LIZA MICHEL CASTRO TANWAR

VERSUS

MUNISH RAJ TANWAR

NO. 25-CA-142

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 805-784, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

May 22, 2025

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and John J. Molaison, Jr.

AFFIRMED

SMC
SJW
JJM

PLAINTIFF/APPELLANT,
LIZA MICHEL TANWAR
In Proper Person

COUNSEL FOR DEFENDANT/APPELLEE,
MUNISH RAJ TANWAR
Kristine K. Sims

CHEHARDY, C.J.

Appellant, Liza Michel Castro Tanwar, seeks expedited review of the trial court's judgment awarding sole custody of their child to Mr. Tanwar and suspending her visitation rights pending both a psychiatric evaluation and her enrollment in a Domestic Abuse Intervention Program.[1] Appellee, Mr. Tanwar, has answered the appeal to request attorney's fees and costs. For the reasons that follow, we affirm the trial court's judgment. Furthermore, we deny appellee's request for costs and attorney's fees. Finally, we dismiss Ms. Tanwar's writ application, 25-C-154, as moot.

Background and Procedural History

Appellant and appellee are parents of one minor child, V.T., born on June 19, 2013.[2] They were married in 2015. On April 9, 2020, Ms. Tanwar filed a Petition for Divorce pursuant to La. C.C. art. 102, requesting joint custody and asking to be named the domiciliary parent. The parties consented to this custody arrangement. On October 25, 2021, the trial court entered a judgment of divorce.

On January 19, 2022, the hearing officer recommended that the custody arrangement be modified to name Mr. Tanwar the domiciliary parent. At that time, the hearing officer also recommended that Ms. Tanwar be found in contempt of court for "going to Mr. Tanwar's home and damaging his property to harass Mr. Tanwar." On March 4, 2022, the trial court entered an interim judgment that provides, in relevant part:

> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that it is in the best interest of the child, that on an interim basis, Mr. Tanwar be the domiciliary parent. Ms. Tanwar admits she is not/has not been making good decisions, not paying the

[1] Ms. Tanwar also filed a writ application seeking supervisory review of the same judgment; we deferred the writ application to the merits of this appeal. *Tanwar v. Tanwar*, 25-C-154.
[2] The initials of the parties' minor child are used in this opinion to protect and maintain the child's privacy. *See* Uniform Rules—Courts of Appeal, Rules 5-1 and 5-2.

> child's tuition (after being given the money), damaging Mr. Tanwar's vehicle intentionally.[3]
>
> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Ms. Tanwar will provide documentation to prove why the minor child was tardy or absent from school.

On January 23, 2023, the parties entered into another consent judgment whereby they agreed to joint and shared custody of the minor child, with Mr. Tanwar remaining as the domiciliary parent. The record contains no substantive activity after early 2023 until October 16, 2024, when Mr. Tanwar filed a Rule for Ex Parte Custody Pursuant to La. C.C.P. art. 3945, seeking sole custody of V.T. and requesting either suspension of visitation or supervised visitation for Ms. Tanwar. Mr. Tanwar's Rule for Ex Parte Custody outlined the events of the September 16, 2024 allegations of abuse by Ms. Tanwar against V.T.

On September 16, 2024, Ms. Tanwar called Mr. Tanwar to tell him that V.T. had locked herself in her bedroom. At the same time, V.T. telephoned Mr. Tanwar and his girlfriend to tell them that she was afraid her mother was going to hit her again. Mr. Tanwar was working in Baton Rouge at the time and therefore contacted the Jefferson Parish Sheriff's Office to request a wellness check on V.T. Mr. Tanwar stated that a JPSO deputy and Mr. Tanwar's girlfriend, Jennifer, arrived at Ms. Tanwar's apartment at the same time. Ms. Tanwar permitted V.T. to leave with Jennifer.

V.T. reported to her father that her mother had "hurt her the night before by intensely squeezing her hand/wrist" and that she was "afraid her mother was going to hurt her again." Mr. Tanwar further alleged that later the same day, Ms. Tanwar texted V.T. to tell her it would be best for her to stay with her dad for a while, then texted Mr. Tanwar to say that she was moving to Boston and wanted him to "keep"

[3] The trial court also held Ms. Tanwar in contempt of court for going to Mr. Tanwar's home and damaging his property to harass him. The court awarded attorney's fees and costs to Mr. Tanwar.

V.T., though she would exercise visitation in the summer, and she did not want to ever hear from him again. At the hearing, numerous screen shots of the text messages were introduced into evidence.

The record also establishes that on October 17, 2024, V.T.'s school contacted Mr. Tanwar to indicate that V.T. had informed a school counselor that her mother had hit her, that she was afraid of her mother and scared she would hit her again. V.T. also stated that she would kill herself if she were made to go with her mother. As mandatory reporters, the school authorities told Mr. Tanwar that they were required to report this information to DCFS. That same day, Mr. Tanwar contacted V.T.'s therapist, Lydia Jaunet, who advised that V.T. could suffer immediate and irreparable harm if Ms. Tanwar resumed unsupervised visitation.[4]

The hearing officer denied Mr. Tanwar's Rule for Ex Parte Custody, but scheduled a hearing for November 25, 2024. After that hearing, the hearing officer entered an order appointing a mental health expert to render, within 90 days: "A full custody evaluation of the parties and the child(ren), including the designation of a domiciliary parent."[5]

The hearing officer further recommended that, on a temporary basis and pending the custody evaluation, Mr. Tanwar be awarded sole custody, finding that Ms. Tanwar: (1) is confrontational with third-party providers, including school and therapists, jeopardizing the child's participation at school and in therapy; (2) informed the child that she was moving to Boston and would never see her again, and that if the child wanted to see her again, she should contact her aunt when she's 18 years old; (3) told Mr. Tanwar that she wanted him to "come get her f***ing child", that she did not want to see the child again, and to prepare the necessary documentation so that Ms. Tanwar would have visitation in summers

[4] In a responsive pleading, Ms. Tanwar generally denied these allegations.
[5] The parties subsequently waived participation in the custody evaluation in order to proceed to trial, and the order for the custody evaluation was vacated.

and holidays only; and (4) exhibited violent behavior toward the child and Mr. Tanwar in the past.

Ms. Tanwar objected to the hearing officer's recommendation and reasons. She requested a *de novo* hearing in the trial court.[6] Mr. Tanwar moved for a *Watermeier*[7] hearing, asking the trial court to determine V.T.'s custody preference pursuant to La. C.C. art. 134. Counsel for Ms. Tanwar did not object to the *Watermeier* hearing, thus, the trial court granted Mr. Tanwar's motion.

On February 4 and February 11, 2025, the trial court first heard testimony from the child's therapist, Lydia Jaunet, the Director of Therapy Services at Brennan Behavior Group and a Licensed Clinical Social Worker and Board Approved Clinical Supervisor. The trial court subsequently heard testimony from V.T., and, after a week-long recess, from Mr. Tanwar and Ms. Tanwar.

Ms. Jaunet testified that she had been the child's therapist since February 2022. She stated that V.T. is in need of continual therapy "based on current life stressors." Ms. Jaunet explained that V.T. "loves her mom" and "wishes their relationship could be better" but that V.T. "is confused and sometimes angered with mom's aggressive verbal attacks and physical altercations towards [V.T.] when she gets enraged."

Ms. Jaunet provided her treatment records to the parties, with the exception of her notes from three dates ranging from October to early November, 2024. Ms. Jaunet testified that she withheld those records due to the "potential for overwhelming harm for [V.T.] … her overall sense of well-being." Ms. Jaunet elaborated by explaining that in those three sessions, V.T. disclosed altercations in

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[6] In *Garcia v. Hernandez*, 21-338 (La. App. 5 Cir. 4/11/22), 339 So.3d 61, this Court held that if either party files an objection, the interim order of the domestic commission remains interim until the trial court renders its judgment. *See also Williamson v. Bell*, 24-6 (La. App. 5 Cir. 5/22/24), 389 So.3d 948, 955 n.3.

[7] *Watermeier v. Watermeier*, 462 So.2d 1272 (La. App. 5th Cir.), *writ denied*, 464 So.2d 301 (La. 1985).

which her mom verbally, emotionally, and physically mistreated her. Her progress notes from March 6, 2023, also indicated that V.T. reported her mother had "sort of hit [her]," and that it had happened in 2021 as well. Ms. Jaunet further reported numerous times during which Ms. Tanwar shared with V.T. "adult content," which Ms. Jaunet described as issues existing between the parents that are not meant to be discussed with V.T.

Ms. Jaunet further testified that V.T. indicated her mom often told her what to say during her sessions with Ms. Jaunet, stating that this behavior was "ongoing," and that the content usually involved negative information about Mr. Tanwar, or she asked V.T. to say that she preferred to live with her mother. Ms. Jaunet stated that she voiced her concern about Ms. Tanwar's behavior in this regard numerous times.

Ms. Jaunet testified that in March 2023, she made a mandatory report to Child Protective Services based on a mark on V.T's skin that was left after her mother got aggressive with her. In an October 25, 2023 progress report, Ms. Jaunet stated that V.T. indicated she was relieved that her mother "had not hit her in a very long time." But since that report, Ms. Jaunet testified that Ms. Tanwar has hit the child "on several occasions" and verbally and emotionally mistreated her. Ms. Jaunet further explained that V.T. reported that her mother came to her school to pick her up, but V.T. told the counselor that she was very surprised and did not want to go home with her mom because she didn't feel safe, as she and her mom had gotten into a huge fight, and her mother said she was moving to Boston.

Referencing a progress note from a recent therapy session with V.T., Ms. Jaunet testified:

> She [Ms. Tanwar] had told [V.T.] that she was tired of dealing with her. She had made a statement that she was a terrible daughter and that she should commit suicide. That shocked [V.T.] and was very upsetting to her, and [she] assumed when mom left to go to Boston that there would be a long period of

> time with no contact. And she assumed that she would be staying with dad. So, when she heard from whoever at the [school's] office told her mom's here to pick you up, that she was -- she was shocked that mom was back in town.

Based on V.T.'s statements to the counselor, the school determined it was necessary for a crisis management evaluator at Children's Hospital to evaluate V.T. The school authorities transported V.T. to Children's Hospital.

With regard to the custody proceedings, Ms. Jaunet testified that V.T. indicated – "numerous times and very consistently" – that she would like to be with her dad full time. Ms. Jaunet again indicated that V.T. on several occasions has expressed fear that her mother was going to hit her.

On cross-examination, Ms. Jaunet testified that she had documented bruising one time on V.T., in the middle lower section of her back. She explained that she was not biased against Ms. Tanwar or in favor of Mr. Tanwar, but that she looked at the facts based on three years of treating V.T. to determine that she is not happy with her mother. Ms. Jaunet stated that does not believe Ms. Tanwar "is a safe place for [V.T.], even with supervised visitation."

As for the October 2024 visit to Children's Hospital for a psychiatric evaluation subsequent to the school's reported concerns of suicidal ideation, Ms. Jaunet noted that Ms. Tanwar was in Boston for weeks before she returned and attempted to pick up the child from school. Thus, if Children's Hospital staff evaluated her for signs of physical abuse, it was less likely that signs of abuse would appear. As for the portion of the October 2024 medical records from Children's Hospital in which V.T. stated that she lied about the suicidal ideation, the records also indicate that the mother had hit V.T. on numerous occasions in the past, ever since her parents have been separated, since she was six years old.

Finally, when questioned by the trial court, Ms. Jaunet stated that she felt V.T. was competent to testify, even looking forward to it, and that she would be able to answer the court's questions.

The trial court then cleared the courtroom and permitted counsel to question V.T. The trial court posed its own questions as well. V.T. testified that she feels safe with her dad, and stated that he has never physically harmed her, but that she only sometimes feels safe with her mom, because "she has been hitting me since the divorce, like for a really long time." She also testified that her mom told her if she wanted to harm herself, to "do it at her dad's house, because she didn't want to pay for all that." V.T. stated that on September 16, her mom hit her on her right arm and that it hurt; she locked herself in her room and her mother was banging on the door and screaming at her.[8] She stated that she did not go to school that day because she was crying too much. She called her dad and asked him if she could stay home. Her mother took the phone and talked to her father, who called the police. V.T. stated that the police came, and she texted her father's girlfriend, Jennifer, asking her to pick her up. V.T. testified that Jennifer picked her up and took her to her dad's house.

V.T. also stated that her mother sometimes asked her to lie. She testified that her mother said it was okay to admit in court that her mother hit her, but to say that she did so lightly. She further testified that her mother, who knows her phone password, sometimes takes her phone and texts her dad while pretending to be V.T.

After recessing for a week, the trial court resumed the hearing on February 11, 2025 and heard testimony from Mr. and Ms. Tanwar. Mr. Tanwar testified that in September 2021, after he and Ms. Tanwar separated, he witnessed on FaceTime

[8] V.T. originally stated that this occurred on September 19, 2024, but she corrected herself later in her testimony, stating that the date was September 16, 2024.

Ms. Tanwar hitting their daughter on the back, telling him to "come get [his] f***ing daughter from here." Mr. Tanwar also testified that he learned, for the first time, and only after the medical records from V.T.'s October 2024 visit to Children's Hospital were admitted into evidence, that Ms. Tanwar had been hitting her daughter every week since the divorce.

Ms. Tanwar was given an opportunity to explain her actions while her daughter was in her care, and to explain the allegations in Mr. Tanwar's pleadings. With regard to the text messages to Mr. Tanwar in which Ms. Tanwar stated that she would give up her rights to V.T. and would see her only in the summer, Ms. Tanwar explained that she was moving to Boston because family members there indicated that she could get a job in the nursing field making $50/hour. When questioned regarding the actual number of times police had been called to her apartment, Ms. Tanwar remembered only two, though she alleged five times.

At the conclusion of the hearing, the trial court issued a custody ruling from the bench, stating that he considered the best interests of the child, the child's own wishes, and the testimony and evidence offered at the hearing. The court found Ms. Tanwar's explanations for certain conduct lacked credibility, determined that certain of her statements about Mr. Tanwar to the child were very inappropriate, and found that Ms. Tanwar "has, in fact, abused [V.T.]." Further, the trial court determined there had been a substantial change in circumstances warranting a change in custody from the prior consent decree. The court therefore awarded sole custody to Mr. Tanwar and suspended Ms. Tanwar's visitation rights pending both a psychiatric evaluation and Ms. Tanwar's participation in a Domestic Abuse Intervention Program, after which time the trial court indicated it would consider a Motion for Supervised Visitation. Ms. Tanwar timely sought this expedited appeal; she also filed a writ application seeking supervisory review of the trial court's ruling.

Discussion

Ms. Tanwar, who was represented by counsel at the custody hearing but who now appears *pro se*, raises several issues on appeal:

1. The trial court erred in awarding sole custody and suspending visitation without a finding of unfitness or harm.
2. The court admitted an illegal recording made by the child at the Appellee's direction, in violation of La. R.S. 15:1303 and 18 U.S.C. § 2511.
3. The court admitted expert testimony from Lydia Jaunet, LCSW, who lacked qualifications under La. C.E. art. 702.
4. The court ordered a psychiatric evaluation by a forensic psychiatrist, despite no finding of criminality.
5. The court improperly shifted the burden of proof to Appellant.
6. The court imposed rehabilitative mandates without findings required under La. R.S. 9:367.
7. The judge failed to act on a conflict involving his spouse and St. Ann School central to the child's allegations and the father's narrative.
8. The trial court erred by treating a hearing officer conference conducted entirely off the record and without procedural safeguards as dispositive of custody matters.
9. The trial court failed to apply La. C.C. art. 134 best interest factors.
10. The court relied on coached, unreliable child testimony.
11. The court excluded Appellant from reviewing in camera evidence and annulled her declaratory judgment.

In most custody cases, the trial court's rulings are based heavily on its factual findings. *Williamson v. Bell*, 24-6 (La. App. 5 Cir. 5/22/24), 389 So.3d 948, 956 (citing *Wilson v. Wilson*, 15-74 (La. App. 5 Cir. 4/29/15), 170 So.3d 340, 344). The trial court is in the best position to ascertain the best interest of the child given the particular circumstances in each case; thus, its determination is entitled to great weight. *Id.* Appellate courts will not disturb a trial court's custody award absent manifest error or an abuse of discretion. *Id.* We review the trial court's factual findings in a child custody determination for manifest error. *McCaffery v. McCaffery*, 13-692 (La. App. 5 Cir. 4/9/14), 140 So.3d 105, 115, *writ denied*, 14-0981 (La. 6/13/14), 141 So.3d 273. The trial court's other determinations are reviewed for an abuse of discretion. *Id.* The primary consideration when determining child custody is the best interest of the child. La. C.C. arts. 131 and 134; *Mulkey v. Mulkey*, 12-2709 (La. 5/7/13), 118 So.3d 357, 364.

The issue to be resolved by a reviewing court is not whether the trier of fact is right or wrong, but whether the fact finder's conclusion is a reasonable one. *Main v. Main*, 19-503 (La. App. 5 Cir. 2/19/20), 292 So.3d 135, 142, *writ denied*, 20-545 (La. 6/12/20), 307 So.3d 1036. An appellate court may not reverse reasonable findings merely because it would have weighed the evidence differently. *Williamson*, 389 So.3d at 956.

First, we note that the trial court's judgment does not *terminate* Ms. Tanwar's rights of custody or visitation, notwithstanding her repeated assertions to the contrary in her appellate brief and her writ application. The trial court *suspended* Ms. Tanwar's visitation rights and, in its reasons for ruling, explicitly stated that it would consider supervised visitation after Ms. Tanwar enrolled in a domestic abuse intervention program and underwent a psychiatric evaluation. Ms. Tanwar's rights have not been "terminated," and her reference to *Santosky v. Kramer*, 455 U.S. 745 (1982), which involved a state-initiated permanent termination of parental rights, is inapposite.

With this preliminary statement in mind, we review Ms. Tanwar's individual assignments of error, reserving our discussion of her first and sixth assignments of error until the remaining allegations have been addressed.

Assignment of Error # 2

In her second assignment of error, Ms. Tanwar contends the trial court admitted an illegal recording made by the child at the Appellee's direction, in violation of La. R.S. 15:1303 and 18 U.S.C. § 2511.

At the hearing, Mr. Tanwar testified that V.T. sent him an audio of her mom admitting "that she does hit her, and she wants her to lie so she doesn't go to jail. And they would have to work together so it doesn't happen again." This recording was played at the hearing and introduced into evidence as T-9. When questioning V.T., counsel for Mr. Tanwar indicated that she would like to play the recording,

noting that it had been admitted into evidence already. V.T. explained that she made the recording "for proof … that she does ask me to lie."

Importantly, counsel for Ms. Tanwar did not object to the recording being entered into evidence. Where no objection is lodged at the time evidence is admitted, any subsequent objection is waived. *See Oldenburg v. Elkersh*, 23-890 (La. App. 1 Cir. 7/2/24), 394 So.3d 838, 847 n.8; *see also* La. C.E. art. 103(A)(1).[9] Because there was no objection to the admission of this evidence, Ms. Tanwar has waived the right to contest its admission into the record on appeal.

Furthermore, although Louisiana law generally prohibits the interception of communications, a number of exceptions to that general prohibition exist, including when the person intercepting the communication is a party to that communication. More specifically, La. R.S. 15:1303 (C)(4) states:

> It shall not be unlawful under this Chapter for a person not acting under color of law to intercept a wire, electronic, or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of the state or for the purpose of committing another injurious act.

Here, V.T. admitted that she made the audio recording and that she sent it to her dad as "proof" that her mom asked her to lie. Ms. Tanwar offers no evidence in support of her allegation that Mr. Tanwar asked V.T. to make the recording.

Additionally, Ms. Tanwar argues in her writ application that V.T., as a minor, lacked the capacity to consent. But in *Smith v. Smith*, 04-2168 (La. App. 1 Cir. 9/28/05), 923 So.2d 732, the First Circuit enunciated three reasons why a parent should be able to vicariously consent on behalf of his minor child to an

[9] La. C.E. art. 103(A)(1) states: "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and (1) When the ruling is one admitting evidence, a timely objection or motion to admonish the jury to limit or disregard appears of record, stating the specific ground of objection[.]"

interception of communication. First, the federal wiretapping statute, 18 U.S.C. § 2511 *et seq.*, contains a consent exception like that found in Louisiana's wiretapping statute, and federal courts have determined that the vicarious consent doctrine applies to the consent exception in the federal statute. Second, the vicarious consent doctrine is clearly limited to situations where a parent has a good faith concern that such consent is necessary and is in his or her minor child's best interest. This limitation comports with the best-interests-of-the-child considerations enumerated in La. C.C. art. 134. Third, because minors do not have the capacity to consent to juridical acts in Louisiana, it follows that a parent shall have the right to consent to an interception of the child's communications, particularly if it is in the child's best interest. *Smith*, 923 So.2d at 740. *See also Silas v. Silas*, 680 So.2d 368, 371 (Ala. Civ. App. 1996) (finding that in limited instances, "a parent may give vicarious consent on behalf of a minor child to the taping of telephone conversations where that parent has a good faith basis that is objectively reasonable for believing that the minor child is being abused, threatened, or intimidated by the other parent.").

In sum, even if Ms. Tanwar had not waived her right to object to the admission of this evidence, the vicarious consent doctrine likely would apply to justify the admission of the recording under these circumstances. As such, Ms. Tanwar's second assignment of error lacks merit.

Assignment of Error # 3

In her third assignment of error, Ms. Tanwar contends the court "admitted expert testimony from Lydia Jaunet, LCSW, who lacked qualifications under La. C.E. art. 702."[10] Ms. Tanwar further contends that Ms. Jaunet's conclusions "were

[10] La. C.E. art. 702(A) provides:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

not based on reliable methodology or peer review standards, as required under La. C.E. art. 702." Ms. Tanwar also claims Ms. Jaunet "was not a qualified forensic evaluator."

At the February 4, 2025 hearing, Ms. Tanwar's attorney stipulated to Ms. Jaunet's expertise in the area of clinical social work. By failing to object to Ms. Jaunet's qualifications or testimony at trial, Ms. Tanwar waived any objection she otherwise might have made to Ms. Jaunet's qualifications on appeal. *See State v. Boudoin*, 11-967 (La. App. 5 Cir. 12/27/12), 106 So.3d 1213, 1225, *writ denied*, 13-0255 (La. 8/30/13), 120 So.3d 260 (citing *Everhardt v. Louisiana Dept. of Transp. & Dev.*, 07-0981 (La. App. 4 Cir. 2/20/08), 978 So.2d 1036, 1046).

Similarly, Ms. Tanwar fails to point to any testimony in support of her allegation that Ms. Jaunet's conclusions "were not based on reliable methodology or peer review standards." In fact, her testimony was based on her therapy sessions with V.T. since 2022. Finally, when Ms. Jaunet was asked whether she examined V.T. for physical signs of abuse, she explained that she is not a "forensic" evaluator. Ms. Tanwar has not pointed to any requirement that Ms. Jaunet be a "forensic" evaluator in order for her testimony regarding V.T.'s therapy to be admissible. This assignment of error lacks merit.

Assignment of Error # 4

In her fourth assignment of error, Ms. Tanwar argues the court ordered a "psychiatric evaluation by a forensic psychiatrist, despite no finding of criminality." The record reflects that the trial court ordered Ms. Tanwar to undergo

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> (1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
> (2) The testimony is based on sufficient facts or data;
> (3) The testimony is the product of reliable principles and methods; and
> (4) The expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

a psychiatric evaluation with Dr. Richard Richoux. Ms. Tanwar posits that because Dr. Richoux's office indicated that he "only conducts evaluations for criminal defendants," his appointment "injects a prejudicial inference of criminality into a civil custody case." We disagree.

La. R.S. 9:331 provides, in pertinent part:

> A. The court may order a mental health evaluation of a party or the child in a custody or visitation proceeding for good cause shown. The mental health evaluation shall be made by a licensed mental health professional selected by the parties or by the court. …
>
> B. The court may order a party or the child to submit to and cooperate in the mental health evaluation, testing, or interview by the licensed mental health professional. The licensed mental health professional shall provide the parties with a written report. The licensed mental health professional shall serve as a witness, subject to cross-examination by a party.
>
> C. "Licensed mental health professional" as used in this Chapter means a person who possesses at least a master's degree and who holds a current unrestricted license in counseling, social work, psychology, or marriage and family counseling.
>
> D. Any licensed mental health professional appointed by the court to conduct a mental health evaluation in a case where domestic abuse is an issue shall have current and demonstrable training and experience working with perpetrators and victims of domestic abuse.

The statute permits a court to order a psychiatric evaluation "for good cause shown." We find no merit in Ms. Tanwar's unsubstantiated claim of prejudicial bias. Moreover, Ms. Tanwar points to no requirement under the law that a court must find "criminality" before ordering a psychiatric evaluation. Given the evidence in the record and the testimony at trial regarding Ms. Tanwar's actions, the trial court did not abuse its discretion when ordering a psychiatric evaluation under La. R.S. 9:331.

Assignment of Error # 5

In her fifth assignment of error, Ms. Tanwar argues the trial court improperly shifted the burden of proof to her. Again, we disagree.

When a trial court has made a considered decree of permanent custody, the party seeking a change bears a heavy burden of proving that the continuation of the present custody is so deleterious to the child as to justify a modification of the custody decree, or of proving by clear and convincing evidence that the harm likely to be caused by a change of environment is substantially outweighed by its advantages to the child. *Bergeron v. Bergeron*, 492 So. 2d 1193, 1200 (La. 1986). The change-of-circumstances rule, the heavy-burden rule, and the appellate review standard apply to any petition to modify custody, regardless of whether it is joint or sole custody. *Id.* at 1203.

Here, Mr. Tanwar offered substantial proof in the form of text messages, audio recordings, medical and therapy records, and testimony from V.T. and her therapist. The trial court found a change in circumstances had occurred and found sufficient evidence to support Mr. Tanwar's request for sole custody. We find no merit to Ms. Tanwar's allegation that the burden of proof was shifted to her.

Assignment of Error # 7

In her seventh assignment of error, Ms. Tanwar claims the judge "failed to act on a conflict involving his spouse and St. Ann School central to the child's allegations and the father's narrative." We also note that on March 3, 2025, after the trial court had issued its February 24, 2025 written judgment awarding sole custody to Mr. Tanwar, Ms. Tanwar filed a pleading entitled "Plaintiff's Emergency Motion to Reinstate Full Appeal Period and Emergency Writ of Mandamus" arguing, among other things:

- The trial judge's wife is employed at St. Ann School, an institution directly involved in this case. Despite this clear conflict of interest, the judge failed to recuse himself, violating La. C.C.P. art.

151(A)(4), which mandates recusal when a judge's impartiality may reasonably be questioned.

- The trial judge called a recess after hearing testimony that two employees of St. Ann School transported the minor child without Plaintiff's consent, despite her 50/50 custody rights. This immediate reaction, coupled with his failure to recuse, raises serious concerns regarding bias and fairness.
- St. Ann School Men's Club donated to Judge Enright's Judicial Campaign (Exhibit A), further reinforcing the appearance of bias in favor of Defendant.

Notwithstanding Ms. Tanwar's allegations, the record reveals that when Ms. Jaunet testified regarding the events at St. Ann School that resulted in V.T. being transported to Children's Hospital for an evaluation, the judge paused the testimony to hold a bench conference with counsel for both parties. The judge disclosed that his wife works in the office at St. Ann School, but she is neither the principal nor the guidance counselor—the two parties who interacted with V.T. and transported her to Children's Hospital. The judge stated that he had no prior knowledge of these events and that his wife had not relayed any of these facts. In response to the trial court's disclosure, counsel for Ms. Tanwar stated: "I don't have any objection to that." The judge then recommended that counsel speak with his client during a recess. After the recess, during another bench conference, the judge confirmed with Ms. Tanwar's counsel that he had spoken to his client. Counsel stated that he had fully advised his client and that they were "ready to move forward."

The trial judge gave Ms. Tanwar an opportunity to object; confirmed that she was advised by her attorney; and was told that Ms. Tanwar chose to proceed. Our review of the record indicates that Ms. Tanwar waived any opportunity to seek recusal of the trial judge. Moreover, we see no basis upon which the trial judge should have voluntarily recused himself, because St. Ann School is not a party to, nor does it have an interest in, this litigation. *See* La. C.C. arts. 151-154.

Even if Ms. Tanwar had not waived her right to seek recusal during the hearing, however, La. C.C.P. art. 154 provides that a party desiring to recuse a judge of a district court shall file a written motion assigning the ground for recusal under La. C.C. P. art. 151. Were we to consider Ms. Tanwar's post-judgment "Emergency Motion to Reinstate Full Appeal Period and Emergency Writ of Mandamus" to be a motion to recuse, there is, nevertheless, no ruling from the trial court on this issue. Without a ruling from the trial court, we have nothing to review. *See Geiger v. State ex rel. Dep't of Health & Hosp.*, 01-2206 (La. 4/12/02), 815 So.2d 80, 86 ("As a general rule, appellate courts will not consider issues raised for the first time in this court, which are not pleaded in the court below and which the district court has not addressed.").

Ms. Tanwar sought recusal of the trial court only after waiving her right to object, and after the trial court issued a ruling against her. Accordingly, we find no merit in Ms. Tanwar's seventh assignment of error.

Assignment of Error # 8

In her eighth assignment of error, Ms. Tanwar contends the trial court erred "by treating a hearing officer conference conducted entirely off the record and without procedural safeguards as dispositive of custody matters." To the contrary, the trial court presided over a two-day hearing in order to consider the matter *de novo*. There is no indication in the record that the trial court impermissibly relied upon the hearing officer's findings of fact, as the trial court heard extensive testimony from the child's therapist, V.T., and her the parents, and reviewed the substantial documentary, medical, and audio evidence offered into the record. We find no merit to Ms. Tanwar's suggestion that the trial court impermissibly relied upon the hearing officer's findings of fact.

Assignments of Error # 9 and # 10

In her ninth assignment of error, Ms. Tanwar argues the trial court failed to apply the "best interest of the child" factors enunciated in La. C.C. art. 134.[11] To the contrary, the trial court specifically stated when ruling that it had considered the best interests of the child, as it is required to do.

In her tenth assignment of error, Ms. Tanwar contends the trial court "relied on coached, unreliable child testimony." However, Ms. Tanwar has failed to point to specific portions of the testimony that demonstrates the child's testimony was "coached" or "unreliable."

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[11] La. C.C. art. 134, "Factors in determining a child's best interest," provides:

> A. Except as provided in Paragraph B of this Article, the court shall consider all relevant factors in determining the best interest of the child, including:
> (1) The potential for the child to be abused, as defined by Children's Code Article 603, which shall be the primary consideration.
> (2) The love, affection, and other emotional ties between each party and the child.
> (3) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.
> (4) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.
> (5) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.
> (6) The permanence, as a family unit, of the existing or proposed custodial home or homes.
> (7) The moral fitness of each party, insofar as it affects the welfare of the child.
> (8) The history of substance abuse, violence, or criminal activity of any party.
> (9) The mental and physical health of each party. Evidence that an abused parent suffers from the effects of past abuse by the other parent shall not be grounds for denying that parent custody.
> (10) The home, school, and community history of the child.
> (11) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.
> (12) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party, except when objectively substantial evidence of specific abusive, reckless, or illegal conduct has caused one party to have reasonable concerns for the child's safety or well-being while in the care of the other party.
> (13) The distance between the respective residences of the parties.
> (14) The responsibility for the care and rearing of the child previously exercised by each party.
> B. In cases involving a history of committing family violence, as defined in R.S. 9:362, or domestic abuse, as defined in R.S. 46:2132, including sexual abuse, as defined in R.S. 14:403, whether or not a party has sought relief under any applicable law, the court shall determine an award of custody or visitation in accordance with R.S. 9:341 and 364. The court may only find a history of committing family violence if the court finds that one incident of family violence has resulted in serious bodily injury or the court finds more than one incident of family violence.

The hearing transcript reveals that the trial judge questioned V.T. regarding the difference between the truth and a lie. Mr. Tanwar's attorney asked V.T. whether her father told her what to say when testifying; V.T. explained that her father "just told me to tell the truth." Counsel then asked V.T. whether her mother told her what to say. V.T. responded: "She told me to tell y'all that she did hit me, but it was light, and not to take away supervisor [sic] visitations and to give my mom domiciliary [sic]." Thus, the only definitive evidence that V.T. was "coached" is the evidence indicating that it was Ms. Tanwar who coached her daughter, not Mr. Tanwar.

The trial court, acting as the finder of fact, is in the best position to evaluate witness testimony to determine its reliability and/or credibility. Each child custody case must be viewed in light of its particular set of facts and circumstances, with the paramount goal of reaching a decision that is in the best interest of the child. *McFall v. Armstrong*, 10-1041 (La. App. 5 Cir. 9/13/11), 75 So.3d 30, 38. The trial court is in the best position to determine the best interest of the child. *Williamson*, 389 So.3d at 956. An appellate court may not reverse reasonable findings merely because it would have weighed the evidence differently. *Id.* Only where the trial court's determination of the facts constitutes clear error or is manifestly erroneous would we be in a position to overturn the ruling. *Silbernagel v. Silbernagel*, 06-879 (La. App. 5 Cir. 4/11/07), 958 So.2d 13, 17. Our review of the record does not reveal any reversible error. We find no merit to these assignments of error.

Assignment of Error # 11

In her eleventh assignment of error, Ms. Tanwar contends the court wrongly excluded her from reviewing in camera evidence and annulled her October 31, 2024 petition for a declaratory judgment.

Ms. Tanwar's petition for a declaratory judgment sought access to all of V.T.'s therapy records from Ms. Jaunet at the Brennan Behavior Group. On

November 6, 2024, the hearing officer entered an Order indicating that Ms. Tanwar was to have full access to the medical and mental health records of the child pursuant to La. R.S. 40:1165.1, and that Ms. Jaunet and Brennan Behavior Group were to produce "complete and unredacted records" to Ms. Tanwar within 10 days. On November 12, 2024, however, Ms. Jaunet and Brennan filed a motion to annul the November 6 Order, arguing, among other things, that they had not been served with the petition for declaratory judgment and thus had no opportunity to oppose it.

On November 25, 2024, the hearing officer nullified the November 6 order that had required complete disclosure of all of Ms. Jaunet's records. Ms. Tanwar's counsel at the time consented to the annulment of the declaratory judgment.

Furthermore, Mr. Tanwar points out that the parties had access to the same records; those records that Ms. Jaunet withheld were not produced to one party and withheld from the other party.

Finally, Ms. Jaunet had the authority to refuse to disclose certain sensitive records. La. R.S. 40:1165.1 A(2)(d) provides: "A health care provider may deny access to a record if the health care provider reasonably concludes that knowledge of the information contained in the record would be injurious to the health or welfare of the patient or could reasonably be expected to endanger the life or safety of any other person." The term "health care provider" includes a person, entity, or institution "licensed or certified by this state to provide health care or professional services as … social worker [or] licensed professional counselor[.]" La. R.S. 40:1231.1 A(10). Ms. Jaunet, a Licensed Clinical Social Worker, testified that she withheld the progress notes from three session dates based on her belief that their release could result in imminent harm to the child. We find no merit in Ms. Tanwar's eleventh assignment of error.

Assignment of Error # 1

In Ms. Tanwar's first assignment of error, she argues the trial court erred in awarding sole custody to Mr. Tanwar and suspending her own visitation rights without a finding of unfitness or harm. Ms. Tanwar argues in her appellate brief and in her writ application that she has never been found unfit and has never been adjudicated as having committed abuse or neglect. Furthermore, she claims Mr. Tanwar has never alleged any facts involving "physical beatings, suicidal ideation, or any conduct rising to the level of abuse that would justify removal under applicable law." Ms. Tanwar continues: "No police reports, medical records, agency referrals, or forensic evidence supported his allegations at trial."

We find Ms. Tanwar's arguments in this regard wholly unsupported by the record, which contains evidence that Ms. Tanwar abused her daughter. Indeed, in an audio recording introduced at the hearing, Ms. Tanwar admitted as much. The records from Children's Hospital state that the mother had been abusing V.T. since their divorce, and Ms. Jaunet's testimony, based on her therapy session with V.T. since 2022, indicate that V.T. reported physical, mental, and emotional abuse.

Additionally, the trial court is not required to make a specific finding that one parent is "unfit" to award sole custody to another parent, or to suspend a parent's visitation rights. Rather, the trial court is required to evaluate the best interests of the child in light of the facts before it.

Mr. Tanwar testified at the hearing that in September 2021, after he and Ms. Tanwar separated, he witnessed on FaceTime Ms. Tanwar hitting their daughter on the back, telling him to "come get [his] f***ing daughter from here." Mr. Tanwar also testified that he learned, for the first time, and only after the medical records from V.T.'s October 2024 visit to Children's Hospital were admitted into evidence, that Ms. Tanwar had been hitting her daughter every week since the divorce. V.T. also testified that her mother hit her and asked her to lie about it. V.T.'s therapist,

Ms. Jaunet, reported that although V.T. loved her mother, she "is confused and sometimes angered with mom's aggressive verbal attacks and physical altercations towards [V.T.] when she gets enraged."

The trial court stated at the conclusion of the hearing that Ms. Tanwar "in fact, abused [the child]. And in light of that, the Court is constrained by law to award simply supervised visitation, if any, at this time, pending her completion of that domestic abuse intervention program."

Having reviewed the record in its entirety and considered each of Ms. Tanwar's assignments of error, we cannot say the trial court's factual findings are manifestly erroneous, nor that the award of sole custody to Mr. Tanwar and the requirements placed on Ms. Tanwar are an abuse of the trial court's discretion. The record contains ample evidence to support the court's decision to require Ms. Tanwar to undergo a psychiatric evaluation and participate in a domestic abuse intervention program.

Appellant's Assignment of Error # 6 and Appellee's Answer to Appeal

Mr. Tanwar answers the appeal to request attorney's fees and costs pursuant to La. R.S. 9:367 of the Post-Separation Family Violence Relief Act. And in her sixth assignment of error, Ms. Tanwar contends the court "imposed rehabilitative mandates without findings required under La. R.S. 9:367."

La. R.S. 9:367 states:

> In any family violence case, all court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeal, evaluation fees, and expert witness fees incurred in furtherance of this Part shall be paid by the perpetrator of family violence, including all costs of medical and psychological care for the abused spouse, or for any of the children, necessitated by the family violence.

Furthermore, La. C.C.P. art. 2164 states:

> The appellate court shall render any judgment which is just, legal, and proper upon the record or appeal. The court may award damages, including attorney fees, for frivolous appeal or

> application for writs, and may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable.

Ms. Tanwar submitted an *in forma pauperis* affidavit in conjunction with her appeal and writ application. In addition, the record contains no information as to which attorney's fees and costs were incurred as a result of the abuse. *See generally Dufresne v. Dufresne*, 08-215, 08-216 (La. App. 5 Cir. 9/16/08), 992 So.2d 579, 587, *writ denied*, 08-2843 (La. 12/17/08), 996 So.2d 1123. Accordingly, we decline to award Mr. Tanwar costs and attorney's fees. We also find no merit to Ms. Tanwar's contention that the trial court "imposed rehabilitative mandates" pursuant to La. R.S. 9:367.

Ms. Tanwar's companion writ application in 25-C-154

Lastly, Ms. Tanwar filed a writ application in this Court seeking supervisory review of the same judgment considered in this expedited appeal. As appellate jurisdiction over the trial court's custody ruling is appropriate under La. C.C.P. art. 3943, and the trial court's judgment has been reviewed on appeal, we dismiss Ms. Tanwar's writ application as moot.

DECREE

For the reasons expressed herein, we find no manifest error in the trial court's factual findings, and no abuse of discretion in the trial court's decision to award sole custody to the father, Mr. Munish Tanwar, and to require Ms. Liza Michel Castro Tanwar to submit to a psychiatric evaluation and enroll in a domestic abuse intervention program before supervised visitation may be considered. Mr. Tanwar's request for costs and attorney's fees in the answer to appeal is denied. The trial court's February 24, 2025 judgment is affirmed. Ms. Tanwar's writ application in 25-C-154 is dismissed as moot.

AFFIRMED

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MAY 22, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-CA-142

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE STEPHEN D. ENRIGHT, JR. (DISTRICT JUDGE)
KRISTINE K. SIMS (APPELLEE)

MAILED
LIZA MICHEL CASTRO (APPELLANT)
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