UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1015

September Term, 2016

ERIC F. HOLT

.

v.

NASHWA HOLT

Wright,
Berger,
Nazarian,

JJ.

Opinion by Wright, J.

Filed: February 10, 2017

This is a child custody appeal filed by Eric Holt ("Father"), appellant, from an order of the Circuit Court for Montgomery County granting a motion made by Nashwa Holt ("Mother"), appellee, for judgment in her favor at the close of the evidence, in effect, rejecting Father's request for a modification of custody regarding the parties' five-year old twin sons, William Holt ("William") and Luke Holt ("Luke") (together, "the Twins").

The custody order, which Father was seeking to modify, had been entered in a prior case approximately two years earlier, on May 20, 2014 ("May 20, 2014 Custody Order"), by the circuit court, in an initial custody determination in a then pending, but subsequently dismissed, divorce and custody proceeding. On October 9, 2015, Father filed Case No. 131219-FL, seeking a divorce and a modification of the May, 20 2014 Custody Order. A hearing on the modified custody request was held on June 20-21, 2016. On June 27, 2016, the circuit court's order granting Mother's motion for judgment was formally entered. Father noted his appeal on July 22, 2016.

QUESTIONS PRESENTED

We have combined and reworded Father's questions for clarity, as follows:[1]

---

[1]In his brief, Father asked:

> 1. Did the court err in determining that there was no material change in circumstances affecting the welfare of the children?
>
> 2. As a subset to Question I, did the court err in finding that [Mother] did [not] "abuse her authority" as to the parties' agreement in medical decision making?
>
> 3. As a subset to Question I, did the court err in finding that the parties had not entered into an agreement to modify custody?

> Did the court commit reversible error in finding no material change of circumstances existed, and granting [Mother's] motion for judgment, functionally denying [Father's] action for modification of a custody arrangement?

For the following reasons, we affirm the decision of the circuit court.

FACTS

The parties were married on November 8, 2005. Both parties are anesthesiologists. Mother is in private practice, and Father is a Colonel in the United States Air Force.

Mother testified that between 2007-2009, while the parties were living in Florida, they experienced marital issues, in part due to Father's deployments and his desire not to have children. Mother testified that she decided to end the marriage.

On January 24, 2009, before she ever filed for divorce, Mother learned that Father was badly injured by an improvised explosive device ("IED") in Afghanistan. Despite the marital difficulties, she flew overseas to provide him with medical care and support.

Father's medical record illustrates that his multiple injuries were severe, and he was diagnosed as suffering from a traumatic brain injury ("TBI"). He experienced a subdural hematoma, fractures of multiple facial bones, injuries to his left hip, knee, and shoulders, and a vertebral fracture which required a spinal fusion. He received inpatient

---

> 4. Did the court err in determining that the date after which a change in circumstances needed to be proven was the date of a court order incorporating an agreement rather than the date of the agreement?
>
> 5. Is an agreement to modify custody evidence of a material change in circumstances as a matter of law?

care for three months, followed by outpatient speech-language pathology and physical therapy. In the summer of 2009, he returned to work as an anesthesiologist, with enhanced supervision from a mentor. In December of 2009, his condition had largely normalized, although he still had very minor difficulties in organizing novel information, but this difficulty did not impact his job performance. From February 2010 to July 2010, he was stationed at Elgin Airforce Base and "performed well as a staff anesthesiologist." A neuropsychological evaluation on November 13, 2013, concluded "[Father] is not displaying any areas of significant cognitive deficit, but does continue to have a few areas of relative weakness." His final evaluation on February 23, 2015, concluded that he had recovered to "near normal" and was cleared for combat duty.

Despite ongoing marital disharmony, the parties decided to have a child. The Twins were born prematurely on October 4, 2011. Both suffer from delayed development.

Martial discontent continued, and on October 9, 2013, the parties entered into a "Marital Separation and Custody Agreement and Child Support Term Sheet." The agreement addressed custody, visitation, and support. It provided a phase-in access schedule for the Father for the first 90 days, after 90 days until 120 days, from 120 days until the Twins are four years old, and then after the Twins turn four in October of 2015. Pursuant to the agreement, beginning in October 2015, Father is to have the Twins on alternating Wednesdays for an overnight from after work until 9:00 a.m. Thursday morning. On weeks in which he does not have a Wednesday night, Father is to have the Twins on Wednesdays from after work until 7:00 p.m. In addition, he is to have them for

alternating weekends from Friday after work until Sunday at 7:00 p.m. The agreement also provides for reasonable telecommunication access with the Twins when they are with the custodial parent, such as by phone, Skype, or FaceTime.

The parties have a complicated legal history, with a mutual pattern of filing and dismissing proceedings.[2] However, only two are relevant to our discussion.

The first legally relevant proceeding is the one from which the original custody order was filed, which was Case No. 110828-FL, a divorce and custody proceeding. That case was dismissed. However, on April 28, 2014, prior to dismissal, a hearing was held which resulted in the initial custody order. The May 20, 2014 Custody Order incorporated the written custody agreement executed by the parties on October 9, 2013, and included various additional provisions. It granted joint legal custody to both parents, with Mother having tie-breaker decision-making authority and primary residential custody of the Twins. On September 9, 2015, the pending proceedings were dismissed, but the parties expressly stipulated that the May 20, 2014 Custody Order would remain in full effect.

[2] The parties were granted a dissolution of marriage by a Florida court in 2010, but the judgment was vacated and the parties remained married. There are several other associated proceedings, but that history has no bearing here. Both parties attempt to add color and context to their arguments by providing a significant amount of irrelevant personal backstory, with Mother adding much about alleged domestic disputes and Father's issues with alcohol, while Father adds significant detail about his injury and recovery. We join the trial court in noting the parties' apparent desire to "air publicly . . . things that would be better kept between the [parties,]" and we have chosen to only include those facts which have direct bearing on the matter before us.

The second relevant proceeding is the one from which this appeal arises – Case No. 131219-FL, filed by Father on October 9, 2015, seeking divorce and modification of the May 20, 2014 Custody Order. A hearing was held on June 20-21, 2016. On June 23, 2016, the circuit court signed a written order granting Mother's motion for judgment, effectively denying Father's request for a modification of the May 20, 2014 Custody Order. On June 27, 2016, the circuit court's order was formally entered, and Father noted his appeal on July 22, 2016.

Additional facts will be provided as they become relevant to our discussion, below.

DISCUSSION

I. Standard of Review

Maryland appellate courts have repeatedly affirmed the standard of review in child custody proceedings stated in *Taylor v. Taylor*, 306 Md. 290, 303 (1986):

> [I]n any child custody case, the paramount concern is the best interest of the child. As Judge Orth pointed out for the Court in *Ross v. Hoffman*, 280 Md. 172, 175 n.1, 372 (1977), we have variously characterized this standard as being "of transcendent importance" and the "sole question." The best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak.

See e.g. McCready v. McCready, 323 Md. 476, 481 (1991).

When deciding whether modification of custody is warranted, the trial court performs a two-step analysis:

> First, unless a material change of circumstances is found to exist, the court's inquiry ceases. In this context, the term "material" relates to a change that may affect the welfare of a child. *See* [*McCready*, 323 Md. at

> 476.] Moreover, the circumstances to which change would apply would be the circumstances known to the trial court when it rendered the prior order. If the actual circumstances extant at that time were not known to the court because evidence relating thereto was not available to the court, then the additional evidence of actual (but previously unknown) circumstances might also be applicable in respect to a court's determination of change. If a material change of circumstance is found to exist, then the court, in resolving the custody issue, considers the best interest of the child as if it were an original custody proceeding . . . . [B]oth steps may be, and often are, resolved simultaneously.

Wagner v. Wagner, 109 Md. App. 1, 28-29 (1996).

Further, on review of "cases involving the custody of children generally, our precedents establish a three part review of the decisions of the lower courts, addressing the findings of fact, conclusions at law, and the determination of the court as a whole." *In re Yve S.*, 373 Md. 551, 584 (2003). In sum:

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. Rule 8-131(c)] applies. If it appears that the chancellor 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 chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion."

Sider v. Sider, 334 Md. 512, 534 (1994) (quoting *Davis v. Davis*, 280 Md. 119, 125-26 (1977)); *accord Yve S.*, 373 Md. at 584-86. An abuse of discretion occurs when "no reasonable person would take the view adopted by the [trial] court" or when the court acts "without references to any guiding rules or principles." *In re Adoption/Guardianship No.* 3598, 347 Md. 295, 312 (1997) (citations omitted). "Additionally, the trial court's opportunity to observe the demeanor and credibility of the parties and witnesses is of particular importance." *Wagner*, 109 Md. App. at 40 (citing

Petrini v. Petrini, 336 Md. 453, 470 (1994)). Thus, "the chancellor's decision is unlikely to be overturned on appeal." *Id.* (citations omitted).

Although it is intimately related to child custody proceedings, the appellate review of the presence, or lack thereof, of materially changed circumstances to warrant review of a custody arrangement is a distinct legal issue. "Pursuant to Maryland Rule 8-131 (c), where, as here, an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." *Friedman v. Hannan*, 412 Md. 328, 334 (2010). Under Md. Rule 8-131(c)[3] an appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Campitelli v. Jonhston*, 134 Md. App. 689, 698 (2000) (where Md. Rule 8-131(c) governed the review of a denial of a motion to terminate or reduce spousal support). "[W]e must defer to the fact-finding of the trial court unless it is clearly wrong or an abuse of discretion."

II. Order for Judgment

Father avers that due to changes in material circumstances, that he believes are evidenced in a number of ways, the circuit court's grant of judgment, functionally denying his request for modification of the custody arrangement, was in error. As stated *supra*, a custody arrangement will only be modified if the court finds that a material change in circumstance exists. "The 'material change' standard ensures that principles of

[3] Md. Rule 8-131 (c) reads in full, "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses."

res judicata are not violated by requiring that such a showing must be made *any time* a party to a custody or visitation order wishes to make a contested change[.]" *McMahon v. Piazze*, 162 Md. App. 588, 596 (2005).

For the following reasons, as the circuit court did, we find that no material change in circumstance existed. Therefore, the circuit court did not err when declining to move to a best interest analysis regarding the current custody arrangement, and appropriately granted Mother's motion for judgment.

A. The Timeframe For Comparing Changed Circumstances

When assessing the adequacy of changed circumstances, the trial court shall review for a change in circumstances at the time of the present hearing from those "known to the [previous] trial court when it rendered the prior order." *Wagner*, 109 Md. App. at 28. Here, this requires that the judge evaluate the circumstances at the time of the hearing, January 2016, compared to those present when the court entered the May 20, 2014 Custody Order.

Father now avers that the prior date should have been August 2013, eight months prior to the May 20, 2014 Custody Order, when the parties' private agreement was reached. He supports this position by pointing only to Md. Code (1984, 2012 Repl. Vol.), Family Law Article, § 7-103(a)(8) which allows only those parties who have an agreement without children to proceed immediately to court to obtain a divorce. Father states that "[g]oing to the expense of the proceedings as to custody before the divorce

case will seem a waste of money to anyone who just reached an agreement and does not anticipate a problem."[4]

Between the time of the initial agreement and Father's present attempt to modify the agreement, the parties reaffirmed the agreement a number of times. Most recently, on September 9, 2015, in the stipulation withdrawing all pending claims and dismissal agreement, the parties dismissed all claims against each other and agreed that "Orders previously entered herein shall remain in full force and effect" including "the Order entered May 20, 2014[.]" Father *expressly affirmed* the continuance of the agreement, which at a minimum shows a lack of express opposition, and could be seen as implicitly affirming the facts and circumstances that led to the agreement, and which continued to the date of the court hearing. Moreover, assuming *arguendo* that Father did persuade us that a private agreement regarding custody should be the date against which we compare for changed circumstances, it seems that we would also be compelled to take cognizance of the later dates, including September 9, 2015, when the parties privately agreed to reaffirm the agreement and the May 20, 2014 Custody Order.

More importantly, what Father fails to recognize is that in custody proceedings, the trial court is charged with conducting a best interest analysis regardless of any prior agreement between the parties. Courts review for a change in circumstance from the initial custody proceedings, precisely because of that best interest analysis and the record

[4] This position seems particularly ironic for the parties at hand, given their *extensive* legal history, before and after the children were born, which would indicate a reasonable anticipation of problems.

of known conditions at the time on which that analysis was based. Circumstances which are considered in determining whether a change in child custody is warranted refer to the circumstances known to the trial court when it entered the prior custody order; if actual circumstances extant at that time were not known to the court because evidence relating thereto was not available to the court, then additional evidence of actual but previously unknown circumstances might also be applicable in response to the court's determination of whether there was a material change in circumstances warranting a change in custody. *Wagner,* 109 Md. App. at 28. There is nothing to indicate that there were actual circumstances unknown to the parties between the two disputed dates. Father's post hoc attempt to argue otherwise is without merit**.**

Father states that he knows "of no law in this state that supports" using the April 24, 2014 timeframe rather than the August 2013 date. This matter is, however, settled law by *Wagner, id.* We will evaluate for material change in circumstances that resulted in the May 20, 2014 Custody Order, rather than from August 2013.

B. Standard for Material Change

For a trial court to consider a modification of custody, it is well established in Maryland that the moving party must first prove a *material change in circumstances*. Before turning to Father's arguments regarding the grounds for determining a change, we first lay out the standard by which we define a material change.

Father avers that the trial court erred because the court identified materiality as something that "affects" the welfare of the child, rather than something that "may affect"

the welfare of the child. The trial court identified that "[a]ccording to *McMahon* [*v. Piazze*, 162 Md. App. 588, (2005)], . . . a material change of circumstances is a change in circumstances that affects the welfare of the child." The trial court correctly restated *McMahon*, where we said that a "change in circumstances is 'material' only when it *affects* the welfare of the child." *McMahon*, 162 Md. App. at 594 (emphasis added) (citing *McCready*, 323 Md. at 482).

However, Father is also correct in his quotation of *Wagner*, where, also citing *McCready*, this Court stated that "[i]n this context, the term 'material' relates to a change that *may* affect the welfare of a child." 109 Md. App. at 28 (emphasis added). Father now asks us to require the more lenient standard of "*may affect*" stated in *Wagner*, failing to note the standard stated in *McMahon*, decided in 2005, nine years after *Wagner*.

In *Dominques v. Johnson*, 323 Md. 486, 498 (1991), the Court of Appeals stated the "principle that an existing custody order ordinarily should not be modified in the absence of a showing of changes affecting the welfare of the children has two bases: preventing relitigating of the same issues and, the preservation of stability in custody cases." The Court then concluded that "[t]o determine that a modification is required, the chancellor need not find . . . that the changes have already caused identifiable harm to the children." *Id.* at 499.

While requiring the moving party to show that changes have already caused identifiable harm to the children is unduly burdensome, to follow the standard of *may affect* would almost certainly allow nearly any change to warrant an evaluation of a modification agreement and would fail to preserve the stability of custody arrangements.

Almost any change in either parent's circumstances has the potential to affect their children. To evaluate every custody arrangement every time a parent under a custody order changed jobs, moved to a different neighborhood, remarried, or suffered from a minor medical condition, would certainly violate the court's commitment to finality and efficiency. Rather, we must evaluate if the changed condition is material, so as to affect the child.

C. Father's Arguments for Change of Circumstances

In his initial filing, Father asserts the following to support that a material change in circumstances occurred:

> 19. Since the time of the parties' Agreement and the entry of this Court's May 20th Order, there have been **material changes in circumstances justifying the modification of the current custody and access arrangement**.
>
> 20. Specifically, the parties' twin boys, **who are now four years old, need to see their father more frequently than the current arrangement allows**, and it is in their best interest that the physical custody and access be modified to allow such.
>
> 21. **The current custody arrangement does not provide the minor children and the Plaintiff with enough quality time together**, which is necessary to maintain and foster their father-son relationship. Specifically, during the weeks when there is no weekend visitation, the boys do not see their father for an entire week.
>
> 22. While the parties' Agreement provides that the non-custodial parent shall have reasonable telecommunications access with the children when they are with the custodial parent, such as FaceTime, **the Defendant has unilaterally decided not to comply with this requirement and refuses to answer Plaintiff's calls**. Accordingly, the minor children are denied contact with their father between visits.[5]

[5] Father also addresses this issue in Count IV- BREACH AND ENFORCEMENT, where he alleges that Mother "continues to deny [Father] FaceTime access with the

> 23. In addition, the **Defendant has informed Plaintiff that she intends to quit her job as an anesthesiologist and relocate to Boston, Massachusetts, with the parties' minor children, over Plaintiff's objections**. Such a move would be gravely detrimental to the minor children and their relationship with their father, particularly given the fact that the **Defendant does not encourage or promote that bond, but rather, seeks to alienate the children from their father.**

The circuit court summarized Father's position as follows:

> In his complaint, [Father] alleges that there has been a change of circumstances between - - because the twin boys are now four and need to see their father more frequently. That [Mother] has not complied with the telecommunication provision of the agreement and order. And that [Mother] has indicated her intention to move to Boston which, of course did not happen.
>
> In answer to interrogatories Father claims that the [M]other has also made false claims to medical providers regarding his care of the children. And that she is engaged in a campaign of malicious alienation of the children from their Father.

We now turn to our analysis of the issues raised at trial, and review the circuit court's conclusion that Father failed to produce sufficient evidence to constitute a material change in circumstance warranting review of the custody arrangement.

Father's first two arguments of changed circumstances are essentially that the boys are older and, therefore, need to see their father more. This position is fundamentally flawed, and it fails to recognize the underlying values of stability and finality expressed in the relevant case law on custody modification. If a child's increased age was an

---

minor children, without any justification or legitimate excuse" and he requests that the court "find [Mother] in breach and enforce the terms of the parties' Agreement and May 20th Order to require, *inter alia,* the Defendant to comply with the FaceTime requirements set forth therein."

adequate factor in assessing changed circumstances, it would be present in every case, "because aging is an inexorable progression prevalent in all custodial contests." *McMahon*, 162 Md. App. at 596 (quoting *Campbell v. Campbell*, 477 S.W.2d 376, 378 (Tex. App. 1972)). While we sympathize with Father's desire to spend more time with his children, their age and his desire cannot be considered relevant factors in this assessment. To do so would allow every parent who is dissatisfied with a custody order to request modification based merely on their dissatisfaction and the passage of time.

Next, Father asserted that Mother intended to move to Boston with the Twins against his wishes. As the circuit court did, we conclude that this move did not happen and was not imminent at the time of the trial. Although we need not wait for minor children to be harmed prior to modifying custody, we also cannot act on mere possibilities of change. "The relocation of a parent having joint or primary physical custody may present serious questions concerning modification of a custody order, and the approach of the courts of the several states to this problem has not been uniform." *Dominques*, 323 Md. at 501 (citations omitted). Maryland courts have taken the position that relocation is a factor that will not automatically warrant a custody modification, but rather that assessing the effects of a relocation on a custody arrangement requires careful balance of the specifics of each case. *Id.* at 502-03. Here, the move has not happened, but instead was merely a possibility. To allow this possibility to be considered as evidence of a material change in circumstance would be to sanction a custody change on mere conjecture. Again, we recognize the value of stability of custody arrangements as an inherent value of the judiciary, and we decline to modify custody.

While Mother was considering the move to Boston, she and Father communicated regarding the custody arrangement and the move. Father asked the circuit court to find these letters to be an agreement to modify custody, and that this "agreement" in itself constitutes a material change in circumstance.[6] On appeal, he asks us to find the same. On August 18, 2015, through respective counsel, the parties engaged in what can only be described as settlement talks, evidenced by the introductory statement in the first letter that the sending party "has authorized . . . the following settlement offer" and the heading on the letter which states, in bold "for settlement purposes only[.]" The move to Boston was a condition precedent to a contractual formation. *All State Home Mortgage Inc. v. Daniel,* 187 Md. App. 166, 182 (2009) ("A condition precedent in a contract is 'a fact, other than mere lapse of time, which, unless excused, must exist or occur before a duty of

[6] On August 18, 2015, Mother, through her counsel, made the following settlement offer to Father, through his counsel, in order "to bring final resolution" to the custody dispute:

> [Mother] is moving to the Boston area imminently and she does not intend to wait for the court proceedings to be concluded. She has no choice. Your client will have physical custody of the boys and be responsible for their day to day care. She will also agree to his having full ownership of the parties' marital home. If your client is in agreement, we can concert this matter to an uncontested divorce.
>
> Although this offer of settlement does not reflect her own wishes, it has become apparent to her that there are no other viable options. It is in the best interests of the boys that the conflict end, even if it means giving up custody.

Father, through his counsel, accepted the offer on the same day, while noting "there are other issues to be finalized, not addressed in your letter . . . ."

immediate performance of a promise arises.'") (Quoting *Chirichella v. Erwin*, 270 Md. 178, 182 (1973)). Although Father accepted the offer, the move to Boston never occurred, which would constitute a failure of a condition precedent to an agreement. *Chirichella*, 270 Md. at 181.

The final issues that Father raised in his filing relate to his assertion that Mother "does not encourage or promote [the Father-son relationship], but rather, seeks to alienate the children from their father." Father asserted that Mother denied him adequate telecommunication while the boys are in her care.[7] Although there is evidence that Father requested FaceTime conversations that were not answered, the Order does not require constant, or even daily, telecommunications. Rather, it requires "reasonable" telecommunications. Based on the record, including text exchanges between Mother and Father where Mother communicates that she has attempted to contact Father for FaceTime with the boys but has been unsuccessful based on Father's actions, in evaluating the evidence, we agree with the circuit court's conclusion that Mother did not unreasonably deny telecommunication between Father and the Twins.

In a similar vein, Father asserted that Mother had abused her authority in her failure to communicate with him about necessary medical care, and that she failed to adequately tend to one of the children's medical needs. However, the record indicated that Father was informed prior to the medical procedure in question, although perhaps not

[7] This issue is raised twice as both evidence of a material changed circumstance and again as evidence of Mother's breach of the May 20, 2014 Custody Order.

as timely as he would have liked, and the children are meeting their milestones. As the circuit court did, we fail to find adequate evidence in the record that "there has been an attempt by [Mother] to undermine the relationship that [Father] has with the children" and likewise find no evidence that Mother abused her authority regarding the children's medical care.

Moreover, Father's allegations regarding Mother's alleged failure to adequately allow telecommunication and his allegation regarding medical decisions and care, seem more appropriately suited to be addressed through alternative legal channels, such as a Motion for Enforcement, rather than asserting, as Father does here, that alleged noncompliance should be seen a material change in circumstance.

Finally, Father also now avers that his health has improved significantly, and that his "miraculous" recovery constitutes a material change in circumstances warranting review of the custody arrangement. While we agree that his recovery is noteworthy, the record is clear that he had returned to practicing medicine as an "independent provider" by the end of 2009, well before the May 20, 2014 Custody Order. Father asks that we see his recovery as "a miracle that underscores [his] perseverance and . . . how he has dedicated his life to serving his country" while noting that it is "the nature of the courts" to forget that "good things happen." Although Father avers that his health has continued to improve since the May 20, 2014 Custody Order, which may well be, such improvements cannot be considered material, as Father was recovered to a high level of function prior to the Order. His continued improvement is not a significant issue.

Although we evaluate the circumstances as compared to those known at the time of the April 2014 hearing, very few of Father's assertions relate back at all. Rather, most of Father's assertions center on the passage of time and his dissatisfaction with Mother and the arrangement.

The Court of Appeals stated in *McCready*:

> In the limited situation where it is clear that the party seeking modification of a custody order is offering nothing new, and is simply attempting to relitigate the earlier determination, the effort will fail on that ground alone. In that instance, appellant would be correct in stating that the absence of a showing of a change in circumstances ordinarily is dispositive, and that the chancellor does not weigh the various factors to determine the best interest of the child.
>
> In the more frequent case, however, there will be some evidence of changes which have occurred since the earlier determination was made. Deciding whether those changes are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child.

323 Md. at 482.

Considering the facts and circumstances of this case, we find this to be exactly the type of "limited situation" the Court of Appeals was referring to, where it is clear that the moving party is merely seeking to relitigate the earlier determination as he is no longer satisfied with the agreement.

We find no argument asserted by Father, independently or collectively, that would provide sufficient evidence of a material change in circumstance to warrant a review of the custody arrangement. Rather, it appears that Father has become displeased with the amount of time that he has with the Twins, and that the parties continue to have interpersonal disputes regarding the care of the children. As in *McCready*, where the

Court of Appeals stated that the "parties were not simply seeking to relitigate issues previously decided," *id*. at 483, here, Father is doing just that.

We conclude that insufficient evidence was produced to show a material change in circumstances. We need not turn to the question of whether the change affected the children, nor do we need to conduct a best interest analysis. Accordingly, we hold that the circuit court did not err in granting Mother's motion for judgment.

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