Circuit Court for Anne Arundel County
Case No.: C-02-FM-20-003181

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 546

September Term, 2023

AMAKA NDUBUEZE

v.

JOHNBOSCO IKECHUKWU ALAENYI

Berger,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: August 8, 2024

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

This appeal originally came before us in 2023, when Amaka Ndubueze ("Mother" and appellant) appealed a judgment entered by the Circuit Court for Anne Arundel County granting she and Johnbosco Alaenyi ("Father" and appellee) an absolute divorce. As to custody of their minor child, Mother was granted primary physical custody, the parties to have joint legal custody with tie-breaking authority to Mother, and the court set forth the terms of Father's visitation with the child. Mother presented three questions on appeal. We agreed with Mother's first question on appeal that the circuit court had erred in denying her motion to alter/amend the judgment on the ground it had been untimely filed.[1] Accordingly, we reversed on the first question, remanded to the circuit court to rule on Mother's motion, and stayed our proceeding on her remaining two questions pending resolution by the circuit court, which subsequently denied her motion.

We now have lifted our stay and address Mother's remaining two issues, which we rephrase for clarity:

> I. Whether the circuit court erred in granting Father visitation with the child without allowing Mother to know the location of the visits.
>
> II. Whether the circuit court erred in denying Mother's request for attorney fees because of discovery violations by Father.

Finding them without merit, we shall affirm the circuit court's judgment.[2]

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[1] *See Ndubueze v. Alaenyi*, No. 546, Sept. Term 2023 (Md. App. Feb. 20, 2024).

[2] Mother had been represented by counsel at all relevant times during this litigation, except on appeal and on remand to the circuit court. The Maryland Supreme Court has stated that although we shall liberally construe the contents of pleadings filed by *pro se*

(continued)

FACTUAL AND PROCEDURAL BACKGROUND

We shall restate many of the facts set forth in our first opinion, but we will also include some additional facts to address Mother's remaining two questions.

Mother and Father married in 2018, and a daughter was born to them the following year. On November 12, 2020, Mother filed a complaint seeking primary physical and sole legal custody of their daughter and child support. Father responded by filing an answer and a counterclaim for joint, physical and legal custody.

On August 9, 2021, when their daughter was around two years old, the circuit court entered a custody order, incorporating the parties' "Parental Agreement" (the "Agreement"). The Agreement provided Mother with primary physical and sole legal custody of their child. The parties agreed to a tiered visitation schedule. Father was to have visitation at Mother's home every Saturday from 8:30 a.m. to 2:00 p.m., and every other Friday and Sunday from 8:30 a.m. to 2:00 p.m., plus certain seasonal holidays. If and when Father acquired his own apartment and he provided to Mother the address, the opportunity to view the apartment, and the names of and the opportunity to meet Father's roommates, Father could care for their child at his apartment, and, after six months, he could have overnight stays with the child. The Agreement also required Father to pay $1,000 a month in child support and an additional $200 a month toward arrearages until $3,000 had been paid.

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litigants, unrepresented litigants are subject to the same rules regarding the law, particularly, reviewability and waiver, as those represented by counsel. *Simms v. State*, 409 Md. 722, 731–32 n.9 (2009) (citation omitted).

The Agreement proved unworkable and both parties filed contempt petitions, which the court denied. Father then filed a complaint for absolute divorce and sought modification of the Agreement. Mother subsequently filed a motion to modify visitation and for child support. During litigation, the parties entered into a consent order to waive the division of marital property and alimony, and both parties filed motions to compel discovery.

A custody hearing was held on May 2, 2023, at which both parties testified. The court issued an oral ruling from the bench and a subsequent written order. The circuit court entered an absolute divorce on grounds of one year of separation. The court awarded Mother primary physical custody and joint legal custody of the child, with tie-breaking authority to Mother. Father was granted visitation every other weekend from Friday afternoon to Monday morning, and during stated seasonal breaks and holidays. Father was to pay Mother $1,188 in child support monthly. The court denied Mother's request for attorney's fees.

It is from the court's ruling that Mother appeals. We shall provide additional facts below to address the questions raised by Mother.

DISCUSSION

Standard of Review

We apply a three-part standard when reviewing child custody cases. *In re Adoption of Cadence B.*, 417 Md. 146, 155 (2010) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)).

> When the appellate court scrutinizes factual findings, the clearly erroneous standard ... applies. [Secondly,] if it appears that the [juvenile 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 [juvenile court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [juvenile court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. (quoting *In re Yve S.*, 373 Md. at 586). An abuse of discretion occurs when a "ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks and citation omitted).

I.

Mother contends that the circuit court erred in its visitation determination because she was denied certain "parental rights and requests[,]" specifically her "parental right to ascertain the whereabouts of my child when asked." To support her contention, she argues that the circuit court overlooked evidence that Father violated the parties' 2021 Agreement by not providing information about his schedule and insufficiently complied with verifying information about his roommate. She also broadly argues that the court gave "inadequate consideration [] to issues related to child pornography or pornography in general . . . despite their significance in this matter." Additionally, she argues that Father's testimony that he was a licensed nurse in Maryland was contradicted by "[n]ew evidence" that he possibly lived in Florida and was a practicing nurse in Florida. It appears that Mother raises Father's possible ties to Florida to bolster the importance of her argument regarding her right to know their child's whereabouts when the child is visiting Father. Father responds that

Mother's claim regarding his residence and nursing license are false and asks us not to disturb the circuit court's ruling.

A non-custodial parent "has a right to liberal visitation with his or her child at reasonable times and under reasonable conditions, but this right is not absolute." *Boswell v. Boswell*, 352 Md. 204, 220 (1998) (quotation marks and citation omitted). "Not only must access to the children be reasonable, but any limitations placed on visitation must also be reasonable." *Id*. (citation omitted). In child visitation cases, the best interest of the child guides the trial court and our review and "is always determinative[.]" *Santo v. Santo*, 448 Md. 620, 626 (2016) (quotation marks and citation omitted). In making a custody or visitation determination, the court examines several factors and weighs the advantages and disadvantages of alternative environments. *See Montgomery County Dep't. of Social Services v. Sanders*, 38 Md. App. 406, 420 (1977) (citation omitted) and *Taylor v. Taylor*, 306 Md. 290, 304–11 (1986).[3]

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[3] In *Sanders,* we set out the following non-exclusive factors for a circuit court to consider in child custody determinations: 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) the ability to maintain natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health, and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender. *Sanders*, 38 Md. App. at 420. In *Taylor,* the Maryland Supreme Court considered the following factors as relevant in making joint custody determinations: 1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; 2) willingness of parents to share custody; 3) fitness of parents; 4) relationship established between the child and each parent; 5) preference of the child; 6) potential disruption of the child's social and school life; 7) geographic proximity of parental homes; 8) demands of parental employment; 9) age and number of children; 10) sincerity of parents' request; 11) financial status of the parents; 12) impact on state or federal assistance; 13) benefit to parents; and 14) other factors. *Taylor*, 306 Md. at 304–11.

We find no error regarding the circuit court's grant of visitation to Father. In its custody and visitation determination, the court considered the *Sanders/Taylor* factors, which Mother does not dispute. Among other things, the court noted that the parties' child was now four years old and found that there had been no abuse of the child by either parent. Notably, the court's written visitation order provided, among other things:

> 5. **PROMPT NOTICE.** Each party shall promptly and fully disclose to the other party any event, which significantly affects the minor child's health, education, behavior, or general welfare.
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> * * *
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> 9. **ADDRESS AND PHONE NUMBERS.** Each party shall keep the other party timely informed of the other's residential address and work and home phone numbers.

The court further ordered that "the parties shall have reasonable telephone access with the minor child at 6:00 p.m. during the evenings when the minor child is in the care of the other parent[.]"

We reject each of Mother's arguments. Contrary to Mother's argument, the court heard evidence and considered the parties' breaches of the prior Agreement. The court noted that the Agreement proved unworkable and the parties were difficult – Mother was "unreasonable" and prevented Father from having overnights and Father "became frustrated and gave up[.]" The court specifically addressed allegations of pornography, stating that although Mother made allegations that Father has "looked at child pornography," she failed to present any evidence to support the allegations, and any evidence that Father looked at pornography privately did not make him unfit to care for

their child every other weekend. As to "new evidence" regarding Father's residence and licensing, Mother has no right to introduce new evidence on appeal, and to the extent that we have any discretion to allow such new evidence, we decline to exercise it for it would undermine the finality of judgment, and unfairly burden Father and the judicial system. *See In re Adoption/Guardianship of J.T.*, 242 Md. App. 43, 58 n.6 (2019), *cert. denied*, 466 Md. 317 (2019). *See also* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

II.

Mother argues that the circuit court erred in denying her request for $6,000 in attorney's fees because of Father's discovery violations. She argues that Father's discovery filings were deficient and untimely, specifically his failure to provide information concerning his current employment and his alleged increased income, and this had a detrimental impact on her attorney's ability to prepare for trial. Father responds that the circuit court properly applied the requisite statutory criteria to deny Mother's request for attorney's fees.

The awarding of attorney's fees in the context of custody and visitation proceedings is governed by Md. Code Ann., Family Law ("FL") § 12-103. That section provides, in pertinent part:

> (b) Before a court may award costs and counsel fees under this section, the court shall consider:
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> (1) the financial status of each party;

> (2) the needs of each party; and
>
> (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

See also Malin v. Mininberg, 153 Md. App. 358, 435 (2003) (a court must consider three factors before awarding attorney's fees: "(1) the financial status of each party; (2) the needs of each party; and (3) whether there was a substantial justification for bringing, maintaining, or defending the proceeding.") (quotation marks and citations omitted). By using the word "may," a trial court is permitted in its discretion to award attorney's fees. *Thornton Mellon, LLC v. Adrianne Dennis Exempt Trust*, 250 Md. App. 302, 322 (2021), *aff'd*, 478 Md. 280 (2022). Mother's argument relates to the first factor.

Here, the court denied Mother's request for attorney's fees, specifically hearing evidence on and reviewing each of the three statutory factors. Mother does not argue to the contrary. As to the first factor, the financial status of each of the parties, the court heard evidence that Mother has a master's degree in information technology and works as a federal contractor, and that she is currently self-employed but not working. In its conclusion, the court noted that Mother's current income is zero, but in 2021, she earned around $11,000 a month as an IT contractor. The court concluded from the evidence that Mother was not working "because she has enough money to try to make it till she gets another contract, which would make her more money than if she just took a" lesser paying job. As to Father's income, the court noted that Father makes $7,186 a month as a registered nurse.

As to Mother's argument regarding Father's discovery failures as to his employment and financial status, Mother directs us to two pages of the May 2 hearing where she explains to the circuit court that Father, as of two years ago, was a correctional officer. Father, when asked by the court, testified that he is not a correctional officer but works as a nurse for Davita Kidney Care. Mother also cites to a page where she alleges that the circuit court erred in not considering rental income Father receives from his roommate. We note that on that page, however, the circuit court advised Mother's attorney that it could not consider rental income because she failed to ask Father on cross-examination how much Father receives from the roommate as rental income. The court stated: "It could be a dollar; it could be $100 or it could be $1,000."

Without more, these two citations and bald assertions fail to show that the court was unable to determine Father's financial status and fail to explain how Mother was prejudiced by Father's alleged discovery violations. It is not our role to search the entire record to find evidence to support Mother's generalized factual assertions or arguments. *See* Md. Rule 8-504(a)(4) (appellant's brief "shall" contain relevant and material facts and "[r]eference shall be made to the pages of the record extract or appendix supporting the assertions"), Md. Rule 8-504(a)(6) (appellant's brief "shall" include "[a]rgument in support of the party's position on each issue" raised), and Md. Rule 8-504(c) (an "appellate court may dismiss the appeal or make any other appropriate order with respect to the case" for noncompliance with this Rule). *See also Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241 (2004) ("'[I]f a point germane to the appeal is not adequately raised in a party's brief,

the court may, and ordinarily should, decline to address it.'") (quoting *DiPino v. Davis*, 354 Md. 18, 56 (1999)).

Under the circumstances, we find no abuse of discretion by the circuit court in denying Mother's request for attorney's fees.[4]

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY APPELLEE.

[4] Because Mother originally raised three questions, one of which we found to have merit, we divide the costs associated with the appeal as stated in our Mandate.