UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 002062

September Term, 2016

LARON WILLIAMS

v.

TAMIKA BLACK

Meredith,
Graeff,
Reed,

JJ.

Opinion by Meredith, J.

Filed: June 29, 2017

In this appeal, LaRon Williams ("Father"), appellant, appeals the order issued by the Circuit Court for Montgomery County granting the motion to modify custody that had been filed by Tamika Black ("Mother"), appellee. Father has appealed, arguing that the finding of a material change in circumstances was an error, and the resulting change in custody was an abuse of discretion. He presents four questions for our review, which we have condensed and re-ordered:[1]

1. Did the circuit court either err or abuse its discretion in granting Mother's motion to modify custody?

2. Did the circuit court correctly decline to rule on Father's Rule 2-535 motion that was filed after the appeal to this Court had been filed?

[1] Father's questions presented, as stated in his Brief, are:

> I. DID THE CIRCUIT COURT ERR IN RULING THAT THERE HAD BEEN A MATERIAL CHANGES [SIC] IN CIRUMCSTANCES BECAUSE THE CHILD AGED, BEGAN SCHOOL, AND THE PARENTS HAD NOT AGREED ON WHERE TO ENROLL HIM?
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> II. DID THE CIRCUIT COURT ERR IN GRANTING MOTHER PRIMARY PHYSCIAL CUSTODY DURING THE ACADEMIC YEAR?
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> III. DID THE CIRCUIT COURT ABUSE ITS DISCRTETION IN MODIFYING THE LEGAL CUSTODY TO AWARD THE MOTHER TIE-BREAKING AUTHORITY WHEN THE MOTHER INDICATED A HISTORY OF UNILATERAL DECISION-MAKING AND A PREFERENCE TO NOT CO-PARENT ON CERTAIN ISSUES?
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> IV. DID THE CIRCUIT COURT ABUSE ITS DISCRETION IN DECLINING TO RULE ON FATHER'S MOTION TO EXERCISE REVISORY POWER WHILE AN APPEAL WAS PENDING?

For the reasons that follow, we will affirm the judgments of the Circuit Court for Montgomery County.

FACTS AND PROCEDURAL HISTORY

The parties to this case were married in 2008. They separated on July 24, 2011, and were divorced in 2013. They are the parents of one child, a son, "M.," who was born on March 24, 2011, and was five years old at the time of the proceedings herein. On July 20, 2012, a custody, access and child support order was filed by the Circuit Court for Prince George's County ("the Original Agreement"), covering, *inter alia*, the following points: (a) the parties agreed to share joint legal and physical custody of their then sixteen-month-old son; (b) the parties would pursue mediation before filing any court action regarding M.'s "health, safety, welfare, religion, daycare and/or education," unless there was an emergency; (c) during the academic year (defined in the parties' agreement as "January-May & September-December"), they would follow an overnight visitation schedule that rotated weekly[2]; (d) each parent would have the right to a two-week (14 consecutive days)

[2] The Original Agreement provided, "by agreement of the parties," that:

> (1) JANUARY-MAY & SEPTEMBER-DECEMBER: During the months of January – May and September – December, the parties shall share access with the minor child on a schedule that rotates every other week as follows:
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> WEEK 1: The Defendant/Mother shall have the minor child Monday, Tuesday and Friday overnight commencing after day care or after school but no later than 6:00 PM until Monday morning. The Plaintiff/Father shall have the minor child Wednesday and Thursday overnight commencing on Wednesday after day care or after school but no later than 6:00PM until Friday morning.

summer vacation with M.; (e) the parties agreed to a holiday and birthday schedule; and (f) Father would pay $281.00 per month in child support going forward, via wage lien. The Original Agreement resulted in a 60/40 custody split, with M. spending 60% of his time during the week in the school year with Mother, and 40% with Father. At the time the Original Agreement was executed, M. lived with Mother in Silver Spring, and Father

> WEEK 2: The Plaintiff/Father shall have the minor child Wednesday overnight commencing after day care or after school but no later than 6:00 PM until Thursday morning and Friday overnight commencing after day care or after school but no later than 6:00 PM until Monday morning. In the event the Monday following Plaintiff/Father's access weekend, is a Federal holiday, the Plaintiff/Father's access with the minor child shall be extended to Tuesday morning. The Defendant/Mother shall have the minor child Monday, Tuesday and Thursday overnight, after day care or after school but no later than 6:00 PM.
>
> The parties shall continue with this rotation Week 1 and Week 2 schedule for the months of January through May and September through December, except when the holiday schedule is in effect as specifically delineated hereinafter.
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> JUNE, JULY, AUGUST: During the months of June, July and August, commencing on June 1, the parties shall have access with the minor child on a rotating one week on and one week off schedule from Sunday to Sunday. In other words, the Plaintiff/Father shall have the minor child every other week from Sunday at 6:00 pm to Sunday at 6:00 pm, with the Plaintiff/Father having the first one week. The Defendant/Mother shall have the minor child every other week from Sunday at 6:00 until Sunday at 6:00 pm, with the Defendant/Mother having the second week.
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> Upon the minor child enrolling in grade school, the rotating week on and week off summer schedule shall commence the day after the minor child's last day of school for the regular academic school year.

resided in Temple Hills, Maryland. In October 2012, Father moved to Crofton, in Anne Arundel County, and in October 2013, Mother moved to Olney, in Montgomery County.

The record reflects that the parties had disagreements over a number of things as time passed. One area of contention related to Mother's efforts to obtain a passport for M., so that he and Mother could travel to Germany to visit Mother's sister's family, who were temporarily residing there. Mother tried for months to obtain Father's cooperation --- asking him to appear at the time of application and sign the form --- but Father refused to comply with Mother's requests, and he proposed adding a number of conditions to the Original Agreement in order to obtain his cooperation on the passport. An additional point of contention developed as M.'s kindergarten year approached; the parties could not agree whether to enroll M. in school in Olney, where Mother lived, or Crofton, where Father lived.

On February 16, 2016, Mother filed, in the Circuit Court for Montgomery County, a Motion to Enroll and Modify Custody, Access and Child Support Order and for Ancillary Relief, in which she asked the court: 1) to enroll the Original Agreement from the Circuit Court for Prince George's County; 2) to grant Mother primary residential and sole legal custody; and 3) to increase Father's child support obligation. As evidence of changed circumstances justifying a modification in custody, Mother cited the passport issue; the kindergarten-enrollment issue; the fact that, once M. began kindergarten and had regular elementary school hours, it would no longer be appropriate for M. to spend 40% of his time during the week overnighting with Father, an hour away from where Mother intended to

enroll him in school; that M.'s day care placement would also need to change once he started kindergarten, as his current day care did not accept school-aged children, and Mother needed to know where M. would be attending kindergarten so that she could locate and enroll him in an acceptable local day care. She alleged that the "parties are no longer able to effectively communicate about issues involving their minor child, and [Father] argues with [Mother] about every issue."

Father initially responded by filing a motion to dismiss, arguing that the Original Agreement contained a provision requiring that the parties mediate any conflict before filing any court action, except in the case of an emergency. Mother responded by filing an opposition to the motion to dismiss, pointing out that she initially approached Father to discuss the kindergarten enrollment issue in the fall of 2015, a whole year prior to when M. actually had to be enrolled in school, and when the parties could not reach agreement on the issue, she suggested mediation, a suggestion to which Father "refused to respond." Accordingly, she asserted, Father's refusal to participate in mediation had created an emergency situation. On May 17, 2016, the Circuit Court for Montgomery County denied Father's motion to dismiss, and signed an order enrolling the Original Agreement in Montgomery County.

On July 26, 2016, Father filed an answer requesting that the motion to modify be denied. On July 28, 2016, Father filed a motion to expedite court date and shorten time -- a motion to which Mother consented -- informing the court that M. had to be enrolled in a school by August 29, 2016, and requesting that the court expedite a hearing on the

modification motion on that basis. But, on August 18, 2016, the court denied the motion to expedite, writing on the order, "Assignment Office has no dates available." The modification hearing was set for September 19, 2016. The parties attended mediation in July, but could not resolve their disputes.

On August 25, 2016, Mother filed an Amended Motion to Enroll and Modify Custody, Access and Child Support Order and for Ancillary Relief. It appears that the amended motion added an allegation that the parties were unable to agree on when each would take their respective two-week summer vacation with M., and the amended motion added various requests for relief, including that Father be "ordered to cooperate in obtaining a passport for [M.]."

The modification hearing occurred on September 19, 2016. Both parties testified. Mother testified that the relationship with Father was "strained" and their ability to communicate and make shared decisions was "not . . . like it should be. I do send out e-mails and try to text and try to talk to him, but I feel like there's not a lot of open communication between the two of us." Mother testified to several examples of an inability to communicate, such as Father's failure to cooperate in obtaining M.'s passport and his failure to ever provide her with a certificate reflecting M.'s Christian dedication, which she had requested numerous times. Mother testified that both of these were long-standing issues; she tried for months to get Father's help with the passport, but still had not gotten it even as of the time of the modification hearing. Instead, she said, Father imposed a "burdensome" list of conditions precedent that Mother testified was a typical example of

their inability to communicate. In her view, any attempt by her to solve a problem is responded to by Father with "[a] lot of words and no resolution" and with the erection of "every roadblock that he can."

Mother testified that it was in M.'s best interest to be with her during the school week because he had just begun kindergarten and was adjusting to a new schedule. She believed it was not in M.'s best interest to spend extra time in the car a few days every week so that Father could pick him up from after-care in Olney, drive him to Crofton, and essentially have almost no downtime before it was time for him to go to bed.

Father testified that he wanted the schedule to remain as it was. He claimed that he knew alternate routes to drive, and it would take him "only" forty minutes to get from Olney to Crofton. He asserted that, "after school there's no traffic." He testified that M. was "a little tired" after school, because he is no longer napping at school as he was in preschool "so sometimes, he's a little sleepy." M. "takes a little more of a nap like as soon as he gets in the car" when Father picks him up from after-care on Father's visitation days. Father testified that it would not, in his view, be disruptive to pull M. from Olney Elementary, where he was in his third or fourth week at the time of the hearing, and move him to Crofton Elementary, because M. "just started. I mean, I don't believe he would have any disruption at all."

The court disagreed with Father's arguments. The court delivered an oral opinion at the conclusion of the hearing on September 19, 2016, later memorialized in an order filed on November 17, 2016, granting Mother's motion to modify. The court found both

parents to be fit, but found that a material change in circumstances had occurred in the four-plus years since the Original Agreement had become effective. The court noted that M. was now school-aged, whereas he had been a toddler at the time of the Original Agreement. As M. was getting older, he would become involved in different activities, like soccer; it was not in his best interest to be uprooted. The court found that M. needed a stable home base, and, finding that Mother was the better decision maker, ordered that she should have primary physical custody during the academic year. Father would have visitation every other weekend and every Wednesday after school until 7:30 p.m. The parties would continue to share joint legal custody, but, because the court found that the parties' "capacity to communicate and reach shared decisions is not great," Mother would have tiebreaking authority.

As noted, the court's order that is the subject of this appeal was filed on November 17, 2016. On November 29, 2016, Father filed his Notice of Appeal.

The docket entries, but not the paper record, reflect that, on December 19, 2016, Father filed a Motion to Exercise Revisory Power and Control Over Judgment and to Remove Wage Withholding Order, pursuant to Rule 2-535(b), complaining that the November 17 order contained a "mistake or irregularity" in that it did not incorporate Father's counsel's input. Additionally, the motion noted that, pursuant to the Original Agreement, Father was subject to a wage withholding order, and he had requested at the hearing on the motion to modify that the court remove the wage withholding provision in whatever order it signed, asserting that it was not necessary because he had never been late

on a payment and it was causing him difficulties at work as it appeared on background checks. Mother opposed the request, and the court asked Father's counsel to supply it with some authority for the court to lift the wage withholding order at this point. The wage withholding provision remained in the November 17, 2016, order, and Father contended in his Motion to Exercise Revisory Power that the court's failure to consider his counsel's memo on that topic, which had apparently been prepared on November 11, 2016, also constituted "mistake or irregularity" within the ambit of Rule 2-535(b).

Mother filed an opposition to Father's Rule 2-535(b) motion, pointing out the tardiness of the motion to revise, the fact that it was filed after Father had noted an appeal to this Court, and that it failed to identify legal authority to lift the wage lien. On February 10, 2017, the court docketed an order denying the motion. Father never filed a separate notice of appeal after the court denied the motion, but he asserts that the court's ruling was an abuse of discretion.

STANDARD OF REVIEW

The Court of Appeals has identified three standards of appellate review that are applied when we review child custody disputes, which the Court described in *In re Yve S.*, 373 Md. 551, 586 (2003):

> We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies. [Second,] if it appears that the [court] 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 [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.

In *Gillepsie v. Gillepsie*, 206 Md. App. 146, 171 (2012), we observed that *Yve S.* also explains:

> In our review, we give "due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses." [373 Md.] at 584, 819 A.2d 1030. 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; [the trial judge] 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." [373 Md.] at 585-86, 819 A.2d 1030.

DISCUSSION

In his brief, Father contends that the court erred in finding a material change in circumstances, abused its discretion in granting Mother's motion to modify, and abused its discretion in declining to rule on Father's Rule 2-535(b) motion.

I. The grant of Mother's motion to modify

This Court described the two-step process that courts must follow when considering a contested motion for modification of custody in *Gillepsie, supra*, 206 Md. App. at 170, noting:

> Courts must engage in a two-step process when presented with a request to change custody. We have described the two-step analysis as follows:
>
> > First, the circuit court must assess whether there has been a "material" change in circumstance. *See Wagner v. Wagner*, 109 Md. App. 1, 28 [674 A.2d 1] (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 v. Piazze, 162 Md. App. 588, 594, 875 A.2d 807 (2005). Therefore, we first consider whether the trial court erred in finding that a material change in circumstances occurred. Second, we consider whether the court abused its discretion in modifying custody.

A. Material Change in Circumstances

Citing two unreported cases, Father contends that the court erroneously found that M.'s growth from a toddler to a kindergartener was a material change, and that the parties knew at the time they entered into the Original Agreement that M. would both get older and eventually enroll in kindergarten. Father argues that an increase in age is not a factor recognized in Maryland law under which a court could find a material change in circumstances. He cites no reported cases from this State for this proposition.[3] Similarly, Father cites no reported cases from this State in support of his argument that enrollment in kindergarten is not an appropriate factor for a trial court to consider in analyzing whether there has been a material change in circumstances.

We stated in *Gillepsie, supra*, 206 Md. App. at 171-72:

> A material change of circumstances is a change in circumstances that affects the welfare of the child. *McMahon, supra*, 162 Md. App. at 594, 875 A.2d 807. The Court of Appeals has explained that although courts must

[3] Maryland Rule 1-104(a) provides: "An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority." Both unreported cases cited by Father were cited for their precedential value; *i.e.*, to support Father's arguments, in contravention of Maryland Rules.

engage in a two-step process in evaluating a petition to modify custody, the two-steps are often interrelated. The Court explained:

> [I]n the more frequent case . . . there will be some evidence of changes which have occurred since the earlier [custody] 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. Thus, the question of "changed circumstances" may infrequently be a threshold question, but is more often involved in the "best interest" determination, where the question of stability is but a factor, albeit an important factor, to be considered.

McCready v. McCready, 323 Md. 476, 482, 593 A.2d 1128 (1991). "In [the custody modification] context, the term 'material' relates to a change that may affect the welfare of a child." *Wagner*, 109 Md. App. at 28, 674 A.2d 1 (1996). "The burden is then on the moving party to show that there has been a material change in circumstances since the entry of the final custody order and that it is now in the best interest of the child for custody to be changed." *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344, 950 A.2d 848 (2008).

We are not persuaded that the trial court's conclusion that there had been a material change in circumstances between July 2012 and September 2016 was clearly erroneous. The Original Agreement was addressed to the custody of a 16-month-old. It was entered into at a time when the parties lived closer together than they did at the time of the September 2016 modification hearing. And, it goes without saying that the infant was not attending school. But, at the time the court considered Mother's request for modification, M. had recently begun a regular school schedule. He was developing outside interests, including sports. Mother reported that Olney Elementary School offered a variety of clubs, had a supportive environment, and was overall "a very good school." Father, by contrast, testified that he knew nothing about Olney Elementary, but he opined that "it's not as good

as what they would offer him at Crofton" without putting on any additional evidence to support this statement.

The evidence showed, as the court found, that M. spent the vast majority of his waking time apart from his parents. Both parents work full-time. Both had relocated since the time of the Original Agreement. Mother testified that she lives seven minutes away from Olney Elementary, and that she drops M. off at daycare in the morning between 7 and 7:30 a.m., the staff at daycare walks M. to school across the street, and she picks him up from daycare between 5:30 and 5:45 p.m. She and M. then go home, have dinner, do homework, and try to unwind before she puts him to bed at 8 p.m. She testified that M. is "tired" and "[i]t's very hard to, in the morning, get him up" when he returns from visitation with Father.

In its ruling, the court noted:

> Now, one of the biggest factors in this whole case, I think, is maybe lost on us a little bit until you really reflect upon it. Because of their schedules, and they have to work, this child is dropped off for school around 7:00, he's picked up around 5:30, 5:45. That's almost 11 hours a day that he's not with his mom and he's not with his dad.
>
> So the last thing I want to see happen is when he gets out of school then he is going for another hour or so in traffic and everywhere else to another location where he can then settle down. I think he needs to settle down during that school week as much as he can in one spot when he gets out of school during the academic year. I think it's going to be much better for him than sitting in a car.
>
> Now, it'd be different for an hour, and I know that with the traffic --- and even if you go the back routes, when you go back roads, there's stop signs, you can't drive as fast, so there's the downside. It's not like you learn the backroads and you can get anywhere you want in 10 minutes. It's still a pretty big drive. Olney and we've got Landover here where dad works. The

> Court's aware of where all these spots are, but Crofton to Olney is quite a distance. Even if you can do it in 45, that's another 45 minutes that he's in the car.
>
> So he's in school, and he's walked across the street, he's with all these people that are nice people, but they're not his mom, and they're not his dad. I think it would be disruptive and not in his best interest then to simply take him in the middle of the school week to go to the father's house, and it's going to be a relatively short period of time.
>
> I'm assuming, I didn't hear from dad, but he will probably put him in bed around the same time because he's only 5, at about 8:00. So by the time he gets him home, and you feed him, next thing you know, you're putting him to bed. I don't think that's a good schedule.
>
> I think during the school week now that he's in school, he should have a home base, and I think that should be with [Mother]. I think it would be too disruptive and not in his best interest to break them.

Although the mere fact that a child is older is not, standing alone, a sufficient basis to find a material change of circumstances, *see McMahon v. Piazze*, 162 Md. App. 588, 595-96 (2005), Mother's petition is not based solely upon the increase in age. She has offered evidence of several changes in circumstances that support the trial judge's conclusion that various terms of the Original Agreement were no longer in the best interest of M. As we pointed out in *McMahon*, *id*. at 596:

> [T]he test of materiality is whether the change is in the best interest of the child. *McCready*, 323 Md. at 482, 593 A.2d at 1131. Consequently, **if a court concludes, on sufficient evidence, that an existing provision concerning custody or visitation is no longer in the best interest of the child and that the requested change is in the child's best interest, the materiality requirement will be satisfied.**

(Emphasis added.)

In finding that a material change in circumstances had occurred since 2012, the court did not give outsized weight to any one factor, nor did it find a material change based solely on the fact that M. had become four years older. Rather, the court considered a variety of factors in concluding that a change in circumstances that affects the welfare of the child had occurred since the entry of the Original Agreement. There was sufficient evidence in this record of provisions in the Original Agreement that were no longer in the best interest of the child, and changes in circumstances affecting the best interest of the child, for us to conclude that the trial court's finding of a material change in circumstances was not clearly erroneous.

B. M.'s Best Interest

Having found a material change in circumstances, the court then went on to find that it would be in M.'s best interest to grant Mother's motion to modify. We review a court's decision to modify custody for clear abuse of discretion. *Gillespie, supra,* 206 Md. App. at 170.

In this case, Mother was asking the court to allow M. to spend all five weekdays with her in Olney during the school year. Father wanted to preserve the schedule in the Original Agreement, which provided that he would pick up M. from aftercare on Wednesdays and Thursdays, drive him almost 40 miles to Father's house in Crofton, feed him dinner, have some minimal amount of time with M. before M. had to go to bed, and then drive him back to Olney first thing in the morning to drop him at daycare around 7 a.m. prior to the school day starting.

Both parties and M.'s maternal grandmother testified that M. was tired after school. Mother testified that, if the current schedule was not changed, she would not be able to put M. in any after-school activities, such as soccer. For his part, Father testified that he objected to M. playing soccer "because I don't feel, as a father, that I should not see my son do any athletic event. I should be there and present for it."

Mother testified that she wanted the modification granted because

> I feel that [M.] needs consistency and stability. I think [M.] needs a schedule. He needs to be in bed by 8:00. He needs --- what I witness is that he needs 10 hours of sleep. If he doesn't have that 10 hours, he's just all out of whack. Mainly for stability.

By contrast, Father testified that he wanted the Original Agreement to remain in place "because if it was changed, it would interrupt what [M.] has already been accustomed to for the past four years."

We see no abuse of discretion in the court's decision that it was in M.'s best interest to grant the motion to modify and award Mother primary physical custody of M. during the week in the academic year. The court articulated its assessment that it was in M.'s best interest to have a "home base," and that he was entitled to stability. We perceive no abuse of discretion in the court's conclusion that a 5-year-old should be spared an unnecessary midweek disruption.

In analyzing the parties' competing points of view, in accordance with *Taylor v. Taylor*, 306 Md. 290 (1986), the court found that the parties' "capacity . . . to communicate and reach shared decisions is not great," and that "[t]hey can't agree on a lot of things, and their communication skills are poor." Although Father disputes this finding on appeal, the

court's finding was not clearly erroneous. The parties were not able to agree on where to enroll M. for kindergarten, on mediation, on obtaining his passport, on Mother's summer vacation dates, and other issues. Mother testified that their communication is "not there like it should be" and that "there's not a lot of open communication between us."

Mother prefers to communicate with Father in writing because "I think it's best to document what was said." Father acknowledged in his testimony that there were subjects on which the parties could not agree, including that Mother "hasn't shared information with any of the school selection process," her unilateral selection of Olney Elementary School, and her scheduling of dentist appointments that Father claims he "didn't know anything about." There was sufficient evidence in the record to support the court's finding that the parties' communication was not very effective. [4]

Father also complains that the court abused its discretion in granting Mother tiebreaking authority. He cites no cases in support of this contention. He merely recites

[4] We also note that, during Mother's closing argument, the trial judge interrupted to state that it found a material change in circumstances existed, saying: "There are too many conflicts with the parties. There's material change. The school is the big one." When Father's trial counsel began her argument, the following colloquy occurred:

> [BY TRIAL COUNSEL]: Thank you, Your Honor. So I hear that you are finding a material change.
>
> [BY THE COURT]: I am. There are too many conflicts with the parents and the child. . . . [T]he parties weren't able to --- they've proven they can't go to mediation on their own and do things.
>
> [BY TRIAL COUNSEL]: Yes. I would agree . . .

the evidence that was before the trial court and, essentially, complains that the trial court should have weighed it differently. But it is not the function of this Court to re-weigh the evidence that was before the trial court, and granting joint custody with tiebreaker authority to one parent is an option available to a trial court within the wide range of its discretion. The use of tie-breaking provisions was expressly approved by the Court of Appeals in *Santo v. Santo*, 448 Md. 620, 646 (2016):

> We hold today that a court of equity ruling on a custody dispute may, under appropriate circumstances and with careful consideration articulated on the record, grant joint legal custody to parents who cannot effectively communicate together regarding matters pertaining to their children. In doing so, the court has the legal authority to include tie-breaking provisions in the joint legal custody award.

See also Shenk v. Shenk, 159 Md. App. 548 (2004). This case presents such "appropriate circumstances," and the trial court articulated on the record its reasons for granting Mother tiebreaking authority. We detect no abuse of discretion.

II. Father's Post-Trial Rule 2-535(b) Motion to Revise

As mentioned above, Father requested at trial that the wage withholding order that was put in effect as part of the Original Agreement be removed. Mother objected, and stated through counsel: "My client doesn't agree to have it lifted, and I don't think the Court has any authority to lift it once it's in place." The trial judge then asked Father's counsel to provide some authority permitting the court to remove the wage withholding order, and "show it to [Mother's] counsel, and you guys, if you can agree, fine, that I can modify the [Original Agreement], I would do that." This conversation occurred at trial on September 19, 2016.

It appears from the record that Father did not submit any such authority to either the court or Mother's counsel. His counsel "prepared a memo November 11, 2016."[5] However, by that time --- almost two months after the trial concluded --- the court's order granting the motion to modify had already been signed (November 2, 2016). It was docketed on November 17, 2016. There is no evidence that Father ever supplied the court with any authority to support his argument that it could remove the wage withholding order over Mother's objection. In his motion to exercise revisory power, Father cites only Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), §10-134(a)(2), which provides: "(a) On motion of the obligor or the recipient that may be filed on a form which shall be prepared by the court, the court shall terminate the withholding **if**: . . . (2) **all of the parties join in a motion for termination** of the withholding[.]" (Emphasis added.) But that is not this case; Mother expressly declined to join in Father's request.

Beyond that, this issue is not properly before us on appeal. The motion to revise was filed after Father's Notice of Appeal was filed on November 29, 2016. After the court entered a subsequent order on February 10, 2017, denying Father's motion, no supplemental notice of appeal was filed. *See* Maryland Rule 8-202(a); *HIYAB, Inc. v. Ocean Petroleum, LLC,* 183 Md. App. 1, 8 (2008) ("The requirement 'that an order of

[5] As we noted above, Father's "Motion to Exercise Revisory Power and Control Over Judgment and to Remove Wage Withholding Order" is reflected in the docket entries at D.E. #56, but it does not appear in the physical, paper record transmitted to us by the circuit court. The last two documents in the paper file are the November 29, 2016, Notice of Appeal, and this Court's order of January 11, 2017, directing that the appeal proceed without a prehearing conference. Father included the Motion to Revise, Mother's Opposition, and the court's denial order in his Record Extract.

appeal be filed within thirty days of a final judgment, is jurisdictional; if the requirement is not met, the appellate court acquires no jurisdiction and the appeal must be dismissed.' *Houghton v. County Com'rs of Kent County,* 305 Md. 407, 413, 504 A.2d 1145 (1986).")

The November 17 custody order maintained "the wage withholding order currently in place." It appears that counsel for Father never provided the court citations to legal authority for the court to lift the withholding order in the absence of Mother's consent. Consequently, even if the denial of Father's motion had been timely appealed, we see no basis to disturb the court's ruling.

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