Circuit Court for Carroll County
Case No. C-06-FM-19-000396

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 415

September Term, 2021

MICHAEL STEVEN STOCK

v.

KRISTIN STOCK

Friedman,
Beachley,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 9, 2022

Michael Steven Stock ("Father"), appellant, challenges the denial of his motion to modify custody and child support regarding his daughter (the "Child") with his former spouse, Kristin Stock ("Mother"), appellee. Discerning no error or abuse of discretion by the Circuit Court for Carroll County, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Family Background

Mother and Father married in 2011, and the Child was born in 2013. During the marriage, Mother, a law school graduate, established a deejay entertainment company that employed both parents.

The couple separated in June 2018. At the time, the family was living at the Manchester residence of Mother's parents in Carroll County, where the Child attended first grade. For the summer break, Mother and the Child stayed in Ocean City while Mother worked at an under 21 dance club five nights a week. Father, meanwhile, moved into a friend's apartment in Hanover.

The Marital Settlement Agreement

While living apart, the parties negotiated their own Marital Settlement Agreement ("MSA"), dated April 19, 2019. The MSA provides for joint legal custody, with Mother "hav[ing] tie breaking authority."

At issue here is physical custody. Under the MSA, Mother has sole physical custody of the Child, while Father has visitation every other weekend and Tuesday evenings. At Father's request, Mother agreed to include in the MSA the following provision that triggers

a custody change based on the parties' residency:

> [Mother] shall have sole physical custody of [the Child]. *If at any point* [*Father*] *resides in the same school district as* [*Mother*], at that time physical custody will become joint between [Father] and [Mother] and visitation will be split evenly. Should this happen, [Father] and [Mother] agree to determine the new visitation schedule at that time. If at any point [Father] or [Mother] reside outside of the same school district again, [Mother] shall have sole physical custody of [the Child].

(Emphasis added).

The MSA also provides that while Mother "has sole physical custody," Father's child support obligation is $800 per month. But "[i]f custody was to change to joint physical custody and time is split evenly," they "agree to both forfeit child support and split any child related expenses evenly (Example: extra-curricular activities, school lunches, etc.)."

The parties' divorce judgment, dated October 21, 2019, incorporates but does not merge the MSA. It includes the following order enforcing the change of custody provision:

> [W]hereas the parties' Marital Settlement Agreement provides for shared physical custody and a general charge of child support *if the parties reside in the same school district*, the parties need not prove any other material change of circumstances in order to modify this Judgment of Absolute Divorce and effectuate their Marital Settlement Agreement if they reside in the same school district in the future.

(Emphasis added).

Shortly after the divorce, Mother moved to the Anne Arundel County residence of her boyfriend on Hillcrest Avenue in Gambrills, Maryland, where the Child enrolled at Waugh Chapel Elementary School.

The Modification Petition

Approximately ten days after the divorce became final, Father moved to a residence in Anne Arundel County, on Bradley Road in Severn. Father's Severn residence is 4.8 miles from Mother's residence in Gambrills and 5.4 miles from the Child's school. It is not, however, in the same school district within the county, for either elementary, middle, or high school.

On December 31, 2019, just over two months after entry of the divorce judgment that resolved child custody, Father filed the modification petition giving rise to this appeal. In his petition, Father sought shared physical custody and a change in his support obligation based on his "move[] to a more permanent residence approximately 5 miles apart from" Mother and the Child.

On May 30, 2020, while Father's modification petition was pending through COVID-related delays, Mother filed a contempt petition, alleging that Father was in arrears on his child support and other payment obligations, including medical insurance for the Child. On July 20, Father responded by filing his own contempt petition, asking for a declaration that his move triggered the MSA's joint physical custody provision and warranted reimbursement of his previous child support payments, asserting that, "[s]ince November 1, 2019 the parties both reside in the same Anne Arundel County Public School District."

On August 3, 2020, the court held a hearing on both contempt petitions. Based on the evidence and arguments presented, the court denied Father's petition for contempt and

granted Mother's petition only "with regard to the unpaid medical bills[.]" The court entered a judgment requiring Father to pay Mother "$1,770.14, which represents his 50% share" of those expenses, payable at $100 per month until the judgment was satisfied. This appeal does not concern those rulings.

Instead, it arises from the court's subsequent denial of Father's petition to modify custody and support. In his modification petition, the only change in circumstances Father asserted was that both parties "recently moved to a more permanent residence approximately 5 miles apart from one another." At the outset of the April 26, 2021 hearing, the court noted that it "had this matter before it previously," stating that it was "not going to revisit any of the issues that were previously decided." The court then referred to the provision in its October 21, 2019 judgment that "[t]he parties need not prove any other material change in circumstances in order to modify this judgment of absolute divorce and effectuate their marital settlement agreement if they reside in the same school district in the future." Noting that "the complaint and answer are in dispute" regarding whether Father and Mother resided in the same school district, the court advised the parties, prior to taking any testimony, that it needed to make a "factual determination as whether or not the parties are now living in the same school district."

Regarding the MSA, Father testified that when he and Mother were discussing it, both were planning to move, and Father "didn't want custody to become an issue." Accordingly, "the only addition [Father] asked [Mother] to make was to write that verbiage in there about if husband and wife ever reside in the same school district, that will convert

to shared custody." Father's testimony suggested that the provision was exclusively his idea, but that Mother agreed to include it in the MSA.

At the hearing on the petition to modify custody, Father testified that approximately ten days after the divorce judgment became final on October 21, 2019, he moved to a rented house in Severn, "[a]bout five miles" from the residence in Gambrills where Mother and the Child had lived since mid-October. The assigned school for Father's address is Ridgeway Elementary, about three miles away. Since the previous year, the Child, then in second grade, had been attending Waugh Chapel Elementary in Gambrills, which, as previously noted, is approximately five miles from Father's residence.

Father subsequently conceded that his residence is not in the same Anne Arundel school district as Waugh Chapel Elementary, but claimed that he did not intend the MSA provision regarding his move to mean that a change of custody would occur if the parties lived in the same "school zoning." When the court clarified whether Father viewed the provision as encompassing any move into Anne Arundel County, Father responded, "Correct."

During cross-examination by Mother, Father stated that his two-year lease would expire on October 31, 2021. Father explained that he lived in the residence with Brittany, his daughter from a previous marriage, as well as Brittany's boyfriend, and Father's girlfriend.

Father admitted that before he picked this residence in Anne Arundel County, Mother informed him that the Child would attend Waugh Chapel Elementary. He

conceded that for the Child to attend that school from his house, he "would have to take her either to the bus stop" located at Mother's residence or "directly to school."

Father then called Mother to testify. Mother claimed that she always had primary responsibility for the Child's care and daily activities. She agreed with Father that her concerns about Father's "lack of care" were among the issues that "led to [their] divorce."[1]

Mother confirmed that they both agreed to the MSA and that upon Father's request, she added the "same school district" custody and support provisions. When Father told her about moving to the Bradley Street address, she did not inform him that it was not within the same school district as Waugh Chapel Elementary because Father "knew the guidelines going into that choice, and . . . still made that adult choice on [his] own." Mother also rejected Father's request to register the Child at Waugh Chapel Elementary using his new address, because she viewed that as an "illegal" and manipulative method to satisfy the "same school district" provision, thus "tak[ing] away [Mother's] rights as the primary custodial parent."

Mother testified that for at least a year prior to the judgment becoming final in October 2019, Father "rarely" exercised his visitation rights to see the Child. Once the judgment was entered providing for a reduction in child support if the parties shared physical custody within the same school district, however, "all of a sudden, he wanted 50

[1] The MSA states that Mother and Father "mutually" agreed to permanently separate "as a result of [Father's] adultery[.]"

percent time." In Mother's view, such "a huge change . . . from what [the Child] was used to" was not "in the [Child's] best interest."

During the COVID-19 pandemic, Mother agreed to adjust the visitation schedule in order to reduce the health risks to the Child by adding an overnight to Father's weekend visitations in lieu of his Tuesday evening visits, so as to "limit her back and forth between the home[s.]" Nevertheless, the Child contracted COVID-19 days after Father and his entire household tested positive for the virus.

Based on Mother's continuing concerns about Father's parenting, she believed that changing custody to evenly split the Child's time with each parent would be against the Child's best interests. In addition to her concerns about Father's availability, she testified that Father consistently lied about his work schedule and about how often he was with the Child, and that Father would consistently feed the Child pizza Lunchables as opposed to more nutritious meals. Although Mother did not contend there was any reason to report Father to social services, she maintained that their parenting differences warranted maintaining the current custody and visitation arrangement for the Child's best interest.

The Court's Order

After Father concluded his case, the court determined that no further evidence was necessary in order to rule on the petition to modify custody. Ruling from the bench, the court denied Father's petition. First, the court rejected Father's interpretation of the term "same school district" for purposes of the MSA. Then, after noting that Father had accumulated child support arrearages that suggested "a lack of being a good parent," the

court inferred from the evidence that Father simply inserted the "same school district" language into the MSA as a means to "try and get a change in custody" and a reduction in child support. Although the court recognized that Father's move to Anne Arundel County constituted a material change in circumstances, the court nevertheless found that Father failed to provide sufficient evidence to show that a change in custody would serve the Child's best interests. Father noted this timely appeal.

MOTION TO DISMISS

Mother, now represented by appellate counsel, moves to dismiss the appeal "as a matter of law" because Father did not file a record extract, consult with Mother's counsel about any such extract, or even cite to one in his brief. *See* Md. Rules 8-501(a), 8-501(d)(1), 8-502(c), 8-503(b). Mother contends she "was prejudiced and burdened by having to respond to the appeal and create a record extract and . . . appendix[,]" alleging that the effect "caused hardship and significant additional attorney fees."

Although Father, also now represented by appellate counsel, filed an appendix with his reply brief, we agree with Mother that he failed to timely comply with Md. Rule 8-501 in preparing and filing a record extract.[2] Father's omission made it necessary for Mother to prepare and file a record extract as an appendix to her brief.

[2] With exceptions not relevant here, Rule 8-501(a) provides that it is an appellant's duty to "prepare and file a record extract . . . in every civil case in the Court of Special Appeals[,]" to "be included as an attachment to appellant's brief, or filed as a separate volume with the brief." Rule 8-501(c) provides that "The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal," including "the circuit court docket entries, the judgment appealed (Continued)

In these circumstances, Md. Rule 8-501(m) contemplates remedial measures short of dismissal, providing in pertinent part:

> Ordinarily, an appeal will not be dismissed for failure to file a record extract in compliance with this Rule. If a record extract is not filed within the time prescribed by Rule 8-502, . . . the appellate court may direct the filing of a proper record extract within a specified time and, subject to Rule 8-607, may require a non-complying attorney or unrepresented party to advance all or part of the cost of printing the extract. The appellate court may dismiss the appeal for non-compliance with an order entered under this section.

This rule reflects that, "[f]or an appellate court, the 'preferred alternative' is always 'to reach a decision on the merits of the case[.]'" *McAllister v. McAllister*, 218 Md. App. 386, 399 (2014) (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007)). "Consequently, this Court typically will not dismiss an appeal, even in the face of noncompliance with Rule 8-501, unless the appellee sustains prejudice." *Id*.

Because Mother's record extract (and Father's belatedly filed appendix) include everything necessary to review the challenged order, dismissal of this appeal would penalize Father for what appears to be his counsel's mistake which, ultimately, does not

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from, and such other parts of the record as are designated by the parties pursuant to" their obligation to agree, "[w]henever possible," on the parts of the record to be included. Md. Rule 8-501(c)-(d). Appellants are required to serve on the appellee, "[w]ithin 15 days after the filing of the record in the appellate court, . . . a statement of those parts of the record that the appellant proposes to include in the record extract" and to resolve disputes on what to include according to timelines and standards set forth in the rule. *See* Md. Rule 8-501(d). When an appellant's "record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief together with a statement of the reasons for the additional part." *See* Md. Rule 8-501(e). In that event, "[t]he cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607" which states that, "[t]he Court, by order, may allocate costs among the parties."

impede our review. Consequently, we conclude that the preferred remedy here is to deny the motion to dismiss but assess the costs of compiling and printing the record extract filed by Mother. *Cf., e.g., id*. ("Here, Ms. McAllister has eliminated any prejudice by diligently supplying the omitted material in the appendix to her brief. Accordingly, we shall not dismiss the appeal. We shall, however, 'impose the cost of printing the omitted material on the appellant.'" (quoting *Kemp-Pontiac-Cadillac, Inc. v. S & M Constr. Co., Inc*., 33 Md. App. 516, 524 (1976))); *Reid v. Balt. Life Ins. Co*., 127 Md. App. 536, 547 (1999) (holding that although "we deny the motion to dismiss because of the absence of prejudice" given that appellees were able to file an appendix containing the relevant material, "we shall assess the costs associated with the creation of appellees' appendix to appellant").

STANDARDS GOVERNING MODIFICATION OF CHILD CUSTODY

When evaluating a petition to modify custody of a minor child, a circuit court follows a two-step inquiry. *See Santo v. Santo*, 448 Md. 620, 639 (2016). First, the court must determine whether there has been a material change in circumstances since the last operative custody order. *Id*. A change is material when it "affects the welfare of the child." *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012).

"Second, if the court determines there has been a material change in circumstance, then it proceeds to consider the best interests of the child, evaluating guiding factors laid out in [*Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977)], and [*Taylor v. Taylor*, 306 Md. 290 (1986)]." *Jose v. Jose*, 237 Md. App. 588, 599 (2018).

"*Sanders* provided ten non-exclusive factors"[3] and "*Taylor* provided thirteen factors, some of which overlap the *Sanders* factors[.]"[4] *Id*. at 599-600. "When considering the *Sanders*-*Taylor* factors, the trial court should examine 'the totality of the situation in the alternative

[3] The best interest factors identified in *Sanders* are as follows:

1. Fitness of the parents;
2. Character and reputation of the parties;
3. Desire of the natural parents and agreements between the parties;
4. Potentiality of maintaining natural family relations;
5. Preference of the child;
6. Material opportunities affecting the future life of the child;
7. Age, health and sex of the child;
8. Residences of parents and opportunity for visitation;
9. Length of separation from the natural parents;
10. Prior voluntary abandonment or surrender.

Jose, 237 Md. App. at 599-600 (citing *Sanders*, 38 Md. App. at 420).

[4] The best interest factors identified in *Taylor* are:

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. Impact on State or Federal Assistance;
13. Benefit to Parents.

Jose, 237 Md. App. at 600 (citing *Taylor*, 306 Md. at 304-11).

environments' and avoid focusing on or weighing any single factor to the exclusion of all others." *Id*. at 600 (quoting *Best v. Best*, 93 Md. App. 644, 656 (1992)). The party seeking modification bears the burden of showing by a preponderance of the evidence both a material change in circumstances and that changing custody is in the child's best interest. *Gillespie*, 206 Md. App. at 171-72.

This Court reviews a child custody determination by applying "three interrelated standards of review." *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). Those three standards are as follows:

> 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. (quoting *In re Yve S*., 373 Md. at 586). An abuse of discretion occurs "when no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles." *Santo*, 448 Md. at 625-26 (internal quotation marks omitted) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). "This standard of review accounts for the trial court's unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Id*. at 625 (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)).

DISCUSSION

Father contends that the circuit court erred and abused its discretion in (1) limiting the scope of the hearing to the issue of the Child's school district; and (2) not considering the best interest factors. We address each challenge in turn, explaining why we conclude the circuit court did not err or abuse its discretion.[5]

I. SCOPE OF HEARING CHALLENGE

Father first contends that the circuit court erred by restricting the scope of the modification hearing to the school district issue. Conceding that he "limited his direct testimony primarily to the issue of the school districts[,]" Father claims this was because "[h]e was not given the chance to testify about the custody factors." In support, Father cites the court's statement at the outset of the hearing that in order to trigger the "same school district" provision on changing custody, he would have "to persuade the [c]ourt, by a preponderance of the evidence, that he now lives in the same school district as [Mother]."

Mother responds that the court did not limit the hearing to school district or proximity issues and that Father did not object to the court's prefatory remark. In her view, the court "systematically reviewed" Father's petition "as a contract to first determine what the Parties had agreed to before determining whether there was a contract defense and if

[5] Confusingly, in his brief, Father captions his second argument as "Did the [c]ourt err in not finding a material change of circumstances?" The record clearly shows, however, that the court did find that his move constituted a material change in circumstances: "Now the fact that [Father] moved to Anne Arundel County from his prior residence is, in essence, a material change in circumstance, as is the fact he is only five miles from where [Mother] is now living."

the inquiry had to move forward as a best interest analysis." She further states that the court gave Father ample opportunity to present any evidence he wished, but that Father chose to focus his testimony and evidence on demonstrating that under the terms of the MSA, he was entitled to shared custody.

We agree with Mother that the circuit court did not limit the scope of the hearing to the school district issue. Father's selective reading of the transcript ignores the broader discussion during which the court made the cited comment. When read in context, the court's remark did not preemptively restrict Father's testimony to the school district issue. Instead, at the outset of the hearing, the court merely explained to both parties that it "primarily" needed to address Father's request to modify custody under the MSA based on his move to a residence near Mother and the Child.

Nor did the court subsequently limit the evidence or argument presented by Father. To the contrary, the court did not interrupt Father or Mother as they questioned each other and Brittany about matters other than the Child's school district, including Father's past and current relationship with the Child, the members of Father's household, and Father's past and current employment. Moreover, the court itself asked Father questions that went beyond the Child's school district, regarding the date of his move, the length of his lease, who else was living with him, and the distances from his residence to Mother's house and the Child's school.

After reviewing the court's prefatory remarks in the context of the full transcript, we conclude that the only restriction on the scope of the hearing was on evidence and

argument concerning the parties' dispute over accrued child support. Indeed, after thanking Father for answering preliminary questions, the court stated, "Please feel free at this time to tell me anything else you want to about this situation." Father responded, "Actually, I think your questions may have covered just about everything I was going to say, Your Honor."

After Mother cross-examined Father, the court again invited him to present any other information that he wanted the court to know, prompting Father to add that he had a two-year lease and had "been looking for other homes" because he "would have liked to have had . . . a pool and a big tub in the master suite."

When Father then stated that he had concluded his case, the court advised him that he could call Mother to testify, and Father did so, questioning Mother without limitation concerning topics that went beyond the Child's school district and the proximity of Father's new residence. Before Mother took the stand, the court assured Father, "I will be here as long as it takes. I will hear any evidence that is necessary for me to render a decision."

At the conclusion of Father's case, the court again asked Father, "Have you presented all the evidence and told me everything you want to tell me about your request to modify custody?" Father replied, "Yes, sir, Your Honor."

The record amply refutes Father's contention that the court curtailed his opportunity to present evidence and argument in a manner that restricted the hearing to the Child's school district. To the contrary, the court repeatedly offered Father the time and latitude to present evidence and argument on any matter he wanted the court to consider.

Consequently, we reject Father's contention that the court improperly limited the scope of the modification hearing.

II. BEST INTERESTS ANALYSIS

Finally, we turn to Father's argument that the court erred in its best interests analysis. As noted above, the trial court found that Father's move constituted a material change in circumstances, but that Father ultimately failed to provide sufficient evidence to sustain his burden that a change in custody would serve the Child's best interests. For purposes of this appeal, the court's decision may be divided into two parts: First, in reaching its decision, the court rejected Father's argument that the "same school district" term in the MSA should be construed as the same "county." Second, the court construed Father's motivation for moving to Anne Arundel County as a surreptitious way to streamline the process for modifying custody.

Father first challenges the circuit court's ruling that his move did not trigger an automatic change in custody pursuant to the "same school district" provision in the MSA. In his view, the language in the MSA providing for shared physical custody "if the parties reside in the same school district" applies equally "if the parties reside in the same county."

We conclude that the circuit court did not err in construing the MSA as an agreement to equally share custody and child support obligations if and when the Child could attend the same school from both parents' residences. "The interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review." *Spacesaver Sys., Inc. v. Adam*, 440 Md. 1, 7 (2014) (quoting *Towson Univ.*

v. Conte, 348 Md. 68, 78 (2004)). "Maryland courts take an 'objective' approach to the interpretation of contracts" by "giv[ing] effect to the plain meaning of the contract, read objectively, regardless of the parties' subjective intent at the time of contract formation." *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 506 (2021) (first citing *Cochran v. Norkunas*, 398 Md. 1, 17 (2007); then citing *Myers v. Kayhoe*, 391 Md. 188, 198 (2006)).

"[W]hen the contract language is plain and unambiguous, 'the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.'" *Id*. at 507 (quoting *Dennis v. Fire & Police Emps.' Ret. Sys*., 390 Md. 639, 656-57 (2006)). "Ambiguity arises when a term of a contract, as viewed in the context of the entire contract and from the perspective of a reasonable person in the position of the parties, is susceptible of more than one meaning." *Id*. (citing *Ocean Petroleum, Co., Inc. v. Yanek*, 416 Md. 74, 87 (2010)).

Here, the court interpreted the term "same school district" according to these canons of construction, rejecting Father's argument that a reasonable person would understand that term to encompass an entire county school system. Taking judicial notice of the "very large" area and problematic "waterways" of Anne Arundel County, the court declined to define "same school district" to mean "the same county." Instead, the court reasonably concluded that, "[t]o say just because two parties lived in the same county that would mean . . . the same [school] district justifying a change in custody makes absolutely no sense whatsoever" given the potential distance and time between where two parents could be living and where the Child was attending school. Having correctly applied the law to

resolve any ambiguity in the term "same school district," the circuit did not err or abuse its discretion in ruling that Father's move to an Anne Arundel County residence located in a different school district than Waugh Chapel Elementary did not trigger the MSA's joint custody provision.

Father further argues that the court "focused more on the language of the agreement" than on "the best interest of the child." Separate and distinct from its construction of the "same school district" provision of the MSA, the court also concluded that Father failed to present sufficient evidence to satisfy his evidentiary burden that shared custody would be in the Child's best interest. Contrary to Father's contention, the court did not treat modification as a strict matter of contract law based on the school district provision in the MSA.

To be sure, courts "cannot be handcuffed in the exercise of [their] duty to act in the best interests of a child by any understanding between the parents." *Stancill v. Stancill*, 286 Md. 530, 535 (1979) (citing *Glading v. Furman*, 282 Md. 200, 208 (1978)); *see generally* Md. Code (2019 Repl. Vol.), § 8-103(a) of the Family Law Article ("The court may modify any provision of a[n] . . . agreement, or settlement with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child.").

Nevertheless, this Court has made clear that

> [t]hat does not mean . . . that the agreement between the parents is meaningless or that it may be casually disregarded as the court searches elsewhere for what is in the best interest of the child. Absent some defect that would make the agreement invalid or unenforceable, it ordinarily should

> be given effect; the court should presume, in other words, at least in the absence of compelling evidence to the contrary, that the decision or resolution reached agreeably by the parents is in the best interest of their child. Such a presumption simply gives credence to what we think is the soundly based supposition that, while parents, like all humans, often make mistakes, they will not ordinarily agree in writing to act in a manner detrimental to their children.

Ruppert v. Fish, 84 Md. App. 665, 674-75 (1990).

Here, the court considered the parents' agreement regarding custody and support, and recognized that Father's move constituted a material change in circumstance. Yet the court found the evidence and argument presented by Father insufficient to rebut the reasonable presumption that the custody agreement that the parties reached—and which the court adopted in its judgment—continued to serve the Child's best interests. *See id.* We are not persuaded that the court erred or abused its discretion in doing so.

After affording both parents wide latitude in presenting evidence and argument, the court found that Father's request for modification was narrowly predicated on the MSA and the proximity of his residence to the Child's residence. Although the "agreement[] between the parties" and "the geographic proximity of the parents' homes" are pertinent factors in a best interest analysis, *see Jose*, 237 Md. App. at 599-600, the court here concluded that, beyond those two factors, Father did not present sufficient evidence that any other factors made shared custody in the Child's best interest. Finding that Father failed to satisfy his burden of presenting "sufficient affirmative evidence" to establish that a change in custody would be in the Child's best interest, the court correctly noted that "[t]he evidence in this case and the pleadings . . . mainly focused on the narrowing of the

distance between where the parties reside." We cannot say the court erred or abused its discretion in failing to address factors that Father himself failed to cite as grounds for modifying custody, such as the "[p]otentiality of maintaining natural family relations," any "[m]aterial opportunities affecting the future life of the child [,]" the ability of the parents to communicate and make shared decisions impacting the child's welfare, or the employment demands of the parents. *Id.* Indeed, because Father's petition to modify was filed a mere two months after entry of the operative custody order, we think it unlikely that the other *Sanders-Taylor* factors would have materially changed during that short time period.

Lastly, we reject Father's contention that the evidence and concerns cited by the court as grounds for denying modification are "suspect." In particular, with respect to the court's determination that Father's arrearage on child support "shows a lack of being a good parent to help support the child[,]" Father contends that the court violated the "long settled law in Maryland that child access is independent of payment (or non-payment) of child support[,]" ignored the "evidence that his financial situation had changed[,]" and otherwise was "not guided by the best interest of the child standard."

We disagree. To be sure, as Father correctly notes in his brief, the Court of Appeals has recognized "the detrimental effect of the withholding of child support[,]" and that it is well-established that "the nonpayment of child support, absent other circumstances, is not sufficient cause to deny companionship with the child." *Stancill*, 286 Md. at 537. Here, however, the circuit court did not deny Father's petition to modify custody and child

support based on Father's arrearages. Although the court observed that Father's failure to provide financial support for the Child did not reflect favorably on his parenting, the court used the accumulation of arrearages to support its inference that Father had a "preconceived" financial incentive under the terms of the MSA to move to a residence where he could obtain shared custody and thereby avoid paying child support:

> In addition, Mr. Stock is in arrearage on child support. That doesn't bode well for a party who is requesting the [c]ourt to change custody. It shows a lack of being a good parent to help support the child.
>
> And quite frankly, I infer from the evidence in this case that when [Father] placed this provision in the [MSA], it was his preconceived intention of moving into the county with [Mother] and using that as a basis to try and get a change in custody.

Read in its proper context, the court did not punish Father for his delinquent child support obligation; the court used that and other evidence to construe Father's actions of moving to Anne Arundel County approximately ten days after entry of the divorce judgment to infer that at least a part of Father's motive in seeking a modification of custody related to the concomitant reduction in child support if the court awarded shared physical custody. We cannot say that this finding was clearly erroneous. *See J.A.B.*, 250 Md. App. at 247.

Moreover, the court made clear that the basis for its decision was the lack of evidence to warrant a change in custody:

> A reduction in distance between the parties' residence may qualify for a material change and does qualify when one party moves from one jurisdiction to another. But the change in distance between the living arrangements of the parties is not an automatic basis to change the custody.

> *The* [*c*]*ourt needs to have affirmative, positive evidence that this would be in the best interest of the child, and I don't have that*.

(Emphasis added).

Based on this record, we hold that the court did not err or abuse its discretion in concluding that Father failed to meet his burden of proving that modification of custody would be in the Child's best interest.

APPELLEE'S MOTION TO DISMISS APPEAL IS DENIED. JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT, INCLUDING ANY COSTS INCURRED BY APPELLEE RELATED TO PRODUCTION OF A RECORD EXTRACT.