

Circuit Court for Montgomery County
Case No.: 175088FL

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2268

September Term, 2022

EMILY W. GUELBEOGO

v.

NOUFOU OUEDRAOGO

Wells, C.J.,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: August 7, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is an unreported opinion. 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).

Appellant, Emily Guelbeogo (“Mother”), and appellee, Noufou Ouedraogo (“Father”), appeared before the Circuit Court for Montgomery County regarding dissolution of their marriage and custody of their minor child. The court granted the parties an absolute divorce, awarded Father primary physical custody and the parties’ joint legal custody, and set forth Mother’s child support obligation. On appeal, Mother challenges the court’s custody and child support determinations.¹ For the reasons we shall discuss, we vacate the judgment with regard to physical custody and child support, and remand for further proceedings consistent with this opinion.

BACKGROUND

The parties were married on June 23, 2017, and their only child, O., was born the following July. Mother testified that the marriage began “going downhill” once becoming pregnant with O. In March of 2021, the parties separated, and one month later, Father filed a complaint for divorce, to which Mother filed a counter-complaint for divorce. In August of 2021, Mother was deployed to Texas for military training with the U.S. Air Force, and O. began residing exclusively with Father.

In October of 2022, the court entered a *pendente lite* order by consent of the parties. That order granted Father primary physical custody of O. and set forth a weekly video-call

¹ Mother, who appears *pro se*, asserts at one point in her brief that “the appeal issues are: legal and physical child custody, child support, and marital assets.” However, the circuit court found that marital property claims were withdrawn after neither party presented evidence in support of those claims at trial. Moreover, the record reflects that Mother agreed to joint legal custody. Accordingly, the issues of marital property and legal custody are not properly before us. *See* Md. Rules 8-131(a).

access schedule for Mother, who was at that time stationed at Langley Air Force Base in Hampton, Virginia.

On February 2, 2023, the parties appeared before the circuit court for trial. The testimony at trial focused primarily on the physical custody of O., who had been diagnosed with a speech delay and autism spectrum disorder. Father asserted that it was in O.’s best interest to remain in Father’s primary physical custody, as O. was already attending an early intervention program and receiving several forms of therapy through the local public school. Mother also sought primary physical custody of O. and voiced several concerns over O. remaining primarily in Father’s custody.

On February 22, 2023, the court issued a judgment of absolute divorce. In pertinent part, that order also granted Father primary physical custody of O. and set Mother’s child support obligation at \$917 per month. Mother timely appealed.

STANDARD OF REVIEW

This Court reviews child custody determinations under “three interrelated standards of review.” *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). First, we review factual findings for clear error. *In re Yve S.*, 373 Md. 551, 586 (2003). Second, legal conclusions are reviewed de novo. *Id.* Finally, when “the ultimate conclusion of the chancellor [is] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor’s decision should be disturbed only if there has been a clear abuse of discretion.” *Davis v. Davis*, 280 Md. 119, 126 (1977).

Further, “[w]e review the trial court’s discretionary determination of child support for abuse of discretion or legal error.” *Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018).

The trial court abuses its discretion when “no reasonable person would take the view adopted by the [trial] court[.]” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

DISCUSSION

Mother contends that the court erred in awarding Father primary physical custody and in determining her child support obligation. Specifically, she maintains that O. “is not being properly cared for[.]” with Father, and that it is “extremely difficult” for her to pay the amount of child support awarded to Father. Father responds that the court correctly granted him primary physical custody of O. in light of the services and therapies O. was already receiving in Father’s care, and that the court properly calculated Mother’s child support obligations using the Maryland Child Support Guidelines.

I. Physical Custody

A trial court’s child custody determination requires “a careful examination of the specific facts of each individual case[.]” *Azizova v. Suleymanov*, 243 Md. App. 340, 344 (2019). Indeed, this Court and the Supreme Court of Maryland² have both “identified several factors for a trial court to consider when making a custody determination as to a minor child.” *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 249 (2021). Specifically, in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1978), this Court set forth the following factors:

² At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

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[.]

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

Later, in *Taylor v. Taylor*, 306 Md. 290 (1986), the Supreme Court of Maryland expanded on the factors enumerated in *Sanders* and set out additional criteria to be considered. The *Taylor* factors include: 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.

While the factors set out in *Sanders* and *Taylor* are instructive to the trial court’s determination of custody, this Court has emphasized that “[u]nequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child.” *Azizova*, 243 Md. App. at 347. Further, on appeal, “[w]e will not make our own determination as to a child’s best interest.” *J.A.B.*, 250 Md. App. at 247. Instead, “the trial court’s decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion.” *Gordon v. Gordon*, 174

Md. App. 583, 637-38 (2007). Accordingly, “a trial court should carefully set out the facts and conclusions that support the solution it ultimately reaches.” *Santo v. Santo*, 448 Md. 620, 630 (2016).

Here, although the court’s custody determination may have been in O.’s best interests, the record does not indicate which factors the court relied upon in reaching its decision. Indeed, neither the court’s written order, nor the transcript, mention the factors enumerated in *Taylor* or *Sanders*, nor “set out the facts and conclusions” supporting the custody determination. *Santo*, 448 Md. at 630. Although Father is correct that the order states that it “consider[ed] all the evidence,” this statement does little to demonstrate which factors the court relied upon in reaching its custody determination. *See Malin v. Mininberg*, 153 Md. App. 358, 430 (2003) (noting that a judge “who fails to provide at least some of the steps in his thought process leaves himself open to the contention that he did not in fact consider the required factors” (quotation marks and citation omitted)).

Father acknowledges that the court “did not explicitly list the custody factors[,]” but contends, citing *Zorich v. Zorich*, 63 Md. App. 710, 717 (1985), that the judgment should be affirmed because the court was not required to set forth “every step in their thought process.” Although it is true that the trial court is “not required to enunciate every factor [it] considered on the record[,]” it must, at a minimum, state “that [it] considered the required factors in making [its] decision.” *Randolph v. Randolph*, 67 Md. App. 577, 585 (1986); *see also Malin*, 153 Md. App. at 429 (holding that a judge is not required to enumerate every factor that led to its custody determination “as long as he or she states that the statutory factors were considered”).

Accordingly, because the court’s order fails to indicate which factors were relied upon, or that the statutory factors were considered, we vacate and remand to allow the court to issue a custody determination applying the requisite factors including, but not limited to, those set forth in *Sanders* and *Taylor*.

II. Child Support

Maryland’s Child Support Guidelines (“Guidelines”), set forth in Md. Code Ann., Family Law (“FL”) §§ 12-201–204, provide that “[t]here is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines set forth in this subtitle is the correct amount of child support to be awarded.” FL § 12-202(a)(2)(i). This Court has stated that, “the presumption may be rebutted by evidence showing that application of the guidelines would be unjust or inappropriate in a particular case.” *Kovacs v. Kovacs*, 98 Md. App. 289, 313 (1993). However, “[c]hild support awards made pursuant to the Guidelines will be disturbed only if there is a clear abuse of discretion.” *Gladis v. Gladisova*, 382 Md. 654, 665 (2004).

Here, Mother does not challenge the court’s use of the Guidelines or the figures used therein. Instead, she asserts only that the judgment requires her to pay child support “with half of her monthly pay[,]” and thus, that it is “making her life extremely difficult.” Although this Court is not unsympathetic to Mother’s contention that the payment of child support may be difficult for her, such an assertion does not amount to an abuse of the court’s discretion. Indeed, the record reflects that the court properly used the incomes provided by the parties in calculating child support under the Guidelines, and Mother makes no assertion that the court’s calculation was unjust or inappropriate. However,

because we vacate the order with respect to physical custody, we also vacate the order with respect to child support so those issues may be addressed together on remand.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY VACATED
WITH REGARD TO PHYSICAL CUSTODY
AND CHILD SUPPORT. CASE REMANDED
TO THE CIRCUIT COURT FOR FURTHER
PROCEEDINGS CONSISTENT WITH THIS
OPINION. COSTS TO BE SPLIT EVENLY
BETWEEN THE PARTIES.**