Circuit Court for Montgomery County
Case No. 134837-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 519

September Term, 2017

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SUZANNE WILSON

v.

ADAM WILSON

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Berger,
Reed,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: November 30, 2017

This case is before us on appeal from an order of the Circuit Court for Montgomery County granting Adam Wilson ("Father"), appellee, primary physical and sole legal custody of the parties' minor child.[1] Suzanne Wilson ("Mother"), appellant, presents four questions for our consideration in this appeal, which we have consolidated into the following three questions:

1. Whether the circuit court erred by denying Mother's two motions to stay the proceedings pursuant to the Servicemembers Civil Relief Act.

2. Whether the circuit court erred and/or abused its discretion by finding a material change of circumstances had occurred and that it was in the best interests of the child to modify custody.

3. Whether certain alleged procedural errors by the circuit court denied Mother due process.

For the reasons explained herein, we shall affirm.

## FACTS AND PROCEEDINGS

Mother and Father married in 2012. Their daughter, E., was born on June 22, 2013. On March 15, 2016, Father filed a complaint for absolute divorce in the Circuit Court for Montgomery County. Thereafter, the parties reached an agreement as to custody and

[1] "Physical custody . . . means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody." *Taylor v. Taylor*, 306 Md. 290, 296 (1986). "Legal custody carries with it the right and obligation to make long range decisions involving education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Id.* "Joint legal custody means that both parents have an equal voice in making those decisions and neither parent's rights are superior to the other. *Id.* at 296-97.

entered into a consent custody order on December 28, 2016. The consent order was filed on January 4, 2017.

Pursuant to the consent order, Mother was awarded sole legal custody of E. but was required to seek Father's input "prior to making any major decisions regarding the health, education and religion" of E. The order further provided that Mother was granted primary physical custody of E. At the time the parties entered into the consent order, Mother was in the military training to be a registered nurse, and the order further provided that Mother was permitted to relocate with E. pursuant to military orders. The order provided for Father to have temporary custody of E. if Mother was required to be deployed or attend training at a location that did not allow Mother to bring E. with her. Father's temporary custody would expire upon Mother's return from deployment/training. The order set forth an access schedule for Father and E., including monthly in-person visits and Facetime visits. The order further provided a holiday schedule and required the use of a system known as the Family Wizard system for communication between Mother and Father. At the time the parties entered into the consent order, Mother was anticipating a two-month training period. The order provided that Father would have temporary custody of E. during Mother's upcoming military training.

Shortly after Father filed the initial complaint in the divorce case, Mother filed a domestic violence petition in the Circuit Court for Montgomery County. The domestic violence case ("the DV case") is not before this Court on appeal. The record of the case on appeal, however, does include references to the DV case, particularly in the context of the circuit court's credibility determinations with respect to Mother. We, therefore, discuss

the DV case to the extent it is relevant to this appeal. The circuit court entered a final order in the DV case on May 27, 2016, which was due to expire on May 27, 2017.

In accordance with the consent order, Father was to have temporary custody of E. from January 28 through May 21, 2017, while Mother attended military training. On January 26, 2017, however, Mother informed Father via email that her February training had been cancelled but that the "training in March [wa]s still happening." Mother told Father that she had learned that she would be assigned to Landstuhl, Germany following her training and that she intended to bring E. with her. Mother told Father that he could "still come and get [E.] this Saturday [January 28, 2017] at 1730 as plan[n]ed." Mother told Father that she would pick up E. "either the 21 or 22nd of May" and that she would let Father know when she "got to training what the date will be, just in case there [were] any changes." Indeed, Mother delivered E. to Father on January 28, 2017.

On January 27, 2017, approximately three weeks after the entry of the consent order (and the day before Mother delivered E. to Father), Mother filed a motion requesting that the court extend and modify the prior DV order. The motion was set for a hearing on February 24, 2017. On February 14, 2017, Father filed a motion to modify custody, arguing that the access schedule in the consent order would not be feasible if Mother and E. moved to Germany for approximately four years. Mother was served with the motion to modify custody on or about February 17, 2017.[2]

[2] Father's motion to modify custody was filed on or about February 14, 2017. The pleading was apparently misplaced by the Clerk and was subsequently refiled on March 9, 2017. The circuit court determined that Mother was served with Father's motion to modify

On February 19, 2017, after having been served with Father's motion to modify custody, Mother filed an emergency domestic violence petition in Florida, in which Mother alleged that Father had kidnapped E. and that Father was not properly feeding or clothing E. The Florida court issued an *ex parte* order. Subsequently, the Sheriff removed E. from Father's home and delivered her to Mother. The Florida case was set for a final evidentiary hearing on February 28, 2017.[3]

Mother failed to appear before the Circuit Court for Montgomery County for the February 24, 2017 hearing on her motion to extend and modify the DV order. Father appeared with counsel before Judge Joseph Dugan, Jr., the judge who had been assigned to handle both the divorce case and the DV case pursuant to the circuit court's "One Family One Judge" policy.

Mother did, however, appear at the Montgomery County Circuit Court on the same date to file a pleading in the divorce case titled "Emergency Petition to Modify Custody and Visitation - No Tr[ia]l and No Advance Notice." Mother also filed a petition for contempt on February 24, 2017. On the same day, Mother filed a motion to postpone the divorce case for four years through June 2021. Mother attached a letter and a copy of military orders dated January 23, 2017, which provided that Mother was to report for training to Fort Sam Houston, Texas from X March, 2017 to X May 2017. Mother had blacked out the specific dates of the months.

prior to filing her emergency motion in Florida, which we discuss *infra*. Furthermore, Mother acknowledged that Father's motion to modify was filed on February 14, 2017.

[3] The Florida case was ultimately dismissed for lack of jurisdiction.

Mother's emergency motion was referred to Judge Dugan, who held a hearing on the afternoon of February 24, 2017. Mother alleged in her motion that Father had kidnapped E. in the State of Florida. Father did, at that time, have E. with him in Florida, but Father asserted (and the circuit court ultimately agreed) that he properly had custody at that time pursuant to the consent order. Mother attached a copy of the February 19, 2017 Florida *ex parte* order granting Mother temporary custody based upon her kidnapping allegation. Mother attempted to persuade the court that Father had kidnapped E., but the court did not find Mother to be credible.[4] The court concluded that Mother knew that her motion to extend the DV order had been denied earlier that day and that her filing of the "Emergency Petition to Modify Custody and Visitation - No Tr[ia]l and No Advance Notice" constituted an attempted "sneak attack" against Father.

The circuit court denied Mother's emergency motion. The circuit court further denied Mother's motion for postponement, observing that there was "nothing scheduled for a hearing" at that time. The circuit court further ordered that "this matter is not to be set for a hearing unless and until [Mother] files an appropriate motion to modify custody and visitation and served [Father] and his counsel." The court ordered that Mother's petition for contempt for denial of visitation "be set in the normal course upon service of the Petition for Contempt on [Father] and his counsel."

On March 27, 2017, Father filed an emergency petition for contempt, alleging, *inter alia*, that Mother had falsely accused him of kidnapping E., leading to police involvement

[4] During the hearing, Mother used vulgar language, telling Judge Dugan, "You're f**king pissing me off right now."

in Florida, and further, had failed to allow him visitation and Facetime access. Judge Dugan scheduled a hearing for April 6, 2017 on Father's petition for contempt.

On April 5, 2017, Mother faxed a letter to Judge Dugan requesting a stay because of her military training in Texas. Mother indicated that she would not be available until June of 2018. She attached a letter from her commanding officer, Commander Christopher L. Donaghe. The letter provided that Mother was not authorized to take leave in order to attend court on April 6, 2017. Commander Donaghe further provided that Mother would be assigned to Landst[uh]l, Germany, after the completion of her training in Texas.

Prior to the hearing on April 6, 2017, Judge Dugan, on his own accord, telephoned Commander Donaghe to inquire whether Mother could participate in the hearing via telephone. Judge Dugan explained that he telephoned Commander Donoghe because he "wanted to find out what's going on and [he] want[ed] to find out why [Father] doesn't have the child and where the child is." Captain Donoghe arranged for Mother to be present and participate via telephone. Mother maintained that she would not return E. to Father in Florida because she believed that Florida would not recognize a Maryland custody order. Mother further informed the court that E. was, at that time, residing in Massachusetts with her mother, E.'s maternal grandmother. Mother explained that E. had not been able to have Facetime vistiation or other communication with Father because the maternal grandmother "does not have any kind of internet service or any kind of Facetime or any kind of cellphone service, unfortunately."

The court repeatedly asked for the address where E. was residing in Massachusetts, but Mother did not provide an address, instead explaining that E. was "in Boston with my mother. But right now they are not in Boston." Mother further explained that her mother and E. were "stuck in Atlanta" at the airport while on her way to Texas to "finish up on military paperwork." Mother informed the court that she was unable to contact her mother and E. because her Mother did not have her phone with her and the maternal grandmother's "phone is dead."[5]

Mother maintained that E. needed to be present in Texas in order to complete certain military processing in preparation for the move to Germany. The court inquired as to where E. would be residing while in Texas, but Mother did not provide a clear answer. Mother indicated that she had "a few different friends she can stay with" but Mother did not "know their addresses right now off the top of [her] head." The court inquired as to when Mother would be able to deliver E. to Father for him to have access to E. before Mother was required to leave for Germany, but again Mother did not provide a clear response. Mother maintained that E. was "not going to Florida with" Father. Captain Donoghe confirmed that Mother would complete her training in Texas on May 19 and was not required to go to Germany until June 5. Toward the end of the hearing, Mother uttered profane language and suddenly left the room in which she had been testifying by telephone.

Captain Donoghe asked the court if Mother could have some time "to collect herself." The court told Captain Donoghe that it may be helpful if someone from the JAG

[5] Nonetheless, during a recess, Mother was able to send and receive text messages from the maternal grandmother.

office talked to Mother to explain to her that Maryland had jurisdiction over the custody determination pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act. Later that afternoon, the hearing resumed, and Mother again participated via telephone. After hearing argument from the parties, the court issued a ruling as to when E. was to be turned over to Father. The court permitted E. to remain in Mother's custody until April 17, 2017 in order for any necessary military paperwork to be completed. Thereafter, E. was to be transferred to Father's custody pending a full hearing on May 24, 2017. The court explained that at the May 24, 2017 hearing, the court would consider "whether or not it is in the best interest of the minor child to remain in the United States in the care and custody of [Father] or to go with [Mother] to Germany and allow some type of expanded visitation for" Father. The court further ordered that Mother was required to be "physically present in the courtroom on May 24th, 2017 at 9:30 a.m. for this hearing."

E. was returned to Father's custody on April 14, 2017. The parties continued to communicate via emails sent through the Family Wizard website. On April 21, 2017, Mother sent Father an email with the subject line, "Custody Modification." Mother wrote that the parties "need to start talking about [Father's] visitations when [E.] is in Germany." Mother wrote:

> This is what I have so far, look over it.
>
> 1. Primary physical and sole legal custody to me. Your visitations will be unlimited meaning you and [E.] can call/Facetime each other as much as you want when we get to Germany. You can do face to face visits with her, but at the beginning [E.] will not be leaving Germany to go to the United States, until I know you will return her back to me. This is only because of what you did in Florida and not returning her when

> I ask[ed] you to, making the courts and police get involved. I will still let you know what is going on in [E.'s] life with pictures and updates. If something major happens I will ask you your opinion before making any decisions.
>
> 2. I can still relocate with [E.] per my military.
>
> 3. When I go to training, you will not be having a temporary primary or temporary sole legal [custody] of [E.]. My mother will watch her and you can until [sic] your visits with [E.] both over the phone and in person.
>
> 4. You need to start paying child support to me, we can discuss the amount later. The main point is that you are a father and have a child and need to work and help provide for her. In the pas[t] you have not given me any money for [E.], but we will start fresh. [E.] is getting older and you need to help support her. I should not need to tell you this, you are an adult.

The parties appeared on May 24, 2017 for the hearing before Judge Dugan. The circuit court heard and considered testimony from Mother, Father, the maternal grandmother, and the paternal grandmother. Based upon the evidence presented, the circuit court found that Mother had delivered E. to Father on January 27, 2017, pursuant to the consent order. Mother told Father that she would be retrieving E. on May 22, 2017. Thereafter, on February 17, 2017, Mother emailed Father to inform him that she would be picking up E. later that day. Mother provided Father no advance notice. Mother refused to tell Father if or when E. would be returning to Father. Father told Mother that he would not deliver E. to her unless Mother told him when E. would be returned.

The circuit court issued a ruling from the bench at the completion of the hearing and subsequently issued a written order. The circuit court found that the domestic violence petition Mother filed in Florida contained "intentional fabrications" and false claims that Father had kidnapped E. The circuit court further found that, after E. was returned to

Mother with the assistance of the Florida Sheriff, Mother refused to allow Father to communicate with E. from February 17, 2017 to April 10, 2017, despite Father's repeated requests.

The circuit court found that neither Mother nor the maternal grandmother was a credible witness. The court found that "it was the intention of [Mother] and [the maternal grandmother] to secret [E.] with [the maternal grandmother] somewhere in Boston so that [Father] would not be able to see or communicate with his daughter prior to [Mother] taking the child with her to Germany." The court observed that Mother "was unable to give specific answers to questions she should have been able to answer in detail" and Mother's "testimony continued to be evasive, filled with inconsistencies and misrepresentations, and was often downright untruthful."

The circuit court summarized Mother's testimony with respect to her plans for E. while in Germany as follows:

> [I]f [Mother] is to be believed, she intends to take the child with her to Landst[uh]l, Germany, where she will be unable to take a day off for the first six months, as she testified she will be in training to learn the standard operating procedures/methods for nursing in the army. She could not give the Court her schedule, beyond that the child would not be available for visitation other than Facetime, nor could she provide any information about where she would be living. [Mother] thought she would be involved in nothing but training or instruction from 8 a.m. to 4 p.m. Monday through Friday for the first two-thirds of the initial period, and only after that period would she begin to work in the hospital. Eventually, [Mother] indicated, she would be on twelve-hour rotating shifts, but did not provide the Court with any specific information regarding her schedule once that work begins, other than that her shifts would be 7 a.m. to 7 p.m. She did not deny that she might work overnight in the hospital, but testified that there would be an Army-

> certified child care provider to watch [E.] at times when she could not be there. The Court is familiar with nursing shifts and certainly, it was clear from [Mother]'s testimony that she has no family available to aid her in watching the child during the long periods of time she would be in the hospital. During those times, the child would be placed in daycare or with some other childcare provider.

The circuit court found the maternal grandmother's testimony to "completely lack[] credibility." The court emphasized that the maternal grandmother testified that E. should have been in daycare in Boston rather than with Father pursuant to the court order. The court further found that both Mother and the maternal grandmother "engaged in an intentional, deliberate course of conduct which involved attempting to hide the child from [Father] until she went to Germany, where it would be extremely difficult for [Father] to enforce any order wherein he was awarded visitation, beyond perhaps some inconsistent Facetime visitation."

Indeed, the circuit court expressed further concerns about Mother's actual intentions, explaining:

> After hearing from [Mother] and [the maternal grandmother], the [c]ourt is not even certain that [Mother] actually intended to bring the child . . . to Germany with her. Instead it may well be that she is actually planning to say she took the child to Germany while secretly leaving the child with [the maternal grandmother] in Boston. The basis for the [c]ourt's fear is that [the maternal grandmother] stated on the record that she should have custody of [E.], and not [Father]. Further, [the maternal grandmother] indicated that she had signed the child up for pre-school and speech therapy, as well as child care, in Boston.

The court further emphasized the content of Mother's April 21, 2017 email with the subject line "custody modification." The court observed that the email indicated that Mother

believed that she could, unilaterally, determine the appropriate custody arrangement for E. and that Mother had no intention to abide by the court's determinations.

The circuit court found that Mother only filed the Florida case after she had been served with Father's motion to modify custody and that she used the false allegations in the Florida petition to obtain E. with the intent to bring E. to Germany so that Father would not be able to interact with E. Based upon the circuit court's factual findings, the court found that a material change of circumstances justifying a modification of custody had occurred. After considering the various custody factors, the circuit court awarded sole legal and sole physical custody of E. to Father. The circuit court attempted to address Mother's visitation with E. before leaving for Germany and while in Germany, but Mother responded that she was not interested in visitation in the following exchange:

> [MOTHER]: No, Your Honor. You don't have to. Okay, I will refuse visitation.
>
> THE COURT: Pardon me?
>
> [MOTHER]: I don't want to visit with [E.], Your Honor.
>
> THE COURT: And you think that's in her best interest, that you not see her?
>
> [MOTHER]: This is in my best interest, Your Honor.
>
> THE COURT: We are not talking about your best interest, ma'am. That seems to be --
>
> [MOTHER]: I'm not visiting with [E.], Your Honor.
>
> THE COURT: You mean you're not visiting with [E.] period? You don't have any intention to visit with her when you go over to Germany?

> [MOTHER]: No, Your honor. I'm just going to have to move on with my life. I put so much --
>
> THE COURT: You're going to, you're going to have to abandon your child?
>
> [MOTHER]: All this, all the abuse I've put up with him, Your Honor --
>
> THE COURT: All right, ma'am, I'm not going to get into it with you. That's what your decision is. One of the things a court can't do is force somebody to take visitation.

In the court's subsequent written order, the court recognized "the emotional setting in the courtroom during a custody trial" and observed that Mother "perhaps . . . acted emotionally, without much thought about exactly what she was saying, as she ha[d] made similar irrational statements in prior hearings before the [c]ourt." The court observed that it was "not certain that [Mother] will reconsider her position" with respect to visitation, "but is still willing to leave the door open for some type of supervised visitation before [Mother] leaves." The court further ordered that "should [Mother] wish to exercise Facetime visitation with [E.], she is to have unlimited access to the child by way of Facetime." The court ordered that Mother "may petition the [c]ourt for proposed specific visitation with [E.] even while [Mother] is in Germany."

This appeal followed. Additional facts shall be set forth as necessitated by our discussion of the issues on appeal.

## STANDARD OF REVIEW

The best interest of the child "is always determinative" in child custody disputes. *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977). We review "a trial court's custody determination for abuse of discretion." *Id.* at

625. "This standard of review accounts for the trial court's unique 'opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 470 (1994)).

"A court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous." *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010). In our review, we give "due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses." *In re Yve S.*, 373 Md. 551, 584 (2003). 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; he 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.

We have explained that a "court can abuse its discretion by reaching an unreasonable or unjust result even though it has correctly identified the applicable legal principles and applied those principles to factual findings that are not clearly erroneous." *Guidash v. Tome*, 211 Md. App. 725, 736 (2013). For an appellate court to reverse a trial court's ruling under this scenario,

> [t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That

> kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

*North v. North*, 102 Md. App. 1, 15 (1994).

## DISCUSSION

### I.

Mother's first contention is that the circuit court committed reversible error by denying her two motions to postpone/stay proceedings. Mother asserts that she was entitled to a stay or continuance of the proceedings pursuant to the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. § 3932. Father responds that Mother's motions failed to comply with the requirements of the SCRA and, therefore, Mother was not entitled to the requested relief.

The relevant portion of the SCRA "applies to any civil action or proceeding, including any child custody proceeding, in which" a party "(1) is in military service or is within 90 days after termination of or release from military service; and (2) has received notice of the action or proceeding." 50 U.S.C. § 3932(a). The statute provides that "[a]t any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met." 50 U.S.C. § 3932(b)(1). The requirements for a stay under the SCRA are set forth in 50 U.S.C. § 3932(b)(2):

> An application for a stay under paragraph (1) shall include the following:

> (A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.
>
> (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

Mother filed two separate motions for postponement in the divorce case. The first motion for postponement was filed on February 24, 2017, the same day that Mother also filed an answer to Father's motion to modify custody, a motion for contempt, and an emergency motion to modify custody and visitation in which Mother asked the court to *ex parte* deny Father all visitation and access to E. Mother's motion for postponement was accompanied by a letter from Mother and a copy of military orders dated January 23, 2017. Mother's letter indicated that she was "an active duty servicemember who will be stationed overseas at Landstuhl, Germany. Mother further indicated that she would be "unable to attend any scheduled proceeding during that time because [she] will be deployed to Germany and will not be able to leave." Mother wrote that she would "return to the [United States] on or about June 2021 and will be prepared to proceed shortly" after her return. The attached military orders indicated that Mother was required to report sometime in March 2017 through sometime in May 2017, and that Mother was again required to report in June 2017. The specific dates and locations where Mother was required to report (as well as the majority of the document overall) were blacked out. Mother also attached a printout of the SCRA to her motion.

Mother's motion for postponement and accompanying documents did not satisfy the requirements of 50 U.S.C. § 3932(b)(2). There was no explanation as to how Mother's current duties prevented her from being able to appear until 2021, as required by 50 U.S.C. § 3932(b)(2)(A). Indeed, the blacked out portion of the military orders rendered it impossible for a court to determine whether Mother might have leave in between when she finished in May and when she was required to report in June. Furthermore, Mother failed to include a letter or other communication from her commanding officer stating that her current military duty prevented her appearance in court as required by 50 U.S.C. § 3932(b)(2)(B). Accordingly, Mother's motion failed to include the information required pursuant to 50 U.S.C. § 3932(b)(2). Because Mother failed to satisfy the two conditions required for a mandatory stay under the SCRA, the circuit court did not err in denying her motion. *See also Hernandez v. Hernandez*, 169 Md. App. 679, 690 (2006) (explaining that a court is required to grant a stay under the SCRA when the "servicemember satisfies the two conditions.").

Mother concedes that her first motion for postponement did not meet the requirements of the SCRA. Mother asserts, however, that because the statute is to be construed liberally, *see Le Maistre v. Leffers*, 33 U.S. 1, 6 (1948) (commenting that the statute should be read "with an eye friendly to those who dropped their affairs to answer their country's call"), the court should have given her the opportunity to amend the motion. The record reflects that the court recommended to Mother that she obtain the services of an attorney. Furthermore, the transcript of the proceedings indicates that the circuit court questioned Mother's veracity at the February 24, 2017 hearing as well as Mother's

motivation in filing the motion, characterizing Mother's concurrent filing of an emergency motion to modify custody as a "sneak attack." Given the circumstances of the case, and the plain deficiencies with Mother's motion, we hold that the circuit court did not err by denying Mother's February 24, 2017 motion to postpone the proceedings.

We next turn our attention to Mother's second request for a stay, which was faxed to Judge Dugan the evening of April 5, 2017, the night before the hearing on Father's emergency petition for contempt, and was accompanied by a letter from Mother's commanding officer, Commander Donoghe. Mother's letter indicated that she would be "unable to attend any hearings or effectively protect [her] interests in the matter in question until . . . on or about May 25, 2018 at the earliest because of [her] military duties."[6] Commander Donoghe's letter provided that Mother's "current military duties prevent her from appearing at the hearing that is scheduled for April 6, 2017, and leave is not authorized for that purpose at this time." The letter further provided that "[o]nce [Mother] complete[s] her training here she will be assigned to Landst[uh]l, Germany, where she is required to do additional mandatory training where she will not be authorized leave."

Although Mother included additional information attached to her second motion, she still failed to satisfy the requirements of 50 U.S.C. § 3932(b)(2). Captain Donoghe's letter provided no details as to the specific dates when Mother would complete her training in Texas and be available to participate in a court proceeding. In addition, Captain

[6] Mother's first motion to stay indicated that she was unavailable until May 2021. Mother did not explain why she would now be available as of May 25, 2018.

Donoghe did not indicate whether Mother would have any leave between the completion of her training in Texas and the date she was required to leave for Germany.

The Massachusetts Appeals Court addressed a somewhat similar situation in the case of *Fazio v. Fazio*, 71 N.E.3d 157, 163 (2017), which we find instructive in the present case. In *Fazio*, the Massachusetts court held that a trial judge's denial of a motion to stay pursuant to the SCRA was not improper when "[t]he commanding officer's communication provided no details about the husband's predeployment training and did not explain how the requirements of the training mission prevented the husband from taking part of one day to attend a court hearing. Nor did the commanding officer state that the husband could not obtain leave to appear at the hearing at any time during the two months prior to mobilization." *Id.*

In this case, the lack of specificity in the letters provided by Mother similarly rendered it impossible for the court to actually determine Mother's availability or lack thereof. In fact, as the court later learned, Mother was available from May 19, 2017 through June 4, 2017. In light of the court's inability to determine Mother's actual availability through the materials submitted in support of her request for the stay, we hold that, under the particular circumstances of this case, the circuit court was not required to grant Mother's motion.[7]

[7] Maryland appellate courts have not, in a reported opinion, addressed issues relating to SCRA stays in the context of custody disputes. We observe, however, that three members of the Court of Appeals discussed this issue in the context of a dissent from a dismissal of an appeal as improvidently granted. *See Whitaker v.* Dixon, 411 Md. 580 (2009) (dismissing appeal as improvidently granted). Father cites the dissent in *Whitaker*

**II.**

Mother's next contention is that the circuit court erred when it found a material change of circumstances warranting a change in custody and subsequently awarded sole legal and physical custody to Father. With respect to the court's determination that a material change of circumstances occurred, Mother first argues that the circuit court improperly took judicial notice of the ultimate issue at the outset of the May 24, 2017 hearing rather than considering the evidence presented. Mother's argument is based upon Judge Dugan's comments at the beginning of the May 24, 2017 hearing. Judge Dugan recapped the procedural history as well as his previous factual findings and conclusions of law at prior hearings. Judge Dugan commented that he was "taking judicial notice of these things and, to the extent that I've maybe misstated something, you all, either one of you can feel free to correct me in testimony later on." Our review of the record reflects that the circuit court did not use the term "judicial notice" as it is defined in Maryland Rule 5-201.[8]

in support of his argument that a court is permitted to grant a temporary or permanent custody order even when an SCRA stay is in place. In light of our determination that Mother's motion failed to comply with the specific requirements of the SCRA, we need not reach the issues commented upon in the *Whitaker* dissent.

[8] Rule 5-201 provides:

> (a) This Rule governs only judicial notice of adjudicative facts. Sections (d), (e), and (g) of this Rule do not apply in the Court of Special Appeals or the Court of Appeals.
>
> (b) A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable

Rather, Judge Dugan explained what he had learned from previous interactions with Mother in the same and related proceedings. Furthermore, at no point did Mother object to the circuit court's comment regarding "judicial notice" of certain facts. Accordingly, this issue is not preserved for our review. *See* Md. 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 . . . .").

Mother further asserts that insufficient evidence was presented to support the circuit court's finding of a material change of circumstances. A court must engage in a two-step process when presented with a request to modify an existing custody or visitation order. *See McMahon v. Piazze*, 162 Md. App. 588, 593-96 (2005). We have described the two-step analysis as follows:

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> of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
>
> (c) A court may take judicial notice, whether requested or not.
>
> (d) A court shall take judicial notice if requested by a party and supplied with the necessary information.
>
> (e) Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
>
> (f) Judicial notice may be taken at any stage of the proceeding.
>
> (g) The court shall instruct the jury to accept as conclusive any fact judicially noticed, except that in a criminal action, the court shall instruct the jury that it may, but is not required to, accept as conclusive any judicially noticed fact adverse to the accused.

> First, the circuit court must assess whether there has been a "material" change in circumstance. *See Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). If a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody. *See id.*; *Braun v. Headley*, 131 Md. App. 588, 610 [750 A.2d 624] (2000).

*McMahon*, *supra*, 162 Md. App. at 594. "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). The burden is on the moving party to (1) prove a material change in circumstances has occurred, and (2) to prove that a modification of custody is warranted. *Id.* at 171-72.

In this case, the circuit court found that a material change of circumstances had occurred "based primarily upon [Mother's] fabrications to the Court in Florida, and to this Member of the Bench in Maryland, with respect to her claims that [Father] had kidnapped the Parties' daughter." The circuit court explained that this case was "one of the most alarming and bizarre cases that the [c]ourt has heard in almost sixteen years on the [b]ench." The court found, based upon the testimony of Mother and the maternal grandmother, that Mother intended "to secret the Parties' minor child with [the maternal grandmother] somewhere in Boston so that [Father] would not be able to see or communicate with his daughter prior to [Mother] taking the child with her to Germany."

This finding was supported by ample evidence and was not clearly erroneous. The court based its factual determinations on, *inter alia*, Mother's inconsistent and evasive testimony about E.'s whereabouts, Mother's refusal to allow Facetime access between Father and E., the maternal grandmother's testimony that she had enrolled E. in a preschool

program in Boston, and Mother's false allegation of kidnapping by Father when Father had temporary custody of E. pursuant to the consent order. We hold, therefore, that the circuit court did not err by finding that a material change of circumstances warranting a modification of custody had occurred.

Mother further argues that the circuit court erred by awarding Father sole legal and primary physical custody of E. The appellate courts have set forth a non-exhaustive list of factors be considered by a court when determining an appropriate custody arrangement: (1) fitness of the parents, (2) the character and reputation of the parties, (3) the desire of the natural parents and any agreements between them, (4) the potential for maintaining natural family relations, (5) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment, (6) material opportunities affecting the future life of the child, (7) the age, health, and sex of the child, (8) the residence of the parents and opportunity for visitation, (9) the length of separation from natural parents, and (10) whether there was prior voluntary abandonment or surrender of custody of the child. *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986; *Montgomery Cnty. Dep't of Social Serv. v. Sanders*, 38 Md. App. 406, 420 (1977). Not all of the factors are necessarily weighed equally; rather, it is a subjective determination. *See Taylor*, *supra*, 306 Md. at 303 ("Formula or computer solutions in child custody matters are impossible because of the unique character of each case, and the subjective nature of the evaluations and decisions that must be made.").

Mother acknowledges that the circuit court addressed the custody factors but argues that the court failed to give the factors "proper consideration" and "only paid lip service"

to the factors when reaching its decision. Mother argues that the factors do not support the trial court's award of custody to Father, but rather, that the circuit court's custody award was intended to punish Mother. Additionally, Mother asserts that the circuit court inappropriately considered that Mother could have requested the military order her to a different location to better facilitate visitation with E.

The record reflects that the circuit court did not base its custody determination on Mother's anticipated relocation to Germany. Indeed, the court recognized that Mother did not have control over her military assignment, commenting, "I am well aware of the fact that you don't get to go where you want to." The circuit court considered all of the factors, but particularly emphasized the fitness of the parents and Mother's willingness to maintain E.'s relationship with Father, if she were awarded primary physical custody. The court explained:

> Fitness of the parents. I think both parents are fit to take care of this child. I think they both love the child, and I know the child loves both of them. The problem for the child is going to be who is going to be the person that's going to encourage the other person, the other parent to be involved in that child's life? We have a real tough situation here . . . I think that your fitness as a mother, you know, [you] love your child, give her everything she needs, I think you can do that, but your problem with fitness is I believe that you intended based on the lies and based on the misrepresentations and based on the frustrations in this case and your refusal to give anybody information including the [c]ourt, indicates that you're not fit, and that you can't be trusted . . . So I think [both parents are] fit to be able to provide meals and love and read stories and do all that stuff, [but] I don't think [Mother is] fit in that I believe that [Mother] will undermine and frustrate [Father's] attempts to see this child.

Particularly given the geographic distance between Mother in Germany and Father in Florida, it was entirely appropriate for this factor to weigh heavily in the court's decision. The distance between the parties increases the difficulty of maintaining a close relationship between E. and the non-custodial parent, and it was eminently reasonable for the court to consider which parent would be more likely to maintain E.'s relationship with the non-custodial parent. Furthermore, this was not the only factor the circuit court found weighed toward granting primary physical custody to Father. With respect to the potentiality of maintaining natural family relations, the court observed that "there is essentially no family over in Germany" but "there's a large supportive family" in Florida.

In this opinion, we cannot set forth every detail the circuit court heard and considered throughout the various proceedings before it, nor is it the place of the appellate court to do so. As we explained *supra*, it is the circuit court judge, and not the appellate court, who "sees the witnesses and the parties [and] hears the testimony." *In re Yve S.*, *supra*, 373 Md. at 585. In this case, the circuit court engaged in precisely the type of analysis we have explained is appropriate when evaluating the best interests of a child in the context of a custody determination. The court carefully considered each factor and explained its reasoning in a comprehensive oral ruling as well as a written opinion. The circuit court's factual findings were supported by the evidence presented at trial and the court's conclusions were based upon the appropriate factors. Accordingly, we reject Mother's assertion that the circuit court erred and/or abused its discretion with respect to its custody determination.

**III.**

Mother's final contention is that the circuit court denied her due process of law. Specifically, Mother points to three alleged "procedural irregularities" which, taken together, she asserts denied her due process of law. Specifically, Mother asserts that: (1) the circuit court's order scheduling a hearing on Father's emergency petition of contempt violated the requirements set forth in the Maryland Rules; (2) the circuit court heard Father's petition for contempt on an expedited basis but refused to hear Mother's petition for contempt on a similarly expedited basis; and (3) the circuit court improperly mailed a copy of the contempt order to an improper address.

Mother asserts that the circuit court's order scheduling a hearing on Father's emergency motion for contempt violated the requirements set forth in Maryland Rule 15-206. Pursuant to Rule 15-206(c)(2), "[u]nless the court finds that a petition for contempt is frivolous on its face, the court shall enter an order providing for (i) a prehearing conference, or (ii) a hearing, or (iii) both." The Rule further provides that "[t]he scheduled hearing date shall allow a reasonable time for the preparation of a defense and may not be less than 20 days after the prehearing conference." An order issued in response to a petition to contempt or on the court's own initiative shall state:

> (A) the time within which any answer by the alleged contemnor shall be filed, which, absent good cause, may not be less than ten days after service of the order;
>
> (B) the time and place at which the alleged contemnor shall appear in person for
>
> (i) a prehearing conference, or

(ii) a hearing, or

(iii) both and, if a hearing is scheduled, whether it is before a magistrate pursuant to Rule 9-208(a)(1)(G) or before a judge[.]

*Id*.[9]

Father filed his emergency petition for contempt on March 27, 2017. Mother was personally served the same day. Father's petition for contempt specifically articulated the basis for Father's contention that Mother had been violating the circuit court's prior custody order. The circuit court issued an order on March 27, 2017 scheduling a hearing on Father's emergency motion for April 6, 2017.

Mother asserts that the circuit court's order violated Rule 15-206(c)(2) because it did not allow her ten days to prepare an answer nor twenty days to prepare a defense. Mother further contends that the circuit court's order failed to state what the alleged contemptuous action was. Because of this, Mother asserts, she was unable to prepare a proper defense.

First, with respect to the timing of the contempt hearing, we emphasize that Rule 15-206 provides that, if the circuit court orders a prehearing conference on a contempt petition, the court may not schedule a hearing on the petition for a date within 20 days of the prehearing conference. Critically, nothing in Rule 15-206 requires a prehearing

[9] The Rule further provides that additional requirements apply if incarceration to compel compliance with the court's order is sought. Father's emergency petition did not seek incarceration.

conference. The only other scheduling requirement set forth in the rule is that the court must "allow a reasonable time for the preparation of a defense[.]"

Furthermore, pursuant to Md. Rule 1-204(a), a court may shorten or extend the time period for the performance of an "act to be done at or within a specified time" for cause shown. Whether to grant a motion to shorten or extend time is a determination left to the circuit court's sound discretion. *Maryland Green Party v. State Bd. of Elections*, 165 Md. App. 113, 143 (2005). In this case, Father asked in his emergency motion that the matter be set for an expedited hearing because Father had been continuously denied access to E., Mother had previously been admonished by the court to permit visitation and Facetime access between E. and Father, and Mother had falsely alleged that Father had kidnapped E. in a Florida court. We hold that, under these facts, the circuit court did not abuse its discretion by setting an expedited hearing in order to address Father's allegations.

Furthermore, we find specious Mother's assertion that she was unaware of the basis of the contempt allegation. Mother was served with Father's contempt petition, and Father's contempt petition put Mother on notice of each instance she was alleged to have violated the consent custody order. Mother was provided with notice of the allegations, notice of the hearing, and a meaningful opportunity to be heard. Accordingly, we reject Mother's contention that she was somehow denied due process in connection with the proceedings on Father's emergency motion for contempt. *See In re Katherine C.*, 390 Md. 554, 572 (2006) ("Generally, due process requires that a party to a proceeding is entitled to both notice and an opportunity to be heard on the issues to be decided in a case.) (quotation omitted).

We further reject Mother's contention that the court's decision to hear Father's petition for contempt on an expedited basis while not similarly setting Mother's petition for contempt for an expedited hearing constituted a "procedural irregularity." Mother filed a petition for contempt on February 24, 2017, alleging that Father had refused to allow Mother to pick up E. on February 18, 2017, and that she had last visited with E. on January 28, 2017. As discussed *supra*, the circuit court was aware, based upon an earlier hearing the same day in the domestic violence case, that Mother had E., having obtained E. on February 19, 2017, with the assistance of Florida authorities. As such, the court reasonably concluded that there was no reason to set the matter in for an expedited hearing.

Finally, Mother asserts that the circuit court erred by mailing a notice to a former address of Mother's, rather than to the post office box address she had provided. Mother does not identify any way in which she was prejudiced by this allegedly deficient notice.[10] Indeed, we cannot imagine how Mother could have suffered any prejudice in light of the fact that Father's attorney had Mother personally served with all hearing notices and pleadings on March 27, 2017.

For the reasons explained herein, we reject Mother's assertions that the circuit court erred and/or abused its discretion with respect to the denial of her motions to postpone

[10] Indeed, Mother acknowledges that "this particular issue is likely not of significant consequence to the ultimate question of custody." Instead, Mother alleges that the issue is "emblematic of the hostility that [Mother] faced from the trial court." As we have explained *supra*, the record reflects that the circuit court was, at times, frustrated with Mother's general lack of candor with the court, including with respect to her current address. We categorically reject that the mailing of a notice to a prior address is somehow indicative of hostility directed toward Mother from the circuit court.

and/or stay the proceedings, by modifying custody, or by engaging in "procedural irregularities." Accordingly, we affirm.

**JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**