Circuit Court for Montgomery County
Case No. 157078FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1171

September Term, 2024

BERIL IZ-DUZYOL

v.

OKAN DUZYOL

Arthur,
Graeff,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: February 18, 2025

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

In this family law case we are called upon to determine whether an award of child support to Father by Mother should have been reduced because Father had received sums of money from his brother which the trial judge did not include in Father's income, after characterizing them as "family loans" or, in the alternative, gifts. We also have been asked to decide whether the trial judge erred in giving tie-breaking authority to the Father, after having awarded joint legal custody to the parties.[1]

Beril Iz-Duzyol, Appellant ("Mother"), was married to Okan Duzyol, Appellee ("Father"), on June 1, 2001. After having two children, a daughter, born in 2008 and a son, born in 2011, they were divorced in Fairfax County, Virginia in 2014. Mother moved to Montgomery County, and the parties, in 2016, consensually modified their custody arrangements in Fairfax County, with Mother continuing to have primary physical custody and Father being ordered to pay $1,237 monthly in child support. Father subsequently moved to Montgomery County in 2018, after which, in October 2018, he filed a request to register the Fairfax judgments in Montgomery County; they were enrolled at the end of the month. The parties continued to litigate against one another throughout 2019.

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[1] The questions presented by the Appellant are:

1) Where Appellee's income for two years consisted solely of "loans" or "gifts" from Duzyol's brother, did the trial court err or abuse its discretion in failing to include these monies in its child support calculations?
2) Did the trial court err or abuse its discretion when it awarded joint legal custody to the parties, with tie breaking authority given to Appellee in the event of an impasse?

In December of 2022, however, the children left Mother's home and moved in with Father. Earlier that month, Father had lost his job and remained unemployed until February of 2024; in March of 2024 Father's income was determined to be $156,000 annually.

Father filed to modify child support in April of 2023, after having continued to pay the monthly stipend to Mother. Mother filed a Petition for Contempt on June 8, 2023, because the children had not been returned to her home.

On March 4, 5, and 15, 2024, a trial on Father's Motion to Modify and Mother's Petition for Contempt was held before Judge J. Bradford McCullough of the Circuit Court for Montgomery County. During the trial, the Court heard from Mother, Father, and Father's brother, who provided sums of money to Father. The trial judge admitted bank statements of Father, as well as various documents related to the money provided by Father's brother and also entertained the "deposition testimony of Court Evaluator Jeanine Bensadon, LCSW-C and her Custody Evaluation, the testimony of Dr. Gail Bleach, and the testimony of the children" to find and determine not only a material change in circumstances supporting a change in custody, but also to grant Father's motion to modify while denying Mother's petition for contempt.

The trial judge ruled that the children should reside primarily with Father, with Mother having prescribed access, while the parties were to have joint legal custody, with Father having tie-breaking authority. Mother was to pay Father $4,299.99 monthly in child support, effective March 15, 2024, with an additional $1,000 to be added monthly until the arrearage of $21,499.50 would be satisfied.

Mother essentially challenges that Father's yearly income was only the $156,000 from the job he secured in February of 2024 in the computation of child support. She argues that Father received various amounts of money from his brother that were gifts and within the judge's discretion to add to the yearly income attributed to Father for child support purposes. The trial judge, however, never had to determine the exact amount that Father's brother provided to Father, because the judge found that the payments were "family loans" or gifts, which he excluded from Father's income.

While Mother alleged at trial and before us that the trial judge was not only wrong in his determination that the payments were "family loans," she also argued that the trial judge should have attributed monies provided to Father by his brother as income, before the date of his motion to modify on April 30, 2023, as well as two amounts, $29,000 on September 11, 2023 and $100,000 on October 6, 2023. At the oral argument in this case, Counsel for Mother acknowledged that the amount the trial judge should have attributed to Father on a yearly basis was the $129,000 after the motion to modify was filed. Because we agree with the trial judge that the amounts provided by the brother to Father did not constitute income to Father, we need not wade into the quagmire that the amounts provided by the brother were greater than $129,000.

Mother also challenges the Court's award of "blanket" tie-breaking authority to Father, arguing that the Supreme Court's[2] opinion in *Santo v. Santo*, 448 Md. 620 (2016),

[2] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md.

does not support an award with such broad parameters. Although the question before us appears to implicate the judge's determination of joint legal custody, counsel for Mother confirmed at oral argument that Mother is not challenging the award of joint custody, but rather that Father was given such broad tie-breaking authority:

> She requests that they continue to have joint legal custody. She objects to him having tie-breaking authority, and I guess that's an inference that she would rather if they just can't decide, that she have a court or a mediator or someone else decide it. But not that he gets to decide every issue because she says he should not be given tie-breaking authority.

For the reasons that follow, we shall hold that Judge McCullough did not err in his computation of Father's income for child support purposes nor in his award of tie-breaking authority to Father.

STANDARD OF REVIEW

In reviewing a child support determination, "[w]e will not disturb the trial court's discretionary determination . . . absent legal error or abuse of discretion." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002). *See also Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020). Whether gifts should be included in a parent's actual income for child support purposes is "within the sound discretion of the trial court, taking into account the totality of the circumstances." *Petrini v. Petrini*, 336 Md. 453, 462 (1994). *See also Frankel v. Frankel*, 165 Md. App. 553, 587 (2005) ("Awards made under FL 12-204(b) will only be disturbed if there is a clear abuse of discretion."). "[W]here the order involves an

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Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules, or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland. . . .").

interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Walker v. Grow*, 170 Md. App. 255, 266 (2006).

A trial court's custody determination is also reviewed for an abuse of discretion. *Santo*, 448 Md. at 625. In reviewing awards of tie-breaking authority within a custody determination, courts have adopted an abuse of discretion standard. *See, e.g.*, *Kpetigo v. Kpetigo*, 238 Md. App. 561, 584 (2018) (holding that a trial court's decision to award tie-breaking authority was not an abuse of discretion). "Though a deferential standard, abuse of discretion may arise 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,* 448 Md. at 625-26 (citing *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

DISCUSSION

Child Support

With respect to the child support computation issue, Judge McCullough made the following findings of fact and conclusions of law:

> Mother claims that Father's brother has been giving Father vast amounts of money that should be treated as income to Father. Father demurs, claiming that the money he has received from his brother have been loans, evidenced by promissory notes and that part of that money (albeit a relatively small amount) has been repaid.
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> In *Petrini v. Petrini*, 336 Md. 453 (1994), the Supreme Court of Maryland considered "whether a trial court can consider non-cash gifts to a parent in determining the amount of that parent's actual income for the purpose of calculating his child support obligation pursuant to Maryland's Child Support Guidelines." 336 Md. at 457. In that case, John and Debra Petrini were parties in a divorce case where child support was one of the

issues being litigated. "Although the court found John's take-home income to be only $14,063.00. . ., it found that his mother allowed her son to reside in one of her homes rent-free, that she paid the expenses relating to his ileostomy bag, and that she paid Eddie's [a minor child of John and Debra] health insurance premiums," *Id.* at 458 (emphasis added) (footnote omitted). The court placed a value on each of those items, and thus increased John's actual income "for purposes of computing the amount of his child support obligation under the statutory guidelines." *Id.* at 458-59 (footnote omitted).

In that omitted footnote, the Supreme Court remarked that the circuit court "did not factor in *all* the monetary contributions that John's mother made to subsidize her son's living expenses," omitting, for example, "the clothing, gas, food, and credit card payments that the mother made for her son." *Id.* at 459 n. 3 (emphasis in original). The Court "was unsure for how long and to what extent these 'gifts' would continue. Nor did it consider numerous cash gifts which the mother made to John on a regular and continuing basis." *Id.*

The Supreme Court was asked to consider what "gifts" a circuit court may include as part of a parent's actual income, for child support purposes. The Court explained that the "types of 'gifts' that may be includable as part of a parent's income in a particular case is within the court's discretion, and should only be reversed if it acted arbitrarily in exercising its discretion or if the judgment on the matter was clearly wrong." *Id.* at 462 (emphasis added) (citations omitted). That discretion is codified at Md. Code Ann., Fam, Law §12-201(b)(4): "Based on the circumstances of the case, the court may consider the following items as actual income: (i) severance pay; (ii) capital gains; (iii) gifts; or (iv) prizes." (emphasis added).

The Court noted that the General Assembly "purposely did not define with pin-point precision what it intended the term 'gifts' to encompass." To the contrary, the legislature "afforded trial courts the latitude to consider all the relevant circumstances in a particular case before making any determination about what should be considered in calculating a parent's support obligation." *Id.* at 463.

Here, the Court finds that the payments Father received from his brother were a hybrid between pure arms-length loans and gifts from a family member. There were indicia of true loans, including documentation ordinarily found as part of a loan. On the other hand, repayment was sporadic. In essence, these were what the Court finds to be a form of a family loan, where repayment is expected, but not strictly enforced. Given that finding of fact, and given that the loans are not ongoing (see *Petrini*, 336 Md. at 459 n.3) and not made on a regular basis, the Court exercises its discretion not to treat the payments as income to father, even if they were

determined to be gifts. They are not taken into account in determining Father's income.

Judge McCullough's findings of fact are supported by the record.

The first issue before us is whether Judge McCullough abused his discretion in initially determining that the sums provided by Father's brother were "family loans," i.e., "a hybrid between pure arms-length loans and gifts from a family member" and alternatively, that such monies, even if gifts, should not be included as income as gifts, based on the evidence adduced in the case.

Mother, however, argues that the monies paid to Father by his brother were gifts and not loans and that the court abused its discretion in not including the monies in Father's income in its calculation of child support. Father argues that there was substantial evidence in the record to support the court's finding that the monies were family loans.

Income for child support purposes is governed by Section 12-201(b) of the Family Law Article, Maryland Code (1984, 2019 Repl. Vol., 2023 Supp.). Child support obligations are divided proportionately between the parties based on their "adjusted actual incomes." Section 12-204(a)(1) of the Family Law Article. Under Section 12-201(b)(1),(3) of the Family Law Article, "actual income" is defined as income from any source to include sixteen categories of income.[3] Section 12-201(b)(3) of the Family Law

[3] The sixteen categories of income identified as actual income in Section 12-201(b)(3) of the Family Law Article (1984, 2019 Repl. Vol., 2023 Supp.) include:

Article. In contrast, the next provision in the Statute includes four items that may be included as income for child support purposes at the trial judge's discretion, "[b]ased on the circumstances of the case":

> (4) Based on the circumstances of the case, the court may consider the following items as actual income:
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> (i) severance pay;
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> (ii) capital gains;
>
> (iii) gifts; or
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> (iv) prizes.

Section 12-201(b)(4) of the Family Law Article. The consideration of whether a gift should be treated as income, thus, is at the discretion of the trial judge. *Petrini*, 336 Md. at 462.

Loans are not included in the lists of mandatory or discretionary income items, ostensibly because, unless forgiven, a loan creates an obligation to repay. *See C.I.R. v. Tufts*, 461 U.S. 300, 307 (1983) ("When a taxpayer receives a loan, he incurs an obligation to repay that loan at some future date. Because of this obligation, the loan

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> (i) salaries; (ii) wages; (iii) commissions; (iv) bonuses; (v) dividend income; (vi) pension income; (vii) interest income; (viii) trust income; (ix) annuity income; (x) Social Security benefits; (xi) workers' compensation benefits; (xii) unemployment insurance benefits; (xiii) disability insurance benefits; (xiv) for the obligor, any third party payment paid to or for a minor child as a result of the obligor's disability, retirement, or other compensable claim; (xv) alimony or maintenance received; and (xvi) expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business to the extent the reimbursements or payments reduce the parent's personal living expenses.

proceeds do not qualify as income to the taxpayer.”). Appropriate documentation of a loan is not dispositive; it is, however, indicative of a loan. *Howard v. Hobbs*, 125 Md. 636, 637 (1915).

While a loan comes with an obligation to repay, a gift does not involve consideration. *Park Station Ltd. Partnership, LLLP v. Bosse*, 378 Md. 122, 131 (2003). A gift is “something that is voluntarily transferred by one to another without compensation.” *Petrini*, 336 Md. at 463. It is a “voluntary transfer of property to another made gratuitously or without consideration.” *Id.*

In the present case, Judge McCullough initially determined that the payments Father received from his brother “were a hybrid between pure arms-length loans and gifts from a family member.” He found indicia of “true loans,” those being promissory notes from Father to the brother admitted into evidence. The trial judge also relied on repayment evidence, also admitted into evidence, to reflect that reimbursement was expected, albeit sporadic. Judge McCullough’s findings were supported by the record. The nature of the monies provided by the brother to Father could be considered “family loans” because repayment was expected and documented; he did not abuse his discretion.

Judge McCullough alternatively determined that even if the payments were to be considered gifts, he would exercise his discretion to exclude the payments from Father’s income, because the brother’s payments to Father were not ongoing and not made on a regular basis, relying on *Petrini v. Petrini*, 336 Md. 453 (1994). In that case, the Supreme Court addressed whether the trial court appropriately included as income, to determine Petrini’s child support obligation, medical expenses paid by his mother and the cost of his

living in her home rent free. *Id.* at 464. The trial court also, however, had not included as income monies given to Petrini the duration of which was unknown. *Id.* at 459 n.3. The Supreme Court in *Petrini* affirmed the trial court's inclusion of the rental cost and the medical expenses, but did not address the trial court's exclusion of questioned duration amounts because the latter were not in issue.

A case after *Petrini* has found and determined that amounts paid by third parties to a parent in a child support context should not be included as income, because they were not gratuitous, as the gifts in *Petrini* were. In *Allred v. Allred*, 130 Md. App. 13, 19, 21 (2000), we held that the trial court erred by imputing as gift income to Mrs. Allred, the rent and utilities paid by her live-in boyfriend, because the payments were made for his own use and were, therefore, not gratuitous.

In *Frankel v. Frankel*, 165 Md. App. 553, 588-89 (2005), we had the opportunity to interpret *Petrini* and found that gifts from relatives who are not obligated to support the child were properly excluded from income. In another case before this court, we employed the distinction between regular and ongoing payments from a third party that could be considered income, though gifts, although income was not determined where payments abruptly ended. *Reynolds v. Reynolds*, 216 Md. App. 205, 224 (2014) ("Importantly, the *Petrini* Court noted that the gifts in that case had no definite end . . . Unlike the ongoing series of gifts in *Petrini*, the payments from Wife's father in the present case had ceased abruptly . . . .").

In the present case, Judge McCullough did not err in excluding the brother's contributions from Father's income for child support purposes because the payments

were not regular and ongoing, as they ended in October of 2023. It is also important to note that, as in *Frankel*, Father's brother had no obligation to support the children. Thus, Judge McCullough did not err in either of his alternative rulings.

Tie-Breaking Authority

The trial judge made various findings relative to the best interests of the children and legal decision making:

> Having reviewed the evidence in this case-and having the considered the factors outlined in Sanders and Taylor-the Court finds that giving Father primary residential or physical custody of the children, subject to the access schedule outlined in the Order accompanying this Opinion, is in the best interest of the children. The Court agrees with Court Evaluator Bensadon:
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> > Both parties love the children, and the children love both parties. However, it was further noted by the children that Mr. Duzyol provides added stability in contrast to Ms. Duzyol who seems to be entrenched in her anger at Mr. Duzyol to which she has exposed the children resulting in them feeling conflicted as they love both parties.
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> (Custody Evaluation, p. 7) (cleaned up). This observation is corroborated by other evidence in the case, including the testimony of Dr. Bleach and the Court's interviews with the children. At pages 6-8 of his Closing Argument, Father compares the relative fitness of the parties as parents. The Court largely agrees with Father's position. While the Court finds that Mother is a fit parent, the Court also specifically finds that Father is more fit. The Court's findings regarding character and reputation mirror those regarding fitness of the parents.
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> Both parents claim to desire primary physical or residential custody of the children, although Mother's desire seems not to be entirely sincere, given her statements to Father (and as otherwise reflected on page 7 of the Custody Evaluator Report). The children strongly prefer to live primarily with Father. Given the support and encouragement Father provides the children—and particularly the positive support he provides Ayla regarding her academic efforts (in contrast to the negativity sometimes exhibited by Mother)—the material opportunities affecting the future lives of the children are best met by giving Father primary physical custody. The

> parents live very close to one another, which provides excellent opportunity for visitation. The ages of the children, and particularly their state of emotional maturity and development, strongly suggest that their interests are best served by giving Father primary physical custody. The remaining Sanders factors provided no guidance to the Court.
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> Father contends that the parties "have no capacity to communicate and reach shared decisions." (Father's Closing Argument, p. 9). He then recounts numerous instances where the parties have faced difficulties in trying to communicate and reach shared decisions. (*Id.* pp. 9-12). The Court agrees that the parties have had difficulty in these areas, but the Court also finds that they are willing to share legal custody and finds that the parents can overcome those difficulties. The Court has already touched on the fitness of the parents, the relationship established between each child and each parent, the preference of the children, and the geographic proximity of the parental homes. The Court agrees with Father's assessments about the demands of parental employment, the sincerity (motivation) of parents' requests, the financial status of each party, and the impact on state or federal assistance. (*Id.* pp. 13-14). The Court adopts those assessments as the Court's findings.
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> The Court also finds that joint legal custody would benefit the parents and that benefit would inure to the best interests of the children. Being involved in shared decision making will keep both parents invested and engaged in the wellbeing of their children and that feeling of engagement will inure to the benefit of the children. Thus, the Court awards joint legal custody, with tie-breaking authority given to Father in case of impasse. The Court finds that he is better able to navigate and deal with the friction between the parents and has exhibited more maturity, is less self-centered, and has exhibited more willingness to place the interests of the children over his own interests.

When joint legal custody has been determined, the option of giving "tie-breaking" authority in situations in which parents have difficulty communicating and negotiating in the best interests of the children is governed by *Santo v. Santo*, 448 Md. 620 (2016). *See also Shenk v. Shenk*, 159 Md. App. 548 (2004) (for an earlier discussion). In that case, the trial judge determined, and the Supreme Court of Maryland affirmed, that tie-breaking authority was consistent with joint legal custody,

> because the parents must try to work together to decide issues affecting their children. . . . We require that the tie-breaker parent cannot make the final call until *after* weighing in good faith the ideas the other parent has expressed regarding their children. . . .
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> . . . The requirement of good faith communication between the parents helps to ensure the parent with tie-breaking authority does not abuse the privilege of being a final decision-maker.

Santo, 448 Md. at 633-34.

Mother, however, though recognizing that *Santo* afforded trial courts discretion to include tie-breaking authority "to account for the parties' inability to communicate," *Santo*, 448 Md. at 646, argues that the trial judge did not sufficiently make findings and issue determinations based appropriately on those findings to award tie-breaking authority; we disagree. Judge McCullough's findings were supported by the record and he considered the appropriate *Taylor* and *Sanders* factors.[4]

Most importantly, though, Mother challenged that Father received tie-breaking authority for all decisions which she argues was not permitted by *Santo*. We disagree, because *Santo* did not preclude the award of broad tie-breaking authority to one parent.

Since *Santo*, this court has upheld an award of joint legal custody with one parent having broad tie-breaking authority. In *Kpetigo v. Kpetigo*, 238 Md. App. 561, 585-86 (2018), the trial court had found that both parents were fit but they suffered from communication issues due to the father's hostile behavior. The trial judge had also found that the father's actions were motivated more by his anger toward the other parent than what was in the children's best interests. *Id.* at 587. Based on these findings, the trial

[4] *Taylor v. Taylor*, 306 Md. 290 (1986); *Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

court awarded tie-breaking authority to one parent, and we held this was not an abuse of discretion. *Id.*

In the instant case, the trial court made sufficient findings to support Father's broad tie-breaking authority, which were supported by the record.

The trial court also recognized and adopted the *Santo* "guardrails" and was careful to emphasize that "the tie-breaker parent cannot make the final call until *after* weighing in good faith the ideas the other parent has expressed regarding their children" and that "[w]hen, and only when the parties are at an impasse after deliberating in good faith does the tie-breaking provision permit one parent to make the final call." As a result, Judge McCullough did not err in giving broad tie-breaking authority within the stated parameters of *Santo*.

CONCLUSION

We conclude that the trial court did not abuse its discretion in excluding payments from Father's brother in income for child support purposes. The trial judge also did not err in granting sole tie-breaking authority to Father.

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