

Circuit Court for Baltimore County  
Case No. C-03-FM-20-003435

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1782

September Term, 2025

ON MOTION FOR RECONSIDERATION

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JASMINE THOMAS

v.

EARL DEMMONT LOYAL

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Graeff,  
Berger,  
Kenney, James A., III  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Graeff, J.

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Filed: May 6, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

On October 20, 2023, Earl Demmont Loyal (“Father”) filed a Motion to Modify Custody in the Circuit Court for Baltimore County. After a hearing, the court held the matter *sub curia* pending completion of a Child Access Evaluation and issued an interim custody order. On May 2, 2024, Father filed a petition for contempt of the interim custody order, and on August 4, 2025, after numerous postponements, the court held a contempt hearing. On October 1, 2025, the court issued an opinion ruling on the motion to modify and the petition for contempt. The court found Jasmine Thomas (“Mother”) in willful contempt of the custody order and granted Father’s motion to modify custody. It awarded Father primary physical custody and sole legal custody of the parties’ minor child and \$5,000 in attorney’s fees.

On appeal, Mother presents the following questions for this Court’s review,<sup>1</sup> which we have rephrased as follows:

1. Did the circuit court err in modifying custody based on evidence considered at a hearing on a petition for contempt when Mother was not present?
2. Did the circuit court err in finding Mother in civil contempt?

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<sup>1</sup> A. Whether the court below abused its discretion and committed Legal Error by finding that the appellant voluntarily waived her right to be present at the August 4, 2025 Child Custody and Contempt Hearing because the court believed that Appellant’s non-Appearance was **not due** to her being treated for Medical Conditions at a Healthcare facility, but rooted in false pretenses;

B. Whether the finding of contempt, particularly in the expression of the court below that no opportunity for the Appellant to “purge” herself from contempt was necessary, and because the contempt finding was “punitive” against the backdrop of why a monetary award for Counsel fees were awarded without a fair opportunity to be heard.

3. Did the circuit court err in awarding Father attorney's fees?

For the reasons set forth below, we shall vacate the judgments and remand for further proceedings without affirming or reversing on the merits.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Father and Mother are the parents of K., who was born in April 2019 and was six years old at the time of the August 2025 hearing. The parties have never lived together. They have had difficulty cooperating with court-ordered visitation and custody arrangements, resulting in each party filing numerous petitions for contempt. Mother also has filed numerous petitions for protective orders against Father, all of which were eventually dismissed.<sup>2</sup>

On August 28, 2020, Mother filed a Complaint for Custody, requesting primary physical custody and sole legal custody of K. On April 7, 2021, after a hearing, the magistrate recommended that the parties have joint legal custody of K. and shared physical custody, with parental access alternating on a 3-4/4-3 schedule. Mother filed exceptions to the Magistrate's Report and Recommendation.

Mother also filed a petition for a protective order against Father, alleging that Father threatened her when she attempted to pick up K. for her parental access time. On

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<sup>2</sup> Although Mother alleges, and the Child Access Evaluation indicates, that there is a February 16, 2024 open case against Father for assault, our review of the docket shows that the court denied Mother's February 16, 2024 petition for a final protective order after granting a temporary protective order against Father and requesting a Department of Social Services investigation.

April 23, 2021, the district court granted a final protective order against Father, which Father appealed to the circuit court.

On July 19, 2021, the court issued a temporary order granting Mother temporary custody of K., and Father supervised visitation, pursuant to the final protective order issued by the district court. On September 16, 2021, after a hearing on the protective order and Mother's exceptions to the magistrate's custody recommendation, the court overruled Mother's exceptions to the Magistrate's recommendations, adopted the Magistrate's recommendations for joint legal custody and shared physical custody, and dismissed the final protective order.

## I.

### **November 2023 Modification Hearing**

On October 20, 2023, Father filed a motion to modify custody. On November 20, 2023, the court held an evidentiary hearing. Both parties appeared unrepresented. At the time of the hearing, Father had physical custody of K., and Mother had not seen K. since October 20, 2023, when Mother transferred K. to Father's custody pursuant to a contempt order purge provision.

Father testified that he had attempted to contact Mother via telephone and text message to arrange for her to see K., but it was almost impossible to contact her because Mother would say that he was threatening her or trying to harass or hurt her. He testified that, after the September 2021 custody order, Mother "fabricated [lies] to try and make it seem like [he] was keeping [K.] from her" and falsely accused Father of violent behavior,

leading to his arrest. Father did not see K. for one year due to difficulties with the exchange of custody and Mother's false allegations.

Father introduced eight police incident reports into evidence, as well as text messages and photographs, relating to his attempt "to retrieve [K.]." He testified that K.'s maternal grandmother, Crystal Green, raised K. and that K. was "never with his mother." He testified that K. was doing very well in his custody, learning to ride his bike and tie his shoes. Father stated that Mother was abusing drugs while in K.'s presence, and he introduced into evidence documentation showing that Mother canceled a doctor's appointment that Father had made for K. to get vaccinations for school. Father requested sole custody of K. and that Mother have supervised visitation until she could prove that she is willing to comply with custody arrangements.

Mother testified that, since the September 2021 custody order, "[i]t's been chaos" because Father did not abide by the order. She stated the Father's behavior was very intimidating and disparaging toward her. Mother introduced text messages to show that she had attempted to contact Father and that she did not block his cell phone number. She testified that she did not receive a text message from Father, but when probed, she stated that she received messages "from him from someone else's phone." She denied cancelling the doctor's appointment Father made for K. and stated that K. was up to date on all his shots.

At the time of the hearing, K. attended a daycare that was preparing him for kindergarten. Mother and K. were living with Mother's father, and Mother paid \$500

per month to him for rent plus \$100 for gas and electric. She also spent \$500 monthly on groceries. Mother testified that she was employed at Cassie's Corner Assisted Living home as a recovery specialist, but she stated that she would not provide an employment address for fear of Father stalking her. She stated that she was a certified medication technician, CNA, had a business degree from CCBC, and had taken classes at Coppin State University to become a registered nurse. She worked 25 hours per week, earning \$25 an hour.

Mother stated that Father was an alcoholic and used marijuana. She was "engaged in recovery," attended Narcotics Anonymous meetings, had a sponsor, and received mental health therapy. She testified regarding the parties' ongoing issues with custody exchanges, lack of service of court documents, the judgments of contempt against her, and a CPS investigation initiated by K.'s pediatrician.

Dr. Green, a Ph.D. nurse practitioner and K.'s maternal grandmother, testified that Mother worked for her 25 hours per week. She observed Father yelling at Mother and believed Father did not have the "mental maturity . . . to effectively co-parent." When asked whether Mother lived with her "from time to time," Dr. Green initially responded in the negative. She then testified, however, that Mother used her mailing address because "she's been living in my address." With regard to receipt of court papers, Dr. Green stated that she often went "a week without [ ] checking [her mail]." Regarding Mother's substance abuse issues, Dr. Green stated that Mother was stable, engaged in

recovery activities, three and a half years sober, and currently taking methadone. She was unsure where K. stayed while Mother worked.

The court found that Mother had withheld access to K. from Father for ten months, but both parties had “not been adhering to the dictates of the [custody] order.” It noted that Mother “appeared during court here to be overmedicated,” and at times, she was not truthful when testifying. The court found that Father was “volatile . . . [and] has difficulty controlling his emotions.” Due to the lack of sufficient evidentiary support for the parties’ arguments, the court postponed ruling on the motion pending completion of a child access evaluation. It issued an interim custody order providing for shared physical custody on an alternating weekly schedule, with exchanges to occur at the local police station. The court granted Father sole legal custody on a temporary basis, citing Mother’s handling of medical issues and her credibility. The court stated that, once the child access evaluation was completed, it would “hold another hearing . . . [a]nd at that time, enter a final order on the request to modify custody.” At the end of the hearing, the court again stated that it would “schedule a hearing for the final decision.”

On March 7, 2024, the child access evaluation was filed. The court evaluator recommended that Father have decision making authority and primary parenting time with K. and Mother have supervised visitation until she completed a substance abuse evaluation. The evaluator also recommended that Mother follow all recommendations of the substance abuse evaluation, including meeting with outpatient mental health providers and sobriety monitoring.

## II.

### **August 4, 2025 Contempt Hearing**

On May 2, 2024, Father filed a fourth petition for contempt. He alleged that Mother withheld K. in violation of court orders, and he requested that Mother serve jail time. On July 3, 2025, after multiple delays and postponements, the court held a hearing on Father’s petition for contempt, but Mother did not appear.<sup>3</sup> The July 3, 2025 hearing notice indicated that the proceeding scheduled was a hearing on contempt related to visitation and access. Because Father requested jail time in his petition for contempt, the court postponed the hearing until August 4, 2025. On the section of the postponement hearing sheet listing subject matters, the clerk checked off the box for “CONTEMPT” but did not check off the boxes for “CUSTODY” or “MODIFICATION.”

Mother did not appear for the August 4, 2025 hearing. The court stated that Mother was aware of the hearing because she had called the clerk’s office earlier that morning, advising that she was hospitalized and unable to appear. The court stated that a judiciary employee called the number left by Mother, and a man answered, indicating he was a hospital employee. The court representative told the man to fax verification of Mother’s hospitalization to the court. After 30 minutes passed without receiving the fax confirmation, the court representative called again, but the call went to voicemail, which did not indicate that the number was connected to a hospital or health care provider.

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<sup>3</sup> Mother also failed to appear for the October 18, 2023 contempt hearing.

The court found that Mother's claim that she was hospitalized to be "an unsubstantiated effort by [her] to avoid appearing at th[e] hearing." It found that Mother had notice of the hearing and "deliberately, without excuse, failed to appear." The court proceeded with the hearing in her absence.

Father testified that, pursuant to the September 2021 custody order, the parties shared access to K. pursuant to a 3-4-4-3 arrangement, and he had legal custody with tie-breaking authority. Father stated, however, that he had not heard from K. in more than 18 months, and he did not know where K. was attending school. Father had "no idea" about K.'s health, but he had called the hospital and was told that K. was missing an immunization. When he called Mother about the immunization, she responded that Father was "harassing her."

Father had been arrested three times based on Mother's allegations, but he was never charged with any offenses. He stated that Mother filed over 20 petitions for protective orders against him. The court issued a final protective order in one of the matters, which had expired, but Father testified that the final protective order was issued in error. Father testified that he was never served with the notice of the protective order in the district court, and the circuit court dismissed the final protective order on appeal. Father stated that the final protective order, although ultimately dismissed, caused him to lose his security clearance and employment delivering turbines for Lockheed Martin.

Father last saw K. on February 13, 2024, when Mother had him arrested and K. was taken from him. The court found Mother in contempt of the custody order in

December 2022, and ordered her to pay a \$1,000 sanction. Mother did not satisfy the purge provision in the contempt order by adhering to the custody order or paying the sanction. The court found Mother in contempt again in October 2023 for withholding K. from Father. It ordered a “body attachment for her apprehension and incarceration.”

Following the October 2023 contempt order, Father had custody of K. in November, but Mother again withheld access until the end of December. Father had K. for Christmas and again in February. On February 13, 2024, after Mother filed something with the court, the police arrested Father at his home and removed K. from his care. In the weeks prior to that date, Mother had refused to abide by the court order to exchange custody at the police precinct. Father testified that Mother never purged the October 2023 contempt order by abiding by the custody order.

Father’s counsel introduced a copy of her billing statement into evidence.<sup>4</sup> Father stated that he had “lost everything because of all [Mother’s] false allegations” and had nothing. He relied on family and friends to survive and did not have a vehicle. Father was employed at Blackwell’s Dump. He could no longer drive for government jobs, at ports, or on military bases because of Mother’s continuous allegations of abuse and unsubstantiated petitions for protective orders.

Father’s total bill for attorney’s fees was \$12,775. He testified that all of the charges were fair. He stated that Mother was intentionally withholding K. and did not

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<sup>4</sup> The court took judicial notice of the September 15, 2021 custody order, and the December 2022 and October 2023 contempt orders.

permit him, or K.’s siblings, to speak to K. on the phone.<sup>5</sup> Father stated that Mother worked at her own mother’s psychiatry business. He requested that the court make a reasonable attorney fee award, stating:

[N]one of this is my fault, this is all me trying to be a good father, and I have to pay and go to jail . . . I want to ask for more, so I can get back to where I was, but I know it’s not going to happen. So, whatever the Court thinks is sufficient, anything to show her that she can’t get away with it.

Father’s counsel explained that the billing statement reflected work related to the contempt petitions and motions to modify the custody order.

Counsel then stated that she was unsure of the status of Father’s motion to modify. The court stated that it previously had ordered a Child Access Evaluation, but it could not consider the completed evaluation without the agreement of the parties. It then stated, however, that Mother “waived that right” and asked if Father would like the court to “look at it.” Father’s counsel requested that the court take judicial notice of the Child Access Evaluation, stating that the evaluation “begs the question whether an emergency hearing should or could be granted.”<sup>6</sup>

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<sup>5</sup> Father also has a 23-year-old son, a 20-year-old daughter, and a 2-year-old son from other relationships.

<sup>6</sup> Father’s counsel then elicited testimony regarding K.’s health insurance coverage and medical appointments. Father testified that Mother stopped K.’s health insurance and deliberately canceled a medical appointment for K. in October 2023. He established medical insurance for K. through a state program, but he was unable to obtain medical information about K. because, if he inquired, Mother would retaliate by making false allegations against him.

In considering whether it needed to hold another hearing on the motion to modify, the court stated that it “heard all the evidence” at the November 2023 hearing and held the motion *sub curia* pending the custody evaluation. It reasoned that its decision on modification

was predicated upon the completion of the Custody Evaluation, which has now been completed, and [Father] has consented to me reviewing it. And since I had ordered it, and [Mother] is not here to object, I’m going to do exactly that. And I will consider the testimony on the other issues, because if I order a Modification, there may not be.

Well, I can, we’ll hold her in the Contempt as well, because it brings into play other issues, including the request for attorney’s fees.<sup>7</sup>

Father’s counsel then continued her questioning of Father. When asked if he was requesting that Mother serve jail time, he said yes because “she constantly commits perjury,” “frivolously filed false allegations,” and needed to understand that she had to respect the law. He also sought jail time for the safety of his son and so he could “at least have a clear couple months . . . [to] not have to worry about” frivolous charges and the police trying to arrest him based on false allegations.

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<sup>7</sup> The court did not admit the Child Access Evaluation into evidence at the hearing. On September 10, 2025, the court issued an Order Correcting Record directing that the Child Access Evaluation be marked and admitted into evidence.

With regard to custody, Father requested that Mother have supervised visitation at a supervised visitation center, in accordance with the recommendations in the Child Access Evaluation.<sup>8</sup> Father asked the court to direct law enforcement to return K. to him.

At that point, the court said that it did not need to hear any more testimony. Based on the record, the court found Mother in contempt of multiple orders, including the September 2021 custody order, the November 2023 interim order, and the two prior contempt orders in December 2022 and October 2023. The court found Father’s testimony “to be highly credible” and in alignment with the facts in the record. With respect to the appropriate purge provisions, the court held that *sub curia*. It stated that it would fashion a purge provision with the objective for Mother to deliver K. to Father, noting that Mother had ignored previous directions to cooperate with Father. The court stated that it would also consider whether it needed to hold another hearing on the modification, which had been pending since November 2023, and it would “consider all the requests for relief that have been made by [Father] in th[at] context.”<sup>9</sup>

### III.

#### Court’s Opinion

On September 29, 2025, the court issued a written opinion and order on Father’s October 20, 2023 Motion to Modify and his May 2, 2024 Petition for Contempt. It made

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<sup>8</sup> The Child Access Evaluation indicated that Mother had ongoing drug addiction and mental health issues.

<sup>9</sup> The court noted that the custody proceedings began in 2020, and at the time of the August 2025 hearing, the case had “generated 449 documents.”

findings of fact based on the evidence presented at the November 23, 2023 modification hearing, the August 4, 2025 contempt hearing, and the March 7, 2024 Child Access Evaluation. It found that the parties had ongoing difficulty complying with the September 2021 custody order, and Father had not been able to see K. since February 13, 2024, due to Mother's "continued denial of visitation." Mother failed to share information about K.'s education, health care, and general well-being with Father, and Mother "repeatedly and willfully failed to appear for multiple court proceedings involving" K.'s custody. The court found that Mother's conduct and repeated contempt reflected unfavorably on her fitness as a parent.

The court stated that the numerous petitions for protective orders and unsubstantiated criminal charges Mother filed against Father had a "severe impact on [Father's] ability to earn a living and maintain stable housing." It found that the charges deprived K. of visitation with his Father, a result the court believed was intended by Mother. The court noted factors included in the Child Access Evaluation, including Mother's history of substance abuse, frequent petitions for protective orders, and her refusal to cooperate in the custody arrangement. It noted the evaluation's conclusion that Father was a fit parent to his other children and was able to co-parent with the mother of his other children. The court also noted that the Child Access Evaluation recommended that Father have primary physical and legal custody of K., and Mother have supervised visitation.

Based on these facts, the court found that a material change in circumstances had occurred since the September 2021 custody order. It then weighed the factors established in *Montgomery County Department of Social Services. v. Sanders*, 38 Md. App. 406, 381 A.2d 1154 (1977), and *Taylor v. Taylor*, 306 Md. 290, 508 A.2d 964 (1986), as follows:

1. The age, health, and sex of the child; [K.], male, age 6; no apparent health concerns.
2. The age and number of children each parent has in the household; none in Mother's home; Father has a 2 year old son with his fiancée as well as two adult children from a prior relationship. His fiancée has two children ages 11 and 8.
3. The preference of the child, when the child is of sufficient age and capacity to form a rational judgment; in his interview with the custody evaluator, [K.] is reported to have expressed a preference for His father's home.
4. The potential disruption of the child's social and school life; it is unclear at this time where [K.] is going to school as [Mother] has failed to appear for hearings and has not provided information to [Father]. At the time of the custody evaluation, [K.] reported that he had no friends.
5. The fitness of the parents/ The character and reputation of the parties;
  - a. [Mother]: As outlined above and expanded upon in the Ch[i]ld Custody Evaluation, the court finds that she has failed to attend court or obey the courts orders as they relate to [K.'s] custody. This failure to adhere to her responsibilities reflects poorly on her fitness as a parent. She has regularly denied the father's access to [K.] which the court finds to be inconsistent with his best interests. She has filed protective order petitions which, in nearly every instance, have proven to be unsubstantiated. This conduct has had a significantly detrimental effect on [Father] and, as result, on [K.'s] opportunity to spend time with his father.
  - b. [Father]: He has consistently [] sought to remain connected to his son and to provide for his well-being, despite the difficulties

presented by [Mother]. The court finds that he is a fit and proper custodian for [K.].

6. The geographic proximity of the parents' residences and opportunities for time with each parent; both parents live in the Baltimore metropolitan area.
7. The ability of each parent to maintain a stable and appropriate home for the child;
  - a. [Mother]: She lives in a home with her father and his wife. The home study conducted on February 20, 2024 revealed a modest and appropriate home, although it appeared "very cluttered."
  - b. [Father]: He lives in a row house with his mother and stepfather. The home study conducted on February the 28, 2024 revealed an appropriate living space.
8. Financial status of the parents; unclear as of this writing.
9. The demands of parental employment and opportunities for time with the child; Employment obligations do not appear to interfere with the parties' time with the child.
10. The relationship established between the child and each parent; The child custody evaluation reflects a divide between how [K.] (then age 4) and his mother view their relationship.
11. Any prior voluntary abandonment or surrender of custody of the child; None
12. The length of the separation of the parents; The parties have never lived together.
13. The requests of each parent and the sincerity of the requests; Both parents have sought sole legal and primary custody. Those requests appear sincere.
14. Any agreements between the parties; None

15. Willingness of the parents to share custody; By her actions, [Mother] appears unwilling to share custody, even when ordered to do so. [Father] appears willing to share physical custody, so long as [Mother] abides by the schedule.
16. Each parent's ability to maintain the child's relationships with the other parent and family; It appears to be very limited given the parties' inability to cooperate with one another.
17. The capacity of the parents to communicate and to reach shared decisions; The parents, as is demonstrated by the court filings have poor communication and are unable to effectively share decision making.
18. Any impact on state or federal assistance; None
19. The benefit a parent may receive from an award of joint physical custody, None

Based on the evidence, including the Child Access Evaluation, the court concluded that it was no longer in K.'s "best interests to remain in the primary custody of [Mother]." The court found that Mother's interference with Father's parenting time was harmful to K.'s development, and her refusal to abide by court orders reflected "unfavorably on her fitness as a parent." It granted Father's motion to modify and awarded him primary physical custody and sole legal custody. The court awarded Mother visitation rights "so long as she abides by the [Custody] Order," which established visitation "under such circumstances as are agreed upon by the parties in writing." The court authorized law enforcement to "take all steps necessary to enforce" the order.

The court also found Mother to be in willful contempt of the November 22, 2023 Interim Order. Because it modified custody, however, the court stated there was "no useful purpose in setting a purge provision for [Mother's] contempt."

Finally, the court addressed Father’s request for attorney’s fees. It stated that it had “considered the financial status and needs of each party” and found that there was substantial justification for Father’s pending motions. It found, on the other hand, that Mother’s withholding of visitation, “was without any substantial justification.” The court found that the requested fees were fair and reasonable in amount, but it reduced the award to exclude services that were not directly related to Mother’s conduct. It awarded Father \$5,000 in attorney’s fees.

This appeal followed.

## **DISCUSSION**

### **I.**

#### **Custody Modification**

Mother, an unrepresented litigant, contends in her informal brief that the court violated her fundamental right to due process and the opportunity to be heard. She notes that the court “made major decisions transforming [her] parental rights” and cites Section 9.5-205(a) of the Family Law Article, which provides that, “[b]efore a child custody determination is made under this title, notice and an opportunity to be heard . . . shall be given to . . . any parent whose parental rights have not been previously terminated.” She argues that the court abused its discretion and committed legal error in finding that she

voluntarily waived her right to be present at the custody modification and contempt hearing.<sup>10</sup>

We review decisions of the circuit court to modify custody using three interrelated standards of review. We review factual findings under the clearly erroneous standard and legal questions without deference, and we shall not disturb the ultimate conclusion of the circuit court unless there has been a clear abuse of discretion. *In re Yve S.*, 373 Md. 551, 586 (2003). Because the circuit court sees the witnesses and the parties and hears the testimony, it “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.” *Id.*

Due process requires that a party be given adequate notice of the time, place, and nature of a hearing. *Van Schaik v. Van Shaik*, 90 Md. App. 725, 739 (1992). As we explained, “[i]t is clear that if a court is contemplating holding a hearing at which it will, or may, determine custody issues, a parent with custodial rights, or one who has the right to claim custody, must be notified that such an issue may be the subject of the hearing.” *Id.* at 738. *Accord* Md. Code Ann., Fam. Law (“FL”) § 9.5.205(a) (2019 Repl. Vol.).

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<sup>10</sup> In our original opinion, now withdrawn, we stated that Father did not file a brief in this appeal. On April 29, 2026, however, Father’s counsel filed a Motion for Reconsideration stating that she filed Father’s brief with an incorrect case number, and therefore, it was not docketed in this appeal. Father’s counsel stated that, because the clerk’s office did not send a deficiency notice, she did not discover the error until after we filed our opinion. On reconsideration, we have considered the arguments in Father’s brief and have concluded that they do not change our analysis or holding.

Here, the record reflects that Mother received notice of the time and place of the hearing, but not the nature of the hearing would involve consideration of custody. The notices for the August 4, 2025 hearing stated that it was a hearing on contempt, not custody.<sup>11</sup> When a hearing notice does not inform parties that child custody will be at issue, but the court nevertheless orders a custody modification, we have found a violation of FL § 9.5.205(a) and a denial of due process rights. *See Van Shaik*, 160 Md. App. at 739 (father's due process rights violated where hearing notice indicated visitation and child's possessions were at issue, but court instead terminated father's joint custody rights). *Accord Burdick v. Brooks*, 160 Md. App. 519, 527 (2004) (court erred in modifying custody at scheduling conference based on Mother's failure to comply with psychological evaluation order where notice letter failed to inform her of possible custody determination).

In its opinion modifying custody, the court relied heavily on the Child Access Evaluation findings, citing to the evaluation as a basis for its finding that there was a

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<sup>11</sup> The August 2025 hearing was postponed from hearings set for April 8, 2025 and July 3, 2025 hearings, both of which listed the "**Type of Proceeding**" as "Hearing-Contempt." The post-hearing summary sheet for the July 2025 hearing noted that Mother failed to appear and checked off the box for "**CONTEMPT**" to indicate the type of hearing held. The "**Hearing Notes**" section stated that Father requested jail time for contempt and that the case would be postponed until August 4, 2025. On the hearing sheet summarizing the August 4, 2025 hearing, the clerk checked off the boxes for "**SHOW CAUSE**" and "**CONTEMPT**" and left blank the boxes for "**CUSTODY**" and "**MODIFICATION.**" Additionally, in his petition for contempt, Father did not request a modification of the custody order; rather, he requested only that Mother serve jail time.

material change in circumstances and in its ultimate custody determination. Mother, however, did not have notice that the court would consider the Child Access Evaluation findings or that custody modification would be at issue at the contempt hearing.<sup>12</sup>

Mother was deprived of the opportunity to address the Child Access Evaluation and its impact on Father’s motion to modify custody. A separate hearing on custody modification was required to provide Mother with due process and an opportunity to be heard on the Child Access Evaluation findings. To keep stability for the child, however, the court’s order will stand pending a new hearing and order. Accordingly, we remand for further proceedings without affirming or reversing. *See Krebs v. Krebs*, 255 Md. 264, 267 (1969) (remanding for further evaluation without affirming or reversing).

## II.

### Contempt

We turn now to the court’s finding of contempt. Mother contends that the court erred in finding her in contempt because it did not include a purge provision. She asserts that the contempt finding, therefore, was improperly punitive.

The court generally will not “disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed.” *Sayed A. v. Susan A.*, 265 Md. App. 40, 69-70 (2025) (quoting *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016)). When the circuit court’s “decision encompasses an error of

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<sup>12</sup> We note that, at the close of the November 20, 2023 modification hearing, the court stated that it would hold another hearing for a final decision once the Child Access Evaluation was complete.

law,” however, we review the court’s conclusion under a *de novo* standard of review. *Breona C. v. Rodney D.*, 253 Md. App. 67, 73 (2021).

The contempt finding at issue here was for constructive civil contempt. Constructive civil contempt occurs outside the presence of the court. *Id.* Civil contempt proceedings are intended to coerce present or future compliance with a court order. *Id.* A party cannot be held in contempt for failure to comply with a court order unless there is a showing that the failure to comply was willful. *Md. Dep’t of Health v. Myers*, 260 Md. App. 565, 634 (2024), *cert. denied*, 487 Md. 267 (2024). “The coercive mechanism of an order of constructive civil contempt is the imposition of a sanction that the contemnor is able to avoid by taking some definite, specified action of which the contemnor is reasonably capable.” *Breona C.*, 253 Md. App. at 74.

An order holding a party in constructive civil contempt is valid only if it:

(1) imposes a sanction; (2) includes a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and (3) is designed to coerce the contemnor’s future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct.

*Id.* *Accord Myers*, 260 Md. App. at 634. If incarceration to compel compliance with a court order is requested, the alleged contemnor has a right to an attorney. Md. Rule 15-206 (c)(2)(C). The court may find that the alleged contemnor has waived his or her right to an attorney, however, if it “finds that there is no meritorious reason for the alleged contemnor’s appearance without counsel.” Rule 15-206 (e)(2)(C). Moreover, “[i]f the

alleged contemnor in a civil contempt proceeding fails to appear in person or by counsel at the time and place set by the court, the court may proceed ex parte.” Rule 15-207(c)(2).

The court here found Mother to be “in willful contempt of the November 22, 2023 Interim Order,” but it did not include a purge provision or impose a sanction for the contempt. It expressly found that there was “no useful purpose in setting a purge provision” because it was modifying custody. As we have explained, however, “there cannot be a finding of contempt unless the contemnor has the present ability to comply with a proper purging provision.” *Kowalczyk*, 231 Md. App. at 211. Here, there was no purge provision. Accordingly, the finding of contempt is invalid, and we shall reverse it.

### III.

#### Counsel Fees

Mother’s final argument is that the court erred in awarding attorney’s fees to Father without providing her with a fair opportunity to be heard. Section 12-103 of the Family Law Article provides that “[t]he court may award to either party the costs and counsel fees that are just and proper under all circumstances in any case in which a person . . . files any form of proceeding . . . to enforce a decree of custody or visitation.” FL § 12-103(a). Before a court may award counsel fees under § 12-103, it must consider: “(1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.” *Id.* § 12-103(b). By its plain language, FL § 12-103 applies to constructive civil contempt actions brought to enforce custody orders. *Sayed A.*, 265 Md. App. at 89. We may uphold

an order’s provision awarding attorney’s fees based on contempt even when the contempt order is vacated based on an invalid purge provision. *Id.* at 90-91.

The court has “significant discretion in applying the factors” set forth in § 12-103(b), but the failure to consider those factors constitutes legal error. *Ruiz v. Kinoshita*, 239 Md. App. 395, 438 (2018). The court does not need “to recite any ‘magical’ words so long as its opinion, however phrased, does that which the statute requires.” *Horsely v. Radisi*, 132 Md. App. 1, 31 (2000) (quoting *Beck v. Beck*, 112 Md. App. 197, 212 (1996)).

The court here found that there was substantial justification for Father to bring the petition for contempt and motion to modify because Mother withheld Father’s visitation “without any substantial justification.” It also found that the fees requested were fair and reasonable in amount. With regard to the financial status and needs of each party, the court stated only that it had considered those factors, without further discussion. In the earlier portion of the opinion discussing custody, however, the court indicated that the “[f]inancial status of the parents” was “unclear as of this writing.”<sup>13</sup>

Based on the record here, the court had “inadequate financial information upon which to have based a FL § 12-103(b) award.” *See Guillaume v. Guillaume*, 243 Md.

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<sup>13</sup> Mother did testify at the November 20, 2023 modification hearing regarding her employment, her hourly wage, and certain living expenses. This was not in the context of a request for attorney’s fees, however, as both parties were unrepresented at the time, and that hearing was nearly two years prior to the August 2025 contempt hearing. As indicated below, the parties current financial status was unclear at the time of the contempt hearing.

App. 6, 28 (2019) (court erred in awarding attorney’s fees where there was insufficient financial information in the record and no discussion of the needs of the parties). Accordingly, we vacate the court’s award of attorney’s fees to Father and remand for further proceedings.<sup>14</sup>

**JUDGMENTS OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY VACATED  
AND REMANDED WITHOUT  
REVERSING OR AFFIRMING FOR  
FURTHER PROCEEDINGS. COSTS  
DIVIDED EQUALLY BETWEEN THE  
PARTIES.**

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<sup>14</sup> Because we vacate the circuit court’s judgments on contempt, modification, and attorney’s fees on other grounds, we need not reach the issue of whether the court properly proceeded with the August 4, 2025 hearing in Mother’s absence. We note, however, that Rule 12-207(c)(2) “provides two, succinct alternatives for the court to select from should a contemnor fail to appear in a civil contempt proceeding”: (1) proceed *ex parte*; or (2) order that the alleged contemnor be arrested and brought before the court for the hearing. *Wilson v. Holliday*, 364 Md. 589, 609 (2001).