

Circuit Court for Prince George's County
Case No. CAD13-12909

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1775

September Term, 2021

M. Y.

v.

L. G.

Berger,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: August 19, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

M.Y. (“Mother”) appeals the grant, by the Circuit Court for Prince George’s County, of L.G.’s (“Father”) motion to modify the parenting addendum to the voluntary separation and property settlement agreement Mother and Father entered into in anticipation of divorce in 2013. We discern from Mother’s informal brief that she claims procedural error in the circuit court’s entry of the order, on the ground that the court improperly modified the addendum to the separation agreement when there was no material change in circumstances justifying the changes. Mother further maintains that the court was biased against her.¹ For the reasons that follow, we affirm the circuit court’s order.

BACKGROUND

Mother and Father married in a civil ceremony in Virginia in 1999 and in a religious ceremony in Venezuela in 2000. They are the parents of two children, “L.” (born January 2001) and “S.” (born September 2008).

¹Mother filed an “Informal Brief” pursuant to this Court’s March 9, 2021, Administrative Order permitting informal briefing in family law cases in which the appellant is a self-represented litigant. *See Maryland Rule 8-502(a)(9)*. Father also filed an Informal Brief.

The issues, as set forth *verbatim* in Mother’s brief, are:

1. Is the trial judge acting lawful and transparent when the Judge makes changes to an agreement, addressing the changes in the court room in a confusing way and without material change in circumstances that justifies the changes in the parenting agreement?
2. Is the trial Court not being impartial when changes a parenting agreement, disregarding and minimizing the Appellant concerns about her daughter’s safety?

In October 2013, the circuit court issued a judgment of limited divorce, incorporating the parties' separation agreement and awarding Mother and Father joint legal custody and shared physical custody of L. and S. The court entered a judgment of absolute divorce in April 2015.

In July 2015, the circuit court granted Father's motion to incorporate a parenting addendum to the separation agreement, thereby modifying the parents' custody access schedule but continuing their shared physical custody of the children. The addendum also outlined that one parent's travel outside the Washington, D.C., metropolitan area with the then-minor children would require written permission from the other parent. As to the children's passports, the addendum specified that Mother would retain the U. S. passport for S. and Father would retain the U. S. passport for L. "until requested by the other parent for travel or other necessary purposes," so that neither parent could take the children out of the country without the permission of the other parent.²

In May 2019, Mother filed a motion for modification of the custody order, requesting primary physical custody and sole legal custody of S.³ Father filed an opposition to Mother's motion, along with his own motion for modification, claiming that Mother had

² The children apparently also have Venezuelan passports, but the circuit court found the wording of the addendum to the separation agreement clear and unambiguous that it referred solely to the U.S. passports because the children had only one passport each when Mother and Father signed the separation agreement.

³ By that point, L. had turned 18 and was no longer implicated in custody matters.

violated the terms of the parenting addendum to the separation agreement on multiple occasions.

On December 2, 2019, the circuit court heard argument on the competing motions for modification. Thereafter, the circuit court issued an order denying Mother’s motion and granting Father’s motion. The court specified that Mother and Father would continue to share legal custody but that Father would have sole physical custody of S., with Mother having one-hour supervised visitation every other Monday. Mother appealed that order.

In January 2020, Father filed another motion for modification, contending that shared custody had become too difficult since Mother had chosen to relocate to Texas. He also requested that the circuit court order Mother to turn over S.’s passport for a planned July 2020 trip to Taiwan, after she had refused his requests to do so on numerous occasions. Mother responded to Father’s motion, and in June 2020, filed her own motions, one for modification of the court’s December 2, 2019 order, asking for a return to shared physical custody of S., and one for contempt, stating that she had moved back to Maryland but Father was not permitting her to visit with S. On September 30, 2020, Father filed a motion to terminate Mother’s visitation rights and to obtain S.’s passport from Mother, after Mother continued to refuse to provide it to him.

Following a hearing, the circuit court issued an order denying Mother’s motion for modification, Mother’s motion for contempt, and Father’s motion for modification. The court further ordered that, despite its belief that Mother would not likely voluntarily give Father the passport, it would hold Father’s motion to obtain S.’s passport in abeyance “until international travel is no longer impacted by travel restrictions due to COVID-19” because

it would not be in the child’s best interest to “even entertain international travel at this point.”

Mother appealed the court’s order. Mother’s two appeals were consolidated in this Court and considered in our unreported opinion, *M.Y. v. L.G.*, No. 1201, September Term 2020 (filed October 7, 2021), *cert. denied sub nom. Y[.] v. G[.]*, 477 Md. 397 (2022). Therein, we affirmed the circuit court’s orders.

On January 12, 2021, Father filed the pertinent motion to modify the parenting addendum to the separation agreement, arguing that the travel restrictions imposed by the agreement on S. should be removed because S. was in his sole custody. Father therefore requested that he be permitted to retain both S.’s U.S. and Venezuelan passports and that the court order Mother to turn over S.’s passports to him within seven days.

In response to Father’s motion, Mother explained that “the time was not appropriate for [S.] to travel due to COVID-19.” She also argued that the circuit court should not make any changes to the parenting addendum to the separation agreement while the court’s December 2, 2019, and January 7, 2021, orders were the subject of an appeal then pending in this Court.

Following an August 23, 2021 hearing on the issue of Mother’s continued refusal to provide Father with S.’s passport after numerous requests, the circuit court deemed the passport lost or stolen and ordered Father to report its loss to the U.S. Department of State so he might then apply for a new passport for S. Mother appealed the court’s order. We dismissed her appeal as having been taken from a non-appealable interlocutory order. *See M.Y. v. L.G.*, No. 946, September Term 2020 (filed May 10, 2022).

The circuit court heard argument on Father’s motion to modify the parenting addendum to the separation agreement on December 14, 2021. Father, *pro se*, averred that Mother continued unreasonably to deny his travel requests for S. as “revenge” for her loss of physical custody of the child. As a result, Father was unable to travel with S. outside the Washington, D.C., metropolitan area for longer than a weekend without Mother’s written agreement. Therefore, Father asked the court to remove the restriction on travel from the parenting addendum.

Mother, represented at the hearing by counsel, argued that her continued restrictions on S.’s travel related only to her concerns about the child’s safety, especially with the rise in COVID-19 variants. She, therefore, asked the court “to keep the status quo” and deny Father’s request for any modification to the parenting addendum.

The court, well aware of the contentious history of the parents’ disagreement regarding travel and the child’s passport, ruled:

THE COURT: . . . The passport issue has been a point of contention for many, many, many years. And when the parties entered into this parenting agreement, it was with the understanding that both parties would discuss and have fruitful conversations regarding whether the child—and at that time there were two minor children. One is now emancipated and whether—who would keep passports and the parties being able to discuss this. Well, we believe 2019, maybe even further than that, Ms.—your client has not elected to turn over the passport and, therefore, the Court had to issue an order so that Mr. G[.] could actually obtain a passport for the minor child. There were members out of the country.

The Court was very focused on COVID and the concern regarding COVID and had delayed even having a hearing on this for those reasons. But, this has been going on repeatedly and there seems to be a—the hang-up is with the language with

the consent or agreement among the parties. And so that language, while it is specific and it is part of an agreement that the parties had decided that has caused significant hardship on the minor child being able to see other family members. And so that is the reason why there is this request for a modification. This isn't a first time it has come up and so it isn't as if this is a unique situation as to what is being requested, because this has been going on for many, many, many, many years. And so the intent of the parties was to be able to facilitate travel. And both parties having the knowledge of where the minor children at the time, but now minor child, would be going and that whoever was traveling with the child that the parent would have—be informed as to the location, where the child was staying, how long the child was going, but it was never any intent to avoid a child traveling to see family members or to—to just travel out of the country, but that's what has, in essence, happened.

And so because this has been going for such an extensive period of time, it only stands to reason that there needs to be some modification with respect to that provision, because it was this impasse the parties are not able to reach a resolution and the minor child is suffering because of it.

There is a way to travel during this now that we're—now that COVID has been on for a time. Individuals have been vaccinated, boosters. There are variants and there are restrictions that are placed on various locations, so all of that is taken into consideration when dealing with the minor child's travel. But, the Court does find this is a material change in circumstance, that while the parties may have agreed to this parenting agreement, it does need to be modified with respect to that aspect. The other remaining aspect, the language is fine the way it is.

And as far as Ms. [Y.], you know, coming back seeking further—further—further access and relationship with the minor child, that—that's fine. That would be great, you know, as long as that remains healthy and helpful to the minor child. But, the Court would grant the request to modify the term of the parenting agreement with respect to that limited language as to the passport and as part instead of agreement, it's going to be notice. And so the Court will issue an order for that small

area so that the minor child may be able to visit and travel with whoever is the custodial parent at the time.

In its written order, the court clarified the pertinent changes to the parenting addendum: (1) where the addendum provided that neither parent could take the child out of the Washington, D.C., metropolitan area for longer than a weekend or out of the country without the written agreement of the other parent, the court changed the provision to permit either parent to travel outside the D.C. metropolitan area or out of the country “during their access period” if an itinerary and written notice, or as much notice is reasonable under the circumstances, is given to the other parent; and (2) where the addendum provided that Mother would retain and safeguard S.’s U.S. passport until requested by Father for travel or other necessary purposes, the court changed the provision to state that Father will retain and safeguard the passport until requested by Mother for travel or other necessary purposes.

Mother filed a timely notice of appeal of the court’s order.

DISCUSSION

Mother argues that the circuit court erred in “arbitrarily” changing the parenting addendum to the separation agreement, as Father had not shown a material change in circumstance to justify the change. She further contends that the court’s order minimized her valid concerns about S.’s travel during the COVID pandemic and is evidence that the court is biased against her in its rulings.

Pursuant to Maryland Rule 8-131(c), we review an action tried without a jury “on both the law and the evidence” and “will not set aside the judgment of the trial court on the evidence unless clearly erroneous.” We will not hold that a circuit court’s evidentiary

findings are clearly erroneous “[i]f there is any competent evidence to support the factual findings below.” *Meyr v. Meyr*, 195 Md. App. 524, 545 (2010) (citation omitted). Further, we will “accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Boemio v. Boemio*, 414 Md. 118, 124-25 (2010) (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)).

Parenting agreements such as the one crafted by Mother and Father “ordinarily will be based upon the child’s best interest,” but they are modifiable “if a court determines that the agreement contain[s] a defect or that the agreement cease[s] to be in the child’s best interest.” *Knott v. Knott*, 146 Md. App. 232, 260-61 (2002). As we explained in *Guidash v. Tome*, 211 Md. App. 725, 740 (2013) (quoting *Ruppert v. Fish*, 84 Md. App. 665, 674 (1990)),

‘The parents of a minor child are generally free to enter into an agreement respecting the care, custody, education, and support of their child. Indeed, they are the persons who ought to decide those things. *Unlike certain other aspects of a marital relationship that can be the subject of an agreement, however, provisions relating to the welfare of minor children are, by statute, subject to court modification.* Md. Fam. Law Code Ann. § 8-103(a) provides that “[t]he court may modify any provision of a deed, agreement, or settlement with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child.” . . . []’

(Alterations in *Guidash*). See also *Stancill v. Stancill*, 286 Md. 530, 535 (1979) (“[T]he chancellor cannot be handcuffed in the exercise of his [or her] duty to act in the best interest

of a child by any understanding between parents”).⁴

A decision on modification of a final order concerning care, custody, visitation, or support of a minor child ordinarily involves a two-step process. First, the circuit court determines whether the moving party has met his or her burden of showing that there has been a material change of circumstances since the prior custody or visitation decision was made. *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). “In [the custody and visitation modification] context, the term ‘material’ relates to a change that may affect the welfare of a child.” *Id.*

If the court finds a material change, then it “proceeds to consider the best interests of the child as if the proceeding were one for original custody [or visitation].” *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005). Often, the material change analysis and the best interest of the child analysis are interrelated. *Id.*

Viewing the record in this matter as a whole, we conclude that the circuit court did not err in finding a material change in circumstances warranting a modification of the parenting addendum to the separation agreement. In announcing its ruling from the bench, the court referenced the long history of conflict between Mother and Father regarding travel with the minor child, along with Mother’s related continued refusal to provide Father S.’s passports upon request, as contemplated by the clear terms of the parenting addendum.

⁴ Once incorporated into the divorce decree, the contractual provisions of a separation agreement are not only modifiable but also “enforceable through contempt proceedings.” *Johnston v. Johnston*, 297 Md. 48, 57 (1983). The circuit court specifically declined to hold Mother in contempt for her failure to comply with the terms of the parenting addendum.

Father's inability to travel outside the D.C. metropolitan area (except on weekend trips), or internationally, with S. -- of whom he previously had been granted sole physical custody -- once COVID travel restrictions had eased supports the trial court's finding of a material change in circumstances that affected the welfare of the child and worked a hardship upon the child. This is especially true in light of the court's finding that there was "never any intent to avoid [the] child traveling . . . out of the country, but that's what has, in essence, happened" by virtue of Mother's actions.

The evidence presented during the hearing on Father's request for modification of the parenting addendum to the separation agreement, as well as during previous hearings, highlighted the fact that the parents' original parenting addendum simply was not working. Mother's consistent refusal to comply with the addendum's travel and passport provisions resulted in Father's inability to travel with S., and therefore, denied the ability to visit with internationally based family members or learn of other cultures. Father's requested modifications to the parenting addendum were in S.'s best interest, and the circuit court's conclusion that the change from the requirement that the non-traveling parent provide written authorization to travel to the requirement that the traveling parent provide only written notice of travel was reasonable under the circumstances. The court's conclusion that Father, as S.'s physical custodian, should hold and safeguard the child's passports was also reasonable, especially in light of Mother's unreasonable refusal to provide the

passports to Father upon request for travel even after COVID travel restrictions had been somewhat lifted.⁵

**ORDER OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

⁵ Contrary to Mother's unsupported assertions, we perceive no undue bias against Mother or lack of objectivity in the circuit court's ruling. The court did not, as Mother contends, minimize her concerns about her child traveling during the COVID pandemic. In fact, the court specified that it, too, had been "very focused on COVID and the concerns regarding COVID and had delayed even having a hearing on this for those reasons." Nevertheless, the court found that Mother's refusal to permit Father to travel internationally with S. predated the pandemic and was contrary to the parents' original intent in drafting the parenting addendum.