Circuit Court for Anne Arundel County
Case No. 02-C-12-167342

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 416

September Term, 2017

ROSE C. MOORE

v.

MATTHEW J. MOORE

Nazarian,
Shaw Geter,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Nazarian, J.

Filed: February 23, 2018

This is an appeal from an April 12, 2017 order by the Circuit Court for Anne Arundel County denying a motion to alter or amend a decision denying Rose Moore's ("Mother") motion to modify custody. The court found initially that Mother had failed to prove a material change in circumstances and that it wouldn't be in the child's best interest to modify the custody order, then declined to alter, amend, or reconsider that decision. The latter order is the only one before us, and we affirm.

I. BACKGROUND

Mother and her former husband, Matthew Moore ("Father") were divorced in 2008 in Hawaii, but they and their litigation later moved to Maryland, and they have battled ferociously over the custody of their two children, E and B, ever since. The longer-term history has been recounted in an earlier appeal, *see Moore v. Moore*, No. 1046, Sept. Term 2014 (Md. App. Dec. 8, 2015), and we will not reinvent that wheel here. It will suffice for present purposes that, when the case was last here, we affirmed two orders: an October 2013 order granting physical and legal custody to Father and a November 2013 order establishing a visitation schedule.

On June 10, 2016, Mother, representing herself, filed a motion to modify the November 2013 visitation order. She argued that the circuit court had "ignored" the children's best interest in deciding previously to award legal and physical custody to Father and that there had been a material change in circumstances. Mother also filed a petition asking the court to hold Father in contempt for allegedly failing to follow the November 2013 order prohibiting either party from disparaging the other. The court issued a show

cause order directing Father to appear, and set a combined contempt and merits hearing for January 6, 2017.[1]

After the hearing, the circuit court entered an order on January 19, 2017 denying Mother's petition to find Father in contempt and Mother's motion to modify custody because she "failed to prove a material change in circumstance after [the] November 2013 order, or that it would be in the best interest of either child to modify that order." Mother filed a motion to alter, amend, reconsider judgment, or new trial on February 5—more than ten days after the circuit court order—and requested a hearing. She contended that the court failed to give appropriate consideration to her arguments and evidence, that the court started the hearing late and took an hour-and-a-half break for lunch, and that the hearing "[p]rocedurally…was a mess." The circuit court denied the motion to alter or amend without a hearing on April 12, 2017. Mother filed a notice of appeal on May 11, 2017.

We will supply additional facts as necessary below.

[1] At the same time, Mother also filed an emergency motion alleging that (1) Father was leaving the children unsupervised at home for several hours at a time during the summer; (2) the children have access to pornography and inappropriate video games; and (3) Father intended to relocate with the children from Crofton to Bel Air. The parties appeared before a magistrate on June 29, 2016, after which the magistrate issued a report that concluded that Mother's allegations were insufficient to change custody immediately, but recommended a *pendente lite* hearing on custody, visitation, and child support. After the *pendente lite* hearing, the court temporarily suspended Mother's child support obligation and ordered, by consent of the parties, that the children "shall continue to attend Old Mill Middle School and shall reside at [Mother's] residence during school nights" and that Father "shall place parental controls on all of the children's electronic devices to preclude access to pornography . . . ."

II. DISCUSSION

Mother seeks to raise two issues on appeal,[2] but since her notice of appeal followed only the denial of the motion to alter or amend—which was filed more than ten but fewer than thirty days after the initial order, and thus didn't toll the appeal deadline for that order, *see* Md. Rule 2-534—we have before us only the question of whether the circuit court abused its discretion when it denied *that* motion. *Miller v. Mathias*, 428 Md. 419 (2012). To be sure, this requires us to assess the relative merits of the original motion, but only in the context of determining whether the circuit court abused its discretion in opting not to reverse itself.

A. The Circuit Court Did Not Abuse Its Discretion When It Declined To Revisit Its Decision Not To Find Father In Contempt.

First, Mother alleges the circuit court erred by finding Father not in contempt. Mother attempted to establish several examples of Father's disparagement of her at the hearing when she testified and cross-examined Father. After considering the evidence and testimony, the court ruled that "father's held not in contempt." Mother has not pointed to an error of law; she challenges the circuit court's finding, as a matter of fact, that Father

[2] Mother phrased her Questions Presented in her brief as follows:

> 1. Did the trial court's decision to deny a change in custody on the basis the court states Mother failed to prove a material change in circumstance following the 2013 order, or that the change would be in the best interest of either child go against Maryland Family law guidelines?
>
> 2. Should the Court have ruled disparagement did occur?

did not defy the court's previous orders. Her arguments require us to review the evidence—testimonial and documentary—against a highly deferential standard. *Piper v. Layman*, 125 Md. App. 745, 754 (1999) ("When conflicting evidence is presented, we accept the facts as found by the hearing court unless it is shown that its findings are clearly erroneous."). She challenges the trial court's assessment of the evidence and testimony underlying that finding, but "[w]e leave the determination of credibility to the trial court, who has the opportunity to gauge and observe the witnesses' behavior and testimony during the trial." *Barton v. Hirshberg*, 137 Md. App. 1, 21 (2001) (cleaned up). Because "the decision of whether to hold a party in contempt is vested in the trial court[']s]" discretion, *Droney v. Droney*, 102 Md. App. 672, 683 (1995), the trial court "is in a far better position" than we are to weigh the evidence and judge the credibility of the witnesses. *See In re Yve S.*, 373 Md. 551, 584 (2003). And in light of the fact that Mother offered no new arguments or evidence in her motion to alter or amend that compelled a different result, we discern no abuse of discretion in the court's decision to leave that decision intact.

B. The Circuit Court Did Not Abuse Its Discretion In Denying Mother's Motion To Amend, Alter, Reconsider Judgment, And/Or New Trial.

Mother contends *second* that the circuit court "ignored" several pieces of evidence and testimony when it denied her motion to alter or amend. The starting point for this analysis is the underlying decision to deny her motion to modify custody. She was required to prove that (1) there had been a material change in circumstances; and (2) that a different custody arrangement was in the best interest of the children, *see McMahon v. Piazze*, 162

Md. App. 588, 593–96 (2005), and the court found initially that she had not met these burdens:

> THE COURT: The Court has had an opportunity to review, consider the evidence and the testimony. Much of it was, in fact a great deal of it was absolutely of no help to the Court. And but that part that I found to be relevant and helpful leads me to the following findings and conclusions.
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> [W]ith regard to the Motion to Modify Custody, the Court finds that…[n]otwithstanding the several unpleasant exchanges, some of the unpleasant events, notwithstanding [F]ather's unexplained failure to be more active in the boys' school and inactive in his – therapy, I still come to the conclusion those things notwithstanding, that there has been no proof, I should say insufficient proof, of a change in circumstances since the 2013 order. So, that it would be in the best interest of either child to modify that.
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> So the Motion to Modify is denied. Evidence did not show material change in circumstance or that it would be in children's best interest to modify.

Mother's motion to alter or amend added nothing that could have altered the court's analysis. Although she promised to supplement her filing, she didn't, and her motion argued only that the court failed to give her contentions the weight she thought they deserved. And indeed, a large portion of the evidence Mother presented rehashed evidence she had submitted in connection with the previous custody determination, evidence the court had analyzed and rejected already. *See Moore*, No. 1046, slip op at 1.

We recognize that the paramount consideration here is the best interest of the children, and we have reviewed this record with that fully in mind. We see nothing here,

however, that could support a finding that the court abused its discretion in deciding not to reverse its finding that the "[e]vidence did not show [a] material change in circumstance or that it would be in [the] children's best interest to modify" the November 2013 order.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANT TO PAY COSTS.