

In the Circuit Court for Baltimore City
Case No.: 24-D-17-002487

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0280

September Term, 2018

JOSHUA WHITE

v.

AKIDA JONES

Meredith,
Kehoe,
Berger,

JJ.

Opinion by Meredith, J.

Filed: November 19, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The parties to this case never married, but are the parents of a son, “Son,” born on April 7, 2015. On July 26, 2017, Joshua White (“Father”), appellant, filed a complaint for custody in the Circuit Court for Baltimore City, asking to be awarded sole physical and sole legal custody of Son, with Akida Jones (“Mother”), appellee, to be awarded three overnights a week. On August 1, 2017, Mother filed an answer and counter-complaint for custody, pointing out that Son had always resided with her. Mother asked the court to award her sole legal and physical custody of Son, with visitation to Father “provided [he] completes anger management and parenting courses” and “provided we go to mediation for a detailed parenting plan.” Mother also requested that a child support order be entered against Father.

On August 10, 2017, a “temporary consent order for joint custody,” was entered providing that, “pending the outcome of the trial on the merits in this case, it is in the best interest of the Minor Child that Father and Mother shall have joint legal custody and joint physical custody of the Minor Child,” with exchanges to take place every Sunday at the Southwestern District of the Baltimore Police Department.

The merits trial in this case was conducted on March 5, 2018. Father testified on his own behalf, and called no other witnesses. Mother testified in her own case, and called two witnesses. Both parties agreed, without reservation, that they could not communicate with each other or co-parent effectively. The court granted Mother’s counter-complaint and denied Father’s. Mother was awarded sole legal and primary physical custody; Father was awarded visitation every other weekend, and an overnight

visit every Monday. The court ordered Father to pay \$289 per month in child support. This appeal followed.

QUESTION PRESENTED

We have distilled the three questions presented by Father in his brief to one:¹ Did the circuit court either err or abuse its discretion in making its custody and child support award?

For the reasons that follow, we answer “no,” and affirm.

STANDARD OF REVIEW

In *Gillespie v. Gillespie*, 206 Md. App. 146, 170–71 (2012), this Court said:

This court reviews child custody determinations utilizing three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586, 819 A.2d 1030 (2003). The Court of Appeals described the three interrelated standards as follows:

We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles

¹ In his Brief, Father asked:

1. Did the lower Court err in changing an already working custody agreement?
2. Did the lower court abuse its discretion by turning a natural parent into a mere visitor?
3. Did the lower court err in its child support calculation?

and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. at 586, 819 A.2d 1030. In our review, we give “due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.” *Id.* at 584, 819 A.2d 1030. We recognize that “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the trial judge] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.” *Id.* at 585-86, 819 A.2d 1030.

ANALYSIS

Father alleges in his Brief that the trial court “was clearly erroneous and abused its discretion by . . . altering a working joint custody agreement and limiting visitation.” But *neither party requested a continuation of a “joint custody agreement”*; both parties sought sole legal and primary physical custody in their complaints. And, referring to *Taylor v. Taylor*, 306 Md. 290, 304-05 (1986), the court observed that “the easiest decision for the [c]ourt was on legal custody because both parties agree that they are not able to communicate.” The court therefore ruled that continuation of joint custody was not appropriate in this case, stating: “It’s clear for me, both of you admitted and it’s clear to me, that that can’t happen, so there will not be any joint legal custody.”

Father also complains that the trial court ruled him “unfit because of a presumption of unstable employment as the only factor,” which he contends “is clearly erroneous and an abuse of discretion.” But the court did not make any express findings

regarding the fitness of either party, and did not say that it found Father “unfit.” And there was evidence, including Father’s own testimony, to support the court’s stated “concern” that Father “does not really have a stable employment,” whereas the Mother “has stable employment, stable home.” The court made a finding that “[M]other’s life is more stable, in actuality, than the [F]ather despite what he says.” The court’s ruling, in pertinent part, was as follows:

[BY THE COURT]: The [Father] has presented that he has a stable home. I am --- my major is concern [sic] is that he really, as far as I’m concerned, the Court is concerned, he does not really have a stable employment. I understand his --- fact that he has criminal convictions keeps him from meaningful employment. A lot of --- unfortunately, a lot of folks do. However, I’m concerned that it’s [a] job that pay[s] cash under the table because there are jobs that you can get without taking it under the table even as a convicted felon.

And if the [F]ather had gone, especially if he had gone through child support court, and I’m sure we can give him certain information, there are a lot of places that would hire him at least at minimum wage or more, so that he could get a more stable salary to take care of his son.

The [F]ather appears to be relying on the fact that his fiancée is working, that she is his help and support, and seems like she’s more than a support, but that she is paying the bills considering what he’s making.

* * *

Also, that she would be supportive of keeping the child when he couldn’t and that they do this now, but it’s --- the child is still not her responsibility. The child is the father’s responsibility, so I’m not certain how that would continue in the future with the child as the child got older and the child enters school. And, again, she has no obligation to stay with him or take care of his child. So that is a concern.

I find that the [M]other’s life is more stable, in actuality, than the [F]ather despite what he says. I also believe that were I to grant the [F]ather primary physical custody and visitation to the [M]other, that it

would be much more difficult for the [M]other to have visitation with the [F]ather rather than the [F]ather having visitation through the [M]other having custody.

So those were the issues that I saw when I reviewed my [sic] facts and my [sic] testimony and reviewed the report. Therefore, I'm awarding primary physical custody and legal custody to the [M]other in this case [W]e're going to do some type of visitation for you because I think that's the only way this is going to start out to work.

The court's ruling in favor of Mother on the parents' competing claims for sole custody was amply supported by the record. We perceive no "clearly erroneous" finding of fact, nor any error of law, nor an abuse of trial court's discretion.

With respect to Mother's claim for child support, Mother filed a financial statement reflecting that her income was \$2,400 per month. She testified that she works at Community Mediation Maryland, and rents part of a 5-bedroom house for \$450/month, residing there with Son and Mother's five-year-old daughter.

Father, on the other hand, did not file any financial statement. He testified that he lives in a house in Halethorpe with his fiancée, and that he works approximately twenty hours a week, for off-the-books cash, at a pizza establishment that pays him "under the table." If Son happened to be in Father's physical custody during a period when Father was working, Father's fiancée -- who did not testify -- cared for Son. The court asked Father to explain how he intended to support Son, should his request for sole custody be granted:

[BY THE COURT]: If you were to get sole physical custody, which is what you're asking for, of [Son], how do you plan to support him?

[BY FATHER]: In terms of?

Q. Financially.

A. Well, I mean, to be honest, yeah, I work part-time and my fiancée is the bread winner right now.

Q. I know, but she's not the child's parent ---

A. Right.

Q. --- or asking for custody. You are.

A. Right, right.

Q. So what are your plans? Like, if you had [Son] ---

A. Uh-huh.

Q. Let's say you have [Son] ---

A. Uh-huh.

Q. ---- and your fiancée is no longer your fiancée. How would you support him?

A. With what cash I have plus my family.^[2]

Q. And he's not quite three. How are you going to support him for the rest of --- till he's 18?

A. Oh. Okay. Right now, yeah, I have quite a few criminal cases on my record and that's why I'm doing what I'm doing as far as employment and it's either off the books or nothing. I filled out ---- I couldn't even Lyft with my own car because of my criminal record.

Q. But you keep a driver's license?

A. Yes.

² Aside from testifying later that "he has a big supportive family," Father presented no specific evidence about how his family could or would help him care for Son.

Q. All right. You'll understand that if I were to rule --- Ms. Jones in her counter-complaint is also seeking sole physical custody, what we would really call primary physical custody.

A. Uh-huh.

Q. She's also asking for child support ---

A. Uh-huh.

Q. --- and your paternity case did not discuss child support, however, rolled it into this case.

A. Right.

Q. **So you understand that for the purposes of child support, the State will infer a minimum wage on you ---**

A. **Okay.**

Q. --- so that --- and I have to get the current amount, but it's clearly --- well, **it's about twelve-something a month**, I think now. **So the child support guidelines would be based on minimum wage whether you're making minimum wage or not.**

A. **Uh-huh.**

Q. Okay? I just want to make sure you understand that.

(Emphasis added.)

Father argues that the trial court "erred in calculating child support by not considering or applying the burdensome transportation costs of picking up and dropping off the child," but Father did not ask the court to perform that calculation, nor did he supply the court with any evidence upon which it could do so. Father lives in Halethorpe and Mother lives in Baltimore City; Father did not argue at trial that having to transport

Son would impose a financial hardship. When the court asked how Father planned to get Son to school once the parties were no longer alternating week-on/week-off visitation (as in the *pendente lite* consent order), Father responded:

[BY FATHER]: Oh, I can pick him up from [Mother]. I have reliable transportation. I have no problem working, like --- that was her biggest --- what happens when he goes to school, this, that, and the third. **I can pick him up from her. Like, that's not a problem.** I have reliable transportation.

(Emphasis added.)

The court evaluated the competing testimony of the parties and the evidence, and concluded that Mother's situation was more stable than Father's. We are persuaded that this record contained sufficient evidence for the court to have found, as it did, that it was in Son's best interest for the court to award sole legal and primary physical custody to Mother.

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