UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1654

September Term, 2015

KIRK MAURICE CHAN-TACK

v.

JANET CHRISTINE LAM-HART

Meredith,
Friedman,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: May 2, 2016

We are asked to determine whether, after appellant Kirk Chan-Tack ("Father") ignored the court's order and hired two strangers to abduct his minor child and transport her to Utah, the Circuit Court for Howard County (McCrone, J.) erred when it granted temporary custody of the child to appellee Janet Lam-Hart ("Mother"). We conclude that, under the emergency circumstances presented, the circuit court's decision to grant temporary emergency custody to Mother was appropriate and necessary.

BACKGROUND

After an eleven-year marriage, resulting in one child born in 2002 (the "Child"), Father and Mother divorced in 2010. In March 2014, following the recommendations of the Child's Best Interest Attorney, Father and Mother entered into a Custody Consent Order ("2014 Custody Order"). The 2014 Custody Order provided for shared physical custody and joint legal custody, but over certain, discrete issues gave one parent or the other sole legal custody. Thus, the 2014 Custody Order granted Father legal custody of the Child for mental health care decisions. In April 2015, Judge McCrone was permanently assigned to the case by an Order of Permanent Reassignment.

The relationship between Father and the Child was rocky. Father became unhappy with the enforcement of the 2014 Custody Order—he felt that Mother was not complying with the Order—and requested a custody modification. In May 2015, Judge McCrone held a custody hearing and denied Father's request to modify custody, leaving the 2014 Custody Order in place.

Father then sought to enroll the Child in a "residential treatment or reunification program" to address their deteriorated relationship. Mother objected to the residential treatment program. In August 2015, Father filed a Request for Emergency Relief and Immediate Order, which asked that Mother "be ordered to comply with [Father's] decision to enroll the Child in a residential treatment program or reunification program." He asserted that this was a proper exercise of his legal custody for mental health care decisions. On August 25, 2015, Judge McCrone denied Father's request.[1]

A week later, on September 2, 2015, Father hired two individuals to abduct the Child from her neighborhood bus stop and transport her to the airport. A neighbor saw the abduction and alerted Mother. Mother contacted Father, who told Mother that the Child was being taken to the airport for a flight to Utah, where she would be enrolled in a residential treatment program. Mother then contacted the Child's Best Interest Attorney, who, in turn, contacted Judge McCrone.

Judge McCrone immediately initiated an emergency telephone conference. Father's counsel, Mother's counsel, and the Best Interest Attorney all participated. At the conference's conclusion, Judge McCrone issued an Emergency Temporary Order

[1] The parties dispute the nature of Judge McCrone's denial of Father's request and whether it should be understood to have precluded Father from undertaking, less than a week later, the same course of action that the circuit court had rejected. Father contends that his August 2015 request was not a request for permission to enroll the Child in a residential treatment program, but rather it was simply a request to force Mother to comply with his decision. Mother, and apparently Judge McCrone, however, believed that Father's August 2015 request was a request for permission to send the Child to a residential treatment program, which the circuit court had denied. We agree with Judge McCrone.

("September 2 Emergency Order"), which granted emergency temporary legal and physical custody to Mother and ordered that Father immediately return the Child to Mother. The next day, Judge McCrone issued notice of a hearing on emergency custody to be held one week later.

On September 11, 2015, the parties appeared before Judge McCrone for the emergency custody hearing. At the hearing, Judge McCrone addressed Father's actions, stating that, he had "had the opportunity, based on [Father's August 2015] motion … to order an emergency placement of [the Child] in a residential treatment facility" but had decided not to do so because it would have been "much, much too traumatic for [the Child]." Judge McCrone explained that he had denied Father's August 2015 request because "[t]he image of [the Child] being dragged off to the airport and forcibly placed in some residential treatment facility where she could learn to love her father again or be taught or compelled to love her father again was one [that he] could not … sanction." *See supra* note 1. Following the September 11 hearing, Judge McCrone issued a second temporary Emergency Order ("September 11 Emergency Order"), which granted Mother sole legal and physical custody and stated that the Child would not be required "to engage in any visitation with [Father]."[2] The September 11 Emergency Order was to be in place

[2] The September 11 Emergency Order on custody replaced the September 2 Emergency Order. As such, the September 11 Emergency Order is the only custody order currently in play and Father's arguments about the moot September 2 Emergency Order are also moot.

for six months, until March 2016, when the parties would reconvene for a custody hearing. This is Father's appeal from the circuit court's September 11 Emergency Order.

As contemplated by the September 11 Emergency Order, the parties reconvened for a custody hearing on March 15, 2016, after briefing but before oral argument of this appeal. A custody decision following that hearing would have mooted this appeal. Father, however, stated that he was unprepared and requested a postponement. Judge McCrone postponed the hearing until July 2016.[3]

DISCUSSION

Father argues that Judge McCrone did not have the power to issue the September 11 Emergency Order because the circuit court: (1) deprived Father of his due process by holding the emergency custody hearings; (2) violated Father's parental rights by not allowing him to exercise his custodial rights and send the Child to the residential treatment program in Utah; and (3) abused its discretion by modifying custody without a prior finding that there had been a material change in circumstances. We reject Father's arguments. We conclude that Judge McCrone had the power to issue the September 11 Emergency Order, and he did not err in concluding that it was necessary and proper for him to do so. Courts must be able to react quickly to protect children. Judge McCrone knew the family and knew the issues and took action to protect the Child from abduction and trauma.

[3] We note our chagrin that the parties could have, and should have, proceeded on March 15, 2016, which would have had the happy side effect of mooting this appeal.

I. The Circuit Court Did Not Violate Father's Due Process

Father first claims that his due process rights were violated because Judge McCrone held the September 2 and September 11 emergency custody hearings despite the fact that no written request for a hearing had been submitted. Father suggests that, because there was no written request, Judge McCrone should not have held either hearing.

To determine whether a party was afforded due process, we look "to the facts and interests involved and to the proceedings to determine whether [the party] either appeared or had the opportunity to appear." *Wagner v. Wagner*, 109 Md. App. 1, 26 (1996). In *Wagner*, this Court affirmed the circuit court's decision to grant custody to a father following an emergency hearing at which the child's mother was not present. *Id*. at 34. The emergency hearing was held after the mother failed to return the child to school and neither she nor the child could be located. *Id.* at 26. The mother's attorney had notice of and attended the hearing. *Id.* When the mother complained on appeal that she had been denied due process, we concluded that the circuit court had provided due process under the emergency circumstances:

> Due process does not mandate a prior hearing in cases where emergency action may be needed to protect a child, especially when the missing party's attorney is fully apprised of the proceeding and attends. The trial court was concerned about the child and her whereabouts. We cannot say that, under these circumstances, [the mother] was denied due process or that the court then erred in awarding [the father] temporary custody.

Id. at 27 (internal citation omitted).

Despite the lack of written pleadings, Judge McCrone provided due process under the emergency circumstances. Father appeared at the September 11 hearing, and his counsel participated in the September 2 telephone conference. Given the emergent circumstances, the circuit court provided as much notice to the parties as it could. Its immediate action was needed to protect the Child from being flown across the country. Moreover, the emergency was solely of Father's creation. In the circumstances, we cannot agree that Father was denied due process.

II. The Circuit Court Did Not Interfere with Father's Parental Rights

Father's second argument is that, by issuing the September 11 Emergency Order, Judge McCrone interfered with his parental rights. Father identifies two types of parental rights that he claims gave him the authority to send the Child to Utah: (1) his legal custody of the Child for mental health care decisions, established in the 2014 Custody Order; and (2) his constitutional right to raise his Child.

Father first argues that the provision of the 2014 Custody Order granting him "legal custody with regard to the Child for all mental health care decisions" grants him authority to send the Child to the residential treatment program in Utah. This misreads the 2014 Custody Order, which must be read as a whole. *See Taylor v. Mandel*, 402 Md. 109, 125 (2007) ("court orders are construed in the same manner as other written documents and contracts"); *Sagner v. Glenangus Farms, Inc.*, 234 Md. 156, 167 (1964) ("a recognized rule of construction in ascertaining the true meaning of a contract is that the contract must be construed in its entirety").

While Father is correct that he has mental health decision-making authority, that authority is necessarily limited by other provisions of the 2014 Custody Order. Sending the Child to Utah, where she would have resided indefinitely, would clearly have interfered with Mother's rights to shared physical custody also established by the 2014 Custody Order. Moreover, sending the Child to Utah would have violated the provision of the 2014 Custody Order that states that "The Child shall not be removed from her current school district." Thus, the document on which Father relies as the source of his authority does not support the manner in which he attempted to exercise it.

Father next argues that his constitutional right to raise the Child gave him the authority to send her to the residential treatment program. A parent's right to raise his or her child is "recognized by constitutional principles, common law[,] and statute, [and] is so fundamental that it may not be taken away unless clearly justified." *In re Adoption/Guardianship No. 10941 in Circuit Court for Montgomery County*, 335 Md. 99, 113 (1994). "We have made clear, however, that the controlling factor in … custody cases is not the natural parent's interest in raising the child, but rather what best serves the interest of the child." *Id.* "[I]t 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." *Davis v. Davis*, 280 Md. 119, 125 (1977) (internal citation omitted). Father's parental rights are subject to the circuit court's determination of the Child's best interest. Here, Judge McCrone determined that the September 11 Emergency Order was in the Child's best interest. We conclude,

therefore, that the September 11 Emergency Order was not an abuse of discretion, or an unwarranted invasion of Father's constitutional rights.

III. There Was a Material Change in Circumstances

Father's third argument is that Judge McCrone abused his discretion in issuing the September 11 Emergency Order because, he argues, there was not sufficient evidence of a material change in circumstances to support a modification of custody.

In Maryland, custody modification is a two-step process: *first*, the court must determine if there has been material change in circumstances; and, *second*, the court must determine what is in the child's best interest. *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). When a trial court has found that a party "established a significant justification for a change in custody, those findings must be accorded great deference on appeal, and will only be disturbed if they are plainly arbitrary or clearly erroneous." *Shunk v. Walker*, 87 Md. App. 389, 398 (1991).

Here, while Judge McCrone didn't say the magic words "material change in circumstances," it is hard to imagine a clearer instance in which a material change has occurred. Judge McCrone had sufficient evidence of two material changes: Father's abduction of the Child and Father's attempted violation of both the August 2015 Order and the 2014 Custody Order. Father paid to have the Child abducted by two strangers so he could send her across the country to a residential treatment program. In addition to the terrifying circumstances in which he placed the Child, Father's attempt to send the Child to Utah was a violation of both: (1) Judge McCrone's August 2015 Order denying Father's

request to send the Child to a residential treatment program; and (2) the 2014 Custody Order, because, as stated above, sending the Child to Utah would have deprived Mother of her right to physical custody and removed the Child from her current school district.

Moreover, the two-step custody modification process is not always done in two distinct steps, but often becomes a one-step determination of what is in the Child's best interest. For a change to be material (step 1), it must affect the child's best interest (step 2):

> [T]he very factors that indicate that a material change in circumstances has occurred may also be extremely relevant at the second phase of the inquiry—that is, in reference to the best interest of the child. If not relevant to the best interest of the child, the changes would not be material in the first instance. [Therefore,] this two-step process is sometimes considered concurrently, in one step, *i.e.,* the change in circumstances evidence also satisfies—or does not—the determination of what is in the best interest of the child.

Wagner, 109 Md. App. at 28.

At the September 11 hearing, Judge McCrone explained that the decision to award temporary custody modification to Mother was in the Child's best interest:

> [Father is] willing to put [the Child] through the ordeal of being dragged off ostensibly in handcuffs and bruised and with strangers in a car that she had no idea of where she going or for how long. She's told she's going to be gone for a month with these strangers. I think that's counterproductive [to the relationship between Father and the Child] and I don't think it's in the best interest of [the Child].
>
> So maybe it was in the best interest of [Father's] desperate need to have a relationship with his daughter short of apologizing to her. But I thought it was much too traumatic a circumstance to impose on [the Child]. And, I thought, quite frankly it would

> just further entrench [the Child's] disdain for her father. Now the disdain has moved into fear of her father.
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> * * *
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> [W]hat I'm telling you[, Father,] is that it's appropriate at this particular point in time [with] the way you've traumatized your daughter that you back off and don't force yourself on her right now when she's petrified to see you. And what's best for her may not be what's best for you.

Judge McCrone's finding that the custody modification was in the Child's best interest because of Father's actions is further evidence that he had concluded that those actions were a material change in circumstances.

We conclude that Judge McCrone had sufficient evidence of a material change in circumstances and his decision to grant temporary emergency custody to Mother was made in consideration of the Child's best interest, and therefore, was not an abuse of discretion.

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