Circuit Court for Anne Arundel County
Case No. C-02-FM-20-001706

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1370

September Term, 2022

JEFFREY REICHERT

v.

SARAH HORNBECK

Wells, C.J
Friedman,
Shaw,

JJ.

Opinion by Shaw, J.

Filed: June 2, 2023

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** 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 appeal stems from an ongoing dispute between Jeffrey Reichert and Sarah Hornbeck regarding the care and custody of the parties' minor child, ("G.R."). Following an eight-day hearing, the Circuit Court for Anne Arundel County awarded Mother sole physical and legal custody of G.R. Father timely appealed and presents the following questions for our review, which we have rephrased[1]:

1. Did the Circuit Court err in awarding Appellee sole physical and legal custody of the parties' minor child?

2. Did the Circuit Court err in its determination of child support and attorney fees?

For the reasons discussed below, we affirm.

BACKGROUND

The parties married in 2009, and G.R. was born later that same year. The parties divorced in 2011 and as part of the divorce, both parties were granted joint physical and

[1] Father's questions were phrased as:

I. Did the Circuit Court err in finding that there was no future likelihood of harm by the Appellee despite credible evidence to the contrary?
II. Did the Circuit Court err in finding a future likelihood of harm by the Appellant without sufficient evidence to support such a finding?
III. Did the Circuit Court err in relying upon the report and opinion of and delegating its fact-finding role to the custody evaluator?
IV. Did the Circuit Court err in its admission of and reliance upon deficient, unauthenticated psychological evaluations?
V. Did the Circuit Court err in its determination of child custody?
VI. Did the Circuit Court err in its determination of attorney's fees?
VII. Did the Circuit Court err in its determination of child support?

legal custody of G.R., with tie-breaking authority to Mother. The parties subsequently filed multiple motions to modify custody and petitions for contempt.

In June 2019, Father filed a Petition for Protection on behalf of G.R. in the Circuit Court for Baltimore City after he was in Mother's care while she was intoxicated. The court issued a Final Protective Order ("FPO") in August 2019 that awarded Father custody of G.R. and supervised visitation with Mother every other weekend. The FPO was effective until February 8, 2020. In October 2019, the parties consented to an order in a modification of custody case and agreed to joint legal custody, with primary physical custody and tie-breaking authority awarded to Father. In February 2020, due to Mother's failed sobriety tests, Father filed a request to extend the FPO and the order was extended by the court until August 2020.

In July 2020, Mother filed a motion to modify custody, in the Circuit Court for Anne Arundel County, where Father lived. She alleged that Father was denying her access to the parties' minor child, and she expressed concern for his safety. The Circuit Court ordered both parties undergo substance abuse assessments, and the court ordered psychological and custody evaluations. Prior to a hearing on Mother's petition to modify custody, in April 2021, the parties agreed to a *pendente lite* order. The order specified that the terms of the October 2019 consent order would remain in effect.

In May 2021, Mother filed a motion to modify the *pendente lite* order, alleging that Father continued to deny her visitation. Following a hearing, the court determined that Father had "unjustifiably interfered" with Mother's access to G.R., and Father was ordered

to produce the minor child for visitation. He failed to comply with the court's order and a body attachment was issued. Father was found in contempt and committed to the Anne Arundel County Detention Center until G.R. was produced in court. Father was released after G.R. was produced.

In September 2021, Mother filed another motion to modify the *pendente lite* consent order, which Father opposed, and a two-day evidentiary hearing was held February 1-2, 2022. On the second day, the judge, and Ms. Harger, a court appointed custody evaluator, spoke with G.R. privately. The judge relayed and Ms. Harger testified G.R. told them that when he was ten-years old "his dad said, 'I can't hide things from you anymore,' and shared some of the things that were going on in court with his mother."

During the conversation, G.R. "referred to his mother as a psychopath" and stated, "everything she does annoys me." When the judge asked Ms. Harger for her recommendations, she stated: "my concern is that [G.R.] is being coached. His relationship is very damaged with his mother . . . he needs to see his mother immediately. My concern is as to what ongoing impact contact with his dad would have on his ability to have a relationship with his mother."

At the conclusion of the hearing, the court found that "it's in [G.R.'s] best interest to have one opportunity to be alone with his mother and without his father . . ." because the judge did not have "any confidence that [G.R.] will ever go see his mother under these current circumstances." The court explained that throughout the conversation with G.R., it became "clear to the Court that Dad had explained, in detail, everything that went on

yesterday. . . ." The judge stated that "Mom has not seen the child more than twice, really, for Christmas and Maine, in two years. And she won't see him again, because Dad moved out of state and is simply not going to make him available." As a result, the court "modif[ied] the custody order, the [*pendente lite*] order to grant sole physical and legal custody to Mom between now and the merits hearing in September. We're going to have a review hearing in 90 days. During the period of the 90 days, [G.R.] is not to have any communication with his dad."

Following the 90-day period, in May 2022, a review hearing was held that reinstated G.R.'s visitation with Father. The court ordered that Father "shall not discuss the case, Mother, or her family with Minor Child."

In July 2022, at a subsequent review hearing, after hearing additional testimony, the court found that "father's continued involvement of the Minor Child in these Court proceedings constitutes mental abuse." The Court stated:

> [i]f the court finds that a party has committed abuse, the court shall make arrangements for custody or visitation that best protect the child who's the subject of the proceeding. . . . I still am hopeful that the dad can do [supervised visitation]. But it is of sincere concern to the Court that allowing unsupervised visitation will be detrimental to the child, further detrimental to the child. And I'm not ready to do that. So I'm going to continue the visitation on a supervised basis.

In its rationale, the Court stated:

> It is clear to the Court, based on all of the professionals the Court has heard in this case, to date, that the relationship that the father has fostered with the child, the estrangement from the mother that the dad has been a participant in, and the continued denial of visitation with the mother, for a whole series of reasons, for over a year, off and on, for most of a year and a

> half, has been psychologically damaging to the child. And I've never made that finding before. I'm making that finding now, because I really don't think there's any question that involving a child to this extent in a child custody proceeding is detrimental to that child's mental state. So I do believe there is mental injury to the child. . . . I think it's damaging every time the court sees that child, and the child participates, it's damaging to the child.

An eight-day merits hearing was held from September 6-15, 2022, to address modification of custody, visitation, child support, and attorneys' fees issues. The court heard testimony from Father, Mother, Ms. Helen Laird, a custody evaluator for the Circuit Court for Anne Arundel County, Ms. Gena Caruma, a child access supervisor, family members, and friends.

At the conclusion of the hearing, the judge ordered, in part, that: 1) "legal custody is solely awarded to the Mother"; 2) "neither party shall discuss the legal aspects of this case or any other case between the parties, or other adult issues with, or in front of the Child"; 3) "neither party shall disparage the other party. . . in front of the Child"; 4) "physical custody shall be granted to the Mother, with visitation to Father . . ."; 5) "the Court finds that there is no likelihood of abuse by Mother; and the Court is unable to make a finding at this time that the Father can have unsupervised visitation with the Child without the likelihood of further damage to his psychological and emotional well-being"; 6) "Father shall pay the Mother the sum of $2,000 on the first day of each month as child support effective October 1, 2022"; 7) "Father shall pay retroactive Child Support for the period from February 3, 2022 until September 15, 2022 in the total amount of $14,000 (or 7 months at $2,000 per month) by paying an additional $500 per month until paid in full"; 8)

"Father shall pay Mother $100,000 in attorney's fees, at the rate of $8,000 per month, on the 1st day of each month beginning on October 1, 2022, until paid in full." Father timely appealed.

STANDARD OF REVIEW

"We review child custody determinations utilizing three interrelated standards of review." *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). First, when "scrutiniz[ing] factual findings, the clearly erroneous standard . . . applies." *Id.* Second, if there is an error of law, "further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless." *Id.* Finally, when the ultimate conclusion of the court 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." *Id.* "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.'" *In re J.J.*, 231 Md. App. 304, 345 (2016) (internal citation omitted).

"While child support orders are generally within the sound discretion of the trial court, . . . not to be disturbed unless there has been a clear abuse of discretion, where the order involves an 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." *Walter v. Gunter*, 367 Md. 386, 391-92 (2002).

"Decisions concerning the award of counsel fees rest in the sound discretion of the trial court. An award of attorney's fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Horsley v. Radisi*, 132 Md. App. 1, 30-31 (2000) (citations omitted).

DISCUSSION

I. The Court did not err in finding that Mother did not pose a future likelihood of harm to the parties' minor child.

Father argues that Maryland law requires a finding by the court that there is no future likelihood of harm prior to granting custody. He contends the court erred in determining that Mother posed no future likelihood of harm despite her purchasing alcohol and missing scheduled sobriety tests numerous times "between October 2019 and 2021." He also argues the doctrine of collateral estoppel required the court to accept the Circuit Court for Baltimore City's findings that there was a likelihood of abuse by Mother from an August 2019 Final Protective Order.

Mother argues the "lower court's findings under Maryland Code, Family Law, § 9-101 are supported by the record" and the "court was well within its discretion from the record at trial to find that [Mother] had taken affirmative steps to address her previous abuse of alcohol." Mother stated she has not consumed alcohol since January 6, 2020, and that she completed a 26-week alcohol education and treatment program in April 2020. She argues that "daily Soberlink testing results proved that for more than two years prior to trial she had not consumed any alcohol."

Under the Family Law Article of the Maryland Annotated Code § 9-101, a court, facing allegations of child abuse or neglect in a custody or visitation proceeding, is required to first determine whether there are "reasonable grounds to believe" that the parent seeking custody or visitation has abused or neglected a child. FL § 9-101(a). U*pon a finding that reasonable grounds exist* to believe that abuse or neglect has occurred, the court must then make a specific finding as to whether child abuse or neglect is likely to occur if custody or visitation rights are granted to the parent responsible for the abuse or neglect. FL § 9-101(a) (emphasis added).

Collateral estoppel applies "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the parties in any future lawsuit." *Tubaya v. State*, 210 Md. App. 46, 49 (2013). The doctrine requires an examination of several factors, including whether: 1) the issue decided in the prior adjudication is identical with the one presented in the action in question; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted is a party or in privity with a party to the prior action; and 4) the party against whom the doctrine is asserted was given a fair opportunity to be heard on the issue. *Garrity v. Md. State Bd. Of Plumbing*, 447 Md. 359, 369 (2016).

Father has provided no caselaw or statutory basis and we have found none for his assertion that a finding in a protective order case is dispositive of an issue in a child custody case and that collateral estoppel applies in such cases. We also note that the finding in the

protective order case occurred more than two years prior to the court's determination in the present case.

In *Coburn v. Coburn*, the Supreme Court of Maryland[2] reiterated, quoting from *Barbee v. Barbee*, 311 Md. 620, 623 (1988), that "The purpose of the protective order statute is to protect and 'aid victims of domestic abuse by providing an immediate and effective' remedy. . . . Thus, the primary goals of the statute are preventative, protective and remedial, not punitive. The legislature did not design the statute as punishment for past conduct; it was instead intended to prevent further harm to the victim." 342 Md. 244, 252 (1996).

In *Kastenelenbogen v. Kastenelenbogen*, the Supreme Court of Maryland acknowledged that ". . . the issuance of a protective order and the provision of this kind of relief in it may have consequences in other litigation. A judicial finding, made after a full and fair evidentiary hearing, that one party had committed an act of abuse against another is entitled to consideration in determining issues to which that fact may be relevant. Living arrangements established as the result of a protective order may have relevance in determining custody, use and possession and support in subsequent litigation." 365 Md. 122, 137 (2001). The *Kastenelenbogen* court, however, did not conclude that collateral estoppel applied in such cases. Rather, the court simply found that issues from a prior protective order case "may be relevant" in other litigation.

[2] 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.

Here, the court held in 2022, and the parties do not dispute the court's finding, that there was "no existing finding of abuse as it pertains to Ms. Hornbeck. . . ." The court acknowledged that "unsupervised visitation was ordered by some judge in another jurisdiction other than me with her years ago . . ." and the court stated, "There is nothing in this court that has ever found that she has abused the child." As we see it, the court considered the prior circumstances, the court did not find that those circumstances were relevant to the proceedings before it, and thus, did not find reasonable grounds that abuse had occurred. The court also had been presented with evidence regarding Mother's alcohol purchases and testing and did not find those circumstances to be dispositive.

Because the court determined that abuse had not occurred, under the statute, the court was not required to make a finding that Mother posed no future likelihood of harm. On this record, the court did not err.

II. The Court did not err in finding that Father posed a future likelihood of harm to the parties' minor child.

Father argues the court made an unsupported finding of abuse against him at the July 2022 hearing *sua sponte* despite him having no contact with G.R. for ninety days. He argues that "G.R. was flourishing under his . . . custody" and that the "record is void of credible evidence that [he] poses a risk of future harm to G.R."

Mother counters that the court was not acting *sua sponte* because "[t]he issue of the continuing pattern of alienation of the minor child as abuse was first raised on [Mother's] Petition to Modify the Consent Pendente Lite Order filed on or about September 8, 2021[.]"

She argues "the lower court was equally within its discretion in finding that [Father's] course of conduct, in involving G.R. as a co-counsel in his case to advocate for [Father] while demeaning and degrading [Mother] to G.R. was not only abuse, but [Father] failed to demonstrate that his own actions in continuing this mental harm to the child would not continue."

She contends Father's "history of alienation, over-involvement and resulting mental abuse of G.R. can be easily found throughout the record." She states that the court made its finding of abuse "after it was disclosed G.R. had participated in [Father's] YouTube Videos, and posted on Facebook, criticizing the lower court's granting of custody pendente lite to [Mother], as well as his history of including the minor child in court filings, . . . and discussing the case extensively with the minor child."

Under the Family Law Article, § 5-701(b)(1):

> (b)(1) Abuse means:
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> (i) the physical or *mental injury* of a child under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed by: (1) a parent; (2) a household member or family member; (3) a person who has permanent or temporary care or custody of the child; (4) a person who has responsibility for supervision of the child; or (5) a person who, because of the person's position or occupation, exercises authority over the child;

Md. F.L. § 5-701(b)(1)(i) (emphasis added).

During the September 2022 merits hearing, the custody evaluator testified that "[Father] continued to deny [Mother] any of the court ordered access time between February 2021 and August 2021[]" leading to his incarceration. "But once G.R. was returned to Mr. Reichert on September 2nd, 2021, he again refused to produce G.R. for the

court order access schedule and never once producing G.R. for visitation." As a result, the custody evaluator recommended that "[Mother] be granted sole legal custody of G.R.[]" and "primary physical custody."

Her recommendations were based on her direct involvement in the case and her testimony at the July review hearing. She stated:

> Mr. Reichert, however, persists in his entrenched position that he is the only parent who cares about [G.R.]. He is the only parent [G.R.] needs. [G.R.] is not safe in his mother's care. The Mother gets drunk while caring for the child. These allegations have no merit. For [G.R.] to repeatedly be exposed to this false narrative is damaging to him.
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> Mr. Reichert has engaged in a campaign of harassment of Ms. Hornbeck using the legal system and media outlets. He has paid for media propaganda to disparage her publicly. It appears that he has little understanding or regard for how this will impact [G.R.] in the future. Mr. Reichert has engaged in adultification of [G.R.], distorting the boundaries of the parent-child relationship by discussing age-inappropriate information with him in talking about the custody proceedings. He has placed [G.R.] in the role of ally in the battle against [G.R.]'s own mother.
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> * * *
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> There is a damage to a child's critical thinking when he aligns one parent's view of reality despite conflicting evidence, objective evidence to the contrary. When the Father attempts to convince the child that the police, lawyers, therapists, custody evaluator and the judge have all conspired against him during custody litigation, the child will experience confusion, lack of trust in authority, self-doubt, fear, long-term pathological, psychological impact on him. Also behaving in ways that are not in line with his personal values are going to result in intense discomfort for him.

At the conclusion of the July review hearing, the judge determined that Father's conduct towards G.R. constituted mental abuse. Furthermore, at the conclusion of the

September merits hearing, the judge found "there is no likelihood of abuse by Mother and that the court is unable to make a finding at this time that Father can have unsupervised visitation with the child without the likelihood of further damage to his psychological and emotional wellbeing."

In support, the judge stated:

> that dad has enlisted [G.R.] in a 10 year battle with mom. [G.R] at one time refused to call her mom, called her a Devil in human skin, which the Court found very disturbing. The Court finds that father is unable to follow Court orders, unable to foster a relationship between [G.R.] and his mother, and unable to move forward from endless disparagement and litigation involving the child. All of these things led the Court to make a finding of mental abuse by the father, which the Court did at a recent hearing before the merits began. And that is the basis for the situation up until today of supervised visitation with the father.
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> * * *
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> In addition, the custody evaluator has testified that father has a distorted view of reality, that father and son are bonded but it is in a mentally damaging and unhealthy way for the child. That dad has acted to cause severe parental alienation; has delusional thinking; is paranoid of the courts, the police, the law; and all this is damaging the child. That he has erratic and delusional thinking. He has lied to the child and he has engaged the child in his distorted world.
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> The Court finds that dad by his actions and by [G.R.] observing him is teaching [G.R.] not to trust professionals' authority or the Court's. The Court finds that dad has a total lack of insight or self-awareness as to the impact of his actions and his statements to his son, [G.R.].
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> * * *
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> The Court finds that father disparages of mom and her parents, and the custody evaluator testified that she did not believe, nor does the Court believe that dad is willing to foster a relationship with mom.

* * *

> The Court made that finding at a recent hearing based on mental abuse as a result of the father's inability to refrain from involving the child in these proceedings and the things that he has said the child with respect the law, professionals, the Court, his mother, and the like. *The Court finds all of those things to be indications of mental abuse*, which are emotionally damaging to the child.
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> * * *
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> The Court's supervision orders specifically required that the father not talk about the case, not talk about -- not say negative things about mother and her family, not involve the child in these proceedings. Instead of that, the testimony was that father made two videos entitled -- one was entitled 'Judicial Child 2 Abuse.' I frankly don't know what the other one was titled. I haven't watched either one. But there was testimony that was unrefuted that [G.R.] participated and is to be heard in those videos. Clearly, father has failed to demonstrate at any level that he has an understanding that these things are not good for this child. So as a result, the Court is unable to find today that the father has satisfied the Court that this psychological and emotional abuse will not continue.

(Emphasis Added).

Based on the record before us, the court did not err in finding that Father posed a future likelihood of harm to the child. The court's factual findings were supported by the record, the court's decision was grounded in its proper analysis of the statute, and the court did not abuse its discretion.

III. The Court did not err in relying upon the testimony of Ms. Laird as the court appointed custody evaluator.

Maryland Rule 9-205.3(f)(1) provides, in part:

> **(f) Description of Custody Evaluation.**
> (1) *Mandatory Elements.* Subject to any protective order of the court, a custody evaluation shall include:
> (A) a review of the relevant court records pertaining to the litigation;

> (B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child;
> (C) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed;
> (D) a review of any relevant educational, medical, and legal records pertaining to the child;
> (E) if feasible, observations of the child with each party, whenever possible in that party's household;
> (F) contact with any high neutrality/low affiliation collateral sources of information, *as determined by the assessor*;
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> **Committee note:** "High neutrality/low affiliation" is a term of art that refers to impartial, objective collateral sources of information. For example, in a custody contest in which the parties are taking opposing positions about whether the child needs to continue taking a certain medication, the child's treating doctor would be a high neutrality/low affiliation source, especially if he or she had dealt with both parties.

Md. Rule 9-205.3(f)(1)(F) (emphasis added).

Father argues the court's "reliance upon Ms. Laird's testimony is tainted by non-compliance with Md. Rule 9-205.3 and bias against [Father]." He argues that Ms. Laird failed to comply with Md. Rule 9-205.3 by not contacting the "multiple neutral, collateral contacts" that he provided to her. He contends that Ms. Laird is biased because her "custody evaluation devolved from an objective inquiry and evaluation" to a "subjectively disparate attack" on him and his "credibility as a father." He asserts that the court erred in relying on her report and opinion in its fact-finding role.

Mother argues that Ms. Laird complied with her legal duties as custody evaluator. She states Ms. Laird spoke with both parties, G.R., and collateral sources before issuing her original report. She asserts that the "original report reflects that each of the

requirements as set forth in 9-205.3(f)(1) were met." Mother further argues the assertion of bias is "unsupported by the record."

During the July 2022 review hearing Ms. Laird testified, "I reviewed information provided by Dr. Hawkins, who is Mr. Reichert's therapist. I interviewed Mr. Reichert, Ms. Hornbeck, [G.R.], Rick Tabor [visitation supervisor] and Susan Krohn [reunification therapist]. And I had some additional phone contact with collateral sources, Detective Farough, Sergeant Isaac and Lisa Thatcher [camp director]."

At the September 2022 merits hearing Ms. Laird testified:

> I have done two custody evaluations. The first one was filed on February 16th, 2021 and the second one was filed on August 5th, 2022. I also prepared testimony for two hearings in between on May 12th and June 17th. All together I have spent time interviewing the child, I have interviewed the mother on numerous occasions. I have interviewed [the] father on number occasions. I have had interviews with collateral contacts and I have reviewed records including medical records, mental health records, hair follicle test results and Maryland judiciary case search, Anne Arundel County Police records, DSS records, I have reviewed the court file. And I have reviewed professionals involved in the case. I have reviewed the psychological evaluations of both parties. I have reviewed the academic records of [the] child. And I listened to audio transcripts from times in court that I wasn't here.

Father's assertion that Ms. Laird failed to contact collateral contacts is not supported by this record as Ms. Laird specified her contacts in testimony and then reiterated in additional testimony that she "had interviews with collateral contacts." Under subsection (f)(1)(F) of the Rule, the inclusion of collateral contacts is "determined by the assessor." As such, Ms. Laird had discretion to determine who she contacted as a collateral source and her evaluation fully complied with the Rule. Further, our review of the record found

no evidence of bias. Rather, Ms. Laird simply provided the court with the information she gathered during her evaluation and Father disagrees with the substance of that information.

On review, our task is not to substitute our judgment for that of the judge who has had the ability to assess the credibility of witnesses. The decision made by the judge, here, was based on factual findings that are supported by the record and the statute. The court neither erred nor abused its discretion.

IV. The Circuit Court did not err by admitting and relying upon the psychological evaluations.

Father argues the court erred in admitting the psychological evaluations of Dr. Wolff and Dr. Lefkowits into evidence without proper authentication and the ability to cross-examine them. He states, "Dr. Wolff's report was devoid of any meaningful information" and "contains material misstatements and omissions of fact." He asserts Dr. Wolff's report failed to "identify that Appellee's access following the 2019 Order was supervised," failed to "address the significan[ce] of the 2019 event in Wicomico County," and failed to "consider the 2019 FPO issued against [Mother]." He asserts "Dr. Lekowits' Report contained multiple diagnoses, unsupported by the findings and information presented[.]" He states Dr. Lefkowits "failed to make contact with" or seek "expert input and opinion" from his therapist, Dr. Hawkins, before issuing his report.

Mother contends that Maryland Rule 9-205.3(i)(4) permits the inclusion of psychological reports as an optional portion of the custody evaluation. She argues that Father "failed to show how considering these foundational documents prejudiced him, as Ms. Laird testified as to the relevant portions of these reports in her own testimony."

Maryland Rule 9-205.3(f)(2) provides:

> Subject to subsection (f)(4) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:
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> (A) contact with collateral sources of information that are not high neutrality/low affiliation;
> (B) a review of additional records;
> (C) employment verification;
> (D) *a mental health evaluation;*
> (E) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and
> (F) an investigation into any other relevant information about the child's needs.

Md. Rule 9-205.3(f)(2)(D) (emphasis added).

In evaluating this issue, the judge stated:

> I did look at the rule before today on that very issue and the way I read the rule, is the psych evals are an optional part of the custody evaluation, they are really considered part of the custody evaluation and when the rule refers to experts who can appear when the reports can be admitted the expert, it includes the psych reports. So I am going to admit the psych reports and the custody evaluation.

In our view, the judge's ruling was in accordance with Rule 9-205.3(f)(2)(D), as the Rule specifically delineates that mental health evaluations can be included in custody evaluations. We disagree with Father's contention that the psychological reports were admitted without proper authentication. Maryland Rule 5-703(a) states that "an expert *may base an opinion on facts or data in the case that the expert has been made aware of* or personally observed." Furthermore, "If facts or data not admissible in evidence are disclosed . . . under this Rule, the court, . . . shall instruct the jury to use those facts and

data only for the purpose of evaluating the validity and probative value of the expert's opinion or inference." Md. Rule 5-703(c).

Following the evaluation reports' admission and further testimony, it was then the judge's responsibility to examine and determine the evaluation's validity and probative value with the inclusion of the reports. Md. Rule 5-703(c). Based on Ms. Laird testimony regarding the contents of the psychological evaluations and her consideration of them in her reports, the court did not err in the admission or reliance in part on the psychological evaluations.

V. Preference of the Child in Custody Determinations.

Father argues the court failed to consider G.R.'s request to live with him in violation of *Montgomery Cnty Dep't of Social Servs. v. Sanders*, 38 Md. App. 406 (1977). According to Mother, the court weighed the *Montgomery* factors and determined based on "Mr. Reichert's actions in committing serial contempt, refusing to produce the child, mental abuse of the child, and absconding from the State of Maryland to Virginia during the course of the case" that Mother should be awarded sole legal and physical custody. Mother contends the judge's decision was "within her sound discretion and based on both logic and sound rationale."

In *Montgomery*, the County Department of Social Services ("DSS") filed a petition in the District Court for Montgomery County for Juvenile Causes to declare a minor child to be a 'Child in Need of Assistance' and sought to prevent the reunification of a minor child with his biological mother after the child was treated in hospital for severe physical

injuries. *Id.* at 408. Following an emergency hearing, the child was "removed from his parents' custody and committed to DSS 'for temporary shelter care.'" *Id.* at 408-09. Mother presented evidence at two subsequent hearings indicating that she was not the cause of the child's injuries. *Id.* at 409. However, the trial judge "found that [the child's] best interest and welfare would be served by his continuing, temporarily, in his foster home[.]" *Id.*

Mother, later, filed a "Petition for Change of Placement of Minor Child to the Natural Mother." DSS opposed and determined that the minor child "should never return to his biological mother." *Id.* at 412. DSS argued that "separation from the natural parent for a sufficient length of time saps the bond of love and affection between child and parent" and "return[ing] to the biological parent would, theoretically, result in severe emotional trauma, detrimental to the child's best interests." *Id.*

The trial judge rejected DSS' argument and ordered the return of the child to Mother's custody, noting that "to accept the standard of the 'best interest theory' as presented by DSS . . . without regard to the circumstances for the original taking of the child . . . places an impossible burden on any natural parent[.]" *Id.* at 413-14. On appeal we agreed and held, in making child custody determinations the court examines numerous factors and weighs the advantages and disadvantages. . . ." *Id.* at 420.

Those factors are:

1) fitness of the parents,
2) character and reputation of the parties,
3) desire of the natural parents and agreements between the parties,
4) potentiality of maintaining natural family relations,

5) preference of the child,
6) material opportunities affecting the future life of the child,
7) age, health and sex of the child,
8) residences of parents and opportunity for visitation,
9) length of separation from the natural parents,
10) prior voluntary abandonment or surrender.

Id. We stated, "[w]hile the court considers all the above factors, it will generally not weigh any one to the exclusion of all others. The court should examine the totality of the situation . . . and avoid focusing on any single factor such as . . . the length of separation." *Id.* at 420. This Court affirmed the decision of the trial judge to award child custody to the Mother.

In *Karanikas v. Cartwright,* a child custody case, Father appealed a decision by the Circuit Court for Anne Arundel County that granted Mother sole physical and legal custody of the parties' minor child. *Id.* at 575. Father argued that the trial court refused to inquire as to the child's preference, as required by *Montgomery Cnty v. Sanders. Id.* at 595. However, the record clearly showed the judge spoke with the child in chambers, and when asked if the child preferred to live with Mother or Father, the child did not express a preference. *Id.*

In reviewing the case, this court held Father's argument as meritless because "the record demonstrates that the trial court inquired as to the child's preference" and *Montgomery Cnty v. Sanders* "does not require that a court expressly ask a child his or her custody preference. Although the preference of the child is a consideration for the court, interviewing the child is not the only method by which the trial judge may discern the preference of the child." *Id.* at 595-96.

In the present case, the trial judge spoke with G.R. in chambers. The judge relayed the conversation to the parties stating since the change in custody G.R. "still wants to have primary visitation with dad, but he wants the schedule [the judge] indicate[s]. And he also indicated the same exact thing to Ms. Laird, which is alternating weekends and three weeks in the summer with mom, but primary with dad. He now is okay with his mom. He no longer hates her. He wants to have a relationship with his mother."

In making its child custody determination, the court addressed each *Montgomery* factor and specifically addressed preference.

> Now I understand that [G.R.] wants to be primarily with his father and that is a very important factor. And I believe that the father profoundly loves [G.R.]. But I also believe that it is not in his best interest to be in the primary custody of his father, based on all of these factors, and that the father's flight from Maryland to Virginia is the reason we have all these problems. The father's continued rejection of any authority, continued refusal to follow the custody order, continued refusal to believe any of the professionals in this case that it is bad for [G.R.] to be embroiled in this litigation leads me to the conclusion that primary custody should be with mother.

"In disputed custody cases, the court has the discretion whether to speak to the child or children and, if so, the weight to be given the children's preference as to the custodian. While the preference of the child 'is a factor that *may* be considered in making a custody order, the court is not required to speak with the children.'" *Karanikas v. Cartwright*, 209 Md. App. 571, 590 (2013) (quoting *Lemley v. Lemley*, 102 Md. App. 266, 288 (1994)) (emphasis in original). The Supreme Court of Maryland has "stated that it is simply one factor to be considered, within the context of all other relevant factors." *Boswell v. Boswell*, 352 Md. 204, 222 (1998).

"[W]hile a parent has a fundamental right to raise his or her own child . . . the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute." *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 680 (2014) (citing *Boswell v. Boswell*, 352 Md. 204, 219 (1998)). "It is a bedrock principle that when the trial court makes a custody determination, it is required to evaluate each case on an individual basis in order to determine what is in the best interests of the child." *Kadish v. Kadish*, 254 Md. App. 467, 493 (2022) (citing *Gillespie v. Gillespie*, 206 Md. App. 146, 173, (2012)). The court is not required to abide by the child's preference. We find no err by the court in awarding physical custody to Mother.

VI. The Court did not err in its determination and award of Child Support and Attorney Fees.

i. Child Support

Father argues that the court erred in its finding of fact as to custody, which requires the child support amount be recalculated. He argues that, although, he testified his income was $240,000 in 2020 and $218,000 in 2021, those amounts do not reflect his actual income. Mother argues the court was "well within its discretion in making this award."

In considering the financial documents provided, the judge found that:

> Mother's income is $7,609 per month. Dad's income is $22,500 per month, and I have determined that based upon several things. His statement to the Court ---. Dad made $240,000 gross in 2020, $218,000 gross in 2021, and he told that Court that he bills $20,000 to $25,000 a month. Mom's attorney added eight months together for this year, which totaled $534,802, divided by eight would be $66,850 a month. However, the Court finds that the $300,000 that was paid by Wayne was not part of his regular earnings. So if you took that out and you used Mr. McCarthy's numbers and divide that by eight, it would be $29,350 a month. Given all those numbers, the Court finds

> it appropriate to use the average of the number the father testified to, which was $20,000 to $25,000. So the Court is using $22,500 as dad's monthly income.
>
> * * *
>
> Okay. So the calculation using the guidelines if mother is the primary custodian is father would pay $3,069 a month. And if it is shared, father would pay $1,593, essentially half.
>
> * * *
>
> The Court believes it is appropriate to deviate downward from the child support for the primary custody with mom because the Court is asking the father to pay for all of the supervision costs and all of the transportation costs during the school year. . . . So, as a result, the Court is reducing it by more than one-third from $3,069 to $2,000 to account for that.
>
> * * *
>
> And given that the Court used the lowest number for projecting father's income of all the numbers available to the Court, the Court feels that $2,000 a month is not a high number for the support of the child. Then I did a calculation of what the retroactive amount would be for the period from February 3rd until September 15th. It was really until September 3rd. I didn't include the extra days. And that was a total amount of $14,000, which is seven months at $2,000 a month. So that would require him to pay an additional $500 towards that until it is paid in full.

We note that this was an above the guidelines case and thus, the court was not required to comply with a mathematical assessment but rather to determine the circumstances and make a decision in the best interests. "[T]he trial court need not use a strict extrapolation method to determine support in an above Guidelines case. Rather, the court may employ any 'rational method that promotes the general objectives of the child support Guidelines and considers the particular facts of the case before it.'" *Malin v. Mininberg*, 153 Md. App. 358, 410 (2003) (internal citation omitted). "When calculating

a parent's obligations pursuant to the Guidelines, the court must ascertain the parties' respective incomes." *Id.* at 411.

Based on the record, the court considered all of the financial documents that were provided and adjusted the payment obligation in consideration of Father's supervision and transportation costs. In fact, the court made a downward deviation in its final determination.

On review, "we will not disturb the trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002). We find that the court exercised discretion to impose an appropriate child support payment obligation in light of the circumstances presented. We hold the court did not err or abuse its discretion.

ii. Attorney's Fees

Father argues the court erred in its calculation of attorneys' fees. He argues the court failed to consider whether there was a substantial justification for the fees and the financial status and resources of the parties since Mother has financial support from her boyfriend.

Mother argues the award of attorney's fees was proper because Father continuously violated the April 2021 *pendente lite* order by refusing to produce the child for visitation. She argues the "court utilized July 11, 2021, the date Appellant failed to produce G.R. for visitation" into its calculation for attorney's fees. She states the court "removed time for

trial preparation as reflected in [Mother's] counsel's bill" and arrived at $98,760 which was rounded up to $100,000.

Md. F.L. § 12-103(b) & (c) provides:

> (b) Before a court may award costs and counsel fees under this section, the court shall consider:
> (1) the financial status of each party;
> (2) the needs of each party; and
> (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.
>
> (c) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees.

Here, following the presentation of evidence on this issue, the court held:

> With respect to attorney's fees, with the assistance of my law clerk, we evaluated all of the postings and the very lengthy bill provided by Mr. McCarthy. And we thought that it would be only appropriate to consider those things that happened after July 11th and did not include trial prep because as [Appellant's Counsel] said, he had to defend the case. Everyone does trial prep. He didn't bring the case. And that is appropriate. Now the rule requires the Court to consider the financial status of each party, the needs of each party, and whether there was substantial justification to bring, maintain, or defend the proceeding. It was Ms. Hornbeck that filed this. I do believe there was substantial justification for her to bring the proceeding because she was not seeing her son at all and dad moved to Virginia and indicated she would never see her son again. So it certainly was justified for her to bring this proceeding. With respect to the finances of each party, I have mother's financial statement, which shows she has far less financial ability than father. As I indicated, I had discounted the $300,000 that father received in January when I was considering his income. But when you look at his ability from a balance sheet perspective, certainly father's ability to pay is far superior to mother's, who makes a lot less money than him, as I already put on the record.

* * *

> So if you do the math and look at what was spent other than trial prep, it is $98,760. So the Court rounded that number to $100,000 and provides that it should be paid at the rate of $8,000 per month. So then that would be in addition to child support until paid full.

To be sure, Md. F.L. § 12-103(b) & (c) requires a trial court to examine certain factors, however, a "trial court 'is vested with wide discretion' in deciding whether to award counsel fees and, if so, in what amount." *Malin v. Mininberg*, 153 Md. App. 358, 435-36 (2003) (internal citation omitted). Our examination of the record, including the court's ruling makes it clear that the trial court considered the financial status of both parties, the needs of each party and whether there was substantial justification for the litigation. Mother's financial support from her boyfriend was not a proper factor in determining her actual income, as defined by Md. F.L. § 12-201(b) for purposes of awarding attorney's fees. The court's finding that Father's pattern of continually withholding visitation was a substantial justification for Mother to initiate these proceedings was not error. We hold the court fully complied with the statutory requirements in awarding attorney's fees and did not abuse its discretion.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.