

Circuit Court for Baltimore County
Case No. C-03-FM-20-002053

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1521

September Term, 2023

JAIME L. MILLER

v.

ANTHONY J. MILLER

Graeff,
Leahy,
Shaw,

JJ.

Opinion by Shaw, J.

Filed: July 25, 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 Rule 1-104(a)(2)(B).

Appellee, Anthony Miller, filed an *Ex Parte* Motion for Immediate Modification of Custody, or in the Alternative, Request for Emergency Hearing after Appellant, Jaime Miller, his ex-wife and mother of his children, was arrested by the Baltimore County Police. The Circuit Court for Baltimore County granted a temporary order restricting Ms. Miller's access to the children pending a hearing. At the conclusion of a modification hearing, the court removed overnight visitation from Ms. Miller. Mr. Miller filed a Motion to Alter or Amend, and Ms. Miller noted an appeal. The court ruled on Mr. Miller's motion, finding a material change in circumstances and modified the custody order. For clarity, we have rephrased Appellant's questions.¹

¹ Appellant presented eleven questions in her brief for our review:

1. Did the trial court err in granting Appellee's Ex-parte Motion for Immediate Custody and denying Appellant's Motion to Reconsider?
2. Did the trial court err in allowing the admission of the edited police body cam footage?
3. Did Mr. Cochran's [Appellant's lawyer] representation amount to ineffective assistance of counsel?
4. Did the trial court err in finding that there were unsecured firearms in the presence of the minor children?
5. Did the trial court err in determining a material change in circumstances based on unsubstantiated claims that legally owned firearms in the home were unsecured, especially when these firearms were not involved in the incident leading to the Appellant's arrest and no evidence was presented to show that the firearms posed a threat to the children's safety?
6. Did the trial court err by relying on dismissed charges against the Appellant as a basis for determining a material change in

1. Did the trial court err in allowing the admission of the edited police body cam footage?
2. Were the trial court’s factual findings clearly erroneous?
3. Were the trial court’s legal conclusions regarding material change and best interest of the children legally correct?
4. Did the trial court err in granting Appellee’s Ex-parte Motion for Immediate Custody and denying Appellant’s Motion to Reconsider?
5. Did the trial court hold a hearing on Appellee’s Motion to Alter or Amend, and was Appellant afforded the opportunity to be heard?
6. Did Appellant’s lawyer’s representation amount to ineffective assistance of counsel?

circumstances regarding custody, contrary to legal standards that require substantial evidence for such determinations?

7. Did the trial court commit an error by misinterpreting evidence and assuming the children were present during the incident, thereby incorrectly assessing the risk to their safety and welfare?
8. Did the court improperly apply the legal standard for the “best interest of the children” by basing its decision on unsupported allegations and misinterpretation of facts, thereby making a custody determination that was not grounded in substantial evidence?
9. Did the trial court err in its assessment of the Appellant’s mental health and fitness for parenting capabilities?
10. Did the trial court err by initially granting a hearing for the motion to alter and amend, followed by granting the appellee’s second motion to alter or amend without holding the scheduled hearing and without affording the appellant the opportunity to be heard?
11. Did the trial court err in denying the motion to recuse and in not granting a hearing?

7. Did the trial court err in denying the motion to recuse and in not granting a hearing?

We hold that the circuit court did not err, and thus, we affirm the judgment.

BACKGROUND

Appellant, Jaime Miller, and Appellee, Anthony Miller, married on September 6, 2015. They shared two children: J.M. and A.M. The parties filed for divorce in 2020 and on September 29, 2021, the Circuit Court for Baltimore County granted the divorce and awarded primary physical and sole legal custody to Mr. Miller. Ms. Miller was granted access to the children every other weekend from Friday at 5:00 p.m. until Sunday at 7:00 p.m., alternating Wednesday evenings during the school year, alternating weeks during the summer, and designated holidays according to a schedule.

In making its custody determination, the court reviewed the *Sanders* and *Taylor* factors and found, in regard to parental fitness, that:

Mother has the capacity to be a fit parent, but is not currently capable of doing so. Her failure to adequately address her underlying mental health needs has left her with impaired judgment, impulsivity, and an inability to control her emotions. Her behavior has been marked by conduct which is not only detrimental to the wellbeing of the children, it has jeopardized their safety. For example, video footage of one of Mother's episodes depicted her throwing the boys' ipads at Father's car while yelling at him, followed by her speeding off in her Porsche with the children, unbelted, in the back seat, and the right rear door open. Given Mother's volatility, the [c]ourt has serious concerns for the safety of the children when in her care.

The court stated that "Dr. Siebert's opinion that Father is the more stable parent has been supported by the evidence in the case, which included evidence that the children's

academic performance has improved while in his care. The [c]ourt finds that Father is a fit and proper person to have custody.”²

On May 6, 2023, Baltimore County Police arrested Ms. Miller, following a domestic dispute with her boyfriend, Derek Starr. Body worn camera footage showed that Mr. Starr had locked himself in a bathroom and that he had stab wounds on his arm. He told police that Ms. Miller stabbed him with a steak knife and he locked himself in the bathroom to avoid further harm from her. He advised police that he had a gun on his person and that there was a second gun in a backpack in another room. Police retrieved both loaded and unsecured firearms. Ms. Miller told police that Mr. Starr “always has a gun on him.” Ms. Miller repeated to the officers that “he just always has a gun.” She was charged with First Degree Assault and held in a detention center without bail.³

On May 11, 2023, Mr. Miller filed an *Ex Parte* Motion for Immediate Modification of Custody, or in the Alternative, Request for Emergency Hearing, stating:

Mother was arrested by the Baltimore County Police Department (“BCPD”) and charged with First Degree Assault and Second Degree Assault for allegedly stabbing her boyfriend during an altercation this past weekend. Mother is currently being held without bail at the Baltimore County Detention Center because, among other things, Mother’s conduct was highly dangerous to the public, the charges against Mother are serious, and firearms were found during the incident (at Mother’s home where the Minor Children reside when in her physical custody). . . . Mother and her boyfriend, Derek Starr (“Starr”) engaged in a verbal argument after a night out consuming alcohol on Cinco De Mayo. When they returned to Mother’s home, Mother allegedly “raised the [black steak] knife above her head and swung it towards him, striking him twice on his right arm . . . [and] attempted to attack him

² The parties were ordered by the circuit court in 2020 to be evaluated by psychiatrist, Stephen Siebert, M.D., M.P.H., in connection with the initial custody case.

³ Her charges were later nolle prosequed.

again. . . . [D]uring the knife attack, [Mother] stated she was going to kill him. . . . It is deeply troubling and highly concerning that Starr lives with Mother and (unbeknownst to Father, who is the custodial parent of the Minor Children) maintained two (2) firearms at Mother’s home, where the children frequent and reside part-time. Father had no prior knowledge that Mother permitted her boyfriend to maintain firearms at Mother’s Home and does not believe that Mother has a gun safe or other facility in which to keep firearms safe, secure, and away from the Minor Children.

On May 12, 2023, the court issued a temporary order stating that Ms. Miller would have third-party supervised visitation with her children until a hearing was held. The court attempted to schedule an emergency hearing on May 22, 2023, but Ms. Miller’s counsel was unavailable. A hearing was set for June 23, 2023.

Ms. Miller was released on May 17, 2023, with the condition that she would not have contact with Mr. Starr. That same day, Ms. Miller filed a Motion for Reconsideration, which was denied by the court. Ms. Miller filed a Motion to Recuse the trial judge [Judge Purpura] and to Postpone the hearing on June 22, 2023. The court rescheduled the hearing to September 7, 2023, and ordered Ms. Miller to supplement her motion to recuse with evidence of bias, specific instances where the court ignored her evidence, and other evidence supporting her allegations. The court ultimately denied Ms. Miller’s Motion to Recuse. The court found that many of her claims had been previously litigated, and it addressed her claims of bias and of undue punishment, finding no meritorious reason to recuse.

On September 7, 2023, a hearing on modification of custody and visitation was held. Mr. Miller offered a summary video of the events leading to Ms. Miller’s arrest into evidence. The court asked, “is there going to be an objection with regard to admissibility

of the video because it’s been edited?” Ms. Miller, through her counsel, objected, stating, “[a]mong other reasons, yes, your Honor.” Her counsel then advised the court that when Mr. Miller’s counsel forwarded the video to him, in accordance with the Maryland Rule of Summaries⁴, he did not watch the video or object to it. Mr. Miller proffered that the video demonstrated a material change in circumstances and compared the incident to another one involving Ms. Miller and firearms. The court replied, “Well, that was a different situation. . . . The Children weren’t present.” Ms. Miller’s counsel objected to any statements from Mr. Starr in the video as being inadmissible hearsay. The court overruled the objection.

Both parties testified and during Ms. Miller’s testimony, she admitted that she had seen Mr. Starr, following her release from detention, in violation of the no contact provision in the temporary order. She also testified that Mr. Starr does not keep the guns around her children.

On September 14, 2023, the court ruled on the Petition to Modify Custody and Visitation and “found that Father had established that there had been a material change in circumstances warranting a modification of custody.” The court described the body worn camera footage showing Ms. Miller being “hysterical,” Mr. Starr locking himself in the bathroom with stab wounds, and the loaded and unsecured guns. The court stated,

Mother’s behavior has been a consistent concern throughout the litigation in this case. Video evidence admitted at the trial in the matter revealed Mother’s inability to control her emotions to the detriment of the safety of her children.” It continued, “Mother’s lack of insight into her mental illness, and persistence in blaming others for all of her problems has significantly impaired her ability to be a fit and proper parent. . . . Since 2021, however,

⁴ Mr. Miller sent the edited video along with the unedited video to Ms. Miller in June.

Mother’s conduct has only gotten worse. Her inability to control her behavior and lack of self-awareness were displayed clearly on the video. Her actions in permitting the children to be in the presence of Mr. Starr and his firearms reveals judgment that is markedly impaired. The combination of Mother’s emotional dysregulation along with the presence of unsecured firearms is a recipe for disaster.

The court ruled that it was removing overnight visitation from Ms. Miller, but left the rest of her access “largely unchanged.”

Mr. Miller filed a Motion to Alter or Amend on September 20, 2023, asking the court to include a measure in its order that would prevent Ms. Miller from having firearms around the children and to provide make-up days if Wednesday access was interfered with. On October 2, 2023, Ms. Miller noted her appeal.

Mr. Miller filed for a Temporary Restraining Order, a Preliminary Injunction, and a Permanent Injunction against Ms. Miller on October 3, 2023, as a result of Ms. Miller’s posts on social media about him and the children. The court granted the Temporary Restraining Order and scheduled all matters be heard on October 23, 2023. Ms. Miller did not appear at the October hearing because she had changed her address and did not receive notification. The hearing was rescheduled to November 28, 2023.

The hearing began on November 28, 2023, but the parties were unable to conclude it. The court set an additional hearing for March 5, 2024, and ordered an updated child access evaluation for each party to be completed in the meantime. Dr. Heller performed the child access evaluation. Ms. Miller did not provide Dr. Heller with records from her previous mental health providers, and she did not get mental health treatment from the

providers that Dr. Heller recommended because she said they were not accepting new patients for individual therapy.

On December 8, 2023, Mr. Miller filed a Motion for Reconsideration asking the court to grant an Interim Amended Order, ensuring that the children would not be near firearms and to vacate the order for an updated child access evaluation. The court granted a temporary amended custody order, but denied Mr. Miller’s request to vacate the child access evaluation.

The second hearing on Mr. Miller’s Motion to Alter or Amend was held on May 29, 2024. The court issued its Ruling and Custody Order on June 7, 2024. The court determined “that there has been a material change in circumstances necessitating a reconsideration of the custody and access of the parties’ two children who are now 14 and 9 years old. Both parents have new homes. Father has remarried and Mother is in a relationship with Derrick [sic] Starr.” In its analysis of the fitness of the parents, the court recounted the evidence regarding Ms. Miller’s worsening mental health:

The evidence showed, however, that Mother has made no meaningful attempt to address her mental health needs. As noted in prior opinions of this Court, those needs are a major impediment to her fitness as a parent. Unless and until Mother engages in treatment sufficient to address her mental health needs, she is incapable of being a fit and proper person to have custody of the children. Moreover, recent events have heightened the Court’s concern for the children’s safety when in her care. On May 6, 2023, Mother was arrested for assaulting Mr. Starr with a knife at her home. Police arrived at the scene and discovered the presence of two handguns. One was on Mr. Starr’s person. The other had been left unsecured in a backpack in one of the rooms.

Mother has a long history of losing control over her behavior when she gets upset. When emotional, she appears to lose an awareness of her surroundings

and is prone to what she refers to as “black outs,” which leave her with no memory of the events.

The court detailed Ms. Miller’s testimony where she stated that she blacked out during the police encounter and could not remember the evening of her arrest. The court further discussed Ms. Miller’s lack of current mental health treatment, her tardiness to court, her missed legal proceedings, and an incident when she did not attend a school meeting but was filing documents on MDEC.

The court ordered that Ms. Miller would have the children “every other weekend from the end of the school day on Friday till 9pm; on Saturday from 9am to 9pm; and on Sunday from 9a.m. to 6p.m.” when the children were in school and “every other weekend from 9am to 9pm on Friday, Saturday and Sunday” when they were not in school. The court further ordered that the parties would not make “derogatory” remarks about each other on social media and that Ms. Miller would be “prohibited from placing the children in any location or with any individual that would expose them to the presence of firearms. This provision includes, but is not limited to, individuals who regularly wear or carry firearms or buildings where firearms may be present.”

Ms. Miller noted this appeal. Further facts will be provided as relevant to our discussion.

STANDARD OF REVIEW

Maryland Rule 8-131(c) governs our standard of review in cases decided without a jury:

(c) Action Tried Without a Jury. When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence.

It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

We review the trial court’s rulings under an abuse of discretion standard. *North v. North*, 102 Md. App. 1, 13 (1994). A court’s decision is an abuse of discretion when it is illogical and against the facts presented before it. *Id.*

DISCUSSION

Ms. Miller argues that the circuit court erred in admitting the summary video of her arrest into evidence. She challenges the court’s factual findings, based in part on the summary video, and the court’s legal findings which led to the modification of her custody. She separately contends that the circuit court erred procedurally in granting Mr. Miller’s *ex parte* motion, denying her motion for reconsideration, and not giving her an opportunity to be heard on Mr. Miller’s Motion to Alter or Amend. She also argues that her counsel was ineffective and that the trial judge should have recused herself.

I. The court did not err in admitting the body worn camera footage.

Ms. Miller outlines four reasons why the body worn camera footage should not have been admitted into evidence. First, the video was not proper summary evidence. Second, the video was not self-authenticating. Third, the video contains hearsay remarks from Mr. Starr, and fourth, the video is of questionable relevance as it is more prejudicial than probative.

Mr. Miller contends any objection to the summary video was waived as he provided notice of his intent to use the summary video to Ms. Miller and she did not object prior to the hearing. He contends that she also did not object to the video’s authenticity and further,

there was a certification from the custodian of records that supported its authenticity. Mr. Miller states that Mr. Starr’s comments in the video were properly admitted as hearsay exceptions, under Maryland Rule 5-803(b)(2) and Maryland Rule 5-803(b)(8)(D), and the statements were highly relevant to the court’s determination regarding a material change of circumstances and the best interest of the children.

“Appellate courts are generally loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.” *Montague v. State*, 471 Md. 657, 674 (2020) (quoting *Portillo Funes v. State*, 469 Md. 438, 479 (2020)) (internal quotation marks omitted).

Maryland Rule 5-1006 governs the admission of summaries:

The contents of voluminous writings, recordings, or photographs, otherwise admissible, which cannot conveniently be examined in court may be presented in the form of a chart, calculation, or other summary. The party intending to use such a summary must give timely notice to all parties of the intention to use the summary and shall make the summary and the originals or duplicates from which the summary is compiled available for inspection and copying by other parties at a reasonable time and place. The court may order that they be produced in court.

Mr. Miller sent the unedited and the edited videos to Ms. Miller and her counsel in June of 2023, months before the hearing in September. Ms. Miller’s counsel admitted at the hearing that he did not object to the video when he received it and that he did not watch the video. As we see it, Mr. Miller properly complied with the Rule.

Maryland Rule 5-902 governs what evidence is self-authenticating and “except as required by statute or this Rule, require[s] no testimony or other extrinsic evidence of

authenticity in order to be admitted.” Rule 5-902(12) for “Certified Records of Regularly Conducted Activity” states,

The original or a copy of a record of a regularly conducted activity that . . . has been certified in a Certification of Custodian of Records . . . provided that, before the trial or hearing in which the record will be offered into evidence, the proponent (A) gives an adverse party reasonable written notice of the intent to offer the record and (B) makes the record and certification available for inspection so that the adverse party has a fair opportunity to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Mr. Miller gave Ms. Miller notice of his intent to use the video. He provided her with the video, as well as the Certification by the Custodian of Records. As such, Mr. Miller met the requirements for self-authentication.

The hearsay exception for excited utterances is Maryland Rule 5-803(b)(2). Under this rule, a “statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition” is an exception to hearsay. Md. Rule 5-803(b)(2). Our Court in *Mason v. State* held that a statement from an anonymous 9-1-1 call fell within the hearsay exception for excited utterance due to the “dramatic content and vivid phraseology of th[e] outburst.” 258 Md. App. 266, 286 (2023).

Here, Mr. Starr called 9-1-1 for help, alleging that Ms. Miller stabbed him. When the police arrived, he could be heard calling for help from a locked bathroom and he had stab wounds on his arm. Mr. Starr was clearly under stress from the incident when he talked to the police. Thus, the video falls under the excited utterance exception.

There is a separate hearsay exception for the admission of police body worn camera footage. Md. Rule 5-803(b)(8)(D). This hearsay exception states,

an electronic recording of a matter made by a body camera worn by a law enforcement person or by another type of recording device employed by a law enforcement agency may be admitted when offered against an accused if (i) it is properly authenticated, (ii) it was made contemporaneously with the matter recorded, and (iii) circumstances do not indicate a lack of trustworthiness.

Md. Rule 5-803(b)(8)(D). As discussed above, the video was properly self-authenticated. The body worn camera footage necessarily by its design “was made contemporaneously with the matter recorded.” Nothing on the record indicates that the video is untrustworthy. We hold that Mr. Starr’s comments on the body worn camera footage also fit this hearsay exception.

Lastly, Maryland Rule 5-402 states “all relevant evidence is admissible” “[e]xcept as otherwise provided by constitutions, statutes, or these rules, or by decisional law.” “Relevant evidence” is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Md. Rule 5-401. Maryland Rule 5-403 states, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” A court’s decision to admit relevant evidence that could be unfairly prejudicial is reviewed under an abuse of discretion standard. *Montague*, 471 Md. at 674.

The evidence from the summary video was relevant to the court’s determination regarding whether there should have been a modification of custody and/or visitation. While the video was prejudicial to Ms. Miller, it was not unfairly prejudicial and it provided significant probative value to what was in the best interest of the children. The court did not err or abuse its discretion in admitting the video into evidence.

II. The court’s factual findings were not clearly erroneous.

Ms. Miller argues the court erred in making its factual findings. She states that the children were not present for her arrest on May 6, 2023, and that they were never at risk from firearms. She contends that she had measures in place for the safe storage of firearms, and that the children were not around unsecured firearms when they were with her. She disputes the finding that she did not follow the court’s orders. Moreover, she disputes the finding that her mental health was affecting her parenting ability and disagrees with the court’s findings from the mental health assessment in the original custody proceeding that relied on Dr. Siebert’s report and found that she struggled with “deregulation.”

Mr. Miller contends the judge correctly weighed the credibility of the evidence and the testimony. He argues that the court did not make its decision based on the children being present for her arrest. He stated that testimony from the hearing and Ms. Miller’s statements from the body worn camera footage, show that the guns were unsecure, they were a danger to the children, and that Ms. Miller’s statements were inconsistent. He argues that the temporary visitation order required Ms. Miller to have no contact with Mr. Starr, but she admitted to seeing him in violation of the order. Furthermore, he argues that Dr. Siebert’s findings were “well-founded,” and that any challenge to the report is barred by res judicata and is untimely as years have passed since the trial court initially relied on the report.

Our Court “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “Findings of fact and credibility

determinations are to be made by trial courts, not appellate courts.” *Longshore v. State*, 399 Md. 486, 520 (2007). Here, the court heard testimony from both parties and allowed them to present additional evidence. The court then, as required, assessed the credibility of the witnesses’ testimony and the weight of the evidence in making its factual findings.

Ms. Miller argues that the court clearly erred as it found that the children were present for her arrest. She points to the court’s statement from the hearing: “Well, that was a different situation. . . . The Children weren’t present” to show that the court believed the children were present on the day of the arrest. This statement was taken out of context. During the hearing, Mr. Miller’s counsel compared the incident of Ms. Miller’s arrest to a previous incident when Mr. Miller visited Ms. Miller’s home for court ordered visitation of the children but was instead met with armed guards who had “mock” police cars. We find no support in the record for Ms. Miller’s assertion that the court relied on the children’s presence for its order here. The court never stated in its memorandum opinions nor in its orders, that it found the children were at risk because they were present for her arrest. Instead, the court focused on Ms. Miller’s behavior, her worsening mental health, and the fact that the footage clearly showed that there were unsecured weapons in the home.

The court did not err in finding that there were unsecured firearms in the home and no safe storage measures in place. Ms. Miller testified that the firearms were kept secured and that she had an agreement with Mr. Starr not to bring the firearms around the children. However, she also said in the footage from her May 6 arrest that Mr. Starr “always has a gun on him.” She further testified that she did not own a gun safe or a lock box, and that Mr. Starr would keep a gun in his backpack. The footage from the arrest showed that Mr.

Starr had a gun loaded on his person and that there was another unsecured gun in an unlocked room.

The court also did not err in finding that Ms. Miller violated court orders. During the custody hearing on September 7, 2023, Ms. Miller testified that she had seen Mr. Starr even though she was ordered not to have contact with him.

Ms. Miller argues the court incorrectly found that her mental health was affecting her ability to parent. She disagrees with the finding from Dr. Siebert’s report that she struggles with “deregulation” and the court’s reliance on this finding in its initial custody order and in its current order. We note that the court accepted Dr. Siebert’s report in reaching its conclusion on custody in 2021, and we affirmed that the court’s reliance on Dr. Siebert’s report was not clearly erroneous in CSA-REG-1834-2021. We also note that while the court referred to the report in the June 7 Order, its decision was not based solely on the report but, rather the recent events that preceded Mr. Miller’s motion for modification. The June 7 Order discusses Ms. Miller’s failure to get medical help to address her mental health needs, and it details the May 6, 2023 incident that was the basis for the emergency hearing. The order refers to Ms. Miller’s frequent tardiness, inconsistent communication with court evaluators, and absence from important events, like her legal proceedings for traffic violations and a school meeting for one of her children when she was filing on MDEC instead. We hold that the court did not err or abuse its discretion in assessing her mental health needs as limiting her fitness as a parent.

In summary, the trial court’s factual findings were not clearly erroneous. The court properly weighed the credibility of the testimony and evidence in making its findings.

III. The court properly found that a material change in circumstances had occurred, and the court properly applied the “best interest” standard.

Ms. Miller argues that the court abused its discretion in finding a material change had occurred. She contends that the guns were kept securely located, and that she made proper disclosures to the authorities when they arrived on May 6, 2023. She argues that the guns were not involved in the incident, the children were not home or in danger, and the charges were ultimately dropped.

Mr. Miller disagrees. He argues that the court did not rely on the dismissed charges but rather analyzed how her “actions adversely affect the welfare of the children.” The court found that Ms. Miller’s mental condition had worsened and that her arrest highlighted this material change.

“A material change of circumstances is a change in circumstances that affects the welfare of the child.” *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012). Deteriorating mental health can be a material change of circumstances. *Id.* at 172. After determining that there has been a material change in circumstances, the court must then analyze whether it is in the best interest of the children to modify custody and visitation. *Id.* Trial courts rely on factors from *Taylor v. Taylor*, 306 Md. 290 (1986) and *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977) to determine what is in a child’s best interest. *Taylor*, 306 Md. at 303 (“The best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak.”). We do not disturb the trial court’s finding of what is the best interest of

the child unless its findings are clearly erroneous, or it abuses its discretion. *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007).

In *Gillespie*, the mother argued that she always had an issue with mental illness, and, as a result, her mental illness could not have been a material change in the circumstances. *Id.* at 172. The circuit court disagreed. *Id.* The circuit court considered mother’s assault of father’s girlfriend, “her apparent lack of control over her actions, and her tendency to minimize responsibility and difficulty in appreciating the effect of her actions on her family” in finding a material change. *Id.* at 172-73. We affirmed the circuit court’s judgment that worsening mental health could be a material change in circumstances and that these factual findings warranted a legal finding of a material change in circumstances. *Id.* at 172.

In our view, the factual findings from the present case are similar to the facts from *Gillespie*. Accordingly, the facts support the court’s determination that a material change of circumstances occurred.

The June 7 Order noted “the parties’ two children [] are now 14 and 9 years old. Both parents have new homes. Father has remarried and Mother is in a relationship with Derrick Starr.” The order then shifted focus to Ms. Miller’s fitness as a parent. It acknowledged on “May 6, 2023, Mother was arrested for assaulting Mr. Starr with a knife at her home.” It stated that Ms. Miller “made no meaningful attempt to address her mental health needs,” and that she “has a long history of losing control over her behavior when she gets upset. When emotional, she appears to lose an awareness of her surroundings and is prone to what she refers to as ‘black outs,’ which leave her with no memory of the

events.” Continuing, the court found that Ms. Miller was “chronically late to important events” including her appointment with Dr. Heller and for the hearing on May 29, and that she even missed “an important meeting at the children's school, arranged by Mr. Miller, to discuss which teacher would be the primary teacher for one of the children next year” because she was “filing documents on MDEC during that time.” The court also discussed how Ms. Miller did not attend court proceedings related to traffic violations which led to the suspension of her license and concluded by stating “in failing to address her mental health needs, the Court finds that she is inadvertently putting the children at risk of harm.”

Ms. Miller, like the mother in *Gillespie*, lacked control over her actions as she testified to when she described her blackouts. *Id.* at 172-73. She has also minimized her responsibility and has “made no meaningful attempt to address her mental health needs.” *Id.* Ms. Miller’s worsening mental condition, as described thoroughly in the modified custody order, serves as a material change, just as it did for the mother in *Gillespie*. *Id.*

The court did not abuse its discretion in finding that it was in the best interest of the children to modify custody based on its expanded analysis of Ms. Miller’s fitness as a parent. In its June 7 Ruling on Mr. Miller’s Motion to Alter or Amend, the court incorporated factors that it considered in the original custody decision from 2021 but expanded its analysis of Ms. Miller’s fitness as a parent. The court believes “with appropriate treatment, [Ms. Miller] could conform her behavior to that expected of a responsible parent who loves her children. Without treatment, [she] lacks insight into her own self-destructive behavior, and appears to be incapable of understanding her current situation is a consequence of her own actions.” The court highlighted Ms. Miller’s arrest,

her inability to follow court orders, her black outs, and her failure to “address her mental health needs.” It concluded that she “is incapable of being a fit and proper person to have custody of the children” until she resolves her mental health issues.

IV. The court did not err in granting the *Ex Parte* Motion for Immediate Modification and denying Ms. Miller’s Motion for Reconsideration.

Ms. Miller contends that the *ex parte* motion should not have been granted because the children were not in immediate harm.⁵ She notes that the children were not present at the time of the incident and that she reached an agreement with Mr. Miller to schedule care for the children. She argues that Md. Code, Fam. Law § 9.5-204 does not consider unavailability as a factor for imminent harm necessary for emergency intervention. The extensive delay of seventy-six days between the emergency order and the emergency hearing also indicates to Ms. Miller that the children were not in imminent harm.

Mr. Miller counters that there was immediate, substantial, and irreparable harm because Ms. Miller was incarcerated. Mr. Miller argues that Ms. Miller cites the wrong standard and that this order was governed by Maryland Rules 15-504 and 1-351. An emergency existed because Ms. Miller was involved in a domestic violence situation which resulted in her arrest. Moreover, any delay that existed, occurred because of Ms. Miller and her counsel. The court attempted to schedule an emergency hearing on May 22, 2023, but Ms. Miller’s counsel was unavailable. Ms. Miller then asked for a postponement of the June hearing date which moved the hearing to September.

⁵ Our Court can review an interlocutory order even after a final judgment has been rendered. Md. Rule 8-131(d).

Courts have discretion to issue an interlocutory injunction. *Magness v. Magness*, 79 Md. App. 668, 678 (1989). A temporary restraining order, or an interlocutory injunction, can only be granted if “it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the party seeking the order before a full adversary hearing can be held.” *Id.* at 678-79; *see also* Md. Rule 15-504. Courts look to maintain the positions of the parties until a full hearing can be held. *Id.*

In *Magness*, our Court upheld an order that “provided that the children would stay, pending a pendente lite hearing, with their mother who had been their primary caretaker up until this time. [Father] had the right, according to the order, to visit the children at mutually agreed-upon times.” *Id.* at 680. The mother averred in her affidavit that her husband “had been harassing and threatening her, and that, despite the recommendations of his pastoral counsellor, he refused to secure professional help with his emotional problems.” *Id.* at 679. The order was limited to prevent continued harassment, protect the children, and to maintain the status quo. *Id.* at 680.

Likewise, here, the goal of the order was to protect the positions of the parties from harm. Mr. Miller alleged in his motion that a domestic violence incident occurred at Ms. Miller’s home that would create a volatile situation for the children. He stated that she was unable to care for the children because she was incarcerated. The order itself ensured Ms. Miller still retained third-party visitation rights in the interim period before an emergency hearing could be held.

The seventy-six-day delay was not evidence of a lack of imminent harm. The delay resulted because of Ms. Miller. At first, Ms. Miller’s counsel was unavailable for the earliest time that the court could schedule an emergency hearing. Then, Ms. Miller requested a postponement the day before the emergency hearing was set to be held. The court was within its discretion to grant the *ex parte* order to avoid immediate, substantial, and irreparable harm that could have occurred had the children been allowed to stay with Ms. Miller and Mr. Starr.

Ms. Miller further argues that her Motion for Reconsideration on the matter should have been granted because she was released from detention, her charges were expunged, and the incident in question did not involve firearms. Mr. Miller contends that the court has broad discretion to grant or deny a motion for reconsideration, and it was within the court’s authority to maintain the order until a full evidentiary hearing could be heard.

Trial judges have broad discretion to grant or deny a motion to alter or amend. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). “[T]he discretion of the trial judge is more than broad; it is virtually without limit.” *Id.* The court decided that it was in the best interest of the children to maintain the temporary order until a full evidentiary hearing could be heard. The court had discretion to alter or amend under the Maryland Rules, and it was within its discretion to preserve the temporary restraining order until the hearing based on the averments in the emergency motion.

V. The court correctly granted a hearing for Mr. Miller’s Motion to Alter or Amend, and Ms. Miller was afforded the opportunity to be heard.

Ms. Miller argues that she should have been given an opportunity to be heard on the Motion to Alter or Amend, including on the temporary changes from Mr. Miller’s December 8 Motion for Reconsideration. She further contends that she should not have been “faulted” “for not attending the initial hearing” on the Motion to Alter or Amend on October 23, 2023. Mr. Miller states that Ms. Miller was present at both the November 28, 2023, and the May 29, 2024, hearings on the Motion to Alter or Amend. She presented “her claims and defenses related to the [m]otion.”

A court may not grant a motion for reconsideration without holding a hearing. Md. Rule 2-311(e); *see also Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 46 (2005). The court held two hearings: first on November 28, 2023, and second on May 29, 2024. Ms. Miller was present at both. She testified and participated thoroughly in the proceedings. Although Ms. Miller did not appear on October 23, 2023, the court gave her the opportunity to speak and be heard on the matter. The court did not abuse its discretion because it held hearings in accordance with Maryland Rule 2-311(e).

VI. Mr. Cochran’s representation did not amount to ineffective assistance of counsel.

Ms. Miller stated in her brief that the “Sixth Amendment of the United States[’] Constitution guarantees the right to effective assistance of counsel” and *Strickland v. Washington*, 466 U.S. 668 (1984) establishes its test. She contends that her counsel, Mr. Cochran, failed to object to the summarized video, failed to watch the summarized video, and filed a motion for reconsideration without her approval or consent. Mr. Miller argues that the constitutional right to effective assistance of counsel does not apply to the present

case. Moreover, he argues that Ms. Miller did not make this argument below, and as such, has waived this argument.

We agree with Mr. Miller. The Sixth Amendment of the United States Constitution starts with “[i]n all *criminal* prosecutions.” U.S. CONST. amend. VI. (emphasis added). This is a civil action. The case that Ms. Miller cited, *Strickland v. Washington*, 466 U.S. 668 (1984), is a criminal case. No Maryland cases yet have extended this right to civil custody disputes. Moreover, we are limited in our review to issues preserved in the trial court below. *Burnett v. Spencer*, 230 Md. App. 24, 36 (2016); Md. Rule 8-131(a). Ms. Miller did not raise this issue below.

VII. The court did not err in denying Ms. Miller’s Motion to Recuse.

Ms. Miller contends the court’s order requiring her to supplement her Motion to Recuse Judge Purpura was an undue, financially burdensome constraint. She argues that the court should have held a hearing to define the scope of documentation required to limit her costs as a pro se litigant. Res judicata and collateral estoppel should not prevent her claims as those previous cases did not address the issues of bias, conflicts of interest, and fairness. Moreover, the court failed to address her “detailed incidences of alleged bias and conflict[s] of interest” which creates “questions about the thoroughness and fairness of the judicial consideration.”

Mr. Miller states that “[r]ecusal is a discretionary matter, and the judge’s decision denying recusal should not be overturned unless clearly wrong.” He argues that Ms. Miller waived this argument because she did not raise it in her supplement to the Motion to

Recuse. Even if the argument is not waived, Mr. Miller contends that Ms. Miller has failed to allege any “personal bias.”

Motions for recusal are “ordinarily” determined by the judge whose recusal is sought. *Surratt v. Prince George’s Cnty., Md.*, 320 Md. 439, 464 (1990). “When bias, prejudice or lack of impartiality is alleged, the decision is a discretionary one, unless the basis asserted is grounds for mandatory recusal.” *Id.* at 465. The court analyzes the motion objectively to determine “whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned.” *Id.* (quoting *In re Turney*, 311 Md. 246, 253 (1987)). Maryland has a “strong presumption” that judges are impartial. *Nathans Assocs. v. Mayor and City Council of Ocean City*, 239 Md. App. 638, 659 (2018). The judge must have “personal” bias from an “extrajudicial source.” *Id.* (internal citations omitted).

The trial judge was within her discretion to deny the motion to recuse. Ms. Miller made claims of judicial bias, conflicts of interests, and unfairness against the judge, but the claims fail to overcome the strong presumption in favor of impartiality. The court has the discretion to determine which witnesses it finds credible. The argument that the court sided with one party more than the other does not mean that the judge was biased, it could mean that the court found one party’s testimony and evidence more credible than the other. It is well within the court’s discretion to find one party’s expert more credible than another’s. Moreover, Ms. Miller fails to demonstrate how any alleged bias is extrajudicial in nature. The court has been involved in the matter since 2020 and naturally knows a significant amount about the parties’ past including their employment histories. Also, the court did

address many of Ms. Miller’s allegations by incorporating past rulings on motions to recuse in this one and by addressing the newer allegations more specifically. The court did not abuse its discretion by denying Ms. Miller’s third motion to recuse.

CONCLUSION

Ms. Miller challenged the circuit court’s Ruling on the Motion to Alter or Amend Custody and Visitation. She presented eleven questions for our review that questioned the circuit court’s factual and legal findings. We affirm the circuit court’s judgment.

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