UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0022

September Term, 2016

TERRY GAMBLE

v.

ANGELA WILCOX

Meredith,
Leahy,
Beachley,

JJ.

Opinion by Meredith, J.

Filed: November 4, 2016

In this appeal, Terry Gamble ("Father"), appellant, contends that the Circuit Court for Baltimore County both erred and abused its discretion in denying his petition to modify the custody of the minor daughter he fathered with Angela Wilcox ("Mother"), appellee. In his brief, Father presented three questions for this Court's review, but the essence of all three questions boils down to: Did the trial court err in denying Father's petition to modify custody?[1]

Our answer is "no."

FACTS AND PROCEDURAL HISTORY

The parties to this case had a romantic relationship of less than a month's duration, which ended when Mother told Father she was pregnant. On August 25, 2012, Mother gave birth to the parties' minor daughter ("Daughter").

Daughter has always resided with Mother, but six days after Daughter was born, Father filed a Complaint to Establish Custody, Child Support, Visitation, and Paternity

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[1] Father's questions presented, verbatim, are:

1. Whether the trial court committed clear error when applying the law to the facts of the case when awarding sole legal and physical custody of the minor child to the Appellee/Mother?

2. Whether the judge committed reversible error when she failed to consider the safety, future harm and dangerousness of allowing the child to live with a sex offender and criminal recidivist in appellee/Mother's home?

3. Whether the judge committed an [sic] reversible error of law when she delegated her judicial authority and responsibility?

Test, in which he asked for sole legal and physical custody. On October 3, 2012, Mother filed an answer, a complaint for child support, and a counter-complaint for custody, in which she requested sole legal and physical custody, and asked that Father be awarded supervised visitation. By consent, an order was filed in December 2012, providing for a paternity test, which demonstrated that Daughter was indeed Father's daughter.

On June 6, 2013, a domestic master heard the competing petitions for custody of Daughter, and recommended that Mother continue to have sole legal and physical custody, with visitation on a phased-in basis granted to Father. Father was also ordered to pay child support. Both parties filed exceptions. On August 19, 2013, Father removed Daughter from daycare, and for a period of 45 days, he refused to return her to Mother until expressly ordered to do so. The exceptions were heard by a judge of the Circuit Court for Baltimore County on October 2, 2013.[2] At the conclusion of the exceptions hearing, the court issued a temporary custody order, continuing sole legal and sole physical custody in Mother, pending the court's ruling on the merits, and additionally ordering that Father return Daughter, that day, to Mother at the North Point Precinct of the Baltimore County Police Department.

On November 7, 2013, the circuit court signed an order adopting the master's recommendations. The order --- which was not entered on the docket until November 25, 2013 --- provided, *inter alia*, that Mother was to have primary physical and sole legal custody of Daughter; that Father's visitation was to be phased in over six phases which

[2] The judge who heard the exceptions was also the trial judge in this case.

would increase his visitation time over a period of months; and that Father was to pay $1,103.00 per month in child support. Father's child support arrearage was determined to be $12,139.00.

On November 26, 2013, the parties reached an agreement in open court --- later memorialized in an order filed on December 3, 2013 --- eliminating Father's "phased-in" visitation, and providing that Father would have visitation with Daughter every other weekend, and overnights every Wednesday. The court's previously-filed November 25, 2013, custody order (sometimes referred to elsewhere as the "November 7 order" because of the date on which it was signed) remained otherwise in force.

On January 9, 2014, Father filed a motion to decrease his child support obligation. He also filed a motion to modify custody, in which he asked for joint legal custody, and asserted that, as a result of the consent order docketed on December 3, 2013, he had sufficient overnight visitation with Daughter to be considered to be in a "shared physical custody" arrangement. In the ensuing months, the parties filed several cross-petitions for contempt against each other. On April 3, 2014, Mother filed a counter-petition for modification, asking that Father's visitation be supervised because he had been charged criminally after intentionally ramming his vehicle into a vehicle driven by Mother's then-boyfriend at a time when the boyfriend's vehicle was occupied by Daughter.[3]

[3] In his brief, Father characterizes this incident as "a minor fender-bender," but he was charged with, *inter alia*, first- and second-degree assault, malicious destruction of property, and reckless driving. He eventually entered an *Alford* plea to second-degree assault, and he was found guilty of that offense.

The next court action pertinent to this appeal occurred on July 7, 2015, when Father filed an Amended Petition for Modification of Custody and Visitation, along with a motion to modify child support. Father sought to reduce his child-support obligation because, four days prior to filing the motion to modify, he voluntarily quit his job.[4] In his Amended Petition to Modify Custody and Visitation, Father cited the confidential results of Mother's psychological evaluation to support his contention that he was entitled to a "modification" of custody and visitation, but failed to specify in his petition what relief he wanted the court to order. Pursuant to Mother's motion, the court subsequently struck from Father's amended petition two paragraphs containing the information from Mother's psychological evaluation.

The merits hearing on Father's petition to modify custody, and his amended petition to modify custody, began on August 26, 2015. The case was then continued to September in order to provide the Child Access Evaluator time to investigate the background of Jose Rodriguez, Jr., Mother's new boyfriend, who had recently moved in with Mother and Daughter. The second day of the merits hearing was September 24, 2015. At the conclusion of the second day of the hearing, the court rendered an oral ruling denying Father's petition to modify custody. Although the court found that there had been material changes in circumstances since the initial custody order had been entered, the court concluded that the changes did not warrant a change of custody. The trial judge explained:

[4] At the eventual merits hearing in this matter, the trial judge found that Father had voluntarily impoverished himself by quitting his job, which is a finding he does not challenge on appeal.

[T]his matter is before the Court on [Father's] Request for Modification of prior Court Orders issued by this Court in November of 2013. There was the original Order dated November 7th, 2013, under which [Mother] was awarded primary, physical custody and sole, legal custody. [Father] was awarded alternate weekends and Wednesday – every Wednesday overnight. There was, by consent, a modification of that Order. There were a few terms that changed, and that modification was signed by Judge Cox and dated November 26th, 2013. The parties are before the Court today, and have been before the Court on a previous hearing date in August, litigating the issue of modification. Essentially, [Father] seeks a change of custody and believes there's been a material change in circumstances that warrants the Court changing custody for a number of reasons.

First of all, he has testified about the fact that [Daughter], who is 3 years old, has had her daycare arrangements changed several times since the Court's Orders in November of 2013. However, Darlene Brinkmeier, . . . is the current, daycare provider for [Daughter] and she has been . . . since March of this year through the present time. And with the exception of recent complaints by [Father] about [Daughter's] care there, he has overall been impressed with the care she's received at that facility. . . . Ms. Brinkmeier, when she testified here back in August, indicated that [Daughter] is, and I wrote this in quotes, "smart, precious and well-adjusted," end of quote. She also testified that [Daughter] and her mother had a good relationship and seem excited to see each other. In addition, she testified that the only other person who picks [Daughter] up from daycare is [Daughter's] maternal grandmother, Ms. Wilcox. And Ms. Wilcox also described a positive relationship between [Mother] and [Daughter]. . . .

Another area that [Father] complains of and believes is a basis for modification, is the area of conflicts between the parties. Conflicts at the exchange site of McDonald's on Wise Avenue. Conflicts in discussing [Daughter's] health and whether she needs to go and get emergency treatment or not. Conflicts about trying to get --- ah, [Father] trying to get [Daughter's] Social Security Number. . . .

There is obviously a lot of tension and conflict between these parties. They can't get along. They can't communicate well, and hence, the reason why one --- only one party has legal custody. . . . [C]ommunication is important. . . . And while it's not the only fact the Court looks at in deciding the issue of joint versus sole, legal custody, it is the most important. Because

if the parties can't communicate, then you can't do things jointly. You can't make joint decisions.[5]

The e-mails that [Father] introduced show the tension between the parties. They can't seem to agree on anything and the responses that they gave each other in communicating by e-mail and text are very terse. In other words, the tense, contentious nature of their relationship is evident, not only as they interact in Court, but as the Court can see from reviewing those exhibits that [Father] introduced.

[Mother], for example, is very firm on the fact that she has sole, legal custody and she's not necessarily always willing to do what [Father] suggests. However, on the other side, I have to say that [Father] is not easy to get along with either. He has anger issues and that's evidence by, for example, the altercation that occurred between [Father] and Mr. Sauer, who was [Mother's] former boyfriend. [Father] was upset, I, I guess, because Mr. Sauer was transporting [Daughter] and so, he, he assaulted Mr. Sauer and that assault --- that incident occurred January 30th of 2014, and as a result, . . . [Father] was found guilty of second degree assault and Court-Ordered to anger management counseling as part of a period of supervised probation. He indicated in response to the Court's questions, that he successfully completed his probation very recently.

Ms. Shinaberry [the Child Access Evaluator], in her testimony, indicated that she felt [Father] was not necessarily forthcoming about his history of anger and domestic violence and she alluded to an incident [that] happened in Indianapolis. But my focus is more on what has happened since November of 2013 and I can't ignore this, this incident, which resulted in a conviction for [Father].

[Mother] has begun a relationship with a man name[d] Jose Rodriquez, Jr. and that is another basis for [Father] citing a material change

[5] We note that, in *Taylor v. Taylor*, 306 Md. 290, 304 (1986), the Court of Appeals stated that the parents' capacity to communicate well with each other and share in making decisions about a child's welfare "is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate, and is relevant as well to a consideration of shared physical custody. Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future."

in circumstances. In fact, at the beginning of August of this year, Mr. Rodriguez moved into [Mother's] four-bedroom home. The reason --- the primary reason that this is of great concern to [Father], and frankly, to the Court, is that Mr. Rodriguez has a conviction for a third degree sex offense. He was convicted in 2003, and as a result of that conviction, he is required to register as a sex offender.

Now, from everything that the Court can glean, including Mr. Rodriguez's testimony, as well as the testimony of Ms. Shinaberry, who I asked to conduct an additional or supplemental investigation in light of the very recent disclosure about the relationship between Mr. Rodriguez and [Mother], everything I can glean is that, at the time of this third degree sex offense, he was 20. The victim was 13. He testified that he believed that the victim was 17 and that he was introduced to the victim by the victim's cousin, who was 17. . . . [T]he fact of the matter is, whether the defendant in a criminal case believed that the victim was of age or not, really is not the issue. It may be taken into consideration in terms of the Court's sentence, but it's a statutory violation. I have no way of knowing whether he really believed that she was 17 at the time. Apparently, he had two, intimate relations with the victim. Her parents discovered the relationship and the authorities were contacted. He, he is paying a penalty for that.

And so, the question for the Court is, how do I take that into account in deciding what is in [Daughter's] best interest? Is it a risk? Should I take into account the fact that this happened back in 2003, when a man was 20 and he's now 33? Should I look at what's happened in between? I think that is relevant in addition to considering the offense itself.

Mr. Rodriguez has had, I believe, a couple of instances where there was an issue about him not properly reporting as a sex offender and --- but Ms. Shinaberry testified that he has been in compliance. He's apparently lived in both the city and the county at different times. He's in compliance now. He has not had any additional, criminal charges since he was 20 years old, according to everything that I can glean. He was in a custody dispute over his 8-year old son by another woman and he went to Court in Baltimore City Circuit Court. The Court ordered him to complete a parenting, a parenting course with The Family Tree. He successfully completed that course. It was a 10, 10-meeting course, and the Court has seen the certificate and Ms. Shinaberry provided that as part of her supplemental investigation.

What is most important to the Court is whether Mr. Rodriguez has unsupervised contact. There is no --- simply no way I can know the answer

to that. The testimony that he gave, which seemed sincere, which seemed credible, was that he doesn't discipline [Daughter] and he's never left alone with her. The Court received similar testimony from [Mother].

As Ms. Shinaberry was careful to point out, she did not perform a risk assessment, but she did review Mr. Rodriguez's background, his history since the criminal case in 2003 and she still maintains that . . . her recommendation would be for the Court to maintain the status quo as far as custody and access are concerned.

I also note that Mr. Rodriguez has had a steady place of employment at Potts & Callahan and has worked his way up to the position of mechanic. He gives [Mother] $600.00 a month towards household bills since he's moved in. His [8-year-old] son comes and spends alternating weekends at the house and he takes an active role in his son's life.

So, the Court, with, with some caution, and some concern about frankly, the judgment of [Mother] in bringing in this new relationship, finds overall that, while it is significant and it is an area of caution, that with certain restrictions, [Daughter] should still reside primarily with her mother.

Let me just address another issue that's been raised by dad. He complains about [M]other's consumption of alcohol. [Mother] does take medication that's noted in Ms. Shinaberry's testimony and [Mother] continues to be in therapy. [Mother] denies consuming alcohol, but Mr. Rodriguez acknowledged that there are occasions, when [Daughter's] not around, that [Mother] consumes alcohol. He didn't testify that it was an extensive amount, but he did testify about that and so, there is some conflict in the testimony as it relates to that issue.

The last, significant change in circumstance that we've heard about in this case is [Father] no longer working. [Father] is married. He has a newborn child. Well, I say newborn. He's about 11 months old now, and he's had some peering [sic] issues and developmental delays according to [Father's] testimony. I don't have any reason to doubt [Father] with respect to that, although [Mother's attorney] makes a good point, that I really don't have any evidence to show the nature and extent of what that child's disability may be.

What I have is [Father] making a decision that he's gonna stay at home while his wife, who's a nurse, works and is the sole, income provider for their children. She has one child by another relationship. That child is in private

school. [Father] was making, according to his own statement, fifty-seven --- over $57,000.00 at the time. I know that [Mother's attorney] would like to impute a higher number, but I find that he was making at least fifty-seven-thousand --- I think it's --- seven-hundred-dollars at the annually --- as an I.T. professional ah, when he stopped working. He stopped working July 3rd of this year. . . .

I do find that [Father] has voluntarily impoverished himself. Without more on the record, I , I just think that that's, that's the only appropriate finding I could make. He, he quit a job and then, four days later, he, he raises that as a basis for the Court to modify its Order.

So, with respect to that, if he has the requisite number of overnights to make it a shared, custodial arrangement, then what I am going to do is instruct [Mother's attorney] to prepare the child support guidelines. . . . And the income . . . that I'm imputing [to Father] is $57,600.00. . . .

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And so, obviously, the things that I'm saying to you lead the Court to the following: While there have been material changes in circumstances, I don't find that it is in [Daughter's] best interest to change the primary, physical custody or the award of legal custody. [Daughter] is doing well. I have talked about that. Parent --- [Daughter's] parents aren't doing so well with each other. There are some modifications that I do find appropriate and so, I am gonna include in the Order, although the overall Order will be the same with these specific exceptions. . . .

I am ordering both parents, whether you've gone though it before or not, to immediately enroll in the Circuit Court's Intensive Services Parenting Class. That's through Family Services. I am ordering that [Mother's] stepfather, as well as Mr. Jose Rodriguez, Jr., that they may not have an unsupervised contact with [Daughter]. . . . That [Mother] will continue to give [Father] notice of any of [Daughter's] medical, dental or other important appointments. [Mother] shall not consume alcohol and she will continue with her therapy. Um, [Father] was recommended to enroll in therapy and I strongly urge that. I'm not gonna make it a requirement. Really, I'm not gonna make therapy a requirement of either parent, ...

You both have a lot of baggage. You both do. You don't have to stand up and say, yes, I agree, but if you're gonna be able to move forward, you have got to deal with these issues. Nobody has to know but you and

> your professional counselor. I don't need to know about it, but you've got to confront it so that you can move on. You all are so angry at each other, that it's gonna come across to [Daughter]. I have no doubt that both parents love her, but you [have] got to move on. . . .
>
> These cases are never easy. I am sure they are difficult for the parents. Difficult for the lawyer too. I didn't meet [Daughter], but from everything I can tell, she's a great, little girl and she deserves the best from her parents. And you all aren't together. You've gone your separate ways. You just need to move forward and try to make the experience the best it can be. . . .

(Paragraph breaks added.)

To memorialize the court's oral ruling, an order was filed on December 7, 2015, and that is the order from which Father appeals. Post-judgment motions filed by Father were denied.

STANDARD OF REVIEW

In *Gillespie v. Gillespie*, 206 Md. App. 146, 170-71 (2012), we said:

> This court reviews child custody determinations utilizing three interrelated standards of review. *In re Yve S.,* 373 Md. 551, 586, 819 A.2d 1030 (2003). The Court of Appeals described the three interrelated standards as follows:
>
> > We point out three distinct aspects of review in child custody disputes. [First, when] the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] if it appears that the [trial court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.
>
> *Id.* at 586, 819 A.2d 1030. In our review, we give "due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses." *Id.* at 584, 819 A.2d 1030. We recognize that "it is within the sound discretion

> of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [the trial judge] 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.* at 585–86, 819 A.2d 1030.

"Appellate review of a trial court's custody determination is limited. The standard of review in custody cases is whether the trial court abused its discretion in making its custody determination." *Barton v. Hirschberg,* 137 Md. App. 1, 24 (2001). "It is not the function of this Court to weigh evidence, nor the credibility of witnesses." *Ritter v. Danbury,* 15 Md. App. 309, 313 (1972). "In a non-jury case, the appellate court does not evaluate conflicting evidence but assumes the truth of all evidence, and inferences fairly deducible from it, tending to support the findings of the trial court, and, on that basis, simply inquires whether there is any evidence legally sufficient to support those findings." *Weisman v. Connors,* 76 Md. App. 488, 500 (1988). An appellate court's deference to the trial judge's assessment of custody disputes is appropriate because the trial judge --- unlike the appellate court --- has an opportunity to see the parents and hear from them and their witnesses in person. "[P]articularly important in custody cases is the trial court's opportunity to observe the demeanor and the credibility of the parties and witnesses." *Petrini v. Petrini*, 336 Md. 453, 470 (1994).

DISCUSSION

Although Father urges us to reverse the trial court's findings and disposition, we are not persuaded that the trial judge's findings of fact were clearly erroneous or that her assessment of the best interest of the child was an abuse of discretion.

First, Father alleges that Mother's stepfather, Larry Logue, is "an unadjudicated pedophile." Father, who represented himself at trial, examined Mother's mother (Bonnie Wilcox) about this allegation. After eliciting testimony that, at age 12, Mother had reported to her mother that Bonnie Wilcox's then-boyfriend --- later, and current, husband --- had touched Mother inappropriately, Father elicited the following explanation from Ms. Wilcox:

> [BY FATHER]: And you did not disclose it to the authorities? You did not disclose it to Angela's father?
>
> [BY MOTHER'S COUNSEL]: Objection. Asked and answered.
>
> [BY THE COURT]: Sustained. She has answered it.
>
> [FATHER]: Very fair. Okay. How did it get handled? How did it get resolved?
>
> [BY THE WITNESS]: We sat down and talked about it as a family and, and it was a --- they were wrestling with my son and my daughter, and ---
>
> [FATHER]: I, I didn't ask for ---
>
> [THE WITNESS]: --- and ---
>
> [FATHER]: ---- the details, ma'am. I, I asked ---
>
> [THE COURT]: That's all right. She ---
>
> [THE WITNESS]: It was a mistake.

[THE COURT]: ---- can answer it. I'm gonna ask anyway. Go ahead. Go ahead, ma'am.

[THE WITNESS]: And they were, they were wrestling, because they were all into wrestling at that time. They watched it on T.V. constantly. They went to the Civic Center to see matches. And so, they were wrestling in the living room and um, you know, Larry's down like this and he's got two kids on top of him, you know, kidney punching, you know, playing? And as he reached around, I guess he touched a wrong spot, but I didn't know that, and so after he had left for work and then, she came to me and told me that, and I called his work, his work right away. And then, when he got home that evening --- that night --- he got off at 11:00. When we got home that night, we sat around the table, and we discussed it, and it was a mistake and he said no more girls wrestling, because she has cousins also, and everybody was into the wrestling thing. And he said no more girls wrestling and that was it.

[FATHER]: So, there was only one incident? There was never ---

[THE WITNESS]: No.

[FATHER]: ---- another incident?

[THE WITNESS]: No.

[FATHER]: Okay. So, one incident, she brought it up to you?

[THE WITNESS]: Yes.

[FATHER]: Fair enough. Okay. So, we'll fast forward to present day. Um ---

Because Father expressed to the trial court his great concern about Mr. Logue having any access to Daughter, the court did order that Mr. Logue not spend any time with Daughter unsupervised.

As noted, the merits hearing was continued to a second day --- September 24, 2015 --- because the child access evaluator, Cynthia Shinaberry, had only recently learned that

Mother's boyfriend, Jose Rodriguez, Jr., had moved into Mother's house, and Ms. Shinaberry had not had time to perform a background check on Mr. Rodriguez that she could incorporate into her report. Ms. Shinaberry's report, as of the first day of the merits hearing, recommended that Mother should retain sole legal and physical custody, as had been initially ordered in the "November 7 order." When Ms. Shinaberry supplemented her report, and included the fact that Mr. Rodriguez is a registered sex offender, Ms. Shinaberry's recommendation that Mother retain sole legal and physical custody did not change. Father argues that Ms. Shinaberry's failure to alter her recommendation based on her investigation regarding Mr. Rodriguez should have caused the trial court to discount the recommendation, and the fact that the court continued to rely upon Ms. Shinaberry's report demonstrates that the trial judge failed to give due consideration to the issue of future harm or danger to Daughter.

Appellant urges us to rule that the trial judge abused her discretion because her refusal to modify custody puts Daughter in a dangerous situation. In his brief, he asserts:

> The gravamen of this controversy is that the court has placed the child in a high risk and potentially harmful situation by refusing to disturb the status quo. The trial court failed to properly weigh and find facts establishing that the convicted child sex offender and unadjudicated sex offender's presence in the child's safe haven (of her home) was in her best interest; or otherwise with family members at the grandmother's residence would not create a risk of future harm to the child. In so doing, nothing the trial court supported, discounted or otherwise considered --- remotely addressed the issue of future harm or dangerousness as it related to the safety, welfare and best interest of [Daughter].

But our standard of review requires us to consider the evidence in a light most supportive of the trial court's ruling. When we do so, we conclude that the trial judge's disposition of the custody dispute was not reversible error.

Despite Father's repeated references to Mr. Rodriguez as a violent sexual offender and a criminal recidivist, the evidence before the court on that point came from Ms. Shinaberry's investigation and Mr. Rodriguez's testimony, and showed that he had a conviction only for sex with an underage teenager when he was 20. There was no evidence of any subsequent (or prior) sexual offense. Further, there was evidence that he had a positive relationship with his own 8-year-old son.

At the first hearing, Ms. Shinaberry testified that, upon recently learning that Mr. Rodriguez had moved into Mother's home, she performed a limited amount of research and uncovered a DSS case from Harford County in 1990, when Mr. Rodriguez was a preteen. But she also learned that he was on the Sex Offender Registry for a third-degree sex offense conviction in 2003, when Mr. Rodriguez was twenty years old. At the second hearing, Ms. Shinaberry testified as to her further research, and explained why her supplemental report, even in light of the new information about Mr. Rodriguez, did not change her recommendation that Mother should continue to have sole legal and physical custody.

Ms. Shinaberry pointed out that Mr. Rodriguez had unsupervised, regular, overnight visitation with his own 8-year-old son. He had been employed by the same company as a diesel mechanic for the past eleven years. The third-degree sex offense to which he pleaded

guilty in 2003 arose from a brief sexual relationship with a girl who was thirteen years old.

Ms. Shinaberry stated in her supplemental report, dated September 21, 2015:

> Mr. Rodriguez reported that initially he had to register once a year for the third degree sex offense charge. In 2005, his charge was switched to a violent charge when the State reformulated the tiers and he had to register every 6 months. In 2010, his charge was placed into a tier, which resulted in him reporting every 3 months. When he changed his address when he moved with [Mother], he went to the county reporting center to change it but then he was told her address was in the city. He became worried as he had missed changing his address within the time frame in the city in 2005, which resulted in another set of charges, which he received a STET for failing [to] register and change of address. . . . He denied other arrests, protective orders, or other police interactions outside of speeding tickets.

Ms. Shinaberry elaborated on her findings at the second day of the merits hearing, in response to the court's questioning:

> [BY THE COURT]: Does the fact that he was 20 at the time of the third degree sex offense, does that in any way impact on your recommendation?
>
> [BY MS. SHINABERRY]: Well, when you're 20, you're not always thinking as a mature adult. You're kind of just in early adulthood. So, then we layer on top of it, here's a guy who[] [is] 20. He's got some, he's got some learning disabilities [ ] limitations. Kind of pulls back maturity a little bit. It kind of delays it. And then, on top of it, you layer ADHD, which is another . . . a cognitive issue that pulls the maturity back a little bit because the ADHD things develop a little bit slower than they would in, in a child who doesn't have it. And so, as you become an adult, some of that maturity kind of catches up. When you're talking about someone who's 20, you're probably --- with an ADHD and a learning disability [diagnosis], emotionally and maturity, probably somewhere about 17 --- 16, 17, 18. I could see it being a mistake. I could see him not really thinking things through. Thinking to ask questions realizing that I'm 20. This girl says she's 17. Does she ---- is she really 17? I can see him not kind of thinking that through at that time because of those issues. We're talking [today,] thirteen years later.

Mr. Rodriguez had testified about the incident on the first day of the merits hearing. He testified that, as of the time of the first hearing, he had been in a relationship with

Mother for five or six months. The court took judicial notice of his 2003 third-degree sex offense conviction, for which he was sentenced to 18 months, all suspended, with 18 months of supervised probation, eighty hours of community service, and the requirement that he register on the Sex Offender Registry. He testified that he does not take care of Daughter, and that he does not expect Mother to take care of his son, when his son visits on the weekends. In connection with his custody case for his son, Mr. Rodriguez completed a ten-session parenting course. He acknowledged that he was arrested in 2006 for failing to timely register, after he was thirteen days late due to his "misinterpret[ation]" of the registration requirement, but he asserted that he had had no criminal issues since then. Regarding the relationship with the underage girl that led to his conviction, Mr. Rodriguez testified that he believed, based on what the girl and her cousin told him, that she was 17, and that he was "[d]evastated" and "disgusted" when he learned the truth.

In his brief, Father takes issue with the trial court's finding that Mr. Rodriguez's testimony was sincere and credible, arguing that the court "committed reversible error or alternatively clearly abused its discretion when it did not find facts which supported that [Daughter's] social life and welfare would be substantially and negatively impacted by living with Rodriguez, a third-degree sex offender and criminal recidivist, in the same house[.]" But, as we stated above, this Court does not second-guess the trial court's credibility determinations. Judge Charles E. Moylan, Jr., writing for this Court in *Starke v. Starke*, 134 Md. App. 663, 683 (2000), explained:

> What is before us ultimately distills down into a single issue. . . . On appellate review of the evidence, how could we ever hold, in a non-jury case, that a judge was clearly erroneous for not being persuaded of something.
>
> Resolving disputed credibility and weighing disputed evidence are matters, of course, in the unfettered control of the fact finder. Where either the credibility of a witness or the weight of the evidence is in dispute, therefore, there is no way in which a fact finder, with such matters properly before him, could ever be clearly erroneous for not being persuaded.

"The 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) (emphasis added), *aff'd on other grounds*, 408 Md. 167 (2009). Here, Father failed to carry his burden to persuade the trial court that the material changes were sufficient to require a change in custody, or that the current circumstances established that a change of custody was in the best interest of Daughter. As we noted in *Gillespie, supra,* 206 Md. App. at 173:

> When making a custody determination, a trial court is required to evaluate each case on an individual basis in order to determine what is in the best interests of the child. *Wagner* [*v. Wagner*], 109 Md. App. [1] at 39, 674 A.2d 1 [(1996)] (citing *Bienenfeld v. Bennett–White*, 91 Md. App. 488, 503, 605 A.2d 172 (1992)). Factors the trial court may use in this determination include:
>
> > [A]mong other things, the fitness of the persons seeking custody, the adaptability of the prospective custodian to the task, the age, sex and health of the child, the physical, spiritual and moral well-being of the child, the environment and surroundings in which the child will be reared, the influences likely to be exerted on the child, and, if he or she is old enough to make a rational choice, the preference of the child.

> *Id.* (internal citations omitted). These factors make it clear that the best interest of the child is not a factor of its own. Instead, it is the goal that all other factors seek to reach. *Id.*

Here, as the trial judge noted, each of the parents "have a lot of baggage." For instance, Ms. Shinaberry testified on the first day of trial that Father was less than forthcoming about his own criminal history, which included domestic violence charges in Indiana against a woman, which Ms. Shinaberry discovered through her investigation. Father did not volunteer this information:

> [BY MOTHER'S COUNSEL]: Was [Father] completely honest with you about his legal history?
>
> [BY MS. SHINABERRY]: He admitted and minimized legal issues that occurred um, in other states.
>
> Q. And what issues did he minimize or not disclose to you?
>
> A. There were issues regarding um, a domestic violence interaction between he and another woman . . . .
>
> * * *
>
> There's a battery --- domestic battery charge in Indianapolis he didn't discuss in the interview and it was reportedly with a woman, who he met online, that he had come stay with him, and there was a disagreement and --- about her paying rent and things got out of control. And he alleges that she had scratched him, and attacked him, and when the police came, he was arrested and had assault --- several charges. And I think at the end, he, he pled to one of the charges, and took anger management and had the charges expunged.
>
> Q. Okay.
>
> [BY THE COURT]: Do you know what charge he actually pled guilty to?

> [BY MS. SHINABERRY]: No. He did not say. And I did not know about that information until I had sat in on the criminal case, where he was charged with [assault relative to] the car accident against Mr. Sauer.

The "car accident" mentioned by Ms. Shinaberry occurred between the time Father filed for modification of custody in early January 2014, and the hearings in August 2015. The incident happened in connection with a custody exchange on January 30, 2014. Father did not address the incident in his brief, other than to characterize it as a "minor fender bender," but the court made reference to his conviction of second-degree assault arising out of this incident. Mother, who witnessed the incident, described it as follows in her testimony:

> [BY MOTHER]: Um, prior to the car accident, and prior to leaving --- prior to actually being on the road, [Father] was very upset with me. He parked his SUV behind the van that I had placed [Daughter] in. I was placing [Daughter] in this van because [Father] was running late that morning. He said that [Daughter] had a bowel movement and he had to clean her up. That was okay. So, he was like, 15 minutes late to the exchange, which, you know, poop happens. But it was gonna make me late for work. So, it just so happened that my boyfriend at the time, Mr. Sauer, was there. He doesn't have a job. I said, hey, can you take [Daughter] to daycare for me? He said, sure. No problem. He keeps a car seat in his vehicle. So, I placed [Daughter] in his vehicle. [Father] jumped in his SUV and pulled it behind Mr. Sauer's vehicle in the parking lot so that Mr. Sauer couldn't come --- couldn't get out of his parking space, and he starts yelling at me from inside his vehicle, telling me he's gonna call the police, and that Mr. Sauer's vehicle isn't safe for her and some other nonsense. I was ignoring him trying to get her strapped in because, you know, I'm still trying to get to work on time. So, Mr. Sauer said to me, he's like, you know what? Ignore him. I got this. I'll get her to daycare. I said, okay. So I gave her a kiss. I walked over to my car. I started it up. Mr. Sauer, it just so happens, he didn't need to back out of his parking spot where [Father] was blocking him in, because there was nobody parked in front of him, so he just pulled straight through. And [Father] swung around the corner and got like, right up behind them as they were exiting the parking lot. And I was right behind [Father]. So, it was three cars in a row. We all made the right-hand turn onto Wise Avenue. At

> this point, [Father] started weaving in and out of traffic trying to cut Mr. Sauer off, trying to get him to stop the vehicle. Um, [Father] also cut, cut off a stranger in traffic. I believe that stranger made the statement to the police about what happened. The third time that [Father] went to cut Mr. Sauer off, Mr. Sauer was able to block it and get past [Father]. This was the point in which [Father] rammed his SUV into the side of Mr. Sauer's van, and had it pinned up against his SUV and the curb.

Daughter was unharmed, but Mother testified that Mr. Sauer had to be treated in the emergency room for his injuries. In the trial court's oral ruling in this case, the judge referred to this incident as something the court "can't ignore," adding that Father "is not easy to get along with either" and has "anger issues."

Father's brief in this appeal purports to address three separate questions. But the arguments made throughout all three sections of Father's brief repeatedly assert that we should reverse the trial court's refusal to modify custody because, in Father's view, both Mr. Rodriguez and Mother's stepfather could sexually abuse Daughter. As we have outlined above, the trial court clearly took into account Father's concerns. Father's vehement insistence that the trial judge paid inadequate attention to the evidence and gave inadequate consideration of the best interest of Daughter is simply not supported by the record. Indeed, even after the trial court announced the oral ruling, when the court asked Father if he was suggesting that he did not want the judge to hear any more of the parents' disputes, Father said, "No," and complimented the judge on her thoroughness:

> [FATHER]: No.
>
> THE COURT: -- I don't take offense by that.

> [FATHER]: I'm not bashful. Believe me, if I felt that was the case, I would. (LAUGHTER) --- I don't agree with everything, but I can't argue the, the thoroughness that you've put forth in this.

After considering the evidence in the record that supports the trial judge's decision to leave custody unmodified, we conclude that the trial judge's rulings were neither clearly erroneous nor an abuse of the trial court's discretion. And we see no basis for the Father's accusations that the trial judge "delegated her judicial authority and responsibility" to any other party.

Our review of the record persuades us that the trial court's denial of Father's motion to modify custody was not a reversible ruling. Accordingly, we affirm.

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