Circuit Court for Frederick County
Case No. 10-C-17-000860

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1652

September Term, 2022

R.G.

v.

B.M.

Berger,
Arthur,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: June 15, 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 arises from a child custody matter in the Circuit Court for Frederick County, between R.G. ("Mother") and B.M. ("Father"). The parties were formerly married and were divorced in July 2018. Pursuant to the judgment of divorce, Mother was awarded primary physical custody of the parties' three minor children, and the parties were awarded joint legal custody, with tie-breaking authority to Mother.

In October 2022, following an evidentiary hearing, the court issued an order modifying the tie-breaking authority provision such that Father has tie-breaking authority on matters related to the children's education, and Mother has tie-breaking authority on matters related to the physical health of the children. In all other matters, neither parent has tie-breaking authority. The court further ordered that, in the event of an impasse, and before exercising tie-breaking authority, the parties must attend two sessions of mediation.

Mother appealed and presents three questions for our review:

> I. Whether the trial court abused its discretion by modifying legal custody.
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> II. Whether the trial court abused its discretion by admitting Father's attorney as an expert witness.
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> III. Whether the trial court erred as a matter of law by ordering the parties to attend at least two sessions of mediation post-judgment before either party could make a legal custody decision.

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

FACTS AND PROCEDURAL HISTORY

Mother and Father are the parents of three minor children: "J." (born October 2007), "E." (born August 2009), and "P." (born March 2011). Pursuant to the judgment of

divorce, dated July 2, 2018, Mother was awarded primary physical custody of the children, and Father was granted access to the children on alternate weekends, every Wednesday night, half of the summer school break, and on designated holidays. The parties were granted joint legal custody of the children, and Mother was granted tie-breaking authority in the case of an impasse.

On November 19, 2020, Mother secured a final protective order on behalf of herself and the children. The order was issued upon a finding that Father committed "[s]tatutory abuse of a child (physical)." The order provided that Father was permitted to contact Mother and the children as provided in the divorce action, but that Father's visitation with the children would not resume until Father's dog had been removed from Father's home. According to the evidence at the modification hearing in September 2022, the dog had bitten the children on several occasions. The protective order further provided that all three children "will immediately resume individual therapy."

Mother's Petition for Modification

On November 24, 2020, Mother filed a petition to modify physical and legal custody. Mother alleged that Father was "verbally, emotionally, and physically abusive to the children;" that Father was financially "unstable;" and that Father was "neglectful" and failed to provide the children with adequate medical attention. Mother further alleged that Father interfered with her ability to make legal custody decisions regarding the minor children[.]" Mother requested that Father have only supervised visitation with the children, and that she be granted sole legal custody.

Father's Petition for Modification

On May 4, 2021, Father filed a motion to modify physical and legal custody. Father alleged that Mother was not compliant with the visitation schedule set forth in the judgment of divorce, and that she and her new husband had "engaged in a persistent pattern of behavior designed to excise [Father] from the minor children's lives." Father requested that he be awarded primary physical custody. Father also requested that he be granted tie-breaking authority on legal custody matters, or alternatively, that he be awarded sole legal custody.

On June 21, 2021, pursuant to Father's unopposed motion, the court appointed Laura Kane ("Kane"), as a best interest attorney for the children.

Trial

The court held a three-day trial in September 2022. At that time, J. was 14 years old, E. was 13, and P. was 11. Both parties were represented by counsel. Kane was present on behalf of the children.

Before trial began, the court signed a comprehensive partial consent order that, among other things, resolved all issues of physical custody by essentially restoring the visitation schedule set forth in the judgment of divorce, with certain modifications.[1] Additionally, the consent order included provisions designating the children's primary care physician; granting Father "appreciable" opportunities to attend the children's medical, dental, and mental health appointments; requiring the parties to notify each other in the

[1] The partial consent order was entered into the record on September 28, 2022.

event that any of the children sustained a significant injury; and requiring the parties to timely communicate pertinent information regarding the children's appointments and extracurricular activities through "Our Family Wizard."[2] The consent order further provided that P. would remain under the care of an occupational and speech therapist at Kennedy Krieger Institute, that E. would immediately begin mental health therapy with a specified provider, and that Father and E. would immediately begin family therapy. The consent order also contained provisions relating to the children's religious upbringing.

The trial then proceeded on the parties' respective requests to modify legal custody. Mother testified that the order for joint legal custody was "not working." She said that "it is impossible to deal with" Father, and that Father "has an inability to agree" with her. Father testified that "most" of the parties' discussions were "difficult," and that Mother often went "behind [his] back" and unilaterally changed plans that the parties had previously discussed.

The parties testified in detail about difficulties encountered in communicating and making shared decisions under the joint legal custody arrangement. According to Mother, with a few exceptions, the parties had not spoken to each other since 2015. They communicated only through email or Our Family Wizard. Mother said that, when she tries to communicate with Father on matters of legal custody, Father does not respond promptly, and that, when he does respond, he repeatedly asks for additional information, making it

[2] "Our Family Wizard is a subscription-based website which is designed as a medium for divorced or separated parents to communicate and manage issues regarding shared parenting." *Wilcoxon v. Moller*, 132 So. 3d 281, 284 (Fla. Dist. Ct. App. 2014).

difficult to reach a decision. Mother explained that "most issues take about 25 emails and usually then there's still no resolution or agreement."

Mother testified that Father set the date for J.'s bar mitzvah without consulting her and that Father took P. to have her ears pierced, without discussing it with her beforehand. Mother explained that she would not have agreed to having P.'s ears pierced because P. did not have the necessary motor skills and was not ready to be able to "take care of her earrings and be responsible like that."

Father said that Mother failed to advise him of the children's medical appointments and refused to allow him to attend an appointment that one of the children had with a specialist. He testified that Mother denied him access to the children for over two months during the first few months of the COVID-19 pandemic because Mother unilaterally decided that it was "not safe for [the children] to go out." When schools began offering in-person learning, Father attempted to discuss it with Mother, but Mother said that she had already made the decision that the children would not return to in-person learning at that time. Father said that Mother scheduled mental health therapy appointments for the children without discussing it with him or giving him input on choice of providers.

A good deal of the evidence at trial focused on educational options for P. Mother testified that P. was diagnosed with a "learning delay" at age three, and was diagnosed with dysarthria, which, Mother explained, is "unintelligible speech." P. had since participated

in speech and occupational therapy and had received services and accommodations at school through an IEP (individualized education program).[3]

Mother testified that P. made no academic progress after completing kindergarten. Mother stated that third grade was "really hard" for P., and that P. started "struggling with some self-esteem issues." When P. was in third grade, she underwent testing at the Kennedy Krieger Institute, which revealed that she had a "severe language disorder." According to Mother, P. "could not do fourth grade work." Mother said that P. "loves to learn" and that, despite her learning disabilities, she had not "given up on" or "rebelled" against learning.

At an IEP meeting in May 2021, at which both parties were present, Mother asked what P.'s "options" were. It was explained that P. could remain "diploma bound," with accommodations, or be "certificate bound," which, according to Mother, would allow P. to remain "in her regular classroom with her peers[.]" The third option was for P. to participate in a "learning for life" program to learn life skills. Mother and Father were in agreement that the third option was not appropriate for P. A follow-up meeting was scheduled for the following month, to determine P.'s placement for her fifth grade year.

Mother testified that the certificate option "sounded good." She told the court:

> what this would give [P.] is that she would . . . be able to be in her classroom . . . . [P.] doesn't have behavioral issues and she

[3] "The terms 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with [20 U.S.C. § 1414(d)]." *In re S.F.*, 477 Md. 296, 315 n.10 (2022) (citation omitted).

> loves people and she loves her classmates and she's been with the same classmates since kindergarten.
>
> So, this would let [P.] be in her regular classroom with her peers, but if, let's say, they were teaching about volcanos, . . .instead of having to write a long paper about volcanos, [P.] might get a worksheet that has four questions about volcanos. So, she still [will be] accessing grade level material, but the work that is given to her is something that she can actually be successful at.
>
> And, to me, I thought that sounded good[.] . . . I didn't feel like putting [P.] in a program [where] she goes to school and is not successful everyday was good for her[,] and I saw her spinn[ing] her wheels and I didn't want her to [start] thinking school was bad or . . . start rebelling and not wanting to go to school.

On May 6, 2021, Mother sent an email to Father, stating that she felt that moving P. to the certificate track was the best option for P. Mother expressed that the issue was something they needed to "start discussing . . . now," and asked Father for his thoughts. On May 14, 2021, Mother sent another message, stating that she had not heard from him and asking him if he had any input. On May 24, 2021, Father responded: "As I said in the IEP meeting[,] I would like more time to look further into this. . . . [T]his is a huge decision and feels premature at this time. I believe we should wait until the best interest attorney for the children gets involved. We should hear back from the court regarding the [best interest attorney] very soon." Mother informed Father that a meeting had been set for June 2, 2021 and asked if he would be able to make a decision by that time. Father reiterated that he wanted more time to look into it and felt that they should wait until the court ruled on his motion to appoint a best interest attorney.

On May 28, 2021, Father sent an email to Mother, informing her that he did not think they should consent to moving P. to a certificate program at that time, and that he had retained a special education attorney to "help navigat[e]" the services available through the public school system. Father wrote:

> I am extremely concerned that [Frederick County Public Schools] has decided that our intelligent 10 year old cannot make sufficient progress academically in order to graduate. This decision feels premature at best and I don't think we should accept that decision. . . . I think we need outside help navigating getting [P.] what educational help she needs. I do not think we should consent to a certificate-based program at this time. I have retained Ashley VanCleef to represent me (and I hope you, although I am not asking for a financial contribution) in regards to [P.] and her IEP with Frederick County. . . . Ashley comes highly recommended and has explained to me many options for [P.], which I think you should hear. She feels that based on [P.'s] reports, she should not be certificate bound. Ashley is looking into other services and tutoring for [P.] that will be more consistent with the curriculum and academic schedule [P.] is on at [her current school]. She thinks and I agree that we need to demand more services from Frederick County now in order to get [P.] the help she truly needs. She has the ability to get a diploma if we work hard with her. It is going to be a very hard path to take but I think we both believe she is more than worth it to have us fight and do whatever we can as parents to make sure she succeeds. Please let me know your thoughts on this. I would like to discuss this further with you as it is my feeling you are considering the certificate bound program. I am not asking for any financial commitment from you regarding this but I think it is in our best interest and mostly [P.'s] best interest that we fight for her and do not allow the school to put her in the certificate bound program.

P. remained a diploma-bound student for the following 2021-22 academic year, which was her fifth-grade year. Father testified that Jen Wei, an educational consultant, had tested P. and had discussed the results with both parties during a conference call in the

spring of 2022. Father and Mother were given options for potential private school placement for P. Both parties agreed that one of the schools was a good fit for P.

At an IEP meeting in the spring of 2022, at the end of P.'s fifth grade year, Mother used her tie-breaking authority to switch P. to the certificate track. Mother testified that it was in P.'s best interest to remain in a school setting where she would be "exposed to grade level material" and would be "interacting with normal learners." According to Mother, P. would be getting all the same services in the certificate program than she would in private placement. Mother stated that she took everything Father said into consideration, and that she had also consulted with staff at the Kennedy Krieger Institute and the children's best interest attorney, prior to making the decision.

Father called Ashley VanCleef ("VanCleef") as an expert in the field of special education and special education advocacy, over Mother's objection. VanCleef earned a bachelor's degree in special education and had worked as a special education teacher. She then worked for various education agencies and school systems where she was responsible for special education compliance and teacher training. She subsequently obtained a law degree and specialized in education law.

VanCleef stated that a majority of her clients are parents with children who have learning disabilities, who are looking for academic services for their children. She testified that she was retained by Father to give her opinion regarding P.'s educational needs and to represent P. in IEP meetings with the school.

VanCleef had reviewed all of P.'s records, including past IEPs and educational and psychological assessments. She explained that, to "qualify" for the certificate track, a

student has to have a "significant cognitive disability." According to VanCleef, P. does not have a cognitive disability. She explained that P. had "specific learning disabilities, mainly dyslexia and dysgraphia, as well as a speech language impairment." She stated that P. had "memory issues" and was "going to struggle" academically, but that she "can learn with the right kind of instructional approach."

After VanCleef was retained, P. was put on a "more intensive" reading intervention program and was "doing well." The school was also going to provide "recovery services" for instruction P. missed when schools were closed during the COVID-19 pandemic.

In VanCleef's opinion, it was "way too early" to consider a certificate track for P. She explained that the focus for students on the certificate track was limited to "very basic academics for reading" and "functional life skills" needed to "be able to eventually live on your own or within a group home environment." She explained:

> The guidance in the [Maryland State Department of Education] Technical Assistance Bulletin . . . caution[s] against making this decision in your earlier years in school because when you make a decision to go into certificate track, you are less likely to ever be able to get a diploma because your instruction is so far away from grade level standards.

By contrast, according to VanCleef, a student with learning disabilities who is pursuing a diploma is "typically going to be in research based interventions" for math and reading skills. She explained that, even if a diploma-bound student is struggling with the curriculum, they are continuing to improve their academic skill level and therefore will have "more opportunities" when they graduate from high school. If a student is still unable to meet the requirements by their junior or senior year, they can be switched over to a

certificate at that time. In that case, according to VanCleef, the student will have a greater skill level than if their educational curriculum to that point had focused mainly on life skills.

VanCleef stated that someone with P.'s disabilities could "absolutely" receive a high school diploma. She explained that, to earn a diploma, a student must read at a fifth-grade level and pass high school assessment tests, although a student who is unable to pass the high school assessments may complete a "bridge project" instead. At the time of trial, P. was in the sixth grade and was reading on a kindergarten or first-grade level. VanCleef said that P. would "probably not" be able to improve her reading to a fifth-grade level if she remained on the certificate track. She added that it would be "very difficult" for P. to achieve that level, even if she were on the diploma track, in a public school setting, due to large class sizes and the lack of "trained practitioners" to work with P. throughout the school day on reading instruction. VanCleef explained, however, that, if P. were to remain on the diploma track, and the public school was unable to meet her needs, the IEP team might recommend referral to private school placement, which the school system would pay for. In a private school setting, P. would receive reading instruction from "highly trained" teachers throughout the day. VanCleef added that private school placement is not usually provided for students on a certificate track unless they have "significant acting out behaviors" that need to be addressed.

At the time of trial, P. had just started sixth grade, as a certificate-bound student. According to Mother, P. was doing "good." P. liked middle school and, according to Mother, was being assigned schoolwork that she was capable of completing.

Mother acknowledged that the parties' communication difficulties were partially her fault, but that, since 2018, she had "improved" her ability to "stay professional" and "just talk about the items at hand." Mother said she had "gotten better" at ignoring the "insults" and "lies" in Father's communications and was better able to focus on the issues relating to the children. She said that she "would love to have a relationship with [Father] where [they] could have a normal conversation[.]" Mother testified that, if she was granted sole legal custody, she would consult Father about major decisions, and would take his thoughts into consideration before making a decision.

Father acknowledged that his conduct played a role in the parties' difficulties. He told the court: "I get frustrated, and, and sometimes my frustration will take the best of me, and I may dig in my heels in deeper than they should be dug in, and I may not be as agreeable at times, but I have worked on that, I'm still working on it." Father said that Kane, the children's best interest attorney, had been a "big help" in "making [him] realize how [he] need[s] to set [his] frustration aside and come to a more even area with [Mother]." He stated that the parties' communications had improved since Kane was appointed to represent the children.

Closing Arguments

In closing argument, Mother requested sole legal custody. She argued that the evidence demonstrated that she could be entrusted to make legal decisions that were in the best interest of the children; that she would keep Father informed; and that she would consider Father's input before making decisions.

Father argued that, although the parties had joint legal custody, Mother acted unilaterally and "without any real input" from him. He suggested that, if Mother were to retain tie-breaking authority, it would be tantamount to giving her sole legal custody, because "that's how she uses it." He argued that vesting sole legal custody in Mother was not warranted because the parties had been able to work together to resolve issues regarding physical custody and other matters prior to trial.

Father argued that he should have tie-breaking authority "at least with regard to educational decisions," because it was "the only way" that P. would "have a chance" to have an "educational future" and become a "productive member of society." Father also requested tie-breaking authority for decisions regarding mental health treatment for the children because, according to Father, Mother "tend[ed] to align with the therapists and co-op therapists against" Father. Father submitted that, for all other decisions, joint custody without a tie-breaker was appropriate.

On behalf of the children, Kane argued against giving Mother sole legal custody or allowing Mother to retain tie-breaking authority. She said that Mother's tie-breaking authority had "served as a barrier to effective communication in this case[,]" and that, "at times it was used by [Mother]" as sole legal custody.

Kane told the court that Father's decision to hire VanCleef was "a wonderful idea," and added that VanCleef "knows her stuff" and had been "aggressive" in "fighting for services for [P.]" Kane argued that the decision to place P. on the certificate track was premature and was not in P.'s best interest. She argued that Father should have tie-breaking authority for educational matters, so that P. would have "every opportunity possible[.]"

Kane asserted that the parties were not making a "genuine good faith effort to communicate," and that the children were "not fine" with the level of conflict between the parties. At the same time, she praised the parties for "work[ing] really hard" to make "some really good decisions for their children," ostensibly referring to the terms of the partial consent order. She predicted that the parties could "continue to do really good work if they just focus on the children" and "figure [ ] out [how] to trust each other a little bit[.]" She suggested that court order the parties to follow a "conflict resolution protocol," including a mediation component, in the event the parties were unable to resolve disagreements regarding legal custody matters.

Circuit Court's Ruling

The court took the matter under advisement and reconvened on September 28, 2022, at which time it placed findings of fact and conclusions of law on the record.

The court found that there had been a change in circumstances, specifically, that Mother had used her tie-breaking authority inappropriately. The court explained that:

> Joint legal custody requires the parents to confer and to discuss; it does not, ultimately, give the tie-breaker the final word. That is only there after the parties have made an effort to try to resolve issues taking into consideration all of the evidence, all of the circumstances around making the decision, and the other party's reasonable position regarding that issue.

The court found that Mother "didn't even consider" Father's "reasonable" objections to her choice of therapist for E. Regarding Mother's use of tie-breaking authority to place P. on a certificate track, the court stated:

> The way [the decision] was made, however, and the way it was described as being made was not in the spirit of joint legal custody.
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> The testimony was very clear that that decision was made after hearing the evidence at that particular IEP meeting, and that that decision was announced at the IEP meeting without even discussing what information was provided at that meeting with [Father]. That's not the proper exercise of joint legal custody in an effort to try to reach an agreement, and only when you can't reach an agreement[,] then having the final decision-making authority.
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> So, I do find that there is a change [in circumstances.]

The court noted that there had been "significant difficulties between the parties in resolving issues regarding the children[,]" but that the parties had since "grown." The court found that there was evidence that the parties had demonstrated an ability to work together to resolve physical custody issues as well as some legal custody issues, and the court commended the parties for their "remarkable growth." The court then expressed agreement with Kane's recommendation for a conflict resolution protocol:

> The problem is the tie-breaker. [The original custody] order did not have an appropriate mechanism in the tie-breaker [provision] of how to deal with a dispute. Neither party was really given an idea prior to Ms. Kane's involvement about how do we get past this impasse; how do we get past this agreement. Obviously, if we could just sit down and talk to one another we wouldn't be in this position.
>
> So, I do think it is appropriate to incorporate in the new joint legal custody determination a conflict resolution module. A lot of it the parties . . . already put that in the existing modification of the physical custody. For example, agreeing that the children are to remain with their treating pediatrician; as to who the therapist is going to be for [E.], and what the therapist's responsibilities [are], but a lot of other things are not covered in that order.

So, as part of the continued joint legal custody, I am going to add that the parties[,] for any issue not covered already in the physical custody [order,] they are to communicate in writing either by e-mail or text the nature of the legal custody issue. That is something regarding the health, safety, religion, education of the children.

The other party will respond within -- I believe in the general order it's 72 hours, so I'm going to keep that time frame so you don't have to remember is this a 72-hour or whatever -- supposed to respond within 72 hours in writing to the other party.

The parties, while they're doing this communication, will communicate civilly and respectfully, and refrain from blaming the other party or rehashing any other matter. It will be a discussion solely on this legal issue.

The parents are to remain focused on making a child-centered decision.

If the parties are unable to reach a joint decision, I am going to require them to undertake at least two sessions of a mediation or conciliation.

I am going to ask that the parties try to decide whether they want to designate a mediator ahead of time in writing, or whether they want to designate another neutral, say a rab[b]i, or a counselor, or someone. And I'm going to give 10 days after the date of this order to try to reach that as to who's going to be their neutral, who is going to be the person that they are going to consult with. And that person's role will be to assist the parents in making a joint decision.

If after two sessions with this neutral, whether it's a mediator, rab[b]i, or whoever the parties agree upon, they are unable to reach a decision, then for educational purposes I am going to grant that decision-making authority to [Father]. And for health determinations, I'll grant that decision-making authority to [Mother].

And for all other matters, the parents are going to have to try to figure out an agreement.

The court then explained its rationale for its decision:

> My reasons for selecting [Father], because I think that the parties deserve for me to put on the record the reason I'm making that determination, is that in considering the factors and how everyone approached [P.'s] decision whether to keep her in a diploma track or in the certificate track that [Father's] decision to consult an expert in that area, and to follow those recommendations, and the testimony of that expert here at trial, which the [c]ourt did find compelling, that that is a -- again, that that is a justifiable, and reasonable, and appropriate way to make the decision, particularly in light of the testimony and the evidence that [P.] could be approved for a private school placement payable through the school board if she remains on the diploma track.
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> As regarding the health issues and making ultimate decisions regarding the health and those circumstances, the ultimate decision-maker after all this process to continue to be [Mother], she's the primary custodial parent. She has the children with her [on a] day-to-day basis to make the appointments, to schedule the appointments, and knowing what their other schedules are. And, as a practical matter, the primary physical custodial parent should ultimately have that final decision-making power in the event that this conflict resolution model does not (unintelligible).
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> And, again, with respect to those specific issues, the other matters, the parties are going to be -- I direct them to follow the conflict resolution model, and to try to reach shared decision-making. And I obviously think that there's been a lot of growth in this process, and I think that the parties will be able to make those decisions.

On October 19, 2022, the court entered a written order consistent with its oral ruling. The order provided as follows:

> ORDERED, that the parties shall have the joint legal custody of their minor children, with no parent having the tie-breaking authority except as provided herein; and it is further,

> ORDERED, that the parties shall communicate and discuss all legal custody issues related to the minor children. Said communication shall be in writing, by Our Family Wizard, and shall be civil and respectful and relate only to the issue communicated. Any party having a concern or issue regarding the minor children shall communicate same to the other party; the other party shall respond within seventy-two (72) hours receipt of same; and it is further,
>
> ORDERED, that in the event the parties cannot reach a joint decision or otherwise reach an impasse on a legal custody issue related to the minor children, they shall timely attend two (2) sessions of mediation with a mutually agreed upon mediator who shall be so designated within ten (10) days of this Order, to assist the parties in making said joint decision; and it is further,
>
> ORDERED, that in the event that the parties are still unable to reach a joint decision on a legal custody matter affecting the minor children after the aforementioned two (2) sessions of mediation, then and only then shall [Father] have the authority to exercise the tiebreaking vote and make the final decision in matters related to the education of the minor children, and [Mother] have the authority to exercise the tiebreaking vote and make the final decision in matters related to the physical health of the minor children. For all other decisions, neither parent shall have tiebreaking authority[.]

This timely appeal followed. Additional facts will be included in the discussion as they become relevant.

DISCUSSION

Standard of Review

In a case such as this, which has been tried without a jury, we "review the case on both the law and the evidence." Md. Rule 8-131(c). We "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id*.

An appellate court applies different standards when reviewing different aspects of a child custody decision:

> The appellate court will not set aside the trial court's factual findings unless those findings are clearly erroneous. To the extent that a custody decision involves a legal question, such as the interpretation of a statute, the appellate court must determine whether the trial court's conclusions are legally correct, and, if not, whether the error was harmless. The trial court's ultimate decision will not be disturbed unless the trial court abused its discretion.

Gizzo v. Gerstman, 245 Md. App. 168, 191-92 (2020) (cleaned up).

A trial court's finding "'is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *In re M.H.*, 252 Md. App. 29, 45 (2021) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). In reviewing the court's findings, "all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below." *Lemley*, 109 Md. App. at 628 (citation omitted).

"An abuse of discretion may occur when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo*, 245 Md. App. at 201. The abuse of discretion standard "'accounts for the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Id.* (quoting *Santo v. Santo*, 448 Md. 620, 625 (2016) (internal quotation marks omitted). "The trial judge, who 'sees the witnesses and the parties, [and] hears the testimony . . . is in a far better position than the appellate court, which has only a

[transcript] before it, to weigh the evidence and determine what disposition will best promote the welfare of the [child].'" *Id.* (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000) (additional citation and some internal quotation marks omitted)). "An abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case.'" *B.O. v. S.O.*, 252 Md. App. 486, 502 (2021) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)).

I. The Circuit Court Did Not Abuse its Discretion in Modifying Legal Custody.

"When presented with a request for a change of, rather than an original determination of, custody, courts employ a two-step analysis." *McMahon v. Piazze*, 162 Md. App. 588, 593-94 (2005). "First, the circuit court must assess whether there has been a 'material' change in circumstance." *Id.* "A change in circumstances is 'material' only when it affects the welfare of the child." *Id.* "If a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody." *Id.*

Mother contends that the court erred in finding that there had been a material change in circumstance to warrant a change in legal custody, and that the court abused its discretion in granting Father tie-breaking authority on matters related to the children's education. Mother further claims that the court failed to articulate findings to support its decision to modify tie-breaking authority.

Father asserts that the court's findings were supported by the evidence, and that, based on those findings, it was within the court's discretion to modify tie-breaking authority. Father further asserts that, although the trial court did not articulate findings on

every factor relevant to a custody determination, it is clear that the court understood the law and properly applied it. We agree with Father.

The court based its determination that there had been a material change in circumstances on its finding that Mother used her tie-breaking authority inappropriately, that is, without a good faith effort to discuss the issue with Father and without considering his input. In making this finding, the court commented that Mother did not consider Father's "reasonable" objections to Mother's choice of a therapist for E. The court further noted that Mother had made the decision to switch P. to a certificate track based on information presented at an IEP meeting, without first discussing that information with Father. Viewing the evidence in the light most favorable to Father, as the prevailing party, we cannot say that the court's findings were clearly erroneous.

Furthermore, we perceive no abuse of discretion in the court's ultimate determination to grant tie-breaking authority to Father on matters related to the education of the children. The court found that it was "reasonable" for Father to seek guidance from an expert in special education law. The court expressed that VanCleef's testimony was "compelling," and that Father's decision to follow VanCleef's recommendation for P. remain on the diploma track was "an appropriate was to make the decision," "particularly in light of" the evidence that the public school system might provide P. with private school placement to meet her needs. Based on our review of the record, and in consideration of the significant deference afforded to the circuit court's custody determinations, we find no error in the court's findings and no abuse of discretion in the court's decision to grant Father tie-breaking authority on matters relating to the children's education.

Finally, Mother contends that the court failed to adequately explain the basis for its ruling. The record does not support this contention. In our view, the court properly focused on the factors relevant to the particular circumstances of this case and adequately articulated the basis for its conclusion that modifying tie-breaking authority was in the children's best interest. *See Gizzo*, 245 Md. App. at 195-96 ("the court need not articulate every step of the judicial thought process in order to show that it has conducted the appropriate analysis.")

II. The Circuit Court did not Abuse its Discretion in Accepting VanCleef as an Expert Witness.

Maryland Rule 5-702, which governs the admission of expert testimony, provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine
>
> (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
>
> (2) the appropriateness of the expert testimony on the particular subject, and
>
> (3) whether a sufficient factual basis exists to support the expert testimony.

Md. Rule 5-702. "[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court[.]" *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020). "Appellate courts review a trial court's decision concerning the admissibility of expert testimony under Maryland Rule 5-702 for abuse of discretion." *State v. Matthews*, 479 Md. 278, 305 (2022).

Mother asserts that the court committed reversible error in allowing VanCleef, who is an attorney, to testify as an expert witness at trial because she acted as an "advocate" for Father. Mother cites Maryland Rule 19-303.7, which provides that, subject to exceptions not applicable here, an attorney "shall not act as advocate at a trial in which the attorney is likely to be a necessary witness[.]"[4] Mother's reliance on Rule 19-303.7 is misplaced. "The advocate-witness rule is a rule of professional conduct that prevents an attorney from taking the witness stand in a case he or she is litigating." *Walker v. State*, 373 Md. 360, 397 (2003) (discussing former Maryland Rule 16-812). VanCleef was not counsel of record for Father and she did not litigate the case. Her role was limited to providing expert testimony regarding the educational options available for P., the consequences of each option, and stating her opinion as to which option was in P.'s best interest.

Mother further asserts, in passing, that the court abused its discretion in determining that VanCleef had the proper credentials and/or experience to testify as an expert witness. This argument appears to have been waived, as Mother did not object to VanCleef's testimony on those grounds. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue [other than subject matter or personal jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court"). In any event, based on our review of VanCleef's curriculum vitae and the voir dire of her

[4] Mother also cites Maryland Rule 19-303.9 in support of her argument that the court abused its discretion in allowing VanCleef to testify as an expert. That Rule has no bearing on the issue at hand as it applies exclusively to nonadjudicative proceeding.

credentials at trial, we discern no abuse of discretion in allowing VanCleef to testify as an expert witness in the field of special education and special education advocacy.

III. The Circuit Court did not Err in Ordering the Parties to Participate in Mediation in the Event of an Impasse.

Mother asserts that the trial court lacked authority to order post-judgment mediation in the event that the parties cannot reach a joint decision on a legal custody issue. Alternatively, Mother argues that, even if authorized to order post-judgment mediation, the court failed to consider factors set forth in Maryland Rule 9-205 before entering such an order. Father contends that the court's order was within its "broad and inherent authority of the court to fully address custody in a way that promotes the children's best interest." We agree with Father.

"[T]he equity courts in Maryland have "plenary authority to determine any question concerning the welfare of children within their jurisdiction, and such power does not terminate once the initial custody, support, and visitation rights have been established." *Kennedy v. Kennedy*, 55 Md. App. 299, 310 (1983). The court "may regulate" matters of custody and support "whenever necessary, . . . and virtually without limitation when children's welfare is at stake[,]" and may impose such conditions "as deemed necessary to promote the welfare of the children." *Id.* at 309-10 (cleaned up). *Accord Santo*, 448 Md. at 636-37 (stating that trial courts have "broad and inherent power . . . to deal *fully and completely* with matters of child custody") (quoting *Taylor v. Taylor*, 306 Md. 290, 301 (1986)) (emphasis in *Santo*). "We will affirm the imposition of such a condition so long as the record contains adequate proof that the condition or requirement is reasonably related

to the advancement of a child's best interests." *Cohen v. Cohen*, 162 Md. App. 599, 611 (2005) (quoting *Kennedy*, 55 Md. App. at 310).

We are satisfied that here, there was adequate proof that the requirement to mediate disputes regarding matters of legal custody is reasonably related to the advancement of the children's best interests. Kane advised the court that the conflict between the parties was adversely affecting the children, and she recommended mediation to facilitate joint custody. The court found that the parties did not understand how to resolve their differences and reach shared decisions, and the court concluded that it was appropriate to incorporate a "conflict resolution module" into the joint custody agreement. Based on our review of the record, we conclude that the court did not err in requiring the parties to participate in non-binding mediation to assist them in making joint decisions in the event of a future dispute. *Accord Shenk v. Shenk*, 159 Md. App. 548, 559 (2004) (a custody order may include proactive provisions in anticipation of future disputes, including a requirement that the parties attempt resolution through mediation).

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