Circuit Court for Howard County
Case No.: C-13-FM-20-000863

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1105

September Term, 2024

H. H.

v.

J. T.

Beachley,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: February 28, 2025

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

This appeal comes to us from the Circuit Court for Howard County following a judgment of absolute divorce ending the marriage between Appellant ("Father") and Appellee ("Mother").[1] After a five-day trial, the court awarded Mother sole legal and primary residential custody of the parties' minor son, R. Among other support obligations, the court ordered that the parties share equally all costs of R.'s private school education. Lastly, the court ordered Father to contribute $100,000 toward Mother's attorneys' fees. Here, Father challenges the custody, support, and attorneys' fees awards.

On appeal, Father presents ten questions for our review.[2] For clarity, we have consolidated those questions into four, which we rephrase as:

[1] For the parties' privacy, we use only their initials on the cover page of this opinion. For the same reason, we refer to them as Father and Mother in the body of the opinion. We likewise refer to the parties' son, a minor, as "R." This initial was chosen at random and may or may not correspond to his actual name. For all involved, we mean no disrespect in using these conventions.

[2] Father phrased his questions as follows:

1. In its rulings on legal custody, physical custody, and attorney[s'] fees, did the trial court err or abuse [its] discretion in disregarding and omitting Mother's gross misconduct on multiple counts: witness tampering, perjury about witness tampering, and withholding key evidence?
2. In its rulings on legal custody, physical custody, and attorney[s'] fees, did the trial court violate Father's right to due process or abuse [its] discretion in relying on a key witness to justify its rulings?
3. In its rulings on legal and physical custody, did the trial court err or abuse [its] discretion in basing its rulings on key factual findings that are clearly erroneous?
4. In its rulings on legal and physical custody, did the trial court err or abuse [its] discretion in disregarding and omitting key evidence that contradict the court's stated findings?

(continued)

1. Did the trial court abuse its discretion in limiting the opinion of one of Father's expert witnesses?

2. Did the trial court err in awarding Mother primary residential and sole legal custody?

3. Did the trial court err in ordering the parties to contribute equally to their minor child's private school education?

4. Did the trial court abuse its discretion in awarding Mother attorneys' fees?

For the reasons below, we answer each question "no" and affirm the circuit court's judgment.

BACKGROUND

The parties met in New York, New York in 2016 and were married there two years later. Both parties are well educated and well employed. Father is a financial professional who, while living in New York, worked on Wall Street. Mother is a medical

5. In its rulings on physical custody, did the trial court err or abuse [its] discretion in failing to articulate specific reasons the ordered custody schedule is in the child's best interest?

6. In awarding attorney[s'] fees to Mother, did the trial court err or abuse [its] discretion in admitting Mother's attorney[s'] fees invoices into evidence?

7. In awarding attorney[s'] fees to Mother, did the trial court err or abuse [its] discretion in failing to articulate how the court calculated the $100,000 award?

8. In awarding attorney[s'] fees to Mother, did the trial court err or abuse [its] discretion in basing its rulings on key factual findings that are clearly erroneous?

9. In awarding attorney[s'] fees to Mother, did the trial court err or abuse [its] discretion in disregarding and omitting key evidence that contradict[s] the court's stated findings?

10. In its ruling on child support for private school costs, did the trial court err or abuse [its] discretion?

doctor, an oncologist, who specializes in breast cancer research and treatment. In the summer of 2019, soon after R. was born, the family moved together to Baltimore, Maryland.

When the COVID-19 Pandemic struck in early 2020, the family moved to Clarksville, Maryland to live with Father's parents. The parties were, for the most part, able to work from home during this time. Mother, however, was scheduled for an in-service rotation at the hospital, which would require her to work in-person for one week.[3] The couple had retained their apartment in Baltimore, so Mother moved back into the apartment during her rotation and isolated there for two weeks after.[4]

The parties had disagreements immediately following their separation about whether Mother would have in-person contact with R. During this time, Mother repeatedly asked to see R. Each time, Father refused. Mother provided evidence that she was never exposed to COVID-19, as no one who tested positive for the virus was allowed into the hospital. Father refused to let her see R. Mother suggested that they could meet outdoors and remain 50 to 60 feet apart. Father refused. Mother suggested that she could see R. from a balcony or through a window. But still, Father refused. Indeed, Father

[3] Mother was scheduled originally for a two-week rotation. One of her colleagues volunteered to take over Mother's second week so that she could return home to her newborn child.

[4] The record suggests that the parties originally agreed that Mother would isolate during her rotation, but they debate the specifics of their agreement and whether it remained intact when Mother's rotation began. Mother insists she told Father before her rotation that she no longer believed isolation was necessary or appropriate. Father insists that Mother changed her mind only after her rotation began. The timing of when Mother withdrew her agreement is irrelevant to our analysis.

threatened to call the police if Mother tried to see R. before her "quarantine" period was over.

After three weeks, Mother recovered R. from Father, and the two of them moved in with her parents in North Potomac, Maryland. From then on, Mother would not allow R. to leave her home with Father unless there was an agreement in writing. Although the parties' separation had not initially been for the purpose of ending their marriage, by this point it was clear that the relationship was over. Father filed for a limited divorce on June 25, 2020, just after R.'s first birthday. Mother filed a cross-complaint for a limited divorce, and the parties both eventually amended their complaints to seek an absolute divorce.

The parties' marriage lasted two years. They have been litigating their divorce more than twice as long. The parties were able to settle most of their financial issues in early 2024, so the only remaining contested issues at trial were custody, support, and attorneys' fees.

In April 2024, the court held a five-day bench trial where it heard from both parties, several collateral witnesses, and two experts. Father wanted a shared, 2/2/5 physical custody schedule and joint legal custody with tie-breaking authority granted to him. Mother also wanted shared physical custody, but on a schedule that would continue the current schedule from the most recent *Pendente Lite* Order entered in November 2023. Under this schedule, Father had custody of R., in Week One, from Thursday afternoon's pick up from school until Friday morning's return to school. In Week Two, Father had custody of R. from Monday afternoon's pick up from school until Tuesday

morning and from Friday afternoon's pick up from school until Monday morning. Mother had custody of R. at all other times for his regular schedule. She also sought joint legal custody with tie-breaking authority granted to her.

The parties detailed many of the disputes that had arisen over the course of the litigation. In August 2020, the court had ordered them to consult with a child development expert. The parties engaged the National Family Resiliency Center ("the NFRC") and worked jointly with a parent counselor, Elaine Drewyer. They worked with her for almost a year until Father unilaterally terminated the NFRC's services because he believed Ms. Drewyer was biased against him. Father also accused Ms. Drewyer of having ex parte communication with Mother's attorney based on an entry in Ms. Drewyer's invoice. At trial, Mother explained that this notation was a billing error.

Mother testified that, even while working with the NFRC, the parties worked painstakingly and for lengthy periods of time on seemingly inconsequential issues. For example, they spent hours over several sessions trying to agree on whether R. would be with Mother for Mother's Day. Only after involving attorneys did Father email Mother, five days before Mother's Day, that "of course" R. could be with her on Mother's Day.

The parties also testified about conflict they had had about R.'s education and extracurricular activities. They agreed to enroll R. in a private preschool and split the tuition. But then Father enrolled R. in a second program without Mother's knowledge or consent. They had signed R. up for swim lessons. But Father signed R. up for a second program without Mother's agreement and then stopped taking R. even while Mother took R. to the sessions on her weekends.

Despite their history, however, the parties both agreed that the other is a fit parent. Likewise, the consensus among the collateral witnesses was that both parties love R. and are fit parents. Yet Mother also testified that, based on their history, she believes she and Father "cannot coparent [and] cannot coordinate." At the conclusion of trial, the court held the matter *sub curia*.

On July 5, 2024, the court issued a twenty-five-page written opinion granting a judgment of absolute divorce. The court awarded sole legal and primary physical custody to Mother. Among other support obligations, the court also directed that the parties contribute equally to the cost of R.'s private school education. Finally, the court ordered that Father contribute $100,000 to Mother's attorneys' fees.

Father timely noted this appeal. Additional facts will be supplied as needed.

DISCUSSION

I. Expert Testimony

Before trial began, the court first had to resolve a discovery dispute. Father had engaged Dr. Katherine Killeen as an expert witness. In October 2020, Dr. Killeen had observed Father's interactions with R. and prepared a report of her findings. Father disclosed this report during discovery and designated Dr. Killeen to testify as an expert witness at trial. However, a few months before trial and long after the discovery period had closed, Father, without informing Mother, contacted Dr. Killeen again and engaged her to observe himself and R. to prepare a new report. This report was disclosed to Mother just five weeks before trial. Accordingly, she moved in limine to exclude the

supplemental report and to bar Dr. Killeen from testifying about it or anything she observed while generating it.

The court found that Mother was prejudiced by the late disclosure and limited Dr. Killeen's opinion and testimony to her original report. The court acknowledged that the prejudice could be cured by a postponement, but it found that delaying the trial was not in R.'s best interest. Father ultimately chose not to call Dr. Killeen as a witness, and her original report was admitted into evidence by stipulation.

On appeal, Father contends that the court erred in limiting the scope of Dr. Killeen's report and testimony. In his view, the court should have looked past his discovery violation because Dr. Killeen's supplemental report was based on more recent observations and R.'s best interests would have been served by admitting it. We disagree.

A. Legal Framework

"Normally, we evaluate a trial court['s] discovery sanction in a civil case through a well-defined lens—abuse of discretion." *A.A. v. Ab. D.*, 246 Md. App. 418, 441 (2020). That said, "before we look through that lens in a child custody case, we must be satisfied that the court has applied the best interests of the child standard in its determination." *Id.* In a child custody case, the trial court's broad discretion "to exclude evidence is not only measured by the potential prejudice to the parties, but is constrained by a court's absolute and overriding obligation to conduct a thorough examination of all possible factors that impact the best interests of the child." *Kadish v. Kadish*, 254 Md. App. 467, 495 (2022).

Before excluding evidence as a sanction, "the court should take a proffer or otherwise ascertain what the evidence is that will be excluded, and then assess whether

that evidence could assist the court . . . in its determination of the best interests of the child." *A.A.*, 246 Md. App. at 448–49. We then review any discovery sanction imposed after the court completes this assessment for an abuse of discretion. *Id*. at 449.

B. Analysis

Initially, we observe that the court's sanction was permissible under the Maryland Rules and was not disproportionate to Father's violation. Discovery sanctions are meant to alleviate the surprise or prejudice a party suffers when their opponent fails to follow the discovery rules. *See Ross v. State*, 78 Md. App. 275, 286 (1989). Father engaged Dr. Killeen to create a supplemental report in October 2023 but did not inform Mother until four months later. Mother only learned of the supplemental report when it was disclosed to her just five weeks before trial, leaving her with no time to depose Dr. Killeen or meaningfully rebut her new report if Mother had wanted to do so.

The record reflects that the court took a proffer of the proposed evidence before opening statements and considered the issue through the first day of trial. The court ultimately determined that the supplemental report would not assist it in its determination of R.'s best interests. The court observed that, contrary to Father's argument, Dr. Killeen's supplemental report was "not the only recent information" about R.; it was merely the most recent opinion from an expert witness. The court, over the course of the five-day trial, would still hear many recent observations from the parties and their witnesses about Father's interactions with R. and his fitness as a parent. Indeed, after hearing all the evidence, the court ultimately concluded that Father *is* a fit parent.

Moreover, the court imposed a limited sanction designed to ensure that it remained as well-informed as possible as to R.'s best interests. The court did not completely exclude Dr. Killeen as a witness. It made clear that she could still testify as to the findings and observations related to her original 2020 report. That report was admitted into evidence by the parties' agreement, but Father chose not to have Dr. Killeen testify.

We conclude that the circuit court excluded Dr. Killeen's supplemental report only after determining that it would not be useful in determining R.'s best interests. The sanction was permissible under the Maryland Rules and was proportionate to Father's violation. Therefore, the circuit court did not abuse its discretion in limiting Dr. Killeen's opinion and testimony.

II. Custody

Father next contends that the court erred in awarding Mother sole legal and primary physical custody of R. He argues that the court violated his due process rights by relying on statements made by Ms. Drewyer contained within his expert witness's notes when he did not have the opportunity to cross-examine Ms. Drewyer. Relatedly, Father contends the court should not have dismissed his expert's recommendation because she was the court-appointed custody evaluator. He also disputes many of the facts on which the court based its decision. Lastly, Father argues that the court did not sufficiently explain the reasoning behind its custody decision. None of these arguments have merit.

A. Legal Framework

Custody decisions "are governed by the best interests of the child." *Gordon v. Gordon*, 174 Md. App. 583, 636 (2007). "Although courts are not limited to a list of

factors in applying the best interest standard in each individual case," *Azizova v. Suleymanov*, 243 Md. App. 340, 345 (2019), precedent provides a checklist of more than twenty non-exhaustive factors that, if applicable to the case, a court must consider when making custody determinations.

Specifically, in *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, this Court laid out several factors to be considered in determining the best interests of a child:

> (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; (10) prior voluntary abandonment or surrender.

38 Md. App. 406, 420 (1977) (internal citations omitted). Later, in *Taylor v. Taylor*, 306 Md. 290, 304–11 (1986), the Supreme Court of Maryland set forth the following factors, several of which overlap with those laid out in *Sanders*: (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.

In determining whether joint custody is appropriate, "the most important factor" is the "capacity of the parents to communicate and to reach shared decisions affecting the

child's welfare." *Id.* at 304. "[T]here is nothing to be gained and much to be lost by conditioning the making of decisions affecting the child's welfare upon the mutual agreement of" parents who are "severely embittered" and whose "relationship [is] marked by dispute, acrimony, and a failure of rational communication[.]" *Id.* at 305.

Even so, "*none* of the major factors in a custody case has talismanic qualities, and no single list of criteria will satisfy the demands of every case." *Santo v. Santo*, 448 Md. 620, 630 (2016) (cleaned up). Instead, the court examines "the totality of the situation in the alternative environments[.]" *Best v. Best*, 93 Md. App. 644, 656 (1992). The test ultimately "begins and ends with what is in the best interest of the child." *Azizova*, 243 Md. App. at 347.

Our appellate courts "practice a limited review of a trial court's decision concerning a custody award." *Wagner v. Wagner*, 109 Md. App. 1, 39 (1996). This practice involves three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). First, factual findings are reviewed 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.*

Findings of fact are not clearly erroneous "[i]f there is any competent material evidence" to support them. *Fantasy Valley Resort, Inc. v. Gaylord Fuel Corp.*, 92 Md. App. 267, 275 (1992). Further, "[t]he burden of demonstrating that a court committed clear error falls upon the appealing party." *Christian v. Maternal-Fetal Med. Assocs. of*

Md., LLC, 459 Md. 1, 21 (2018). Moreover, an abuse of discretion occurs where "no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (cleaned up).

B. Analysis

Father first protests the circuit court's reliance on statements made by Ms. Drewyer that appear in his expert witness's notes. He failed to preserve this issue, though.

Under Maryland Rule 2-517(a), "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Dr. Maureen Vernon was Father's witness at trial. The court had appointed her previously to perform a custody evaluation, though no formal order of appointment was ever entered. At trial, the court accepted Dr. Vernon as an expert in child custody evaluation and as a psychologist with expertise in child development. On cross-examination, she testified, without objection, about her conversation with Ms. Drewyer and how Ms. Drewyer had described Father as "aggressive" and "high conflict." Mother then offered, into evidence, Dr. Vernon's notes from her conversation with Ms. Drewyer. Father did not object. By failing to object to either Dr. Vernon's testimony or the admission of her notes, Father has waived the right to challenge them on appeal.

Also on the topic of Dr. Vernon, Father challenges the court's rejection of her custody recommendations. He contends her opinion should have been given more weight

because of her role as the court-appointed custody evaluator. Father cites no case holding that the trial court was required to credit Dr. Vernon's opinion simply because she was the custody evaluator. He also ignores that her opinion was eviscerated by Mother's expert.

Dr. Robert Simon was Mother's witness at trial. The court accepted him as an expert in custody evaluations and forensic psychology. Dr. Simon testified that the errors in Dr. Vernon's report were "both numerous and critical," and he opined extensively on them. For example, Dr. Simon explained that it was the "consensus opinion of the child custody community" that the tests Dr. Vernon selected for her evaluation "are junk science." Dr. Simon also heavily criticized Dr. Vernon's lack of notes and record keeping.[5] In his view, this rendered the conclusions in her report unreliable.

Generally, a "trial judge need not accept the testimony of any expert." *Quinn v. Quinn*, 83 Md. App. 460, 470 (1990). "An expert's opinion has no greater probative value than the soundness of the reasons given for the opinion." *Goicochea v. Goicochea*, 256 Md. App. 329, 354 (2022) (cleaned up). Further, "[w]here there are two experts, the trier of fact must evaluate the testimony of both of them and decide which opinion, if any, to accept." *Id.* (cleaned up).

Here, the court agreed with Dr. Simon. It observed that Dr. Vernon's recommendations "generally lacked the type of factual and logical support that would be

[5] Dr. Vernon took notes while performing her evaluation, but, at some point, her email was "hacked," and her notes were lost. Dr. Simon also criticized Dr. Vernon's failure to immediately disclose this to anyone.

expected for well-founded recommendations" and that "[o]ddities" in her work rendered her opinions and recommendations unreliable. Indeed, the court concluded that Dr. Vernon's recommendation on legal custody "could only be made by someone who did not have any understanding of the parties in this matter." Its decision to reject her recommendation was reasonable, logical, and explained in detail. *See Goicochea v. Goicochea*, 256 Md. App. at 355. The court was not clearly erroneous in crediting Dr. Simon's opinion as to the reliability of Dr. Vernon's opinion.

Father next takes issue with the court's findings of fact. He flags several facts discussed in the court's opinion that he claims are contradicted by his testimony. For example, he asserts that he never refused to let Mother see R. from a balcony while she was isolating during her in-service rotation. Father acknowledges, however, that the court did not fabricate these facts from whole cloth. Rather, it pulled them from Mother's testimony. Thus, in essence, Father challenges the court's decision to credit Mother's testimony over his and resolve conflicting evidence in her favor.

Just as when dealing with competing expert witnesses, "the [fact-finder] has authority to decide which evidence to accept and which to reject." *Hall v. State*, 119 Md. App. 377, 393 (1998). The court here expressly found that Mother's testimony was more credible than Father's testimony. "It is not our role, as an appellate court, to second-guess the trial judge's assessment of a witness's credibility." *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020). Ultimately, the court's findings of fact were based on Mother's testimony and, therefore, supported by "competent material evidence" despite Father's

opposing evidence. *See Fantasy Valley Resort, Inc.*, 92 Md. App. at 275. Thus, they are not clearly erroneous.

Father also complains that the court relied on Ms. Drewyer's statements about him but did not discuss, in its opinion, the "misconduct" he alleged concerning ex parte communications between her and Mother's attorney. Father points to an entry in the bills from Mother's attorney that show an email and phone call between counsel and Ms. Drewyer before he terminated Ms. Drewyer's services. "Trial judges are not obligated to spell out in words every thought and step of logic." *Meek v. Linton*, 245 Md. App. 689, 730 n.6 (2020) (cleaned up). In other words, the court was not required to expressly reject Father's attack on Ms. Drewyer's impartiality before relying on her statements. And in any event, the court made clear that it did not accept Ms. Drewyer's statements as proof of any "issues in the marriage or even post-separation[.]"The court merely observed that her notations were consistent with other evidence of "Father's less than collaborative behaviors."

Finally, Father does not dispute that the court considered the appropriate custody factors when making its decision. Instead, he argues that the court did not explain why Mother maintaining primary physical custody was in R.'s best interests. Not so.

The court first analyzed the custody factors laid out in *Best*, 93 Md. App. at 655–56, almost all of which equally favored both parties. The court found that Mother and Father are both fit parents who deeply love their son. The court also noted that both parties could provide for R.'s necessities (and beyond), and they live in close enough proximity to permit ample access with both parties. The court recognized that the

circumstances of their separation created high conflict and neither party was blameless for their inability to coordinate a routine access schedule. The court observed, however, that Father struck first in this area, which it found was important. The court also concluded that Mother's restrictions on Father's access "were based more on fear that [he] would again withhold [R.] from her and not on an agenda against Father."

After reviewing the relevant factors, the court found that Father's proposed custody schedule was not in R.'s best interest as he begins his formal education because it requires several mid-week transitions. Based on the evidence, the court noted that R. "does best with structure and routine." For that reason, the court also agreed that Father's concerns with Mother's proposed custody schedule were well-founded because the days R. was with him varied significantly week to week. As a result, it adapted the schedule to address his concerns: Father would have custody of R. every other week from Friday, starting after school, until Tuesday morning at the start of school, and in the alternative every other week, from Monday after school until Tuesday at the start of school. The court observed that this schedule will allow for the consistency of days, as Father suggested, because R. would be in his custody every Monday.

At bottom, the record reflects that the court considered the appropriate factors. Although nearly all of them favored the parties equally, the court found that Father's history of depriving Mother of access to R. was "cruel" to her and "contrary to the best interests of the child." This tipped the scale towards awarding Mother primary residential custody. Even so, the court still acknowledged Father's concerns with the custody schedule and adapted it in response. The court did not act "without reference to any

guiding rules or principles." *See In re Adoption/Guardianship No. 3598*, 347 Md. at 312. Consequently, it did not abuse its discretion.

III. Child Support

Father next contends that the court abused its discretion in ordering that he pay fifty percent of R.'s private school tuition and expenses. According to him, the court failed to consider the factors required to prove a specific need for private school. Under the circumstances here, however, it did not need to do so.

A. Legal Framework

Under Md. Code Ann., Fam. Law ("FL") § 12-204(i)(1), "by agreement of the parties or by order of court," the tuition and costs for attending a private elementary or secondary school, to meet the particular educational needs of the child, "may be divided between the parents in proportion to their adjusted action incomes[.]"

When determining whether a child has a particular educational need to attend a special or private elementary or secondary school, a court should consider the following non-exhaustive list of factors: (1) the child's educational history, such as the number of years the child has attended the particular school; (2) the child's performance in the private school; (3) whether the family has a history of attending a particular school; (4) whether the parents had made the decision to send the child to a particular school prior to their divorce; (5) any particular factor that may exist in a specific case that might impact the child's best interest; and (6) the parents' ability to pay for the schooling. *Witt v. Ristaino*, 118 Md. App. 155, 169–71 (1997). Although "allocating the cost

proportionately may be appropriate in many cases," the trial court has discretion to determine whether another division is appropriate. *Id.* at 174.

B. Analysis

Father asserts that the court erred because it failed apply the *Witt* factors. This is a curious argument because, as the circuit court found, private schools were the "only considered choices" for R.'s future education. The parties' disagreement was limited to *which* private school R. would attend. Indeed, during closing argument, Father's attorney stipulated that he would pay 50% of the expenses if R. continued at the private school Father had selected. At no point during trial did either party suggest public school was even an option, let alone a preferred choice.[6]

As for the division of costs, this is an above guidelines[7] case. The parties' combined adjusted income exceeds $15,000 per month. Father earns more than $34,000

[6] Father now claims that he "was actively considering public school" for R. As proof, he cites to a single sentence in an email chain in which he tells Mother he is "open to considering" other public or private schools and asks if she is too. Father did not testify at any point that he was considering enrolling R. in public school. Generally, "a passing reference to an issue, without making clear the substance of the claim, is insufficient to preserve an issue for appeal, particularly in a case with a voluminous record." *Concerned Citizens of Cloverly v. Montgomery Cnty. Plan. Bd.*, 254 Md. App. 575, 603 (2022). Even if we were to take up Father's argument, we disagree that the court erred in requiring him to pay for half of R.'s tuition and expenses because the *Witt* factors are "non-exhaustive" and need not be listed expressly. *See Witt*, 118 Md. App. at 169–70. The record reflects that the court "heard evidence and considered several relevant factors relating to [R.'s] enrollment in private school—most notably the parents' consent agreement to continue with private school and their ability to pay." *See Ruiz v. Kinoshita*, 239 Md. App. 395, 430–31 (2018). That was enough for the court to order them to split the costs evenly.

[7] The current Guidelines now provide for combined incomes up to $30,000 per month.

per month, and Mother earns more than $17,000 per month. In above guidelines cases, the trial court "need not use a strict extrapolation method to determine support, but may employ any rational method that promotes the general objectives of the child support Guidelines and considers the particular facts of the case before it." *Ruiz*, 239 Md. App. at 425 (cleaned up). Here, the parties agreed to divide the costs of R.'s private school tuition equally, not in proportion to their adjusted actual income. Because this is an "above guidelines case," the circuit court had discretion to allocate the costs in line with their agreement.[8] *See id.; Witt*, 118 Md. App. at 174.

In short, because the court relied on the parties' apparent agreement that R. did and should continue to attend private school, it did not need to apply the *Witt* factors to find that he *needed* to attend private school to address this expense. There was no dispute on this point, and no dispute that the parties could and would split the costs evenly. Thus, the court did not err in ordering them to do so.

IV. Attorneys' Fees

Finally, Father contends that the court erred in awarding Mother $100,000 in attorneys' fees. His attack is two-pronged. *First*, he argues Mother's invoices for attorneys' fees should not have been admitted into evidence. *Second*, he argues the court did not properly apply the relevant statutory factors. His arguments are unavailing.

[8] In any event, Father is not the parent disadvantaged by the equal split of R.'s private school tuition. Because Mother earns less than Father, Mother is the one who would have benefitted from a proportional payment. Nonetheless, Mother has not challenged the court's tuition split on appeal.

A. Legal Framework

In cases involving custody or child support, "[t]he court may award to either party the costs and counsel fees that are just and proper under all the circumstances[.]" Md. Code Ann., Fam. Law ("FL") § 12-103(a). Before doing so, "the court shall consider: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b). "Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees." FL § 12-103(c). Substantial justification "relates solely to the merits of the case against which the judge must assess whether each party's position was reasonable." *Davis v. Petito*, 425 Md. 191, 204 (2012).

"The trial court has significant discretion in applying the § 12-103(b) factors to decide whether to award counsel fees and, if so, in what amount." *David A. v. Karen S.*, 242 Md. App. 1, 39 (2019) (cleaned up). "We will affirm a finding of bad faith or substantial justification unless it is clearly erroneous or involves an erroneous application of law." *Id.* at 38. We also assess the reasonableness of the amount of attorneys' fees awarded. *Id.* at 40. "Reasonableness is a factual determination within the sound discretion of the court, and the party requesting fees has the burden of providing the court with the necessary information to determine the reasonableness of its request." *Id.* (cleaned up). Ultimately, we will not reverse an award of attorneys' fees "unless [the] court's

discretion was exercised arbitrarily or the judgment was clearly wrong." *Id.* at 23 (cleaned up).

B. Analysis

Father first contends that Mother's invoices for attorneys' fees should have been excluded from evidence because they were not disclosed during discovery. Not so. Although his attorney at trial objected on that basis to their admission, Mother's counsel assured the court that they had been disclosed to Father's prior attorneys. The court believed her and admitted the invoices, implicitly finding that there had not been a discovery violation. There is nothing in the record to suggest the court's admission of the invoices was erroneous.

The court also did not err in awarding Mother a contribution towards her attorneys' fees. Mother presented evidence showing that she had incurred over $300,000 in attorneys' fees over the course of the litigation. Upon hearing this at trial, the court remarked that it was "shocked" at the amount. Even so, looking at the fees overall, the court expressly found that, "considering the circumstances" they were "fair and reasonable."

The court then found that, although "both parties were justified in pursuing child custody and child support, the manner in which [Father] litigated was, in large part, not justified." The court highlighted the numerous subpoenas Father issued seeking collateral evidence "that, in several instances, was not relevant to the case and when relevant, was in some instances, quite overblown considering the length of the marriage and the issues at hand." For example, Father subpoenaed substantial records of Mother's parents,

including their small business financial records, their personal financial records, and their EZ Pass travel records. He also subpoenaed a variety of preschools and recreational programs to which R. may have applied. He even subpoenaed pharmaceutical companies that worked with Mother's employer but with which Mother had no affiliation.

The court also pointed to Father's filing criminal charges against Mother's father, which caused significant stress to Mother and her family and, ultimately, were not pursued by the State. Father also filed an additional civil suit against Mother. At trial, Mother testified that Father had vowed to "destroy" her through litigation. Based on his scorched-earth litigation strategy throughout the case, the court believed Father did make that vow. The court determined that Father's "aggressive litigation . . . was out of proportion to the outcome [he claimed he] sought." The court found that Mother was justified in defending against Father's "overblown" litigation tactics. *See David A.*, 242 Md. App. at 35–36 (observing that one of the "important policy considerations" that FL § 12-103 promotes is "disincentivizing parties from engaging in conduct that produces protracted litigation").

Finally, the court considered the financial status and the needs of the parties. It observed that Father's resources outpace Mother's; he earns annually more than 66% of the parties' combined income. The court fashioned an award that it found to be within Father's means. Contrary to Father's argument on appeal, the court was not required to explain with mathematical precision how it calculated its award or limit it to the fees attributable to Father's unjustified actions. *See id.* at 41. The record reflects that the court considered the factors required by FL § 12-103(b), which is all it needed to do. *See id.* Its

findings, including the amount of fees awarded, were reasonable and supported by the evidence. The court's decision was neither arbitrary nor clearly wrong.

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