Circuit Court for Wicomico County
Case No. C-22-FM-21-000691

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1175

September Term, 2025

JOANNE FEDORKO

v.

MICHAEL R. FITZHUGH

Arthur,
Ripken,
Hotten, Michele D.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: February 13, 2026

*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 Joanne Fedorko ("Mother"), appellant, and Michael R. Fitzhugh ("Father"), appellee. In 2022, the Circuit Court for Wicomico County granted Father sole legal and primary physical custody of the parties' shared child ("Child"). In July of 2025, on Mother's motion, the court modified custody to grant joint legal and shared physical custody to Mother and Father. According to Mother, following the court's order she became aware that Father planned to move from the home he resided in with his mother ("Grandmother") to his own home. As a result, Mother noted this appeal and presents the following sole issue for our review:

> [w]hether the custody determination should be remanded to the [c]ircuit [c]ourt for re-evaluation based on new and material information concerning the father's post-hearing plans and circumstances.

For the reasons to follow, we shall dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are the biological parents of Child, born in January of 2014. From as early as 2017, Child lived with Grandmother or Father. In August of 2021, Father petitioned for sole legal custody of Child. In January of 2022, following a hearing in which Father participated and Mother was in default, the court awarded sole legal and primary custody to Father, providing Mother supervised visitation with Child.

The next year, in January of 2023, Mother petitioned to modify the 2022 custody order. However, that petition was dismissed as Mother did not demonstrate service on Father. In February of 2025, Mother filed a new petition to modify custody. On July 9, 2025, a settlement conference was held before Magistrate Mark A. Tyler with both parties present. At the hearing, the parties reached an agreement and consented to the immediate

entry of the order announced in open court that day, which granted Mother's motion and awarded joint legal and shared physical custody to Mother and Father (the "modified custody order"). The parties waived their rights to have the magistrate's findings reduced to writing, to receive copies of the findings, and to file exceptions. The following day, Magistrate Tyler issued a report and recommendation that contained the custody modification order, which Judge Leah J. Seaton signed four days later.

Mother asserts that after the court entered the modified custody order in July 2025, she became aware that Father was planning on moving from the home he shared with Grandmother. Based on this new circumstance, Mother noted this appeal of the modified custody order.

DISCUSSION

THE CIRCUIT COURT MADE NO FINDINGS REGARDING THE ALLEGED CHANGE IN CIRCUMSTANCE.

A. Party Contentions

Mother contends that because the circuit court entered the modified custody order with the understanding that Child would be residing with Father and Grandmother when in Father's custody, and instead Father intends to live separately from Grandmother, "the living arrangement the court relied upon when awarding primary custody was not what it appeared to be." Mother asserts that Father's new living situation is a material change in circumstance which the circuit court must now consider and use to re-evaluate the best interests of Child. Mother asks this Court to remand the matter to the circuit court for a

new custody hearing to consider this contended new information and accordingly modify custody. Father did not file a brief in this appeal.

B. Analysis

"Ordinarily, an 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[.]" Md. Rule 8-131(a). A reviewing court may decide issues unaddressed below "if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." *Id.*

In the context of child custody determinations, we have declined to review an appellant's arguments related to issues not raised to the trial court by the parties such as that the custody determination below detrimentally impacted the children's access to airline benefits. *Leary v. Leary*, 97 Md. App. 26, 38–39 (1993) (abrogated in part on other grounds by *Fox v. Wills*, 390 Md. 620 (2006)). Explaining our decision in *Leary*, we stated that "[w]e do not comment on this particular issue as it was not before the trial judge; hence, neither he nor we could consider this allegation." *Id.* at 38. We reasoned that despite the appellant's explanation "that he did not present any evidence because he was lulled into complacency, thinking that he would have at least been named joint custodian," this argument "does not alter our range of review." *Id.* at 38–39 (citing Md. Rule 8-131(a)). We may, however, review an issue even if the parties did not address it below, as long as the trial court decided the issue. *See* Md. Rule 8-131(a); *see also In re Levon A.*, 124 Md. App. 103, 124–25 (1998), *rev'd on other grounds by In re Levon A.*, 361 Md. 626 (2000) (finding that the Appellate Court could review the issue of restitution in the order, although the appellant had not raised exceptions on the issue in the Magistrate's findings, because the

circuit court considered the issue on the stand "just in case"). *See also Skipper v. CareFirst BlueChoice, Inc.*, 264 Md. App. 631, 653–54 (2025) (holding that this Court could review an argument that had not been raised below based on trial court's instruction).

Here, as Mother concedes by bringing the appeal based on this "new information," the circuit court did not consider how Father's alleged plans to move affect the best interests of Child, if at all. Likewise, Mother did not raise the issue below herself because, she contends, she was unaware of the changes.

Additionally, Maryland Code, Family Law section 9-202(a) (1984, 2019 Repl. Vol.) dictates that

> The court may modify, in accordance with the provisions of this subtitle, a child custody or visitation order *if the court determines that there has been a material change in circumstances since the issuance of the order* that relates to the needs of the child or the ability of the parents to meet those needs and that modifying the order is in the best interest of the child.

(Emphasis added). The trial court must make such a determination in the first instance, not the Appellate Court of Maryland. *See Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (citation and quotation marks omitted) (noting that "t[h]e appellate court does not make its own determination" regarding a child's best interest). In explicitly requesting remand for the circuit court to make such a determination, Mother's appeal acknowledges that the circuit court is the proper channel for her request to modify custody.

As a final note, the facts *sub judice* do not lend themselves to an exercise of our discretion under Maryland Rule 8-131(a) because appellate review is not "necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal" where Mother's request—that the trial court reconsider custody—can be satisfied by a filing to

the circuit court, without our review. For those reasons, we do not have jurisdiction to consider the issue raised by this appeal. *See* Md. Rule 8-131(a).

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.