Circuit Court for Montgomery County
Case No. 103746FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1840

September Term 2022,

No. 0265

September Term, 2023

COLEEN H. HAYBACK

v.

MICHAEL A. BONNELL

Leahy,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 17, 2023

* This is an unreported opinion. The 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).

** During the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant, Coleen Hayback ("Mother"),[1] appeals from the December 5, 2022 order ("December 2022 Order") granting in part and denying in part the motion filed by appellee, Michael Bonnell ("Father"), to modify legal and physical custody of the parties' now 16-year-old son,[2] C. Mother also appeals from the denial of her emergency motion for a writ of *ne exeat*.[3]

Around the time of their divorce, almost ten years ago, the parties executed an initial custody agreement by consent that provided for shared physical and legal custody with Father having tie-breaking authority. Then in 2020, the custody order was amended to provide for a detailed decision-making process *before* Father could exercise his tie-breaking authority. Beginning in fall 2021, C.'s struggles with co-occurring depression and substance abuse escalated into a crisis. The parties had very different views about how to address the situation, and their fractured communication and mistrust of one another prevented them from reaching an agreement on a treatment plan. As result of the impasse, both parties filed cross motions to modify legal and physical custody in the Circuit Court for Montgomery County, Maryland. After a three-day hearing in November 2022, the circuit court maintained the existing joint legal custody arrangement, but shortened the

[1] Because the parties formerly shared the same surname, to simplify and bring clarity to the historical record we shall refer to Ms. Hayback as "Mother" and Mr. Bonnell as "Father" throughout this opinion, and mean no disrespect thereby.

[2] To protect the minor child's privacy, we shall refer to him only as "C.".

[3] The two appeals were consolidated by order of this Court on May 1, 2023.

decision-making process from 14 days to 10 days with expedited mediation. Mother appealed. Less than two months later, Mother also filed an emergency motion for a writ of *ne exeat* in the circuit court, arguing that Father had abused his tie-breaking authority by unilaterally sending C. out of state to a therapeutic boarding school without her consent, and requesting C.'s immediate return to Maryland. Following an emergency hearing, on April 14, 2023, the circuit court denied Mother's motion. Mother appealed.

In her brief for these consolidated appeals, Mother presents four questions for our review.[4] Because Mother's questions, and the arguments presented thereunder, overlap in varying degrees, we consolidate and reframe them as follows:

I. Did the circuit court err or abuse its discretion when it awarded two fit parents joint legal custody with tie-breaking authority to Father, specifying, in part, that the legal

[4] Mother's questions presented, taken verbatim, are as follows:

> I. Does legal custody, under the laws of the State of Maryland, include the right for one parent to send a Minor Child away to the care and custody of a third-party treatment center, school, program, or like facility over the express objection of a fit and proper parent with shared physical custody?
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> II. Does the fundamental right to rear a child prevent the Court from authorizing a parent to send a Minor Child to a third-party treatment center, school, program, or like facility for an indefinite period over the express objection of a fit and proper parent with shared physical custody?
>
> III. Did the Court err in failing to make additional findings regarding exceptional circumstances or that a parent was unfit in awarding one parent the authority to send a Minor Child to a third-party treatment center, school, program, or like facility over the objection of the other parent?
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> IV. Did the Court err in denying Appellant's request for a Writ of *Ne Exeat* after Appellee declared that he intended to keep the Minor Child in the State of Utah with a third-party over the express objection of the Minor Child's fit and proper parent?

decision to enroll the child in a treatment center, school, program, or like facility merely suspends the parenting time and does not constitute an interference with physical custody?

II. Did the trial court err in failing to make additional findings of exceptional circumstances or parental unfitness prior to awarding Father tie-breaking authority that includes the authority to send the minor child to a third-party residential treatment center, or like facility, over the objection of Mother?

III. Did the trial court abuse its discretion in denying Mother's emergency motion for a writ of *ne exeat*?

We hold that the trial court appropriately applied the best-interests-of-the-child analysis and was not required to make additional findings of parental unfitness or exceptional circumstances before awarding Father tie-breaking authority, including the authority to send the minor child to a third-party residential treatment center or like facility. The trial court has broad discretion in *how* it fashions custody orders, including the discretion to award one parent tie-breaking authority that may impact the other parent's physical custodial time. We also hold that the trial court did not abuse its discretion by denying Mother's emergency motion for a writ of *ne exeat* because a writ of *ne exeat* was an improper vehicle by which to relitigate Father's tie-breaking authority. Accordingly, we affirm.

BACKGROUND

The parties were married in 2004 and divorced in 2014. Their only child, C., turned 16-years old in March 2023. Prior to the judgment of absolute divorce, the parties executed an initial custody agreement by consent on December 20, 2013 ("December 2013 Order"), that provided for shared physical and joint legal custody with Father having tie-breaking authority. Seven years later, on February 6, 2020, the parties executed an amendment to

the December 2013 order ("February 2020 Order") that included the following process *before* Father could exercise his tie-breaking authority:

> **After (14) days of discussion regarding a particular legal custody decision**, each party shall send to the other a written communication by email setting forth his/her respective position. **Each party shall compose a written response via email to the same within 72 hours.** This fourteen (14) day time period shall not apply in the event of a medical or life-threatening emergency. If after exchanging said communications the parties are still unable to resolve the legal custody decision, the parties will employ the tie breaking protocol detailed . . . below.
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> [] **If after good faith and reasonable discussion pursuant to the communication protocol detailed above**, the above protocol is unsuccessful at breaking any impasse, and expert consultation is necessary for major medical or health care related issues, **then the parties shall consult with an expert in the area of disagreement** . . . . However, regarding [C.]'s mental health treatment, if the parties disagree on the manner/method/effectiveness of the treatment or treating mental health professional, they shall jointly select another mental health professional for the purpose of consultation and share equally the cost thereof. **If this protocol is unsuccessful at assisting the parties in reaching a shared decision, then the parents agree that the Father shall have sole authority to make the decision which gave rise to the disagreement.**

(Emphasis added).

Cross-Motions to Modify Custody

On December 30, 2021, Father filed a motion to modify custody in the Circuit Court for Montgomery County, Maryland, alleging that C. was "currently engaging in inappropriate and dangerous behaviors, including a pattern of marijuana abuse that has recently escalated to the detriment of his wellbeing and performance in school to the point that he has a near 0 grade point average." Father also alleged that C. was engaged in other "dangerous behaviors." Father accused Mother of failing to take appropriate steps to

manage C.'s substance abuse and requested that the court modify the February 2020 Order to grant Father sole legal and physical custody of C.

Mother filed an answer denying most of Father's allegations, and then filed a counterclaim for modification of child custody and child support. In the counterclaim, Mother alleged, among other things, that Father regularly "dismisse[d] [Mother]'s concerns regarding decision-making for [C.], [] refuse[d] to timely share information with her about [C.,]" and that Father's tie-breaking authority for legal custody decisions "d[id] not give him carte blanche to modify the physical custody schedule and access time as it pertains to [Mother]'s parenting time with [C.]." Mother recited the dates of C.'s overnights with her over the past year, asserting C. only had 24 overnights with Father between January 1, 2021, through April 5, 2021, and 10 overnights with Father between September 1, 2021, through December 21, 2021.[5] Accordingly, Mother requested that the court award her primary physical custody and sole legal custody of C., along with an increase in child support and reasonable attorneys' fees.

On June 10, 2022, at Mother's request, the court appointed Vincent Wills, Esq., as the Best Interest Attorney ("BIA") for C., with the authority to waive privilege.[6]

[5] Mother also alleged that since the start of the COVID-19 pandemic, the parties "started keeping [C.] on a week on week off schedule, but mostly allowed [C.] to decide where he wanted to stay overnight." When the parties were not following the week on/week off schedule, C. spent the majority of his overnights with Mother.

[6] Father initially moved for a private custody evaluation, which Mother opposed. Instead, Mother requested the appointment of a Best Interest Attorney ("BIA") who could waive privilege. Father did not dispute that a Child Privilege Attorney was needed, but (Continued)

The parties were ordered to attend a Post Judgment Settlement Conference, following which they entered into another consent order on September 27, 2022 ("September 2022 Order"). The parties agreed to a week on/week off physical custody schedule that they had adopted during the pandemic, thereby amending Section III(B) of the original December 2013 Order. The September 2022 Order also provided that the parties would "cooperate in good faith with the family therapy program" that C. started in August 2022, and that they would follow the program's recommendations. The parties agreed that "[t]his Consent Order[] . . . resolve[d] only the issues of a modification of physical custody and family therapy" but did not resolve "the issues of modification of legal custody, modification of child support, and attorneys' fees."

Less than three weeks later, however, Father filed an amended motion to modify custody that placed the issue of physical custody back on the table. Now seeking sole legal and physical custody, he claimed that the week on/week off shared physical custody schedule was not working because, among other allegations, Mother intentionally interfered with his custodial time. Father also complained that he alone shouldered the costs for C.'s needs, in addition to paying $2,500 per month in child support. Father asserted that Mother was now gainfully employed and should contribute to these costs. Accordingly, Father requested a modification in child support to account for any change in physical custody.

argued that a BIA, unlike a custody evaluator, would not be able to conduct testing or submit expert opinions to the court. On June 10, 2022, the court denied Father's request for a custody evaluation and granted Mother's request for a BIA.

On October 25, 2022, Mother filed a motion to strike, or in the alternative, dismiss Father's amended motion to modify custody. Simultaneously, she filed a motion to continue the trial scheduled for November 14. Mother argued, among other things, that the parties had already agreed via the September 2022 Order that physical custody was not being contested and that Father's motion failed to allege any new material changes since it was issued.[7] Father and Mr. Wills, the BIA, opposed Mother's motions.

Custody Modification Hearing – November 14, 15, 16, 2022

Trial was held on November 14, 15, and 16, 2022. On the morning of the first day of trial, in contravention of Maryland Rule 9-204.2, the parties submitted *separate* "joint statements concerning decision-making authority and parenting time."[8] In Mother's statement, she proposed "that [Father] maintain tie[-]breaking authority in the event of a genuine impasse, subject to certain requirements of good faith discussion and mediation." Given the timing of Father's amended motion for custody, the court decided to move forward on the issue of physical custody *pendente lite* until a final hearing could be

[7] Father's amended motion to modify custody also rehashed many of the same incidents he complained about in his December 2021 motion to modify custody.

[8] Maryland Rule 9-204.2 provides that "[i]f the parties are not able to reach a comprehensive parenting plan, the parties shall file a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time." Md. Rule 9-204.2(a). Notably, the Rule mandates that the Joint Statement "shall be filed . . . 20 days before the scheduled trial date or by any other date fixed by the court." Md. Rule 9-204.2(c).

scheduled, but proceeded on the remaining issues of legal custody, child support, and attorneys' fees.[9]

Father's Testimony

Father testified first. He explained that C. was experiencing a number of physical and mental health challenges, including generalized anxiety, depression, and "parental relationship distress." Father explained how these issues "spiraled out of control" in the fall of 2021. At this time, C. was in the ninth grade at a high school in Bethesda, Maryland, but "was failing out of school," "leaving class at will," and doing "drugs pretty much every day[.]" In December 2021, Father confiscated a marijuana vape pen in C.'s room and confronted him about it. Later that evening, Father received a call from Mother, who had just spoken with C., indicating "that there was pandemonium at [Father's] house" because "[C.] was breaking holes in the wall[.]" According to Father, Mother "indicated that she had given [C.] permission to break holes in the wall of the house," which she justified by stating that "breaking holes in the wall [was] better than [C.] using drugs[.]"

According to Father, in February 2022, the parties agreed to send C. to an intensive outpatient treatment program ("IOP"). Two months later, however, in April 2022, C. was "administratively discharged" from the program "for noncompliance to their rules and procedures." Afterwards, upon the recommendation of Judi Robinovitz, an educational consultant hired by Father, C. attended a wilderness therapy program in Utah ("Utah

[9] The Montgomery County Circuit Court docket indicates the final hearing to determine physical custody that was scheduled for August 17, 2023, has been rescheduled at the request of both parties.

Program"), from early May 2022 to July 18, 2022. Although Father believed Mother was on board with sending C. to the Utah Program, he testified that Mother soon withdrew her consent and actively tried to interfere with C.'s treatment there. Father introduced into evidence copies of text messages between the parties wherein Father asked Mother why C. was using an apparent codeword, "lobster roll," in his communications from the Utah Program, which Mother refused to explain. Then, the day after the parties dropped C. off at the Utah Program, Father received "communication from the [Utah Program] that [Mother] was there or on her way to remove [C.] from the program" without Father's knowledge or consent. Additionally, Father testified the parties "had an agreement [for C. to] have psychological testing conducted at [the Utah Program]" but Mother "revoked her consent[.]" Despite Mother's interference, C. successfully completed the Utah Program, and Father observed that C. was "happy," "very outgoing and very talkative," "advocating more for himself," and that he had gained new coping skills and was "drug-free, which was incredible."

The Utah Program recommended that C. transition immediately to an IOP program and the parties selected an IOP in Rockville, Maryland ("Rockville IOP"). Instead of starting at the Rockville IOP right away, however, C. "went on vacation with [Mother]." When he returned, C. attended the program from August 2022 until late October 2022 when he was discharged after Father discovered drugs in C.'s wallet. Meanwhile, in August 2022, Father made the decision to re-enroll C. at the high school he had attended previously, even though both parties had agreed that was not a good option for C. Father

explained that the parties had explored different schools in the Washington D.C. Metro area, but the private schools "[were] very selective on how they take kids," and one school in D.C. that Mother "was very focused on" refused to accept C. because he "wasn't committed to the school[.]" Fearing that the impasse would generate a truancy issue, Father made the decision to re-enroll C. at the high school in Bethesda.

Then, on October 25, 2022, Father stated that "[f]or the second time in only a few days, [C.] had been discovered with a marijuana vape pen at the school." Because this was C.'s second offense bringing drugs to school, the staff at the high school "announced that they were going to call Montgomery County Police." C. then became "extremely agitated[,]" threatened to take certain actions, "and fled the school." Eventually, C. agreed to go to the Montgomery County 24-Hour Crisis Center ("Crisis Center"). From there, he was then admitted to a local hospital on an emergency petition, and later released to his parents' care.

At this point, the parties agreed that C. should not return to the high school, but they were once again at an impasse on where he should go next. Father advocated for a residential treatment center in Connecticut ("Connecticut Program"), whereas Mother advocated for a short-term residential treatment center in Crownsville, Maryland ("Crownsville RTC"). Father believed the Connecticut Program was the best fit for C. because, unlike the Crownsville RTC, the Connecticut Program allowed parents to tour the facility and meet with the staff and clinical director and provided for daily therapeutic activities. When asked whether he discussed the Connecticut Program with Mother, Father

replied that he had emailed Mother a "preadmissions form" that asked parents to list C.'s strengths and weaknesses, but Mother emailed the Connecticut Program directly "saying [she's] absolutely not interested[.]" Father testified that Mother "refused to coordinate with" the Connecticut Program at all and "flatly stated that she w[ould] not consent to any therapeutic boarding school at any time for any reason[.]"

Father's main concern was that Mother "d[id] not want to agree to any further steps beyond a short-term process," followed by C.'s return home and enrollment in the Recovery Academic Program ("RAP") through the Montgomery County Public School system. Father acknowledged that RAP was "a fabulous program;" however, RAP "ma[de] it very clear[that] the program is designed for students that have committed to sobriety."

Finally, Father testified about Mother's "intense and vile name-calling" in front of C., as well as significant interference with Father's parenting time. Father explained that when C. was at his house, Mother would frequently call, text, and Facetime C., in addition to appearing unannounced at Father's house. Father introduced into evidence a video that showed Mother shouting at Father—within earshot of C.—that Father "ha[d] zero parental instinct" and declaring that she was "X-ing [Father] out" of "coordinat[ing] with [Father]" on parenting.

Kristina Cao's Testimony

On November 15, the second day of trial, Father called Kristina Cao, LMSW, who was C.'s therapist at the Rockville IOP, to testify. Ms. Cao testified that she saw C. "nine hours a week in a group setting" and "individual [therapy] every two weeks" from August

18, 2022, to October 10, 2022, when he was discharged from the program for "[n]onadherence of policy in regards to lack of attendance, inconsistent attendance, as well as [not] abstaining from substances." Ms. Cao testified C. initially "met [the] criteria to be in the program" but that it was no longer the appropriate place for him once the Rockville IOP was notified "about the [drug] usage." Ms. Cao said she learned from the parent of another child at the Rockville IOP that C. "shared [drugs] with another adolescent[.]" As a result, her treatment recommendation for C. changed from an IOP to "a higher level of care in a more secure environment" such as "a residential treatment center" or alternatively, a "therapeutic boarding school[.]"

Mother's Testimony[10]

Mother testified next. She agreed that C. "needs to go to a residential treatment program" but her preferred program would be the Crownsville RTC. Mother testified that she gave "[s]ignificant weight" to the input of mental health professionals, but that she also considered "other factors" which might influence their opinions. When asked about the Connecticut Program, Mother stated that she would be "open" to C. attending the program "as a residential treatment center" but not as a long-term option. Mother denied wanting to limit the number of days C. might spend at a residential treatment center, but later testified that she would not agree to any type of therapeutic boarding school or similar long-term treatment facility.

[10] Before her testimony, Mother stated that was no longer seeking an increase in child support but was still seeking attorneys' fees.

During cross-examination, Mother asserted that the purpose of a 30-to-90-day residential treatment center was "to reunite the families, not to keep kids institutionalized." Mother's preferred treatment plan would be that C. complete short-term residential treatment at the Crownsville RTC as a "reset," and then have C. "come home to his family, continue with his primary therapist, maintain any level of medication that seems right, and go to school" while utilizing the coping skills C. learned at the residential treatment center. After that, Mother believed that RAP "could be a really great solution for a credit recovery program which would support and encourage sobriety, keep [C.] away from [the high school], let him get back into a learning environment until we figured out what would be [the] next steps."

Regarding the Utah Program, Mother "was vehemently opposed" to any wilderness therapy program because she believed it was part of the "troubled-teen industry," which she found to be "punitive and frightening" and was intended only "to keep your kid in that system forever." Although Mother admitted that she helped facilitate C. going to the Utah Program, she "felt bullied into it" because she was aware that C. needed help and knew that Father "was going to invoke his tie-breaking [authority.]" With regard to the codeword "lobster roll," Mother explained that before C. left for the Utah Program, "we came up with the idea that we would have a code word" and "if [C.] had any kind of opportunity to write it down," it would "be an indicator to me that [C.] was in a desperate emotional state." Mother explained, in regard to the psychological testing offered by the Utah Program, that she did not believe it was necessary to test C. there because it "could be done when he got

home[.]" She also acknowledged that there were some positives about C. in attending the Utah Program such as C. feeling a sense of accomplishment for "going through the required steps and the processes to get himself discharged[.]"

Mother denied ever giving C. permission to punch holes in the wall at Father's house; she explained she told C. "[i]t was going to be okay" not that it was "okay" to punch holes in the wall. However, when Mr. Wills, the BIA, introduced evidence showing that Mother texted Father, "I gave [C.] permission to punch holes in the wall," Mother admitted that she may have "misrepresented" the word "permission." Finally, Mother testified that she was proposing to keep the current joint custody arrangement with Father having tie-breaking authority "in the event of a genuine impasse" but it was not her "first choice." Mother was "willing to work with it" as long as her "voice is heard in the decision-making process for [C.] and as it relates to his future."

The Court's Ruling

On the last day of trial, November 16, the parties presented closing arguments.[11] Mr. Wills argued that it was clear that both parents love their child and that Mother "should have a place at the table" because "it's important for her to be heard." However, Mr. Wills recommended that the court award joint legal custody with tie-breaking authority to Father, with the caveat that there be a "very streamline[d] process" in the event of an impasse so

[11] In addition to the witnesses described above, Father's fiancée, Lyssa Tavel, testified as Father's witness and Charles Hayback, Mother's husband, testified as a witness for Mother.

that a decision can be made in a timely manner. ***Id.*** The court took the matter under advisement.

On November 21, 2022, the parties returned to hear the court's ruling. The court first found that "a material change has occurred that affects the welfare of [C.]" and noted that the "joint legal custody arrangement entered February 6, 2020[,] is not working" because of the parties' "inability . . . to reach shared decisions in a timely manner and the tie-breaking process agreed to by the parties previously prevents timely decisions to be made regarding the very real and emergent and time-sensitive issues that [C.] is struggling with." The court specified that "what guides th[is] Court is the best interest of the child analysis." Taking into the account the "myriad of factors" laid out in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986) (collectively, the "*Sanders-Taylor* factors"), the court made the following findings relative to custody and visitation:[12]

[12] The court determined that some of the *Sanders-Taylor* factors were not applicable, including: (1) the impact on federal assistance or any benefit bestowed; (2) the length of the separation of the parties; and (3) prior voluntary abandonment of the minor child. Additionally, while the court made findings under each factor, the court held that the following factors "d[id] not weigh in favor of either party": (1) the character and reputation of the parties; (2) the age and number of children each parent has in the household; (3) the demands of parental employment and the opportunities for time with the child; (4) the age, health and sex of the child; (5) the requests of each parent and sincerity of the request; (6) the preference of the child when the child is of sufficient age and capacity to form a rational judgment; (7) the physical, spiritual and moral well-being of the child; (8) the potential disruption of the child's social and school life; (9) the geographic proximity of the parents' residences and opportunities for time with each parent; and (10) the relationship between the child and each parent.

- **The fitness of the parents.** "Neither party has alleged at trial that either party is unfit. Although there have been shortcomings pointed out by both parties, the Court finds that both parties are fit parents."
- **Any agreements between the parties.** "In light of the previous agreement that gave [Father] tie-breaking authority, this [factor] weighs in favor of [Father]."
- **Willingness of the parents to share custody.** "In terms of the scheduled parenting time, it seems that both parties are willingly abiding by the schedule for the most part to share custody. However, when [C.] is with [Father], [Mother] seems to feel the need to be in touch with [C.] daily, even when not in her care. Additionally, it appears that [Mother] also finds a need to show up unannounced at [Father]'s home, volunteer what she perceives as helpful suggestions to others in [Father]'s home . . . as well as encourag[e] [C.] to come to her house when it's not her parenting time. This demonstrates some unwillingness to share custody, and therefore, this factor weighs in favor of [Father]."
- **Financial status of the parties.** "[Father] is clearly in a more superior financial position than [Mother] . . . . He makes more money and has consequently paid for most of the treatment for [C.], along with the cost of the BIA. [Mother] relies on child support to pay some of her own housing costs. This factor therefore weighs in favor of [Father]."
- **Additional consideration.** "[T]he Court finds the [Mother] giving [C.] permission to put holes in [Father]'s wall to be disconcerting. What is more disconcerting is the extent to which the [Mother] tried to maintain that she didn't tell him that he could do that. The Court does not find this credible. What is evident to the Court is that [Mother] is unable to accept that perhaps she made a mistake in authorizing this destructive action. We all make mistakes."

With regard to the propriety of awarding joint legal custody, the court focused on the following two factors:

> **1) Each parent's ability to maintain the child's relationship with the other parent, siblings, relatives, and any other person who may psychologically affect the child's best interests.**

The court found that:

> Very concerning is the effort to have [C.] only discuss some things with [Mother], and not with [Father], creating a code word that she refused to share with [Father] and stressing to [C.] that it was their secret way of communicating. That implied that [Mother] cared more about [C.]'s welfare[,] [i]ndicating to [C.] that she did not want him to be at [wilderness

> therapy] and that [Mother] thought it was inhumane and punishing, all [] while [C]'s supposed to be engaging in productive therapy. The venue [at the Utah Program] was stark, barren, and in the wilderness. That's the point.
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> Finally, it's evident that [Mother] believes that she's the more superior parent. And that [Father] is sometimes an afterthought. . . . Of course [Father] is not without blame as well. . . . [I]t's clear at times he's spoken to professionals to get them on board with some of his thoughts, stacking the deck to a certain degree.
>
> Fortunately, there are a fair number of people who [C.] has a relationship with, including the soon to be stepsister, stepbrother, stepmom, as well as his grandmother and his stepdad, Mr. Hayback. . . . So this means allowing the relationships to blossom without interference and name calling. This weighs in favor of [Father].

2) The capacity of the parents to communicate and reach shared decisions affecting the child's welfare.

The court observed that the parents:

> both believe that [C.] needs to have a level of education, mental health treatment, [and] substance abuse treatment. They want him to be happy, to feel loved, and to have good relationships with others.
>
> What they cannot agree on is how do we get him to be happy, content confident, education, and sober. That is in large part because no one can guarantee success in any mode of treatment or with any treatment provider. . . . It is clear to the court that both parties are confident that their way is the most appropriate way to approach the issue.
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> * * *
>
> Unfortunately, because of their toxic relationship born out of the dissolution of the marriage, they are not able to blend their approaches and use the strengths that each one of them has. More importantly, they are unable to accept that each one of the have some unique insight into how [C.] thinks or acts that would be helpful to each. The text and emails are particularly telling of the dysfunction between the parties.
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> * * *
>
> However, even with their different approaches to the issue, the ability that allows the other party to be heard out is different. . . . The Court finds that [Mother] is less likely to consider [Father]'s opinion as she describes him as having zero parenting skills**.** As such, this factor weighs in favor of [Father].

After going through the *Taylor-Sanders* factors, the court found that, "at this time, it is in [C.]'s best interest to do the following":

> The Court believes a decision needs to be made quickly with regard[] to the treatment of [C.]. It cannot wait any longer for a lengthy process to start. The parties both agree that [C.] needs a higher level of care and should go to a residential treatment center for the most part. The Court believes that this needs to be done in short order as [C.] continues to struggle.
>
> The Court believes that [Father] is the best equipped to make this decision. The Court finds that [Mother] struggles to make some difficult decision[s]. [Father] is willing to listen to professionals, consider [Mother]'s opinion, and move forward with the process. **Therefore, as to the decision regarding the placement of [C.] right now, and where that should be, alone, the Court is going to give joint legal decision making to the parties on that issue, and [Father] will be able to exercise tie-breaking authority.** This decision cannot wait for mediation or the like. Time is of the essence, and it's time for a decision to be made.
>
> However, **regarding any other legal decision-making for future decisions** such as where [C.] goes after he has finished with his treatment at the [residential treatment center] -- if that's where he goes -- or for whatever period of time that is, 30, 60 or 90 days, the parties shall have joint legal decision-making with the following process. **The parties shall, in a timely manner, discuss the matter in an email or a text, followed up by a phone call. [Father] shall set forth the issue in writing and [Mother] will respond within 24 hours in writing. If they are unable to reach a decision, the parties shall engage a mediator within 10 days**, which shall meet with the parties for a minimum of two hours and not for more than four hours, unless agreed by both parties.
>
> **The mediator shall be engaged by the parties and meet within 10 days of the impasse, which is ten days from the response of [Mother]. If the parties are unable to mediate the decision, then [Father] my exercise his tie-breaking authority.**
>
> Both parties shall engage in discussions in good faith. Future decisions are not as time sensitive as this decision, and as such, the Court believes that the mediation process can be utilized.

(Emphasis added). In regard to physical custody, the court ruled:

> [T]he Court will pendente lite adopt the week on/week off schedules that the parties consented to on the September 27, 2022[,] consent order.

> The Court finds that the decision **regarding legal custody to place [C.] in a residential treatment center or like facility is not precluded by any parenting time or access set forth in a court order or consent order**. The legal decision to put the child in a treatment facility **merely suspends the parenting time until treatment is concluded**, and as such, does not interfere with the physical custody schedule.

(Emphasis added). Additionally, the court held that "the parties will abide by the rules of the facility when it comes to the engagement with the child. Both parties shall fill out all necessary paperwork to allow admission of the child into the treatment facility that is chosen." The court entered a corresponding order on December 2, 2022.[13]

On December 22, 2022, Mother filed a notice of appeal.

Mother's Emergency Motion for a Writ of *Ne Exeat*

Less than three months after the court's ruling, on February 23, 2023, Mother filed a "Verified Motion For A Writ Of *Ne Exeat* And To Return The Minor Child To The Home State Pending Further Order of Court" with a request for an emergency hearing. Mother averred that following the court's oral ruling, C. went to the Connecticut Program for two months. Then, on February 1, 2023, Father "informed [Mother] that he would be enrolling [C.] at [the Utah Program] for a second time, and then Father would be sending C. to Crossroads Academy ("Crossroads"), a long-term therapeutic boarding school in Ogden, Utah, "where he will stay for 9-12 months." Mother asserted that she "never consented to

[13] The court also ruled that the parties shall engage in individual therapy and "shall not talk disparagingly about the other" in front of C.; directed that C.'s passport be held in the registry of the court; and ordered that "each party shall respect the parenting time of the parent and the non-custodial parent shall not communicate with the child when in the custody of the other parent beyond every other day." Finally, the court ordered Father to pay Mother $20,000 in attorneys' fees.

enrolling [C.] in a second stint at [the Utah Program] or a long-term placement at Crossroads Academy" and Father "made the unilateral decision to enroll him in those programs where [C.] will be away from his home and family for at least an entire year, in violation of the parties' legal custody decision making protocol[.]" She claimed that within 24 hours of Father's email stating that he was enrolling C. in the Utah Program and Crossroads, Mother requested that Father participate in mediation, but he declined to do so.

On February 28, 2023, Father replied in opposition to Mother's motion, arguing, among other things, that Mother was "attempting to improperly re-litigate the legal custody provision in their recent December 5, 2022[,] Custody Order under the guise of a concocted 'emergency'" and that a writ of *ne exeat* was both "inapplicable" and "moot" because a writ of *ne exeat* "is intended to keep an individual contained *within* a certain jurisdiction." (Emphasis supplied by Father). Father alleged that in February 2023, C. was dismissed from the Connecticut Program "because of the ongoing and serious nature of his issues" that required emergency temporary placement at another treatment facility until C. could start at Crossroads on March 1, 2023. Father claimed that "[n]ot only did [he] attempt to schedule mediation pursuant to the court-ordered protocol to address the issues in [Mother]'s motion in December 2022 and January 2023, but [Father] also willingly attended mediation with [Mother] on February 21, 2023, thus curing any alleged violation of the tie-breaking protocol." Specifically, Father averred that on December 29, 2022, he "attempted to schedule a mediation session with [Mother] regarding next steps after the

child's treatment at [the Connecticut Program,]" but that Mother "failed to cooperate with scheduling or attending mediation, and the ten (10) day mediation provision expired."[14]

On March 13, 2023, Mother filed a reply to Father's opposition, and disputed Father's "chronology of the various requests for mediation" which, she argued, the parties were "required to attend **before** any tie-breaking authority can be exercised." (Emphasis supplied by Mother). Attached to Mother's reply were exhibits of email correspondence between the parties from December 13, 2022, through February 2, 2023.[15] Mother averred

[14] The following email communications between the parties were attached as exhibits to Father's opposition. On December 28, 2022, Mother refused to complete the evaluation form from the Connecticut Program to consent to psychological testing for C. Father responded by requesting Mother participate in mediation within 10 days pursuant to the December 2022 Order, and suggested a potential mediator. Mother replied that this was "not an emergency" and was looking for "free mediators offered through the county." On December 29, Father emailed Mother that if she "want[ed] to attend mediation, [he was] ready and willing to attend"; however, if Mother wanted to use a free mediation service, she "need[ed] to find a free mediator who can mediate within the allotted 10 days." In that email, Father summarized the issues to be discussed at mediation, including (1) "[a]ny recommendations for any type of testing for [C.]"; (2) "[a]ny recommendation for any type of after care to include, but not limited to: [] [a]ny PHP program[,] [a]ny residential therapeutic or other program[,] [a]ny therapeutic or support or general type boarding school[,] any traditional or other type of school"; and (3) "[a]ny educational consultant." Father concluded the email by reminding Mother that they had "until January 8, 2023 to attend mediation."

[15] Between December 13 and 20, 2022, Mother emailed Father four times, inquiring about the next steps "to get [C.] back home and into a school setting where he will feel happy and can find success" and suggesting possible schools. Father did not appear to reply to these emails. On December 28, Mother emailed Father again, asking what his understanding was about what "[C.]'s days at [the Connecticut Program] look like?" Then, on January 3, Mother emailed Father, complaining that he never responded to her December 13 email, and requested to know "what [Father] would like to do regarding [a] meaningful discussion about a plan for [C.] upon his completion" from the Connecticut Program. On February 2, 2023, Mother emailed Father claiming that she did not fail to (Continued)

that "[i]t was only *after* [she] filed her Motion for a Writ of *Ne Exeat* that [Father] wanted to 'propose that [the parties] attend mediation about next steps for [C.] ***as soon as possible.***'" (Emphasis supplied by Mother). Although Mother had agreed at trial that Father "could have tie-breaking authority," she argued that Father "should not just be able to send the Minor Child away for an extended or indefinite period of time[.]" Finally, Mother claimed that Crossroads Academy, which she described as "a quasi-treatment center/quasi-school, seemingly avoiding regulation by being neither school nor a treatment facility[,]" was not in C.'s "best interest academically, socially, or emotionally."

Emergency Hearing

On March 15, 2023, the parties, including Mr. Wills, the BIA, all attended a hearing to address Mother's emergency motion. Father requested a postponement if the court intended to move forward with an evidentiary hearing to allow Father to (1) review Mother's recent expert witness designation[16]; and (2) obtain records from C.'s therapist at the Connecticut Program. Father argued that "[t]his issue has already been litigated" in a three-day evidentiary trial in November 2022 and that "there is no emergent circumstance

complete the mediation Father requested on December 29. Instead, Mother asserted that when Father reached out to her on December 28, the only issue to be mediated at that time was "specific to testing at [the Connecticut Program] with Dr. Beitel" but "[t]hat issue resolved itself and mediation was moot." She argued that recommendations for aftercare placement for C. and an educational consultant "were not part of the discussion as recommendations were not being made yet and in fact, have continued to change over the last four weeks."

[16] Prior to the hearing, on March 13, 2023, Mother filed a notice of intent to offer expert witness testimony from Olivia Stull, Ph.D., who had "academic and clinical experience regarding long term treatment facilities of Minor Children."

here that would warrant an emergency hearing[.]" Father posited that he had the authority to send C. to the Utah Program and then Crossroads and that Mother "was merely trying to do an end run around the appellate process . . . to get essentially a third bite of the apple[.]"

Mr. Wills confirmed that he had obtained the records from the Connecticut Program and waived privilege but was "very hesitant" to provide the parties copies of the records without first reviewing them. He explained that the director of the Connecticut Program wanted Mr. Wills to confirm that none of C.'s records would be released to his parents. He proffered, however, that the "records say [C.] was in significant distress." He urged the court "to consider all that if [it is] going to contemplate moving [C.] back to Maryland at this point in time;" unless the court wanted to "deny the motion" which Mr. Wills would "be fine with[.]"

The court decided to keep the scheduled hearing for March 16, but held that the hearing was "not going to be an evidentiary hearing" and the court would not "consider anything other than what's already been filed on this by all parties[.]"

On March 16, 2023, the parties returned to present arguments to the court. Counsel for Mother argued that the issue before the court was whether Father's tie-breaking authority gave him "the indisputable court-ordered legal authority to place [C.] in an educational and therapeutic facility out of state, regardless of [Mother]'s consent." In regard to Father's argument that Mother's motion was moot because C. was already at Crossroads in Utah, her counsel argued that the "ongoing emergency is the fact that this child . . . is still out of state, and is still in a facility that [Mother] does not agree with."

Citing to *Jackson v. Jackson*, 15 Md. App. 615 (1972), counsel asserted that "the mere fact that the child wasn't here isn't dispositive" because in "some of the caselaw," the "person that's sought to be returned [was] in fact already out of the state when the writ [was] filed." Additionally, Mother's counsel pointed out the judge who reviewed Mother's emergency motion said that "there was sufficient concern" to set this emergency hearing.[17] However, counsel acknowledged that the parties did go through a mediation in late February after Mother filed her emergency motion.

Father's counsel responded that this issue was *res judicata*, because it "was 100 percent contemplated" at the time of the modification hearing in November. His counsel emphasized that "[w]e had a three-day trial" with "55 exhibits, expert witness testimony, five witnesses, [and] numerous certified business records regarding the child's mental health treatment" that placed the issue of whether Father's tie-breaking authority gave him the right to send C. to a therapeutic boarding school over Mother's objection. Father's counsel asserted that it was "undisputed" that the parties "did mediate this" in February after which Father "properly invoked his decision-making authority." Finally, counsel argued that Mother's motion for a writ of *ne exeat* was not applicable because "the writ of ne exeat is really intended to try to retain jurisdiction over a person . . . [to restrain them] from leaving that jurisdiction, to ensure compliance with a court order" and "it would be catastrophic for the Court at this point to order this child back to the State of Maryland

[17] The judge who reviewed the pleadings related to Mother's motion for a writ of *ne exeat* and set a hearing in this matter was the same judge who presided over the three-day modification hearing in November 2022.

when there's no place established for this child to go" given the "very significant serious issues" about C.'s physical and emotional safety.

Mr. Wills agreed with Father that the writ of *ne exeat* was not applicable to the facts of this case and argued that Father "followed the process laid out by [the court] in the order." He asked the court to deny Mother's motion "either because the ne exeat doesn't apply" or because "it's moot."

The court denied Mother's motion, finding first that the motion was "moot" because:

> The child's already been at Crossroads since March 1st. But even if . . . I did not find the request to be moot, I don't find at this point that this is an emergency. And furthermore, even if I were to get beyond that and treat it as an emergency, I find that under the facts and circumstances, that ultimately this is something that the father is granted the authority to make this decision, pursuant to the order that was just recently entered by [the court].

On April 14, 2023, the court entered a corresponding order denying Mother's motion for a writ of *ne exeat.*

Mother filed a notice of appeal on April 11, 2023,[18] and on May 1, 2023, we consolidated Mother's two appeals.

[18] We note that, although Mother's notice of appeal was filed after the announcement by the trial court of a ruling but before the entry of the corresponding order on the docket, we treat Mother's appeal "as filed on the same day as, but after, the entry on the docket." Md. Rule 8-602(f).

DISCUSSION

STANDARD OF REVIEW

Ordinarily, in reviewing "an action . . . tried without a jury, we apply the clearly erroneous standard of review to the trial court's factual findings and review the court's decision for legal error." *Basciano v. Foster*, 256 Md. App. 107, 128 (2022); Md. Rule 8-131(c). In child-custody disputes, the best interests of the child "guides the trial court in its determination, and in our review" and "'is always determinative.'" *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)). In *Santo*, the Supreme Court of Maryland articulated the standard of review that should apply in reviewing a custody determination:

> We review a trial court's custody determination for abuse of discretion. This standard of review accounts for the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.
>
> Though a deferential standard, abuse of discretion may arise when 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. Such an abuse may also occur when the court's ruling is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic. Put simply, we will not reverse the trial court unless the decision is well removed from any center mark imagined by the reviewing court.

Santo, 448 Md. at 625-26 (cleaned up); *see also*, *Davis v. Davis*, 280 Md. 119, 125 (1977) (holding "it is within the sound discretion of the chancellor to award custody according to the exigencies of each case.").

I.

Tie-Breaking Authority

A. Parties' Contentions

Mother admits that "there was no dispute about the Minor Child's enrollment in a *temporary* residential treatment center"; however, she argues that the court "erred in finding that legal custody included the right to make decisions that would suspend physical custody of a fit and proper parent with shared physical custody." (Emphasis supplied by Mother). Citing to *Ross v. Hoffman*, 280 Md. 172, 174 (1977), Mother avers that the Supreme Court of Maryland "has recognized the interplay between private custody resolution of fit parents, and protection of the child" but "has not addressed how to resolve the conflict of a legal custody decision that acts to deprive a fit parent of physical custody." As reflected by her first question presented, Mother contends that the trial court exceeded its authority by giving Father the ability to "usurp a fit parent's right to care for a child in their physical custody." According to Mother, as reflected by her second question presented, there is no Maryland caselaw or statute that supports the proposition that "a parent with *joint* legal custody with tie-breaking authority has the legal right to send a Minor Child to a third party, be it professional or otherwise, over the objection of a fit and proper parent with shared (and in this particular case, equal) physical and joint legal custody." (Emphasis supplied by Mother).

Father responds that "the [trial] court did not abuse its discretion in finding that an award of final decision-making authority to one parent enables that parent to make legal

custody decisions that impact the custodial time of the other parent." Father disputes Mother's contention that this is a "novel legal issue" and, citing to *Taylor v. Taylor*, 306 Md. 290, 296 (1986), and *Santo v. Santo*, 448 Md. 620, 627 (2016), avers that "[t]he law is well established that '[l]egal custody carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare.'" He contends that the trial court properly considered all of the relevant *Taylor-Sanders* factors as well as the unique circumstances of this case to correctly determine that it was in the best interests of the child for Father to have tie-breaking authority at this time. Father emphasizes that the trial court did not find that any of the *Taylor-Sanders* factors weighed in Mother's favor and the evidence presented at trial "overwhelmingly demonstrated" that C. was suffering from a mental health crisis that required immediate intervention and "the parties had exhausted all available options for appropriate education and mental health treatment in the Washington D.C. Metropolitan area." Finally, Father urges this Court to deny Mother's request "to establish a bright line rule to limit a parent's ability to make legal custody decisions that significantly impact the other party's custodial time" as it would essentially "require the [c]ourt to arbitrarily decide how much time constitutes an infringement on the other party's time" including decisions such as whether to hospitalize a child, enroll a child in a private school or in-patient treatment. Such a bright line rule, according to Father, is a "slippery slope" that would "shift the focus to the parent's right to parent their child and away from the best interests of the child, which is antithetical to Maryland law."

In reply, Mother attempts to distinguish this case by asserting that, because Father "is seeking to use his legal custody with tie-breaking authority for neither parent to physically care for the Minor Child[,]" this is "distinct from two fit parents seeking physical custody of their child." (Emphasis supplied by Mother). Mother asserts that Father "create[s] a false comparison between temporary disruptions in parenting time and the instant case," and suggests that decisions like hospitalizing a child or enrolling a child in private school are "not indefinite suspensions." Mother avers that "there is not even a scintilla of evidence in the record as to why the Minor Child has to be receiving treatment in Utah as opposed to Maryland[.]"

B. Applicable Law

In Maryland, any custody decision affecting the welfare of a child necessarily requires evaluation of the factors set out in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977), *Taylor v. Taylor*, 306 Md. 290 (1986), and related cases.[19]

"In child custody cases, the circuit court functions as both a protector of the child and as a resolver of a dispute between the parents." *McMahon v. Piazze*, 162 Md. App. 588, 593 (2005). But "[w]hen the custody of children is the question, 'the best interest[s] of the children is the paramount fact. Rights of father and mother sink into insignificance before that.'" *A.A. v. Ab.D.*, 246 Md. App. 418, 441 (2020) (quoting *Kartman v. Kartman*,

[19] Maryland Rule 9-204.1 enumerates sixteen factors to be considered by the parties to a child custody case in the development of a parenting plan, many of which overlap with the factors set forth in Maryland decisional law.

163 Md. 19, 22 (1932)). Indeed, "[e]ven when father and mother are living together, a court has the power, if the best interests of the child require it, to take it away from both parents, and commit the custody to a third person." *Kartman*, 163 Md. at 22 (quoting *Schneider v. Batey*, 161 Md. 547 (1932)). Thus, "while a parent has a fundamental right to raise his or her own child," our Supreme Court has held that "the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute." *Boswell v. Boswell*, 352 Md. 204, 219 (1998). The best interests of the child standard "is firmly entrenched in Maryland and is deemed to be of **transcendent importance**." *Ross v. Hoffman*, 280 Md. 172, 174-75 (1977) (emphasis added). *See also Taylor*, 306 Md. at 303 (holding "in any child custody case, the paramount concern is the best interest of the child."); *Dietrich v. Anderson*, 185 Md. 103, 116 (1945) (holding "the welfare of the child is the consideration of transcendent importance").

Our decisional law firmly establishes that "it is not necessary that a parent be declared unfit before joint or sole custody can be changed from that parent" because "[t]he result depends upon the circumstances of each case." *Domingues v. Johnson*, 323 Md. 486, 500 (1991). In *Domingues*, for example, the parties, who lived in Maryland at the time, agreed during divorce proceedings that they "would 'have joint custody of their minor children,' and that the children would reside primarily with mother" with father having liberal visitation during the week and on alternating weekends. *Id.* at 488-89.

Approximately three years later, mother married a military officer who was scheduled to be transferred from Maryland to Texas, which prompted mother to file a

petition for modification of the existing joint custody arrangement "to accommodate her projected move with her new husband to San Antonio, Texas[.]" *Id.* at 489. Father objected to mother moving the child to Texas and, following an extensive hearing, the magistrate[20] recommended that primary custody be given to father. *Id.* After the chancellor overrode the mother's exceptions, she appealed. This Court reversed, holding that the chancellor improperly applied the best interests of the child standard, when he should, instead, have determined whether there was sufficient evidence of a change of circumstances affecting the welfare of the children. *Id.* at 489-90. We further held that the record failed to show a demonstratable adverse effect upon the children moving out of state, and "as a matter of law, the chancellor should have granted custody to the mother." *Id.* at 489-90.

Our Supreme Court, however, ruled that the chancellor did not err when he "considered the best interest of the children" or "that the evidence compel[led] but a single result." *Id.* at 490. The Court explained:

> The evidence in a given case may be sufficient to support an award of custody to either parent. Notwithstanding the oft-repeated reference in the cases to 'fit' and 'unfit' parents, it is quite often the case that both parents are entirely 'fit' to have legal and/or physical custody of a child, but joint custody is not feasible. In such cases, the chancellor must exercise his or her independent discretion to make the decision.

[20] As of October 1, 2015, individuals previously serving as a "master or family magistrate" are "designated a magistrate." Md. Rule 1-501. Accordingly, we refer to the "master" referenced by the *Domingues* Court as a "magistrate."

Domingues, 323 Md. at 492. The Court observed that "whether the interest of the child is best served by the certainty and stability of a primary caretaker, or by ensuring significant day-to-day contact with both parents" cuts both ways, and "are but some of the factors that the chancellor must consider" in protecting the child's best interest. *Id.* at 501-03. Indeed, we frequently see this scenario in relocation cases where one parent wants to move to a different state with the minor child over the objection of the other parent. *See, e.g.*, *Goldmeier v. Lepselter*, 89 Md. App. 301, 306, 313 (1991) (holding that "the actions of the parents, the reactions and concerns of the stepparents, the concern for the grandparents, the attitude and condition of the children, the advantages for the children, the schools in both locations, the living arrangements, and all the other factors involved in establishing what is in the best interests of the children" would support the ultimate decision made by the trial judge to permit mother to relocate the minor children from Maryland to Texas over the father's objection, but noting that "[i]t would also support a contrary decision."); *Ball v. Tate*, No. 1687, Sept. Term. 2022, slip op. at 21 (Md. App. Ct. filed Aug. 3, 2023) (unreported) (affirming trial court's decision to permit the minor child to relocate with mother from Maryland to Virginia over the father's objection because, among other reasons, the minor child "continuing to see Father every month in Connecticut [where father resided] is evidence that her move to Virginia has not detrimentally affected her ability to see and form a relationship with her father."). *But see, e.g., Braun v. Headley*, 131 Md. App. 588, 610, 613 (2000) (concluding that "the best interest of [the minor child]

warranted a modification of [mother's] parental rights" to transfer custody to the father who resided in Maryland when the mother relocated to Arizona).

Tie-Breaking Authority in an Award of Joint Legal Custody

The Family Law Article grants the circuit court continuing equitable jurisdiction over custody matters. Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL"), § 1-201(c). The statute provides: "In exercising its jurisdiction over the custody, guardianship, visitation, or support of a child, an equity court may: . . . from time to time, set aside or modify its decree or order concerning the child." FL § 1- 201(c)(4). This grant of jurisdiction "is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child." *Taylor*, 306 Md. at 301-02. *See also Ross*, 280 Md. at 174 ("The court may direct who shall have the custody of a child, decide who shall be charged with its support and maintenance, and determine who shall have visitation rights. This jurisdiction is a continuing one . . ."); *Wagner v. Wagner*, 109 Md. App. 1, 41 (1996) ("The *parens patriae* power of equity courts is plenary to afford minors whatever relief may be necessary to protect their best interests."); *Bienenfeld v. Bennett-White*, 91 Md. App. 488. 503-04 (1992) ("Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interests standard, . . . but possess a wide discretion concomitant with their 'plenary authority to determine any question concerning the welfare of children within their jurisdiction[.]'" (quoting *Kennedy v. Kennedy*, 55 Md. App. 299, 310 (1983))).

In *Taylor*, we explained the distinction between physical and legal custody. "Legal custody" entails "the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Taylor*, 306 Md. at 296 (footnote omitted). Joint legal custody "means that both parents have an equal voice in making those decisions, and neither parent's rights are superior to the other." *Id.* "Physical custody," on the other hand, "means the right and obligation to provide a home for the child to make the day-to-day decisions required during the time the child is actually with the parent having such custody;" however, "shared physical custody may, but need not, be on a 50/50 basis" and "most commonly will involve custody by one parent during the school year and by the other during summer vacation months, or division between weekdays and weekends, or between days and nights." *Id.* at 296-97.

The discretion that we accord trial courts in fashioning relief in custody matters is very broad. In *Santo*, our Supreme Court held, as a matter of first impression, that the trial court did not abuse its discretion when awarding joint legal custody to two parents who could not communicate and reach shared decisions for their children. *Santo*, 448 Md. at 630-31, 636-37. Notably, the Court addressed the propriety of tie-breaking provisions in joint legal custody awards, which grant one parent the authority to decide a matter affecting the children. *Id.* at 633-34. There, the trial court had granted "tie-breaking authority" to the father regarding the children's education, religious training, and medical care and the mother was given tie-breaking authority over selection of the children's therapist. *Id.* at

643. Father appealed, arguing, among other things, that tie-breaking provisions in joint legal custody awards were both ineffective and inconsistent with the holding announced in *Taylor v. Taylor*, 306 Md. 290 (1986), and FL § 5-203(d), which provides that "a court may award custody of a minor child to either parent or joint custody to both parents." *Santo*, 448 Md. at 631. The Court disagreed with the father, and concluded that:

> [S]uch an award is still consonant with the core concept of joint custody because the parents must try to work together to decide issues affecting their children. . . . **We require that the tie-breaker parent cannot make the final call until *after* weighing in good faith the ideas the other parent has expressed regarding their children**. . . . Such an award has the salutary effect of empowering both parents to participate in significant matters affecting their children. . . . **Because this arrangement requires both parties to attempt to make decisions together, it is a form of joint custody.** *See Taylor*, 306 Md. at 303 ("The availability of joint custody, in any of its multiple forms, is but another option available to the trial judge.").

Id. at 633-64 (bold emphasis added; italic emphasis in original) (some citations omitted).

The *Santo* Court—citing with approval a decision by the District of Columbia Court of Appeals in *Downing v. Perry*—further held that "[t]he requirement of good faith communication between the parents helps to ensure the parent with tie-breaking authority does not abuse the privilege of being a final decision-maker. And a court has the means to sanction a breach of good faith." *Id.* at 634 (citing *Downing v. Perry*, 123 A.3d 474, 483-85 (D.C. 2015)). In *Downing*, the District of Columbia Court of Appeals upheld a trial court order of joint legal custody that transferred final decision-making authority from the father to a neutral third party because father had "rigid[ly] exercise[d] [] his tie-breaking authority[.]" *Downing*, 123 A.3d at 483. The *Downing* Court held that the father's abuse of tie-breaking authority "is not in the best interests of the children as it is tantamount to

giving [the father] *de facto* sole legal custody over the children." *Id.* The *Santo* Court instructed that "*Downing* underscores that the tie-breaking authority does not eliminate the voice of the parent without that authority. Rather, such measure pragmatically reflects the need for *some* decision to be made *for the child* when parents themselves cannot agree. It is the child, after all, whom the court must consider foremost in fashioning custody awards." *Santo*, 448 Md. at 634-35 (emphasis in original).

C. Analysis

Mother asserts that the trial court erred in awarding Father tie-breaking authority to send the child away—indefinitely—over the express objection of a fit parent whose custodial parenting time would be adversely affected. Mother claims that she presents a novel issue. We disagree.

As previously noted, trial courts "have broad discretion in *how* they fashion relief in custody matters." *Santo*, 448 Md. at 636-37. The inquiry into the extent of a court's custody jurisdiction "is not whether [the General Assembly] has ***granted*** a power, but whether it has attempted to ***limit*** a power that exists as part of the inherent authority of the court." *Taylor*, 306 Md. at 298 (emphasis added); *Santo*, 448 Md. at 637. Legal custody of a child includes with it "the right and obligation to make **long range decisions** involving **education**, religious training, discipline, **medical care**, and **other matters of major significance concerning the child's life and welfare.**" *Taylor*, 306 Md. at 296 (emphasis added) (footnote omitted). Here, the trial court correctly applied the legal principles laid out in *Taylor*, *Sanders*, and *Santo*, and fashioned a custody order that protected C.'s best

interests under the circumstances presented. The court's December 2022 Order contemplated sending C. away for mental health treatment and specified that "a legal custody decision resulting in the minor child's admission or enrollment into a treatment center, school, program, or like facility is not precluded by either party's parenting time or access" and "merely suspends the parenting time until said treatment center, school, program, or like facility is concluded and does not constitute an interference with physical custody."

We decline to hold, as Mother suggests, the trial court lacks the power to grant one parent tie-breaking authority to decide whether to place the child in a residential treatment center or like facility, just because it may impact one or both parents' custodial time. *See Taylor*, 306 Md. at 303 ("The availability of joint custody, in any of its multiple forms, is but another option available to the trial judge."). Such a conclusion would be inconsistent with our statutory and decisional law directing that the child's best interests is the guiding principle in all family law cases and would severely restrict the trial court's plenary authority to fashion custody orders that protect the child's best interests.

We have routinely upheld custody determinations that are based on the facts presented to the trial court after a careful analysis of the non-exclusive *Taylor-Sanders* factors. Mother's misapplication of the legal principles guiding child custody decisions does not create a novel *legal* issue. Factually, every case is novel, because "there is no such thing as 'a simple custody case.'" *Sanders*, 38 Md. App. at 414 (quoting *Mullinix v.*

Mullinix, 12 Md. App. 402, 412 (1971)). "'Custody cases are like fingerprints because no two are exactly the same.'" *Id.*

Here, the trial court carefully considered all of the relevant factors and made factual findings consistent with the evidence adduced at trial. The evidence presented at trial clearly showed that C. was in crisis and needed immediate treatment for his mental health and substance abuse disorders and that the parties' impasse at reaching a decision adversely affected C. in obtaining the treatment he needed. Specifically, the court found that that the factor concerning each party's ability to maintain the child's relationship with the other parent weighed in favor of Father because, among other reasons, Mother's conduct while C. was at the Utah Program—using the codeword and indicating to C. that wilderness therapy was "inhumane and punishing"—was "[v]ery concerning" and "implied that [Mother cared more about [C.]'s welfare" than did Father. It was reasonable for the court to conclude that such behavior interfered with C.'s ability to engage in productive therapy. Additionally, the court found that "[t]he capacity of the parents to communicate and reach shared decisions affecting the child's welfare" weighed in favor of Father because "[Mother] is less likely to consider [Father]'s opinion as she describes him as having zero parenting skills." The court "believe[d] that [Father was] the best equipped to make th[e] decision" regarding tie-breaking authority to send C. to a residential treatment center or therapeutic boarding school as "[Mother] struggles to make some difficult decision[s,]" whereas "[Father] is willing to listen to professionals, consider [Mother]'s opinion, and move forward with the process." It is also significant that the BIA urged the court to give

Father tie-breaking authority and agreed with Father's decision to send C. to a residential treatment center.

Finally, we observe that while both parents' physical custody of C. will be impacted by his attending any residential treatment center, within or outside this State, the court's underlying order decided physical custody only on a *pendente lite* basis. We also note that at no point during the proceedings below did C. complain—either through the BIA or Mother—that he was abused, neglected, or otherwise harmed during his time at any of the facilities discussed in this opinion. In fact, the record bears out that C. had some positive experiences at the Utah Program, where he learned valuable coping skills to help with his sobriety. Accordingly, we discern no abuse of discretion or error in *how* the court fashioned the December 2022 Order because the order "pragmatically reflect[ed] the need for *some* decision to be made *for the child* when parents themselves cannot agree." *Santo*, 448 Md. at 634-35 (emphasis in original).

II.

Residential Treatment Centers as a Third-Party

A. Parties' Contentions

Mother next contends that the circuit court erred in "failing to make additional findings regarding exceptional circumstances or that a parent was unfit" before "awarding one parent the authority to send a Minor Child to a third-party *treatment center, school, program, or like facility* over the express objection" of a fit and natural parent. Emphasis supplied by Mother). Citing to *Conover v. Conover*, 450 Md. 51 (2016) and related cases,

Mother analogizes this case to child-in-need-of-assistance ("CINA") cases and third-party custody cases where "additional findings" of parental unfitness or exceptional circumstances are required to "ensure a balancing of the child's best interests and the parent's constitutional rights." Mother avers that the trial court was required to make additional findings on the record before providing Father a "blank check to keep the minor child in another state away from both of his natural parents indefinitely."

Father responds that Mother failed to preserve for appellate review, under Maryland Rule 8-131, whether the court was required to make additional findings regarding exceptional circumstances or parental unfitness prior to awarding Father tie-breaking authority to send the minor child to a third-party residential facility. He acknowledges that "[w]hile Mother's counsel cited to the body of law concerning extraordinary circumstances in *de facto* parent cases during closing arguments, [Mother's counsel] correctly noted that those are very different decisions than what the trial court was tasked to decide in this instant matter."

Assuming the argument is preserved, Father contends that Mother's argument "fails on the merits" because Maryland law does not require additional findings regarding exceptional circumstances or parental unfitness in custody matters between two natural parents. Father quotes the instruction from *McDermott v. Dougherty*, 385 Md. 320, 354 (2005), that arguments relating to third-party custody disputes "in no way alter the 'best interests of the child' standard that governs courts' assessments of disputes *between fit parents* involving visitation or custody," (quoting *McDermott v. Dougherty*, 385 Md. 320,

354 (2005) (emphasis in original)). Father also points to *Cusack v. Cusack*, 202 P.3d 1156, 1162 (Alaska 2009), where the Supreme Court of Alaska addressed the issue of "whether placing a child in boarding school is the equivalent of giving custody to a third party" and held that the decision to send a child to boarding school does not confer legal or physical custody to the school.

Mother replies that she appropriately preserved her claim for appellate review because there were "at least two instances in the record where she [] raised that the court should have made additional findings outside the best interest analysis or had an additional check on [Father's] tie-breaking authority[.]" Mother points to the Joint Statement Concerning Decision-Making Authority and Parenting Time where she stated that "[Mother] does not believe that [Father]'s tie-breaking authority gives [him] the ability to commit the Minor Child to a long term residential facility over [Mother's] objection." Mother also contends that she preserved the issue in her closing arguments wherein she argued that the trial court should look at "both the *de facto* parenthood [] and the extraordinary circumstance cases," citing *Basciano v. Foster*, 256 Md. App. 107 (2022), and *Ross v. Hoffman*, 280 Md. 172 (1977).

B. Analysis

We first address Father's preservation argument. Ordinarily, we will not address an issue on appeal "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). The primary purpose of Rule 8-131 is "to ensure fairness for all parties in a case and to promote the orderly administration of law." *State v.*

Bell, 334 Md. 178, 189 (1994) (quoting *Brice v. State*, 254 Md. 655, 661 (1969)). The interests of fairness are furthered by "requir[ing] counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings[.]" *Clayman v. Prince George's Cnty.*, 266 Md. 409, 416 (1972). During closing arguments at the November modification hearing, Mother's counsel argued:

> The one thing that I can point the Court to in terms of some evidence in our law about how important of a decision this is, **is looking at both the de facto parenthood cases and the extraordinary circumstance cases.** Extraordinary circumstance is Ross v. Hoffman and the de facto parents, there was actually a decision, I believe, last week, November 1st. . . . Basciano v. Foster. And, obviously, Your Honor, **those are different decisions than what the Court has before it.** But I think it is important to look at, especially the slip opinion, Your Honor, **has an excellent recanting of all the laws regarding . . . how important natural parents are.**

(Emphasis added). We conclude that, by the slimmest of reeds, Mother preserved the issue she now raises on appeal. Notwithstanding that Mother conceded that third-party custody cases "are different decisions than what the Court has before it," she did make a reference to "de facto parenthood cases and the extraordinary circumstance cases" outlined in *Ross v. Hoffman*, 280 Md. 172 (1977), and *Basciano v. Foster*, 256 Md. App. 107 (2022). Therefore, we shall treat the third-party issue as preserved for our review.

We hold, however, that the court was not required to make additional findings on the record of parental unfitness or exceptional circumstances before granting Father tie-breaking authority that includes the ability to place C. in a third-party residential facility, if necessary. There is no basis under Maryland law to apply the third-party custody

doctrine in a custody dispute between two natural parents. The third-party custody doctrine concerns the question of standing as does the doctrine of *de facto* parenthood. *See Basciano*, 256 Md. App. at 143-44. Here, a third-party (*i.e.*, Crossroads) is not seeking standing to request custody of C. Indeed, C. was sent to Crossroads at the direction of Father under the authority of the court order.

In *McDermott v. Dougherty*, our Supreme Court held that "in private actions in which **private third parties are attempting to gain custody of children of natural parents** over the objection of the natural parents, it is necessary first to prove that the parent is unfit or that there are extraordinary circumstances posing serious detriment to the child, before the court may apply a 'best interest standard.'" 385 Md. 320, 374-75 (2005) (emphasis added). The Court defined "third-parties" as "**persons other than natural parents or the State** attempting, directly or indirectly, to gain or maintain custody or visitation in respect to the children of natural parents." *Id.* at 355 (emphasis added). Then, in *Conover v. Conover*, the Court distinguished "pure third parties" from "those persons who are in a parental role" or "*de facto* parents" and held that "*de facto* parents have standing to contest custody or visitation and need not show parental unfitness or exceptional circumstances before a trial court can apply a best-interests-of-the-child analysis." 450 Md. 51, 85 (2016).

In the instant case, while it is true that any third-party treatment facility may act *in loco parentis*[21] while C. resides there—just as any boarding school would—sending a child to a residential treatment center does not confer standing on the center to contest custody.[22] We note that Ms. Cao, who treated C. at the Rockville IOP, recommended "higher level of care" for C., and the BIA—appointed at Mother's request—also advocated that Father have tie-breaking authority. The BIA pressed the court to implement a more streamlined process because the parties' inability to reach joint decisions was detrimental to C.'s best interests. In sum, this case involves a custody dispute between *two fit parents* and, therefore, the court correctly applied the best interests of the child analysis based upon the facts of the case. The court made extensive findings under all of the applicable *Taylor-*

[21] "*In loco parentis*" is defined as "[s]upervision of a young adult by an administrative body such as a university." *In Loco Parentis*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[22] In this regard, we agree with the Supreme Court of Alaska's analysis in *Cusack v. Cusack*, 202 P.3d 1156 (Alaska 2009). There, the trial court granted the father sole legal and primary physical custody and awarded mother visitation. *Id.* at 1157-58. Upon the recommendation of the court-appointed custody evaluator, the court also entered an order giving father the authority "to send [the daughter] to boarding school for the child's educational, emotional, mental and physical benefit" and provided alternative visitation schedules for mother in anticipation of that event. *Id.* at 1158. The mother appealed, arguing that the trial court erred "by allowing a third party (a boarding school) to have physical custody of the daughter" and "by limiting [the mother]'s access to the daughter." *Id.* at 1161. The Supreme Court of Alaska disagreed and endorsed the conclusion of the intermediary court that "[i]n the course of daily affairs, parents leave their children with various caretakers, such as daycare, schools, sports programs, summer camps, babysitters, and friends and relatives. Although such persons have the child and stand *in loco parentis*, they do not have any claim of custody." *Id.* at 1161-62. The Supreme Court of Alaska held that "merely sending a child to boarding school does not confer legal or physical custody . . . and does not implicate" third-party custody considerations. *Id.* at 1162.

Sanders factors and determined that five factors weighed in favor of Father whereas none of the factors weighed in favor of Mother. Accordingly, we hold that the trial court did not err in failing to make additional findings under the exceptional circumstances analysis required in third-party custody cases.

III.

Writ of *Ne Exeat Republica*

A. Parties' Contentions

Finally, Mother argues that the trial court erred in denying her motion for a writ of *ne exeat* because the court "was without [the] authority to endorse an indefinite placement outside the care of the fit parents." Thus, according to Mother, when Father "acted unilaterally to transport the child to another state to live at a long-term facility, the trial court should have intervened." Citing to *Jackson v. Jackson*, 15 Md. App. 615 (1972), and *Abbott v. Abbott*, 560 U.S. 1 (2010), Mother argues that a writ of *ne exeat* may "provide to keep a minor child in the state pending the resolution of a dispute." In essence, Mother seeks the return of the minor child from the institution "selected unilaterally by [Father] to the care and custody of the parties jointly."

Father responds that the trial court did not abuse its discretion in denying Mother's request for a writ of *ne exeat*. He disputes Mother's interpretation of the holdings articulated in *Jackson* and *Abbott* and argues that "a writ of *ne exeat* (which is intended to keep an individual contained within a certain jurisdiction) cannot and does not apply." Father contends that the court correctly denied Mother's motion for the writ because "at

the time of Mother's filing, the child was already outside the jurisdiction and had been for several months due to the parties' agreement to send the child" to the Connecticut Program. Finally, Father asserts that his decision to invoke tie-breaking authority to enroll the child at Crossroads was not intended to deprive the court of jurisdiction in this matter.

B. Governing Law

A writ of *ne exeat republica*, literally, "let him not exit the republic," is an equitable remedy that arises from English common law.[23] Article 5 of the Declaration of Rights of the Maryland Constitution of 1867 provides that "the Inhabitants of Maryland are entitled to the Common Law of England" as it existed on July 4, 1776, assuming of course, that Maryland has made no change in the intervening time. MD. DECL. OF RTS. art. 5(a)(1).

In *Jackson v. Jackson*, we addressed whether a writ of *ne exeat* could be issued in Maryland in a case involving a request for alimony before a judgment of default had been entered. 15 Md. App. 615 (1972). There, the appellee-wife filed a complaint for divorce on the grounds of adultery. *Id.* at 621. Four days later, pursuant to an affidavit filed by the wife, the court issued a writ of *ne exeat* against the husband with a $1,000 bond. *Id.* at 621-22. That same day, the wife met her husband, who was returning from a business trip, drove him to their home, whereupon the husband was arrested and incarcerated pursuant

[23] *See* CYNTHIA CALLAHAN & THOMAS C. RIES, FADER'S MARYLAND FAMILY LAW, § 19-24(a) (7th Ed. 2021) ("*Ne exeat republica*, also known by its shortened form of *ne exeat*, was a common law writ in equity. It could be issued to prevent a person from leaving a jurisdiction. No longer widely used in many jurisdictions, but still found in Maryland complaints for custody, and in orders intended to comply with the Hauge Convention."); *see also Ne Exeat Republica*, BLACK'S LAW DICTIONARY (11th ed. 2019).

to the provisions of the writ. *Id.* at 622. Two days later, the husband filed, among other things, a motion to quash the writ of *ne exeat*. *Id.* At the hearing on the husband's motion, the wife testified that she "had no income," that her husband did not want her to file for divorce in Maryland, "that he had told her a number of times he would 'see that (she) had nothing to live on' and suggested 'he was going to take off for Bolivia and Africa' and live like bum; that he had on a number of occasions stated 'he can be the biggest bum on earth and he can get lost in the Everglades,'" and that "after being served with the writ in this case, the husband had provided no support for her and took her credit cards and automobile away from her." *Id.* The court denied the husband's motion. *Jackson*, 15 Md. App. at 623.

On appeal, we held that "a writ of *ne exeat* cannot be issued in Maryland prior to the time there has been a default under a decree for alimony or support." *Id.* Thus, because at the time the writ was issued the husband had been supporting the wife and was not currently in default, we reversed the trial court's ruling. *Id.* at 623-24. We also observed that "there [were] other remedies available to deal with a departing husband" that made him "amenable to other interstate processes." *Id.* at 623. Finally, we cautioned that:

> In these times **our notions of individual liberty are too strong to permit any expansion of the writ to permit incarceration of a husband who is not i[n] default of supporting his wife simply because she feels that he might at some future date default.** . . . [W]e must weigh the likelihood of the wife becoming a public charge against the likelihood that a husband who has made an idle threat during the course of a marital dispute may be incarcerated prior to any default in his obligation to his family**. To us, the remedies now available to a wronged wife or her children, are ample without risking improper imprisonment of the husband before default.**

Id. at 624 (emphasis added).

In 2010, the United States Supreme Court held, in the context of the Hague Convention on the Civil Aspects of International Child Abduction ("Hauge Convention"),[24] that a parent's *ne exeat* right confers a "right of custody." *Abbott v. Abbott*, 560 U.S. 1, 10 (2010). In *Abbott*, the non-custodial father filed suit in the United States District Court for the Western District of Texas seeking an order requiring his son's return to Chile under the Hauge Convention after the mother brought the minor child to Texas without the father's permission. *Id.* at 7. When the couple separated in 2003, the Chilean courts granted the mother "daily care and control of the child, while awarding the father 'direct and regular' visitation rights, including visitation every other weekend and for the whole month of February each year." *Id.* at 6. Under Chilean law, once a parent is granted visitation rights, a *ne exeat* right automatically follows. *See* Minors Law 16,618, art. 49 (Chile); *Abbott*, 560 U.S. at 6. When the father obtained a British passport for the child, the mother sought and obtained a "*ne exeat* of the minor" order from the Chilean family court, prohibiting the child from being taken out of Chile. *Id.* However, in 2006, while proceedings before the Chilean court were still pending, *the mother* relocated with the child to Texas without the father's permission and filed for divorce and modification of custody in Texas state court. *Id.* Father sought an order requiring his son's return to Chile pursuant

[24] *See* Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 ("Hauge Convention"), and the implementing statute, the International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. § 9001 *et seq.*

to the Hague Convention and the ICARA. *Id.* at 7. The District Court denied father's request and he appealed. *Id.*

The Supreme Court first summarized that the Hague Convention sought "'to secure the prompt return of children wrongfully removed to or retained in any Contracting State,' and 'to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.'" *Id.* at 8 (citing Art. 1, S. Treaty Doc. No. 99-11, at 7). The Court further explained that:

> The Convention's central operating feature is the return remedy. When a **child under the age of 16** has been wrongfully removed or retained, the country to which the child has been brought must 'order the return of the child forthwith,' unless certain exceptions apply. A removal is 'wrongful' where the child was removed in violation of 'rights of custody.' The Convention defines 'rights of custody' to 'include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence.' **A return remedy does not alter the preabduction allocation of custody rights but leaves custodial decisions to the courts of the country of habitual residence**.

Abbott, 560 U.S. at 9 (cleaned up) (emphasis added). The Court concluded, therefore, that the father's "*ne exeat* right is a right of custody under the [Hauge] Convention." *Id.* at 10 (emphasis in original).

C. Analysis

Mother argues that at the hearing on her motion for *ne exeat*, the trial court erred by effectively endorsing Father's legal authority to send the child away from his parents indefinitely. We disagree.

First, we do not interpret the court's denial of Mother's motion as endorsing Father's authority to send the child away indefinitely. Rather, the trial court's decision was

limited to reviewing Father's decision to send C. to the Utah Program for a few weeks and then to Crossroads. After C. completes his treatment at Crossroads, Father must still abide by mediation provision outlined in the December 2022 Order.

Second, we do not view the holdings in *Jackson* and *Abbott*, *supra*, as necessarily supporting the proposition that a writ of *ne exeat* may be used in Maryland to order the return of a child when there were other legal remedies available to Mother. As explained above, a writ of *ne exeat* is an equitable remedy and there is no Maryland case that holds a parent may seek *the return* of a minor child who was wrongfully removed. Under Maryland common law, *ne exeat* rights have been used primarily to keep someone from leaving the jurisdiction by issuing a monetary bond to ensure compliance where the person seeking the writ had a *money demand* and had *no other remedy at law*. *See Jackson*, 15 Md. App. at 619 (citing to the "relatively new Maryland Rule[]" which "clearly contemplate[d] the use of the writ [of *ne exeat*] in cases involving alimony or support of children."); *Lukat v. Lukat*, 21 Md. App. 354, 355-56 (1974) ("Out of fear that her husband intended to 'speedily to leave this State and the jurisdiction of this Court with intent to evade the obligation . . .,' Mrs. Lukat obtained a Writ *Ne Exeat*."); *Lopez v. Lopez*, 206 Md. 509, 513 (1955) ("Complainant prayed for a divorce, alimony, counsel fees, a division of defendant's personal property between the parties, a writ of *ne exeat* to prevent the defendant from leaving the State without leave of the Court" and "[o]n April 26 the Court issued a writ of *ne exeat*, and defendant thereupon filed a bond in the sum of $10,000 to guarantee that he would not go out of the State without leave of the Court."); *Cox's Ex'rs*

v. Scott, 5 H. & J. 384, 389 (1822) (holding that "[t]hese cases [discussing a writ of *ne exeat*] prove the practice of the court of chancery in this state to be, that a writ of *ne exeat* may issue, and be sustained, where the party has a *money demand*, . . . **and has no remedy at law**, and cannot hold the debtor to bail." (italic emphasis in original; bold emphasis added)).

Returning to the case on appeal, we have no reason to believe that Father violated the provisions of the mediation protocol outlined in the December 2022 Order because Mother failed to respond to Father's specific request for mediation within ten days of his email dated December 29, 2022. Regardless, as our Supreme Court noted in *Santo*, there are other legal remedies, (apart from a motion for *ne exeat*), available to Mother if she believed that Father abused his tie-breaking authority. *See Santo*, 448 Md. at 634 ("The requirement of good faith communication between the parents helps to ensure the parent with tie-breaking authority does not abuse the privilege of being a final decision-maker. **And a court has the means to sanction a breach of good faith**.") (emphasis added); *see also Jackson*, 15 Md. App. at 624 ("[T]he remedies now available to a wronged wife or her children, are ample without risking improper imprisonment of the husband before default."). Accordingly, we view Mother's emergency request for a writ of *ne exeat* as an improper attempt to re-litigate the issue of Father's tie-breaking authority to make decisions about C.'s mental health and educational needs. *See McCready v. McCready*, 323 Md. 476, 481 (1991) ("A litigious or disappointed parent must not be permitted to

relitigate questions of custody endlessly upon the same facts, hoping to find a [judge] sympathetic to his or her claim.").

In regard to Mother's contention that the court declined to hold an evidentiary hearing, we note that Mother was given both notice and an opportunity to be heard, and the court fully considered the pleadings and exhibits filed by the parties. *See Wagner v. Wagner*, 109 Md. App. 1, 23-24 (1996) (holding in the context of custody cases that "it is sufficient if there is at some stage an opportunity to be heard *suitable to the occasion* and an *opportunity* for judicial review at least to ascertain whether the fundamental elements of due process have been met.") (emphasis in original); *Cf. Burdick v. Brooks*, 160 Md. App. 519, 526-27 (2004) (holding that a mother was deprived of due process of law when the circuit court ordered a change in custody after a fifteen-minute status conference "[b]ecause the court did not provide notice of a possible custody determination," the mother "had no 'opportunity for an **effective argument** on the issue of custody.'") (emphasis in original) (quoting *Van Schaik v. Van Schaik*, 90 Md. App. 725, 739 (1992)). Accordingly, we affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.