Circuit Court for Baltimore County
Case No. C-03-FM-20-003949

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2522

September Term, 2024

JEFFREY F. BARRY

v.

AMY KATHLEEN SCHWENDER

Ripken,
Tang,
Kehoe, S.,

JJ.

Opinion by Kehoe, J.

Filed: August 14, 2025

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

The appeal before this Court arises primarily from the denial of Appellant's Petition to Modify Custody and Visitation on January 30, 2025, by the Hon. Keith R. Truffer of the Circuit Court for Baltimore County. Appellant, Jeffrey F. Barry ("Mr. Barry"), who is the father of the Child in question, also argued, pro se, several other motions that were denied at the January 30, 2025 hearing, including a motion to transfer venue, a motion for recusal, and a motion regarding the Child's school enrollment. Appellee, Amy K. Schwender ("Ms. Schwender"), who is the mother of the Child, filed a motion to quash Mr. Barry's subpoena for the Child and a motion for judgment against Mr. Barry for attorney's fees. Both of Ms. Schwender's motions were granted. On February 28, 2025, Mr. Barry filed an appeal to this Court.

The questions presented for our review are rephrased as follows:[1]

[1] Mr. Barry, pro se, submitted an informal brief that did not clearly outline the legal questions presented for review. For legal clarity, Ms. Schwender attempted to represent the grounds for appeal on Mr. Barry's behalf, as follows:

> 1. Whether the trial court erred or abused its discretion or otherwise demonstrated prejudice against Father in receiving evidence and determining facts during the divorce hearing, e.g., testimony of Ashley Neduer or others. [Appellant's] Brief §III.A, D.
>
> 2. Whether the trial court erred or abused its discretion in quashing a trial subpoena at the modification hearing, preventing Father from calling [the Child] as a witness. [Appellant's] Brief §III.A.
>
> 3. Whether the trial court erred or abused its discretion at the modification hearing by denying Father's recusal motion. [Appellant's] Brief §III.B.

1.) Whether the circuit court erred in denying Appellant's Petition to Modify Custody and motion regarding the Child's school enrollment;

2.) Whether the circuit court abused its discretion in quashing Appellant's subpoena compelling the Child to testify at the modification hearing;

3.) Whether the circuit court abused its discretion in denying Appellant's motion to reconsider the transfer of venue;

4.) Whether the circuit court abused its discretion in denying Appellant's request for the Judge to recuse himself from the case; and

5.) Whether the circuit court erred in entering a judgment against Appellant for attorney's fees.

For reasons that we will outline *infra*, we affirm the judgment of the Circuit Court for Baltimore County.

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4. Whether the trial court erred or abused its discretion at the modification hearing by denying Father's motion to transfer venue. [Appellant's] Brief §III.B.

5. Whether the trial court erred or abused its discretion in denying Father's "Motion to Re-Issue Summons." [Appellant's] Brief §III.E, G.

6. Whether the trial court erred or abused its discretion in its initial custody and child support determinations, as outlined in [Appellant's] Brief §III.E, G.

7. Whether the trial court erred or abused its discretion in denying Father's Petition to Modify custody, as outlined in [Appellant's] Brief §III.F.

8. Whether the trial court erred or abused its discretion in its initial granting Mother's request of attorney's fees, as ordered by the JAD, as outlined in [Appellant's] Brief §III.H.

I. FACTUAL & PROCEDURAL BACKGROUND

Mr. Barry and Ms. Schwender were married on October 31, 2012, and one child was born of the marriage on July 13, 2015. During the marriage, Mr. Barry worked and provided the financial support for the family, while Ms. Schwender was a stay-at-home wife and mother. After experiencing difficulties in the marriage, the parties separated on April 28, 2020. On September 29, 2020, Ms. Schwender filed a Complaint for Absolute Divorce, which also sought sole legal custody and primary physical custody of the Child, child support, and attorney's fees from Mr. Barry, *inter alia*.

a. Judgment of Absolute Divorce & Custody Order: January 12, 2022

A trial on the merits proceeded on January 5, 6, and 10, 2022, presided by Judge Truffer, in the Circuit Court for Baltimore County. The Judgment of Absolute Divorce ("JAD") was entered on January 12, 2022. Ms. Schwender was granted sole legal and joint physical custody of the Child, with the Child primarily residing with her. Mr. Barry was granted unsupervised access with the Child every Wednesday after school until 7:00 p.m., every other weekend from Friday at 5:00 p.m. through Sunday at 5:00 p.m., and every third weekend of the month on Saturday from 10:00 a.m. until 5:00 p.m. The JAD also granted summer vacation access to Mr. Barry and a holiday schedule shared between the parties.

At the time of the divorce, Mr. Barry was employed by Lockheed Martin as a Cyber Security Engineer, with an annual base salary of $175,000.00. In the JAD, Mr. Barry was ordered to pay Ms. Schwender $750.00 per month for two years as alimony and $1,795.00 per month for child support. As of the date of the JAD, Mr. Barry had accrued $5,475.00

in arrears for child support, which were ordered to be paid at an additional rate of $200.00 per month until the arrears were paid in full. Mr. Barry was also ordered to pay a portion of Ms. Schwender's attorney's fees in the amount of $2,500.00 within six months. The JAD included, "that should Mr. Barry fail to pay [Ms. Schwender] the sum ordered within six (6) months of the date of this Judgment, [Ms. Schwender] shall be able to obtain a judgment against [Mr. Barry] by filing a Motion with his Court."

b. Petition to Modify & Other Motions: December 2024 – January 2025

On December 4, 2024, Mr. Barry filed a Petition to Modify Custody and Visitation, requesting that he be granted sole legal and primary physical custody of the Child, and a change in the current child support order, *inter alia*. In his petition, Mr. Barry alleged that the following circumstances had changed since the initial custody order:

> Mother fraudulently enrolled [the Child] outside of his proper [z]oned school, perjurying [sic] address. [The Child] has asked for me (Dad) to take over his activities and scheduling from his mother. [The Child's] access to friends is limited at his mother[']s. His emotional health and hygiene is [sic] worse in his mother[']s care. [The Child's] Mother recently began working full-time overnights (7pm-7am shifts), leaving before [the Child's] bedtime, and is often not home at regular exchange times, on information and belief [Ms. Schwender] is sleeping during daylight hours where [the Child] is not being attended by her and [Ms. Schwender] indicates she is now living between addresses – [the Child] is asking to move in with me, Dad[.] In 2023 I, Father, had [the Child] for a total of 107 Overnights, collected/dropped off [the Child] to/from School, per §12-201. Definition of Shared physical custody Mom's sole custody is incorrect.

Pursuant to the petition, a modification hearing was scheduled for January 30, 2025.

Mr. Barry also filed an untitled motion on December 18, 2024, requesting that the court grant permission for the Child to attend a "shadow day" at Saint Casimir's Catholic

School to observe the fourth grade class on a date in February 2025. At the time, it was Mr. Barry's desire to enroll the Child into fifth grade at Saint Casimir's Catholic School in Baltimore City. The court scheduled this motion to be heard along with the petition for custody modification on January 30.

On December 23, 2024, Mr. Barry filed a motion titled, "DEFENDANT MOTION TO Administrative Judge TO TRANSFER VENUE." Mr. Barry requested that the court transfer this case to Baltimore City for the convenience of the parties and "in order to avoid an appearance of impropriety[.]" Mr. Barry alleged that because he resided in Baltimore City and Ms. Schwender worked in Baltimore City, the Circuit Court for Baltimore City was a more convenient and appropriate venue for this case. Mr. Barry further alleged that "clerical delays," "mishandling," and "error" related to his petition required that the case be transferred to Baltimore City to ensure "fair and impartial justice." The motion was denied without a hearing on January 15, 2025, by the Hon. Dennis M. Robinson, noting that the "motion does not present a sufficient legal or factual basis for relief requested."

In addition, Mr. Barry caused a subpoena to be issued compelling the appearance and testimony of the Child at the January 30 hearing, which was served upon Ms. Schwender on January 22, 2025. In response, Ms. Schwender filed a motion to quash the subpoena, asserting that the Child would be subjected to "emotional distress and unnecessary trauma and offer the Court little, if any, probative value[,]" if compelled to testify. As such, Ms. Schwender requested that the court exercise its discretion to quash the subpoena.

Ms. Schwender also filed a motion for judgment of attorney's fees and interest against Mr. Barry on January 24, 2025. The motion referenced the attorney's fees in the amount of $2,500.00 that were awarded to Ms. Schwender in the JAD on January 12, 2022, and never paid by Mr. Barry. Ms. Schwender also requested judicially determined interest, which is ten percent per year, pursuant to Md. Code, Cts. & Jud. Proc. § 11-107. Additional attorney's fees for filing this motion were requested as well.

c. Custody Modification Hearing: January 30, 2025

The modification hearing was held on January 30, 2025. Before addressing the issue of custody, Mr. Barry moved for Judge Truffer to reconsider the transfer of venue decision. Mr. Barry argued that because Ms. Schwender's mother worked at the Circuit Court for Baltimore County, the court should grant the transfer of venue. Mr. Barry further alleged that "there is a perception" that Judge Truffer had a "positive view" of Ms. Schwender that he "probably gained over knowing" Ms. Schwender's mother while working at the courthouse. Judge Truffer considered this statement as a request to recuse himself from the case. In his ruling, Judge Truffer stated the following:

> Okay. As I said, the Plaintiff, Miss Schwender's mother works here. I have had limited contact with her while she has been here. I have certainly had no communication with her about this case. I did not know the Plaintiff, Miss Schwender, at all, had never met her until she was in court for the first time here. I have received no information, zero, none from any source about this case and the matters in this case from any source other than evidence that has been presented in this courtroom while Mr. Barry has been present. I don't have any animus towards him. I don't have any preference towards Miss Schwender. I rule on the law on the facts as they are presented to me.

Judge Truffer denied Mr. Barry's motion to reconsider the transfer of venue.

Next, Ms. Schwender's motion to quash Mr. Barry's subpoena to compel the Child to testify was addressed. Ms. Schwender submitted on her written motion. While he did not think it would be appropriate to cross examine the Child, Mr. Barry argued that it would be in the Child's best interest to be able to "speak his mind" to the court and participate in the process. On the motion to quash the subpoena, Judge Truffer ruled:

> [. . .] In these kind of cases the [c]ourt certainly has the opportunity under the appropriate circumstances to speak with a child or children who are the subject of custody proceedings. Personally, I have done that very, very rarely over the course of my time here on the [c]ourt. And the reason is I believe that it is more harmful to the child to be placed in the middle of this conflict, and this is, to be sure, a very contentious custody matter and it has been since I have first come on to the case. I find that it is more harmful to the child to be placed in the middle and as Mr. Barry I think said well, that he may say one thing to one parent that he is afraid to say to the other. And I think it is more harmful than it is beneficial to hear what the child has to say. There are other ways to obtain that.
>
> And in this instance, given the high level of antagonism between the parties, I am going to exercise my discretion and decline to interview [the Child] in this case, at least at this time as part of this motion.

The motion to quash Mr. Barry's subpoena for the Child was granted.

The court then addressed Mr. Barry's petition to modify custody.[2] Mr. Barry argued that circumstances had changed in such a way that it was no longer in the Child's best interest to remain in the sole legal and primary physical custody of Ms. Schwender. Mr. Barry's first contention was that Ms. Schwender's work schedule changed, in that she was

[2] Mr. Barry filed a motion titled "DEFENDANT MOTION TO Correct Appearance of Hunter Gallagher to December 8th 2024" on January 17, 2025, which was also addressed at the January 30 hearing and denied. However, the ruling of that motion was not appealed and therefore we will not address it.

working more overnight shifts per week and thus was unable to properly care for the Child. However, the court found that,

> [t]he uncontradicted testimony was that she at the time of the divorce decree was working six overnights per week and now is working four overnights per week, which permits her to be home more frequently, not less frequently. And thus could not possibly be a detriment to [the Child] in the manner which Mr. Barry has described.

Second, Mr. Barry argued that he had changed residences and now the child had a nicer bedroom with their own bathroom. The court noted that this

> is not the kind of significant change that would warrant a change in the custody order. Mr. Barry still lives in Baltimore City; [. . .] resides there with his fiancée and every other week his fiancée's daughter. That really isn't a change from where we were in January of 2022.

Mr. Barry argued that the Child's access to his friends and activities was limited by Ms. Schwender and that she discouraged any friendships. The court pointed out that Ms. Schwender, in her testimony, was able to list the Child's friends by name. The court also found

> that [the Child] has been able to maintain those friendships. The only problem was that he had signed up for soccer and for reasons I don't really need to get into great detail on, he was not going to practice and whether he had told Mr. Barry did not want to play soccer or told [Ms. Schwender] he wanted to, really doesn't change the fact his fundamental friendships and relationship has not been altered in a material way since January of 2022.

Next, Mr. Barry argued that the Child was fraudulently enrolled in a school that was outside the proper zone for Ms. Schwender's address. On this issue, the court found that,

> [m]y recollection is this exact issue was raised at the time of the [initial custody] hearing. That has not changed in any way. And on top of that, Miss Schwender's testimony was that she had spoken to the Baltimore County

> Public Schools, had advised them of this issue, that in '23 or '24 and they were perfectly content with leaving things as they were.

As to Mr. Barry's last argument, Ms. Schwender conceded that there was a change since the initial custody order. At first, the parties did not strictly follow the custody order but rather allowed for greater flexibility until conflict arose. The court summarized as follows,

> [t]he final issue is, and this was agreed to by [Ms. Schwender] that following the filing of the divorce decree and the custody schedule in that, the parties in an effort to frankly benefit [the Child] and to make things easier for themselves, were more flexible in adherence to the schedule, which is not at all, outside of what the [c]ourt would hope, unless it becomes a conflict and they could no longer agree. And that is exactly what happened in October or November of 2023 when Mr. Barry sought to expand the schedule on a continuing basis rather than trying to give and take here or there and it was at that time Miss Schwender decided to fall back to the letter of the order itself and to adhere to that since that time.

While the court acknowledged that there had been slight changes in the Child's life, the court found that "none of these things in [its] view amounts to a material change of circumstances which would require a reordering of the custody schedule that the Court first put in place in January of 2022." With that finding, the court denied Mr. Barry's petition to modify custody. Moreover, because legal custody remained with Ms. Schwender, the court denied the motion regarding the Child's school enrollment as well, noting that Ms. Schwender "has made a determination after consultation and there is a lot of evidence of communication, that [the Child's] best interests are show[n] by staying at Warren Elementary."

Regarding Ms. Schwender's motion for judgment against Mr. Barry for attorney's fees and interest, the court stated, "I will hold that and I will rule on it without further hearing." The hearing concluded. On February 19, 2025, the motion for judgment was granted, and a judgment was entered against Mr. Barry in the amount of $2,500.00. On February 28, 2025, Mr. Barry filed an appeal to this Court.

Additional facts will be included in the discussion as they become relevant.

II. DISCUSSION

First, we would be remiss if we did not acknowledge that it was difficult to decipher precisely what issues, relevant facts, and legal arguments were presented by Mr. Barry in his brief and reply brief. Nevertheless, it is common practice for courts to construe liberally filings prepared by pro se litigants, and thus those filings are held to "less stringent standards than formal pleadings drafted by lawyers." *Simms v. State*, 409 Md. 722, 731 (2009) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). As such, we have organized and addressed *infra* what we presume to be Mr. Barry's appealable issues. However, we still note that "[w]e cannot be expected to delve through the record to unearth factual support favorable to [Mr. Barry] and then seek out law to sustain his position." *Van Meter v. State*, 30 Md. App. 406, 408 (1976).

a. Modification of Custody & Motion Regarding School Enrollment

The principal issue before this Court is whether the circuit court erred in denying Mr. Barry's petition to modify custody on January 30, 2025. The standard of review for child custody determinations, including modifications, can be summarized as follows:

> We review the case on both the law and the evidence: we will not set aside the judgment of the trial court unless it is clearly erroneous, and we give due regard to the opportunity of the trial court to judge the credibility of the witnesses. In summary, when we scrutinize factual findings, we apply the clearly erroneous standard; when we review issues of law, we do so *de novo*; and, finally, we disturb the trial court's ultimate conclusion on the question of custody "only if there has been a clear abuse of discretion."

Karen P. v. Christopher J.B., 163 Md. App. 250, 264 (2005) (citations omitted); *see also In re Yve S.*, 373 Md. 551, 585–86 (2003) ("[I]t is within the sound discretion of the chancellor 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."); *McCready v. McCready*, 323 Md. 476, 482 (1991) (in discussing whether custody modifications should be reversed, "[t]he scope of appellate review of this question is narrow."); Md. Rule 8-131(c) (reiterating the scope of review for actions tried without a jury).

An abuse of discretion occurs when "no reasonable person would take the view adopted by the trial court[,] . . . when the court acts without reference to any guiding principles[,] . . . or when the ruling is violative of fact and logic." *Alexander v. Alexander*, 252 Md. App. 1, 17 (2021) (internal citations, quotations, and brackets omitted). "[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *North v. North*, 102 Md. App. 1, 14 (1994). Only decisions "beyond the fringe of what that court deems minimally acceptable" may be reversed under an abuse of discretion standard of review. *Id.*

When a party seeks to modify the terms of a current custody order, the court must conduct a two-step analysis. *McMahon v. Piazze*, 162 Md. App. 588, 593–94 (2005). First, the court must determine whether there has been a material change in circumstances. *Id.* A change is "material" when it affects the welfare of the child. *Id.* at 594. If, and only if, the court finds that there has been a material change in circumstances, then the court will consider whether it is in the best interests of the child to modify the custody order. *Id.* at 593. "[T]he absence of a showing of a change in circumstances ordinarily is dispositive, and [] the [trial court] does not weigh the various factors to determine the best interest of the child." *McCready*, 323 Md. at 482.

A material change in circumstances affecting the welfare of the child is required before the court will modify a custody order because:

> The desirability of maintaining stability in the life of a child is well recognized, and a change in custody may disturb that stability.
>
> Stability is not, however, the sole reason for ordinarily requiring proof of a change in circumstances to justify a modification of an existing custody order. A litigious or disappointed parent must not be permitted to relitigate questions of custody endlessly upon the same facts, hoping to find a chancellor sympathetic to his or her claim. An order determining custody must be afforded some finality, even though it may subsequently be modified when changes so warrant to protect the best interest of the child.

Id. at 481; *see also McMahon*, 162 Md. App. at 596 ("The requirement is intended to preserve stability for the child and prevent relitigation of the same issues."). As such, "[t]he 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 (2008).

On appeal, Mr. Barry argues that the circuit court erred in failing to find a material change in circumstances and further erred by neglecting to address the best interests of the child. At the January 30 hearing, the court summarized Mr. Barry's arguments that there were changes in circumstances to include: 1) Ms. Schwender's increased overnight work shift schedule; 2) Mr. Barry's new residence, complete with the Child's own bedroom and private bathroom; 3) the Child's lack of access to his friends and activities; 4) the Child's fraudulent enrollment in school based on the address Ms. Schwender was using; and 5) Ms. Schwender's strict compliance with the custody order where there once was flexibility. Mr. Barry also argued, and continues to do so on appeal, that further changes include the fact that he and his partner work remotely from home and therefore they both can be full-time caregivers for the Child.

The court found that there had been no "material" changes since the final custody order. With regard to Ms. Schwender's work schedule, the court found that she worked overnight shifts at the time of the final custody order, and as such, this was not a change in circumstance. In fact, the court noted that her schedule decreased rather than increased since the final custody order, "and thus could not possibly be a detriment to [the Child]." Moreover, the court found Ms. Schwender's testimony credible as to the Child's access to friends and activities, further finding there was no material change to that aspect of the Child's life.

As to the school enrollment of the Child, the court recalled that the parties addressed this same issue during the initial custody hearing in 2022, and thus found that there was not a material change in circumstances in this regard. In addition, Ms. Schwender and Mr. Barry both testified that they advised Baltimore County Public Schools of the Child's address possibly being out of the school's proper zone. Ms. Schwender further testified that after speaking with the school, she was not required to enroll the Child in a different school.

The court acknowledged that Mr. Barry changed residence, and that the Child now had their own bedroom and bathroom at Mr. Barry's home. However, the court noted that Mr. Barry still resides in Baltimore City, as he did when the final custody order was granted. The court found that this "is not the kind of significant change that would warrant a change in the custody order." In regard to Mr. Barry and his partner working remotely and being able to be full-time caregivers, this fact has also not changed since the final custody order. Mr. Barry indicated at the hearing on January 10, 2022, that he and his partner "both worked from home and both work flexible hours that allow us to pick up and drop off kids[.]"

The court also found that there was a change in the flexibility that was given in complying with the final custody order. Ms. Schwender testified that prior to November 2023, she allowed more access than the custody order provided. However, after November 2023, Ms. Schwender strictly complied with the custody order. However, it would be

absurd to find that such compliance with a court order requires the court to modify said order.

While the court recognized that minor changes may have occurred since the final custody order, "none of these things in [its] view amounts to a material change of circumstances which would require a reordering of the custody schedule that the Court first put in place in January of 2022." Because the court did not find any "material" changes, it did not inquire into the second step of the analysis—the best interests of the child. Mr. Barry misconstrues any change in circumstance as a "material" change. We conclude that the circuit court did not err in denying Mr. Barry's motion to modify custody. Furthermore, as sole legal custody remained with Ms. Schwender, the court did not err in denying Mr. Barry's motion regarding the Child's school enrollment.

b. Quashing Subpoena Compelling the Child to Testify

The second issue we address is whether the circuit court abused its discretion in quashing Mr. Barry's subpoena compelling the Child to testify at the modification hearing. Mr. Barry argues that the circuit court erred in quashing the subpoena for the Child as it denied him the "opportunity to present the child's stated custodial preference" and that the Child's "voice was ignored in a process that directly affected his physical and emotional welfare." Ms. Schwender argues the circuit court did not err in quashing the subpoena, reiterates her arguments made before that court, and requests that we affirm.

A trial court's ruling on a motion to quash a subpoena is reviewed under an abuse of discretion standard. *Floyd v. Baltimore City Council*, 241 Md. App. 199, 207 (2019). A

party seeking to quash a subpoena compelling attendance at a court proceeding must file a motion pursuant to Maryland Rule 2-510(e), which reads, in pertinent part:

> On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before a magistrate, auditor, or examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost, including one or more of the following:
>
> (1) that the subpoena be quashed or modified[. . . .]

Md. Rule 2-510(e).

In the case before us, Mr. Barry caused a subpoena to be issued compelling the testimony of the Child at the January 30 hearing and Ms. Schwender filed a motion to quash the subpoena, asserting that the Child would be subjected to "emotional distress and unnecessary trauma and offer the Court little, if any, probative value." The court found that it would be "more harmful to the child to be placed in the middle" of, what the court considered to be, a "very contentious custody matter" than it would be "beneficial to hear what the child has to say[,]" as there are other ways of obtaining that information.

A trial court may interview a child to assist the court in formulating the custody order. However, this Court has previously noted:

> In disputed custody cases, the court has the discretion whether to speak to the child or children and, if so, the weight to be given the children's preference as to the custodian. While the preference of the child is a factor that *may* be considered in making a custody order, the court is *not* required to speak with the children.

Karanikas v. Cartwright, 209 Md. App. 571, 590 (2013) (internal quotation marks and citations omitted) (emphasis added). The court may discern the child's preference by methods other than interviewing the child. *Id.* at 595.

The circuit court considered the "contentious" nature of this custody matter, the age of the child, and the potential trauma testifying could bring. It also considered the allegations that Mr. Barry put forth in his petition for modification and the alternative means of proving them. We conclude that the circuit court did not abuse its discretion in quashing Mr. Barry's subpoena compelling the Child to testify at the January 30 hearing.

c. Motion to Reconsider Transfer of Venue

Third, we discuss whether the circuit court abused its discretion in denying Mr. Barry's motion to reconsider the transfer of venue. The denial of a motion for reconsideration is reviewed for abuse of discretion. *Miller v. Mathias*, 428 Md. 419, 438 (2012). Similarly, we review transfer of venue decisions under an abuse of discretion standard. *Murray v. TransCare Maryland, Inc.*, 203 Md. App. 172, 190 (2012), *aff'd*, 431 Md. 225 (2013). "Accordingly, when reviewing a motion to transfer, a reviewing court should be reluctant to substitute its judgment for that of the trial court." *Id.* (quoting *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 437 (2003)).

On December 23, 2024, Mr. Barry filed a motion to transfer venue pursuant to Maryland Rule 2-327(c), requesting that the court transfer the case to Baltimore City for the convenience of the parties and "in order to avoid an appearance of impropriety[.]" Mr. Barry argued in the motion that a transfer of venue to Baltimore City would be more

convenient for the parties because Mr. Barry resided in Baltimore City and Ms. Schwender worked in Baltimore City. In addition, the interests of justice would be better served by a transfer of venue because of clerical delays by the Circuit Court for Baltimore County, according to Mr. Barry. The motion was denied without a hearing on January 15, 2025, by Judge Robinson, noting that the "motion does not present a sufficient legal or factual basis for relief requested."

At the modification hearing on January 30, 2025, Mr. Barry moved, orally, for Judge Truffer to reconsider the transfer of venue decision. However, Mr. Barry's argument at the hearing only focused on the interests of justice and did not address the convenience of the parties. Mr. Barry briefly argued that because Ms. Schwender's mother worked at the Circuit Court for Baltimore County, there was an appearance of impropriety, and for that reason, the court should grant the transfer of venue. In addition, Mr. Barry alleged that Judge Truffer had a "positive view" of Ms. Schwender because Ms. Schwender's mother worked at the courthouse. As a result, Judge Truffer considered Mr. Barry's statement as a request to recuse himself as the judge on the case. The court denied Mr. Barry's motion to reconsider the transfer of venue and the request to recuse. On appeal, Mr. Barry reiterates his "interests of justice" concern, but omits the "convenience of the parties" concern, in support of his transfer of venue argument.

i. Motion to Reconsider: Md. Rule 2-534

The purpose of a motion to reconsider is to alert the court of a procedural error, misunderstanding of applicable law, or a "development that the party could not have raised

before the court ruled," because such argument or fact did not exist at the time, such as new evidence, an intervening appellate decision, or a change in the law. *Schlotzhauer v. Morton*, 224 Md. App. 72, 85 (2015), *aff'd*, 449 Md. 217 (2016). However, "[a] circuit court does not abuse its discretion when it declines to entertain a legal argument made for the first time in a motion for reconsideration that could have, and should have, been made earlier[.]" *Morton v. Schlotzhauer*, 449 Md. 217, 232 n. 10 (2016).

Mr. Barry made his motion to reconsider the transfer of venue, orally, on January 30, 2025. A trial court has the discretion to reconsider a prior ruling by another judge in the case. *Charles Riley, Jr. Revocable Trust v. Venice Beach Citizens Assoc., Inc.*, 487 Md. 1, 16 (2024). We will address Mr. Barry's arguments made in both the December 23 motion and at the January 30 hearing.

ii. Transfer of Venue: Md. Rule 2-327(c)

Maryland Rule 2-327(c) states that "[o]n motion of any party, the court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice." Under this Rule, a motion to transfer venue will only be granted when the two factors—the convenience of the parties and witnesses and the interests of justice—"weigh strongly in favor of the moving party." *Murray*, 203 Md. App. at 191 (2012 (citing *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40 (1990)). Of course, first, "[t]he transferee court must be a court where the action could have been filed in the first instance." *Payton-Henderson*, 180 Md. App. at 280 (citations omitted). The plaintiff's choice of venue, which must be given

"proper regard," will not be "altered solely because it is more convenient for the moving party to be in another forum." *Murray*, 203 Md. App. at 191 (quoting *Leung v. Nunes*, 354 Md. 217, 224 (1999)). Convenience refers to where the parties reside or work in relation to the court. *Id.* at 192 (citing *Payton-Henderson*, 180 Md. App. at 289–91).

In the case before us, the Plaintiff, Ms. Schwender, filed her complaint for absolute divorce and custody in Baltimore County where she and the Child resided, in accordance with Courts and Judicial Proceedings § 6-202.[3] Baltimore County, as the "choice forum" of Ms. Schwender, should be given "proper regard." *See Murray*, 203 Md. App. at 191. Ms. Schwender still resides in Baltimore County. Ms. Schwender has primary custody of the Child and thus the Child resides in Baltimore County. While Ms. Schwender may work in Baltimore City, she works night shifts when the courts are closed, which negates the argument that a transfer of venue to Baltimore City would be convenient for Ms. Schwender.

[3] Section 6-202 of Courts and Judicial Proceedings reads, in pertinent part:

> In addition to the venue provided in § 6-201 or § 6-203, the following actions may be brought in the indicated county:
>
> (1) Divorce -- Where the plaintiff resides;
>
> [. . .]
>
> (5) Action relating to custody, guardianship, maintenance, or support of a child -- Where the father, alleged father, or mother of the child resides, or where the child resides;

Md. Code Ann., Cts. & Jud. Proc. § 6-202(1)-(5).

As to the first factor, we are faced with a Plaintiff, Ms. Schwender, who resides in one venue and a Defendant, Mr. Barry, who resides in another venue. However, "where the competing factors are in equipoise, [and] the defendant to whom was allocated the burden had, by definition, failed to carry that burden[,] the resulting tie would, therefore, go to the plaintiff and the plaintiff's right to choose the forum." *Payton-Henderson*, 180 Md. App. at 284 (citing *Leung*, 354 Md. at 224). As such, the fact that Baltimore City is "more convenient" for Defendant, Mr. Barry, because he resides there, does not weigh strongly enough in favor of transferring venue. *See Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 444 (2003) ("[U]nless the balance of convenience is strongly in favor of a defendant, a plaintiff's choice of forum should rarely be disturbed—mere inconvenience to a defendant is not sufficient."). The "convenience of the parties" factor does not weigh in favor of the moving party here.

We next turn to the "interests of justice" factor, which involves weighing both private and public interests. *Stidham v. Morris*, 161 Md. App. 562, 568 (2005). Private interests include

> [t]he relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.

Id. (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). Private interests are concerned with "the trial process itself" and "only with a particular case." *Payton-Henderson*, 180 Md. App. at 292.

Public interests involve "broad citizen concerns" such as "the county's road system, its educational system, its governmental integrity, its police protection, its crime problem, its fire protection, etc." *Id.* at 669. It also includes "considerations of court congestion, the burdens of jury duty, and local interest in the matter." *Stidham*, 161 Md. App. at 569. With regard to jury duty, it "is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." *Johnson v. G.D. Searle & Co.*, 314 Md. 521, 526 (1989) (quoting *Gulf Oil Corp.*, 330 U.S. at 508–09 (1947)). As for local interest, "[t]here is a local interest in having localized controversies decided at home." *Stidham*, 161 Md. App. at 569 (quoting *Johnson*, 314 Md. at 526). Other considerations of public interest include the schedule of the trial court, and the location of documents and properties involved. *Payton-Henderson*, 180 Md. App. at 293.

In his December 23 motion, Mr. Barry argued that a transfer of venue from Baltimore County to Baltimore City was in the "interests of justice." In this regard, Mr. Barry alleged that

> [t]he Clerk is at fault for mishandling of Defendant[']s Petition, leaving potential for an immediate appealability against Defendant where the Baltimore Circuit Court[']s own [n]egligence would be a liable cause. [. . .] Transfer is in the interest of fair and impartial justice where the December 4th filed petition will not be impeded by a malpractice of the County Court.

Mr. Barry continued to state that such transfer was required to prevent "further [c]lerical delays" noting at the time of the filing of the motion that "it has now been since December 4th 2024 (19 days) equaling a [m]ajority of a [c]alendar [m]onth now of delay from Clerk / Judge / or Assignment Office to take a routine action of [s]ummons pursuant to Rule 2-

114 & Rule 3-114." Mr. Barry claimed that such delay "violates a 14th amendment right to due process of Defendant." Mr. Barry ended his motion noting that a transfer of venue to Baltimore City would "alleviate County Court of its plain liability it has caused to both sides of justice in its error."

We surmise that Mr. Barry's complaint is that the Clerk's Office did not issue a summons following the filing of his petition to modify custody as expeditiously as he would have liked. Such an argument could be interpreted as a "private interest" concern, as it related only to the matter at hand. *See Payton-Henderson*, 180 Md. App. at 292. However, Mr. Barry failed to demonstrate how this delay prejudiced his case. Mr. Barry reiterates the circuit court's delay in issuing the summons in this appeal, arguing that it "obstructed Appellant's ability to present evidence" and prevented Mr. Barry from "fully litigating their case." Yet, Mr. Barry fails to identify what evidence he was prevented from presenting, how he was prevented from fully litigating his case, or how else he was otherwise harmed from the delay in issuing the summons. Ms. Schwender points out that Mr. Barry "does not argue that it led to the unavailability of any witness," and "he was afforded a full and fair opportunity to be heard[.]" We agree. Even so, a delay on the part of the court does not tip the scales in favor of transferring venue.

On appeal, Mr. Barry argues that the employment of Ms. Schwender's mother within the Circuit Court for Baltimore County presents a "direct conflict of interest that should have necessitated recusal or venue transfer" and that

> [t]he trial court failed to transfer venue, despite evidence of institutional bias favoring Appellee due to her mother's longstanding employment within the

> courthouse. Maryland courts emphasize that litigants must receive fair treatment, and conflicts of interest must be avoided to maintain public confidence in the judiciary (In re Adoption of Baby Boy B., 291 Md. 702 (1981)).[4]

Mr. Barry made the same argument at the January 30 hearing, stating:

> I would like to motion the [c]ourt to reconsider transfer of venue. I think that the facts of this case will still reflect that there was an express violation of Maryland code at the outset of this case with it's [sic] original settlement hearing where the original settlement judge in fact had worked with and my other parties' here lawyer, clerked with directly, and my other parties' here ex mother-in-law worked with for 10 years in the Family Law Court's hearing.
>
> So I do think it serves the interest of justice that a venue where my son hadn't met and interacted with most of the judges and regularly been in the chambers of, which I think on admission Mr. Gallagher [Ms. Schwender's counsel] here has met my son while he essentially has been babysat while his mother slept. I would like to consider a motion for transfer of venue.

This argument could be interpreted as a "public interest" concern, as such an allegation relates to "systemic integrity and fairness." *See Cobrand*, 149 Md. App. at 438. However, again, Mr. Barry fails to identify specific examples of systemic prejudice against him. Mr. Barry's argument that the Clerk's Office delayed a summons and that the judge ruled against him because the opposing party's mother used to work at the courthouse without substantial proof of such cause and effect is not convincing. Additionally, Mr. Barry seems to conflate transfer of venue with recusal of a judge, which we discuss next.

[4] This Court was unable to locate a case by this name, matching this citation. Mr. Barry cites several other cases in his brief that similarly cannot be located by name nor by citation, such as: "In re Adoption of Baby Boy B., 291 Md. 702 (1981)"; "Williams v. Baltimore County Office of Child Support, 2021 Md. App."; "Peterson v. Peterson, 219 Md. App. 713 (2014)"; "Kelley v. Kelley, 200 Md. App 436 (2011)."

Where Mr. Barry failed to demonstrate that a transfer of venue weighed strongly in his favor, we conclude that the circuit court did not abuse its discretion in denying Mr. Barry's motion to transfer venue and subsequent motion to reconsider the same.

d. Recusal of the Judge

Next, we review whether Judge Truffer abused his discretion in denying Mr. Barry's request to recuse himself from the case. Mr. Barry argues that Judge Truffer is prejudiced against him as a result of Ms. Schwender's mother's prior employment at the Circuit Court for Baltimore County. Ms. Schwender counters that "[w]ithout any evidence showing that the judge had personal knowledge of the case, a stake in the outcome, or had a close familial tie to the case, there is no abuse of discretion when the honourable [sic] judge refused the recusal motion."

Maryland Rule 18-102.11 identifies circumstances where "the judge's impartiality might reasonably be questioned" and when a judge shall recuse oneself from a proceeding:

> (1) The judge has a personal bias or prejudice concerning a party or a party's attorney, or personal knowledge of facts that are in dispute in the proceeding.
>
> (2) The judge knows that the judge, the judge's spouse or domestic partner, an individual within the third degree of relationship to either of them, or the spouse or domestic partner of such an individual:
>
> (A) is a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
>
> (B) is acting as an attorney in the proceeding;
>
> (C) is an individual who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) is likely to be a material witness in the proceeding.

(3) The judge knows that the judge, individually or as a fiduciary, or any of the following individuals has a significant financial interest in the subject matter in controversy or in a party to the proceeding:

(A) the judge's spouse or domestic partner;

(B) an individual within the third degree of relationship to the judge; or

(C) any other member of the judge's family residing in the judge's household.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as an attorney in the matter in controversy, or was associated with an attorney who participated substantially as an attorney in the matter during such association;

(B) served in governmental employment, and in such capacity participated personally and substantially as an attorney or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(C) previously presided as a judge over the matter in another court; or

(D) is a senior judge who is subject to disqualification under Rule 18-103.9.

Md. Rule 18-102.11(a). As for our standard of review, "[u]nless grounds for mandatory recusal are met, a judge's decision not to recuse himself or herself will be overturned only upon a showing of an abuse of discretion." *Abrishamian v. Barbely*, 188 Md. App. 334,

341 (2009) (quoting *S. Easton Neighborhood Ass'n, Inc. v. Town of Easton*, 387 Md. 468, 499 (2005)). Therefore, the party moving for recusal must overcome a strong presumption "that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified." *Jefferson-El v. State*, 330 Md. 99, 107 (1993).

In the case before us, Mr. Barry argues that Judge Truffer must recuse himself from the case because the mother of the opposing party, Ms. Schwender, used to work at the Circuit Court for Baltimore County. Such a circumstance does not require mandatory recusal under Rule 18-102.11. Furthermore, Judge Truffer explained when denying the motion to recuse:

> As I said, the Plaintiff, Miss Schwender's mother works here. I have had limited contact with her while she has been here. I have certainly had no communication with her about this case. I did not know the Plaintiff, Miss Schwender, at all, had never met her until she was in court for the first time here. I have received no information, zero, none from any source about this case and the matters in this case from any source other than evidence that has been presented in this courtroom while Mr. Barry has been present.

This case is in stark contrast to cases where our Supreme Court found the judge's impartiality questionable. *See generally Surratt v. Prince George's County*, 320 Md. 439 (1990) (where the judge was accused by a female attorney appearing before him of repeated sexual misconduct); *In re Turney*, 311 Md. 246 (1987) (where a close friend of the judge's former wife's stepson was on trial for a crime before him and the stepson was also implicated in that crime); *Jefferson-El*, 330 Md. at 109 (where the judge criticized the jury and stated that the defendant's acquittal was an "abomination.").

A party alleging impartiality, for reasons other than those mandatory grounds listed in Rule 18-102.11, is required to identify the judge's bias conduct and prove that such conduct is detrimental to that party's case. "Bald allegations and adverse rulings are not sufficient to overcome [the] presumption of impartiality." *Harford Mem'l Hosp., Inc. v. Jones*, 264 Md. App. 520, 541–42 (2025), *cert. denied*, No. 58, SEPT. TERM, 2025, 2025 WL 1912731 (Md. June 30, 2025). Moreover, to preserve such an argument for our appellate review, the party must ensure that the record reflects:

> (1) facts are set forth in reasonable detail sufficient to show the purported bias of the trial judge; (2) the facts in support of the claim must be made in the presence of opposing counsel and the judge who is the subject of the charges; (3) counsel must not be ambivalent in setting forth his or her position regarding the charges; and (4) the relief sought must be stated with particularity and clarity.

Braxton v. Faber, 91 Md. App. 391, 408–09 (1992). If a party's argument is preserved, we ask "whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned." *Harford Mem'l Hosp., Inc.*, 264 Md. App. at 547 (citations omitted). When the party alleges bias in the court's evidentiary rulings or in the manner the court conducts its trial, we review those decisions for legal correctness or abuse of discretion. *Id.*

Here, Mr. Barry fails to set forth any facts in sufficient detail that would show bias on behalf of Judge Truffer either at the January 30 hearing or in his brief on appeal before us. At the January 30 hearing, Mr. Barry's only argument is that "there is a perception" that Judge Truffer has a "positive view" of Ms. Schwender that he "probably gained over knowing" Ms. Schwender's mother while she worked at the courthouse. We have already

established that simply knowing and previously working with the opposing party's mother is insufficient grounds for recusal. As such, we conclude that the circuit court did not abuse its discretion in denying Mr. Barry's request to recuse.

Moreover, Mr. Barry did not point out any conduct on behalf of the Judge that would show bias throughout the January 30 hearing, as required by *Braxton*. *See Braxton*, 91 Md. App. at 408–09. In addition, on appeal, Mr. Barry does not reference the record anywhere in support of his argument for bias or impartiality. He merely alleges "procedural failures," "evidentiary errors," "unexplained delays," and the like, without referencing where in the trial record these occurred or how they were detrimental to his case. As such, we have no conduct to review, and this argument is unpreserved.

e. Judgment Against Appellant for Attorney's Fees

The last appealable issue for our review is whether the circuit court erred in entering a judgment against Mr. Barry for attorney's fees awarded to Ms. Schwender in the JAD on January 12, 2022. Mr. Barry was ordered to pay a portion of Ms. Schwender's attorney's fees in the amount of $2,500.00 within six months. The JAD also included, "that should Mr. Barry fail to pay [Ms. Schwender] the sum ordered within six (6) months of the date of this Judgment, [Ms. Schwender] shall be able to obtain a judgment against [Mr. Barry] by filing a Motion with his Court." On January 24, 2025, Ms. Schwender filed a motion for a judgment against Mr. Barry for failure to pay the $2,500.00 in attorney's fees. The court granted the motion and entered the judgment against Mr. Barry on February 19, 2025.

On this issue, Mr. Barry's argument is that:

> Appellee's request for attorney fees should be denied, as trial court errors, judicial bias, and financial miscalculations obstructed Appellant's due process rights, forcing unnecessary litigation (Jefferson-El v. State, 330 Md. 648 (1993)).[5] Maryland law recognizes improper financial penalties stemming from procedural violations as unconstitutional.

However, Mr. Barry fails to identify exactly what errors or financial miscalculations were made by the trial court, and how these errors or the alleged judicial biases obstructed Mr. Barry's due process rights as it relates to the attorney's fees.

Ms. Schwender argues that this issue is moot, as the attorney's fees in question were awarded by the court as part of the JAD on January 12, 2022. Pursuant to Maryland Rule 8-202(a), "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." As such, the time to appeal the award of attorney's fees has passed.

With regard to the entry of the judgment, Ms. Schwender argues that Mr. Barry never filed any opposition to Ms. Schwender's January 24, 2025 motion for judgment of attorney's fees. While the court did not address Ms. Schwender's motion for judgment at the January 30 hearing, noting that the court would "rule on it without further hearing[,]" Mr. Barry had the opportunity from January 24 until the court made its ruling on February 19 to file an opposition to Ms. Schwender's motion for judgment. Where counsel, or in this

[5] The correct citation for this case is: *Jefferson-El v. State*, 330 Md. 99 (1993). This case discusses when a trial judge should grant a defendant's "recusal motion to avoid the appearance of impropriety[,]" after being "accused by a defendant of being partial against him[.]" *Id.* at 102.

case, a pro se litigant, fails to object or raise an issue before the circuit court, that issue is not preserved for appeal. *Perry v. State*, 229 Md. App. 687, 713 (2016).

We agree with Ms. Schwender and dismiss the issue of attorney's fees as moot and the entry of judgment as unpreserved.

f. Miscellaneous Moot Issues

There are several issues that Mr. Barry mentions in his brief that are moot due to Mr. Barry failing to appeal the decisions within 30 days of the JAD pursuant to Rule 8-202(a). Mr. Barry argues that the court erred in many aspects during the divorce and initial custody trial in 2022, such as in its assessment of the testimony of the psychiatrist and his partner, Ashley Neuder, among other complaints from that trial. However, the JAD was entered on January 12, 2022, and thus any complaints Mr. Barry had from that trial must have been raised 30 days from that date. As such, all of Mr. Barry's arguments from the divorce and initial custody trial are moot and we will not address them.

III. CONCLUSION

In conclusion, the circuit court did not err in finding that no "material" change in circumstance existed and thus the circuit court did not err in failing to inquire into the best interests of the child. Nor did the circuit court err in denying Mr. Barry's motion to modify custody. Furthermore, the court did not err in denying Mr. Barry's motion regarding the Child's school enrollment, as sole legal custody remained with Ms. Schwender.

We further conclude that the circuit court did not abuse its discretion in quashing Mr. Barry's subpoena compelling the Child to testify at the January 30 hearing, considering

the "contentious" nature of this custody matter, the age of the child and the trauma testifying could bring, as well as the allegations that Mr. Barry put forth in his petition for modification and the alternative means of proving them.

The circuit court did not abuse its discretion in denying Mr. Barry's motion to transfer venue and subsequent motion to reconsider the same, where Mr. Barry failed to demonstrate that a transfer of venue weighed strongly in his favor and conflated transfer of venue with recusal of a judge. Similarly, the circuit court did not abuse its discretion in denying Mr. Barry's request to recuse, where the opposing party's mother's previous employment at the courthouse is not a mandatory ground for recusal. Additionally, Mr. Barry failed to sufficiently detail any biased conduct on behalf of the judge for our review, and thus his argument is unpreserved.

Lastly, Mr. Barry's argument on the attorney's fees ordered in the JAD on January 12, 2022, is moot as untimely, and his argument on the entry of judgment is unpreserved as he never objected to its entry.

For those reasons, the judgment of the Circuit Court for Baltimore County is affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.