UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1322

September Term, 2013

ON MOTION FOR RECONSIDERATION

RAMEZ A. GHAZZAOUI

v.

CAROLINA V. CHELLE

Meredith,
Graeff,
Leahy,

JJ.

Opinion by Meredith, J.

Filed: June 2, 2015

On July 30, 2013, in the on-going child custody disputes between Ramez Ghazzaoui ("Father"), appellant, and Carolina Chelle ("Mother"), appellee, the Circuit Court for Anne Arundel County entered, *inter alia*, an opinion and three orders, which denied: Father's motion to consolidate the monetary judgments; Father's motions to compel compliance with Rule 1-321; and Father's complaint for theft and second motion for modification of custody. Father noted a timely appeal, challenging all three orders.

After we filed an unreported opinion in this case on August 15, 2014, appellant filed a motion for reconsideration asking us to locate transcripts that he believed had been filed with this Court in order to address the merits of his challenge to the circuit court's denial of the motion for modification of custody. As requested in the appellant's motion for reconsideration, we have reviewed the transcripts of the hearings conducted on February 14, 2013 and April 9, 2013, and, following reconsideration, submit this opinion to supercede and replace our opinion filed on August 15, 2014.

QUESTIONS PRESENTED

Father presents seven questions for our review, which we have consolidated into three as follows:[1]

[1]Father's questions presented are:

> A. Did the Trial Court abuse its discretion by denying Plaintiff's Second Motion for Modification of Custody?
>
> B. Does the Trial Court's denial of Plaintiff's Second Motion for modification of custody serve the Minor Child's best interests?

(continued...)

1. Did the court err and/or abuse its discretion in denying the motion to modify custody?

2. Did the court err in failing to grant Father a hearing before denying the motion to consolidate judgments?

3. Did the court err in failing to grant Father a hearing before denying the motions to compel?

For the reasons stated below, we conclude that the circuit court committed no error in denying Father's motion to consolidate and motions to compel without hearings. Furthermore, we conclude that the circuit court did not commit any reversible error in

[1](...continued)

C. Is the Court's July 30, 2013 Opinion based in part of [sic] false beliefs and/or inaccurate interpretation of facts?

D. Did the Trial Court have the authority to deny Plaintiff's Motion for Consolidation of Judgments without a hearing?

E. Did the Trial Court have any valid reason for denying Plaintiff's Motion for Consolidation of Judgments?

F. Did the Trial Court abuse its discretion by denying Plaintiff's Motion for Consolidation of Judgments without providing an explanation or an opinion?

G. Did the Trial Court have the authority to deny Plaintiff's Motion to Compel without a hearing?

H. Did the Trial Court have any valid reason for denying Plaintiff's Motion to Compel without any explanation?

denying Father's motion to modify custody of the minor child by order entered July 30, 2013. Accordingly, we will affirm these judgments of the circuit court.

FACTS AND PROCEDURAL HISTORY

On October 8, 2010, the circuit court entered an order awarding joint legal and physical custody of the parties' minor daughter to Father and Mother. This order established visitation and holiday schedules, placed certain conditions on the parties, and included a warning "that a failure to comply with any portion of this Order may constitute a material change in circumstances upon which this Court may modify this Order." The circuit court later entered a separate judgment of absolute divorce. This Court affirmed those orders in an unreported opinion. *See Chelle v. Ghazzaoui*, No. 80, Sept. Term 2011; No. 2052, Sept. Term 2010 (filed Jan. 31, 2012).

Since the entry of the custody and divorce orders, the parties have litigated extensively, and pursued several appeals to this Court. *See, e.g., Ghazzaoui v. Chelle*, No. 1321, Sept. Term 2013; No. 1259, Sept. Term 2013; No. 1114, Sept. Term 2012; No. 1585, Sept. Term 2009.

The present appeal was noted by Father after the circuit court entered a memorandum opinion and three orders on July 30, 2013. One issue raised in this appeal relates to a complaint/motion Father filed on June 15, 2012, alleging theft and asserting his second motion for modification of custody. Father alleged that Mother induced the child to take some of the child's own allowance money which was being held at Father's residence in

order to pay for the replacement of eyeglasses the child had lost. Furthermore, Father charged Mother with neglecting their daughter's dental care. Father twice supplemented this motion — on September 25, 2012, and January 11, 2013 — with further accusations of Mother's alleged misconduct. Father contended that Mother's actions constituted a violation of the custody order, and that such conduct established a material change in circumstances warranting a termination of the joint custody that had been previously ordered by the court. Father requested modification of custody and asked the court to award sole legal and physical custody of the nine-year-old child to him.

On September 10, 2012, Father also filed a motion to compel Mother and her attorney to comply with Maryland Rule 1-321. Rule 1-321 requires — subject to an exception inapplicable in this case — that all pleadings and papers be served upon all parties. Father alleged that Mother's then-counsel of record had failed to serve certain papers upon Father when they were filed with the court. Father stated that he had had to personally obtain these documents from the circuit court due to the failure of Mother's counsel to comply with the service requirements of Rule 1-321. Father moved for the court to order compliance with Rule 1-321, and sought sanctions against Mother and her counsel. On March 18, 2013, Father filed a second motion requesting the same relief and also seeking injunctive relief. In the second motion to compel, Father requested a hearing.

On May 30, 2013, Father filed a motion for consolidation of the various monetary judgments that had been entered in the case as of that point in time. Father pointed out that

there were multiple monetary judgments between him and Mother — some requiring payment from him to her, and others ordering payment from her to him. Additionally, both parties had judgments entered against them for fees owed to the child's best-interest attorney. Father asked the court to consolidate the judgments, and he proposed that Mother alone be responsible for paying the best-interest attorney. Father requested a hearing on this motion.

On February 14, 2013, and continuing on April 9, 2013, the court conducted an evidentiary hearing on the complaint for theft and second motion for a modification of custody. At the conclusion of those hearings, the court took the matter under advisement.

On July 30, 2013, the court entered an opinion and order denying Father's complaint for theft and second motion to modify custody. The court's opinion stated in pertinent part:

> The Second Motion for Modification and accompanying supplements allege a number of complaints against the Defendant [Mother], including:
>
> 1. Teaching the minor child robbery and stealing;
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> 2. Neglect of the minor's mental health;
>
> 3. Refusal to share information on planned activities, extracurricular activities, and healthcare (specifically dental records); and
>
> 4. Failure to pay half of the home mortgage during the use and possession period between October 2010 and June 2011.
>
> Plaintiff [Father] argues these incidents, and specifically the incident involving the removal of thirty dollars, amount to a material change in circumstances upon which the court must modify the existing Custody Order so as to protect the best interests of the minor child.
>
> * * *

Generally, Maryland courts follow a two-step process to determine whether or not a modification of an existing custody judgment is warranted. *McMahon v. Piazze*, 162 Md. App. 588, 594, 875 A.2d 807 (2005). The court must first find that a material change in circumstances has occurred. *Id. See also Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). **If no material change in circumstances is found, the Court's inquiry ends and the custody judgment remains unchanged**. . . .

A material change in circumstances is one that affects the welfare of the child. *McMahon, supra*, 162 Md. App. at 594. . . . In instances where one party is moving for modification of the existing custody judgment, **the moving party bears the burden of persuasion in showing materiality of the change in circumstances**. *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344, 950 A.2d 848 (2008).

Having considered the testimony of the parties, and interviewing the minor child in chambers, **it is the conclusion of this Court that there has been no material change in circumstances** as a result of the incident surrounding the glasses. The money taken, and used, belonged to the minor child and not the Plaintiff. The Defendant [Mother] made it clear to the child that the use of the allowance money to buy the new glasses was an effort to teach her a lesson about responsibility. [FOOTNOTE 1: This was the third pair of glasses purchased for the child, after two previous pairs had been misplaced. During the interview in chambers, the child indicated that she understood that she was to use her allowance money to pay for the glasses and that in doing so she was learning a lesson.]

The Court does not accept the Plaintiff's contention that a material change in circumstances has occurred. Rather, this episode and the other allegations are indicative of the long-standing difficulty with communication that exists between these parties. As co-parents, and as ordered under the Custody Order, both parties are to work together in bringing up their child. This continued difficulty in communication signifies a failure to live up to their responsibilities. It is in the best interests of the child that each parent has an equal role in her care and upbringing. However, **nothing submitted to the court or offered during testimony suggests any change in the circumstances that existed at the time of the Custody Order or in the welfare of the child that would give cause for a modification of that order**.

> The failure of communication between the parties remains not one of inability to communicate, but one of choice.
>
> **Finding no material change in circumstances, all requests by either party to modify the existing Custody Order are denied**. . . . **[T]here is no indication that a modification of the previous Custody Order is warranted or in the best interest of the minor child at this time.**

(Emphasis added.)

Additionally, the court entered two separate orders, one denying Father's motions to compel, and one denying Father's motion to consolidate judgments. Father timely noted an appeal.[2]

DISCUSSION

A. The Motion to Modify Custody

Father contends that the court abused its discretion in denying the motion to modify custody. Father argues that the court overlooked Mother's behavior and/or failed to properly credit his testimony. Moreover, Father asserts that, in denying his motion, the court failed to properly take into account the best interests of the child.

Appellate review of custody cases is both limited and deferential. *McCarty v. McCarty*, 147 Md. App. 268, 272 (2002). "Custody and visitation determinations are within the sound discretion of the trial court, as it can best evaluate the facts of the case and assess

[2] On October 28, 2013, this Court dismissed the appeal due to Father's failure to file a civil appeal information report pursuant to Rule 8-205(b). On the same day, however, Father filed the required report. On November 4, 2013, Father filed a motion to reconsider the dismissal, which this Court granted on December 3, 2013. Accordingly, we vacated the order dismissing the appeal.

the credibility of witnesses." *Boswell v. Boswell*, 352 Md. 204, 223 (1998). As stated in *Davis v. Davis*, 280 Md. 119, 126 (1977):

> Such broad discretion is vested in the chancellor because only he sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

Appellate opinions "rarely, if ever, actually find a reversible abuse of discretion" on the issue of joint custody. *McCarty*, 147 Md. App. at 273.

In this case, we consider whether the circuit court abused its discretion by declining to exercise its power to change the custody and visitation pursuant to Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 1-201(b)(4), which allows the court to modify any decree with respect to the care, custody, or support of any minor child if the modification would be in the best interests of the child.

"In all family law disputes involving children, the best interests of the child standard is always the starting – and ending – point." *Boswell, supra*, 352 Md. at 236. The best interest of the child is the "paramount concern" in any child custody case and "the objective to which virtually all other factors speak" in a trial court's overall consideration. *Taylor v. Taylor*, 306 Md. 290, 303 (1986). Because visitation is a form of temporary custody, both custody and visitation decisions are subject to the best interest of the child standard. *Boswell, supra*, 353 Md. at 219. No single list of criteria will satisfy the demands of every case because of the unique character of each case and the subjective evaluations and decisions

necessary to custody determinations. *Taylor, supra*, 306 Md. at 303. Because of this, we usually defer to the "delicate weighing process" undertaken by the chancellor and refrain from substituting our judgment for the trial court's. *McCarty, supra*, 147 Md. App. at 273.

When presented with a request for a change of, rather than an original determination of, custody, courts employ a two-step analysis. *McMahon v. Piazze,* 162 Md. App. 588, 593-94 (2005). First, the circuit court must assess whether there has been a "material change" in circumstances justifying the review of custody. *Id*. The court must find there has been such a material change before the court considers whether it would be in the best interest of the child to modify the custody arrangements.

The requirement of "material change" is designed to "preserve stability for the child and to prevent relitigation of the same issues." *McMahon, supra*, 162 Md. App. at 596. A change in custody will potentially disturb the stability which may exist in the life of a child of divorced parents. *McCready v. McCready*, 323 Md. 476, 481 (1991). Further, requiring a "material change" in circumstances in order to revisit custody decisions "ensures that principles of *res judicata* are not violated by requiring that such a showing must be made *any time* a party to a custody or visitation order wishes to make a contested change." *McMahon, supra*, 162 Md. App. at 596. (Emphasis in original.) Any reconsideration of a court decree should emphasize changes in circumstances which have occurred since the last court hearing. *McCready, supra,* 323 Md. at 481 (citing *Hardisty v. Salerno*, 255 Md. 436, 439 (1969)). The Court of Appeals has cautioned: "[A] litigious or disappointed parent must not be

permitted to relitigate questions of custody endlessly upon the same facts, hoping to find a chancellor sympathetic to his or her claim." *McCready, supra*, 323 Md. at 481.

A truly static custody case is rare, and in most cases, *some* changes occur during the time between the earlier determination and the new custody dispute. The trial court must determine whether these changes are "material" and worthy of a modification. *McCready, supra*, 323 Md. at 482.

Although Father argues vehemently that his testimony proves conclusively that the various incidents relative to his daughter and Mother's interactions with the child and him demonstrate material change in circumstances, we do not agree that the trial court's conclusion to the contrary was clearly erroneous. The trial judge spent literally days in the presence of this family, and we will not second-guess the trial judge's finding of no material change.

When Father began his testimony on April 9, 2013, the trial judge reminded Father that the critical issue to be addressed was whether there had been a material change in circumstances. The Court stated: "I need a clear, concise statement of fact or whatever . . . supports your belief that there has been a material change of circumstances that justifies a modification of custody and visitation." Father replied that "there are two bas[e]s for significant change of circumstances." The first was the incident regarding the child's use, at Mother's urging, of $30 to buy eyeglasses to replace a pair the child had lost. Father explained: "This money was Maya's allowance. It was an envelope in which we keep money

that I give to [my daughter] as allowance." Father further explained: "[I]t seems that [Mother] . . . had instructed [our daughter] to take money from the envelope from my home and take it to [Mother] because [Mother] wanted to buy glasses for [our daughter]." As noted in the above quoted portion of the trial court's opinion, the court did not find that this incident supported a conclusion that there had been a material change in circumstances.

Father also testified about Mother cancelling dentist appointments he had made for their daughter. According to Father, Mother had made it difficult for him to have access to the daughter's medical records. Father also asserted that Mother was taking their daughter to a dental professional she had unilaterally selected, contrary to his wishes and without his approval. Similarly, Mother was cutting Father out of extracurricular activities, such as piano lessons, despite the court's order granting Father "final decision making authority over all decisions relating to extracurricular activities of the minor child." Additionally, Father testified that Mother eavesdropped on his telephone conversations with the daughter and interfered with those communications. And he described incidents when Mother did not drop off the daughter at summer camp and at school as she was obligated to do. Mother had also taken their daughter to work in the District of Columbia despite a prohibition against travel outside the State of Maryland. Mother had permitted their daughter to have nail polish, contrary to Father's strict rule against that. And there were numerous other aspects of Mother's behavior that were unacceptable to Father, such as missing visitation commitments and failing to return clothing.

But the trial judge, who was permitted to weigh the evidence and make findings, was not persuaded that Mother's conduct constituted a material change in circumstance that supported an abandonment of the previously-ordered joint custody. As moving party, it was Father's burden to persuade the trial judge that there had been a material change. *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008) ("The burden is . . . on the moving party to show that there has been a material change in circumstances since the entry of the final custody order and that it is now in the best interest of the child for custody to be changed."), *aff'd*, 408 Md. 167 (2009). We have pointed out in other cases that it is very difficult for a party who bears the burden of persuasion on an issue — as the appellant did in this case — to convince an appellate court that the trier of fact (here, the trial judge) erred by not being persuaded. In *Byers v. State*, 184 Md. App. 499, 531(2009), Judge Moylan wrote for this Court that "it is nearly impossible for a verdict to be . . . legally in error when it is based not on a fact finder's being persuaded of something but only on the fact finder's being unpersuaded." (Citing *Starke v. Starke*, 134 Md. App. 663, 680–81 (2000)).

In the trial court's view, the evidence presented by the parties at the hearings on the motion to modify custody was merely "indicative of the long-standing difficulty with communication that exists between [Mother and Father]." The court concluded: "However, nothing submitted to the court or offered during testimony suggests any change in the circumstances [from those] that existed at the time of the Custody Order or in the welfare of the child that would give cause for modification of that order." The trial court's finding that

there had not been a material change was not clearly erroneous. Consequently, the court did not err in denying Father's motion for modification of custody.

B. The Motions to Compel and Motion to Consolidate

Father contends that his request to consolidate the judgments and motions to compel compliance with Maryland Rule 1-321 are "claims" as contemplated by Maryland Rule 2-311(f), which provides, in pertinent part: "Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but **the court may not render a decision that is dispositive of a *claim*** or defense without a hearing if one was requested . . . ." (Emphasis added.) Accordingly, Father asserts, the court could not deny these motions without the hearings that he had requested. Mother argues that Father's motions are baseless, and the court could deny them without a hearing.

In cases interpreting Rule 2-311(f), this Court has explained that "'the words claim and defense were to be narrowly construed, and that these terms are [not] to include the arguments made in order to obtain or thwart collateral litigation matters . . . .'" *Logan v. LSP Mktg. Corp.*, 196 Md. App. 684, 696 (2010) (quoting *Shelton v. Kirson*, 119 Md. App. 325, 329 (1998)). *See also Unnamed Attorney v. Attorney Grievance Comm'n*, 409 Md. 509, 527 (2009) (noting that "'claim' and 'defense' were claims and defenses 'intrinsic to the underlying cause of action,' such as motions for summary judgment and motions to dismiss" (quoting *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 485 (1991))).

Although Father summarily asserts that his motion to consolidate and motions to compel were claims necessitating a hearing, we are not persuaded that these motions raising procedural issues were claims intrinsic to the underlying cause of action. Rather, we conclude that Father's motions were collateral litigation matters, and the circuit court was not required to hold a hearing prior to denying them.

Father cites no rule or authority for the necessity of a hearing for a motion to consolidate judgments. (Indeed, he cites no authority for the court to rework previously entered judgments.) This motion is not intrinsic to the underlying child custody dispute.

Similarly, there is no requirement in Maryland Rule 1-321 — or any other rule referring to Rule 1-321 — that a court hold a hearing before denying a motion complaining about lack of compliance with Maryland Rule 1-321. Moreover, a motion seeking compliance with Maryland Rule 1-321 is akin to a motion for discovery sanctions, which is a collateral litigation matter not necessitating a hearing. *See Logan*, *supra*, 196 Md. App. at 696 (quoting *Shelton*, *supra*, 119 Md. App. at 329-30). Accordingly, the court committed no error in failing to hold a hearing before denying Father's motions to compel and motion to consolidate.

Father also asserts that the court erred in failing to provide an opinion explaining its rationale for denying these motions. But Father has failed to cite to us any authority for the proposition that a court is required to provide a written opinion with such orders. Although Maryland Rule 2-522(a) requires a court to provide "a brief statement of the reasons for the

decision" when a judgment is entered "[i]n a contested court trial," there appears to be no comparable requirement for rulings upon procedural motions. Because no authority was cited in support of Father's argument that the court's lack of opinion was reversible error, we decline to consider this assertion. *See Brass Metal Prods., Inc. v. E-J Enters., Inc.*, 189 Md. App. 310, 343 (2009) (citing *Anderson v. Litzenberg*, 115 Md. App. 549, 577-78 (1997)) (noting that appellate courts will not review arguments devoid of citations to legal authority).

APPELLANT'S MOTION FOR RECONSIDERATION GRANTED. JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY ENTERED JULY 30, 2013, AS TO APPELLANT'S MOTION FOR MODIFICATION OF PHYSICAL CUSTODY, LEGAL CUSTODY AND ACCESS, APPELLANT'S MOTION FOR CONSOLIDATION AND SIMPLIFICATION OF MONETARY JUDGMENTS, AND APPELLANT'S MOTIONS TO COMPEL AFFIRMED. COSTS TO BE PAID BY APPELLANT.