Circuit Court for Montgomery County
Case No.: 128060FL

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1290

September Term, 2025

SHAILA E. LEWIS

v.

DAVID L. LEWIS

Ripken,
Tang,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: March 23, 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 Md. Rule 1-104(a)(2)(B).

Shaila E. Lewis ("Mother"), appellant, appeals the denial of her motion to modify a post-divorce order for shared physical and legal custody (the "Custody Order") of her two children with David L. Lewis ("Father"), appellee. During a two-day evidentiary hearing, both parents, who are attorneys representing themselves, testified and argued their positions at length. Mother alleged that Father has not been "using his tie-breaking authority appropriately and [has been] acting in a way that puts" both their son, born in 2008 ("Son"),[1] and daughter, born in 2011 ("Daughter"), "in harm[']s way." In support, she presented a wide range of concerns focused primarily on Daughter, whose "severe-to-profound deafness" has presented specialized language and educational needs.

The Circuit Court for Montgomery County denied Mother's request to modify the existing Custody Order. In a thorough opinion, the court found that Mother did not establish a "material change in circumstance to the parties' ability or willingness to communicate about legal custody matters" because "many of her examples" of "events that she believes support a finding that there is a material change in circumstance" were "normal difficulties two people experience when trying to co-parent." Challenging that decision in this timely appeal, Mother contends that the court erred in finding no material change and abused its discretion in declining to modify custody. We disagree and affirm that order.

[1] We note that Son's eighteenth birthday approaches in May.

BACKGROUND

The Custody Order and Modification Motion

On June 27, 2016, while these parents' divorce was still pending, the circuit court entered the Custody Order at issue here, which provides for shared physical[2] and legal custody of their two children, with Father having tie-breaking authority and paying child support.[3] Their divorce was finalized on October 18, 2016.

In June 2018, Mother moved to modify custody and child support. Denying that motion, the circuit court found there was no material change in circumstances, and this Court affirmed that decision. *See Shaila E. Settles Lewis v. David L. Lewis*, No. 3482, Sept. Term, 2018 (filed Aug. 20, 2020) ("*Lewis I*").

At issue in this appeal is Mother's second motion to modify legal and physical custody, filed on September 16, 2024, and argued at an evidentiary hearing on July 21-22, 2025. Both parents represented themselves, presenting documentary and video evidence, testifying, and cross-examining each other.[4] Throughout the hearing, most of the evidence and argument concerned their fifteen-year-old Daughter, who has severe-to-profound

[2] The Custody Order provides for "a 2, 2, 5, 5, 2, 2, 5" physical custody schedule, which the parties agreed they were following.

[3] In August 2016, the circuit court denied both Mother's motion to alter or amend the Custody Order and Father's motion to reconsider the Custody Order. Neither parent appealed the Custody Order to this Court.

[4] Both parents are attorneys working for the United States Patent and Trademark Office. The circuit court noted that each had "approximately five and a half hours to testify, offer evidence, and cross-examine the other." Mother presented fifty-five exhibits, while Father presented twenty-six.

bilateral hearing loss for which she has one cochlear implant and attends specialized schools affiliated with Gallaudet University.

Mother argued there was material change warranting custody modification based on Father's failure to meet Daughter's language needs by communicating in American Sign Language ("ASL"), his tie-breaking decision allowing her to participate in contact sports, his mishandling of other health matters for both children, his abuse of tie-breaking authority to silence her at individual education planning ("IEP") meetings, and his failure to communicate with her regarding the children's needs. Father countered that there has been no material change because he and Mother are still able to work together toward agreement and action on what is in the children's best interests. Acknowledging that Daughter is "behind academically" because of her "language deficits," he and Mother were still "working collectively to deal with it" and "relying on the experts at school[.]"

The Order Denying Modification

By order entered on August 21, 2025, the circuit court denied Mother's motion to modify custody, finding "there is no material change in circumstances[.]" Noting that most of the evidence presented at the hearing "solely related to their daughter[,]" the court summarized Mother's "specific examples" of how Father "is not using his tie-breaking authority appropriately and is acting in a way that puts the Minor Children in harm[']s way[,]" which "[s]he believes . . . is a material change in circumstances" because these decisions "affect the welfare of the children." The contentions that Mother renews as grounds for this appeal are highlighted in the following summary:

> [Mother] alleges [Father] (a) ***tried to silence her at IEP meetings;*** (b) ***bought the Minor Children cell phones without consulting her, exposing them to danger (both access to strangers and radiation exposure);*** (c) ***blocked her access to the Minor Children's health insurance accounts;*** (d) ***traveled to Florida when the Minor Children had Covid;*** (e) ***did not agree to switch their daughter to another school until the special education attorney hired by [Father] advised the parties to move her to a different program;*** (f) ***caused their daughter to be severely disabled;*** (g) ***did not learn ASL or cued speech;***[5] (h) tried to get out of paying child support and expenses; (i) did not try to obtain services for their daughter outside of Kendall Demonstration Elementary School ("KDES"); (j) ***ignored their daughter's health needs;*** (k) ***did not participate in conversations about their daughter's financial future;*** (l) gave the Minor Children meat, although the parties were vegetarian prior to the divorce; (m) no longer is involved in religion, as he was during the marriage; and (n) ***put their daughter in danger, without identifying specific danger.***

(Emphasis added.)

Acknowledging "[t]he voluminous evidence show[ing] . . . the co-parenting relationship has been tumultuous," the court concluded that, nevertheless, "the parties have been able to work together and achieve results in the best interest of both Minor Children." We will detail the court's relevant findings and decisions in our discussion of Mother's challenges, which may be grouped into the five categories she identifies in her brief: (1) Daughter's language needs, (2) Daughter's participation in sports, (3) both children's

[5] Cued speech is "a visual mode of communication that uses hand shapes and hand placements" in combination with the mouth movements and speech to make the "phonemes" of spoken language look different from each other. *Information about cued speech*, Cue Coll. (an affiliate of Nat'l Cued Speech Ass'n), https://cuecollege.org/new-cue-library-page/new-info-about-cued-speech/ (last visited Mar. 12, 2026). In contrast, American Sign Language is its own visual language featuring grammar, syntax, and vocabulary, predicated on hand shapes, movements, body language, and facial expressions or signals. *American Sign Language*, Nat'l Inst. on Deafness and Other Commc'n Disorders, https://www.nidcd.nih.gov/health/american-sign-language#1 (last visited Mar. 12, 2026).

health needs, (4) Father's exercise of tie-breaking authority in IEP meetings, and (5) Father's communications with Mother regarding these matters.

Appeal

Mother timely appealed the denial of her motion to modify custody, presenting five questions challenging the circuit court's decision that there has been no material change in the children's needs or the parents' ability to work together in their best interests. We reorder and restate these as follows:

1. Did the circuit court err in finding that Daughter's current language needs and Father's failure to learn ASL do not constitute material change?

2. Did the circuit court err in failing to treat Father's decision to allow Daughter to play school sports over Mother's objection as a material change?

3. Did the circuit court err in determining that Father's handling of the children's health needs was not negligent and does not amount to material change?

4. Did the circuit court err in failing to treat Father's exercise of his tie-breaking authority in IEP meetings as material change?

5. Did the circuit court err or abuse its discretion in finding that Father's communications with Mother and his failure to provide access to health insurance coverage information are not material change?[6]

[6] In her brief, Mother frames the issues as follows:

1. Whether the trial court erred as a matter of law in finding that no material change in circumstances has occurred since [Father] began enrolling our daughter in contact sports in violation of the requirements, conditions of use, and probable risks listed on the FDA-approved label for her cochlear implant.

2. Whether the trial court abused its discretion in finding that no material change in circumstances has occurred when the evidence in the record

(continued…)

After summarizing the law governing our review, we address each of Mother's contentions in turn, explaining why the circuit court did not err in finding that there was no material change or abuse its discretion in denying her motion to modify the existing Custody Order.

shows that our daughter's struggles with language deprivation are significant and ongoing, that, although access to American Sign Language in all environments is the remedy, she only has access in school and at my home, and [Father's] poor decisions and failure to learn and use her languages are the cause of her language deprivation and extremely deficient literacy and academic skills.

3. Whether the trial court abused its discretion in finding that no material change in circumstances has occurred when the evidence in the record shows that [Father] has a history of being irresponsible and ignoring our children's health needs, including allowing our daughter to suffer in pain for an entire weekend only to find out that the pain she complained of was due to a fractured arm.

4. Whether the trial court abused its discretion in finding that no material change in circumstances has occurred when the evidence in the record shows that [Father] violated the custody order by attempting to use his tie-breaker authority to silence me at our daughter's Individualized Education Plan ("IEP") meetings.

5. Whether the trial court abused its discretion in finding that no material change in circumstances has occurred when the evidence in the record shows that [Father] engages in a pattern of behavior that involves refusing to communicate about health and education issues and other matters of major significance to our children, making decisions without notice about health, education, and other matters of major significance to our children, and refusing to provide access to information regarding our children's health and welfare.

LEGAL STANDARDS GOVERNING CUSTODY MODIFICATION

In every child custody determination, the court's responsibility is "to serve the best interests of the child." *Caldwell v. Sutton*, 256 Md. App. 230, 265 (2022) (cleaned up); *see Conover v. Conover*, 450 Md. 51, 60 (2016). When a parent asks a court to modify an existing custody order, the court is required to find that circumstances have materially changed before considering whether a change in custody is in the children's best interests. *See Santo v. Santo*, 448 Md. 620, 639 (2016); *Sayed A. v. Susan A.*, 265 Md. App. 40, 81 (2025); *Caldwell*, 256 Md. App. at 270. The purpose of this threshold "material change" requirement is to preserve stability in custody arrangements and to prevent parties from relitigating the same issues decided in earlier proceedings. *See Domingues v. Johnson*, 323 Md. 486, 498 (1991).

This Court recently summarized this judicial inquiry:

> 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."
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> * * *
>
> "[U]nless a material change of circumstances is found to exist, the court's inquiry ceases." If "either no change or the change itself does not relate to the child's welfare, there can be no further consideration of the best interest

> of the child because, unless there is a material change, there can be no consideration given to a modification of custody."

Velasquez v. Fuentes, 262 Md. App. 215, 246-47 (2024) (cleaned up).

When deciding whether joint legal custody is appropriate, the "'most important factor'" 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 v. Taylor*, 306 Md. 290, 304 (1986)). "Ordinarily the best evidence" concerning this factor is "the past conduct or 'track record' of the parties." *Taylor*, 306 Md. at 307.

Maryland courts understand that giving tie-breaking authority to one parent in a joint legal custody order affects the co-parenting dynamic. Approving this hybrid form of legal custody, our Supreme Court has explained that,

> [i]n a joint legal custody arrangement with tie-breaking provisions, the parents are ordered to try to decide together matters affecting their children. When, and only when the parties are at an impasse after deliberating in good faith does the tie-breaking provision permit one parent to make the final call. Because this arrangement requires a genuine effort by both parties to communicate, it ensures each has a voice in the decision-making process.
>
> To be sure, . . . joint legal custody places parents' decision-making rights on an equal footing; indeed, it characterizes their voices as being equal. A delegation of final authority over a sphere of decisions to one parent has the real consequence of tilting power to the one granted such authority.
>
> But such an award is still consonant with the core concept of joint custody because the parents must try to work together to decide issues affecting their children. We require that the tie-breaker parent cannot make the final call until after weighing in good faith the ideas the other parent has expressed regarding their children. Such an award has the salutary effect of empowering both parents to participate in significant matters affecting their children. Because this arrangement requires both parties to attempt to make decisions together, it is a form of joint custody. *See Taylor*, 306 Md. at 303 ("The availability of joint custody, in any of its multiple forms, is but another option available to the trial judge.").

> 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. And a court has the means to sanction a breach of good faith. In *Downing v. Perry*, 123 A.3d 474, 483-85 (D.C. 2015), the District of Columbia Court of Appeals affirmed a trial court order of joint legal custody that transferred final decision-making authority from the father to a neutral third party because the father had abused this privilege. Among other things, the *Downing* court emphasized the trial court's finding that the father had "rigidly exercised" tie-breaking authority granted him under a prior agreement based on a "patterned negative response to the mother's suggestions, rather than making decisions in the child's best interest." *Id*. at 484. Even though both parents had "equal rights," the *Downing* court explained that the father "was using his tie-breaking authority as a form of de facto sole legal custody." *Id*. at 484 n.11.
>
> *Downing* underscores that 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.

Santo, 448 Md. at 632-35 (2016) (cleaned up).

On appeal, this Court reviews the denial of a motion to modify custody under three interrelated standards. *See Velasquez*, 262 Md. App. at 227. First, we review factual findings, including determinations about material change, for clear error, by considering the evidence in the light most favorable to the custody decision, to determine whether it supports the finding. *See In re R.S.*, 470 Md. 380, 397 (2020); *Velasquez*, 262 Md. App. at 227; *Domingues*, 323 Md. at 499.

Next, we review without deference whether the court erred as a matter of law, and if so, whether that error was harmless. *See Velasquez*, 262 Md. App. at 227. Finally, when the court's ultimate custody determination is "founded upon sound legal principles and based upon factual findings that are not clearly erroneous," we will affirm unless there has

been a clear abuse of discretion, which exists only if "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." *Id.* at 227-28 (cleaned up). *See Santo*, 448 Md. at 625-26.

Mindful that appellate review is not a forum for a disappointed parent to relitigate the weight of the evidence or dispute the credibility of witnesses or documents, we recognize that the circuit court "sees the witnesses and the parties, hears the testimony, and . . . is in a far better position than is an 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 child." *Reichert v. Hornbeck*, 210 Md. App. 282, 304 (2013) (cleaned up). As long as there is substantial evidence to support the factual findings and no abuse of discretion, we will affirm that court's determinations regarding material change and best interests. *See Gizzo v. Gerstman*, 245 Md. App. 168, 200-01 (2020).

DISCUSSION

Mother contends that the circuit court abused its discretion by failing to credit her complaints about Daughter's "access to American Sign Language" outside of school and in Father's home, Daughter's participation in school sports, Father's handling of other health-related matters affecting both children, his exercise of tie-breaking authority in IEP planning, and his failure to communicate with Mother regarding the children. In addition, she argues that the court erred by "set[ting] new conditions of use for" Daughter's medical device. Father counters that Mother's appellate "claims amount to disagreement with the factual findings of the trial court and do not establish either legal error or abuse of discretion." We review Mother's contentions in turn, explaining why the record and the

law support the circuit court's determination that there has not been a material change warranting modification of joint legal and physical custody.

I. The circuit court did not err in determining that Daughter's language needs do not constitute material change warranting modification of physical and legal custody.

Most of Mother's case for modifying physical and legal custody focused on Daughter's language deficits and needs. During the hearing, both parents agreed (and presented supporting reports) that Daughter is multiple grade-levels behind her hearing peers in academics, primarily because her lack of receptive and expressive language have interfered with her classroom instruction.[7] They attributed Daughter's deficits to a combination of factors, including her late introduction to sound at age five when she received a cochlear implant, and an unsuccessful course of classroom instruction through her elementary grades.

Daughter attended Montgomery County Public Schools ("MCPS") for eight years in programs using a combination of English and cued speech, rather than ASL. After she attended a middle school program that introduced ASL, and an independent counsel advised that MCPS had "failed" her, both parents agreed to send her to KDES, which is affiliated with and located on the Gallaudet campus, where she has progressed academically, socially, and athletically.

[7] Mother presented academic assessments showing that Daughter, then age fourteen, was "at a first grade reading level" and "a second grade level with all of the other subjects, science, social studies, everything else." Mother testified that Daughter "speaks at like a six to seven-year-old age level." Father testified that, after attending KDES, she had improved to a third grade reading level.

At the modification hearing, disagreements revolved around responsibility for Daughter's language deprivation and current language needs. Mother wanted to transition to ASL and specialized schools before Father would agree to do so. In her view, Father caused Daughter's academic and language deficits by deciding to keep her in MCPS cued speech programs, and he continues to inhibit her language and academic development because he has not learned ASL or cued speech.

Father attributed Daughter's language deficits to her late introduction to sound at age five, when Mother finally agreed to a single cochlear implant, and to the late switch in her "mode of communication" from cued speech to ASL. Father testified that he advocated for cochlear implants at age one, but Mother's objections delayed the surgery for critical years in Daughter's language development. He supports her doctor's recommendation of a second implant, for bilateral sound, but Mother has not agreed.

Father acknowledged that, as Daughter fell further and further behind academically in her cued speech classrooms, Mother began to advocate changing to ASL-based communication and instruction. He explained that he relied on MCPS educational experts until he retained special education counsel, who independently reviewed Daughter's IEPs and advised that the MCPS programs had "failed" Daughter. After they moved Daughter into a middle school ASL program offered by MCPS, she "rapidly excelled" and both parents "agreed this [was] an excellent time to move her to" KDES, a school for deaf students, many of whom have a cochlear implant like Daughter. KDES instructs in ASL and English.

During the two years Daughter had been attending KDES, she stopped falling further behind academically and socially. Instead, she made a full grade-level of progress in each year, as she acquired language using both ASL and aural English with the aid of her cochlear implant and hearing aids. Over Mother's objections but with medical clearances obtained by Father, Daughter joined KDES sports teams in basketball, volleyball, and track. Through academics and sports, and the use of Bluetooth technology linked to an iPhone provided by Father over Mother's initial objection, Daughter has been developing her language as well as her social relationships with peers.

According to Mother, Daughter's current language needs, Mother's use of both cued speech and ASL, and Father's failure to learn cued speech or ASL constitute material changes affecting Daughter's best interests. In Mother's view, Daughter needs to be in her physical custody daily because she needs "a seamless transition between . . . using American Sign Language at school and using American Sign Language at home so that she can strengthen her language." In addition, Mother believes that Daughter needs to be in her legal custody (or at least in joint legal custody with Mother having tie-breaking authority) because Mother will prevent her from injury in contact sports and obtain the additional tutors and extracurricular help she needs to "catch up" at a pace that will prepare her for college. Mother proposed changing physical custody so that Father would pick up both children after school on weekdays, then bring them home around 7 p.m. to do homework, and also have them on alternating weekends.

Father admitted that he does not use cued speech and has only watched YouTube videos on ASL, but testified that he communicates effectively with Daughter in English.

Due to the success of her hearing devices – a combination of one cochlear implant, a Bluetooth device that connects her to the iPhone he provided her, and hearing aids – Father and Daughter converse without difficulty, with Father often explaining the meaning of words she is hearing for the first time. Father emphasizes the importance of "her proficiency in English[,]" which he believes "is just as important" for her as ASL.

Father opposed modifying the Custody Order, arguing there was no material change and pointing out that Daughter's language deficits reflect decisions made jointly over years by both parents, including that she did not have her cochlear implant until age five, rather than at age one, as doctors recommended and he preferred. Acknowledging that Mother effectively advocates for Daughter, by challenging whether her needs are being met during IEP meetings, Father explained that he adopts a less adversarial approach with Daughter's IEP team members. He also pointed out that he obtained the independent recommendation that prompted Daughter's move to KDES.

Father denied silencing Mother or disregarding her views, claiming that "wouldn't make sense" because he "respect[s] her opinion . . . [and] analysis of a lot of the issues that [their] daughter is experiencing." He simply "differ[s] . . . on the solution to . . . how we catch her up[.]" Father testified, for example, that he has opposed a plan by Mother "to take [Daughter] out of Kendall Demonstration School and to allow her to be primarily taught [by] a tutor [who] doesn't hear and can't help her with any English speech" because that would "take her away from the community at KDES" and Gallaudet, which Father views as "one of her most significant resources or assets."

The circuit court was not persuaded that Daughter's current language needs constituted a material change derailing these parents' track record of working together to make decisions in the best interest of her academic and emotional growth. Although the court recognized that Father's decision-making style contrasts with Mother's, it found that their co-parenting approach ultimately resulted in agreement and action that has improved Daughter's language and academic performance.

The court did not agree with Mother that Father caused Daughter's language and academic deficits. With respect to the critical decision to change languages and schools, the court found that Father "waited until the education experts advised the parties to move their daughter to a different school. While [Mother] may have recognized earlier that their daughter needed to be moved, [Father] waiting for professional advice is not counted against him." Likewise, Father's

> lack of effort to learn ASL or cued speech is not an issue for the Court. It is not the Court's role to weigh in on which parental approach is better or to decide between two reasoned and appropriate medical choices. ([Father] favors their daughter learning English with the aid of a cochlear implant and [Mother] favors ASL.) He testified he is able to communicate with his daughter and she with him. He presented exhibits that show their daughter participating in age-appropriate activities such as hanging out with friends, making social media videos, and playing sports.

Ultimately, the court rejected Mother's assignment of blame to Father:

> The Court does not find, as [Mother] alleges, that [Father] caused their daughter's disability. [Footnote: [Father] testified, and this Court previously noted in the June 27, 2016 Custody Order, that the fact that their daughter did not receive her cochlear implant until age 5 has contributed significantly to her language delays. Neither party offered expert testimony on this issue. The Court finds [Father's] explanation to be as logical as any.] The Court finds [Father] is contributing to her success and encouraging her to live her life as a normal teen as they are working through her challenges.

We conclude the evidentiary record supports these factual findings and the court's determination that there is no material change arising from Daughter's current language needs. As Mother acknowledged to both the circuit court and this Court, Daughter's lifelong language challenges have required regular review and coordination by both parents. During the ten years that the Custody Order has been in effect, both Mother and Father have actively worked together to make decisions affecting Daughter's language development and education. Most significantly, both took action to remedy Daughter's language deficits, including by authorizing her cochlear implant and agreeing on her current enrollment at KDES where she is using ASL and English to build language necessary to raise her academic levels.

The evidence also supports the circuit court's finding that Father's lack of training in ASL or cued speech is not a material change. Although Mother uses both languages with Daughter, the court was satisfied that Daughter is still able to communicate effectively with Father in English, using her cochlear implant and her iPhone. The court also did not err in concluding that Mother's mastery of cued speech and ASL does not outweigh the language benefits that Daughter derives from her communications in English with Father.

Our task in reviewing the circuit court's findings is not to reweigh the evidence or reevaluate the credibility of these parents. *See Reichert*, 210 Md. App. at 304. Despite their differences in communication mode and style, the evidence supports the circuit court's factual finding that Daughter's current language needs have not materially changed in a manner that diminishes the value of the existing physical custody schedule or their ability to make joint decisions in her best interests.

II. The circuit court did not err in determining that Daughter's participation in school sports does not constitute a material change warranting modification of custody.

In the circuit court, Mother maintained that Father's exercise of his tie-breaking authority to allow Daughter to play on KDES volleyball, basketball, and track teams is a material change in circumstances warranting modification of custody because contact sports are contraindicated for her cochlear implant. The court disagreed, finding instead that Father "is encouraging . . . safety testing for sports clearances[,]" "seeking proper professional help with sports decisions[,]" and "is not putting their daughter in danger."

Citing federal statutes, regulations, and case law pertaining to medical devices, as well as literature from the manufacturer of Daughter's cochlear implant, Mother contends that the circuit court erred as a matter of law by disregarding the manufacturer's "label that advises patients to avoid contact sports" because doing so effectively "set new conditions of use and requirements for the device in violation of federal law" prohibiting states from setting requirements for FDA-regulated medical devices that are "different from, or in addition to, any requirement applicable to the device" under federal law. (Cleaned up.) *See generally Riegel v. Medtronic, Inc.*, 552 U.S. 312, 330 (2008) (holding that "State requirements are pre-empted under the" Medical Device Amendments to the Food, Drug, and Cosmetics Act, 21 U.S.C. § 360k(a)(1) "to the extent that they are 'different from, or in addition to' the requirements imposed by federal law").

We do not agree that the circuit court established new conditions for the use of Daughter's cochlear implant device. Instead, the court simply rejected Mother's claim that playing "contact" sports is contraindicated for Daughter, after reviewing the device

manufacturer's literature and the evidence that Father obtained clearances from the manufacturer as well as medical and audiology experts for Daughter to play while wearing an approved military-grade anti-concussion headband designed to prevent head injuries, which covers her implant site.

The evidence amply supports the court's factual finding that Daughter is not at risk of implant-related injury while playing on KDES teams. The manufacturer's "Important Safety Information" expressly anticipates and authorizes such sports activity, stating:

> ***Cochlear implant users are able to enjoy nearly any activity,*** but some restrictions or cautions will apply, including but not limited to the following: . . . The implant package and the electrodes are located directly under the skin. To avoid damage to the implant recipients should not unnecessarily move, rub, stretch, or extensively scratch the skin above the implant site and should also avoid mechanical pressure on the site. . . . It is important to protect the implant from sources of direct impact. . . . ***A blow to the head may damage the implant and result in its failure. Implant recipients are strongly encouraged to use head protection whenever possible during sports and activities in which head trauma is a risk (e.g.[,] bicycling, motorcycling, skiing)*** and should never participate in sports in which head trauma is part of the activity (e.g.[,] boxing).

(Emphasis added.)

The plain meaning of this warning, as well as the FDA's published information about the risks associated with cochlear implants, is to caution that head trauma associated with "contact sports, automobile accidents, slips and falls, or other impacts near the ear," may injure *the implant*, not the individual wearing it. It recognizes that a head injury may damage the implant, which "may mean needing a new implant and more surgery." These advisories expressly anticipate that individuals with cochlear implants should be "able to enjoy nearly any activity," including skiing and other sports, when using "head protection"

like the specialized headband that Daughter wears. Consistent with that evidence, Father testified that many athletes at Daughter's school, including a substantial number of her teammates, play safely with cochlear implant devices, that Gallaudet's athletic director reported no implant-related injuries during his fifteen years at the school, and that Daughter's participation in KDES sports was approved by her medical and audiology providers.[8]

The evidence also supports the court's finding that Daughter derives important benefits from playing on the KDES basketball, volleyball, and track teams. While exceling to the point of winning MVP honors in multiple sports, she has become a leader in her peer group. In turn, these experiences have helped her handle academic, social, and language challenges. As a result, her medical and educational providers support her participation in athletics and have included it in her IEP as an important element of her development that balances her academic challenges tied to late language development.

The evidence also supports the court's determination that the current Custody Order remains in Daughter's best interests because it allows her to continue playing sports. Because Mother does not allow her to play sports on days she has custody, she misses some practice and games. Father does not interfere with Mother's choice, but having been unable to reach an agreement despite the ample evidence that Daughter is not at risk of serious

[8] Father testified that Mother notified KDES that Daughter "should not be playing any kind of sports" and unsuccessfully "attempted to get an emergency injunction " from "a Prince George's County court." On December 12, 2023, the Circuit Court for Prince George's County denied Mother's request for such an injunction on jurisdictional grounds.

injury, has exercised his tie-breaking authority to ensure she plays because he views sports as a physically and socially healthy way for her to integrate and succeed.

For example, on one occasion when the KDES basketball team left for a tournament in Boston on a day Mother had custody, Mother did not allow her to travel with the team. Instead, Father and Daughter flew to Boston so she could play. Her team won the tournament, with Daughter being named one of three MVPs.

Based on this record, we conclude that, rather than setting new conditions for Daughter's medical device, the court merely credited evidence that, like other cochlear implant users at her school and on her teams, Daughter can safely play school sports that contribute to her physical and emotional well-being. Although Father and Mother were unable to agree on this particular issue, Father's permission for Daughter to play school sports was neither an abuse of his tie-breaking authority, nor a material change indicating that these parents will not be able to work together on other matters affecting the best interests of their children. *Cf. Santo*, 448 Md. at 634-35 (recognizing that tie-breaking authority "pragmatically reflects the need for some decision to be made for the child when parents themselves cannot agree" because "[i]t is the child . . . whom the court must consider foremost" (emphasis omitted)).

III. The circuit court did not err in determining that Mother's concerns about Father's handling of the children's health matters did not constitute material change warranting modification of custody.

Mother next contends that the trial court abused its discretion by failing to treat Father's "negligen[ce]" in "ignoring our children's health needs" as grounds for modifying

custody. In support, she points to both the risk of injury from playing sports with a cochlear implant discussed above, and the following additional evidence:

- Evidence that Daughter "fractured her arm" when she fell out of a shopping cart while in a store with Father, he reported "she was fine" and did not take her to urgent care for evaluation.

- Evidence that Father took the children on a commercial flight to Florida after they tested positive for COVID.

- Evidence that Father "ignored" Daughter's "severe premenstrual cramps" because "he does not believe" she "require[d] medical attention" and that he did not respond to Mother's "attempts to contact him to discuss a plan of action[.]"

- Evidence that Father failed "to have a meaningful discussion in good faith about what [they] can do to protect" Daughter, in response to Mother's belief that "cochlear implants are . . . vulnerable to tampering if Bluetooth[] technology is used[,]" via "cybersecurity risks" from "hackers" who access "implanted" medical devices.

The circuit court was not persuaded that any of these concerns established that Father was negligent or otherwise presented a substantial risk to the children. In addition to determining that Father did not put Daughter at risk of injury by playing sports, *see supra* Part II, the court ruled that, "[w]hile [Father] has made certain parenting decisions, the Court does not find that [Father] put the Minor Children in danger." Regarding Mother's COVID complaint, the court specifically stated that "[m]any people traveled with Covid and although not advisable, the Court does not find he harmed the Minor Children. The potential harm would have been to other travelers."

We agree with Father that "[a]t most," Mother's "assertions represent differences in parenting style" that do not "meet the material change standard." (Emphasis omitted.) As we have explained, Father consulted the cochlear implant manufacturer, medical providers,

as well as the KDES audiologist and athletic director, all of whom contradicted Mother's claim that there is a risk of serious injury to Daughter during school sports. Moreover, Father testified that he quarantined the children and himself for COVID while visiting Orlando; that he was concerned about Daughter's accidental fall; and that after Daughter told him that her menstrual cramps were better with ibuprofen and eating, he "followed [Mother's] lead" about consulting her gynecologist. Regarding the risk of "tampering" from Bluetooth connections to Daughter's cochlear implant, Father testified that the manufacturer considered Mother's fears of "mind control" not merely improbable, but impossible. Based on this evidentiary record, the circuit court did not err in finding that Father was not negligent, and in turn, that there was no material change in his ability to act jointly with Mother in the best interests of the children's health.

IV. The circuit court did not err in finding no material change based on Father's exercise of tie-breaking authority in IEP meetings.

V. The circuit court did not err in finding no material change based on Father's communications with Mother regarding educational and health planning.

In her fourth and fifth questions, Mother points to what she insists have been other abuses of Father's "tie-breaker authority" in silencing her at an IEP meeting, refusing "to communicate about health and education issues[,]" and denying "access to information" about their children's "health and welfare." Addressing the court's decision on each of the concerns raised by Mother, we discern no error.

The court rejected Mother's complaints about being silenced in IEP meetings and health matters, finding:

> The evidence shows that [Mother] did participate in IEP meetings and actively has been communicating with doctors, educators, and therapists. *See, e.g.*, Pl. Ex. 16 and 45; Def. Ex. 10-11; and 16-18. The evidence also shows that [Mother] can be combative and manipulative towards [Father] and the various people involved in their daughter's care. *See, e.g.*, Pl. Ex. 11; 38; 39; and 45 and Def. Ex. 10-11; and 17-18. The Court also observed [Mother's] combativeness and refusal to listen during trial.

Likewise, the court found that the communication difficulties cited by Mother did not amount to either an abuse of Father's tie-breaking authority or a material change in circumstances:

> It is clear to the Court that these parties always have had difficulties communicating. The Court wrote in the initial Custody Opinion, "[d]espite [Mother's] pattern of selective communication with [Father], the Court finds that the parties have repeatedly demonstrated the ability to effectively communicate, and in fact, do so regularly." *June 27, 2016 Custody Opinion,* 16. The Court finds that now [Father] has a pattern of selective communication. However, this "selective communication" is by not responding to [Mother's] deluge of communications. The Court believes there are many instances were [Mother] gets extremely upset or anxious about a situation and begins to aggressively communicate with or attempts to make decisions without [Father]. The Court finds that what [Mother] alleges is a willful action by [Father] not to communicate, is in actuality a defense mechanism for [Father] to take time to triage the panicked and frequent "emergencies." The Court further finds that in most instances, [Father] reaches out to proper professionals and responds appropriately. The Court finds there is no material change in circumstance to the parties' ability or willingness to communicate about legal custody matters.

The evidentiary record supports the circuit court's finding that there has been no material change in the circumstances surrounding Mother's participation in IEP meetings or these parents' communications regarding their children. Contrary to Mother's testimony that Father has "attempted to stop [her] from speaking at IEP meetings for our daughter,"

Mother admitted on cross-examination that she does most of the talking during IEP meetings. Moreover, both parents acknowledged that their phone, text, and email records show regular messages between them.

Nor are we persuaded by Mother's contention that the court erred by failing to treat Father's denial of access to his health insurance accounts for the children as a violation of the Custody Order that constitutes a material change in the parties' ability to continue sharing custody. The circuit court correctly rejected Mother's claim that she was entitled to access those accounts, explaining that neither the law, nor the evidentiary record supports a finding of material change predicated on her inability to view medical information that she can access from sources other than Father's health insurer:

> [Mother] alleges [Father] blocked [Mother] from accessing the Minor Children's health insurance accounts as proof of not abiding by legal custody principles. The Court finds that [Father] did not give [Mother] access to the BlueCross BlueShield account; however, that is permissible. Pl. Ex. 7. While Fam. Law § 9-104, does require all parties to have access to the Minor Children's medical, dental, and educational records, the Court does not find that includes an individual party's health insurance account, even if the Minor Children are covered under the party's plan. Parties are not required to provide access to the other's bank account, 529 account, or investment account even if those accounts fund their children's medical, dental, or educational needs. The Court does not find that a health insurance account, while it funds the children's medical needs, is a "medical record" under the statute.
>
> Additionally, Fam. Law § 9-104 reads that "medical . . . records concerning a child may not be denied to a parent because the parent does not have physical custody of the child." That was not the situation in this case. First, [Mother] does have shared physical custody. Second, [Father] denied [Mother] access to the insurance records because he was understandably concerned that [Mother] would meddle with his account and create a problem. *See*, Pl. Ex. 7. However, even if this conduct was not permissible, it is not a material change in circumstances. [Mother] is actively involved with their daughter's healthcare decisions and is regularly in contact with her

> medical providers—perhaps even more than [Father] is in contact with the Minor Children's providers. There was no evidence that [Mother] was denied access to any other medical records.

Mother presented no evidence that Father's denial of access to his health insurance account actually prejudiced her ability to obtain pertinent medical records, even though she has joint legal and physical custody for both children and, as the parent who primarily arranges for their health care, has access to the medical care for which she claims to be seeking records. Absent any specific evidence that she has been unable to obtain records, the circuit court did not err in finding no material change based on Father's decision not to give Mother access to his health insurance account.

Likewise, the circuit court did not err in concluding that Father's purchase of cell phones for both children without consulting Mother was not a material change. Father admitted that, years before, he did not communicate with Mother before buying both children phones. He pointed out that Daughter currently uses hers with a Bluetooth device that helps her communicate with him, as well as access music, speech, and friends, as shown in images that were admitted into evidence. The court recognized Mother's opposition, and that after consulting with Mother, Father "added appropriate children's protections and offered [Mother] access to those accounts and acknowledged via email that the parties need to monitor the phones and that they were to be collected at night." We cannot say the court erred or abused its discretion in not treating this evidence as a material change presenting current obstacles to joint custody, but as an example of parental miscommunication that was resolved years earlier by a co-parenting agreement about what is in the children's best interests.

More broadly, the court also reasonably inferred from the testimony of both parents and the communication spreadsheet that Father presented to show their contacts over the preceding months that there has been no material change in their communications regarding the children. The many parental points of contact show that communication lines have remained open to facilitate the mutual decisions these parents have reached throughout nearly ten years since the Custody Order went into effect, pertaining to matters ranging from the micro, e.g., daily routines like arranging custody exchanges and having the same instructional materials at both houses so Daughter "always has . . . her material[,]" to the macro, e.g., school choice for both children and plans for Son's upcoming circumcision. Because Father and Mother have communicated in a manner that has generated agreements about a wide range of significant challenges and choices for both children, the circuit court did not err in concluding that Father has not exercised his tie-breaking authority to eliminate Mother's voice in matters over which they jointly exercise their parental authority. *See Santo*, 448 Md. at 635. In turn, the court did not err in finding no material change in these parents' ability to communicate in the best interests of their children.

CONCLUSION

As this Court observed in Mother's prior appeal from the denial of her petition to modify custody and child support, Mother's "dissatisfaction with" the existing Custody Order is not sufficient grounds to establish material change. *Lewis I*, slip op. at 9. Nor is there a "master list that a trial court can consult to assess whether a given event constitutes a material change of circumstances." *Id*.

Here, the circuit court thoroughly considered the evidence and arguments presented at this two-day hearing, concluding that there had been no material change that would prevent these parents from continuing their successful, if at times "tumultuous," track record of sharing time with the children and making joint decisions in their best interests:

> [Mother] provide[s] many examples of events that she believes support a finding that there is a material change in circumstance. However, many of her examples are normal difficulties two people experience when trying to co-parent. The Court does not find that the specific examples [Mother] provided support a finding that [Father] is not using his tie-breaking authority appropriately and is acting in a way that puts the Minor Children in harm[']s way. The Court does not find that any of the individual examples support a finding of a material change in circumstance.

Because the evidence supports the finding that there has been no material change, the court did not err in determining that it lacked authority to modify this Custody Order. *See Velasquez*, 262 Md. App. at 247 (recognizing that "there can be no modification of custody unless a material change of circumstance is found to exist" (cleaned up)).

ORDER ENTERED AUGUST 21, 2025, BY THE CIRCUIT COURT FOR MONTGOMERY COUNTY, DENYING APPELLANT'S MOTION TO MODIFY CUSTODY AFFIRMED. COSTS TO BE PAID BY APPELLANT.