Circuit Court for Montgomery County
Case No. 93258FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1068

September Term, 2017

KARINE GRACE FOUTH-TCHOS

v.

PATRICE NSOGA MAHOB

Arthur,
Leahy,
Beachley,

JJ.

Opinion by Beachley, J.
Dissenting Opinion by Leahy, J.

Filed: May 23, 2018

On June 24, 2016, appellant Karine Grace Fouth-Tchos ("Mother") filed a petition to modify an April 2014 custody order. She sought to maintain and possess her minor children's passports, and to move with them to Germany. Appellee Patrice Nsoga Mahob ("Father") opposed the petition and requested a hearing.[1] Following a three-day hearing, the Circuit Court for Montgomery County denied Mother's petition. Mother filed a motion for reconsideration, which the court also denied. Mother timely appealed and presents three issues for our review:

1. Whether the trial court's refusal to permit Mother to relocate with the parties' children to resume her livelihood as a licensed doctor in Europe, or even travel with them overseas, impairs fundamental rights protected by the United States and Maryland [C]onstitutions?

2. Whether the trial court's decision that Mother had failed to show changed circumstances to modify the April 22, 2014 order satisfies strict scrutiny, especially where the evidence is unrebutted that the family had suffered financial hardships after the order, that Father had failed to maintain contacts with the children as anticipated by the order, and that Mother had cooperated with Father's extended summertime visitations in Ghana?

3. Did the trial court make clearly erroneous findings, err as a matter of law, or otherwise abuse its discretion, in its failure to determine whether Mother's relocation with the parties' children to resume her livelihood as a licensed doctor, or even to travel with them overseas, was in their best interests?

We perceive no error, and affirm.

[1] Father failed to file an appellate brief in this case.

FACTUAL AND PROCEDURAL BACKGROUND

Mother was born in Cameroon and became a medical doctor in Germany in 2000. She practiced internal medicine in both Germany and France from 2000 until 2004 when she met Father in Germany. The two agreed to marry and move to the United States where Father worked in Houston, Texas as a geophysicist. In January 2005, the couple married and subsequently had two children. They separated in 2008.

On March 25, 2010, a court in Fort Bend County, Texas, issued an "Agreed Final Decree of Divorce" (the "Texas Decree"). Of particular relevance here, the Texas Decree granted Mother "the exclusive right to designate the primary residence of the children, without regard to geographical location" as well as "the right to maintain possession of any passports of the children[.]" In March 2011, Mother moved to have the Texas Decree enrolled in Maryland.

After the Texas Decree was enrolled, Mother filed a petition to modify custody in the Circuit Court for Montgomery County, Maryland. In her petition, Mother claimed that the children's passports had expired, and sought an order that would allow her to obtain new passports without Father's permission.[2] She further claimed that she had received an employment offer to work as a physician in Germany, and indicated that she would use the new passports to move there with the children.

[2] According to Mother's petition, federal regulations prevented her from unilaterally obtaining new passports. Instead, she claimed that she would have needed either: (1) Father's cooperation during the application process, or (2) a court order specifically authorizing her to unilaterally obtain the passports.

Following a four-day trial, on April 22, 2014 (the "April 2014 Order"), the court ordered the parties to reapply and obtain valid passports for the children. Additionally, the court modified some terms from the Texas Decree. It ordered that the new passports be kept in the court registry, modifying Mother's exclusive right to maintain them. The court also denied Mother's request to move the children to Germany, and ordered that she could only designate the geographic residence of the children within the United States.

On June 24, 2016, Mother filed a petition to modify the April 2014 Order, alleging a material change in circumstance, and claiming, *inter alia*, that it would be in the children's best interests for her to relocate outside of the United States, as well as for her to maintain control of their passports. Father filed an opposition to Mother's petition to modify, and requested a hearing.

The court held a three-day hearing on Mother's petition to modify from May 2 through May 4, 2017. At the conclusion of the hearing, the trial court found no material change in circumstance since the issuance of the April 2014 Order, and denied Mother's petition to modify. The court issued its order denying Mother's petition on May 11, 2017, and four days later, Mother moved for reconsideration. The court denied Mother's motion for reconsideration, and Mother timely appealed.

DISCUSSION

I. Mother's Constitutional Arguments

Mother first argues on appeal that the trial court erred in denying her petition to modify custody because it improperly impaired her fundamental rights under the United

States and Maryland Constitutions. Specifically, Mother argues that the trial court's decision denying her request to relocate outside of the United States and its decision to restrict her access to the children's passports improperly interfered with her constitutional rights to: (1) raise her children, (2) maintain her family's integrity, (3) practice medicine, and (4) travel. Mother's appellate brief reads nearly identically to her motion to reconsider, which the trial court denied.[3]

At the outset, we note that Mother only raised her constitutional arguments in the motion for reconsideration. Mother did not allege that her constitutional rights had been impaired in her June 24, 2016 petition to modify the April 2014 Order. Similarly, during the three-day hearing, she did not argue that the trial court should grant her petition to modify because the April 2014 Order infringed upon her constitutional rights. Because the trial court only considered these constitutional arguments in the context of a motion for reconsideration, our task on appeal is simply to determine whether the court erred in denying that motion.

This Court has stated, "With respect to the denial of a Motion to Alter or Amend . . . the discretion of the trial judge is more than broad; it is virtually without limit." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). On raising an issue for the first time in such a motion, the Court of Appeals has noted,

[3] Mother could have raised these constitutional arguments prior to the issuance of the April 2014 Order. While we need not decide this issue, it is likely that these arguments are barred by the principle of *res judicata*.

> [A] motion to alter or amend under Rule 2-534 is not an occasion for a party to make arguments that it neglected to make initially. A circuit court does not abuse its discretion when it declines to entertain a legal argument made for the first time in a motion for reconsideration that could have, and should have, been made earlier, and consequently was waived.

Morton v. Schlotzhauer, 449 Md. 217, 232 n.10 (2016) (citation omitted).

Here, Mother's motion for reconsideration, filed within ten days of the trial court's order, constituted a motion to alter or amend pursuant to Rule 2-534. Because of the nearly limitless discretion afforded to trial courts on such motions, and because it is not an abuse of discretion to disregard an argument made for the first time in such a motion, we conclude that the court did not abuse its discretion in rejecting Mother's constitutional arguments by denying her motion for reconsideration.

II. Material Change in Circumstances

Next, Mother argues that the trial court erred in denying her petition to modify custody as provided in the April 2014 Order when it failed to find a material change in circumstance. In her petition to modify, Mother alleged the following material changes in circumstances: Father's failure to pay child support, Father's failure to abide by the access schedule, and the effects of impoverishment on the children due to Mother's inability to find employment.

In *In re Yve S.*, the Court of Appeals described the three interrelated standards of review for child custody determinations:

> [W]e point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] [i]f 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.

373 Md. 551, 586 (2003). As the reviewing court, we give due regard "to the opportunity of the lower court to judge the credibility of the witnesses." *Id*. at 584. We also recognize that,

> [I]t is within the sound discretion of the [court] to award custody according to the exigencies of each case, and as our decisions indicate, a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [court] because only [she] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [she] is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

Id. at 585-86.

When presented with a request to change custody, a court must engage in a two-step process. *McMahon v. Piazze*, 162 Md. App. 588, 593-94 (2005). "First, the circuit court must assess whether there has been a 'material' change in circumstance. 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*. at 594 (internal citations omitted). "A change in circumstances is 'material' only when it affects the welfare of the child." *Id.* We conclude that the trial court did not abuse its discretion in finding that there had been no material change in circumstance.

We first address Mother's argument that Father's failure to pay child support constituted a material change in circumstance. At trial, Father testified that he was current on his child support payments, and that he always paid by wage lien. Furthermore, he introduced into evidence numerous pay stubs to verify that child support was withheld from his pay. Although Father began working for a new company in July 2014, he did not learn until February 2015 that his child support payments were not being forwarded to Mother. He explained that because he was paid in British pounds sterling, the currency conversion caused problems with the direct transfer of his funds.

Regarding whether this "failure" to pay child support constituted a material change in circumstance, the court concluded,

> Any failure to pay child support in this case has long ago been corrected. There was extensive testimony about that by both sides which showed unequivocally that, yes, there was, in [Father's] words, a snafu. There was a problem with getting the child support from [Father's] employer in Africa or at the time I think in the United Kingdom. . . . [A]nd that, quite frankly, was not [Father's] fault. . . . Somehow it happened, but it was long ago corrected.
>
> [Father] testified . . . that he is . . . up-to-date with his child support and there was no evidence presented that suggests he is not. So the [c]ourt does not find that there is a failure to pay child support in this case such that it is a material change in circumstance.

The record demonstrates that Father did not fail to pay child support. Rather, due to problems with currency conversion, Mother did not timely receive the funds. The court did not err in concluding that Father did not fail to pay child support.

Mother's second allegation of a material change in circumstance is that Father failed to abide by the access schedule. In her brief, Mother contends that the trial court erred by

disregarding Father's responsibility to maintain contact with the children, particularly through Skype. The evidence, however, shows that since 2015, Father has physically spent more time than he previously had with his children. Father testified that, although he was unable to visit with the children in the summer of 2014, he did exercise summer visitation in 2015 and 2016.

The court soundly rejected Mother's contention that Father had failed to abide by the access schedule. It concluded,

> There really has been no change in access other than [Father] has physically seen the children more by way of his summer visitations over the last two years. Perhaps the Skype sessions that have been discussed at length in this hearing have been less frequent, perhaps they have been less in duration when they do occur, *but that is not really a material change affecting the welfare of the children. Nothing at all presented on welfare of the children or how their best interests have been materially impacted detrimentally has been shown to this [c]ourt*.

(Emphasis added). On this record, the court did not err when it found no material change in circumstance regarding Father's involvement with the children.

Finally, Mother argues that the court erred in finding no material change in circumstance regarding the alleged financial hardships stemming from her inability to obtain employment and the reduction in child support. The court, however, found that the children were not struggling due to poverty. Instead, it found that the family lived "in a safe and nourishing home in an upper-middle class neighborhood in Montgomery County, in North Bethesda, in a high-rise building which advertises itself as a luxury high-rise." Additionally, the court found that "Despite the fact that [Mother] has failed to gain

employment . . . [she] and her children are living in suitable and safe housing." Regarding Mother's employment situation, the court concluded

> [Mother's] inability to find employment, while highly suspicious, remains unchanged. It is the [c]ourt's opinion that [Mother's] lack of employment is completely due to her own decisions and her own actions. I cannot for one minute believe that there is not suitable employment for [Mother] in this country, in this area of Washington, D.C. It is simply not believable. To suggest that employment she could get here in the Washington, D.C. area is somehow beneath her education level is absurd and insulting.

Because the court found that: (1) the children were doing well and lived in a safe and stable home, and (2) that Mother's unemployment "remain[ed] unchanged" from the April 2014 Order, it concluded that there was no material change in circumstance sufficient to modify custody.

The record supports the court's conclusion. Mother's own testimony did not portray the children as struggling due to poverty.[4] Instead, Mother testified that the children were involved in many afterschool activities, played sports, and received exemplary grades in school. Furthermore, at the time of the hearing, Mother testified that since May 2016, she and the children had been living in the same apartment building.

Regarding Mother's inability to find suitable employment, the court heard testimony from Lianne Friedman, an expert in the fields of vocational rehabilitation counseling, vocational consulting, employability, and earning capacity. At the hearing, Ms. Friedman testified that Mother had not "done a good faith job search effort because of the . . . gaps

[4] In rendering its decision, the court noted that "[Mother's] counsel himself agreed in closing arguments that the children were thriving."

in her job search, the time spent in her job search . . . . It's not rigorous enough. She's not doing enough." Ms. Friedman told the court,

> [Mother] is applying for jobs because there are jobs available, but she's not applying enough. She's not spending enough time. It should only take someone at most six to nine months of a good faith job search effort to find a position if you're doing what you're supposed to be doing and spending the time you're supposed to be spending and she has not been doing that. I can't even explain any of the reason [sic] why [Mother] shouldn't have found a job by now, except that she's not doing enough of what she should be doing.

Based on this testimony, the court was entitled to conclude that Mother could find suitable employment in the Washington, D.C. metro area and reject Mother's claim of "impoverishment" as a basis for finding a material change in circumstance.

The dissent concludes that the reduction in child support in June 2016 from $4,000 to $2,600 per month "*did* constitute a material change in circumstances." We agree that the reduction in child support constituted "a change" in circumstances. We disagree, however, that the change was "material" under the facts of this case.

The dissent concedes, as it must, that a change is only material if it affects the welfare of the child. *McMahon*, 162 Md. App. at 594. Mother contended that the combination of her unemployment and the reduction in child support caused a detrimental effect in the children's lifestyle. The dissent treats the reduction in child support as dispositive in concluding there was a material change in circumstance. We disagree. Instead, our focus is whether the reduction in child support, coupled with Mother's unemployment, caused sufficient impoverishment to impact the welfare of the children.

In June 2016, the court found that Mother could earn $1,762 per month, or $21,144 per year. Only eleven months later, at the May 2017 hearing, Father's expert, Ms. Friedman, testified that Mother could earn a minimum of $63,800 per year.[5] In its impoverishment analysis, the court was entitled to credit that testimony. Although the child support decreased by $1,400 per month, Mother's income, at a minimum, increased (at least on an imputed basis) nearly three-fold—an increase of more than $3,500 per month. The record supports that the "change" related to the reduction in child support could be more than offset by Mother entering the workforce where she could earn a minimum of $63,800 per year. On that basis, the court did not err in discrediting Mother's "impoverishment" argument, and its lack of impact on the children's welfare.

Because all of the court's findings were substantiated by the record and therefore not clearly erroneous, we conclude that the trial court did not abuse its discretion in determining that there was no material change in circumstance to warrant a modification of the April 2014 Order.[6]

[5] Ms. Friedman testified that the average salary for an epidemiologist in the Washington, D.C. metro area was $78,440, nearly $15,000 more than the minimum salary she testified Mother could earn.

[6] To the extent Mother argues that the court erred in denying her request to travel overseas with the children between June 19, 2017 and July 5, 2017, we note that the court, in denying her request, doubted Mother's sincerity and intentions. The court noted that it had "tremendous pause and grave skepticism" regarding Mother's travel request "given the history of this case and [Mother's] role in it." Moreover, the court expressed concern about Mother's requested travel dates because they "literally back[ed] up to [Father's] requested summer access." We see no error in the denial without prejudice of Mother's request for international travel between June 19 and July 5, 2017.

III. Best Interests of the Children

Finally, Mother argues that the court erred because it "never made any findings concerning the best interests of the children." We conclude that because the court found no material change in circumstances since the issuance of the April 2014 Order, a "best interests" analysis was unnecessary.

The Court of Appeals has explained that,

> In the limited situation where it is clear that the party seeking modification of a custody order is offering nothing new, and is simply attempting to relitigate the earlier determination, the effort will fail on that ground alone. In that instance . . . the absence of a showing of a change in circumstances ordinarily is dispositive, and . . . the [court] does not weigh the various factors to determine the best interest of the child.

McCready v. McCready, 323 Md. 476, 482 (1991). As we concluded above, there is ample support in the record for the court's determination that Mother had failed to prove a material change in circumstance. Accordingly, under *McCready* and *McMahon*, the court was not required to consider the best interests of the children. Indeed, "The 'material change' standard ensures that principles of *res judicata* are not violated by requiring that such a showing must be made *any time* a party to a custody or visitation order wishes to make a contested change[. . . .]" *McMahon*, 162 Md. App. at 596. We hold that, under these circumstances, the trial court did not err in declining to consider the best interests of the children.

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

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Dissenting Opinion by Leahy, J.

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Fundamentally, Mother seeks additional income for herself and her children in the underlying motion to modify custody by renewing her request to relocate to Germany, where she is licensed as a doctor, to pursue a career that she cannot pursue in the United States. Father, who lives in Ghana, does not seek custody of the children but rather seeks to prevent Mother from moving to Germany. Noting the uniqueness of the issues presented, the majority opinion holds that Mother's constitutional arguments, raised for the first time in a motion for reconsideration, were properly dismissed by the circuit court, and that Mother failed to establish a material change in circumstances by asserting that Father failed to pay child support and failed to abide by the access schedule. I agree with the majority on all these points. I write separately, however, because I believe the circuit court erred in determining that Mother presented no material change in circumstances regarding the family's financial situation, despite Father's change of employment and the reduction in child support from $4,000 to $2,600 per month.

The procedural history relevant to this issue begins with the custody order entered on April 22, 2014, giving Mother physical custody of the children, limiting her travel with the children to within the continental United States, and obligating Father to pay monthly child support in the amount of $4,000. On April 1, 2015, due to an involuntary decrease in income, Father filed a motion to decrease his child support obligation, which Mother opposed on April 20, 2015. On June 16, 2016, the circuit court granted Father's motion and entered an order reducing Father's child support obligation from $4,000 per month to

$2,600. Eight days later, Mother filed the underlying motion to modify the 2014 Custody Order.

Specifically, in her June 24 filing, Mother alleged that "[Father]'s failure to pay support as anticipated and ordered by this Court when it issued the April 22, 2014 order, *and the Court's recent reduction of such support by $1,400.00 per month*" created "a material change in circumstances that make it in the children's best interests" to allow her to move outside of the continental United States. (Emphasis added). Additionally, Mother pleaded the following:

> 4) On June 16, 2016, [the circuit court] entered an order that granted [Father]'s motion to modify the child support ordered by the April 22, 2014 Order, and lower it to $2,600.00 per month. This amount is far less than the amount required to provide for [the children] in the life-style to which they are accustomed, in the area where they reside and where they have attended school.

In Father's response, he contended that Mother's "claims that she cannot get a job in public health and thus needs to move outside of the United States to work as a medical doctor[] . . . was her claim in 2014 and should be barred as res judicata."

At the conclusion of the hearing to address Mother's motion, the circuit court correctly noted the scope of its review, and stated:

> As in every case involving legal decision-making and parenting time, the best interest of the child is the focus of the inquiry. This applies with equal force to modification proceedings. However, before the best interest determination can be made, the movant first must meet the burden of establishing a change in circumstances affecting the child's welfare. *That is a change in circumstances material to the child's welfare must be proven before the Court can consider whether a modification is appropriate.*

> *While the testimony about these two issues is likely to come together, the Court's analysis must be separate.* The modification must not be granted unless a change in conditions has occurred which affects the welfare of the child and not that of the parents. In *Wagner v. Wagner*, [109 Md. App. 1 (1996),] the court articulated a two-step process for analysis. One, determine whether there has been a material change in circumstances. If not, then stop. If so, then go to step two, which is consider the best interests of the child as if this were an original custody proceeding.

(Emphasis added). The trial court, in its oral ruling, decided that none of Mother's claims constituted a material change in circumstances and denied Mother's petition.

As the Court of Appeals has explained, the existence of a material change in circumstances as a prerequisite to a modification of custody is designed to afford finality to the custody order and preserve stability in the children's lives. *McCready v. McCready*, 323 Md. 476, 482 (1991). A prior custody order may be modified to "protect the best interest of the child" and should "emphasize changes in circumstances which have occurred subsequent to the last [custody] hearing."[7] *Id.* (citation and quotation marks omitted). Whether a material change in circumstances has occurred is a threshold issue and is a mixed

[7] While petitions to modify a prior custody order and a prior child support obligation order both require a threshold showing of a "material change in circumstances" in order to revisit the prior order, modification of a custody order is proper only if the change of circumstances "affects the welfare of the child *and not of the parents.*" *Levitt v. Levitt*, 79 Md. App. 394, 398 (1989) (emphasis altered) (citation and quotation marks omitted). On the other hand, a petition to change a parent's child support obligation necessarily requires a change in circumstances that either "caus[es] the level of support a child actually receives to diminish or increase" or "affects the income pool used to calculate the support obligations upon which a child support award was based." *Wills v. Jones*, 340 Md. 480, 488 n.1 (1995). Therefore, although the language is identical, only a modification of *custody* requires a threshold analysis of how the change would affect the *child's* welfare irrespective of the circumstances of the parents.

question of law and fact. The material change in circumstances determination and the best interests of the children inquiry are separate steps, although the facts that inform the two inquiries often coalesce. *Wagner*, 109 Md. App. at 28-29.

On the threshold question of whether the circumstances changed to the detriment of the children's welfare, the court in this case failed to even mention the significant reduction in the child support obligation. Even assuming the court was correct in its determination that Mother has the means to find employment here in the United States, the assertion by Mother that her unemployment together with the recent reduction in child support left her unable to sustain her children's current lifestyle "is a change in circumstances material to the child[ren]'s welfare." The court addressed only Mother's claim that the children were impoverished because she was unable to get a job, finding that Mother's claim that "the employment she could get here in the Washington D.C. area is somehow beneath her education level is absurd and insulting." The court never addressed her claim that "**the Court's *recent reduction of such support* by $1,400.00 per month**" constituted a material change in circumstances. Clearly the record shows that the monthly child support obligation from $4,000 to $2,600—a 35% decrease—was significant and had an impact.

During the hearing, the following testimony was developed on direct examination:

> [MOTHER'S ATTORNEY]: . . . [C]an you describe what the apartment's like?
>
> [MOTHER]: It's a two bedroom apartment, one bath, a kitchen, living room.
>
> [MOTHER'S ATTORNEY]: And the children, do they each have an individual room then, bedroom?

[MOTHER]: I gave one bedroom to each of them and I was sleeping in the living room. But at one point in time [Daughter] got seriously sick and I moved back in the room and since then I've stay, I've shared a room with [Daughter].

[MOTHER'S ATTORNEY]: Okay. So, [Son] has a separate bedroom from [Daughter] and [Daughter] shares her bedroom, is that true?

[MOTHER]: I would say I've moved into her bedroom.[8]

[MOTHER'S ATTORNEY]: Okay, and how long have you all, the three of you resided at that apartment?

[MOTHER]: We've resided at that particular apartment since January 2017. But we have lived in the same building since May 2016.

[MOTHER'S ATTORNEY]: And where did, what apartment did you reside in before you moved into this one in that building?

[MOTHER]: It was apartment [X].

[MOTHER'S ATTORNEY]: And was there any differences in terms of the layout between the two apartments?

[MOTHER]: Yes. The previous apartment had two bedrooms. It was bigger and it was more expensive.

[MOTHER'S ATTORNEY]: Okay, and can you explain what caused you to move?

[MOTHER]: *The reduction of child support.*

[MOTHER'S ATTORNEY]: Okay. So, the apartment that you're living in now, how much are you paying for it?

[MOTHER]: Depending on, you know, if it's 28 days a month. It's almost 1,500.

[8] On re-direct, Mother testified, "we have a little apartment . . . it's not a big space[.]"

[MOTHER'S ATTORNEY]: Per month?

[MOTHER]: Per month, yes.

* * *

[MOTHER'S ATTORNEY]: Okay. So, the one that you were living in before January 2017, what was the rent[] there?

[MOTHER]: It was almost 2,200.

(Emphasis added). Later, Mother testified to the family budget since the reduction in child support:

[MOTHER'S ATTORNEY]: Okay. So can you describe to the Court what, if any, impact the reduction of child support by $1,400 per month has had on your ability to subsist with your two children?

[MOTHER]: For us, $1,500 is a lot of money, so paying a rent for a two-bed home apartment when you are a family of three is already $2,200, in the area where we live. So it had an impact on our living conditions generally, because not only the rent, but the utilities, clothing, extracurricular activities.

I mean, many times, I wasn't able to, to pay the bills. And then I have to choose which bills I pay this month, and which bills I prioritize the next month. There are fees that I have to pay for fieldtrips for extracurricular activities, and many times, I couldn't pay on time. The payment[s] have been late. And sometime[s] they had to miss [] one class here and there.

I can't organize birthday parties. I haven't organized any birthday part[ies] for [Daughter's] birthday on March 23rd. We don't even have enough room, you know, if she wants to invite a friend [] for playdate.

In the instant case, we can all agree with the circuit court that Mother's claim that she should be allowed to move to Germany with her children is not a new claim. However, her renewed request to relocate with the children because she can no longer sustain their

standard of living based on the decrease in child support payments—whether material or not—*did* constitute a material change in circumstances since the last custody hearing in 2014 that the court should have considered in rendering its decision in this case. Instead, the circuit court focused only on Mother's ability to earn a higher income and the fact that the children were not impoverished.

The majority agrees that the reduction of child support was a change but urges, under a fair reading of our decisional law, that the circuit court's ultimate determination that the children were thriving and living in a safe and nourishing home rendered immaterial the effect of that reduction. As this Court observed in *Wagner*, the facts that inform a court's determination on the initial material change in circumstances often coalesce with those that should be considered in the best interests of the children inquiry. 109 Md. App. at 28-29. I simply depart from the majority on the contours of when it is appropriate to collapse the two tests. In the majority's reading of the case law, the court may balance Mother's voluntary impoverishment and *imputed* income against the reduction of child support to determine that any change caused by the latter was immaterial—rendering the best interest analysis unnecessary. In my view, however, whether the children are impoverished—or even thriving—is distinct from whether their circumstances have changed materially because the court reduced child support by $1,400 per month. *Cf. Wills v. Jones*, 340 Md. 480, 488 (1995) (instructing, in a child support case, that "the question of whether a material change of circumstance has occurred is distinct from the issue of whether a parent is voluntarily impoverished"); *see also Gillespie*

v. Gillespie, 206 Md. App. 146, 170 (2012) ("Courts must engage in a two-step process when presented with a request to change custody."). I also believe the trial court erred by failing to articulate whether it considered the substantial decrease in monthly child support during its change of circumstances calculus. For the foregoing reasons, I respectfully dissent.