Circuit Court for Anne Arundel County
Case No. C-02-FM-17-000955

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2095

September Term, 2018

ANN PENTECOST

v.

JOSEPH PENTECOST

Wright,
Friedman,
Beachley,

JJ.

Opinion by Wright, J.

Filed: July 10, 2019

*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 case arises out of a divorce proceeding involving Ann Pentecost ("Mother"), appellant, and Joseph Pentecost ("Father"), appellee. The couple have two children, Daniel, born in January 2005, and Vincent, born in May 2011. In addition, Mother has a son, Donald, from a prior marriage, who was emancipated at the time of the underlying proceedings. On March 6, 2017, Father filed a complaint seeking an absolute divorce, custody of the parties' two minor children, and other related relief. Mother filed a counter-complaint, and later an amended counter-complaint, seeking an absolute divorce or, in the alternative, a limited divorce, custody of both children, and other related relief.

A trial on the merits was held in the Circuit Court for Anne Arundel County over the course of five days between January 17, 2018, and May 30, 2018. In a written memorandum opinion entered on August 14, 2018, the circuit court granted Mother an absolute divorce, resolved issues of marital property, awarded Mother $500.00 per month in indefinite alimony, determined Mother's marital share of Father's military pension, awarded physical custody of both children to Father, awarded joint legal custody of both children, with tie-breaking authority to Father, and awarded visitation according to a specific schedule. Mother filed this timely appeal.

ISSUE PRESENTED

The sole issue presented for our consideration is whether:

> [h]aving acknowledged that [Mother] had been the primary caretaker of the minor children for their entire lives, the trial court abused its discretion in determining that it was in the best interest of the minor children to be in the primary physical custody of [Father], and [awarding] joint legal custody, with tie-breaking authority to [Father].

For the reasons below, we shall affirm.

FACTUAL BACKGROUND

The parties met in Tennessee in the Fall of 2002 and began a romantic relationship in February 2004. During that period of time, Mother was attending college classes and, for about one year, Donald resided at the home of his maternal grandparents without his mother. According to his maternal grandmother, Donald had been abused by his biological father, and had attention deficit, hyperactivity disorder ("ADHD"), and "fight or flight syndrome."

About three months after Mother and Father began their romantic relationship, Mother learned she was pregnant. She eventually went to live with her parents and Donald. Throughout Mother's pregnancy, Father did not communicate with her. Their child, Daniel, was born in January 2005. Shortly thereafter, Mother moved into a townhouse. Several months after Daniel's birth, the parties resumed their relationship and, eventually, Father moved into Mother's townhouse.

At that time, Mother was obtaining employment through a temporary employment agency and Father was unemployed, but had enlisted in the United States Navy and was scheduled to begin training in March 2006. The parties were married in a religious ceremony on January 1, 2006. The marriage was Father's first and Mother's third. Shortly thereafter, Mother was "relieved" of her position at a manufacturing firm. When

Father entered the Navy and began his training in March 2006, Mother remained in Tennessee and cared for Daniel and Donald.

The couple moved frequently as a result of Father's Navy service. In the Fall of 2006, the parties moved to Connecticut where Father was stationed. They remained there until about the Spring of 2007, when Father was relocated to Georgia. Mother cared for the children and did not work outside the home. According to Mother, during their time in Georgia, Father was deployed once or twice, for two to three months at a time. Child Protective Services ("CPS") conducted several investigations with respect to Donald when Mother was living in Tennessee and when the family was living in Georgia.

In 2009, the Navy relocated Father to Florida, where the parties lived until 2011. During that time, Mother worked part-time for about five months at a child development center, which Daniel attended. According to Mother, Father had a history of viewing pornography. On one occasion, she saw him viewing pornography and "smacked him on the back of the head." Father went to work that day. He later returned, told Mother that he was going to file for divorce, packed some of his things, and left to stay at a friend's house. About three weeks later, Father returned with "divorce papers" but claimed that "he wasn't sure whether he should sign [them] or not." Mother said, "fuck this" and attempted to walk out of the house. Father called the military base police and reported that Mother was threatening to kill herself. When an ambulance arrived, Mother asked to be taken to a hospital so she could get away from Father. After a few hours in the hospital, Mother was released and returned to the marital home.

The couple decided to stay together. Subsequently, Mother obtained employment at the Navy Exchange and later became pregnant with the couple's second child. In April 2011, the family relocated to California and, a month or so after they arrived in San Diego, Vincent was born. Mother did not work outside the home and continued to care for the children. CPS conducted an investigation with respect to Donald when the family was living in California.

Father was transferred to Maryland in 2014. Initially, he was assigned to a training program and the family lived on the military base at Fort Meade. The couple decided to purchase a home in Pasadena so their children could attend better schools.

Mother asserts that, in December 2016, she awoke one evening to find Father attempting to have sex with her. Mother told Father "no," but he forced her to have sex with him. Father denied Mother's allegation. The Navy Criminal Investigative Service ("NCIS") conducted an investigation. The allegations were determined to be unfounded and the investigation was closed.

The parties separated on February 6, 2017 and both sought a divorce. Father alleged that Mother was having an affair with her martial arts instructor. On that issue, at trial, both Mother and her alleged paramour, Jerome McGlotten, invoked their Fifth Amendment privilege against self-incrimination. Mother alleged that Father drank too much and too often, was obsessed with pornography and online gaming, and took little interest in their children.

With respect to the parents' competing claims for custody, the trial court found, based on the factors set forth in *Montgomery County Dep't of Social Servs. v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986), and the reasons articulated in its memorandum opinion, that it was in the best interests of the parties' children to be in the primary physical custody of Father. The court awarded joint legal custody and gave Father tie-breaking authority. The specific findings of the court will be reviewed in more detail in our discussion of the issue presented.

DISCUSSION

I.

Mother contends that, although the trial court considered the required factors for a custody determination, its decision was tainted by the judge's disapproval of her alleged adultery. She maintains that the court punished her for her alleged adultery and rewarded Father for his innocence. In support of her contention, Mother points to several references in the trial court's memorandum opinion to the finding that Mother had committed adultery. According to Mother, "[t]his finding polluted [the trial judge's] consideration of" the factors required for a custody determination and "permeated" the "final custody award." Mother challenges many of the trial court's factual findings on the ground that they were inconsistent with or contrary to the evidence presented at trial. She also asserts that the trial court abused its discretion in concluding that her testimony was generally not credible.

In addition, Mother contends that the trial court abused its discretion in ordering joint legal custody with tie-breaking authority to Father. According to Mother, she was primarily responsible for all decisions impacting the children's well-being, and the court was aware that the parties did not effectively communicate regarding the children. Mother asserts that the court's award of tie-breaking authority to Father was punitive toward her, based upon her alleged adultery, and that the court should have awarded tie-breaking authority to her. We disagree and explain.

A. Standard of Review

Resolving custody disputes is considered "one of the most difficult and demanding tasks of a trial judge." *Taylor*, 306 Md. at 311. It requires "thorough consideration of multiple and varied circumstances, full knowledge of the available options, including the positive and negative aspects of various custodial arrangements, and a careful recitation of the facts and conclusions that support the solution ultimately selected." *Id.* In child custody cases, "the power of the court is very broad so that it may accomplish the paramount purpose of securing the welfare and promoting the best interest of the child." *Id.* at 301-02.

In reviewing a child custody determination, we employ three interrelated standards of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. Rule 8-131(c)] applies. [Second,] if 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.

Reichert v. Hornbeck, 210 Md. App. 282, 304 (2013) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

In our review, we give "due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses." *In re Yve S.*, 373 Md. at 584. We recognize that "it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion." *Id.* at 585-86. The discretion to make custody determinations is vested in the trial court because the judge, unlike the appellate court, is in the best position to see the witnesses and parties, hear the testimony, speak with the children, weigh the evidence, and determine an outcome meeting the best interest of each child. *Id.* at 585-86. A trial court abuses its discretion when its decision is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons[,]'" *Levitas v. Christian*, 454 Md. 233, 243 (2017) (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011)) (emphasis removed), or when it acts "'without reference to any guiding rules or principles.'" *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

In making a custody determination, "[t]he best interest of the child standard is the overarching consideration[.]" *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013). "[T]o

determine what is in the best interests of the child," a court "is required to evaluate each case on an individual basis." *Reichert*, 210 Md. App. at 304. "The best interest standard is an amorphous notion, varying with each individual case," and obliges the court to "evaluate the child's life chances in each of the homes competing for custody and then to predict with whom the child will be better off in the future." *Karanikas v. Cartwright*, 209 Md. App. 571, 589-90 (2013) (quoting *Sanders*, 38 Md. App. at 419).

There are various factors to be considered when making a custody determination. These include the guiding factors set forth in *Sanders* and *Taylor*. In *Sanders*, we provided ten non-exclusive factors: fitness of the parents; character and reputation of the parties; desire of the natural parents and agreements between the parties; potentiality of maintaining natural family relations; preference of the child; material opportunities affecting the future life of the child; the age, health, and sex of the child; residences of parents and opportunity for visitation; length of separation from the natural parents; and, prior voluntary abandonment or surrender. *Sanders*, 38 Md. App. at 420.

Taylor provided fourteen factors particularly relevant to consideration of joint custody, some of which overlap with the factors set forth in *Sanders.* The *Taylor* factors are: capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; willingness of parents to share custody; fitness of parents; relationship established between the child and each parent; preference of the child; potential disruption of the child's social and school life; geographic proximity of parental homes; demands of parental employment; age and number of children; sincerity of parents'

request; financial status of the parents; impact on State or Federal assistance; benefit to parents, and other factors. *Taylor*, 306 Md. at 304-311. As the *Taylor* Court cautioned, none of the major factors in a custody case "has talismanic qualities" and "no single list of criteria will satisfy the demands of every case." *Taylor*, 306 Md. at 303. Further, when considering the *Sanders-Taylor* factors, "the [trial] court should examine the totality of the situation in the alternative environments and avoid focusing on or weighing any single factor" to the exclusion of all others. *Karanikos*, 209 Md. App. at 590; *Best v. Best*, 93 Md. App. 644, 656 (1992).

B. Physical Custody to Father

In the case at hand, the court's finding that physical custody with the Father would be in the best interests of Daniel and Vincent was neither based upon an error of law, nor any clearly erroneous finding of fact, nor an abuse of discretion. In making its custody decisions, the court referenced the *Sanders* and *Taylor* factors, applied the factors to the evidence, and discussed many of the them in detail. Mother challenges the court's determinations with respect to several of the *Sanders-Taylor* factors, and we shall discuss each of those challenges, below.

1. Fitness of the Parents

Mother's first challenge is to the court's findings with respect to the fitness of the parents. The circuit court acknowledged that Mother had "always been the primary caregiver to the [c]hildren," including after the parties' separation. It also recognized, however, that both children had many unexcused absences from school, had been

"consistently marked tardy" for school, and that Daniel had regularly failed to turn in completed homework assignments and struggled to maintain his grades. The court noted that Mother "made the unilateral decision to take the children on vacation which caused them to miss additional days of school." The court also referenced the fact that Mother was the subject of several CPS investigations in different states, but it declined to make any finding of abuse and did not find that there was a likelihood of abuse or neglect of Daniel or Vincent in the future.

The court found that Father had always provided for the children economically and that he presented "a sincere desire to maintain an active role in their lives." The court noted Father's testimony that he had always maintained contact with their teachers and school officials, monitored their grades, and did "whatever he [could] to assist with school work." The court stated that "while meeting with the [c]hildren [*in camera*] they expressed a desire to the Court to spend as much time with Father as possible, which is something that Mother has done little to facilitate." The court concluded that Father was "very capable of providing care and stability" to the children.

Mother challenges the court's finding that Father maintained contact with the children's teachers and school officials, monitored their grades, and helped with school work because Father's e-mail with Daniel's teachers reflected only recent communication. She points to her own testimony that Father had never been involved in the children's education and the fact that Father attended only a few of Vincent's speech therapy appointments while she attended all of them. Mother also challenges the court's

finding that Daniel struggled to maintain his grades and turn in homework assignments, especially on days following the nights that Mother took the children to her boyfriend's gym. Again, Mother points to her own testimony that Daniel had always struggled with organization and submitting his homework. Further, Mother argues that it was "merely" Father's allegation that there was a connection between Daniel's failure to turn in homework and his time at the gym, and that Father had no personal knowledge of the specific dates when the children went to the gym. With respect to the children's stated desire to spend as much time as possible with Father, Mother argues that "it was erroneous for the trial court to base it's [sic] findings regarding fitness upon the children's preference." Again, she points to her own testimony that she offered Father extra time with the children beyond what was required under the *pendente lite* order and, in any event, any failure on her part to offer additional time was "not indicative of inferior fitness."

Mother's challenges to the court's determination that Father was more fit than her to provide a caring and stable environment for the children going forward are without merit. The court specifically found that Mother's testimony was not credible, and Father's desire to maintain an active role in the children's life was sincere. As a result, the court was not required to give more weight or significance to Mother's prior role as the primary caretaker of the children. The fact that Father was the primary wage earner did not preclude him from involvement in the care of the children and there was ample evidence that in the time leading up to the hearing, Father became more involved in the

children's care. Nothing in the court's memorandum opinion indicates that it gave excessive weight to the children's desire to spend more time with Father. Moreover, although the court referenced Mother's prior contacts with CPS, it declined to make any finding of abuse and did not make any finding against the Mother on this issue.

Mother also argues that the court should have considered the fact that Father relocated several times following the parties' separation, and that the court ignored Daniel's *in camera* statement that "Mother takes care of the emotional stuff and always knows what to do when he is upset." Those assertions are without merit.

With respect to the Father's housing following the parties' separation, there was no evidence to support the conclusion that Father's moves impacted his fitness as a parent. The court noted that Father's orders from the Navy would keep him at Fort Meade for the next three years, that following the parties' separation, Father continued to provide for the family "both financially and otherwise," that both parents live in the children's school district, that the children had traveled back and forth between the parties' homes since the separation; and that Father rented "an apartment close to the marital home to encourage regular engagement with the [c]hildren."

As for Daniel's *in camera* statement, the court addressed it when considering the children's preferences.

2. Character and Reputation of the Parties

Mother challenges the court's determination that Father has always been an involved and loving parent who desires to continue having an active role in the children's

lives. The court determined that despite Father's changing work schedule and past relocations, he "has always been an involved and loving parent who desires to continue having an active role in the [c]hildren's life [sic]." The court also commented on the fact that Father would be staying at Fort Meade for the next three years and that, following the parties' separation, Father continued to provide for the family "both financially and otherwise."

With respect to Mother, the court noted that she had been married three times, committed adultery which effectively ended her marriage to Father, threatened Father, and threatened to take her own life. The court found that Mother had filed a protective order alleging that Father raped her and, after withdrawing her request for a protective order, filed a complaint with the Department of the Navy alleging that Father sexually assaulted her. That allegation was ultimately found to be unsubstantiated. In addition, the court found that Mother accused her two former husbands of the same conduct upon the dissolution of those marriages.

The court concluded that it did not find Mother's testimony credible. The court wrote:

> At trial, Mother was evasive and consistently provided incomplete or fabricated testimony and was regularly instructed by the Court to answer basic questions of counsel. Mother regularly invoked her [Fifth] Amendment privilege, said that she could not recall or did not know information, and was otherwise flippant while testifying. Mother was impeached several times during her testimony, most notably when she denied receipt of the results from the Department of the Navy. The Court does not find Mother's testimony and other representations to be credible.

Mother points to the fact that Father attended only some of Vincent's speech therapy sessions while she attended all of them and the fact that Father could not name all of the children's physicians or teachers. Mother also points to her own testimony about Father's drinking, his use of pornography, and her claim that he was "a wholly uninvolved Father prior to the parties' separation." The record makes clear, however, that the court did not credit Mother's testimony. The court considered the fact that Father worked full time, was the primary wage earner for the family, and it recognized that that fact did not prevent him from being an involved and loving parent who desired to continue having an active role in the children's lives following the parties' separation.

Mother argues that the court's finding that she was not credible was an abuse of discretion because it was based upon the findings that Mother had been married three times, committed adultery, made threats about taking her own life, and had threatened Father. She asserts that "[i]t is clear" that the trial judge was offended by her marriage record "and found this to be inferior to Father's sole marriage to her." She also points out that "there was no evidence presented that the adultery itself had any harmful effects on the children, who only knew Mr. McGlotten as an instructor at the gym." We reject those arguments.

The record makes clear that the trial court's determination that Mother's testimony was not credible was not based on the number of times Mother had been married, her adultery, or her threats. Rather, it was based on the fact that Mother made similar complaints against all of her husbands and on her own testimony, which the court

described as "evasive," "incomplete," "fabricated," and "flippant." The court's conclusion was well supported by Mother's testimony and was neither erroneous nor an abuse of discretion.

3. Potential for Maintaining Family Relations

With regard to the potential for maintaining family relations, Mother argues that, because there was no evidence about the involvement of Father's family in the lives of the children, and in light of her testimony that Father's family was uninvolved, the court should have weighed this factor in her favor. The court found that the children were close to their maternal grandmother and that Mother had one child from a prior marriage, Donald. The court's findings were not erroneous and there is no indication that the court weighed this factor against Mother.

4. Preferences of the Children

Mother next challenges the trial court's findings pertaining to the preferences of the children. The trial court met with Daniel and Vincent *in camera* and summarized on the record what occurred in the meeting. With regard to Vincent, the judge reported that he liked to go to the pool near his mother's house and that he was learning how to swim. When asked what he did at his mom's house, Vincent replied that he "watches TV and he plays on his tablet." Vincent told the judge "he built a robot with his dad that cost $160.00 that you can control with a tablet." When asked what he did at his dad's house, Vincent said, "Legos, movies, video." In its memorandum opinion, the court summarized Vincent's statements, in part, as follows: "[w]hile at Mother's house,

Vincent said that he watches television and plays on his tablet. Vincent was also looking forward to using the pool near Mother's house this summer." The court further stated that "[w]hile with Father, Vincent indicated that Father played Legos and built robots with the [c]hildren, in addition to watching movies and playing video games with them." Mother contends that these findings are erroneous because they assume that Father participates in activities with the children and Mother does not. We disagree.

There is absolutely nothing in the record before us to suggest that the court concluded that Mother does not participate in activities with the children. In fact, after sharing with the parties details of her interview with both children, the court stated that the children:

> seem like healthy, normal kids to me and lovely. So whatever you did as parents up to now, it has worked well and I hope that you're able to continue to parent them as well in the future.

Mother also challenges the court's finding that Daniel voiced his discontent with the current schedule because he reported to the court that the current schedule was going well. In fact, when the court reported the details of the interview on the record, she stated that Daniel:

> told me how he visits with dad on Wednesdays and then on alternating weekends and he says that's going well. I asked him what he would do in a perfect world and he said he would spend one week with each parent.

Daniel's desire to spend a week with each parent was an expression of discontent with the custody and visitation schedule that was then in place, notwithstanding the child's belief that the visitation was "going well."

Mother also maintains that the court ignored Daniel's preference to spend one week with each parent and failed to give weight to Daniel's report that Mother always knew when he was upset and what to do, and that Mother "used to always take care of all the emotional stuff" whereas Father was not used to having to do that. According to Mother, the "failure to consider that the parent to whom primary physical custody is being awarded has never had to handle the children's emotions when they are upset is erroneous." Finally, Mother argues that the court "only considered Daniel's desire to have more time with [Father], and ignored his desire to have more time with [her]."

Mother fails to acknowledge that the preferences of the children are only one of many factors to be considered and weighed by the court in deciding the issue of physical custody. As we have already noted, none of the major factors in a custody case has "talismanic qualities," and trial courts are cautioned to avoid focusing on or weighing any single factor to the exclusion of all others. *Karanikas*, 209 Md. App. at 590. Here, the review of the interview with the children was set forth for the purpose of evaluating the preferences of the children. The record makes clear that the children did not indicate a preference to live with one or the other parent. Daniel indicated that he would like to spend one week with each parent, and Vincent stated he that wished there was a way he could have more time with both parents. The findings of the court are consistent with the evidence presented at trial, which showed that the children enjoyed and desired time with both parents. Contrary to Mother's assertions, the court was not required to fashion a

custody decision based solely upon consideration of the children's desire to spend one week with each parent or to spend more time with each parent.

5. Residences of Each Parent and Opportunity for Visitation

With respect to the court's consideration of the parties' residences and opportunities for visitation, Mother again contends that the trial court failed to consider that Father had moved three times since the parties separated and had refused to provide his address to her when she requested it. As we have already stated, the court was not required to credit Mother's testimony or give weight to text messages concerning Father's failure to provide Mother with his address. The court did not specifically reference the fact that Father had other residences prior to the one he occupied at the time of the hearing, but such a fact would be insignificant particularly in light of the lack of evidence that Father's ability to regularly engage with the children was hindered in any way by where he lived. The court specifically considered the couple's living situation at the time of the hearing and concluded that Mother resided in the marital home, and that Father rented an apartment close to the marital home to encourage regular engagement with the children. Those findings were not clearly erroneous.

6. Voluntary Abandonment or Surrender of Custody of the Children

Mother contends that the circuit court erred in finding that "[t]here was nothing to suggest that either party voluntarily abandoned or surrendered custody of the [c]hildren." She claims this finding was erroneous because Father was not involved in Daniel's life until he was approximately five months old. In its recitation of the factual background of

the case, the court recognized that after Mother learned that she was pregnant, Father ceased all communication with her, "continuing through Daniel's birth." The court failed to mention Father's absence during the first five months of Daniel's life, but that fact was not disputed below.

While the court clearly failed to reference the undisputed fact that Father was absent for the first five months of Daniel's life, this fact is insignificant in light of the fact that Daniel was 13 years old at the time of the underlying hearing. From the time Daniel was five months old, and throughout Vincent's entire life, there was never a time when Father voluntarily abandoned or surrendered custody of them. Thus, we reject Mother's contention that because Father was absent for the first five months of Daniel's life, the circuit court abused its discretion in granting physical custody to Father.

C. Joint Legal Custody with Tie Breaking Authority to Father

Mother contends that the circuit court abused its discretion in awarding joint legal custody with tie-breaking authority to Father. She maintains there was no evidence that Father had previously participated in "legal custody decisions," that she always made the decisions regarding the care of the children, that the parties had difficulty communicating, and that the court should have awarded tie-breaking authority to her. She also asserts that the award of tie-breaking authority to Father "was punitive toward" her "based upon her alleged adultery." We disagree.

Preliminarily, we note that there is not a shred of evidence to support Mother's contention that the award of tie-breaking authority to Father was punitive based on her

alleged adultery. Legal custody encompasses "the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Taylor*, 306 Md. at 296 (footnote omitted). "Joint legal custody means that both parents have an equal voice in making those decisions, and neither parent's rights are superior to the other." *Id.* Although often preferable to vesting sole legal custody in one parent, joint legal custody can be challenging because "[c]onflicts in the post-divorce period typically revolve around one or more of several areas including unresolved marital issues, lingering anger and hurt about the divorce, conflicts with or over new partners, or fruitless power struggles that revolve only around efforts to 'win' over the ex-spouse, such 'wins' often being a Pyrrhic victory." *Shenk v. Shenk*, 159 Md. App. 548, 559 (2004). Tie-breaking authority proactively anticipates "a post-divorce dispute." *Id.* at 560. The tie-breaker can and should only be used when both "parties are at an impasse after deliberating in good faith[.]" *Santo*, 448 Md. at 632. By requiring "a genuine effort by both parties to communicate, it ensures each has a voice in the decision-making process." *Id.* at 633.

As we have already recognized, building on the factors discussed in *Sanders*, the *Taylor* Court articulated factors "particularly relevant to a consideration of joint custody[.]" *Taylor*, 306 Md. at 303. The most important factor is the capacity of the parents to communicate and to reach shared decisions affecting the children's welfare. In *Santo*, the Court of Appeals held:

> [t]hat a court of equity ruling on a custody dispute may, under appropriate circumstances and with careful consideration articulated on the record, grant joint legal custody to parents who cannot effectively communicate together regarding matters pertaining to their children. In doing so, the court has the legal authority to include tie-breaking provision[s] in the joint legal custody award.

448 Md. at 646.

In order for us to set aside the trial court's award of joint legal custody and tie-breaking authority to Father, we must conclude that the trial court's decision constituted an abuse of discretion; that is, that it was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994). The record before us does not support such a conclusion.

The court expressly considered the *Sanders-Taylor* factors in determining whether an award of joint legal custody was in the children's best interests. The court concluded that the parties did not have a record demonstrating effective communication. In light of that finding, the trial court appropriately granted joint legal custody but gave tie-breaking authority to Father, the party who had been granted sole physical custody of the children. We note that the award of joint legal custody places Mother and Father on equal footing in their decision making, with the tie-breaking provision permitting Father to make the final call if he and Mother reach an impasse after deliberating in good faith. *Santo*, 448 Md. at 632. For all these reasons, we reject Mother's contention that the circuit court abused its discretion in awarding joint legal custody with tie-breaking authority to Father.

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