UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 439

September Term, 2016

CATHERINE HALL

v.

DANIEL HALL

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2017

Catherine Hall, appellant, and Daniel Hall, appellee, are the parents of S.H., a minor child. Upon granting the Halls a judgment of absolute divorce in 2003, the Circuit Court for Prince George's County awarded sole legal and physical custody of S.H. to appellant. However, in 2011, the court modified that custody order, awarding joint legal custody, with tie-breaking authority to appellee, and granting appellee primary physical custody.

Four years later, in 2015, appellant filed a motion for modification of custody, in the Prince George's County circuit court requesting sole physical and legal custody of S.H. She claimed that there had been a material change in circumstances because, among other things, appellee's wife had assaulted S.H. and threatened to kill her with a knife. The same day, she also filed a petition to find appellee in contempt of court because, she claimed, he had violated the terms of the court's 2011 custody order. After consolidating the two actions and holding a hearing on both of appellant's demands, the court denied the petition for contempt and granted appellee's motion for judgment, finding that appellant had not demonstrated that a material change in circumstances had occurred and, therefore, that a modification of its prior custody order was unwarranted.

On appeal, appellant essentially raises four issues: (1) whether the trial court erred in denying her motion to modify custody; (2) whether the trial court failed to comply with Section 9-101 of the Family Law Article by not making specific findings that there was no likelihood of further abuse or neglect; (3) whether the trial court erred in denying her petition for contempt; and (4) whether the trial court was biased against her. For the reasons that follow, we affirm.

Appellate review of a trial court's decision regarding child custody involves three interrelated standards. First, any factual findings made by the court are reviewed for clear error. *In re Yve S.,* 373 Md. 551, 586 (2003). Second, any legal conclusions made by the court are reviewed *de novo. Id.* "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." *Davis v. Davis,* 280 Md. 119, 234 (1977).

Resolution of a custody-modification request requires a two-step process. First, the circuit court must find that there has been a material change in circumstances since the last custody order. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). "A material change in circumstances is one that affects the welfare of the child." *Id*. at 171. If the court finds that a material change has occurred, it "proceeds to consider the best interests of the child as if the proceeding were one for original custody." *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005) (citing *Wagner v. Wagner,* 109 Md. App. 1, 28 (1996)). However, where the court determines that the moving party has failed to meet the initial burden of showing that a material change has occurred since the last custody order, the court's inquiry "must cease." *See Braun v. Headley*, 131 Md. App. 588, 610 (2010).

Appellant contends that a "material change of circumstances was explicitly detailed in the record" and, therefore, that the trial court's finding to the contrary was clearly erroneous. We agree that the evidence presented by appellant, if believed, could have supported a finding of a material change in circumstances. However, the trial court considered that evidence and, ultimately, was not convinced by a preponderance of the

evidence that appellant had proven her claim. Although appellant asserts that the trial court failed to assign the appropriate weight to the evidence, which she claims was undisputed, weighing of "the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder" and "in performing this role, the fact-finder has the discretion to decide which evidence to credit and which to reject." *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136 (2000). In fact, "it is almost impossible for a judge to be clearly erroneous," when, as here, the judge is simply not persuaded of some claim. *See Bricked v. Warch*, 152 Md. App. 119, 137 (2003). Applying these principles, we do not believe that the trial court's findings were clearly erroneous and therefore, it did not err in finding that appellant had failed to prove a material change in circumstances. And, because appellant did not meet her burden of proof as to that issue, the trial court was not required to make additional findings regarding the best interests of the child.

The trial court also did not err, as appellant contends, by failing to make specific findings regarding the likelihood of future child abuse or neglect by appellee or his wife. Section 9-101 of the Family Law Article requires the court in a custody proceeding to make findings regarding the likelihood of further abuse or neglect if it "has reasonable grounds to believe that a child has been abused or neglected by a party[.]" Here, however, the trial court determined that appellant had failed to establish her claims of abuse and neglect by a preponderance of the evidence. Consequently, no further findings were required under § 9-101.

Finally, appellant's remaining contentions are not properly before this court. Appellant does not have the right to appeal the circuit's court's denial of her petition to

hold appellee in contempt as Section 12-304 of the Courts and Judicial Proceedings Article "clearly and unambiguously limits the right to appeal in contempt cases to *persons adjudged in contempt.*" *Pack Shack, Inc., v. Howard Cnty.*, 371 Md. 243, 254 (2002) (emphasis added). Moreover, we decline to consider appellant's claim that the trial judge was biased against her because she did not file motion to recuse or otherwise raise that claim in the circuit court. *See* Maryland Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.