Circuit Court for Montgomery County
Case No. C-15-FM-22-006111

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1279

September Term, 2024

REGINALD EVAN TAYLOR

v.

RENEE HILL TAYLOR

Friedman,
Shaw,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: February 6, 2025

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

This is an appeal from a judgment, entered in the Circuit Court for Montgomery County, modifying a custody arrangement between Reginald Taylor ("Father") and Renee Taylor ("Mother") and terminating Father's use and possession of the family home. Father, appellant, presents two questions for our review. For clarity, we have rephrased those questions as:

1. Did the circuit court err or abuse its discretion in denying Father's request for mediation?

2. Did the circuit court err or abuse its discretion in terminating Father's use and possession of the family home?

As to question 1, we hold that the circuit court did not err or abuse its discretion in denying Father's request for mediation. As to question 2, we hold that the court erred in terminating Father's use and possession of the family home. Accordingly, we affirm in part and reverse in part the court's judgment, and we remand the case for further proceedings consistent with this opinion.

BACKGROUND

Mother and Father were previously married. One child (the "Child") was born during the marriage.

In October 2022, Father filed for absolute divorce. Around that same time, the parties executed two documents: a marital settlement agreement ("MSA") and a parenting plan. Under the terms of the MSA, Father would receive "[u]se and possession of the family home and family personal property at no cost for up to six (6) years from the date of divorce[,]" while Mother would receive "[the] Family Home located at 5924 Avon Drive,

Bethesda, MD, 20814 . . . from date of divorce." Under the terms of the parenting plan, the parties agreed to "jointly make major decisions about the [C]hild" and to "jointly agree on the parenting schedule depending on circumstances at the time in [the Child's] best interest." In addition, the parties agreed that, in the event of a dispute related to the parenting plan, they would "attend at least 5 mediation session(s) before asking the court to intervene."

On January 19, 2023, the circuit court entered a judgment of absolute divorce. In that judgment, the court incorporated, but did not merge, the MSA and the parenting plan.

In October 2023, Mother filed a "Complaint for Modification of Custody, Dissolution of Use and Possession Provision, and Other Relief." The following month, Mother filed an amended complaint. In that amended complaint, Mother alleged that, in executing the MSA, the parties had agreed to continue to reside together in the family home following the divorce for the benefit of the Child. Mother alleged that, in October 2023, Father remarried, at which point Father's new wife and eight-year-old step-daughter had moved into the family home with Father, Mother, and the Child. Mother alleged that, around that same time, Father had demanded that Mother vacate the family home, which was now titled solely in Mother's name, per the terms of the MSA. Mother asked that the court terminate or dissolve the use and possession provision of the MSA. Mother also asked that she be awarded primary physical custody and sole legal custody of the Child. Mother stated that she and Father had been unable to jointly agree on a parenting schedule.

Shortly after the filing of Mother's amended complaint, Father filed a "Motion for Mediation and Dismissal of Complaint." Regarding Mother's request for custody, Father

noted that the parties had agreed to attend at least five mediation sessions before asking the court to intervene in a dispute as to custody of the Child. Father requested, therefore, that the court order the parties to attend mediation. As to Mother's claims regarding the family home, Father asserted that those claims should be dismissed because he vacated the home on November 13, 2023.

Mother thereafter filed a response to Father's motion, arguing that, although Father had vacated the family home, Mother was still seeking termination or dissolution of the use and possession provision in the MSA "so that Father cannot return to the family home." As to Father's request for mediation, Mother proffered that she had, on multiple occasions, attempted to coordinate a mediation schedule with Father but that Father had rebuffed those efforts. Mother also included, as an attachment, an email sent from Father to Mother in September 2023 in which Father stated that he was not interested in attending mediation sessions with Mother.

In December 2023, the court entered an order denying Father's "Motion for Mediation and Dismissal of Complaint."

The following month, Father filed a "Counter-Petition to Modify Custody." Father asserted that the purpose of the use and possession provision was to afford him "a residence for a period of 6 years without cost" and that he "forewent his claim to the sizeable share of the equity in the home in exchange for this bargained period of use and possession[.]" Father stated that, since he remarried, Mother had refused to allow him use and possession of the family home, which violated the MSA, and that he had been forced to move to a different location. Father asserted that he and Mother could no longer agree on custody

decisions and that a more concrete custody arrangement was necessary. Father noted that he "now lives with his new spouse at another location" and that he was in the process of purchasing a new home in Virginia, where he planned to move with his new spouse and step-daughter. Father asked that he be awarded primary physical custody and tie-breaking authority as to all legal custody decisions.

In May 2024, the circuit court held a hearing, at which the parties presented evidence and argument with respect to their various claims. As to the use and possession issue, Father argued that, in executing the MSA, he had bargained for exclusive use and possession of the family home for six years in exchange for relinquishing his share of the marital portion of the home. Father argued that the court did not have the authority to modify that provision. Mother countered that a use and possession provision automatically terminates when the party remarries, which Father did in October 2023. Mother also noted that the court could modify the use and possession provision if doing so would be in the best interest of the Child. Mother insisted that allowing Father to have use and possession for the entire six-year term would create a hostile environment for the Child.

In the end, the circuit court granted Mother's request to terminate Father's use and possession of the family home. The court found that, although Father had characterized the use and possession provision as a contractual bargain, "[t]he plain language of the agreement is use and possession." The court explained that the primary purpose of a use and possession provision was to permit a child to live in a familiar environment following a divorce. The court concluded that "it is clear from the action and words of the parties that they understood the concept" and that "they intended that the [C]hild's life would not be

disrupted, even though their marriage had gone through dissolution." The court found that the parties' initial plan of living together in the family home for six years became untenable once Father remarried. The court found that it was no longer in the Child's best interest that Father be allowed to have continued use and possession of the family home.

As to the custody issue, the court considered the requisite factors and found that it was in the Child's best interest that Mother be given primary physical custody, with Father having visitation pursuant to an access schedule. The court ordered that the parties were to share legal custody.

This timely appeal followed. Additional facts will be supplied as needed below.

STANDARD OF REVIEW

Appellate review of a trial court's decision regarding child custody involves three interrelated standards. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). First, any factual findings are reviewed for clear error. *Id.* Second, any legal conclusions are reviewed *de novo*. *Id.* Finally, if the court's ultimate conclusion is "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." *In re J.J.*, 231 Md. App. 304, 345 (2016) (citation and quotation marks omitted). "A decision will be reversed for an abuse of discretion only if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* (citations and quotation marks omitted).

DISCUSSION

I.

Parties' contentions

Father first argues that the circuit court erred in denying his request to enforce the provision of the parenting plan in which the parties agreed that they would "attend at least 5 mediation sessions before asking the court to intervene." Father notes that, under Maryland Rule 9-205, a court is required to order mediation if the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child. Father asserts that, by incorporating the parenting plan into the judgment of absolute divorce, the court had already determined that mediation was appropriate. Father contends that the court was therefore required to order mediation. Father also contends that the court's refusal to enforce the parenting plan's mediation provision had "the same effect of rewriting the contract," which was improper.

Mother asserts that the court's decision was not erroneous. Mother argues that ordering mediation would have been a waste of judicial resources given Father's documented reluctance to schedule mediation and the parties' clear inability to resolve custody disputes absent court involvement.

Analysis

Maryland Rule 9-205 is applicable "to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including . . . an action to modify an existing order or judgment as to custody or visitation[.]" Md. Rule 9-205(a)(1)(B). Under that rule, "[p]romptly after an action subject to this Rule is at issue,

the court shall determine whether . . . mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child[.]" Md. Rule 9-205(b)(1)(A). "If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute." Md. Rule 9-205(b)(3).

We hold that the circuit court did not err or abuse its discretion in refusing Father's request for mediation. The court's decision to deny Father's request came "promptly" after Mother filed her complaint for modification of custody and Father filed his motion for mediation. When that decision was made, it was clear from the parties' pleadings that mediation was unlikely to be beneficial to the parties or the Child. Thus, the court was under no obligation to order mediation pursuant to Maryland Rule 9-205.

Moreover, the court's obligation pursuant to Maryland Rule 9-205 was not triggered simply because the court may have tacitly acknowledged the appropriateness of mediation when it entered the judgment of absolute divorce nearly one year prior. Although mediation may have been appropriate at that time, the parties' circumstances had changed drastically between when the parenting plan was accepted by the court and when the court denied Father's request for mediation. Father's suggestion that the court was somehow bound by its prior determination is without merit. *See Caldwell v. Sutton*, 256 Md. App. 230, 270 (2022) ("[R]econsideration of custody orders generally should focus on changes in circumstances which have occurred subsequent to the last court hearing." (citation and quotation marks omitted)).

We likewise find no merit to Father's suggestion that the court lacked the authority to "rewrite" the mediation provision of the parties' parenting plan. Section 8-103 of the Family Law Article of the Maryland Code ("FL") states, in pertinent part, that a court "may modify any provision of a deed, agreement, or settlement with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child." FL § 8-103(a). Because the provision at issue here related to the care and custody of the Child, the court was empowered to modify that provision if doing so would be in the best interests of the Child. Under the circumstances, we cannot say that the court abused its discretion in refusing to enforce the mediation provision of the parties' parenting plan.

II.

Parties' contentions

Father next claims that the circuit court erred in terminating his use and possession of the family home. Father notes that, under FL § 8-210, when a provision concerning use and possession of a family home terminates, a court is required to adjust the equities and rights of the parties. Father asserts that the court failed to comply with that statute.

Mother contends that Father's use and possession of the family home automatically terminated upon his remarriage. Mother notes that Father deeded the property to her following dissolution of the marriage and that, since that time, she has taken care of all necessary expenses related to the home. Mother asserts, therefore, that any issues concerning the family home have been resolved.

Analysis

When a divorce is granted, "the court may determine which property is the family home and family use personal property[.]" FL § 8-207(a). In so doing, "the court may: (i) decide that one of the parties shall have the sole possession and use of that property; or (ii) divide the possession and use of the property between the parties." FL § 8-208(a)(1). The purpose behind those powers is to enable a child to continue living in a familiar environment following a divorce and to provide continued occupancy of the home to a parent who has custody of the child and has a need to live in that home. FL § 8-206. When a use and possession provision is made part of a final order or decree, that provision is subject to modification or dissolution by the court. FL § 8-209. In addition, a court has the power to modify any provision of a marital settlement agreement "with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child." FL § 8-103(a). Finally,

> [w]hen a provision that concerns the family home or family use personal property terminates, the court shall treat the property as marital property if the property qualifies as marital property, and adjust the equities and rights of the parties concerning the property as set out in § 8-205 of this subtitle.

FL § 8-210(c).

Here, the record makes plain that the provision in the MSA granting Father use and possession of the family home was considered, accepted, and enforced by the court as a "use and possession" provision pursuant to the statutory authority outlined above. As such, when that provision was terminated, the court was required to "treat the property as marital property if the property qualifies as marital property, and adjust the equities and rights of

the parties concerning the property as set out in § 8-205 of this subtitle." FL § 8-210(c). The court failed to do so, and that failure constituted an abuse of discretion. *See Mitchell v. Hous. Auth. of Balt. City*, 200 Md. App. 176, 205 (2011) ("The failure to exercise discretion when its exercise is called for is an abuse of discretion." (citation and quotation marks omitted)). We therefore must reverse that portion of the court's judgment and remand the case so that the court can exercise its discretion pursuant to FL § 8-210(c). In so doing, we note that Father, in executing the MSA, agreed to relinquish to Mother his marital share of the family home in exchange for use of possession of the family home for six years. That bargained-for exchange was curtailed when the court terminated the use and possession provision before the end of the agreed-upon term. The court should be mindful of that when adjusting the equities and rights of the parties pursuant to FL § 8-210(c).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND REVERSED IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID ½ BY APPELLANT AND ½ BY APPELLEE.