Circuit Court for Prince George's County
Case No. CAD 14-06930

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 282

September Term, 2022

SEMONE THOMPSON

v.

HAROLD ROBINSON, JR.

Nazarian,
Friedman,
Wright, Jr., Alexander,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: December 7, 2022

Semone Thompson ("Mother") challenges the Circuit Court for Prince George's County's order denying her petition for contempt and her motion for modification in her custody case against Harold Robinson, Jr. ("Father"). Mother contends that the trial court abused its discretion by declining to find Father in contempt for failing to pay child support and by denying her request for visitation scheduled at the child's discretion. Mother argues that the court was biased against her and failed to consider the best interests of the child. We find no error and affirm.

I. BACKGROUND

The parties divorced in 2014 and are the parents of one child, who was born in December 2011. In October 2014, Mother had sole physical and legal custody over the child and Father paid child support. Since then, though, there has been a great deal of conflict, and both parties have filed various motions to modify and petitions for contempt against each another. Mother has obtained multiple protective orders against Father, but also has been found in contempt of the custody order for denying Father visitation.

On June 17, 2021, Mother obtained a final protective order against Father which stated that "[t]here is a preponderance of the evidence to believe that [Father] committed the following act(s) of abuse(s): Placed [Mother] in fear of imminent serious bodily harm." The order referenced Father's statement on April 24, 2021 that "I'm going to kill her[.]" The court ordered Father not to "abuse or threaten to abuse [Mother] or minor child" and prohibited Father from contacting Mother "except to facilitate any child visitation" through OurFamilyWizard.

A. Mother's Petition For Contempt And Motion For Modification

At issue in this appeal is Mother's April 12, 2021 petition for contempt for failure to pay child support owed and request for a modification of visitation. The alleged change in circumstances was that Father "has been convicted of child abuse. He is not an active parent in child's life and when he had visitation was negligent and emotionally and verbally abusive. Child now has been diagnosed w/ PTSD." She requested supervised visitation, for the cell phone the child used to communicate with Father to be returned, and for the child to "only be made to speak with [Father] if the calls are cordial and only if the child wants to." Mother later sought to have visits occur only at the child's discretion.

B. The Hearing

On February 22, 2022, the court held what can only be described as a chaotic Zoom hearing that featured numerous interruptions and connection issues. Mother, who was represented by counsel, testified first. She told the court that she hadn't received child support since 2020, and that because the parties have a protective order in place where they don't communicate "unless it has to do with visitation," she has never discussed child support with Father or the reasons he hasn't paid.

As for visitation, Mother testified that the child has suffered harm as a result of his visits with Father:

> The reason why I'd like the visitation arrangement to be modified is because my son has experienced physical and emotional harm. I put my son in therapy . . . and since then, my son has been able to communicate with me and with his therapist some of the issues that he was experiencing at

> [Father's] home. . . . I don't want him being put in a dangerous situation.

She also referred to the existing "protective order that was recently granted because [Father] made the actual threat to my son of what he was going to do to me, which my son had to testify in a court. And so the threats haven't stopped." When Mother tried to describe the threats that her son told her Father had made ("he was told he was going to have his liver cut out with a knife"), the court interrupted her, and instructed, "you can't testify to what your son has told you."

Mother asked the court to allow the child to decide "whether he wants to go over there for a weekend," and to allow him to return to Mother on Sundays instead of Mondays. Mother admitted that visitation with Father has been ongoing and was admonished by the trial court for trying to review documents while testifying.

The child also testified at the hearing. At first, the court asked the child questions and kept the discussion light, discussing video games, school, and activities. When asked about his mental health, the child stated, "Sometimes in class I'll miss my siblings or just think about things that happened—that are bad and stuff." He stated that he visited Father two weekends ago and "[i]t was okay." When pressed for whether he was ever in danger with Father, he described a time when Father reached for pizza while driving, "smoking," and "driv[ing] a bit fast." The child had difficulty thinking of "anything dangerous" that concerned him with Father; he thought sometimes Father drank alcohol when driving, and that perhaps he'd been injured by Father while playing too rough. He described an incident where Father grabbed a knife in the kitchen and "he said he was going to cut out my liver,"

but couldn't remember when it happened or what happened leading up to the event. He also described one time when Father was angry and called him names after testifying in the protective order case: "He has called me a snake before, he has called me the B word, and the N word . . . . [H]e was mad because of that one time when I testified in court." When asked about his relationship with Mother, the child said, "She gives me clothes, she feeds me, she lets me go outside, she gives me games and stuff. She's—I mean, I can't ask for anything else to be honest."

The court then asked the child about visitation, and the child asked if he could decide when to stay or leave from Father's house:

> [THE COURT:] Okay. How are you with your visit schedule as it goes now, is it working for you?
>
> [THE CHILD:] Yes, it's working for me but I do have one question.
>
> [THE COURT:] Oh, absolutely, what's your question?
>
> [THE CHILD:] I wanted to, you know, kind of like make it so that I can go and leave when I want to. Like if I don't want to go, I don't have to go. I mean, we've done that before and dad was okay with that, but like . . . when there's a birthday party or something, but like I want to go when I want to go and stuff like that, and I was just wondering we can make it like that.
>
> [THE COURT:] And why is that you would want to leave sometimes?
>
> * * *
>
> [THE CHILD:] . . . [I]f he has like work or I just want to go back home or something. And, yeah.
>
> [THE COURT:] Okay. So not because he's done anything, just because you want to end the visit?
>
> [THE CHILD:] Sometimes can be because he done—he did something, but most of the times it's going to be I just want to

> end the visit or like my friends are going to . . . do something that day and that's really it.
>
> [THE COURT:] Okay. And right now, you see him every other weekend?
>
> [THE CHILD:] Yeah.
>
> [THE COURT:] Okay. Anything else you want to tell me?
>
> [THE CHILD:] No, not really.

The court also asked about, and the child discussed, his therapist, to whom he talks about "getting bullied or I mean like my dad and siblings and stuff . . . ."

Father, who was *pro se*, gave brief narrative testimony. He stated that he didn't agree to Mother's request for his visitation to end on Sundays because she would take advantage of the situation and keep the child from him as she had done in the past. He too was interrupted by the court and directed to refrain from giving hearsay testimony and discussing irrelevant events.

At the close of all of the testimony, and despite having no witness to move documents into evidence, Mother's counsel sought to admit documents that hadn't been shared with Father before the hearing. Instead of denying admission, though, the court continued the hearing to March 15, 2022. When they reconvened, the court admitted two documents, both court orders in effect at the time of the hearing: (1) a copy of the June 17, 2021 final protective order, and (2) a April 23, 2021 order regarding visitation and access between the parties.

The court denied admission of a "Charles County docket entry" that the court already had "considered in the past with another hearing" and that was "not related to this child," and therefore irrelevant. In addition, the court declined to admit the child's therapy

records because there was no custodian and no witness to authenticate them. The court reviewed the records and stated that, in addition to general references to trauma, they revealed a PTSD diagnosis but "no specific identification of what caused the PTSD at all. So I can't find that this is specifically related to the father."

Mother's counsel gave a closing argument highlighting the child's testimony that Mother "does everything for him." Counsel also argued that "I think we've been able to show that [Father] remains not what I'll consider a fit parent. I think we've been able to show that there is an element of negligence and abuse." He referenced the incident where Father took out a knife, which he called "outrightly dangerous" and "very abusive." Father offered in closing that "[Mother's] weaponized the court system and I'm tired of it. Like I'm fighting to see my son every weekend. I love my son. He knows I would never do anything to hurt him. They keep saying something about a knife. Never pulled a knife on my son."

C. The Court's Ruling

The court ruled from the bench and began by detailing the litigation history between the parties, including the many protective orders and competing motions for modification and contempt dating back to 2014. The court found that there was no evidence or testimony

regarding why Father failed to make child support payments, and thus found the evidence insufficient to prove that the payments were not being made willfully.

With respect to modifying visitation, the court noted that Mother had requested supervised visitation, but found that request and others waived:

> . . . [Mother] requested supervised visitation. However, not raised or argued in the body of the hearing here today, only mentioned ultimately in the closing, and apparently visitation with the child has continued unsupervised with [Father] at his home, however erratically. The Court is not clear on how much or how often, but clearly the visits do occur.
>
> [Mother] has requested the return of the cellular phone. Likewise, that was not raised or argued, so not determined. [Mother] requested in her written petition that the child speak to [Father] only if cordial. Again, there was no testimony regarding any conversations that they had on a regular basis that were not cordial. There was an allegation that there was a statement that was made by the father, an inappropriate statement, but generally speaking, their general communication and conversation was not really raised or argued so that is not . . . determined either.
>
> And then ultimately that the child speak to [Father] only if the child wants to, and again not raised or argued, and when I spoke to the child, I didn't get any indication from the child that he didn't want to speak to the father or have conversations with the father.
>
> However, at the time of the hearing, [Mother] did request that the child be the one to determine when visits shall occur and end . . . .

The court then recounted the child's testimony and opined that he had been coached:

> Both of you are having conversations that neither of you should be having with a nine or ten-year-old child regarding your issues, regarding his child support, regarding visitation and/or access. It's inappropriate and it drags the child into the muddy waters of the parents, where the child just certainly should not be.

> As a result, it appears to this Court that the child has been either directly coached or indirectly coached by consistently hearing how [Mother] professes how well she cares for and provides for the child.
>
> It's funny that counsel should bring up the issue that the father says that the child says is nothing more she could ask for, because I just don't hear that coming out of nine or ten-year-old's mouth. If there's just nothing I ever could ask for from my [Mother]. Children always have something else that they want to ask for. He was very fluid when he listed out all the things his mother does for him and cares for him. And I have no doubt that she does these things or that he loves and cares for her, but just the way that it was presented just seemed suspect to me.

Also, with respect to the child's testimony about alleged abusive incidents involving Father, the court stated that she found "his testimony on that issue very disjointed and very inconsistent. I just—it all seemed very inconsistent and incoherent to me."

The court reviewed the June 17, 2021 protective order and found "no change in the access and/or visitation as a result of the final protective order that was issued," which would be in place through June 23, 2023. The court found as well that the testimony and the protective order were insufficient to justify a modification of visitation:

> [I]t's [Mother's] burden to show this Court why a change should occur and/or be in the best interest of the child. [Mother] must show a material change that is negatively affecting the child to support the request, and there really just has not been any material change showing that is negatively affecting the child. The child appears to be well cared for, well dressed, well housed, well fed, well educated, he seems to be in good medical condition, and while there is some question as to his

> mental state, the evidence was insufficient for this Court to determine why that was so.

The court noted that there was no evidence that Father had ever been convicted of child abuse, as Mother's motion alleged, and that, despite Mother's assertions that he is an inactive parent, Father has been "begging for time with the child" through his various court filings. The court also found, citing the child's testimony, that his "visits are going along fine" and there was otherwise insufficient testimony to establish any negligence on the part of Father during visits.

The court denied Mother's request to modify visitation and instructed the parties to continue visitation as ordered, noting that it "is not about to turn the child into a parent by allowing him to basically call the shots, particularly when this Court has concerns that honestly the shots would really . . . be coming by and through the influence of [Mother]." A corresponding order was entered March 18, 2022, and Mother's timely appeal followed. Additional facts are discussed as needed below.

II. DISCUSSION

Mother appeals the order denying her petition for contempt and motion for modification, citing four issues,[1] one of which is appealable: whether the trial court abused

[1] Mother framed her four Questions Presented as follows:

> ISSUE 1: The presiding Judge in this matter, Judge ShaRon M. Grayson Kelsey should have recused herself due to a conflict of interest. While she was presiding over this case she was also required to prepare a document required by the Judicial Disabilities Commission, challenging my complaints against

Continued . . .

her. She stood as the "accused" (for a third time) in my matter against her with the Judicial Disabilities Commission, compromising her ability to reasonably and fairly judge this case.

* * *

ISSUE 2: Kelsey displayed a bias against me and my testimony and this was prevalent throughout the hearings. Her inability to properly conduct this hearing fairly and without bias against me set the tone for how she would subsequently question my son's testimony, ask leading questions and make a final ruling based on her own coloring or distortion of events rather than the facts presented.

* * *

ISSUE 3:

a) The child's rights. In this case and due to the seriousness of the circumstances, visitation with the non-custodial parent should be at the discretion of the child. "Best interest of the child" standard has not been adhered to.

b) Visitation weekends should end at the child's discretion or on Sunday afternoon, for the child to have school on Mondays.

* * *

ISSUE 4[:] Child support contempt, which I filed, where Kelsey found the Appellee not in contempt.

Issue 1 isn't preserved. Mother didn't file a motion or otherwise request that the trial judge recuse herself and we decline to exercise our discretion to consider whether it was an abuse of discretion for the trial judge not to disqualify herself *sua sponte*. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal."). In any event, the alleged improper conduct occurred "from a source within the four corners of the courtroom,"

Continued . . .

its discretion in denying Mother's request to modify the visitation schedule in favor of supervised visitation at the child's discretion. Mother attacks the trial court's decision in two ways: *first*, she argues that the court failed to consider the best interest of the child, and *second*, she contends that the trial judge was biased against her.

"Custody and visitation determinations are within the sound discretion of the trial court, as it can best evaluate the facts of the cases and assess the credibility of witnesses." *Boswell v. Boswell*, 352 Md. 204, 223 (1998) (citation omitted). We review these determinations against a three-layered standard of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard . . . applies. Secondly, if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003) (cleaned up). An abuse of discretion occurs only when the custody award is "'well removed from any center mark imagined by the

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which is not grounds for recusal. *Conner v. State*, 472 Md. 722, 744 (2021) (cleaned up).

Issue 2 doesn't state a discrete request for relief. To the extent Mother alleges that the trial court's bias infected its decisions on custody, it's fairly part of Issue 3; to the extent Mother intends it as a separate basis for requiring the trial judge to recuse, it is not preserved.

Also, Mother has no right of appeal from an order denying her contempt petition, so Issue 4 is not before us. *Kadish v. Kadish*, 254 Md. App. 467, 508 (2022) (*citing Pack Shack, Inc. v. Howard Cnty.*, 371 Md. 243, 254 (2002)).

reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 686 (2014) (*quoting North v. North*, 102 Md. App. 1, 13–14 (1994)).

A. The Trial Court Considered The Best Interest Of The Child Properly When It Denied Mother's Request For A Modification Of Visitation.

First, we consider Mother's contention that the trial court failed to follow the best interest of the child standard. Mother argues that the court should have found a qualifying material change from Father's "abuse, dangerous home situation[], [and] dramatic shifts in [the] child's behavior," and that the court should have given greater weight to the child's preference regarding visitation. She argues that "the child's own testimony" established that "it would be in his best interest to be able to determine whether he goes for visits to the [Father] or not."

When considering a motion to modify visitation, the court engages in a two-step process to determine whether modification is warranted. *See Jose v. Jose*, 237 Md. App. 588, 499 (2018). The court determines first whether there has been a material change in circumstances, and if so, considers whether a change in custody would be in the best interest of the child. *Id.* The burden is on the movant to establish both that there has been a material change and that, because of that change, a change in custody serves the best interest of the child. *Gillespie v. Gillespie*, 206 Md. App. 146, 171–72 (2012); *see also Taylor v. Taylor*, 306 Md. 290, 302 (1986) (discussing factors relating to best interests of the child for child custody determinations); *Ross v. Hoffmann*, 280 Md. 172, 174–75 (1977)

(discussing the best interest of the child standard); *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977) (same).

Here, the trial court found that Mother did not meet her burden of showing a material change in circumstances that affected the child negatively. At the hearing, Mother relied on her own testimony, the child's testimony, and the June 17, 2021 protective order to argue that there were new circumstances making it dangerous for the child to resume unsupervised visitation with Father.[2] But the court found insufficient evidence that the current visitation was the cause of any harm to the child's mental state, stating "[t]he child appears to be well cared for, well dressed, well housed, well fed, well educated, he seems to be in good medical condition, and while there is some question as to his mental state, the evidence was insufficient for this Court to determine why that was so." The court also considered that the June 17 protective order had not changed the circumstances of the parties—indeed, by its own terms it left the visitation schedule intact—and found that the "visits are going along fine" and there otherwise was no testimony to establish any negligence on the part of Father during visits.

"Visitation rights . . . are not to be denied even to an errant parent unless the best interests of the child would be endangered by such contact." *Boswell*, 352 Md. at 220 (citation omitted). There is a "presumption that liberal unrestricted visitation with a non-custodial parent is in the best interests of the child . . . ." *Id.* at 221. Furthermore, restrictions

[2] Although Mother argues that the child's "therapy document submitted as evidence adequately substantiated and confirmed what [she] was testifying to," that document was not admitted into evidence, and properly so.

on visitation must be "reasonable," and must bear a "reasonable relationship" to a harm they wish to protect. *North*, 102 Md. App. at 14–15. Thus, it was Mother's burden to overcome the presumption that unsupervised visitation was in the child's best interest and to prove that, in fact, the child would be endangered by unsupervised visits with Father.

Reviewing the record, Mother's testimony relied on statements from the child that there had been abuse. But the child's testimony conflicted with Mother's allegations—he testified that the visits were "working for me" but that he wanted to be able to end them to "do something [else] that day" like spend time with friends. The court otherwise didn't give much weight to the child's testimony regarding certain dangerous situations, a decision we can't disturb on this record. *See Karanikas v. Cartwright*, 209 Md. App. 571, 590 (2013) (discussing that the court has discretion over whether to speak to the child in a custody dispute "'and, if so, the weight to be given the children's preference as to the custodian.'" (*quoting Leary v. Leary*, 97 Md. App. 26, 36 (1993)); *see also Davis v. Davis*, 280 Md. 119, 125 (1977) (The trial court has the opportunity to observe the parties and witnesses, hear testimony, and make credibility determinations and "is in a far better position than [the] appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.").

We understand Mother's disagreement with the court's conclusion, but we find no clear error in the court's finding that Mother had fallen short of proving that the child was endangered by unsupervised visits with Father. The child's testimony didn't support a finding that he had been abused, and the trial court, in its role as factfinder, was justified

in evaluating Mother's influence over the child's testimony and weighing his testimony about harm accordingly. Given the actual evidence before the court and the deference we owe appropriately to the first-hand fact-finder, we affirm the court's ruling that Mother had not proven the prerequisite for a modification of custody.

B. The Trial Court Did Not Show Bias Against Mother.

Second, Mother contends that the trial court was biased against her. Although her argument that the trial judge should recuse is not preserved, we do consider Mother's contention that the trial court "displayed a bias against [her] and [her] testimony" that was "prevalent throughout the hearings" in the context of the custody rulings. It's true that we will vacate a custody determination when the circuit court "has been guided by their personal beliefs in fashioning an outcome rather than by the evidence . . . ." *Azizova v. Sulymanov*, 243 Md. App. 340, 348 (2019). But as discussed above, we discern no clear error in the trial court's conclusion that Mother failed to meet her burden.

Mother quotes various parts of the transcript that, she claims, demonstrate the trial court's bias against her. She refers specifically to the fact that the court limited the portions of her testimony (which was elicited by counsel) that included hearsay while allowing Father (who was *pro se*) to testify in narrative form. But the court interrupted and limited both parties' testimony; it was in no way as one-sided as Mother contends. During Father's narrative testimony, which was brief, the court stopped him in the same way as it stopped Mother, warning him that "whatever it is you're going to tell me I believe that it's probably going to be hearsay, so I'm just going to stop you there." Moments later, the court later

interrupted him again: "It's not in this case right now, so we're not discussing that. Okay?" To control the hearing, the court had to reprimand both parties (and counsel, for that matter) for bringing up irrelevant events, had to mute all of the participants when they interrupted each other, and repeatedly had to instruct parties to re-word questions and limit responses. The transcript is rife with examples of the court trying to control the proceedings and keep the parties' testimony and arguments on relevant matters, and the court's directives were aimed fairly at both sides.

Mother also takes issue with the trial court's questioning of the child and its impressions of the child's testimony. Mother argues that the court "weave[d] her own narrative to justify what her ruling will eventually be." In *Azizova*, we reversed a custody determination when the circuit court improperly weighed evidence about a mother's decision to attend school and work a part-time job when the court found it was not a financial necessity. *Id.* at 364. We found that the circuit court also relied on "stereotypes about the fragility of infancy" that did not apply to the child, who was thirty-one months old at the time. *Id.* at 373. Additionally, the court determined that the mother was unable to function in the best interest of the child because of her youth and an incident of drunkenness at which the child was not present, while finding the father able. *Id.* at 374. None of the factual findings in that case linked the mother's behavior to an adverse impact

on the child or its development, and we held that the circuit court's assumptions were not supported by the evidence. *Id.*

After reviewing this transcript, though, we can't point to any improper analysis by the trial court. Again, the trial court "is in a far better position than [the] appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor." *Davis*, 280 Md. at 125. On this cold record, we can't say the trial court mischaracterized the child's testimony. The child himself stated that the visits with Father were "working for [him]," but that he wanted to be able to end them to "do something [else] that day," like spend time with friends. Rather than showing bias, the transcript reveals that the court considered all the available evidence and applied the appropriate legal standard in fashioning its ruling. The court's denial of Mother's request for unsupervised visitation at the child's discretion was not an abuse of discretion, especially given the conflicting testimony and lack of evidence of harm to the child.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.