Circuit Court for Washington County
Case No. C-21-FM-20-000953

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 562

September Term, 2022

L. L. G.

v.

D. G.

Beachley,
Shaw,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: November 21, 2022

In this appeal, we are asked to determine whether the Circuit Court for Washington County erred in denying a petition to modify a child custody order, based on a finding of no material change in circumstance. We perceive no error and shall affirm.

BACKGROUND

Appellant, L.L.G. ("Mother"), and Appellee, D.G. ("Father"), were married in 2010. Twin children were born to the parties in 2012.

In October 2020, Father filed for divorce. The parties, who were both self-represented, entered into a written settlement agreement that resolved issues relating to alimony; the distribution of property; and the care, custody, access, and support of the children. With respect to child custody, the agreement provides that Father will "tak[e] full responsibility" of the children and Mother "will have open visitation."

A divorce hearing was held before a magistrate on March 17, 2021. The magistrate recommended that the court: (1) grant Father a divorce from Mother; (2) award primary custody of the children to Father, and "reasonable rights of visitation" to Mother; and (3) award joint legal custody to the parties, with Father to have tie-breaking authority. Neither party filed exceptions to the magistrate's recommendations. On June 11, 2021, the court entered a Judgment of Absolute Divorce which adopted the magistrate's recommendations. With respect to physical custody, the judgment provides that Father is awarded primary physical custody "with reasonable rights of visitation granted to [Mother]."

On September 8, 2021, Father filed a *pro se* petition for contempt against Mother. Father claimed, among other things, that Mother picked up the children from camp, "without permission," took them to an "unknown place[,]" and "cut off" the children's

communication with Father. Father also alleged that Mother was "interfering" with the children's education by "pressuring" him to discontinue homeschooling. Father asked the court to "give clear concise paperwork" to help him enforce his "rights and legal responsibility."

On October 4, 2021, Father filed a second petition for contempt. Father claimed that, on September 28, 2021, Mother "showed up" to "take" the children without first communicating with him. Father alleged that he had to call 911 because Mother "would not leave[,]" and claimed that Mother took one of the children and did not return her for two days. Father asked the court for an order prohibiting Mother from taking the children without his knowledge and consent.

On October 5, 2021, Mother, through counsel, filed a motion to modify custody based on a material change in circumstances. Mother claimed Father had "unilaterally modifie[d]" her visitation such that she had "reduced or no access with the children." Mother also alleged that Father was not conferring with her on legal custody matters. Mother requested primary physical custody and sole legal custody, with Father to have access to the children on a schedule "to be determined by the court."

On October 6, 2021, the day after filing for modification, Mother filed an "Emergency Petition for Contempt" against Father. Mother claimed Father had "cut off communication completely" and would not allow her to see or speak to the children. The court held a remote hearing on December 29, 2021, on the parties' respective petitions for contempt. The hearing was not transcribed for the record.

On January 20, 2022, the court issued an order finding both parties in contempt of the order for custody in the Judgment of Absolute Divorce. The court modified that order by establishing the following visitation schedule: "[Mother] shall have the children on alternating weekends from Friday evening through Sunday evening and at any other times that the parties shall agree upon[.]"[1] In addition, the order granted visitation to Mother for five days at the end of March 2022, and on Mother's Day Weekend, 2022.

Modification Hearing

On May 3, 2022, the court held a hearing on Mother's motion to modify custody. Both parties were represented by counsel. The children were nine years old at the time of the hearing. Mother and Father were the only witnesses.[2]

Mother's Testimony

Mother testified that at the time of the divorce, she and Father verbally agreed she would have visitation every other weekend, from Friday evening to either Sunday evening or Monday morning. In addition, they agreed she would have the children from Tuesday evening to either Wednesday evening or Thursday morning. The parties followed that

[1] Pursuant to § 9-105 of the Family Law Article, upon a finding that "a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order[,]" the court may "modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order," consistent with the best interest of the child. *See also Dodson v. Dodson*, 380 Md. 438, 448 (2004) (stating that, as part of a contempt proceeding, a court may issue "ancillary orders for the purpose of facilitation compliance or encouraging a greater degree of compliance with court orders.")

[2] The only other evidence introduced during the hearing was a copy of text message exchanges between the parties.

schedule until June or July 2021. At that time, according to Mother, Father began to ignore her text messages and phone calls. Mother did not see the children for a period of three months.

Mother insisted that she did not "steal" one of the children from Father on September 28, 2021. She explained that she called and sent a text message to Father, but Father did not respond. Mother went to Father's house and knocked on the door. The children came to the door, followed by Father. One of the children went home with Mother. Two days later, there was a court hearing, the precise nature of which is not clear from the record on appeal. Mother was "advised by counsel" that she could "keep" the child "until after that court date." The hearing was held and Mother returned the child to Father that evening.

Mother was asked whether she "removed" the children from summer camp. Mother explained that it had been her weekend to have the children, and she advised Father by text message that she was going to pick them up from camp.

Mother stated that, after she filed her motion for modification, she was investigated by Child Protective Services ("CPS"). According to Mother, the complaint was "ruled out" and the investigation was "dropped."

Prior to the divorce, the children attended public school. At the beginning of the COVID-19 pandemic, the parties agreed that the children would be homeschooled by Father. At some point, after schools reopened, Mother felt that the children should return to school, for the "discipline" and the "structure" and "to be around other children." Father did not agree.

Mother said that Father did not respond to her request for information about the childrens' academic progress in the homeschooling program. According to Mother, Father also failed to notify her of routine dental and medical appointments and did not consult her before taking the children to a therapist.

Mother agreed that things had been "go[ing] well" between her and Father since the entry of the contempt order which established a schedule for visitation. When Mother was asked if the children had "adjusted well" to the schedule imposed by the court, Mother responded, "No." Mother did not testify about any issues or problems the children were having, however.

Father's Testimony

Father testified that, prior to the visitation schedule set forth in the contempt order, Mother repeatedly failed to return the children when promised. Father said that Mother "would show up [and] say she's gonna get ice cream with [them] or something," and then would not return the children until the next morning. According to Father, Mother picked up the children from camp "without permission."

Father stated that, following the incident on September 28, 2021, one of the children was "going through episodes like she wanted to die, like something was wrong with her mentally." Father took the child to "three emergency visits at the hospital." CPS "got involved" and evaluated the child. Father explained that he placed both children in therapy on the recommendation of the hospital and CPS. Each child was seen once a week for about three months. Father stated that he informed Mother by text message that the children were in therapy, and Mother told him that she "felt they needed it."

Father agreed there was a three-month period when Mother did not see the children. Father explained: "I made the decision 'cause it was recommended to me . . . that they not have contact with [Mother] until [an] investigation takes place of [sic] why . . . the children want to do harm to themselves." According to Father, after the court imposed the visitation schedule following the contempt hearing, the "strange symptoms [he] was seeing" in the children "were starting to fade away." Father stopped taking the children to therapy at that time because things were going "real well" and the children "seem[ed] more relaxed [and] happier[.] Father said it would be in the best interests of the children for Mother to continue to have alternating weekend visitation, as well as one night during the week, and for two full weeks during the summer. Father also proposed that the parties "split the holidays[,] like [they] have been."

Father testified that the homeschooling instruction he provided to the children was "better" than what they would receive in public school. According to Father, the children had been "struggling" in public school but were "learning more" through homeschooling. He explained that he had completed a homeschooling training program approved by the Washington County Board of Education, and that the children's progress is monitored by an evaluator appointed by the school to review the children's schoolwork and address any concerns. Father said the children had "scored exceptionally high" in the most recent evaluation.

Father stated that he usually lets the children tell Mother what they are learning, but he has also discussed the children's homeschooling progress with Mother and has told Mother she is welcome to review the children's schoolwork. He said that he gives Mother

at least two months' notice of the children's medical and dental appointments, and has the children call Mother afterward to "let [Mother] know how it went." According to Father, since the January 2022 order establishing a visitation schedule, communication between he and Mother had been generally "good[,]" and there was "very little conflict."

Parties' Arguments

Mother argued that there had been a change in circumstances because (1) she was not getting "reasonable access" to the children, as set forth in the judgment of divorce, and (2) Father had abused his tie-breaking authority on matters of legal custody by making decisions unilaterally, such as whether the children should be homeschooled, and whether they should receive therapy. Mother requested that the court "split up the [parenting] time" as the court deemed fit and award her sole legal custody.

Father asserted there was no material change in circumstance. He argued that there was no evidence that the children were being harmed academically and that, although communication between the parties had been lacking, it had improved since the court had imposed a visitation schedule in the contempt order. Father suggested the improvement was due to the fact that the parties' "duties and obligations are more clearly defined by a set schedule[.]"

Ruling on Modification

The court found no material change in circumstance with respect to the children's education that warranted a modification of the prior order with respect to legal custody. The court noted that the mutual agreement to homeschool the children was made prior to the divorce, and there was no evidence to suggest that Father's decision to continue

homeschooling had any negative impact on the children. The court found that the children demonstrated "self-motivation" "based on the fact that they did so well in their annual review." The court also did not find any material change in circumstance with respect to the issue of communication on matters of legal custody. The court did not accept that Father failed to inform Mother of medical and dental appointments, and found, instead, that essential information regarding the children's health was being conveyed.

With respect to physical custody, the court found that, since the order establishing a visitation schedule for Mother went into effect in January 2022, the "animosity has calmed down." The court remarked that the "most rewarding" evidence was that "very serious concerns" about the children's mental health had been "alleviated." The court explained: "[s]tability, security[,] knowing where they're going to be on what day with which parent, that matters." Ultimately, the court concluded that "the existing schedule set by [the contempt court] is working for the children" and there was "no reason to deviate" from that schedule "in the hopes . . . that a different schedule may work better."

On May 3, 2022, the court issued a written order denying Mother's motion for modification based on a finding that there was no material change in circumstance. On May 11, 2022, Mother filed a motion to alter or amend the judgment, which the court denied.

In this timely appeal, Mother presents one question for our review:

Did the circuit court err in finding that no material change in circumstances existed?

STANDARD OF REVIEW

Pursuant to Maryland Rule 8-131(c):

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Appellate review of a trial court's decision regarding child custody involves three interrelated standards. *J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 246 (2021). First, any factual findings are reviewed under the clearly erroneous standard of Rule 8-131(c). *Id*. If there is competent or material evidence in the record to support the court's conclusion, its findings are not clearly erroneous. *Id.* at 247. Second, any legal conclusions are reviewed de novo. *Id*. at 246. Finally, if the court's ultimate conclusion is "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. 551, 586 (2003)). "A decision will be reversed for an abuse of discretion only if it is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *In re J.J.*, 231 Md. App. 304, 345 (2016), *aff'd* 456 Md. 428 (2017) (quoting *Yve*, 373 Md. at 583-84).

DISCUSSION

A final custody order, including an order "entered by the consent and upon the agreement of the parties[,]" may be modified only if the court concludes that "there has been a material change in circumstances" since the prior custody determination. *McCready*

v. McCready, 323 Md. 476, 481, 483 (1991). The rule that a custody award may not be modified absent a material change in circumstances is "intended to preserve stability for the child and to prevent relitigation of the same issues." *McMahon v. Piazze*, 162 Md. App. 588, 596 (2005). The party moving for modification bears the burden of showing "'that there has been a material change in circumstances since the entry of the [prior] custody order and that it is now in the best interest of the child for custody to be changed.'" *Gillespie v. Gillespie*, 206 Md. App. 146, 171-72 (2012) (quoting *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008)).

Consideration of a motion to modify custody involves a two-step process. "First, the circuit court must assess whether there has been a 'material' change in circumstance." *McMahon*, 162 Md. App. at 594. "If a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody." *Id.* If no such material change has occurred, however, "the court's inquiry must cease." *Braun v. Headley*, 131 Md. App. 588, 610 (2000).

"In [the custody modification] context, the term 'material' relates to a change that may affect the welfare of the child." *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996); *accord Gillespie*, 206 Md. App. at 171. If there is "either no change or the change itself does not relate to the child's welfare, . . . there can be no consideration given to a modification of custody." *Wagner*, 109 Md. at 29.

Mother's sole argument on appeal is that the court erred in finding no material change in circumstance. Mother asserts that Father's "failure to consult with her on joint

legal custody issues and unilaterally changing her access schedule with the children constituted a material change in circumstance" because "[b]oth issues negatively affected the children[.]" Mother does not point to any evidence introduced at the modification hearing to support her contention.

We perceive no clear error in the court's findings. The court's determination that there was no material change of circumstance to warrant a change in legal custody was based on the court's findings that the parties' decision to homeschool the children was made during the marriage, the children were doing well academically, and there was no evidence of any negative impact on the children. With respect to Father's alleged failure to consult with Mother on matters of legal custody, the court credited Father's testimony and found that essential information was being conveyed.

As to Mother's request to modify physical custody, the parties agreed with the court that the January 2022 contempt order, by which Mother has visitation on alternating weekends "and any other times that the parties shall agree upon[,]" was the most recent order regarding physical custody and visitation. The court determined that the existing order provided much-needed stability in the children's lives and had eased tensions between the parties, and that there was no demonstrated reason to modify visitation.

The court's findings are substantiated by the evidence in the record before the court. Accordingly, the court did not err in determining that there was no material change in circumstance that warranted a modification of custody.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.