Circuit Court for Washington County
Case No. C-21-FM-20-000190

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 373

September Term, 2025

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A. R.

v.

C. R.

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Wells, C.J.,
Tang,
Kenney, James A. III
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kenney, J.

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Filed: December 8, 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 Rule 1-104(a)(2)(B).

A. R. ("Mother"), appellant, and C. R. ("Father"), appellee, are the divorced parents of two minor children, "M." and "Z." (jointly referred to as "the children").[1] In this timely appeal, Mother challenges an order of the Circuit Court for Washington County which modified legal custody of the children. She asks[2]:

1. Whether the trial court's finding of a material change in circumstances was erroneous.

2. Whether the trial court abused its discretion in awarding Father tie-breaking authority on education issues.

For the reasons that follow, we shall affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to the Judgment of Absolute Divorce dated January 5, 2022, the parties were granted joint legal and shared physical custody of the children. At the time the judgment of divorce was entered, M. was seven years old, and Z. was three years old. Legal custody was subsequently modified three times. It is the third modification that is the subject of this appeal.

[1] To protect the identity of the children, we refer to the parties by their initials and to the children by randomly selected letters.

[2] Rephrased from:

1. Whether the trial court abused its discretion in determining that a material change existed in this matter?

2. Whether the trial court abused its discretion in awarding Father tie-breaking authority on educational issues for both the minor children?

*First Modification*

On August 11, 2022, Father filed a motion to modify custody. In support of the motion, Father alleged that Mother enrolled M. in a new school ("East Elementary"),[3] which was located "across the county from [Father's] established residence[,]" without consulting Father. Father alleged that it was in M.'s best interest to attend the elementary school in Father's school district ("West Elementary"). Father requested sole legal and physical custody of the children.

Mother filed a cross-motion to modify custody. Mother alleged that the parties were unable to agree as to whether M. (and eventually Z., when Z. reached school age) should attend school "based on the Father's address or the Mother's address." Mother asked the court to order that the children "attend school based on [Mother's] district[.]"

On October 4, 2022, following an evidentiary hearing, the court entered an order granting Father sole legal custody as to educational matters. Mother moved to alter or amend the order on grounds that there was no evidence of a change in circumstances that affected the children's welfare. The court denied the motion. Mother filed a notice for en banc review.

*Second Modification*

On December 9, 2022, while the en banc review was pending, the parties agreed to the entry of a consent order which restored joint legal custody on all issues, including education, beginning January 24, 2023. The consent order further provided that M. would

[3] To further protect the children's privacy, we have assigned fictitious names to the schools they attended.

remain at East Elementary until January 24, 2023, after which M. would begin attending West Elementary.

*Third Modification*

On August 6, 2024, Father filed a second motion to modify legal custody. As grounds for the motion, Father alleged that he and Mother were "unable to reach an agreement on where to enroll [Z.] in school, which represents a material change in circumstances." Father requested that the court grant him sole legal custody of the children, or alternatively, sole legal custody over educational matters.

On September 4, 2024, Mother filed a cross-motion to modify legal custody. She alleged several material changes warranting a change in legal custody, including the parties not agreeing on a school for Z., and Father "unilaterally" enrolling Z. in West Elementary. Mother further alleged that M. had "talked" about self-harming himself "due to bullying" at West Elementary and that M. "perform[ed] better" when going to East Elementary. Mother requested that the court grant her sole legal custody over educational and mental health issues for the children. On the same date, Mother filed a petition for contempt based on Father's unilateral decision to enroll Z. in West Elementary, which she maintained was a violation of the terms of the consent order granting the parties joint legal custody.

***Modification/Contempt Hearing***

On February 10, 2025, the court held a hearing on the parties' respective motions to modify custody and Mother's petition for contempt. At the time of the hearing, M. was eleven years old and in the fifth grade. Z. was six years old and in kindergarten. Both parties were represented by counsel and testified at the hearing. The court also heard testimony

from Karen Robbins, the court-appointed parent coordinator, and Jeremy Malloy, Mother's boyfriend.

*Testimony of Karen Robbins*

Pursuant to the December 9, 2022 consent order, the parties agreed to hire Ms. Robbins as their parent coordinator and they were ordered to schedule an appointment with her to "discuss access and exchanges" upon M.'s transfer from East Elementary to West Elementary in January of 2023. The parties did not meet with Ms. Robbins, however, until March of 2023, by which time M. had been attending West Elementary for two months. The parties disagreed as to whether M. should remain there "[s]o, the discussion really revolved around whether [West Elementary] was truly the best choice for [M.]"

At the parties' request, Ms. Robbins spoke with M.'s therapist. Upon speaking with the therapist, Ms. Robbins learned that Mother's "report that . . . [M.] was not doing well" at West Elementary was "not . . . correct." Ms. Robbins testified: "what I learned from [the therapist] is that what was reported by [M.] . . . depend[ed] on which parent brought him [to the appointment]. And that the issue is essentially a parent issue and not a [M.] issue."

After Ms. Robbins spoke with the therapist, she communicated with the parties by email. Mother responded by providing Ms. Robbins with notes from M.'s primary care physician that purported to support that M. was unhappy and was "being bullied" and "physically accosted" at West Elementary. According to Ms. Robbins, the doctor's notes were "unusual." She explained: "[t]here were notes that were written by the doctor[,] and then they were lined out and then there were other notes that were typed in and then there were further pieces that were inserted in bold." When Ms. Robbins asked Mother why the

report was "redacted[,]" Mother responded that the notes were "incorrect" and the doctor was asked to amend them.[4]

In June of 2023, Ms. Robbins and the parties began discussing pre-kindergarten placement for Z. for the 2023-24 school year. The parties agreed that East Elementary's "accelerated" pre-kindergarten program was "superior" to the pre-kindergarten program at West Elementary. Ultimately, Z. was enrolled in East Elementary for pre-kindergarten, but there was no agreement as to whether Z. would remain at East Elementary when Z. started kindergarten the following year.

In June of 2024, the parties met with Ms. Robbins concerning the children's placement for the 2024-25 school year. According to Ms. Robbins, Mother and Father "absolutely disagreed on a fundamental level" and were both "very firm in their points of view." Father's position was that M. was "doing well" at West Elementary and that Z. should attend the same school. Mother wanted both children to attend East Elementary, which she believed was a better school. Mother believed that M. was being bullied at West Elementary, that he was unhappy there, and that he wanted to go back to East Elementary.

*Mother's Testimony*

Mother testified that she never wanted M. to attend West Elementary. She agreed to it to regain joint legal custody, rather than wait for a decision to be rendered in her request for en banc review of the first modification order which granted sole legal custody to Father.

[4] The doctor's notes were not offered into evidence.

According to Mother, M. was not happy at West Elementary. She said, M. "comes crying" about being bullied and "doesn't want to live anymore, and like every day is a bad day[.]" Mother described several incidents where "bullying has been an issue." She said that, while M. was using the bathroom, other students "made fun" of M. and kicked in the door of the stall. On one occasion, M. was held down and kicked by another child. In another incident, "a kid held [M.] down and pretended like he was humping [M.]" Mother testified that she "reached out" to M.'s teachers but the teachers either did not respond or "just brushed off" Mother's concerns about bullying.

Mother testified that M. had "letters" in his bookbag expressing suicidal thoughts and with West Elementary "x'd out everywhere and [M.] holding swords[.]" Mother introduced into evidence a drawing that was found in M.'s bookbag in November of 2023. The drawing depicts three figures composed of rectangular shapes. One figure appears to be holding some sort of weapon. The word "help" is written in a speech bubble above another figure, who appears to be crying. At the bottom of the page, the actual name of the school M. attends is written, over which there are two diagonal lines in the shape of the letter X. Mother showed the drawing to M.'s therapist.

On cross-examination, Mother acknowledged that the therapist did not "confirm" the account of bullying when she spoke to Ms. Robbins. Mother "had a problem" with the therapist because she "totally just disregarded the fact that [M.] was being bullied" at West Elementary and "consistently just brought up" the court order providing for M. to attend West Elementary. Mother stopped taking M. to the therapist. She explained: "I feel like

[M.] is not able to open up to her as [M.] should in therapy, and I don't like the fact that a court order is just brought up in [M.'s] face."

Mother would not agree to send Z. to West Elementary for kindergarten because she did not feel it was in his best interests. According to Mother, Z. was also unhappy at West Elementary. When asked to explain, Mother said that Z. was "[a]cting out[,]" was "disruptive in class[,]" and his grades were not as good as the previous year, when he was in pre-kindergarten at East Elementary.

When the parties failed to reach an agreement about school choice with the help of Ms. Robbins, Mother hired an attorney, but still no resolution was reached. A few weeks before the 2024-25 school year started, Z. still had not been enrolled in kindergarten. Mother testified that Father enrolled Z. at West Elementary without her knowledge.

*Father's Testimony*

Father is remarried and lives with his wife and their young child. Father's wife also has two school-aged children who live with them. When Father was asked why he enrolled Z. in West Elementary, he replied:

> Multiple reasons. The main reason being that I wanted [Z.] to attend school with [Z.'s sibling,] [M.] as well as [Z.'s] stepsiblings, who [Z. is] very close with and [Z.'s] half-[sibling] . . . , who would be starting this Fall. . . . [I]t had already been discussed and a Consent Order was signed that [M.] would attend [West Elementary], nothing had changed, and I did not see any reason why they should be [in] separated school districts. One, because it just doesn't make sense to separate two kids, two [siblings] in their school districts. Two, it's a logistical nightmare. Both schools start at the same time, both schools have pick up at the same time. So, if one went to one school and one was at the other[,] . . . you have to [have] some kind of after school care set up to make it work[.]

Father denied that he enrolled Z. in West Elementary without telling Mother. The following text messages between the parties were admitted into evidence.

*February 26, 2024*

[FATHER]: Just reaching out now before the end of summer sneaks up on us. As we discussed with [Ms. Robbins], our parent coordinator, [Z.] attended [East Elementary] for the advanced learning program and will attend [West Elementary] for [k]indergarten. Registration will start end of spring. I will get the forms and pass them along to you to fill out your portion. Also after-school care . . . for both [children], they give a discount for early registration and we both know if fills up quick so we should stay on top of that.

[MOTHER]: Per the parent coordinator she said the issue would need to be addressed.

*July 1, 2024*

[MOTHER]: [Father,] clearly we have a disagreement in regard to the school issue. There is no prior order[] or agreement that [Z.] would attend [West Elementary]. Please do not put in any applications until we have a chance to discuss this matter. Please let me know when we can discuss.

*July 3, 2024*

[FATHER]: I've read your message and I believe it is factually incorrect based off of our conversations and emails with Ms. Robbins. I don't have anything else to discuss.

*July 24, 2024*

[FATHER]: I don't see what there is to discuss. [M.] is going to [West Elementary]. [Z.] should not be separated. The Parent Coordinator said the same.

[FATHER]: I have the application for [West Elementary]. We also need to get . . . set up for after school care.

[MOTHER]: We have joint legal custody and if we can't agree then we have to have some sort of mechanism in place such as mediation.

[FATHER]: We do . . . that's what the parent coordinator is.

*July 25, 2024*

[MOTHER]: The parent coordinator and mediator are two different things.

*August 13, 2024*

[MOTHER]: Did you register [Z.] for [West Elementary] and if so when did you do that?

[FATHER]: I sent you an email answering this question.

An email dated August 13, 2024, from Father to Mother, and copied to Ms. Robbins, was admitted into evidence. Father wrote:

> Since February 26, 2024, I have attempted to work with you to resolve the issue of where [Z.] would be attending this fall, which has included working with our parent coordinator and attorneys. I still do not understand why you want to put our children in different school districts. . . . To move things forward, my attorney filed a Complaint to Modify Legal Custody. . . . [Z.] has already missed out on Kindergarten Day at [West Elementary] on [August 8, 2024]. It is not in [Z.'s] best interest to be kept out of school and miss meet the teacher night. I have turned in the necessary registration forms to allow [Z.] to attend [West Elementary]. I have attached a copy of the forms that I turned in.

When asked about his efforts to resolve the issue before enrolling Z. in West Elementary, Father explained:

> I did everything that I thought I was required to do. I reached out to [Mother] in App Close for us to try and discuss it civilly and figure it out on our own. That clearly didn't work. So, then I went to the next step that we were ordered to do. And that was get Karen Robbins involved, the Parent Coordinator. We went through that. We agreed for her to talk to the therapist. We signed consent for her to talk to the therapist. She came back with her answers. That didn't work. So, at that point in time we're done, we wasted . . . [four] months of time and it was coming up that [Z.] had to be enrolled. I refused to not enroll [Z.] in school and let [Z.] stay in limbo while a court date was decided on and [Z.] miss out on . . . education. There's no way that was going to happen. So, I reached out to [Mother] again . . . . I consulted an

> attorney. A decision was made. School was coming up. I took it upon myself to file the paperwork based off the fact that we had already talked to the Parent Coordinator. There was a Consent Order in place. Yes, I know [Z.'s] name wasn't on it but in my mind it only made sense that the kids went to the same school.

Father testified that the children have "good days" and "bad days" at West Elementary, "just like any other elementary school student." He said the children's grades were "good" and there was "nothing out of the norm." Copies of the children's report cards for the previous two marking periods were introduced into evidence.

According to Father, M. was not being bullied at school. Father said: "[t]here have been incidents . . . that needed [to be] addressed. They were addressed. And there were some incidents that were brought up that were found not to be what they seemed." Father added:

> [T]here has been no bullying reports filed through the school. We've had one meeting with the principal and the teacher . . . but there were no signs that [M.] was being bullied. And [M.'s] definition of being bullied was completely miscued as to what was actually happening. Like the bathroom incident. It was a kindergartener that kicked the bathroom stall door in and hit [M.] in the head. . . . It wasn't a bullying situation. . . . The other incident was on the playground. [M.] got hurt on the playground because a kid stepped on [M.'s] hand on the monkey bars. . . . I don't believe it was a bullying situation.

Father was asked about the drawing that Mother discovered in M.'s bookbag. He said that it "looks like one of [M.'s] comic book drawings. They look like Minecraft characters because [M.] loves writing movie scripts and story scripts and then acting it out on his iPad[.]" Father never noticed anything that suggested M. wanted to engage in self-harming himself.

Father said that Mother had not been taking M. to therapy "because she doesn't agree with the therapist." According to Father, M. appears "happy" and "relieved" after therapy sessions and asks "when [are we] coming back[?]"

*Testimony of Jeremy Malloy*

Mr. Malloy, who had been dating Mother for two years, testified that he had picked up M. from West Elementary on occasion. When asked to describe M.'s demeanor on those occasions, Mr. Malloy stated, "it varied but . . . there was a little bit of consistency as far as like just kinda down, like, just not happy, you know what I mean. Sometimes [M.] would be chatty, sometimes [M.] wouldn't."

## ***Ruling on Modification***

The court held a virtual hearing on March 21, 2025 to announce its ruling. The court stated:

> When the [c]ourt considers a modification of custody matters, it has to look first at whether there is a material change in circumstances. In this case, the parties both seem to concede that there is a material change in circumstance. Namely, that circumstance is there was a fundamental disagreement over where [Z.] would be attending school. When the [most recent] [o]rder . . . was put in place, [Z.] was not yet of school age. . . . [T]here was . . . apparently an agreement made to enter into a Consent Order . . . that [Z.] would attend [East Elementary] for PreK, but the question then became . . . what would happen once [Z.] reached elementary school age. And obviously [Z.] did that and needed to be enrolled for [k]indergarten, and there was a dispute as to where that would occur. There [were] also some disputes regarding the . . . therapist and who should be providing therapy services to the children, and that created further disagreement. Therefore, the [c]ourt does find, and the parties do seem to concede, that there was a material change in circumstances that would allow the [c]ourt to reach the best interest standards concerning the children.

The court then engaged in an analysis of the custody factors set forth in *Taylor v. Taylor*, 306 Md. 290 (1986).[5] The court found both parties to be fit parents and that there was no evidence that the character and reputation of either parent should have any influence on the custody determination. The court found that the children had a well-developed relationship with both parents, and had a good relationship with Father's wife and their stepsiblings. The court found that both parties were able to maintain a stable and appropriate home for the children and both parents had adequate opportunities for time with the children. The court found there was evidence that the parties generally got along and were able to make shared decisions regarding the children, with the exception of where the children should attend school and the choice of therapists.

In discussing the factor that requires the court to consider the potential disruption of the child's social and school life, the court stated:

> [T]he [c]ourt is concerned that there have been multiple schools for the children in a relatively short period of time. The [c]ourt believes that stability is important at any age of a child's life, but certainly at a young age, and the [c]ourt is concerned about the children being ping-ponged back and forth between schools. The [c]ourt has reviewed . . . the report cards of the children, and the report cards seem to indicate that the children are generally doing well.

[5] "[F]actors particularly relevant to a consideration of joint custody" include: capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; willingness of the parents to share custody; fitness of the parents; relationship established between the child and each parent; preference of the child; potential disruption of the child's social and school life; geographic proximity of parental homes; demands of parental employment; age and number of children; sincerity of parent's request for custody; financial status of the parents; impact on state or federal assistance; and benefit to parents. *Taylor*, 306 Md. at 303-11.

The court found credible Ms. Robbins's testimony that "[Mother's] report that [M.] was not doing well at [West Elementary] was incorrect[.]"

Ultimately, the court maintained joint legal custody, but provided that, in the event of an impasse between the parties on education and mental health issues, Father would have tie-breaking authority:

> The [c]ourt does not believe it [is] appropriate to award either party sole custody of the children or sole custody for educational and mental health purposes because there has been a demonstration that the parents are active and involved in their children's education, . . . therapy, and . . . medical care. And the [c]ourt does find that they have the ability to continue to cooperate generally and have the right to be involved in decisions regarding the children's educational and mental health . . . . Therefore, as to a modification of custody, it's the [c]ourt's determination that both parents be awarded joint legal custody, with tie-breaking authority going to [Father] for only educational and mental health purposes, and that the parties' physical custody arrangements otherwise remain as they are currently.

On April 3, 2025, the court entered an order consistent with its oral ruling. In addition, the court ordered the parties to communicate in good faith on matters related to legal custody:

> If there is a disagreement between the parties concerning a legal custody matter, the parties shall first attempt resolution through good-faith communication via AppClose. If the parties are unable to reach a mutual decision after exchanging four (4) messages or within seven (7) calendar days of the initial communication (whichever occurs first) on a matter concerning educational and/or mental health . . . [Father] shall have tie-breaking authority to render a final decision on the disputed educational and/or mental health matter[.]"

The order further provided that Z. shall remain at West Elementary. The court denied Mother's petition for contempt. This timely appeal followed.

## STANDARD OF REVIEW

In a case such as this, which has been tried without a jury, we "review the case on both the law and the evidence." Md. Rule 8-131(c). In doing so, we "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id*.

An appellate court applies different standards when reviewing different aspects of a child custody decision:

> The appellate court will not set aside the trial court's factual findings unless those findings are clearly erroneous. To the extent that a custody decision involves a legal question, such as the interpretation of a statute, the appellate court must determine whether the trial court's conclusions are legally correct, and, if not, whether the error was harmless. The trial court's ultimate decision will not be disturbed unless the trial court abused its discretion.

*Gizzo v. Gerstman*, 245 Md. App. 168, 191-92 (2020) (cleaned up).

A trial court's finding "'is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *In re M.H.*, 252 Md. App. 29, 45 (2021) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). In reviewing the court's findings, "all evidence contained in an appellate record must be viewed in the light most favorable to the prevailing party below." *Lemley*, 109 Md. App. at 628.

An abuse of discretion "may occur when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo*, 245 Md. App. at 201. The abuse of discretion standard "'accounts for the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.'" *Id.* (cleaned up) (quoting *Santo v. Santo*, 448 Md. 620, 625

(2016)). "The trial judge, who 'sees the witnesses and the parties, and hears the testimony is in a far better position than the appellate court, which has only a transcript before it, to weigh the evidence and determine what disposition will best promote the welfare of the child.'" *Id.* (cleaned up) (quoting *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000)). '"An abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case.'" *B.O. v. S.O.*, 252 Md. App. 486, 502 (2021) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)).

**DISCUSSION**

"When presented with a request for a change of, rather than an original determination of, custody, courts employ a two-step analysis." *McMahon v. Piazze*, 162 Md. App. 588, 593-94 (2005). "First, the circuit court must assess whether there has been a 'material' change in circumstance." *Id.* at 594. "A change in circumstances is 'material' only when it affects the welfare of the child." *Id*. The rule that a custody award may not be modified absent a material change in circumstances is "intended to preserve stability for the child and to prevent relitigation of the same issues." *Id.* at 596. If there is "either no change or the change itself does not relate to the child's welfare, . . . there can be no consideration given to a modification of custody." *Wagner v. Wagner*, 109 Md. App. 1, 29 (1996).

"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." *McMahon*, 162 Md. App. at 594. The "determinative factor" in evaluating whether a modification in custody is warranted is '"what appears to be in the welfare of

the children at the time of the [modification] hearing.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 357 (2019) (emphasis omitted) (quoting *Raible v. Raible*, 242 Md. 586, 594 (1966)), *cert. denied*, 467 Md. 693 (2020).

**I.**

Mother sets forth various arguments in support of her claim that the court erred in finding a material change in circumstances. We will address each argument in turn.

First, Mother asserts that the court "relied primarily on its inaccurate belief that the parties conceded that a material change in circumstances was present[.]" The record does not support this contention. The court simply noted that the parties "seem[ed] to concede" the existence of a material change; a reasonable observation given that both parties were requesting a modification of custody based on allegations of a material change in circumstances. It is clear that the court made an independent finding of a material change in circumstances. The court determined that, after entry of the consent order, which re-established joint legal custody and choice of school for M., the parties were unable to reach a shared decision concerning the choice of school for Z. The court further found that the parties could not agree on choice of therapist for M. Based on these findings, the court concluded: "[t]herefore, *the* [*c*]*ourt does find*, and the parties do seem to concede, that there was a material change in circumstances that would allow the [c]ourt to reach the best interest standards concerning the children." (Emphasis added.)

Next, Mother claims that the court "erroneously found that [Z.] starting elementary school, in and of itself, was a material change."[6] The court, however, did not find that the fact that Z. was old enough to start kindergarten was, in itself, a material change. Rather, the court determined that the parties' inability to reach a shared decision as to a school for Z. and a therapist for M. was a material change.

Mother further claims that the impasse regarding where Z. would attend school did not constitute a material change in circumstances because the parties' "fundamental disagreement" about where both children would go to school preexisted the entry of the prior order for custody. We are not persuaded. The prior custody order was entered on December 9, 2022. The evidence demonstrated that, in June of 2023, the parties agreed that Z. would attend East Elementary for pre-kindergarten. The parties did not begin discussing kindergarten placement until February of 2024. Because of the ensuing stalemate, Z. remained unenrolled in any school as of mid-August of 2024. In our view, the evidence supports the court's finding of a material change in circumstances. Moreover, the court did not base its finding of a material change in circumstance solely on the dispute over Z.'s school, but also on the parties' dispute about a choice of therapist for M. In sum, we conclude that the court did not err in finding that the parties' fundamental dispute regarding choice of school for Z. and choice of therapist for M. was a material change of circumstances affecting the children's welfare.

[6] "'[B]ecause aging is an inexorable progression prevalent in all custody contests[,]'" the fact that the child is older, without more, is not sufficient to establish a material change in circumstances justifying modification of custody. *McMahon v. Piazze*, 162 Md. App. 588, 596 (2005) (quoting *Campbell v. Campbell*, 477 S.W.2d 376, 378 (Tex. Civ. App. 1972)).

**II.**

Mother claims that, even if the court's finding of a material change was not erroneous, the court abused its discretion in granting Father tie-breaking authority on matters related to the children's education.[7] Father asserts that the court's ruling was an appropriate exercise of the court's discretion.

Although joint custody is "often preferable to vesting sole legal custody in one parent," it may be challenging due to "'unresolved marital issues, lingering anger and hurt about the divorce, conflicts with or over new partners, or fruitless power struggles[.]"' *Kpetigo v. Kpetigo*, 238 Md. App. 561, 585 (2018) (quoting *Shenk v. Shenk*, 159 Md. App. 548, 559 (2004)). The "'most important factor'" in deciding whether joint legal custody is appropriate is "the 'capacity of the parents to communicate and to reach shared decisions affecting the child's welfare.'" *Santo*, 448 Md. at 628 (quoting *Taylor*, 306 Md. at 304). "[E]ffective parental communication is weighty in a joint legal custody situation because, under such circumstances, parents are charged with making important decisions together that affect a child's future." *Id.* "If parents cannot make those decisions together because, for example, they are unable to put aside their bitterness for one another, then the child's future could be compromised." *Id.* "Blind hope that a joint custody agreement will succeed, or that forcing the responsibility of joint decision-making upon the warring parents will bring peace, is not acceptable." *Taylor*, 306 Md. at 307.

[7] Mother does not challenge the court's decision to grant Father tie-breaking authority on decisions regarding the children's mental health.

To address the inability of the parents to reach shared decisions, a court may award them joint legal custody with a tie-breaker. *See Kpetigo*, 238 Md. App. at 584 (observing that tie-breaking authority "has unquestionably been recognized in Maryland" (cleaned up)). The purpose of the tiebreaker is to "ensure[] each [parent] has a voice in the decision-making process" by "requiring a genuine effort by both parties to communicate[.]" *Id.* at 585 (cleaned up). "The requirement of good faith communication between the parents helps to ensure the parent with tie-breaking authority does not abuse the privilege of being a final decision-maker." *Santo*, 448 Md. at 634 (noting that "a court has the means to sanction a breach of good faith"). Tie-breaking authority "does not eliminate the voice of the parent without that authority. Rather, such measure pragmatically reflects the need for *some* decision to be made *for the child* when parents themselves cannot agree. It is the child, after all, whom the court must consider foremost in fashioning custody awards." *Id.* at 634-35.

Here, the court found that the parties were generally able to cooperate, were both active and involved in the children's education, and that both had the right to be involved in decisions regarding education. The evidence, however, showed that neither parent agreed with the other's choice of school, and, despite efforts to resolve their differences, the parties remained deadlocked. Under these circumstances, we are not persuaded that the court abused its discretion by determining to maintain joint legal custody but grant tie-breaking authority to Father on matters related to the education of the children. That ruling ensured both continued communication concerning decisions related to the children's

education and that the children's welfare would not be compromised in the parties' failure to reach a shared decision.

Mother contends that, in modifying legal custody, the court failed to address the preference of the child, specifically, M. *See Leary v. Leary*, 97 Md. App. 26, 48 (1993) ("When a child is of sufficient age and has the intelligence and discretion to exercise judgment as to his or her future welfare, based upon facts and not mere whims, those wishes are one factor that, within context, should be considered by the trial judge in determining custody."), *abrogated by*, *Fox v. Wills*, 390 Md. 620 (2006). Here, however, there was no evidence that M. possessed the maturity required for his preference to be considered or even had a preference as to which parent should have legal decision-making authority. Mother claims that the drawing found in M.'s bookbag demonstrated that M. was unhappy at West Elementary. Even assuming Mother's interpretation of the drawing could be viewed as evidence of M.'s preference regarding legal custody, the court found that Mother's concern that M. was not doing well at West Elementary was unfounded. Because that finding is supported by the testimony of both Father and Ms. Robbins, we cannot say that it is clearly erroneous.

Mother maintains that the court abused its discretion in granting Father tie-breaking authority on education issues as to both children because the parties' disagreement related only to choice of school for Z. Again, we perceive no abuse of discretion because the court recognized that another "point of friction" between the parties was whether M. should remain at West Elementary. *See Shenk*, 159 Md. App. at 560 (stating a custody order may include proactive provisions in anticipation of future disputes).

Mother sets forth additional arguments in support of her claim that the court abused its discretion in granting tie-breaking authority to Father, including: (1) the ruling "reward[ed]" Father for unilaterally enrolling Z. in West Elementary; (2) the ruling was "inconsistent" and not "equitable" because, according to Mother, the first modification order dated October 4, 2022, "punished" Mother for unilaterally enrolling M. in East Elementary by granting Father sole legal custody on education matters;[8] and (3) the court ignored evidence that it would have been "much more convenient" for Father to take the children to school at East Elementary than it is for Mother to take the children to school at West Elementary. But the Supreme Court of Maryland has emphasized "in any child custody case, the paramount concern is the best interest of the child." *Taylor*, 306 Md. at 303. Here, the court expressed concern for the children's stability, noting that they had been "ping-ponged" between different schools. At the time of the modification hearing, M. had been attending West Elementary for over two years, Z. had been there for almost a full school year, and the court found that they were generally doing well there. Based on the facts and circumstances of this case, we conclude that the court did not abuse its discretion in granting Father tie-breaking authority on matters related to the children's education.

**JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

[8] The record on appeal does not include a transcript of the hearing that led to the October 4, 2022 order for modification, nor does it include a transcript of the court's oral ruling.