Circuit Court for Harford County
Case No. 12-C-16-002687

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1249

September Term, 2022

SIMON TUSHA

v.

GRETCHEN TUSHA

Wells, C.J.,
Friedman,
Zic,

JJ.

Opinion by Wells, C.J.

Filed: June 8, 2023

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

This case involves a custody dispute between Appellant Simon Tusha ("Father") and Appellee Gretchen Tusha[1] ("Mother") regarding their minor child, ("child"). After the parties reached an oral agreement regarding custody and placed it on the record in the Circuit Court for Harford County, but before they submitted a consent order memorializing that agreement, Mother filed a Motion for Emergency Relief and/or Hearing on Temporary Relief asking for sole legal and physical custody. Judge Eaves[2] denied the requested relief and notated on the file: "Not an emergency; child not in danger. Proceed by usual course." The parties thereafter submitted an executed consent order to the court. Days later, Mother filed a Motion to Strike Consent Order, citing the same grounds in her motion for emergency relief. After a hearing, the circuit court granted Mother's motion and modified the previous temporary access order, eliminating Father's unsupervised visitation.

A hearing on the merits was held May 16-18, 2022. The court awarded Mother sole legal and primary physical custody, and Father gradually increasing visitation, beginning with twice weekly video calls. Father timely appealed and submits the following two issues for our review:

1. Did the Circuit Court for Harford County err in granting [Mother's] Motion to Strike Consent Order?

2. Did the Circuit Court for Harford County err in its consideration of the factors established in *Taylor v. Taylor* in reaching its custody determination?

[1] We note that in some of the proceedings below, the appellee is addressed by her maiden name, Aurand. We use the last name Tusha in this brief introduction merely for the purpose of consistency with the case caption; we do not mean any disrespect to her.

[2] The Honorable Angela M. Eaves now serves as a Justice on the Supreme Court of Maryland. At the time of her ruling in this case Justice Eaves was an Associate Judge on the Circuit Court for Harford County.

For the reasons that follow, we answer no to both and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Mother were married on July 31, 2010 and had their only child together in 2013. In September 2016, Mother filed a petition for protection from domestic violence against Father, which was granted and awarded Mother temporary custody of the child. Mother also filed second degree assault charges against Father, and additional charges for violating the protective order by contacting Mother while he was incarcerated. Father was held without bail from November 30, 2016 until his trial date on March 16, 2017. Father was convicted of assaulting Mother and found guilty of five counts of violating the protective order.[3] Father was incarcerated from October 2016 to November 2017, during which time he had no contact with the child. As a condition of Father's parole and probation, he had no contact with Mother. He began having supervised visits with the child at the Harford County Visitation Center.

On December 13, 2017, the Circuit Court for Harford County granted Mother a judgment of absolute divorce against Father, resolved all financial issues between the two, and awarded Mother custody. Father was awarded supervised visitation with the child twice a week at the Harford County Visitation Center, on a temporary basis, pending a Child Custody Evaluation. Father began his supervised visitation. Later, the Magistrate held a hearing to receive the Custody Evaluator's Report and subsequently entered a report

[3] Additionally, in February 2016, Father entered into a plea agreement with the U.S. Department of Justice for conspiring to defraud the United States. Father's federal incarceration would begin May 2019.

recommending Father have unsupervised visitation with the child on Fridays and Sundays from 10:00 a.m. to 3:00 p.m**.**

Mother filed Exceptions to the Magistrate's report, to which Father responded. At the exceptions hearing, the parties reached an agreement on a temporary access schedule which gave Father unsupervised access with the child every Thursday from after school until 7:00pm and every Sunday from 12:00pm until 6:00pm. The circuit court entered the temporary custody order and a merits hearing on custody was scheduled for October 11, 2018.

But at a September 28, 2018 pre-trial conference, the parties reached an agreement as to all child custody issues. The terms of the agreement were placed on the record, the parties acknowledged the terms of the agreement on the record, and a proposed consent order reflecting the agreement was to be filed with the court. The agreement provided Mother with sole legal and primary physical custody, and Father with unsupervised visitation every Wednesday after school until Thursday morning at the start of school (or 12:00pm when no school), alternating weekends, certain holidays, and two non-consecutive weeks of vacation.

On October 31, 2018, prior to the submission of the written consent order, Mother filed a Motion for Emergency Relief and/or Hearing on Temporary Relief, asking that the court "[g]rant her immediate sole legal and physical custody of [the child] pending further order of Court." The motion alleged that around September 22, 2018, albeit while the child was not in Father's care, Father's other minor daughter was sexually assaulted by a third party—a convicted child sex abuser and regular house guest of Father—at Father's home.

The motion emphasized that Father knew about the assault shortly after it occurred at 3:30 a.m., but did not contact police until 9:54 a.m., and did not inform the mother of the victim. Mother learned of the incident a month after the alleged incident, from the victim's mother. As has been discussed, the court declined to grant emergency relief, noting on the file: "Not an emergency; child not in danger. Proceed by usual course."

Shortly thereafter, Mother began withholding access to the child from Father. As a result, Father moved to enforce the parties' custody agreement even though the parties had not yet signed and submitted the consent agreement to the court.

While Father's motion to enforce the visitation schedule was still pending, during a scheduling conference, the parties signed the custody agreement. Although there are no docket entries for the scheduling conference, various parts of the record indicate that the conference was held before a judge, and Mother informed the court that she would ultimately be filing a motion to strike the consent order. The circuit court entered the consent order.

Shortly thereafter, Mother filed a Motion to Strike Consent Order and Request for New Trial, citing Rule 2-533, on the same grounds previously argued, namely, the sexual assault that occurred in Father's home on September 22, 2018, and Father's alleged prioritization of his own interests over his children's, as evidenced by his allowing a convicted child sex abuser around his children, waiting several hours before reporting the incident to police, and failing to report it to the victim's mother or Mother. The motion also adopted by reference Mother's motion for emergency relief.

Father filed an Answer and a Petition for Contempt and Enforcement. All of his

motions were to be heard with Mother's motion to annul the consent order.

After a two-day hearing, the court granted Mother's motion to strike the consent order and denied Father's motion to enforce the same. As a result, the court ordered Father to have pendente lite supervised visitation, two days a week, two hours each day, at the Harford County Visitation Center.

The merits hearing, originally scheduled for March 19, 2020, was not held until May 16-18, 2022 due to the COVID-19 pandemic. On August 25, 2022, the court entered a Memorandum Opinion and Order applying the *Taylor*[4] factors to award Mother sole legal custody and primary physical custody. Father was awarded gradually increasing access, beginning with remote access (e.g., FaceTime) twice weekly for no more than thirty minutes each time.[5] After three months, in addition to the remote visits, Father was permitted to have supervised access with the child where Mother now lived in Arizona, at a visitation center similar to the Harford County visitation center, for two hours a day once a week, every other week. Visits could increase only if a therapist recommended it and if Mother agreed. Father timely appealed.

DISCUSSION

[4] *Taylor v. Taylor*, 306 Md. 209 (1986).

[5] Father was released from federal incarceration in October 2020.

I. Mother's Motion to Strike Consent Order

A. Standard of Review

A consent order memorializing terms agreed to by the parties is not an interlocutory order, but a final judgment, as it amounts to a "'final' decision that disposes of the petition in terms of what is in the long-term overall best interest of the child." *Frase v. Barnhart*, 379 Md. 100, 112 (2003). However, a trial court's *decision to strike* a consent order—the case here—*is* an interlocutory order, because it has the effect of reopening, rather than finally resolving, the controversy between the parties. *See* Black's Law Dictionary, 819 (7th ed. 1999) (defining "interlocutory" as "interim or temporary, not constituting a final resolution of the whole controversy" and "interlocutory order" as a decision "that relates to some intermediate matter in the case; any order other than a final order.") Our review, however, is appropriate under Maryland Rule 8-131(d), which provides that "[o]n an appeal from a final judgment, an interlocutory order previously entered in the action is open to review by the Court unless an appeal has previously been taken from that order and decided on the merits by the Court." *Ruiz v. Kinoshita*, 239 Md. App. 395, 421 (2018) ("[I]n a case in which custody is litigated (and not consented to by the parties), an aggrieved party may either appeal the interlocutory custody order immediately or wait until the case results in a final judgment and appeal the custody order as part of the final decision.").

In this case, Father argues that the circuit court lacked the legal authority to strike the consent order. Thus, our review of the lower court's authority to grant Mother's Motion to Strike Consent Order is de novo, as it "involves the interpretation and application of

Maryland constitutional, statutory and case law." *Dzurec v. Bd. of Cnty. Commissioners of Calvert Cnty., Maryland*, 482 Md. 544, 560 (2023) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)).

B. Parties' Contentions

Father alleges that the circuit court granted Mother's motion to strike the consent order based on an "unsound foundation." He makes a number of claims, but at the heart of his argument is his contention that when Judge Eaves ruled that Mother's motion for emergency custody was "[n]ot an emergency – child not in danger. Proceed by usual course," the court simply denied Mother's requested relief. To bolster his assertion, Father contends that the Harford County Family Differentiated Case Management Plan requires that the administrative judge or designee decide, upon receipt of a motion alleging emergent circumstances, within two to three days whether an emergency hearing is necessary or if the case can proceed as normal. Relatedly, Father says that because Mother made no specific requests to keep her motion for emergency relief open and did not file a companion motion for temporary relief, she effectively waived all other claims for specific relief under Maryland Rule 2-305. Thus, Father concludes, the circuit court had no basis in law to essentially revive Mother's emergency motion.

Father also contends that Mother's reliance on Rule 2-533 is unavailing because Mother filed 11 days after the consent order's entry, not within 10 days as the rule requires. Moreover, says Father, the rule applies only to judgments from a trial, not a consent order that effectuates an oral agreement. Father adds that the "newly discovered evidence" basis under Rule 2-533 is inapposite since Mother filed her January 14, 2019 Motion to Strike

Consent Order on the same basis underlying her October 31, 2018 motion for emergency relief, and since she voluntarily executed the consent order on December 28, 2018 (and did not file a motion to set aside the September 28, 2018 oral agreement prior to executing the consent order), she cannot claim that the information about the sexual assault at Father's home was newly discovered.

Father also alleges that Rules 2-534 and 2-535 are unavailing because Mother's motion was not filed within 10 days of the entry of the January 3, 2019 consent order, and regarding 2-535 specifically, Mother cannot allege newly discovered evidence or fraud.

Mother counters that when Judge Eaves ruled that the motion for emergency relief would "proceed as usual," that decision denied only the "emergency" aspect of the motion but kept open the request for temporary relief. But, Mother adds, even if that ruling completely closed off any possibility of relief being granted based on Mother's emergency motion, her motion to strike the consent order incorporated her emergency motion as if fully restated, and thus all the same matters were before the court again in January.

Regarding Father's untimeliness claim, Mother counters that the tenth day after entry of the consent order was Sunday, January 13, 2019, and under Maryland Rule 1-203, when courts are closed the filing deadline extends to the next day the court is open. In this case, that was Monday January 14, 2019, which was the day she filed her motion.

Finally, Mother argues that Rule 2-533 permitted her to file a motion for a new trial, since "judgment" is defined in Maryland Rule 1-202(o) as "any order of court final in its nature entered pursuant to these rules," which accurately describes the Consent Order.

C. Analysis

On March 15, 2019, the circuit court granted Mother's Motion to Strike Consent Order:

> The next motion that the [c]ourt will address is the motion to strike the consent order. The consent order was agreed to on the record on September 22, 2018[6], but was not signed and entered by the by the [c]ourt until January 3rd, 2019. . . . There is a need to address the legal basis for the motion to strike. [Mother's] attorney suggest[s] that the [c]ourt apply Maryland Rule 2-533, which allows for a new trial if it is filed within ten days of a verdict or judgment. [Mother's] attorney also suggests in the alternative that the [c]ourt apply Rule 2-534 or 535 under the revisory powers of the [c]ourt.
>
> It is difficult to apply any of these rules to this situation since these rules all apply to a situation where there was a trial. There was no trial here. Although the matter had been scheduled for trial, the need for a trial was obviated when the parties entered into a settlement agreement concerning access. However, the [c]ourt finds that it does not need to rely on any of these rules to exercise revisory power.
>
> [Mother] also filed a request for temporary relief that is still ripe and pending [] with [the] [c]ourt. The request for emergency hearing was denied, but Judge Eaves, who reviewed it, permitted the request to stand and allowed it to be heard in the normal course. Her motion seeks relief in the form of sole legal and physical custody of [child] and requests such other and further relief as the nature of her cause may require. The [c]ourt notes that in this matter it sits as a [c]ourt of equity. The [c]ourt is aware and notes that the overall and overriding concern of the [c]ourt is and should be what is in the best interest of [child]. Therefore, the [c]ourt is not going to enter into any mental or legal gymnastics to determine under which Rule the [c]ourt can exercise revisory power over the consent order. The [c]ourt does not need to determine whether or if there was a fraud committed by [Father] when he did not disclose the incident involving the alleged sexual assault [of] his daughter to [Mother]. The [c]ourt maintains ongoing jurisdiction to alter and modify court orders and consent orders concerning the welfare of children.
>
> The [c]ourt finds that it is not in [the child's] best interest to follow the terms of the consent order, and the [c]ourt is going to grant the motion to strike the consent order – to strike the consent order, and the [c]ourt will modify the

[6] This is an apparent misstatement, also recognized by Father in his brief, as the terms were agreed to on the record on September 28, 2018.

> access order based on the motion for temporary relief that was filed by [Mother], I believe, in October 2018.

We now address each of Father's arguments in turn.

1. *When the circuit court denied Mother's request for emergency relief it denied only the allegedly emergent aspect of the motion. The court did not rule on the merits.*

We reject Father's first sub-argument that because the court had already declined the emergency relief Mother sought in her emergency motion for custody, there was no basis on which the court could consider the same alleged factual circumstances later on. We do not share Father's interpretation of the court's decision not to grant emergency relief to mean that the facts alleged were insufficient to warrant modification of custody. Rather, the court appears to have determined that while the circumstances did not amount to an emergency, the substance of the motion could be considered later at a hearing scheduled in "the normal course."

But, even if the court's ruling had disposed of the motion for temporary relief, Mother restated the same underlying facts in her motion to strike the consent order, putting them squarely before the court again. Viewed through this lens, the circuit court's statement that it would "modify the access order *based on the motion for temporary relief that was filed by [Mother] . . . in October 2018*" (emphasis added) and order that it would grant the Motion for Temporary Relief amounts to no more than harmless semantical error.

2. *The court had a legal basis to strike or modify the consent order.*

We forego full analyses of Maryland Rules 2-533 and 2-534 because, at a minimum, Rule 2-535 provides the circuit court with the authority to have revised the January 3, 2019

consent order on Mother's January 13, 2019 motion. The Supreme Court of Maryland[7] discussed twenty years ago how this Rule is a source of a circuit court's continuing jurisdiction over custody matters, when exercised to further a child's best interest:

> At some point, hopefully with dispatch, [following pendente lite orders,] the issue [of custody] comes before the court for "final" resolution, either through agreement of the parties or on evidence presented at a trial conducted by the court or a master appointed by the court.[ ] The court then has the benefit of either an agreement or the full record of evidence, and, based thereon, it renders a "final" decision that disposes of the petition in terms of what is in the long-term overall best interest of the child.
>
> Because the court retains continuing jurisdiction over the custody of minor children, no award of custody or visitation, even when incorporated into a judgment, is entirely beyond modification, and such an award therefore never achieves quite the degree of finality that accompanies other kinds of judgments. Nonetheless, as we pointed out in *McCready v. McCready*, 323 Md. 476, 481, 593 A.2d 1128, 1130 (1991), "[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." *See also Hardisty v. Salerno*, 255 Md. 436, 439, 258 A.2d 209, 211 (1969) ("[W]hile custody decrees are never final in Maryland, any reconsideration of a decree should emphasize changes in circumstances which have occurred subsequent to the last court hearing."); *Wagner v. Wagner*, 109 Md. App. 1, 674 A.2d 1 (1996). In *Haught v. Grieashamer*, 64 Md. App. 605, 611, 497 A.2d 1182, 1185 (1985), the [Appellate Court of Maryland] observed that such an order, if possessing the other required attributes of finality, was a judgment as defined in Maryland Rule 1–202(n)[8] and was therefore subject to Maryland Rule 2–535[.]

Frase, 379 Md. at 111–12. Rule 2-535 provides:

> (a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the

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

[8] "Judgment" is currently defined by Maryland Rule 1-202(o) as "any order of court final in its nature entered pursuant to these rules."

> judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.
>
> (b) Fraud, Mistake, Irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.
>
> (c) Newly-Discovered Evidence. On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.
>
> (d) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

To begin, as was recognized in *Frase*, "judgment" is defined in Rule 1-202(o) as "any order of court final in its nature entered pursuant to these rules[,]" which includes a final custody order based on the parties' agreement. 379 Md. at 111–12 (citing *Haught*, 64 Md. App. at 611). The January 3, 2019 consent order constitutes such an order, bringing it within the realm of Rule 2-535. In fact, Father concedes in his brief that "Maryland Rule 2-535 applies to all judgments, including judgments by consent."

Next, because Mother's Motion to Strike was filed within 30 days of January 3, 2019, the court's general revisory power over the consent order under subsection (a) of Rule 2-535 applies. The trial reference in subsection (a) ("if the action was tried before the court, [the court] may take any action that it could have taken under Rule 2-534[]") does not *require* that a trial have already occurred for the court to have revisory power. Rather,

that provision requires that *if* a court seeks to take the specific actions permitted under Rule 2-534 such as receiving additional evidence, amending the court's findings, amending the judgment itself, etc., the original judgment must have been entered in *that same* court. *Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366–67 (2013) ("As implied by Maryland Rule 2–535 and § 6–408 of the Courts and Judicial Proceedings Article, a circuit court may revise or modify only those final judgments entered by that circuit court." (quoting Md. R. 2–535 ("*the court* may exercise revisory power over *the judgment*") (emphasis added in *Kent Island*)), and Md. Code (1973, 2006 Repl. Vol.), Courts & Judicial Proceedings Article, § 6–408 ("*the court* has revisory power and control over *the judgment*") (emphasis added in *Kent Island*))).

Because Mother's motion to strike was filed within 30 days of the entry of the consent order, there is no need for a showing of fraud, mistake, or irregularity (see Rule 2-535(b), "on motion of any party filed *at any time*" (emphasis added)). Similarly, newly-discovered evidence under Rule 2-535(c) is not required, as a *new* trial was not granted. The court's order granting Mother's motion to strike did not mention her request for a new trial, most likely because it was inapplicable; *no* trial had yet occurred, since the need for a trial had been obviated when the consent order was entered. Moreover, Rule 2-535(c) simply provides a final opportunity for parties to move for a new trial when they could not have discovered the new evidence soon enough—within ten days of the entry of judgment—to move for a new trial under Rule 2-533. Assuming then, as Father's argument does, that the merits trial ultimately held in this case in May 2022 would be considered a "new trial" within the meaning of Rule 2-535, then Rule 2-533—which has no "newly-

discovered evidence" requirement—*would have* given the court sufficient authority to grant that new trial, as Mother's motion was filed "within ten days after entry of judgment." Rule 2-533(a). As Mother points out, the tenth day after entry of the consent order, January 3, 2019, was Sunday, January 13, 2019. Under Maryland Rule 1-203, when courts are closed the day of the filing deadline, time runs until the end of the next day the court is open—in this case, January 14, 2019, the day Mother filed her motion to strike.

Given that the court had revisory power over the consent order when Mother filed her motion, it was not a legal error for the court to grant Mother's motion to strike. And although Father does not challenge the merits of the court's decision itself, we conclude the court also did not abuse its discretion in concluding that following the consent order and its award of regular unsupervised visitation with Father would not be in the child's best interest. Finding no error, we affirm.

II. Custody Award

A. Standard of Review

We use three interrelated standards of review for child custody determinations:

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

J.A.B. v. J.E.D.B., 250 Md. App. 234, 246 (2021) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)) (alterations in *J.A.B.*).

The reviewing court "give[s] due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id.* (quoting *In re Yve S.*, 373 Md. at 584). Our Supreme Court has explained that

> it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and ... a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

Id. at 246–47 (quoting *In re Yve S.*, 373 Md. at 585–86) (alterations in *J.A.B.*).

B. Parties' Contentions

Father alleges the circuit court erred in its application of the factors from *Taylor v. Taylor*, 306 Md. 209 (1986) in awarding sole legal and primary physical custody to Mother. He addresses the factors, one-by-one, pointing out what evidence he believes the court failed to consider, or why the court's conclusions did not comport with the weight of the evidence.[9] Mother counters that the record contains ample support for the circuit court's findings, and that the circuit court's Memorandum Opinion and Order acknowledge all the evidence Father claims it failed to consider. Mother also notes that "[c]ompliance with Rule 2-522(a) does not require detailed explanation of judicial thought process on every item of evidence to demonstrate appropriate analysis."

[9] We will discuss some of these contentions in more detail below.

C. Analysis

We conclude that the circuit court did not abuse its discretion in assessing the *Taylor* factors and awarding sole legal and primary physical custody to Mother. Notably, the court considered Father's criminal convictions and found he lacked remorse for his crimes, based on repeated statements that it was "not his choice" to assault Mother or to violate the terms of her protective order against him. The court found "that [Father's] character is such that he will not follow any court orders which he perceives do not benefit him." The court also found that the parties are not capable of communicating and reaching joint decisions, as Father does not respect Mother's decision-making and is unremorseful for the harm he has caused her, and Mother cannot communicate and make decisions with Father because she is justifiably fearful of him. Father's previous conviction for assaulting Mother and the dysfunctional parenting relationship that results is such an "exigenc[y]" of the case, according to which the circuit court had discretion to award custody. *J.A.B.*, 250 Md. App. at 246, (quoting *In re Yve S.*, 373 Md. at 585–86). It was not an abuse of discretion for the court to assign these findings and conclusion significant weight in its custody determination.

Similarly, the circuit court concluded that the child's life would be significantly disrupted by custody with Father, since it would mean the child would be living with a parent she had not seen in three years, and it would require her to change schools and would remove her from the parent who has provided for her and cared for her for her entire life.

Based on evidence that the child witnessed and remembers vividly Father's abuse of Mother, and Father's lack of remorse for the abuse, the court also deemed it appropriate to consider the provisions of Md. Code Ann., Fam. Law. 9-101.1, which provides:

> (b) In a custody or visitation proceeding, the court shall consider, when deciding custody or visitation issues, evidence of abuse by a party against:
> (1) the other parent of the party's child;
> (2) the party's spouse; or
> (3) any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation proceeding.
>
> (c) If the court finds that a party has committed abuse against the other parent of the party's child, the party's spouse, or any child residing within the party's household, the court shall make arrangements for custody or visitation that best protect:
> (1) the child who is the subject of the proceeding; and
> (2) the victim of the abuse.

Md. Code Ann., Fam. Law ("FL") § 9-101.1. Thus, the court considered Mother's justified fear of father, the child's three years of separation from Father, and her tender age, in awarding sole legal custody to Mother and setting conditions of visitation with Father, such as that it be resumed gradually, that conversations be monitored, that access be supervised initially, and more. We do not find the court's underlying findings to be erroneous, its application of FL § 9-101.1 to be legally incorrect, or its ultimate conclusion to be an abuse of discretion.

Is it clear from Father's argument that he would have assigned different weight to the *Taylor* factors than did the trial court.[10] As we have discussed, we give broad deference

[10] Father conceded in his brief that the trial court properly considered several of the factors.

to the trial court's firsthand opportunity to observe the witnesses and assess their credibility, and so we will not reverse the trial court on a custody award unless there is a clear showing of an abuse of discretion. A mere difference of opinion on the weight to be assigned to certain factual findings—none of which, Father seems to dispute—does not indicate the court abused its discretion. Although it is unnecessary to address each contention in Father's argument, we will, for the sake of clarity briefly explain why some of his central arguments fail.

Father argues that the court should have focused more of its assessment of parental fitness and the character and reputation of the parties on the child's best interests, rather than on the parties' alleged prior acts. This argument makes little sense to us, as these factors—fitness and character and reputation of the parents—are individual considerations meant to inform what outcome is in the child's best interests. Moreover, aside from their demeanor in the courtroom, the parties' past acts is one of the few pieces of evidence available for assessing the parties' character.

Many of Father's contentions that the court did not consider certain facts are simply incorrect. Regarding the court's finding of Mother to be a fit parent, Father says the court "failed to properly consider Mother's impact on the minor child by moving her hundreds of miles away from Father and the minor child's paternal siblings." But the court *did* explicitly recognize that Mother moved the child out of state, in noncompliance with the pendente lite order, saying it did "not condone" her actions. Notably, however, Father agrees with the court's finding that Mother is a fit parent, so it is unclear how Father thinks

greater consideration of this fact would and should have influenced the court's assessment of parental fitness.

Similarly, Father contends the custody award was in error because "it inhibits the ability of the minor child to maintain and continue to develop her relationship with the paternal side of her family[.]" But we see plainly from the circuit court's Memorandum Opinion and Order, that it did, in fact, consider that the child "has been unable to maintain a relationship with her siblings and with Father's family since Mother moved her from Maryland and relocated her to Arizona. The potential to re-establish a relationship with her siblings and extended family exists and should be encouraged."

Father also says the court "failed to give adequate weight to the Facilitated Visitation Reports which indicated the positive interactions between the minor child and Father[.]" Once more, the court *did* consider under the "relationship established between the children and each parent" factor, that "the evidence shows that the previous supervised visits [during Father's incarceration] went well, and during that time, the minor child was happy during her visits with Father." This finding presumably informed the court's conclusion that it is in the child's best interest to reestablish contact and access with Father. As for the court's decision to nonetheless award Mother sole legal and primary physical custody, the *Taylor* factors are meant to provide the court with a roadmap; the considerations arising from one factor alone will not dictate the child's best interests.

Another class of Father's contentions is his disagreement with the circuit court's conclusions as to the parties' intentions. Father contends that the court should have concluded that "Father's request for custody was sincere and realistic, while Mother's

requests were based on her continued desire to alienate Father from the minor child." Father says this was apparent since Father's request still included visitation for Mother, while Mother's request did not account for any visitation with Father. But determination of a party's sincerity is the province of the trial court, given its exclusive opportunity to see the witnesses, observe their demeanor, and hear their testimony. A party's disposition or intention is not for this Court to second-guess based on nothing more than a cold record.

Concluding that the circuit court did not clearly err in its factual findings, applied sound legal principles, and did not abuse its discretion, we affirm.

THE JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.