Circuit Court for Prince George's County
Case No. C-16-FM-23-000598

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2448

September Term, 2023

ERIC A. DREWERY

v.

KAYLA B. HAWKINS

Albright, A.,
Kehoe, S.,
Getty, Joseph M.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kehoe, J.

Filed: November 8, 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 arises from a custody determination of E.D., the five-year-old son of Eric Drewery ("Father") and Kayla Hawkins ("Mother"), entered by the Circuit Court for Prince George's County. The trial court awarded joint legal custody and, to Mother, primary physical custody. Father presents the following questions for review, which we have restated[1]:

I. Did the trial court err by failing to consider the factors related to the best interest of the child in making its child custody determination?

II. Did the trial court err in its determination of E.D.'s health insurance costs?

We answer yes to the first question and no to the second. We vacate the order of the trial court and remand for further proceedings consistent with this opinion.

BACKGROUND

Father filed a complaint for custody on January 26, 2023, and Mother filed a complaint for custody in a separate action on April 13, 2023. At Father's motion, the cases were consolidated by way of an order entered by the clerk on June 7, 2023. In his complaint, Father requested joint legal custody and a week-on/week-off schedule. In her

[1] Questions one and two have been consolidated for efficiency. The "status quo" is a factor to be considered along with the others in light of the child's best interest.
1. Did the Trial Court Abuse Its Discretion By Failing to Consider Any of the Relevant Caselaw Factors in Its Award of Primary Physical Custody to Mother?
2. Did the Trial Court Abuse Its Discretion by Altering the Status Quo and Awarding Father Minimal Custody, Even Though the Factors Overwhelmingly Favored Him?
3. Did the trial Court Abuse Its Discretion by Accepting Mother's Unsupported Testimony as to Health Insurance Payments but Rejecting Father's Testimony Supported by Documentation?

complaint, Mother requested joint legal custody with tie-breaking authority and primary physical custody with access to Father.

After a series of filings by the parties, there was a *pendente lite* hearing before a magistrate on September 25, 2023, and the court entered a *pendente lite* custody order on October 6, 2023. The parties attended Alternative Dispute Resolution on October 23, 2023, which did not succeed. The court held the merits hearing on January 23, 2024, and entered its child custody and support order on February 22, 2024. Father timely filed his appeal.

At the merits hearing, the court heard from Father, Father's mother, and Mother. The parents' testimony often conflicted, and this section portrays the competing narratives in parallel. Father submitted screenshots of the parties' discordant text message communications and documents relating to his earnings and spendings. We provide brief background on the family members and then describe in detail their disputes.

The parties never married, and they are the parents of E.D., who was born in February of 2018. At the time of the merits hearing, E. D. was nearing his sixth birthday.

Father works as a math teacher at Robert Goddard Montessori and supplements his income with Airbnb and Turo. As a teacher, he makes about $70,000 per year, and Turo and Airbnb[2] netted him $1,200 and $14,000 per year respectively. Since July of 2023, after moving out of Mother's residence, he resides in a three-bedroom townhouse at 2622 Lewis and Clark Avenue in Marlboro, Maryland with his partner Erin Huntington and their twins, who were less than a week old at the time of the hearing. He keeps a second residence at

[2] Turo is a car sharing program. Airbnb is a short-term rental program.

9111 Erfurt Court in Laurel, Maryland. Both houses are about fifteen minutes from E.D.'s school.

Mother is an assistant principal at J.P. Ryon Elementary School. She earns about $91,000 per year and works Monday through Friday from 8:15 a.m. to 3:45 p.m. Since 2016, she has resided at 6971 Walker Mill Road in Capitol Heights, Maryland. E.D. has lived in Capitol Heights his entire life, except the time spent with his father since his parents separated. E.D.'s school and activities are "19 minutes" from Mother's home. Her job is about 30 to 40 minutes from her home.

Mother and Father's relationship

Mother and Father dated from 2014 through 2021 and cohabitated for about six years. Father stated that the relationship "just ran its course" around July of 2022 because the parties "weren't seeing eye to eye." Mother stated it ended in September 2021 because of "a lot of infidelity" and "a few incidents of abuse." She identified one event in 2018 when Father "chased [her] down the hallway," and though she was "able to get the door closed," despite E.D. being asleep on the bed, "Mr. Drewery punched a hole through the door." Then, in 2021, after an incident where Father "hit [Mother] in the face and slammed [her] on the bed in front of [E.D.]," she began "repeatedly asking Mr. Drewery to move out, . . . which he refused for a year."

Summary of prior custodial arrangements

The original custody agreement between Mother and Father was 50/50, with Father caring for E.D. on Mondays and Wednesdays, Mother on Tuesdays and Thursdays, and

weekends alternating. Father testified that the arrangement initially involved him "picking [E.D.] up and taking him to school every morning" regardless of whose day it was. Later, Mother's parents took E.D. to school whenever he was with her. Father stated that all of the "back and forth" in the wake of their relationship provided for communication issues.

Generally, Father and Mother would exchange E.D. at school, but pick-ups and drop-offs also occurred at Royal Farms or Wawa near Mother's house or at the Gold's Gym in Bowie, which the parties considered a middle location**.** Father stated that he abided by the custody schedule and compromised with Mother on various occasions, like vacations, family reunions, and work, but that she did not return the favor**.** On November 28, 2023, Mother told Father that she needed to meet 35 minutes early to exchange E.D.; Father described these requests as happening "pretty often."

As a result of the *pendente lite* order, Father and Mother switched to a "2/2/5" schedule where one parent cared for E.D. on Monday and Tuesday, the other took Wednesday and Thursday, and responsibility alternated each weekend. That agreement continued until the hearing in January 2024. Father requested, and the judge ordered, that the parents communicate using the OurFamilyWizard parenting app. Father said that after using the app, "things ha[d] gotten a little better." He admitted that he had not been responding to all the messages Mother sent him but claimed they did not all need a response. For Father, the arrangement had "ups and downs as far as . . . clothing, exchanging clothes, and location on pickups . . . when the child is not in school." Mother described the state of affairs under the *pendente lite* order as "up and down" due to "a lack

of communication." She stated that communicating with Father is "draining" because "he's responsive when it's an argument, but when we're trying to solve something, he does not respond." She said that the communication issues prevent her from being able to plan E.D.'s schedule.

At one point, Father asked when the parties could sign up for a parenting app and commit to writing their tentative agreement to a week-on/week-off custody arrangement. Mother replied, "I'm never putting in writing shit you come up with on some app you found from someone. Try again." She then challenged Father, "Take me to court." Father said that Mother's threats to sue for custody had a negative impact on their ability to communicate regarding E.D.'s care.

School

E.D. is a kindergartener at Robert Goddard Montessori, which he has attended for three years. Neither Mother's nor Father's residences are in the school zone for E.D.'s school, but the Laurel home, which Father leases but does not occupy, is. E.D.'s attendance of Robert Goddard concerns Mother. She worries that E.D. may enroll only on special permission due to Father's employment there, and that if Father were to leave, E.D. would be out of zone and have to attend a different school. Father contends he maintains the Laurel address both because it is a three-year lease and because it is in the school's zone, so it allows E.D. to continue there. Mother noted that the school has her address listed as E.D.'s residence.

Expenses and activities

Father testified that when E.D. is in his care, he covers all expenses, including "clothing, supplies, shoes, transportation, activities, [and] health insurance," as well as "daycare, medicine, and stuff for his room." Father said that he has reimbursed Mother for various things. He submitted annotated lists of money transfers ranging mostly from $20 to $100 made to Mother since 2019 that were mostly for "daycare" and "groceries." Mother explained that many payments were for portions of a house bill: for example, "if we had a . . . grocery bill of $200, he would provide $40," and that the money Father sent her was for his groceries, not for hers or E.D.'s.

Mother stated that she pays for all of E.D.'s extracurricular activities, including swimming, t-ball, and soccer, but that Father contributed half of the cost for football and basketball; they have had "quite a few disagreements" on things like devices, clothing, and scheduling; that she takes E.D. to the majority of his practices, but that Father began to take him to football and to a couple weeks of t-ball in June of 2023; that she plans all of E.D.'s special events, including birthday parties and his baptism; that they had collaborated on some Christmas gifts, but that until Father provided $7.50 towards a copay in December of 2024, he had provided nothing otherwise.

Regarding football: according to Father, Mother was hesitant about E.D. starting football because she wanted him to be consistent with soccer, which he had played the previous year. Mother did allow E.D. to play football after Father explained that soccer was a two-season sport, meaning that he could continue when football ended, and that

playing diverse sports would make E.D. a better overall athlete. Father said that Mother gave permission for E.D. to register for football after the registration date passed, but Father brought E.D. to the first practice, and after Mother spoke to the coach, who was a childhood friend, the football league let E.D. register. Father stated that football was good for E.D. because he started the season out shy but made new friends. Mother stated that she became aware of the football registration after Father sent her a text informing her that E.D. was registered and that he had a great first practice.

There were disputes as to who would claim E.D. and his expenses on their taxes. Mother had claimed the child tax credit since E.D. was born. She said that Father had begun to feel entitled to some of the money from the child tax credit because he started to contribute nominal amounts to E.D.'s upbringing. Mother stated that during 2023, dentists discovered many cavities in E.D.'s mouth and he required four dental procedures. Father did not contribute anything to the costs, which were over $1,000, and told mother that the money needed to come out of the "tax money," but Mother did not know what that referred to. Father stated that he told Mother to "get the taxes that she filed without the permission of the father." He explained that Mother would file taxes and they "would split the childcare aspect of the taxes." But since they lived apart, "she filed the taxes without [his] knowledge."

Healthcare and doctors' appointment

Father testified that although he has been to some of E.D.'s doctors' appointments, it is typically Mother's responsibility because she handles scheduling. He stated that he

wants to "have input" and "to be in communication" so that they can make joint decisions. On cross examination, Father admitted that the last time he took his child to an appointment was to the dentist in September of 2023, and before that was the dentist in September of 2022. Mother testified that she takes E.D. to all of his appointments and could only recall two that Father had taken him to since 2018. She stated that she sends Father all of the scheduling information in writing the day she receives the information, but that Father typically does not respond, even after follow-up. Father's unresponsiveness resulted in Mother's cancelling appointments to avoid being charged for no-shows. She resorted to scheduling all of E.D.'s doctors' appointments on her days.

Father stated that both parents provide health insurance for E.D. He claimed that he pays "about $508" for insurance through Kaiser Permanente and that his son's portion is "about $276," but provided evidence that contains neither of those numbers.[3] He stated that he began including E.D. on his Kaiser Permanente policy in January of 2024 because he "wanted all of his kids to be on the same insurance." Prior, Mother paid for E.D.'s health insurance and did not ask for contributions from Father. Mother stated that she pays all the copays, but that Father, in December, provided half a copay. She also stated that she pays $230 per month for E.D.'s health insurance, has done so his entire life, and that Father has never contributed.

[3] Father provided a pay stub that indicated pre-tax deductions of $1.80 for Vision Active, $227.50 for Med Kaiser Active and $423.78 for Dental Active for the pay period running from December 16, 2023, to December 29, 2023. He did not provide a pay stub or other information that would indicate how much of the premium would be allocable to covering E.D.

Summer Camp

The parties disagreed about a summer camp that E.D. attended in 2022. According to Father, at Father's sister's recommendation, the parties agreed to send E.D. to the camp and to each cover a certain amount of two-week sessions, but Father ended up paying for all of the sessions. Father described E.D. as initially thrilled about camp, but said that after a stay with his mother where she decided unilaterally that he was not to go to the camp, E.D. became less enthusiastic. Father took issue not only because he felt the camp, which he paid for, was educational, entertaining, and good for E.D., but because it was supposed to function as a no-interaction exchange site.

Mother testified that she and Father "had preliminary discussions about the camp" where he provided her the brochure. She said that they "never came to an agreement on payment . . . because [they] weren't even in agreement on the sessions that E.D. would attend." Mother explained that as an assistant principal, she has summers off, so she was working from home. At some point, Mother learned that Father agreed to pay for all the sessions. Regarding E.D.'s not attending summer camp, Mother explained that she kept him home because of a field trip and that she informed Father of the situation but that he was unresponsive.

Relationship with E.D.

Father described his relationship with his son as "very good." He stated that E.D. is "very attached, very playful, [and] very energetic," and that they "do a lot of activities together." Father coached E.D.'s football team. E.D.'s typical day at his father's house

includes waking up, brushing his teeth, calling his mother, eating breakfast, going to school, coming home, doing homework, going to the kids' club at the gym, and getting into bed around 8:30.

Mother described E.D. as brilliant, amazing, smart, attentive, considerate, respectful, and happy. She said that he loves food and making people laugh and that he's a "really good kid." She is "really close" with E.D. They bond over board games and cooking. They "spend a lot of time in the kitchen and [they] talk." Mother described E.D.'s relationship with his father as "playful."

Kimberly Brandy, Father's mother, testified that Father's parenting style is loving and patient and said Mother was a good parent. Although she and Mother had argued in the past, Ms. Brandy prayed for Mother and Father to be able to co-parent without drama.

Parties' support systems

Father stated that he sometimes leaves E.D. in the care of his mother, his brother and his brother's wife, or his partner. He described E.D.'s relationship with his family as "very strong, well loved," and said that since they spoil him, E.D. asks to go see them all the time. Father's mother took care of E.D. while Father's other children were being born, and said that E.D. displayed no signs of distress and rather was excited about having a brother and sister. E.D. is able to communicate with his mom through his iPad when he is with his grandmother. Father stated that his family members only watch E.D. "sparingly." Mother was not concerned necessarily about Father's family caring for E.D., but she worried that he would spend too much time "consecutively . . . between [Father's] mother's

house and [Father's] brother's house." She stated, "It's not that I don't want him to spend time with them. It's the amount of consecutive time that he spends where he's in their care and not in Mr. Drewery's care." She said that Father's family wouldn't harm E.D., but that they don't communicate with her.

Mother testified that her support system is her immediate family, including her mother, her father, and her brother, and that she has a pretty large family that lives fairly close to her. She stated that her parents do pick-up and drop-off on her days, and that a cousin sometimes steps in. Father has no problems with E.D. being with Mother's support system.

Electronic device disagreements

Problems arose regarding E.D.'s electronic devices around July of 2023. Father became aware that Mother had placed AirTags in E.D.'s backpack without Father's knowledge, which caused Father to believe Mother was trying to track his whereabouts using the AirTags and E.D.'s iPad. The parties seem to agree that as a result, E.D. would have a separate iPad for each house. Father described an event where Mother tried to throw E.D.'s iPad and cell phone into Father's car. After Father placed them on the ground, Mother "tried to scream that [Father] was cussing at her and trying to pull off on her." Father did not want E.D. to have a cellphone because he didn't think that a five-year-old needed one.

Mother testified that she placed the AirTag in E.D.'s backpack after, in the summer of 2023, following a t-ball game, E.D. "was placed into an Uber with two other minors."

She stated that she attempted to address the issue with Father, but that he was unresponsive. As to the incident that Father described, Mother told another story. She said that although E.D. had had the same iPad since 2020, Father decided that he didn't want him to have the iPad, so Mother tried to send E.D. off with a phone. Mother didn't have any contact information for the second iPad, and her only way to contact E.D. was through the phone or the original iPad. Mother said that when Father picked up E.D., he "threw the phone out of the car" and sped off, having "pointed his fingers in [Mother's] face."

Father said that Mother accuses him of preventing E.D. from calling her and interfering with the calls, but that the interferences result from occurrences like E.D. asking for breakfast during the call. Father stated that although the order from the *pendente lite* hearing is for both parents to have communication, he has "probably received maybe three phone calls since the order was put in place." Mother said that Father can call E.D. when he likes. She stated that prior to the *pendente lite* hearing, she had trouble contacting E.D. in the morning and that when they would connect, he would seem distracted by his father or others talking to him. She said the problems substantially abated since the *pendente lite* hearing, but also addressed problems with Father through OurFamilyWizard on November 3, 2023, a month after the hearing, messaging, "Good morning. To date, I have three occurrences of you or others interfering with my access phone calls with Eric. Per the temporary order that should not take place."

Parties' custody requests

Father requests joint legal custody and a week-on/week-off schedule for physical custody. He thinks this schedule would give E.D. more time to spend with each family, including his brothers and sisters. It would reduce communication conflict by being less constrictive and requiring fewer exchanges. Father testified that Mother did not want to commit to week-on/week-off because she didn't want her parents to have to take E.D. to and from school. Father testified, "growing up, my father wasn't present in my life and the man that was my stepfather passed away. So I just wanted to, you know, I vowed to make sure that I was always in my son's life and that's why I'm here." He stated that he has no concerns about Mother's ability to care for their son, but her aggression and anger made communication difficult, especially when plans do not go as Mother expects them to**.**

Mother requested joint legal custody with tie-breaking authority and primary physical custody with reasonable access to Father on the weekends. She based this on her history of having to make decisions without support from Father, whom she stated was often non-responsive, unwilling to collaborate, and argumentative. She pointed to a seven-month period in 2018 and 2019 where Father was basically absent from E.D.'s life. Mother said she would not entrust Father with E.D.'s safety and health.

Resolution of Hearing

Towards the end of the hearing, which ran longer than intended, counsel for Mother moved to submit written closings or to postpone closing arguments. The following conversation then took place:

> THE COURT: No, you don't have to do a closing.
>
> [COUNSEL FOR APPELLEE]: We don't have to do a closing?
>
> THE COURT: You don't have to. The Court is pretty much understanding (indiscernible) both parties are doing very good at (indiscernible) the parties are requesting access, financials. So if you want to finish up and (indiscernible) take about a couple of minutes (indiscernible). (Indiscernible).
>
> [COUNSEL FOR APPELLEE]: (indiscernible)? Okay. Then I believe (indiscernible).
>
> [COUNSEL FOR APPELLANT]: No, I never know. I get—
>
> THE COURT: No, I understand. But yet, I can, you know, I can (indiscernible) process these things very quickly. (indiscernible) All right?

After Mother's counsel proceeded with redirect examination, and the court asked Mother a short series of questions, it made the following ruling:

> THE COURT: All right. So we're here on the gentleman's complaint for custody as well as the lady's complaint of custody. Both cases have been consolidated on the current case number. I've been able to judge both the demeanor and credibility of the parties as well as their witnesses. And based on their testimony, although the parties have what could be referred to as a tumultuous relationship, the Court believes that its [*sic*] in the best interest of the minor child that they be awarded joint legal custody and share physical custody, with primary residential custody granted to the defendant during the school year, with the gentleman having access.

The court detailed the custody arrangement, and then went on:

> THE COURT: The parties' communication will continue in the OurFamilyWizard app. Phone calls will only be made in case of emergency or if a party is running late for a drop off or pickup. The parties will refrain from using any disparaging language about the other party in front of the minor child, and will make at least a good faith effort to prevent others from making such remarks in the presence of the minor child.
>
> And to be clear, the parties will consult each other on all major decisions involving the child including, but not limited to, decisions regarding medical treatment, education, religious upbringing, and shall attempt to reach joint decisions on these issues.
>
> * * *
>
> With regard to child support, based on the gentleman's resources of income, the $14,000 earned from the Airbnb, the $1,200 earned form Turo, and his salary of $70,000 and with the lady indicating she had a salary of $91,000, the recommended support giving the lady credit for health insurance.
>
> I've not given the gentleman credit for health insurance, the lady has been providing insurance for the minor child and has done so for the entirety of the child's life. There's no indication that the gentleman's been denied an access or use of that insurance, so I am going to give the lady credit for these calculations of $230 towards that. E-211.

Father's counsel contested the inclusion of the $230 on grounds that there was no proof. The court responded:

> THE COURT: Well, [Mother has] testified to the amount and by all indications she has been providing such for the minor child. The gentleman agreed. And the Court finds the lady's testimony sufficient for these calculations.
>
> She indicated the exact amount just for the child, not including her, was $230, and the Court has used that in its calculations.

After providing Father credit for 117 overnights, the court awarded Mother $628 in child support based on the shared custody model.

Additional facts will be supplied as necessary.

DISCUSSION

The child custody determination challenge

Father first contends that the trial court abused its discretion by awarding primary physical custody to Mother without considering any of the factors related to the best interests of the child. He argues that he presented a variety of reasons to grant coequal physical custody of the child, but that the court failed to consider the precedential factors related to child custody decisions, and instead awarded primary physical custody to Mother and minimal visitation to Father without any basis for its decision. Father argues that the deviation from the status quo was an abuse of discretion. He also points out that the court granted primary custody to the parent with less time to spend with the child and that the court refused to grant tiebreaker authority to either parent despite its acknowledgement of the couple's communication problems.

Mother responds that the court indicated it considered the best interest of the child after observing the demeanor and credibility of the parties and describing the relationship as "tumultuous." She states that no case law supports the proposition that the court should honor the "status quo." She argues that since the court's decision was not one that no reasonable person would adopt, the court did not abuse its discretion.

The Supreme Court of Maryland ruled in *Taylor v. Taylor*, 306 Md. 290 (1986), and reiterated in *Santo v. Santo*, 448 Md. 620, 639 (2016), that in child custody cases "a trial court should carefully set out the facts and conclusions that support the solution it ultimately reaches." The trial court failed to consider the factors relevant to the best interest

of the child and its decision does not appear to be supported by the facts on the record. We vacate the decision of the trial court and remand for further proceedings consistent with this opinion.

The standard of review

We apply three interrelated standards of review to child custody orders. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Scrutinizing factual findings, the clearly erroneous standard of Rule 8-131(c) applies. *Id.* "[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." *Id.* As to an "ultimate conclusion" founded upon sound legal principles and factual findings that are not clearly erroneous, we disturb only for abuse of discretion. *Id.* Since the trial court "sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Id.* at 171 (quoting *In re Yve S.*, Md. at 586). Judicial discretion is "a composite of many things," including "conclusions which are drawn from objective criteria" and "sound judgment exercised with regard to what is right under the circumstances." *Gunning v. State*, 347 Md. 332, 352 (1997). "Abuse" arises when discretion exercised is "manifestly unreasonable, . . . on untenable grounds, or for untenable reasons." *Id.* Further:

> A proper exercise of discretion involves consideration of the particular circumstances of each case. As Chief Judge Bond observed in *Lee v. State*, 161 Md.

> 430, 441 (1931), "the discretion being for the solution of the problem arising from the circumstances of each case as it is presented, it has been held that the court could not dispose of all cases alike be a previous general rule." Hence, a court errs when it attempts to resolve discretionary matters by the application of a uniform rule, without regard to the particulars of the individual case.

Id.

The best interest standard

"Child custody and visitation decisions are among the most serious and complex decisions a court must make, with grave implications for all parties." *Gizzo v. Gerstman*, 245 Md. App. 168, 199 (2020) (quoting *Conover v. Conover*, 450 Md. 51, 54 (2016)). In *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, we lamented that "there is no such thing as 'a simple custody case'", they "are like fingerprints because no two are exactly the same." 38 Md. App. 406, 414 (quoting *Mullinix v. Mullinix*, 12 Md. App. 402, 412 (1971)). We echoed Justice Bernard Botein's declaration that "[a] judge agonizes more about reaching the right result in a contested custody issue than about any other type of decision he renders." *Sanders*, 38 Md. App. at 414 (quoting Justice Bernard Botein, *Trial Judge* 273, Simon & Schuster (1952)).[4]

> Custody has legal and physical components:
>
> Legal custody carries with it 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. 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.
>
> Physical custody, on the other hand, means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time

[4] Justice Bernard Botein was a Justice of the Supreme Court of New York and later a Judge on the New York Court of Appeals.

> the child is actually with the parent having such custody. Joint physical custody is in reality "shared" or "divided" custody. Shared physical custody may, but need not, be on a 50/50 basis, and in fact most commonly will involve custody by one parent during the school year and by the other during summer vacation months, or division between weekdays and weekends, or between days and nights.

Taylor, 306 Md. at 296-97 (footnotes and citations omitted). "Proper practice in any case involving joint custody dictates that the parties and the trial judge separately consider the issues involved in both joint legal custody and joint physical custody, and the trial judge state specifically the decision made as to each." *Id.* at 297.

The court's primary objective in any custody case is to determine what arrangement serves "the best interests of the child." *Gizzo*, 245 Md. App. at 199. "Rights of father and mother sink into insignificance before that." *Ross v. Hoffman*, 280 Md. 172, 176 (1977) (quoting *Kartman v. Kartman*, 163 Md. 19, 22 (1932)). Since the best interest of the child is "of transcendent importance" and "the sole question," it is "not considered as one of many factors, but as the objective to which virtually all other factors speak." *Taylor*, 306 Md. at 303. "Assessing the child's best interest requires 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.'" *Gizzo*, 245 Md. App. at 199 (quoting *Domingues v. Johnson*, 323 Md. 486, 499 (1991)). The challenge is heightened when neither parent is unfit, *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503 (1992), because "[i]t may well be that no matter what the ultimate decision, an injustice to at least one of the parties will occur." *Hadick v. Hadick*, 90 Md. App. 740, 745 (1992).

Our Supreme Court warned that "[f]ormula or computer solutions in child custody matters are impossible because of the unique character of each case, and the subjective nature of the evaluations and decisions that must be made." *Taylor*, 306 Md. at 303. Child custody determinations proceed "by careful examination of facts on a case-by-case basis." *Bienenfeld*, 91 Md. at 503. "Present methods for determining a child's best interest are time-consuming, involve a multitude of intangible factors that ofttimes are ambiguous." *Sanders*, 38 Md. App. at 419. "There can be very little constructive or useful precedent on the subject of custody determinations, because each case must depend upon its unique fact pattern." *Id.*

Over the last century, this Court and the Supreme Court of Maryland have developed a "non-exhaustive delineation of factors a court must consider when making custody determinations." *Azizova v. Suleymanov*, 243 Md. App. 340, 345 (2019); *see e.g*, *Taylor*, 306 Md. at 308-11; *Sanders*, 28 Md. App. at 420. In *Azizova*, we reproduced the consolidation from *Fader's Maryland Family Law*:

(1) The fitness of the parents;

(2) The character and reputation of the parties;

(3) The request of each parent and the sincerity of the requests;

(4) Any agreements[5] between the parties;

(5) Willingness of the parents to share custody;

[5] "Prior agreements between the parties may be entitled to weight, *see Breault v. Breault*, 250 Md. 173, 180 (1968), but they should be considered in light of the circumstances when they were entered into along with the totality of the circumstances surrounding the requested modification." *Jose v. Jose*, 237 Md. App. 588, 607 (2018).

(6) Each parent's ability to maintain the child's relationships with the other parent, siblings,[6] relatives, and any other person who may psychologically affect the child's best interest;

(7) The age and number of children each parent has in the household;

(8) The preference of the child, when the child is of sufficient age and capacity to form a rational judgment;

(9) The capacity of the parents to communicate and to reach shared decisions affecting the child's welfare;

(10) The geographic proximity of the parents' residences and opportunities for time with each parent;

(11) The ability of each parent to maintain a stable and appropriate home for the child;

(12) Financial status of the parents;

(13) The demands of parental employment and opportunities for time with the child;

(14) The age, health, and sex of the child;

(15) The relationship established between the child and each parent;

(16) The length of the separation of the parents;

(17) Whether there was a prior voluntary abandonment or surrender of custody of the child;

(18) The potential disruption of the child's social and school life;

(19) Any impact on state or federal assistance;

(20) The benefit a parent may receive from an award of joint physical custody, and how that will enable the parent to bestow more benefit upon the child;

[6] "[I]t is ordinarily in the best interest of a child to be raised with his or her siblings." *Sider v. Sider*, 334 Md. 512, 533 (1994) (citing *Hadick v. Hadick*, 90 Md. App. 740, 748 (1992)).

> (21) Any other consideration the court determines is relevant to the best interest of the child.

243 Md. App. at 345-46 (quoting Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law* § 5-3(a), at 5-9 to 5-11 (6th ed. 2016)); *cf. Reichert v. Hornbeck*, 210 Md. App. 282, 305 (2013) ("Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interests standard, but possess a wide discretion concomitant with their 'plenary authority to determine any question concerning the welfare of children within their jurisdiction[.]'" (quoting *Bienenfeld*, 91 Md. App. at 503)). Further factors are "encouraged" for consideration:

> (1) the ability of each of the parties to meet the child's developmental needs, including ensuring physical safety; supporting emotional security and positive self-image; promoting interpersonal skills; and promoting intellectual and cognitive growth;
>
> (2) the ability of each party to meet the child's needs regarding, *inter alia*, education, socialization, culture and religion, and mental and physical health;
>
> (3) the ability of each party to consider and act on the needs of the child, as opposed to the needs or desires of the party, and protect the child from the adverse effects of any conflict between the parties;
>
> (4) the history of any efforts by one or the other parent to alienate or interfere with the child's relationship with the other parent;
>
> (5) any evidence of exposure of the child to domestic violence and by whom;
>
> (6) the parental responsibilities and the particular parenting tasks customarily performed by each party, including tasks and responsibilities performed before the initiation of litigation, tasks and responsibilities performed during the pending litigation, tasks and responsibilities performed after the issuance of orders of court, and the extent to which the tasks have or will be undertaken by third parties;

(7) the ability of each party to co-parent the child without disruption to the child's social and school life;

(8) the extent to which either party has initiated or engaged in frivolous or vexatious litigation, as defined in the Maryland Rules; and

(9) the child's possible susceptibility to manipulation by a party or by others in terms of preferences stated by the child.

Azizova, 243 Md. App. at 346-47.

The "status quo"[7] is only a relevant factor in a custody determination insofar as it bears upon the maintenance of some particular arrangement related to a factor that the court determines is in the best interest of the child. *See Gillespie*, 206 Md. App. at 171 ("[I]n the 'best interest' determination, . . . the question of stability is but a factor, albeit an important factor, to be considered." (quoting *McCready v. McCready*, 323 Md. 476, 482 (1991))); *Conover v. Conover*, 450 Md. 51, 85 (2016) (holding that *de facto* parents have standing to contest custody or visitation and "allowing judicial consideration of the benefits a child gains when there is consistency in the child's close, nurturing relationships").

We note that the role the "status quo" serves in the "final" custody determination following a merits hearing should not be confused with its effect on a *pendente lite* determination or in a petition for a change of custody. Since a *pendente lite* order serves

[7] Father's assertion that "the trial court abused its discretion by altering the custodial status quo" essentially duplicates the contentions argued in the first part of his brief and is supported by no particular cases. "It 'is not our function to seek out the law in support of a party's appellate contentions.'" *See Collins v. Collins*, 144 Md. App. 395, 438 (2002) (quoting *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997)); *see also Orioian v. Allstate Ins. Co.*, 62 Md. App. 654 (1985) (argument deemed waived because appellants cited no authority in their brief to support their position).

to "provide some immediate stability pending a full evidentiary hearing" and prevent further trauma to the child from "the separation that engenders the dispute," "to the extent possible, the courts look to avoid any further unnecessary immediate disruptions in the child's life." *Frase v. Barnhart*, 379 Md. 100, 111 (2003). But a "*pendente lite* order is not intended to have long-term effect and therefore focuses on the immediate, rather than any long-range, interests of the child." *Id.* "As a result, . . . it does not bind the court when it comes to fashioning the ultimate judgment." *Id*. Thus the status quo does figure more prominently in a *pendente lite* analysis than in any other custody order, but with an eye only toward providing or maintaining the child's immediate stability in light of the impermanence of the order and the dearth of facts before the court, and the *pendente lite* order holds no import in any subsequent decision of the court. Required for a change of custody, on the other hand, is a change in conditions affecting the welfare of the child, and the reason for the rule is that "the stability provided by a continuation of a successful relationship with a parent who has been in day to day contact with a child generally far outweighs any alleged advantage which might accrue to the child as a result of a custodial change." *Johnson v. Domingues*, 82 Md. App. 128, 133 (1990), *rev'd on other grounds, Domingues v. Johnson*, 323 Md. 486 (quoting *Levitt*, 79 Md. App. 394, 398 (1989)). The court does not maintain the status quo of itself, but rather the conditions which are beneficial to the child. And the showing of a change in circumstances also serves to prevent a "disappointed parent" from "relitigat[ing] questions of custody endlessly upon the same facts." *McCready*, 323 Md. at 481. *Pendente lite* and change in custody analyses both

warrant consideration of the "status quo" of a child's custody arrangement serving both substantive and procedural ends that are not relevant in an initial "final" custody determination. *See Frase*, 379 Md. at 112 ("Because the court retains continuing jurisdiction over the custody of minor children, no award of custody or visitation, even when incorporated into a judgment, is entirely beyond modification, and such an award therefore never achieves quite the degree of finality that accompanies other kinds of judgments.").

Generally, no one factor is determinative, but sometimes certain factors are more useful. For example, while "the 'capacity of the parents to communicate and to reach shared decisions affecting the child's welfare' is relevant to a shared physical custody analysis, it is especially important in determining whether joint legal custody is appropriate." *Jose v. Jose*, 237 Md. App. 588, 601 (2018) (citing *Taylor*, 306 Md. at 304). We use this principle because:

> When the evidence discloses severely embittered parents and a relationship marked by dispute, acrimony, and a failure of rational communication, there is nothing to be gained and much to be lost by conditioning the making of decisions affecting the child's welfare upon the mutual agreement of the parties. Even in the absence of bitterness or inability to communicate, if the evidence discloses the parents do not share parenting values, and each insists on adhering to irreconcilable theories of child-rearing, joint legal custody is not appropriate.

Id. at 601 (quoting *Taylor*, 306 Md. at 305). Our Supreme Court cautioned that "[t]o elevate effective parental communications so that it becomes a prerequisite to a joint custody award would undermine the trial court's complex and holistic task." *Santo v. Santo*, 448 Md. 620, 629 (2016). However, "'[r]arely, if ever,' is a joint legal custody

award permissible, . . . 'and then only when it is possible to make a finding of a strong potential for such conduct in the future.'" *Id.* at 620 (quoting *Taylor*, 306 Md. at 304); *cf. Kpetigo v. Kpetigo*, 238 Md. App. 561, 585 (2018) ("Although often preferable to vesting sole legal custody in one parent, joint legal custody can be challenging . . .").

Rule 2-522(a)

Rule 2-522(a) prescribes that "[i]n a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages." We explained that "a trial court is not required to articulate each step in its thought process," *Prahinski v. Prahinski*, 75 Md. App. 113, 136 n.6 (1988); and that "[a] judge is presumed to know the law and to properly apply it," *Campolattaro v. Campolattaro*, 66 Md. App. 68, 80 (1986); but that though factual and legal findings may be "spare," they may not be "so summarily articulated as to prevent us from adequately assessing the cogency of [the court's] conclusion or the reasonableness of its remedy." *Patriot Cons., LLC v. VK Electrical Servs., LLC*, 257 Md. App. 245, 270 (2023). The rule requires that a court's opinion "should reflect consideration of the relevant issues and the reasoning supporting the [court's] independent decisions on those issues." *Kirchner v. Caughey*, 326 Md. 567, 573 (1992).

"At minimum, [Rule 2-522(a)] mandates that the court state an objective to be served . . . and then detail the facts furthering the objective." *Boswell v. Boswell*, 352 Md. 204, 223 (1998). Since the "resolution of a custody dispute continues to be one of the most

difficult and demanding tasks of a trial judge," the decision "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." *Taylor*, 306 Md. at 311; *see also Boswell*, 352 Md. at 223 (stating custody disputes require "findings of fact in the record stating the particular reasons for [the court's] decision"). If the court "does not make appropriate factual findings based on the evidence presented or relies on one factor to the exclusion of all other," the court's custody order is subject to reversal. *Boswell*, 352 Md. at 224. The requirement that "a trial court should carefully set out the facts and conclusions that support the solution it ultimately reaches" applies especially where a court awards joint custody to parents who cannot communicate effectively. *Santo*, 448 Md. at 631. Reiterating *Taylor*, the *Santo* court stated that "no 'robotic recitation that a custody award proposed by a custody court is in the "child's best interest" serve[s] as a replacement for the serious consideration' of the facts and circumstances of each case." *Id.*

In *Domingues v. Johnson*, our Supreme Court observed that "a determination of custody requires an element of prediction." 323 Md. 486 at 499. The Supreme Court further observed that a change in custody may involve a recalibration of that prediction. *Id*. at 500. These observations underscore the need for a trial court to undertake an analysis of the factors to be considered as the basis for its prediction of what is in the child's best interest. An analysis of the factors to determine custody informs the parties and the court

of the circumstances that supports a court's award of custody. A party seeking a change in custody can look at those factual findings to allege that there has a been a change in circumstance. Without such findings, a party might find itself in the untenable position of having to litigate matters that the court has already considered. Further, a court can look at the findings to understand the basis of any previous order.

Failure to consider the best interest factors

The following oration comprises the entirety of the trial court's findings of fact and justification for its legal conclusions based upon the evidence presented at trial:

> I've been able to judge both the demeanor and credibility of the parties as well as their witnesses. And based on their testimony, although the parties have what could be referred to as a tumultuous relationship, the Court believes that it's in the best interest of the minor child that they be awarded joint legal custody and share physical custody, with primary residential custody granted to the defendant during the school year, with the gentleman having access.

This summary articulation of the factual and legal conclusions does not satisfy the requirements of Rule 2-522(a) imposed in *Taylor* and *Santo*. Although the court's description of the parties' relationship as "tumultuous" is accurate, it does not constitute "appropriate factual findings based on the record presented" required under *Boswell*. If it can be argued that this statement comprises a consideration of factors related to the best interests of the child, then it fails for it "relies on one factor to the exclusion of all others." *Boswell*, 352 Md. 224. Although the trial court may have considered this one factor to have been dispositive, it is necessary to consider it in light of the other factors to assure that there has been a "thoughtful, painstaking consideration of the relevant issues." *See*

e.g., Santo, 446 Md. at 642. Further, the record reflects that this case is one where the parents do not communicate effectively. Thus, the requirement that a trial court explain its decision to award joint custody applies in greater force.

We are cognizant of the high degree of deference shown to a trial court's decision in a contested custody case. But given the import of the decision on both the child and the parents, in light of the declaration in *Boswell* that a court that does not articulate its decision leaves itself open to challenge and recognizing that a proper consideration of the facts and law in this case may lead a trial court to enter an order similar to the one we vacate, we cannot find that the trial court properly exercised its discretion. The record before us contains an imperfect but cooperative arrangement between the parents on the one hand, and many signs that the parents will be unable to communicate effectively enough to justify an award of joint legal custody without at least tie-breaking authority granted to Mother on the other.

Health insurance payments award challenge

Father next appeals the trial court's acceptance of Mother's unsupported testimony as to health insurance payments and rejection of Father's testimony supported by documentation. He avers that abuse lies in the court's decision to credit Mother and not credit Father "for no other reason than what had happened in the past" when "child support is being awarded prospectively." Mother argues that her testimony as to her health insurance payments was uncontested and that the trial court's decision was sound,

considering that Father did not provide any reasons for providing E.D. with a second healthcare plan other than that he wanted E.D. to be on his family plan.

Standard of Review

Child support orders are generally "not to be disturbed unless there has been a clear abuse of discretion." *Walter v. Gunter*, 367 Md. 386, 392 (2002). "As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm [the child support order], even if we may have reached a different result." *Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020) (quoting *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003)).

"When the trial courts findings are supported by substantial evidence, the findings are not clearly erroneous." *Collins v. Collins*, 144 Md. App. 395, 409 (2002) (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230(2000)). "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 529-30 (2003) (quoting *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 451 (2002)).

Relevant law

A child's parents are his "natural guardians" and owe the child a "legal, statutory obligation of support." *Walker v. Grow*, 170 Md. App. 255, 265 (2006) (quoting *Lacy v. Arvin*, 140 Md. App. 412, 422 (2001). "A parent owes this obligation . . . to the child regardless of whether the child was the product of a marriage." *Id.*

Family Law § 12-202(a)(1) contains the general rule that "in any proceeding to establish or modify child support, . . . the court shall use the child support guidelines." A court must adhere to the schedule contained in § 12-204(e) unless the parties' combined adjusted actual income exceeds $30,000,[8] in which case the court has broad discretion to determine appropriate child support, *see Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018), or where the presumption of correctness of the award in the schedule is "rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case." Fam. Law § 12-202(a)(2)(i)-(ii). We described how to use the guidelines:

> [T]he court first must determine the adjusted actual income of each parent, F.L. § 12-201(d), as well as the expenses incurred on behalf of a child for work-related child care, extraordinary medical expenses, school, and transportation between the homes of the parents. F.L. § 12-204(g)-(i). The court must also make note of preexisting child support obligations actually paid, alimony awarded, and the cost of providing health insurance for a child. F.L. § 12-201(d). Having made those findings of fact, application of the guidelines is a straightforward mathematical exercise. *Gates v. Gates*, 83 Md. App. 661, 666-67 (1990).

Reuter v. Reuter, 102 Md. App. 212, 235 (1994). Section § 12-204(h)(1) requires that "[a]ny actual cost of providing health insurance coverage for a child whom the parents are

[8] "In an 'above guidelines case,' considered to be one in which the parties' combined adjusted income exceeds $15,000 per month—the highest level of income specified in the child support guidelines set out in F.L. § 12-204(e)—the trial court enjoys significant discretion in determining the amount of the basic child support award." *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018) (citing *Karanikas v. Cartwright*, 209 Md. App. 571, 596 (2013)). The guidelines were amended in 2020, effective October 1, 2021, with a new schedule that provided guidance for parties with significantly higher combined income than before. 2020 Maryland Laws Ch. 383 (H.B. 946).

jointly and severally responsible shall be added to the basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes."

An aggrieved party may challenge a child support award on several grounds. It may "allege the numbers obtained in the court's preliminary fact-finding were not supported by evidence and were clearly erroneous." *Reuter*, 102 Md. App. at 235 (citing Md. Rule 8-131(c)). It may claim "the calculations were performed incorrectly." *Id.* (citing *Tannehill v. Tannehill*, 88 Md. App. 4, 16 (1991)). Or it may aver that the court abused its discretion by making an award inconsistent with the guidelines or that that the court failed to justify departure from the guidelines with the findings required under Family Law Article § 12-607(a)(2). *Id.*

In *Collins*, the appellant argued that the award of $228 per month to the mother for her son's healthcare was erroneous, considering the mother testified only to paying $40 per month. 144 Md. App. at 440. On appeal, we credited the trial court for being thorough, but we were "unable to find any evidentiary evidence to [the mother] paying $228 in conjunction with health insurance premiums," so we remanded "for a determination on the correct amount spent . . . on health insurance premiums." *Id.*

Analysis

We review the trial court's finding as to Mother's healthcare payments for clear error and the decision to credit Mother and not Father for abuse of discretion. The court's findings were supported by evidence, and the court justified its decision to credit mother and not father for health insurance payments. The trial court found "sufficient" Mother's

testimony that she pays $230 per month for E.D.'s health insurance and has done so his entire life. In *Collins*, we found no evidentiary support for the court's assessment of health insurance costs, and the number testified to differed from the one the court used. 144 Md. App. 440. But here, Mother attested to $230, and that is the number the court used in its calculation.

Father's contention that his documents settle the matter fails because the documents are inconclusive of the cost of E.D.'s health insurance. He argues that his printout from the PGCPS Employee Self-Service portal and his Benefits Confirmation and Summary from the Board of Education of Prince George's County are dispositive that he pays "approximately $276" per month for E.D.'s health insurance. We note that the trial court is not obligated to accept as true the statements contained in a piece of evidence. In any event, the documents do not state with clarity Father's premiums; rather they show Father's "coverage health insurance deductions" for medical, dental, and vision insurance are respectively $227.50, $23.78, and $1.80, summing $253.08. As such, they do little to prove he pays $276 per month for E.D.'s health insurance. The documents also reveal that Father selected for his policy an "Employee + 1" option and included only E.D. as a covered dependent, which contradicts his testimony that he "wanted all of his kids to be on the same insurance." That Father's testimony differs from his evidence in two ways provides ground for the court to find his testimony unreliable and him incredible.

In crediting Mother and not Father, the court explained that "the lady has been providing insurance for the minor child and has done so for the entirety of the child's life."

It found "no indication that the gentleman's been denied an access or use of that insurance." The court's reasoning is sound that the health insurance policy Mother provided for E.D. was satisfactory and that Father's purchase of a second policy would not be required prospectively. The finding of the trial court as to Mother's payments is not clearly erroneous, and its decision to credit Mother but not Father is not arbitrary.

The vacatur of the child custody award, however, mandates the same treatment of the child support award. After making factual findings and considering them in light of the required factors, the court's custody order may differ from its previous one. Further, at a second hearing, the parties are likely to produce new evidence as to their current incomes and the appropriate amount for child support. A different child custody arrangement may affect the calculation of child support. Even if the order is substantially the same, other changed financial circumstances since the previous order may impact the child support calculations.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.