Circuit Court for Montgomery County
Case No. 105974FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2946

September Term, 2018

ANDREA FERA

v.

YUMNA KALUF

Wright,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: August 7, 2019

Andrea Fera ("Father"), appellant, and Yumna Kaluf ("Mother"), appellee, are the divorced parents of a 15-year-old daughter (the "Child"). In 2014, the parties entered into a consent order appointing a Best Interest Attorney ("BIA") for the Child. In 2015, the parties entered into a consent order regarding the care and custody of the Child. In 2018, Father filed, in the Circuit Court for Montgomery County, a motion to modify custody of the Child and to have the Child's BIA removed. Following a hearing, the circuit court dismissed Father's motion for modification and denied his motion to remove the Child's BIA. In this appeal, Father presents several questions for our review, which we rephrased as follows:[1]

1. Did the circuit court err in dismissing Father's motion for modification of custody?

2. Did the circuit court err in failing to grant Father leave to amend his motion for modification of custody?

[1] Father submitted the following questions:

1. Whether the Circuit Court for Montgomery County, Maryland, erred in dismissing Appellant's petition for modification of custody.

2. Whether the Circuit Court for Montgomery County, Maryland, erred in determining that Appellant's petition for modification of custody failed to state a claim and, specifically, failed to sufficiently allege a material change of circumstances.

3. Whether the Circuit Court for Montgomery County, Maryland, erred in failing to give Appellant leave to amend his petition for modification.

4. Whether the Circuit Court for Montgomery County, Maryland, erred in denying Appellant's motion to dismiss/disqualify the BIA.

3. Did the circuit court err in denying Father's motion to remove the Child's BIA?

4. Should the 2015 Consent Order be declared void because certain provisions of the order "impermissibly delegated the circuit court's power and jurisdiction?"

For reasons to follow, we answer all questions in the negative and affirm the judgments of the circuit court.

BACKGROUND

The parties were married in 2003 and, on May 2, 2004, the Child was born. In 2012, the Child was paralyzed from the waist down because of an automobile accident. In 2013, the parties divorced.

As part of their divorce, the parties executed a Voluntary Separation, Child Custody, Child Support, and Property Settlement Agreement ("2013 Consent Order"). In that agreement, which was incorporated into the divorce judgment, the parties agreed to share joint legal custody of the Child. Because the Child had recently been released from the hospital following the automobile accident, the parties agreed the Child would live with Mother, but that Father would have "frequent visitation" on a "consistent, meaningful basis." The parties anticipated increasing Father's "visitation periods" as the Child's medical condition improved, consistent with her best interests, and agreed to confer in three months and every six months thereafter to review Father's access schedule to determine if it should remain the same or be increased. They agreed that "but-for" the Child's injuries, Father would have weekly day and overnight visits, as well as extended access for vacation and holidays, and that it was the parties' "goal consistent with the

child's best interests, her medical needs, and the location of the parties' residences" to "implement[] . . . a schedule along these lines[.]" Father was to be permitted "frequent, regular contact and communications directly with [the Child]" by telephone, e-mail, text messaging, and video chatting platforms, and Mother agreed to facilitate that contact.

In 2014, Mother moved to modify custody and child support. She alleged Father had moved out of the state and possibly out of the country; that he refused to provide Mother with his address; that he had seen the Child only twice since he moved away; and, that he was not cooperating with Mother to manage the Child's medical treatment in her best interests. Mother asked the court to grant her sole legal custody of the Child and to increase child support.

Soon thereafter, Mother filed an emergency motion for modification of legal custody, asking the court to grant her sole authority to make medical decisions for the Child. She alleged that the Child required surgery on her hip; that Father had been unresponsive to her e-mails about the planned surgery; and, that he had contacted the Child's doctors to inform them that he did not consent to the surgery. Following a hearing, at which Father did not appear, the court granted Mother's motion.

Shortly after the circuit court granted Mother's emergency motion, Father filed a motion to modify custody, visitation, and child support. That motion, as amended, alleged that, prior to the filing of Mother's motion to modify custody, Father had "enjoyed full and open daily electronic communications" with and "frequent direct physical access" to the Child. Since that time, however, Mother had, according to Father,

taken "extreme and extraordinary steps to interfere" in the relationship between Father and the Child. Father alleged that Mother's actions were contrary to the Child's best interests and jeopardized her medical care.

On August 1, 2014, the circuit court, with the consent of the parties, appointed Gail Landau as the Child's BIA. On December 9, 2014, the parties entered into an "Amendment to Child Custody and Child Support Agreement." ("Amended Agreement") The Amended Agreement provided that Mother would have sole legal custody of the Child, that Mother would communicate with Father about "important issues" affecting the Child, and that Mother would give "good faith consideration" to concerns or recommendations made by Father. The parties further agreed that Mother would have sole physical custody of the Child and that Father would be permitted "electronic and/or written access to [the Child] without interference from Mother." Regarding Father's physical access to the Child, the Amended Agreement stated that "the resumption of physical visitation between Father and [the Child] shall take place under such conditions, and at such times, frequencies, and location(s) as determined by the BIA, based upon the recommendations of [the Child's] psychotherapist." The Amended Agreement also provided that the Child "should continue psychotherapy for the foreseeable future" and that "the BIA will have final decision-making authority with respect to choosing a therapist." On February 4, 2015, the circuit court entered a consent order that incorporated the Amended Agreement ("2015 Consent Order").

Eight months later, Father again moved to modify visitation. He alleged Mother was refusing to communicate with him about the Child, that Mother would not let the Child use a cell phone he had bought her, and that the 2015 Consent Order was "not working." He asked the court to grant joint legal custody and to establish a visitation access schedule including visits at least twice per week for at least one hour per visit.

Following the filing of Father's motion for modification, the circuit court ordered that a custody/visitation evaluation be performed. In March 2015, Father moved to remove the Child's BIA on the grounds that she was acting against the Child's best interests and was actively conspiring with Mother to alienate the Child from him. On May 5, 2016, the parties appeared for a pre-trial conference, and the custody evaluator gave her report. At that hearing, Father withdrew his motion to modify visitation and all other pending motions.

Approximately two years later, on July 24, 2018, Father again moved to modify custody and visitation and to remove Ms. Landau as BIA. He alleged, among other things, that the 2015 Consent Order was entered into "in the hope that [Father] and [the Child] would repair their relationship so that [Father] could once again resume the regular physical interaction he had with [her] for the vast majority of her life;" that Mother and the BIA were not cooperating with Father and were "actively harm[ing] [his] relationship with [the Child];" that the 2015 Consent Order "was implemented to encourage visitation between [Father] and [the Child]" but that "the situation has been left unchanged;" that "the current circumstances have changed significantly such that the

consent order is not serving the best interests of [the Child];" and that the Child "needs support from both parents" and to have "a loving relationship with her father."

Father also alleged that, in early 2018, he "reached out to the BIA" to arrange a visit with the Child but received no response "for several weeks;" that, when the BIA ultimately responded to arrange a visit, she "imposed several requirements," including that Father not touch the Child without her permission or discuss the court case with her; and that, following his visit with the Child, it was clear that "someone, presumably [Mother], the BIA, or both had alienated [the Child] against [Father]." Father then alleged that his subsequent communications to the Child and the BIA went unanswered; that, when the BIA responded, she informed Father that the Child did not want to see him and that the BIA would not sanction future visits unless Father "sought parental coaching;" that Father then contacted Mother, who stated that she "saw no reason to change the consent order;" and, that, as a result, Father was "effectively prevented from seeing his daughter" and could "do nothing under the consent order to change the current situation."

Following the filing of Father's motions, the BIA moved to dismiss, arguing that Father had failed to state a claim upon which relief could be granted. Mother also opposed Father's motions, arguing there had been no material change of circumstances since the entry of the 2015 Consent Order and that there was no cause for removal of the BIA.

On November 9, 2018, the court held a hearing on the parties' motions. At that hearing, Father argued that Mother and the BIA had "isolated" him from the Child and "turned her against [him]." Father also argued that, since the adoption of the 2015 Consent Order, the Child had become progressively "detached" from him.

In response, Mother's counsel proffered that the parties, in agreeing to the 2015 Consent Order, decided to "put decision making in the hands of professionals" to "shield [the Child] from the process, and to do it in a way that would ensure [the Child's] safety and wellbeing." Counsel further proffered that, in so doing, the parties "specifically put the BIA in a role" to "institute conditions for visitation, [to] determine the timing of those visits, and to determine the frequency of those visits." Counsel argued that Father had not presented any argument to show that the BIA's actions breached those duties or any other duties inherent in her position as BIA.

Regarding the motion to dismiss, the BIA argued that all of the actions cited by Father in support of his motion for modification were contemplated by the 2015 Consent Order, which expressly stated that the BIA had the discretion to place conditions on Father's access to the Child if doing so served the Child's best interests. The BIA further argued that the continued deterioration of Father's relationship with the Child was because the Child "got older" and made the conscious decision to limit her contact with Father.

At one point during the hearing, the court asked Father to explain the "material change in circumstances" that had occurred since the BIA's appointment. Father

responded that "they [had] not acted upon [sic] as it was written in the agreement." Father further stated that the BIA had been appointed "with a specific task" of making his relationship with the Child "regular" but that the BIA was "biased" against him and had been "completely acting against" the agreement. Father then stated that the BIA had not been "doing what professionally she should be doing," and that the BIA was supposed to allow for "regular access between [Father and the Child] instead of preventing [Father] from any contacts with [the Child]." When the court reminded Father that, per the 2015 Consent Order, he had agreed to give the BIA the power to make those decisions, Father responded that "nothing is different" and that the agreement stated that "something should be happening."

The circuit court ultimately denied Father's motion to remove the BIA. The court found that it could not "unilaterally remove a [BIA] that the parties have agreed to put in place and keep in place for very specific reasons" unless Father was able to show that there had been "some specific violation of a Rule of Professional Conduct" on the part of the BIA, which Father failed to do. The court also found that it would be improper to remove the BIA simply because Father "disagree[d] with how this case [had] progressed" or because he was unhappy with "the independent assessment that [the BIA] put forth regarding what she believes is in [the Child's] best interest."

Regarding Father's motion for modification of custody, the circuit court granted the BIA's motion to dismiss. The court explained that, according to Father, the lack of progress towards reconciliation and increased visitation with the Child was a material

change of circumstance. The court noted, however, that the 2015 Consent Order made the resumption of regular visitation between the Child and Father contingent upon the recommendation of the BIA, in consultation with the Child's therapist. The fact that that had yet to occur did not, according to the court, amount to a material change in circumstances.

On November 19, 2018, the circuit court entered judgments denying Father's motion to remove the BIA and granting the BIA's motion to dismiss Father's motion for modification of custody. Around that same time, the BIA filed a petition for attorney's fees. On November 29, 2018, Father filed the instant appeal. On December 27, 2018, the court granted the BIA's petition for fees.

MOTION TO DISMISS

Mother moves to dismiss Father's appeal, arguing that Father failed to file a sufficient record extract and that, at the time the appeal was noted, the circuit court's judgments were not final. We decline Mother's request.

First, Father's record extract is sufficient, in that it contains "all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal[.]" Md. Rule 8-501(c). To the extent that Father's record extract omitted certain documents that Mother felt were germane to the instant appeal, those documents have been included in Mother's appendix. *See McAllister v. McAllister*, 218 Md. App. 386, 399 (2014) ("[T]his Court typically will not dismiss an appeal, even in the face of noncompliance with [Md.] Rule 8-501, unless the appellee sustains prejudice."); *see also*

Md. Rule 8-501(e) ("If the record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief[.]"). Consequently, even if Father failed to comply with Md. Rule 8-501, dismissal is unwarranted. *See Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 547 (1999) (holding that failure by appellant to include certain portions of transcripts in record extract did not warrant dismissal where those portions were included in appellee's appendix). We will, however, require that the cost of printing Mother's appendix shall be paid by Father. Md. Rule 8-501(1).

Second, regarding the timeliness of Father's appeal, we note that, at the time the court entered the judgments from which the instant appeal lies, the only pending issue was a motion for fees filed by the BIA. Under those circumstances, dismissal is inappropriate because the award of fees or costs is a collateral matter and does not deprive the judgment of finality for purposes of appeal. *E.g.*, *Blake v. Blake*, 341 Md. 326, 336 (1996); *Johnson v. Wright*, 92 Md. App. 179, 181-82 (1992). We now turn to the merits of Father's claims.

DISCUSSION

I.

Father first contends that the circuit court erred in dismissing his motion for modification of custody. Father maintains that the court's decision, which was based on a finding that Father had failed to allege a material change in circumstances, was erroneous because, contrary to the court's finding, his motion for modification included

allegations sufficient to overcome a motion to dismiss. Father notes the following allegations: that, at the time his motion for modification was filed, the 2015 Consent Order had "failed" and no longer served the purpose for which it was written; that Mother had "breached" the 2015 Consent Order by failing to facilitate contacts between Father and the Child; that the Child had become "alienated" from Father; that the BIA had failed to properly perform her duties, as contemplated by the 2015 Consent Order; that the BIA had been unresponsive; that the BIA had imposed "unreasonable" restrictions on Father's access to the Child; and, that the 2015 Consent Order "had been used to effectively and unjustly strip him entirely of his parental rights without any genuine avenue of redress, and, indeed, was being applied to completely cut his ties with [the Child] and obliterate him from [the Child's] life." Father maintains that those allegations sufficiently stated a claim because "effective extirpation of the father's presence from a child's life is patently a material change of circumstances that warrants review."

Maryland Rule 2-322(b)(2) provides that a defendant in a civil suit in circuit court may seek dismissal of the suit if the complaint fails "to state a claim upon which relief can be granted." In such a motion, "[a] defendant asserts . . . that, despite the truth of the allegations, the plaintiff is barred from recovery as a matter of law." *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003). "When ruling on a motion to dismiss, 'consideration of the universe of 'facts' pertinent to the court's analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.'" *D'Aoust v. Diamond*, 424 Md. 549, 572 (2012) (quoting *Converge*

Servs. Grp., LLC v. Curran, 383 Md. 462, 475 (2004)). "In deciding whether to grant a motion to dismiss a complaint, a court is to assume the truth of the factual allegations of the complaint and the reasonable inferences that may be drawn from those allegations in the light most favorable to the plaintiff." *Heavenly Days Crematorium, LLC v. Harris, Smariga and Associates, Inc.*, 433 Md. 558, 568 (2013) (footnote omitted). "Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *Ricketts v. Ricketts*, 393 Md. 479, 492 (2006). That said, the plaintiff "must allege facts with specificity; 'bald assertions and conclusory statements will not suffice.'" *Campbell v. Cushwa*, 133 Md. App. 519 (2000) (quoting *Bobo v. State*, 346 Md. 706, 708-09 (1997)). "Upon appellate review, the trial court's decision to grant such a motion is analyzed to determine whether the court was legally correct." *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010).

"[C]ourts retain continuing jurisdiction over, and may from time to time amend, alter, and modify, their judgments and decrees with respect to custody of and visitation with minor children[.]" *Walsh v. Walsh*, 95 Md. App. 710, 714 (1993). "To invoke such continuing jurisdiction and effect a change in a prior judgment, a party must present a case that, by reason of a substantial change in circumstances, is not the same as the case previously decided." *Id.* That is, the moving party must 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." *Gillespie v. Gillespie*, 206 Md. App. 146, 171-72 (2012) (quoting *Sigurdsson v. Nodeen*, 180 Md. App. 326,

344 (2008)). "A material change of circumstances is a change in circumstances that affects the welfare of the child." *Id.* at 171.

That said, "custody and visitation orders entered by the court are intended to carry some amount of finality." *Barrett v. Ayres*, 186 Md. App. 1, 18 (2009). "In the limited situation where it is clear that the party seeking modification of a custody order is offering nothing new, and is simply attempting to relitigate the earlier determination, the effort will fail on that ground alone." *McCready v. McCready*, 323 Md. 476, 482 (1991). "If, however, a party can show a material change in circumstances, that is, circumstances affecting the best interest of the child that were not in existence at the time the original order was made, the court will entertain a motion to modify its previous order." *Barrett*, 186 Md. App. at 18. The purpose of requiring a party to show a material change in circumstances is "to preserve stability for the child and to prevent relitigation of the same issues." *McMahon v. Piazze*, 162 Md. App. 588, 596 (2005). "Consequently, if a court concludes, on sufficient evidence, that an existing provision concerning custody or visitation is no longer in the best interest of the child and that the requested change is in the child's best interest, the materiality requirement will be satisfied." *Id.*

We hold that Father's pleading failed to allege a material change in circumstances sufficient to state a claim for which relief could be granted.[2] Aside from the conclusory

[2] Mother contends that Father's motion was properly dismissed because it violated the "voluntary dismissal rule." We disagree. The "voluntary dismissal rule," as set forth in Md. Rule 2-506(d), states, in pertinent part, that, unless otherwise specified, the voluntary dismissal of a claim "operates as an adjudication upon the merits when filed by a party who has previously dismissed . . . an action based on or including the same

allegations that Mother and the BIA were "not cooperating" and were "harming his relationship with the Child," Father did not plead any act or occurrence since the 2015 Consent Order to show a change of circumstances affecting the welfare of the Child. To the contrary, Father alleged that, since the 2015 Consent Order, "the situation [had] been left unchanged." Although Father did claim that the 2015 Consent Order was no longer serving the Child's best interest, he did not, in so claiming, assert any facts to show how the Child's best interests had been affected, aside from his bald assertions that the Child needed "support from both parents" and to have "a loving relationship with her father." In short, it is clear from Father's complaint that he was "offering nothing new" but was "simply attempting to relitigate" the 2015 Consent Order.

To be sure, Father alleged that, during a visit with the Child in 2018, it "became clear" that Mother and/or the BIA had "alienated" the Child from him and that that alienation had caused his relationship with the Child to deteriorate. In making those claims, however, Father failed to set forth any facts to show how Mother or the BIA had effectuated the "alienation," nor did he show how the purported alienation led to his and the Child's estrangement. Instead, Father concluded that, because the Child did not want to visit with him, Mother and the BIA must have done something to alienate the Child from him. Such conclusory statements are insufficient to overcome a motion to dismiss.

claim." Here, although Father had filed, and then withdrew, a motion for modification and a motion to remove the BIA two years prior to the filing of the instant motions, it is clear from the record that the instant motions were based, at least in part, on events that had occurred following the withdrawal of the previous motions. Thus, the voluntary dismissal rule is inapplicable.

See McMahon, 162 Md. App. at 597 (holding that plaintiff failed to state a claim where "[n]o nexus between the facts and the conclusion can be inferred, other than by speculation."). Accordingly, the circuit court did not err in granting the BIA's motion to dismiss Father's motion for modification of custody.

II.

Father next contends that the circuit court erred in failing to grant him leave to amend his motion for modification of custody. We hold that this issue is unpreserved, as Father never asked the court for leave to amend. *See Fedder v. Component Structures Corp.*, 23 Md. App. 375, 386 (1974) ("The right to amend is not a right *ex debito*, but is subject to the sound discretion of the trial court and will not be reviewed in the absence of abuse."); s*ee also* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

III.

Father next contends that the circuit court erred in denying his motion to disqualify the Child's BIA. According to Father, the BIA should have been removed for "lack of diligence" in failing to respond timely to his requests for visits with the Child. Father also claims that the BIA had imposed "unreasonable conditions, restrictions, and limitations" on him and had exhibited "disregard of the law to the effect that [Father] has now been effectively stripped of his parental rights without due process."

Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 1-202(a), authorizes a court, in a custody action, to appoint a BIA to represent the minor child. The purpose of the BIA is to make "an independent assessment of what is in the child's best interest" and to "advance[] a position that the attorney believes is in the child's best interest." *McAllister*, 218 Md. App. at 403-04 (citations and quotations omitted) (footnote omitted). "Because the BIA must advance a child's best interests in the midst of what are often bitter and contentious disputes between the child's parents, the BIA will frequently displease at least one, if not both, of the parties." *Id.* at 403. Consequently, if a parent "claims that a BIA should be disqualified from representing the child because the parent disapproves of the BIA's representation, it is appropriate for courts to view the claim with some measure of skepticism." *Id.* at 404. In those instances, "close scrutiny is particularly important because a parent might use the prospect of disqualification as a tactic to deter the BIA from carrying out his or her duty to make 'an independent assessment of what is in the child's best interest' and to advocate that position before the court." *Id.* at 404 (citations and quotations omitted).

"When a party moves to disqualify another person's attorney, . . . the moving party must first identify a specific violation of a Rule of Professional Conduct, such as a disabling conflict of interest." *Id.* at 405 (internal citations and quotation omitted). Upon such a showing, the court must determine whether opposing counsel actually violated the rule. *Klupt v. Krongard*, 126 Md. App. 179, 203 (1999). Even then, disqualification is

not automatic; rather "it remains within the discretion of the court whether to impose the sanction of disqualification." *Id.*

We hold that the circuit court did not abuse its discretion in refusing to disqualify the Child's BIA. At no point, either in his written motion or in his argument before the court, did Father identify a specific violation of a Rule of Professional Conduct by the BIA. Moreover, in complaining of the BIA's "lack of diligence" and imposition of "unreasonable conditions," Father has presented no argument as to how those actions adversely affected the Child's best interest. Instead, Father asserts that the BIA's actions "effectively stripped [him] of his parental rights without due process." Such considerations are not, under the circumstances, sufficient to warrant the BIA's removal. *See, e.g., John O. v. Jane O.*, 90 Md. App. 406, 435-36 (1992) (noting that a BIA "is responsible for providing the court with an independent analysis of the child's best interests, not advocating either parent's position."), *abrogated on other grounds*, 340 Md. 480; *Levitt v. Levitt*, 79 Md. App. 394, 436 (1989) (noting that a five-year-old child involved in a custody dispute "needed some special consideration," which he could have received "through an attorney dedicated to looking out for [the child's] interests, not those of his parents.").

Again, the BIA's actions must be measured against the overall purpose of her position, which was to investigate and represent the best interests of the Child. In that

regard, the record shows that the BIA acted with due diligence.[3] That Father may have at times disagreed with the BIA's actions is not cause for her removal. *See McAllister*, 218 Md. App. at 405 (noting that removal of a BIA was improper where the moving party based "his case for disqualification solely on his vociferous disagreement with how the BIA opted to conduct her representation of [the children.]").

IV.

Father's final contention is that two provisions of the 2015 Consent Order are void and unenforceable. The first provision states that "the resumption of physical visitation between Father and [the Child] shall take place under such conditions, and at such times, frequencies, and location(s) as determined by the BIA, based upon the recommendations of [the Child's] psychotherapist." The second provision states that "the BIA will have final decision-making authority with respect to choosing a therapist." According to Father, those two provisions "violate due process and are void" because they "impermissibly delegated to the BIA powers that reside solely in the trial court."

[3] At the hearing on his motion, Father claimed that, per the 2015 Consent Order, the BIA had been appointed "with a specific task" of rekindling Father's relationship with the Child. To the extent that Father asserts, in this appeal, that the BIA exhibited a lack of diligence in failing to follow that express directive, we disagree. Nothing in the 2015 Consent Order suggests that the BIA was required to affirmatively promote any sort of reconciliation or reunification between Father and the Child. The 2015 Consent Order did state, however, that "the resumption of physical visitation between Father and [the Child] shall take place under such conditions, and at such times, frequencies, and location(s) as determined by the BIA, based upon the recommendations of [the Child's] psychotherapist." That is precisely what happened.

Father's claim is without merit. The circuit court did not delegate any powers to the BIA. Rather, Father and Mother decided, per their Amended Agreement, which the court incorporated in the 2015 Consent Order, to bestow upon the BIA certain decision-making powers regarding the Child, including the power to determine the terms of visitation between Father and the Child and to choose an appropriate therapist for the Child. In other words, Father made the conscious decision to grant those powers to the BIA, and the court accepted that decision. Thus, the court did not "delegate judicial authority to determine the visitation rights of parents to a non-judicial agency or person," *In re Mark M.*, 365 Md. 687, 704 (2001), but, rather, permitted Father to exercise his parental right to designate a third party who would be responsible for making certain decisions in accordance with the Child's best interests. *See Green v. Green*, 188 Md. App. 661, 681-82 (2009) (noting that the court's acceptance of the parties' custody agreement, which granted physical custody of the parties' child to a third party, did not violate the parties' parental rights but rather "represented an exercise of those rights by the parties themselves, which the court accepted."). Moreover, there is nothing in the record to suggest that the disputed provisions in the 2015 Consent Order were, at the time they were accepted by the court, contrary to the Child's best interests. *See Ruppert v. Fish*, 84 Md. App. 665, 675 (1990) (noting that a court should presume, "at least in the absence of compelling evidence to the contrary, that the decision or resolution reached agreeably by the parents is in the best interest of [the] child."). In short, the provisions of the 2015 Custody Order were, at the time they were agreed to by the parties, a valid and

enforceable exercise of the parties' parental rights. *See id.* ("The parents of a minor child are generally free to enter into an agreement respecting the care, custody, education, and support of their child.").

That is not to say that the disputed provisions of the 2015 Custody Order may never be modified. If those provisions result in the impairment of the Child's best interest, a party may, as Father did here, move to modify that order. And, if upon such a motion, a court finds a material change in circumstances affecting the best interests of the Child, the court may then modify its prior order. *See Walsh*, *supra*, 95 Md. App. at 715 ("[C]ourts retain continuing jurisdiction over, and may from time to time amend, alter, and modify, their judgments and decrees with respect to custody of and visitation with minor children[.]").

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS OF PRINTING APPENDIX TO APPELLEE'S BRIEF TO BE PAID BY APPELLANT AS WELL AS ALL OTHER COSTS.