Circuit Court for Prince George's County
Case No.: CAD08-33135

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 837

September Term, 2022

L.Q.

v.

A.A.

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Berger, J.

Filed: May 5, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant, L.Q. ("Mother"), and appellee, A.A. ("Father"), are the parents of one minor child, "A". Mother appeals from an order of the Circuit Court for Prince George's County overruling her exceptions, and granting, in part, her motion to modify custody. Father did not file a brief or participate in this appeal.

Mother presents no issues for our review, however, we discern from her brief that she is dissatisfied with the court's order granting, in part, her motion to modify custody.

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

Following a Child in Need of Assistance ("CINA") hearing in 2009, the circuit court declared A to be CINA and placed him in the care and custody of Father. On May 18, 2010, the court entered an order enrolling the final custody order, providing primary physical and sole legal custody to Father with "liberal supervised visitation" to Mother, "as arranged by the parties."

On July 25, 2021, Mother filed a motion to modify custody and visitation. Father filed a responsive pleading. On March 14, 2022, a hearing was held before a family magistrate ("magistrate"). At the hearing, Father testified that, following the court's May 18, 2010 custody order, the parties' access to supervised visitation sites had been terminated due to Mother being argumentative and disruptive. As a result of getting "kicked out" of two supervised visitation sites, the parties "just took it on [their] own, so [A] could see his mom." For the past "six or seven years," the parties had arranged unsupervised visits for Mother on alternating weekends. Father further stated that after the parties' access to the supervised visitation sites was terminated, Mother made threats

towards Father and his family, called his place of employment, and broke into his house on two occasions. According to Father, A had informed him that Mother had been banned from stores in her neighborhood because "she argues with everybody."

Mother testified that she had not visited with A in fourteen months. Mother explained that her access to A had been halted two years ago when she learned that A had been communicating by phone with an individual named "Maria," whom Mother believed was a 60-year-old man. Mother had reported this information to the police and Child Protective Services. Mother stated that the situation was resolved because Father told the authorities "some kind of lies." Father disputed Mother's account of the situation and testified that "Maria" was a woman who had been living with him during the previous year.

Father further testified that he had agreed to let A stay with Mother for a week in November 2021, over the Thanksgiving holiday, and "she kept him until January." In order to secure A's return, Father "got the police involved." Consequently, Father discontinued Mother's alternating weekend visits with A. Father advised the magistrate that he did not want to return to a supervised visitation schedule, and he would only agree to resume Mother's unsupervised alternating weekend visits if Mother obtained a mental health evaluation.

In response, Mother stated that the hearing was not a trial, and she wanted a full trial, as she had not yet received interrogatory responses from Father. The magistrate advised Mother that the proceeding was, in fact, a trial. The magistrate asked Mother what change in circumstances warranted a modification of custody, and Mother responded that the change in circumstances was that she was working and had a home with a room for A.

The magistrate noted that documentation in the record confirmed that Mother had been "kicked out" of supervised visitation "because of [her] misbehavior."[1] The magistrate recommended that Mother's motion to modify custody be granted, in part, and that her visitation with A be modified from supervised visitation to visitation at Father's discretion as to time, duration and frequency.

On March 25, 2022, the court issued a Notice of Family Magistrate's Recommendations and Proposed Order. Mother filed exceptions, and a hearing on the exceptions was held on July 1, 2022. At the exceptions hearing, Mother stated that beginning in 2019, she had intermittent visits with A, occurring every two or three months. She argued that the magistrate erred in recommending that visits be scheduled at the sole discretion of Father. The court found that Mother had failed to demonstrate through the pleadings, exceptions, and testimony that the magistrate erred as a matter of law. Accordingly, the court denied Mother's exceptions. On July 1, 2022 the court entered an order adopting the magistrate's recommendations. The court granted Mother's motion to modify, in part, and ordered that Mother's access with A be at Father's sole discretion. On July 13, 2022, Mother noted an appeal.

[1] The record contains a notice from the circuit court to the parties dated May 18, 2010, notifying them that, pursuant to the Major Unusual Incident Report from April 26, 27 and 28, 2010, Mother's use of the Children's Rights Council facilities had been terminated. A copy of the Major Unusual Incident Report is attached to the notice.

DISCUSSION

Mother contends that the circuit court erred in granting, in part, her motion to modify custody by requiring that Mother's access to A be at the sole discretion of Father.[2]

Standard of Review

In reviewing a child custody determination, we employ three interrelated standards of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. Rule 8-131 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.

Reichert v. Hornbeck, 210 Md. App. 282, 304 (2013) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

This deferential standard of review "'accounts for the trial court's unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses.'"" *Gizzo v. Gesterman*, 245 Md. App. 168, 201 (2020) (citing *Santo v. Santo*, 448 Md. 620, 625 (2016) (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)). "The trial judge who 'sees the witnesses and the parties, [and] hears the testimony . . . is in a far better position

[2] In her brief, Mother challenges a number of prior orders of this Court and the circuit court, including the CINA orders. Because those orders are not properly before the Court in this appeal, we do not address Mother's complaints regarding those orders.

than the appellate court, which has only a [transcript] before it, to weigh the evidence and determine what disposition will best promote the welfare of the child.'" *Id*. (citing *Viamonte v. Viamonte*, 131 Md. App.151, 157 (2000) (quoting *Davis v. Davis*, 280 Md. 119, 125 (1977)).

In order for us to set aside a trial court's custody determination, we must conclude that the trial court's decision constituted an abuse of discretion. *Santo*, 448 Md. at 625. A court can abuse its discretion "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, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo*, 245 Md. App. at 201.

Analysis

In deciding whether modification of an existing custody order is warranted, the court must first determine whether a material change in circumstances has occurred since the matter was last before the trial court. *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005). A material change in circumstances is a change that "affects the welfare of the child." *Id*. (citation omitted). If the court determines there has been such a change, the court considers the best interests of the child. *Id*. The moving party has the burden of showing "'that there has been a material change in circumstances since the entry of the final 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)).

The court concluded that the parties' inability to comply with May 18, 2010 custody order of supervised visitation constituted a change in circumstances. In light of that finding, the court determined that it was in A's best interests that Mother's access to A be modified to unsupervised access at Father's sole discretion. Though Mother requested that she be awarded access to A because she had not seen him in fourteen months, she did not specify the custody arrangement she sought, nor did she request a specific access schedule. Indeed, the court's modification order merely formalized the informal custody agreement that the parties had been operating under for a number of years. Based on the evidence presented, we conclude that the court did not abuse its discretion in granting, in part, Mother's request for a modification of custody, and ordering that Mother's access to A be at Father's sole discretion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.