that the consent order was the result of duress, undue influence, and fraud. *Inko-Tariah v. Okereke*, Case No. 703, September Term, 2020, 2021 WL 840922 (filed March 5, 2021). We later affirmed, finding no merit to Father's arguments. *Id.*

recently discovered that the divorce certificate, which had purportedly been issued by the Customary Court of Lagos in Nigeria, was fake and that Mother was still in a legal marriage when she and Father married in November 2011. Father asserted that his marriage to Mother was therefore "void by reason of bigamy and polygamy" and "voidable by reason of fraud and deceit." Mother did not file an answer to Father's amended complaint.

Mother Files Counter-Complaint for Absolute Divorce

On November 21, 2022, Mother filed a counter-complaint for absolute divorce. Mother again asked for primary physical and sole legal custody of the minor children.

On April 6, 2023, the court scheduled a two-day merits trial to begin on June 29, 2023.

Father Files Request for Expert Witnesses to Appear Remotely

On June 7, 2023, Father filed a "Motion for Witnesses to Appear Remotely from Nigeria." In that motion, Father stated that he intended to call two witnesses, both of whom were experts in traditional marriages in Nigeria. Father stated that both witnesses were in Nigeria and unable to attend the trial in person. Father did not disclose the substance of the witnesses' testimony, nor did he provide any reason for the late disclosure.

Mother opposed the motion, arguing that one of the witnesses had never been identified as a witness; that the other witness had not been identified as an expert witness; and that Father had not disclosed any information regarding either witness's opinion. Mother also argued that permitting the witnesses to testify would be prejudicial given the late disclosure. The trial court ultimately denied Father's request.

For reasons not entirely clear from the record, the merits hearing was cancelled and rescheduled for October 25, 2023.

Father Files Motion for Summary Judgment

On September 7, 2023, Father filed a "Motion for Part Summary Judgment of His Amended Complaint." Father argued that, because Mother did not file an answer to his amended complaint, the allegations in that complaint were deemed admitted. Father argued that he was therefore entitled to summary judgment on his annulment claim.

Mother opposed the motion, arguing that granting Father an annulment by way of summary judgment would be inappropriate. Mother also argued that Father's motion should be denied because Father failed to file the requisite affidavit along with his summary judgment motion. Lastly, Mother argued that the averments in Father's amended complaint were "complete speculation" and did not provide sufficient grounds on which to grant Father an annulment.

On September 27, 2023, the trial court denied Father's motion. Father subsequently renewed the motion and included, as an attachment, a one-page document that was, purportedly, an excerpt of Nigerian law. The court denied Father's renewed motion.

Shortly thereafter, the merits hearing that was scheduled for October 25, 2023, was postponed. A new hearing was scheduled for January 26, 2024.

Father Files Notice of Intention to Rely on Foreign Law

On December 5, 2023, Father filed a "Notice of Intention to Rely on Foreign Law." In that notice, Father stated that he planned "to rely on the Laws of the Federation of

Nigeria, including the customary laws of Lagos state and Imo state." Father asked the court "to take judicial notice of these laws."

Trial

On January 26, 2024, the parties arrived in court for trial on Father's complaint for annulment and Mother's counter-complaint for absolute divorce. At the start of the hearing, the trial court noted that "annulments are disfavored under Maryland [l]aw." The court added that "we can take testimony, if [Father] wants to pursue that, he can."

The court then asked if counsel wished to provide an opening statement. Father's counsel responded by stating that he was renewing the motion for summary judgment. Counsel argued that, because Mother was not properly divorced in Nigeria, and because Mother did not file an answer to Father's amended complaint, the court was required to grant the annulment.

Mother's counsel opposed the renewed motion. Counsel asserted that Father, in renewing his summary judgment motion and indicating his intention to rely on Nigerian law, appeared to be asserting a claim that was different from the claims raised in his amended complaint. According to counsel, Father appeared to be arguing that Mother's divorce was invalid under Nigerian law because Mother's first marriage "happened [in] one place and the divorce happened somewhere else." Counsel noted that that argument was different from the one raised in the amended complaint, in which Father alleged that Mother's divorce certificate was fraudulent. Counsel argued further that Father should not be allowed to rely on Nigerian law because he did not provide adequate notice regarding the substance of the Nigerian law on which he intended to rely.

After reviewing the parties' filings, including the one-page excerpt of Nigerian law that Father had attached to his renewed motion for summary judgment, the trial court found "a number of issues[.]" The court explained that, to begin with, Father's motion for summary judgment had already been considered and denied multiple times. The court then noted that, in relying on Nigerian law, Father seemed to be arguing a "different ground . . . than what was set forth in the amended complaint." Lastly, the court found that there were questions about the authenticity and reliability of the evidence on which Father was relying regarding Nigerian law.

In response, Father's counsel argued that the court should take judicial notice of Nigerian law, regardless of any deficiencies in Father's evidence, because Nigerian law is based on the common law of England. Counsel then explained that, under Nigerian law, a divorce decree must be obtained from the area where the marriage occurred.

The court was not persuaded. The court found that Father had not produced "any admissible authority" that "what [he had] proffered to the [c]ourt is [Nigerian] law." The court also found that the theory set forth in Father's amended complaint was "a different theory and basis for a request for annulment than what's being put forth today for the first time." For those reasons, the court concluded that it was "not going to go forward on the annulment request." The court then proceeded to take testimony from Mother and Father regarding Mother's divorce request and the parties' request for custody of the minor children.

Court Announces Its Ruling

At the conclusion of the evidence, the court granted Mother an absolute divorce. In addition, the court expressly considered and discussed, in detail, various factors that were relevant to the court's custody determination. In the end, the court found that it was in the minor children's best interests that Mother be given primary physical custody, with Father having visitation according to an access schedule, which the court set forth in detail. The court also found that it was in the children's best interests that the parties share legal custody.

After putting its findings on the record, the court asked Mother's counsel to prepare a proposed judgment for the court's signature. On April 8, 2024, Mother's counsel filed the proposed judgment, which was signed by Father's counsel.

Judgment of Absolute Divorce

On April 10, 2024, the court signed the proposed judgment and entered it into the court's docket. The relevant portions of the judgment were: that Mother would have primary physical custody of the children; that Father would have access to M.S. and M.O. every other weekend from Friday after school to Monday morning; that Father would have access to N.S. during that same period, but would return the child to Mother's care on Sunday evening; that, during the summer time, the parties would share custody of M.S. and M.O. on a "week on/week off" basis; that, during the summer, Father would have access to N.S. for two non-consecutive weeks in addition to his regular-scheduled weekend visits; that Father would provide notice to Mother of his selected weeks with N.S.; and, that the minor children would not be left unattended while in either parent's care.

This timely appeal followed. Additional facts will be supplied as needed below.

STANDARD OF REVIEW

"When reviewing an action tried without a jury, we review the judgment of the trial court 'on both the law and evidence.'" *Baltimore Police Dep't v. Brooks*, 247 Md. App. 193, 205 (2020) (quoting *Banks v. Pusey*, 393 Md. 688, 697 (2006)). We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). Issues of law are reviewed *de novo*. *Brooks*, 247 Md. App. at 205.

DISCUSSION

As noted, Father has filed an informal brief raising twelve "issues." Those issues address a variety of topics, some of which concern the proceedings generally, while others concern specific decisions by the trial court. For the purposes of this appeal, we have arranged those topics into four "questions presented," which are set forth below. Within each question, we shall address the corresponding issue or issues raised by Father.

I.

We begin with a discussion of whether the trial court erred or abused its discretion in refusing to grant Father's request for an annulment. For reasons to follow, we find no error or abuse of discretion.

A.

Father first contends that the trial court should have granted him an annulment based solely on the allegations contained in his amended complaint. Father argues that Mother's failure to file an answer to his amended complaint meant that the allegations contained in

the complaint were deemed admitted. Father argues that, because those allegations established that Mother was not properly divorced when she and Father married, the trial court should have granted his motion for summary judgment with respect to annulment.

Mother argues that the court did not err in refusing to summarily grant Father's annulment request. Mother contends that the court could not grant an annulment by default. Mother further contends that Maryland law disfavors annulments and that, in any case, Father's evidence in favor of the annulment was insufficient.

We hold that the court did not abuse its discretion in refusing to grant Father an annulment based solely on the allegations contained in his amended complaint and his "renewed motion for summary judgment." By that time, the court had already considered and denied the motion twice. The court was within its discretion in refusing to reconsider the motion again. *See Ralkey v. Minnesota Mining & Mfg. Co.*, 63 Md. App. 515, 522 (1985) (noting that a trial court has the discretion to uphold a prior ruling in the case). The underlying merits of the motion and additional arguments are discussed, *infra*.

B.

Father next claims that the trial court erred in "dismissing" his amended complaint "without a merits trial[.]" Father insists that the court dismissed his complaint for the following reasons: that the notice he filed indicating his intention to rely on Nigerian law was insufficient; that the court did not have the authority to interpret or implement Nigerian law; that annulments are disfavored in Maryland; that Father propounded different legal theories in support of his annulment claim; and, that there were no expert witnesses to

explain Nigerian law. Father claims that none of those reasons constitutes adequate grounds to uphold the court's decision.

Mother contends that the court properly refused to consider Father's annulment claim. Mother argues that the theory presented by Father in support of the claim at trial was different from the one set forth in his amended complaint. Mother argues that permitting Father to go forward on that new theory would have resulted in prejudice.

Before discussing the merits of Father's claims, we must set forth the relevant facts, as Father has seemingly misconstrued the court's decision. At the beginning of trial, the court recognized that Father was asking for an annulment. Although the court cautioned that "annulments are disfavored under Maryland [l]aw[,]" the court nevertheless stated that it was willing to "take testimony, if [Father] wants to pursue that[.]" Shortly thereafter, the court asked the parties if they wanted to give opening remarks. Father's counsel responded by renewing his motion for summary judgment, which the court subsequently denied because, *inter alia*, the motion had already been considered multiple times. In addition, Father's counsel suggested that the annulment claim should be allowed to go forward because, under Nigerian law, a divorce decree must be obtained from the area where the marriage occurred. Mother objected, arguing that Father was presenting a new legal theory based on foreign law, about which she had not been given reasonable notice. After the court suggested that it may not have the authority to interpret Nigerian law, the court reviewed the relevant statute, namely, § 10-504 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code, which states, in relevant part, that a party may present admissible evidence of foreign law, but the party must provide reasonable notice

to the adverse parties. Upon reviewing that statute, the court noted that Father had not presented any admissible evidence that would allow the court to take judicial notice of Nigerian law. The court further noted that the basis for Father's request for an annulment included in his amended complaint was "a different theory . . . than what's being put forth today for the first time." Citing those reasons, the court decided that it was "not going to go forward on the annulment request."

From that, it is evident that the court was under the impression that Father was essentially asking to amend his complaint so that he could pursue his annulment claim under a new legal theory rooted in Nigerian law. The court ultimately refused to entertain Father's annulment request because: one, Father had failed to present "admissible evidence" of Nigerian law, as required by CJP § 10-504; and two, Father's stated grounds for annulment were being raised for the first time at trial and were different from the grounds set forth in his amended complaint.[3]

The trial court did not "dismiss" Father's claim or prohibit him from pursuing it. The court was willing to allow Father to present evidence on the claims raised in his amended complaint, and the court offered Father the opportunity to give some opening remarks on those claims. Rather than taking the court up on its offer, Father took that time to challenge the court's prior summary judgment decision and to further amend his claim for annulment.

[3] To the extent that Father is arguing that the court was incorrect in its assessment of his position, Father did not raise that issue in the trial court. As such, that argument is not preserved for our review. Md. Rule 8-131(a).

With respect to Father's attempt to further amend his complaint, when a party seeks to do so on the day of trial, the party must obtain leave of the court. Md. Rule 2-341(c). Amendments to pleadings should be permitted liberally, provided that "the operative factual pattern remains essentially the same, and no new cause of action is stated invoking different legal principles[.]" *Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 269 (2015) (quotation marks and citations omitted). "A trial court should not grant leave to amend if the amendment would result in prejudice to the opposing party or undue delay." *Prudential Sec. Inc. v. E-Net, Inc.*, 140 Md. App. 194, 232 (2001) (cleaned up). We review for abuse of discretion the court's decision to grant or deny leave to amend. *Id.*

Here, the annulment claim presented by Father to the trial court was based on facts and legal principles that were substantially different from those contained in his amended complaint. Permitting Father to pursue his amended claim, which was not disclosed until just before trial, would have certainly caused prejudice to Mother. That prejudice was compounded by the fact that Father's claim was based on foreign law, and there were questions as to whether Father could produce admissible evidence regarding that law and whether he had provided Mother adequate notice of his intentions.

Father takes issue with the court's interpretation and application of CJP § 10-504, arguing that Mother was provided adequate notice of his intention to rely on Nigerian law and that his grounds for annulment have always been rooted in Nigerian law.

We remain unpersuaded. In his amended complaint, Father sought an annulment on the grounds that Mother's divorce certificate from Nigeria was fraudulent. That theory was markedly different from the one proffered for the first time at trial, in which Father

suggested that Mother's divorce was invalid under Nigerian law because she did not obtain a divorce from the same area where the marriage occurred. Moreover, while Father may have informed Mother of his intention to rely on Nigerian law, it does not appear that Father properly disclosed the substance of the law or how he intended to use that law at trial. Permitting Father to proceed with his claim under those circumstances would have almost certainly prejudiced Mother.

C.

Father next claims that the trial court erred in permitting Mother to defend against the relief for annulment of marriage sought by Father in his amended complaint. Citing Mother's failure to file a timely responsive pleading to his amended complaint, Father insists that Mother "cannot raise any defense to the averments" because "the statute of limitation[s] had run[.]" Father contends that the trial court should not have allowed Mother to argue against the amended complaint's averments at trial.

Mother asserts that Father's argument is merely a restatement of his previous argument regarding the trial court's decision not to summarily grant him an annulment based on the averments in his amended complaint. Mother disputes Father's current argument for the reasons given in opposition to his prior argument.

We find no merit to Father's claims. First, Father is mistaken in claiming that Mother's failure to file a timely responsive pleading implicated a "statute of limitations" that would have precluded Mother from defending against Father's claim for relief. Although the Maryland Rules generally require a party to challenge new facts or allegations in an amended complaint within a certain period of time, *see* Md. Rule 2-341, that

requirement does not operate as a "statute of limitations," such that a party who fails to file a responsive pleading would be barred from defending against the amended pleading's averments. To the contrary, the Rules expressly empower the court to accept a pleading, including an amended answer, beyond the deadline for which such a pleading would normally be due. Md. Rule 2-341(b); *see also Mattvidi Assocs. Ltd. P'ship v. NationsBank of Virginia, N.A.*, 100 Md. App. 71, 83-84 (1994) (discussing a court's authority to accept a belated amended answer).

D.

Father next claims that the court erred in denying the motion for summary judgment he filed prior to trial. Father claims that, because the allegations contained in his amended complaint were deemed admitted by Mother after she failed to file a responsive pleading, he was "entitled" to summary judgment as a matter of law. Mother contends that the denial of a motion for summary judgment is not appealable.

First, although the denial of a motion for summary judgment generally is not appealable, it may be reviewed for abuse of discretion following entry of a final judgment. *See Com. Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 626-27 (1997) (discussing the appealability of the denial of a motion for summary judgment); *see also Shader v. Hampton Improvement Ass'n, Inc.*, 217 Md. App. 581, 601 (2014) ("[W]e generally apply an abuse of discretion standard when reviewing a circuit court's denial of a motion for summary judgment in favor of further proceedings[.]").

That said, Father is incorrect in asserting that he was "entitled" to summary judgment. Assuming without deciding that the averments in Father's amended complaint

were admitted by Mother and that those averments formed the requisite proof to sustain Father's annulment claim, a court has the discretion to relieve a party from an admission and require proof of the facts in question. Moreover, although a trial court does not have the discretionary power to *grant* summary judgment, the court does have the discretion to '"affirmatively deny[] a summary judgment request in favor of a full hearing on the merits . . . even though the technical requirements for an entry of such a judgment have been met.'" *Dashiell v. Meeks*, 396 Md. 149, 164 (2006) (quoting *Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980)). That is, "a trial court has at least a limited amount of discretion to deny a motion for summary judgment, even if it could properly have granted the motion, in order to allow the parties to develop the facts in greater detail, including at a trial." *Johns Hopkins Univ. v. Ritter*, 114 Md. App. 77, 92 (1996). "Thus, on appeal, the standard of review for a denial of a motion for summary judgment is whether the trial judge abused his discretion and in the absence of such a showing, the decision of the trial judge will not be disturbed." *Dashiell*, 396 Md. at 165. The question here, then, is not whether Father was entitled to summary judgment, but rather whether the court abused its discretion in refusing to grant Father's motion for summary judgment.

We hold that the court acted within its discretion in denying Father's request for summary judgment on his annulment claim. "The law does not favor annulments of marriages, and it has long been a settled judicial policy to annul marriages only under circumstances and for causes clearly warranting such relief." *Morris v. Goodwin*, 230 Md. App. 395, 402 (2016) (cleaned up) (quoting *Hall v. Hall*, 32 Md. App. 363, 381-82 (1976), *superseded by statute on other grounds as stated in Ledvinka v. Ledvinka*, 154 Md. App.

420 (2003)).[4] "The general rule is that marriages shall stand and not be nullified except with caution, and only upon clear, satisfactory proof of recognized grounds of nullification." *Picarella v. Picarella*, 20 Md. App. 499, 504 (1974) (cleaned up).

Here, the bases for Father's summary judgment motion were the averments in his amended complaint, which he claimed Mother had admitted by failing to file a timely answer. Though Mother did in fact fail to file a timely answer, she nevertheless did file a timely response to Father's summary judgment motion. In that response, Mother challenged the validity of the averments in Father's amended complaint, and she questioned whether the averments in Father's amended complaint were sufficient to grant an annulment. Thus, had the court granted Father's summary judgment motion, it would have been awarding him an annulment based solely on Mother's failure to plead.

Moreover, we have reviewed the averments in Father's amended complaint and found those averments to be ambiguous and open to interpretation. Thus, even if those averments are deemed admitted, there is a question as to whether Father would be entitled to an annulment based solely on the truth of those averments.

Given those circumstances, and given Maryland's general disapproval of annulments, we cannot say that the court abused its discretion in denying Father's summary judgment request in favor of a trial.

[4] Father claims that "the annulment disfavorment [sic] theory . . . has been obsoleted in Maryland by . . . *Ledvinka v. Ledvinka*, 154 Md. App. 420 (2003)." Father is mistaken. In *Ledvinka*, we held that an annulment could be granted only on specified grounds. *Id.* at 436. We did not hold, or suggest, that annulments were no longer disfavored in Maryland. In fact, we reaffirmed Maryland's policy of disfavoring annulments as recently as 2016. *Morris, supra*, 230 Md. App. at 402-03.

II.

Father's next set of issues concern whether the trial court erred or abused its discretion in entering the judgment of absolute divorce. For reasons to follow, we find no error or abuse of discretion.

A.

Father first contends that the written judgment entered by the court is invalid because "it is materially different from the judgment announced by the court" at trial. Father asserts that the court's written judgment contains a provision that was not part of the court's announced judgment. That provision, which concerns Father's vacation time with N.S., states that Father "shall provide notice to Mother prior to May 15th of each year of his selected weeks." Father insists that that provision was "surreptitiously inserted" into the judgment following a "secret *ex parte*" meeting between the trial court, Mother, and Mother's attorney, which Father claims occurred without his knowledge at the conclusion of trial.

Mother categorically denies that there was any "secret meeting" involving either her or her counsel and the trial court. Mother contends that the written judgment is valid because, before the court signed it and entered it into its docket, a copy was sent to Father's counsel, and Father's counsel signed off on the judgment.

We find no merit to Father's claim. There is absolutely no evidence in the record of any meeting, secret or otherwise, between Mother, Mother's counsel, and the trial court following the court's announcement of its ruling at the conclusion of trial. Nor is there any evidence that either Mother or Mother's counsel colluded with the court to

"surreptitiously" have the disputed provision included in the court's written judgment. Father's claim that the court inappropriately added the disputed provision to the judgment of absolute divorce is simply not supported by the record.

To the contrary, the record establishes that the court's inclusion of the disputed provision was appropriate. When the court announced its decision at the conclusion of trial, it stated that Father would have two, non-consecutive weeks of vacation time with N.S. The court did not, however, indicate that Father had to provide Mother with any particular notice regarding which weeks he would choose. After announcing its ruling, the court asked Mother's counsel to prepare a proposed judgment for the court's review. Mother's counsel agreed, and neither Father nor Father's counsel objected. Several weeks later, Mother's counsel filed the proposed judgment, and that proposed judgment included the disputed provision stating that Father "shall provide notice to Mother prior to May 15th of each year of his selected weeks." The proposed judgment also included a signature line on which Mother's counsel and Father's counsel could indicate whether the proposed judgment was "[a]pproved as to form[,]" and both signature lines contained signatures indicating that both attorneys had approved of the judgment. Two days later, the court signed the judgment and entered it into the court's docket.

Based on that record of events, we find nothing that would invalidate the court's written judgment. Although it is apparent that the disputed provision was not included in the court's oral ruling, the court's acceptance of the provision suggests that the court believed that it was reasonable for Father to provide Mother with some sort of notice as to which weeks Father planned to exercise his vacation time. The court's decision to accept

the proposed judgment, including the disputed provision, was all the more reasonable given that Father (through counsel) had approved of the proposed judgment. *See* Md. Rule 1-311 (permitting a party's attorney to act on behalf of the party). If Father believed that the disputed provision should not have been included in the judgment, then he (through counsel) should have brought the matter to the court's attention instead of affirmatively attesting to the judgment's accuracy. Father cannot now complain about a provision to which he (through counsel) agreed. *See In re Nicole B.*, 410 Md. 33, 64 (2009) ("It is well-settled that a party in the trial court is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order.").

B.

Father next asks whether this Court should give deference to the trial court's findings of fact and determinations of credibility. In suggesting that we should not, Father cites, as examples of the court's "dishonesty" and "biased judgment," various adverse rulings and alleged nefarious acts by the trial court, including the previously-discussed "clandestine" meeting that purportedly occurred between Mother, Mother's counsel, and the trial court. Mother, unsurprisingly, denies any untoward behavior on the part of the trial court.

We will not belabor this issue any more than necessary. We have reviewed the record, and we have found absolutely no evidence in support of Father's outlandish claims. The record shows that the trial court conducted the proceedings in a professional manner and without any hint of bias.

III.

Father's next set of issues concern whether the trial court erred or abused its discretion in determining custody of the minor children. For reasons to follow, we find no error or abuse of discretion.

Appellate review of a trial court's decision regarding child custody involves three interrelated standards. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). First, any factual findings are reviewed for clear error. *Id.* Second, any legal conclusions are reviewed *de novo*. *Id.* Finally, if the court's ultimate conclusion is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion." *In re J.J.*, 231 Md. App. 304, 345 (2016) (quotation marks and citation omitted). "A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* (quotation marks and citation omitted).

This Court has identified various factors a trial court should consider when making a custody determination. *J.A.B.*, 250 Md. App. at 253. Those factors include but are not limited to: the parties' fitness; the parties' character and reputation; the parties' desire; any agreements between the parties; the potential of maintaining natural family relations; the child's preference; any material opportunities affecting the child's future; the child's age, health, and sex; the parties' residence and the opportunity for visitation; the length of separation from the natural parents; and any prior voluntary abandonment or surrender. *Id*.

When considering those factors, "the trial court should examine the totality of the situation in the alternative environments and avoid focusing on or weighing any single factor to the exclusion of all others." *Jose v. Jose*, 237 Md. App. 588, 600 (2018) (quotation marks and citation omitted). Moreover, "[t]he primary goal of access determinations in Maryland is to serve the best interests of the child." *Conover v. Conover*, 450 Md. 51, 60 (2016). "The best interest of the child is [therefore] not considered as one of many factors, but as the objective to which virtually all other factors speak." *E.N. v. T.R.*, 474 Md. 346, 397 (2021) (cleaned up). "'In this regard, trial courts are endowed with great discretion in making decisions concerning the best interest of the child.'" *Bussell v. Bussell*, 194 Md. App. 137, 157-58 (2010) (quoting *Petrini v. Petrini*, 336 Md. 453, 469 (1994)).

A.

Father first claims that the trial court abused its discretion in requiring that the minor children not be left unsupervised while in their parents' care. Father contends that the court's decision was "without rationale or justification," particularly given that the court did not indicate when that supervision would end, which meant that, theoretically, the children would need supervision until they become legal adults.

Mother argues that the court did not abuse its discretion. Mother notes that the court received evidence that M.S. and M.O. had special needs and that Father had previously left the children alone while he went to work.

We hold that Father's argument was either affirmatively waived or, at the very least, unpreserved. At trial, Father testified that, when the children spent extended periods of time with him during the previous summer, he sometimes left the children home alone

when he went to work. Later, when the trial court was announcing the access schedule, the court stated that Father would be allowed vacation time with the children but "he's got to make sure that the children are properly supervised during his absence." Shortly after the court finished announcing its decision, Father's counsel asked for clarification as to whether supervision would be required when Father had the children over spring break. The following colloquy ensued:

> THE COURT: Any time that [Father] has the children, and if he has to leave, just because of their ages, they can't be left unattended. That's all I'm saying.
>
> [DEFENSE]: But you did not make that requirement for the mother, also.
>
> THE COURT: Because I didn't hear any testimony that that was an issue. Obviously, you know it's against the law to leave your children unattended when they're certain ages.
>
> [DEFENSE]: That's obvious, but it wasn't ever – it's never put on a judgment, order that there should be supervision. If the man is in violation, or the woman is in violation, the law would take its course. It was never in part of the order to put, "supervised" –
>
> THE COURT: Okay, I'll tell you what I'll do. I'll make it neutral. The children will not be unattended by their parents, when they have them in their custody. All right? So that will apply to both parents without singling dad out.
>
> [DEFENSE]: That's fair.
>
> THE COURT: All right.

From that, we are convinced that Father's appellate argument was waived or, at the very least, unpreserved. Though Father's counsel did initially object to the supervision requirement, he did so on the grounds that the court was not holding Mother to the same

requirement. When the court addressed that issue by making the provision neutral, Father's counsel agreed that the provision was "fair." It appears, then, that Father was in agreement with the disputed provision. Father cannot now claim error about a custody provision to which he agreed. *See In re Nicole B, supra*, 410 Md. at 64. At the very least, if Father still had an objection to the provision, he had a duty to bring it to the court's attention. Md. Rule 8-131(a).

Assuming, *arguendo*, that Father's appellate argument is properly before this Court, we find no merit to Father's claim that the court's inclusion of the supervision requirement was "without rationale or justification[.]" At the time of trial, M.S. and M.O. were both eleven years old and N.S. was five years old. The court heard evidence that Father had previously left the children alone and unattended while he went to work. After considering that evidence and the children's best interests, the court decided to include a provision in the custody arrangement that prevented either parent from leaving the children unattended. We see no error or abuse of discretion in that decision. That the children may eventually not need constant supervision does not mean that the court abused its discretion in determining that the children need such supervision now. *See Basciano v. Foster*, 256 Md. App. 107, 152 (2022) ("In making a custody determination, courts look to the situation as it exists at the time." (quotation marks and citation omitted).

In support of his argument, Father notes that "Maryland statutory law does not require adult supervision for minors over the age of eight." Although Father does not cite the specific law to which he is referring, we assume he is referencing § 5-801 of the Family Law Article ("FL") of the Maryland Code, which makes it a crime for a child-care provider

to leave a child under the age of eight locked or confined in a dwelling or other enclosure without appropriate supervision. To the extent that Father is claiming that the court erred because it implemented a condition of supervision that is more restrictive than FL § 5-801, we remain unpersuaded. That statute is a bar, not a ceiling.

B.

Father next claims that the trial court abused its discretion in deciding custody. Father contends that the court's decision to have one visitation schedule for M.S. and M.O. and a different visitation schedule for N.S. was "arbitrary and distinctly irrational." Father further contends that the court erred in implementing an access schedule that was different from the access schedule set forth in the *pendente lite* custody agreement. Father insists that the court should not have modified that schedule because the parties had previously agreed to that schedule.

Mother contends that the court did not abuse its discretion in reaching its decision regarding custody. Mother asserts that the court carefully considered the evidence and the relevant circumstances and made a sound decision based on the children's best interests.

We hold that the court did not abuse its discretion in deciding custody. First, the court was under no obligation to adopt the *pendente lite* access schedule, regardless of whether that schedule had been agreed to by the parties. *See Frase v. Barnhart*, 379 Md. 100, 111 (2003) ("A *pendente lite* order is not intended to have long-term effect[,] . . . and it does not bind the court when it comes to fashioning the ultimate judgment."). Furthermore, the children's circumstances were markedly different at the time of trial than at the time the *pendente lite* custody agreement was put in place. The *pendente lite* order

was entered in August 2020, when M.S. and M.O. were eight years old and N.S. was just two years old. By the time of trial nearly four years later, M.S. and M.O. were almost twelve years old and N.S. was almost six years old. As the court explained in reaching its decision, there were various social, scholastic, and other factors relevant to the court's custody determination that were not at issue when the *pendente lite* custody order was entered. The court properly considered those factors and, based on the children's best interest, implemented a reasonable custody arrangement.

In any event, to the extent that the court did alter the *pendente lite* custody arrangement, those alterations were minor. Under the *pendente lite* schedule, Father had access to M.S. and M.O. for two consecutive weekends, from Thursday to Monday, every three weeks and for alternating weeks during the children's summer vacation. Under the court's modified schedule, Father had access to M.S. and M.O. every other weekend, from Friday to Monday, and for alternating weeks during the children's summer vacation. As to N.S., under the *pendente lite* schedule, Father had access on the same weekends he had M.S. and M.O., but his time with N.S. was limited to Friday to Sunday on the first weekend and Friday to Saturday on the second weekend. In addition, Father had no summer visits. Under the court's modified schedule, Father had access to N.S. every other weekend, from Friday to Sunday evening, for the entire year, and he had two additional weeks of vacation time with N.S. during the summer. Thus, while Father's time with M.S. and M.O. was decreased slightly under the court's modified schedule, his time with N.S. was increased significantly. Given those circumstances, we fail to see how the court abused its discretion in reaching its decision.

As to the court's decision to have an access schedule for M.S. and M.O. that was different from the access schedule for N.S., we see nothing "arbitrary" or "irrational" about that decision. As noted, the parties had agreed to and were already operating under separate schedules pursuant to the *pendente lite* order. We are at a loss as to why Father would take issue with such a schedule now. Be that as it may, the court provided a detailed explanation for its decision. The court noted that, at the time of trial, N.S. was in kindergarten and had to be in school later than the other two children. After discussing "some of the challenges" that had occurred between the parties in the past, the court found that it was in N.S.'s best interest that she be returned to Mother by Sunday evening. The court then included a provision whereby the parties could modify that schedule if they later agree that doing so would be in N.S.'s best interest. We find no abuse of discretion.

IV.

Father's final issue concerns whether the trial court erred or abused its discretion when it denied his pretrial request to have witnesses testify remotely from Nigeria. Father argues that those witnesses "were essential participants in the proceeding" and were "critical to [his] case[.]"

Mother contends that Father's argument is unpreserved because he did not raise the issue at trial. Mother argues, in the alternative, that the court did not err or abuse its discretion in precluding the two witnesses from testifying.

We hold that Father's argument is unpreserved. To be sure, Father did file a pretrial request for the witnesses to testify remotely, and the court denied the request. Father did

not, however, provide any proffer as to the substance of the excluded evidence. Father therefore failed to preserve his appellate argument. Md. Rule 5-103(a).

Assuming, *arguendo*, that the issue was preserved, we hold that the court did not abuse its discretion in refusing Father's request to have two expert witnesses testify remotely from Nigeria. Father made the request on June 7, 2023, three weeks before trial and approximately three years after the court-ordered deadline for discovery. As Mother pointed out in her opposition to Father's request, Father never identified either witness as an expert witness or disclosed any information regarding either witness's opinion. Moreover, Father provided no explanation for the late disclosure. Under the circumstances, we cannot say that the court abused its discretion in denying Father's request. *See Shelton v. Kirson*, 119 Md. App. 325, 332-33 (1998) (holding that trial court did not err in precluding expert witness, where witness was not named until nearly one year after the close of discovery).

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