Circuit Court for Frederick County
Case No. C-10-FM-20-000129

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1521

September Term, 2022

TERRELL DAWSON

V.

BARBARA SNIPES

Nazarian,
Friedman,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 30, 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 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.

This is a third-party custody dispute between Terrell Dawson (Father), the appellant, and Barbara Snipes (Grandmother), the appellee, regarding A.S.J. (Child), who presently is 13 years old.[1] On January 1, 2020, Laronda Albert (Mother), Grandmother's daughter and Child's mother, died. Soon thereafter, in the Circuit Court for Frederick County, Grandmother sued Father for sole physical and legal custody of Child. Father filed a counterclaim seeking the same. After an evidentiary hearing, the court found that exceptional circumstances existed and that it was in Child's best interest to be in Grandmother's custody, with visitation for Father.

Father appealed, posing five questions for review, which we have combined and rephrased for clarity:[2]

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[1] To protect Child's privacy to the extent possible, we shall use relationships and/or initials to refer to the people involved in this case. By doing so we mean no disrespect.

[2] In his brief, Father framed his questions presented as follows:

1. Did the trial court err/and or abuse its discretion when it did not begin its exceptional circumstances analysis with the first Hoffman factor?

2. Did the trial court err/and or abuse its discretion when it found that the [C]hild had spent a long period of time away from Father, without any substantive factual findings?

3. Did the trial court err/and or abuse its discretion when it found exceptional circumstances sufficient to overcome the constitutional presumption favoring Father?

4. Did the trial court err/and or abuse its discretion when it found that it was in the child's best interest to live with [Grandmother]?

(continued…)

I. Did the circuit court err or abuse its discretion in finding that exceptional circumstances existed and that it was in Child's best interests for Grandmother to have custody?

II. Did the circuit court err or abuse its discretion by refusing to allow Father to question Grandmother about her health?

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

The merits hearing in this case took place on August 9 and 10, 2022.[3] Grandmother testified in her own case and called her mother (Great-Grandmother), sister, and two other grandchildren in her care. Father testified on his own behalf and called his wife, mother, grandmother, brother, and aunt. With the agreement of the parties and Child's Best Interest Attorney (BIA), the court interviewed Child privately, and the interview was recorded and transcribed. The following facts were adduced.

Grandmother lives in a four-bedroom house in Frederick with Child; Child's half-brother (A.P.), who is 20 years old and has lived with Grandmother since 2003; and Granddaughter, Child's cousin, who is 18 years old. The latter two have graduated from high school. Grandmother's daughters - - Mother, and Granddaughter's mother - - died within a few weeks of each other in early 2020.

5. Did the trial court err/and or abuse its discretion when it refused to allow Father to inquire into the health of [Grandmother]?

[3] The hearing was delayed several times. Both Grandmother and the Best Interest Attorney (BIA) requested continuances, which the court granted. Further delay occurred when Father requested an additional day for trial.

Child was born in October 2009, in Portsmouth, Virginia. At the time, Mother, Father, Grandmother, and Great-Grandmother were residing in that town. Mother and Father were not married. Before Child was born, they lived together for a while. They did not live together after Child was born. For the first three months of his life, Child and Mother lived with Great-Grandmother. They then moved in with Grandmother. Later, for a few months, Mother lived in a home of her own, with Child. That home was near Grandmother's house, and Grandmother bought clothes and food for Child and paid Mother's bills. Mother and Child then moved back in with Grandmother.

In late 2015, Grandmother moved to Frederick with Great-Grandmother and A.P. and Granddaughter, who were about 13 and 11, respectively. Around that same time, Mother became homeless and suffered a mental health crisis that caused her to be admitted to a hospital in Portsmouth. She turned Child's care over to Father. Child was attending pre-kindergarten. In June 2016, Mother was discharged from the hospital and retrieved Child from Father. She and Child moved to Frederick to live with Grandmother, who was living with Great-Grandmother. After a month, Mother left, without Child (or A.P.), and spent a year moving around to several different states. Grandmother found housing, and Child and A.P. moved with her to her own home. Eventually, Mother returned to Frederick and moved in with Grandmother.

According to Grandmother, Child would visit Father during the summer and at Christmas. At first, Father and his family would come to Frederick to get him. One time, when Mother was there, she treated Father and his family very poorly. After that, he

refused to come to Frederick to get Child. At that point, Grandmother and Mother started transporting Child to Portsmouth to visit Father.

On January 1, 2020, Mother and Child were in Portsmouth for Child's Christmas visit with Father when Mother died suddenly from hypertension. According to Grandmother, after the funeral, she and Father discussed Child's living arrangements. Father agreed that if Grandmother would not seek child support, Child could live with her, and in June he would come to Frederick to get Child for his summer visit.

Grandmother testified that before Father arrived in Frederick on the appointed day in June, Child became upset and uncontrollable. Grandmother learned that Father had been telling Child that he was taking him to Virginia to live permanently and that he should not tell Grandmother. When Father arrived at Grandmother's house, Grandmother would not turn Child over to Father. He called the police. The police asked Child whether he wanted to stay with Grandmother or leave with Father. Child said he wanted to stay with Grandmother, which he did. Grandmother then filed suit for custody.

The court entered a *pendente lite* order permitting Father to visit Child in Frederick on one week's notice to Grandmother. In the year before trial, Father only exercised visitation in Frederick once. Grandmother testified that, until she filed suit, Father never sought custody of Child and never contacted her about seeing Child.

Much evidence was introduced about Child's extensive medical and mental health history. In April 2013, when Child was three years old, his pediatrician referred him to a psychotherapy center in Virginia. He was seen three times, after which the sessions were

discontinued due to Child's "maladaptive" behavior that was so disruptive it interfered with other patients' counseling sessions. About four months later, Mother took Child to a children's hospital in Virginia because he was to start a preschool program and she was concerned about his behavior. He was described as "very hyperkinetic" with a "combined type" of attention deficit disorder. Medication was prescribed. In August 2017, Child was evaluated at the Mount Washington Pediatric Hospital, in Baltimore. He was diagnosed with Autism Spectrum Disorder, Disruptive Mood Dysregulation Disorder (DMDD), Attention Deficit/Hyperactivity Disorder (ADHD), and two types of learning disorders, one in reading and the other in written expression. Child was prescribed several medications. He also was diagnosed with asthma.

In 2018, Child was seen five times by a psychiatrist. In a progress note, the psychiatrist reported that, according to Mother, when Child visited with Father, "[Father] takes [Child] off all medication as he does not believe in the treatment[.]" The note further stated that Mother and Father did not communicate except "through her mom talking to his mom." Grandmother testified that when Child would visit Father, Father would not give Child his medication. She knew that because Child would return to her care with the same amount of medication he had left with.

Beginning in April 2020, soon after Mother's death, Child was seen by Potomac Case Management Services. The assigned case manager testified at trial, explaining that he and Child would meet two to three times a month after school for between 15 minutes to three hours. He, Grandmother, and Child worked together to devise a plan of care and specific measurable educational and social goals for Child. He assisted in arranging

mental health services for Child through Brook Lane Health Services. He and Grandmother had been advocating for Child's needs. In his opinion, Child "has really started to thrive and be able to identify kind of the things that he struggles with a lot and get the help and ask for the help which . . . he wants and needs." He emphasized that routine and consistency are very important for Child:

> I have found that working along with the family and school, [Child] works very well with a rigid schedule. [Having an] autism diagnosis [requires] that things kind of need to be known and set in stone and change is very hard. And, even within the school, simply if he was supposed to be somewhere . . . and it changed last minute he . . . would have a hard time with handling those situations.

The case worker added that Child is very comfortable at Grandmother's home, where he has his own room and can close the door if he wants. He has friends in the neighborhood and a few in school. He described Child's relationship with A.P. and Granddaughter as "great," and said he has an excellent support system in Frederick. Child had missed a lot of school that last year, mostly due to side effects from medications. Child has new medications now, and the case manager anticipated that he will miss fewer days from school for that reason.

On August 2, 2022, Child underwent another psychiatric evaluation. Once again, he was diagnosed with Autism Spectrum Disorder, requiring support in social communication and to control repetitive behaviors; ADHD, predominantly hyperactive/impulse presentation; severe DMDD; generalized anxiety disorder; and chronic adjustment disorder. Grandmother testified that "[l]ittle things upset [Child]." Both before and after Mother's death, Grandmother was the primary person to take Child

to his doctor appointments. Medical reports showed that Grandmother either took Child herself or accompanied him to his doctor visits.

Child's academic history also was elicited. When Child attended pre-kindergarten in Portsmouth from late 2015 to June 2016, while living with Father, his report card showed either "progressing" or "satisfactory" marks in academics but "needs improvement" or "experienc[ing] difficulty meeting grade level standards" in all areas of "personal development." When Child moved to Frederick in June 2016, Grandmother enrolled him in first grade at North Frederick Elementary School, from which he graduated in June of 2021. She enrolled him at Governor Thomas Johnson Middle School in Frederick for sixth grade for the 2021-2022 school year. Child has an Individualized Education Program (IEP) in middle school, and Grandmother has attended all his IEP meetings. He also has a social worker assigned to him at school. Although Child missed more than 60 days of school this past year, he made the honor roll for the first time. Grandmother testified that Child has a "very good" friend from school with whom he has been friends since first grade.

A.P., Child's half-brother, testified that he and Child have lived together their whole lives, except when he and Grandmother first moved to Frederick. He described Child as "energetic" and "playful" although he has "mood changes" and can get "really sad[.]" A.P. characterized Child's relationship with Grandmother as "very close[.]" Granddaughter testified that she and Child are "like twins[,]" as they do many things together. She described Child's relationship with Grandmother as "[s]uper close."

Father testified that Mother was homeless twice, once in 2011 when she was in jail and once for about seven months in 2015-2016 when she lost her section 8-housing and was living in a shelter.[4] During that latter time, Mother gave Child to him, and Child attended preschool. Father testified that he did not know that Mother was hospitalized for mental health problems. He did not seek custody of Child during those times. From 2016, when Child moved to Frederick, until Mother died in 2020, he usually saw Child during the summer and at Christmas. Frederick is a four-to-five-hour drive from Father's home, and he did not have a car until around 2020. Father testified that he has not visited Child in Frederick since the court entered its *pendente lite* order because it is too far to drive.

Father described his relationship with Mother as "good." Because he had to work, Mother took care of Child and his medical issues most of the time. He would attend Child's medical appointments if he could. (There was no evidence elicited that he ever was present for a medical appointment.) According to Father, Mother "always informed" him of Child's medical and educational issues both when she was in Portsmouth and after she moved to Frederick. He denied ever taking Child off medications or that he and Mother had had difficulty communicating. He testified that he is aware of Child's diagnoses and that Child has a school IEP.

When asked how he would care for Child given his various diagnoses, Father responded, "Well, when he is with me, honestly I have no issues. I'm not really aware of

[4] The evidence was unclear as to whether and when Mother was in jail and any details surrounding that situation.

those issues when [Child] is with me. He seems normal." He added that Child doesn't appear to have "any special needs" when he is with him, and he was unaware that Child had any difficulty communicating or functioning in social situations. He and Child talk once or twice a week. Father believes Child has "always done" well in school. He complained that notwithstanding that the *pendente lite* order required Grandmother to provide him with Child's medical records, she has refused to do so. He asserted that Grandmother has refused to provide him with Child's medication when Child visits.

Father currently lives in a two-bedroom home in Chesapeake, Virginia with his wife, whom he married in 2021, and their daughter, who was 1 month old at the time of the merits hearing. They sleep with the baby in one bedroom. The other bedroom is used by Father's 11-year-old son, who lives with his mother about 15 minutes away but visits "all the time" and during the summer. That room has a full-size bed and an air mattress. This is where Child would stay if Father gained custody. Father and his wife are looking for a three-bedroom home. Father works full-time as a chef at a local hotel chain during the week, from about 5:00 p.m. to 11:00 p.m., and on several weekends. In addition, he works several days a week doing construction jobs.

Although he expressed concern about disrupting Child's routine if he were to gain custody, Father stated: "I don't think it would affect him. I don't think it would affect him that much. [Child] adapts very quickly." He added:

> [H]onestly, I mean I feel like change is good. I mean, you know, I am his father. So I'm still entitled to do the same thing that [Grandmother] does. I feel like it's my responsibility as well. He is a growing – going to be a man. I don't feel like that a woman can do that the same. I mean I have the

> right to do the same thing she does. The point is I want to do that too. I want to be a part of it.

Father testified he is confident he can meet Child's educational, physical, and mental health needs because his work schedule is flexible and he has a lot of family support, including from his wife, mother, and grandmother.

Father's wife testified that she and Father met in 2016. She never met Mother. She described her relationship with Child as "special" and characterized Child's relationship with Father as "[v]ery loving." Child is "always excited" to see Father and is "very curious" and "very happy." Although at the time of trial her newborn was waking up every three hours during the night, she denied being tired and testified she has a lot of help from Father and other family members. She works from home from 8:00 a.m. until 4:45 p.m. Since she has known Father, Child has spent time in the summer and over the Christmas holiday with them.

Before Mother's funeral, Father's wife overheard Grandmother and Father speaking about Child returning to Frederick with Grandmother to finish his school year and Father having him during the summer. It was unclear to her what agreement, if any, they had reached as to what would happen after the summer. The morning they left to retrieve Child for the summer, Father called Grandmother to say they were coming to get Child permanently and she should pack Child's birth certificate so he could enroll him in school. Grandmother responded by screaming, "I'll see you in court." While in transit, Father tried calling Grandmother several times, but she did not answer. When they arrived at Grandmother's mother's home, Grandmother and Child were not there,

although other family members were present. Father called the police and after they arrived Grandmother and Child appeared. Grandmother said Child did not want to go with Father. Father was "crushed." It was during this interaction that he first learned that Grandmother was seeking custody.

According to Father's wife, following the *pendente lite* hearing, Child was "very excited" about leaving with Father, "[h]e was singing, he was playing his games. He was laughing and joking." Grandmother refused to give Father Child's medication or clothes for his visit. She also refused to send medication with Child the last three visits he had with Father: a week in June 2022; two weeks around Christmas 2021; and the summer of 2019. She testified that Child went without medication for 90 days during the summer of 2019.

Father's grandmother, mother, brother, and aunt gave similar testimony to each other. The grandmother said Mother had brought Child to visit Father every couple of weeks, sometimes more, when Child was very young, in Portsmouth. She had a "good relationship" with Mother but was unaware that she had mental health issues, had been homeless, or was living in different states after moving to Frederick. She described Child as happy and loving. She lives about 25 minutes from Father. Father's mother testified she also lives about 25 minutes from Father. When Mother was in jail, she and Father took care of Child. When Mother moved to Maryland, Father would see Child in the summer. She did not know who else Child and Mother lived with in Maryland. She was unaware that Mother was living in different states after she had moved to Frederick. Father's brother testified that when Child moved to Maryland, Father saw him during

school breaks. Father's aunt testified that she lives about 10 minutes from Father. When Child lived in Portsmouth, Father saw him every other weekend. When Mother was in jail, Father took care of Child and sent him to school. She knew Mother "very well" but was unaware that she had any mental health problems or how many times she had been homeless. When Mother was alive, Father's aunt had no concerns about Child's welfare. Child was "very happy," always giving hugs.

During the interview in chambers, Child asked the judge whether he could *not* go with Father after the hearing because he felt uncomfortable. Child told the judge he was "kind of scared because I don't want him to be mad at me[,]" expressing concern that Father might think he was lying about where he wanted to live or that Grandmother had told him what to say. Child said that Father irritates him sometimes because he tries to turn him away from Grandmother. He said Grandmother did not tell him what to say, only to "just tell the truth." Child told the judge that Father tells him that he is his son, and therefore he, not Grandmother, should be the one to raise him. Child told the judge that Mother and Father "never got along well" and "[e]very time I would call [Father], when I was like 6 or something, he would say that he's busy and he could never [come] get me." Child does chores at Grandmother's house. He said he does not like school, but he did well this past year. He and A.P. have "been together our whole life. [A.P.] was there at the hospital" when Child was born. He and his cousin (Granddaughter) have a "pretty good relationship."

Child told the judge he did not want to live with Father because "I don't want to go to a new school. I don't [want] to move out there. I don't want new friends. I like

being here. I got everything that I need here." He added, "I think [Father] should understand that I don't want to live with him. And I don't see what the problem is. Nobody's telling me nothing. And I don't want to live with him." He said, "I just want what's best for me, and I think being in Maryland is best for me." He would like to continue visiting with Father during the summer and over Christmas. He likes his case manager at Potomac Services and referred to him as his "best friend." He told the judge that Grandmother always sends his medication with him when he visits Father, but sometimes he forgets to take it because he is "having too much fun."

On September 12, 2022, the court heard closing arguments of counsel for the parties and the BIA, who advocated in favor of custody in Grandmother. The court ruled from the bench, setting out its findings of fact and conclusions of law in over 20-pages of transcript. The judge addressed extensively and in detail his interview with Child, remarking that he was "completely blown away with this young man … This young man lights the room up when he walks in." "[I]t was almost like talking to another adult[.]" "He doesn't BS anybody. What you see is what you get with him[.]" Addressing credibility, the judge stated that each party takes the position that Child does not want to live with the other party, "but I think the testimony of [Father's] witnesses does not convince me to the level that [Grandmother's] does, and if I had any doubt [Child's] own words really corroborate this[.]"

The court rejected Grandmother's argument that she was a *de facto* parent.[5] It determined that exceptional circumstances existed and that Child's best interest would be served by granting primary physical and sole legal custody to Grandmother. It awarded Father visitation during the summers, except when Child is in summer school; in Frederick on one week's notice to Grandmother; and on certain holidays. A written custody order was entered on October 4, 2022. This timely appeal followed.

We shall include additional facts as necessary to our discussion of the issues.

DISCUSSION

I.

CUSTODY

Standard of Review

On appeal after a non-jury trial, we will not set aside the trial court's factual findings unless "clearly erroneous[.]" Md. Rule 8-131(c). We review the court's application and interpretation of statutory or case law *de novo*. *Faulkner v. State*, 468 Md. 418, 460-61 (2020). *See also Davis v. Davis*, 280 Md. 119, 125-26, *cert. denied*, 434 U.S. 939 (1977) (We will not disturb a trial court's decision if based upon "sound legal principles and . . . factual findings that are not clearly erroneous[.]").

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[5] In *Conover v. Conover*, 450 Md. 51, 62 (2016), our high Court held that when a child's parents consent to the formation of a parent-like relationship between their child and a third party, the third party may become a *de facto* parent upon satisfying a four-factor test. *See also E.N. v. T.R.*, 474 Md. 346, 394-95 (2021) (holding that to overcome the presumption of parental rights, one must show *de facto* parenthood, parental unfitness, or exceptional circumstances). Here, the trial court specifically found that the parties had not both consented to Grandmother taking on the relationship of a *de facto* parent.

In child custody cases, the child's best interests "guides the trial court in its determination, and in our review" and "'is always determinative[.]'" *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)). "We review a trial court's custody determination for abuse of discretion." *Id.* at 625. This deferential standard is appropriate "'because only [the trial court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child[.]'" *Burak v. Burak*, 455 Md. 564, 617 (2017) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court," when the court acts "without reference to any guiding rules or principles[,]" or where "the ruling under consideration is clearly against the logic and effect of facts and inferences before the court[.]" *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quotation marks and citations omitted). "[A]n abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case." *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005).

Parental Versus Third-Party Custody Rights

The Due Process Clause of the Fourteenth Amendment to the federal constitution protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Maryland's appellate courts have consistently echoed the United States Supreme Court's declaration that the rights of parents to "direct and govern the care, custody, and control of their children is a fundamental right[.]" *Conover v. Conover*, 450 Md. 51, 60 (2016).

See also In re Yve S., 373 Md. at 566 (A parent's interest in raising a child is "a fundamental one that cannot be taken away unless clearly justified.").

When the parties to a custody dispute are two fit parents, the sole issue is the child's best interests because "each fit parent's constitutional right neutralizes the other parent's constitutional right," rendering the parents "presumptive equals[.]" *McDermott v. Dougherty*, 385 Md. 320, 353 (2005). When a custody dispute pits a parent against a third party, however, the "parties do not begin on equal footing in respect to rights to care, custody, and control of the children" because a third party "has no fundamental constitutional right to raise the children of others." *Id*. (quotation marks omitted). Accordingly, in a custody case brought by a third party against a parent, there is a constitutional presumption that the child's best interests are best served by custody in the parent. *Id*. at 423. *See also Caldwell v. Sutton*, 256 Md. App. 230, 275 (2022). To overcome that presumption, the third party must establish that the parent either is unfit or that exceptional circumstances exist. *McDermott,* 385 Md. at 423.[6]

"[U]nfitness means an unfitness to have custody of the child, not an unfitness to remain the child's parents; exceptional circumstances are those that would make parental custody detrimental to the best interest of the child." *E.N. v. T.R.*, 474 Md. 346, 372 (2021) (quotation marks and citation omitted). In the case at bar, counsel for

[6] As noted, a third party also may prevail by establishing *de facto* parenthood. *See* n.5, *supra*. *See also E.N.*, 474 Md. at 394-95 (holding that to overcome the presumption of parental rights, one must show *de facto* parenthood, parental unfitness, or exceptional circumstances).

Grandmother made clear to the court that she was not pursuing custody on the ground of unfitness.

In *Ross v. Hoffman*, the Supreme Court of Maryland[7] listed several factors that a circuit court may find probative in determining whether exceptional circumstances exist:

1) The length of time the child has been away from the biological parent;

2) The age of the child when care was assumed by the third party;

3) The possible emotional effect on the child of a change of custody;

4) The period of time that elapsed before the parent sought to reclaim the child;

5) The nature and strength of the ties between the child and the third party;

6) The intensity and genuineness of the parent's desire to have the child; and

7) The stability and certainty of the child's future in the custody of the parent.

280 Md. at 191. These factors are not mandatory or exhaustive. Other factors have been suggested that may be relevant to an exceptional circumstances analysis, including the stability of the child's current home environment; whether there is an ongoing family unit; and the child's physical, mental, and emotional needs. *Burak*, 455 Md. at 660 n.59.

The *Hoffman* Court made several general observations about the proper analysis for deciding whether exceptional circumstances exist. It stated that "[t]he child may be so

[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.

long in the custody of the nonparent that, even though there has been no abandonment or persistent neglect by the parent, the psychological trauma of removal is grave enough to be detrimental to the best interest of the child." 280 Md. at 191 (footnote omitted). Additionally, "[c]hanges in conditions which affect the relative desirability of [third-party] custodians . . . are not to be accorded significance unless the advantages of changing custody outweigh the essential principle of continued and stable custody of children." *Id.* (quotation marks and citation omitted). Finally, although the court may look to the opinions of social workers, psychiatrists and psychologists, reliance on their opinions should not be too routine or given exaggerated deference. *Id.*

Analysis

(a)

Exceptional Circumstances

Father contends the court's exceptional circumstances analysis was flawed and the evidence was legally insufficient to overcome the constitutional presumption in favor of parental custody. His arguments in support fall into two categories: criticism of the court's analysis of the first *Hoffman* factor, and criticism of the court's analysis of the rest of the *Hoffman* factors.

1. First *Hoffman* Factor

Father asserts that the first *Hoffman* factor - - the length of time the child has been away from the biological parent - - "MUST be the first" the court considers in its exceptional circumstances analysis. He maintains that here, the court erroneously began its analysis with whether "the child [was] separated from the parent, and in the care of [a]

third party" and only then moved on to consider how long Child had been away from Father. He further asserts that the court's findings with respect to separation and length of time were not supported by the evidence and were not justified by the court in its analysis. He takes the position that under prevailing Maryland case law, the facts in evidence could not support a finding that Child was away from Father for a period long enough to constitute exceptional circumstances.

In *Burak v. Burak*, the Supreme Court of Maryland provided guidance about the scope and significance of the first *Hoffman* factor. The child at the center of the custody dispute had lived with his mother and father from birth. When he was one year old, his parents entered into a polyamorous relationship with a woman who they invited to live with them and with whom they engaged in illicit drug use from time to time. When the child was four, mother refused to continue the sexual relationship with the other woman. The next year, father engaged in violence and mother obtained an order requiring him to vacate the marital home. The other woman left soon thereafter. Mother sued father for divorce and custody, and a *pendente lite* consent order was entered keeping physical custody of the child with her and granting father visitation, supervised by his parents.

At that point, father's parents filed a motion to intervene, seeking primary physical and legal custody of the child. They alleged that they had been very involved in the child's life since his birth. He had spent a substantial amount of time at their house, including several times during the week and on occasional weekends, and they had enrolled him in activities, taken him on vacation, and volunteered at his school.

A custody evaluator recommended that primary physical custody remain with mother, with father continuing to have visitation supervised by his parents. Based on a finding that, in the past, the paternal grandparents would care for the child when mother was using drugs (which she did together with father and the other woman) and that before she and father separated, she had been using drugs for periods of time that varied from every other weekend to once a month, the court found that mother had transferred constructive custody of child to the paternal grandparents. *Burak*, 455 Md. at 662, 664.

The Supreme Court reversed. It explained that although the first *Hoffman* factor is "not the exclusive" one in the exceptional circumstances analysis, nevertheless the "court must first determine that the child at issue has spent a long period of time away from his or her biological parent before considering the other *Hoffman* factors." *Id.* at 662-63. The purpose of the first factor "is to determine whether the child . . . has been outside the care and control of the biological parent for a sufficient period of time for a court to conclude that the constructive physical custody of the child has shifted from the biological parent to a third-party." *Id*. at 663. Generally, the first factor will be satisfied when a parent has abandoned a child or ceded the child's care and upbringing to a third party. *Id*. at 663, 673. This can occur

> where the parents surrender complete custody of an infant for such a long time that its interests and affections all attach to the person who fill the place of the parents, and the infant develops into a healthy and happy child, then if the parents seek to reclaim the child by judicial decree, the court should place the right of the parents subordinate to the right of those who performed the parental duties, for the ties of companionship strengthen by lapse of time, and upon the strength of those ties the welfare of the child largely depends.

Id. at 663-64 (quotation marks and citation omitted).

The *Burak* Court concluded that the trial court's finding on constructive custody was in error, as the length of time the child had been away from his mother was legally insufficient to satisfy the first *Hoffman* factor. The trial court's "conclusion [on the first factor] ignores . . . facts in the record reflecting that [mother] has played an active role in the care of the [c]hild since he was born[,]" *id*. at 665 (footnote omitted), including that he had lived with mother his entire life. Mother had decided what school the child should attend, had arranged all his doctor appointments, and had responded to and sought ways to address his behavioral issues at school by enrolling him in a behavior-based program. She had investigated obtaining an IEP for the child, had attended almost every school function, and had planned his birthday parties. She had sought advice on how to become a more effective parent and had searched for an appropriate therapist for the child. *Id*. at 594-96, 664, 666.

Recently, this Court had an opportunity to discuss the first *Hoffman* factor in *Basciano v. Foster*, 256 Md. App. 107 (2022), where both parents of a 6-month-old infant overdosed on illegal drugs while the child was in their care. The local department of social services placed the infant with his maternal grandparents, who filed a complaint for custody. Adopting the findings and recommendations of a magistrate, the court awarded the maternal grandparents temporary custody. Almost a year later, the maternal grandparents and the child's father and his parents, with whom he was living in New Jersey, entered into a temporary visitation agreement. (Throughout all of this, the child's mother remained a drug addict whose whereabouts were unknown.) The agreement

allowed father overnight visitation, supervised by his parents, if he submitted to various drug testing, continued with therapy and medication management, and met other agreed criteria.

At a subsequent custody hearing, a special education teacher with the local school system testified that she was working with the child twice a month and had '"definite concerns of autism[,]"' given his social interactions and communications. *Id.* at 119. She advocated his being enrolled in a tailored, intensive weekly autism program offered by the school system. A custody evaluator recommended that the maternal grandparents have primary physical and legal custody with a graduated access schedule for father. Father's primary care physician testified that he had been testing negative for drugs. The maternal grandmother testified that since the child had started spending alternating weeks with father under the visitation agreement, his sleep schedule had become disrupted and he was engaging in significant nail biting due to separation anxiety. The trial court concluded that the maternal grandparents had established *de facto* parenthood and that there were exceptional circumstances. After considering the child's best interests, it granted custody to the maternal grandparents. Father appealed.

We affirmed in part and reversed in part. We agreed with father that because the mutual consent requirement had not been satisfied, the maternal grandparents were not *de facto* parents. We then addressed whether the trial court had erred in determining that exceptional circumstances existed. As to the first *Hoffman* factor, father argued that the 10-month interval between his overdose and the visitation agreement with the maternal grandparents was not long enough to show abandonment or transfer of physical custody.

The maternal grandparents responded that father was not involved in the child's care and had relinquished parental duties of a child with special needs to them. Although we agreed with father that the length of time involved was less than in the cases he referenced (which we shall discuss below), we stated:

> [T]he length of time is not controlling. Rather, as *Burak* directs, the relevant inquiry is whether the child "has been outside the care and control of the biological parent for a sufficient period of time for a court to conclude that the constructive physical custody of the child has shifted from the biological parent to a third-party."

Id. at 150 (quoting *Burak*, 455 Md. at 663). We noted that the trial court had found that father had handed over all parenting responsibility to the maternal grandparents for about a year after his overdose and that, during that period, which was most of the child's life, the child had bonded with the grandparents. We concluded that in those circumstances, the child had been away from the father for a sufficient length of time to shift constructive custody to the maternal grandparents.

We return to the case at bar. Before it embarked on its exceptional circumstances analysis, the court made some general findings about problems Mother had suffered during her life, the context of this custody dispute, and credibility. It found that Mother had suffered mental health and substance abuse problems, which resulted in Grandmother having to take care of Child. In addition, it assessed Grandmother's witnesses as being more credible than Father's witnesses.

> So, what we do have here … is, unfortunately, as all too frequently happens, we have an individual, [Father], who fathered a child who by default meaning the child found himself in the care and custody of a mother who had I think undeniably personal problems whether they were mental health, substance abuse. Unfortunately, I find credible the testimony that I

> heard in regards to the problems that she experienced during her unfortunately brief life and as a result [Grandmother] became the child's caregiver. Whether that is something [Grandmother] desired or not or whether she found herself duty bound to do that, that is what happens, and unfortunately in the world in which we live it is not confined to today. It has happened throughout history. That is what happens. We have grandmothers raising children.

In then addressing exceptional circumstances, the court divided the first *Hoffman* factor into two parts: whether Child and Father had been separated and, if so, the length in time of that separation. The court explained:

> So, here are the considerations that I have to examine in determining exceptional circumstances. ***First, is the child separated from the parent, and in the care of the third party and that is undisputed here.*** Now, let me say that no one of these [*Hoffman*] factors - - and there is about nine of them that I am going to go through - - are conclusive by themselves, but I have to pay attention to each one and make findings with regard to each one assuming that there was testimony or evidence that was presented with regard to them.
>
> ***The second factor is the length of time that the child has been separated from the parent and I find to be the testimony in this case that*** **[*Father*]** ***was not living with*** **[*Mother*]** ***when*** **[*Mother*]** ***gave birth to*** **[*Child*].** ***There was testimony and it varied as to length of time that*** **[*Child*]** ***was in the custody and care of his father. I heard mention of seven months***. I am not sure I recall specifically that being the amount of time and the testimony.
>
> I do remember that Ms. Dawson, the present wife of [Father] testified that for 90 days in the summer of 2019 [Child] was in [Father's] care and custody and there have been other times during vacations when [Father] had care and custody of the child, ***but by and large for the bulk of*** **[*Child*]*'s almost 13 years on this planet he has been in the care of his mother slash, his grandmother, the plaintiff in this case.***

(Emphasis added.)

There is no merit in Father's complaint that the court erred by not considering the first *Hoffman* factor before all others. It only makes sense that whether a parent and child

have been separated at all is integral to that first factor. If the parent and child have not been separated, there is no length of time the child has been away from the parent to consider. The court did not err by dividing its analysis of the first *Hoffman* factor in two. It addressed the entirety of the first *Hoffman* factor, did so at the outset of its analysis, and did so thoroughly. Although the court used the term "second factor" when referring to the second half of the first *Hoffman* factor, that is not an error of law or even significant.

Father maintains that contrary to the court's comment, it was not "undisputed" that he and Child had been separated. He argues that the court failed to consider evidence that he was "actively involved in the child's life in the first seven years[,]" including in late 2015 and early 2016 when Child lived with him, and that, after Mother moved to Frederick to live with Grandmother, Child still visited him at Christmas and during the summer. He points out that he also paid child support. He asserts that when cases decided prior to *Burak* and *Hoffman* (which were discussed in *Burak*) are considered, the length of the time of separation between the child and the parent must amount to an abandonment. We disagree.

To be sure, there are third party exceptional circumstances cases in which a parent effectively abandoned the child. In *Ross v. Pick*, 199 Md. 341 (1952), the first case in which the Supreme Court of Maryland clearly articulated the unfitness or exceptional

circumstances test, the child had been abandoned.[8] At age two, he was left in the custody of foster parents with whom he lived from then on, bonding with them. When the child was 11 years old, his father resurfaced and sought custody. The Court held that in that situation it would be harmful to the child to grant custody to father. In so doing it relied heavily on the child's strongly expressed desire to remain living with his foster parents. Although "the desire of a child is not controlling upon the court[,]"

> where the child is able to form a rational judgment, its desire should be given special consideration where the parents have voluntarily allowed it to live in the family of others for a considerable length of time, and thus form home associations and ties of affection for those having its care and nurture, and where it would jeopardize its health or mar its happiness to sever such ties.

Id. at 353-54. In *Dietrich v. Anderson*, 185 Md. 103, 106, 116 (1945), the Court also affirmed a judgment keeping custody of a child with her foster parents, with whom she had been living from age 10 months to 5 years, and not granting custody to her father, who had abandoned her.

In other of these cases, however, the Court ruled in favor of the third party when the child had not been abandoned. In *Piotrowski v. State*, 179 Md. 377, 378-83 (1941), the child lived with her parents until she was 5 months old, when her mother died. From then on, she lived with her maternal grandparents. Her father visited her once or twice a week for two years and contributed to her support. After he remarried and had another

[8] The Court stated: "[W]hile the parents are ordinarily entitled to the custody of their minor children …, this right is not an absolute one, but may be forfeited where it appears that any parent is unfit to have custody of a child, or where some exceptional circumstances render such custody detrimental to the best interests of the child." *Ross*, 199 Md. at 351.

child, he visited less frequently, but he still spent time with the child and shared financially in her support. When the child was eight years old, he brought suit seeking her return. The circuit court ruled in his favor. The Supreme Court reversed. It acknowledged that courts are "bound … to recognize the natural right of parents to the custody of their children, and unless convinced that it would be injurious to their welfare, to maintain the relationship which society has always recognized as the one most to be desired." *Id*. at 381 (quotation marks and citation omitted). Nevertheless, it held, it would be "injurious" to the child to remove her from "the only home she ha[d] ever known." *Id*. at 383.

Although not mentioned by Father, the *Burak* Court also referenced *Trenton v. Christ*, 216 Md. 418, 421-23 (1958), another case involving third party grandparents. When the parents of a young child separated, mother and child moved in with the maternal grandparents, in the same town. Ultimately, the parents divorced. A few years later father remarried and he and his wife gave birth to a disabled son. Father and his family moved out-of-state, first to Delaware and then to Wisconsin. He would return to his hometown and visited the child about four times a year. It was not feasible for the child to visit his home due to the demands of his disabled son. Six years after moving in with her grandparents, when the child was 10 years old, her mother was killed and she was injured in an automobile accident. Father traveled to Maryland to see the child in the hospital and suggested she visit him. She reacted positively, but when he later told her he wanted to take her to Wisconsin to live with him, she became upset to the point of physical illness. In a suit for custody by the grandparents, the trial court found

exceptional circumstances and granted them custody. The Supreme Court affirmed. As in *Piotrowski*, it placed great weight on the child's testimony that she did not want to move away from her grandparents' home because her life was established there, with friends and school, and she was close to her grandparents.

These cases and those of the modern era demonstrate that there is no formula for what constitutes "a long period of time" for a child to be away from a parent. In some cases, there has been abandonment, in others the parent has had some involvement in the child's life, and in others, length of time is viewed relatively, as a function of the age of the child from separation until trial. In *Burak*, the child never had been away from his mother, who was his primary custodian his entire life. The grandparents were very involved in his life, but in the role of grandparents, not custodians. By contrast, in *Basciano*, the child was an infant when he came into the custody of his grandparents, who, by the time of trial had been his primary custodians and solely responsible for his welfare for most of his life. There, even though the length of time of separation was not long, the nature of the separation, given the child's age and disabilities, was tantamount to constructive physical custody having been shifted to the grandparents.

When read in context, the court's description of the separation between Father and Child as "undisputed" meant that the broad strokes of when Child stayed with Grandmother and when he stayed with Father were not contested. Until Child was 6 years old, he lived in Portsmouth Virginia, almost always with Grandmother and Mother. Beginning in late 2015, when he was 6, he lived with Father for seven months while Mother was in the hospital and Grandmother was in Frederick, having just moved there

with Great-Grandmother and her two other grandchildren. Thus, Father had primary responsibility for Child for seven months. Then, when Child was still 6 years old, Mother retrieved him and took him to Frederick to live with Grandmother. For the next six years, until the merits hearing, when Child was about two months shy of 13, Child lived with Grandmother, at her home. (He continues to live with her and will turn 14 in October 2023.) During at least the first year he lived in Frederick with Grandmother, Mother was not present.

Regarding the disputes over details of Child's living arrangements, the court explained that it was crediting the testimony of Grandmother and her witnesses over that of Father and his witnesses. In addition, the Court credited the information Child gave in his interview, which corroborated the testimony of Grandmother's witnesses. All that evidence showed that when Child was young and living in Portsmouth, Father visited him from time to time but Child's home was with Grandmother and with Mother. Mother's serious personal problems affected her ability to function, rendering her incapable of setting up and keeping a home of her own and supporting Child. Grandmother assumed the role of primary caretaker for Mother and for Child (and for two other grandchildren). After Child moved to Frederick, Child lived with Grandmother and that relationship continued. During long periods, Mother lived with them also. Child visited Father during summers and at Christmas. Most of those visits were made possible by Grandmother and Mother. Father and Child communicated by phone, although sometimes not to Child's satisfaction.

The undisputed facts and the disputed facts credited by the court established that Child was away from Father for the overwhelming majority of his life. Except for seven months in late 2015-June 2016, Child's primary home never has been with Father. Instead, his home was with Grandmother and Mother together or with Grandmother alone, and for periods of time he visited Father. To be sure, Father did not abandon Child. Except for the seven months in 2015/2016, however, he was never Child's primary caregiver and his house was not Child's home. Where Father lived was not where Child went to school, made friends, received therapy, had doctors' visits, and lived his day-to-day life. As the cases discussed above demonstrate, there need not have been a complete abandonment of a child by a biological parent for a finding of exceptional circumstances to be supported by the evidence. Here, although Father had some involvement in Child's life, he was not actively involved when Child lived in Portsmouth, until age 6, except for seven months. And from the time Child was 6 until he was almost 13, roughly 7 years, Father saw Child only during the summer and at Christmas. The evidence before the court was legally sufficient to support the court's finding that Child had been away from Father for a long period of time, and Father's finding in that regard was not legally incorrect. [9]

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[9] We note that the first *Hoffman* factor concerns the time the child has been away from the biological parent who is seeking custody in a dispute with a third party, not the time the child has been away from both biological parents. The length of time away from the biological parent involved in the custody dispute is not discounted by any period of time the child spent with the other biological parent, who by the time the custody dispute is before the courts, either is dead or not functioning. *See, e.g., Trenton v. Christ, supra* (child lived with grandparents and mother for six years before mother died, and bonded

(continued…)

2. Other *Hoffman* Factors

In its ruling from the bench, the court reviewed and discussed each of the remaining *Hoffman* factors, although not in order. Father argues that the court did not make findings with respect to each factor and did not sufficiently explain the basis for the findings it gave. We disagree.

Father maintains that the court did not state Child's age when Grandmother assumed his care (factor two). The court characterized that factor as "sort of piggyback[ing] on" factor one, which the court had just covered, and reiterated that Child "has essentially lived in some fashion or other with [Grandmother] essentially all of his life. She has bought food and clothing for him. She has taken him to doctor's appointments. She has gotten him assistance through community organizations with his disabilities." In other words, the court found, as an add-on to its finding on the first *Hoffman* factor, that Grandmother assumed Child's care from the time he was born. This finding was supported by the evidence.

The court found that Child was strongly bonded with Grandmother (factor 5). The judge discussed his interview with Child, summarizing part of it as follows:

> [A]s was mentioned, this young man has good days and he has bad days and I said to him, what happens at home when you are having a bad day[?] What does your grandmother do? The response was we go outside. We go on a walk. She always talks to me about anything. She is a person you like to confide in? Answer yes. Out of everybody in the house I probably go

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with grandparents during that time). We note that here, the court made clear in its findings that Child was living with, and became bonded with, Grandmother because Mother's many problems interfered with her ability to care for him and Father did not establish a primary custodial relationship with him.

> and talk to her the most. We talk about everything together. That is how it has always been, and I said to him not as a concluding remark, but towards the end of my questions, what is going to make you happy when this is all over with? The child [said] that I know that I get to be here [in Frederick] with my grandmother.

This evidence and the testimony of Grandmother's witnesses demonstrated that Child's bond with Grandmother was, as the court stated, "very strong."

With respect to factor 4, the period of time that elapsed before Father sought to reclaim Child, the court found that Father had not attempted to gain custody of Child until after Mother died (at which point Child was 11 years old) but commented that it was placing little weight on that factor. The court weighed in Father's favor factor 6, the intensity and genuineness of Father's desire to have custody of Child.

The court devoted a significant amount of its analysis to factor 3, "the possible emotional effect on the child of a change of custody[,]" which, given Child's afflictions, it expanded to mean "the child's physical, mental, and emotional needs." The court explained that Child suffers from severe psychological and emotional problems, and, as the evidence showed, also experiences health problems including "asthma, headaches, stomach problems, and leg problems." The court found it "crucial" to Child's well-being that he have a routine that is regimented. The support system Child has in Frederick, the court determined, facilitates the structured life that Child needs to cope with his severe emotional conditions while the life he would have with Father's family would not. Based on what Child had spoken about in the interview, the court found that Father's family would not be able to learn to provide the structure Child would need. Child expressed, in so many words, that Father never took the initiative with him. For example, as

Grandmother's testimony and Child's interview showed, although Grandmother always sent Child's medicine with him when he visited Father, Father would not remind him to take it, which resulted in his forgetting to take it. Indeed, by his own admission, Father did not consider Child to have any serious problems that needed to be addressed. The court also brought out, again by recounting the interview with Child, Child's strong preference to remain with his Grandmother, on whom he relied for emotional support, in Frederick, where he had a strong relationship with his counselor and where his doctors were located.

The court's discussion of factor 7, "the stability and certainty of the child's future in the custody of the parent[,]" also related to the Child's emotional and physical needs, as stability for him meant not changing his environment and the routine that was serving him well.

Much of Father's argument regarding the *Hoffman* factors amounts to a debate over the facts, in which he finds fault with the court for accepting the facts testified to by Grandmother's witnesses and not accepting the facts testified to by his witnesses. On appeal from a trial by the court, unless factual findings are clearly erroneous, we accept them as a basis for the court's rulings and do not second guess them. Md. Rule 8-131(c). Indeed, we credit the facts that support the rulings and verdict of the court, again, unless factual findings are clearly erroneous or the court clearly abused its discretion. So, for example, Father's argument that the court erred in finding that Grandmother bought food and clothing for Child because there was no proof of this other than Grandmother's testimony falls flat. The court chose to credit Grandmother's testimony in this regard and

as an appellate court, it is not our role to quarrel over the trial court's demeanor-based credibility findings.

The trial court thoroughly and properly analyzed the issue of exceptional circumstances. It did not make any material factual findings that were clearly erroneous, and the findings it made were sufficient to support its conclusion that exceptional circumstances existed.

(b)

Best Interests of the Child

As explained, once a third party establishes exceptional circumstances, thereby rebutting the presumption favoring custody in a biological parent over a third party, the trial court must determine whether the best interests of the child weigh in favor of custody with the parent or the third party. *Conover*, 450 Md. at 61. The Maryland appellate courts have encouraged the circuit courts to consider several factors in deciding the best interests of the child. *See Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1978) (setting out 10 non-exhaustive factors for a trial court to consider in any custody award), and *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986) (adding factors for consideration).[10]

[10] In *Sanders,* we listed the following non-exclusive factors for a circuit court to consider in child custody determinations: 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) the ability to maintain 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; and 10) prior voluntary abandonment or surrender. *Sanders*, 38 Md.
(continued…)

In the case at bar, after finding exceptional circumstances, the trial court proceeded to address Child's best interests, as if the dispute were between parents on an equal footing, as the law requires. Father maintains that the court erred in determining that custody with Grandmother would serve Child's best interests because its fact finding on this issue was "non-existent," its analysis was "sparse," and its findings were clearly erroneous. Once again, we disagree.

The court discounted some of the *Sanders* factors because they only are material in a dispute between biological parents. It found that some of the other *Sanders* factors overlapped with the *Hoffman* factors it had just considered. For those, such as the preference of the child, the court found, consistent with its exceptional circumstances analysis, in favor of custody in Grandmother. The court further found that it had every reason to believe that Grandmother would continue to encourage Child to develop a relationship with Father. It found that notwithstanding the physical distance between Grandmother and Father's homes, Child would be able to maintain his relationship with Father through visitation, as had happened in the past. The court did not find any problems with either parties' character or reputation. In the final analysis, the court

App. at 420. In *Taylor,* the Court reiterated the *Sanders* factors and added some factors that, in the context of that case, related to the ability of parents to share joint legal custody, such as 1) the capacity to communicate and reach shared decisions affecting the child's welfare; 2) willingness to share custody; 3) relationship established between the child and each parent; 4) potential disruption of child's social and school life; 5) geographic proximity of parental homes; 6) demands of parental employment; 7) age and number of children; and 8) financial status of the parents. *Taylor*, 306 Md. at 304-11.

determined that Child's best interests would be served by Grandmother having physical and legal custody.

Once again, Father argues the facts, maintaining, for example, that the court should have made a negative finding about Grandmother's character. He has not pointed to any first level factual findings that are clearly erroneous, however, and we see none. We defer to the court in its interpretation of facts that are not clearly erroneous, its assessments of credibility, and its exercise of discretion, which in this case does not meet the onerous test for abuse.

In summary, this is an unusual case factually. For all his life, Child has suffered from severe emotional and psychological problems that require strict behavioral and medical management. As described in one of Child's psychological evaluations, DMDD is an extreme type of mood disorder that can produce intense outbursts and physical and verbal aggression. A rigid routine that includes wearing certain clothes that he prefers, having certain comforting items, such as a pillow, with him, helps Child keep this disorder under control. In addition to severe DMDD, Child has autism, which affects his social behaviors, language, and ability to communicate and self-regulate, among other things; and he has ADHD, two learning disabilities, depression, and physical ailments. It is essential to his well-being that he take his prescribed medicine and that his routine be rigidly followed.

Grandmother has managed Child's serious disorders and he has done well, even excelling in school. Father's testimony made clear that although he loves Child he does not appreciate the exceptional needs his disabilities impose so as to be able to meet them.

Child is no longer a young boy. He will be 14 years old in a few months. In his interview with the court, he was mature and insightful with respect to his own needs and unsparing in his desire to continue to live with Grandmother, who recognizes and meets his needs, in Frederick, where his health care providers are located and he is doing well. The trial court closely considered the issues in this case and we see no valid reason to overrule its findings on exceptional circumstances and Child's best interests. The court did not err or abuse its discretion in granting Grandmother's petition for custody and denying Father's counterclaim.

II.

GRANDMOTHER'S HEALTH

Father contends the trial court erred by precluding him from asking Grandmother about her diagnosis of multiple sclerosis (MS). He asserts that he had the right to inquire into Grandmother's fitness and that diagnosis in particular, and the court erred by precluding him for doing so.

This contention lacks merit for several reasons. First, Father's brief does not include a citation to the record in which his counsel posed a question to Grandmother about her MS diagnosis. His failure to do so should end our inquiry. Nevertheless, in reading through the record extract, with no guidance from Father, we found a point in Grandmother's cross-examination where Father's counsel asked her about that diagnosis. She had testified on direct examination about being diagnosed with MS and that she no longer takes medication for it as she did not need to. In answer to Father's counsel's question, "Why don't you have to take your medication?," Grandmother said: "Because,

like I explained, I take care of my body. I overcame diabetes. I overcame being obese. And, when I go to the doctor and I check my MS and I check my diabetes, it's excellent."

Not satisfied, counsel for Father asked, "Do you have anything here to show that you are no longer - - that you are stabilized with MS and that you have no issues with MS?" Counsel for Grandmother objected and the court sustained, explaining that there was no claim being made that Grandmother was unfit. When counsel for Father seemed to hedge on that, the court asked him directly, "Are you claiming that [Grandmother] is unfit?" Counsel answered, "No."

Not only did Father fail to bring the colloquy at the heart of this contention to our attention but also the fact that Grandmother has MS was, indeed, brought out at trial, and ultimately Father's counsel conceded that Father was not arguing that Grandmother was unfit, making further inquiries into her MS diagnosis irrelevant. There was no error on the part of the court.

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