Circuit Court for Baltimore City
Case No. 820203002J

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 432

September Term, 2024

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IN RE: M.M.

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Arthur,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Ripken, J.

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Filed: February 18, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is the second appeal arising from a Child in Need of Assistance ("CINA")[1] proceeding in the Circuit Court for Baltimore City. The first appeal resulted in a remand to the circuit court for further proceedings. On remand, the court ruled that the involved child, M.M.,[2] was not a CINA and awarded primary physical custody and sole legal custody to M.M.'s mother ("Mother"). M.M.'s father ("Father") filed this timely appeal. For the reasons to follow, we shall affirm.

## ISSUES PRESENTED FOR REVIEW

Father presents the following issues for our review:[3]

I. Whether the circuit court abused its discretion in its *in-camera* interview with M.M.

II. Whether the circuit court abused its discretion in awarding sole legal and primary physical custody to Mother.

[1] A CINA is a "child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs." Md. Code (2001, 2020 Repl. Vol.), Cts. & Jud. Proc. § 3-801(f) ("CJP").

[2] To protect the identity of the minor child, we refer to the child using initials.

[3] Rephrased from:

I. Whether the juvenile court erred in its *in-camera* interview with [M.M.].

II. Whether the evidence adduced at trial supports the juvenile court's finding that the best interests of [M.M.] are served by awarding Mother sole legal and primary physical custody.

III. Whether the juvenile court erred by focusing almost exclusively on a single factor (i.e. the expressed preference of the child) rather than taking all factors into consideration, contrary to the dictates of well-established case law.

III. Whether the circuit court erred in its analysis of the custody factors.

## FACTUAL AND PROCEDURAL BACKGROUND

M.M. was born in February of 2012. For the first eight years of M.M.'s life, the child lived with Mother, who was the sole caregiver. Father had occasional contact with M.M. pursuant to an informal agreement.

In July of 2020, the Baltimore City Department of Social Services ("the Department") removed M.M. from Mother's home after Father made a report of physical abuse. We summarized the facts regarding the Department's involvement and the proceedings that led to the first order of custody in the previous appeal:

> In July of 2020, when M.M. was eight years old, [Father] called the Baltimore City Police Department, alleging that [Mother] was physically abusing M.M. and that M.M. had arm bruises. In response, [the Department] transported M.M. to Johns Hopkins Hospital, where M.M. was examined. The exam was "diagnostic for abuse," and hospital notes described M.M. as having a "clearly inflicted pattern of injury."
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> Subsequently, the Department petitioned the circuit court, asserting that M.M. was a CINA and requesting an Order of Shelter Care to provide for M.M.'s safety. The court then conducted a hearing and ordered M.M. to be placed with relatives.
>
> Then, in March of 2021, the court placed M.M. with Father. Mother was permitted four hours of unsupervised visitation each week. Subsequently, the court also granted Mother access to M.M. for overnight visits while M.M. remained under Father's primary care.
>
> In May of 2022, the court held an adjudicatory hearing. Therein, the court ruled in favor of Department allegations and found that M.M. had been abused and neglected. The court then held a disposition hearing to determine whether M.M. was a CINA and whether the existing custody arrangement should be modified.
>
> Recognizing uncertainty related to the source of M.M.'s injuries, the court found that the injuries had occurred while M.M. was in Mother's care but

> declined to find that Mother had inflicted them. The court acknowledged Mother's partial rehabilitation and her willingness to engage in anger management classes and family therapy and described Father as an asset to the family, noting that he had acted "above and beyond" to help M.M. The court accepted the parties' shared assertion that M.M. wanted to spend equal time with each parent. Even so, the court found that Mother and Father had not engaged in family therapy and that they continued to have an antagonistic relationship.
>
> Ultimately, in August of 2022, the court found M.M. to be a CINA and ordered Mother and Father to share custody. The court indicated that declining to find M.M. a CINA would place M.M. in "a very frustrating" and "very unfriendly" situation and that awarding sole custody to either parent would not be in M.M.'s best interest. The court also placed M.M. under an Order of Protective Supervision, enabling the Department to have access to M.M. on an announced and unannounced basis and to provide services related to family therapy.

*In re M.M.*, No. 1028, Sept. Term 2022, slip op. at 1–3 (Md. App. Ct., Apr. 17, 2023) ("*In re M.M. I*") (paragraph breaks added, footnotes omitted). Father filed an appeal from the August 2022 custody order (the "First Appeal").

**The First Appeal and Remand**

In the First Appeal, we held that the court abused its discretion in finding M.M. to be a CINA because Father was able and willing to care for her.[4] *In re M.M. I*, slip op. at 7–8. We further held that, because the court had sustained allegations of abuse sufficient to support a CINA finding against Mother, the court erred in awarding Mother shared custody

[4] CJP section 3-819(e) provides:

> If the allegations in the petition are sustained against only one parent of a child, and there is another parent available who is able and willing to care for the child, the court may not find that the child is a child in need of assistance, but, before dismissing the case, the court may award custody to the other parent.

of M.M. without making a specific finding that there was no likelihood of further abuse or neglect while in Mother's care.[5] *Id.* at 13–14. Accordingly, we vacated the disposition order and remanded the matter to the circuit court with instructions to decide whether to (a) determine a custody arrangement in M.M.'s best interest in the CINA case; or (b) dismiss the CINA case and allow the parents to pursue a custody determination outside of the CINA proceedings. *Id.* at 14. The court proceeded with the former option and scheduled a custody hearing.

**Evidence Adduced at Custody Hearing**

The custody hearing took place on four separate dates that spanned a six-month period between September of 2023 and March of 2024. When the hearing began, M.M. was eleven years and seven months old, and had just started the sixth grade. At the outset of the hearing, and again at the end, the Department advised the court that it had no concerns with respect to M.M.'s safety while in the custody of either parent, and that it would defer to the court on the issue of custody.

At the request of counsel for M.M., and over Father's objection, the court conducted two *in-camera* interviews of M.M., on the first day of the hearing and again four months

[5] Section 9-101 of the Family Law Article, which governs child custody and visitation, provides: "if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party." Md. Code (1984, 2019 Repl. Vol), Family Law Article ("FL") § 9-101(a). Absent a finding that there is no likelihood of further child abuse or neglect by the party, "the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child." FL § 9-101(b).

later, on the third day of the hearing. Both Mother and Father testified and were represented by counsel. Father called three witnesses: M.M.'s fifth grade teacher, a Department social worker, and the father of K., Mother's fourteen-year-old son.

*Mother's Testimony*

Mother testified that she had been M.M.'s sole caregiver from her birth in 2012 until July of 2020, when the CINA proceedings began. She and Father lived together for a month after M.M.'s birth. Mother said that Father was "there more" when M.M. was an infant, but, when she and Father "started to have issues" and the "police and court started to get involved[,]" Father "wasn't . . . present at all."

Mother testified that three protective orders were issued in her favor against Father. The first was in 2013, following an encounter with her at her father's house. According to Mother, Father came to the house, started "arguing, yelling, and screaming[,]" and broke a screen door in an attempt to force it open. In 2016, Mother secured a second protective order after Father showed up at her apartment, "bang[ed]" on her door, ignored requests made by security personnel for the apartment building to leave the premises, and then physically assaulted Mother. The third protective order was issued in July of 2023, after an incident at M.M.'s day camp where Father began "threatening, yelling, and screaming in [Mother's] face." The court took judicial notice of the district court cases that resulted in the final protective orders issued in 2016 and 2023.[6]

According to Mother, Father did not see M.M. from the time she was one year old

[6] The court was not asked to take judicial notice of the 2013 case.

to the time she was six. When M.M. was six or seven years old, Father "started to come back around more often to see her." Mother said, "[m]aybe once or twice a year [Father] would . . . call and talk to [M.M.] on the phone or ask to see her. And when he would, he would see her maybe for an hour[,] then leave."

Mother stated that she has two other children: K., who was fourteen years old when the hearing began, and V., who was then eight years old.[7] Mother explained that V. is not her biological child, but had been in her care since the child was four months old.[8] She considers V. to be one of M.M.'s and K.'s siblings.

K.'s father has sole legal custody and primary physical custody of K. Mother has overnight visitation every other weekend.

V. lived with Mother until two weeks before the custody hearing for M.M. began. At that time, there was a change in V.'s guardianship, from Mother to Mother's father.[9] V. had since been staying with Mother's father at night, but Mother still picked V. up from school and V. would stay at her house for several hours. Mother stated that the guardianship order allows V. to "stay with [her] from time to time[,]" and that V. still has a bedroom and belongings at her house.

Mother testified that M.M., K., and V. refer to each other as "brother" and "sister[,]"

[7] To protect the minor children's identities, we refer to them using randomly selected initials.

[8] According to an order of the court dated May 23, 2022, V. is Mother's nephew, and had been in her care since 2016. Mother was granted custody and guardianship of V. in 2019.

[9] No evidence was presented regarding the circumstances leading to the modification of the guardianship order.

and she described the relationship between them as "really, really good[.]" She said, "[t]hey roughhouse just like they always have. They [are] always playing together. They ride bikes together." When they are not all at her house, they "tag" each other in online games "so that they can all play together."

Mother is a self-employed nail technician. Her salon is located in the same building in which she lives. Mother testified that she works by appointment, and that her schedule does not interfere with her ability to care for M.M.

Mother stated that M.M. has five to eight friends in Mother's neighborhood. M.M. and those friends go to the playground after school or sit outside together. According to Mother, M.M. has no interaction with friends outside of school when she is with Father.

Mother speaks with M.M.'s teachers "regularly," either in person or by text message. She monitors M.M.'s grades and attends PTA meetings. Mother went on "many" school field trips with M.M. and has been "very present" at M.M.'s after-school programs and theater classes.

Mother described the relationship between her and M.M. as "very loving[,]" "playful," and "amazing." She said, "we always find ways to just find fun." They take their dog on long walks, cook together, pray together, participate in a "parent and child" fitness class, and do each other's hair and makeup. They share an interest in artistic pursuits such as drawing and painting.

Mother stated that she was willing to share custody with Father, but that his lack of "consistent transportation" made shared custody impossible. She testified that she was willing to communicate with Father on issues regarding M.M., but that she and Father did

not communicate well. She said, "if it's not his way, it's no way[,]" and that there was "always . . . some type of argument between [them], even when [the communication is] just supposed to be about M.M." She did not "feel safe" in her interactions with Father because "they always lead to a rant, a rave, [and] arguments[.]"

Mother testified that, because Father does not allow M.M. to have her phone with her while at his house, she does not hear from M.M. for the entire week that M.M. is with Father. On school days, Mother goes to M.M.'s school to talk to her to "make sure she's doing okay." Mother said, "[b]ut outside of that, [M.M.] has no communication with myself or her brothers."

Mother stated that "[o]ne of the most important" concerns she had about M.M. being in Father's care was that there was "always an issue with his transportation[,]" and that, as a result, M.M. was "always late" for school. When Mother testified in her case, on the last day of the hearing in March of 2024, she indicated that Father had recently been having M.M. transported to school each day by Uber.[10] Mother was concerned that, because Father "demanded" that M.M. not bring her phone to his house, M.M. had no way to contact anyone during the thirty-five-minute trip from Father's house to school in the event of a "situation" or an "emergency."

[10] Uber is "a technology company that, inter alia, uses an app to match up potential riders with drivers seeking customers for prearranged transportation." *Anoush Cab, Inc. v. Uber Techs., Inc*., 8 F.4th 1, 9 (1st Cir. 2021).

*Father's Testimony*

Father testified that, prior to the initiation of the CINA matter, in July of 2020, there was no formal custody arrangement. M.M. lived "principally" with Mother, while Father's contact with M.M. was "extremely sporadic." Father acknowledged that there were periods in which he had no contact with M.M. because of a protective order. He said that he "had just been able to come back into M.M.'s life" in 2020.

Father stated that, from February of 2021 to August of 2022, he had custody of M.M. from Sunday evening to Friday evening, and Mother had custody from Friday evening to Sunday evening.[11] Father testified that "having all of that time together" was "new" for him and M.M., and they "made a lot of progress[]."

Father became concerned that Mother was having an "adverse influence" on M.M., and he reported Mother to the Department for "misbehaviors" and "misdeeds[.]" As an example of such behavior, he said that Mother gave M.M. a cell phone and told her not to tell him about the phone.

Father had taken M.M.'s phone from her on several occasions "as discipline or punishment." He said, "[a] part of M.M.'s biggest struggle at home in staying focused with her responsibilities is that [she] would rather be on the phone." At one point, he

[11] It is not clear when Mother began having weekend visitation. Following a hearing held on February 22, 2021, the court signed an order of shelter care pursuant to which M.M. was placed in the care and custody of Father, and Mother was granted unsupervised visitation twice a week for two hours at a time. On May 23, 2022, the court entered an order pursuant to which Mother was granted unsupervised, overnight visits coordinated by the Department. The court noted that the Department suggested that Mother have overnight visitation from Friday to Sunday.

intentionally broke M.M.'s phone in front of her because he was "really angry that day," and "really tired of the issues that [they] were having about the phone." According to Father, M.M. did not need a phone to communicate with Mother while in his care because she could use his phone; Mother could call or text him if she wanted to talk to M.M. He added that M.M. had a tablet computer with "Google Voice[12] connected to it[,]" which she could use to make calls to Mother as long as she was connected to the internet, but he acknowledged that there were periods of time in the preceding year when he did not have internet service at his house.

Father is employed as a case manager for an organization that provides services to individuals dealing with substance abuse issues or mental health challenges. He stated that his work hours are from 8:30 a.m. to 5:00 p.m. Father said that his job gives him flexibility that allows him to pick M.M. up from school, but that he also had a "couple [of] arrangements in place[.]" Father stated, "initially, when M.M. gets out of school at 2:40 [p.m.], she has aunts and a cousin that will pick her up from school." He added that, while M.M. was waiting for the cousin to pick M.M. up, or for Father to get there from his place of employment, M.M. was permitted to go to Mother's house.

Father said the trip from his home to M.M.'s school takes between thirty-five and forty-five minutes, and that it was "quite challenging" for him to get M.M. to school on time. When he was asked if he was aware that M.M. was tardy twenty-eight times in the

[12] "'Google Voice' is a [computer] program that 'gives [the user] a phone number for calling, text messaging, and voicemail.'" *Beckwitt v. State*, 249 Md. App. 333, 349 n.8 (2021) (internal citation omitted), *aff'd*, 477 Md. 398 (2022).

preceding year while in his custody, he replied, "that wouldn't surprise me[.]" Father denied that M.M. had been absent from school six times while in his custody, but he admitted that she missed two days of school in September of 2023 because his car was "in the shop" for two weeks. When asked why he did not arrange for M.M. to be taken to school by Uber, Father said that, on one of those days, he either had "connection issues" caused by the trees around his house, or "it might [have] been [his] card." Father said, "[a]nd the other day[,] I just had quite a busy day that day, and it would [have] been too challenging[.]" He did not ask Mother for help getting M.M. to school because "the ability to communicate with [Mother] is almost non-existent" and there was "nothing to motivate [him] to reach out" to Mother to "help [him] get through [his] challenges with M.M."

Counsel for Mother asked Father if he was seeking sole legal custody so he could remove M.M. from her current school and transfer her to a school closer to where he lived. Father responded, "As a sole reason, no." Counsel for M.M. asked Father whether he would change M.M.'s school if he was granted "full" custody. He responded, "I think that it would be most important for me to speak with M.M., her teachers, and her therapist, and make the best decision based on that and not just be impulsive."

Father testified that, after the custody arrangement was changed to an alternating-week schedule in August of 2022, M.M.'s behavior was "different," and there was a "shift" in his relationship with her. He said that it was "extremely difficult to maintain any type of daily routine with M.M." and that it was a "constant struggle for which parent's authority is the one that she needs to be following or that she should follow."

In Father's opinion, the alternating-week custody arrangement was "very, very

challenging" and "hasn't worked out" because there was "no cooperation between" him and Mother. He added that going back and forth between homes was a "burden on M.M." because "there's a different routine" when she is with Mother. Father stated:

> [E]very time that [M.M.] come[s] back with me, there's a startover. There's a getting back acclimated to [her] 9:30 [p.m.] bedtime. There's the study time re-acclimation. There's the time to eat. There's the cleaning up time. It's getting it all re-acclimated, and it's a[n] ongoing thing week after week after week after week.

On "numerous" occasions during the 2022–2023 school year, M.M.'s teacher called him on Monday or Tuesday of his custody week to report that M.M. had "a behavioral problem" at school.

Father testified that it was "extremely difficult" to get M.M. involved in extracurricular activities such as sports and martial arts because Mother "made clear" that he should not schedule anything during her parenting time. He said that, during one of Mother's custody weeks, M.M. did not attend an after-school program in which she was enrolled.

Father told the court that he should have "full" physical and legal custody of M.M. In his view, Mother did not provide M.M. with the "routine" and "support" that are needed to be a "successful student."

*Father's Witnesses*

K.'s father testified about his experience parenting a child with Mother. Pursuant to a court order, he and Mother had joint legal custody and shared physical custody of K. on a split-week basis. According to K.'s father, the custody arrangement was not successful. He stated that Mother transferred K. to a different school two or three times without

consulting him. He said that K. did not participate in extracurricular activities because Mother would not bring K. to the activity during her parenting time, and that, during the COVID-19 pandemic, when school was being held virtually, K. was not logged into his virtual classroom "a lot of times" while the child was in Mother's care.

In 2022, the court granted a motion to modify custody filed by K.'s father and awarded him sole legal custody and primary physical custody of K. Mother has visitation every other weekend, and for two consecutive weeks in the summer. According to K.'s father, since custody was modified, communication with Mother had been "great."

Nakia Bright, the Department caseworker assigned to M.M.'s case, testified that, after M.M. was placed in Father's care in February of 2021, she performed an evaluation of Father's home and found it to be appropriate. On cross-examination, Ms. Bright stated that there was a "brief period" of time when Father's house had no electricity. During that time, Father arranged for M.M. to reside temporarily with her paternal aunt. In March or April of 2023, Mother notified Ms. Bright that Father was living in a hotel. Father told Ms. Bright that the lease on the house he had been living in had expired, and the home he was moving to was in the process of being repaired. According to Ms. Bright, Father stayed in a hotel for approximately three weeks.

Father's last witness was Katelyn Fisher, who was M.M.'s fifth grade teacher in the 2022–2023 school year. She testified that M.M. was "incredibly smart" and "very much advanced for her age[,]" but she "lack[ed] certain social-emotional skills for a fifth[-]grader." She said that M.M. displayed a bi-weekly "behavioral pattern" of "outbursts in class where she would just get up and . . . say things that were not in line with

academics." M.M. became "upset throughout the day[,]" made "negative" and "insult[ing]" comments to other students, and ate pencil lead in class. Ms. Fisher tried to discuss M.M.'s behavior at lunchtime, but M.M. "usually wouldn't want to talk." According to Ms. Fisher, M.M. "would usually just want to eat her lunch and then fall asleep."

Ms. Fisher communicated with Father at least once a month to discuss M.M.'s academic progress and behavior, and how he could help and support M.M. In a letter addressed "to whom it may concern," which Ms. Fisher prepared in May of 2023, at Father's request, she wrote: "One thing I must note is that through my conversations with [Father] I have witnessed and seen the outpouring of support and best interest of his child at length. Every note and detail [Father] and I have discussed has been implemented and fully developed to great effect."

Ms. Fisher could not recall any interactions she had with Mother. She called Mother the first week of school but "couldn't get ahold of her voicemail[.]" After that, she stopped trying to communicate with Mother.

*In-Camera Interviews with M.M.*

Prior to the first day of the hearing, counsel for M.M. filed a motion requesting that the court interview M.M. *in camera*, because "testifying on the witness stand about her desires for custody, in front of her parents, would be unduly burdensome for her emotionally and developmentally." Father filed an opposition in which he objected to M.M. being interviewed *in camera* or testifying in open court because it would subject to her "unnecessary stress and strain[.]"

The court addressed the motion for an *in-camera* interview at the beginning of the

first day of the hearing. Father objected to M.M. being interviewed by the court that day, and instead proposed that it take place on a day when M.M. was scheduled to see her therapist, to help M.M. "process" the experience. The court overruled the objection, noting that M.M.'s appointed counsel had expressed no reservation or objection to the interview. Counsel for M.M. was present during both interviews, which were recorded. The other parties observed the interviews remotely as they occurred from another location within the courthouse.

M.M. was eleven years old at the time of the first interview during the hearing on September 12, 2023. M.M. had recently started sixth grade in a new school. M.M.'s older half-brother, K., who was then in high school, had attended the same school. M.M. told the court that she liked her teachers and she liked the school, which she described as "really cool." She said that everybody at the school was "nice" and that it was "generally better" than the K-8 school she had attended from kindergarten through fifth grade.

M.M.'s current school is located within a two-minute walk from Mother's house. M.M. said that it takes "about an hour" to get to school from Father's house, and that, when she stays with Father, she is late for school "most of the time." When the court asked M.M. whether she would prefer to look for another school or stay at her current school, M.M. said that she wanted to stay at her current school. M.M. responded affirmatively when the court asked if she had lots of friends at school, and M.M. named her "best friend" in the school. Her other "best friend," who goes to different school, lives "down the street" from Mother's house. She has known one of her best friends since she was in kindergarten. She enjoys talking to or exchanging text messages with her friends after school. When the court

asked M.M. if she had any "issues" with her brothers, M.M. said, "No. I love my brothers. They're so adorable."

M.M. told the court that she loves to paint and create art. The court asked M.M. whether she was interested in participating in after-school activities. M.M. responded, "Not really. . . . Sports are not my thing. It's just not."

The court asked M.M. about her preference for custody. M.M. said that she loves Father "very much" and wants to be able to see him, but that she preferred to live with Mother:

> THE COURT: So, M.M., if you had, you know, if you had your choice, how would you kind of see or envision where you [would] stay?
>
> M.M.: I want to stay with my mom most of the time and be able to see my dad. It would be - -
>
> THE COURT: Right. No, that's a tough choice for a kid to make.
>
> M.M.: Yeah.
>
> THE COURT: You've kind of grown used to that, and you said that you kind of - -
>
> M.M.: I want to be with my mom more.
>
> THE COURT: Be with your mom more.
>
> M.M.: Yeah.
>
> THE COURT: Okay. Is there anything in particular that, you know, the reason why you want to stay with your mom more [than] with your dad?
>
> M.M.: I just love my mom. And I've known her for like most of my life.
>
> THE COURT: Okay.
>
> M.M.: I want to stay with her.

THE COURT: Okay. And do you get along with your dad?

. . .

M.M.: Yeah. I love my dad very much.

THE COURT: [Are] there any challenges, you know, going to his house as opposed to staying with your mom?

M.M.: Well, his house is far out. So, like it's far away.

THE COURT: Okay. And does some of that have to do with . . . you have friends in the neighborhood with your mom or - -

M.M.: Yeah. Most of my friends are in the city. (Unintelligible) my school is closer and it's inside the city, so I prefer that. 'Cause when I have to go home it takes a while.

A little later in the interview, the court again asked M.M. about her preference:

THE COURT: . . . I hate to put it this way, because life, you know, sometimes [you have to] make a choice, but if you had to make a choice would you prefer to stay with your dad or your mom?

M.M.: Probably my mom.

THE COURT: Okay. But you'd certainly want to visit your dad?

M.M.: Yeah.

THE COURT: And have either of them . . . pressured you to tell me or to say that or - -

M.M.: No.

THE COURT: This is what you want - -

M.M.: Just living with both of them together. I know how I feel about both of them.

At the request of counsel for M.M., the court conducted a second interview four

months later, during the third day of the hearing on January 30, 2024. Due to a technical issue, the parties had difficulty hearing M.M.'s responses, so the court summarized her statements.

During the second interview, M.M. "expressed a great deal of satisfaction" with her school and said that her teachers were more supportive and helpful than those at her previous school. She found it "very convenient and very nice" that the school was located less than half a block from Mother's house.

M.M. told the court that things had been "fine" since the first interview, but there had "been some challenges more recently." She "went into great lengths about the difficulty in getting to and from school" under the alternating-week custody arrangement, and she "elaborated that staying with [Father] has resulted in her going to her aunt's house as well." She said that Father "didn't have a car that would allow him to take her to school on a timely basis[,]" and that, when she is with Father, she takes an Uber or her aunt takes her to school. M.M. had recently started to stay with the aunt during Father's custody week so that she could get to school on time.

M.M. told the court that she feels "a little bit more isolated" when staying with Father. Her friends do not live near Father, and she had not been able to make friends in Father's neighborhood because there are not many children there. She cannot call or text her friends because Father does not like her to have a phone, so she does not bring it to his house.

As she had in the first interview, M.M. told the court that she would prefer to stay with Mother. When the court asked her to explain her reasons, M.M. said that Mother was

"easier to get along with[,]" while Father has "greater expectations" of her.

**Court's Findings and Custody Order**

On April 10, 2024, the court issued a written opinion and order. At the outset, the court made a finding, pursuant to FL section 9-101, that there was no likelihood of future child abuse or neglect in Mother's care. The court stated:

> On the contrary, this court is convinced that [Mother], like [Father], cares deeply for [M.M.]. Any past allegations or concerns regarding . . . abuse or neglect have been alleviated. Since the initial allegations were raised, Mother has participated in several programs to help address the concerns raised by the Department. This included attending anger management, parenting classes and therapy. The result of this, along with the testimony received throughout the course of this hearing provided substantial evidence that there is [] no likelihood for further abuse or neglect.

The court proceeded to explain in detail the reasoning behind its custody decision by considering the relevant factors under *Taylor v. Taylor*, 306 Md. 290 (1986). The court found that both parents were fit, both were sincere in their requests for custody, and that neither parent's job or financial status was a significant factor. The court evaluated the location of each parent's home relative to M.M.'s school and social life, finding there was a "material distance" that raised concerns. The court also found that there were "clearly some differences" in M.M.'s relationship with each parent. The court determined that the balance of factors weighed against a shared custody arrangement and in favor of granting Mother primary custody.

Ultimately, the court concluded: (1) M.M. was not a CINA; (2) there was no likelihood of further child abuse or neglect by Mother; and (3) it was in M.M.'s best interest for Mother to be granted sole legal custody and primary physical custody. Father was

granted visitation every other weekend during the school year, and alternating weeks during the summer. The parties were ordered to participate in mediation to work out an agreement regarding holiday visitation.

Additional facts will be incorporated as they become relevant to the issues.

**DISCUSSION**

On appeal, this Court reviews a child custody decision under "three interrelated standards of review." *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). First, "[w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies." *Id.* (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). Factual findings "are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (quoting *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019)). In reviewing the court's factual findings, we view the evidence in the light most favorable to the prevailing party. *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). Furthermore, we "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Gizzo*, 245 Md. App. at 200 (quoting Md. Rule 8-131(c)).

Next, "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." *J.A.B.*, 250 Md. App. at 246 (quoting *Yve S.*, 373 Md. at 586).

Finally, "[o]n the ultimate issue of which party gets custody . . . we will set aside a judgment only on a clear showing that the [trial court] abused [its] discretion." *Gizzo*, 245 Md. App. at 201 (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)). "An

abuse of discretion may occur 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, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Id.* (citing *Santo v. Santo*, 448 Md. 620, 625–26 (2016)). "An abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case." *B.O. v. S.O.*, 252 Md. App. 486, 502 (2021) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)).

## I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN INTERVIEWING M.M.

### A. Party Contentions

Father contends that the court erred in interviewing M.M. during the hearing because she was "just" twelve years old and, in Father's view, did not have the maturity or capacity to evaluate what was in her best interest. Father asserts that the court violated what he claims are "well-established principles and guidelines for interviewing children" by asking M.M. which parent she would prefer to live.

M.M., through counsel, maintains that the interviews were developmentally appropriate and conducted in an appropriate manner. Mother filed a line adopting M.M.'s arguments but did not submit a separate brief. The Department did not submit a brief.

### B. Analysis

In a disputed custody case, "a child's preference to live with one parent over the other is a factor that 'may' be considered[.]" *C.M. v. J.M.*, 258 Md. App. 40, 66 (2023) (citing *Lemley*, 102 Md. App. at 288).

> The desires of the child are consulted, not because of any legal rights to decide the question of custody, but because the court should know them in order to be better able to exercise its discretion wisely. It is not the whim of the child that the court respects, but its feelings, attachments, reasonable preference[,] and probable contentment.

*Leary v. Leary*, 97 Md. App. 26, 48 (1993) (quoting *Ross v. Pick*, 199 Md. 341, 353 (1952)), abrogated on other grounds by *Fox v. Wills*, 390 Md. 620 (2006). *Accord Karanikas v. Cartwright*, 209 Md. App. 571, 591 (2013).

It is "axiomatic" that the court has discretion to conduct an interview of a child in a custody matter. *C.M.*, 258 Md. App. at 66. In exercising its discretion, the court should be mindful of the possibility of "severe psychological damage to the child." *Marshall v. Stefanides*, 17 Md. App. 364, 369 (1973). "[T]here is no specific age of a child at which [his or her] wishes should be consulted and given weight by the court"; rather, "[t]he matter depends upon the extent of the child's mental development." *Leary*, 97 Md. App. at 48 (quoting *Ross*, 199 Md. at 353). "When a child is of sufficient age and has the intelligence and discretion to exercise judgment as to his or her future welfare, based upon facts and not mere whims, those wishes are one factor that, within context, should be considered by the trial judge in determining custody." *Id.*

Here, there is nothing in the record to indicate that M.M. was not "of sufficient age" or that she lacked "intelligence and discretion to exercise judgment" as to her future welfare. To the contrary, M.M.'s former teacher described her as "incredibly smart" and "very much advanced for her age." The circuit court described M.M. as a "very thoughtful" and "well-adjusted teenager" and attributed the ability to have "meaningful and instructive" conversations with her to her age. Furthermore, there is nothing in the record to suggest

that an interview by the court would subject M.M. to the possibility of "severe psychological damage." *See Marshall*, 17 Md. App. at 369. Counsel for M.M. requested that the court conduct an interview. Mother did not object to the interviews; nor did the Department. Although Father claimed that it would create "unnecessary stress and strain" for M.M., and he requested that any interview take place on a day when M.M. was scheduled to see her therapist, there is no indication that the therapist expressed any concerns. The decision to speak with M.M. about her preference regarding custody was an appropriate exercise of the court's discretion.

Father cites no legal precedent to support his contention that the court violated "well-established" principles by inquiring as to M.M.'s preference to live with Mother or with Father. As argued in the brief filed on behalf of M.M., the court has discretion as to the content of a child interview. *C.M.*, 258 Md. App. at 66; *see also Karanikas*, 209 Md. App. at 588. Moreover, as stated above, one of the factors a court may consider is the child's preference "to live with one parent over the other[.]" *C.M.*, 258 Md. App. at 66. The court did not abuse its discretion in asking M.M. about her preferred custody arrangement.

## II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING SOLE LEGAL CUSTODY AND PRIMARY PHYSICAL CUSTODY TO MOTHER.

### A. Party Contentions

Father maintains that the court based its custody determination on findings that were not supported by the evidence. While Father recites several of the court's findings in this section of his brief, the only one he appears to challenge is the finding that Mother is fit to

have custody. He claims that the finding was erroneous because the court had previously sustained allegations of abuse and neglect, and, according to Father, his evidence demonstrated that Mother's home lacks "structure[,]" and she does not help M.M. with her schoolwork or support her participation in extracurricular activities. Father argues that the only conclusion supported by the evidence is that Mother is not a capable and fit parent, and therefore, the court abused its discretion in awarding her primary physical and sole legal custody.

M.M. and Mother maintain that the evidence supports the court's ultimate custody determination.

**B. Analysis**

A previous finding of abuse or neglect by a parent does not necessarily compel a finding that a parent is unfit to have custody.[13] *See Gizzo*, 245 Md. App. at 203 (evidence of a parent's past conduct is "only relevant insofar as it [may be] predictive of future behavior and its effect on the child.") (quoting *Azizova*, 243 Md. App. at 357). Here, the undisputed evidence before the court established that Mother had complied with all Department requirements, including participation in anger management, parenting classes, and therapy. The Department advised the court that it had no concerns about M.M.'s safety while in Mother's care. Based on our review of the record, we cannot conclude that the

[13] The court did not make a finding that Mother physically abused M.M., as Father contends. Rather, the court found that the injuries to M.M. had occurred while she was in Mother's care, however, because the source of the injuries was uncertain, the court declined to find that Mother had inflicted them. *In re M.M. I*, slip op. at 2.

court's finding—that there was no likelihood of further abuse or neglect while the child was in Mother's care—was clearly erroneous.

Moreover, although Father claimed that Mother was uninvolved in M.M.'s academic life and did not promote her involvement in extracurricular activities, Mother's testimony tended to establish otherwise. In sum, viewing the evidence, as we must, in the light most favorable to Mother, as the prevailing party, we conclude that the court's finding that Mother was fit to have custody was not clearly erroneous.

## III. THE CIRCUIT COURT DID NOT ERR IN ITS ANALYSIS OF THE CUSTODY FACTORS.

### A. Party Contentions

Father's third and final contention is that, in making its custody determination, the court focused "exclusively" on M.M.'s stated preference to live with Mother.[14] M.M. and Mother maintain that the court properly considered all relevant factors in making its custody determination and did not rely solely on M.M.'s wishes.

### B. Analysis

"When a court makes a custody determination, it is called upon to make a prediction about the custody arrangement that is in the child's best interest." *In re T.K.*, 480 Md. 122, 156 (2022). "[T]he fact finder is called upon to evaluate the child's life chances in each of the homes competing for custody and then to predict with whom the child the child will be

[14] Father suggests that the court erred in failing to expressly accept or reject the evidence he presented. We do not agree. "[E]ven where the trial court must issue a statement explaining the reasons for its decision, the court need not articulate every step of the judicial thought process in order to show that it has conducted the appropriate analysis." *Gizzo*, 245 Md. App. at 195–96 (internal citations omitted).

better off in the future." *Azizova*, 243 Md. App. at 344–45 (internal quotation marks and citation omitted). Although a trial court is "not limited to a list of factors in applying the best interest standard in each individual case," the Maryland Supreme Court and this Court have discussed various factors that are relevant to a custody determination. *Id.* at 345 (citing *Taylor v. Taylor*, 306 Md. 290 (1986); *Montgomery Cnty. Dept. of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977)).[15]

[15] These factors, originally set out in *Sanders*, 38 Md. App. at 420, and *Taylor*, 306 Md. at 304–11, include:

> (1) The fitness of the parents;
> (2) The character and reputation of the parties;
> (3) The requests of each parent and the sincerity of the requests;
> (4) Any agreements between the parties;
> (5) Willingness of the parents to share custody;
> (6) Each parent's ability to maintain the child's relationships with the other parent, siblings, relatives, and any other person who may psychologically affect the child's best interest;
> (7) The age and number of children each parent has in the household;
> (8) The preference of the child, when the child is of sufficient age and capacity to form a rational judgment;
> (9) The capacity of the parents to communicate and to reach shared decisions affecting the child's welfare;
> (10) The geographic proximity of the parents' residences and opportunities for time with each parent;
> (11) The ability of each parent to maintain a stable and appropriate home for the child;
> (12) Financial status of the parents;
> (13) The demands of parental employment and opportunities for time with the child;
> (14) The age, health, and sex of the child;
> (15) The relationship established between the child and each parent;
> (16) The length of the separation of the parents;
> (17) Whether there was a prior voluntary abandonment or surrender of custody of the child;
> (18) The potential disruption of the child's social and school life;

"While the court considers all the . . . factors, it will generally not weigh any one to the exclusion of all others. The court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor[.]" *Karanikas*, 209 Md. App. at 590 (quoting *Sanders*, 38 Md. App. at 420).

We are satisfied that the court did not base its custody determination solely on M.M.'s stated preference. The court listed the factors as articulated in *Taylor*, 306 Md. at 304–311, and made findings as to the factors relevant to this determination:

*Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child's Welfare*. The court found that the parents' capacity to communicate was "compromised." The court noted that "[w]hile both [p]arents appear intent on doing what is in their daughter's best interest," it was "abundantly clear that input or compromise between them was dismissed or ignored."

*Willingness of Parents to Share Custody.* The court remarked that, although there were "moments in which the parents appeared to be open to [c]o-[p]arenting with shared decision making[,]" it became apparent over the course of the hearing that it was "not likely" because of their communication problems. The court found that "both Mother and Father are ultimately unwilling to share custody."

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> (19) Any impact on state or federal assistance;
> (20) The benefit a parent may receive from an award of joint physical custody, and how that will enable the parent to bestow more benefit upon the child;
> (21) Any other consideration the court determines is relevant to the best interest of the child.

*Azizova*, 243 Md. App. at 345–46 (internal citations omitted).

*Fitness of Parents*. The court found, despite the differences in the parties' approach to parenting, that they were "both fit parents who love their daughter and want what is in her best interest."

*Relationship Established Between the Child and Each Parent.* The court commented that there were "clearly some differences" in M.M.'s relationship with each parent. The court stated:

> [w]hile it might be inviting to account for the difference . . . as resulting from one parent being more lax in household rules while the other is a perceived disciplinarian, this does not consider the other subtle differences between the parents. Based on the [c]ourt's consultation with [M.M.], it was clear that [her] preference is to remain with Mother. This was based on several factors which can help inform the [c]ourt's finding regarding the relationship between parent and child. School choice, friends, and availability of a cell phone, all contribute to [M.M.'s] preference to be with Mother. This is not to say that [M.M.] does not love both her parents, but this relationship is manifested in different ways between the two.

*Preference of the Child.* The court noted that it had several "meaningful and instructive" conversations with M.M., in which M.M. said that she wanted to live with Mother. The court found that M.M. came to that decision on her own, that there was no pressure on her to do so, and that the decision was not "arbitrarily or capriciously made." The court noted that in its conversations with M.M. she "made it clear [that] she loved" Father, but that Mother "provided more of the structure and opportunities she was interested in."

*Potential Disruption of Child's Social and School Life.* The court noted that M.M. wanted to remain with Mother because she "enjoyed her school, its proximity to [Mother's] house, and the friendships she's developed over the past year. [M.M.] seemed genuinely

happy with her school, and to remove her from that environment would clearly affect [her] in an adverse way."

*Geographic Proximity of Parental Homes.* The court found that, although the parents "do not live terribly far from one another," there is a "material distance" in that they live in separate school districts, and, therefore, M.M. would have to transfer to a new school if Father were granted primary custody. The court further found that M.M.'s "friends and support network appear to be centered around [Mother's] house[,]" which weighed in favor of Mother.

*Demands of Parental Employment.* The court noted that Mother is self-employed and works from home, which gives her "some flexibility over her hours[,]" and that "Father's employment varies but appears stable and allows for sufficient time off in which to accommodate" M.M.'s needs. The court found that "[w]ork obligations do not interfere with either [parent's] ability to care" for M.M.

*Age and Number of Children.* The court found that, because of M.M.'s age, it was able to have "meaningful and instructive conversations with her."

*Sincerity of Parents' Request.* The court found that both parents "clearly wanted" custody of M.M.

*Financial Status of the Parents.* The court found that the parties' respective financial status was not a "significant factor" as both were employed and had the means to provide for M.M.'s needs.

The court expressed that it would not "defer" to M.M.'s preferred custody arrangement but would take it into account. Through considering many relevant factors,

the court determined that M.M.'s friends and support network were centered around Mother's home,[16] and that removing M.M. from her current school and surrounding environment would have an adverse effect. The court concluded that, in addition to M.M.'s preference to reside with Mother, the evidence demonstrated that M.M.'s interest would be best served by granting custody to Mother.

Based on our review of the record, we find no error in the court's findings, no error of law in the analysis of the relevant factors, and no abuse of discretion in the court's decision to grant primary physical custody and sole legal custody of M.M. to Mother. Therefore, we affirm the order of the circuit court.

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

[16] Father asserts that the court's finding that M.M.'s support network is centered around Mother's home is not supported by the evidence. We disagree. Mother testified that M.M. has several friends in her neighborhood. M.M. told the court that one of her best friends lives down the street from Mother, and that she enjoyed "family time" with K. and V. while at Mother's house.