Circuit Court for Cecil County
Case No. C-07-FM-22-000367

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 8

September Term, 2025

P. J.

v.

K. A.

Friedman,
Tang,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, Christopher B., J.

Filed: September 10, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises out of a custody dispute between "P. J." ("Father") and "K. A." ("Mother") regarding the parties' minor child, whom we will refer to as "R."[1] The parties were divorced by a judgment of absolute divorce entered in the Circuit Court for Cecil County in 2023. The judgment incorporated a marital settlement agreement in which the parties agreed to joint legal and physical custody of R.

Father subsequently filed a motion for modification of custody, arguing that there had been a material change in circumstances since the judgment of divorce was granted, and that the changes warranted modification. According to Father, the changes in circumstances stem in large part from Mother's refusal to coparent with Father. After a two-day trial, the circuit court denied the motion. The court concluded that the 2023 judgment of absolute divorce was a final order and that there had been no material change in the parties' circumstances since the judgment was entered. Therefore, the court did not address whether the proposed change of custody was in R.'s best interests.[2]

Father has appealed. He presents three questions for our review:

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[1] We will refer to the parties and the child by initials in order to protect their privacy. *See J.A.B. v. J.E.D.B.*, 250 Md. App. 234, 241 n.1, 242 n.4 (2021). Neither the minor child's first name nor their last name begins with the letter "R." We have chosen the letter "R." at random. *See Augustine v. Wolf*, 264 Md. App. 1, 7 n.2 (2024).

[2] *See, e.g.*, *Caldwell v. Sutton*, 256 Md. App. 230, 270 (2022) ("When presented with a request to change custody or visitation, the trial court must engage in a two-step process: First, the circuit court must assess whether there has been a 'material' change in circumstance. If a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody." (cleaned up) (quoting *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005))).

1. Did the trial court err in finding that the marital settlement agreement is a final custody order?

2. Did the court err in not applying the best interest standards in reaching its custody determination?

3. Did the trial court err in failing to apply the *Taylor*[3] standards in deciding not to modify legal custody?

We will reverse the judgment of the circuit court and remand this case for further proceedings consistent with this opinion.

BACKGROUND

The parties were married in 2018. R. was born in 2019. Thereafter, the family moved to Maryland.

In 2022, Mother filed a complaint for a limited divorce, alleging that Father had constructively deserted her. Among other relief, she requested that the court award her "primary physical and sole legal custody" of R. Based on recommendations made by the family law magistrate after an evidentiary hearing, the circuit court entered a pendente lite order that, among other things, awarded the parties joint legal custody and "shared physical custody of [R.], with the parties exercising a week on/week off custodial schedule[.]"

In 2023, Mother filed a complaint for an absolute divorce. Among other relief, she sought joint legal and shared physical custody of R.

On February 9, 2023, the parties and their counsel had a status conference before the family law magistrate. The magistrate forwarded recommendations to the circuit court.

[3] A reference to *Taylor v. Taylor*, 306 Md. 290 (1986).

Based on those recommendations the court entered an order dated February 15, 2023, which provided in pertinent part that the parties had reached an agreement resolving the issues between them, but that counsel "need[ed] time to draft a Marital Settlement Agreement" and to "schedule divorce testimony[.]" The order also appointed Matthew E. Hurff, Esquire (the "BIA"), as Best Interest Attorney[4] and Child Privilege Attorney for R. Finally, the order stated that "there shall be a Review Hearing on August 2, 2023[.]"

On March 13, 2023, the parties filed an undated marital settlement agreement (the "MSA"). The MSA included the following relevant provisions:

> 1. [Mother and Father] shall have joint legal custody of the parties' minor child, [R.]
>
> 2. [Mother and Father] shall continue to exercise shared physical custody of the parties' minor child exercising a week-on-week-off schedule[.]
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> * * *
>
> 33. Matthew Hurff, Esquire, shall be appointed as the Best Interest Attorney and Child Privilege Attorney for the part[ies'] minor child, [R.][5]
>
> 34. Matthew Hurff, Esquire, as Best Interest Attorney and Child Privilege Attorney, may make the recommendation for a custody evaluation and make a recommendation whether the custody evaluation should include psychological evaluations. If Matthew Hurff, Esquire, makes a recommendation for the parties to undergo a custody evaluation and/or undergo psychological evaluations, all parties agree to cooperate fully with the custody evaluation and psychological evaluations.

[4] *See* Md. Code, Fam. Law § 1-202(a)(1)(ii) (authorizing a court to "appoint a lawyer who shall serve as a best interest attorney to represent the minor child and who may not represent any party to the action").

[5] This provision was superfluous. As we have explained, the circuit court appointed Mr. Hurff as R.'s best interest and child privilege attorney on February 15, 2023.

The Judgment of Absolute Divorce

On May 12, 2023, the circuit court entered a judgment granting the parties an absolute divorce. The judgment stated that the MSA was incorporated, but not merged, into the judgment of absolute divorce. The judgment did not mention that a custody review hearing had been scheduled for August 2, 2023.

The First Review Hearing

In July 2023, Father filed a "Motion for Psychological Evaluation." The motion came on the heels of several emails which Mother had sent to Father over the previous few months, stating that R. had made statements to her suggesting that there had been sexual contact between him and Father. The emails had also been sent to Child Protective Services ("CPS"), and CPS had subsequently determined that Mother's allegations were unfounded. Father asserted that, given the nature of the allegations, Mother should be required to undergo a mental health evaluation. The BIA filed a written response. He asserted that both Mother and Father should undergo a "psychological assessment, and that said assessment [should] contain a psycho-sexual assessment component[.]"

These issues were addressed by the magistrate in the August 2, 2023 review hearing. Following that hearing, the magistrate made several recommendations to the circuit court, including that both parties complete psychological and, if recommended, psychosexual evaluations. On August 8, 2023, the court entered an order adopting these recommendations. The court further ordered that another review hearing was scheduled for November 27, 2023.

Mother and Father participated in the mental health evaluations. Written reports regarding these evaluations were prepared and submitted to the court. The BIA filed a request to disclose Mother's and Father's evaluations to R.'s therapist.

The Second Review Hearing

On November 27, 2023, the second scheduled review hearing was held before the family law magistrate. The primary issue at the hearing was the BIA's request to disclose the psychological evaluations of the parties to R.'s therapist. In light of the arguments and evidence presented at the hearing, and after reviewing the mental health evaluation of each party, the magistrate filed an order that stated in relevant part (emphasis added):

> Upon review of the pleadings filed in this matter, along with the parties' agreements and Marital Settlement Agreement, *custody is not a resolved issue, nor has it been*. When the parties appeared in January 2023, they placed an agreement on the record, which was later incorporated into the Judgment of Absolute Divorce. Part of the parties' agreement was that Mr. Hurff, Esquire, was appointed as Best Interest Attorney and Child Privilege Attorney. A Review Hearing was scheduled for August 2023. *If the issues of custody and visitation were completely resolved, there would have been no need for a Best Interest Attorney, Child Privilege Attorney*, *or a Review Hearing*. The Review Hearing was continued from August to November to allow the parties time to complete their psychological evaluations. *A Custody Hearing is needed and warranted in this matter*.
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> * * *
>
> Therefore, it is recommended that there be a Custody Hearing on May 15, 2024, . . . [and that] the Motion for Partial Dissemination of Psychological Evaluation filed on October 31, 2023, be denied.[6]

[6] The magistrate recommended against disclosing the parties' psychological evaluations because "there are no diagnoses for the parties. There does not appear to be

(Footnote Continued . . . .)

On January 9, 2024, and based upon the magistrate's recommendation, the court entered an order stating that, in light of the report, findings and recommendations of the family law magistrate, a custody hearing was scheduled for May 23, 2024.[7] But that hearing was never held.

This Court's Unreported Opinion in Hurwitz v. Esque

Several weeks after the circuit court entered its January 9th order, this Court filed an unreported opinion in *Hurwitz v. Esque*, No. 1161, Sept. Term, 2023, 2024 WL 1251007 (Md. App. Ct. Mar. 25, 2024). In *Hurwitz*, a panel of this Court addressed the Circuit Court for Cecil County's practice of routinely scheduling child custody review hearings after the trial court had entered a final custody award. The panel concluded that "[b]y continuing to hold the issue of custody open for periodic court reviews following a final [custody] order, the circuit court abused its discretion and committed procedural error." *Id.* at *6 (citing *Frase v. Barnhart*, 379 Md. 100, 111 (2003); and *Petrini v. Petrini*, 336 Md. 453, 470 (1994)).

The Motion to Vacate the Custody Hearing

On March 26, 2024, Mother filed a motion to "vacate," *i.e.*, cancel, the pending custody review hearing scheduled for May 23, 2024. Quoting *Frase*, 379 Md. at 121, Mother asserted that:

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additional information contained in the psychological evaluation that the minor child's therapist could not ascertain from talking with the parties and observing the parties."

[7] The review hearing had initially been scheduled for May 15, 2024. At the request of the parties, the hearing was rescheduled to May 23, 2024.

> continued reviews following a final custody determination leads to a situation where:
>
> > [T]he case never ends; the child and the parties remain under a cloud of uncertainty, unable to make permanent plans. The court seemingly reserves the power to alter the custody arrangement at any time, even in the absence of a new or amended petition, based on a later review of circumstances known or predicted to exist at the time of the initial determination. That is procedurally impermissible.

On April 12, 2024, the circuit court entered an order that vacated the custody hearing. This brings us to the case before us.

The Complaint to Modify Custody and the Trial Court's Judgment

On April 8, 2024, Father filed a complaint for modification of custody seeking sole legal and primary physical custody of R. The complaint included a number of allegations of inappropriate conduct by Mother as well as allegations that this conduct was harmful to R. Mother filed an answer in which she denied any misconduct and requested that the court deny Husband's complaint.

After a two-day evidentiary hearing, the circuit court entered a judgment denying Father's motion. Relevant to the issues before us, the court first stated that it viewed the judgment of divorce as a final order. The court then stated in stated in pertinent part:

> Now, a primary difference between this case and that other case[8] is [that in] this case, [Father's counsel] did file the motion to modify. In that case, there was no motion to modify filed.
>
> * * *

[8] We assume that the court was referring to *Hurwitz v. Esque*.

> So -- but again, I think based on case law now, that we have to look at [the] May 9th . . . marital settlement agreement as an actual final order and have to determine that there is a material change in circumstances.
>
> * * *
>
> And there seemed to be at least uncertainty through testimony of [Mother and Father] if the March investigation[9] was even complete prior to the marital settlement agreement.
>
> * * *
>
> So we have -- and we -- so we have a lot of things here. I'm talking about schooling. We're talking about so many of these things that are in here are things -- are provisions that though the latter provisions with introducing [the BIA], absent some of those latter provisions, this reads just as a final order. And I bring that up because we're trying to look at it and say okay, as I get deeper into the material changes or what material changes exist, I was struggling to find a material change.
>
> * * *
>
> I think I can look at it and could determine looking at everything in the totality, that there could be material change, but I just don't believe that since that May 9th,[10] though there have been some changes, the new therapist, that there's no -- and again I'm trying to bring up things [the BIA] brought up, you know, with therapists with the fact that we don't have the opportunity for Ms. Muller-Thym[11] to be involved.

[9] On March 10, 2023, that is, three days before the executed MSA was filed with the circuit court, Mother emailed Father asserting that R. had been sexually abused. Child Protective Services investigated the matter and took no action.

[10] On June 14, 2023, Mother again emailed Father alleging sexual abuse of R. She copied Child Protective Services, which investigated the matter and took no action.

[11] On December 5, 2022, the circuit court ordered that Connie Muller-Thym, LCWS-C, "shall provide case monitoring for the parties in this case for a period of six months to one year[.]" At some point (exactly when is unclear), Ms. Muller-Thym ceased providing services to the parties.

> *I don't think those are necessarily material changes in circumstances that warrant some sort of change [to] this order. So that being said, the court is going to deny the request for the modification.*

(Emphasis added.)

This timely appeal followed.

THE STANDARD OF REVIEW

Appellate review of a trial court's decision regarding child custody involves three related standards. *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019). First, factual findings are reviewed for clear error. *Id*. Second, any legal conclusions are reviewed de novo. *Id*. Third, if the court's ultimate conclusion is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion." *Id*. (cleaned up) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

Finally, "[t]he light that guides the trial court in its determination, and in our review, is 'the best interest of the child standard,' which 'is always determinative in child custody disputes.'" *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)).

ANALYSIS

A. The Standards for Modification of Custody

As this Court has recently observed:

> Countless reported cases in Maryland stand for the following proposition: When presented with a request to modify custody, courts must engage in a two-step process. The two-step process is as follows: First, the circuit court must assess whether there has been a material change in circumstance. Then,

> if a finding is made that there has been such a material change, the court proceeds to consider the best interests of the child as if the proceeding were one for original custody.
>
> A material change of circumstances is a change in circumstances that affects the welfare of the child. The burden is then on the moving party to show that there has been a material change in circumstances since the entry of the final custody order and that it is now in the best interest of the child for custody to be changed.

Velasquez v. Fuentes, 262 Md. App. 215, 246 (2024) (cleaned up).

B. The Circuit Court's Decision

In the present case, the trial court denied Father's complaint to modify custody because it concluded that there had been no material changes in circumstances between the date that the judgment of absolute divorce was entered, *i.e.*, May 12, 2023, and the trial on Father's complaint to modify custody, which commenced on February 19, 2025. We do not agree with the court's reasoning.

We begin with the judgment of absolute divorce, which was based solely on the parties' MSA, and which explicitly provided for the appointment of a BIA for R.[12] The MSA provided that the BIA:

> may make the recommendation for a custody evaluation and make a recommendation whether the custody evaluation should include psychological evaluations. If [the BIA] makes a recommendation for the parties to undergo a custody evaluation and/or undergo psychological evaluations, all parties agree to cooperate fully with the custody evaluation and psychological evaluations.

[12] As we have explained, this provision of the MSA was inaccurate and superfluous because that court had appointed the BIA to protect R.'s interests approximately one month prior to the execution of the MSA.

As we have related, the BIA asked the parties to undergo custody evaluations. The parties consented and, in due course, the results of those evaluations were submitted to the family law magistrate. Based upon the magistrate's recommendation, the court scheduled a custody hearing on May 23, 2024 to address these issues. However, and as we have related, that hearing was canceled after Mother filed a motion to vacate the scheduled custody hearing because such a proceeding would be incompatible with the concept of final judgments in the context of child custody cases. *See Frase*, 379 Md. at 121. This notwithstanding, the fact remains that custody was a disputed matter when the MSA was filed with the court. Custody remained unresolved when the judgment of divorce was entered, and custody was never resolved thereafter. The first, and only, adversarial proceeding that addressed custody was the two-day hearing that resulted in the judgment that is before us in this appeal. The trial court denied relief to Father on the basis that the court concluded that there were not "material changes in circumstances that warrant some sort of change [to] this order."

The fatal difficulty with the court's reasoning is that it is impossible to decide whether there has been a material change in circumstances without first determining what the original circumstances were.

Evidence as to the concerns identified by the parties, the BIA, and the magistrate was presented at the hearing on Father's complaint to modify custody. But instead of addressing the merits, the court concluded that there had been no material change in R.'s circumstances since the judgment of divorce was filed and denied Father's complaint for that reason.

Because there had never been an adjudication of R.'s circumstances in the first place, the trial court erred when it denied Father's complaint on the basis that there was no change in R.'s circumstances.[13]

There is another aspect to this case. As this Court has recently explained:

> "[C]hildren have a substantial interest in the outcome of their parents' custody dispute and are individuals with rights recognized by the courts[.]" *Auclair v. Auclair*, 127 Md. App. 1, 13 (1999), *abrogated on other grounds by Fox v. Wills*, 390 Md. 620 (2006). As this Court has previously indicated, a child has "an indefeasible right to have any custody determination concerning [the child] made, after a full evidentiary hearing, in [the child's] best interest." *Flynn v. May*, 157 Md. App. 389, 410 (2004). Similarly, we have "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." *A.A. v. Ab.D.*, 246 Md. App. 418, 448 (2020) (quoting *Flynn*, 157 Md. App. at 410)[.]

Augustine v. Wolf, 264 Md. App. 1, 16 (2024).

Just like the children in *Augustine*, *Auclair*, *Flynn*, and *A.A.*, R. has an "indefeasible right" to have their best interest considered before the trial court rules on Father's motion to modify custody. This has not yet happened. Therefore, we reverse the judgment of the circuit court and remand this case for the court to address the merits of the motion to modify custody. Additionally, the court should permit the parties to present evidence pertaining to

[13] A critical part of R.'s "circumstances" involved information and insights contained in the psychological evaluations of the parents as well as the assessments of R. that have been made by social workers and psychologists. It is not necessary for us to delve into the substance of these assessments and evaluations for the purposes of this opinion other than to say that we fully agree with the magistrate's conclusion that "[a] [c]ustody [h]earing is needed and warranted in this matter."

additional mental health evaluations, evidence as to other changes, if any, that may have occurred since the court entered its judgment, and other relevant evidence that was not presented to the circuit court in the prior proceeding.

The factors that the court should consider include, but are not limited to, those identified in *Azizova*, 243 Md. App. at 344–47.[14]

THE JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY IS REVERSED AND THIS CASE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[14] In his brief, Father asserts that the relevant issues are identified in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1978), and *Taylor*, 306 Md. 290. However, as the Court pointed out in *Azizova*, Maryland courts have identified additional factors in the nearly four decades that have passed since *Taylor* was decided. 243 Md. App. at 346–47. The additional factors listed in *Azizova* are discussed in Cynthia Callahan & Thomas C. Ries, FADER'S MARYLAND FAMILY LAW § 5-11–5-12 (7th ed. 2021).