LUIS FUQUEN	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
v.	*	**COA-PET-0065-2019**
	*	**CSA-REG-0313-2018**
	*	**(No. C-02-FM-15-000375, Circuit Court for Anne Arundel County)**
TRINA EVERITT		

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals filed in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera

Chief Judge

DATE: June 21, 2019

Circuit Court for Anne Arundel County
Case No. C-02-FM-15-000375

UNREPORTED IN THE COURT OF

SPECIAL APPEALS OF MARYLAND

No. 313

September Term, 2018

LUIS FUQUEN

v. TRINA

EVERITT

Meredith,
Reed, Sharer, J.
Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 5, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Luis Fuquen ("Father"), appellant, appeals the judgment entered after a custody trial in the Circuit Court for Anne Arundel County. The appellee is Trina Everitt ("Mother"). By order docketed March 22, 2018, the court awarded sole legal custody, as well as primary physical custody, of the parties' two minor children to Mother. The court's order also provided for Father to pay child support, made a marital property award, and ordered Father to pay a portion of Mother's attorney's fees. Father's brief states:

> There are now three primary questions before this court:
>
> 1) whether a parent's exercise of the constitutionally protected choice to dissolve the marital relationship provides sufficient state trigger to regulate and censor intimate and expressive close family parent-child speech, association, and worship;
>
> 2) whether TC's [the trial court's] viewpoint regarding the best interest of the children sufficiently justifies that regulation and censorship of intimate and expressive close family parent-child speech, association, and worship; and
>
> 3) whether the absence of a neutral and impartial decision-maker deprived the litigants of a fair hearing?

We perceive no reversible error, and affirm the judgments of the Circuit Court for Anne Arundel County.

FACTS AND PROCEDURAL HISTORY

Father and Mother were married on April 25, 2002. Two children were born to the parties: R., on March 29, 2002, and K., on July 7, 2004. The parties separated in June 2014 when Mother took the children and left the marital home. The court found that their

separation had been uninterrupted since September 2014. The court made the following findings:

> The parties' marriage was turbulent before it began. Their first wedding date was canceled, and they didn't talk for months after that, despite the fact that [Mother] was already pregnant with their first child. Eventually they did marry and went on to have their second [child]. Their children are the subject, in part, of the instant controversy. Their marriage was never good, and according to [Father] their ever-present tension came to a head when he realized the parties' life goals were not the same. This realization came about as the result of the parties' attempts to purchase a franchise for [Mother] to run. In the course of their discussions, [Mother] indicated that she would like to eventually retire and stay home. [Father] was appalled by her lack of ambition.
>
> Throughout 2013 the tension in their household had been rising. During this time, [Father] was commuting to Virginia to work. He arrived home late in the evenings and was exhausted on weekends. For weeks and sometimes months, [Father] would refuse to communicate with [Mother] or the children ("the silent treatment") as the result of some perceived infraction. [Father] raised the issue of divorce with [Mother] on several occasions throughout that year. To add to this stress, in the Fall of 2013, [Father] learned that his employment was being terminated.
>
> Finally, as the result of an incident on Thanksgiving of 2013, [Mother] came to the realization that she and the children could no longer live with [Father]. Pets were an integral part of the parties' household, and they recently had added a kitten to their menagerie. At dinner, [Father] became angry with their youngest child for being disrespectful to [Mother's] mother. As punishment to the child, [Father] announced that the kitten would have to go and threw the kitten out of the house into the cold night, causing everyone at the house, especially the children, great emotional distress. [Footnote 1 explains that the kitten was rescued by Mother's father.] After that, [Father] did not speak to [Mother] or the children for months, including over the Christmas holidays.
>
> At some point thereafter, [Mother] began to make active plans to move out of the home with the children, which she eventually did in June 2014. [Father] testified that he was shocked and emotionally devastated by this move. He threatened suicide and eventually ended up in Sheppard Pratt for one week. Following his release from Shep[p]ard Pratt in August

2014, he went to his sister's home in Chicago and underwent two weeks of intense out-patient therapy. When he returned to Maryland in September of 2014, [Mother] agreed that he could sleep on the couch in the family home, and he did so temporarily. Despite having an offer of employment in Washington, DC, [Father] accepted a position in New Jersey and relocated there, with [Mother's] help, in September, 2014. Although he had been terminated from this new job by Thanksgiving of 2014, [Father] continued living in New Jersey until July of 2016. [Father] had no contact with the children during the first three weeks after he moved. Thereafter until July, 2016, the vast majority of [Father's] contact with them was electronic. A Consent Order Regarding Final Custody and Visitation Determination was entered on June 22, 2015 providing the parties with joint legal custody and [Mother] with primary physical custody and final decision-making authority. Under that Order [Father] had alternating Sunday afternoon visits, two non-consecutive summer weeks and certain holiday visits. A subsequent Consent Order Regarding Custody further defining the parties' joint legal custody was entered on November 19, 2015.

On that same date, another Consent Order was entered which provided, inter alia, that the parties would continue to rent the marital home to a third party tenant and that [Mother] should be "entitled to retain as her sole property any and all rental income that exceeds the cost of [the] mortgage . . .[.]" As previously indicated, in July of 2016, [Father] began coming back to Maryland, and he eventually moved back into the marital home located at [redacted] Lane, Annapolis, Maryland 21409. Until that point, the net third party rental income had been $600.00 per month. Pursuant to the terms of the November 19, 2015 Consent Order, those funds were paid to [Mother]. [Mother] has not received any rental income since [Father] resumed residing in the marital home. On November 29, 2017, [Mother] filed a Petition for Contempt and Motion to Enforce Consent Order due to [Father's] alleged failure to follow the dictates of the November 19, 2015 Consent Order. During his occupancy, [Father] claims he made a number of repairs to the property, for which he now seeks contribution from [Mother].

Once [Father] returned to live in Maryland, he became hyper-vigilant of the [children] and hyper-critical of [Mother's] parenting. He decided that the [children] were malnourished and suffered from eating disorders. He insisted that they be evaluated for eating disorders, a demand to which [Mother] acceded. Eventually, [R.] was diagnosed with an eating disorder for which she has been treated. [Father] introduced the [children] to calorie counting and suggested at one point that [R.]'s "ins and outs" be

weighed. Much to [R.]'s chagrin, he contacted her recreational soccer coach and suggested she not exert herself due to her eating disorder. He has also, to the [children's] great embarrassment, advised school personnel of certain alleged physical and psychological conditions of the [children] and their mother, all without the input or approval of [Mother] or the [children's] health care providers. To the detriment of the children, [Father] verbally attacks and berates any professional who disagrees with his unconventional theories of treatment, on at least one occasion causing a scene in the pediatrician's office in front of both children.

Through text and telephone calls, [Father] has attempted to manipulate the [children] by threatening to again move away or texting them cryptic goodbyes, leaving them to conclude he is suicidal, if they do not live with him or behave the way he wishes. At one point, [Father] went to [Mother's] home and demanded they give him their puppy Simon in apparent retaliation for [Mother] hiring a lawyer to represent her in the divorce case. This came after he had already gotten rid of three of their dogs, their chickens and at least one cat.

[Father] repeatedly shared details of the parties' case and the court process with the [children] and is apparently unable to see the impropriety of doing so, at one point stating, "As a parent I have clearly stated the facts to the kids and they are in the know because they need to know how screwed up is the system." In contrast, [Mother] expressed regret and remorse for the few times she improperly involved the children in the parties' disputes. Aside from deriding the court system to the [children], [Father] repeatedly blames [Mother] for everything to them. He tells them that [Mother] is mentally and physically ill and is taking a "cocktail" of drugs. He also tells them that [Mother's] depression is genetic and that they too are likely to suffer from mental illness in the future. He has unjustifiably reported [Mother] to Child Protective Services, leaving the [children] to fear they would be put in foster care. The Child Protective Services investigation resulted in a recommendation to [Father] that he stop putting the children in the middle of the parties' divorce. Several mental health professionals testified at trial that [Father] was not receptive to their suggestions that he stop threatening and manipulating the children. The experts also made it clear that while [Father] has inflicted significant psychological damage on the children, he is not considered to be a physical threat to them.

Despite all of this, the [children] love [Father] and through counseling they are learning to establish the necessary boundaries between

> [Father] and themselves to preserve and protect their mental health. At trial one of the counselors recommended reunification therapy for [Father] and [K.] [Father] testified he did not think such therapy would be beneficial but would defer to the therapist's recommendation.

The court granted Mother an absolute divorce based on a one-year separation.

With respect to the parents' competing claims for custody, the trial court found that there had been a material change in circumstances since the time the court had entered a consent order in June 2015 providing for joint legal custody of the children. The court found that Father's move back to Maryland from New Jersey was a material change in circumstances, as was "the deterioration in the parties' ability to communicate" as alleged by Mother. And the court found, based "on the factors set forth in *Montgomery County v. Sanders*, 38 Md. App. 406 (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986)," plus the reasons articulated in the court's opinion, that it was "in the best interests of the parties' children to be in the primary physical custody of" Mother.[1]

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[1] In *Sanders*, 38 Md. App. at 419-21, we explained:

> Where modification of a custody award is the subject under consideration, equity courts generally base their determinations upon the same factors as those upon which an original award was made, that is, the best interest of the child. Unfortunately, there is no litmus paper test that provides a quick and relatively easy answer to custody matters. Present methods for determining a child's best interest are time-consuming, involve a multitude of intangible factors that ofttimes are ambiguous. The best interest standard is an amorphous notion, varying with each individual case, and resulting in its being open to attack as little more than judicial prognostication. The fact finder is called upon 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. At the bottom line, what is in the child's best interest equals the fact finder's best guess.

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> What critics of the "judicial prognostication" overlook is that the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments. See *Chapsky v. Wood*, 26 Kan. [650] at 655, 40 Am.Rep. [321] at 325 [(1881)]. The court's prediction is founded upon far more complex methods than reading tea leaves. The criteria for judicial determination includes, but is not limited to, 1) fitness of the parents, *Cornwell v. Cornwell*, 244 Md. 674, 224 A.2d 870 (1966); *Barnard v. Godfrey*, 157 Md. 264, 145 A. 614 (1929); 2) character and reputation of the parties, *Hoder v. Hoder*, 245 Md. 705, 227 A.2d 750 (1967); 3) desire of the natural parents and agreements between the parties, *Breault v. Breault*, 250 Md. 173, 242 A.2d 116 (1968); *McClary v. Follett*, 226 Md. 436, 174 A.2d 66 (1961); *Colburn v. Colburn*, 20 Md. App. 346, 316 A.2d 283 (1974); *Davis v. Jurney*, 145 A.2d 846 (D.C. Mun. App. 1958); 4) potentiality of maintaining natural family relations, *Lippy v. Breidenstein*, 249 Md. 415, 240 A.2d 251 (1968); *Melton v. Connolly,* [219 Md. 184, 188 (1959)]; *Piotrowski v. State*, 179 Md. 377, 18 A.2d 199 (1941); 5) preference of the child, *Ross v. Pick*, 199 Md. [341] at 353, 86 A.2d at 469 [(1952)]; *Young v. Weaver*, 185 Md. 328, 44 A.2d 748 (1945); *United States v. Green*, 26 Fed.Cas. No. 15256, pp. 30, 31-32 (C.C.R.I.1824); 6) material opportunities affecting the future life of the child, *Thumma v. Hartsook,* [239 Md. 38, 41-42 (1965)]; *Butler v. Perry,* [210 Md. 332, 339-40 (1956)]; *Cockerham v. The Children's Aid Soc'y of Cecil County*, 185 Md. 97, 43 A.2d 197 (1945); *Jones v. Stockett*, 2 Bland. 409 (Ch.1838); 7) age, health and sex of the child, *Alden v. Alden*, 226 Md. 622, 174 A.2d 793 (1961); *Cullotta v. Cullotta*, 193 Md. 374, 66 A.2d 919 (1949); *Piotrowski v. State, supra*; 8) residences of parents and opportunity for visitation, *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 440 (D.C. App. 1972); 9) length of separation from the natural parents, *Ross v. Hoffman*, [280 Md. 172, 175 (1977)]; *Melton v. Connolly, supra*; *Powers v. Hadden*, 30 Md. App. 577, 353 A.2d 641 (1976); and 10) prior voluntary abandonment or surrender, *Dietrich v. Anderson,* [185 Md. 103, 116-17 (1945)]; *Davis v. Jurney, supra.*
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> While the court considers all the above factors, it will generally not weigh any one to the exclusion of all others. The court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor such as the financial situation, *Cockerham v. The*

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The court found each party to be physically fit to have custody of the children, but noted that it was "unpersuaded" by Father's attempts to convince the court that Mother was "psychologically unfit[.]" Not only was the court unpersuaded that Mother was psychologically unfit, the court also stated that it was, "[i]n contrast . . . greatly concerned about [Father's] psychological fitness." The court observed that Father was "combative and antagonistic by nature," had "alienated at least four of the five medical/mental health professionals who have attempted to treat his [children]," "projects his own medical conditions onto the [children], causing them extreme anxiety and depression," and "manipulates the children by overtly threatening to abandon them and more obliquely threatening suicide." In September 2017, a few months before the proceedings at issue here, Father had experienced what he described as "an emotional meltdown," but he was no longer in treatment because he claimed he had "found a better way to cope with his issues" and was "currently utilizing a 'life coach.'"

The court found that, while Mother was described by witnesses as "a loving, generous, stable parent" who was "'kind to a fault,'" and "well-liked, respected and helpful," Father, "[i]n contrast . . . was described as 'extremely controlling,' behaving explosively at times." The court further noted that "[a]t least one of the therapists

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Children's Aid Soc'y of Cecil County, supra, or the length of separation. *Powers v. Hadden, supra.*

directly attributed [R.'s] depression to exhaustion from the parties' custody battle and pressure placed upon her by [Father]."

The court found that "[b]oth parties appear sincere in their expressed desire to have primary physical custody of the children," but they could not agree on either physical or legal custody. Likewise, the court found that both parties "can adequately support the children and provide them with adequate material opportunities," and each lives in a "suitable residence for the children." The court noted that neither child testified, but the evidence indicated that, "at the time of trial, by their own choice, [R.] was seeing [Father] on alternating weekends and on an occasional weekday evening, and [K.] had seen [Father] only once in the preceding three months."

The court's finding as to which parent offered greater potential for maintaining natural family relations came down on the side of Mother. The court found:

> [Mother] has a close relationship with her own family. [Father] became estranged from his family in 2011 as the result of an unspecified incident. He has since reconciled with most of his family but remains estranged from his brother. [Mother] is in contact with that brother and has arranged for the parties' children to see his children, their cousins, since the parties' separation. [Father] views [Mother's] family as genetically damaged and psychologically unstable, none of which was borne out by the evidence. [Father] does not have a good relationship with the children's maternal relatives.

The court found that, overall, the children, who were fifteen and thirteen at the time of trial, were healthy,

> although at [Father's] instigation, [R.] has been diagnosed with an eating disorder. . . . Both [children] have been traumatized by the protracted custody battle and the undue pressure and manipulation placed on them by

> [Father]. As a result, both [children] suffer from anxiety and [R.] has been diagnosed with depression.

Regarding the "length of separation from the natural parents," *see Sanders, supra*, 38 Md. App. at 420, the court found:

> Following the parties['] initial separation in June of 2014, [Father] suffered a mental breakdown requiring his hospitalization for one week. He then went to Chicago for several weeks. He subsequently relocated to New Jersey where he lived for approximately two years. Throughout this period, his communications and visitation with his [children] were sporadic and inconsistent. For the first three months after his relocation, [Father] had no contact with the children. On several occasions since his return to Maryland in July of 2016, [Father] has threatened to again leave the area if the [children] don't behave as he wishes or if he does not get the custodial arrangement to which he feels he is entitled. [Mother] has never been separated from the children for any significant period of time, and she has never abandoned or threatened to abandon them.

The court found that, in light of its consideration of the *Sanders* and *Taylor* factors, "the best interests of the children will be served if they are in the primary custody of [Mother]."

The court then turned to consideration of the advisability of continuing joint legal custody, applying the guidance provided in *Taylor*, 306 Md. at 302-11, in which the Court of Appeals revisited the option of joint custody for the first time since its predecessors had "denounced" the concept in *McCann v. McCann*, 167 Md. 167, 172 (1934), as "an evil" "to be avoided, wherever possible[.]" The *Taylor* Court recognized that "[s]ignificant societal changes" had occurred since 1934 that warranted a "re-examination" of the views that led to the *McCann* holding. The *Taylor* Court observed that, "in any child custody case, the paramount concern is the best interest of the child."

Taylor, 306 Md. at 303. Building on the factors discussed in *Sanders*, *supra*, the *Taylor* Court articulated "factors particularly relevant to a consideration of joint custody[.]"

The trial court in this case expressly referred to the *Taylor* factors in its discussion of its consideration of the award of legal custody, stating:

> The court must consider the factors set forth in *Taylor v. Taylor*, 306 Md. 290 (1986), in determining whether joint legal custody is appropriate, *i.e.*, in the children's best interests. The most important of these factors is the capacity of the parents to communicate and to reach shared decisions affecting the children's welfare. *Taylor* states:
>
> > Rarely, if ever, should joint custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future.
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> *Id.* at 304. The court is aware that in *Santo v. Santo*[, 448 Md. 620 (2016),] the Court of Appeals recently held:
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> > that a court of equity ruling on a custody dispute may, under appropriate circumstances and with careful consideration articulated on the record, grant joint legal custody to parents who cannot effectively communicate together regarding matters pertaining to their children. In doing so, the court has the legal authority to include tie-breaking provision[s] in the joint legal custody award.
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> 448 Md. 620, 646 (2016).
>
> In the case *sub judice*, the parties have not been able to communicate and reach shared decisions regarding the children. They were unable to agree on the children's counselors, pediatrician, church attendance, summer camps, extracurricular activities, diet and overall physical and psychological needs. [Father] is overbearing and manipulative. If a professional disagrees with him, he becomes antagonistic. He views [Mother], who has been open and receptive to the recommendations of

various professionals, as child-like and unstable. He does not value her opinion.

Taylor further dictates that the court is to also consider the geographic proximity of the parties' homes, each child's relationship with each parent, the potential for disruption in the children's school and social lives, the demands of parental employment and the benefits to the parties. The parties live approximately ten minutes from one another. Prior to trial [Father] "threatened" to move across the street from [Mother] when the marital home is sold. At trial, [Father] indicated he no longer intends to do so. The court does not believe such a living arrangement would be in the [children's] best interests. In addition, the court believes that joint legal custody would disrupt their school and social lives, as the parties' inability to effectively communicate would severely delay any decision-making. At trial, both parties indicated they have flexibility with their employment. [Mother] indicated she works very close to home, and her employer has been extremely accommodating by giving her necessary time off. [Father] testified that he works from home occasionally and that he also has flexibility with his work hours. However, the testimony at trial also indicated that for his visits with [R.], [Father] frequently does not pick her up until after 7:00 or 8:00 p.m. because he has been working. As previously discussed, [K.] and [Father] do not have a good relationship at this time. One mental health professional testified they have an "unhealthy dynamic." Except for one occasion, she refused to visit with him in the three months preceding the trial. [R.'s] relationship with [Father] is a bit better. Both children have a good, stable relationship with [Mother]. Finally, the court does not believe joint legal custody would benefit either party. To the contrary, it would provide more opportunities for conflict, disagreement and discord and the inevitable associated stress. Considering all of the above, the court believes it is in the children's best interests for [Mother] to have sole legal custody of the children.

With respect to the monetary issues that are challenged in Father's brief, the trial court ruled that Father had dissipated a portion of the couple's marital assets by withdrawing over $88,000 from two marital-property accounts in 2017, as to which Father produced evidence that he used $12,500 to pay attorneys' fees, but, the court found, Father "produced no credible evidence to establish [any other portions of the

withdrawals] were used for marital purposes." The court therefore found "that [Father] has dissipated marital assets totaling $75,531.34." The court ruled that Mother would be compensated for this dissipation of marital assets either by an increase in the purchase price of her interest in the marital home if Father sought to buy the home (in which he was residing), or, if Father did not purchase Mother's interest in the marital home, the court would reduce to judgment the $37,765.67 (*i.e.*, half of $75,531.34) that would have been Mother's share of the dissipated funds.

The court also ordered Father to pay to Mother "the sum of $15,000.00 as contribution to her reasonable and necessary attorneys' fees . . . within thirty days of th[e] court's Judgment of Absolute Divorce . . . ."

I. Custody

In *Gillespie v. Gillespie*, 206 Md. App. 146, 170-72 (2012), we summarized the standards of appellate review that are applied in an appeal from a custody ruling as follows:

> Courts must engage in a two-step process when presented with a request to change custody. We have described the two-step analysis as follows:
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> > First, the circuit court must assess whether there has been a "material" change in circumstance. *See Wagner v. Wagner,* 109 Md. App. 1, 28 [674 A.2d 1] (1996). If a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody. *See id.; Braun v. Headley,* 131 Md. App. 588, 610 [750 A.2d 624] (2000).
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> *McMahon v. Piazze,* 162 Md. App. 588, 594, 875 A.2d 807 (2005). Therefore, we first consider whether the trial court erred in finding that a

material change in circumstances occurred. Second, we consider whether the court abused its discretion in modifying custody.

* * *

This court reviews child custody determinations utilizing three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586, 819 A.2d 1030 (2003). The Court of Appeals described the three interrelated standards as follows:

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

Id. at 586, 819 A.2d 1030. In our review, we give "due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses." *Id.* at 584, 819 A.2d 1030. We recognize that "it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the trial judge] 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 585–86, 819 A.2d 1030.

(Internal headers omitted.)

In this case, the court's findings that there had been a material change in circumstances and that a change in custody to Mother would be in the best interests of the children are neither based upon an error of law, nor any clearly erroneous finding of fact,

nor an abuse of discretion. Upon our review of the record in this case, we affirm the court's decision to award Mother primary physical custody and sole legal custody of the parties' children.

In Father's brief, he raises a number of arguments that had been asserted in his motion for a new trial. Although there is nothing frivolous about the United States Constitution and the Supreme Court cases cited in Father's brief, Father's arguments appear to be wholly without merit. Father makes references to due process, overbreadth, vagueness, fundamental rights, and equal protection, but provides no rational explanation as to how those concepts compel a different result in his case. He refers to "orders that are least restrictive" and "strict scrutiny" and "*ex post* facto" laws and "viewpoint discrimination," but, again, this use of legalese provides no rational explanation of a reversible error on the part of the trial court.

For example, Father asserts that the trial court erred by failing to "render an equal division of time between each parent," but there is no statutory or constitutional requirement that mandates that result. Father bemoans that the "best interest of the child" standard impinges upon his personal freedoms, but Maryland cases have repeatedly determined that the best interests of the child are paramount to conflicting interests of parents who are not in agreement about the care and custody of a minor child. In *Boswell v. Boswell*, 352 Md. 204, 236 (1997), the Court of Appeals asserted: "In all family law disputes involving children, the best interests of the child standard is always the starting—and ending—point." And in *Taylor, supra*, 306 Md. at 303, the Court of

Appeals reiterated that "[t]he best interest of the child" is the "paramount concern" in "any child custody case," *i.e.*, not merely one factor the court should consider, but rather "the objective to which virtually all other factors speak." The best interest of the child is "of transcendent importance." *Id.* Suffice it to say that the best interest of the child standard is not unconstitutional, and the trial court here analyzed the facts without committing clear error and applied the law to the facts without abusing the court's discretion.

Based upon the Maryland cases describing the best interest of the child as the overriding concern of a court considering a dispute between two parents, we see no merit in Father's assertion that the circuit court abused its authority when it ordered him to participate in reunification counseling with a therapist who was recommended by an expert witness at trial.

McDermott v. Dougherty, 385 Md. 320 (2005), cited by Father in his brief, was a custody challenge by maternal grandparents to a fit natural parent's exercise of custody. Father's case, in contrast, is a custody challenge between fit natural parents. The two factual backdrops are not the same, nor is the applicable law, as the Court of Appeals recognized in *McDermott*, 385 Md. at 353-55:

> In a situation in which both parents seek custody, each parent proceeds in possession, so to speak, of a constitutionally-protected fundamental parental right. Neither parent has a superior claim to the exercise of this right to provide "care, custody, and control" of the children. *See* Md. Code (1984, 1999 Repl. Vol., 2004 Supp.), § 5–203(d)(2) of the Family Law Article. **Effectively, then, each fit parent's constitutional right neutralizes the other parent's constitutional right, leaving, generally, the best interests of the child as the *sole standard* to apply to**

these types of custody decisions. Thus, in evaluating each parent's request for custody, the parents commence as presumptive equals and a trial court undertakes a balancing of each parent's relative merits to serve as the primary custodial parent; **the child's best interests tips the scale in favor of an award of custody to one parent or the other**.

Where the dispute is between a fit parent and a private third party, however, both parties do not begin on equal footing in respect to rights to "care, custody, and control" of the children. **The parent is asserting a fundamental constitutional right. The third party is not.** A private third party has no fundamental constitutional right to raise the children of others. Generally, absent a constitutional statute, the non-governmental third party has no rights, constitutional or otherwise, to raise someone else's child.

The arguments and outcome of the instant case in no way alter the "best interests of the child" standard that governs courts' assessments of disputes *between fit parents* involving visitation or custody. We have frequently and repeatedly emphasized that in situations where it applies, it is the central consideration. *See Wilhelm v. Wilhelm,* 214 Md. 80, 84, 133 A.2d 423, 425 (1957) (stating succinctly and conclusively in regard to the best interests standard, that "[i]t seems unnecessary to cite additional authority in support of this firmly established rule"). **So critical is the best interests standard that it has garnered superlative language in the many cases in which the concept appears: This Court labeled it "of transcendent importance"** in *Dietrich v. Anderson,* 185 Md. 103, 116, 43 A.2d 186, 191 (1945), as the **"ultimate test"** in *Fanning v. Warfield,* 252 Md. 18, 24, 248 A.2d 890, 894 (1969), and as the **"controlling factor"** in *In re Adoption/Guardianship No. 10941,* 335 Md. 99, 113, 642 A.2d 201, 208 (1994). *See also Hoffman,* 280 Md. at 175, n. 1, 372 A.2d at 585 n.1 (providing a more complete survey of the various descriptions of the best interest standard). Although the child's well-being remains the focus of a court's analysis in disputes between fit parents, "[t]he best interests standard does not ignore the interests of the parents and their importance to the child. We recognize that in almost all cases, it is in the best interests of the child to have reasonable maximum opportunity to develop a close and loving relationship with each parent." *Boswell v. Boswell,* 352 Md. 204, 220, 721 A.2d 662, 669 (1998) (alteration added).

When considering the application of the "best interests of the child" standard it is essential to frame the different situations in which it is attempted to be applied. First, and certainly the most important application

> of the standard, is **in disputes between fit natural parents, each of whom has equal constitutional rights to parent. In those cases the dispute can be resolved best if not solely, by an application of the "best interests of the child" standard. This situation most often arises in marriage dissolution issues between natural parents and it is necessary to resolve the matters of custody and visitation between two constitutionally equally qualified parents**. Although the Court is unaware of any compilation of numbers, it can reasonably be supposed that the vast majority of cases throughout the country in which the "best interest of the child standard" is applied, or sought to be applied, are of this nature. . . .

(Footnote omitted; internal headers omitted; bolding added.)

Father refers repeatedly to what he calls "the *Palmore* standard," which he describes as "hold[ing] that parental conflict does not neutralize constitutional rights or grant [the trial court] authority to balance 'merits.'" In his brief, Father cites (incompletely) to Justice Thomas's dissent in *Grutter v. Bollinger*, 539 U.S. 306 (2003), contending that Justice Thomas wrote that, in *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984), "the Court held that even the best interests of a child did not constitute a compelling state interest." 539 U.S. at 352. Father asserts that the trial court in some way violated this so-called "*Palmore* standard" in its decision on custody in this case. First of all, we observe that *Grutter* was *not* a child custody case, but was a case addressing a race-conscious admission policy of the University of Michigan Law School. Second, *Palmore* does not weaken the "best interest of the child" standard in any respect that affects the trial court's ruling in this case.

In *Palmore*, after a couple divorced and the mother (Palmore) was awarded custody of the parties' 3-year-old daughter, the father (Sidoti) filed a motion to modify custody, asserting not that Palmore was unfit, but that there were changed circumstances

justifying a modification of custody because Palmore and the child had begun living with an African-American man (whom Palmore later married). The trial court in that case made no express finding of unfitness by either parent, and even noted that it found "no issue as to either party's devotion to the child, adequacy of housing facilities, or respectability of the new spouse of either parent." 466 U.S. at 430. However, it nevertheless granted Sidoti's motion to modify based on the "changed circumstances," namely, Palmore's "cho[ice], for herself and her child, [of] a life-style unacceptable to the father and to society[,]" a thinly-veiled reference to her choice of a bi-racial relationship. *Id.* at 431. The District Court of Appeal for the Second District of Florida summarily affirmed, and the United States Supreme Court granted *certiorari.* Writing for a unanimous Court in *Palmore*, Chief Justice Burger observed that the trial court had "correctly stated that the child's welfare was the controlling factor." *Id.* at 432. And the Supreme Court stated, *id.* at 433:

> The State, of course, has a duty of the highest order to protect the interests of minor children, particularly those of tender years. In common with most states, Florida law mandates that custody determinations be made in the best interests of the children involved. Fla.Stat. § 61.13(2)(b)(1) (1983). The goal of granting custody based on the best interests of the child is indisputably a substantial governmental interest for purposes of the Equal Protection Clause.

The *Palmore* Court "had little difficulty in concluding" that "the reality of private biases and the possible injury they might inflict" are **not** "permissible considerations for removal of an infant child from the custody of its natural mother." *Id.* With respect to invidious racial discrimination prohibited by the Fourteenth Amendment, the *Palmore*

Court reiterated: "The Constitution cannot control such prejudices but neither can it tolerate them." *Id.* at 433. Accordingly, the Court reversed the Florida court's custody ruling that was based upon racial prejudice. We fail to discern any meaningful similarity between *Palmore* and the custody ruling in Father's case.

II. Dissipation

At trial, Mother argued that Father had dissipated marital assets by withdrawing funds in 2017 from savings accounts titled in his name. The court agreed, and explained its finding as follows:

> [Mother] claims that [Father] has dissipated marital assets. In order for the court to find that one spouse has dissipated marital assets, warranting a deviation from the standard that marital property which has been sold or transferred should not be considered by the court, the finder of fact must find by a preponderance of the evidence that the accused "spent or otherwise depleted marital funds or property with the principal purpose of reducing the amount of funds that would be available for equitable distribution at the time of the divorce." *Welsh v. Welsh*, 135 Md. App. 29, 50-51 (2000).
>
> The evidence shows that in 2017, [Father] removed $75,031.14 from his retirement accounts. On December 4, 2017 he also removed $13,000.00 from his USAA money market account. **Of the $88,031.14 withdrawn in 2017, $12,500.00 was used for [Father's] attorneys' fees. Payment of attorneys' fees is a proper use of marital assets and those sums will not be considered dissipated assets.** See *Allison v. Allison*, 160 Md. App. 331[, 339-40] (2004). However, the court finds [Father's] principal purpose in making the balance of the 2017 withdrawals was to reduce the amount of funds that would be available for distribution at the time of divorce, and these funds were dissipated. **[Father] produced no credible evidence to establish they were used for marital purposes.**

> **The court therefore finds that [Father] has dissipated marital assets totaling $75,531.34. This sum will be treated as extant property and accounted for in the disposition of the marital estate.**

(Emphasis added.)

"The doctrine of dissipation is aimed at the nefarious purpose of one spouse's spending for his or her own personal advantage so as to compromise the other spouse in terms of the ultimate distribution of marital assets." *Heger v. Heger*, 184 Md. App. 83, 96 (2009). The Court of Appeals discussed how a court evaluates a dissipation claim in *Omayaka v. Omayaka*, 417 Md. 643, 655–57 (2011) (boldface italics added):

> In their *Maryland Family Law* treatise, the authors suggest a "**cookbook method**" to resolve a dissipation allegation. As modified to clarify the burdens of production and persuasion, that method is as follows:
>
> - If property does not exist at the time of divorce, it cannot usually be included as marital property
> - Well, that is so unless one spouse proves [by a preponderance of the evidence] that the other spouse dissipated assets acquired during the marriage to avoid inclusion of those assets toward consideration of a monetary award.
> - [A prima facie case] of dissipation occurs when evidence is produced that marital assets were taken by one spouse without agreement by the other spouse.
> - ***Then, the burden of going forward with evidence shifts to the party who [allegedly] took the assets without permission to [produce evidence that generates a genuine question of fact on the issue of (1) whether the assets were taken without agreement, and/or (2)] where the funds are [and/or (3) whether the funds] were used for marital or family expenses.***
> - If that proof of use for marital or family purposes is not produced, then the property taken is "extant" marital property, titled in or owned by the individual who took the marital property without permission.

- From that "extant" property in the name of one spouse, the other spouse may be given a monetary award to make things equitable.

John F. Fader, II & Richard J. Gilbert, *Maryland Family Law,* § 15–10 (4th ed.2006).

It is clear that the ultimate burden of persuasion remains on the party who claims that the other party has dissipated marital assets.

> The burden of persuasion and the initial burden of production in showing dissipation is on the party making the allegation. *Choate v. Choate,* 97 Md. App. 347, 366, 629 A.2d 1304[, 1314] (1993). That party retains throughout the burden of persuading the court that funds have been dissipated, but after that party establishes a prima facie case that monies have been dissipated, i.e. expended for the principal purpose of reducing the funds available for equitable distribution, the burden shifts to the party who spent the money to produce evidence sufficient to show that the expenditures were appropriate.

Jeffcoat [*v. Jeffcoat*], 102 Md. App. [301] at 311, 649 A.2d at 1142. [(1994)].

Proof that a spouse made sizable withdrawals from bank accounts under his or her control is sufficient to support the finding that the spouse had dissipated the withdrawn funds. *Ross v. Ross,* 90 Md. App. 176, 191, 600 A.2d 891, 898–99, *vacated on other grounds,* 327 Md. 101, 607 A.2d 933 (1992).

"A trial court's judgment regarding dissipation is a factual one and, therefore, is reviewed under a clearly erroneous standard. 'If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.'" *Solomon v. Solomon,* 383 Md. 176, 202 (2004) (quoting *Fuge v. Fuge,* 146 Md. App. 142, 180, 806 A.2d 716, 738 (2002)). *Accord Beck v. Beck,* 112 Md. App. 197,

216 (1996) ("We will not set aside a trial court's determination regarding dissipation of marital assets unless the determination is clearly erroneous.").

Here, Father raises no genuine dispute as to the *prima facie* evidence of dissipation, *i.e.*, the fact that he withdrew $88,031.14 from accounts under his control that were marital assets. But he argues that the trial court's view of the evidence was clearly erroneous because the court failed to trace a greater portion of those funds to expenditures that were for proper marital purposes. In essence, he argues that the trial court was required to accept his conclusory arguments that he spent the withdrawn funds for legitimate family expenses.

At trial, Father submitted, as Exhibit J, his financial statement, which noted that he had five credit-card accounts on which he owed an aggregate balance, as of January 5, 2018, of $57,477.18, and that he had a monthly recurring expense of $924, which he attested was the monthly minimum payment on that debt. He also submitted, as his Exhibit K, his (non-itemized) credit-card bills, showing five accounts with a total debt of $56,619.12. The sole evidence he cites in support of his contention that the trial court erred in failing to consider his "high" credit card bills as an allowable expenditure of marital funds for family expenses was the following bit of his direct testimony:

> [BY FATHER'S ATTORNEY]: Now, sir, how did those credit cards get that high?
>
> [BY FATHER]: Through all the --- all --- it's been a journey. Since 2014, I've been having to pay to --- pay living expenses, to feed myself, to pay legal fees, the transportation to and from Long Island, New Jersey to see my kids, the money to be able to provide food for my kids, entertain my

> kids, legal fees, medical fees, paying the, you know, house repairs, car repairs.

Father's reliance upon this vague testimony and the exhibits he introduced to rebut the evidence of dissipation misses the point. Once Mother made out a *prima facie* case of dissipation by offering evidence that Father made the withdrawals of marital funds from those accounts in 2017, the burden shifted to Father to "produce evidence sufficient to show that the expenditures [he made with those withdrawals of $88,031.14] were appropriate." *Omayaka, supra,* 417 Md. at 657 (quoting *Jeffcoat, supra,* 102 Md. App. at 311 (1994)). In other words, it became his burden to offer evidence to answer for the court the question: Where did that money that you withdrew from these accounts go? Father's documents established no utilization of the withdrawn funds to make substantial *payments* on his credit card debts or any other particular marital obligations after the funds were withdrawn in 2017. Consequently, the trial court's finding of dissipation in the amount of $75,531.34 was not clearly erroneous.

III. Attorneys' Fees

Father's final complaint is that the trial court erred in ordering him to pay $15,000 toward Mother's legal fees. The court explained its ruling on this issue as follows:

> Both parties incurred significant legal fees in this case. In addition to the $25,000 in attorneys' fees she incurred in 2015, [Mother's] attorneys' fees from October 6, 2016 through January 12, 2018 totaled $32,889.10. Her expert witness fees were $2,150.00. [Father's] attorneys' fees and costs for the five attorneys he employed since 2014 totaled about $73,000.00. His fees for his trial counsel were over $21,375.00, incurred over a six-week period. In addition, the court-appointed Best Interest

> Attorney for the children had fees of $30,090.64. Of that sum, [Mother] has paid $4,500.00, and [Father] has paid $7,000.00.[2] [Mother] was justified in pursuing her claims for divorce, custody and property division. However, the court does not believe that [Father's] custody claim was well-founded. He, himself, predicted he would lose his custody claim, but he persisted nonetheless at great monetary and emotional expense for all. In addition, he undertook a series of retirement account withdrawals which the court has determined to constitute a dissipation of marital assets. Each party has already used marital assets to pay some of his/her attorneys' fees. [Father's] income is approximately $110,000.00 per year higher than [Mother's], and he will be able to financially rebound from this financial catastrophe more quickly than [Mother].
>
> Upon consideration of the statutory factors set forth in Family Law, §§ 8-214, 11-110 and 12-103, the court shall direct [Father] to pay [Mother] the sum of $15,000.00 as contribution to her reasonable and necessary attorneys' fees. This sum is in addition to the unpaid $5,000.00 awarded to [Mother] by Judge Silkworth on December 4, 2015, $2,700.00 of which shall immediately be reduced to judgment. [Father] shall pay the additional $15,000.00 attorneys' fees award to [Mother] within thirty days of this court's Judgment of Absolute Divorce or the same shall be reduced to a judgment against him without need for further hearing.
>
> With regard to the Best Interest Attorney's Fees, [Father] will be ordered to pay Mr. Bennett the sum of $18,590.64 within thirty days of the date of the Judgment of Absolute Divorce or the same shall be reduced to judgment against him without the need for further hearing.

With respect to the standard of appellate review for an award of counsel fees, this Court said in *Gillespie v. Gillespie*, 206 Md. App. 146, 176 (2012):

> We review the award of counsel fees under the abuse of discretion standard. *Meyr v. Meyr,* 195 Md. App. 524, 552, 7 A.3d 125 (2010). The circuit court's decision regarding the award of fees "will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Petrini v. Petrini,* 336 Md. 453, 468, 648 A.2d 1016 (1994).

[2] The court noted in a footnote here that "Mr. Fuquen ignored the Best Interest Attorney's second escrow request."

On appeal, Father contends that the court erred in awarding counsel fees based upon its finding that his custody claim was not "well-founded." Father assails that finding because, he argues, "it is always in the best interest of society to prevent violations of constitutional rights, a practice rampant in family courts throughout the U.S."

The foregoing sections of this opinion have explained our conclusion that, as the circuit court observed, Father's claims that his constitutional rights were being violated were not well-founded. We perceive no abuse of discretion in the court's modest award of counsel fees to Mother.

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

TRINA EVERITT	*	IN THE
Plaintiff/Counter-Defendant	*	CIRCUIT COURT
v.	*	FOR
LUIS FUQUEN	*	ANNE ARUNDEL COUNTY
Defendant/Counter-Plaintiff	*	CASE NO. C-02-FM-15-000375

OPINION

This matter came before the court on the Plaintiff/Counter-Defendant's Amended Complaint for Absolute Divorce and the Defendant/Counter-Plaintiff's Counter-Complaint for Absolute Divorce. Both parties seek an absolute divorce and have asked the court to determine marital property and attorneys' fees. In addition, the Plaintiff, Ms. Everitt, is requesting support arrearages and a finding that the Defendant, Mr. Fuquen, is in contempt, while Mr. Fuquen is seeking a modification of child custody.

The trial lasted five days. The court heard testimony from the parties and eleven witnesses and received seventy-two exhibits.

On January 12, 2018, at the conclusion of the trial, the court held the matter *sub curia*.

BACKGROUND

Both parties have resided in Anne Arundel County, Maryland for more than six months prior to the filing of the Amended Complaint and Counter-Complaint, and neither party is in the military. The parties were married on April 25, 2002 in a civil ceremony in Miami, Florida. Two children were born to the parties: Rebeca Fuquen, born March 29, 2002, and Karyn Fuquen, born July 7, 2004. The parties last resided together in September, 2014, and their

separation has continued without interruption to the present. There is no reasonable hope of a reconciliation. Since the parties' separation, the minor children have resided with the Plaintiff.

The parties' marriage was turbulent before it began. Their first wedding date was canceled, and they didn't talk for months after that, despite the fact that Plaintiff was already pregnant with their first child. Eventually they did marry and went on to have their second daughter. Their children are the subject, in part, of the instant controversy. Their marriage was never good, and according to Defendant their ever-present tension came to a head in 2013 when he realized the parties' life goals were not the same. This realization came about as the result of the parties' attempts to purchase a franchise for Plaintiff to run. In the course of their discussions, Plaintiff indicated that she would like to eventually retire and stay at home. Defendant was appalled by her lack of ambition.

Throughout 2013 the tension in their household had been rising. During this time, Defendant was commuting to Virginia to work. He arrived home late in the evenings and was exhausted on weekends. For weeks and sometimes months, Defendant would refuse to communicate with Plaintiff or the children ("the silent treatment") as the result of some perceived infraction. Defendant raised the issue of divorce with Plaintiff on several occasions throughout that year. To add to this stress, in the Fall of 2013, Defendant learned that his employment was being terminated.

Finally, as the result of an incident on Thanksgiving of 2013, Plaintiff came to the realization that she and the children could no longer live with the Defendant. Pets were an integral part of the parties' household, and they recently had added a kitten to their menagerie. At dinner, Defendant became angry with their youngest child for being disrespectful to Plaintiff's mother. As punishment to the child, Defendant announced that the kitten would have

to go and threw the kitten out of the house into the cold night, causing everyone at the house, especially the children, great emotional distress.[1] After that, the Defendant did not speak to the Plaintiff or the children for months, including over the Christmas holidays.

At some point thereafter, Plaintiff began to make active plans to move out of the home with the children, which she eventually did in June, 2014. Defendant testified that he was shocked and emotionally devastated by this move. He threatened suicide and eventually ended up in Shephard Pratt for one week. Following his release from Shephard Pratt in August 2014, he went to his sister's home in Chicago and underwent two weeks of intense out-patient therapy. When he returned to Maryland in September of 2014, Plaintiff agreed that he could sleep on the couch in the family home, and he did so temporarily. Despite having an offer of employment in Washington, DC, the Defendant accepted a position in New Jersey and relocated there, with Plaintiff's help, in September, 2014. Although he had been terminated from this new job by Thanksgiving of 2014, Defendant continued living in New Jersey until July of 2016. Defendant had no contact with the children during the first three months after he moved. Thereafter until July, 2016, the vast majority of Defendant's contact with them was electronic. A Consent Order Regarding Final Custody and Visitation Determination was entered on June 22, 2015 providing the parties with joint legal custody and Plaintiff with primary physical custody and final decision-making authority. Under that Order Defendant had alternating Sunday afternoon visits, two non-consecutive summer weeks and certain holiday visits. A subsequent Consent Order Regarding Custody further defining the parties' joint legal custody was entered on November 19, 2015.

[1] The kitten was rescued by Plaintiff's father and taken to his family farm in New Jersey where it apparently lived thereafter.

On that same date, another Consent Order was entered which provided, *inter alia*, that the parties would continue to rent the marital home to a third party tenant and that Plaintiff should be "entitled to retain as her sole property any and all rental income that exceeds the cost of [the] mortgage...." As previously indicated, in July of 2016, the Defendant began coming back to Maryland, and he eventually moved back into the marital home located at 1612 Col-Mar Lane, Annapolis, Maryland 21409. Until that point, the net third party rental income had been $600.00 per month. Pursuant to the terms of the November 19, 2015 Consent Order, those funds were paid to Plaintiff. Plaintiff has not received any rental income since Defendant resumed residing in the marital home. On November 29, 2017, Plaintiff filed a Petition for Contempt and Motion to Enforce Consent Order due to Defendant's alleged failure to follow the dictates of the November 19, 2015 Consent Order. During his occupancy, Defendant claims he made a number of repairs to the property, for which he now seeks contribution from the Plaintiff.

Once Defendant returned to live in Maryland, he became hyper-vigilant of the girls and hyper-critical of Plaintiff's parenting. He decided that the girls were malnourished and suffered from eating disorders. He insisted that they be evaluated for eating disorders, a demand to which Plaintiff acceded. Eventually, Rebeca was diagnosed with an eating disorder for which she has been treated. Defendant introduced the girls to calorie counting and suggested at one point that Rebeca's "ins and outs" be weighed. Much to Rebeca's chagrin, he contacted her recreational soccer coach and suggested she not exert herself due to her eating disorder. He has also, to the girls' great embarrassment, advised school personnel of certain alleged physical and psychological conditions of the girls and their mother, all without the input or approval of Plaintiff or the girls' health care providers. To the detriment of the children, Defendant verbally

attacks and berates any professional who disagrees with his unconventional theories of treatment, on at least one occasion causing a scene in the pediatrician's office in front of both children.

Through text and telephone calls, Defendant has attempted to manipulate the girls by threatening to again move away or texting them cryptic goodbyes, leaving them to conclude he is suicidal, if they do not live with him or behave the way he wishes. At one point, Defendant went to Plaintiff's home and demanded they give him their puppy Simon in apparent retaliation for Plaintiff hiring a lawyer to represent her in the divorce case. This came after he had already gotten rid of three of their dogs, their chickens and at least one cat.

Defendant repeatedly shared details of the parties' case and the court process with the girls and is apparently unable to see the impropriety of doing so, at one point stating, "As a parent I have clearly stated the facts to the kids and they are in the know because they need to know how screwed up is the system." In contrast, Plaintiff expressed regret and remorse for the few times she improperly involved the children in the parties' disputes. Aside from deriding the court system to the girls, Defendant repeatedly blames Plaintiff for everything to them. He tells them that Plaintiff is mentally and physically ill and is taking a "cocktail" of drugs. He also tells them that Plaintiff's depression is genetic and that they too are likely to suffer from mental illness in the future. He has unjustifiably reported Plaintiff to Child Protective Services, leaving the girls to fear they would be put in foster care. The Child Protective Services investigation resulted in a recommendation to the Defendant that he stop putting the children in the middle of the parties' divorce. Several mental health professionals testified at trial that Defendant was not receptive to their suggestions that he stop threatening and manipulating the children. The experts also made it clear that while Defendant has inflicted significant psychological damage on the children, he is not considered to be a physical threat to them.

Despite all of this, the girls love the Defendant and through counseling they are learning to establish the necessary boundaries between Defendant and themselves to preserve and protect their mental health. At trial one of the counselors recommended reunification therapy for Defendant and Karyn. Defendant testified he did not think such therapy would be beneficial but would defer to the therapist's recommendation.

Further factual findings will be made throughout this Opinion.

DIVORCE

Plaintiff provided testimony to support an absolute divorce based on a one year separation, and this court will grant her an absolute divorce based on those grounds.

PHYSICAL CUSTODY AND VISITATION

In order to modify the June 22, 2015 Consent Order Regarding Final Custody and Visitation Determination, the court must find a material change in circumstances. *Wagner v. Wagner*, 109 Md. App. 1 (1996). Defendant posits that his return to Maryland to reside constitutes such a change, and the court agrees. Plaintiff asserts that the deterioration in the parties' ability to communicate is also a material change in circumstances. Once again, the court agrees. Once a material change in circumstances has been established, the court is then tasked with determining the custodial arrangement that will serve the children's best interests. Based on the factors set forth in *Montgomery County v. Sanders*, 38 Md. App. 406 (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986) and for the reasons set forth below, the court finds it is in the best interests of the parties' children to be in the primary physical custody of the Plaintiff. Specifically, the court makes the following findings:

1. The Fitness of the Parents

Each of the parties is physically fit to have custody of the children. Defendant attempted to persuade the court that Plaintiff is not psychologically fit due to depression and a thyroid condition and related prescribed medications. The court is unpersuaded. In contrast, the court is greatly concerned about Defendant's psychological fitness. Defendant is combative and antagonistic by nature. He has alienated at least four of the five medical/mental health professionals who have attempted to treat his daughters. He projects his own medical conditions onto the girls, causing them extreme anxiety and depression. He manipulates the children by overtly threatening to abandon them and more obliquely threatening suicide. Since the parties' separation, Defendant has undergone seven days of in-patient treatment at Sheppard Pratt and an intensive fourteen day out-patient treatment program in Chicago. Defendant testified he had had an emotional "meltdown" as recently as September, 2017. Notwithstanding this meltdown less than four months before trial, he is no longer in counseling because he says he has found a better way to cope with his issues. He is currently utilizing a "life coach."

2. The Character and Reputation of the Parties

The Plaintiff was described as a loving, generous, stable parent. One witness said she is "kind to a fault." She is well-liked, respected and helpful. In contrast the Defendant was described as "extremely controlling," behaving explosively at times. At trial he spoke of his "inherited rights" with respect to his offspring and lamented the fact that previous court orders have restricted his rights. Defendant believes it is his responsibility to "educate" the children by involving them in adult discussions concerning this litigation and by exposing these two teenage girls to practices such as calorie counting. According to Defendant, "this is part of teaching them about making life decisions." At least one of the therapists directly attributed Rebeca's

depression to exhaustion from the parties' custody battle and pressure placed upon her by the Defendant.

3. The Desire of the Natural Parents and Agreements Between the Parties

Both parties appear sincere in their expressed desire to have primary physical custody of the children. The parties are not able to agree upon the physical custody issue. However, Plaintiff has at times agreed to Defendant having time with one or both of the girls beyond that set forth in the current Custody Order. The parties are likewise unable to agree upon legal custody.

4. The Potential for Maintaining Natural Family Relations

Plaintiff has a close relationship with her own family. Defendant became estranged from his family in 2011 as the result of an unspecified incident. He has since reconciled with most of his family but remains estranged from his brother. Plaintiff is in contact with that brother and has arranged for the parties' children to see his children, their cousins, since the parties' separation. Defendant views Plaintiff's family as genetically damaged and psychologically unstable, none of which was borne out by the evidence. Defendant does not have a good relationship with the children's maternal relatives.

5. The Preference of the Children

Neither child testified. However, the evidence indicates that at the time of trial, by their own choice, Rebeca was seeing Defendant on alternating weekends and on an occasional week-day evening, and Karyn had seen the Defendant only once in the preceding three months.

6. Material Opportunities Affecting the Future of the Children

Both parties can adequately support the children and provide them with adequate material opportunities.

7. Age, health and sex of the children

Rebeca is a fifteen year old female. Overall, she is healthy although at Defendant's instigation, she has been diagnosed with an eating disorder. Karyn is a healthy thirteen year old female. Both girls have been traumatized by the protracted custody battle and the undue pressure and manipulation placed on them by the Defendant. As a result, both girls suffer from anxiety and Rebeca has been diagnosed with depression.

8. The Residences of Parents and Opportunities for Visitation

Each of the parties currently provides a suitable residence for the children. Defendant is living in the family home, and Plaintiff has procured a three bedroom townhouse which has three finished levels. The parties live fairly close to one another, and there should be ample opportunity for adequate visitation.

9. Length of Separation from the Natural Parents

Following the parties initial separation in June of 2014, Defendant suffered a mental breakdown requiring his hospitalization for one week. He then went to Chicago for several weeks. He subsequently relocated to New Jersey where he lived for approximately two years. Throughout this period, his communications and visitation with his daughters were sporadic and inconsistent. For the first three months after his relocation, Defendant had no contact with the children. On several occasions since his return to Maryland in July of 2016, Defendant has threatened to again leave the area if the girls don't behave as he wishes or if he does not get the custodial arrangement to which he feels he is entitled. The Plaintiff has never been separated from the children for any significant period of time, and she has never abandoned or threatened to abandon them.

10. **Prior Voluntary Abandonment or Surrender**

This factor is discussed above.

In light of the above, as previously stated, the court believes the best interests of the children will be served if they are in the primary custody of the Plaintiff. It is in Rebeca's best interests to have visits with the Defendant on alternating weekends from Friday at 7:00 p.m. until Sunday at 5:00 p.m. Karyn's best interests will be served if she visits Defendant on alternating Sundays from noon until 5:00 p.m.

Holidays

It is in the children's best interests for the parties to continue to follow the holiday and summer vacation schedule set forth in the Consent Order entered June 22, 2015.

Electronic Contact

Plaintiff testified that the Defendant often uses texts or phone calls to manipulate and upset the children. Exhibits introduced at trial support Plaintiff's contention. The court, therefore, finds that it is in the children's best interests to restrict electronic contact between Defendant and the children.

All such contact shall be limited to one call not to exceed five minutes or one text/email exchange every other day. Defendant shall not discuss diet, nutrition or health issues with the children in said communications.

LEGAL CUSTODY

The court must consider the factors set forth in *Taylor v. Taylor*, 306 Md. 290 (1986) in determining whether joint legal custody is appropriate, *i.e.*, in the children's best interests. The most important of these factors is the capacity of the parents to communicate and to reach shared decisions affecting the children's welfare. *Taylor* states:

> Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future.

Id. at 304. The court is aware that in *Santo v. Santo* the Court of Appeals recently held:

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

448 Md. 620, 646 (2016).

In the case *sub judice*, the parties have not been able to communicate and reach shared decisions regarding the children. They were unable to agree on the children's counselors, pediatrician, church attendance, summer camps, extracurricular activities, diet and overall physical and psychological needs. Defendant is overbearing and manipulative. If a professional disagrees with him, he becomes antagonistic. He views Plaintiff, who has been open and receptive to the recommendations of various professionals, as child-like and unstable. He does not value her opinion.

Taylor further dictates that the court is to also consider the geographic proximity of the parties' homes, each child's relationship with each parent, the potential for disruption in the children's school and social lives, the demands of parental employment and the benefits to the parties. The parties live approximately ten minutes from one another. Prior to trial Defendant "threatened" to move across the street from Plaintiff when the marital home is sold. At trial, Defendant indicated he no longer intends to do so. The court does not believe such a living arrangement would be in the girls' best interests. In addition, the court believes that joint legal custody would disrupt their school and social lives, as the parties' inability to effectively

communicate would severely delay any decision-making. At trial, both parties indicated they have flexibility with their employment. Plaintiff indicated she works very close to home, and her employer has been extremely accommodating by giving her necessary time off. Defendant testified that he works from home occasionally and that he also has flexibility with his work hours. However, the testimony at trial also indicated that for his visits with Rebeca, Defendant frequently does not pick her up until after 7:00 or 8:00 p.m. because he has been working. As previously discussed, Karyn and Defendant do not have a good relationship at this time. One mental health professional testified they have an "unhealthy dynamic." Except for one occasion, she refused to visit with him in the three months preceding the trial. Rebeca's relationship with the Defendant is a bit better. Both children have a good, stable relationship with the Plaintiff. Finally, the court does not believe joint legal custody would benefit either party. To the contrary, it would provide more opportunities for conflict, disagreement and discord and the inevitable associated stress. Considering all of the above, the court believes it is in the children's best interests for the Plaintiff to have sole legal custody of the children.

Reunification Therapy

Karyn's counselor recommended reunification therapy to repair Karyn's relationship with Defendant. Defendant expressed skepticism as to the necessity for and the potential efficacy of reunification counseling. Notwithstanding Defendant's reluctance, the court believes it is in Karyn's best interests for her and her father to attempt to repair their relationship. Accordingly, the court will order them to participate in reunification therapy with Anthony B. Wolff, Ph.D. The Defendant shall be responsible for the cost of the reunification therapy.

CHILD SUPPORT

On November 23, 2015 Judge Silkworth ordered Defendant to pay child support to Plaintiff of $1,278.00 per month based, *inter alia*, on Plaintiff having an annual income of $40,300.00 and Defendant having an annual income of $85,000.00. There have been material changes in the parties' incomes and access-related travel expenses as well as the children's health insurance costs and extraordinary medical expenses since the entry of the last child support order. The court will, therefore, recalculate child support.

Defendant testified that he does not work forty hours every week. The only pay statement he introduced shows he earns $80.00 per hour and worked 78 hours in the two weeks period covered by the statement. The court finds Defendant's annual gross income is $140,000.00 (35 hours/week x $80/hour x 50 weeks per year). Plaintiff's current annual income is $30,294.64. Defendant provides health insurance for the children at a monthly cost of $496.68. The children have extraordinary medical expenses as defined by Md. Code, *Family Law*, §12-201(g), of $310.00 per month for orthodontics, counseling and their doctor's appointments.

Pursuant to the Maryland Child Support Guidelines Worksheet, a copy of which is attached hereto as Exhibit A, Defendant should pay Plaintiff the sum of $2,382.00 per month in child support. Plaintiff is entitled to child support arrearages under Judge Silkworth's December 4, 2015 Order. Those arrearages shall continue to be paid at the rate of $150.00 per month.

ALIMONY

The Plaintiff withdrew her request for future alimony at trial.[2] However, she seeks alimony arrearages based on the November 19, 2015 Consent Order entitling her to the marital home net rental proceeds "as her sole property." Based on the language of the Order, the court

[2] Plaintiff's requests for alimony and alimony arrears were reserved in the November 19, 2015 Consent Order.

does not find that the net rental proceeds were alimony. This issue will be addressed further in the Contempt Section of this Opinion. The court finds, therefore, that each party has waived his/her claim to alimony.

MONETARY AWARD

Each of the parties seeks a monetary award pursuant to Md. Code, *Family Law*, §8-205. The Plaintiff seeks a monetary award to adjust the inequities arising from the titling of the marital property. Defendant seeks a monetary award based on his claim that he contributed non-marital funds to the purchase of the marital home.

The purpose of a monetary award is to adjust the equities between the parties. In order to grant such an award, the court must engage in a three step analysis. *Family Law*, Section 8-203(a) requires that the court first determine which property is marital. Next, the court must establish the value of all marital property, *Family Law*, §8-204(a). Finally, the court must consider the factors set forth in *Family Law*, §8-205.

The parties have the following marital assets with the indicated associated fair market values:

Marital Property	Title	FMV	Liens
1612 Col-Mar Lane Annapolis, MD 21409	T/E	$430,000.00	$254,927.00
Vanguard IRA	H	$ 7,947.47	-0-
Vanguard Money Market	H	$ 1,726.95[3]	-0-
TNCSC 403(b)	H	$ -0-[4]	-0-
Thrift Savings Plan	H	$ 86,554.55	-0-

[3] Defendant withdrew $13,000 from the account on December 4, 2017.
[4] Defendant withdrew $44,561.23 from this account between January 6, 2017 and March 31, 2017.

Marital Property (cont.)	Title	FMV	Liens
Fidelity Verizon Retirement Savings Plan	H	$ -0-[5]	-0-
Viacom 401K	H	$ 10,364.20[6]	-0-
USAA Checking	H	$ 2,944.00	-0-
2011 Toyota Corolla	H	$ 2,737.00	-0-
AOB 403(b)	W	$ 975.65	-0-
USAA Checking	W	$ 201.26	-0-
2014 Mazda	W or Joint	$ 7,500.00	$ 12,469.00

The court does not find that Plaintiff's Bank of America child support account with a balance of $200.00 or the USAA account with a balance of $201.00 consisting entirely of Karyn's money are marital assets. The parties have no nonmarital assets.

In determining the monetary award, the court must consider all of the factors set forth in *Family Law*, §8-205(b). Those factors and the court's related findings follow:

(1) The contributions, monetary and nonmonetary, of each party to the well-being of the family.

The Defendant was the primary breadwinner for the family, while Plaintiff took care of the children, their pets and the household duties. Once the children began school, the Plaintiff also worked outside the home and contributed financially. Defendant sometimes helped the children with their homework.

(2) The value of all property interests of each party.

The assets held by each party and their fair market values are set forth above.

(3) The economic circumstances of each party at the time the award is to be made.

Plaintiff is currently earning approximately $30,000.00/year. Defendant earns $80.00 per hour. He testified his hours vary each week. As indicated above, the court finds his annual

[5] In November, 2017, Defendant withdrew $30,469.91 from this plan.
[6] $4,729.18 of this balance had not vested as of the date of trial.

income to be $140,000.00 per year. Defendant has over $50,000 in credit card debt. Plaintiff owes $14,000.00 on credit cards.

(4) The circumstances that contributed to the estrangement of the parties.

Although Plaintiff was the party who physically moved out of the family home, Defendant indicated he was dissatisfied with the marriage and had expressed his dissatisfaction with the marriage before Plaintiff left. Prior to the separation, the parties and the children were living in a toxic environment.

(5) The duration of the marriage.

The parties have been married almost sixteen years. However, they have been separated for nearly four of those years.

(6) The age of each party.

Plaintiff is age 41. Defendant is age 53.

(7) The physical and mental condition of each party.

Each party is physically healthy. Their mental conditions have been previously addressed in the child custody discussion.

(8) How and when specific marital property or interest in property described in subsection (a)(2) of this section, was acquired, including the effort expended by each party in accumulating the marital property or the interest in property described in subsection (a)(2) of this section, or both.

Defendant testified that he owned the Vanguard IRA and money market accounts prior to the parties' marriage. However, he testified that he had deposited marital tax refunds and bonuses into the money market account. Thus, marital and nonmarital funds were clearly commingled. Defendant did not prove the value of the IRA on the date of marriage or whether the premarital funds were still in the account. There were a number of retirement account withdrawals during the course of the marriage.

(9) The contribution by either party of property described in § 8-201(e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety.

Defendant testified that he owned a home in Shady Side, Maryland prior to the parties' marriage and that the proceeds from the sale of that home went into the purchase of the marital home. He owned the Shady Side home for less than one year prior to the marriage, and his interest was encumbered by the lien of a mortgage. Following their marriage, the parties lived in the Shady Side home for eight or nine years and paid the mortgage from marital funds during that period. Further, the mortgage on the Shady Side home was refinanced at least once while the parties lived there.

(10) Any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home.

Not applicable.

(11) Any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and equitable monetary award or transfer of an interest in property described in subsection (a)(2) of this section, or both.

Not applicable.

Dissipation of Marital Assets

Plaintiff claims that Defendant has dissipated marital assets. In order for the court to find that one spouse has dissipated marital assets, warranting a deviation from the standard that marital property which has been sold or transferred should not be considered by the court, the finder of fact must find by a preponderance of the evidence that the accused "spent or otherwise depleted marital funds or property with the principal purpose of reducing the amount of funds that would be available for equitable distribution at the time of the divorce." *Welsh v. Welsh*, 135 Md. App. 29, 50-51 (2000).

The evidence shows that in 2017, Mr. Fuquen removed $75,031.14 from his retirement accounts. On December 4, 2017 he also removed $13,000.00 from his USAA money market account. Of the $88,031.14 withdrawn in 2017, $12,500.00 was used for Defendant's attorneys' fees. Payment of attorneys' fees is a proper use of marital assets and those sums will not be considered dissipated assets. See *Allison v. Allison*, 160 Md. App. 331 (2004). However, the court finds Defendant's principal purpose in making the balance of the 2017 withdrawals was to reduce the amount of funds that would be available for distribution at the time of divorce, and these funds were dissipated. Defendant produced no credible evidence to establish they were used for marital purposes.

The court therefore finds that Defendant has dissipated marital assets totaling $75,531.34. This sum will be treated as extant property and accounted for in the disposition of the marital home.

The Marital Home

Defendant has requested that this court authorize him to purchase Plaintiff's interest in the marital home located at 1612 Col-Mar Lane, Annapolis, Maryland 21409 pursuant to Md. Code, *Family Law* §8-205(a)(2)(iii). Plaintiff has asked the court to order the home sold and the proceeds divided equally.

The home is currently titled to both parties and is encumbered by a mortgage. Defendant testified that he is pre-qualified to refinance the mortgage into his sole name. The court finds that the current fair market value of the home is $430,000.00. The mortgage pay-off is $254,927.00. If the home were sold, the parties would expect to incur costs of 7% of the sales price, or $30,100.00. This leaves $144,973.00 in net equity to be divided between the parties, *i.e.*, each party has $72,486.50 in equity in this marital asset.

The court will account for the dissipated assets discussed above and will apply a sum equal to one half of the fair market value of the dissipated funds to the computation of equity in the home to determine the sum Defendant should pay to Plaintiff to purchase her interest in the home. As calculated, the value of assets dissipated by Defendant is $75,531.34. One-half of the marital interest in those dissipated assets is $37,765.67, and after conducting the analysis required by *Family Law*, §8-205, the Court finds that equity requires Plaintiff be granted a monetary award in that amount. Upon adding the value of one-half of the dissipated funds to Plaintiff's share of the equity on the home, the result is $110,252.17. Therefore, the court will order that Defendant may purchase Plaintiff's interest in the marital home provided he refinances

all existing liens on that property and pays Plaintiff the sum of $110,252.17 within sixty (60) days of the date of the parties' Judgment of Absolute Divorce. So long as he occupies the marital home, Defendant shall timely pay all mortgage payments and any other expenses related to the maintenance and upkeep of said real property.

In the event Defendant does not refinance the mortgage on the home and pay Plaintiff within sixty (60) days of the date of the Judgment of Absolute Divorce, the court shall immediately reduce Plaintiff's monetary award of $37,765.67 to judgment and appoint a trustee to sell the property. The net proceeds of sale shall be divided equally between the parties with Plaintiff's monetary award to be paid directly from the Defendant's share of the net proceeds.

Defendant seeks contribution from the Plaintiff for landscaping, removing the shed and upgrading the water system at the marital home while he has been living there. The court does not find it equitable to award Defendant contribution from Plaintiff for expenses he has paid to maintain the marital home during his residence.

Personal Property Excluding Retirement Benefits

Defendant individually owns a 2011 Toyota Corolla. The fair market value of that vehicle is $2,737.00; it has no lien. There is also a 2014 Mazda, the title of which is unclear. Regardless, it is owned by one or both of the parties and the loan balance on that vehicle, $12,469.00, exceeds its fair market value, $7,500.00. For marital property purposes, the value is $-0-. The Mazda is used primarily for family purposes and as such it is family use personal property pursuant to *Family Law*, §8-201(d). The court will order that upon satisfaction or refinance of the lien, which shall be paid by Plaintiff, Defendant shall transfer his interest, if any, in the Mazda to Plaintiff to hold as her sole and exclusive property. Md. Code, *Family Law*, 8-

205(a)(2)(ii). Until that time, Plaintiff shall have exclusive use and possession of the vehicle for up to three years.

Each of the parties shall retain sole ownership of any personal property held individually and the non-retirement financial accounts in their sole names, which have fluctuating balances and nominal values.

Retirement Benefits

Plaintiff has an Archdiocese of Baltimore 403(b) Plan with a fair market value of $975.65. The remaining balances in Defendant's retirement accounts after his spate of pre-trial withdrawals are: Vanguard IRA $7,947.47; Thrift Savings Plan $86,554.55; and Viacom 401K vested balance $5,635.02 and total balance $10,364.20. After consideration of the factors set forth in §8-205(b)(1)-(11) of the Family Law Article, to further adjust the equities between the parties, the court directs that Plaintiff shall be awarded $49,500.00 from Defendant's retirement accounts, which shall be paid through tax-free rollover to be made first from Defendant's Thrift Savings Plan and then to the extent there is any deficiency, from Defendant's Vanguard IRA and finally the Viacom 401K. Plaintiff shall be entitled to earnings and shall incur any losses on her share of the Defendant's defined contribution plans from the date of the Judgment of Absolute Divorce to the date of distribution. The parties shall cooperate in exchanging all information necessary to have the appropriate Domestic Relations Orders prepared, and this court shall retain jurisdiction for entry and amendment of said Orders. Each party is responsible for his/her costs associated with obtaining the DROs to rollover the retirement assets Plaintiff is awarded.

CONTEMPT

The circuit court cannot exercise its contempt powers until the payment of a sum certain has been ordered. *Kemp v. Kemp*, 287 Md. 165, 176 (1980). Because the provision requiring

that Plaintiff "retain as her sole property any and all rental income that exceeds the cost of [the] mortgage" is not an order to pay a specified sum, the court cannot utilize its contempt powers to enforce this provision. *Kemp* at 175. If the Court determines the amount owing under the provision and enters an order to pay a specific amount, that order may subsequently be enforced through the court's contempt power. *Id.* However, the court is unable to determine what, if any, the net rental proceeds from July, 2016 to the present would have been. The testimony indicated that the tenants' lease was about to end when Defendant resumed living in the marital home. Any projected rental proceeds from a new third party tenant would require speculation on the part of the court.

ATTORNEYS' FEES

Family Law, §§ 8-214, 11-110 and 12-103 provide for payment of attorneys' fees to parties in monetary award, divorce and custody proceedings. All statutes require the trial court to consider the financial status of each party, the needs of each party and whether there was substantial justification for bringing or defending an action. To be recoverable, any attorneys' fees must be reasonable and necessary.

Both parties incurred significant legal fees in this case. In addition to the $25,000 in attorneys' fees she incurred in 2015, Plaintiff's attorneys' fees from October 6, 2016 through January 12, 2018 totaled $32,889.10. Her expert witness fees were $2,150.00. Defendant's attorneys' fees and costs for the five attorneys he employed since 2014 totaled about $73,000.00. His fees for his trial counsel were over $21,375.00, incurred over a six week period. In addition, the court-appointed Best Interest Attorney for the children had fees of $30,090.64. Of that sum, Plaintiff has paid $4,500.00, and Defendant has paid $7,000.00.[7] Plaintiff was justified in pursuing her claims for divorce, custody and property division. However, the court does not

[7] Mr. Fuquen ignored the Best Interest Attorney's second escrow request.

believe that Defendant's custody claim was well-founded. He, himself, predicted he would lose his custody claim, but he persisted nonetheless at great monetary and emotional expense for all. In addition, he undertook a series of retirement account withdrawals which the court has determined to constitute a dissipation of marital funds. Each party has already used marital assets to pay some of his/her attorneys' fees. Defendant's income is approximately $110,000.00 per year higher than Plaintiff's, and he will be able to financially rebound from this financial catastrophe more quickly than Plaintiff.

Upon consideration of the statutory factors set forth in *Family Law*, §§ 8-214, 11-110 and 12-103, the court shall direct Defendant to pay Plaintiff the sum of $15,000.00 as contribution to her reasonable and necessary attorneys' fees. This sum is in addition to the unpaid $5,000.00 awarded to Plaintiff by Judge Silkworth on December 4, 2015, $2,700.00 of which shall immediately be reduced to judgment. Defendant shall pay the additional $15,000.00 attorneys' fees award to Plaintiff within thirty days of this court's Judgment of Absolute Divorce or the same shall be reduced to a judgment against him without need for further hearing.

With regard to the Best Interest Attorney's Fees, Defendant will be ordered to pay Mr. Bennett the sum of $18,590.64 within thirty days of the date of the Judgment of Absolute Divorce or the same shall be reduced to judgment against him without the need for further hearing.

Donna M. Schaeffer, Judge

3/20/18
Date