

Circuit Court for Anne Arundel County
Case No. C-02-FM-18-001375

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 975

September Term, 2024

SHANE A. SHORTER

v.

SARA R. GIBBONS

Graeff,
Berger,
Zic,

JJ.

Opinion by Graeff, J.

Filed: January 21, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from an order issued by the Circuit Court for Anne Arundel County on motions to modify custody filed by appellant, Shane A. Shorter (“Father”), and appellee, Sara R. Gibbons (“Mother”). The court granted Mother’s motion and awarded her sole legal and primary physical custody of their minor child. It also ordered Father to pay Mother monthly child support in the amount of \$2,519.00.

On appeal, appellant presents several questions for this Court’s review,¹ which we have consolidated and rephrased slightly, as follows:

1. Did the circuit court clearly err or abuse its discretion in awarding primary physical custody to Mother?
2. Did the circuit court err or abuse its discretion in awarding child support to Mother?

¹ Appellant raised the following questions for review:

- I. Was the trial court clearly erroneous in the trial court’s factual findings regarding the demands of the Appellant’s employment and Appellant’s travel?
- II. Was the trial court clearly erroneous in admitting hearsay statements of the minor child over the proper objection of trial counsel for the Appellant?
- III. Did the trial court abuse its discretion in awarding Appellee primary physical custody and substantially reducing Appellant’s overnights with the minor child when relying on clearly erroneous fact finding and hearsay statements of the minor child?
- IV. Did the trial court abuse its discretion in awarding Appellee primary physical custody and substantially reducing Appellant’s overnights with the minor child on the testimony and evidence presented?
- V. Did the trial court err and abuse its discretion in awarding Appellee primary physical custody and substantially reducing Appellant’s overnights with the minor child based on speculation?
- VI. Did the trial court err and abuse its discretion in awarding child support when neither the Appellant nor the Appellee pleaded for a modification of the existing child support arrangement?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Custody Agreement and Petition to Modify

Father and Mother are the parents of P., a minor child born in June 2015.² Mother and Father were never married.

On July 2, 2018, the parties entered into a custody agreement (“Custody Agreement”), which was incorporated into a court order on July 9, 2018. The Custody Agreement provided for joint legal, and shared physical, custody of P. Physical custody was split evenly between the parties on an alternating, “[one] week on, [one] week off,” schedule. The Custody Agreement also provided a schedule for holidays, vacations, and other special occasions. Father agreed to provide medical and dental insurance benefits for P. through his employment, and the parties agreed to split child care costs. Pursuant to the Custody Agreement, neither party paid any child support.

At the time the parties signed the Custody Agreement, Father lived with his parents, Tina and Glenn Shorter. P. lived in the home of Father’s parents during Father’s custodial weeks “for the first six years of her life.” In July 2021, Father purchased and moved into a home two to three miles from his parents’ home. P. did not immediately start living in Father’s new house, however, because it needed renovations that took a couple of months to complete. In late November 2021, Mother emailed Father expressing concern that P.

² We use initials for the minor child to protect the child’s privacy.

was not staying in Father’s house and was spending most of Father’s custodial time at her paternal grandparents’ home. Mother stated that it seemed like she had “split custody with gammy and pop, not dad,” and she “would love more time with [P.]”

On October 26, 2022, Mother filed, as an unrepresented litigant, a form Petition to Modify Custody. She alleged that Father “has had multiple Domestic Violence charges as well as a 4th degree sexual assault charge,” and “it appears that [P.] is residing more with the Grandparents than at [Father’s] own residence.” Mother requested full legal and physical custody of P., with Father having weekend visitation every other week. Mother did not check the box on the court’s form document to indicate a request to change the current child support order. The form, however, stated that she was requesting the court to change custody and “order any other appropriate relief.”

On November 30, 2022, Father filed an Answer to Motion to Modify Custody and a Counter-Motion to Modify Custody. He requested sole legal and physical custody, alleging that he “ha[d] serious concerns” regarding Mother’s parenting abilities, including her inability to arrange medical appointments, provide a stable residence, and oversee P.’s homework. He also alleged that Mother forced P. to parent P.’s younger siblings, had untreated mental health issues that affected P.’s behavior and Mother’s parenting abilities, and continuously attempted to “unilaterally control situations” pertaining to P. Father requested that Mother be ordered to undergo a psychological evaluation and that she have only supervised visitation with P. On December 16, 2022, Mother, now represented by

counsel, filed an answer to Father’s counter-motion, requesting dismissal, attorney’s fees, and “such other and further relief as the nature of the cause may require.”

On January 26, 2023, the parties attended a scheduling conference. Following the conference, the court issued an order directing the parties to bring financial documents to the next hearing, including documents supporting expenditures set forth in the child support guidelines worksheet. It also ordered Father to file a Child Support Financial Statement by February 9, 2023.³

II.

Protective Order and Pendente Lite Hearing

On February 21, 2023, Mother filed, in a separate matter, a petition for a protective order, requesting relief for herself and P. from threats of violence made by Father. Mother alleged that she received a video recording on February 20, 2023, in which Father discussed a plan to have Mother killed and stated that “he hates children and doesn’t care about anything.” The court issued a temporary protective order that same day and scheduled a hearing on a final protective order for March 7, 2023. On March 14, 2023, after the hearing, the court entered a final protective order against Father, finding by a preponderance of evidence that Father placed Mother “in fear of imminent serious bodily harm.” The final protective order provided, among other things, that Father shall not attempt to contact, harass, or abuse Mother, and shall stay away from Mother’s residence and place of employment, as well as P.’s school and child care provider. The court awarded primary

³ Mother filed her financial statement prior to the conference.

physical custody to Mother for the duration of the protective order and supervised visitation to Father every other weekend.

On April 17, 2023, the court held a *pendente lite* hearing on the issue of “visitation and access” in the custody case, together with a hearing on the court’s own motion to modify the final protective order in the domestic violence matter. The court modified the “custody and visitation aspect of the Final Protective Order” to provide that the parties would have joint custody of P. pursuant to the July 2, 2018 Custody Agreement, but all transportation would be provided by Father’s parents and all communication would occur through Our Family Wizard.

On May 11, 2023, Father filed a motion to dismiss the final protective order, alleging that, since the issuance of the order, two independent witnesses had come forward with firsthand knowledge that Mother viewed the video at issue in the petition seven months prior to filing the March 2023 petition, not in February 2023 as she alleged. Father also alleged that Mother’s counsel advised her “to file the protective order as a way to ‘win’ the on-going custody case.” Mother moved to strike the motion to dismiss on the grounds that it was procedurally improper and based on “unfounded and baseless accusations.” She also noted that Father could have subpoenaed the two witnesses at the time of the hearing on the final protective order and subjected them to cross examination, but he chose not to

do that. On May 30, 2023, the court denied Father’s motion to dismiss the final protective order.⁴

III.

Pre Trial Hearing

The parties subsequently attended several pre-trial conferences. After the conferences, the court issued pre-trial orders indicating that, at a March 2024 hearing, the issues would include modification of custody, visitation, and child support. On January 30, 2023, a best interest attorney was appointed for P.

IV.

Hearing on Petition to Modify

On March 5, 6, and 7, 2024, the court held a three-day hearing on the petition to modify. At the beginning of the hearing, Mother’s counsel made a preliminary motion *in limine* to exclude the testimony of the two witnesses who made credibility allegations against Mother in Father’s motion to dismiss the final protective order. Counsel argued that Father was attempting to improperly “re-litigate and retry the protective order,” which was already “fully litigated.” Father responded that “the fact that [Mother] would lie and

⁴ Father filed a flurry of other motions prior to the merits hearing on the petition to modify, including: a motion for an emergency hearing based on Mother’s attendance at a family function with her brother, who is a registered sex offender; a petition for emergency hearing based on a proposed change to childcare arrangements; motions to compel discovery; a motion for *pendente lite* relief based on P.’s missing schoolwork; and a petition for contempt based on Mother’s efforts to schedule therapy for P. Father also filed a separate lawsuit against Mother alleging invasion of privacy and defamation, which was dismissed for failure to state a claim.

deprive [Father] of substantial visitation with [P.] [wa]s a relevant part of this case” and had not been heard “in the context of custody.”

The court reserved the motion, stating that it would make a determination at the time the witnesses were called. It noted that it would not re-litigate the protective order, but it would entertain testimony regarding Mother’s veracity. The court ultimately disallowed the testimony, and Father did not appeal this ruling.

A.

Mother’s Testimony

Mother testified that she lived in Pasadena, Maryland, with P., who was almost nine years old, and her other two daughters, who were turning one and three in a few weeks. She also lived with her fiancé, Samuel Summers, who was the father of her two younger daughters.⁵ Mother was employed as an assistant estimator for a general contractor. She worked 40 hours per week and earned an annual salary of \$60,000. At the time of the hearing, she had worked at her current job for seven or eight months, and she had accepted the position because it offered a higher salary and more flexibility than her previous position.

At the time Mother entered into the Custody Agreement, Father was residing with his parents, Tina and Glenn Shorter. P. spent her custodial weeks with Father at the

⁵ At the time of the hearing, Mother was actively looking for a new rental place because the owners of her current residence were selling the house and did not renew her lease. She was looking for a new rental in the same area and school district as her current residence.

Shorter's home. Father moved out of his parent's home in July 2021. Mother testified that, after Father moved, she "tried to talk to him about getting [P.] acclimated to living with him rather than his parents," but he always responded with "negative remarks toward [her]." Mother stated that P. had a fantastic relationship with Father's parents, and she viewed that relationship as important. Prior to filing for a modification of custody, she and Mrs. Shorter had a good relationship, and they spoke nearly every day. They spent holidays together, as well as P.'s birthday. Since filing for the modification, however, Mother and Mrs. Shorter did not speak at all.

Mother testified that, from July 2021 until November 2021, P. was residing solely with her grandparents during Father's custodial time. She stated that Father would tell her that P. was staying the night with him, but "that was not the case." Mother testified that P. told her that she spent most of her custodial time with her grandparents, and Mother stated that P.'s grandparents did "the majority of raising her." Mother believed that P. was "being raised by the grandparents rather than [Father]," and P.'s grandparents "are not meant to discipline and do that kind of stuff that a parent would do." Mother testified that P. was "spoiled completely" by her grandparents. In response to questioning from Father's counsel regarding the amount of time P. spent with her grandparents, Mother stated:

A I strongly believe that it's more than a couple nights a week that she is spending with the grandparents. I believe that they have a majority of the time with the grandparents rather than Mr. Shorter, himself.

Q When you say you believe that, what is the basis of that belief?

A [P.] has relayed that to me.

Q I see. So [P.] tells you what?

A I ask her if she got to spend any time at daddy's house and she will bluntly say, Oh, I had a sleep over, or, No, I was at Grammy's house this week.

Before Mother obtained the protective order, Father rarely picked up P. from the bus stop. "It was always the grandparents that picked her up. . . . [Father] didn't really do any of the transportation besides maybe a time or two."

Prior to starting therapy, P. had difficulty getting along with her siblings and Mother's fiancé when she came from her grandparents' house. P. was mean to Mother's fiancé, and it "would take a couple of days for her to wind down and get a little bit better but not much better." Mother scheduled a "therapy in-take" appointment with her younger daughter's pediatrician because she "thought [P.] might benefit from therapy." Mother informed Father of the appointment after it occurred because she was concerned that he would use it against her, and she "didn't think he was going to be for it." After this appointment, Father stated in a message to Mother: "I haven't given my opinion on therapy to [P.] as [P.] shouldn't know how I truly feel about it and she will only receive my support I will tell you though that she said she doesn't want to go to therapy and . . . says [she] won't talk to them." Based on that message, Mother believed Father was supportive of therapy, so Mother continued it.⁶

⁶ On December 19, 2023, Father filed a Petition for Expedited Contempt, alleging that Mother violated the Custody Agreement by unilaterally changing P.'s doctor and scheduling therapy without first consulting Father. He requested that the court issue an order preventing Mother from continuing with therapy. The court issued a show cause

At the time of the hearing, P. was attending therapy weekly. Mother had not yet told Father the name of the therapist, but she did not object to sharing that information. Mother had noticed “an improvement in [P.’s] behavior and general well-being since she started going to therapy.” She believed it was in P.’s best interest to continue with therapy.

Mother had concerns about sexual assault and assault charges filed against Father, as well as his aggressive communication style. Father would constantly belittle Mother, and it was impossible to communicate with him. When Mother arranged for Mrs. Shorter to pick up P. at daycare so Mother could attend a medical appointment, Father sent Mother the following text message: “Sorry you are a poor piece of shit that keeps getting pregnant. Maybe worry about not letting your newborn eat dogshit and not letting [P.] get molested by your neighbors.” When Mother sent Father a friendly message reminding him about a change in pick up due to snow, Father responded: “My daughter, my week, I know when I have to get her.”

P. has attended daycare at Cuddly Bear Daycare, operated by Johnna Croghan, since 2015. P. attends daycare after school and on weekdays when school is closed. On a typical day, Mother takes P. to the bus stop in the morning, and Ms. Croghan picks her up from the bus stop after school. P. obtained a school transfer so she could be dropped off at her daycare after school. During Mother’s custodial weeks, P. is at daycare for “about an hour and a half” after school.

order and scheduled a contempt hearing for March 5, 2024, the same day as the merits hearing. We could not find in the record any ruling on the petition for contempt.

Mother proposed changing the child-care arrangement with Ms. Croghan after she found a nanny who would watch her two younger daughters at her home, and P. after school, until her fiancé came home at 4:00 p.m. Father opposed the arrangement because P. would potentially be home alone for 15 minutes while the nanny picked up her own daughter from school. When Mother then arranged for a neighbor to cover that 15-minute period, Father filed a request for an emergency hearing. Ultimately, Mother respected Father's concerns about the proposed child-care arrangement, and they agreed that P. would continue aftercare with Ms. Croghan, and Father would bear the cost.

There were further child-care issues in the summer of 2023. Mother wanted P. to stay home with the nanny so P. could spend time with her sisters. Father opposed the idea, stating that he did not know the nanny's qualifications and had not met her. Mother attempted to set up a Zoom call for Father to speak with the nanny, but "nothing ever came [of] that." She also sent him documentation regarding the nanny's qualifications, training, and background. On President's Day 2023, Father objected to the nanny watching P. during Mother's custodial week. He refused to allow Mother to have custody of P. when Mother arrived to pick her up for the week.

Mother testified that, after the protective order issued in February 2023, the parties sent all communications through Our Family Wizard. Mother sent a message to Father on P.'s birthday to give him "the opportunity to reach out to [her fiancé] and talk to [P.]" without violating the protective order. Father coordinated with Mother's fiancé to speak with P. later that day. In June 2023, Mother messaged Father and attached a photo to

inform him that P. had an injury at home. Father responded, stating that he had taken P. to get medical attention, and CPS would be contacting her. CPS never contacted Mother.

P. started participating in dance in 2022. At first, during Father's custodial weeks, Mrs. Shorter brought P. to her dance lessons. When Mother stated that she would attend P.'s dance lessons even when it was not her custodial week, Father responded: "[S]top playing this wonder mom role. The Court's already see[ing the] show you are putting on . . . The clown emoji." In the summer of 2023, Mrs. Shorter brought P. to one dance class. After that, P. never returned to dance during Father's custodial weeks.

Father's parents also took P. on vacation, which Mother believed was a great experience for P., and she never objected to P.'s grandparents taking P. on a trip. Over Thanksgiving 2023, however, Father informed her that his parents had taken P. to Florida after they had already landed there. When Mother asked Father why he did not inform her of the trip prior to P.'s departure, he stated: "It was a surprise and I couldn't trust you not to ruin it for [P.]." When Mother asked to speak to P., he told her that he was "uncomfortable having P. speak to [her] outside [Mother's] allotted time." Mother testified that she would not have objected to the trip, but she believed she should have been informed that her "child was traveling out of state on an airplane."

Mother testified about several other communications with Father that she believed were abusive. Mother stated that Father "called [her] every name in the book," including "[s]lut, whore, bitch, the C word. A poor piece of shit. A clown." Father also called P.'s siblings the disparaging term "fetus." Mother introduced text messages from Father prior

to P.'s birth in which he states: "Nope. Not mine. I won't be having a child . . . I could care less if it passes at birth." When P.'s violin could not be located, Mother messaged Father requesting that he ask P. where she last had the instrument. He responded:

I did. She doesn't know. Please have it [at] Johnna's tomorrow so she can practice. As her mother, you should be aware of where her things are. Especially that involves her learning in school. Violin is part of that and she was unable to practice today because of your negligence. You are her mother. You should have her prepared for her school day and sending her with her violin is part of that.

Mother testified that P. had left the instrument at school, and Father never apologized for his accusatory message to her.

Father also was very degrading to his own mother. When Father and Mrs. Shorter would have a disagreement involving P., Father would use P. as a punishment, threatening to keep his parents from seeing P. if Father did not get his way. There were times when Mother would keep P. "for a week during [Father's] time because of a disagreement between him and his parents." Other times Mother would "try to mediate between him and his mother to come to an agreement . . . before [giving] up [his] time with [P.]" Mother expressed concern about Father's inability to control his anger and how he might treat P. as she got older.

Mother stated that it was nearly impossible to make shared decisions with Father about P. given the parties' communication difficulties, which caused "quite a bit" of stress. In her experience, Father did not provide input with regard to decisions concerning P.; "[i]t was always just argument." Mother testified that Father did not show her any respect for her parenting or decision-making and refused to consider switching weekends with her so

P. could attend her uncle’s funeral.⁷ Mother did believe, however, that it was important for Father to have input regarding decisions involving P. She stated that if she were awarded tie-breaking authority she would continue to keep Father informed and would consider his input. She also believed it was important for P. “to maintain a close relationship with her grandparents,” and Father should have frequent, unsupervised visits with P.

B.

Father’s Testimony

Father resided with his parents in Pasadena, Maryland, until 2021. When he moved out, P. did not immediately live with him because the house needed renovations, and Father believed that his parents’ house was a better environment for P. until the remodeling was finished. Once the work was completed, P. began to stay with Father, but she continued to spend several nights per week at her grandparents’ house up until the time of the hearing. In the beginning of 2022, P. stayed four nights at her grandparents’ house, and toward the end of the year, she stayed three nights. After Mother filed the petition for modification, P. stayed only two nights per week at her grandparents.

On a typical weekday, Father picked up P. from the bus stop or child-care provider, and they would go to his home, where P. played, did homework, and had a snack. At approximately 6:30, Father would get dinner, P. bathed, and then P. went to bed at 8:30 p.m. P. had her own room and a large playroom in Father’s four-bedroom house. Father

⁷ Father laughed as Mother began to cry while testifying about her deceased brother.

and P. played out back on the rope swing, did puzzles and arts and crafts, and played checkers and videogames together. P. had two friends in the neighborhood.

When P. spent the night at her grandparents, she still had dinner and bathed at Father's house. She then went to her grandparents to go to sleep. P. loves her grandparents. Father denied ever calling his mother terrible names. Either he or his mother took P. to school in the morning, but it "kind of was a tradition" for Mrs. Shorter to bring her. Mrs. Shorter also picked up P. from the bus stop and from the daycare provider.

Father testified that his communications with Mother were not always respectful, and he and Mother could not effectively co-parent. He stated that Mother was 90% at fault for their inability to co-parent, but they were equally at fault with regard to the inability to communicate respectfully. When asked if he had taken any action to improve his communication skills, Father said: "I don't see much of an issue [in] the way I communicate." Father did not believe that Mother was a good mother, but he believed that he was a good father. He stated that he was very upfront about issues concerning P., but he often he did not hear back from Mother, which hindered his ability to communicate. At the time of the hearing, Mother had not told Father where she was employed.

Father testified that he had two final protective orders entered against him and two final peace orders entered against him since 2021. Three of the four orders involved women that Father had been dating; the other involved a woman who had accused Father of texting too much after he had contacted her through an on-line dating site. Father

testified that the final protective order obtained by Mother against him was “bogus” and based on lies.

Father’s understanding of the protective order was that he could not call P. or have P. call him while she was with Mother. He mistakenly believed that P. was not permitted to communicate with Mother while P. was staying with Mrs. Shorter. The protective order obtained by Mother against him prevented him from attending P.’s doctor’s appointments, dance classes, and school events. Mother, however, arranged for Father to speak with P. on her birthday by having P. call Father on Mother’s fiancé’s phone. When Mother asked to speak to P. while she was in Florida with Father, however, Father would not allow it because he did not want to risk violating the protective order, even using Our Family Wizard or his parents’ phone.

Father testified that, once the protective order expired, it would be in P.’s best interest to have the ability to contact either parent while in the custody of the other. Father did not agree to switch weekends with Mother so P. could attend her uncle’s funeral because P. had no relationship with Mother’s brother, who died of a drug overdose, and he did not believe it was appropriate for P. to attend a viewing with “active drug users and recovering addicts.”

At the time of the hearing, Father was employed as a retirement wholesaler for a company in California. He earned \$60,000 annually as base pay and received bonus compensation. The financial statement he filed almost a year prior to the hearing indicated that he earned \$18,000 a month, but Father testified that his income had “significantly

dropped” since then. Father did not know how much he earned in 2023, but his most recent paystubs were entered into evidence. Father testified that he earned a biweekly gross income of \$8,124, as well as a \$15,000 bonus in February 2024. He also earned variable compensation based on commissions throughout the year. Father’s counsel objected to the questioning on income on the ground that Mother did not request child support in “any of the complaints.” The court stated that, “whenever there is a modification of custody, there is also going to be a review of what the child support is . . . [b]ased on the administrative directives [of the court].”

Father testified that, when Mother was looking into having a nanny watch P. after school, Mother provided him with a name only, “[n]o phone number, no background check, no awards, no certifications.” He did not recall any efforts to set up a Zoom call with the best interest attorney to meet the nanny. When Father was shown messages to refresh his recollection, he stated that he was expecting information about the nanny from Mother, not by setting up a Zoom call with the best interest attorney. The messages indicated that Father opposed setting up a call with the best interest attorney. Father testified that he would have done “due diligence” to vet the nanny for the safety of P. Although Mother arranged for an adult to stay with P. while the nanny picked up her own child, Father stated that this adult’s minor son had molested P.⁸

⁸ Father stated that he reported the incident to the police, but he decided not to pursue it after speaking to the child’s parents.

Father did not trust Mother to select appropriate childcare because she “overlooks some of the critical necessities someone would need to properly take care of [P.],” and she sometimes made ignorant choices. He acknowledged, however, that both parents were involved in choosing Johnna Croghan, who was “a good selection.” On President’s Day 2023, Father kept P. on Mother’s custodial day after Mother told him the nanny would be watching P. When Mother then informed Father that she decided not to work that day, Father still kept P. because he was unsure whether Mother was being truthful, and he was exercising his “right of first refusal.” Father conceded that the Custody Agreement in place did not contain a right of first refusal provision, and since 2022, he had never offered for Mother to exercise any right of first refusal when he was unable to have P. in the evenings due to work events.

Father testified that he did not object to P. attending therapy, but he was never consulted, and he would “need to do my due diligence to see if they are even a credible therapist.” He stated that Mother refused to disclose the name of the therapist and that co-parenting required that she discuss P.’s participation in therapy with him. If there was factual evidence that therapy was in P.’s best interest, Father would have no problem with P. continuing, but Father could not trust Mother’s assessment because she left him out of the decision-making process and had “actively lied to [him].”

Father testified that Mother changed P.’s pediatrician without notifying him in advance, and as a result, he filed a petition for relief from the court. On cross-examination, Father could not remember the name of P.’s pediatrician. He acknowledged that he took

P. to urgent care and the “CVS minute clinic” instead of her pediatrician on several occasions because it was easier to get an appointment and “just as good.”⁹

Father did not believe that P. benefitted from her relationship with her siblings because P. was responsible for a lot of their caretaking, including waking them up, feeding them, and “walking . . . a newborn down two flights of stairs.” Father considered Mother’s other children to be “illegitimate.” Father believed that P. was “essentially [a] full time babysitter to her siblings” and “[v]ery rarely . . . [had] sister play time.” When P. transitioned from Mother’s house to Father’s, she was “always exhausted, always [had] some sort of respiratory issue . . . [and was] always hungry.”¹⁰ P. sometimes was in “rugged” clothes and looked “discombobulated.”

Father stated that P. did not always complete her homework while at Mother’s house, and Mother packed P. lunches with expired food that lacked nutritional value. Mother introduced an email, however, showing that P. also missed homework assignments while at Father’s house, even though he had equal access to P.’s schoolwork portal. Mother stated that Father’s testimony regarding P’s incomplete homework was not accurate, and “there was [only] one week that [they] slipped up” due to a miscommunication.

⁹ Mother stated in her testimony that she had not changed P.’s pediatrician. She also noted that Father did not inform or provide any information to her before seeking medical care for P.

¹⁰ Mother testified that P.’s grandparents had, on a “couple instances,” asked that Mother not feed P. because they planned on providing P. dinner.

Father testified that, since 2022, P. had less overnight stays and “less visitation time with Gammy.” Mrs. Shorter visited P. at Father’s house “three or more times a week” and sometimes stayed over. She stayed the night more frequently as a “comfort tool” when Father was transitioning P. to her new home. P. still spent the night at Mrs. Shorter’s house once or twice per week when Father traveled or had a networking event. P. usually stayed at her grandparents’ house on Monday evenings because she was coming back from Mother’s. Other than that, it varied depending on the weather, homework, friends, and her grandparents’ plans.

With regard to his travel schedule, Father stated:

Q Okay. You testified that your job does involve travel, is that correct?

A Yes.

Q How often does [your job] require travel?

A It is -- it varies. I make my own schedule. So really I kind of plan it around [P.]. If there is a networking event that I can’t kind of move around then I -- That is where Gammy comes in. But I really kind of make my travel schedule.

Q And so how long would your travel be? Would it ever impact your time with [P.]?

A No. No. When I travel, I mean, like maybe for lunch meetings or something like that.

Q So you are not traveling across the country --

A Oh no, no. No.

Father stated that the most he was away for travel was three to four hours for “a networking event, a lunch or breakfast, a happy hour” when P. was in school or at daycare,

and it was never overnights. Father could make his schedule around P., and he lived only seven minutes from P.'s school. Despite this flexibility, Father's parents were available to pick P. up from school if necessary. Father acknowledged, on cross-examination, that he was unable to accommodate Mother's request to change the scheduled date of the parent/teacher conference due to work.

Father requested full legal and physical custody of P., with Mother having unsupervised visitation every other weekend. He testified that he would be willing to discuss the selection of health care providers and other issues with Mother if he were awarded sole legal custody.¹¹

C.

Testimony of Johnna Croghan

Ms. Croghan had provided after school and summer child care for P. for eight years. She sometimes noticed that P. was tired during Mother's custodial weeks, but she only had her for approximately 45 minutes in the afternoon. Sometimes P. was "a hot mess" when she arrived at her house, but "it's after school," and "[w]hen you go to school, your clothes get[] messed up and stuff like that."

Ms. Croghan testified that P. had "a wonderful relationship with her grandmother," and they did a lot together. P.'s grandmother picked her up from child care at least three

¹¹ Olivia Reynolds, Father's brother's girlfriend, testified that she and her 11-year-old daughter spent time and went on outings with Father and P. She stated that Father was a "very good, hands on father" and it "would be beneficial for [P.] to have time with and a relationship with [Father]."

days per week, and sometimes all five days. Croghan stated that P.'s grandmother picked up P. 15 out of 20 days per month.

D.

Testimony of Sam Summers

Sam Summers, Mother's fiancé, testified that he and Mother had two children together. Mr. Summers was employed by Conai Elevators, and he worked from 7:00 a.m. to approximately 3:30 p.m. He picked up P. from after-school child care at approximately 4:30 p.m. during Mother's custodial weeks. When P. got home, she got a snack, and when Mother got home, they "talk[ed] about their day," P. did homework, and then she got ready for bed. P. enjoyed spending time with her siblings, but "[e]very once in a while" they would have conflict with sharing.

E.

Testimony of Christina Shorter

Mrs. Shorter, P.'s grandmother, testified that she had a very special relationship with P., and P. lived with her and her husband for "the first six years of her life." Father's new house was three minutes from his parents' home. Mrs. Shorter described P. as full of energy, "[s]uper-smart," funny, loving, and kind. Father and P. had a very good relationship, and she and her husband were proud of how Father had embraced being a dad. With regard to her relationship with P., Mrs. Shorter testified that "grandparents add a different element to a child's life. They have a different perspective. . . . I think there's a lot of value grandparents can add, just from the history and family perspectives."

Mrs. Shorter denied that her son called her horrible names. Mrs. Shorter previously had a very good relationship with Mother, but Mother “just stopped talking to [her]” about 18 months prior to the hearing. After the protective order was issued, Mrs. Shorter declined Mother’s offers for her to have extra time with P. because she did not want to take the risk of violating the order, and Mother showed “a different side of her that [Mrs. Shorter] had not seen.” Father’s attorney advised Mrs. Shorter that she was not permitted to accept any visits with P. outside of Father’s custodial week. Mrs. Shorter stated that Mother “got that protective order on a lie,” and she was “very disappointed that [Mother] would go to this length and disrupt [P.] the way she did.”

Mrs. Shorter testified that Mother once dropped off P. at her home when no one was there. Mrs. Shorter was at the grocery store when Father called to inform her that Mother was en route to drop off P. Mrs. Shorter hurried to get home and “had just missed [Mother],” who she “had passed . . . on the road going into the neighborhood.” Prior to Father calling her, Mrs. Shorter “knew [P.] may be coming to the house” because “[i]t was the switch day,” and there was discussion of her picking up P. from Mother’s work. Mrs. Shorter testified that she did not have any direct communications with Mother about the exchange. Mother, however, introduced evidence of several text messages sent by her to Mrs. Shorter that day asking when she was going to pick up P. and providing her work

address. Mrs. Shorter stated that she never received them. P. was alone at Mrs. Shorter's home for less than five minutes.¹²

Since Father's move, P. still spent the night at her grandparents' home two nights a week. P. would come over after dinner and homework, at approximately 7:00 p.m. P. had been spending two nights per custodial week at her grandparents' house for longer than six months. From July 2021 through November 2021, P. stayed with her grandparents full-time while Father's house was being renovated. After November 2021, Father transitioned P. to his house and decreased the amount of time that P. was with her grandparents. Mrs. Shorter often picked up P. from after-school care.

F.

Closing Argument

At the conclusion of the testimony, counsel for Mother and Father, as well as the best interest attorney ("BIA"), gave their closing arguments. The BIA stated that both parents took care of P. while she was in their custody, and there was no evidence of "any abuse, neglect, [or] mistreatment." The BIA believed, however, that it was in P.'s best interest for Mother to have primary physical and sole legal custody based on Father's disdainful attitude toward Mother and her family. The BIA expressed concern that Father's contempt for Mother and her family would affect "the wellbeing of [P.] because, in order

¹² Mother's testimony regarding this incident conflicted with Mrs. Shorter's. Mother stated that when she dropped off P., Mrs. Shorter's car was in the driveway, and the door was unlocked, so P. went inside. After hearing Mrs. Shorter call out to P., Mother left and returned to work.

to co-parent, you have to believe you are on the same level.” She also questioned what Father was “saying behind closed doors to [P.],” given his public testimony about Mother and her other children. She noted her concern that Father’s “disdain will trickle down to [P.] and . . . will harm her relationship with her siblings, with her step-father, with her mother at some point.” She stated that this was not in P.’s best interest.

The BIA further noted that the ability of the parents to make joint decisions was “non-existent” because Father responded to Mother’s attempts to communicate with insults, and their communication challenges harmed P. by delaying decision-making. The BIA also stated that, based on her conversations with P., she believed P. was with her grandmother more than Father.¹³

Mother’s counsel began her closing by noting that, when Mother testified regarding the loss of her brother, Father laughed at her. She stated that his actions reflected his poor character and illustrated the “hate and disregard he ha[d] for [Mother],” which he displayed throughout the hearing. Counsel stated that it was uncontested that P. had a great relationship with her grandmother, which Mother encouraged, and would continue to encourage if she were awarded primary custody.

Counsel further argued that there had been a material change in circumstances because Father had moved to a new home, but P. continued to spend the majority of

¹³ On June 14, 2024, before the court issued its decision, Mother filed a motion for expedited hearing, requesting the court to allow additional evidence in support of her motion to modify custody. She alleged that Father was attempting to “sabotage” their child care arrangement and disrupt P.’s stability after Mother moved to a new school district. The court denied the motion.

Father's custodial time at his parents' home. She asserted that the evidence was clear that, when P. was in Father's custody, P.'s grandmother did most of the parenting; Father had relinquished his parenting responsibilities to his parents. Counsel argued that Father lied multiple times during his testimony, and Father's disdain and disrespect toward Mother prevented the parties from communicating effectively. She requested that the court award Mother primary physical and sole legal custody, as well as child support, and that Father continue to pay for P.'s childcare expenses and health insurance.

Father's counsel argued in closing that Mother had not "lived up to" the terms of the Custody Agreement because she refused to consult with Father about decisions affecting P., including P.'s participation in therapy. He alleged that Mother welcomed the involvement of P.'s grandparents in their life until she became engaged and was now hostile to Mrs. Shorter and did not want Father involved in raising P. Father's counsel also asserted that Mother was not truthful in her testimony. Counsel argued that the parties could not co-parent.

V.

Court's Ruling

On July 9, 2024, the court read its opinion into the record. The court first found that there was a material change in circumstances since the Custody Agreement issued in 2018. Father had moved from his parents' home into his own home and had started a new job requiring travel. The court found that, on multiple occasions while traveling, Father had left P. with his parents overnight. Moreover, Mother was currently residing with her fiancé

and her two additional children, one three years old and one ten months old, and she had obtained a final protective order against Father based on a finding of abuse.

The court next addressed the best interest of the child, discussing the requisite factors for custody determinations. It started with the fitness of the parents. The court stated that it had concerns with Father's fitness, noting that another judge had found him abusive and issued a protective order against him. It found it "very concerning that [Mother] had to go through such lengths to feel a level of security."

The court then found that both parents had stable homes, loved P., and seemed to want the best for her. It found that, "[f]or the most part," they each had been caring for P. since birth.

The court next evaluated the character and reputation of each parent. It had significant concerns with Father's character, noting that he was found to have committed abuse against Mother, and he continued "to be verbally abusive through text message and [Our Family Wizard]." The court found that Father was "disrespectful and demeaning to [Mother]," observing such character in court. Father's contempt for Mother gave the court "great concern." Nevertheless, it found Father "to be a good father [who] loves his daughter." It also found that Mother was a "good mother."

With regard to the desire of the parents and agreements between the parties, the court noted that, although each party now wanted primary physical and sole legal custody of P., the parties initially agreed to joint legal and physical custody in the Custody Agreement. Mother still wanted Father in P.'s life.

In analyzing the potential for maintaining natural family relations, the court stated that Mother recognized the importance of having Father and his parents in P.'s life, but the "malfeasance" that Father had for Mother "interfered with the relationship that [Mother] and [Father's] mother enjoyed." Father did not value the relationship that P. had with Mother or P.'s siblings, and he had "spoken very derogatorily about them," both in testimony and in writing. The court stated that it did not have faith that Father would "nurture or even support the relationship that [P.] has with her mother or other siblings," and it was concerned Father's "actions would affect the love that [P.] ha[d] for [her] younger siblings."

There was no evidence regarding P.'s preference, and the court found that both parents could financially provide for P. The court found that P. was a healthy and active girl, and she had learned to manage her emotions by attending therapy. Regarding the residences of the parents and opportunities for visitation, the court found that both parents "maintained a stable and appropriate home" for P., "with [the] exception of [Father's] perception of [Mother]," and each parent had an opportunity for visitation. The court further found that Father had the support of his parents when he was not in town, and they also had provided a stable residence for P. The court found that the factors involving length of separation from the parents and prior voluntary abandonment were not applicable.

Next, the court considered the relevant factors for determining legal custody, beginning with the capacity of the parents to communicate and reach shared decisions affecting P.'s welfare. The court found, based on its review of text messages and

communication from Our Family Wizard, that the parents were “not able to effectively communicate.” It found that Father’s belittling and degrading language was “totally unacceptable,” and his “utter disregard and disdain for [Mother] was very apparent throughout the trial and supported by the evidence.” The court noted that Father laughed when Mother cried during her testimony about the loss of her brother, and he “found nothing wrong with allowing” P. to travel to Florida with his parents without notifying Mother. The court found that Father had a clear double standard with regard to communication about medical decisions, becoming angry when Mother placed P. in therapy, but not notifying her when he took P. to get medical care.

Turning to the willingness of the parents to share custody, the court noted that Father was not willing to share custody of P. and wanted sole legal and primary physical custody. It found this concerning because Father was “not always available for overnights” and traveled a lot for work, during which time P. stayed with his parents. The court noted that the testimony of the child-care provider, who the court found credible, was contrary to Father’s testimony about how often he had P. Mother, on the other hand, testified that she wanted P. to spend time with Father as well as Father’s family.

The court determined that the custody determination would not result in disruption to P’s social and school life because the parents lived in the same area, and P. would still have access to her friends. Regarding the demands of parental employment, however, the court found that Father’s job required frequent travel out of town. The court expressed concern that the demands of his employment affected “his ability to spend time with [P.],”

stating that Father “shifts his parental responsibilities to his parents when he travels out of town, allowing [P.] to stay with his parents multiple nights during his custodial time and not notifying [Mother] when he is leaving town or the custodial arrangement that he has made for [P].” The court found that Mother’s employment was not demanding. She worked a day job when P. was in daycare.

Geographic proximity of the parents’ homes presented no issue because both parties lived in Pasadena, Maryland. The court found that P. had “established a great relationship with both of her parents.” Addressing the sincerity of the parents’ request for custody, the court noted that both parties seemed sincere, but Father believed that he was “superior to [Mother], which diminishes the sincerity of his request.” Father contended that “he was a better parent and that [Mother] was not a good mother,” but the court found that the evidence did not support this contention. Instead, the evidence showed that Mother attempted a collaborative parenting approach with Father, but this was “met every time with deprecating, disparaging, and just downright offensive and demeaning responses.” The court noted that Mother had arranged for therapy for P. to address changes that P. was experiencing.

With regard to financial status of the parents, the court stated that Father earned “significantly more than” Mother. Father’s pay stubs showed that he earned approximately \$24,729 the first two months of the year, as opposed to Mother’s \$60,000 annual salary. The court found that the custody determination would not impact state or federal assistance and that both parents would benefit from the interaction they have with P.

Finally, the court noted its concern with how Father’s “constant deprecating and degrading behavior” toward Mother would affect P. in the future. Accordingly, the court found that it was in the best interest of P. for Mother to have sole legal and primary physical custody, stating:

This Court has not seen in almost four years on the bench such disdain for one parent to the other. As pointed out by the best interest attorney, that the concern is how long before [Father’s] attitude toward [Mother] affects [P.] . . . This Court does not find it in the best interest of [P.] to wait and see.

The court ordered that Father have visitation every other weekend, and two non-consecutive weekends during the summer, and that Mother have the first right of refusal to have access to P. when Father is out of town.¹⁴ The court further ordered that Father contact Mother to inform her when he is going to be out of town, and Father’s “parents may have visitation with [P.] but [Father] does not get to relinquish his access to his parents.” The court noted that civility clauses would be in the final order and that all communications were to continue through Our Family Wizard.

The court next addressed child support, finding that the Child Support Guidelines applied. Pursuant to the guidelines, the court ordered Father to pay Mother \$2,519 per month in child support.¹⁵

¹⁴ Although the court’s statement in court and in its final order grants Father “two non-consecutive weekends during the summer,” in context, it appears that the court ordered two weeks in the summer, which is what Mother states in her brief.

¹⁵ After the court issued its ruling, the following occurred:

[FATHER]: Okay. You’re out of your mind.

This appeal followed.

DISCUSSION

I.

Custody Modification

Father contends that the court erred or abused its discretion in awarding Mother primary physical custody for several reasons.¹⁶ First, he argues that the court's factual findings regarding Father's overnight travel and the demands of Father's employment were clearly erroneous. Second, he argues that the court impermissibly relied on hearsay statements of P. to find that P. "was spending a significant amount of time with [her] paternal grandparents." Finally, he argues that, based on the evidence presented and speculation regarding how Father's behavior might affect P. in the future, the court abused its discretion in awarding Mother primary physical custody and "substantially reducing" his overnight custodial time with P.

Mother contends that the court properly exercised its discretion in awarding her primary physical custody. She argues that its decision was not based on speculation, and the court's findings regarding Father's employment and availability to care for P. were not clearly erroneous, asserting that the overwhelming evidence supported the court's findings regarding P's overnight visits with her grandparents. Mother contends that the court did

THE COURT: Sir, I suggest that you monitor your language.

[FATHER]: I did. I said, you're out of your mind. I'm freedom of speech. That's all I said. I will leave now.

¹⁶ Father does not appeal the court's ruling on legal custody.

not err in relying on P.’s alleged hearsay statements because Father admitted the same evidence, and therefore, any objection was waived.

This Court engages in “a limited review of a trial court’s decision concerning a custody award.” *Wagner v. Wagner*, 109 Md. App. 1, 39, *cert. denied*, 343 Md. 334 (1996). We apply three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). First, we review factual findings for clear error. *In re R.S.*, 470 Md. 380, 397 (2020). Second, we review whether the court erred as a matter of law, without deference, under a *de novo* standard of review. *Id.* Finally, ultimate conclusions of the court, “when based upon ‘sound legal principles’ and factual findings that are not clearly erroneous, will stand, unless there has been a clear abuse of discretion.” *Id.* With that standard of review in mind, we address Father’s contentions.

A.

Factual Findings

As indicated, one of the court’s findings leading to its custody determination was that Father traveled a lot for work, during which time P. stayed with his parents. Father contends that the court’s factual findings with regard to his travel obligations were clearly erroneous. Mother contends that the court’s finding in this regard was not clearly erroneous, noting there was overwhelming evidence that Father was often not available to care for P., who “spent many of the overnights on [Father’s] weeks with the grandparents.” She further states that, even if the court’s finding in this regard was clearly erroneous, the

court did not abuse its discretion in the ultimate custody decision given the totality of the evidence.

In general, “[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.” *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 247 (2021) (quoting *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019)). To determine whether findings are clearly erroneous, we give “due regard” to the court’s “opportunity to ‘judge the credibility of the witnesses’” as part of “a highly deferential evidentiary review.” *MAS Assocs., LLC v. Korotki*, 465 Md. 457, 474 (2019) (quoting Md. Rule 8-131(c)). We must accept the circuit court’s findings unless they are “so contrary to unexplained, unimpeached, unambiguous documentary evidence as to be inherently incredible and unreliable.” *Kusi v. State*, 438 Md. 362, 384 (2014) (quoting *Att’y Grievance Comm’n v. Maignan*, 390 Md. 287, 295 (2005)).

Here, the court’s findings regarding Father’s unavailability to watch P. were not clearly erroneous. Father testified that, during his custodial weeks, P. spent the night at her grandparents’ house twice a week. He stated that the dates she stayed at her grandparents’ house depended on “if I have a networking event in the evening.” Father testified that his job involved travel. He subsequently testified that his travel for networking events did not involve overnight travel. There was clear evidence, from Father himself, that he travelled for work. Although Father testified that his travel was primarily for three- to four-hour networking events that occurred while P. was in school or daycare, this testimony contradicted Father’s earlier testimony that he had networking events in the evenings,

which resulted in P. staying overnight at her grandparents. The court was free to determine what testimony to credit. *See J.A.B.*, 250 Md. App. at 250 (“Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.”) (quoting *State v. Smith*, 374 Md. 527, 533-34 (2003)). In any event, the testimony was uncontested that P. stayed at her grandparents’ house at least two nights per week during Father’s custodial time. The court’s finding that Father travelled for work and left P. in the care of his parents overnight on multiple occasions was not clearly erroneous.

B.

Hearsay

Father next contends that the court improperly relied on hearsay testimony in making its factual findings regarding the overnight time P. spent with her grandparents. Specifically, he points to the following exchange during Mother’s testimony:

A He would tell me that I can’t tell him what to do. He would say that [P.] was over there staying the night. However that was not the case.

Q And how did you know – how did you know that [P.] was spending a significant amount of time [at her grandparents]?

A. [P.] had told me.

[COUNSEL]: Objection. Move to strike.

THE COURT: Overruled.

Mother contends that this contention is not preserved for review because Father subsequently elicited the same testimony. She further asserts that the statement was not hearsay. Finally, she argues that, to the extent that there was error, it was harmless because

there was significant other evidence that P. spent a significant amount of Father’s custodial time with her grandparents.

We address first the preservation issue. This Court had made clear that, “if the same or similar evidence is admitted without objection at another point in the trial, [any earlier] object[ion] is waived.” *Francois v. State*, 259 Md. App. 513, 523, *cert. denied*, 486 Md. 243 (2023). *Accord Benton v. State*, 224 Md. App. 612, 627 (2015) (“[O]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection.”) (quoting *DeLeon v. State*, 407 Md. 16, 31 (2008)).

Here, after objecting to Mother’s testimony about P.’s statements regarding the time P. spent at her grandparents’ house, Father probed the same issue during his own direct examination of Mother:

Q So you heard [Father’s] testimony, during his week he picks [P.] up, dinner, homework, of course, she has to play outside with the children. And then the only thing that happens is that he goes – she goes to the grandmother’s to sleep a couple nights a week. How is he not making use of the time he has?

A I strongly believe that it’s more than a couple nights a week that she is spending with the grandparents. I believe that [P. has] a majority of the time with the grandparents rather than Mr. Shorter, himself.

Q When you say you believe that, what is the basis of that belief?

A [P.] has relayed that to me.

Q I see. So [P.] tells you what?

A I ask her if she got to spend any time at [Father’s] house and she will bluntly say, Oh, I had a sleep over, or, No, I was at Grammy’s house this week.

Because this testimony was elicited by Father’s counsel and admitted without objection, Father has waived any objection to Mother’s earlier testimony. This issue is not preserved for review, and we will not consider it on the merits.

C.

Custody Award

Father contends that the court’s award of physical custody was an abuse of discretion. He asserts that the decision was “far outside the range that this Court should consider acceptable.” He further argues that the court improperly relied on speculation regarding potential further harm to P.

Trial courts employ a two-step process when considering a request to modify child custody. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). They first determine the threshold question whether “there has been a ‘material’ change in circumstance.” *McMahon v. Piazza*, 162 Md. App. 588, 594 (2005). A change is material if it affects the “welfare of the child.” *McCready v. McCready*, 323 Md. 476, 481 (1991). “[I]f the court determines there has been a material change in circumstance, then it proceeds to consider the best interests of the child” in deciding whether the material change necessitates a modification in custody. *Jose v. Jose*, 237 Md. App. 588, 599 (2018). *Accord McCready*, 323 Md. at 482.

Father does not dispute that there was a material change of circumstances. Rather, he challenges the court’s determination of the best interests of P. and the ultimate award of physical custody.

In reviewing a trial court’s ultimate custody decision, “an appellate court does not make its own determination as to a child’s best interest.” *Gordon v. Gordon*, 174 Md. App. 583, 637 (2007). The circuit court has broad discretion because it sees the witnesses and hears the testimony, and therefore, it “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.

“There is an abuse of discretion where no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles.” *Bord v. Balt. Cnty.*, 220 Md. App. 529, 566 (2014) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). “To constitute an abuse of discretion, the decision ‘has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Cousins v. State*, 231 Md. App. 417, 438, *cert. denied*, 453 Md. 13 (2017).

The Maryland appellate courts have addressed factors to guide a court’s custody decision. In *Montgomery Cnty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977), this Court established the following factors to be weighed in its analysis:

- 1) fitness of the parents;
- 2) character and reputation of the parties;
- 3) desire of the natural parents and agreements between the parties;
- 4) potentiality of maintaining 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.

(Internal citations omitted). In *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986), the Supreme Court of Maryland expanded on these factors to include: (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 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’ requests; (11) financial status of the parents; (12) impact on state or federal assistance; (13) benefit to parents; and (14) any other factors as appropriate.

Although the factors set out in *Sanders* and *Taylor* instruct a trial court’s custody determination, “no one factor serves as a prerequisite to a custody award.” *Santo v. Santo*, 448 Md. 620, 629 (2016). Indeed, this Court has emphasized that “the test with respect to custody determinations begins and ends with what is in the best interest of the child.” *Azizova*, 243 Md. App. at 347.

Based on our review of the evidence, we conclude that there was extensive evidence in the record to support the court’s exercise of discretion in making its custody determination. The court had serious concerns about Father’s fitness as a parent and his character based on his abusive behavior toward Mother, which resulted in the issuance of a protective order. The court found that Father was, and continued to be, verbally abusive to Mother over text messages and Our Family Wizard, and it observed that Father was

“disrespectful and demeaning” to Mother throughout the trial. Father’s behavior gave the court “great concern.”

With regard to the potential for maintaining family relationships, the court noted that Mother recognized the importance of having Father in P.’s life, but Father did not “share the same belief” and spoke “very derogatorily about [Mother and P.’s siblings],” both in written evidence and on the stand. The court found that Father’s behavior “interfered with” the positive relationship Mother and Mrs. Shorter had once shared.

There was ample evidence in the record that the parties could not effectively communicate. Father made belittling remarks to Mother, and he failed to tell Mother that P. was traveling to Florida with his parents. The court noted that Mother’s attempts to co-parent with Father were met with “deprecating, disparaging, and just downright offensive and demeaning responses.”

On the issue of willingness to share custody, the court found that Father did not wish to share custody, but he was not always available to have P. during his custodial time. The court found that P. stayed with Father’s parents on “multiple nights during his custodial time,” resulting in Father shifting his responsibility to his parents. Although Father cites to his testimony that his work did not interfere with his custodial time, the court was within its discretion to discredit this testimony. *See Westley v. State*, 251 Md. App. 365, 419 (2021) (factfinder can accept all, some, or none of a particular witness’ testimony); *Nouri v. Dadger*, 245 Md. App. 324, 342 (2020) (credibility determinations are for the fact

finder). Moreover, other evidence indicated that P. spent a significant amount of Father's custodial time with her grandparents.

Finally, Father's contention that the court improperly speculated during its ruling that Father's degrading behavior toward Mother would negatively affect P. in the future is without merit. Father relies on *Boswell v. Boswell*, 352 Md. 204, 235-38 (1998), to argue that the court failed to "establish a nexus between [Father's] behavior and any adverse impact on [P.'s] overall wellbeing." Father further contends that any finding of harm must be "evidence-based" and not grounded in "stereotypical presumptions of future harm."

As noted by Mother, *Boswell* addresses requests for limitations or restrictions to custody and visitation based on allegations of harm to a child. *Id.* at 236 (court must find adverse impact on child before restricting visitation based on presence of non-marital partner in home). *Boswell* does not stand for the proposition, however, that there must be a finding of actual harm to a child when a court determines that one parent should have primary physical custody in an ordinary modification proceeding.

Here, there was evidence that Father's behavior was already having a negative effect on P. Mother testified that, when P. returned from Father's custody, P. "had a very hard time getting along with her siblings" and was mean to Mother's fiancé. P. called Mother's fiancé "names like fat, and ugly, and stupid," and she did not wish to engage with her siblings. It took P. "a couple of days for her to wind down and get a little bit better." Under these circumstances, the court was appropriately concerned that Father's conduct would continue to affect P., finding that it was not in P.'s best interest "to wait and see" whether

it would also impact P.’s relationship with Mother. As the Supreme Court of Maryland has noted, a court is not required

to sit idly by and wait until a child is actually harmed by . . . visitation. If there is sound evidence demonstrating that a child is likely to be harmed down the road, but there is no present concrete finding of harm, a court may still consider a child’s future best interests and restrict visitation.

Boswell, 352 Md. at 237.

The court thoughtfully and thoroughly analyzed all the requisite factors in determining that an award of primary physical custody to Mother was in the best interest of P. The court did not abuse its discretion in granting Mother’s motion for a custody modification.

II.

Child Support

Father’s final contention is that the court erred and abused its discretion in modifying child support because Mother did not request this relief in her motion to modify custody. He asserts that the court erred in overruling his objection to consideration of child support when it stated that “whenever there is a modification of custody, there is also going to be a review of what the child support is.”

Mother contends that the court did not err in awarding her child support. In support, she notes that she requested “any other appropriate relief” in her modification pleadings, and it was within the range of reasonable possibilities that child support would change if there was a change in custody. She further notes that Father was on notice that child support was at issue based on various pre-trial orders.

The “court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.” Md. Code Ann., Fam. Law (“FL”) § 12-104(a) (Repl. Vol. 2019). “The term ‘material’ limits a court’s authority to situations where a change is of sufficient magnitude to justify judicial modification of the support order.” *Payne v. Payne*, 132 Md. App. 432, 442 (2000) (quoting *Wagner v. Wagner*, 109 Md. App. 1, 43 (1996)). A court’s decision to modify child support is reviewed for an abuse of discretion and “will not be disturbed[] unless that discretion was arbitrarily used or the court’s judgment was clearly wrong.” *Id. Accord Jocelyn P. v. Joshua P.*, 259 Md. App. 129, 177 (2023) (decisions regarding child support are always within the sound discretion of the court).

To be sure, as Father notes, on the court-generated form document requesting a custody modification, Mother did not check off the box stating: “I/We also request a change in the current child support order.” “The central point” of looking to the “pleadings in framing the issues,” however, is to put the parties “on notice of the matters in dispute.” *Lasko v. Lasko*, 245 Md. App. 70, 82 (2020). We have held that a court has authority to grant any relief authorized by law based on a party’s general request for appropriate relief. *Id.* at 82-83.

In *Payne*, we held that the circuit court did not err or abuse its discretion in addressing a request for modification of child support based on written correspondence from counsel “in lieu of a formal motion.” 132 Md. App. at 439. We noted that opposing counsel did not object to the form of the request until the actual hearing on the issue and

that the correspondence “contained sufficient facts to give notice and inform the opposing side of the matter in controversy, including the relief appellee sought to obtain.” *Id.* at 440.

The parties were also fully heard on the issue prior to the modification. *Id.*

Here, Mother requested that the court order “any appropriate relief” in her form petition to modify custody. She also asked the court to “grant such other and further relief as the nature of the cause may require” in her answer to Father’s complaint to modify custody. It is well established that the court may modify a child support payment in a custody modification proceeding when there is a showing of a material change in circumstance, such as transition to or from shared custody. *Payne*, 132 Md. App at 442-43. Thus, a change in child support was within the range of reasonable possibilities, particularly where, as here, there was clear notice to Father by the court that it was an issue that the court would hear in the case.

There were several orders that put Father on notice that child support was an issue in the litigation. The court’s December 8, 2022 Order for Remote Scheduling Conference ordered both parties to complete financial statements pursuant to Md. Rule 9-202(f). That rule provides that, if “modification of child support is claimed by a party, each party shall file a current financial statement under affidavit.” Rule 9-202(f). After the scheduling conference, the court issued a Scheduling Order requiring Father to file a short form Child Support Financial Statement by February 9, 2023. Mother’s May 5, 2023 pre-trial statement provides, under the relief sought heading, that she sought “child support and child support arrears.” On May 5, 2023, Mother filed a child support guidelines worksheet,

and the court's July 31, 2023 and January 26, 2024 pre-trial orders both clearly indicated that modification of child support was an issue for the merits hearing. Counsel for both parties signed the January 26, 2024 pre-trial order.

There is ample evidence in the record that Father was on notice of Mother's request for a modification of child support well before the March 2024 hearing. The court did not err or abuse its discretion in ordering Father to pay Mother monthly child support.¹⁷

**JUDGMENTS OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

¹⁷ Father does not contest the amount of child support awarded or that there was a material change justifying a modification.