Circuit Court for Baltimore County
Case No. 03-C-17-010269

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0871

September Term, 2021

LINDSEY MCFARLAND

v.

MATTHEW HUFF

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Ripken, J.

Filed: March 4, 2022

Lindsey McFarland ("Mother") appeals from a July 27, 2021 order of the Circuit Court for Baltimore County modifying the custody schedule of her two minor children with Matthew Huff ("Father"). In a 2019 divorce judgment, the court awarded Mother and Father joint legal custody and shared physical custody of the children. At a January 13, 2021 hearing on Mother's motion to modify the custody order, her motion to modify child support, and Father's opposition to both, the parties reached an agreement to modify the custody schedule. At the conclusion of the hearing, the court instructed the parties to submit a proposed order reflecting the terms of their agreement. Mother filed a proposed order on March 8, 2021, but noted that Father did not join. Father also filed a proposed order on March 8. That proposed order was not consistent with Mother's proposed order. However, on July 16, 2021, Father filed a second proposed order, which was identical to Mother's March 8 proposed order. The circuit court entered the proposed order on July 27, 2021.

Mother asks us to reverse the circuit court order because there was no material change in circumstances to modify the custody schedule, the parties did not agree on the terms of the modification, and the order did not address her motion to modify child support. Mother also asks us to recalculate child support payments based on the evidence presented in the circuit court and to appoint a different attorney to represent the best interests of the children. We hold that the issues of Mother's request to modify child support payments and Mother's request to appoint a new attorney are not properly before us. And, for the reasons explained below, we further hold that the circuit court's July 27, 2021 order was a consent order that accurately reflected the parties' agreement. Hence, we shall dismiss this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2019, the Circuit Court for Baltimore County granted Mother and Father an absolute divorce. The divorce judgment awarded the parties joint legal custody and shared physical custody of the minor children. The shared physical custody was outlined in a regular access schedule, a holiday access schedule, and a summer access schedule. Because Mother is a member of the United States Navy, the divorce judgment also included a deployment access schedule, which provided that "any deployment or change of station of Mother will not be considered material change in circumstance." The deployment access schedule further provided that, "[i]f Mother is deployed or received change of station, . . . Mother will have all school breaks, holidays, and weekends, to the extent feasible with her military assignment and location[.]" The judgment also ordered Mother to pay Father child support in the amount of $1,000 per month.

In September 2019, Mother received orders from the Navy requiring her to relocate from Fort Meade, Maryland, to Norfolk, Virginia. The parties began following the deployment access schedule, and the children were with Mother during all breaks, holidays, and weekends. At the onset of the COVID-19 pandemic in March 2020, the parties discontinued using the access schedule. Father quarantined the minor children for the remainder of March 2020, and the minor children went to Mother on April 3, 2020. Father then asked Mother to keep the children with her in Norfolk to avoid exposing his newborn child to the COVID-19 virus. The children attended classes virtually, and the children remained with Mother until September 2020—the beginning of the next school year.

On June 9, 2020, in the Circuit Court for Baltimore County, Mother filed a motion to modify child custody seeking sole physical and legal custody of the children and a motion to modify child support.[1] Mother's motion to modify custody alleged that "the children are in great mental and emotional distress in an unsafe environment their education is being hindered and they are being denied assistance by [Father]. [Father] himself has also told [Mother] to keep the minor children for an extended period of time (greater than 2 months)." On December 10, 2020, Father filed an opposition to Mother's motions to modify child custody and child support. Father's answer to the motion to modify custody further requested an order granting him "at least one weekend per month during the school year, alternating holidays, and two weeks of summer vacation, despite the deployment schedule." On December 11, 2020, the court appointed a best interests of the child attorney ("BIA") for the minor children.

On December 16, 2020, the court held a hearing on both motions. To support her custody claims, Mother raised concerns with the children's attendance and performance in school, the cleanliness of Father's house, and the alleged marijuana use in Father's house. Father argued that there had been no material change in circumstances, but in the alternative, that the children should reside with him during school. Throughout the hearing,

[1] Mother requested a decrease in child support because her "military transfer has put her in a location where she receives less income." She stated that the children have been "solely in mother's care since April 3, 2020[,] [and] [t]he current calculations for support do not accurately represent the time spent with each parent." As discussed later, the circuit court has not made a ruling on the motion to modify child support.

the court instructed the parties to focus on the issue of whether there had been a material change in circumstances. The hearing was continued to resume on a later date.

On January 13, 2021, the hearing on the motions reconvened. The court again requested proffers of a material change in circumstances. Mother reasserted her claims from the prior hearing. Father stated that the only change was the automatic trigger for the deployment access schedule, and he reiterated his position that there had been no material change in circumstances. Father also asked the court to allow him weekends and vacation time during the regular access schedule, and to allow him holidays during the deployment access schedule. The BIA stated that he did not find sufficient evidence of any material change in circumstances and responded to each of Mother's contentions regarding a change in circumstances.

After hearing from Mother, Father, and the BIA, the court stated that, "I don't see where there's been a material change." The court indicated that the parties appeared to agree on changes to the access schedule. The following exchange occurred:

> THE COURT: Do we want to do for COVID, while school is virtual, do we want to do [Mother] keeps them for a week? I mean, isn't, school is virtual anyway, I mean, why not take advantage of this time right now where school is virtual for these kids.
>
> [MOTHER'S COUNSEL]: Are you talking about like swapping a weekend and week each month?
>
> THE COURT: Yeah.
>
> [MOTHER]: That's fine.
>
> [MOTHER'S COUNSEL]: We're fine with that.
>
> ***

[MOTHER'S COUNSEL]: And then, in the summer, some vacation for, well—

THE COURT: And then in the summer—

[MOTHER'S COUNSEL]: —time with [Father]—

***

THE COURT: . . . So, I would suggest that, you know, we give, we do at least a week a month to [Mother] while school is virtual okay? And then when, can we do a week or two weeks while school is virtual and then you all go back to the regular schedule when school is in person[.]

***

THE COURT: . . . So, why don't we do that? Okay? And then we revert back to the regular when, when school is in person except [Father] gets the one weekend a month and [Mother] gets a break. Okay? Do you want to do something about the holidays, alternating the holidays?

[MOTHER'S COUNSEL]: Sunday, the switch?

THE COURT: Well, for right now, while school is virtual, switch on Sunday.

[MOTHER]: Okay.

THE COURT: For alternating weeks.

[MOTHER]: Okay, so, like, okay.

THE COURT: Okay? When school is back in person, then it goes back to the old schedule except one change. [Father] gets one weekend a month and you want to make it the first weekend or the third weekend, something like that?

[MOTHER]: We could just (inaudible) based off what weekend he prefers that month, that would be fine.

THE COURT: Okay.

***

THE COURT: . . . You all pick your weekend okay? . . .

> [MOTHER]: Yeah.
>
> ***
>
> THE COURT: Did you all want to alternate the holidays or are we going to keep that the same?
>
> [MOTHER'S COUNSEL]: If we are taking a weekend away from [Mother], I think we prefer not to alternate—
>
> ***
>
> [MOTHER]: I already had that but if I'm going to lose time, that means I'm losing a percentage of the time I'm with them (inaudible).

At the conclusion of this discussion, the court directed the parties to draft a proposed order reflecting the agreed upon changes to the access schedule:

> [THE COURT]: All right. I'll have to think about that one for when we return. But go ahead and draft it up. Leave a blank, leave a blank for when we, for when it reverts back to in school and the weekend (inaudible). And, and when you submit the proposed Order, who is preparing this Order?
>
> [FATHER'S COUNSEL]: I will, Your Honor, I suppose.
>
> [THE COURT]: All right. Submit the proposed order, leave a blank for, you know, the return part of like what we're doing about the weekend a month and how we can kind of offset that, okay? Just remember to, to put in a space for that for me, please. Let me sleep on that. And you all are both welcome, when the proposed order is submitted, to submit any suggestions for my consideration. Okay?

On March 8, 2021, the court received a Proposed Order from Father requesting that it be the final order. The court also received a Proposed Order from Mother. Mother filed a Line with Proposed Order that noted the Court had requested a proposed order that would "include a provision modifying the access schedule to week-on, week-off until such time as the minor children of the parties resumed in-person classes." Mother's Line continued:

> The Court further ordered that the proposed order should include a blank space for the Court to write in its ruling on visitation after the minor children resumed in-person schooling. The Court further invited both parties to submit suggestions for what they would like the final visitation arrangement to look like. The parties and their counsel were unable to agree upon the contents of a proposed order. . . . [Father's proposed order] is not the Proposed Order requested by the Court and it was not approved by Counsel for [Mother]. Counsel for [Mother] filed the Proposed Order with the provisions ordered by this Court . . . . This Line includes [Mother's] suggested language for an Order[.]

On July 16, 2021, the court received a proposed order from Father that was identical to Mother's proposed order which she had submitted March 8, 2021. Father's Line with Second Proposed Order stated that "[b]ased on the matters heard during the hearing, [Father] respectfully requests that the Proposed Order filed in this matter with this Line, be the order that addresses the weekend, holiday, and vacation access."

On July 27, 2021, the court entered the proposed order. It contains the following provisions:

> **ORDERED** that the parties agree that . . .while the minor children are required to attend virtual schooling as a result of the COVID-19 pandemic, the parties' access schedule will be as follows:
>
> A. The parties will alternate access time with the Minor Children every other week with an exchange on Sundays;
>
> **ORDERED** that as agreed by the parties that once in person learning resumes, the parties' access schedule shall revert to the schedule stated in the Judgment of Absolute Divorce, but Father shall have one weekend per month (Friday to Sunday), and which shall be generally the second weekend of the month, being the second Friday in a month, if that second weekend happens to fall on a 3 day holiday weekend that would be Mother's, Father shall have the next immediate following weekend;
>
> **ORDERED** that Father shall also have two non-consecutive weeks (7 days in a week) of vacation time with the minor children during summer, which he shall select and notify Mother of by May 1 of each year;

ORDERED that the parties Holiday Access Schedule during the deployment schedule shall be as follows with the parties alternating the following holidays:

1. Father has every Father's Day;
2. Mother has every Mother's Day;
3. Father has Thanksgiving during odd years and Mother has Thanksgiving during [e]ven year[s]. (Thanksgiving shall be defined as when school lets out for the Holiday until Friday[)];
4. Mother has Spring Break every year;
5. Winter break will be split as follow[s];
    a. In odd years Mother will have Winter Break;
    b. In even years, Father shall have from the day school lets out for the Holiday until December 26, when Mother shall have access until January 1st;

ORDERED that all other provisions of the Judgment of Absolute Divorce of February [9], 2019, shall otherwise remain in full force and effect unless specifically modified herein.

The order was identical in every way to Mother's proposed order submitted March 8, 2021. Mother's timely appeal followed.

ISSUE PRESENTED FOR REVIEW

Mother presents five questions for review, which we combine and rephrase into a single question: whether the circuit court's order reflects the parties' agreement.[2] Prior to addressing this question, we clarify the scope of our appellate review and explain that two

[2] Mother presented her questions as follows:

I. Did the court err in ordering changes to the Judgement of Absolute Divorce without finding any material change to allow one?
II. Did the court err in finding change in circumstance for Child Support during the hearing but ordered nothing and changed nothing in the written order?
III. Did the court err in stating that there is an agreement between the parties when record shows otherwise?
IV. Did the court err in making changes without the use of *Taylor v. Taylor* best interest factors?
V. Did the court's appointed attorney show bias against Mother due to her location?

of Mother's requests for relief are not properly before this Court. For the reasons discussed below, we shall dismiss.

DISCUSSION

I. MOTHER'S REQUESTS TO MODIFY CHILD SUPPORT PAYMENTS AND TO APPOINT A NEW BEST INTERESTS ATTORNEY ARE NOT PROPERLY BEFORE THIS COURT.

In addition to challenging the circuit court's modification of the custody schedule, Mother asks this Court to (1) recalculate child support payments and (2) appoint a new best interests attorney. Neither request is properly before this Court.

"This Court has jurisdiction over an appeal when the appeal is taken from a final judgment or is otherwise permitted by law, and a timely notice of appeal was filed." *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 661 (2014). "Premature notices of appeal are generally of no force and effect." *Id.* at 661. Even where this Court has jurisdiction, "[a]n issue is properly before [the] Court only if [it] was properly presented to the trial court and decided by it in the first instance." *In re Adoption/Guardianship No. 2633*, 101 Md. App. 274, 287 (1994); *see* Md. Rule 8-131(a).

First, the circuit court has not ruled on Mother's motion to modify child support, which was filed at the same time as her motion to modify custody and was addressed at the hearing. Accordingly, we cannot review Mother's requested modification of child support payments. *See Lieberman v. Lieberman*, 81 Md. App. 575, 583 (1990) (noting that because no order was entered or directed to be entered concerning breach of contract and contempt claims raised at the same time as the child support modification on appeal, those claims were not reviewable). Mother's notice of appeal is premature as to modification of child

support.[3] *See* Md. Code, Courts and Judicial Proceedings Article § 12-301 (stating that "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court").

Second, our review of the record reveals that Mother did not argue before the circuit court—as she does on appeal—that the BIA should be disqualified for displaying bias against her. Mother did not challenge the BIA's appointment or object to his conduct at the hearing. Therefore, Mother's contentions regarding the BIA are not preserved for appellate review.[4]

II. THE JULY 27, 2021 ORDER IS A CONSENT ORDER THAT ACCURATELY REFLECTED THE PARTIES' AGREEMENT.

On appeal, Mother contends that the court erred when it modified the child custody order despite finding there had not been a material change in circumstances. Father first asserts that the July 27, 2021 order did not modify the custody schedule but merely filled in ambiguities in the deployment schedule. He also argues that the July 27, 2021 order should be treated as a consent order because Mother agreed to its terms. We conclude that

[3] We note that Mother filed a line requesting a ruling on her child support motion on the same day she noted her appeal. If mother is aggrieved by the circuit court's eventual ruling, she may seek review of that order at the appropriate time.

[4] We also note that Mother does not explain how the alleged bias relates to the BIA's execution of his duties. *See McAllister v. McAllister*, 218 Md. App. 386, 403–04 (2014) ("Because the BIA must advance a child's best interests in the midst of what are often bitter and contentious disputes between the child's parents, the BIA will frequently displease at least one, if not both, of the parties. . . . [If] a parent merely claims that a BIA should be disqualified from representing the child because the parent disproves of the BIA's representation, it is appropriate for courts to view the claims with some measure of skepticism." (citation omitted)).

the court's order was a consent order reflecting the parties' agreement on the record. Accordingly, the appeal must be dismissed.

We review the entry of a consent order for an abuse of discretion. *See Smith v. Luber*, 165 Md. App. 458, 468–70, 479 (2005). An abuse of discretion occurs when "no reasonable person would take the view adopted by the [trial] court; or when the court acts without any guiding rules or principles." *Id.* at 467 (internal quotation marks omitted) (quoting *Das v. Das*, 133 Md. App. 1, 15–16 (2000)). We afford the trial court "wide latitude" and will not reverse merely because "we would not have made the same ruling as the trial court." *Id.*

Ordinarily, in a contested motion to modify child custody, the trial court must find that there has been a material change in circumstances that affects the best interests of the children before it may modify the existing arrangement. *See Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). The terms of a child custody agreement can also be modified through the mutual consent of the parties. *Knott v. Knott*, 146 Md. App. 232, 257 (2002). In *Knott*, this Court explained that

> [t]here are essentially four ways to modify or change the terms of an agreement affecting the care, custody, education or support of a minor child. *The parties could mutually agree to change the terms*; the court could change the terms pursuant to § 8-103 of the Family Law Article; the court could change the terms pursuant to §§ 12-104 and 12-202 of the Family Law Article; or the court could change the terms pursuant to Rule 2-535.

Id. at 257–58 (emphasis added).

A consent order is "an agreement of the parties with respect to the resolution of the issues in the case or in settlement of the case, that has been embodied in a court order and

entered by the court, thus evidencing its acceptance by the court." *Long v. State*, 371 Md. 72, 82 (2002). It "memorializes the agreement of the parties, pursuant to which they have relinquished the right to litigate the controversy in exchange for a certain outcome and/or, perhaps, expedience." *Id*. at 83.

A consent order need not be formally labeled as such to be treated as one. *See Barnes v. Barnes*, 181 Md. App. 390, 407–409 (2008). Accordingly, when the parties "enter[] into an agreement in open court, which under Maryland law is binding upon the parties, intending that the court will subsequently reduce the agreement to a written order, the legal principles regarding consent orders are equally applicable to the resulting order." *Id.* at 409 (internal quotation marks omitted) (quoting *Smith*, 165 Md. App. at 470–71).

Because a consent order is the product of the mutual agreement of the parties, "the general rule is that no appeal lies from a consent order." *Barnes*, 181 Md. App. at 411; *Suter v. Stuckey*, 402 Md. 211, 224 (2007) ("The availability of appeal is limited to parties who are aggrieved by the final judgment. A party cannot be aggrieved by a judgment to which he or she acquiesced." (citations omitted)). The exception to this general rule is that an appeal will lie from a consent order only "where it was contended below that the 'consent judgment' was not, in fact, a consent judgment because the consent was coerced, the judgment exceeded the scope of consent, or for other reasons there was never any valid consent." *Chernick v. Chernick*, 327 Md. 470, 477 n.1 (1992). Therefore, the only question in an appeal from a consent order is whether the order was the product of consent. *Barnes*, 181 Md. App. at 411. "Our review is confined to whether the circuit court erred in entering

the Order. Put another way, we must examine from the record the core question of whether appellant consented to the terms of the Order." *Id*.

Although, the July 27, 2021 order modifying the child custody access schedule was not labeled as a consent order, it is apparent from the record that the parties agreed to the terms of the order. In reviewing the parties' verbal agreement during the January 13, 2021 hearing, the parties discussed four terms of access during the hearing. They verbally agreed to: (1) alternate physical custody on every other Sunday while the children were in virtual school; (2) allow Father two nonconsecutive weeks of vacation during the summer; and (3) revert to the schedule in the divorce judgment once in-person learning resumes, except that Father will have one weekend per month. Additionally, they discussed a fourth term, whether to clarify alternating holiday access during the deployment schedule. Mother agreed to the first three terms and agreed to resolve the fourth term outside the hearing. The final details would be agreed on in a proposed order.

The parties reached mutual agreement through the submission of proposed orders: the court effectively accepted Mother's proposed order after Father adopted that order in July 2021. Undoubtedly, the parties' initial proposed orders submitted on March 8, 2021, differed. Mother's proposed order included all of the terms discussed during the hearing (and attached a transcript of the hearing) and proposed a favorable schedule for alternating holidays in the deployment schedule. Father's first proposed order addressed only the first term and included a blank as to the third and fourth, making no comment on Mother's proposal. However, on July 16, 2021, Father acceded to Mother's proposal by submitting a proposed order that mirrored Mother's order verbatim. The court signed and entered that

order. Mother did not attempt to withdraw her proposed order while the motion was under advisement. Mother cannot now claim that she is aggrieved by the court's order or that she did not consent to the order. *See Suter*, 402 Md. at 224 ("A party cannot be aggrieved by a judgment to which he or she acquiesced.").

Furthermore, on appeal, Mother does not identify which specific terms she believes lacked mutual agreement. *See Smith*, 165 Md. App. at 471 (explaining that the appellant pointed to eight specific terms of the parties' agreement that the contested consent order modified or omitted). Mother states only that "these changes should not have happened since they were not needed as the court had found[]." But, as noted, a finding of material change is not required where the parties modify the order by consent. *See Knott*, 146 Md. App. at 257; *Barnes*, 181 Md. App. at 407. It is not clear how Mother contends the court erred in accepting her proposed order based on terms the parties agreed to in open court on the record.

By way of contrast, our opinion in *Smith v. Luber* is instructive. In *Smith v. Luber*, the parties sought a judgment of absolute divorce, and during the proceedings, the parties discussed their agreement on certain terms in open court. 165 Md. App. at 465. Thereafter, Smith and Luber could not agree on a proposed consent order to submit to the court that accurately reflected their agreement in open court. *Id.* at 465–66. Smith and Luber each submitted a proposed order to the court, and the court entered a consent judgment that did not reflect Smith's preferred terms. *Id.* at 466. Smith filed a motion to revise the order, but the court concluded that its order "accurately and properly reflected the agreement of the parties[.]" *Id.* Smith then appealed to this Court and argued that the order was entered

without his consent and did not accurate reflect the parties' agreement on the record. *Id.* at 467, 471. On appeal, this Court held that the trial court abused its discretion in entering its "consent order" because it inserted new terms that were not discussed or agreed on by the parties. *Id.* at 479.

Unlike *Smith v. Luber*, here, the court's order modifying the child custody schedule was based exclusively on the parties' agreement in open court during the January 13 hearing and on Mother's proposed order. Therefore, the court did not abuse its discretion in entering the July 27, 2021 order. *See Barnes*, 181 Md. App. at 416 ("Although [Mother] contends that the Order issued by the Court differs from the agreement set forth by the parties on the record, the language of the Order tracks the language of the agreement almost verbatim.").

We explained in *Barnes* that where an appellate court determines that a consent order is effective and supported by the parties' mutual agreement, the proper outcome is to dismiss the appeal. *Id.* at 418–20 ("Maryland adheres to the 'English practice' of dismissing an appeal where the order at issue on appeal is found to be a properly entered consent order."). Because the court's July 27, 2021 order accurately reflects the parties' agreement and the record supports the conclusion that Mother consented to its terms, we shall dismiss this appeal. *Id.* at 420 ("Because there is no evidence on the record to

contradict the conclusion that both parties voluntarily agreed to the terms of the Order, we shall dismiss the appeal.").

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY DISMISSED. COSTS TO BE PAID BY APPELLANT.