

Circuit Court for Washington County  
Case No. 21-C-13-46970CT

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 684

September Term, 2017

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LINDA BOYD

v.

CHRISTOPHER W. BROWN

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Kehoe,  
Berger,  
Wilner, Alan M. (Senior Judge, Specially  
Assigned

JJ.

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Opinion by Wilner, J.

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Filed: January 17, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant complains that the Circuit Court abused its discretion and otherwise erred in denying her exceptions to the recommendation of a family law magistrate that her motion to change the custody of her two children from their father to her be denied. We find no abuse of discretion or other error and shall affirm the judgment of the Circuit Court.

Ms. Boyd and Mr. Brown are the parents of two minor children, W. and V., who are seven and six, respectively. The parents are not and never were married to each other. In June 2016, the court awarded sole legal and primary physical custody of the children to Mr. Brown, largely out of concern over a significant alcohol problem involving Ms. Boyd and her husband, Mr. Boyd. Ms. Boyd was allowed reasonable visitation with the children.

Two-and-a-half months later, in September 2016, Ms. Boyd moved for modification of the custody arrangement. The motion itself does not indicate what change she wanted, but it became clear at the hearing before the court's family law magistrate that she wanted at least primary physical custody of the children. Although Mr. Brown was served with the motion, he failed to respond, and an Order of Default was entered against him. Mr. Brown did not move to vacate that order; nor did he appear at the hearing before the magistrate. All of the evidence in support of the motion was provided by Ms. Boyd.

Ms. Boyd asserted four reasons why the custody arrangement should be changed: (1) since the June Order, she had undergone counseling and testing for her alcohol

problem and was then sober; (2) Mr. Brown failed to address medical problems involving one of the children – a broken toe, a cough, and psychotherapy, (3) his refusal to enroll W. in a magnet school program, and (4) the children’s clothing were frayed and had holes in them.

In her proposed findings and recommendations, the magistrate dealt with each of those matters. She acknowledged Ms. Boyd’s current sobriety. Based on the evidence presented, which she recounted, the magistrate concluded that “[t]his medical record cannot stand for the proposition that Mr. Brown failed to take his daughter to the doctor.” One of the problems Ms. Boyd complained about began when the child was with her, and another may have begun just one day before a visit with her. With respect to the magnet school, which apparently would involve moving the child to another school outside the school district, the magistrate noted Mr. Brown’s response to that request – that after speaking with the child’s teacher, he concluded that the child was fine in her current advanced reading and math class, that he was reluctant to have the child switch schools again, and that, when his budget allowed, he would look for a magnet program within the school district. The magistrate concluded that, as sole legal custodian, that was Mr. Brown’s decision to make and found that it was a reasonable one.

In support of her complaint regarding the children’s clothing, Ms. Boyd produced photographs showing the holes in their pants and in one shoe. The magistrate took what amounted to judicial notice that “[t]oday’s teenagers purchase and wear clothing with tears in the jeans” and that many students walk the public streets of Hagerstown wearing

“jeans with significant tears and frayed areas, all of which are likely to have been purchased in that condition.”

In summary, the magistrate recounted that “the custody of children should not be disturbed unless there is some strong reason affecting the welfare of the child.” She concluded that “Ms. Boyd has complaints, but none arise to the level of affecting the welfare of the children” and that, accordingly, Ms. Boyd had failed to meet the burden of proof that there has been a material change in circumstances.”

Ms. Boyd filed exceptions, asserting that the magistrate erred in declining to find a material change in circumstances and in declining to modify custody. Notwithstanding the requirement of Md. Rule 2-541(g) that the written exceptions set forth each asserted error “with particularity,” no such particularity was included. Nonetheless, the court, after a hearing that Mr. Brown did attend, carefully recounted the evidence before the magistrate, and, upon its own independent review of the transcript of proceedings before the magistrate, agreed that Ms. Boyd “has not documented a material change of circumstances that would necessitate a change of custody.”

Complimenting Ms. Boyd on her sobriety, the court observed that the children now had two fit parents, but that was not enough for a change in legal or physical custody. With respect to medical appointments, the magnet school issue, and the children’s clothing, the court agreed with the magistrate that Ms. Boyd had not demonstrated neglect or unfitness on Mr. Brown’s part, but, “to the contrary, the record and documents admitted show that Mr. Brown was thoughtfully involved in those matters.”

In reviewing exceptions to a magistrate’s findings and recommendation, the court must exercise its own independent judgment, decide each question presented in an exception, and state how it has resolved those challenges, but, with respect to fact-finding, should defer to the magistrate’s findings if they are supported by substantial credible evidence. *Leineweber v. Leineweber*, 220 Md. App. 50, 60-61 (2014). The Circuit Court clearly applied those standards and did so correctly.

We do note one issue raised in Ms. Boyd’s brief that was of some concern to the Circuit Court, namely, Mr. Brown’s decision not to participate in the proceeding before the magistrate. We note also that he has failed to file a brief in this appeal. A litigant certainly runs a risk in failing to defend an action, but the burden was and remains on Ms. Boyd to establish a material change in circumstances or some legal error in the proceedings, and the mere failure of a defendant to participate or mount an affirmative defense does not suffice to satisfy that burden.

**JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.**