Circuit Court for Prince George's County
Case No.: CAD17-15885

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1445

September Term, 2024

MAISHA JONES

v.

ALONZO JONES, JR.

Friedman,
Shaw,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 16, 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. R. 1-104(a)(2)(B).

Appellant Maisha Jones ("Mother") appeals from an order issued by the Circuit Court for Prince George's County finding her in constructive civil contempt and modifying a custody order to grant her former husband, appellee Alonzo Jones, Jr. ("Father"),[1] primary physical custody of their children and sole legal decision-making authority on certain topics.[2] Mother argues that the circuit court erred by (1) finding her in constructive civil contempt without imposing a sanction or establishing a purge, and (2) modifying legal and physical custody in the context of a contempt proceeding and without conducting a best interest analysis. For the reasons that follow, we conclude that the contempt order is legally insufficient and that the court erred by modifying custody without first making findings bearing upon the children's best interests. We therefore reverse the contempt order, vacate the order modifying custody, and remand for further proceedings.

BACKGROUND

Mother and Father share three sons: A., age 15; J., age 12; and M., age 9. The parents divorced in 2020. The terms of the parties' access with the children is spelled out in their divorce decree, as modified by a consent judgment (collectively, "the custody order").[3] Under that custody order, they shared joint legal custody and split physical custody on a nearly 50-50 basis.

[1] Father did not file a brief in this Court.

[2] By order of this Court, that judgment has been stayed pending the resolution of this appeal.

[3] This Court affirmed the custody and access provisions of the divorce judgment on appeal. *See Jones v. Jones*, No. 369, Sept. Term 2020 (filed Nov. 23, 2020).

Father filed his petition for contempt in September 2022, alleging that Mother violated the custody order by: (1) not providing adequate notice prior to her moving more than 30 miles away; (2) not providing adequate notice prior to traveling internationally with the children; (3) not timely notifying Father that J. was bitten by an animal while traveling, requiring rabies prophylaxis; and (4) by repeatedly not returning the children to his custody on time or at the agreed-upon exchange location.

Six months later, Father moved to modify custody to make him the children's sole legal and primary physical custodian.[4] In addition to incorporating the allegations of the petition for contempt, which he asserted were a material change of circumstances affecting the welfare of the children, Father also alleged that Mother had been cited for reckless driving while the children were in her vehicle, was not ensuring that the children completed schoolwork during her access periods, and had not discussed with Father a change in the children's school enrollment.

The court heard evidence on contempt and modification over two days in late 2023 and early 2024.[5] Since the entry of the custody order, both parties had moved. Mother had moved twice: from Bowie to Silver Spring and then to Potomac. Father had moved from

[4] Mother also filed motions for contempt and modification of custody but does not challenge the denial of her motions in this appeal.

[5] The court initially held a contempt hearing in August 2023 at which Father and his counsel appeared, but Mother and her counsel did not. After the court found Mother in contempt, she moved for reconsideration, arguing that her attorney had been advised that that hearing was postponed**.** The court granted her motion for reconsideration and vacated the contempt order. In this appeal, Mother suggests that the court may have improperly relied upon evidence received at the first hearing in deciding the issues before it in the second hearing. We find no support in the record for this contention.

Lanham to Westminster, just under 50 miles away from Mother's home. Custody exchanges were supposed to occur at a park in Silver Spring. The evidence showed that although Mother notified Father about her most recent move, she did so only the day before school started and without discussing that the children were changing schools.

Father testified to repeated instances of Mother either not picking the children up from him as scheduled or not returning the children to his custody as scheduled. The most recent failure to abide by the access schedule was the weekend prior to the first day of the hearing.

The custody order required the parties to provide each other advance notice before flying with the children and to notify each other "immediately" if a child became ill while in their care. Father testified that Mother notified him that she was traveling to Thailand with the children only after they were already at the airport and only notified him that a monkey bit J. during that trip, necessitating prophylactic treatment for rabies, after they had returned to Maryland.

With respect to modification, Father sought sole legal custody and primary physical custody, with Mother receiving access every other weekend. He testified that Mother failed to help the children with their homework when they were in her custody and, as a result, they were falling behind academically. If he were granted primary physical custody, Father planned to enroll the children in their zoned public schools near his home, which he testified were excellent.

The court ruled from the bench during a remote proceeding in August 2024. The court found that Mother engaged in a "regular, consistent and ongoing cycle ... of

noncompliance" with the custody order, followed by periods of seeming compliance in advance of court dates. It reasoned that unlike in *Breona C. v. Rodney D.*, 253 Md. App. 67, 76 (2021), where this Court held that past non-compliance with a custody order could not support a constructive civil contempt finding if the parent was currently compliant, Mother's continuous, willful violations of the custody order were contemptuous. For those reasons, the court found Mother in constructive civil contempt. The court concluded that there was "no viable sanction" it could impose, however, and moved on to consider Father's motion to modify custody.

On the issue of modification, the court found that the parents were unable to effectively communicate, and no longer lived in close proximity to each other, which combined to "create[] a major problem." Mother's failure to timely notify Father of deviations from the access schedule resulted in "unproductive driving" and exhausted children. As a result, the children's grades were declining, and they were struggling with their mental health. Based on these findings, which the court stressed were not all its considerations, it found that there were material changes that negatively impacted the children, warranting modification of the custody order.

The court modified the custody order to grant Father sole legal custody with respect to passports, travel, and educational decisions and primary physical custody, with Mother's access occurring every other weekend from Friday after school until Sunday evening. The provisions of the custody order not explicitly modified remained in effect.

Following its oral ruling, the court entered a 2-page order, captioned "Order of Contempt" setting out the above changes to custody. Although the order stated that it is

"based on the 'best interest of the child' standard," it did not include any factual findings related to the best interest of the children. It did, however, include findings in support of holding Mother in contempt.

DISCUSSION

I. CONTEMPT

Mother first challenges that the circuit court erred by entering an order finding her in constructive civil contempt of the custody order because the order neither imposed a sanction nor included a valid purge provision. We agree.

"Constructive, as opposed to direct contempt, is contempt that occurs outside of the 'presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings.'" *Breona C.*, 253 Md. App. at 73 (quoting MD. R. 15-202) (footnote omitted). Unlike criminal contempt, which serves a punitive purpose, civil contempt proceedings are intended to coerce present or future compliance with a court order. *Sayed A. v. Susan A.*, __ Md. App. __, __, No. 1365, Sept. Term, 2024, slip op. at 28-29 (filed Mar. 28. 2025). To achieve that purpose, a constructive civil contempt order must:

> (1) impose a sanction; (2) include a purge provision that gives the contemnor the opportunity to avoid the sanction by taking specific action of which the contemnor is reasonably capable; and (3) be designed to coerce the contemnor's future compliance with a valid legal requirement rather than punish the contemnor for past, completed conduct.

Breona C., 253 Md. App. at 71.

Here, the contempt order is defective because it fails to impose a sanction or include a purge provision. Indeed, the circuit court expressly found that there was no viable sanction it could impose because Mother already was ordered to comply with the custody

order, and later in the hearing, noted that any sanctions or purge provision would be moot due to the modification of the custody order. We, therefore, reverse the finding of contempt.[6]

II. MODIFICATION

Next, Mother challenges that the circuit court erred in modifying custody without conducting a best interest analysis.

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 abuse of discretion only. *Id*. When considering a motion to modify custody, the circuit court engages in a two-step process to determine whether modification is warranted. *Jose v. Jose*, 237 Md. App. 588, 599 (2018); *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012). First, the court determines whether there has been a material change in circumstances since the previous custody order was entered, and if so, the court then considers whether a change in custody

[6] Because we are reversing on the grounds that the contempt order failed to include the required sanction and purge provision, we do not address whether the evidence of Mother's pattern of noncompliance with the custody order could have supported a finding of constructive civil contempt. *See Breona C.,* 253 Md. App. at 76 n.6 (leaving open the possibility that a "pattern of conduct in violation of a court order that, due to its continuing or repetitive nature, could reasonably be found to be ongoing at the time of a contempt hearing" even if the alleged contemnor is no longer "technically out of compliance" could support a finding of constructive civil contempt).

would be in the best interest of the child. *Jose*, 237 Md. App. at 599; *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." *McMahon*, 162 Md. App. at 594. This "procedural analysis" applies whether the court rules upon a standalone motion for modification or issues an ancillary order modifying custody or visitation in the context of a contempt proceeding "for the purpose of facilitating compliance or encouraging a greater degree of compliance[.]" *Sayed A.*, slip op. at 33 (cleaned up).

Under the first step, the circuit court found at least three material changes had occurred since the entry of the divorce decree and the consent order: (1) the parents' deteriorating communication and inability to co-parent; (2) the increased distance between their homes; and (3) Mother's repeated failure to comply with the access schedule.

Mother challenges some of the factual findings underlying the court's determination that there had been material changes. Her arguments, however, concern the weight the court assigned to certain evidence and the court's credibility assessments, both of which fall within the exclusive province of the circuit court.[7] *See In Re: Timothy F.*, 343 Md. 371, 379 (1996) ("Judging the weight of evidence and the credibility of witnesses and resolving

[7] We note that Mother's brief includes no citations to the record or the record extract in support of her contentions. *See* MD. R. 8-504(a)(4) (requiring references to "the pages of the record extract or appendix" to support factual assertions). Her record extract also does not contain the order from which she appeals. *See* MD. R. 8-501(c) ("The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal" and "shall include ... the judgment appealed from[.]"). It is not this Court's job to search the record to find evidence in support of Mother's claims and we decline to do so. *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 618 (2011).

conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact."). After reviewing the record, we conclude that the circuit court's findings were not clearly erroneous.

Mother also contends that there was no evidence showing that any of the changes affected the welfare of the children such that they would be considered "material." There was evidence before the court that the children were exhausted and were struggling academically, which the court found demonstrated that their welfare was negatively affected by increased driving for custody exchanges, coupled with Mother's lack of communication about deviations from the schedule. We perceive no error by the court under the first prong of its modification analysis.

The court's analysis under the second procedural step was, however, lacking. The court granted Father's motion to modify custody, altering the essentially 50-50 access schedule to give Father twelve overnights in every two-week block and to grant him sole decision-making authority over travel, passports, and education. But in doing so, the court did not make findings on the pertinent best interest factors set out in *Taylor v. Taylor*, 306 Md. 290 (1986), *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1978), and related cases. Though there is certainly overlap between the circuit court's findings relative to contempt and the material changes, on the one hand, and the best interest factors, on the other, the court did not engage in any meaningful analysis of the factors or comment upon how this dramatic change would affect the children. *See Boswell v. Boswell*, 352 Md. 204, 223 (1998) (in making a custody or visitation determination, a "court is to consider the [best interest] factors ... *and then make findings*

of fact in the record stating the particular reasons for its decision") (emphasis added). Although we are cognizant of the high degree of deference we must show to a circuit court's decision in a contested custody case, we cannot assess whether the circuit court appropriately exercised its discretion in the absence of on the record findings bearing upon the factors that the court determined to be dispositive. Consequently, we vacate the order granting Father's motion to modify custody and remand for further proceedings not inconsistent with this opinion.

We take judicial notice of the fact that Father has filed a new motion for modification of custody seeking to limit Mother's access to supervised visits based upon events that transpired since this appeal was noted. A hearing on that motion is scheduled for May 22, 2025. As a matter of judicial economy, the court may, in its discretion, choose to wait until after that proceeding to make additional findings consistent with this opinion.[8]

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FINDING APPELLANT IN CONTEMPT REVERSED. ORDER GRANTING APPELLEE'S MOTION TO MODIFY CUSTODY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE EVENLY DIVIDED.

[8] We observe that the appointment of a best interest attorney to represent the children's interests might aid the court in assessing the appropriate custody and access arrangement and in determining whether and in what manner the children's preferences could be considered. MD. CODE, FAM. LAW § 1-202; *see also*, *e.g., Augustine v. Wolf*, 264 Md. App. 1, 17 (2024) ("To effectuate a child's unique interest in the outcome of a custody dispute, a BIA is frequently appointed to represent a child in contested custody proceedings, and in certain contexts, the failure to provide independent representation to a child in such proceedings can be reversible error.").