Circuit Court for Prince George's County
Case No. CAD1830863

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0138 and 0790

September Term, 2021

RENISON BLACKMAN

v.

JASMINE DAVIS

Fader, C.J.,
Wells,
Adkins, Sally D.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, J.

Filed: January 31, 2022

Following a modification of custody hearing, the Circuit Court for Prince George's County awarded appellee, Jasmine Davis ("Mother"), sole physical and legal custody of the parties' minor child. Soon after the hearing, Mother requested that the court amend its written order to reflect its oral ruling, which the court subsequently granted. Appellant, Renison Blackman ("Father"), now appeals both the custody award (No. 0138) and the amended order (No. 0790)[1] raising four issues for our review, which we have rephrased and consolidated into three issues for organizational purposes.[2]

1. Whether the trial court erred in finding a material change in circumstances.

2. Whether the trial court erred in limiting Father's access to the parties' minor child by awarding Mother sole physical and legal custody.

3. Whether the trial court erred in amending the child custody and visitation award.

For the reasons that follow, we affirm both the custody award and the amended order.

[1] Father's appeal of the trial court's custody award, No. 0138, was consolidated with Father's appeal of the amended order, No. 0790. *See* COSA Order, September 13, 2021.

[2] Father presents four questions for our review even though Father only lists three of them in the "Questions Presented" section of his brief. The fourth issue appears only in the Table of Contents and the body of the brief and is not in the form of a question:

1. Whether the Circuit Court erred in finding that a material change in circumstances had occurred?

2. Whether the Circuit Court erred in limiting the Appellant's access to the parties' minor child?

3. Whether the Circuit erred in awarding the Appellee sole legal custody?

4. The Circuit Court erred in amending the order of court awarding custody and visitation and access.

FACTUAL BACKGROUND

Mother and Father are the parents of a minor child born in early 2016. The parties, who never married, separated in early 2018 and Mother and the child thereafter moved out. Once separated, Father voluntarily provided financial assistance to Mother in the amount of $1,200.00 per month until September of 2018 when Father reduced the amount to $600.00 per month. It was at that time, September 2018, that Mother relocated with the child to Mexico for the purported reason of further distancing herself from Father.

In the Circuit Court for Prince George's County, Father filed for custody in August 2018. The complaint and summons were served on Mother before she moved to Mexico.[3] Mother never filed an answer. Having received no response from Mother, under Maryland Rule 2-613(b),[4] Father moved for an order of default against her, which the circuit court granted on February 15, 2019. Mother never moved to vacate the order of default within 30 days, as required under Maryland Rule 2-613(d), nor did she appear at a court-ordered merits hearing before a Family Magistrate. Following the hearing, the court accepted the recommendations of the Family Magistrate and awarded the parties joint legal and shared physical custody.

[3] Although Mother denied being served, the trial court made a factual finding that she was indeed served.

[4] Rule 2-613(b) provides:

> If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default. The request shall state the last known address of the defendant.

Almost a year later, February 2020, and for the first time since their separation, Father visited Mother and the child in Mexico. Mother then traveled to San Antonio, Texas. Father testified that he contacted the authorities there trying to enlist their help to enforce the custody order but asked them not to contact Mother.

According to Mother, she only found out about the custody order after the San Antonio police approached her, apparently in contravention of Father's wishes. More importantly, after she was informed of the custody order, Mother immediately moved to vacate the order and requested a hearing in the Circuit Court for Prince George's County. She simultaneously filed a motion to modify custody and child support in that same court. After Mother filed these papers, Father stopped financially supporting the child and moved himself to modify custody.

Later, a Family Magistrate denied Mother's motion to vacate the custody order. But the magistrate set a hearing date before a circuit court judge on Mother's motion to modify custody and child support.

After taking testimony and listening to arguments from both sides, at the end of modification hearing, the circuit court found that Father "made no efforts at all to have the [original] custody order enforced." As a basis for this factual finding, the circuit court noted that the first time Father contacted authorities to try and enforce the order was in March 2020, when both he and Mother were in San Antonio. But the court found Father's efforts were ineffectual because he did not ask the authorities to contact Mother, who had custody of the child.

Based on these findings, the circuit court concluded that a material change in circumstances had occurred since the entry of the original custody order in early 2019 Specifically, the court found that Father made no real effort to enforce the order since its inception one year prior, which included the entire time period that Mother and the child were living in Mexico.

The court then evaluated the factors set out in *Taylor v. Taylor*, 306 Md. 290 (1986) to determine what custodial arrangement served the best interests of the child. The trial court concluded that it was in the child's best interests to remain with Mother and awarded her sole physical and legal custody. The court "encourage[d]" Mother to share with Father decisions regarding the child's schooling, religion, medical treatment, and the like, and further ordered Mother to add Father's name to "any records, such as school or government, so that [Father] can access those records to check on his child and [her] progress."

Also, in its oral ruling, the court granted Father access during the summer, "beginning the fourth full week in June until the end of July, so August 1st." But the subsequent written order granted Father access beginning the *first* full week of June, instead of the fourth full week as the judge stated at the end of the hearing. To correct the inconsistency, Mother filed a Motion for Appropriate Relief. The court granted her motion on July 12, 2021 and the written order was amended to reflect the trial court's oral ruling.

Father appeals both the modified custody award and the granting of the Motion for Appropriate Relief. Additional facts will be discussed later in the opinion.

STANDARD OF REVIEW

In Maryland, the "guiding principle of any child custody decision . . . is the protection of the welfare and best interests of the child." *Wagner v. Wagner*, 109 Md. App. 1, 29 (1996) (quoting *Shunk v. Walker*, 87 Md. App. 389, 396 (1991)). In accordance with that standard, when reviewing a child custody reward or modification made by a trial court, appellate courts employ three methods of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of Rules 886 and 1086 applies. If it appears that the chancellor 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 chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion.

Davis v. Davis, 280 Md. 119, 125–26 (1977). A trial court, moreover, is entitled to "accept—or reject—all, part, or none of the testimony of any witness," *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011), and the appellate court, when reviewing an action taken by a trial court without a jury, must give "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c).

DISCUSSION

I. The Circuit Court's Finding of a Material Change in Circumstances Was Based on Sound Legal Principles

A. Parties' Contentions

Father argues that the circuit court abused its discretion by finding the existence of a material change in circumstances based on its conclusion that Father, once awarded joint physical custody, made no attempts to enforce that order, a factual finding that Father

disputes. Father also contends that the trial court failed to "opine as to how the inactivity of [Father] affected the welfare of the parties' minor child" which "was required in order for the trial court to determine that a material change in circumstances existed." On a different line of attack, Father argues that the trial court held him to an "unattainable standard" because the child was in Mexico and individuals who try to enforce custody orders abroad face "difficult and complex issues." Finally, Father asserts that the trial court abused its discretion because Mother conceded on cross-examination that there had been no material change in circumstances.

Mother argues that the circuit court's finding of a material change in circumstances was based on sound legal principles and thus does not constitute an abuse of discretion. Mother cites multiple Maryland cases that stand for the proposition that "a parent's extended absence or separation from their child is a consideration i[n] determining what custody or access schedule with that parent is in the child's best interest." Mother also disputes Father's assertion that he was unable to do anything to enforce the custody order after Mother relocated to Mexico with the minor child, noting that the trial court explicitly found otherwise.

And in response to Father's third avenue of attack, Mother explains that at the hearing, she did respond "No" to Father's trial counsel's question, "Has anything changed that had affected the minor child?" But Mother argues that focusing on her response to that one question ignores the "totality" of Mother's testimony and all of the other evidence. According to Mother, that answer is "no more dispositive on its own [of a material change

in circumstances]" than if Mother had instead answered "yes." In support, Mother directs our attention to her counsel's response[5] following Father's argument on this point:

> [B]ut her other testimony, even in the light most favorable to her, really, has been in the last year, Mr. Blackman has really abandoned the child, that he hasn't called her consistently, that he came to visit her once in February, and that after that, all attempts of the child to keep in touch with him, to be consistent, even notwithstanding restrictions for travel with COVID, even for phone calls, Ms. Davis' testimony is that he really has not done anything to keep in touch or foster a relationship with his child after this.

Thus, Mother argues, it was not an abuse of discretion for the trial court to find a material change in circumstances.

B. Analysis

The primary inquiry in any child custody case is: What constitutes the best interest of the child? *McCready v. McCready*, 323 Md. 476, 481 (1991). As has been often reiterated, answering that question is "the objective to which virtually all other factors speak." *Id.* (quoting *Taylor*, 306 Md. at 303). Because it is the objective and not a factor, it is the paramount concern when a trial court determines whether to *modify* a child custody order. *Wagner*, 109 Md. App. at 29. In fact, our courts undertake a two-step inquiry in determining whether to grant a custody modification: first, has there been a material change in circumstances since the prior order was issued, and if so, what arrangement would then serve the best interests of the child? *Id.* at 28. A change in circumstances is considered

[5] In her brief, Mother inaccurately attributes the above quote to "the Court." In fact, this was an argument advanced by Mother's trial counsel.

"material" when it affects the "welfare of the child." *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005) (citing *McCready*, 323 Md. at 482).

In this case, the circuit court found a material change in circumstances chiefly because after the court awarded Father custody, he

> made no effort at all to obtain custody of his daughter, and essentially, allowed [Mother] to keep the child in Mexico. Regardless of what difficulty there would have been in pursuing it, if he really wanted his daughter, if he really wanted his daughter to live with him, in the Court's estimation, he would have done something. And the Court finds that he did nothing.

The court also stated that it disbelieved Father regarding his attempts to enforce the custody order. Specifically, the court noted: "[n]otwithstanding his testimony here today—I would say, honestly, I don't believe that he went to the Mexican authorities." Mother argues that the circuit court's finding of a material change in circumstances was based on sound legal principles and thus cannot constitute an abuse of discretion. We agree.

Although it is only the first part of the two-step inquiry on which we focus in this part of our analysis, we note that the determination of a material change in circumstances rests largely on the same legal principles as an original custody award. As we explained in *McMahon*, the "material change" standard and the "best interest" standard are interrelated. 162 Md. App. at 593–94; *see also McCready*, 323 Md. at 482 ("[T]he question of 'changed circumstances' may infrequently be a threshold question, but is more often involved in the 'best interest' determination."). Simply put, if a change occurs with regard to any of the best interest considerations the court made in its original custody determination, then that change in circumstances would inevitably have been material

(affecting the child's welfare) at the outset. Therefore, many of the questions a trial court asks in making an initial custody award are germane to a "material change" determination.

In *Montgomery County Department of Social Services v. Sanders*, we noted that the "length of separation from the natural parents" and the "prior voluntary abandonment" of the child are relevant criteria in custody disputes. 38 Md. App. 406, 420 (1977). And in *Taylor*, among other factors identified by the Court of Appeals as being "particularly relevant" when adjudicating a custody dispute, are the "willingness of parents to share custody" and the "sincerity of parents' request." 306 Md. at 304, 308, 309–10 (capitalization in original removed).

Here, the circuit court's finding of a material change is grounded in these concerns for the best interests of the child. Notably, the court found that Father made no attempts to obtain custody, effectively relinquishing custody to Mother. Father suggests that persons, such as himself, face "difficult and complex issues" when enforcing custody order internationally. Father asserts that a parent can enforce rights under the Hague Convention on International Child Abduction, but he insists, that would require a court in Mexico to commence the action. We disagree and explain.

The Hague Convention's "central operating feature is the return remedy." *Abbott v. Abbott*, 560 U.S. 1, 9 (2010).

> When a child under the age of 16 has been wrongfully removed or retained, the country to which the child has been brought must "order the return of the child forthwith," unless certain exceptions apply. A removal is "wrongful" where the child was removed in violation of "rights of custody." The Convention defines "rights of custody" to "include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence." A return remedy does not alter the preabduction

> allocation of custody rights but leaves custodial decisions to the courts of the country of habitual residence. The Convention also recognizes "rights of access," but offers no return remedy for a breach of those rights.

Id. (internal citations omitted). Father is mistaken when he asserts that the Hague Convention requires a court in Mexico to initiate the proceeding. The Convention was implemented by Congress under the International Child Abduction Remedies Act (ICARA), 102 Stat. 439, 22 U.S.C. § 9001 *et seq*. *Abbott*, 560 U.S. at 5. Under ICARA, in order to enforce the custody order, Father need only "commenc[e] a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed." 22 U.S.C. § 9003(b). Father could have sought to enforce the custody order by filing a petition in the Circuit Court for Prince George's County, as that court had jurisdiction over the parties' child under the Convention. *Id.* § 9003(a); *see also* Md. Code, Fam. Law Art. § 9.5-302 (granting Maryland courts the power to enforce "an order for the return of the child made under the Hague Convention"). Because Mexico is a signatory to the Convention, *Flores Castro v. Hernandez Renteria*, 971 F.3d 882, 886 (9th Cir. 2020), and was "where the child [was] located at the time the petition is filed," filing in the circuit court was a mechanism that Father could have used to recover the child.[6]

Notwithstanding Father's misplaced understanding of the Hague Convention and its enacting statute, the circuit court was troubled by Father's lack of *any* effort in trying to enforce the custody order. With *Montgomery County* and *Taylor* as the backdrop, the

[6] Our research has not found a single Maryland appellate case that addresses ICARA or its application.

circuit court's finding of a material change in circumstances was based on sound legal principles and, therefore, does not constitute an abuse of discretion.

Further in support of his contention that the circuit court abused its discretion, Father also suggests that "the exact circumstance that the Court of Appeals said must be avoided in McCready occurred." Father directs our attention to that portion of the opinion which states:

> Stability is not, however, the sole reason for ordinarily requiring proof of a change in circumstances to justify a modification of an existing custody order. 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. An order determining custody must be afforded some finality, *even though it may subsequently be modified when changes so warrant to protect the best interest of the child*.

McCready, 323 Md. at 481 (emphasis added). Father focuses on this passage from *McCready* to suggest that a party may not use the courts to endlessly fight the same custody battles when the facts remain unchanged. However, the emphasized portion of the quote from *McCready* was omitted from Father's brief and constitutes the obvious exception to the rule.

Of course, a parent should not be able to endlessly relitigate custody issues based on the same set of facts, but, first, as Mother aptly points out, "a noncustodial parent is never foreclosed from seeking a change in custody," *Wagner*, 109 Md. App. at 29, and second, assuming for sake of argument that Mother was properly served, this would still only represent one additional attempt to litigate custody issues, a far cry from "endlessly" relitigating upon the same facts, as Father implies.

Finally, Father points to the following excerpt from Mother's testimony during the February 22, 2021 hearing:

> [COUNSEL FOR FATHER]: So since April of 2019, has anything changed with regard to anything that has affected [the child]? Anything changed for her since April of 2019?
>
> [MOTHER]: No.

Following her testimony, counsel for Father moved for judgment, arguing that Mother conceded that there had been no change in circumstances. The trial court denied the motion, finding "sufficient evidence demonstrating a material change in circumstances." We agree with the court and conclude that the quoted portion of Mother's testimony is not dispositive of the existence of a material change in circumstances. The circuit court, instead, properly evaluated the circumstances presented to determine whether a material change had occurred.

In coming to its determination, the court expressly outlined why it found a material change existed, namely: that upon gaining custody, Father did nothing to enforce the order; that the trial court did not believe that Father actually went to the Mexican authorities; that the court *did* believe Mother's testimony that Father had not discussed the custody order with her; and when Mother finally did learn of the order, she took immediate action to correct the order. Taken together, the circuit court was within its discretion in finding a material change based on the totality of the facts presented. *See Jose v. Jose*, 237 Md. App. 588, 600 (2018) (noting that a trial court, when considering the *Taylor* factors, should examine "the totality of the situation in the alternative environments" (quoting *Best v. Best*, 93 Md. App. 644, 656 (1992))).

II. The Circuit Court's Custody Award, Based on a Weighing of the *Taylor* Factors, Was Not an Abuse of Discretion

A. Parties' Contentions

Father asks us, in the event that we affirm the circuit court's finding of a material change in circumstances, nonetheless, to hold that the court abused its discretion in awarding Mother primary physical custody and sole legal custody. Father argues that the circuit court abused its discretion in awarding Mother primary physical custody because, *first*, "[c]ontrary to the trial court's conclusions, a shared custody arrangement is possible under the circumstances[.]" Father cites the parties' daughter's age and the fact that she is home-schooled as reasons why a shared custody arrangement would not have unreasonably disrupted her social life or schooling. *Second*, Father also argues that because the parties can communicate electronically to "consult with one another on legal custodial issues regarding" the child, it was an abuse of discretion for the trial court to award Mother sole legal custody.

Mother argues that the circuit court did not abuse its discretion as its award of sole physical and legal custody to Mother was "based on its weighing the credibility of the witnesses and is supported by the material evidence in the record." According to Mother, the court properly weighed the *Taylor* factors, and based on its factual findings, made the award based on the best interests of the child, which we cannot disturb because the court's award was grounded in sound legal principles and factual findings that were not clearly erroneous.

B. Analysis

Following a finding of a material change in circumstances, a trial court must determine the custody arrangement that serves the best interests of the child. *Wagner*, 109 Md. App. at 29. As we previously alluded to, the Court of Appeals, in *Taylor v. Taylor*, enumerated several factors that are "particularly relevant" to a custody award:

1) Capacity of the parents to communicate and to reach shared decisions affecting the child's welfare
2) Willingness of parents to share custody
3) Fitness of parents
4) Relationship established between the child and each parent
5) Preference of the child
6) Potential disruption of child's social and school life
7) Geographic proximity of parental homes
8) Demands of parental employment
9) Age and number of children
10) Sincerity of parents' request
11) Financial status of the parents
12) Benefit to parents

Taylor, 306 Md. at 304–11. Although the Court identified these factors as particularly relevant, the list is in no way "intended to minimize the importance of considering all factors and all options before arriving at a decision." *Id.* at 303. Again, we will only disturb the trial court's custody award if it abused its discretion—a high bar. *See Ross*, 280 Md. at 186 ("The ultimate conclusion as to the custody of a child is within the sound discretion of the chancellor" and is not a matter "of the best judgment of the reviewing court"). The role of the trial court in judging the credibility of the parties and witnesses is of "particular importance." *Wagner*, 109 Md. App. at 40 (citing *Petrini v. Petrini*, 336 Md. 453, 470 (1994)). Thus, so long as the trial court's decision is based on sound legal principles, and the factual findings are not clearly erroneous, we will affirm.

In reaching its decision, the circuit court methodically addressed each *Taylor* factor, noting when certain factors were not relevant and explaining how each of those factors went into the trial court's consideration. A number of the factors cited by the court weighed in favor of granting Mother sole custody. For example, in evaluating the second factor, the "willingness of parents to share custody," the court noted that "it's in the Court's honest opinion that while [Father] may want to spend time with his child, the Court is not certain that [Father] wants to be a full-time, 24/7, father." Next, in evaluating the "potential disruption of [the] child's social and school life," the trial court stated that "[t]he child lives in Mexico and has lived in Mexico for two and a half years . . . Certainly, if she were to be taken from Mexico and transplanted to the District of Columbia to live with her father, there will be a major disruption in her social and school life." Relatedly, regarding the "geographic proximity of the parental homes," the trial court noted that the distance between Father in Maryland and the child's current residence in Mexico is "such a distance that a shared custody arrangement is just not possible under the circumstances." Finally, in addressing the "sincerity of the parents," the trial court found that while Father is sincere in his desire to have access to the child, the trial court nonetheless did not believe that Father "wants to be an everyday parent."

The trial court concluded by stating:

> [T]he Court, having considered all those factors, and for the reasons it's laid out here, the Court finds that it is in [the child]'s best interest to remain in the care and custody of her mother. The Court thinks that it would be detrimental to this child's well-being to uproot her from Mexico to go live with her father who has never really had to care for her by himself. And as the Court has stated, the Court is not sure that [Father] really wants that responsibility.

It is clear to us then that the primary factors entering the trial court's consideration are the potential disruption to the child's social and school life, resulting from the vast geographic distance between the parties' homes, the willingness of Father to share custody, and the sincerity of Father's request to share custody, the latter two being based on the trial court's estimation of Father's credibility.[7] We thus find no abuse of discretion based on the trial court's careful evaluation of the relevant factors.

III. The Circuit Court Did Not Err in Amending the Custody Award Because There Is No Limitation Period for Correcting a Clerical Error Under Md. Rule 2-535(d)

In its oral ruling, the circuit court awarded Father access to the child during the summer, "beginning the fourth full week in June until the end of July." However, the written order granted access to Father beginning "the *first* full week in June until August 1." (emphasis added). Attempting to correct the inconsistency, Mother filed a Motion for Appropriate Relief, then a Corrected Motion for Appropriate Relief, requesting that the trial court correct the written order to reflect the oral ruling announced at the end of the merits hearing. The court granted Mother's motion and amended only Father's summer break access to comport with the oral ruling.

Father appeals the amended order, arguing that in amending the custody order almost 90 days after the entry of the original order, the trial court erred under Md. Rule 2-535(a) which generally only allows for the trial court to revise its decision within 30 days

[7] As mentioned, when a jury is not present, the trial court has the unique ability to judge the credibility of witnesses, and as the reviewing court, we must give due regard to the trial court's determinations of credibility. *See* Rule 8-131(c).

after the initial entry of judgment. Father further argues that the order also could not be corrected under Rule 2-535(b), which provides for revisory power "at any time," in case of "fraud, mistake, or irregularity." Because Mother did not argue fraud, mistake, or irregularity, and because none existed, Father submits, the motion should have been denied as untimely.

Father's argument is easily refuted by a simple reading of Md. Rule 2-535(d) which states that clerical mistakes in orders "may be corrected by the court *at any time* on its own initiative, or on motion of any party after such notice, if any, as the court orders." (emphasis added). Nothing indicates that this was anything other than the correction of a clerical mistake, and Father does not provide any reason or argument why this amended order falls outside the scope of Rule 2-535(d). The circuit court thus clearly did not err in amending the order and we therefore affirm.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.