Circuit Court for Cecil County
Case No. 07-C-14-001304

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 19

September Term, 2017

WILLIAM TIDABACK

v.

STEPHANIE TIDABACK

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 30, 2017

On October 5, 2015, the Circuit Court for Cecil County granted a judgment of absolute divorce ("divorce judgment") between William Tidaback ("Father" or appellant) and Stephanie Tidaback ("Mother" or appellee). The court awarded the parties joint legal and physical custody of the couple's two minor children – a son and a daughter – with a specific custody and visitation schedule in the order.[1] The court appointed Sheri Lazarus as a parent coordinator to have tie-breaking authority in the event of a disagreement between the parties.

Relative to this appeal, in February 2016, Mother filed a petition to modify child custody. The court heard testimony as to Mother's petition on January 5 and February 2, 2017. Following closing arguments on February 7, 2017, the court found that there had been a material change in circumstances. The court did not alter legal custody of the children, but it ordered that Mother would have sole physical custody of the children with visitation to Father every other weekend – with an additional weekend per month with the son. Father noted this appeal, challenging several evidentiary rulings of the court, as well as the court's finding of a material change in circumstances sufficient to modify custody. For the reasons stated below, we dismiss the portion of the appeal concerning the daughter and otherwise affirm.

[1] The parties described the physical custody as "4/3-3/4 custody," whereby in the first week, Mother had the children from Monday through Friday morning, and Father from Friday morning through Monday morning, and in the second week Mother had the children from Monday through Thursday morning, and Father from Thursday morning through Monday morning.

Prior to a discussion of the merits, we note that Father's record extract fails to comply with Rule 8-501. Notably, the record extract does not include a table of contents, the docket entries, or the judgment appealed from, and includes documents irrelevant to the issue on appeal. *See* Rule 8-501(c) & (h). We are "mindful that reaching a decision on the merits of a case 'is always a preferred alternative.'" *Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007)). We, therefore, do not generally dismiss an appeal for failure to abide by the rules of appellate procedure, unless there has been a deliberate violation of a rule or prejudice to the appellee. *See id.* at 202-03. Although we do not condone Father's failure to comply with Rule 8-501, perceiving no prejudice to Mother and/or a deliberate violation of the rule, we will address the merits of his case.

In our search of the record for the court's February 16, 2017 order, the one from which this appeal is derived, however, we noticed an order dated June 9, 2017, in which the court ordered that Mother be awarded sole legal and physical custody of the daughter. The court further ordered Father not to contact or attempt to contact daughter and to stay away from her school and Mother's place of work. The other portions of the February 16, 2017 order were to remain in effect. Father did not note an appeal to this order. Although the court termed the June 9, 2017 order a "modification" of the February 16th order, it was, in reality, a new order.[2] *See Sigurdsson v. Nodeen*, 180 Md. App. 326, 344

[2] Rule 2-534 gives courts the authority to open a judgment for revision on motion by a party within ten days of the entry of the judgment. Rule 2-535 provides that a court may revise a judgment within thirty days of entry of the judgment, but after that time, a (continued)

(2008) (noting that the circuit court retains continuing jurisdiction over children after entering a final custody order). Because Father failed to note an appeal from the June 9, 2017 order, we have no jurisdiction as to it. *See* Rule 8-202(a); *Carter v. State*, 193 Md. App. 193, 206 (2010). As such, the portion of the appeal of the February 16, 2017 order concerning the daughter is moot, because the June 9, 2017 order superseded the February 16, 2017 order. *See Stevenson v. Lanham*, 127 Md. App. 597, 612 (1999) (explaining that a case is moot when "'there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy'" (quoting *Coburn v. Coburn*, 342 Md. 244, 250 (1996))). We will, therefore, dismiss that portion of the appeal relating to the daughter.

Turning to the merits of the appeal as to the son, Father contends that the court committed fourteen errors in admitting evidence.[3] Father does not challenge any one specific error, but he contends that cumulatively, "it would be virtually impossible to ignore the information that has been presented." Moreover, he alleges that the court gave Mother's counsel "free reign" over evidence in the proceeding.

(continued)
judgment may only be opened in cases of fraud, mistake, or irregularity. Accordingly, the circuit court's June 9, 2017 order in this case was a new order, not a modification or revision.

[3] We quickly dispense with two alleged errors. The court sustained Father's objection to testimony by his sister, Carol Carpenter, that his girlfriend called the son a name. *See Imes v. State*, 158 Md. App. 176, 185 (2004) (holding that where the trial court sustained the objection and granted the relief requested, there was no error). As to testimony concerning Mother's request for attorney's fees, Father's argument on appeal is different from his objection at trial. This alleged error is, therefore, not preserved. *See Addison v. State*, 188 Md. App. 165, 176 (2009).

Father fails to argue with citations to legal authority why and/or how the court erred in admitting any one specific piece of evidence. He compares his case with *Kapiloff v. Locke*, 276 Md. 466 (1975), in which the Court of Appeals held that the circuit court had erred in admitting hearsay evidence in a breach of contract case and reversed. Father, apparently, assumes that we will agree with his conclusory statements that the complained of evidence is hearsay. We will not make his arguments for him, however. *See HNS Dev., LLC v. People's Counsel for Balt. Cnty.*, 425 Md. 436, 459-60 (2012) (remarking that appellate courts will not seek out legal authority on behalf of a litigant). Accordingly, we affirm the evidentiary rulings made by the circuit court.

Father also contends that the court erred in finding a material change in circumstances sufficient to order a change in custody because Mother filed a petition to change custody four months after the initial child custody determination. Father's argument is essentially that Mother entered into an agreement with Father and expressed "buyer's remorse" after four months, which he maintains is an insufficient amount of time in which circumstances can change.

When a party files a motion to modify child custody, "a trial court employs a two-step process: (1) whether there has been a material change in circumstances, and (2) what custody arrangement is in the best interests of the children." *Santo v. Santo*, 448 Md. 620, 639 (2016). This Court has explained that a material change in circumstances is one that "affects the welfare of the child." *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012). We also stated that, "'if a court concludes, on sufficient evidence, that an existing provision concerning custody or visitation is no longer in the best interest of the child and

that the requested change is in the child's best interest, the materiality requirement will be satisfied.'" *Barrett v. Ayres*, 186 Md. App. 1, 19 (2009) (quoting *McMahon v. Piazze*, 162 Md. App. 588, 596 (2005)).

We are persuaded that the circuit court had sufficient evidence to conclude that there had been a material change in circumstances sufficient to warrant a change in custody of the son. The court heard testimony that Father does not actively participate in the son's school's online program, in which parents can monitor students' grades, attendance, and other school-related issues. Furthermore, there was testimony that Father, without consulting Mother or Ms. Lazarus, changed the son's attention deficit disorder ("ADD") medication, which was a violation of the divorce judgment. The court also heard testimony that Father's anger issues had worsened: the daughter stated that Father had punched holes in the walls of his home and had also lost his temper when the daughter asked to meet Mother for lunch. The court, therefore, had sufficient evidence from which it could conclude that there had been a material change in circumstances sufficient to change custody, which was in the son's best interest. Although Mother filed her petition to modify four months after entry of the divorce judgment, the court heard testimony over a year later. Father's argument, therefore, of insufficient time to generate

a material change in circumstance has no merit, and he cites no authority supporting his argument.[4]

APPEAL RELATING TO THE DAUGHTER DISMISSED AS MOOT. JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] We note that in commenting on the material change in circumstances, the court attributed the calling of the son a derogatory name to Father, but the evidence from Ms. Carpenter was that Father's girlfriend called the son the name. This is a distinction without a difference. The fact remains that there was evidence that Father had isolated the son from his aunt in addition to the evidence discussed above.