Circuit Court for Cecil County
Case No. C-07-FM-22-000034

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1161

September Term, 2023

DARYL ANTONY HURWITZ

v.

VERONICA LYNN HARPER ESQUE

Ripken,
Albright,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Ripken, J.

Filed: March 25, 2024

*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 case arises out of a custody dispute between appellant, Daryl Antony Hurwitz ("Hurwitz"), and appellee, Veronica Lynn Harper Esque ("Esque"), who are the parents of "L.",[1] a minor child born in 2016. Following a custody hearing on the merits, the Circuit Court for Cecil County awarded sole physical custody to Hurwitz, and joint legal custody to the parties. Subsequently, the court scheduled and held multiple "review" hearings on the matter. At the latter of these hearings, the court entered an order modifying its previous custody determination and awarding sole physical custody to Esque. For the reasons to follow, we vacate the judgment of the trial court.

ISSUES PRESENTED FOR REVIEW

Hurwitz presents the following issues for our review, which we have condensed and rephrased as follows:[2]

I. Whether the court erred by entering a final custody order, and subsequently holding review hearings.

II. Whether the court erred by altering a custody determination without first making a finding of a material change in circumstances and evaluating the best interests of the child.

[1] To protect the anonymity of the minor child, we refer to her by a randomly selected letter.

[2] Condensed and rephrased from:

I. Did the court err and abuse its discretion in holding the matter open for further consideration following a final order, and in considering a modification of custody in August 2023?
II. Did the court fail to apply the appropriate material change in circumstances standards and Taylor-Sanders standards in reaching a determination to modify custody?
III. Did the court's consideration of the matter lack appropriate procedural due process?
IV. Did the court err or abuse its discretion in failing to decline jurisdiction and/or to transfer the matter to Pennsylvania?

III. Whether the circuit court erred by retaining jurisdiction over the custody proceeding.

FACTUAL AND PROCEDURAL BACKGROUND

In October of 2022, the circuit court conducted a three-day custody hearing, during which both parties had the opportunity to present testimony and evidence. In preparation for the hearing, Robert Kraft, PsyD ("Dr. Kraft"), a court appointed psychologist, conducted individual interviews and psychological testing of Hurwitz, Esque, and L., as well as observed interactions between L. and each of L.'s parents. *See* Md. Rule 9-205.3(f). Dr. Kraft memorialized his conclusions and recommendations to the court in April of 2022. Dr. Kraft noted that at the time of his evaluation, the parties lived a significant distance from one another, with Esque residing in the state of Washington, and Hurwitz living in Maryland, but with plans to relocate to Pennsylvania to pursue graduate education. Dr. Kraft stated that despite their serious disagreements with each other, "both parents behaved in an appropriate nurturing and supporting manner" with L. Moreover, Dr. Kraft stated that L.'s "parents living separately . . .is most distressing to [L.], not what any one party has or has not done."

Ultimately, Dr. Kraft recommended that Hurwitz receive sole physical custody of L., with Esque being awarded regular weekend and holiday visitation, including during summer breaks. This recommendation was conditioned upon Hurwitz allowing L. to have contact with her maternal grandmother, and facilitating two hours per week of telephone or electronic contract between Esque and L. Specifically, Dr. Kraft stated: "If Mr. Hurwitz

does not agree to the increased contact between [L.] and her mother and grandmother . . . then the court should consider awarding fully physical custody of [L.] to [Esque] and the above outlined visitation schedule to Mr. Hurwitz."

Following the October 2022 merits hearing, the court issued an order which largely followed Dr. Kraft's recommendations and awarded joint legal custody to the parties with sole physical custody to Hurwitz. The court's order also outlined an access schedule whereby L. would reside with Esque in the summer, as well as during one weekend per month and on school breaks. The court also mandated that a "review hearing" be scheduled within 90 days of the entry of the order.

The parties attended the scheduled review in March of 2023, during which no testimony was taken, and an additional review hearing was scheduled for April of 2023. At the April hearing, the court heard testimony, and subsequently entered an order scheduling another "review hearing" in August of 2023. There were other portions of the April 2023 order which dealt primarily with the scheduling and logistics of transferring L. between the parents' residences. It also directed that the parties "shall abide by the previous custody order on this matter," and explicitly stated that the court "retain[ed] jurisdiction under MD Code, Family Law, § 9.5-202 up and until [the] court relinquishes jurisdiction[.]" The record does not reflect that either party challenged the court's April 2023 order or objected to the court's retention of jurisdiction.

In June of 2023, Hurwitz filed a motion asserting that none of the parties resided in Maryland, that Maryland was no longer L.'s home state, and that Maryland was an

inconvenient forum pursuant to section 9.5-207 of the Family Law Article ("FL") of the Maryland Code. In the motion, Hurwitz requested that the court relinquish jurisdiction and transfer jurisdiction to Pennsylvania. It does not appear from the record that Esque filed an answer, however the motion was opposed by L.'s Best Interest Attorney ("BIA").[3] The BIA's answer contended that the court should decline to exercise its discretion to transfer the case but agreed with Hurwitz that "Maryland does not have exclusive jurisdiction." The court summarily denied the motion.

At various times leading up to the August 2023 hearing, court documents identify the approaching hearing in different ways. On April 4, 2023, a notice to the parties listed the August proceeding as a "Custody & Review" hearing. However, the court's April 5 order indicated the August hearing was to be a "review hearing." A subsequent notice from the clerk's office indicated that the hearing type of the August proceeding was "Hearing – Custody[.]"

At the August 2023 hearing, the parties, including the BIA, appeared and were given the opportunity to introduce evidence, cross-examine witnesses, and give closing statements. At that hearing, the court characterized its November 2022 order as a "final order[,]" albeit one that "could change based on some of the recommendations made by Dr. Kraft." At the outset of the hearing, the court stated that: "Today is -- it is titled, they have titled [it] one thing. I will tell you all though, . . . to me, this [is] a review. It is titled

[3] A BIA is an attorney appointed by a court to represent a minor child's best interests in an action where custody, visitation rights, or the amount of a child support award is contested. *See* Md. Code FL § 1-202.

as a custody hearing. . . . [T]oday is not a full-blown custody hearing." Similarly, the court later articulated that "this is not necessarily a fully contested hearing[,]" and stated that "I don't know who you all would want to testify. To be brutally honest, I don't really want much more than the parents."

After interviewing L. outside of the courtroom,[4] and hearing the parties' arguments, the court delivered an oral ruling. The court stated that if the parties "lived down the street from one another" the custody determination would "eas[il]y" be "50/50." During its ruling, the court also spoke about its *previous* determination at the October 2022 hearing, which culminated in a "final order." The court noted that "it [was] really though like by a hair I made the decision I made[,]" and stated that it had made the custody determination based off "how I think it had been" prior to October 2022, when "things weren't horrible." However, the court explained, "the problem that I noticed in this case come March and April" was that "things didn't happen like I was hoping they would happen. And I didn't see a re[-]creation of the times that were good."

The court specifically noted that "[w]e're not necessarily here on like a motion to modify and we're looking for this material change necessarily." Rather, the court determined that "this really goes back to what my initial hangup was and what Dr. Kraft's hangup was, is that ability to co-parent." The court recounted its attitude toward the custody determination at the October 2022 hearing:

[4] The court stated that after speaking to L., "the needle didn't necessarily move in any direction[.]"

> "[L]et's try it out. But, man, if it doesn't work -- this co-parenting thing doesn't work like this, then we need to . . . do a flip. And I think that [L. is] doing [al]right in both places, but the Court does agree with Dr. Kraft. I think that though I've heard testimony today about what happened between October to April, . . . I believe that in light of Dr. Kraft's view and my view . . . that the co-parenting, I've seen little to no improvement for Mr. Hurwitz."

Thus, the court determined that "it's appropriate . . . to do the switch . . . with the custody." The remainder of the hearing consisted of discussions about the logistics regarding changing L.'s physical custody during the school year to Esque. The court did not weigh further evidence or assess any additional factors on the record.

The court indicated that as part of its ruling it was setting yet another review hearing to continue monitoring custody. The court noted that while its goal was not to "flip[] this kid back and forth . . . across the country[,]" the court believed it was appropriate to set an additional review hearing. In response, Hurwitz's counsel asked: "So there's that possibility that . . . things could switch again?" The court replied: "I don't know. I mean, I'm not saying -- I have no idea what possibility lie[s] there."

Following the August 2023 hearing, the court entered an order awarding Esque sole physical custody of L. during the school year and granting Hurwitz access during some weekends and school breaks, as well as custody during the summer. The court also scheduled a further review hearing for December 1, 2023. Following the August 2023 hearing, Hurwitz filed a motion for reconsideration. Hurwitz noted this timely appeal.

DISCUSSION

I. THE CIRCUIT COURT ERRED BY CONTINUING TO HOLD REVIEW HEARINGS AFTER ENTERING A FINAL ORDER ON CUSTODY.

A. Standard of Review

We review a trial court's child custody determination utilizing three separate but interrelated standards of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. If it appears that the chancellor 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 chancellor founded upon sound legal principles and based upon factual findings not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion.

Wagner v. Wagner, 109 Md. App. 1, 39–40 (1996) (quoting *Davis v. Davis*, 280 Md. 119, 125–26 (1977)).

An abuse of discretion occurs when "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." *Santo v. Santo*, 448 Md. 620, 625–26 (2016) (internal quotation marks and citation omitted). We acknowledge the trial court's unique "opportunity to observe the demeanor and the credibility of the parties and the witnesses[,]" *Petrini v. Petrini,* 336 Md. 453, 470 (1994), and will reverse only when a trial court's decision is "well removed from any center mark imagined by the reviewing court[.]" *North v. North*, 102 Md. App. 1, 14 (1994).

B. Parties' Contentions

Hurwitz argues that the circuit court committed reversible error by continuing to hold review hearings in the matter of L.'s custody following the November 2022 entry of a final order. Hurwitz asserts that following the entry of a final custody order, a court may not continue to "subject a fit and proper parent to a series of reviews." Esque disagrees, arguing that the court's November 2022 order was never intended to be final because it contemplated a future review hearing.[5]

C. Finality of Child Custody Orders in Maryland

Child custody orders are generally of two types—*pendente lite* determinations, which "provide some immediate stability pending a full evidentiary hearing," and final orders, which are entered after a court evaluates "the full record of evidence," and which create a durable custody determination based on the "long-term overall best interest of the child." *Frase v. Barnhart*, 379 Md. 100, 111–12 (2003). Under Maryland law, courts typically retain jurisdiction over the custody of minor children following a custody determination, and so final custody orders do not achieve "quite the degree of finality that accompanies other kinds of judgments." *Id.* at 112. Nevertheless, "[a]n order determining custody must be afforded some finality, even though it may subsequently be modified when changes so warrant to protect the best interest of the child." *McCready v. McCready*, 323 Md. 476, 481 (1991).

[5] Esque, who filed a *pro se* brief but did not appear for oral argument in this Court, also argues, inconsistently, that the August 2023 order *was* final, despite that following the "flip" of custody, the court planned to conduct yet another review hearing.

The finality of custody determinations, even if more limited than in other spheres, serves an important function for parents and children. *See id.* As the Supreme Court of Maryland has stated:

> In the normal custody case, . . . subjecting a parent, found fit to have custody, to periodic future review hearings essentially converts an order that should effectively end the dispute into something more like a *pendente lite* order. . . . [Such an order] puts a serious damper on the parent's ability to make long-range plans for [them]sel[ves] or the child and effectively removes the parent's discretion to provide a home for the child and make day-to-day decisions regarding [the child's] welfare. In so doing, it significantly infringes on and thus acts as a substantial, albeit partial, deprivation of the parent's legal and physical custody.

Frase, 379 Md. at 119. The Court further noted that a trial court may not "make findings that would dictate a particular result and then subject the favored party to conditions inconsistent with that result and to continuing review hearings." *Id.* at 121. In the Court's view, continued reviews following a final custody determination leads to a situation where:

> [T]he case never ends; the child and the parties remain under a cloud of uncertainty, unable to make permanent plans. The court seemingly reserves the power to alter the custody arrangement at any time, even in the absence of a new or amended petition, based on a later review of circumstances known or predicted to exist at the time of the initial determination. That is procedurally impermissible.

Id. at 121.

D. Analysis

The case at bar involves just the "procedurally impermissible" situation the Supreme Court repudiated in *Frase*. *Id.* Here, after the completion of a three-day evidentiary hearing on the merits, the court entered a final order in November 2022. Notwithstanding the finality of that order, the court set a future review hearing, and subsequently, proceeded to

conduct *further* review hearings. This process culminated in the August 2023 proceeding and the attendant order modifying custody, which engendered this appeal.

We disagree with Esque that the November 2022 order was not intended by the court to be a final custody order. During the August 2023 hearing, the court described the October 2022 proceedings as "a full trial on the merits[,]" and explicitly acknowledged that its determination was "a final order[.]" Although the court did characterize the November 2022 order as "final[,]" it also described it as "a final order with the understanding it could change[.]" As we have noted, the fact that child custody orders may be subject to future modification does not obviate their legal finality. *See* Section II.C. *supra*. Moreover, there is a clear distinction between a final order and a *pendente lite* determination, apparent in this particular matter as the court had entered a *pendente lite* order with regard to the case earlier in the year. Thus, we determine that notwithstanding the provision of the November 2022 order that called for a future "review hearing," the court's order, entered following a three-day trial, and which included a comprehensive plan outlining the parties' shared custody, was a final order. *See Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989); *cf. McCready*, 323 Md. at 481–82 ("An order determining custody must be afforded some finality, even though it may subsequently be modified when changes so warrant to protect the best interest of the child.").

By contrast, during the August 2023 hearing, the court characterized the ongoing proceeding as a "review" and stated that "today is not a full-blown custody hearing. It is not the [c]ourt's intention to have a full-blown custody hearing." Nevertheless, following

the "review" hearing, the court substantially modified the custody order. Each "review" hearing, including the August 2023 hearing which resulted in custody modification, was set by the court itself and was not initiated by a motion made by one of the parties.[6]

By continuing to hold the issue of custody open for periodic court reviews following a final order, the circuit court abused its discretion and committed procedural error. *See Petrini*, 336 Md. at 470; *Frase*, 379 Md. at 111–12.

II. THE RECORD DOES NOT REFLECT THAT THE CIRCUIT COURT FOUND A MATERIAL CHANGE IN CIRCUMSTANCES OR PERFORMED A BEST-INTERESTS-OF-THE-CHILD ANALYSIS.

As we have determined that the circuit court erred by continuing to hold review hearings following a final order, our analysis could end there. Nevertheless, in the interest of providing guidance to the trial court should a future Motion for Modification be properly filed and served, we will also address Hurwitz's second contention.[7]

A. Standard of Review

As articulated *supra*, we review a court's final determination of custody for abuse of discretion. *See Wagner*, 109 Md. App. at 39–40. Although review under the abuse of discretion standard is deferential to the judgment of the trial court, "a court's discretion is

[6] In March of 2023, Esque did attempt to file a petition for custody modification, but it was never served on Hurwitz and was rejected by the circuit court.

[7] However, in line with this Court's longstanding practice to avoid deciding constitutional issues unnecessary to the resolution of a case, we decline to reach Hurwitz's contention that the August 2023 hearing deprived him of procedural due process. *See VNA Hospice of Md. v. Dep't of Health and Mental Hygiene*, 406 Md. 584, 606 (2008) (noting that cases should be decided "on a non-constitutional ground if reasonably possible").

always tempered by the requirement that the court apply the correct legal standards." *Basciano v. Foster*, 256 Md. App. 107, 129 (2022) (citing *Faulkner v. State*, 468 Md. 418, 460–61 (2020)).

B. Parties' Contentions

Hurwitz argues that even if a modification hearing had been proper, the court erred by failing to find a material change in L.'s circumstances prior to modifying the custody order. Hurwitz also posits that if the court found such a material change in circumstances, the court further erred by declining to apply the best interests of the child standard in fashioning the modified custody order. In response, Esque presents many examples of Hurwitz's conduct that she purports would enable the court to have found that L.'s best interests would be better advanced in her care.

C. Custody Modification Requires Findings of a Change in Circumstances and the Best Interests of the Child.

Any modification of a child custody order "should emphasize changes in circumstances since the last order." *Kadish v. Kadish*, 254 Md. App. 467, 504 (2022). Prior to modifying a custody order, courts are required to assess whether "there has been a material change in circumstances." *Green v. Green*, 188 Md. App. 661, 688 (2009). A change is material only when it affects the welfare of the child. *See Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012). After making such a determination, the court must then determine whether a modified custody order would be in the best interests of the child. *Id.* at 173. As this Court has previously articulated, "[u]nequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child."

Azizova v. Suleymanov, 243 Md. App. 340, 347 (2019).

In determining a child's best interests, Maryland appellate courts have set forth a list of non-exhaustive factors "that a court must consider when making custody determinations." *Id.* at 345 (citing *Montgomery Cnty. Dep't of Soc. Services v. Sanders*, 38 Md. App. 406 (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986) (collectively, the "*Sanders-Taylor* factors")). None of the *Sanders-Taylor* factors are independently dispositive, nor do the enumerated factors constitute an exhaustive list.[8] *See J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 257 (2021). However, prior to making a custody determination, a court is required to conduct an individual evaluation of the child's circumstances and determine if the modified custody arrangement would advance the child's best interests. *See Gillespie*, 206 Md. App. at 173. Ultimately, "the trial court should examine 'the totality of the situation in the alternative environments' and avoid focusing on or weighing any single

[8] While no factor is dispositive, effective parental communication is of particular importance when, as here, the parties have joint legal custody over the child. *See Santo*, 448 Md. at 628. This is because parties with joint legal custody over their child are tasked with collaboratively making important decisions that impact the child's future; inability to communicate about the options and effects of those choices will frequently affect the child's best interest. *See id.*

The Supreme Court of Maryland has noted that assigning joint legal custody in the face of a parental "lack of ability to cooperate or agree" is acceptable only where "the evidence is strong in support of a finding of the existence of a significant potential for compliance with this criterion." *Taylor*, 306 Md. at 307. Should a court award joint legal custody absent a history of parties making collaborative decisions about the child's welfare, "the trial judge must articulate fully the reasons that support that conclusion." *Id.* While an award of joint legal custody in the face of a parental inability to effectively communicate is not in and of itself erroneous, in cases where a court concludes parents cannot communicate effectively, the court "must articulate well the justifications for awarding joint custody." *Santo*, 448 Md. at 630–31.

factor to the exclusion of all others." *Jose v. Jose*, 237 Md. App. 588, 600 (2018) (quoting *Best v. Best*, 93 Md. App. 644, 656 (1992)).

Although our standard of review is highly deferential to a trial court's discretion in calculating the best interests of a child, a court's exercise of discretion must be clear from the record. *Gillespie*, 206 Md. App. at 171; *Maddox v. Stone*, 174 Md. App. 489, 502 (2007). "A failure to exercise discretion – for whatever reason – is by definition not a proper exercise of discretion." *State v. Alexander*, 467 Md. 600, 620 (2020).

D. Analysis

Here, had a Motion for Modification been properly before the trial court, it is not clear from the record whether the circuit court found a material change in circumstances, or if the court engaged in a full best-interest-of-the-child analysis which evaluated the parties' circumstances in their entirety. In reaching its determination, the court noted that the communication between the parties was "horrible[,]" a factual finding that is not at issue, and one which undoubtedly has some baring on the ability of the parents to make collaborative decisions. *See Santo*, 448 Md. at 628. However, the court noted that at the time it made its *initial* custody determination in October of 2022, it had then *also* determined that "communication wasn't happening[]" and observed that the parties' communication "felt like it was horrible[.]" The court stated that its original determination of joint custody was made based on "how I think it had been before[,]" and because "it felt like there had been a moment before October [of 2022] when things weren't horrible[.]" In explaining its custody modification ruling, the court stated that following the initial ruling,

"things didn't happen like I was hoping they would happen." In addition to focusing on a lack of change in the behavior of the parties, as opposed to a change in circumstances, the court also explicitly stated that it was *not* "looking for this material change necessarily[,]" as the parties were "not necessarily here on . . . a motion to modify."

Similarly, the court made no explicit finding regarding L.'s best interests. The court determined that L. could be successful at either placement, stating that L. could "succeed . . . either way," and that "if you lived down the street from one another" custody would "easily" be "50/50." The court also noted that "what can work for the child I think . . . a lot of things can work for her. I think when she was at both places, it works for her." The court did not explicitly evaluate any of the *Sanders-Taylor* factors, other than parental communication, as weighing toward one of the parties. Nor did the court make an explicit finding about how L.'s best interests were impacted by the parties' communication, or by any other factor.

Rather, the court explained that it was basing its decision to modify custody on Dr. Kraft's recommendation prepared more than a year earlier for a different proceeding. Dr. Kraft's report, generated specifically for the original October 2022 merits hearing, stated that although he recommended awarding physical custody to Hurwitz, if Hurwitz did not agree to allow L. increased contact with Esque and L.'s maternal grandparents, the court should instead consider awarding physical custody to Esque. Dr. Kraft did not testify at the August 2023 hearing, nor did he submit an updated recommendation or report. During the August 2023 hearing, the court again emphasized that it understood that L. was "doing

[al]right in both places," but ultimately found that it was "appropriate to . . . do the switch . . . with the custody," in light of "Dr. Kraft's view[,]" and because that court had "seen little to no improvement [from] Mr. Hurwitz" *vis a vis* communication with Esque.

Based on record before us, we cannot say that the court properly applied its discretion in altering the custody order. The court did not determine that there had been a material change in circumstances, as required by Maryland law.[9] *See Kadish*, 254 Md. App. at 504. Rather, the court focused on a perceived *lack* of change in Hurwitz's communication style with Esque. Although the court emphasized that "it's so important that you are able to work this out so the other person can see the child when they need to see their child[,]" the court did not make a specific finding regarding how the parents' continued difficulties communicating would impact L.'s best interests. Nor is it clear from the record how "doing a total flip" of custody, which would not affect the frequency of transfers or communication between the parents, would advance L.'s best interests.

A court, in modifying custody, must always consider the best interests of a child, and the child's best interest is the *only* dispositive factor from which a court can base a custody award. *See Jose*, 237 Md. App. at 600. Prior to modifying custody, a court must

[9] This is not to say *no* changes had occurred in the parties' situations, notably Esque's move from the state of Washington to Texas. However, the court did not make an on-the-record determination of any specific material change that affected the best interests of the child. Regarding Esque's move, the court specifically stated that "I don't know how much of a difference [it made,]" and that the court's "primary focus [was] on those co-parenting abilities." When the court made the decision to award physical custody to Esque, the court was not aware of facts such as Eqsue's address or work schedule, what school L. would be attending in Texas, or when the school year started.

consider the alternative environments in their totality, and "avoid focusing on or weighing any single factor to the exclusion of all others." *Jose*, 237 Md. App. at 600. Here, the record does not reflect that the court examined either L.'s best interests, or indeed, any factors other than the quality of the parties' communication. This lack of on-the-record analysis of any other factors affecting L.'s best interests is especially problematic in light of the principle that when a court determines that the parents lack the ability to effectively communicate, but nevertheless awards joint legal custody to the parties, the court "must articulate fully the reasons that support that conclusion." *Taylor*, 306 Md. at 307.[10]

The record before us does not allow us to discern whether, prior to entering an order modifying custody, the court either found a material change in circumstances that affected the best interests of the child or conducted a best-interests-of-the child analysis which evaluated the totality of L.'s circumstances, both of which are required by Maryland law. *See Jose*, 237 Md. App. at 600; *Gillespie*, 206 Md. App. at 173; *Maddox*, 174 Md. App. at 502 ("If the judge has discretion, he must use it and the record must show that he used it." (quoting *Nelson v. State*, 315 Md. 62, 70 (1989))).

III. THE RECORD DOES NOT REFLECT THE CIRCUIT COURT ERRED IN RETAINING JURISDICTION OVER THE CASE.

A. Standard of Review

The question of whether a trial court correctly asserted jurisdiction is "an issue of

[10] We note that the court's determination of joint legal custody is not challenged on appeal, and our decision today does not assert that the trial court erred by virtue of assigning joint legal custody of L. to the parties.

statutory interpretation that we review *de novo* to determine whether the court was legally correct." *Cabrera v. Mercado,* 230 Md. App. 37, 80 (2016). By contrast, the decision whether to relinquish jurisdiction and transfer a case to a more convenient forum is entrusted to the sound discretion of the trial court. *Miller v. Mathias*, 428 Md. 419, 454 (2012).

B. Parties' Contentions

Hurwitz asserts that the court erred or abused its discretion in retaining jurisdiction over the matter. He argues that because the court's November 2022 order did not explicitly state that it was retaining jurisdiction, and the court's continued adjudication of the matter after the point where the parties resided in Maryland was contrary to the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). In the alternative, Hurwitz argues that the court abused its discretion by failing to transfer the matter to Pennsylvania. Esque asserts that the court both maintained jurisdiction over the case and acted within its discretion in declining to transfer jurisdiction.

C. Jurisdiction In Child Custody Matters

At the outset, we discern no error in the court's initial custody determination during the October 2022 merits hearing. Nor do the parties dispute that at the time of the November 2022 final order, the court had custody under the UCCJEA, as codified in FL sections 9.5-101 to 318.[11] Under FL section 9.5-202, a court retains "exclusive, continuing

[11] The UCCJEA is a uniform statute drafted by the National Conference of Commissioners on Uniform State Laws with the goal of preventing conflicts between multiple child custody determinations in different states and promoting national uniformity in how

jurisdiction" over a child custody determination until a court makes a factual finding pursuant to FL section 9.5-202(a). In the court's April 2023 order, the court stated that it "retain[s] jurisdiction under MD Code, Family Law, § 9.5-202 up and until [the] court relinquishes jurisdiction[.]"

The record from the August 2023 hearing indicates that the court did consider Hurwitz's motion that Pennsylvania was a more convenient forum, as required by FL section 9.5-207, and determined that Maryland should retain jurisdiction over the case. *See Miller*, 428 Md. at 457. The record also reflects that the court did not make an explicit finding under FL section 9.5-202(a) that it no longer retained jurisdiction over the case.

The record before us is not sufficiently developed to allow us to determine that the court either erred or abused its discretion by continuing to exercise jurisdiction over the case.

For the reasons previously articulated, we vacate the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY VACATED. COSTS TO BE PAID BY APPELLEE.

custody determinations are made and enforced. *See Friedetzky v. Hsia*, 223 Md. App. 723, 733–34 (2015). Maryland adopted its version of the UCCJEA in 2004. 2004 Laws of Maryland, ch. 502 (H.B. 400).