

Circuit Court for Worcester County
Case No. 23-C-14-001483

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1313

September Term, 2021

MELISSA PARKER

v.

DAVID BENNETT

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

JJ.

Opinion by Berger, J.

Filed: May 17, 2022

*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.

This appeal stems from a child custody matter in the Circuit Court for Worcester County. In June 2018, the court entered a judgment of divorce that gave Melissa Parker, appellant, and David Bennett, appellee, shared physical and joint legal custody of their two sons. Beginning in March 2021, Parker denied Bennett his overnight visitation with the children because Parker had concerns about the living conditions at Bennett’s new residence. After contentious litigation, which included both parties’ requests to modify custody and Bennett’s petition to find Parker in contempt for violating the judgment of divorce, the court held an evidentiary hearing in October 2021. The children were five years old and eight years old at that time. The court did not find that Parker’s concerns were credible. The court found Parker in contempt of the judgment of divorce, awarded attorney’s fees to Bennett as a purge provision of the contempt order, and modified custody by granting sole physical and legal custody of the children to Bennett, subject to Parker’s visitation. Parker appealed and presents three questions for our review that we rephrase as follows:¹

¹ Parker filed her brief in this Court *pro se* and phrased the questions presented as follows:

1. Whether it is in a child’s best interest to reside in a camper with no heat overnight, an inoperable toilet, no water hook-up, a fire hazard, and no internet connection, and, if not, whether it was an abuse of discretion to change custody to the parent who resides in such an environment.
2. Did the Circuit Court err in holding the Appellant in contempt.

- I. Whether the court erred in modifying custody.
- II. Whether the court erred in finding Parker in contempt or in ordering Parker to pay attorney’s fees as a purge provision.
- III. Whether the court erred in failing to address child support arrearages when that issue was not before the court.

For the reasons to follow, we shall affirm the judgments of the circuit court.

BACKGROUND

In March 2021, Parker filed a request for an emergency hearing. In that filing, Parker stated that Bennett had recently moved into a thirty-foot trailer, and she claimed that their children’s health and safety were at risk because of the living conditions there. Parker alleged that Bennett’s camper had no heat, a broken toilet, and no running water. Beginning that month, Parker disallowed the children from being with Bennett overnight.

Bennett responded to Parker’s request for an emergency hearing, and he denied Parker’s allegations about the living conditions at his new residence. The court denied Parker’s request for an emergency hearing.

Parker moved to modify physical custody, repeating some allegations from her request for an emergency hearing. Bennett requested to modify custody and petitioned the court to find Parker in contempt. Counsel for the children was appointed in July 2021.

Parker deprived the children of their weekly overnight access to Bennett for about thirty weeks leading up to the hearing. Parker also enrolled the children in the Wicomico

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3. Whether the Circuit Court erred in not [determining] the amount of past due child support.

County school system after she had moved from Worcester County, although Bennett wanted the children to remain in the Worcester County school system.

Before the hearing, counsel for the children visited Bennett’s residence and tried to gain Parker’s compliance with the court-ordered shared physical custody schedule, but Parker still refused to allow the children to stay at Bennett’s residence overnight. At the evidentiary hearing, Bennett introduced evidence to show that Parker’s allegations were false. Parker admitted that she unilaterally terminated the physical shared custody that the court had ordered. Parker also admitted that she transferred the children from the Worcester County school system to the Wicomico County school system without Bennett’s approval. The children’s counsel made the following observation regarding Parker’s behavior: “I don’t think that Ms. Parker is going to get it I have little faith that Ms. Parker is going to follow any Court Order.” The court agreed and made a credibility determination as to Parker’s concerns about Bennett’s living situation: “I do not find the concerns to have been credible.”

We supply additional facts below as needed.

DISCUSSION

I. The court did not err in modifying custody.

Parker claims that the court erred in modifying custody. Parker acknowledges that she withheld the children from Bennett in violation of the judgment of divorce. In essence, Parker contends that her concerns about Bennett’s living situation justified her violations of the custody order. Bennett argues that Parker’s specious allegations about his living

situation were refuted at the evidentiary hearing through testimony, exhibits, and the investigation by the children’s counsel.

Courts must engage in a two-step process when presented with a request to change custody:

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.

McMahon v. Piazze, 162 Md. App. 588, 594 (2005) (citation omitted).

We review a child custody determination using three interrelated standards of review, which we have described as follows:

When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. Rule 8-131(c)] 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.

Gillespie v. Gillespie, 206 Md. App. 146, 170 (2012) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). The abuse of discretion standard recognizes “the trial court’s unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.” *Santo v. Santo*, 448 Md. 620, 625 (2016) (quotation marks and citation omitted). An abuse of discretion “may arise when no reasonable person would take the view adopted by the . . . court[.]” “when the court acts without reference to any guiding

rules or principles[.]” or when “the court’s ruling is clearly against the logic and effect of facts and inferences before the court[.]” *Id.* at 625-26 (cleaned up). Critically, in all custody and visitation determinations, the best interest of the child is the overarching consideration. *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013).

At the evidentiary hearing, Bennett presented evidence to show that Parker’s allegations were false. Bennett introduced pictures of his residence that showed the following:

- bunk beds for the children,
- Bennett’s separate bedroom,
- the kitchen, which had a sink, microwave, stove, and oven,
- the bathroom, which had a shower, sink, and toilet,
- and the dining room table.

The controlled-access community where Bennett resided had a swimming pool and playground. Contrary to Parker’s allegations, Bennett testified that his shower, toilet, and heat functioned properly. Bennett confirmed that the children were bathing regularly when they had been with him. Bennett stated that he cooked his children’s meals: “I always tried to feed the boys fresh meat, vegetables, and fruits I like to cook. I cooked professionally before.” Bennett testified that Parker had never asked to inspect his trailer or living arrangements. Parker had only seen the trailer before Bennett moved into it.

Parker argues that Bennett’s new residence lacked the internet service necessary to allow the children to attend school online. Before Bennett moved into his new residence, however, both parties agreed that the children were spending their school days at Parker’s

home and participating in a virtual learning program. Around that time, Bennett picked up the children after work, and Parker had the children during the school day. Thus, a lack of internet at Bennett’s new residence did not justify Parker’s refusal to allow the children to stay overnight with their father.

Parker refused to comply with the child custody order even after the court had denied her request for an emergency hearing. Bennett testified about the children’s demeanor after Parker terminated Bennett’s custody. The few times that Parker brought the children to see Bennett, the children “had a lost look on their face[,]” the children were “disoriented[,]” and “[t]hey didn’t understand.”

Bennett’s unilateral and unauthorized termination of the court-ordered custody arrangement was not in the best interests of the children. We find no error in the court’s factual findings. Moreover, the record contains sufficient evidence of a material change in circumstances that affected the welfare of the children. *See Gillespie*, 206 Md. App. at 170. The court conducted a comprehensive review and determined that modification of custody was in the best interests of the children. Thus, the court did not err in modifying custody.

II. The court did not err in finding Parker in contempt, nor did the court err in imposing the purge provision.

At the October 2021 hearing, the court found Parker in contempt of the judgment of divorce because Parker continuously violated the judgment of divorce since March 2021. The court also awarded attorney’s fees to Bennett in the amount of \$8,555.35 as a purge provision for the order of contempt. Parker insists that the court erred in finding her in

contempt. In essence, Parker contends that the court disregarded a duress defense. Parker also claims that the purge provision was punitive. Bennett argues that the contempt finding and the purge provision were proper.

A proceeding for civil contempt is “intended to preserve and enforce the rights of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties.” *Marquis v. Marquis*, 175 Md. App. 734, 745-46 (2007) (citation and quotation marks omitted). “Civil contempt proceedings are generally remedial in nature, and [such proceedings] are intended to coerce future compliance.” *Id.* (citing *Bahena v. Foster*, 164 Md. App. 275, 286 (2005)). For a civil contempt penalty to be coercive rather than punitive, it must allow for purging that permits the defendant to avoid the penalty by some specific conduct within the defendant’s ability to perform. *Bryant v. Howard Cnty. Dep’t Soc. Servs. ex rel. Costley*, 387 Md. 30, 46 (2005). Civil contempt must be proven by a preponderance of the evidence. *Bahena*, 164 Md. App. at 286.

Generally, we will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact on which the contempt was imposed. *Gertz v. Md. Dept. of Env’t*, 199 Md. App. 413, 424 (2011) (citations omitted). But when the order involves an interpretation and application of statutory and case law, we must determine whether the circuit court’s conclusions are legally correct under a *de novo* standard of review. *See Walter v. Gunter*, 367 Md. 386, 391-92 (2002).

We are unpersuaded by Parker’s argument that her actions were necessitated by emergency or duress. After the court denied Parker’s request for an emergency hearing,

Parker continued to violate the judgment of divorce. At that point, Parker’s noncompliance was willful and unnecessary. Thus, the court did not err in finding Parker in contempt.

The purge provision is also consistent with Maryland law. Parker was engaged in a pattern of conduct in violation of a court order, and the court could reasonably determine that the conduct was ongoing at the time of the hearing. *Cf. Breona C. v. Rodney D.*, 253 Md. App. 67, 76 n.6 (2021). *See also Marquis*, 175 Md. App. at 756-57 (upholding a purge amount that included the opposing party’s expert witness fees and attorney’s fees).² Parker contends that her financial condition precluded the court’s imposition of the purge provision. But Parker’s testimony confirmed that she could pay the purge amount of \$8,555.35. Indeed, aside from her Social Security income, assistance from her adult son, and a \$30,000 personal injury settlement that she was scheduled to receive within forty days of the hearing, Parker testified that she had \$13,200 in a safe. Accordingly, we hold that the court did not err in imposing the purge provision.

III. Before the evidentiary hearing, the court confirmed with the parties’ counsel that the issue of child support arrearages was not before the court.

Lastly, Parker contends that the court erred in failing to address Bennett’s child support arrearages. When the hearing began, the court consulted with the parties to clarify the purpose of the hearing:

² The appellant in *Marquis* contended that the court failed to comply with Maryland Rule 15-207(d)(2) by not specifying in a written order the sanction for the contempt. *Marquis*, 175 Md. App. at 756. This Court disagreed and expressed no apparent disapproval of the purge amount, “which included \$2,083.00 in expert witness fees and \$250.00 in additional attorney’s fees.” *Id.* at 757.

THE COURT: Alright. Very well. So we're here counsel as I understand it on cross-petitions or motions to modify and cross-petitions for contempt.

[BENNETT'S COUNSEL]: Well, I don't think there's a cross-petition for contempt.

THE COURT: Oh, I thought I had two, I thought I saw two. One was filed by Mr. Bennett and the other was filed by Ms. Parker. One concerned child support.

[BENNETT'S COUNSEL]: Oh, well that's being handled in a different court, Your Honor.

[PARKER'S COUNSEL]: Okay.

* * *

THE COURT: Okay. That's the Worcester County Bureau of Child Support?

[BENNETT'S COUNSEL]: Yes, ma'am.

THE COURT: Okay. So the Show Cause Order says to appear on the 13th. That's in a different courtroom, not before me?

[BENNETT'S COUNSEL]: Correct. Yes, Your Honor.

* * *

THE COURT: Okay. And then . . . do the parties need to get to the other courtroom at a particular time or anything.

[BENNETT'S COUNSEL]: No, that's been resolved --

THE COURT: Okay, great.

As we addressed above, the court held a hearing on the parties' motions to modify custody and Bennett's motion for contempt. The court sought clarification from the parties at the beginning of the hearing and determined that the issue of child support arrearages was

being handled in another court. Parker did not object to that determination. Accordingly, the court did not err in failing to address child support arrearages at this hearing.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**