Circuit Court for Anne Arundel County
Case No.: C-02-FM-17-001179

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2185

September Term, 2023

W. S.

v.

S. M.

Shaw,
Zic,
Albright,

JJ.

Opinion by Albright, J.

Filed: August 30, 2024

*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).

This appeal[1] arises from an Order issued by the Circuit Court for Anne Arundel County modifying child custody and support, and setting visitation, for two minor children shared by appellant, W. S. ("Father"), and appellee, S. M. ("Mother"). On appeal, Father enumerates five issues for our review, which we rephrase and recast into the following four questions:[2]

1. Did the court err in granting sole legal and primary physical custody of the children to Mother?

[1] For the parties' privacy, and that of their minor children, we refer to the parties and the witnesses below (including the employees in Father's business and the business itself) by their abbreviated names, or their initials, and use only the parties' initials on the cover page of this opinion. The initials we use for the parties' minor children are chosen at random and may or may not be their actual initials. For all involved, we mean no disrespect in using these conventions.

[2] Father's issues presented in his brief assert that:

1. The Trial Court was clearly erroneous and abused its discretion when modifying legal custody of the minor children, by granting the Appellee sole legal custody of the parties['] minor children.

2. The Trial Court was clearly erroneous and abused its discretion when granting the Appellee sole physical custody of the parties['] minor children.

3. The Trial Court was clearly erroneous and abused its discretion when ordering that the Appellant would have supervised visitation with the parties['] minor children.

4. The Trial Court clearly was erroneous and abused its discretion when calculating the Appellant's income for the purpose of child support[.]

5. The Trial Court clearly was erroneous and abused its discretion when it ordered the Appellant to pay the Appellee's attorney[']s fees in the amount of $10,000.

2. Did the court err in ordering that Father's visitation with the children be supervised?

3. For the purposes of its child support award, were the court's findings about Father's income clearly erroneous?

4. Was the court's award of attorney's fees an abuse of discretion?

For the reasons set forth below, we answer each question in the negative and we shall affirm the judgment of the circuit court.

BACKGROUND

The parties are the parents to ten-year-old R. and twelve-year-old T. In February of 2018, the court entered an Order that granted the parties joint legal and shared physical custody of the children, set forth an alternating weekly access schedule, and ordered Father's payment of $80.00 in monthly child support to Mother.

In June of 2022, Father filed a motion to modify child custody. Therein, he asserted that Mother had "unilaterally withdr[awn]" the children from their schools in Anne Arundel County and relocated to Baltimore County. He asserted that Mother's move constituted a material change in circumstance and requested that the court grant him sole legal and physical custody of the children. In response, Mother agreed that there had been several material changes in circumstances since the 2018 Order, including her relocation to Baltimore County and several incidents of domestic violence by Father "against various girlfriends[,]" and Mother, too, sought sole legal and physical custody of the children.

In October of 2023, the court held a two-day bench trial where it heard from both parties, several witnesses on behalf of each party, and a custody evaluator assigned by the court. Father testified to being a master plumber and the sole owner of a plumbing business.

He asserted that in 2022, the business grossed nearly $280,000. He confirmed that his highest-paid employee earned up to $55 an hour. When asked how much he paid himself, Father responded that he "normally [doesn't] pay [him]self" and that he "just keep[s] money in the bank and [doesn't] spend it." He introduced 2021 and 2022 personal income tax returns indicating earnings of $52,432 and $42,432 in those years, respectively. Further, the court heard testimony that less than two months before trial, Father purchased a six-bedroom home for $665,000, for which he pays a $4,681.14 monthly mortgage.

At the conclusion of trial, the court decided that it would hold the matter *sub curia* and announce its ruling on November 21, 2023. However, before the court could do so, on November 2, Mother filed a "Motion to Re-Open Merits Trial," asserting that following trial, Father was arrested while the children were in his care ("Motion to Re-Open"). She maintained that after being notified that "the children had been absent from school for two days[,]" she learned that Father had been incarcerated and charged with, among other charges, first and second-degree assault against his former girlfriend.[3]

On November 21, 2023, the court held an additional hearing, where it heard from both parties and conducted an in-camera interview of the children. The court noted that T. seemed "guarded" and that R. disclosed that she did "not always feel safe" at Father's house and that "there were several times when dad does something bad and they [the children] call the cops[.]" The court determined that it was not then prepared to issue a

[3] Mother "locate[d] the minor children at a paternal aunt's home" later that afternoon. At the hearing on Mother's Motion to Re-Open, Father testified that the first-degree assault charge had been dropped.

decision "in light of [its] conversations with the children," and entered a *pendente lite* custody order granting Mother sole legal and primary physical custody of the parties' minor children.

Finally, on December 21, 2023, the court delivered a 25-page oral opinion modifying child custody. The court awarded sole legal and primary physical custody to Mother and set forth a three-phase visitation schedule for Father, providing supervised visitation in the first two phases and unsupervised visitation in the final phase:

> 1. Phase One: This phase shall last twelve (12) weeks from the date of the entry of this order. During Phase One, [Father] shall have supervised parenting time with the minor children on the first three Saturdays of every month commencing on the date of the docketing of the court's order from 10:00 a.m. to 8:00 p.m. [Mother] shall have parenting time with the children on the fourth Saturday of every month (and on any 5th Saturday). [Father's] parenting time shall be supervised by [Father's Father], [Father's Aunt M.], another person mutually agreed upon by the Parties, or a professional visitation supervisor. [Father] shall bear the cost, if any, for the visitation supervisor. During Phase One, [Father] and the children shall participate in family therapy which shall commence within thirty (30) days of the Court's order and shall occur with a minimum frequency of one session every two weeks. Any cost associated with the therapy not covered by insurance shall be paid by [Father]. Participation in therapy at the designated frequency is a prerequisite to completion of Phase One.
>
> 2. Phase Two: This phase shall last twelve (12) weeks and immediately follow completion of Phase One. During Phase Two, [Father] shall have supervised parenting time with the minor children on the first three Saturdays of the month from Friday at 6:00 p.m. until Saturday at 8:00 p.m. [Father's] visitation with the children shall be supervised by [Father's Father], [Father's Aunt M.], or another person mutually agreed upon by the Parties. During Phase Two, [Father] and the children shall continue to participate in family therapy which shall occur with a minimum frequency of one session every two weeks. Any cost associated with the therapy not covered by insurance shall be paid by [Father]. Participation in therapy at the designated frequency is a prerequisite to the completion of Phase Two.

> 3. Phase Three: This phase shall begin after completion of Phases One and Two. During Phase Three, [Father] shall have unsupervised access with the minor children every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.

Further, the court found Father's "testimony regarding his income not credible." Specifically, the court noted Father's $4,681.14 monthly mortgage, asserting that "[i]t strains credulity to believe that a person making $4,369 would qualify for a mortgage with a payment of $4,681.14[.]"[4] Instead, the court concluded that "given that the evidence shows that the highest-paid employee at [Father's] business, makes $55 an hour, the [c]ourt finds it appropriate to impute that[5] amount of income to [Father] for full-time employment[,]"[6] and it imputed a $9,526 monthly income to Father. Using the child support guidelines, the court ordered Father's payment of $1,862 in monthly child support to Mother.

In addition to child support, the circuit court awarded Mother $10,000 in attorney's fees, to be paid by Father in equal monthly installments of $1,000 per month. The court found that Father was in a "superior financial position," that his income is "three times that

[4] The salary listed on Father's 2021 tax return ($52,432) divided by twelve equates to $4,369 per month.

[5] Notwithstanding its use of the term "impute," the court calculated Father's child support obligation based on what it inferred his actual income to be, not on potential income as if he was voluntarily impoverished. Neither party contends that the circuit court's income finding for Father was based on his being voluntarily impoverished.

[6] Father testified that he usually works Monday through Friday 9 to 5, and in its ruling, the court noted that it calculated the income it imputed based on Father's full-time work schedule.

of [Mother,]" and that his business "had substantial income, which was sufficient to allow him to purchase a $625,000 home."[7] By contrast, noted the court, Mother was unable to afford a larger home, lived in a two-bedroom trailer, and had "substantial" needs. The court also found that Father was substantially justified in bringing the action, and that Mother was substantially justified in defending it.

Father timely noted this appeal. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

Our appellate courts "practice a limited review of a trial court's decision concerning a custody award." *Wagner v. Wagner*, 109 Md. App. 1, 39 (1996). This practice involves three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). First, factual findings are reviewed for clear error. *In re R.S.*, 470 Md. 380, 397 (2020). Second, we review whether the court erred as a matter of law without deference, under a *de novo* standard of review. *Id*. Finally, ultimate conclusions of the court, when based upon sound legal principles and factual findings that are not clearly erroneous, will stand unless there has been a clear abuse of discretion." *Id*.

Findings of fact are not clearly erroneous "[i]f there is any competent material evidence" to support them. *Fantasy Valley Resort, Inc. v. Gaylord Fuel Corp.*, 92 Md. App. 267, 275 (1992). Further, "[t]he burden of demonstrating that a court committed clear error falls upon the appealing party." *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459

[7] The court found that Father's home cost $625,000, but Father testified that he purchased it for $665,000. Neither party challenges the court's finding.

Md. 1, 21 (2018). Moreover, an abuse of discretion occurs where "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." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations omitted).

Our standards of review for child support modifications and attorney's fees awards are also narrow. "Whether to grant a [child support] modification rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily used or the judgment was clearly wrong." *Ley v. Forman*, 144 Md. App. 658, 665 (2002). Similarly, "the trial court 'is vested with wide discretion' in deciding whether to award counsel fees and, if so, in what amount." *Malin v. Mininberg*, 153 Md. App. 358, 435-36 (2003) (quoting *Dunlap v. Fiorenza*, 128 Md. App. 357, 374 (1999)).

DISCUSSION

I. The court did not err in granting Mother sole legal and primary physical custody of the children.

a. Parties' Contentions

Father asserts that in awarding Mother sole legal and primary physical custody of the children, the court erroneously relied upon allegations of abuse that occurred prior to the 2018 Order, even though "[t]here was no new or additional testimony . . . that [Father] had engaged in any further domestic violence against [Mother.]" Further, he asserts that the court did "not properly complete[]" a review of the factors set forth in *Montgomery Cty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977), and *Taylor v. Taylor*, 306 Md. 290 (1986), and that the court's findings "that the parties are both fit and proper[]"

and that the children had not "been hurt by either party[]" demonstrate that the court abused its discretion in awarding custody to Mother.

Mother responds that the court conducted a thorough review of the *Taylor* and *Sanders* factors prior to modifying child custody. Thus, according to Mother, the court appropriately "expressed concern" about the parties' inability to communicate, Father's history of domestic violence against romantic partners, including "his inability to protect the children from the adverse effects of witnessing acts of domestic violence[,]" and Father's lack of credibility. Mother contends that the court's modification of custody and visitation was neither clearly erroneous nor an abuse of discretion.

b. Legal Framework

Generally, trial courts employ a two-step process when considering a request to modify child custody. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). First, they determine a threshold question of whether "there has been a 'material' change in circumstance." *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005). Second, they consider "the best interests of the child, evaluating guiding factors laid out in *Montgomery Cty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 and *Taylor v. Taylor*, 306 Md. 290." *Jose v. Jose*, 237 Md. App. 588, 599 (2018) (cleaned up).

Specifically, in *Sanders*, this Court enumerated several factors to be considered in determining the best interests of a child:

> 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health and sex of

> the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender[.]

38 Md. App. at 420 (internal citations omitted).

Later, in *Taylor*, the Supreme Court of Maryland enumerated the following factors, several of which overlap with those set forth in *Sanders*: 1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; 2) willingness of parents to share custody; 3) fitness of parents; 4) relationship established between the child and each parent; 5) preference of the child; 6) potential disruption of child's social and school life; 7) geographic proximity of parental homes; 8) demands of parental employment; 9) age and number of children; 10) sincerity of parents' requests; 11) financial status of the parents; 12) impact on state or federal assistance; 13) benefit to parents; and 14) any other factors as appropriate. *Taylor*, 306 Md. at 304-11.

Furthermore, while the factors in *Sanders* and *Taylor* are instructive to a trial court's determination regarding the best interests of the children, "no one factor serves as a prerequisite to a custody award." *Santo v. Santo*, 448 Md. 620, 629 (2016). Instead, "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." *Jose*, 237 Md. App. at 600 (quoting *Best v. Best*, 93 Md. App. 644, 656 (1992)). In sum,

"[u]nequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child." *Azizova v. Suleymanov*, 243 Md. App. 340, 347 (2019).

c. Analysis

Here, it was undisputed that Mother's relocation to Baltimore County constituted a material change in circumstance since entry of the 2018 Order. Accordingly, the court conducted a thorough review of the *Sanders* and *Taylor* factors to determine the best interests of the children, specifically noting that it "considered each of the factors set out in *Taylor v. Taylor* and *Montgomery County v. Sanders*" and that if it "fail[ed] to speak to any factor, that does not mean that [it] did not take that factor into consideration." The court found several *Sanders* factors relevant to its determination, including the fitness of the parents, the character and reputation of the parties, the potentiality of maintaining natural family relations, the preference of the children, and the homes of the parties.

As to the fitness of the parties as parents, the court found this factor weighed in Mother's favor for custody. The court found that Mother "is a fit and proper person to have custody of the children[]" and that Father "is a fit and proper person to have parenting time with the children and, at the present time, supervised parenting time with the children[.]"

The court also analyzed the character and reputation of the parties and found that it weighed in Mother's favor. It concluded that there was nothing "in the testimony that would reflect, adversely, on [Mother's] character or reputation." However, the court noted that it had "concerns about the character and reputation of [Father,]" finding that there was a "history of domestic violence[.]" Indeed, the court noted Father's "recent arrest for

domestic violence against a person whom he had a protective order against and who had a protective order against him[,]" observing concern about his "compliance with court orders and his ability to protect the children from the adverse effects of witnessing acts of domestic violence, whether perpetrated by or against [Father]."

Further, the court expressed concern regarding Father's credibility and alcohol consumption. Specifically, the court asserted that the "ability to accurately assess the best interests of the children was significantly impaired by what the [c]ourt finds to be untruthful and contradictory testimony by [Father.]" *See* Part III, *infra* (further discussing the court's assessment of Father's credibility). Finally, the court noted that Father's financial transactions show "26 purchases from three different liquor stores in December of 2022, sometimes multiple purchases a day, and an additional 16 purchases from liquor stores in January 2023[.]"

Furthermore, as to the ability of the children to maintain natural family relationships, the court found that permitting Mother to retain custody of the children would allow the children to maintain relationships with two additional half-siblings who live with Mother.

The court also considered the preferences of the children. It noted that T. "initially said that the custody arrangement per the [c]ourt's prior order should remain in place, but upon further discussion, he stated that he would like to see his father on the weekends[.]" Further, the court found that R. "does not always feel safe in [Father's] home" and that

"[b]oth children noted that when they are in [Father's] custody, they spend significant time away from his home and at the home of either his sister or his parents."

Moreover, the court considered the homes of both parties, noting that at Mother's, the children share a room with each other and one half-sibling. The court noted that although the sleeping arrangements at Mother's may "create issues[] as the children mature[,]" overall, Mother's home was "stable and appropriate[.]" The court noted that although each child has their own bedroom at Father's, due to the concerns regarding domestic violence, "his home is not stable and appropriate at this time."

Regarding the additional factors set forth in *Taylor*, the court found the capacity of the parents to communicate, the relationship between the children and the parties, the potential disruption of child's social and school life, the geographic proximity of the parental homes, and the demands of parental employment all weighed in favor of Mother.

Specifically, concerning the parties' capacity to communicate, the court noted that "the parties do not have a good capacity to communicate[.]" It found that "[t]ext messages between the two are hostile and confrontational, which the [c]ourt attributes largely to [Father's] use of insulting language directed at [Mother]."

Regarding the parties' relationships with the children, the court found that based upon its conversations with the children, this factor also weighed in favor of Mother. It found that Mother has a "strong relationship with the children[.]" Further, although the court found that "[T.] and [Father] have a strong relationship[,]" it noted that Father's

relationship with R. was "strained" and that she "doesn't feel safe in his home and that she becomes scared[] because he yells at her."

Additionally, the court considered the potential disruption in changing the custody arrangement and found that the potential disruption of what Father had requested was "significant[.]" It noted that "[t]he children have been attending the Baltimore County school since 2019" and that "[i]f [Father] were awarded sole custody, as he requested, the children would have to start new schools and essentially start over[.]"

As to the geographic proximity of the parties' homes, the court found that the distance from Father's home caused problems. It noted that Mother and Father live "approximately 50 minutes apart[]" and that "the distance between the parties' respective residence[s] has acted as an impediment to [Father] getting the children to school on time." Although the issue regarding the children's school attendance was initially raised several months before trial, the court found that there was "extensive testimony regarding the number of absences and late arrivals to school occurring during [Father's] parenting time[,]" including that:

> [R]ecords show that [R.] was absent from school a total of 25 times, 21 of which were during [Father's] custodial time and that [T.] was absent 29 times, 25 of which were during [Father's] custodial time. And that each of the children were late an additional 19 times, largely occurring during [Father's] parenting time.

In sum, the court noted that it was "particularly struck by [Father's] failure to alter his pattern or schedule to ensure that the children arrive to school on time."

As to the demands of each parent's employment, the court again found the factor ultimately weighed in favor of granting Mother custody. It noted that Mother is "able to work around the children's schedule[,]" and that although Father "testified that he is self-employed and makes his own schedule[,]" it could not "reconcile that testimony with the children's school records, which show that both [T.] and [R.] were absent or tardy a significant number of times while in [his] care."

Accordingly, we disagree with Father's assertion that a review of the *Taylor* and *Sanders* factors was "not properly completed."

The fact that the court noted Father's history of domestic violence, including his recent arrest and his past abuse of Mother, does not change our analysis. Father did not dispute that he was arrested in the month leading up to the court's opinion for a domestic dispute while the children were in his care.[8] That those criminal charges were still pending at the time of the court's ruling, or that the abuse was not against the children, does not invalidate the court's concern about the children being "adversely affected by their exposure to domestic violence." Finally, although the court specifically noted that Father's abuse of Mother "occurred prior to [the] entry of the February 2018 [O]rder[,]" it nonetheless found Father's "history of . . . perpetrating domestic violence against romantic partners" relevant to its custody determination.

[8] Instead, Father asserted that the children "didn't know that [he] was actually getting arrested" because the officer "did it beside the car and put [him] in the front seat[.]"

Further, Father asserts that the court abused its discretion in modifying custody, particularly as the court found that Father was fit and proper for visitation. Building on this finding, Father argues that there was no evidence that he was not fit and proper also to have custody. To be sure, the court explicitly determined that Father was fit and proper to have "supervised parenting time with the children." But the court does not rely upon "one factor to the exclusion of all others[]" when making a child custody award. *Boswell v. Boswell*, 352 Md. 204, 224 (1998). Instead, the court looks to the "totality of the situation in the alternative environments[,]" and here, the court determined that the totality of the situations at the parties' homes indicated that it was in the children's best interests to be in Mother's sole legal and primary physical custody. *Jose*, 237 Md. App. at 600 (cleaned up). We cannot say that under these facts, "no reasonable person would take the view adopted by the [trial] court[.]" *In re Adoption/Guardianship No. 3598*, 347 Md. at 312 (cleaned up).

Finally, we disagree with Father's assertions that the court "used erroneous facts" or that the absence of a recommendation from the custody evaluator indicates an abuse of the court's discretion. Father does not specify which facts he contends were "erroneous[,]" and thus, fails to meet his burden of demonstrating any clear error. Further, Father cites no support for his assertion that the absence of a recommendation from the custody evaluator amounts to an abuse of the court's discretion, and we are not aware of any. In any event, although the custody evaluator did not issue a custody recommendation, she nonetheless noted that "violence in [Father's] home does appear to be an ongoing problem as evidenced by the protective orders[]" and further, that Father failed to "pay[] attention to [the

children's] hygiene[.]"[9] Accordingly, the court's findings of fact were adequately supported by the record, including by the testimony of the custody evaluator.

II. The court did not err in ordering that Father's visitation begin as supervised visitation.

a. Parties' Contentions

Father challenges the court's determination that his visitation with the children was to begin as supervised. He asserts that by ordering this restriction, the court erroneously made a "conditional custody award to a fit parent[,]" contrary to the Maryland Supreme Court's decision in *Frase v. Barnhardt*, 379 Md. 100 (2003). He also argues that there was no evidence to show that he was" not a fit and proper parent to have custody of [the children]." In sum, concerning the conditions imposed upon his visitation, Father argues that the court improperly weighed the evidence and should not have credited certain evidence.

Mother disagrees. She argues that courts are able to impose conditions upon visitation when they would support the best interests of the children. She contends that the court credited evidence that Father had abused previous romantic partners. In sum, she asserts that the visitation schedule was justified under the circumstances, including "the relationship between the children and [Father], the ongoing conflict in his home, and [Father's] inability to shield the children" from the conflict in his home.

b. Legal Framework

[9] The custody evaluator testified that she did not offer a formal custody recommendation because she was assigned only to conduct a "brief assessment."

Generally, a non-custodial parent has "a right to liberal visitation with his or her child 'at reasonable times and under reasonable conditions[.]'" *Boswell*, 352 Md. at 220 (quoting *Myers v. Butler*, 10 Md. App. 315, 317 (1970)). However, the Maryland Supreme Court has noted that "this right is not absolute." *Id*. Indeed, "the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation, or adoption dispute." *Id*. at 219. Furthermore, "[b]ecause visitation generally is awarded to non-custodial parents not for their gratification or enjoyment, but to fulfill the needs of the child, when the child's health or welfare is at stake[,] visitation may be restricted or even denied." *Id*. at 221; *see also Kennedy v. Kennedy*, 55 Md. App. 299, 310 (1983) (holding that the court may "impose such conditions upon the custodial and supporting parent as deemed necessary to promote the welfare of the children."). Accordingly, a court generally has "broad discretion as to whether to impose [a] condition upon a parent's visitation/custody rights[,]" "so long as [the condition] is in the child's best interest and there is sufficient evidence in the record to support [it.]" *Cohen v. Cohen*, 162 Md. App. 599, 608 (2005). Thus, we will uphold a court's imposition of such a condition when it meets those requirements.

Finally, "when an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of witnesses." Md. Rule 8-131(c). In reviewing an order granting a party visitation of a child, we give due regard to the trial court's credibility

determinations, "because that court, which 'sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child,' is 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].'" *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 687 (2014) (quoting *In re Yve S.*, 373 Md. at 584-86).

c. Analysis

Here, we give due deference to the court's credibility determinations and conclude that the court did not abuse its discretion in imposing conditions on visitation—namely, supervision and family therapy—because the conditions were in the children's best interest, and there was sufficient evidence to support them. To begin, we give due regard to the court's determination that there was an overall concern about domestic violence in Father's home, as well as a "lack of focus on the children's educational needs" by Father. The trial court had ample opportunity to hear testimony from the parties and their witnesses and to speak with the children. The court concluded, after a two-day merits trial, and an additional hearing on Mother's Motion to Re-Open, that its ability to assess the best interests of the children was impaired by what the court found to be "untruthful and contradictory testimony by [Father]." Giving due regard to the trial court's credibility determinations, we see no reason to disturb the court's finding that Father's visitation should, at the outset, be supervised.[10]

[10] Father also challenges certain text messages introduced by Mother at trial, contending that they were not properly authenticated. Although there is no indication that (continued)

Further, the court's imposition of conditions was supported by sufficient evidence. For example, there was evidence about Father's physical abuse against romantic partners, statements from the children, including that R. feels "scared" in Father's home, and school records indicating that each child was absent over 20 times while in Father's care. Thus, there was sufficient evidence to support findings that these circumstances existed and that the conditions of supervision and family therapy would help counteract these circumstances.

Additionally, in light of the court's finding that the children had been adversely affected by domestic violence in Father's home, we see no abuse of the court's discretion in ordering that Father's visitation be supervised at the outset. *See Boswell*, 352 Md. at 221 (noting that "[i]n situations where there is evidence that visitation may be harmful to the child, the presumption that liberal unrestricted visitation with a non-custodial parent is in the best interests of the child may be overcome.").

Nor are we persuaded by Father's argument that *Frase v. Barnhart* provides otherwise. In that case, the trial court attached several conditions to its award of child custody to mother, including that she apply for specific housing and facilitate visitation with a sibling. *Frase*, 379 Md. at 108. The Court held that the conditions imposed were improper, noting that the trial court may not "make findings that would dictate a particular result and then subject the favored party to conditions inconsistent with that result and to

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the court relied upon said text messages in reaching its decision to modify child custody, because Father failed to object to the text messages at trial, his assertion is not preserved for our review. Md. Rule 8-131(a).

continuing review hearings." *Id*. at 121. The Court noted that the conditions were improper "[p]articularly when coupled with a caveat that the parent and child live at the specific place chosen by the court[.]" *Id*. at 119. Under such circumstances, the Court concluded, "the case never ends; the child and the parties remain under a cloud of uncertainty, unable to make permanent plans." *Id*. at 121.

No such conditions or uncertainty exist under the facts before us. Instead, the court unequivocally ordered sole legal and primary physical custody to Mother. Father was granted supervised visitation while completing family therapy with the children, in a phased-in approach where each consecutive phase "immediately follows" his successful completion of the phase prior. Indeed, the final phase provides for his unsupervised visitation with the children. Contrary to the circumstances in *Barnhart*, no continuing review hearings are necessary or contemplated under the Order before us. Moreover, Father presents no support for his argument that a phased-in approach with a set timeline, like the one before us, is prohibited under *Barnhart*. *See Cohen*, 162 Md. App. at 608 (finding that the court did not abuse its discretion in imposing a condition so long as that condition was in the child's best interest and there was sufficient evidence to support it).

III. The court's findings about Father's income were not clearly erroneous and its award of attorney's fees to Mother was not an abuse of discretion.

a. Parties' Contentions

Father disputes the circuit court's award of child support and attorney's fees to Mother. He maintains that in calculating his income, the court erred in "presuming that

[he] earned at the same rate as one of his employees, rather than relying on [his] filed Federal income tax returns[.]" Regarding attorney's fees, he acknowledges that there was substantial justification for each party to bring their respective complaints. However, he reiterates that the court improperly calculated his income, so, he argues, the award of attorney's fees was improper.[11]

Mother responds that both awards were proper and appropriate. She argues that the court's findings regarding Father's income were appropriate given the fact that the court found Father's testimony regarding his income not credible, and that the court "could not reconcile" his stated income and his monthly mortgage.

b. Legal Framework

Generally, when awarding child support, the court must determine a parent's "income." For a parent who is employed to full capacity, "income" means "actual income." Md. Code, Fam. L. ("FL") §12-201(i)(1). For a parent who is voluntarily impoverished, "income" means that parent's "potential income." FL § 12-201(i)(2). "'Actual income' means income from any source." FL § 12-201(b)(1). "For income from self-employment [or] . . . proprietorship of a business . . . , 'actual income' means gross

[11] We note that Father cited to the incorrect statute in his brief, i.e., Md. Code, Fam. L. § 8-214(c), which governs award of expenses in regard to property disposition in annulment and divorce cases. Instead, we analyze the court's award of attorney's fees, *infra*, under Md. Code, Fam. L. §§ 12-301(a) and (b), which apply to the award of attorney's fees in cases involving modification of custody, visitation, and child support, among others.

receipts minus ordinary and necessary expenses required to produce income." FL § 12-201(b)(2).

As above, we review " . . . the case on both the law and the evidence. [We] will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of witnesses." Md. Rule 8-131(c). Indeed, the trial court may "consider all the relevant circumstances in a particular case before making any determination about what should be considered in calculating a parent's support obligation." *Petrini v. Petrini*, 336 Md. 453, 463 (1994). In so doing, "'[a]s long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we may have reached a different result.'" *Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020) (quoting *Malin*, 153 Md. App. at 415).

c. Analysis

Here, the court found that Father was self-employed and in a "superior financial position" than Mother due to what the court found to be "significant profits[]" earned from the plumbing business that he solely owned. Indeed, Father testified that in 2022, the business grossed over $275,000. Nonetheless, Father testified that he paid himself less than $43,000. Further, Father asserted that the only master plumbers in his business were

himself and his father.[12] However, the record reflects that his highest-paid employee, N. C., made as much as $55 per hour, an amount far greater than what Father maintained that he paid himself.[13]

Further, the court noted additional inconsistencies in Father's testimony, including that:

> [Father] also testified that he didn't know his income because his father handled his finances. However, [his father] testified that [Father] did not speak with him about how much money he made.

Moreover, the court noted that while it "credited some of [Father's] testimony," "in several instances he testified to something during his direct testimony and provided diametrically opposite testimony during his cross-examination." Specifically, the court observed that:

> This occurred, for example, specifically when he spoke about saving $125,000 for a down payment on his house, which he said he had accrued from saving for 3 months on direct examination. But on cross examination, said that his father had given him some of the money.

Ultimately, the court found Father's testimony regarding his income not credible and imputed what it determined to be the highest-paid employee's annual income to Father.[14] Giving "due regard to the opportunity of the trial court to judge the credibility of

[12] We note that although Father testified several times that his father was an employee of the business, Father's Father was not included on the employee list introduced at trial.

[13] The court found that full-time employment at the rate of $55 an hour "results in a monthly figure of $9,526." The income listed on Father's 2022 tax return, $42,432, results in a monthly figure of $3,536 per month.

[14] We note that the employee list provided by Father indicated that the highest-paid employee made three different hourly rates: "Regular ($21) Repair ($31.50) Jobs ($55)[.]" (continued)

the witnesses[,]" we cannot say that the court's conclusion was an unreasonable inference from the facts before us. Md. Rule 8-131(c); *see also State v. Smith*, 374 Md. 527, 547 (2003) ("The primary appellate function in respect to evidentiary inferences is to determine whether the trial court made reasonable, *i.e.*, rational, inferences from extant facts.").

Accordingly, we hold that the court's findings regarding Father's actual income were not clearly erroneous and we affirm the court's modified child support award.

Finally, we also uphold the court's award of attorney's fees. FL § 12-103(a) permits an award of reasonable attorney's fees and costs in cases involving modification of custody, support, or visitation. Before making such an award, the court "shall" consider three things:

> (1) the financial status of each party;
>
> (2) the needs of each party; and
>
> (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

FL § 12-103(b).

In his appeal, Father challenges the attorney's fees awarded to Mother solely on the basis of the income imputed to him by the court. Specifically, Father argues that the court improperly disregarded his filed tax returns in finding that his "income was far greater than that of [Mother.]" But the court was not required to credit Father's tax returns to the

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It is unclear from the record how often, if ever, Father used different hourly rates to pay the highest-paid employee. In any event, Father does not challenge the court's calculation of the highest-paid employee's annual income on appeal.

exclusion of other evidence. Rather, the court weighed all of the evidence in concluding that Father was "in a superior financial position." By taking into account the parties' justifications for bringing and defending the suit (a point Father does not challenge here), and the parties' relative financial statuses and needs, the court considered each factor under FL § 12-103(a). Therefore, we similarly see no abuse of discretion in the fee award granted to Mother.

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