

Circuit Court for Howard County
Case No. C-13-FM-19-001743

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1069

September Term, 2022

FELISCA CUMMINGS

v.

DAVID CUMMINGS

Graeff,
Reed,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 16, 2023

*At 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.

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

This case arises from a custody ruling issued by the Circuit Court for Howard County relating to the two minor children of appellant, Felisca Cummings (“Ms. Wong”), and appellee, David Cummings.¹ The court awarded Mr. Cummings sole legal and physical custody of the minor children, and it awarded supervised visitation to Ms. Wong, with Ms. Wong to pay the cost of the parenting supervisor.

On appeal, Ms. Wong presents two questions for this Court’s review,² which we have consolidated into the following question:

Did the circuit court err or abuse its discretion in granting Mr. Cummings sole legal and physical custody and awarding Ms. Wong supervised visitation?

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

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Cummings and Ms. Wong met in 2002 and got married in September 2006. Ms. Wong gave birth to the parties’ son, L. in August 2007.³ After L.’s birth, Ms. Wong quit

¹ Appellant’s married name was Felisca Cummings, but she subsequently changed her name to her maiden name. She identifies herself in the briefs as “Ms. Wong,” and we will therefore refer to her by that name in this opinion.

² Ms. Wong presented the following questions:

1. Did the circuit court commit legal error when it found reasonable grounds to believe the minor children had been abused by Ms. Wong?
2. Did the circuit court violate Ms. Wong’s fundamental right to make decisions concerning the care, custody and control of the minor children?

³ To protect their privacy, we shall refer to the minor children by their first initials. See *In re G.T.*, 250 Md. App. 679, 683 n.1 (2021).

her job and became a stay-at-home mother. Mr. Cummings continued to operate his real estate business and was the primary income earner for the household. In September 2012, Ms. Wong gave birth to the parties' second child, C.

The parties began to experience complications in the marriage. As discussed in more detail, *infra*, on February 5, 2019, an altercation ensued in which the parties physically fought in the presence of the children. On February 6, 2019, protective order proceedings were initiated by each of the parties. The court issued a temporary protective order to Mr. Cummings on February 7, 2019. As a result, Ms. Wong was forced to leave the marital home and was prohibited from seeing the children.

On March 28, 2019, the parties resolved the temporary orders of protection by agreeing to terms set forth in a "Term Sheet," which outlined issues of custody and care for the children. The parties agreed to follow a 2-2-5 schedule of shared parenting time and agreed to seek therapy.⁴ The Term Sheet prohibited Ms. Wong from doing homework with the children and provided that neither party would use corporal punishment on the children. If a party violated the prohibition on corporal punishment, that party agreed to forego overnight parenting time with the children until the children's therapist deemed it appropriate. Additionally, each party agreed to dismiss their petitions for protective orders. In light of this agreement, a final protective order never issued.

⁴ Also known as a "2-2-5-5" schedule, a 2-2-5 schedule includes "a two-week rotation, where one parent has Mondays and Tuesdays overnight. The other parent has Wednesdays and Thursdays overnight. They alternate the Friday-Saturday-Sunday overnights each week." *Jose v. Jose*, 237 Md. App. 588, 596 n.3 (2018).

On September 18, 2019, Mr. Cummings filed an initial complaint for limited divorce. On October 24, 2019, Ms. Wong filed an answer and counter-complaint.

On November 13, 2019, Mr. Cummings filed a motion requesting that the court appoint a best interest attorney (“BIA”) for the minor children. Mr. Cummings stated that he had “grave concerns about past and potential abuse of the children” by Ms. Wong. He argued that “a best interest attorney is appropriate to assist in providing the [c]ourt a more complete picture of the children’s experiences with each of their parents, which will inform the [c]ourt’s determination regarding a custody and visitation arrangement that is in their best interests.” On December 2, 2019, Ms. Wong filed a response/ opposition to the motion, denying all allegations of abuse and consenting to the appointment of a BIA. On December 6, 2019, the court granted the motion and appointed Sarah Schwartzman as a BIA for the children.

On May 7, 2020, Ms. Schwartzman filed a motion requesting a psychological and custody evaluation for the minor children. She stated that “an independent, full custody evaluation, including psychological testing of the parties and the minor children,” was necessary to determine the best interest of the minor children. Specifically, Ms. Schwartzman stated that she was concerned “that the discord to which the children have been exposed and/or in which the children have been involved may have a lasting impact on the children’s ability to develop healthy attachments, and may be a risk factor for emotional, mental and/or developmental issues.” On May 29, 2020, the court granted the motion and appointed Dr. Gina Santoro, a psychologist, to conduct the evaluation.

On April 27, 2021, Dr. Santoro completed the evaluation and issued an advisory report summarizing her findings and recommendations. Dr. Santoro stated that, in conducting her evaluation, she: (1) performed individual psychological assessments of the parties and minor children; (2) performed numerous home visits; (3) conducted parent-child observations; and (4) conducted clinical interviews and collateral meetings. Dr. Santoro spent approximately 75 hours assessing the family. She identified five specific incidents of concern: (1) December 2018; (2) February 5, 2019; (3) August 2019; (4) January 17, 2020; and (5) February 28, 2021.

In December 2018, while working with L. on his homework, Ms. Wong became frustrated with L. for not showing his work on a math problem as instructed. Ms. Wong repeatedly slapped L. on the face and verbally berated him for defying her instructions. She then grabbed L. forcefully by the arm, swung him around, and pinned him against the wall by pressing on his collarbone. Mr. Cummings came into the room and pushed Ms. Wong away from L., causing her to fall to the ground. Mr. Cummings testified that he observed Ms. Wong with her hands around L.'s throat, and he stated that L. had a look of fear on his face. Ms. Wong testified that L. was not in any pain from this incident.

On February 5, 2019, a similar event occurred in which L. again failed to show his work on his homework. Mr. Cummings testified that he observed Ms. Wong slap L. on the arm and head, causing L. to cry. Mr. Cummings also testified that Ms. Wong slammed L. into the wall and dug her nails into his arm. He stated that Ms. Wong continued to berate and hit L. and told him "not to defend himself." Mr. Cummings intervened by grabbing

Ms. Wong's arm and pushing her off of L. Ms. Wong slapped Mr. Cummings in the face, and Mr. Cummings then hit her in the face, causing a black eye. Ms. Wong called the police, and a Domestic Report was filed. The police found that Mr. Cummings intervened to protect L. and that Ms. Wong assaulted Mr. Cummings. Mr. Cummings refused to press charges because he was worried about the effect that would have on the children.

In August 2019, Ms. Wong sought permission to take the minor children overseas on a three-week trip to visit her family in Singapore. During the trip, Mr. Cummings received numerous emails from L., who stated that his mother was "slapping, punching, pinching, and digging her nails into him." L. also told Mr. Cummings that Ms. Wong told the children that she was allowed to physically discipline them because they were in Asia, and she abused L. every day they were there, except for his birthday. Ms. Wong testified that she told L. she could physically discipline him, but that she did not do so, and she denied punching, pinching, or slapping L. during this trip. L.'s allegations resulted in Ms. Wong losing overnight parenting time for two days.

On January 17, 2020, L. disobeyed Ms. Wong's instructions to go to bed after he was finished talking on the phone to Mr. Cummings. Ms. Wong discovered L. was up playing games on his phone, and she demanded that he give his phone to her. L. refused and threw a basketball at Ms. Wong's head. It missed and hit a glass door behind her. Ms. Wong gave L. "a swat," and L. grabbed "a steak knife and gestured with it pointed at his

arm.”⁵ Ms. Wong called the police, who responded with the mobile crisis team and interviewed Ms. Wong and L. L. reported that he grabbed a butter knife because he wanted to see Ms. Wong’s reaction. As a result of this incident, the court found that Ms. Wong violated the Term Sheet by using physical discipline, and it ordered that Ms. Wong have no further overnight parenting time. Ms. Wong has not had any overnights with the children since this time.

On February 28, 2021, L. spit on C.’s plate while she was eating lunch. Ms. Wong instructed L. to go upstairs, but L. refused. Ms. Wong then attempted to force L. upstairs, but L. ran away. While L. was running, Ms. Wong attempted to reach out and grab his shirt. In doing so, she accidentally scratched L. on the back of his neck, leaving identifiable markings.

In addition to these five incidents, Dr. Santoro noted in her report that, between December 2019 and January 2020, police had been called on three separate occasions to assist Ms. Wong in parenting L., including one occasion where L. said that he “would rather die than stay overnight at” Ms. Wong’s house. Dr. Santoro noted that multiple reports had been made to Child Protective Services (“CPS”). Dr. Santoro summarized those incidents as follows:

- a. On 2/28/21, a caller reported that [L.] told caller that Ms. [Wong], “grabbed his neck and back and dragged him.” [L.] showed the caller scratches on his back reported to be made by Ms. [Wong’s] fingernails during the altercation. “[L.] stated he got away from her by punching

⁵ Mr. Cummings testified that Ms. Wong called him and said L. “was getting out of hand,” and she “smacked” him, rather than giving a mere swat.

- her.” The allegations of physical abuse were investigated, the family was referred to community resources and the case was closed.
- b. On 12/28/20, a caller reported that [L.] told caller that “his mother forced him onto the stairs and did not let him get up. Mother kept her weight on him so he could not move.” [C.] also observed this incident and told caller that she witnessed [L.] crying. [C.] told caller that she “tried to get her mother off of [L.]” No maltreatment was suspected at that time and the report was screened out.
 - c. On 10/14/20, a caller reported that [C.] told caller that Ms. [Wong] “has been physically abusive with [L.],” has hit [L.] when they were in Singapore in 2019, and pushed [L.] against the wall. No maltreatment was suspected at that time and the report was screened out.
 - d. On 12/2/19, a caller reported that, on November 23, 2019, [L.] and [C.] were arguing. “Mother took [L.] by the arm and swung him around. [L.] has/had a bruise about three inches in diameter and a fingernail size cut on his arm.” During this investigation, [L.] called CPS on two occasions reporting that his mother had hit, punched, slapped, elbowed, and grabbed him. The children were determined to be “safe” and the investigation was closed with a determination that “there is no further intervention required.”
 - e. On 2/7/19, a caller reported that Ms. [Wong] “repeatedly slapped [L.] in the head and ears, grabbed him by the shoulders, dragged him out of his seat, and slammed him against the wall several times.” General neglect, defined as physical treatment of the child, which poses a significant risk to child health or welfare, was investigated and ruled out. The report stated, “The situation was a minor incident of maltreatment that resulted in nail marks on the backs of [L.’s] arms.” The investigation found that Ms. [Wong] “exhibited an impaired ability to understand [L.’s] side during the incident.” It was recommended that Ms. [Wong] attend anger management classes and that the children attend counseling to process the incident of domestic violence they witnessed between their parents.

Dr. Santoro concluded her report by recommending joint legal custody of the minor children. If a disagreement occurred, the parties were required to meet with a parent

coordinator for at least one session to attempt to resolve the impasse. If no such resolution was reached, Dr. Santoro recommended that Mr. Cummings hold tie-breaking authority.

With respect to physical custody, Dr. Santoro recommended that Mr. Cummings have primary physical custody of the minor children, with a three-phase parenting schedule for Ms. Wong. During phase one, Ms. Wong would have supervised visitation with a parenting supervisor. This phase would last three months, at which point the parenting supervisor would determine if Ms. Wong was ready to progress to phase two, which permitted unsupervised visitation for up to eight hours per week. Phase three permitted overnight visits. Dr. Santoro recommended that the parties meet with a parenting coordinator and undergo therapeutic intervention. She recommended that Ms. Wong write an apology letter to L. to be provided to L.'s therapist for approval.

On May 14, 2021, the circuit court issued a Pendente Lite Consent Order, which largely incorporated Dr. Santoro's recommendations, including the proposed three-phase parenting schedule for Ms. Wong. Phase one included eight hours of supervised visitation per week, with the cost of a professional parenting supervisor to be split by the parties. Phase two was not to commence before Ms. Wong and L. had begun family therapy. The parties continued to operate under the Pendente Lite Order until the circuit court issued its written opinion on July 29, 2022.

Beginning in June 2021, Kristy Caceres supervised Ms. Wong's visitation. She distributed her notes to the parties following each visit. Several of these notes were admitted into evidence at trial.

On November 12, 2021, Mr. Cummings filed an amended complaint for absolute divorce, custody, and other relief. Mr. Cummings requested joint legal custody with tie-breaking authority and physical custody to be implemented in phases as recommended by Dr. Santoro.

Trial began on November 15–17, 2021, and it continued on March 14–17, 2022, and May 6, 2022. Mr. Cummings testified regarding the alleged events of physical abuse identified in Dr. Santoro’s report. He stated that Ms. Wong was “very overbearing,” and she “[a]lways demanded perfection from the kids in anything that they did academically or recreationally.” Ms. Wong made the children juggle numerous after school activities, and they did not have “a lot of downtime.” Mr. Cummings testified that he has since removed the children from some of these activities because they were “always a struggle.” He acknowledged that he used physical discipline with the minor children prior to December 2018, but he had not used it since that time and has sought therapy on better parenting methods. He testified that his “relationship with the children has never been better,” but Ms. Wong and the children had a lot to work on in their relationship.

Mr. Cummings testified that Ms. Wong’s treatment of the children “had been an escalating pattern [of physical punishment] over the years” and eventually got to a “downright scary level.” In addition to the events described in Dr. Santoro’s report, Mr. Cummings testified about numerous other events over the years in which he feared for the safety of the children around Ms. Wong. Specifically, in 2015, Mr. Cummings received a

“disturbing text message” from Ms. Wong in which she threatened “to stab herself and the children.”

In December 2019, there was an incident where L. got into a disagreement with Ms. Wong on the drive home from swim practice about attending a holiday swim party, and he “started kicking the seat.” Ms. Wong instructed L. to get out of the car and stand on the side of the road while she called the police. L. was damp from practice and was forced to stand in the cold on the side of the highway.

Mr. Cummings testified that the parties struggled to make basic decisions about the children’s welfare. They often disagreed about things such as healthcare, extracurricular activities, and education.

Ms. Wong testified that her discipline methods were consistent with discipline that she experienced as a child and that was customary in Asian culture. Her parents used corporal punishment on her growing up. It was normal for Asian parents to demand excellence and hard work from their children, and when that standard was not met, corporal punishment was appropriate. She testified that these methods are meant to encourage appropriate behavior and that American children are coddled.

Ms. Wong testified that, throughout the marriage, Mr. Cummings was not involved in the children’s lives, and she made all decisions regarding their welfare and any educational and medical issues. Mr. Cummings used physical discipline on the children for a majority of the marriage and would often insult them or ridicule them for behavior with which he disagreed. She stated that she never used corporal punishment as discipline

for behavioral problems. She used it only in relation to achievement in academics or extracurricular activities, and it only occurred four or five times.

With respect to the December 2019 event, Ms. Wong testified that L. had been invited to a Christmas party after swim practice, but he did not tell her about it until two hours before the event. When she refused to let him go, L. began kicking and screaming in the car. She pulled the car over and told him to stop or she would call the police. L. did not stop, so she made him get out of the car with a jacket. L. then took off running and called Mr. Cummings, who instructed him to go find a safe place. L. ran to a nearby house and knocked on the door. Ms. Wong testified that she ran over and apologized to the neighbor and dragged L. back to the car.

Ms. Wong agreed that the parties had poor communication with each other, and she stated in an email that “[i]t is impossible to work with [Mr. Cummings] amicably.” Ms. Wong also admitted to calling L. a “brat” and “liar” in text messages and telling C. that she had a “bitchy mouth.”

Kevin Cummings, Mr. Cummings brother, testified that Ms. Wong is militant and demanding, and he had observed several physical altercations between Ms. Wong and L. over the years. Specifically, in 2016, Ms. Wong smacked L. across the face because he was not strong enough to open a soda bottle.

On July 29, 2022, the circuit court issued a written opinion. The court granted the parties an absolute divorce and incorporated, but did not merge, the parties’ March 25,

2020 settlement agreement concerning child support and the division of marital property.

The court then addressed custody of the minor children.

With respect to legal custody, the court addressed the relevant factors. With respect to the capacity of the parents to communicate and reach shared decisions affecting the children's welfare, the court found that the parties "have demonstrated zero ability to communicate and reach shared decisions regarding the children," and Ms. Wong "displays consistent hostility towards" Mr. Cummings. It found that joint custody with tie-breaking authority was not in the children's best interests.

The court then assessed the fitness of each parent. With respect to Mr. Cummings, the court noted that Dr. Santoro's report described Mr. Cummings' interactions with the children as positive and supportive, and that he obeyed court orders. With respect to Ms. Wong, the court noted that she admitted using physical discipline on the children, particularly L., which the court found "concerning." The court cited to five specific instances where Ms. Wong used her body to intimidate the children:

- December 2018 – [Ms. Wong] picked [L.] off of a stool, pinning him against the wall and placing her hands around [L.'s] neck.
- February 5, 2019 – [Ms. Wong] pinned [L.] against a wall, then dragging him back to his seat and squeezing him until he cried.
- August 2019 – While in Singapore with [Ms. Wong], [L.] fled from his mother and boarded a subway car alone. Evidence demonstrated that [Ms. Wong] told [L.] that abuse is legal in Singapore, so she cannot get in trouble.
- December 2019 – One night, [Ms. Wong] forced [L.] out of her car on the side of the road because he was kicking the back of the seat. She told

[L.], while he was still damp from swim practice, to stand on the side of the road while she called the police. [L.] ran away.

- December 2020 – [Ms. Wong] forced [L.] onto the stairs and kept her weight on him. [C.] was observing this and upon seeing that [L.] was crying, [C.] attempted to pull [Ms. Wong] off of [L.]

The court stated that, “[a]lthough there has been no testimony that [C.] has been the object of physical punishment, she has seen it and she is fearful of her mother.”

The court also noted that Dr. Santoro testified that Ms. Wong uses physical punishment to exert control over L. and that L. told Dr. Santoro that Ms. Wong routinely slapped or hit him. The parenting supervisor observed various physical altercations during the supervised visits, which were stated in her Visitation Notes, as follows:

Mr. Cummings sent [L.] to today’s visit with a change of clothes, and even though [Ms. Wong] asked [L.] to leave the dirty clothes at her house, he packed them in a bag and attempted to leave with them at the end of the visit. An argument ensued when [Ms. Wong] saw this, and [L.] and [Ms. Wong] both had their hands on a pair of shorts while they argued whether [L.] could take them. I asked them to move on from the situation as it was escalating

While at the farm, [L.] insisted he wanted to go to the car because the farm was boring. He also said he was cold. [Ms. Wong] suggested he go to the car and get another jacket and come back, but he said he wasn’t coming back. Therefore, [Ms. Wong] did not give him the keys. [L.] tried many times to go into the backpack [Ms. Wong] was carrying in order to get the keys. [Ms. Wong] kept pulling away from him, and asked him repeatedly to stop grabbing the bag. She finally took the bag off to hold in front of her so she could monitor it better and keep him away from the zipper. [L.] continued to try to grab the bag, open the zipper, and get past [Ms. Wong’s] arms and hands which were blocking the zipper. He finally wriggled his hand into the bag and grabbed the keys. Before he could walk away with the keys in his hand, [Ms. Wong] circled his wrist with her hand to stop him and requested he give the keys back. He refused, and she tried to take the keys, and he yanked them away. He insisted he was going to the car, and he refused to give the car keys back to her. He had wiggled his wrist from her only to the

point where she was still grasping two of his fingers. At that point, I stepped in and asked for them to break contact. [Ms. Wong] immediately let [L.] go. . . .

[L.] had packed a box full of items from his room, which he brought to the mud room at the end of the visit. On top was a completed Lego set (a grey space ship?). While walking through the mud room, towards the doorway of the main part of the house, [Ms. Wong] leaned down and took the spaceship off the top of the pile and continued walking towards the foyer. She got through the doorway and partially into the foyer before [L.] caught up with her. At that time, they both struggling to wrestle the Lego and gain control of it. They were locked in a type of “Twister” stance, arms and bodies entangled, verbally arguing over the ownership of the Lego and neither milling to let go of it. I verbally intervened, saying that was enough. When neither was willing to concede the Lego, I asked [L.] to let go of the Lego. He did so, and went back to his box to pick the rest of his belongings up. . . .

[A]t the end due to [L.] wanting to take his Lego set to his father’s home, [Ms. Wong] told him he could not take the set, and physically tried to block him from going towards the door with the Lego box. She put her arm out, and told him the set stays at her home. [L.] clutched the box, and maneuvered around [Ms. Wong] to get to the door. They had a verbal argument, during which I intervened to deescalate the incident. . . .

The court noted that Ms. Wong had dismissed feedback from multiple professionals regarding her discipline practices and instead justified her actions “because of how she was reared.” The court also noted that, pursuant to the March 2019 Term Sheet, Ms. Wong lost overnight privileges with the minor children because she continued to use physical discipline. The circuit court found that Ms. Wong was “unfit at this time to appropriately parent without supervision for the children’s benefit.”

The court next addressed the relationship between the child and the parents. It found that L. and Ms. Wong had a “physical and emotionally tumultuous relationship,” and although Ms. Wong and C. had a better relationship, it was still tense. The minor children’s

relationship with Mr. Cummings was very good. With respect to the preference of the children, they preferred to see Ms. Wong for a limited amount of time and that visits continue to be supervised.

With respect to potential disruption of the children's school and social life, the court noted that the children had been living with Mr. Cummings for two years. They were stable in Mr. Cummings' home and had "appropriately adjusted to school, family, and friends." Mr. Cummings' brother and his children lived nearby. Ms. Wong's family lives in Singapore, and she has no family locally.

With respect to the remaining factors relevant to legal custody, the court made the following factual findings:

(7) *Geographic Proximity of Parents' Homes*

Both parties reside in Howard County, Maryland. The parties' homes are within fifteen minutes driving time.

(8) *Demands of Parental Employment*

The[re] was no evidence presented that indicated that this is a significant factor in this case.

(9) *Age and Number of Children*

The parties are the parents of two (2) children: [L.], who is almost 15 years old, and [C.], who is almost 10 years old.

(10) *Sincerity of Parent's Request*

Each parent testified that (s)he wants custody of the minor children.

(11) *Financial Status of the Parents*

Each parent has sufficient income and/or assets to care for the minor children.

(12) *Impact on State or Federal Assistance*

There was no evidence presented that addressed any impact on state or federal assistance.

(13) *Benefit to Parents*

The Court did not hear any testimony that discussed this factor.

(14) *Any Other Factors Useful in Guiding the Court*

None noted.

The court determined that, based on these factors, and the absence of effective communication between the parties, Mr. Cummings would be awarded sole legal custody of the children.

Turning to the issue of physical custody, the court noted that the paramount concern was the best interests of the children. The court then proceeded to evaluate the requisite factors that had not already been considered.

With respect to the character and reputation of the parties, the court noted that Mr. Cummings' brother testified that Mr. Cummings was "a loving father; that the children seem happy, at ease in general, and with their father." Mr. Cummings' brother testified that he has not seen Mr. Cummings use corporal punishment when disciplining the children. The court noted that Ms. Wong's two character witnesses testified that she was "a loving mother," but Mr. Cummings' brother testified that he observed Ms. Wong

“smack [L.] across his face, causing [L.] to cry” because he was unable to open a soda bottle. Mr. Cummings’ brother also testified that Ms. Wong was “demanding and militant.”

With respect to the desire of the natural parents, the court stated that, “[g]iven the problematic relationship between the minor children and [Ms. Wong] which has continued, . . . this factor is not a controlling factor.” With respect to the potentiality of maintaining natural family relations, the court found that Mr. Cummings’ brother and family lived nearby, whereas none of Ms. Wong’s family lived locally, and they mostly resided in Singapore. Mr. Cummings did not discourage the children in maintaining a relationship with Ms. Wong’s family. Ms. Wong consistently berated Mr. Cummings and his family in the children’s presence.

With respect to the remaining factors the court had not previously addressed, the court found:

(6) *Material Opportunities Affecting the Future of the Children*

Both parties are employed; as noted above, [Mr. Cummings] is in real estate and property management; [Ms. Wong] works in the Howard County Public School System and part-time as an interpreter. Financially, each is able to assist the children. Both parents reside in Howard County and the children attend Howard County Public Schools.

There are social and cultural opportunities that each party could provide for the children. However, because of [Ms. Wong’s] behavior towards the children, she has impeded any ability to provide the children said opportunities. At this juncture, the emotional health of the children and their physical safety overrides anything else.

(7) *Age, Health and Sex of the Children*

* * *

As it relates to the health of the children, the physical health of the children is age appropriate. However, each's emotional and behavioral health is suffering. The minor children began individual therapy with Elaine Drewyer, LCSW in April 2019. Subsequently, both children were diagnosed with anxiety and depression. Specifically, Dr. Santoro diagnosed [L.] with adjustment disorder with mixed disturbance of emotion and conduct and she diagnosed [C.] with hypervigilance.

(8) *Residences of Parents and Opportunity for Visitation*

Each parent has his/her own home, appropriately furnished, with each child having his/her own bedroom. Geographically, the parent's homes are not distant; if the children were not in emotional turmoil, there would be ample opportunity for visitation.

(9) *Length of Separation From the Natural Parent*

The parties separated on or about April 1, 2019, and despite poor communication between the parents and strained relations between the children and [Ms. Wong], the children have had consistent contact with [Ms. Wong] pursuant to the outstanding Consent *Pendente Lite* Order. However, [Ms. Wong] has not always adhered to said Order. The children have lived with [Mr. Cummings] for two (2) years.

(10) *Prior Voluntary Abandonment or Surrender*

The [c]ourt finds no prior abandonment or voluntary separation from the minor children by either party.

Based upon these factors, the circuit court found that it was in the best interest of the children to remain with Mr. Cummings, and it awarded him sole legal and physical custody of the minor children. The court recognized Ms. Wong's fundamental right to raise her children, but it stated that, "[w]hen balancing a parent's right to parent and method of parenting, and the right of the child to feel safe and be safe, the [c]ourt must choose the

latter.” The court found that Ms. Wong’s insistence on her children excelling in school and activities was “to the detriment of the children’s physical, mental, and emotional health, and to the detriment of her relationship with the children.” The children feared Ms. Wong, and despite efforts to help her, Ms. Wong was “unwilling to conform her conduct to that which would be in the best interests of the children.”

The circuit court found that, based upon the testimony and evidence presented, Ms. Wong had emotionally abused both minor children and had physically abused L. This abuse continued to occur, despite “having overnights removed, having a professional parenting supervisor, and agreeing to attend therapy and parent coaching.” Pursuant to Md. Code Ann., Fam. Law Art. (“FL”) § 9-101(b) (2019 Repl. Vol.), the court stated that it could not “find that there is no likelihood of further child abuse until and unless [Ms. Wong] recognizes the value and importance of and participates in meaningful therapy . . . and refrains from the abusive behavior.”

The court awarded Ms. Wong supervised visitation for eight hours every other weekend, and on select holidays, with Ms. Wong to pay the cost of the professional parenting supervisor. The court ordered that a 12-month review hearing could be scheduled at the request of either party.

This appeal followed.

STANDARD OF REVIEW

When a matter is tried without a jury, we “review the case on both the law and the evidence.” Md. Rule 8-131(c). *Accord Vanison v. State*, 256 Md. App. 1, 9 (2022). “[We]

will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* “Under this standard, if there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.” *Givens v. State*, 459 Md. 694, 705 (2018) (cleaned up).

“The clearly erroneous standard does not apply, however, when we are reviewing the circuit court’s legal conclusions.” *Critzos v. Marquis*, 256 Md. App. 684, 691 (2023). “In determining whether the decision of a [trial] court was legally correct, we give no deference to the trial court findings and review the decision under a *de novo* standard of review.” *Lamson v. Montgomery County*, 460 Md. 349, 360 (2018).

With respect to the ultimate issue of custody, if the lower court’s conclusion is “founded upon sound legal principles and based upon factual findings that are not clearly erroneous,” this Court will disturb that decision only “if there has been a clear abuse of discretion.” *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021) (quoting *In re Yve S.*, 373 Md. 551, 585 (2003)). *Accord Davis v. Davis*, 280 Md. 119, 125, *cert. denied*, 434 U.S. 939 (1977). We recognize that:

Such broad discretion is vested in the [circuit court] because only [the circuit court judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in 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 585–86. “An abuse of discretion occurs when ‘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.”” *Matter of Jacobson*, 256 Md. App. 369, 404 (2022) (quoting *Wilson-X v. Dep’t Hum. Res.*, 403 Md. 667, 677 (2008)).

DISCUSSION

Ms. Wong contends that the circuit court violated her “fundamental right to make decisions concerning the care, custody and control” of her children. She asserts that, as long as she was not physically or emotionally abusive, she had a “constitutional right to parent her children as she sees fit.” Ms. Wong argues that the court erred when it found that she abused her children.

With respect to the finding that she abused the children, Ms. Wong argues that this is error because there was no evidence that the children sustained physical or mental injury where their health or welfare was harmed, as required to meet the definition of abuse found in FL § 5-701(b)(1). With respect to physical abuse of L., Ms. Wong argues that no injuries or bruising were shown, and she asserts that, “[w]ithout establishing physical injury and harm or the risk thereof, the parental privilege to use corporal punishment is protected.” Ms. Wong further argues that the evidence did not support a finding that she mentally abused the children, asserting that, although she made statements to the children that could be characterized as “mean,” they did not lead to mental injury. She contends that her statements represented “a mother correcting her children on morals this entire society holds as golden.”

Mr. Cummings contends that the circuit court “properly balanced [Ms. Wong’s] fundamental right to parent with the best interest of the minor children.” He asserts that

the court did not err in finding that Ms. Wong abused the parties' minor children. He made several arguments in this regard.

First, Mr. Cummings notes that, although Ms. Wong relies on the definition of abuse in FL § 5-701, the circuit court did not reference that statute. Instead, it relied on FL § 9-101, which does not define "abuse." He asserts that the definition in "FL § 5-701 is to be utilized in the context of abuse and neglect investigations," and it does not automatically follow that the same definition should be considered in custody matters. Second, Mr. Cummings argues that, even if the definition of abuse under FL § 5-701 controls, the court did not err in finding that Ms. Wong physically abused L. and emotionally abused both minor children. Third, Mr. Cummings argues that, even if Ms. Wong's treatment of the children did not meet the definition of abuse under FL § 5-701, the court did not abuse its discretion in its custody determination because it properly engaged in a best interest analysis in determining that he have full custody, and "even absent a finding of abuse, the court would have been within its discretion to order supervised visitation."

"[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion). *Accord Conover v. Conover*, 450 Md. 51, 60 (2016); *Boswell v. Boswell*, 352 Md. 204, 217 (1998). "The rights of a parent in the raising of his or her children, however, are not absolute." *In re Yve S.*, 373 Md. at 568. The State has a compelling interest to protect the best interest of the child, and "this interest takes precedence over the fundamental right of a parent to raise his

or her child.” *Id.* at 569–70. *Accord Boswell*, 352 Md. at 218 (“In the context of most family law disputes over children, the State’s interest is to protect the child’s best interests as *parens patriae*, which is in accord with the State’s interest in protecting the health, safety, and welfare of its citizens.”).⁶ “Thus, while a parent has a fundamental right to raise his or her own child, . . . the best interests of the child may take precedence over the parent’s liberty interest in the course of a custody, visitation, or adoption dispute.” *Id.* at 219.

“[N]either parent has a superior claim to the right to custody, and the issue is decided based on the best interests of the child.” *Caldwell v. Sutton*, 256 Md. App. 230, 265 (2022). Courts have discretion to consider a variety of factors in assessing the best interest of a minor child. Maryland law provides a number of non-exclusive factors that a court must consider when making custody determinations: (1) the “fitness of the parents;” (2) the character and reputation of the parents; (3) the desires and prior agreements of the parents; (4) the potential of “maintaining natural family relations;” (5) the preference of the child; (6) “material opportunities affecting the future life of the child;” (7) the child’s age, health and sex; (8) where the parents live and the opportunity for visitation; (9) the length of the child’s separation from the parents; (10) either parent’s prior voluntary abandonment or surrender; (11) the parents’ capacity to communicate and reach shared decisions affecting the child’s welfare; (12) the parents’ willingness to share custody; (13) the established relationship between the child and each parent; (14) potential disruption to the child’s

⁶ “*Parens patriae*” refers to the legal principle that the State must act “as provider of protection to those unable to care for themselves,” such as minors or someone under a legal disability. BLACK’S LAW DICTIONARY 1339 (11th ed. 2019).

social and school life; (15) the demands of each parent’s employment; (16) the age and number of the children; (17) the sincerity of each parent’s request for custody; (18) the financial status of the parents; (19) the impact the custody decision may have on any parties’ state or federal assistance; and (20) the benefit to the parents in maintaining the parental relationship with the child. *Jose v. Jose*, 237 Md. App. 588, 599–600 (2018) (citing *Taylor v. Taylor*, 306 Md. 290, 304–11 (1986); *Montgomery Cnty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1978)).

“Allegations of past abuse provide the court with additional evidence that may be relevant in assessing the seriousness of the abuse and determining appropriate remedies” because “a history of prior abusive acts implies that there is a stronger likelihood of future abuse.” *Coburn v. Coburn*, 342 Md. 244, 257–58 (1996). Additionally, “[a]pplying a best interests standard, coupled with a finding of adverse impact, Maryland courts have restricted or denied visitation in situations involving sexual abuse, physical abuse, and/or emotional abuse by a parent.” *Boswell*, 352 Md. at 221. *See also In re Mark M.*, 365 Md. 687, 706 (2001) (“[V]isitation may be restricted or even denied when the child’s health or welfare is threatened.”).

Ms. Wong contends that the court erred in finding that she abused the children. As she notes, FL § 5-701(b) provides that abuse is “the physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed.” *See Charles Cnty. Dep’t of Soc. Servs. v. Vann*, 382 Md. 286, 302 (2004). Mental injury is defined as “the observable, identifiable, and substantial

impairment of a child’s mental or psychological ability to function caused by an intentional act or series of acts, regardless of whether there was an intent to harm the child.” FL § 5-701(r).

In determining whether there are reasonable grounds to believe that a child has been abused or neglected, the preponderance of the evidence standard applies. *Baldwin v. Baynard*, 215 Md. App. 82, 106 (2013) (citing *Volodarsky v. Tarachanskaya*, 397 Md. 291, 308 (2007)). Section 9-101 of the Family Law Article provides that, “if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.”

Mr. Cummings argues that FL § 5-701(b) does not apply in custody cases. He does not, however, provide any authority in support of this assertion. The Supreme Court of Maryland has expressly held that “there is only one definition of child abuse in the Family Law Article,” which is provided under FL § 5-701(b).⁷ *Vann*, 382 Md. at 305–06. The definition of abuse found under FL § 5-701(b) governs our analysis.

Ms. Wong contends that, in the absence of injury to L., her physical punishment of L. was not abuse, but instead, was permitted by her “parental privilege to use corporal punishment.” The Supreme Court has stated that “[r]easonable corporal punishment, by

⁷ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

definition, is not child abuse.” *Vann*, 382 Md. at 303. *Accord B.H. v. Anne Arundel Cnty. Dep’t of Soc. Servs.*, 209 Md. App. 206, 229 (2012) (“When a court is deciding whether a particular parental discipline is child abuse, whether it be under [Md Code Ann., Crim. Law Art. § 3-601 (2021 Rep. Vol.)] or FL §§ 5–701 or 4–501, the court always determines whether the corporal punishment was reasonable.”) (quoting *Vann*, 382 Md. at 303).⁸ In determining whether an act of punishment is reasonable, the court looks to “the misbehavior of the child and the amount of force used in the punishment from the parent’s perspective,” as well as “the physical and mental maturity of the child, and the propriety of the decision to use force in circumstances that may increase the potential for serious injury.” *Vann*, 382 Md. at 299. There is, however, “no privilege, even within the context of administering ostensible child discipline, for excessive, cruel, or immoderate conduct.” *Anderson v. State*, 61 Md. App. 436, 446, *cert. denied*, 303 Md. 295 (1985).

Here, there was extensive evidence for the court to weigh in determining whether Ms. Wong’s physical punishment of L. constituted abuse. The evidence included testimony that, when L. failed to show his work on math homework, Ms. Wong slapped him, pinned him against the wall, and put her hands around his neck. The court did not err or abuse its discretion in finding this to be unreasonable physical discipline, outside the realm of reasonable corporal punishment. Additionally, when Ms. Wong was on vacation with the children in Singapore, L. reported that Ms. Wong slapped, punched, and pinched him

⁸ Md Code Ann., Crim. Law Art. § 3-601 (2021 Rep. Vol.) addresses child abuse in the context of a criminal case, and Md. Code Ann., Fam. Law Art. § 4-501 (2019 Repl. Vol.) addresses child abuse in the context of a protective order.

repeatedly. The parenting supervisor also observed physical altercations during Ms. Wong's supervised visitation with the children. The court noted that, despite court intervention and attempts to help, Ms. Wong continued to use "her body to intimidate the children and try to force their compliance to her will." The evidence presented, as set forth more extensively in the facts, *supra*, supported the court's finding that Ms. Wong physically abused L.

There was also extensive evidence for the court to weigh in determining whether Ms. Wong abused both children by subjecting them to mental injury. Dr. Santoro stated that Ms. Wong had hurt L. physically and emotionally on multiple occasions and used harsh and inappropriate punishment. L. was angry at, and fearful of, Ms. Wong. Dr. Santoro diagnosed L. with adjustment disorder, the development of emotional or behavioral symptoms in response to identifiable stressors, and she said that his acting-out behaviors were causing interpersonal challenges for him. With respect to C., Dr. Santoro reported that C. had significant fear of her mother, based on Ms. Wong's punishment of L. and Ms. Wong's yelling at her.

We need not determine whether this evidence was sufficient to show mental injury because, even if it did not technically meet the definition of abuse in FL § 5-701(b), Ms. Wong's negative interactions and relationship with the children were relevant to the custody determination and the best interests of the children. The circuit court engaged in a careful and thorough analysis of the requisite factors in determining the best interests of the children. We perceive no abuse of discretion in the circuit court's decision to award

Mr. Cummings sole legal and physical custody of the children, with Ms. Wong to have supervised visitation. *See In re G.T.*, 250 Md. App. 679, 698 (2021) (Generally, “decisions concerning visitation are within the sound discretion of the court, and we accordingly will not disturb such decisions unless there has been a clear abuse of discretion.”) (cleaned up).⁹

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

⁹ Appellant asserts in her brief that the court erred in placing the entire cost of the parental supervision on her, when she does not have the funds to pay, and she says that, for the same reason, her attorneys’ fees should be reduced. We will not consider these contentions because they are waived for two reasons. First, issues that do not appear in a litigant’s “Question Presented” section of their brief generally are not preserved for our review. *See Green v. N. Arundel Hosp. Ass’n, Inc.*, 126 Md. App. 394, 426 (1999), *aff’d*, 366 Md. 597 (2001) (“Appellants can waive issues for appellate review by failing to mention them in their ‘Questions Presented’ section of their brief.”). This is because “[c]onfining litigants to the issues set forth in the ‘Questions Presented’ segment of their brief ensures that the issues presented are obvious to all parties and the Court.” *Id.* Second, Ms. Wong cites no law to support these arguments. *Klaunberg v. State*, 355 Md. 528, 552 (1999) (Maryland appellate courts have made clear that “arguments not presented in a brief or not presented with particularity will not be considered on appeal.”). We do note, however, that the circuit court’s order provided for review of the order in 12 months if any party requests it. If there is a request for such review, the circuit court may want to reconsider the condition of visitation that Ms. Wong pay the parental supervisor fees, if she does not have the means to do so.