Circuit Court for Montgomery County
Case No. 157774-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1519

September Term, 2021

KELLY JOHNSON

v.

LORAINE KENTNER

Nazarian,
Zic,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: June 16, 2022

This appeal concerns a custody modification dispute between Kelly Johnson ("Father") and Loraine Kentner ("Mother"). After a hearing, the Circuit Court for Montgomery County modified the operative custody order to award sole legal custody to Mother and to reduce slightly Father's parenting time with their child ("Child"). The court also altered the holiday schedule, added parameters to the parties' vacation access, and removed a provision restricting Child's interaction with each parties' romantic partners. On appeal, Father challenges the custody and parenting time decisions. We affirm.

I. BACKGROUND

Mother and Father were never married, but their relationship begat a child who is now seven years old. After Child was born, Mother discovered that Father had a relationship with Dr. Robin Wright and that they had a child who had been born approximately nine days before Child was born.

Mother and Father separated in 2018 and their original custody proceedings took place in 2019, when Child was four years old. In the original custody order, as amended in response to a motion, the court awarded Mother primary physical custody, ordered joint legal custody, and awarded Mother tie-breaking authority with respect to medical and mental health care, education, and religious training. Father's custody schedule included parenting time with Child on Friday through Monday every other weekend and a Wednesday overnight each week. The order also included a holiday and summer vacation schedule and a provision restricting each parent's ability to have romantic partners around Child.

A. Procedural History.

This round of proceedings began on August 27, 2020, when Father filed a motion to modify custody that sought to remove the restriction regarding romantic partners because he had recently become engaged to a woman named Maria Negrisros.[1] Mother filed a countermotion on December 16, 2020 that raised communication issues between the parties and asked the court to alter the access schedule and grant her sole legal custody, or in the alternative, tie-breaking authority across the board. Mother also asked the court to require Father to make Child available for phone calls during Father's custodial time, to alter the existing holiday schedule so that Thanksgiving and Christmas were split between both parties, and to adjust the summer schedule. Father amended his motion to modify to include co-parenting and communication issues and requested sole legal and physical custody.

Both parties' motions raised concerns about the fitness of the other parent and alleged that their deteriorating (in)ability to communicate was affecting Child negatively. Mother alleged that Father communicates in a "dictatorial and dismissive manner" that makes joint decision-making "extremely difficult if not altogether impossible," and that his behavior in front of Child is "often offensive." Father alleged that Mother failed to provide proper hygiene for Child and contended that she "attempts to micromanage" Father's care of Child and "continually seeks to convince their child that he is abnormal and is in constant

[1] There was some confusion during the circuit court proceeding surrounding the identity and name of Father's fiancée. For clarity, we refer to her by the same name that the court's memorandum opinion used. We mean no disrespect.

need of psychological treatment."

In November 2020, the court appointed Marilennis Cruz to conduct a custody evaluation. Ms. Cruz filed a report on May 28, 2021 after conducting interviews and virtual home visits with each parent, meeting with Child, and contacting references for each parent. More on this below.

B. Merits Trial.

The court held a three-day merits trial that began on August 16, 2021. Both parties testified, as did Ms. Cruz, Father's mother, Imogene Johnson, and Dr. Wright. Ms. Cruz took the stand first as an expert in custody evaluation and her report was admitted into evidence. Ms. Cruz testified that Child reported positive things about both parents and expressed a desire to spend more time with Father; he asked for Thursday through Monday with him rather than the existing arrangement. Ms. Cruz reported that Father told her he had one other child, the child he shares with Dr. Wright.

Ms. Cruz noted that Mother and Father both raised communication issues during their interviews,[2] but after speaking with and reviewing emails provided by both parents, she concluded that they had "minimal issues in their communication." But she also "recommended [] services to help in their co-parenting communication." And although Child expressed a desire to spend Thursday through Monday with Father, Ms. Cruz

[2] In the custody evaluation report, Mother "described the communication between her and [Father] as 'not good.' She said that [Father] is often short or ignores her messages." Father "described communication as 'one-sided' and demanding. He added that [Mother] does not respond to his messages at times."

recommended a different schedule, one in which each parent would have equal time with Child. She "recommended that the parties follow a 5-2-2-5 schedule whereby [Mother] has access with the child every Monday and Tuesday, [Father] has access with the child every Wednesday and Thursday and the parties alternate weekends from Friday to Sunday." She testified that "splitting time would be good for [Child]" because Child "does want to spen[d] time with both parents" and "has positive relationships with both . . . ." Ms. Cruz also recommended that the parties be awarded joint legal custody.

Father testified next. He told the court that he didn't contact Mother about the romantic partner provision in the order because they "don't have that kind of open communication to discuss th[o]se things, and also due to the situation with Dr. Wright, there is even more stress[] involved with telling things to [Mother]." When asked why he sought sole legal custody, he answered "because of communications with [Mother], and the demands she makes sometimes are onerous, and I don't believe it's in [Child's] best interest for her to have sole legal custody. I also believe his growth is being inhibited by her actions." Father identified multiple instances since the amended order in which he felt Mother was not acting in Child's best interest:

- Mother kept Child from attending school to visit a relative that was in town.
- Father disagreed with Mother's co-sleeping with Child.
- Mother attempted to call Child while he was with Father and Father limited those calls based on Child's preferences.
- Father found a GPS watch that Mother had given Child that gave Mother the ability to track Child's location while with Father.

- Mother used the tie-breaking authority to keep Father from picking up Child at appointed times or switched pickup times at the last minute.
- On occasions, Mother planned play dates for Child during Father's access periods, or asked Father to take Child to other children's birthday parties.
- Father noticed that Child looked "very unkempt" when picked up from Mother's house.
- Mother restricted phone access with Father and did not pick up when Father called Child on his birthday the year prior.
- Mother does not use proper protective gear when Child rides his scooter, and Child had sustained multiple injuries including "huge rashes, bumps on his head from not wearing a helmet . . . ."
- Mother kept Child out of school three or four times for medical complaints over the last two years.

Father testified next about Child's enrollment in therapy. Mother enrolled Child in therapy in 2019 because of nightmares, and Father testified that he agreed and supported this decision at the time. But on cross-examination, when asked if he wanted Child's therapy to stop, he responded that he "would have to talk to the therapist" and hasn't "been updated." Father testified that he had not spoken to the therapist directly since the initial meeting in 2019.

Father's mother, Ms. Johnson, testified next. She testified that her son is "possibly" getting married to a woman named "Latonya," but that she didn't think he was presently engaged. Ms. Johnson also testified about Father's positive parenting relationship with Child. She said that she did not become aware that he had a child with Dr. Wright until the child was four years old, and that he has two other children he is responsible for legally but he's not their biological father. At the beginning of day three of the merits hearing, Father

rested his case.

The court then ruled on Father's motion to modify. The court agreed with Mother that concerns about her parenting style were generalities, not serious, and not supported by the testimony. The court also agreed with her that Father doesn't think therapy is necessary and doesn't communicate with Mother or Child's therapist about Child's therapy, including Child's nightmares.

The court credited Father for acknowledging that Child's growth and development were due to both parents and found that Father didn't lie to the custody evaluator about how many children he had, most likely because he misunderstood the question. But the court found other credibility issues, notably that Father had not told the "whole truth" about when he met his fiancée and that his mother was unaware that he was currently engaged or planning to get married. Ultimately, the court ruled that Father had not shown a material change in circumstances.

Mother's case began after the ruling and she testified first. She addressed communication between the parties, phone access with Child, and disagreements on health, medical, and educational choices. She testified that she has attempted to call Child while with Father over twenty-five times since the last order and has been successful speaking with Child around a quarter of the time. She also testified that Father has not called Child once while with Mother. On one occasion, Mother attempted to call Child while her mother was in hospice care and Father did not allow Child to speak with his grandmother. Mother stated that Father has not participated actively in Child's therapy since the initial meeting.

Mother asked Father to attend a therapy session to discuss introducing Dr. Wright and Father's child to Child and how this would potentially affect him, but Father refused. She testified that Father said he was not interested in discussing this issue with the therapist and would bring it up to Child when he felt it was appropriate. Mother also testified that Father would push back on having Child attend therapy if sessions were scheduled on his access days. Mother described Father's dialogue with her as "constantly dismissive and condescending . . . ." She noted several instances in which they disagreed about Child's education and extracurricular activities. Mother said that Child began having bathroom issues at school and that Father has ignored and dismissed her concerns. Mother also said that she and Father disagree on Child attending religious services. She and Child attend church biweekly and when she asks Father whether he will attend with Child "he pushes back and says . . . he will see if their schedule allows."

Mother testified about instances when Child returned from Father's care and was quiet, including one time where Child told Mother he needed to tell her something, hid under a blanket, and hit himself. She then described an incident in August 2020 where she dropped off Child to Father's house and Father showed her messages between himself and Dr. Wright where Dr. Wright expressed negative feelings about Child. Mother testified that Father typically doesn't allow Mother on his property but asked her to approach his window, where he had printed the messages and posted them for her and Child to see. Child was present for this exchange.

Dr. Wright testified next. She explained that just before she appeared as a witness

in the original custody trial, Father told her an elaborate story about his involvement with a government agency that compelled her secrecy during the trial.[3] Dr. Wright also testified that Father's current fiancée was an au pair candidate for Dr. Wright and Father between 2018 and 2019.

C. Court's Ruling And Memorandum Opinion.

After taking the case under advisement, the court issued a memorandum opinion and order on November 2, 2021. The court granted Mother sole legal custody, modified the access schedule, and removed the restriction on romantic partners, among other things. This new access schedule changed Father's parenting time from Friday through Monday to Thursday through Monday every other weekend and substituted his weekly Wednesday overnight with a Wednesday evening visit from 3:00 pm to 7:00 pm on the alternating weeks when Father did not have his weekend visit. Overall, the new custody schedule reduced Father's overnights with Child from five out of fourteen days to four out of

[3] Dr. Wright testified that Father told her he worked for a government agency "like the CIA or FBI" and was hired to get close to Mother to investigate her brother. At some point, Mother had to find another place to live, so Father "offered for her to move into his place as a roommate. And then at one point after living there []as his roommate, she wanted to have a child." Father told Dr. Wright that Mother "asked him to donate sperm so that she can have a child," and Father cleared this with his supervisors with the caveat that the sperm would be switched by the agency. Father then told her that he donated sperm but wasn't sure if the sample had been swapped by the government agency, so he didn't know if the child was his. Father told Dr. Wright that she couldn't testify about his involvement in the government agency for his safety.

It is unclear from the record before us whether Dr. Wright did lie for Father during the custody proceeding. That wasn't the court's focus, though—her testimony was considered as part of evaluating his current fitness as a parent and his credibility.

fourteen days.

The order also modified the existing holiday schedule to limit holiday custody to no more than seven days at a time with Child and alternates Thanksgiving and Christmas. Finally, the order added a provision allowing the noncustodial parent to have at least one daily opportunity to speak with Child when he is with the other parent, except on exchange days.

In its memorandum, the court agreed that Child's behavioral issues, his increase in age, and the parties' deteriorating relationship collectively constituted a material change in circumstances. The findings of fact included several observations:

- Child "has experienced some physically manifested distress since the entry of the order upon his transition from [Father] to [Mother]."
- After overnights with Father, Child will not talk to Mother, he is tired, frustrated, and on one occasion Child told Mother that he had to tell her something, hid under a blanket and hit himself.
- Child "has had problems with toileting at school, and . . . has had tension headaches and eye aches."
- Father "largely has been uninvolved with [Child's] therapy, and he believes that [Mother] is trying to convince [Child] that he is abnormal." Mother has asked Father to take Child to therapy, Father has declined to do so because the request was made during his extended weekend.
- Father has made no effort to contact Child's therapist, but also noted that "notwithstanding [Father's] disinterested attitude toward [Child's] therapy, there is no indication that [Father] has interfered with [Child's] therapy . . . ."
- Father was untruthful in several aspects with both women, (referring to Mother and Dr. Wright) including the birth of his children.

- "The court credits Dr. Wright's testimony, which raises concerns about [Father's] judgment, fitness, and credibility."
- Father didn't tell his mother about his child with Dr. Wright until the child was four years old. Father's mother was not aware he became engaged over a year earlier.

The court also explained that Father had exhibited "behaviors that raise concerns about his judgment and fitness":

> [Mother] relayed that in August 2020, after a custody order had been entered in this case, [Father] asked [Mother] to approach his home during an exchange, whereas before he would not allow [Mother] on his property. During this time, Dr. Wright and [Father] were undergoing custody disputes. [Child] was in the home at the window. When [Mother] approached, [Mother] saw that [Father] had taped four pieces of paper on his window that [Father] wanted her to see. [Mother] could not read the papers, and so [Father] took them down and gave them to her. The papers contained heated communications between [Father] and Dr. Wright. It is unclear to the court why [Father] would post these communications on his window, invite [Mother] to read them, or do any of this in the presence of the parties' young child.
>
> With respect to [Father's] engagement, [Father] anticipates getting married to a woman named Maria Negrisros. [Father] could not say when he and Ms. Negrisros were getting married. . . . [Father] also indicated that if Ms. Negrisros is not cleared and/or the court does not modify the custody order, he may not be getting married. [Father] met his fiancé virtually in 2019 when he and Dr. Wright interviewed her to be an Au Pair for their [child]. [Father] and Ms. Negrisros began a relationship virtually and first met in person in January 2020. Following that first in-person meeting and before a second in-person meeting in August 2020, [Father] and Ms. Negrisros became engaged in May 2020. [Father] met Ms. Negrisros once more in July 2021. He intends to bring her back from overseas to live with him and with [Child]. [Father] did not tell [Mother] or Dr. Wright about Ms. Negrisros until court proceedings. [Father] has refused [Mother's] requests to talk to [Mother] and/or [Child's] therapist about how and when

[Child] will be told about this impending marriage.

Ultimately, the court concluded that the parties did not have a functioning co-parenting relationship, that Father did not want Mother involved in decision-making if it related to decisions he makes, and that Father attempted to shut Mother out of anything to do with Father. The court found that Father refused to acknowledge that the parents' own actions or decisions will have a potential impact on Child. The court also was concerned that Father believed Mother should be uninvolved in how major life changes may affect Child. The court considered the custody evaluator's findings, including her recommendation that the court adopt a 5-2-2-5 schedule[4] and that the parties should share legal custody. The court also acknowledged that the custody evaluator had interviewed Child and both parents and reported that Child wanted to spend more time with Father. The custody evaluator reported that both parents were "attentive, supportive, and loving" with Child.

The court then identified the material changes in circumstances since the entry of the original custody order:

> [Child] has expressed distress that has manifested itself physically, including having toileting problems at school, hitting himself, and showing reluctance to speak with his mother. [Child] is still excelling in school, healthy, and has a good relationship with both parents.
>
> [Father] has become engaged and intends to bring a new wife to his home. This is after [Child] learned about a new sibling that [Father] kept from the mothers of his children, and his own mother.
>
> [Father] has made decisions which impact [Child] which show poor judgment and a failure to fully consider [Child's] best

[4] The court's opinion references a "2-2-5" schedule. This is consistent with the custody evaluator's recommendation.

> interest.
>
> The parties do not co-parent. Their relationship continues to deteriorate. Both parties have some responsibility, though the court finds [Father's] refusal to co-parent to be a significant factor. Because of the parties' difficulties, [Child] is unable to speak with his mother when in [Mother's] custody, he misses out on fun activities, he behaves in a way that shows internal conflict, and while he continues to be in therapy, there is no indication that [Father] is supportive or encouraging of [Child's] therapy.
>
> [Child] has grown, he has matured, and he is able to express himself.
>
> All of these changes impact [Child's] welfare materially.

The court then moved on to the best interest analysis and found that increasing the frequency of exchanges between the parties was not in Child's best interest given their contentious relationship. The court also found that overnights during the week would not serve Child's best interest in light of his difficultly adjusting after visits with Father. The court stated that Child may be better off "having a longer block of time" with Father, "as it is sometimes difficult for children to adjust when they are transferred back and forth with shorter stints of time with a parent."

Next, the court addressed legal custody, noting that Father's "poor decisions" have affected Child in a negative way. The court emphasized that Father's disinterest in Child's therapy was troubling and that his attitude toward Mother "reflects a disregard for her as a parent." The court opined that the parties' disagreements would affect Child negatively and that he likely would pick up on each parent's differing attitude toward major decisions in his life. Last, the court removed the provision restricting the parents from associating with significant others while Child is in their care and added a provision that allowed each parent

to contact Child while with the other parent at least once a day.

Father filed a timely notice of appeal. We discuss additional facts as appropriate below.

II. DISCUSSION

On appeal, Father challenges the circuit court's decision to modify the custody order, grant sole legal custody to Mother, and reduce Father's overnights with Child.[5]

We review decisions to modify custody using three interrelated standards of review:

> We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . 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

[5] Father phrased the Questions Presented in his brief as follows:

> I. Did the lower court err by considering evidence of the Father's past relationship lifestyle choices as a basis for modification of custody, all of which had already been considered in the original custody proceeding?
>
> II. Did the lower court err by failing to analyze the case by applying the required custody factors, and instead allowing the best interest analysis to be influenced in a material way by its own personal beliefs and biases?

Mother phrased the Questions Presented in her brief as follows:

> 1. Whether the trial court erred by considering evidence of Appellant's lifestyle choices as a basis for modification, some of which had been considered in the original custody proceeding.
>
> 2. Whether the trial court injected "personal beliefs and biases" in its best interest analysis in place of an application of requisite custody factors.

> 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.

In re Yve S., 373 Md. 551, 586 (2003) (cleaned up). We defer to the custody determinations of a trial judge "because only [the court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the court] 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.* We recognize too that the circuit court is bestowed with broad discretion because of its "unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Santo v. Santo*, 448 Md. 620, 625 (2016) (*quoting Petrini v. Petrini*, 336 Md. 453, 470 (1994)).

A motion to modify custody requires a two-step analysis: *first*, the court determines whether there has been a material change in circumstances since the entry of the final custody order; and *second*, if a material change in circumstances has occurred, it determines what custody arrangement would serve the best interests of the children. *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005). Accordingly, we *first* address whether the circuit court erred in finding a material change warranting a modification of its original custody order, *then* consider the court's analysis of Child's best interests in modifying legal and physical custody.

A. The Circuit Court Did Not Abuse Its Discretion In Finding A Material Change In Circumstances.

Father begins by arguing that the circuit court erred or abused its discretion in

finding a material change in circumstances. He argues *first* that the court "founded its decision on facts previously litigated in the original custody litigation." He contends that the circuit court relied on stale evidence, specifically evidence predating the January 2020 amended order, of Father's past relationship lifestyle in finding a change in circumstances. He characterizes the circuit court's modification hearing as a "do-over of the original custody litigation," arguing that the circuit court "allowed its beliefs and biases pertaining to . . . Father's past lifestyle choices to drive the court's" decision. Mother counters that this background information laid the foundation for the current modification and that at most the testimony impeached Father's credibility and provided context for current events.

A material change in circumstances is one that affects the welfare of the child. *Id.* at 162. In requesting modification of a child custody order, "[t]he burden is [] on the moving party to show that there has been a material change in circumstances since the entry of the final custody order and that it is now in the best interest of the child for custody to be changed." *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008) (citations omitted).

To be sure, "[a] litigious or disappointed parent must not be permitted to relitigate questions of custody endlessly upon the same facts, hoping to find a [court] sympathetic to his or her claim." *McCready v. McCready*, 323 Md. 476, 481 (1991). The material change in circumstances requirement and the best interest of the child factors are separate considerations, but one inquiry often sheds light on the other. *Id.* at 482. And although sometimes it's obvious that the petitioning party is offering nothing new, more often "there will be some evidence of changes which have occurred since the earlier determination [on

custody] was made." *Id.* "Deciding whether those changes are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child[,]" and from that "the question of 'changed circumstances' may infrequently be a threshold question, but is more often involved in the 'best interest' determination," where stability is an important factor to consider. *Id.*

Father argues that Mother relitigated facts from before the amended custody order and that the court wrongfully considered evidence of Father's relationship history that had been presented to the court during the original litigation. But throughout the proceeding, the circuit court asked the parties to clarify the timing of events to focus on events *after* the court's January order. Nothing in the record suggests that the court considered evidence before the January amended order in determining whether to modify custody. The court relied specifically on instances "after [the original] custody order had been entered" in its memorandum opinion, including Child's behavioral and bathroom problems at school, the incident where Father posted contentious messages between him and Dr. Wright in his window for Mother to see, Father proposing to his fiancée, his refusal to discuss the proposal with Mother or Child's therapist, and the ongoing co-parenting issues raised by both parties. We are comfortable that in this case, "there was sufficient evidence of change to demonstrate that the parties were not simply seeking to relitigate issues previously decided . . . ." *Id.* at 483.

That doesn't mean the past is entirely out of bounds. The court may consider evidence predating the original order for the purpose of assessing the present character and

fitness of the parties. *See id.* at 481–82 (*citing Raible v. Raible*, 242 Md. 586, 594–95 (1966)) ("The salutary rule that a court does not relitigate an earlier custody order when considering a requested modification of that order does not mean that the court is precluded from considering evidence that was before the earlier court."). And although there was testimony about events before the January 2020 order, such as Dr. Wright's description of the, um, unusual restraints on her testimony at the first trial, the court did not rely on these events in determining that a material change in circumstances had occurred—it considered them only for purposes of Father's current fitness as a parent and for credibility. The court found that the context and the multiple inconsistencies throughout Father's present testimony cast serious doubt on Father's truthfulness. Dr. Wright testified that Father convinced her to choose Ms. Negrisros as their au pair when Father testified it was Dr. Wright's idea, and the court credited Dr. Wright's version. Next, Dr. Wright stated that she and Father interviewed his current fiancée between 2018 and 2019, which contradicted Father's testimony that he "met" his fiancée in January 2020. Father also told Dr. Wright he had no other children. Although these events occurred before the amended order, the court noted that "credibility is certainly an issue," that Dr. Wright could not get "into every lie that he ever might have told her," and that the testimony wasn't "terribly weighty anyway." Ostensibly, the court found Father's testimony about Mother's fitness to be uncredible and unpersuasive, while also finding Father's testimony contradictory. Father's testimony about his fiancée was inconsistent with his own mother's testimony. And although his mother did testify regarding a woman she referenced as "Latonya," she didn't

know important details about Father's relationship status, importantly, that he had become engaged over a year prior.

A principal basis for the court's finding of a material change in circumstances was the parties' deteriorating relationship and ability to communicate. "To be sure, the capacity of the parties to communicate and reach shared decisions regarding the child['s] welfare is of paramount importance." *Reichert v. Hornbeck*, 210 Md. App. 282, 306 (2013) (citation omitted). However, "this does not require the parents to agree on every aspect of parenting, but their views should not be so widely divergent or so inflexibly maintained as to forecast the probability of continuing disagreement on important matters." *Id.* (cleaned up). At a minimum, parents "must maintain a sense of respect for one another as parents, despite the disappointment in each other as [romantic] partners." *Id.* (cleaned up). It is the trial court's duty to evaluate existing communication issues as "'temporary condition[s]'" based on "'the tensions of separation and litigation'" or if these issues are "'more permanent in nature.'" *Id.* at 307 (*quoting Taylor v. Taylor*, 306 Md. 290, 307 (1986)).

Both parties argued with vigor that the other was responsible for the ongoing conflict, and both presented testimony and evidence at the merits trial to support their contentions. Both parents testified that they struggled to communicate effectively. Although Father claimed that most of their issues get resolved, Mother raised several instances in which important issues involving Child continued and described Father's dialogue as "constantly dismissive and condescending." Mother testified that she and Father have been unable to make joint decisions regarding Child's best interests on

numerous important topics in Child's life, including therapy, extracurricular activities, hygiene, phone calls with each parent, participation in religious events, health decisions, and Child's general welfare.

The circuit court found a material change in circumstances because the parties' inability to communicate and work together made joint legal custody no longer viable and, in light of Child's behavioral issues and physical distress, that circumstances had changed since the entry of the January amended order. The hearing transcript, which goes on for more than 400 pages not counting exhibits, directly refutes Father's claim that Mother didn't prove a material change in circumstances. The circuit court did not err in finding a material change in circumstances warranting a revision of the original custody order.

B. The Circuit Court Did Not Abuse Its Discretion In Determining That Awarding Mother Sole Legal Custody And Enhanced Physical Custody Was In The Best Interest Of The Child.

Second, Father argues that the circuit court erred by not engaging in the required analysis of the *Taylor* custody factors. Custody disputes between divorcing parents are decided according to the best interests of the children. *Taylor*, 306 Md. at 307; *Ross v. Hoffmann*, 280 Md. 172, 174–75 (1977); *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 407 (1977). There is no standard formula for determining the children's best interests—they depend on the facts of each case. *See Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503 (1992) ("Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interests standard . . . ."); *Sanders*, 38 Md. App. at 419 ("The best interest standard is an amorphous notion, varying

with each individual case . . . ."). The trial judge, "who has had the parties before [them], has the best opportunity to observe their temper, temperament and demeanor, and so decide what would be for the child's best interest . . . ." *Kartman v. Kartman*, 163 Md. 19, 23 (1932). This requires the court to consider and weigh a plethora of factors:

> The criteria for judicial determination includes, but is not limited to, 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

Sanders, 38 Md. App. at 420 (cleaned up). "While the court considers all the above factors, it will generally not weigh any one to the exclusion of all others. The court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor . . . ." *Id.* at 420–21.

Although the court's memorandum didn't walk through the *Taylor* factors in rote checklist form, the "court need not articulate every step of the judicial thought process in order to show that it has conducted the appropriate analysis." *Gizzo v. Gerstman*, 245 Md. App. 168, 195–96 (2020) (citations omitted). And in this case, the court's analysis is thorough and well-reasoned and emphasized the factors it found most important—the character and reputation of the parties, the desires of the parents, the preferences of Child, and the age and health of Child.

With respect to Child's physical distress, the court found Mother's testimony about

his change in demeanor to be especially significant, and the court concluded that Child would benefit from fewer back-and-forth exchanges between Mother and Father given his recent behavioral changes. The new schedule reduced Father's overnights from five to four out of fourteen days, but also *increased* the number of consecutive days Child would be with him and reduced the number of times Child would change hands between parents. The court struck a fair balance between each party's requests, the custody evaluator's recommendation, and, importantly, Child's desire to spend Thursday through Monday with Father. We are satisfied that the court's best interest analysis considered each relevant factor.

And although the court ultimately awarded Mother sole legal custody, it declined to allow Mother to dictate the activities in which Child would participate. The court recognized that the parents, who do not agree on most aspects of co-parenting, still should both be involved in the decision-making process and did not want to provide Mother with a provision that would "unreasonably impede" on Father's authority. The opinion also stated that Mother may not interfere with Father's parenting time and that the parties still need to work together to ensure Child "has an active and healthy social, academic, and extracurricular life."

Father argues that the circuit court "allowed its personal beliefs and biases relating to . . . Father's past relationship lifestyle choices to influence in a material way its custody modification decision . . . ." It's true that we will vacate a custody determination when the circuit court, "while assessing a particular factor, has been guided by their personal beliefs

in fashioning an outcome rather than by the evidence . . . ." *Azizova v. Suleymanov*, 243 Md. App. 340, 348 (2019). And "when evaluating what is in the best interest of a child, the determinative factor is what appears to be in the welfare of the children at the time of the custody hearing." *Id.* at 357 (cleaned up). "An evaluation of a parent's past conduct is only relevant insofar as it is predictive of future behavior and its effect on the child." *Id.* (citation omitted). But that's not what happened here.

In *Azizova*, we reversed a custody determination in which the circuit court improperly weighed evidence of a mother's decision to attend school and work a part-time job when the court found it was not a financial necessity. *Id.* at 364. We found that the circuit court erred when it relied on "stereotypes about the fragility of infancy" which did not apply to the child, who was thirty-one months old at the time. *Id.* at 373. Additionally, the court erred when it determined that the mother's youth and an incident of drunkenness in which the child was not present, but the father was, affected her ability to function in the best interest of the child. *Id.* at 374. None of these factual findings linked the mother's behavior to an adverse impact on the child or its development and the circuit court's assumptions were not supported by evidence. *Id.*

This case is nothing like *Azizova*. Rather than showing bias, the record reveals that legal and physical custody were modified for appropriate reasons. The circuit court considered testimony from Dr. Wright that shed light on Father's credibility, and the court found her persuasive and credible. The court relied on ample evidence of Child's development and the parents' inability to communicate in Child's best interests. We do not

see in its order that the circuit court relied on any of Father's lifestyle or personal choices in its decision to modify custody.

Last, Father argues that the circuit court abused its discretion by failing to undertake "any analysis of the court-appointed evaluator's findings and recommendations." We disagree. The court referenced the custody evaluation in its detailed opinion, and although a court in a custody case "is entitled to weigh" evidence offered by custody evaluators, it does so in conjunction "with contradictory testimony and its own observations." *Sanders*, 38 Md. App. at 423. Here, the court was entitled to weigh the custody evaluator's findings against the contradictory evidence and testimony presented by each parent, and it did so appropriately. The court was under no obligation to defer to the custody evaluator, and it certainly didn't abuse its discretion by deviating from the evaluator's recommendations where, as here, "other evidence and the court's own perceptions dictated otherwise." *Pastore v. Sharp*, 81 Md. App. 314, 322 (1989).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.