Circuit Court for Howard County
Case No. C-13-FM-21-002177

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2294

September Term, 2024

STEPHANIE MARTIN KREWSON-KELLY

v.

MATTHEW DANIEL KELLY

Nazarian,
Arthur,
Leahy,
JJ.

Opinion by Leahy, J.

Filed: August 29, 2025

***** This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In this timely appeal, we highlight once again the principle that the best interests of the child is the paramount consideration in all child custody cases. Appellant Stephanie Martin Krewson-Kelly ("Mother") challenges the judgments of the Circuit Court for Howard County denying her motion to modify custody and petition for contempt against Appellee Matthew Kelly ("Father") following a two-day merits hearing.

Mother presents four questions for our review,[1] which we consolidate, rephrase, and reorder as follows:

I. Did the circuit court abuse its discretion in denying Mother's Petition for Contempt?

II. Did the circuit court err or abuse its discretion in denying Mother's motion to modify custody?

First, we conclude that there is no appellate jurisdiction to review the circuit court's denial of Mother's petition for contempt because, in a contempt case, the right of appeal is not available to the party who unsuccessfully sought to hold the other party to be in contempt. *Second,* we hold that the circuit court erred in denying Mother's motion to modify custody, as the court failed to sufficiently consider the child's welfare in determining there was no material change in circumstances that may warrant modification

[1] Mother's questions presented are:

1. Did the Trial Court Err in Denying Appellant's Complaint to Modify Custody?
2. Did the Trial Court Abuse its Discretion in Denying Appellant's Complaint to Modify Custody?
3. Did the Court err in Denying Appellant's Petition for Contempt?
4. Did the Trial Court Abuse its Discretion in Denying Appellant's Petition for Contempt?

of custody. Accordingly, we dismiss in part and vacate in part.

BACKGROUND

Divorce Proceeding and Dr. Berman's Evaluation

Mother and Father were married in March 2013. Their minor child, W., was born in April 2012. In December 2021, Mother filed a complaint for absolute divorce, custody, child support, and other relief, and Father subsequently filed a counter-complaint and an answer. Years of litigation followed.

As the divorce proceeding was ongoing, Mother filed a motion for psychological evaluation of Father, alleging, among other things, Father's "access to, and misuse of, pain medications including those not prescribed to him[.]" The circuit court appointed Dr. Paul Berman, Ph.D., to examine both Mother's and Father's mental health and issue a report that includes the results of psychological testing, any diagnoses or treatment recommendations, and an explanation of the impact, if any, of the parties' mental health on parenting.

Dr. Berman completed his psychological evaluation of the parties and issued a report on July 10, 2023. In the section titled "Diagnostic Impression[,]" Dr. Berman stated that Mother did "not meet criteria for any DSM-5 mental health diagnosis" but showed signs of "complex traumatic stress disorder[,]" which he explained as "[a] research and clinically based disorder which is not yet included in any diagnostic manual." In the same section, Dr. Berman found that Father meets criteria for the DSM-5 diagnosis of "Other

Substance Use Disorder" involving Kratom.[2]

In other parts of his report, Dr. Berman explained his diagnostic impressions, noting that there are "significant concerns about [Father's] use of Kratom" and that "he may have developed a physical dependence upon Kratom." According to Dr. Berman, Father reported that he had "been taking Kratom for five years" and used it "3-4 times per day" for pain relief. Mother also reported that Father spends about "$800 a month on Kratom" and when he does not use Kratom, "[h]e would get very irritable and short tempered . . . [i]n front of [W.]" Nonetheless, Dr. Berman concluded that the "[r]esults of the evaluation do not support [Mother's] view that [Father] is unstable or that he is a 'bad' and 'dangerous[']person[.]"

Dr. Berman did not record any diagnostic impressions regarding either party's alcohol use. Still, Dr. Berman found that the results of his evaluation raised "concerns about [Mother's] alcohol use" and "significant concerns about [Father's] alcohol use," even though he could not conclude whether Father had an alcohol abuse problem. Although Father reported that he had been drinking "1-3 glasses of wine or 1-3 beers" three or four times per week, with "a little more on the weekend"—a pattern he stated began

[2] According to Dr. Berman's report:

> Kratom is derived from a tropical tree in the coffee family native to Southeast Asia. It can have both stimulant effects and sedative effects, depending upon the individual and the dose. It is not a controlled or regulated substance. It is not considered a typical opioid based on its chemical structure but does bind to opioid receptors and has been found to relieve pain in some individuals. Research has shown regular users of kratom can develop physical dependence. **E. 374 fn. 2.**

prior to the parties' separation—Dr. Berman noted that "individuals undergoing court-ordered psychological evaluations rarely self-report alcohol problems." As a result, Dr. Berman concluded that both parties were "at high risk for developing alcohol use problems" and advised that they "should remain aware of their alcohol use and seek consultation with a professional if their alcohol use increases."

Based on these observations, Dr. Berman made the following "Recommendations" in his report. First, Mother "would benefit from individual therapy[,]" including "working on developing additional coping skills so that she can more effectively regulate her reactions to current stressors" and "separate thoughts and feelings related to current stressors from those that may be childhood-based." Second, Mother "would benefit from a consultation with a psychiatrist to assess whether medication could be useful to help her better regulate and contain her thoughts, feelings, and behaviors." Third, and finally, Dr. Berman suggested that Father "would benefit from an assessment with a pain management specialist and/or substance use therapist with specific expertise working with individuals who regularly use Kratom."

Judgment of Absolute Divorce

On September 7, 2023, the court entered a Judgment of Absolute Divorce (the "JAD"). Prior to the entry of the JAD, the parties had executed a partial marital separation and property settlement agreement (the "Property Agreement") on August 9, 2023, and a custody agreement (the "Custody Agreement") on August 30, 2023.

The Property Agreement required Mother to pay Father the sum of $160,000 on a schedule that extended into the year 2027. The Custody Agreement provided that the parties would have joint legal custody, with Mother having tie-breaking authority and primary physical custody. Among other things, the Custody Agreement detailed Father's visitation schedule for the child's vacation and holidays. It also noted that Mother planned to relocate with W. to Michigan "upon the execution of this Agreement" and outlined a weekly visitation schedule contingent upon Father's relocation "to within twenty (20) miles of Mother's [Michigan] residence[.]" Further, the Custody Agreement provided as follows:

> 1.8 Dr. Berman Recommendations. The Parties hereby agree that they will each strictly abide by the recommendations set forth in Dr. Berman's Psychological Evaluation Findings and Recommendations, dated July 10, 2023, specifically related to page 44, Section XVII, Diagnostic Impression and page 45, Section XVIII, Recommendations. The Parties further agree they will each provide proof directly to the other party, in writing, to confirm their assessment, consultation or enrollment related to Dr. Berman's recommendations.

Both the Custody Agreement and the Property Agreements were incorporated, but not merged, into the JAD. Consistent with the Custody Agreement, the court awarded both parties joint legal custody, giving Mother primary physical custody and tie-breaking authority, and providing Father regular visitation with W.

December 26, 2023

In October 2023, Mother relocated with W. to Plymouth, Michigan. Father remained in Maryland. Per the Custody Agreement, Father was to have visitation with W. beginning "December 27th through two days before the end of [W.'s] Christmas/Winter break from school[.]" Accordingly, in the morning of December 26, 2023, Father flew to

Detroit to pick up W. at the airport. Father then returned to Maryland with the child, arriving at BWI airport between 8:00 and 9:00 p.m. Mother also drove to Maryland that same day, arriving at Ellicott City around 7:30 p.m., and had dinner with Steven Budorick, her former co-worker, and his wife.

A little before midnight, as Mother was about to leave Budorick's home, she received a FaceTime call from W. Both Mother and Budorick later testified that they saw that the child was in distress. W. told Mother, "Dad won't wake up." When Mother asked him to clarify, W. turned his phone to show Father, who appeared "sort of collapsed" and was "lying diagonally on the bed, not under the covers." W. slapped Father in the face multiple times to wake him up, but Father did not respond. Father woke up the next morning and found "a barrage of e-mails" and text messages from Mother.

Motion to Modify Custody and Petition for Contempt

Shortly thereafter, on December 28, 2023, Mother filed a "Complaint to Modify Custody," requesting sole legal and primary physical custody of W., and seeking to suspend Father's in-person visits until he "successfully completed an assessment with a pain management specialist and a substance abuse [] therapist[.]" She also asked the court to order Father to undergo "hair follicle testing for both drugs and alcohol" before his scheduled visitation could resume. Mother asserted that Father had failed to comply with Dr. Berman's recommendations and "used illicit substances" on December 26 while having

W. in his care, placing the child "in imminent harm to the point that [his] health, safety, and welfare are at substantial jeopardy."[3]

About six months later, on June 14, 2024, Mother filed a petition for contempt against Father, reiterating that Father had "failed to comply with any of the mutually agreed upon terms of the Custody Agreement related to Dr. Berman's recommendations." Father filed a response, countering that he had been "evaluated by a pain management specialist, namely Malcolm Moses-Hampton, MD, at Clearway Pain Solutions" and attached a "copy of the e-mail [he] received from Clearway Pain Solutions, confirming his appointment for August 15, 2023[.]" Father further asserted that he had provided the email to Mother, as proof of his compliance with Dr. Berman's recommendations. Father filed a separate petition for contempt against Mother, alleging, among other things, that she failed to pay him $20,000 by June 1, 2024, as required by the Property Agreement.

Contempt Hearing and Magistrate's Recommendation

On August 28, 2024, the parties appeared for a show cause hearing on the parties' contempt petitions against each other.

[3] That same day, Mother also filed a motion for emergency hearing, alleging that W. called her via FaceTime "[a] few minutes prior to midnight on December 26, 2023, and again at approximately at 1:00 a.m. on December 27, 2023" and told her that he was "scared" because Father was "unresponsive." Mother further alleged that "[t]his was the last communication that [she] received until 10:30 a.m. later that day" and that she "was extremely worried for" W.'s safety during those ten and a half hours. A family magistrate, however, denied the emergency motion the next day without a hearing, noting that W. was returning to Mother's custody the day after (December 30, 2023). Mother later testified that the child was returned to her on New Year's Day.

Following the hearing, the magistrate issued a report and recommendations, recommending that Mother's petition for contempt be granted. The magistrate also recommended that Father's petition for contempt be granted regarding Mother's failure to pay $20,000. Specifically, the magistrate found that Mother had proven, by a preponderance of the evidence, that Father had "willfully violated the [JAD] by not complying with Dr. Berman's recommendations." He credited Mother's testimony that she saw Kratom in Father's car and the magistrate noted that Father admitted to having used Kratom on the day of the hearing. The magistrate also observed that Father appeared "uneasy" and "dehydrated" and that "his movements were erratic and spasmodic[,]" although those observations were "not terribly disturbing and [could] be explained through innocuous explanations."

As a "sanction," the magistrate recommended that Father forfeit two $20,000 payments—one due June 1, 2024, and the other due December 31, 2024—from the Property Agreement. To purge the contempt, the magistrate recommended that Father provide documentation demonstrating "that he has obtained an assessment from a pain management specialist and/or substance use therapist with specific expertise working with individuals who regularly use Kratom within the next 60 days." Father subsequently filed exceptions, arguing, in relevant parts, that he had not willfully violated the Custody Agreement because he "believed he had complied with [Dr. Berman's recommendations] when he was assessed at Clearway Pain Solutions."[4]

[4] Mother did not file an exception to the magistrate's report and recommendations.

Merits Hearing

On January 2 and 3, 2025, the parties appeared for a two-day merits hearing on Mother's motion for modification and Father's exceptions to the magistrate's report and recommendations.

The Circuit Court Initially Sustained the Magistrate's Contempt Finding

At the outset, the court heard the parties' arguments on Father's exceptions and found that the magistrate's finding of contempt was supported by evidence. The court highlighted that the Custody Agreement not only required Father to consult with a pain management specialist but also to provide Mother with proof of such consultation in writing. The court then noted that despite these requirements, Father only "gave [Mother] a receipt that he went to a pain management specialist" and that receipt "in no way tells [Mother] that [he] went to talk about the Kratom."

Although the judge sustained the magistrate's finding of contempt at that point in the proceeding, the court reserved on a final ruling on the matter, noting that "the purge is to provide written proof to [Mother]" and "[i]t may all be moot after I hear the Modification."

Testimony on Custody Modification

After denying Father's exception to the magistrate's contempt finding, the court turned to address Mother's motion to modify custody. Budorick and Mother testified to the December 26 incident as summarized above. Mother explained that she was "stay[ing] local" that night, "in case [she] needed to get [W.] early" because she "always had concerns

about [Father's] drinking." Mother stated that she called W. back when she came back to the hotel from Budorick's home, staying on the phone with W. for hours. When asked if she saw whether Father's bed was made during the FaceTime call with W., Mother stated that she was unable to see it "because it was just the light . . . from [W.'s] cell phone" but emphasized that "it was clear that [Father] was still dressed . . . from what I could see, from . . . belly button up he was dressed in just normal clothes." Mother stated it was "upsetting to see someone like that" and W. was "clearly panicked[ ] and upset" when calling her.

Mother also testified about Father's Kratom use during their marriage. Mother stated that Kratom "makes him calm" but "when he's . . . starting to go into withdrawal . . . he starts sweating, and gets agitated, and jerky, and he sleeps very heavily." She also stated that use of Kratom made Father "less reliable" as "[h]e would sleep for very long periods of time" and not wake up. Mother recounted an incident in early 2016, where she repeatedly called Father during a work trip, but he did not answer. Although Mother was still unaware of Father's substance use at the time, this incident led her to believe that she could no longer rely on him to care for W. when she traveled. As a result, Mother stated that she never left W. alone with Father for extended periods during their marriage.

Mother expressed that she believes it is in W.'s best interests for the court to modify the Custody Agreement and "put in place safeguards for when [W.] is with his father during the times prescribed by the Custody Agreement" by requiring Father to "submit to drug tests at a third-party" because "if someone is drunk or high on substances . . . accidents are

more likely to happen." Mother also stated that she "was very unhappy with th[e] Custody Agreement" because she wanted "Kratom and alcohol use to be addressed in it." Nonetheless, while acknowledging that there was no "overt" prohibition on Father's Kratom use in the Custody Agreement, Mother maintained that "the whole point of having him comply with Dr. Berman's Recommendations was for him to get help" and "[t]o get off of Kratom, [which] he's addicted to[.]" Similarly, although Mother admitted that Dr. Berman's recommendations did not contain any prohibition on Kratom, she stated that it was "implied that [Father] should not be taking Kratom."

Father testified that he began using Kratom in 2016 for his neck and back issues and still uses it for pain "as needed." Father testified that he visited Dr. Moses-Hampton and discussed Dr. Berman's evaluation and recommendations with him. Father's medical record from Clearway Pain Solutions was entered into evidence and provided, in relevant part,[5] that "Father presents today to discuss his chronic pain treatment by recommendation of his psychologist, presiding over his divorce." The record noted that Father had a medical history that was "significant" for "chronic low back pain," and was following up for "management of chronic pain with medication management." The record also noted: "[d]iscussed other treatment options including modalities such as PT/OT, chiropractic, and acupuncture, as well as interventional procedures that would be beneficial in managing patient's chronic pain."

[5] Although Mother's counsel objected to admission of this portion of the medical record, the objection was overruled. Mother has not renewed the objection in this appeal.

Following the visit, Father did not get anything in writing from Dr. Moses-Hampton or Clearway Pain Solutions other than a receipt, because, Father testified, Dr. Moses-Hampton "was not prescribing [him] anything[.]" Nonetheless, Father stated that he believed the receipt to be "sufficient evidence" of his compliance with Dr. Berman's recommendation.

After the magistrate found him in contempt, Father revisited Dr. Moses-Hampton for a 20-minute appointment in December 2024, and the doctor gave him the following note :

> To whom it may concern:
>
> Patient was here today for continued pain management consultation. We continue to support his effective treatment with non-narcotic treatment. Options include the daily use of kratom.

Father admitted that he did not have any follow-up appointments with Dr. Moses-Hampton, explaining that "if you go through pain management[,] they prescribe you opioids . . . . [T]hat's not . . . the path that I choose to go down." When the court asked why he continued to use Kratom, Father answered:

> The first part of it is, at no point did I ever feel that it was going to come to this hyper awareness. So if I'm, if I have a choice between visiting my son and taking Kratom I'm, I will quit Kratom.
>
> * * *
>
> And, I've been through this pain management system for 20 years. It is not pretty if we are being prescribed opioid medication is awful.
>
> * * *

> There's a lot of side effects to that, okay. I've done physical therapy, I've done shots in my back, I've tried anti-inflammatories. I ate Aleve, I took Aleve for years, and it started to take a toll on my stomach.
>
> This is a last resort alternative that happens to work. And at no point in my entire life did I believe that the custody of my child was going to hinge on whether or not I take an anti-inflammatory. At no point.

Regarding his use of alcohol, Father testified that he drinks socially and has "no set schedule[.]" Specifically, Father stated that he drinks wine when he "cook[s] . . . one big meal during the week" and "probably once, maybe twice on the weekends." Father also stated that he could not recall the last time he drank in excess.

During the hearing, Mother's counsel introduced Father's Wells Fargo bank statements into evidence. Father's counsel objected, but the court overruled, stating, "If nothing else[,] it goes to the best interest of the child in the event that I do find a material change in circumstance." The statements showed multiple charges at taverns, liquor stores, and smoke shops. Father acknowledged having purchased Kratom from multiple smokes shops. The statements also showed, for example, that Father spent $42.24 at a liquor store on January 16, 2024, then spent over $100 at the same liquor store the next day. That same day, Father had a separate charge of $130.87 at a tavern. When asked about this $130 charge, Father explained that he "probably spent close to . . . $85.00 on wings" and about $50 on alcohol, stating he "was there with a friend."

Father also testified about the December 26 incident. He denied using any alcohol or substances that day, although he "may have taken Aleve" in the morning. Father explained that it was "a heavy travel day" for him, as he left home at 5:00 a.m. and took

four flights—two on the way to Michigan and two on the way back—to bring W. from Michigan. Father testified that they arrived at Father's home in Baltimore County between 9:30 p.m. and 10:00 p.m., and he let W. "stay up late, probably midnight[.]" Father stated that he "probably went right to bed" after W. fell asleep "after midnight . . . maybe 1:00." Father woke up the next morning at around 8:30 a.m., but he "decided to ignore" Mother's e-mails until later that day.

Dr. Berman testified that he recommended Father obtain an assessment with a pain management specialist or a substance use professional because Father met "diagnostic criteria in the DSM 5" for substance use disorder involving kratom. Dr. Berman explained that Kratom "binds to the opiate receptors in the brain" and may involve withdrawal symptoms similar to those involving opioid withdrawal, such as "irritation, temper issues, agitation" and possible "sedation" as well as "fainting spells." Dr. Berman noted that the FDA recommends people not use Kratom and that it was "important for [Father] . . . to have an awareness of what he was taking[,]" make informed decisions about his pain management, and "get information about the dependence that he had developed[.]" Although Dr. Berman stated that he wanted Father to have "[a] thorough discussion with . . . [s]omeone who had access to all of the information available to allow the person . . . to make a complete assessment[,]" he clarified that the person did not need to be a medical doctor or review Father's medical records, so long as that person had "some experience in dealing with pain management . . . [e]ven if it's not Kratom[.]" Dr. Berman also clarified that he did not recommend a total prohibition on Kratom.

The Circuit Court Announced Its Ruling

After the evidence concluded, the parties' counsel presented closing arguments. Mother's counsel highlighted Father's extensive purchases of Kratom and alcohol as shown in his Wells Fargo bank statements. Following the closing arguments, the circuit court announced its rulings on the record, denying both Mother's motion to modify custody and her petition for contempt.

Regarding Mother's petition for contempt, the court found that although Father had been found in contempt by the magistrate, he was "no longer in contempt as of this moment." The court explained:

> Contempt is a very technical procedure. We can't find him in contempt for what Dr. Berman meant to say. We can find him in contempt if he didn't comply with what the Court Order says.
>
> In this case we have the parties[']s custody agreement of August 30th, 2023, incorporated into the [JAD], September 7th, 2023. **At this point, -- and the contempt that I found was not necessarily that he hadn't done the consultation but he hadn't provided it to [Mother] and certainly she has a copy of it now.** Was it exactly what Dr. Berman had in mind? No, but contempt only lays where the alleged contemptnor [*sic*] is on notice of the conduct that will place him in jeopardy of being found in contempt. And the plain words say, do a consultation with someone who understands Kratom.
>
> **He tells me he gave the report, the report does indicate that he was sent there because of the psychologist who presided over his divorce case,** with that language making the Court giggle. But certainly the psychologist does not preside over the divorce case, the Court does. So he has his opinions I have mine.
>
> **So I find at this point, [Father] is no longer in contempt of Court and so the Order that will be entered will be for the remainder of the Magistrate's Recommendations and not for contempt against [Father] because he has, he is no longer in contempt as of this moment.**

(Emphasis added).

Turning to Mother's motion to modify custody, the court found no material change in circumstances that warranted modification of custody. The court determined that the magistrate's finding of contempt itself was not a material change in circumstances, noting that "in fact looking back, [Father] did what he was supposed to do but he didn't give the documentation" and "[n]ow [Mother] . . . knows that he consulted." The court also found that the December 26 incident did not amount to a material change of circumstances, stating:

> So the second alleged change is the incident of December 26th, 2023. And you know, it's a Court of law, we operate on facts and so I'm looking at it and what do I know that's not disputed about December 26th, 2023. I know that [F]ather got on an airplane and went to Detroit and he tells me he had a layover on the way there, so there were two flights to Detroit, and there were two flights back. And he told me he started at 5:00 in the morning, got home at 9:0[0] in the evening. And I know that he has significant back pain.
>
> And I -- her testimony that at 11:30 to 12:00 and it's slightly different in the Complaint for the Emergency, I think that was 12:30 to 1:00, there's this phone call from [W.] to his other [*sic*] saying he can't awaken his father. And Mr. Budorick said that he was present and saw over this telephone that [F]ather was laying in I think an unnatural position or an unregular position, I can't remember the exact word he used, on the bed.
>
> There were certain inconsistencies. And I don't know if they're major or minor. [Mother's motion for emergency hearing] stated that [W.] had called his mother at 12:30 and at 1:00 and then she had not heard from him for ten and a half hours, it specially says that until, 10:30 in the morning. And she was about to call for a welfare check.
>
> Her testimony was that there was this one phone call and then she was on the phone with him for most of the night that's an inconsistency. I don't know, I don't know why.
>
> I am not sure why Mr. Budorick could see [F]ather's entire body in the unnatural position and [M]other testified that she could only see his face lit up by the cellphone which would indicate that it was dark in the room. His

> upper body and could tell that, you know, at least from the waist up he seemed to be dressed. I wonder why the child trying to wake his father up at 1:00 in the morning? And if it was concerning, why did no one call 911 and get an ambulance there. Why did no one come pick up the child or come sit with [W.]until dad was able to wake up? That didn't happen and why was [W.] still left with dad?
>
> **And so the conclusion that I reached factually about all of this, is dad was on four flights starting at 5:00 a.m. ending at 9:00 p.m. He was fatigued. And I will take judicial notice that sitting on an airplane hurts your back when you don't have a bad back. He probably took his pain reliever. He probably was in agony, and he probably took his pain reliever. And he was fatigued, he took his pain reliever and he went to sleep. I don't know.**
>
> You know, and then there's like the other thing that I would hate to accuse anyone's child of, of manipulating their parents by saying something that's not a hundred percent accurate. But they do that sometimes. So I don't know what all of this is. **But when I look at the facts of this case, when I look at the psychological evaluation, there are statements in there about father's use of Kratom. That he'd spend $800.00 a month on it. [T]hat she testified from the witness stand that when they were married, there were times when she couldn't wake him up**.
>
> **What happened on December 26th is not different. It's not different, it's not surprising, it's a single incident under an unusual set of circumstances. I'm sure that father does not normally take four flights and spend fourteen hours in airports and airplanes, all of which is troublesome to his back. Have extreme fatigue. It's an unusual circumstance. That's consistent with the history of this case that I know from both mom's -- [M]other's testimony and from the things that she said to Dr. Berman. It's not a change in circumstance.**

(Emphasis added).

Notably, even though the court found no material change in circumstances warranting modification of custody, it expressed significant "concerns" about Father's use of Kratom. The court emphasized that it wished it "could [o]rder [Father] to make different decisions about his pain management and to also keep [Mother] informed of those

decisions so that her sense of safety for her child's welfare could be addressed." The court continued:

> That's why I'm suggesting it to you, not once but twice. This is what you need to do. This is unsafe. You buy it in gas stations and smoke shops. If it was safe, your pharmacist would have it, or your CVS would have it. [Y]ou don't know what you're getting. It could be adulterated. It could be higher strength, lower strength and then that whole risk of these symptoms that start with, what I experienced when I quit smoking, irritability, and crankiness, and an inability to sleep and go all the way to death.
>
> You don't want your son to experience those things and you don't want your son -- you don't want to have that conversation with your son, daddy's an alcoholic, if I start drinking, you know, you need to do a, b, and c. You don't want to have that conversation with him, you don't want [Mother] -- she doesn't want to have that conversation with him.
>
> **So while I'm not allowed to go there because I don't find a material change in circumstance, I encourage you, do those things. Number one, there's other things you can do for your pain and nothing's effective. I like [*sic*] with a person with chronic pain, I understand.**

(Emphasis added). Following the hearing, on January 3, 2025, the circuit court entered two written orders: (1) order denying Mother's motion to modify custody; and (2) "Order for Contempt" denying Mother's petition for contempt, granting Father's petition for contempt "pertaining to non-payment of a portion of the monetary award[,]" and setting a review hearing for April 18, 2025, to assess the purge provisions regarding Mother's contempt.

On January 29, 2025, Mother timely noted this appeal. Subsequent to the filing of the appeal, and following the April 18, 2025 review hearing, both Father's and Mother's petitions for contempt were dismissed with prejudice by agreement.

DISCUSSION

I

DENIAL OF PETITION FOR CONTEMPT

Before this Court, Mother contends that the circuit court abused its discretion by denying her petition for contempt because "[t]he factual findings and testimony do not support the trial court's conclusion that [Father] purged his contempt[.]" In response, Father urges us to dismiss Mother's appeal from the denial of her contempt petition because (1) she "has no right to appeal her unsuccessful attempt to have [Father] adjudged in contempt[,]" and (2) the circuit court's order for contempt, which scheduled a subsequent review hearing, does not constitute a "final, appealable judgment." We agree with Father that Mother has no right to appeal from the denial of her contempt petition.

In Maryland, "unless constitutionally authorized, appellate jurisdiction is determined entirely by statute, and therefore, a right of appeal only exists to the extent it has been legislatively granted." *Mayor & City Council of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 665 (2021) (internal quotations omitted); *see also Maryland-Nat'l Cap. Park v. Smith*, 333 Md. 3, 7 (1993) ("The right to take an appeal is entirely statutory, and no person or agency may prosecute an appeal unless the right is given by statute") (citations omitted). "If no statutory authorization exists, this Court does not have jurisdiction, and we must dismiss the case *sua sponte*." *Ross Cont., Inc. v. Frederick Cnty.*, 221 Md. App. 564, 575 (2015) (cleaned up).

Maryland statutes are "structured to confer a broad, general right of appeal, that subsequently is limited by enumerated 'exceptions.'" *Pack Shack, Inc. v. Howard Cnty.*, 371 Md. 243, 249 (2002). Consistent with this statutory scheme, Section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code ("CJP") (1973, 2020 Repl. Vol.) codifies a "general right of appeal" from circuit courts, providing as follows:

> Except as provided in § 12-302 of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law.

(Emphasis added).

As pertinent to this appeal, the "final judgment" requirement under CJP § 12-301 "does not apply to appeals in contempt cases, which are governed by § 12-304 of this subtitle[.]" CJP § 12-302(b). In turn, CJP § 12-304 states:

> (a) *Scope of review.* – Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action.
>
> (b) *Exception.* – This section does not apply to an adjudication of contempt for violation of an interlocutory order for the payment of alimony.

The Supreme Court of Maryland has interpreted this statutory language as "clearly and unambiguously limit[ing] the right to appeal in contempt cases to persons adjudged in contempt." *Pack Shack, Inc.*, 371 Md. at 254. Put differently, in order for a contempt order "to be appealable, [CJP] § 12-304 requires the order or judgment to be passed to preserve the power and dignity of the court *and to have adjudged the person appealing in*

contempt of court." *Id.* (emphasis added). If either of these prongs are not met, the appeal is not properly before us.[6]

We hold that Mother does not have a right to appeal because she was the "party who unsuccessfully [sought] to have another party adjudged in contempt." *Pack Shack*, 371 Md. at 254. Accordingly, we must dismiss the first issue raised in Mother's appeal challenging the court's order denying her petition for contempt because we have no jurisdiction over the claim. *See Ross Cont., Inc.*, 221 Md. App. at 575; *see also* Md. Rule 8-602(b)(1) (mandating dismissal of appeal "if . . . the appeal is not allowed by [Maryland] Rules or other law").

[6] Notably, in *Tyler v. Baltimore County*, 256 Md. 64 (1969), the Supreme Court of Maryland, in a dicta, observed: "[t]here may be occasional instances in which the order . . . refusing to impose the order for civil contempt is so much a part of or so closely intertwined with a judgment or decree which is appealable as to be reviewable on appeal as part of or in connection with the main judgment[.]" *Id.* at 71. Relying on this dicta, this Court found a right to appeal from a denial of a civil contempt petition in *Howard Cnty. v. Pack Shack, Inc.*, 138 Md. App. 720 (2001), even after recognizing that "ordinarily there is no such right of appeal[.]" *Id.* at 725. The Supreme Court of Maryland, however, reversed our judgment, explaining:

> **To say that two orders or judgments are closely intertwined does not make it so**. . . . **In any event, the continued vitality of this exception [under *Tyler*], which was a very narrow one to begin with, is highly doubtful.** Although we need not reach that issue here . . . that exception very likely would not apply when the appeal is filed by a person who was not held in contempt, however closely related and intertwined it is with other orders or judgments also pending appeal. ***Tyler* simply does not support affording the losing party to a contempt action the right of appeal.**

Pack Shack, 371 Md. at 260.

II

DENIAL OF MOTION TO MODIFY CUSTODY

Parties' Contentions

Mother next contends that the circuit court abused its discretion in denying her motion to modify custody, arguing that the ruling "was based on clearly erroneous findings[.]" *First*, Mother argues that the circuit court was clearly erroneous in finding that Father's "non[-]compliance with Dr. Berman's recommendation, in conjunction with the totality of the circumstances, did not constitute a material change in circumstances" because such non-compliance "ultimately impacts . . . and has impacted" W.'s welfare. *Second*, Mother argues that the circuit court was clearly erroneous in failing to find that the December 26 incident "amount[ed] to a material change in circumstances" and that the court's findings regarding the incident were "not supported by . . . the evidence presented." Specifically, Mother emphasizes that she and Budorick both "witnessed th[e] incident and observed [Father] in a non-responsive state and [W.]'s fear first handedly" and that there was "no indication by the [circuit] court that their testimony was discreditable." Finally, *third*, Mother argues that the court abused its discretion in failing to find that Father's "excessive spending towards Kratom and alcohol since his evaluation with Dr. Berman" constituted a material change in circumstances warranting custody modification.

Father counters that the circuit court properly denied Mother's motion to modify custody, arguing that "the circumstances alleged to constitute a 'material change' were in existence" when the court entered the JAD. *First*, Father argues that the magistrate's

finding of contempt did not amount to a material change in circumstances because he subsequently complied with Dr. Berman's recommendations and the circuit court ultimately "determined that it had no authority to enter an order for contempt." *Second*, with respect to the December 26th incident, Father argues that the evidence, including Mother's own testimony, "established that [his] use of Kratom . . . was known to [her] at the time of entering into the Custody Agreement[.]" Because the circuit court "appropriately approached the modification issue by first assessing whether a material change in circumstances had occurred[,]" and because the evidence supported the court's finding of lack of material changes in circumstances, Father argues that the circuit court did not abuse its discretion in declining to modify custody.

Legal Framework

Standard of Review

When reviewing a court's child custody determinations, we utilize three interrelated standards of review. *Kadish v. Kadish*, 254 Md. App. 467, 502 (2022) (citing *In re Yve S.*, 373 Md. 551, 586 (2003)). First, we apply the "clearly erroneous" standard of review to the court's factual findings. *See id.* (quoting *Yve S.*, 373 Md. at 586). Under this standard, we "must consider evidence produced at the trial in a light most favorable to the prevailing party[,]" *Plank v. Cherneski*, 469 Md. 548, 608 (2020) (citations omitted), and "[i]f there is any competent material evidence to support the factual findings of the [circuit] court, those findings cannot be held to be clearly erroneous." *YIVO Ins. for Jewish Res. v. Zaleski*, 386 Md. 654, 663 (2005). Second, where the court's custody determination "involves an

interpretation and application of statutory and case law," we decide "whether the circuit court's conclusions are 'legally correct' under a *de novo* standard of review." *Barrett v. Ayres*, 186 Md. App. 1, 10 (2009) (quoting *Walter v. Gunter*, 367 Md. 386, 391-92 (2002)).

Finally, if we determine that the circuit court's "ultimate conclusion" was "founded upon sound legal principles and based upon factual findings that are not clearly erroneous," we do not disturb that conclusion absent a "clear abuse of discretion." *Kadish*, 254 Md. App. at 502 (citations omitted). An abuse of discretion exists when

> no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

Velasquez v. Fuentes, 262 Md. App. 215, 228 (2024) (quoting *Das v. Das*, 133 Md. App. 1, 15-16 (2000)). In addition, "[a] failure to exercise . . . discretion, or a failure to consider the relevant circumstances and factors of a specific case, 'is, itself, an abuse of discretion[.]'" *Cagle v. State*, 462 Md. 67, 75 (2018) (quoting *101 Geneva LLC v. Wynn*, 435 Md. 233, 241 (2013)).

Custody Modification and "Best Interests" as the Guiding Principle

The term "custody" embraces both "legal" and "physical" custody. *Taylor v. Taylor*, 306 Md. 290, 296 (1986). The former "carries with it the right and obligation to make long range decisions involving . . . matters of major significance concerning the

child's life and welfare[,]" while the latter "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." *Id.*

Section 1-201 of the Family Law Article of the Maryland Code ("FL") (1984, 2019 Repl. Vol. Supp. 2024) confers jurisdiction on an equity court over, among other things, "custody or guardianship" and "visitation of a child[.]" In relevant parts, FL § 1-201(c) further provides:

> **(c) In exercising its jurisdiction over the custody, guardianship, visitation, or support of a child, an equity court may:**
>
> (1) direct who shall have the custody or guardianship of a child, pendente lite or permanently;
>
> (2) determine who shall have visitation rights to a child;
>
> (3) decide who shall be charged with the support of the child, pendente lite or permanently; [and]
>
> **(4) from time to time, set aside or modify its decree or order concerning the child[.]**

(Emphasis added).

When presented with a request for custody modification, a circuit court must engage in the following two-step process: "First, the circuit court must assess whether there has been a 'material' change in circumstance." *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012) (quoting *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005)). This is a "threshold" inquiry, *Velasquez*, 262 Md. App. at 247 (citation omitted), and "there can be no modification of custody unless a material change of circumstance is found to exist." *Id.*

(quoting *Wagner v. Wagner*, 109 Md. App. 1, 29 (1996)). Second, "[i]f 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." *Gillespie*, 206 Md. App. at 170 (quoting *McMahon*, 162 Md. App. at 594). In sum, the party requesting custody modification must "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." *Id.* at 171-72 (quoting *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008)).

As we recently explained in *A.A. v. Ab. D.*, "[i]n a child custody case, the best interests of the child standard 'is firmly entrenched in Maryland and is deemed to be of transcendent importance.'" 246 Md. App. 418, 441 (quoting *Ross v. Hoffman*, 280 Md. 172, 174-75 (1977)). Indeed, our decisional law has long recognized that "the best interest of the children is the paramount fact. Rights of father and mother sink into insignificance before that." *Kartman v. Kartman*, 163 Md. 19, 22 (1932); *Taylor v. Taylor*, 306 Md. 290, 303 (1986) ("We emphasize that in any child custody case, the paramount concern is the best interests of the child."). More specifically, we have explained that "[t]he guiding principle of any child custody decision, whether it be an original award of custody *or a modification thereof*, is the protection of the welfare and best interests of the child." *Wagner*, 109 Md. App. at 29 (quoting *Shunk v. Walker*, 87 Md. App. 389, 396 (1991)) (emphasis added).

Consistent with this principle, we explained that in the context of custody modification, a "material" change means "a change that may affect the welfare of a child." *Wagner*, 109 Md. App. at 28. In explaining the intertwined relationship between the "threshold" finding of a material change and the best interests of the child standard, the Supreme Court of Maryland has instructed that,

> 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. 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 (1991).

In *A.A. v. Ab. D.*, we highlighted that "our decisional law has long recognized that a court commits legal error when it makes a decision that impacts a custody determination without first considering how that decision will affect the child's 'indefeasible right' to have his or her best interests considered." 246 Md. App. at 448 (quoting *Flynn v. May*, 157 Md. App. 389, 410 (2004)). In order to preserve this "indefeasible right" for the child, the circuit court must view all the relevant facts from the child's perspective, not from the viewpoint of the parents or the court itself. *See In re Adoption of Jayden G.*, 433 Md. 50,

68 (2013) ("[T]he focus of the inquiry into the child's best interest . . . must be on the child, not the parent.") (citations omitted). Therefore, when a court determines whether a change in circumstances was "material," its analysis must focus on how the change affects (or does not affect) the child.

Analysis

Magistrate's Finding of Contempt

Mother challenges the court's determination to deny her motion for modification of custody on two grounds. First, she argues that the circuit court was clearly erroneous when it found that the magistrate's contempt finding against Father did not constitute a material change of circumstances. Specifically, the circuit court found that Father "in fact . . . did what he was supposed to do" per Dr. Berman's recommendations when he visited Dr. Moses-Hampton in August 2023. The court also found that Father's only non-compliance was his failure to provide written proof of his consultation to Mother. Because it was established at the merits hearing that Mother now "knows that [Father] consulted" Dr. Moses-Hampton, the court reasoned that he was "no longer in contempt" under the terms of the magistrate's contempt order, and therefore, the prior contempt finding did not constitute a material change in circumstances.

We conclude that the circuit court's findings were supported by competent and material evidence in the record. *See Plank*, 469 Md. at 608. Father's medical record from Clearway Pain Solutions indicates that he visited Dr. Moses-Hampton on August 15, 2023, "to discuss his chronic pain treatment by recommendation of his psychologist, presiding

over his divorce." Mother does not dispute that Dr. Moses-Hampton is a pain management specialist. Dr. Berman acknowledged that his recommendations did not require Father to seek a Kratom expert, as long as he finds a medical provider with "some experience in dealing with pain management[.]" Moreover, even though the medical record from August 15, 2023, does not specify whether Father told Dr. Moses-Hampton the extent of his Kratom use, Father's own testimony confirms that he did discuss Dr. Berman's evaluation—which expressly addressed Father's physical dependence on Kratom—during the visit.

> [THE COURT]: Oh, it does say, "Patient presents to discuss his chronic pain treatment by recommendation of his psychologist presiding over his divorce." That's just cute wording. And so you did show him Dr. Berman's Evaluation and discuss with him?
>
> [FATHER]: Yeah. And the Recommendations.

Mother also claims that Father "has not provided sufficient documentation purporting to show compliance in August 2023[,]" but the record seems to belie that claim. True, the magistrate found, and the circuit court agreed, that Father's receipt from Clearway Pain Solutions did not satisfy the Custody Agreement's requirement that the parties "provide proof directly to the other party, in writing, to confirm their assessment, consultation or enrollment related to Dr. Berman's recommendations." During the merits hearing, however, Father presented his medical record from Clearway Pain Solution, showing that he had consulted Dr. Moses-Hampton on August 15, 2023 per "recommendation of his psychologist, presiding over his divorce." The medical record

was made available to Mother and her counsel, and the circuit court specifically noted that Mother "has a copy of it now."

At minimum, we cannot say that the circuit court was clearly erroneous in finding that Father made some good-faith efforts to follow Dr. Berman's recommendations and the Custody Agreement by visiting Dr. Moses-Hampton, a pain management specialist. As we recently explained, "one may not be held in contempt of a court order unless the failure to comply with the court order was or is willful." *Sayed A. v. Susan A.*, 265 Md. App. 40, 70 (2025) (quoting *Dodson v. Dodson*, 380 Md. 438, 452 (2004)); *see also Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 451 (2008) ("Willful conduct is action that is '[v]oluntary and intentional, but not necessarily malicious.'") (quoting Black's Law Dictionary 1630 (8th ed. 2004)). To be sure, we need not (and would not) discuss whether the circuit court was proper in denying Mother's petition for contempt, as that issue is not properly before us. *See Pack Shack, Inc. v. Howard Cnty.*, 371 Md. 243, 254 (2002) (holding that the party who unsuccessfully sought to hold the other party in contempt has no right to appeal from the contempt proceeding). Regardless, since competent and material evidence suggests that Father was no longer in contempt by the time the merits hearing concluded, the circuit court was not clearly erroneous in finding that the magistrate's contempt finding—which was made nearly six months prior—did not represent a material change in circumstances.

December 26 Incident

Mother's second contention is that the circuit court erred in finding that the December 26 incident did not constitute a material change in circumstances because "the

trial court failed to address the impact of the traumatizing December 2023 incident on [W.] . . . and wrongly states 'what happened on December 26th is not different' from similar events that transpired during the parties' marriage."[7] We agree.

As noted above, during the merits hearing, Mother's counsel introduced Father's Wells Fargo bank statements into evidence, showing various charges at tavern, smoke shops, and liquor stores—expenses that Father did not dispute—over months. The court admitted those bank statements, stating, "If nothing else[,] it goes to the best interest of the child *in the event that I do find a material change in circumstance*." (Emphasis added). Notably, when ruling that there was no material change in circumstances to warrant modification of custody, the court made no mention of the bank statements. Nor did the court make any finding regarding Father's continued purchase of—and use of—alcohol and Kratom.[8] Overall, instead of determining whether the December 26 incident was a

[7] Specifically, Mother argues that the court "misinterpreted" her and Budorick's testimony and did not give it sufficient weight by highlighting perceived "inconsistencies." For one, the court noted that while Mother initially alleged in her motion for emergency hearing that she did not hear from W. for ten and a half hours, she subsequently testified that she was on the phone with the child for hours that night. The court also wondered how "Budorick could see [F]ather's entire body in the unnatural position[,]" whereas "[M]other testified that she could only see his face lit up by the cellphone[.]"

We need not discuss at length whether the circuit court was mistaken in highlighting these "inconsistencies[,]" as they were not the basis of the court's finding. The court expressly declined to determine whether these perceived inconsistencies were "major or minor."

[8] As the record reflects, the court repeatedly expressed its "wish" to order Father "to make different decisions about his pain management and to also keep [Mother] informed of those decisions so that her sense of safety for her child's welfare could be addressed." These concerns, together with the circumstances in the parties' custody arrangement where W. is left alone with Father, may be sufficient grounds for the circuit court to find a material change in circumstances warranting a custody modification.

change that affected W.'s best interests, the circuit court focused on whether the incident, as a stand-alone event, was "consistent with the history of this case" that the court had known.

We conclude that the circuit court erred by failing to sufficiently consider how the circumstances affected the child in assessing whether there was a material change in circumstances. It is commendable that the trial court had empathy and understanding for Father's back pain and his struggle to find effective pain relief. However, even if it is true that Father had passed out during the marriage as Mother alleged, the *circumstances for W. changed* when the child had to address the situation alone, without another parent or adult in the house. A "material" change means "a change that may affect the *welfare of a child*." *Wagner*, 109 Md. App. at 28 (emphasis added). Therefore, the court's "threshold" finding of a change in material circumstance is never separate from the overarching, "best interests of the child" inquiry. *See McCready*, 323 Md. at 482 ("[T]he question of 'changed circumstances' . . . is more often involved in the 'best interest' determination[.]").

The circuit court should have considered the December 26 incident in conjunction with other undisputed changes in circumstance—i.e. the parties' divorce and their custody-sharing schedule under the Custody Agreement. *See Cagle v. State*, 462 Md. 67, 75 (2018) ("[A] failure to consider the relevant circumstances . . . 'is, itself, an abuse of discretion[.]'"). Mother now lives in Michigan, and the current custody-sharing schedule allows (if not requires) Father, who lives in Maryland, to be solely responsible for making such "day-to-day decisions" for W. during his custodial time, without any safeguards that

Mother had provided (or could have provided) during their marriage. In its ruling, the court did not address these changes, and instead simply reasoned that the December 26 incident was "not different" from a prior incident where Mother could not wake Father up during their marriage.

In sum, we hold that the court failed to sufficiently consider the child's welfare in determining that there was no material change in circumstances that may warrant modification of custody. *See Shunk v. Walker*, 87 Md. App. 389, 398 (1991). We vacate, rather than reverse, the court's ultimate determination because on remand the circuit court may still find that it is in the best interests of W. not to modify custody. The court may receive additional evidence, for example, that may convince the court that Father has control of his pain management or will take the necessary precautions to ensure W. will not have to experience another episode similar to what occurred on December 26.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY DENYING MOTHER'S PETITION FOR CONTEMPT DISMISSED; JUDGMENT DENYING MOTION TO MODIFY CUSTODY VACATED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE SPLIT EVENLY.