

Circuit Court for Frederick County
Case No. 10-C-16-002481

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1147

September Term, 2019

TARA TREGER

v.

CALEB WADE

Graeff,
Reed,
Gould,

JJ.

Opinion by Reed, J.

Filed: June 12, 2020

*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 appeal arises from the circuit court for Frederick County’s written order dated October 4, 2018, awarding Appellee, Caleb Wade (“Wade”), primary physical and sole legal custody of the parties’ minor child, W., while granting Appellant, Tara Treger (“Treger”)¹ visitation. On June 20, 2019, the court held a hearing on Appellant’s Motion for Reconsideration, and the court made slight changes to the order entered on October 4, 2018, which did not affect the custody arrangement. Treger appeals, presenting two questions for our review, which we have condensed into one for clarity:²

- I. Did the trial court err when it awarded sole physical and legal custody to Wade?

Finding no error, we affirm the circuit court’s ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Treger and Wade met when Wade was a deputy guard at the Washington County Sheriff’s Office, and Treger was a nurse in the same office. After dating, Treger became pregnant, and Wade proposed to her. Wade completed construction of a house on his family property for Treger, her son from a previous relationship, B., and their unborn child. Around the time Treger moved into the newly constructed home, but before W. was born, Treger testified that she asked Wade to add the children’s names (B. and W.) to the deed

¹ Throughout the trial record, the Appellant was identified as “Tara Treger Lowry.” However, on appeal, in her brief, she is referenced as “Tara Treger.”

² Appellant presents the following questions:

1. Whether the Trial Court utilized irrelevant factors in deciding custody?
2. What (sic) the trial court abused its discretion in awarding sole physical custody to Appellee-father?

of the farm. Wade refused to add their names and explained that Treger threatened to take W. to go live with her mother in Utah and told him that he would never see W. if he didn't add them. Treger noted that she only suggested that she be allowed to buy 40 acres of adjoining land for her sons. Their child, W., was born on June 13, 2016. Wade testified that when he left the room after the birth certificate papers were drawn up with his name on them, Treger had Wade's name removed from the birth certificate. This had negative implications for Wade at his job, as he had signed up for the Family Leave Act ("FMLA"), which was rejected and initiated an internal investigation into whether Wade had fraudulently applied for FMLA. Wade was required to pay for and furnish a banding DNA test result that proved that he was W.'s biological father.

On August 11, 2016, Wade testified that Treger became "very irate" because Wade had thrown out some old breast milk. W. began crying, and in an attempt to calm the baby down, Wade sat his phone down, which apparently contained sensitive law enforcement material, particularly related to the FMLA internal investigation. Wade indicated that Treger grabbed his phone and started going through his emails and taking screenshots of confidential e-mails, texting them to herself. Wade asked Treger to return his phone, and put his hands out to take it back, when Treger shoved his arm away as he was holding W. Wade mentioned that he informed Treger he was going to call the police and Treger destroyed his phone by putting it in the sink, and turning the faucet on. Wade filed a police report, describing Treger as "[i]rate" and "[m]anic." In an attempt to not jeopardize his new job at the Frederick City Police Department, Wade left the home he had built to move in with his parents.

Also, during this time, Wade testified that Treger started seeing her old boyfriend and father to B., Samuel Green (“Mr. Green”), who, according to Treger, was a heroin addict and domestic violence abuser. When Treger and Wade first started dating, Wade testified – and Treger confessed – that she told Wade that Mr. Green had multiple felonies, and that he had assaulted her numerous times in the past, prompting the police to often be called when they lived together. Wade also explained that during a trade-off of Treger’s older son, B., she informed him that Mr. Green got mad at her and threw a soda can at her while she was pregnant with W. Even still, Wade pointed out that Mr. Green started spending extensive periods of time at the farm. Treger testified that Mr. Green was only around when he was picking up B. or fixing the pool for B. Either way, Wade along with his family, grew displeased with how often Mr. Green was at his home, especially given that he (Wade) was staying at his parents’ home since the cellphone incident. Wade testified that Treger even proposed that Wade stay at his parents’ property while she, Mr. Green and the kids stayed at the farm, which she denied. On or about August 16, 2016, an eviction notice was placed on the door of the home. By August 24, 2016, Treger had vacated the property. Eventually, Wade found out that Treger had moved to West Virginia.

On September 6, 2016, Wade filed a petition for custody for W. in the state of Maryland. In response, Treger, pro se, filed a petition for custody in West Virginia, where she was residing at the time. Treger also filed a motion to dismiss in Maryland, so that the custody matter could be heard in West Virginia. However, on November 17, 2016, judges, while considering the Maryland Rules, denied Treger’s motion to dismiss filed in Maryland and dismissed the West Virginia custody petition. Throughout the course of this ordeal,

Wade sought to spend more time with W., but his efforts were mainly rejected by Treger. Wade testified that he was only allowed to have day visits with W., once a week. At Christmas time in 2016, Wade’s grandfather was dying, and Wade wanted W. to spend some time with his great grandfather during his last Christmas alive. Wade testified that he was informed by Treger’s “counsel” that if he “wanted to see W. for Christmas that [they] better concede [the] Maryland case.” Wade got to see W. on Christmas for approximately three hours. In March of 2017, W. was hospitalized when he ingested a foreign object while at his babysitter’s house and was “uncontrollably vomiting.” When Wade arrived at the hospital and questioned Treger about who the babysitter was, Treger told Wade that it “was no[ne] [of his] business.”

Treger retained counsel and filed a second motion to dismiss in Maryland, which was heard on March 8, 2017, and ultimately denied. Treger subsequently filed a Motion to Reconsider the Issue of Proper Jurisdiction for the Custody Proceeding, which was also denied on May 8, 2017. Eventually, in April of 2017, Wade and Treger came to an agreement that Wade would get an overnight stay with W. once a week. However, Treger would not permit Wade or anyone in his family to babysit W., even though they were willing and able to. Treger testified that she wanted a “neutral” third party involved because Wade’s family allegedly kept accusing her of child abuse

On June 26, 2017, the circuit court held a hearing and the parties were ordered to mediation. On August 1, 2017, Wade filed a Motion for Pendente Lite Relief, and after a hearing on September 6, 2017, he was awarded three overnight visits, granting him four days and three nights with W. Wade was also ordered to pay \$500 in child support. The

parties attended a settlement hearing on February 9, 2018 but were not able to reach a settlement regarding W.'s custody and the April 2, 2018 merits hearing was continued. Within a week, for unknown reasons, Treger's attorney withdrew his/her representation. Eight days before the custody hearing, on August 14, 2018, Treger married Jason Lowry ("Mr. Lowry").

Custody Proceeding

The circuit court heard Wade's custody petition during a two-day hearing on August 22nd and 24th of 2018. Because Treger represented herself in these proceedings, she testified twice, first on direct examination in Wade's case in chief, and in her defense examination. In his case, Wade also called his sister, Renee Wade ("Ms. Wade"), his father, Reverend Ed Wade ("Rev. Wade"), and Treger's former supervisor, Beth Beard ("Ms. Beard"), in addition to testifying himself. In her case, Treger was the only one to take the stand.

Treger's Direct Examination

During Wade's direct examination, Treger testified that she met her current husband, Mr. Lowry while she was working as a nurse at the Roxbury Correctional Institution, where he had been incarcerated on a 35-year sentence for robbery. She confessed that she did know about his past before she married him, but his past "did not" concern her. Treger indicated that they do not live together, as Mr. Lowry is still on parole and must request permission to move. Treger stated that she has taken Ritalin and Cymbalta in her teenage years for an emotional disorder, but that she hasn't been prescribed any medication for mental disorder since she had her first son. However, when it was asserted

that Treger had tested positive for Buprenorphine, the generic brand of Suboxone, Treger noted that there was a “pending legal issue” with that, and that she was not even sure that “she tested positive.” It was also revealed that in the past five years, Treger had moved seven different times between West Virginia, Maryland, Virginia, Pennsylvania and Utah, with her other minor son, B.

Ms. Wade’s Testimony

The court then heard from Ms. Wade, who testified that at some time before W. was born, Treger came down to the farm, and was “very upset” that Wade would not add W. and B. to the deed on the farm. Ms. Wade explained that when she told Treger that Wade was not going to add the children to the deed, and that she and Wade would be the beneficiaries of the farm, Treger “stomped out of the kitchen.” Ms. Wade also recalled an earlier incident where Treger had come down to the farm “mad,” “angry,” and she was “screaming” because she could not take her medication while she was pregnant. Ms. Wade noted that Treger had told her that she was bipolar and that she had been hospitalized in the past. Ms. Wade testified that Mr. Green would be at the parties’ home for 2-3 hours at a time, and always after Wade had left to go to work. She noted that W. had a great relationship with her daughter and W.’s cousin, A.

On cross examination, during Ms. Wade’s testimony, it was stipulated that the process to build the home the parties eventually lived in had begun prior to Treger’s pregnancy. Ms. Wade mentioned that Wade often watched B., along with W., while Treger was at work. She stated that she knew who was home based on whose car was in the driveway. Ms. Wade also explained that based on the location of her home, she could easily

see Mr. Green's truck in the parties' driveway, whether she was sitting on the porch or inside her home, and that he was there more than three times a month. She testified that she did meet Mr. Green, and that he was polite and respectful, but that he looked like "a druggie" and that concerned her.

Rev. Wade's Testimony

Wade's Father, Rev. Wade testified that that when Wade introduced Treger to the family, they were happy that he had found someone to marry. He indicated that the plans for the home were in the "planning stages" before Wade and Treger met, but construction on the home wasn't complete until around February or March of 2016. Rev. Wade spoke about how both his family and Wade would help out with B. while Treger was at work. He testified that Treger and Wade were very excited about getting married, but then he noticed a "a whole distinct . . . this difference in her." Rev. Wade asked his son about it, and Wade informed him that "[Treger] wanted B. to have an inheritance in the farm. To be put on the deed and her also potentially." He also testified that the farm was a historical place and had been in the family since 1790, and they wanted to keep it that way. Rev. Wade explained that after that incident, Treger did not come down as much, and her demeanor was "short." However, after W. was born, Treger did start to bring him down so that they could watch him a couple of times a week.

Rev. Wade testified that he did meet Mr. Green, and at first, Mr. Green would just come by to pick up B., but then he started staying longer; he knew when Mr. Green was coming and going because he had an older car that had an exhaust issue. After the cellphone incident, Rev. Wade testified that Wade came and stayed with them at the main farm, and

Treger suggested that Wade stay down with his parents, while she lived in the house. Rev. Wade indicated that he then called the Frederick County's Sheriff's Department, seeking guidance about how to have her removed from the property. On August 16, 2016, he placed the eviction notice on the house.

Ms. Beard's Testimony

Ms. Beard testified that she knew Treger because she was a charge nurse at Sterling Care before Treger was terminated for failing to comply with the company's drug screening processes. Ms. Beard explained that pursuant to company drug diversion policies, they drug-tested all charge nurses. She pointed out that if a charge nurse tested positive for a drug, they were required to show that they had a prescription, and if they could not provide one, they were terminated. Ms. Beard explained that Treger was drug tested, and her results came back positive for Suboxone, the generic name for Buprenorphine, which is an opioid medication used to treat opioid addiction by suppressing symptoms of opioid withdrawal. Treger was required to provide a prescription, and stated that she would provide one, but could only provide a prescription for Bupropion, the generic brand of Wellbutrin, an antidepressant, and a medication for smoking cessation under the name Zyban. Ms. Beard stated that because Treger could not provide a prescription for the drug she tested positive for, she was terminated. On cross examination, Ms. Beard testified that she was not aware that Treger tested negative for the drug she had previously tested positive for. She also noted that while the names of the drug she has a prescription for and the drug she tested positive for were similar, there was no misunderstanding about the drug she tested positive for. However, Ms. Beard explained that Treger did dispute the drug test, and that it is

possible to have false positives.

Before Wade testified, his counsel entered into evidence attested copies of all of the convictions of Mr. Lowry.

Wade's Testimony

Wade testified that he had gotten remarried, and W. gets along with his wife very well. Wade stated that he does not get along with Treger's husband, as Mr. Lowry falsely accused Wade of harassing him, causing them to appear in court multiple times. Wade noted that when he applied for the Baltimore City Police, his background investigator had to contact Treger, who then filed a peace order on Wade saying that "his job would allow him [to be] a police officer down in Baltimore to harass Mr. Lowry because he [Mr. Lowry] has some association with the Baltimore City area." After Wade appeared in court multiple times, the case was dismissed and shielded off of his record.

Wade testified that W. liked to run around, have fun, and spend time with his cousins and grandparents. He was on top of his ABCs and was able to count to 12. In regard to custody, Wade expressed that it is in W.'s best interest that Wade have sole physical and legal custody. He does believe that W. should be able to see his mom, but thinks that Treger doesn't associate with reputable people, and that she is currently married to a 13-time felon who just got out of jail. Wade suggested that Treger should have an overnight a week and daytime visits. He also stated that if Treger is misusing prescription drugs, she should get some help and needs to just admit that she has a problem. Wade testified that he wants W. to have a stable home where he goes to school, goes to church and has structure in his life. Wade doesn't want W. moving to six or seven different school districts, as Treger's other

son B. has had to do. Both parties stipulated that it would be in W.'s best interest to go to school in Wade's school district, because the schools are excellent in his county. Wade mentioned that Treger can be a kind person, and is proud to be a nurse, but she doesn't make the best choices in her personal life. Wade testified that he has concerns about Treger allowing Mr. Green to be around W. after he has assaulted her in the past and her marrying someone who just got out of prison, in addition to the apparent suboxone use. Wade testified that he's also concerned that Treger smokes around W., even when he has asked her not to.

On cross examination, Wade testified that he has another son, C., whom he is in contact with on a weekly basis. When questioned about whether he threatened to call CPS on Treger, Wade noted that the only instance he stated he would call CPS was when she was allowing B. to come into the shower with her. Wade also mentioned that he was questioned in two CPS cases against Treger and her babysitter after Wade received W. from the babysitter with a 4-6-inch mark from the inside of his butt cheek down the back of his leg. Wade mentioned that several doctors came in and talked with him and concluded that it looked like "a child abuse case." After an investigation, the complaint was dismissed as unsubstantiated. Even so, Wade mentioned that he had received W. with big lumps and bruises and infected, little bug bites that were allergic reactions, and he sought medical attention to take care of his son, and not to "get [Treger] in trouble." Wade admitted that he has concerns about Treger's stability, mental well-being, co-parenting relationship with Mr. Green and her ability to co-parent with him, and that those issues are "detrimental to W.'s well-being."

Treger's Examination During the Defense Case

During her direct examination in the defense case, Treger testified again, first describing her home as a two-bedroom, one bath apartment with a big front yard and big back yard. Treger noted that she had dug up the entire backyard and placed multiple play sets in the backyard. Treger mentioned that she knows her home is a “very small place,” but she is looking and working with a real estate agent to find a larger home. When asked about daycare for W., Treger indicated that Wade’s parents offered to care for W., but Treger stopped taking W. to them because they kept taking him to Urgent Care when they would find things wrong with him, as well as alleging that she was abusing W. In order to have a “neutral third party who saw how she cared for W.,” she didn’t allow Wade’s family to babysit W.

The judge questioned Treger about her working hours, and she testified that she did find a new job, and was working Saturday and Sunday, from 7:00 a.m. – 11:00 a.m., with Monday through Friday off. Treger believes that she and Wade could co-parent and that all of the “animosity and hard feelings” would dissipate once clear boundaries had been set. Treger also testified that she and Wade’s current wife are “working on things” and that they have had “some recent conversations that is really promising.” Treger explained that she does not have any issues with Wade being a Christian man and does not foresee a problem with W. being raised as a Christian.

Treger then testified about testing positive for drugs and losing her job. She stated that she got her own testing done and had it sent to a third-party lab and has since been offered three jobs, all of which she has had to take a drug test for. She stated that she

submitted a full screen panel that came back negative but did not bring the “full test” results with her, and only brought the results for two drugs she tested negative for, neither of which was for Suboxone.

In reference to her relationships, Treger noted that she was with Mr. Green for eight years, and he fell down a tunnel which was extremely ugly, and she didn’t allow B. to see him for almost six years. She testified that she has a “very difficult time co-parenting” with Mr. Green. When asked about whether Mr. Green would be around W., Treger stated that Mr. Green “probably won’t even see W. . . . if that’s what’s needed.” In response to the court’s concern that Mr. Green had a variety of criminal activity in his background, in addition to her husband’s extensive criminal background, Treger, testified that Mr. Lowry installs insulation and that he is “privy to drug testing and he already has parameters.” However, Treger noted that she and Mr. Lowry have never lived together. She asserted that when she first met Mr. Lowry in prison, and “felt like the communication line was bordering inappropriate [she] transferred prisons and didn’t talk to [Mr. Lowry] for four years.” Treger explained that eventually, she re-contacted him and that’s how they ended up married.

Treger testified that Wade has a fantastic work ethic, that he is very diligent and extremely dedicated. Treger indicated that he is an attentive father and has a good support system. Treger ended her defense examination by stating that she is not concerned about her children’s safety when they are in her care, as she is very attentive to them. She also mentioned that her two boys have a strong relationship and that she didn’t want that bond to be broken, because she did not have any type of bond with her siblings. Treger stated

that she volunteers at B.'s school and that she hasn't done drugs since May 3, 2002 and that's something she's really proud of because "it's not something a lot of people can do." Treger mentioned that she would have no problem going to counseling, whether it be psychological, drug, or both.

On cross-examination, Treger was asked why she kept W. from Wade's family, particularly based on supposed allegations of abuse she stated that the staff at Urgent Care made when Wade took W. to be seen. Treger eventually acknowledged that there was in fact no CPS investigation or allegations of abuse from Wade's family, but that she was having trouble communicating with them. Treger indicated that she would call and text every day wanting to know where W. was, what he was doing, and whether he was eating. In response to the family's comment that she was "being overbearing," Treger "unilaterally decided" she would take W. to a daycare provider so that Wade's family could not be with W. Treger stated that "if they aren't willing to communicate openly with [her]," then it is better for W. to be with a complete stranger, rather than Wade's family. She conceded that the daycare provider she had was the same provider where W. ingested a foreign object (paper) and was taken to the emergency room. Treger admitted that she kept W. from spending any overnights with Wade from September 2016 until April of 2017 but did not provide a reason as to why. Treger also disclosed that even though she put in the pleadings she filed on November 4, 2016 that Wade was an unfit parent, she just signed what her attorney told her to sign, and did not actually believe that Wade was an unfit parent.

Treger was also questioned about the extent of Mr. Green's presence at her home with Wade during and after her pregnancy with W., and she admitted that he was around

because she “had a new baby and was stressed out and felt alienated and probably wasn’t making the best choices . . . and wasn’t being as considerate as [she] should have.” Concerning the conversation about adding the kids’ names to the farm deed, Treger testified that she wanted adjoining property to his family’s farm so that she would have something to leave her son B. When asked about the medication she apparently was upset about and craving during her pregnancy, Treger noted that she didn’t know what medication it was that she was upset about. In reference to her job, Treger indicated that her first day was the very next day, on August 25, 2018, and that it was an hour and fifteen minutes from her home. She mentioned that her job is close to where Mr. Lowry currently lives, in Westminster, and that she stays with him on the weekends, while W. is with Wade.

For custody purposes, Treger requested 50/50 physical parenting time between the parties, and 50/50 joint co-parenting counseling. She stated that both parties should utilize their own daycare during their parenting time, and that Wade would continue to maintain health insurance on W.; both parties would be allowed to participate in doctors’ appointments and school functions. Treger also requested that there be no child support order.

Wade’s Rebuttal Direct Examination

On rebuttal direct examination, Wade testified that he believes parenting classes would be beneficial if things went the way Treger wanted, but that if they do not go her way, she can get “irate” and “will do things to get her way.” Wade noted that when he didn’t put the kids on the farm deed, she did not put him on the birth certificate; when he didn’t concede the case at Christmas, he couldn’t really spend time with W. at Christmas

when his grandfather was dying. Wade stated that many of Treger’s threats came after his refusal to add her to the farm deed. Wade mentioned that he was afraid that she would in fact go live with her mother in Utah, as she had prevented Mr. Green from seeing B. for six years, and he took her threats very seriously. In regards to W.’s care, Wade stated that he repeatedly told Treger that his family could easily babysit W., for free, which would also provide them with an opportunity to spend time with him; Wade testified that Treger told him that “[he] didn’t have an option of where [W.] was going.”

Wade testified that he does not believe that W. should have “extended time” with Treger, and that he does not trust her to act in W.’s best interest. Wade continued to voice concern about Mr. Lowry but testified that Mr. Lowry reached out to him on August 4, 2018, informing him that he and Treger had broken up because she was seeing Mr. Green behind his back. Wade ended his testimony by stating that he wanted sole physical and legal custody.

Circuit Court’s Ruling

Before making its findings, the court acknowledged that this was a “tough case,” and that it is the court’s job to “look out for the best interests of young [W.] in this case.” The court then commended both sides and their presentation of the case, specifically noting that Treger, while without counsel, “handled herself very competently, better than most people that represent themselves.” Subsequently, the court gave its oral ruling and factual findings. The court outlined that the primary consideration is what is in the best interest of the child. The court indicated that there are a number of factors that it has to consider in

determining what that interest is, pursuant to “*Sanders*,³ *Taylor*⁴ . . . and *Santo*.”⁵

In reference to the fitness of the parents, the court acknowledged that there had been a lot of testimony about the fitness of the parties. For Wade, the court noted that he comes from a “good . . . warm, loving family.” The court stated that it “certainly find[s] [Wade] to be a fit parent.” In regard to Treger, the court noted that she has “struggled with some things” and some of the decisions she has made. The court indicated that she had “lots of excuses” regarding the drug test, and that it “really didn’t know what happened there.” The court observed that a lot happened in her past, but there “seems to have been at least some period of [her] getting her act together.” The court pointed out that it did not find Treger to be unfit because of her relationship with Mr. Green. The court found both parties to be fit and did not believe that either party was unfit.

In considering the ability of the parents to communicate, the court found that they had “a very difficult time communicating in a meaningful way and that was demonstrated by the testimony that the court heard.” The court mentioned that the parties were “doomed from the start,” given that their personalities were just so different. The court stated that while Treger was “very strong willed,” Wade was “passive . . . and probably let people roll over [him].” Concerning the willingness of the parents to share custody, the court stated that both parties wanted the child to see each parent and neither wanted to keep W. from the other, even though they could not agree on what shared custody should look like. (The

³ *Montgomery County Dep't of Social Servs. v. Sanders*, 38 Md. App. 406 (1977).

⁴ *Taylor v. Taylor*, 306 Md. 290 (1986).

⁵ *Santo v. Santo*, 448 Md. 620 (2016).

court indicated that Wade and Treger were both good parents in their own way and both have a close relationship with the child. The court noted that obviously, both parents love W. and have cared for him since his birth. The court observed that they “love [their] child more than [they] don’t like each other.”

With respect to the child’s social and school life, the court recognized that there was not much of a social and school life at the age of two. The court did mention that it listened to testimony about W.’s interactions with his cousins and that he gets along with his brother. The court also commended Treger’s willingness to allow W. to go to school in Middletown, where Wade lives, due to the area’s reputation for good quality schools. The court found that W.’s interactions with family on both sides could continue, without interruption. Regarding geographic proximity, the court acknowledged that Treger lived in Martinsburg, West Virginia and Wade lived in Middleton, but noted that neither party has indicated an issue with the distance. Turning to the demands of parental employment, the court affirmed that Wade was a police officer and Treger was a nurse, both with different schedules. The court found that while difficult, there would be no real problem with either party working their employment around their time with W. The court did express “strong concerns” that Treger would not allow Wade’s family to babysit W., and instead put him in daycare. From the testimony, it seemed to the court that Treger was “extricat[ing]” a “punishment” on Wade; the court mentioned that she refused to put his name on the birth certificate, even though she knew he was the father, causing all types of disruption to his livelihood.

Observing the age of the child, the court stated that W. was two and was the only

child between the parties. In consideration of the sincerity of the parents’ request, the court found both parties’ requests regarding custody were “absolutely sincere.” Without much testimony about the parties’ financial status, the court presumed that, as a police officer, Wade made decent money to support W. The court reflected on its comment during Treger’s testimony when she noted that she wanted to buy a piece of property, and stated that “I am a nurse, I make decent money.” The court assumed that Treger also had the “financial means” to support W. The court considered the impact on state or federal assistance and found it irrelevant in this case. In relation to the benefits to the parents, the court reiterated that both parents love W., and both would benefit from their relationship with W.

Regarding the character and reputation of the parties, the court explained that it did not find any evidence or testimony that Wade had bad character. The court touched on the fact that Wade is the son of a Reverend, and was raised in a stable family situation, having been raised and is still living on the family’s farm property. On the other hand, the court discussed its perspective of Treger, stating that she might have had a more “difficult upbringing.” The court recognized and had concerns regarding Treger’s new husband’s criminal record and the possible impact the contact with her husband could have on W. The court explained that it was not happy with the fact that he “went down to Baltimore and tried to do some things that would negatively affect [her] son’s father’s career and livelihood.” The court also acknowledged that there were “valid concerns” over Mr. Green, due to his run-ins with the law, his past relationship with Treger, and the fact that he “threw a soda at Treger,” noting that the interactions with Mr. Green could have negative impacts

on the child.

The court considered the desire of the natural parents and any agreements, indicating that the parties could not come to an agreement, notwithstanding efforts at negotiation. In reference to the potential for maintaining natural family relations, the court stated that Wade's family is was "warm and fuzzy - - good things from [his] side of the family." The court mentioned that Treger's situation was "very different." The court did not consider the preference of the child, since W. was only two at the time of the hearing. The court noted the marital opportunities affecting the future of the child, stating that both parties are now married. The court acknowledged that it considered the age, health and sex of the child, in addition to the residence of the parents and the opportunity for visitation, explaining that the court "appreciates concerns" regarding Treger's changes of residence for the past several years, which shows instability. The court did acknowledge that Treger has been living where she lived at the time of the hearing for the past two years and is looking for a bigger home. The court also expressed apprehension about the fact that she would be moving in with a husband who was just getting off parole, whom she has never lived with before. On a final note, the court looked at the length of separation from the parents, declaring that the parties have been separated since W. was born, or shortly thereafter. The court found no application of voluntary abandonment or surrender of custody of the child, even though the court mentioned that it was not happy with instances where Treger admittedly and purposefully kept W. away from Wade.

Announcing its ruling as to legal custody, the court asserted that legal custody "carries with it the right and obligation to make long range decisions involving education,

religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." In conjunction with Treger's indication that she had no issue with Wade making a decision regarding W.'s religious training, the court found that the parties were unable to share legal custody and granted legal custody to Wade. Having considered all of the factors as outlined above, the court ordered that W.'s primary physical custody be with Wade. The court gave Treger every other weekend, from Friday at 6:00 p.m. through Monday at 9:00 a.m. On the weekends that Treger would not have W., she would have access to him on Thursdays, from 6:00 p.m. to 9:00 a.m. on Friday morning.

The parties would alternate Thanksgiving and Christmas each year, and W. would always spend Father's Day with Wade, and Mother's Day with Treger. The court also ordered Treger to undergo drug testing once a week for three months; after testing negative for that time period, Treger would then test once a month for nine months, for a total of a year of testing. The court also required that Treger participate in mental health counseling and would permanently refrain from using illegal drugs or abusing prescription medication. Both parties would participate in co-parenting classes. Wade is responsible for providing health insurance for W., which Treger requested, and any uncovered medical expense would be paid 50/50.

In reference to child support, the following colloquy took place:

[The Court]: I think child support may have been pled in this . . . but there was no testimony on it, so here's what I'm going to do on child support. Knowing this custody, there's going to be guidelines. If you all agree to the guidelines, that's going to be the guidelines. If you don't, then unfortunately you're going to have to come back to court and fight over what child support

should be.

[Wade's Attorney]: Maybe we can exchange financial information within ten days and if we can do that - -

[The Court]: I'm happy to put that in the order as well. Would you be willing to do that [Treger]? Exchange financial information within ten days so you can figure out what the child support is going to be?

[Treger]: Sure.

On October 4, 2018, the circuit court issued a custody order consistent with the judge's oral ruling.

Subsequent Procedural History

On the same day that the court's written order was entered, Treger filed a Motion for Reconsideration, alleging that the order included a provision that was not stated during the oral ruling, and that the court's written order was not being complied with. In the motion, Treger requested that the court order "reasonable phone Skype/Facetime access," in addition to the ability to participate in activities related to W.'s schooling, medical care and extracurricular activities. The circuit court set the motion in for a hearing, which was continued on three separate occasions for a number of reasons, including Wade's mandatory training with the Carroll County Sherriff's Office Training Academy, which required attendance from September 10, 2018 to March 22, 2019, as well as a continuance because the original trial judge was on temporary leave for active duty. Wade also filed a motion for emergency relief because Treger was smoking around W.

On June 20, 2019, the circuit court heard arguments on Treger's Motion for Reconsideration and Wade's Motion for Emergency Relief. At this hearing, Treger was represented by counsel. Treger agreed not to smoke in front of W. Treger indicated that Rev. Wade was allegedly taking pictures and snooping around when he would pick W. up

for Wade’s custody time; the court ordered that he not do that. The court mandated that Treger be allowed to have information about activities at W.’s daycare, but that she cannot cause a disruption, go to the daycare unannounced or threaten to revoke the daycare license.⁶ Concerns regarding W’s pick-up and drop-off were expressed, and the court changed Treger’s pick-up time to 5:00 p.m. on Fridays for weekend stays and every other Thursday. With regard to child support, Wade had also filed a Motion for Contempt, since Treger had not been paying child support. A hearing was set to determine child support, address the motion for contempt, as well as to hear a motion to modify and a modified motion for emergency relief.⁷ Both parties agreed to attend mediation to arbitrate the “last little picayune,” “hairsplitting things.” The court issued the written order on July 9, 2019, and Treger noted this appeal.

DISCUSSION

A. Parties’ Contentions

For the first time on appeal, Treger argues that the court utilized irrelevant factors in deciding custody. Particularly, Treger asserts that the court expressed “a great deal” of

⁶ There was testimony that in October of 2018, there was an incident at W.’s daycare, where Treger had caused a disruption and was informed not to come back to the daycare. Treger then repeatedly called, texted and harassed the daycare, and they continued to ask her not to contact the school. On March 29, 2019, Treger attempted to get the daycare’s license revoked, stating that W. didn’t have any immunization records because she didn’t get him immunized when he was in her care.

⁷ Wade asserted that W. was being emotionally harmed, based on “adverse reactions” W. was having before and after visitation with Treger. The circuit court determined that that was not an emergency, and scheduled arguments on that issue with the child support hearing.

concern about Treger’s past, as well as her associational rights, contending that her association with Mr. Green or Mr. Lowry had no impact on W. She also maintains that the court abused their discretion in awarding sole legal and physical custody to Wade, arguing that there is no justification for the court to deny 50-50 physical custody. Wade contends that the court did not abuse its discretion, as it detailed each and every factor that it considered in making its determination that Wade should have sole legal and primary physical custody.

B. Standard of Review

There are three interrelated standards of review utilized by appellate courts for child custody determinations, which the Court of Appeals has defined as the following:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rules [8-131(c)] applies. [Secondly,] [i]f it appears that the [trial court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [trial court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [trial court’s] decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003) (emphasis removed) (citing *Davis v. Davis*, 280 Md. 119, 122-126 (1977)); *see also Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). Because of the trial court’s distinctive “opportunity to observe the demeanor and the credibility of the parties and the witnesses,” the trial court’s award of child custody is reviewed for an abuse of discretion. *Petrini v. Petrini*, 336 Md. 453, 470 (1994). Abuse of discretion arises when ““no reasonable person would take the view adopted by the [trial] court’ . . . when the court acts ‘without reference to any guiding rules or principles,’” or

when the court’s conclusion is “‘clearly against the logic and effect of facts and inferences before the court,’ and therefore ‘violative of fact and logic.’” *Santo*, 448 Md. at 626 (internal citations omitted). Most dispositive of the court’s conclusion about child custody is whether its ruling is in the “best interest of the child.” *Id.* (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)).

C. Analysis

We first acknowledge that Treger never raised the argument at trial that she now advances on appeal. In her Motion to Reconsider, Treger requested the following relief, in relevant part:

Wherefore, I respectfully request that the court order i. allow reasonable phone/skype/FaceTime access (by set schedule); ii. that I be provided information and the ability to participate in activities, as intended by the court, relating to child’s schooling, medical care and extra-curricular activities; iii. And that I be permitted to contact representatives from the school, medical providers, extra-curricular activities directly; iv. And that the court order reflect that parties shall not act in a manner that affects child’s relationship with the parent and that third parties cannot be permitted to alienate child from the mother.

Treger, while unrepresented, never raised an issue regarding the court’s consideration of certain “irrelevant” factors in the child custody determination, nor did she assert at the trial level that the circuit court abused its discretion when it gave Wade sole legal and physical custody. Even after she retained counsel, at the hearing on June 20, 2019, Treger actually sought to have the October 4, 2018 order enforced. There was no argument or request to amend the order of sole legal and physical custody, or a dispute that the court’s custody determination was erroneous or unfair. Nevertheless, even if this issue had been advanced

at the trial court, Treger would still not prevail here because we find no abuse of discretion in the circuit court’s ruling.

Child Custody Determination

Trial courts are vested with a broad net of discretion in making determinations related to child custody, and yet, they are bound to always seek and “apply[] the best interests standard, consider[ing] any evidence which bears on a child’s physical or emotional well-being.” *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503–04 (1992), *cert. denied*, 327 Md. 625 (1992). As this Court has traditionally held,

The best interest standard is an amorphous notion, varying with each individual case ... [t]he fact finder is called upon to evaluate the child’s life chances in each of the homes competing for custody and then to predict with whom the child will be better off in the future. At the bottom line, what is in the child’s best interest equals the fact finder’s best guess.

Karanikas v. Cartwright, 209 Md. App. 571, 589–90 (2013) (quoting *Sanders*, 38 Md. at 419). In examining what the best interest of the child is, appellate courts customarily accept the comprehensive judgment bestowed on the [trial court], “because only [it] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [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 585-86. As every case is regarded as unique, considering the intricacies that exist in domestic disputes, the trial court is tasked with “evaluating each case on an individual basis” to reach its conclusions regarding the child’s best interest. *Gillespie*, 206 Md. App. at 173; *see also Azizova v. Suleymanov*, 243 Md. App. 340, 344 (2019).

While “[c]ourts are not limited or bound to consideration of any exhaustive list of factors in applying the best interest standard,” Maryland courts have outlined key factors that trial courts may utilize to make custodial determinations. *Reichert v. Hornbeck*, 210 Md. App. 282, 305, (2013) (citing *Bienenfeld*, 91 Md. App. at 503–04). In *Sanders*, we explained that:

The criteria for judicial determination [of child custody] includes, but is not limited to, 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.

38 Md. App. at 420 (internal citations omitted). In *Taylor v. Taylor*, the Court of Appeals expanded on these factors for deliberation as to whether joint custody should be ordered, and stated that the non-exclusive, but still relevant considerations are:

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’ request; (11) financial status of the parents; (12) impact on state or federal assistance; (13) benefit to parents; and (14) other factors.

306 Md. at 304-11. “[N]one’ of the major factors in a custody case ‘ha[ve] talismanic qualities, and [] no single list of criteria will satisfy the demands of every case,” but “a trial court should carefully set out the facts and conclusions that support the solution it ultimately reaches.” *Santo*, 448 Md. at 630 (quoting *Taylor*, 306 Md. at 303). Hence, “[t]he

best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak.” *Taylor*, 306 Md. at 303.

Evaluation of the above-referenced factors define how the circuit court grants legal and physical custody. The *Santo* Court made clear the two types of custody, stating:

Legal custody carries with it the right and obligation to make long range decisions that significantly affect a child’s life, such as education or religious training. Physical custody, on the other hand, means the right and obligation to provide a home for the child and to make daily decisions as necessary while the child is under that parent’s care and control.

448 Md. at 627 (internal citation omitted). Even though no one factor is dispositive of the court’s custody determination, the circuit court holds the parties’ abilities to communicate “of paramount importance” when making an award for joint custody, as this is indicative of how the parties will handle shared decisions. *Reichert*, 210 Md. App. at 306; *see also Gillespie*, 206 Md. App. at 173. Therefore, “[r]arely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child.” *Taylor*, 306 Md. at 304.

Over the span of 18 transcript pages, the circuit court judiciously outlined each of the appropriate factors, “consider[ing] the arguments of counsel, all the evidence and testimony, as well as the pertinent and applicable laws and statutes” required to make its custody decision. The court also had the opportunity to personally observe the parties and witnesses, weighing their credibility and the sincerity of their testimony. Treger alleges that the court “expressed a great deal of concern about her past and her associational rights.” However, as detailed *infra*, the circuit court’s very valid concerns about the

criminal history of Mr. Green and Mr. Lowry were fleeting at best, and when viewed in its entirety, the court's custody determination was founded on more than Treger's questionable associations.

For instance, the circuit court acknowledged that the parties had “a very difficult time communicating in a meaningful way.” While addressing the demand on the parties' parental employment, the court expressed “strong concerns” regarding Treger's willful and deliberate withholding of W. from Wade and his family, particularly when she refused to let the family babysit because of “communication issues,” in addition to when she intentionally removed Wade's name from the birth certificate, when she knew he was the father. The court also mentioned that there was apprehension about Treger's drug use, since she had “a lot of excuses” regarding the drug test and whether she actually tested negative after testing positive for an illegal substance. Therefore, Treger's contention that the circuit's ruling was driven largely by her past or current associations is unfounded. More importantly, Treger provides no legal authority to support her proposition that the circuit court's inconsequential reflections on Mr. Green and Mr. Lowry are “irrelevant factors” to be considered in a child custody determination. In actuality, Treger's brief is devoid of any legal citation, other than to the case *Boswell v. Boswell*, 352 Md. 204 (1998). Consequently, we see no reason to further discuss the merits of this argument. *See also Conrad v. Gamble*, 183 Md. App. 539, 569 (2008) (Court refused to address an issue because the argument raised was “completely devoid of legal authority”).

Treger also maintains that there is no justification for not ordering 50/50 custody. She support this contention with a singular citation to *Boswell*, which stated: “reasonable

maximum exposure to each parent is presumed to be in the best interest of the child.” *Boswell*, 352 Md. at 214. However, even if “the evidence in a given case may be sufficient to support an award of custody to either parent.... [I]t is quite often the case that both parents are entirely “fit” to have legal and/or physical custody of a child, but joint custody is not feasible. In such cases, the [trial court] must exercise his or her independent discretion to make the decision.” *Petrini*, 336 Md. at 472. The court’s findings, guided by the factors outlined in *Sanders* and *Taylor*, were logical, given the facts and inferences before it. We find no abuse of discretion.

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