

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1079

September Term, 2022

Alireza Alain Kalantar

v.

Gloriana Galeano

Leahy,
Reed,
Battaglia,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: April 18, 2023

*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.

** On December 14, 2022, the names of the Court of Special Appeals and Court of Appeals were changed to the Appellate Court of Maryland and Supreme Court of Maryland, respectively.

This appeal of a denied motion to alter or amend custody was filed by Alireza Alain Kalantar, Appellant-Father, following an argument on May 25, 2022 between Gloriana Galeano, Appellee-Mother, and their teenage son, N.K.G., born January 2, 2007. On May 25, 2022, Mother tried to confiscate an Apple iPhone cell phone (“iPhone”) Father gave to N.K.G. following a visit with Father. N.K.G. refused to give Mother the iPhone because he believed that since he was not being punished, Mother should not be able to confiscate the iPhone, resulting in a disagreement between Mother and N.K.G. Following their disagreement, N.K.G. left Mother’s home. N.K.G. called Father, who advised him to call the police. Father picked up N.K.G. from the police station and filed for a protective order, which was denied by the circuit court for failing to meet the burden of proof.

On June 6, 2022, Father filed a motion to alter or amend custody for full physical custody of N.K.G., tie breaking authority, and requested a best interest attorney. Mother has had physical custody of N.K.G. since his birth, which Father sought to modify to grant himself full physical custody and tie-breaking authority over N.K.G., alleging that Mother’s physical custody of N.K.G was no longer in their child’s best interest following the May 25th incident because N.K.G. was scared of Mother.

The circuit court denied Father’s request for a best interest attorney on July 5, 2022, stating that the “[p]arties will be permitted to call the minor child as a witness to testify.” *Gloriana Galeano v. Alireza Alain Kalantar*, Order, Case No. 61975FL (Md. Cir. Ct. Jul. 5, 2022). On July, 29, 2022, following an evidentiary hearing in which Mother, Father, and N.K.G. testified about the May 25, 2022 argument between Mother and N.K.G., the circuit court denied Father’s motion to modify. The circuit court made a single minor clarification

to the custody order requiring each parent to always allow N.K.G. access to a phone to call the other parent, subject to reasonable restrictions.

Father filed a pro se appeal¹ on August 29, 2022, requesting that this Court review the circuit court’s decisions dated December 16, 2021, January 18, 2022, May 24, 2022, July 13, 2022, July 29, 2022, August 9, 2022, and August 26, 2022. *Alireza Alain Kalantar v. Gloriana Galeano*, Notice for Expedited Appeal, Case No. 61975-FL (Md. Cir. Ct. Aug. 29, 2022). In bringing his appeal, Father presents two questions for appellate review, which we have rephrased for clarity:²

- I. Did the circuit court err in not appointing a “best interest” attorney to represent N.K.G?
- II. Did the circuit court err in denying Father’s motion to modify custody to grant him full physical custody of N.K.G. and tie breaking authority?

For the following reasons, we answer both questions in the negative and affirm the circuit court’s decision.

FACTUAL & PROCEDURAL BACKGROUND

¹ Father later retained legal counsel. Father’s appellate brief was filed by Dmitri A. Chernov, Esq. and Galina Rakityanskaya, Esq. who entered their appearance on September 10, 2022.

² In his brief, Appellant posed the following questions for consideration:

1. Whether the Circuit Court Erred in Failing and Refusing to Appoint a Best Interest Attorney/Child Advocate Attorney for [N.K.G.]
2. Whether the Circuit Court Properly Addressed the Custody Factors.
3. Whether the Circuit Court Erred in Not Granting Mr. Kalantar Residential Custody.
4. Whether the Circuit Court Erred in Failing and Refusing to Award Mr. Kalantar Tie-Breaking Authority.

Father and Mother met at a nightclub and began a romantic relationship in 2005. At some point during that year, Mother moved in with Father. Mother learned she was pregnant in 2006. A few months later, Mother and Father ended their romantic relationship during a trip to Miami, Florida.³ Mother returned from the Florida trip a day before Father and moved out of his home.

N.K.G. was born on January 2, 2007. On April 24, 2007, Mother filed for custody of N.K.G.

A. Original Visitation and Custody Arrangement

On November 30, 2007, the Circuit Court for Montgomery County entered a custody and support order for N.K.G. following a custody agreement (“Agreement”). Father and Mother agreed to share joint legal custody of N.K.G. A parenting coordinator with tie-breaking authority, Dr. Gail Thornburg, was appointed with reasonable costs of the parenting coordinator to be paid by Father.

At the time of filing, Mother was unemployed. Father owned a nightclub bar and lounge, Harlot DC Lounge,⁴ located in Washington, D.C. Father was to pay child support, calculated at \$1264 but set to \$1,250 monthly by the circuit court.

Under the Agreement, Mother had sole physical custody of N.K.G. and Father’s

³ Mother was four and a half months pregnant at the time of their break-up.

⁴ Father misstated the name of the restaurant he operates as “Harbor Lounge,” located at “2001 111th Street Northwest at U Street in Washington, D.C.” in the February 23, 2022 hearing, but the name of the bar and lounge is Harlot DC, located at 2001 11th Street N.W., Washington, D.C. 20001. *See* Harlot DC, <https://www.harlotdc.com/> (last visited Feb. 24, 2023).

visitation arrangements were outlined in the Agreement. Father’s visitation would be as followed:

<u>Timeframe</u>	<u>Day of the Week</u>
2:00-7:00pm	Sunday
10:00-5:00pm	Monday
12:00-2:00pm	Wednesday
12:00-2:00pm	Thursday
12:00-2:00pm	Friday

Additionally, the Wednesday through Friday access would be with no restrictions on travel with N.K.G. Both parents agreed that Father’s time with N.K.G. would grow as N.K.G. grew older to include additional overnights, summer vacations, and school breaks.⁵ Regarding holidays, Mother would always have N.K.G. on Easter and Father would have N.K.G. to celebrate Persian New Year every year on March 21 from 9:30a.m. until 7:00pm on March 22. Additional time for family visiting from outside the country and rotating holidays would be addressed with Dr. Thornburg.⁶

B. Petition for Contempt and Motions to Modify Custody and Visitation

Since the Agreement, Mother gave birth to twin daughters, T.G. and N.G. (collectively “the twins”), with another person whom she is no longer with. Mother has physical custody of the twins. The twins live with Mother, N.K.G., and Mother’s fiancée,

⁵ Beginning on July 1, 2008, Father’s Sunday visits would change to overnight visits starting at 3:00pm on Sunday to 11:00am on Monday. From August 1, 2008, through January 1, 2009, Appellant’s time from Sunday to Monday would increase by an hour each month, with Monday drop offs starting at 12:00pm as of August 1, 2008, increasing by one hour each month and by January 1, 2009, drops offs on Monday shall be at 5:00pm.

⁶ The parties have not spoken to Dr. Thornburg since 2007.

Anthony Vahedi (“Vahedi”).⁷

Father entered his second marriage⁸ in 2020 to Vera Pirunova (“Pirunova”). Pirunova has a younger son from a previous relationship, E.P., whose father lives in Russia. E.P. lives with Father and Pirunova.

In 2012, Mother and Father agreed amongst themselves to change Father’s visitation time to Sundays from 3:00pm-8:00pm, with the occasional overnight if there was no school on Monday, and Wednesdays from 5:00-7:00pm. Father has had visitations with N.K.G. every other weekend from Friday at 5:00pm to Sunday at 6:00pm.

On October 12, 2021, Father filed a petition for contempt alleging Mother was not following the visitation schedule. On October 22, 2021, Father petitioned for a custody evaluation through the Family Division Services of the Circuit Court for Montgomery County. The motion was granted. The court appointed a custody evaluator, Stephanie Hesse (“Hesse”), a licensed clinical social worker. Hesse conducted individual interviews with Mother, Father, and N.K.G., did virtual home tours (rather than in-person home tours, due to COVID-19 pandemic restrictions) of both homes, and observed both household units⁹ interact in one-hour increments. Hesse recommended primary residential custody¹⁰

⁷ Vahedi has two sons from a previous relationship. He has access to his children every other weekend and he and the children “typically stay with [Vahedi’s] parents during those weekends.”

⁸ Father was married to Sarah Lord from 1994 to 2004.

⁹ Mother’s household unit includes Mother, Vahedi, N.K.G., N.G., and T.G. Father’s household unit includes Father, Pirunova, and E.P.

¹⁰ Hesse outlined in her report that Mother expressed concerns to her regarding: Father’s

be granted to Father because of Mother’s previous unresponsiveness to Father’s inquiries. Hesse, in her report, stated N.K.G. confirmed physical discipline occurred during his time with Mother. Such discipline concerned Hesse because “it could create a dangerous dynamic, especially if [N.K.G.] begins to defend himself or fight back.” Hesse, however, confirmed in her testimony that she never asked Mother about the physical discipline.

She also recommended joint legal custody of the N.K.G. with tie-breaking authority to Father. Hesse determined that Father is fit to care for N.K.G. “physically and emotionally and has the support of Ms. Pirunova. He is offered opportunities and experiences that he does not have in [Mother’s] home.”

Father filed an amended motion to modify custody, motion to “shorten the time for [Mother] to respond,” and requested a best interest attorney for N.K.G. on November 29, 2021. In the amended motion, Father stated that material changes have occurred since the original custody order, such as that the parties have been following an irregular custody

home environment, a video recording of possible drug use in Father’s home by another person, and Father taking N.K.G. to his nightclub at night. However, despite Mother’s stated concerns, Hesse based her conclusions on the following factors: (1) Mother decides to exclude Father from N.K.G.’s life, refuses to coparent with him, and uses “extreme gatekeeping behaviors,” such as not allowing the child to contact the other parent without anybody listening into their calls; (2) uses physical discipline; and (3) speaks negatively about Father’s wife, which creates issues with relationship building. Father reported the physical discipline in the form of hair pulling and slapping him in the face to Hesse. Hesse noted that she is concerned about Mother’s ability to care for N.K.G. because she “does not seem to understand the importance of [N.K.G.] having his father and extended family in his life and has not worked to create a healthy co-parenting relationship with [Father]. This sentiment is shared by [the father of Mother’s twin daughters, who] has similar co-parenting challenges.” Hesse also stated that N.K.G. is facing academic challenges, and while Mother blames Father, Hesse attributes it to Mother moving multiple times, causing N.K.G. to change schools.

arrangement that differs from the Agreement since N.K.G. was three years old. Though Father and Mother have been cooperative in working a modified visitation schedule in the past few years, the cooperation between the parents has since soured. Father alleged that during the COVID-19 pandemic, Mother started denying access to N.K.G. because of possible COVID-19 transmission between the two households, but Mother responded that the parties mutually agreed to put a hold on visits for safety reasons, including that Father runs a nightclub in which he and his patrons do not wear masks. Mother also stated that she took away N.K.G.'s cell phone as a punishment for his lowered school grades, because Mother believed N.K.G.'s cell phone use was interfering with his academic assignments.

The circuit court denied Father's motion to shorten the time for Mother to respond on December 1, 2021. In his motion to appoint a best interest attorney, Father alleged family violence and a "high level of conflict," and inappropriate adult influence. The circuit court denied Father's motion to appoint a best interest attorney on January 18, 2022, stating, "there was not enough time to appoint a best interest attorney."

C. February 2022 Circuit Court Hearing and Order

On February 22-24, 2022, the Circuit Court for Montgomery County held a hearing on Father's petition for contempt and motions to modify custody. The circuit court heard testimony from Hesse about the custody evaluation report she prepared following her interviews with Mother, Father, N.K.G., the virtual home tours, and doing family observations with both households. Hesse testified that Mother was concerned about the company Father would bring around N.K.G., that Father spoke negatively about Mother and told N.K.G. that he did not have to share the same religious beliefs as her, and that he

was not completing homework assignments when he came back from visits with Father. Father bought electronics for N.K.G., such as a cell phone and a laptop, and both Father and Mother took them away as punishment, which Hesse considered a “very standard, typical consequence for teenagers.” She stated that Father allowed N.K.G. to consult on adult issues, such as access and visitation.

The circuit court admitted Hesse’s custody report, but clearly stated that the

facts restated in the evaluation are received as support for the expert’s opinion, and not necessarily for the truth of the matter asserted, but . . . if she based her opinion on certain facts, I believe that those facts upon which she based her opinion are not precluded by the hearsay rule . . . [T]he report is admitted, but the facts underlying the admission are not necessarily received, unless we’ve had some evidence of it, so we’ll, perhaps, . . . get evidence of those things, but the report is received.

The circuit court cited Maryland Rule 5-703. When questioned about her conclusion that Mother was restricting access from Father, Hesse stated that there was no formal modification in the arrangement and she based her opinion on the fact that “[Father] was asking for access, [N.K.G.] was asking for access [with Father], and [Mother] was either non-responsive or not agreeing to it.”

Hesse stated in her notes that Mother explained that one night after returning from Father’s, N.K.G. “went in [his sisters’ room] and threw a box speaker at his sister. [Mother] grabbed him by his hair.” T.G. also testified. T.G. stated that she enjoys her time and relationship with her older brother. T.G. stated that Mother has never pulled her or her twin sister’s hair or physically punished her. T.G. stated that she only saw Mother pull N.K.G.’s hair once when N.K.G. threw a speaker at her.

Sharom Shawn Tamami (“Tamami”) also testified. Tamami is a friend of Father’s

“from the nightlife,” who does taxes and credit repair and helped Father with a Payroll Protection Program (PPP)¹¹ application during the COVID-19 pandemic. Tamami stated that Father filled out an online application where Father declared that on average, he made \$10,000 a month. Father also provided Tamami a copy of his driver’s license, a voided check, and his February bank statement. Tamami then created a Schedule C and submitted it to one of his lenders for the PPP. The Schedule C was admitted into evidence.

On May 18, 2022, the circuit court entered an order (“Order”) denying Father’s petition for contempt and granted in part the parties’ cross motions to modify custody. Father was granted visitation from after school on Friday until 7:00pm on Sunday every other weekend and for dinner on Wednesday, but Mother continued to have primary

¹¹ The Payroll Protection Program (PPP) was a program implemented by the federal government’s Small Business Administration (SBA) in 2020 during the COVID-19 pandemic through Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide economic relief to small businesses during government mandated COVID-19 related business closures. The PPP

provides small businesses with funds to pay up to [eight] weeks of payroll costs including benefits. Funds can also be used to pay interest on mortgages, rent, and utilities . . . Funds are provided in the form of loans that will be fully forgiven when used for payroll costs, interest on mortgages, rent, and utilities (due to likely high subscription, at least [seventy-five percent] of the forgiven amount must have been used for payroll). Loan payments will also be deferred for six months. No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.

U.S. SMALL BUSINESS ADMINISTRATION, Small Business Paycheck Protection Program, <https://home.treasury.gov/system/files/136/PPP%20--%20Overview.pdf> (last visited Feb. 24, 2023). Under the CARES Act, the PPP loan may be partially or fully forgiven if the business keeps its employee counts and employee wages stable. U.S. SMALL BUSINESS ADMINISTRATION, Paycheck Protection Program Loans: Frequently Asked Questions (FAQS), <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf> (last visited Feb. 24, 2023).

physical custody of N.K.G. Particularly of note regarding cell phone use and contact with the non-custodial parent, the Order stated:

ORDERED that each party shall have liberal phone or Facetime (or similar application) access with the minor child on days when the minor child is not in his or her custody, as the child's schedule permits, or at 7 p.m. if that parties do not agree to a time; and it is further

ORDERED that if a parent wishes to purchase a mobile phone and maintain the service for [N.K.G.], either may do so and [N.K.G.] may contact either party while in the custody of the other parent; and it is further

ORDERED that the custodial parent at the time may impose reasonable restrictions on [N.K.G.] use of the phone as they deem appropriate (for eg., not school, not during family meals, not after bedtime, etc.); However, if the phone is taken from [N.K.G.] as a punishment, [N.K.G.] must be granted an alternative method to maintain contact with both parents; and it is further

ORDERED that the parties shall not use any corporal punishment on the child; . . .

D. Argument Between Mother and N.K.G.

On May 25, 2022, N.K.G. returned to Mother's home following a visit with Father wielding an iPhone Father purchased for him. Mother had a longstanding rule that N.K.G. may not have the electronics Father provided for him in her home, with the understanding that she provided a cellphone and Apple iPad to be able to communicate with Father, subject to reasonable restrictions regarding bed, meal, and study times.

N.K.G. showed Mother the phone a few minutes after he returned to her home and Mother asked N.K.G. several times to give her the phone. N.K.G. refused to give Mother the phone, arguing that she can only take the phone away as punishment. Mother reminded him of the house rule, and N.K.G. responded, "that's not what my dad said, and that's not what the order says." Mother asked N.K.G. again to give her the phone and N.K.G. became

angry, so she suggested he go outside to take a moment to calm down.¹²

N.K.G. went outside and called his Father. N.K.G. stated his Father told him to call the police during their ten second phone call. N.K.G. called 911 and police advised him to walk to the Rockville City Police Department. Police officers interviewed N.K.G. about the incident. N.K.G. alleged that Mother grabbed his arms and pinned him to a doorframe during the incident, which Mother denied.

Father met N.K.G. at the police station and police advised Father and N.K.G. to apply for a civil protective order.

**E. Protective Order, Motion to Modify Custody,
and Evidentiary Hearing on July 29, 2022**

Just days after the circuit court’s hearing, on May 25, 2022, Father sought and obtained an interim civil protective order for N.K.G. following a dispute between N.K.G. with Mother regarding a cellphone that Father gave N.K.G. N.K.G. stayed with Father until the temporary protection order hearing on May 27, 2022. Father’s counsel and N.K.G. testified on the altercation with Mother before the District Court of Maryland for Montgomery County. *Alireza Alain Kalantar obo [N.K.G.] v. Gloriana Galeano*, Order of Denial/Dismissal of Petition for Protection, Case No. D-06-FM-22-002656 (Md. Cir. Ct. Jul. 7, 2022). The circuit court denied the petition, stating the burden of proof was not met to put the protective order in place. *Id.*

On June 6, 2022, Father filed a motion to alter or amend and requested a best interest

¹² Father and N.K.G. alleged that Mother told “him to leave” and “kicked him out” of her home.

attorney. Father alleged the May 25, 2022 argument between N.K.G. and Mother warranted a change to Father having primary physical custody of N.K.G. Father alleged that N.K.G. was scared of Mother following the argument. Father stated that N.K.G. “is adamant that he no longer wishes to reside with [Mother,]” requested N.K.G. testify “express his custodial preferences . . . *in camera*” and requested a best interest attorney be appointed. Father also requested Hesse to be reappointed as custody evaluator to “update her evaluation and make recommendations.” That same day (on June 6, 2022), Father’s motion to shorten time was granted. Father’s motion to request a best interest attorney was denied on July 5, 2022, stating that the “[p]arties will be permitted to call the minor child as a witness to testify.” *Gloriana Galeano v. Alireza Alain Kalantar*, Order, Case No. 61975-FL (Md. Cir. Ct. Jul. 5, 2022).

On June 17, 2022 Mother filed a motion to oppose Father’s verified motion to alter or amend. In her countermotion, Mother stated that she made a rule in her home preventing the use of the electronics that Father provided for N.K.G., such as the iPhone. However, Mother provided an alternative cell phone and her iPad for N.K.G.’s use to contact his Father, as required by a previous circuit court order. That house rule caused an argument between Mother and N.K.G. because N.K.G. wanted to keep the iPhone when he returned from a visit with Father. Mother denied yelling at N.K.G. to get out of the house or cursing. Mother also denied lunging at N.K.G., grabbing, or pinning N.K.G. against a doorframe. Mother stated N.K.G. walked out of the house on his own accord. Finally, Mother concludes that N.K.G. was not scared of Mother at any point during their argument.

On July 13, 2022, the circuit court denied Father’s motion for *in camera* testimony

and to reappoint a custody evaluator. *Gloriana Galeano v. Alireza Alain Kalantar*, Order, Case No. 61975-FL (Md. Cir. Ct. Jul. 13, 2022). On July 29, 2022, the Circuit Court for Montgomery County held an evidentiary hearing on Father’s motion to alter or amend, to which this appeal originates. During the hearing, the circuit court heard testimony from N.K.G., Mother, Father.

i. N.K.G.’s Testimony

N.K.G., in his testimony, explained that in May of 2022, Father bought him an iPhone. After coming home from a visit with Father, Mother confiscated the iPhone Father provided and returned the iPhone Father in the following visit. N.K.G. stated that Mother provided a flip phone and an iPhone to N.K.G. to use to communicate with Father, in which he has access to “[m]ost of the time.” He has Facetime access with his Father while with Mother. However, Mother does not allow him to use his electronics, while he is doing assignments or after 9:30p.m. and has placed “screen time restrictions” on the iPhone. N.K.G. stated that Mother is never present for his phone calls with Father.

Regarding the argument on May 25, 2022 regarding the new iPhone Father gave N.K.G., he stated:

[When I went through the front door of Mother’s house,] I remember that we had gone to like Dawson’s and gotten some groceries, Dawson’s Market. So, I had put those in the fridge and then I showed my mom when she came down the stairs; and then I told her about the gym. And when I showed her the phone, she got upset at me and started yelling, and cornered me in the kitchen. And then I walked away and she blocked me in front of the door, the front door of the house, and said that I had to give her the phone. And when I asked her why, she just kept yelling at me, give me the phone, give me the phone until she attacked me. And I pushed her away from myself and then she told me to leave, like kicked me out, and was yelling at me the whole time. So, I left and then I called my dad for like [ten] seconds, and then

instantly called the police and went to the police station.

He stated his Father told him to call the police during their ten second phone call. When describing Mother's attack, he stated

She grabbed both of my arms and pinned me to the door; and so, I was like freaking out. So, I like didn't push her, but like I put my leg up to push her away from myself and I just started yelling assault, assault repeatedly, saying that she was going to call the cops on me.

When asked if he was hurt, N.K.G. stated that he had a mark on his arm that went away after a day. When asked about if N.K.G. remembered if Father, at the police station, stated that Mother was "crazy" or had "psychological problems," he stated "yes."

N.K.G. stated that he did not believe that he needed to listen to his Mother and should not have given up the iPhone his Father gave him because he was "not being punished[.]" N.K.G. stated that his preference would be to live with his Father because he is "more comfortable with his dad" and with Mother, he said he always feels "stressed" and that he has "his guard up."

Finally, regarding the information the parties shared with N.K.G., N.K.G. stated that Father regularly shows him the correspondence between Father and Mother when N.K.G. requests to see them. There was also an incident following the protective order hearing where Mother gave her attorney a ride home and they discussed the case in front of N.K.G.

ii. Mother's Testimony

Mother also testified. She stated that she recently moved out of the place she was living for four and a half years because the previous landlord sold the property she was residing. She also provided her account of the May 25th argument, stating that N.K.G.

knew for the past year and a half that Mother did not want the iPhone Father provided in her home and she asked him to give her the iPhone after he showed her the iPhone.

And he said no, I don't have to give you the phone. I don't actually have to do it unless I'm punished. And am I being punished? And I said no, you're not punished at all. There's no punishment here. It's just that you have a phone here, and you have your iPad here, and there's no reason why you need to bring that, your dad's phone to the house, especially under the situation that we've been going through and how I feel about his electronics being in the house. And you're very well aware of this.

Mother interpreted the order to only require that N.K.G. has access to a phone or iPad to contact the other parent at any time, but "that didn't mean that [Father's] electronics had to come to my home, or vice versa."

Mother asked N.K.G. several times to give him the phone and he refused stating, "that's not what my dad said, and that's not what the order says." And then Mother walked toward him and said

[N.K.G.] come on, please, like I don't want to have issues just because of a telephone, and there's no need to, and can you just please give me the phone? And I lifted my left hand and I reached out to him, just extending it, and he said no, I don't have to give you anything. Why do I have to give it to you? I'm like you just need to understand it's not that you did anything wrong, it's just that I don't want these electronics at this house. You keep that for when you're with your dad, and when you're here you have all the other electronics that you can play with and use and utilize and contact with. And then he said well, I'm not going to give it to you, and again I reached out and I leaned forward, just extending my hand with my palm up. It was the left hand, and I just extended it near his pocket. I never touched him. I never touched his pocket. I didn't even walk towards him. It was more of a leaning in with my shoulder and my arm. And then at which point he grabbed my arm and shoved me back, and said why are you grabbing me. And I said [N.K.G.] I didn't even touch you. What are you talking about, grabbing me, I said, what do you mean? Give me the phone, please, so we can put it away, because this is ridiculous, fighting over a phone. And he said I don't need to give you anything, I'm not going to give it to you. And I said [N.K.G.] please hand me the phone. Once again I extended my arm. He walked away towards the

outer door, the exit to the house, and did the same thing. And I said [N.K.G.], what are you doing, maybe you need to take a chill, some time away and take some time to relax outside, a few minutes. Leave the phone outside, come back in, and let's talk about it, because this isn't right.

When asked if Mother made physical contact during the May 25th incident, she said she did not. She also stated that she did not tell N.K.G. to leave the house, but instead she told him to “step out and take a breather, and leave the phone outside. And after he calmed down, to come back inside so we can talk.” Finally, Mother stated that she limits N.K.G.'s electronic screen time around bedtime and while he should be studying.

iii. Father's Testimony

According to Father, on May 25, 2022, Father dropped off N.K.G. at Mother's house at around 6:55pm with a bag of groceries and the iPhone. Mother started interrogating N.K.G. about his time with Father as soon as he walked in. She shouted and cursed at him, allegedly lunged at him and pinned him against a doorframe, confiscated his phone, and kicked him out of the house, leading him to call the police. N.K.G. called Father “about [ten] minutes after [Father] dropped him off[,]” while Father was driving past “exit, Connecticut Avenue, Chevy Chase, on 495.” N.K.G. told him about the altercation and Father told him to call the police.

N.K.G. called 911 and police advised him to walk to the Rockville City Police Department. Police officers interviewed N.K.G. Father met N.K.G. at the police station and police advised Father and N.K.G. to apply for a civil protective order. Father sought and obtained an interim civil protective order for N.K.G. that evening. N.K.G. stayed with Father until the temporary protective order hearing on May 27, 2022. Father stated he saw

marks on N.K.G.'s body the day after the argument.¹³ N.K.G. testified on the altercation with Mother, but the District Court of Maryland for Montgomery County denied the petition and N.K.G. left with Mother.

Father stated that he provided N.K.G. with a cell phone and Mother prohibited the phone from being allowed in her home. Mother confiscated the iPhone Father gave N.K.G. from May 28-June 3, 2022 and returned it to Father. Mother allowed N.K.G. to contact Father through alternate devices during that period.

iv. Circuit Court's Holdings

The circuit court stated that N.K.G.'s testimony does not support Father's allegations. The circuit court stated that when N.K.G. and Mother had this disagreement and N.K.G. called Father, Father could have turned around and picked N.K.G. up from Mother's house or talked through the disagreement with him. Instead, when Father received N.K.G.'s phone call at around 7:00pm that evening, he was not very far from Rockville, Maryland – at the Connecticut Avenue exit on the 495 Highway – but still advised N.K.G. through a ten-second phone conversation to call the police.

The circuit court concluded that Father's concern about the deterioration of the relationship between N.K.G. and Mother was falsely stated. Instead, the circuit court concluded that Father was "part of the problem and not the solution to any deterioration of that relationship." As a result, N.K.G. "has been taught not to respectfully deal with others that he believes to be wrong," and not to follow rules at Mother's house. Father does not

¹³ Father stated there were scratches "[o]n his right arm, scratches on his right shoulder, and there was this scratch right here around his pectoral."

reinforce boundaries set at Mother's house, and instead taught N.K.G. to call Father or the police when he does not agree with Mother.

The circuit court held that N.K.G., despite Father's accusations that N.K.G. was scared of Mother and Mother acted in a hostile manner towards N.K.G., N.K.G. was instead a "teenager who did not want to do what he was told to do." The circuit court noted that N.K.G., though a very bright individual, is a teenager testing his and his parents' boundaries and "is still a child subject to the discipline of his parents; and if he doesn't follow the rules, he's subject to that discipline."

However, the circuit court was concerned about N.K.G.'s exposure to his parents' "battling" one another. N.K.G. was taken to a protective order hearing, which was denied, and N.K.G. went home with Mother. Mother gave her attorney a ride because it was raining, but while in the car, Mother and her attorney discussed the hearing in front of N.K.G. N.K.G. also read adverse communications between his parents and the court order. N.K.G. went through the court order with his parents. The court stated the concerning nature of his exposure to his parents' legal tribulations because he is a child, is the subject of the legal battle, and the order is between his parents.

The circuit court made one clarification to the May 18 order, requiring each parent to allow N.K.G. access to a phone to have the ability to call the other parent at all times, subject to reasonable restrictions. Reasonable restrictions include not using the phone in school, during family meals, after bedtime, and the duration a child may use electronics. Under the provision, if N.K.G.'s cell phone is taken away, N.K.G. must have alternative methods to maintain contact with the other parent.

Father filed a timely appeal on August 29, 2022.

DISCUSSION

I. Appointing a Best Interest Attorney

Father contends that the circuit court erred in not appointing a “best interest” attorney to represent N.K.G. However, this Court finds no abuse of discretion in the circuit court’s decision to deny the motion to appoint a best interest attorney. “‘Child’s Best Interest Attorney’ means a lawyer appointed by a court for the purpose of protecting a child’s best interest, without being bound by the child’s directives or objectives.” *McAllister v. McAllister*, 218 Md. App. 386, 403 (2014). MD. CODE ANN., FAM. LAW (“FL”) § 1-202 states: “(a) In an action in which custody, visitation rights, or the amount of support of a minor child is contested, the court **may**: . . . (ii) appoint a lawyer who shall serve as a best interest attorney to represent the minor child and who may not represent any party to the action[.]” (emphasis added). FL§ 9-205.1(b) outlines the factors that a circuit court may consider in determining whether to appoint an attorney for a child:

[i]n determining whether to appoint an attorney for a child, the court should consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment. Appointment may be most appropriate in cases involving the following factors, allegations, or concerns:

- (1) request of one or both parties;
- (2) high level of conflict;
- (3) inappropriate adult influence or manipulation;
- (4) past or current child abuse or neglect;
- (5) past or current mental health problems of the child or party;
- (6) special physical, educational, or mental health needs of the child that require investigation or advocacy;
- (7) actual or threatened family violence;

- (8) alcohol or other substance abuse;
- (9) consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;
- (10) relocation that substantially reduces the child’s time with a parent, sibling, or both; or
- (11) any other factor that the court considers relevant.

a. Standard of Review

Under FL § 9-205.1(b), it is within the circuit court’s discretion to appoint a best interest attorney for the child. Thus, in order for Father to prevail, he must demonstrate that the circuit court abused its discretion in not appointing a best interest attorney. “The analytical paradigm by which we assess whether a trial court’s actions constitute an abuse of discretion has been stated frequently.” *Alexander v. Alexander*, 252 Md. App. 1, 17 (2021). In *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005), we explained

[t]here is an abuse of discretion “where no reasonable person would take the view adopted by the [trial] court[]” . . . or when the court acts “without reference to any guiding principles.” An abuse of discretion may also be found where the ruling under consideration is “clearly against the logic and effect of facts and inferences before the court[]” . . . or when the ruling is “violative of fact and logic.”

Questions within the discretion of the trial court are “much better decided by the trial judges than by appellate courts, and the decisions of such judges should be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.” In sum, to be reversed “[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court[] deems minimally acceptable.” *Wilson*, 385 Md. at 198-99 (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312-13 (1997)).

An abuse of discretion, therefore, “should only be found in the extraordinary, exceptional, or most egregious case.” *Alexander*, 252 Md. App. at 17 (quoting *Wilson*, 385 Md. at 199).

b. Analysis

This Court holds that the circuit court did not abuse its discretion in declining to appoint a best interest attorney. Father insinuates that the comment following FL § 9-205.1(b) supports his contention that the circuit court was required to appoint a best interest attorney in this case. However, FL § 1-202(a) makes clear that the circuit court was not required to do so, stating “the court **may**: . . . (ii) appoint a lawyer who shall serve as a best interest attorney” (emphasis added). Under FL § 9-205.1(b), “[i]n determining whether to appoint an attorney for a child, the court should consider **the nature of the potential evidence to be presented, other available methods of obtaining information . . .**” (emphasis added).

The circuit court considered both Father and Mother’s filings regarding the appointment of a best interest attorney. The circuit court held the “[p]arties will be permitted to call the minor child as a witness to testify.” *Gloriana Galeano v. Alireza Alain Kalantar*, Order, Case No. 61975-FL (Md. Cir. Ct. Jul. 5, 2022). In a case where the catalyst of the court filing was an argument between a mother and teenage son over cell phone usage in her home, this Court holds that the nature of the evidence would not reasonably require a best interest attorney and thus, the circuit court did not abuse its discretion. *See Wilson v. John Crane, Inc.*, 385 Md. at 198 ([t]here is an abuse of discretion “where no reasonable person would take the view adopted by the [trial] court[.]” (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. at 312 (citations omitted))). Moreover, it is clear to this Court that the circuit court deemed N.K.G.’s future testimony of the events that transpired on May 25, 2022 as a reasonable alternative to appointing a best interest attorney to obtain the evidence. We agree.

II. Circuit Court's Custody Decision

A. Appellant's Contentions

Mother did not file a brief in this appeal, so this Court shall solely weigh the merits of Father's contentions. In his brief, Father alleges that the circuit court erred in failing to award Father full physical custody and tie breaking authority of N.K.G. following an evidentiary hearing held on July 29, 2022. Appellant argues that the circuit court failed to consider the "best interest" factors, thus did not exercise proper discretion in reaching their decision. We disagree.

B. Standard of Review

This Court reviews child custody determinations utilizing three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). The Supreme Court of Maryland has described these standards:

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 [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

Id. at 586 (cleaned up). We give "due regard to the opportunity of the trial court to judge the credibility of the witnesses." MD. RULE §8-131(c).

C. Analysis

There is nothing in the record to suggest that the circuit court erroneously considered factual findings. Instead, Father argues that the circuit court erred as a matter of law

because the circuit court did not engage in examining the “best interest” custody factors and in not awarding him physical custody of N.K.G.

When considering a child custody modification order, this Court explained the circuit court’s guiding analytical framework in *Wagner v. Wagner*, 109 Md. App. 1 (1996):

[a] change of custody resolution is most often a chronological two-step process. First, unless a material change of circumstances is found to exist, the court’s inquiry ceases . . . If a material change of circumstance is found to exist, then the court, in resolving the custody issue, considers the best interest of the child as if it were an original custody proceeding . . . Because of the frequency with which it occurs, this two-step process is sometimes considered concurrently, in one step, *i.e.*, the change in circumstances evidence also satisfies – or does not – the determination of what is in the best interest of the child . . . Thus, both steps may be, and often are, resolved simultaneously.

Id. at 28-29. However, if it appears that the circuit court erred as a matter of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. *See In re Yve S.*, 373 Md. at 586. This Court holds that the circuit court did not err as a matter of law.

As the first step of analysis for modification of custody, Father was required to demonstrate material change in circumstances since the previous order that would justify the custody modification. *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005); *Gillespie v. Gillespie*, 206 Md. App. 146, 171-72 (2012). A change in circumstances is only material when it affects the welfare of the child. *McCready v. McCready*, 323 Md. 476, 482 (1991). While every situation and case to modify custody must be evaluated based on its own unique set of facts, Maryland cases have been illustrative in demonstrating what would be deemed a material change of circumstances.

In *Gillespie*, this Court held that a material change of circumstances occurred when a mother’s mental health had “severely deteriorated,” causing a lack of control in her actions and their emotional damage incurred as a result, and that the deterioration adversely affected the children following an assault on a family member at a youth baseball game. *Gillespie*, 206 Md. App. at 172-73. In *Shunk*, after finding a father in contempt of court for failing to appear in court proceedings for the mother’s motion to modify custody, the circuit court deemed the father’s legal troubles as a significant change of circumstances that could affect the best interests of the child. *Shunk v. Walker*, 87 Md. App. 389, 395 (1991). In *Caldwell*, mother’s release from being incarcerated was deemed a material change in circumstances to consider whether it was in the best interest of the child to modify custody. *Caldwell v. Sutton*, 256 Md. App. 230, 272 (2022).

In each of these cases, only after a material change of circumstances was deemed by the circuit court to have occurred did the court consider the “best interest” factors, even when only “minor” changes were requested. *McMahon*, 162 Md. App. at 596. “The Court of Appeals has explained that the requirement of a showing of ‘material change’ has its roots in principles of claim and issue preclusion.” *Id.* at 594 (citing *Slacum v. Slacum*, 158 Md. 107, 110-11 (1930)).

The provisions of the chancellor’s decree with respect to the custody and maintenance of [an] infant are . . . res judicata with respect to these matters and conclusive upon both [parents] so far as concerned their rights and obligations at the time of the passage of the decree. But the conditions which determine the custody and care of the infant and the amount necessary for its maintenance are not fixed, and may change from time to time, and, so, from considerations of policy and the welfare of the infant, a material alteration in the substantial circumstances will take the particular provisions of the decree with reference to the custody and maintenance of the infant out of the rule

of res judicata and authorize a change, from time to time, of the decree in these respects.

Id. at 595. This two-step process is to prevent relitigating earlier determinations by litigious or disappointed parents upon the same facts. *See McCready*, 323 Md. at 481; *Wagner*, 109 Md. App. at 30; *Domingues v. Johnson*, 323 Md. 486, 498 (1991).

No such material change of circumstance is illustrated between the court’s most recent order on May 18, 2022 and when the new motion for modification was filed on June 6, 2022. Father’s filed brief argues and elaborates on his opinions of what is in the best interest of the child, but fails to first show, as the moving party, that since the most recent court order, there was a material change of circumstances that adversely affected N.K.G. requiring the modification in custody. *See Gillespie*, 206 Md. at 175.

The thrust of Father’s argument is that the dispute between Mother and N.K.G. over an iPhone that Father gave N.K.G. warranted a change in custody from Mother to Father because N.K.G. feared Mother following the argument and because Father alleged N.K.G. “is adamant that he no longer wishes to reside with [Mother.]”

Father filed for a protective order following the argument over the iPhone mere days after the May 18, 2022 order. While Father may have stated that Mother had psychological problems when filing for the protective order,¹⁴ there is nothing in the record that suggests that Mother’s alleged mental health issues would be deemed a material change of circumstances, such as in *Gillespie*. In following the reasoning that the outcomes of legal

¹⁴ Father, while picking up N.K.G. at the police station, stated that Mother was “crazy” or had “psychological problems[.]”

tribulations could show a material change of circumstances, such as in *Caldwell* and *Shank*, a protective order would have triggered a material change in circumstances, especially because the protective order would have directly concerned the best interest of the child. However, after a hearing where N.K.G. and Father’s counsel testified, the protective order was declined on May 27, 2022 for failing to meet the burden of proof.

As is clear to this Court and the circuit court, this case was brought simply because Mother and N.K.G. argued over cell phone usage in her home. Where Mother set a house rule a year prior that N.K.G. could not have the iPhone Father gave to him in Mother’s home, N.K.G. is a teenager who tested the boundaries of such rule. N.K.G. did not want to give up the iPhone to Mother, even though Mother gave him access to another cell phone and an iPad to call Father, subject to reasonable restrictions around bedtime and time reserved for completing schoolwork.

While this does not preclude Father from petitioning the court for modification of custody in the future, *see Green v. Green*, 188 Md. App. 661, 689 (2009), in this particular case, there was no material change in circumstances demonstrated by Father warranting a change in custody, and thus the circuit court was not required to review the best interest factors deciding whether custodial modification was in the best interest of the child. The burden was clearly on Father to show why the court should take the affirmative action, and since he failed to meet the burden, this Court holds the circuit court did not err in its decision. *See Wagner*, 109 Md. App. at 31-32.

CONCLUSION

Accordingly, we affirm the judgment of the Circuit Court for Montgomery County.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; COSTS TO APPELLANT.**