

Circuit Court for Anne Arundel County  
Case No. C-02-FM-21-002257

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1443

September Term, 2024

---

JASON CHRISTOPHER BROWER

v.

JESSICA M. POLAND

---

Reed,  
Friedman,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Friedman, J.

---

Filed: April 8, 2025

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

Appellant, Jason C. Brower (“Father”), challenges an order of the Circuit Court for Anne Arundel County modifying child custody and awarding attorney’s fees to appellee, Jessica M. Poland (“Mother”). For the following reasons, we affirm the judgment of the circuit court.

### **BACKGROUND**

Father and Mother are the parents of one minor child, B., who was born in May 2019. The parties never married and lived together in Pasadena from August 2018 until June 2021, when Father changed his residence to Arnold. One month later, in July 2021, Mother filed a complaint in the circuit court against Father for custody, child support, and attorney’s fees.

In August 2021, Mother filed a petition for a protective order against Father, and in September 2021, the District Court of Maryland for Anne Arundel County granted her request for a final protective order against Father, effective until September 2022. Under the order, Father could not contact Mother, and any communication regarding B. was to go through Father’s parents only.

In November 2021, the circuit court entered a consent order between Father and Mother that incorporated a parenting plan. Under the consent order and parenting plan, the parties had joint legal custody and shared physical custody of B. and agreed to limit their communication to parenting issues only.

In June 2022, Mother filed a petition in the district court to extend the final protective order against Father. Because of the related child custody case, the district court transferred Mother’s motion to extend the final protective order to the circuit court.

Following a hearing, the circuit court found by a preponderance of the evidence that Father had committed “subsequent [a]cts of stalking” and extended the final protective order until September of 2024.

In July of 2022, Father plead guilty in the district court to a criminal violation of the protective order. Father was sentenced to probation before judgment. The probation was set to last 18 months and one of the conditions of his probation was to obey the protective order.

In March of 2023, Mother petitioned for contempt, claiming that Father had violated a court order by withholding B. from her when Father’s parents were on vacation. A magistrate found that although Father’s withholding of B. was unjustified, because Father obeyed the custody order after his parents returned from vacation, Father was not in contempt. In June 2023, the circuit court ratified the magistrate’s findings.

In September of 2023, Father filed a motion for modification of custody and child support seeking 50/50 custody of B. The next month, Mother filed a counter-complaint for modification of custody and child support, seeking sole legal and primary physical custody of B.

The circuit court held a two-day trial on the parties’ modification requests in August of 2024. Mother was represented by counsel, and Father represented himself.<sup>1</sup> After the trial, the circuit court granted Mother sole legal custody of B., and modified physical custody, granting 225 overnights to Mother and 140 overnights to Father. The court

---

<sup>1</sup> Mother and Father represent themselves in this appeal.

awarded \$6,000 in attorney’s fees to Mother, which amounted to “approximately 25 percent of” her attorney fees for legal services from August 2023 through July 2024. Father’s timely appeal followed.

## DISCUSSION

Father presents thirteen issues on appeal. We address them all below.

### I. MODIFICATION OF CUSTODY

In his first issue, Father argues that the circuit court abused its discretion by presuming that the parties’ lack of communication and cooperation was an “automatic bar” to joint legal custody.

We review decisions to modify custody using three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). First, we review factual findings to determine if they were clearly erroneous. *Id.* Next, we review legal conclusions without deference. *Id.* Finally, if the circuit court’s factual findings were not clearly erroneous and the legal conclusions were correct, we review the court’s ultimate decision for an abuse of discretion only. *Id.* When a circuit court considers a motion for modification of custody, it employs a two-step analysis: (1) whether there has been a material change in circumstances, and (2) what custody arrangement is in the best interests of the children. *McMahon v. Piazze*, 162 Md. App. 588, 593-94 (2005). “A change in circumstances is ‘material’ only when it affects the welfare of the child.” *Id.* at 594.

Here, the circuit court determined that there had been a material change in circumstances in two respects: *first*, B. was now old enough to begin attending school so exchanges between the parties could no longer take place during the school day; and

*second*, there had been a significant deterioration in the ability of Mother and Father to communicate and interact with each other. The circuit court further found that both Mother and Father were fit but expressed concerns about Father’s alcohol use and the number of times that B. had been exposed to domestic conflict between his parents. Having reviewed the record, we see nothing clearly erroneous in these factual findings.

Next, the record shows that in making its ruling, the circuit court relied on and weighed the guiding factors outlined in *Taylor v. Taylor*, 306 Md. 290 (1986) and *Montgomery Cty. Dep’t of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1978). This is the correct legal framework for the court to have used to make its analysis.

Because the circuit court’s factual findings were not clearly erroneous and it utilized the correct legal framework, the only question left for us to determine is whether the ultimate decision constituted an abuse of discretion. Here, the circuit court awarded the parties a shared physical custody schedule, with mother having, on average, 4 days per week and father having, on average, 3 days per week. The custody exchanges were timed around B.’s school schedule and were to be made through third parties to minimize contact between Mother and Father. The circuit court awarded Mother sole legal custody, noting that the parents had a demonstrated inability to communicate with each other that had only gotten worse over time.

Father argues that the parents’ apparent inability to communicate and cooperate with each other is an insufficient basis to justify giving sole legal custody to one parent, and the circuit court abused its discretion by not considering other options, such as the ability of Father and Mother to communicate through Father’s parents. Although the circuit court

was not precluded from awarding joint custody to parents who do not communicate effectively with each other, *see e.g., Santo v. Santo*, 448 Md. 620, 630 (2016), “[r]arely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other.” *Taylor*, 306 Md. at 304. In the rare case that joint legal custody is awarded to parents who have demonstrated an inability to communicate and cooperate, the court must “articulate fully the reasons that support that conclusion.” *Taylor*, 306 Md. at 307. Here, the circuit court fully articulated its reasons for concluding that joint legal custody was *not* appropriate. This conclusion was well within the circuit court’s discretion.

## II. ATTORNEY FEES

Father next argues that the circuit court erred in awarding attorney’s fees to Mother. Father asserts that Mother’s stubborn litigation strategy and frivolous claims should have prevented her from receiving attorney’s fees.

In cases involving child custody or support, “[t]he court may award to either party the costs and counsel fees that are just and proper under all the circumstances[.]” MD. CODE, FAM. LAW (“FL”) § 12-103(a). Before awarding attorney’s fees, “the court shall consider: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.” FL § 12-103(b). “We review an award of attorney’s fees in family law cases under an abuse of discretion standard.” *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 756 (2017) (citing *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002)). “An award of attorney’s fees will

not be reversed unless a court’s discretion was exercised arbitrarily or the judgment was clearly wrong.” *Petrini v. Petrini*, 336 Md. 453, 468 (1994).

In making the decision to award counsel fees here, the circuit court explained that it had considered all the factors in FL § 12-103(b). The court found that Mother was the “prevailing party” and that although Father was justified in many of his actions, he also filed things that were unnecessary that Mother was obligated to defend. The record supports the circuit court’s factual findings and shows that the circuit court complied with the statutory requirements for awarding expenses. We conclude that the circuit court did not act arbitrarily or abuse its discretion.

### **III. “UNJUSTIFIED” FINDING**

*Third*, Father asserts that the circuit court erred in adopting the magistrate’s report and recommendation, which found that he had committed “unjustified” actions when he withheld B. from Mother in March 2023.

We note first that the “unjustified” finding about which Father complains was made in the context of a contempt hearing, which took place in May 2023, more than a year before the modification of custody trial from which this appeal is taken. That proceeding is therefore outside the scope of our review. MD. R. 8-131. Moreover, the circuit court denied Mother’s contempt petition. Father’s actions were found to be “unjustified,” but he was not found in contempt. Under Maryland law, only someone found in contempt may appeal. *Pack Shack, Inc. v. Howard Cty.*, 371 Md. 243, 254 (2002); MD. CODE, CTS. & JUD. PROC. (“CP”) § 12-304 (providing that a person held in contempt has the right to appeal). Thus, Father had no right to appeal from the denial of Mother’s contempt petition,

or the circuit court’s finding that his actions were “unjustified.” *Pack Shack, Inc.*, 371 Md. at 254.

#### IV. BEST INTEREST FINDING

*Fourth*, Father argues that the circuit court erred in how it weighed B.’s best interest “after being presented with evidence that clearly showed [Mother] denied the child’s physical needs.” Specifically, Father claims that Mother failed to meet B.’s health needs because she did not bring B. to a dental appointment. More generally, Father argues throughout his brief that the circuit court “did not review the evidence properly,” was improperly influenced by the erroneous actions of the district court with regard to the protective order, and failed to appreciate that Mother was manipulating the courts to play the victim.

When we review a circuit court’s custody determination, we do so under the abuse of discretion standard. “This standard of review accounts for the [circuit] court’s unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.” *Basciano v. Foster*, 256 Md. App. 107, 128 (2022). A court abuses its discretion when “no reasonable person would take the view adopted by the ... court or when the court acts without reference to any guiding rules or principles.” *Santo*, 448 Md. at 626-26.

As noted previously, the circuit court followed the correct legal standard and weighed the appropriate factors. In making its ruling, the circuit court explained that it considered the deterioration of the parties’ ability to cooperate and concerns about Father’s use of alcohol to be most significant to determining the best interest of B. It is clear that Father disagrees with the circuit court’s evaluation and weighing of the evidence. And we

acknowledge that another judge may have viewed and weighed the evidence differently. Nonetheless, on review “we grant the [circuit] court broad discretion because only the [circuit] court sees the witnesses and the parties, hears the testimony and has the opportunity to speak with the child.” *Basciano*, 256 Md. App. At 129. “It is within the sound discretion of the [circuit court] to award custody according to the exigencies of each case.” *In re Yve S.*, 373 Md. at 585-86; *see also Braun v. Headley*, 131 Md. App. 588, 596-97 (2000) (because the trial court has the “opportunity to observe the demeanor and credibility of both the parties and the witnesses,” “[t]he determination of which parent should be awarded custody rests within the sound discretion of the trial court”). We, therefore, conclude that the circuit court’s best interest finding was not an abuse of discretion.

## **V. MEDIATION**

*Fifth*, Father claims that the circuit court erred and denied him due process by refusing to order the parties to return to mediation as required by their consent agreement. Specifically, Father refers to section 3b of the parenting plan, which was incorporated into the consent order and stated that “[i]n the event Mother and Father are unable to resolve a major dispute or a change in circumstances regarding the terms of this [p]arenting [p]lan, they agree to return to mediation to modify this plan before bringing Court action.”

In July and August 2023, Father filed motions to return to mediation, asserting that Mother changed the parenting plan by enrolling B. in a pre-kindergarten program, which reduced Father’s time with B. Mother responded and opposed returning to mediation. The circuit court denied Father’s motions in August of 2023, noting: “As there is still no Motion

to Modify before the Court and [Mother] again opposes mediation, these requests are Denied.” The next month, Father filed a petition to modify custody and child support. After a scheduling conference held in October of 2023, the circuit court declined to order mediation on the grounds that there was a “[s]afety concern expressed by a party.”

Mediation in child custody and visitation cases is governed by Maryland Rule 9-205, which applies “to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including ... an action to modify an existing order or judgment as to custody or visitation[.]” MD. R. 9-205(a)(1)(B). Before entering an order requiring parties to mediate, the court must first “determine whether ... mediation ... is appropriate and likely would be beneficial to the parties or the child[.]” MD. R. 9-205(b)(1)(A). A court may not order mediation “[i]f a party ... represents to the court in good faith that there is a genuine issue of abuse of the party ... and that, as a result, mediation would be inappropriate.” MD. R. 9-205(b)(2). This Rule, of course, must supersede even the parties’ agreement to the contrary, as expressed in the parenting plan.

As discussed previously, in June 2022, the district court found that Father had engaged in “subsequent [a]cts of stalking” and granted Mother’s request to extend the final protective order against Father until September of 2024. As a result, the protective order was still in effect when Father sought to return to mediation. Stalking qualifies as a form of abuse under MD. R. 9-205(a)(2). *See also* FL § 4-501(b)(1)(vi). Because there was a good faith, genuine dispute regarding Father’s alleged abuse of Mother, mediation was inappropriate under Rule 9-205(b)(2). The circuit court, therefore, did not err in denying Father’s requests to return to mediation.

## VI. DISTRICT COURT PROCEEDINGS

In his eight remaining issues, Father asserts that the district court exceeded its authority and acted outside its jurisdiction in numerous ways by acting to enforce the final protective order when those restrictions conflicted with the parties’ parenting plan. Specifically, Father points out that because the parenting plan was entered by the circuit court after the protective order was issued, under FL § 4-506(j)(3) the terms of the parenting plan superseded the restrictions of the protective order. As a result, Father argues that the criminal case against him for violation of the protective order was “void ab initio” because the district court did not have jurisdiction to prosecute him for a violation of a protective order that had been superseded, and consequently, the district court’s June 2022 order extending Mother’s final protective order against him until September of 2024 was also “‘void ab initio’ because it only came to fruition after the [d]istrict [c]ourt went beyond its criminal jurisdiction[.]” Moreover, Father asserts that the district court did not have jurisdiction to modify the terms of the parenting plan to conform to the restrictions of the protective order. Father further argues that because the protective order was superseded by the parenting plan, the protective order was void and thus the district court could not threaten to arrest him or prosecute him or impose probation for his failure to comply with it. Finally, Father asserts that because the parenting plan allowed the parties to communicate about parenting issues, any attempt to enforce the “no contact” provision of the protective order violated his rights to free speech.

We acknowledge Father’s frustrations about the complex intersection of domestic violence protective orders, district court jurisdiction, circuit court jurisdiction, child

custody orders, and child custody agreements. Nevertheless, this appeal is taken only from the circuit court’s order modifying custody and awarding attorney’s fees to Mother after the trial in August 2024. Thus, the district court’s actions in 2022 and 2023 prior to the trial are outside the scope of our review. MD. R. 8-131. Moreover, there are no circumstances by which this Court could review the district court’s rulings, even if those issues were timely. While parties to a civil case are able to appeal a final judgment entered by a district court, that appeal is “taken to the circuit court for the county in which judgment was entered.” CP § 12-401(a), 12-403(a). For the circuit court’s appellate decision to be reviewed, the Supreme Court of Maryland must grant certiorari. CP § 12-305; *see also* CP § 12-302(a) (providing that “[u]nless a right to appeal is expressly granted by law,” there is no right for a party to appeal from an appellate judgment entered in review of a decision of a district court). Thus, Father could not have chosen to appeal the district court’s rulings to this Court at any point.

## **VII. CONCLUSION**

For all these reasons, the circuit court properly modified custody and awarded attorney’s fees to Mother.

**JUDGMENT OF THE CIRCUIT  
COURT FOR ANNE ARUNDEL  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**