

# Should the *Taylor v. Taylor* Factors be Mandatory in Custody Cases?

If parents are unable to effectively communicate with each other about their children, should a judge be barred from imposing joint custody?

The petitioner-father is contending before the Court of Appeals that Montgomery County Circuit Court Judge

Cynthia Callahan erred in granting joint legal custody of their children in *Adam Santo v. Grace Santo*, CA No. 15-89.

Represented by James S. Maxwell, Brian M. Barke and Joel R. Zuckerman, of Maxwell Barke & Zuckerman in Rockville, the father argues

that the *Taylor v. Taylor*, 306 Md. 290 (1986), factors constitute "binding legal parameters" that limit the discretion of chancellors faced with a custody decision.

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## Court of Appeals

### TAYLOR (from page 1)

In addition, the father is challenging the tie-breaker provisions as inconsistent with *Taylor* and Fam. Law § 5-203(d).

On the other side, Grace Santo, represented by Susan W. Scofield and John S. Weaver in Rockville, counter that a trial judge's "broad and inherent equitable powers" in custody decisions, authorize joint legal custody and the tie-breaker is one of many forms of joint custody in Maryland.

She also claims the tie-breaker issue was not preserved below.

At the core of the case are two parents who cannot cooperate.

Judge Callahan, despite acknowledging that the parent's relationship was "poisonous," decided to impose joint custody over their objections because she believed both parents should continue to "have access to information" about both children.

The Court of Special Appeals affirmed Judge Callahan's ruling on Oct. 9, 2015, in an unreported opinion, noting that the case was "rare" in that joint custody was given to parents "incapable of communicating with each other." The panel said the trial court sought to keep both parents involved in their children's lives.

The father argues that the Court of Appeals needs to clarify how the *Taylor* factors should continue to be applied.

And whether the routine use

of joint legal custody with a tie-breaker, is consistent with joint legal custody as authorized by Fam. Law § 5-203(d).

In this case, the father argues, any track record showing good communication is absent. The record does not show it will improve in the future. In fact, Judge Callahan admitted the parents were "at war with one another."

A decision to impose joint custody on parents who cannot effectively communicate "are at odds with the plain and palpable intentment of this court's opinion in *Taylor*."

are not likely to benefit from a joint legal custody arrangement, if their parents cannot communicate and make any shared parental decisions."

Both the circuit court and the CSA paid "mere lip service" to the *Taylor* factors, the father con-

tends, and instead, left the children in the "toxic sequella of their parent's embattlement, by requiring [the parents] to do what they simply cannot do."

And as for the tie-breaker concept, the use of them by Maryland courts in joint legal custody orders "has been both

any appellate decision "directly affirming the use of a tie-breaker clause in connection with an award of a joint legal custody award," the father argues.

The mother, reiterating that the tie-breaker argument was not presented below, argues that both *Shenk* and Fam. Law § 5-203(d) support the use of a tie-breaker as one of "the multiple forms of joint custody."

In custody disputes, a trial court has wide discretion to make decisions that promote a child's best interests. That concept is codified as Fam. Law § 1-201.

Maryland law does not "limit the equitable jurisdiction of a court to a 'binary' award only," she argues. That is "impractical and inconsistent with the best interests standard." Section 5-203(d) refers to custody generally, and that it is given to one parent or both.

The *Shenk* court actually "rejected the same binary argument the father makes," she says.

No single *Taylor* factor is dispositive, and the trial court did not abuse its discretion in continuing joint legal custody.

Adopting the father's position would estab-

lish a bright-line rule of effective communication as a precondition to order joint legal custody. That would eliminate the best interest standard. *Taylor* remains "vibrant in its guidance of custody decisions."

*Taylor*, even after more than 30 years, remains sound legal authority and should be re-affirmed, the mother says. ♦

### CA Preview

*"A decision to impose joint custody on parents who cannot effectively communicate is at odds with the plain meaning and intentment of this Court's decision in Taylor"*

*-James S. Maxwell  
Attorney for Petitioner Adam Santo  
Santo v. Santo*

Joint legal custody should only be awarded if parents can communicate or that there is "strong potential" in the future.

And here, both the trial court and the CSA erred when it approved the rationale for joint legal custody.

"[I]f there is anything of enduring value for us to take from *Taylor*, written three decades ago, it is that children

hypocritical and insidious."

The father notes that in *Shenk v. Shenk*, 159 Md. App. 548 (2004), the CSA rejected the argument that tie-breakers were prohibited under *Taylor* and § 5-203(d). That statute limits custody orders to an award to "either parent" or "joint custody to both parents" but nothing else.

Searches have not uncovered