Circuit Court for Anne Arundel County
Case No. C-02-FM-19-002262

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1904

September Term, 2022

INGRID KOHLSTADT

v.

ELLIS RICHMAN

Kehoe,**
Berger,
Arthur,

JJ.

Opinion by Berger, J.

Filed: August 23, 2023

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

**Kehoe, Christopher B., now retired, participated in this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the adoption of this opinion.

The *pro se* appellant, Ingrid Kohlstadt ("Mother"), and the appellee, Ellis Richman ("Father"), are the divorced parents of two minor children, a daughter, R., and a son, E. Mother appeals from an order entered by the Circuit Court for Anne Arundel County on December 9, 2022, modifying custody, visitation, and access to the children.[1] In her informal appellate brief, she presents four issues for our review, which we have rephrased as follows:

1. Whether the court erred by declining to categorically prohibit Father from having any contact or communication with R.

2. Whether the court erred by failing to fashion a sibling reunification plan.

3. Whether the court erred by (i) indefinitely suspending Mother's visitation and telephone contact with E.; (ii) prohibiting her from contacting his physicians; and (iii) depriving her of access to his academic and medical records.

4. Whether the court erred by denying Mother's request for legal and physical custody of E.

For the reasons set forth below, we will affirm the judgments of the circuit court.

[1] Father neither filed an appellate brief nor otherwise participated in this appeal.

BACKGROUND

The Marriage and Divorce

Mother and Father were wed in January 2005. The marriage produced two children, R., born in March 2006, and E., born in September 2009. On September 29, 2020, the circuit court entered a judgment of absolute divorce between the parties, in which it awarded them joint legal custody of R., with primary physical custody to Wife. The court awarded Father sole legal and primary physical custody of E. The court's order also (i) granted the parties "equal access to the children's school and medical records," (ii) permitted "either party . . . to attend any of the children's activities no matter whose care said child may be in," and (iii) allowed both parties to have weekly phone access with the child not in his or her care. Finally, the court established an access schedule, which provided:

> Starting in October and every other month thereafter [Father] shall have both minor children in his care [on] the 1st and 3rd Saturday from 12-4, and [Mother] shall have the minor children in her care the 2nd Saturday from 12-4[.]
>
> . . . Starting in November and every other month thereafter [Mother] shall have both minor children in her care [on] the 1st and 3rd Saturday from 12-4, and [Father] shall have the minor children in his care the 2nd Saturday, from 12-4[.]

Mother noted an appeal from that judgment on November 19, 2020. We dismissed that appeal for failure of Mother to file the necessary transcripts.

The Parties' Motions to Modify Custody

On July 25, 2022, Mother filed a motion to modify custody and visitation, alleging that Father had both neglected E.'s "education[al] and medical needs" and abused R. She sought, among other things, "full legal and physical custody of [E.] until such . . . time th[at] Father's fitness can be assured," and requested that the court "[m]odify language about [R.]'s contact with . . . Father to assure her safety." Two days later, the court appointed a children's privilege attorney and ordered a full custody evaluation.[2] On September 13, 2022, Father filed his own motion, alleging that Mother had repeatedly interfered with E.'s education. Father requested that the court enter an order (i) requiring Mother to reduce any requests for E.'s academic records to writing and (ii) prohibiting her from attending conferences regarding E.'s education absent a request by his school's administrator. On October 19, the children's privilege attorney filed a report and recommendation, wherein he advised the court that "it is in the best interests of the child[ren] that the [patient-psychologist] privilege not be waived and that privilege be asserted."

[2] A "children's privilege attorney" is "a lawyer appointed by a court in a case involving child custody or child access to decide whether to assert or waive, on behalf of a minor child, any privilege that the child if an adult would be entitled to assert or waive." *Maryland Guidelines for Practice for Court–Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access*, § 1.3.

The Merits Hearing

Both parties appeared *pro* se at the November 22, 2022, merits hearing on their motions. At the outset of that hearing, the custody evaluator assigned to the case, was called as a court's witness and testified as follows:

> Since September 25, 2020, the relationship between the parents, as well as the relationships between the parents and the children, have deteriorated to the point that the current order may no longer be in the children's best interest.
>
> The parties [agree] . . . that the visitation between [Father] and [R.] is not beneficial to either of them at this time. [Father] agrees to suspend access with [R.] at this time. Therefore, that aspect of the case is not in dispute.
>
> * * *
>
> I did not interview [R.] due to that fact.
>
> What remain[s] in dispute at this time is the physical and legal custody of the parties' son, [E.] On May 5, 2022, [Father] filed a motion to stop [Mother]'s visitation with [E.] in the aftermath of [E.]'s serious suicide attempt. [Father] attributed the suicide attempt to the unbearable stress associated with visitation with [Mother] and [R]. [Father] cited multiple false allegations of abuse that have been reported by [Mother] and the sister during visits. These false reports often resulted in police intervention in the visitation and repeated stressful interviews with multiple [Department of Social Services] agencies.
>
> And [Father] also cited the failure of reunification therapy. I spoke with the reunification therapist, Gale Anne Bellucci, who did agree that reunification therapy failed. She . . . has, in fact, not worked with the parties on reunification since January of 2021. She says it is hopeless and she does not desire to continue to work with the parties.

On July 25, 2022, [Mother] also filed a motion to modify custody and visitation. She alleges that it was [Father]'s neglect that led to the suicide attempt by [E]. She also alleged fictitious disorder imposed on another. That is the disorder that was formerly known as Munchausen Syndrome by proxy.

* * *

This investigation has uncovered no evidence whatsoever that [Father] demonstrated any behavior associated with that disorder.

Additionally, there was no evidence that [Father] neglected [E.] in any way leading to his suicide attempt.

However, there was ample evidence to support [Father]'s allegations [that] visitation with his mother is not beneficial to [E.] at this time. And it has likely contributed significantly to a deterioration in his mental health. That visitation schedule of three four-hour Saturday visits has been fraught with difficulties as evidenced by police reports in multiple jurisdictions, [Department of Social Services] investigations in multiple jurisdictions, [domestic violence] petitions, criminal charges, contempt petitions, and reports from professionals involved with the family.

The level of conflict and animosity has created an untenable situation for the children. The false allegations asserted by [Mother] against [Father] appear to be increasing in both frequency and seriousness.

I believe it is of paramount importance to decrease the level of conflict between the parents as it is significantly impacting the wellbeing of the children.

I noted that [R.] is strongly allied with her mother as [E.] is strongly allied with his father. Both children are struggling with serious mental health issues.

> At this time, I believe it is in the children's best interest to suspend contact with their non-preferred parent. I also believe that [Mother]'s interactions with [E.]'s providers are not serving his best interests at this time. [Mother]'s participation in [E.]'s health care and academic meetings have created significant difficulty, including having providers resign from treating the child.

Based on the foregoing, the custody evaluator recommended that (i) Father have sole legal and physical custody of E., (ii) Mother have sole legal and physical custody of R., and (iii) the court indefinitely suspend the noncustodial parents' respective visitation rights. The evaluator further suggested that Mother neither participate in E.'s "medical, dental, or mental health appointments" nor contact his medical or educational providers. Finally, the evaluator advised "[t]hat the siblings participate in a minimum of two reunification therapy sessions and may have regular telephone contact" if they so choose. With respect to reunification therapy, the evaluator expressed pessimism with respect to the outcome and added: "Just the children together. Not the parents."

On cross-examination by Father, the custody evaluator testified that she conducted a telephone interview with Ms. Bellucci on October 18, 2022. During that interview, the evaluator averred, Ms. Bellucci reported "that she found it impossible to work with [Mother] due to cognitive distortions, her oppositionality, . . . her argumentativeness, her abuse of the legal system, and the fact that she sees nothing wrong with her own behavior." During Mother's cross-examination, the evaluator reiterated that she declined to interview

R. because Father had voluntarily agreed to suspend visitation with her, and the parties did not therefore dispute "what should happen with [her]."

Father called Mother as his first witness. On direct examination, Mother testified that she obtained a temporary protective order against Father. Although she had filed for final protective orders against Father, Mother tacitly conceded that no such orders were ever issued. She also acknowledged having filed a written complaint against E.'s primary care physician, alleging forgery, misconduct, and negligence, explaining that as a physician herself, it was her duty to do so.

Following his examination of Mother, Father testified on his own behalf. According to him, he and E. reside in a three-bedroom townhouse in Rehoboth, Delaware, approximately ten minutes away from the home of his brother, sister-in-law, and their two children. Father expressed his hope of purchasing the property (which he was then renting pursuant to a two-year lease) with the proceeds of the court-ordered sale of the parties' marital home. Father characterized his relationship with E. as "exceptionally close." With respect to Mother's request for sole physical custody of E., Father opined:

> I think that it would be a mistake to change [E.]'s environment. I think that he has made it very clear that he prefers to stay with me where my brother and sister-in-law live in the same city, where his schools are, where his friends are. And I think he would respond very angrily and upsetly [sic] to being in [Mother]'s physical care.
>
> I think that is -- his healthcare providers from dental, orthodontics, emotional healthcare providers, psychiatrists, nurse practitioner, medication management, his school -- his

> public school is phenomenal. I mean, they have multiple counselors who are all finely attuned to [E.]'s balance of what he needs to have chances for optimal success, where [Mother] wants to place him in Severn School where the private school is not even mandated to have a 504 plan.[3] They have learning plans, but they are certainly not . . . anywhere near as extensive as a 504 plan's accountability.

Father further averred that E.'s present 504 plan meetings were unnecessarily protracted, intimating that during those meetings Mother had excessively "deflect[ed] into . . . areas that [were not] relevant to [E.]'s optimal education."

With respect to the preexisting access schedule, Father testified that E. was "strongly averse and resistant" to participating in visitation at Mother's residence, and "didn't like it when [R.] came to Rehoboth." After visiting Mother in Annapolis, Father averred that "it took [E.] over half a day to unwind" before returning to his "normal baseline behavior[.]" According to Father, R.'s scheduled visitation with him fared no better. He testified that during visitation, R. repeatedly placed calls to the Rehoboth Beach Police Department and the Delaware State Troopers. The ensuing police interviews were so unsettling, Father testified, that E. and he routinely "walk[ed] on eggshells" during visitation. With respect to the relationship between his children, Father attested that "the

[3] Section 504 of the Rehabilitation Act of 1973 safeguards the rights of individuals with disabilities who are enrolled in federally funded programs, including public schools. "504 plans" afford students with disabilities who are enrolled in such schools reasonable accommodations designed to meet their educational needs and intended to promote their academic success. *See* https://mdod.maryland.gov/education/Pages/Section-504-Plans.aspx (last visited August 17, 2023).

majority of the time they are at odds with each other." Finally, as to E.'s mental health, Father relayed that his son had assured him that "he would never try to attempt suicide again."

During her case-in-chief, Mother called Dr. Joan Razi, R.'s pediatrician, as a witness. Dr. Razi testified that she and Mother had formed a collaborative team of professionals to aid R., apparently with mental health disorders from which she suffers. That team consisted of Dr. Razi and Mother, as well as R.'s school counselor, church group leader, psychiatrist, psychologist, and neurologist. Dr. Razi testified that Father had interfered with R.'s improvement by repeatedly triggering her with his presence, "whether it's by phone or text or in person" and by filming R. despite her request that she not be filmed. Dr. Razi denied, however, that Father had directly interfered with her recommended treatment of R.

Mother called R. to testify as her second witness. During a brief recess, the court interviewed R. outside the presence of the parties. After it had done so, the court relayed that R. had indicated that she was uncomfortable with Father having access to her medical records, purportedly because Father had divulged the information contained therein to third parties. As recounted by the court, this had made R. "fearful about being honest and upfront with her providers[.]"

Finally, Mother testified on her own behalf. According to her, two weeks after Ms. Bellucci unilaterally terminated reunification therapy in September 2021, R. fainted and

fractured her ankle. Mother attributed the fainting spell to a blood pressure medication that R. had been prescribed "that is known to cause girls to faint." Mother claimed that R. had been prescribed that medication due to an incident during which Father came within six feet of her home in violation of a temporary protective order granted in November 2020 and filmed R. with his phone from the front steps.

Mother also averred that on November 12, 2021, R. advised Ms. Bellucci that E. made suicidal statements and attributed his suicidality to Father's having encouraged him to "be mean" to R. According to Mother, Ms. Bellucci failed to report the incident to her. Upon learning of E.'s utterance, Mother alerted his school, but was told that "they could only look for signs in the 504 plan," and "since [Father] had sole legal custody of [E.], they could not modify the 504 plan unless he initiated it." According to Mother, E.'s mental health continued to decline during the ensuing four months. On or around March 20, 2022, Mother heard E. say "if somebody wanted to die, they could just take medicines." Mother contacted E.'s school guidance counselor that same day but was again told that the proper course of action was to amend E.'s 504 plan, which she was not eligible do. Mother testified that six days later, E. attempted suicide while in Father's care.

Lastly, Mother recounted two incidents during visitation when E. experienced what she referred to as "violent rages" and "anxiety fit[s]." Following the first such incident, Mother purportedly made eight requests that Father provide her with E.'s medications, but he refused to comply. During the second episode, E. appeared to "becom[e] aggressive

toward [R.]," thereby causing her to experience "flashbacks." Mother became frightened, contacted Father, and requested that he "leave [E.'s] medication somewhere nearby" so that she could "run out and get them[.]" When she did not receive a prompt reply, Mother elicited assistance from the police.

At the conclusion of the merits hearing, the court held the matters *sub curia*, and reconvened on November 29, 2022. A civil hearing sheet entered that same day reflects that the court "placed findings on the record as to [the] [m]erits [of] all issues alleged in previous filings." Mother has failed, however, to furnish us with a transcript of that subsequent hearing.

The Modification Order

On December 9, 2022, the court entered an order modifying the parties' custody rights, which stated:

> ORDERED, that [Mother] be awarded sole legal custody of [R.] . . . and that she retain primary physical custody of [R.]; it is further
>
> ORDERED, that [Father] retain sole legal custody and primary physical custody of [E.] . . . ; it is further
>
> ORDERED, that only the party with sole legal custody shall have access to the that child's school and medical records and shall be listed as the emergency contact for school, medical, or other such entities; it is further
>
> ORDERED, that only the party with sole legal custody shall be able to attend medical appointments, routine or otherwise, with the child. That neither parent shall have contact with, question, interfere with or involve themselves in any way

in the medical treatment of the child that they do not have sole legal custody of; it is further

ORDERED, that both parties are no longer required to participate in reunification therapy; it is further

ORDERED, that both parties must update each other within 48 hours of any change to their phone number, email address, and/or mailing addresses; it is further

ORDERED, that both parties must notify the other party within 48 hours of any medical emergency situation involving the minor child in their care; it is further

ORDERED, that all visitation between the parties and the minor child they do not have sole legal and primary physical custody of, as well as visitations between the minor children, are suspended indefinitely; it is further

ORDERED, that all phone calls between the parties and the minor child they do not have sole legal and primary physical custody of, are suspended indefinitely; it is further

ORDERED, that the parties are permitted to text the minor child they do not have sole legal and primary physical custody of between the hours of 5:00 and 8:00 pm but the parties must respect the fact that the minor child is not required to respond to such texts; it is further

ORDERED, that the parties are permitted to attend any of the minor children's extracurricular activities so long as those activities take place in a public setting regardless of whose care the child is in[.]

STANDARD OF REVIEW

We review child custody determinations under three interrelated standards of review, which the Supreme Court of Maryland has described as follows:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court]'s decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 125-26 (1977)) (emphasis omitted).

The clearly erroneous standard of review is highly deferential and "give[s] great weight to the [court's] findings of fact." *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000). When reviewing a trial court's factual findings for clear error, an appellate court "give[s] due regard to the opportunity of the trial court to judge the credibility of the witnesses," Md. Rule 8-131(c), and therefore "must consider the evidence produced at trial in a light most favorable to the prevailing party[.]" *Ross v. Hoffman*, 280 Md. 172, 186 (1977) (quotation marks and citation omitted). "A trial court's findings are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v.*

Lemley, 109 Md. App. 620, 628, *cert. denied*, 343 Md. 679 (1996)), *cert. denied*, *Suleymanov v. Azizova*, 467 Md. 693 (2020).

We review a court's ultimate determination for abuse of discretion "because only [it] sees the witnesses and . . . hears the testimony," and is therefore "in a far better position than is an appellate court . . . to weigh the evidence and determine what disposition will best promote the welfare of the [child]." *In re Yve S.*, at 586. A court abuses its discretion when

> "no reasonable person would take the view adopted by the [trial] court," "when the court acts without reference to any guiding rules or principles," "when the court's ruling is clearly against the logic and effect of facts and inferences before the court," "when the ruling is violative of fact and logic,' or when 'its decision is well removed from any center mark imagined by the reviewing court."

Jose v. Jose, 237 Md. App. 588, 598-99 (2018) (quoting *Santo v. Santo*, 448 Md. 620, 625-26 (2016)). "Appellate courts 'rarely, if ever, actually find a reversible abuse of discretion on'" the issue of child custody. *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020) (quoting *McCarty v. McCarty*, 147 Md. App. 268, 273 (2002)).

When a party requests a modification of child custody, the court engages in a two-step analysis. *Jose*, 237 Md. App. at 599. "First, the . . . court determines whether there has been a material change in circumstance" since the prior custody order was entered. *Id.* "A material change of circumstances is a change in circumstances that affects the welfare of the child." *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012). If there has been such

a change, the court "then . . . proceeds to consider the best interests of the child" using a non-exhaustive list of factors. *Jose*, 237 Md. App. at 599.

DISCUSSION

I.

In her appellate brief, Mother presents several arguments that often bear only a tenuous connection to the issues presented and which fail to comply with fundamental principles of appellate practice. In support of each of her appellate contentions, she repeatedly claims that the custody evaluator both failed to exercise due diligence when conducting the custody evaluation and omitted salient facts from her report. Specifically, she claims:

> The [c]ustody [e]valuator . . . did not interview [R.] about contact with her father.
>
> * * *
>
> [T]he [c]ustody [e]valuator [did not] avail[] [herself] of medical opinion and medical records not protected by privilege[.]
>
> * * *
>
> The [c]ustody [e]valuator may have relied too heavily on the [r]eunification [t]herapist and . . . Child Protective Services to satisfy due diligence.
>
> * * *
>
> [T]he [c]ustody [e]valuator's [r]eport interviews [the reunification therapist] as a disinterested professional and may not have sufficiently fact-checked.

* * *

> The [c]ustody [e]valuator did not include in her report the documents I gave her suggesting the reunification therapist may have failed our family rather than our family "failing" reunification.

* * *

> The [c]ustody [e]valuator's [r]eport did not address my concern that the original Judgement of Absolute Divorce grants [Father] the right to select the next reunification therapist.

* * *

> The [c]ustody [e]valuator was ordered to determine if [Father] needed a psychological evaluation. I do not see where this determination was diligently made, especially since [E.] was in [Father's] home and in his sole custody when he attempted suicide in March 2022.

* * *

> [T]he [c]ustody [e]valuator would not accept into evidence more than 20 recordings [Father] had secretly made of our family.

* * *

> [T]he [c]ustody [e]valuator did not review [E.]'s medical records I received in January 2021, that show [Father] dismissed a doctor, established care with another doctor and then made a treatment decision in August 2020 against that doctor's recommendation

Mother's arguments with respect to the alleged inadequacy of the evaluator's custody evaluation are not appropriate for appellate review. For purposes of appeal,

"[w]itnesses do not commit error." *Apenyo v. Apenyo*, 202 Md. App. 401, 425 (2011). Rather, appellate review is limited "to the rulings made by a trial judge, or to his [or her] failure to act when action was required[.]" *Braun v. Ford Motor Co.*, 32 Md. App. 545, 548, *cert. denied*, 278 Md. 716 (1976). *See also Apenyo*, 202 Md. App. at 425 ("Only the judge can commit error, either by failing to rule or by ruling erroneously when called upon, by counsel or occasionally by circumstances, to make a ruling." (quotation marks, citation, and emphasis omitted)). The proper forum in which to impeach the adequacy of the custody evaluator's investigation and custody evaluation report was at the merits hearing, when Mother had the opportunity to cross-examine her. Absent some error purportedly committed by the court (*e.g.*, by impermissibly restricting Mother's cross-examination of the evaluator), the adequacy of the evaluator's investigation and report are irrelevant for purposes of appellate review. To the extent that Mother challenges the court's reliance on the evaluator's testimony and report, it was clearly entitled to do so. *See Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) ("[T]he [c]ircuit [c]ourt [i]s entitled to accept—or reject—*all, part, or none* of the testimony of any witness, whether that testimony was or was not contradicted or corroborated by any other evidence." (emphasis retained)).

Throughout her brief, Mother repeatedly refers to events that allegedly transpired after the merits hearing and other alleged facts that were not presented to the court. For example, in support of her contention that the court erred by permitting Father (i) to send

text messages to R. between the hours of 5:00 and 8:00 p.m. and (ii) to attend her publicly performed extracurricular activities, Mother claims:

> [R.] wanted to tell the court about her concerns known at the time of the [h]earing. Because her concerns were not heard, the [c]ourt could not address them. Then[,] *after the [h]earing, the concerns continued*.
>
> 1. [Father] repeatedly text[ed R.] at times he [wa]sn't supposed to. It has interfered with school and sleep. *After the Judgement[,] texting outside the timeframe continue*.
>
> 2. [R.] was concerned her father was using texts to find her location. There had been stalking. *[R.] now fears she is not protected from stalking, and that if she were to call for help she would again not be believed based on the Order*.
>
> 3. [Father] would show up unexpectedly at her flute concerts and appear to film her holding his phone the way he did during the family trauma. [R.] felt she would have to quit band because the motor and vocal tics got worse from fear [Father] would appear and film her. *After the Order[,] [R.] quit band*.
>
> 4. When [Father] filmed her in her home, she needed to take Tourette's medication that then caused her to faint and break her ankle. At that time[,] [Father] was standing in a public sidewalk, a place permitted in the Order allowing contact. *[R.] has suffered Tourette's flares.*
>
> 5. [R.] believes the content of most communication is ulteriorly motivated and intended to gaslight her. Some has been sexual. *After the Order harassing texts have continued and resulted in evident distress*.

> 6. *[R.] understands she can block her father's texts, but she fears that without a [j]udgement disallowing texts, she will be blamed as "hating" her father and damage her relationship with [E.]*

(Emphasis added).

In support of her challenge to the termination of court-ordered reunification therapy, Mother similarly asserts:

> Although the modified [j]udgement [sic] orders that [R.] and [E.] may communicate with each other, it was known at the time of the [h]earing that this is not a viable plan. *[R.] frequently calls and texts [E.] and can't reach him*. [E.] takes several medications for mental health. His doctors and school have repeatedly determined that [E.] needs support in all peer interactions. This includes his sister. *Absent an order assuring [E.] receive the needed support, [E.] may not be able (not unwilling) to talk with [R.] The net result is court-enabled forced separation of siblings.*
>
> * * *
>
> [R.] is an obvious stakeholder in sibling reunification. However, the [c]ourt did not hear her on this matter. Without [R.'s] insights how could the [c]ourt determine the impact suspending reunification may have on her well-being?
>
> *Excluding [R.] made her feel disempowered. And it sent a frightening message: [R.'s] younger brother was interviewed by the [c]ustody [e]valuator after he harmed himself.* Would she need to do what her brother did in order for the court to listen to her?

(Emphasis added).

These arguments are clearly improper, as the facts alleged therein are neither contained in nor supported by the record. *See Cochran v. Griffith Energy Serv., Inc.*, 191

Md. App. 625, 663 ("[A]n appellate court must confine its review to the evidence actually before the trial court when it reached its decision."), *cert. denied*, 415 Md. 115 (2010); *Johnson v. Nadwodny*, 55 Md. App. 227, 238 (1983) ("[M]atters not ascertainable from the record should not be factually relied upon in argument."). By the same token, there is no merit to Mother's claims that the court erred by excluding evidence that she never offered (*i.e.*, Father's journal, of which she made no mention at the merits hearing and "more than 20 recordings" that Father allegedly made of the family). *See Douglas v. First Security Federal Savings Bank*, 101 Md. App. 170, 177 ("[T]he appellate court has a purely appellate function; we have no power to consider documents not considered by the trial court in reaching its decision when we review its decision."), *cert. denied*, 336 Md. 558 (1994).

Finally, Mother has failed to furnish us with a transcript of the hearing at which the court announced its findings of fact in violation of Rule 8-411(a)(2).[4] Without such

[4] Rule 8-411 requires, among other things, an appellant to order "a transcription of any portion of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-503 (b) and that: (A) contains the ruling or reasoning of the court or tribunal, or (B) is otherwise reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal[.]" Md. Rule 8-411(a)(2).

As Mother failed to comply with Maryland Rule 8-411's requirement that she file a proper record, we may, in our discretion, dismiss this appeal pursuant to Rule 8-602(c)(4). *See Town of Cheverly Police Dept. v. Day*, 135 Md. App. 384, 391 (2000). We may, however, decline to exercise that discretion if "[w]e are confident that we . . . have before us all materials necessary to decide this appeal[.]" *Id.* (quotation marks and citation omitted).

findings, Mother neither claims that they were clearly erroneous nor asserts that the court abused its discretion in applying the appliable law thereto. Instead, she seems to challenge the weight of the evidence and apparently invites us to relitigate the case.[5] It is not, however, within the purview of an appellate court to retry a case or reweigh the evidence. *See Kremen v. Maryland Automobile Ins. Fund*, 363 Md. 663, 682 (2001) ("Our function is not to retry the case or reweigh the evidence[.]"); *Terranova v. Board of Trustees of Fire & Police Employees Retirement Sys.*, 81 Md. App. 1, 13 (1989) ("The weighing of the evidence and the assessment of witness credibility is for the finder of fact, not the reviewing court."), *cert. denied*, 319 Md. 484 (1990).

II.

Notwithstanding Mother's attempts to relitigate her case on appeal, we will briefly address two of her challenges to the court's evidentiary rulings. We will first address Mother's assertion that the court ought to have conducted a more thorough interview of R.—one which included the issues of sibling reunification and her contact with Father. We will then consider her claim that the court erred by declining to admit E.'s March 2022 medical records.

[5] For example, in support of her contention that the court did not "diligently obtain[] the information needed to determine the legal and physical custody of [E.]," Mother claims that the court should have more heavily weighed E.'s "504 [p]lan meeting minutes from September 2022" rather than relying on the custody evaluation report.

The Court's Interview of R.

"In child custody cases, it is axiomatic that a trial court has discretion to interview a child[,] and we review a trial court's decision under an abuse of discretion standard." *C.M. v. J.M.*, 258 Md. App. 40, 66 (2023) (quotation marks and citation omitted). *See also Lemley*, 102 Md. App. at 288 ("While the preference of the children is a factor that *may* be considered in making a custody order, the court is not required to speak with the children." (emphasis retained)). The content and duration of such an interview likewise lie within the sound discretion of the trial court and will not be disturbed on appeal absent a clear abuse thereof. *See C.M.*, 258 Md. App. at 66 ("[A] trial judge has discretion as to the length and content of a child interview." (quotation marks and citation omitted)). *See also Karanikas v. Cartwright*, 209 Md. App. 571, 590, *cert. granted*, 432 Md. 211, *and cert. dismissed as improvidently granted*, 436 Md. 73 (2013). In exercising such discretion, courts should "balance the right of the parents to present evidence as to what they deem to be in the best interest of the child . . . against possible severe psychological damage to the child." *Marshall v. Stefanides*, 17 Md. App. 364, 369 (1973).

Preliminarily, we note that because Father agreed to indefinitely suspend visitation between R. and himself, the issue of his communication and/or contact with her is largely moot. *See Md. Comm'n on Hum. Rels. v. Downey Commc'ns, Inc.*, 110 Md. App. 493, 512 (1996) ("A question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy

which the court can provide." (quotation marks and citations omitted)). Before Mother called R. as a witness, Dr. Razi testified that "she is repeatedly traumatized by . . . [F]ather's presence, whether it's by phone or text or in person." With respect to R.'s relationship with E., Dr. Razi averred that R.'s "one request when the family separated was to be able to continue to see her brother," with whom Dr. Razi opined R. had a loving relationship. In light of this testimony and assuming that R.'s testimony with respect to the issues her contact with Father and sibling reunification would have been favorable to mother, its probative value would have been slight.

In addition, the court was on notice that R. suffers from mental health conditions that make her particularly vulnerable. On direct examination of Father, Mother asked whether he had "[l]eft her alone when she was in a . . . disabled state during [his] visitation." When Father did not answer to her satisfaction, Mother clarified: "Well, she gets [Post Traumatic Stress Disorder] that triggers Tourette's, and she . . . literally freezes and can't speak." Dr. Razi subsequently testified that R. suffers from "mental health problems," include Tourette's Syndrome and "experiences severe trauma," which Dr. Razi attributed to "[F]ather's presence, whether it's by phone or text or in person." Based upon the record before us, the court could have reasonably determined that the potential probative value of R.'s unrestricted testimony was outweighed by the risk of causing her psychological harm. The court, therefore, did not abuse its discretion by narrowly tailoring its interview of R. to issues related to Father's legal custody of her.

E.'s Medical Records

Turning to the second evidentiary challenge raised below, Mother asserts that the court erred by declining to admit E.'s March 2022 medical records, which she claims were "not protected by the [patient-therapist] privilege[.]" She claims that those records "contain[ed] essential information such as how willingly [Father] seemed untruthful to the doctors saving [E.]'s life, and that [E.'s] primary diagnosis was major depressive disorder [and] not anxiety about reunification." Accordingly, she maintains that the records were relevant to E.'s best interests and the court's legal and physical custody determinations.

Maryland Code (1973, 2020 Rep. Vol.), § 9-109 of the Courts and Judicial Proceedings Article ("C.J.") provides, in pertinent part:

> (b) Unless otherwise provided, in all judicial, legislative, or administrative proceedings, a patient or the patient's authorized representative has a privilege to refuse to disclose, and to prevent a witness from disclosing:
>
> (1) Communications relating to diagnosis or treatment of the patient; or
>
> (2) Any information that by its nature would show the existence of a medical record of the diagnosis or treatment.

"[W]hen a minor is too young to personally exercise the privilege of nondisclosure, the court must appoint a guardian to act, guided by what is in the best interests of the child." *Nagle v. Hooks*, 296 Md. 123, 128 (1983). Where a patient -- or, as here, a child privilege attorney acting on a minor patient's behalf -- asserts rather than waives the patient-therapist privilege, "[d]ocuments claimed to be privileged remain presumptively privileged even

from *in camera* inspection." *Balt. City Police Dep't v. State*, 158 Md. App. 274, 288 (2004) (quotation marks and citation omitted). *See also Reynolds v. State*, 98 Md. App. 348, 366 (1993) ("Records containing information about communications between the patient and the psychiatrist or psychologist are presumptively privileged."). Accordingly, "[t]he burden is on the party seeking production to make a preliminary showing that the communications or documents may not be privileged[.]" *Id.* at 365 (quotation marks and citation omitted). If the requesting party makes no such showing "'the claim of . . . privilege should be honored without requiring an *in camera* inspection.'" *Id.* at 365 (quoting *Hamilton v. Verdow*, 287 Md. 544, 567 (1980)). If, on the other hand, proponent of such evidence satisfied that initial burden, "the court should order an *in camera inspection* . . . to determine whether the material is privileged [and] to sever privileged from non-privileged material if severability is feasible[.]" *Id.* (Quotation marks and citation omitted).

In this case, Mother offered into evidence E.'s medical records concerning his March 2022 suicide attempt. Father objected to their admission, advising the court that of the approximately 100 pages of medical records, approximately half consisted of "psychiatric notes." Mother did not dispute Father's claim, and therefore, failed to satisfy her burden of making a preliminary showing to rebut the presumption that the privilege applied. Indeed, on appeal, Mother concedes that she had offered the records into evidence, in part, to demonstrate that "[E.]'s primary diagnosis was major depressive disorder not anxiety about reunification." This is precisely the sort of psychologically diagnostic

evidence to which C.J. § 9-109 applies. We do not, therefore, perceive any error on the part of the court in declining to admit the records into evidence.

For the foregoing reasons, we affirm the judgments of the circuit court.

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