

Circuit Court for Howard County
Case No. 13-C-17-111878

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 909

September Term, 2022

SHENGLIN WANG

v.

SIU WAI MAK

Kehoe,
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Leahy, J.

Filed: June 1, 2023

* This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

** 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.

For the second time, the dispute between Shenglin Wang (“Mother”), appellant, and Siu Wai Mak (“Father”), appellee,¹ over custody of their six-year-old son, J, is before this Court. In this appeal², Mother challenges: 1) findings made by the Circuit Court for Howard County on remand from our prior decision, which reaffirmed a custody order granting Father sole legal and primary physical custody of J, and 2) a subsequent interim order entered by the circuit court that grants Father sole legal and sole physical custody of J, with supervised video access for Mother. She presents three issues in an informal brief,³ which we rephrase as:

I. Did the circuit court err or abuse its discretion by entering its June 29, 2022 “Findings and Order on Remand” in which the court detailed its analysis of the best interest factors and reaffirmed its October 18, 2021, custody order?

II. Did the circuit court err or abuse its discretion by entering its August 25, 2022 “Immediate Order for Temporary Custody and Access” in which it

¹ Father did not file a brief in this Court.

² Mother, at various points in her brief, also alleges procedural errors regarding hearings prior to *Wang I*, which are not the subject of this appeal.

³ The three issues presented by Mother in her brief are:

I. The Circuit Court for Howard County did not decide, determine the case in accordance with the legal process.

II. The circuit judges and magistrates did not read and consider the defendant (Mother)’s evidence fairly and did not consider the best interests of the minor child.

III. The plaintiff (Father) did not comply any law and contempt for all court orders and abused police public resources to malicious and false accused the defendant (Mother).

temporarily granted Father sole legal and physical custody of J and restricting Mother's access to J?

III. Did the circuit court err by the terms contained in the Contempt Order issued on August 26, 2022, following entry of the Immediate Order for Temporary Custody and Access ?

For the following reasons, we affirm the custody orders, vacate the contempt order, and remand for further proceedings.

BACKGROUND

We need not repeat the extensive factual history set out in our unreported opinion in *Wang v. Mak*, No. 1387, Sept. Term 2021 (filed June 27, 20212) (*Wang I*). Instead, we summarize the succession of custody orders leading up to the *Wang I* decision and set out the events that followed thereafter.

The Prior Custody Orders

Mother and Father, who were never married to each other, are the parents of J, who is now six. They separated in June 2017, when J was three or four months old. Since then, the court has entered five custody orders. First, in March 2018, when J was a year old, the court entered the original custody order, which granted Mother sole legal and primary physical custody, with a graduated access schedule for Father that culminated in alternating weekend access.

Next, in August 2019, when J was two years old, the circuit court held a hearing on cross-motions to modify custody and visitation. It entered an interim custody order granting joint legal custody, which preserved Mother's primary physical custody and the

existing access schedule and appointed a court social worker to conduct a custody evaluation.

Third, in February 2020, the court continued the hearing on the merits of the cross-motions to modify custody and visitation and entered a memorandum opinion and modified custody order. The court granted Father legal custody of J and preserved primary physical custody with Mother until Father enrolled J in a licensed daycare, at which point, the access schedule would transition to J spending equal time with each parent.

Fourth, in September 2020, when J was three years old, a magistrate held a hearing on petitions for contempt filed by Father due to Mother's non-compliance with the February 2020 Order. In October 2020, the court adopted the magistrate's report and recommendations and entered a supplemental custody order that granted Father expanded access with J each week. Under the modified schedule, J would be with Father from Sunday morning through Thursday evening and Mother would have J in her care the rest of each week.

Last, in July 2021, after an evidentiary hearing on cross-motions to modify custody and for contempt, a magistrate found that Mother had failed to comply with the February 2020 and October 2020 orders by not returning J on time and by not taking him

to scheduled daycare.⁴ The magistrate, in a Report and Recommendations, directed that Father retain sole legal custody and be granted primary physical custody of J, while Mother be granted access to J three weekends each month.

On October 18, 2021, the circuit court issued a modified custody order and order for contempt (“October 2021 Order”), following an exceptions hearing on the magistrate’s Report and Recommendations, which adopted the magistrate’s recommendations with minor adjustments. The October 2021 Order granted Father sole legal custody and primary physical custody of J. Mother was granted access the second, third, and fourth weekend each month, beginning at daycare pickup on Friday afternoon and ending Sunday evening at 6 p.m., with the latter exchange to occur at the Ellicott City police station. The court adjudged Mother in contempt of the February 2020 and October 2020 orders and said she could “purge herself of the aforesaid contempt by abiding by this [October 2021] Order, following this hearing for a period of six (6) months; further provided that, upon full compliance with the aforesaid purge provisions, this contempt shall be considered as purged.” Mother appealed from the October 2021 Order.⁵

⁴ The social worker who conducted the custody evaluation noted J’s expressive speech delay and recommended that he be evaluated and attend daycare for socialization and to aid his language development.

⁵ On December 22, 2021, in a related child support case, the circuit court issued an order adopting a magistrate’s recommendation that Mother pay Father \$622 per month in child support commencing December 1, 2021. Mother noted an appeal from that order. This

(Continued...)

This Court’s Decision in *Wang I*

In September of 2022, this Court issued an opinion on the appeal from the October 2021 Order, which held that the circuit court did not err in any of its findings or abuse its discretion by determining that “Mother’s unilateral violations of the custody arrangement” impacted J’s welfare and amounted to a material change in circumstances justifying a modification of custody. *Wang I* at *12-13. We did vacate the custody award, however, because the record did not reveal whether the circuit court weighed the best interest factors enunciated in *Montgomery County Department of Social Services v. Sanders*, 306 Md. 290 (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986) in reaching its custody determination. *Wang I* at *13. We remanded for the circuit court to conduct this analysis. *Id.*

We also vacated the portion of the order adjudging Mother in contempt of the February 2020 and October 2020 orders because “it did not fulfill the requirements for a valid order holding a person in constructive civil contempt[;]” which we identified as an order that:

(1) imposes a sanction; (2) includes a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and (3) is designed to coerce the contemnor’s future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct.

(...continued)

Court affirmed the order in a *per curiam* opinion. *Wang v. Mak*, No. 1732, Sept. Term 2021 (filed Sept. 30, 2022).

Id. at *15 (quoting *Breona C. v. Rodney D.*, 253 Md. App. 67, 72 (2021)).

Specifically, the sanction and the purge provision were one and the same, *i.e.*, that Mother comply with the custody order for six months; and it therefore failed to “serve the coercive purpose of civil contempt” because in such a case “undertaking the purge action necessarily completes, rather than avoids, the sanction.” *Id.* at *15 (quoting *Breona C.*, 253 Md. App. at 72). The specified six months of compliance was invalid as a sanction because the only obligation it imposed was to comply with the custody order. *Id.* It was also invalid as a purge provision because it required Mother to accomplish something six months hence, so that she “lack[ed] a present ability to immediately comply with the purging provision and, thereby, avoid the sanction.” *Id.* at *16. We remanded for the circuit court to determine if Mother had already purged her contempt following the order and, if not, to “fashion an order that imposes an appropriate sanction and purge provision.” *Wang I* at *16.

Proceedings on Remand

June 29 Custody Opinion on remand

On remand, the circuit court revisited the October 2021 Order and issued a memorandum opinion on June 29, 2022 (“June 29 Custody Opinion”), which analyzed the *Sanders-Taylor* factors, made additional findings, and affirmed the custody provisions of the October 2021 Order. We summarize the court’s pertinent findings:

- Both Mother and Father love J and had demonstrated an ability to meet his basic needs, and neither was “unfit in those regards.”

- Both parents engage in arguments in front of J, have filmed each other during custody exchanges, and have involved law enforcement at exchanges. Additionally, Mother had engaged in conduct during medical appointments for J that had caused his providers to cease treating him and had repeatedly disallowed Father his court-ordered contact with J. All of this conduct is detrimental to J's best interests.
- Father had a prior conviction for fraud in another state that reflected negatively on his character. Mother's violation of court orders, unfounded accusations against Father, including a [Child Protective Services "CPS"] complaint, demonstrate "an intentional failure to recognize Father's legitimate role in [J's] life" and reflect negatively on her character.
- Both parties desired primary custody of J and had not been successful in reaching agreements about access.
- Father has stable employment as a UPS driver. Mother testified that she works part time teaching swimming and providing childcare for a family in Laurel.
- J was a healthy 5-year-old boy. He is Mother's only child. Father has a 15-year-old son from a prior relationship who stayed with him on alternating weekends.
- Father resides in a one-bedroom apartment. Mother was living in a house with other people but had provided little detail about her living arrangements. She had been living in a hotel when the court custody evaluation was completed.
- The parties could not communicate to reach shared decisions on issues affecting J's welfare.
- Father had demonstrated willingness to share custody by returning J in accordance with the custody orders. Mother's failure to return J and her unfounded reports to CPS and the police about Father demonstrated that she was not always willing to share custody.
- Both parents sincerely desired to have custody of J.
- Father earns \$21 per hour. Mother's income is unknown.
- Mother had "acted to interfere with Father's time and relationship" with J.

- Mother often removed J from daycare on her custody days despite the court finding that it was in his best interest to attend to “enhance his social and emotional development.”

Based upon these findings, the court determined that it was in J’s best interest to have the custody and access schedule set forth in the October 2021 Order.

The court referred the remanded contempt matter to a magistrate to determine if Mother had already satisfied the defective purge provision. The court directed that if she had, the magistrate should report that the contempt was purged and if she had not, the magistrate should set a sanction and a purge, if necessary to compel future compliance.

On July 29, 2022, Mother noted an appeal from the June 29 custody memorandum opinion.

August 10 Magistrate’s Recommendations on Contempt upon remand

Meanwhile, the parties appeared with counsel for a contempt hearing before a magistrate,⁶ and on August 10, 2022, the magistrate issued a report and recommendations finding that Mother had not satisfied the defective purge provision because she had not complied with the terms of the October 2021 Order for even three months before she embarked on a course of violation. The magistrate recommended:

That it be found that the mother has not been in compliance with the court's order regarding custody and access and that as a sanction, she shall pay to the father a fine of \$800. To avoid the sanction, the mother shall strictly comply with all drop off and pick up times and schedule for custody and

⁶ A transcript of that hearing, held July 25, 2022, was not requested by Mother, and does not appear in the record.

access for a period of 4 months from the date of this order of court, after which the contempt shall be considered purged. If the mother is not in full compliance for that period, the mother shall pay to the father, immediately, the amount of \$800.

Neither party filed exceptions.

Father's August 17 Motion for Emergency Custody

One week later, on August 17, 2022, Father filed a motion for emergency custody or an expedited hearing and a petition for contempt, based on Mother's latest failure to follow the provisions of October 2021 Order. Mother was scheduled to have J in her custody from close of daycare on Friday, July 29, until Sunday, July 31, at 6 p.m. In violation of the October 2021 Order, Mother picked J up from daycare on Friday just one hour after Father dropped him off. When Mother did not return J to Father on Sunday, he reached out to her by text and to his counsel by email.

Father submitted an exhibit showing that Father's counsel reached out to Mother's counsel on Wednesday, August 3, asking for information about J's whereabouts and stating that Father was considering contacting the police. Mother's counsel responded that same day, stating: "[Mother] cannot drive because her [driver's license] is suspended due to [Father's] Child Support case." Father told the court that J, at the moment of the hearing, was missing orientation for the school he was due to start in two weeks' time.

August 25 Emergency Custody Hearing

Father and Mother appeared before a magistrate on August 25, 2022, for an emergency hearing.⁷ Father’s counsel explained that Father had not seen J, nor had J attended daycare, for nearly a month. Father did not know where Mother was living, and she had “stopped responding altogether” to his attempts to communicate with her. Meanwhile, J was scheduled to start kindergarten on August 29.

Mother’s counsel responded that there was not “much to be contested here as far as factually.” He explained that when he learned that Mother did not return J to Father as scheduled, Father’s counsel reached out to her and she told him that her driver’s license was suspended, which he then communicated to Father’s counsel. Mother’s counsel said that he later learned that Mother’s license was not suspended, and he believed that Mother, who does not speak English as her first language, had misinterpreted a letter that threatened to suspend her license if she did not pay child support.⁸ Nevertheless, he acknowledged that Mother “does have to return the child” and suggested that Mother should be permitted to address the court about that.

Father testified that on July 29, after he dropped J at daycare, Mother picked J up around 10:30 a.m. He texted Mother on Saturday reminding her that he would be at the

⁷ Mother’s attorney advised the court that he was planning to move to withdraw from the case following the hearing. His appearance was stricken on October 27, 2022.

⁸ Mother had not made any child support payments in consequence of the December 22, 2021 child support order.

Ellicott City police station on Sunday at 6 p.m. to receive J. He went to that location the next evening, but Mother did not show up or respond to his messages. Father said that for the past several years he has not known where Mother was living. Further, he did not “have any idea” where J was at that moment, as the daycare had confirmed that J was absent, and J was not present at the courthouse. Father also confirmed that he had enrolled J in kindergarten at Father’s local public school, where J was scheduled to begin on the next Monday.

Father asked the court to order Mother to return J to his custody and to enter an immediate order modifying Mother’s visitation access until Mother provided verification of her physical address, and to require visitation be supervised thereafter. On cross-examination, Father denied that he had any role in prompting the letter Mother had received from the State regarding her failure to pay child support.

Mother testified that her mailing address was in Clinton, Maryland, but that she was not living at that location.⁹ She was instead staying at a “safe house” or a “transitional house” in Prince George’s County. When the court asked her to confirm that she was currently living in Prince George’s County, Mother replied, “No, I don’t . . . currently live there.” She testified that she had stayed at that house with J for the past thirty days, “because there is law enforcement invested in the case” who were planning to interview her. Mother suggested that the case of which she spoke was an investigation of

⁹ The magistrate and Father’s counsel each questioned Mother at times.

Father “and the prostitution[.]” She also alleged, without corroboration, that Father “just showed the middle finger to me right now[.]”

On direct examination, Mother confirmed that she had not returned J to Father’s custody for the past “three or four weeks[.]” The magistrate questioned Mother directly, asking her to explain “any other reason why you could not return, didn’t return [J]” in terms of “what’s really at issue[.] here which is, really[,] his best interest.” Mother explained that upon receiving the letter from the Department of Motor Vehicles stating that her license *could* be suspended if she did not pay child support, she feared that if she were to “drive car to the [rendezvous at the] police station, [Father] is definitely going to call the police. Try to frame [her] and stall [her] and go send to jail.”

The magistrate questioned Mother about how she traveled to court that day. She said she received a ride from a friend. The magistrate asked Mother “where is the child?” and she responded that “law enforcement [are] going to [be] watching him.” Mother refused to specify which branch of law enforcement or what location, except to say that J was not in Maryland. Mother’s counsel interjected to clarify his client’s responses, noting to the court that “[Mother] did say a couple of times when she was testifying [‘in Washington[’,.]” and what he believed she intends to tell the court “is that right now [J is] being interviewed by those police officers in Washington DC[,]” who were purportedly investigating Mother’s allegations that Father “is involved in a prostitution ring or runs a brothel in DC[.]”

On re-direct, Mother explained her belief that she had to protect J from Father. Mother alleged that J had told her that both Father and Father's mother beat him, that Father had taken J to a brothel, and that Father's "mistresses" had taken J "many, many places." Mother added that J was losing weight and his teeth were decaying in Father's care, and testified that Father did not actually take J to daycare. When asked to explain succinctly why she did not return J to Father's custody, Mother replied that there were two reasons: 1) Father was a liar and 2) J told her that Father and Father's mother abused him.

On cross-examination, Father's counsel asked Mother whether she would provide the court with the address where J was currently located if Father and his counsel left the courtroom. After Mother insisted she could not, the magistrate ordered Mother to tell her "where the child is, and Mother's counsel advised her that she must answer the question. Mother replied that J was "very safe right now." The magistrate asked Mother if J was in Washington, D.C. Mother replied, in turn, that J was in Maryland," and that he was "somewhere [in the] United States[,] but refused to reveal in what location or in whose care. Further, when asked by her counsel, "[i]f The Court orders you to bring [J] back here tomorrow or later today, will you go get him and bring him back?" Mother insisted that [J's return] did not depend on her, but on "law enforcement." Finally, after the magistrate instructed several more times, "I'm ordering you to tell me where the child is" and Mother persisted in evasion, the magistrate concluded Mother's testimony.

The magistrate advised the parties that she was going to recommend the grant of sole legal and sole physical custody of J to Father, with supervised video access between J and Mother. Mother interjected, “No, I do not agree.” Mother and Father waived oral argument through counsel, “but retain[ed] all of [their] rights to exceptions to [the magistrate’s] fact findings and [] recommendations.”

August 25 Immediate Order for Temporary Custody and Access

That same day, the magistrate issued a report and recommendations. The magistrate found that Mother withheld J from Father since July 29; that she refused to tell the court where the child was or who he was with; that she claimed that she had not returned him because her driver’s license was suspended, but it was not suspended; that Mother was “not credible and seems to be suffering from poor mental health”; and that “circumstances exist that warrant the entry of an immediate order.” She further found that both parties waived oral argument and retained the right to file exceptions. The magistrate recommended: 1) that Father be granted temporary sole legal and sole physical custody of J, with “reasonable video access” with Mother, supervised by Father or his designee; 2) that Father file a motion to modify custody; 3) that Mother immediately return J to Father’ care; 4) that “any law enforcement in the State of Maryland” be authorized “to assist and use force, if necessary,” to effectuate the J’s return; and 5) that an immediate order be entered. Later that day, the circuit court entered an “Immediate

Order for Temporary Custody and Access” adopting the magistrate’s recommendations (“August 25 Immediate Order”).¹⁰

August 26 Contempt Order upon remand

The next day, the circuit court signed an order adopting the magistrate’s recommendations dated August 10, 2022, arising from the hearing on contempt upon remand from this Court. (“August 26 Contempt Order”). The order imposed an \$800 fine and decreed that Mother could avoid that sanction by complying strictly with “all pick up and drop off times and schedule for custody and access for a period of four (4) months from the date of this [o]rder[.]”

Mother returned J to Father on August 29, 2022.

On August 29, Mother noted an appeal from the August 25 Immediate Order and the August 26 Contempt Order. This Court elected to treat the earlier July 29 notice of appeal and the August 29 notice of appeal as a single case.

STANDARD OF REVIEW

This Court applies “three interrelated standards of review” to child custody determinations. *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-

¹⁰ Father filed a motion to modify custody and visitation on September 9, 2022, seeking sole legal and physical custody of J and the suspension of visitation between Mother and J until she established a residence, underwent a mental health evaluation, and complied with any directives or recommendations arising from that evaluation. A hearing on Father’s motion, as well as a contempt petition filed by Mother and a motion to modify child support filed by Mother in a related case, is scheduled for June 5, 2023.

131(c)] applies.” *Id.* (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)) (second alteration in *J.A.B.*). 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.” *Id.* (alteration in *J.A.B.*) Third, the court’s “ultimate conclusion,” if “based upon factual findings that are not clearly erroneous” and the application of “sound legal principles,” “should be disturbed only if there has been a clear abuse of discretion.” *Id.*

Generally, “[a] trial court’s findings are not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.” *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quotation marks and citation omitted). “Such broad discretion is vested in the [trial court] because only [the trial court] sees the witnesses and the parties, [and] hears the testimony, . . . ; [the trial court] 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.” *In re Yve S.*, 373 Md. at 586. “We will only disturb a decision made within the discretion of the trial court ‘where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.’” *J.A.B.*, 250 Md. App. at 247 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

DISCUSSION

I.

Mother first challenges the circuit court’s June 29 Custody Opinion on remand from *Wang I* in which it analyzed the *Sanders-Taylor* factors and determined that the

access schedule that was outlined in the vacated October 2021 Order served J's best interests.¹¹ As explained above, that order had granted sole legal and primary physical custody of J to Father and reduced Mother's access to three weekends per month.¹²

We glean from Mother's brief that she contends the circuit court did not give due consideration to her testimony and evidence or consider J's best interest in reaching its disposition on custody and access. Mother does not challenge particular findings of the June 29 Custody Opinion for clear error, but she makes a flurry of factual allegations in her brief on appeal that could be relevant to an analysis of the *Sanders-Taylor* factors for the purpose of deciding custody and access. These allegations are the same as, or substantially similar to, those voiced in earlier proceedings and represented in the appellate record.

These allegations fall into three broad categories. Mother maintains that Father has repeatedly lied to the court and violated court orders, while she has followed all the court directives. She alleges that Father has made false accusations and filed malicious and frivolous lawsuits against her throughout the course of the custody dispute. Mother

¹¹ As mentioned, this Court affirmed the circuit court's determination that there was a material change of circumstances in *Wang I*. Consequently, the issues before the trial court on remand were the weighing of the *Sanders-Taylor* factors and the ultimate determination on custody and visitation.

¹² The custody schedule reaffirmed in the June 29 custody memorandum opinion was supplanted by the August 25 Immediate Order for Temporary Custody and Access. Because the Immediate Order is an interim custody order and Father's motion to modify custody has not yet been adjudicated, we conclude that Mother's challenge to the June 29 decision is not moot.

contends that J is not safe with Father; alleging that Father is engaged in illegal activities such as prostitution and illegal drugs, that Father and his mother abused J, and that Father is inattentive to J's medical needs.

The thrust of Mother's argument is that the court should have credited her testimony and rejected Father's testimony. It is not the role of an appellate court, however, to weigh the evidence, assess witness credibility, and make findings. *See B.O. v. S.O.*, 252 Md. App. 486, 509 (2021) ("Trial courts have discretion to make findings of fact and apply those facts to the law, and we give the trial court's decision discretion because the trial court has had the opportunity to 'weigh the evidence' in a manner, unlike the way an appellate court does." (citation omitted)). The circuit court is charged with resolving any conflicts in the evidence and assessing the credibility of the witnesses. *Smith v. State*, 415 Md. 174, 185 (2010) ("Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.").

Since J's birth in 2017, Mother and Father have demanded numerous hearings concerning protective orders, child support, and custody of J, which has resulted in a voluminous record of magistrates' factual findings and recommendations. After hearing exceptions, the circuit court issued its Order for Modification and Contempt on October 18, 2021 ("October 2021 Order"). That order adopted the written recommendations of the magistrate who observed Mother and Father testify at the July 9, 2021, hearing. The

October 2021 Order was later vacated in *Wang I*, not for error in any of its findings, but because the record did not reveal how the circuit court correlated the magistrate’s fact findings with the *Sanders-Taylor* factors and applied them in a best interests analysis.

On remand from *Wang I*, the circuit court conducted a thorough evaluation of the *Sanders-Taylor* factors based upon, as the trial judge described it, “the significant filings, hearings, and orders in this case, [from which] the Court has been called upon to make findings and determination about best interest throughout the minor child’s 5 years on several occasions[,]” including the findings underlying the October 2021 Order. The resulting June 29 Custody Opinion collects, sifts, and weighs those facts applying the *Sanders-Taylor* best interests analysis.

As we summarized above, the court found that Mother and Father were fit, that they loved J, and that they both sincerely desired to have custody of him. Although both parents had engaged in some behaviors that were detrimental to J’s best interests, the court found that the conflict attendant on Mother’s inability to share custody was harmful to J. The court noted that Mother’s behavior during medical appointments had caused J’s providers to discontinue treatment; that she had not followed the court ordered access schedule and had “made unfounded CPS complaints” against Father; that she had not demonstrated a willingness to share custody with Father; that she had acted to interfere with Father’s time with J and made unfounded allegations of physical and sexual abuse against him; and that she removed J from daycare during her access periods despite the evidence that it was beneficial to his social and emotional development. The court also

found that details of Mother’s employment and living arrangements were unclear, whereas Father had an apartment with a bed for J and stable employment.

Given these findings, the court determined that J’s best interests would best be served by Father’s sole legal and primary physical custody. We perceive no abuse of the court’s broad discretion in the weighing of the *Sanders-Taylor* factors and affirm the June 29 Custody Opinion, thus reaffirming the October 2021 Order. *See Azizova*, 243 Md. App. at 347 (noting that Maryland appellate courts have “time and time again affirmed custody determinations where the trial court embarked upon a thorough, thoughtful and well-reasoned analysis congruent with the various custody factors”).

II.

Mother contends that the circuit court erred by entering the August 25 Immediate Order granting Father temporary sole legal and physical custody of J and limiting Mother’s access to supervised video visitation. Her first argument is that the entry of the order violates Maryland Rule 1-351, because the hearing was granted upon Father’s August 17 Motion for Emergency Custody, an allegedly *ex parte* application. Next, Mother contends that she was denied the opportunity to file exceptions to the magistrate’s Report and Recommendations from the August 25 Emergency Custody Hearing.¹³ She

¹³ The Magistrate’s Report and Recommendations advises that : “In accordance with Maryland Rule 9-208(f), an exception to this recommendation must be filed in writing with the Clerk of the Court within 10 days after recommendations are placed on the record or served pursuant to Md Rule 9-208(e). This is your only notice of proposed recommendations. The party taking exceptions is required to cause a transcript to be

(Continued...)

alleges that the court entered the order prematurely, before the time for the filing of exceptions had expired.

First, the entry of the August 25 Immediate Order does not violate Maryland Rule 1-351. Black’s Law Dictionary defines an *ex parte* application as a “motion made to the court without notice to the adverse party; a motion that a court considers and rules on without hearing from all sides.” *Ex Parte Motion*, Black’s Law Dictionary (10th ed. 2009). Rule 1-351 states:

No court shall sign any order or grant any relief in an action upon an *ex parte* application unless:

- (a) an *ex parte* application is expressly provided for or necessarily implied by these rules or other law, or
- (b) the moving party has certified in writing that all parties who will be affected have been given notice of the time and place of presentation of the application to the court or that specified efforts commensurate with the circumstances have been made to give notice.

Md. Rule 1-351.

This rule is not applicable to Father’s August 17 motion for emergency custody or an expedited hearing and a petition for contempt, because it contained a certificate of service on Mother. Father and Mother both participated in the resultant Emergency Custody Hearing on August 25, 2022. Therefore, the court did not violate Rule 1-351 when it issued the August 25 Immediate Order.

(...continued)

prepared in accordance with Maryland Rule 9-208(g). Failure to comply with exception procedures may result in case dismissal.” The court sent the Report via first class mail to both parties on August 25, 2022.

Second, the entry of the August 25 Immediate Order did not deny Mother the opportunity to file exceptions to the magistrate’s August 25 Report and Recommendations. Maryland Rule 9-208 directs the circuit court to refer such child access matters to a standing magistrate with the authority to conduct evidentiary proceedings and to recommend findings of fact and conclusions of law. Md. Rule 9-208(a)(1)(G), (b). Ordinarily, the circuit court “shall not direct the entry of an order or judgment based upon the magistrate’s recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions[.]” Md. Rule 9-208(h)(1)(A). However, if the magistrate finds that “extraordinary circumstances exist and recommends that an order be entered immediately, the court shall review the file and any exhibits and the magistrate’s findings and recommendations and shall afford the parties an opportunity for oral argument” and then may issue an immediate order accepting, rejecting, or modifying the recommendations. Md. Rule 9-208(h)(2). The parties retain the right to file exceptions and the immediate order is subject to modification based upon the court’s determination on any exceptions. Md. Rule 9-208(h)(2), (f).

In this case, the magistrate held a hearing and found that extraordinary circumstances existed in that Mother had not returned J to Father’s custody for over three weeks and refused to tell the court where he was and who was caring for him. This plainly satisfied the threshold for extraordinary circumstances. Both parties were represented by counsel at the hearing before the magistrate and, through counsel, waived

their right to oral argument before the entry of an immediate order. Consequently, the court did not err by entering an immediate order that same day adopting the magistrate's findings and recommendations.

As the magistrate's report and recommendation and the Immediate Order stated, Mother retained her right to file exceptions within ten days after she was served with the report and recommendation. Mother did not file exceptions, thereby waiving any challenge to the magistrate's findings on the grounds of clear error. *See Barrett v. Barrett*, 240 Md App. 581, 587 (2019) ("A party's failure to timely file exceptions forfeits any claim that the [magistrate]'s findings of fact were clearly erroneous." (quotation marks and citation omitted)). She retains her right to "challenge the court's 'adoption of the [magistrate's] application of the law to the facts.'" *Id.* (quoting *Green v. Green*, 188 Md. App. 661, 674 (2009)).

We conclude that the circuit court did not err by adopting the magistrate's recommendation that Father be granted, on an interim basis, immediate sole legal and sole physical custody of J. The court responded to Mother's repeated refusal to abide by the court ordered access provisions by temporarily limiting Mother's contact with J to supervised video visits. The evidence showed that Mother had violated the terms of the custody order by not returning J to Father for over three weeks; that she had not responded to Father's communications during that time; and that she refused to tell the court where J was then located. Mother's testimony was contradictory at times. She continued to assert that Father was operating a brothel and was physically abusing J,

allegations that the court, the custody evaluator, and the police had previously determined to be unfounded. On this evidence, the magistrate found that Mother was not credible and “seem[ed] to be suffering from poor mental health.”

In the context of the circuit court’s recent determinations that: it was in J’s best interest to spend the majority of his time in Father’s care (75% of overnights); that Mother refused to recognize Father’s legitimate role in J’s life and interfered with their relationship; and, that Mother prevented J from attending daycare as recommended for his social and emotional development, it is clear that Mother’s conduct justified an immediate change in his custody to ensure his safety and access to education. Further, though there is a presumption that liberal visitation with the non-custodial parent is in the child’s best interests, that presumption may be overcome by evidence that the best interest of the child would be endangered by spending time with that parent. *Boswell v. Boswell*, 352 Md. 204, 220 (1998). Restrictions on visitation must be “reasonable,” and must bear a “reasonable relationship” to a harm they wish to protect against. *North v. North*, 102 Md. App. 1, 14-15 (1994).

Here, the court restricted Mother’s contact with J to supervised video access on a temporary basis. We conclude that the court did not abuse its discretion by so ruling. Mother’s repeated refusal to abide by the court ordered access provisions, culminating in her flagrant violation of the June 29, 2022 decision, necessitated a restriction upon her access to J to ensure that she would not abscond with him again. Further, the court adopted the magistrate’s findings that Mother was exhibiting a decline in her mental

health and was “not credible” in her testimony. Given Mother’s concerning behavior, the court reasonably restricted Mother’s contact with J.

III.

Mother contends that the August 26 Contempt Order directly conflicts with the August 25 Immediate Order. As set out above, the August 26 Contempt Order adopted the magistrate’s recommendations and imposed an \$800 fine as a new sanction against Mother for her failure to follow custody orders, in substitution for the defective purge provision in the October 2021 Order, which this Court vacated in *Wang I*. The purge provision of the superseding August 26 Contempt Order requires Mother to “strictly comply with all drop off and pick up times and schedule for custody and access for a period of four (4) months from the date of this Order of Court[.]” However, such exchanges had been suspended just the day before, by the August 25 Immediate Order, which eliminated all in-person visits between Mother and J in the immediate future. Mother asks, “[w]hich court order should the defendant obey? Obeying one of them violates the other.”

In *Wang I*, we reviewed the requirements for a valid contempt order, and vacated that portion of the October 2021 Order for a defect in its purge provision. We quoted:

[A]n order holding a person in constructive civil contempt is not valid unless it: (1) imposes a sanction; (2) includes a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and (3) is designed to coerce the contemnor’s future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct. Moreover, . . . to serve the coercive purpose of civil contempt, the sanction must be distinct from the purge provision and the valid legal

requirement the court seeks to enforce. If the sanction imposed is a requirement to take the very action the court says will purge the contempt, then undertaking the purge action necessarily completes, rather than avoids, the sanction.

Breona C. v. Rodney D., 253 Md. App. 67, 74 (2021). The purge provision of the August 26 Contempt Order, reads, in relevant part:

FOUND, that the Defendant/Mother, Shenglin Wang, has not been in compliance with the Court's Order, entered October 18, 2021, regarding custody and access; and it is further ORDERED, ADJUDGED, AND DECREED, that, as a sanction, Mother shall pay to the Plaintiff/Father a fine of Eight Hundred Dollars (\$800.00); and it is further ORDERED, ADJUDGED, AND DECREED, that in order to avoid the sanction, Mother shall **strictly comply with all drop off and pick up times and schedule for custody and access for a period of four (4) months** from the date of this Order of Court, after which the contempt shall be considered purged; . . .

(Emphasis added). By the time the order was signed and entered, however, the August 25 Immediate Order controlled Mother's access to J. Consequently, the purge provision requiring Mother to comply with the "schedule for custody and access" for four months, and specifically referencing pick up and drop off times was rendered defective. *See Breona C. v. Rodney D.*, 253 Md. App. 67, 74 (2021) (explaining that for a purge provision to be valid, it must give "the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable"). For this reason, we shall vacate the August 26, 2022 contempt order. The circuit court may, on remand, impose a new purge provision if necessary to compel compliance with the custody orders.

**JUDGMENT OF THE CIRCUIT
COURT FOR HOWARD COUNTY**

**VACATED, IN PART, AND
AFFIRMED, IN PART. ORDERS
DATED JUNE 29, 2022 AND
AUGUST 25, 2022 AFFIRMED.
ORDER DATED AUGUST 26, 2022
VACATED. CASE REMANDED FOR
FURTHER PROCEEDINGS
CONSISTENT WITH THIS
OPINION. COSTS TO BE PAID BY
75 % BY APPELLANT AND 25 %
BY APPELLEE.**