UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1473

September Term, 2014

SONJA R. HARRELL SAMPSON

v.

CHRISTOPHER SHELTON

Krauser, C.J.,
Graeff,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: May 29, 2015

This is an appeal from the denial, by the Circuit Court for Charles County, of appellant, Sonja R. Harrell Sampson's,[1] request to alter the custody arrangement that she and appellee, Christopher Shelton, have with respect to their seven-year-old daughter, T. The parties met as a result of Mr. Shelton placing an advertisement on a website offering to be a "sperm donor." After responding to that advertisement, Ms. Sampson, in 2008, gave birth to T.

In 2010, a dispute between the parties over custody and visitation led Mr. Shelton to bring an action in the Circuit Court for Anne Arundel County to resolve that issue. In 2011, that court awarded the parties joint legal and physical custody of T., granting tie-breaking authority to Mr. Shelton.

In May of 2013, another disagreement arose between the parties as to where T. was to enroll in kindergarten, an issue complicated by the fact that the parties live more than ninety miles apart and in different states, Ms. Sampson in Maryland and Mr. Shelton in Virginia. In the midst of this disagreement, Ms. Sampson filed a complaint, in the Charles County circuit court, seeking to modify the existing custody order and requesting sole legal and primary physical custody of T. Mr. Shelton responded by filing a counterclaim seeking primary physical custody. Following a hearing on the multiple claims raised by the parties, the circuit court declined to alter the current custody arrangement, finding that not only had there been no material change of circumstances warranting a modification of custody but,

[1] Appellant's name on all filings in the circuit court was given as Sonja R. Harrell Sampson. At the hearing below, appellant indicated to the Circuit Court for Charles County that she preferred to be called "Ms. Sampson." For the sake of clarity, we refer to appellant by her preferred last name.

in fact, T. appeared to be thriving under the current arrangement. Ms. Sampson then noted this appeal.

Background

Ms. Sampson and Mr. Shelton were, as the circuit court aptly put it, "strangers who had a child together." They met when Ms. Sampson and her domestic partner, Shanda Sampson, responded to Mr. Shelton's internet advertisement offering to be a sperm donor. The parties agreed that Mr. Shelton would father a child with Ms. Sampson, that Ms. Sampson and Shanda Sampson would raise the child, and that Mr. Shelton would be a "part" of the child's life. Ms. Sampson thereafter became pregnant and gave birth to the parties' daughter, T., on April 4, 2008.

In 2010, when T. was two years old, Mr. Shelton filed a complaint, in the Circuit Court for Anne Arundel County,[2] seeking joint legal and physical custody of T. On May 5, 2011, the Anne Arundel County circuit court awarded Mr. Shelton and Ms. Sampson "joint legal and shared physical custody of [T.]" The court ordered "alternate physical custody of [T.] on a week to week schedule," with all "exchanges" of T. to occur "at a location agreed to by the parties." Any "alterations" to this schedule were to be "worked out between the parties."

The court further awarded Mr. Shelton "tie-breaking authority" with respect to "any matters pertaining to the child's health, education, and general welfare." Absent an

[2] This action was brought in Anne Arundel County because Ms. Sampson was, at that time, a resident of that county. Mr. Shelton has, at all times, been a resident of Virginia.

"emergency situation," Mr. Shelton was to exercise this tie-breaking authority "only after a good faith, open discussion of the issue" with Ms. Sampson.

The parties have adhered to this "week to week schedule" since 2011. T., in accordance with that schedule, spends alternate weeks at Mr. Shelton's home, outside of Richmond, Virginia, and at Ms. Sampson's home, in Charles County, Maryland.

A dispute arose between the parties as to where T. should begin her schooling, that is, in Maryland or in Virginia. On February 10, 2013, Mr. Shelton sent an e-mail to Ms. Sampson "reaching out to [her] to discuss and determine" where T. should be enrolled for kindergarten. His e-mail suggested three schools that T. might attend in Virginia: one elementary school, one middle school, and one high school, all of which were public schools in the school district where he lived. Among the "several advantages" listed by Mr. Shelton in support of sending T. to school in Virginia were that several children from T.'s daycare would be attending the same elementary school, that T. would have a "huge network of family members" nearby who would be able to help care for her, and that Mr. Shelton's "flexible" work schedule would allow him to take T. to and from school and attend school events. Then, after noting that either he or Ms. Sampson would "need to become the primary custodial parent" once T. began school because of the distance between their homes, Mr. Shelton reassured Ms. Sampson that he was "open" to discussion about where T. should attend school and asked for her response "within the next two weeks."

Mr. Shelton also sent a copy of this e-mail message to Ms. Sampson by certified letter. Ms. Sampson, however, claimed she never saw the e-mail nor received the letter.

In fact, she maintained that the first time she received a copy of Mr. Shelton's message was in March, after he hand-delivered a copy to her while they were exchanging custody of T.

On April 12, 2013, one month after that exchange and two months after the e-mail was originally sent, Ms. Sampson responded, by e-mail, to Mr. Shelton regarding what she characterized as his "decision to send [T.] to a public school" in Virginia. Ms. Sampson stated that she was "disappointed that [Mr. Shelton] did not make any effort to consult with [her] about this decision" and that it was her belief that "it would be better for [T.] to go to school in Maryland." She expressed the hope that Mr. Shelton would reconsider his decision and discuss other school options with her and suggested two private schools in Maryland where she would consider enrolling T. She offered, moreover, to send Mr. Shelton information on those schools if he was "receptive" to her suggestions.

Mr. Shelton responded to this message that same day, by e-mail, stating that he had not yet decided to send T. to school in Virginia, although, in the absence of input from Ms. Sampson and with school registration having begun, he was "close to deciding" to enroll T. in a local public school. But he reassured her that he was "open to [Ms. Sampson's] choices" and invited her to send him information on her preferred schools in Maryland, although he did caution that "with over two months without any input from [her], the train may have left the station." He further stated that he would send her "several school options that are excellent, including private schools."

On April 18, 2013, only one week after this final e-mail exchange between the parties, Ms. Sampson filed, in the Charles County circuit court, a complaint alleging "significant changes in circumstance" and seeking to modify physical and legal custody of

T. After asserting that Mr. Shelton had made it "abundantly clear" that his tie-breaking authority allowed him to "make any decisions" he wanted to make, rendering her input "of no consequence," she claimed that he had decided to have T. attend school in Virginia without any discussion with her. She maintained that it was not in T.'s best interests to attend school in Virginia because of Mr. Shelton's work schedule. That schedule, she pointed out, required him to commute to Washington, D.C., several times each week, a commute that allowed him "limited if any involvement" with T. It was, however, in T.'s best interests, in Ms. Sampson's view, to attend school in Maryland, where she could go to a private school and where Ms. Sampson, a stay-at-home parent, would be available to care for T. "without the need of daycare." She further asserted that Mr. Shelton had "disparaged" her and her domestic partner (who as of 2010 was her spouse) to T. and had made "homophobic" comments. She requested that the court award her "sole legal and primary physical custody" of T.

On May 16, 2013, one month after Ms. Sampson had filed her complaint to modify custody, Mr. Shelton enrolled T. in school in Virginia. One month later, he filed a counterclaim seeking to modify physical (but not legal) custody of T., alleging that, because T. was now attending school in Virginia, it was "impractical" and not in T.'s best interests to have Ms. Sampson drive T. to Virginia on a daily basis during the weeks when Ms. Sampson had physical custody of the child. Thus, according to Mr. Shelton, there had been a "material change in circumstances," and he requested that the court award him primary physical custody of T.

Custody Hearing

A hearing was held in the Charles County circuit court on both the complaint and the counterclaim. Evidence was presented to the court regarding T.'s home environment in both Maryland and Virginia, the strained relationship between Mr. Shelton and Ms. Sampson, and T.'s academic success during her year in kindergarten in Virginia.

At her home in Maryland, T. lives with her mother; her mother's spouse, Shanda Sampson, whom her mother married in 2010; and her three step-sisters. After giving birth to a child in early 2013, Ms. Sampson has stayed at home to care for the couple's children. T. has many friends in the surrounding neighborhood, enjoys a strong bond with her oldest step-sister,[3] and is "extremely close" with her mother.

At her home in Virginia, T. lives with Mr. Shelton and his wife, Deborah Shelton, whom Mr. Shelton married in 2011. Mr. Shelton estimated that his wife provides about "sixty percent of the care," including bathing, cooking, and picking T. up from daycare, and he provides about forty percent of her care, including "weekend activities," dropping her off at school, and assisting with homework. Mr. Shelton's job requires him to commute to Washington, D.C., two to three times per week. On other days, Mr. Shelton "teleworks."

T. has many friends in Virginia and "approximately ninety percent" of Mr. Shelton's family lives in the surrounding area, including cousins with whom T. plays. She attends "daycare" after school, which, according to Mr. Shelton, she "loves" and has been

[3] T.'s two older of her three step-sisters are Shanda Sampson's daughters from a previous marriage. Her younger step-sister is Ms. Sampson's daughter, whom Shanda Sampson has adopted.

attending, with the same group of children and teachers, for the last three years. Mr. Shelton described his relationship with T. as "very strong" and loving" and said that he and T. "talk about anything."

With regard to the relationship between the parties, the circuit court described Ms. Sampson and Mr. Shelton as "strangers who had a child together" and who "continue to be strangers to each other." Indeed, Ms. Sampson and Mr. Shelton agree that, when they meet to exchange custody of T. each week, they "barely speak" to each other. They communicate almost exclusively through e-mail. Ms. Sampson further explained that she communicates "sparingly" with Mr. Shelton because the two of them do not "get along." As Ms. Sampson put it, the "animosity" between the parties started "a long time ago," even before the entry of the initial custody order, and has "never changed."

As one element of the "animosity" between the parties, Ms. Sampson alleged that Mr. Shelton had "disparaged" her and her spouse, Shanda Sampson, to T. Specifically, Ms. Sampson testified that T., after returning from Mr. Shelton's home, has said that Mr. Shelton told her that it is "weird" for two women to marry and that only men and women should be married. In her view, such statements "confused" T. and were an attempt, on Mr. Shelton's part, to "alientate[]" T. from her, but she nonetheless acknowledged that she had never overheard Mr. Shelton make homophobic or disparaging comments to T. Mr. Shelton, however, denied making such statements to T. and maintained that he had only told T. that she should "be careful" when telling her friends about her mother's marriage to Shanda Sampson, because "other people may not understand."

Ms. Sampson further testified that Mr. Shelton's tie-breaking authority had given him, as she described it, a "sense of authority" that he had "held over" her since 2011. But, although the parties both acknowledge that Mr. Shelton had expressed to Ms. Sampson that his tie-breaking authority would allow him to "change the schedule" and keep T. with him, they agreed that there had only been two instances where Mr. Shelton had actually threatened to use his tie-breaking authority to modify the custody schedule.[4] Moreover, they agreed that neither of those two instances resulted in the actual exercise of Mr. Shelton's tie-breaking authority. In fact, the only time, to date, that Mr. Shelton has exercised his tie-breaking authority was when he enrolled T. in school in Virginia in May of 2013.

The parties disagreed, however, as to whether this single exercise of tie-breaking authority was warranted. Ms. Sampson testified that Mr. Shelton's e-mail of February 10, 2013, did not indicate "an openness to discuss" where to send T. to school; rather, she thought that, by sending this e-mail, Mr. Shelton was "just providing lip service" to his obligation to make a good-faith effort to discuss the issue with her before making a decision. For his part, Mr. Shelton explained that he used his tie-breaking authority only after Ms. Sampson waited over two months to respond to his first e-mail, responded by stating she was "disappointed" with his decision to enroll T. in school in Virginia when no

[4] The first instance occurred in December of 2012, when T. was to participate in a "winter concert," and the second occurred in June of 2013, when T. was to graduate from preschool. Since both events were scheduled during weeks when T. was in Ms. Sampson's custody, Mr. Shelton threatened to use his tie-breaking authority so that T. could stay with him for part, or all, of those weeks to attend those events.

decision had yet been made, and filed her complaint seeking a change in custody one week after responding to the e-mail. In short, he felt he had met the requirement that he make a good-faith attempt to discuss where to enroll T. and reach a decision with Ms. Sampson before choosing, on his own, to send T. to school in Virginia. In his view, it was Ms. Sampson who had "opted out of the process" by seeking to modify custody rather than engage in discussion.

Since T. began attending kindergarten, Ms. Sampson has, during the weeks she has physical custody of T., driven T. to and from school in Virginia each day. The distance between their home in Maryland and the school is approximately ninety miles, which requires them to leave their house around 5:00 A.M. Once school adjourns around 2:00 P.M., she and T. drive back to Maryland, usually arriving home around 4:00 P.M. Mr. Shelton, in expressing his belief that the commute from Maryland to Virginia is "hard" on T., pointed out that he had observed her looking tired on Mondays when he picked her up from school. Ms. Sampson, however, did not testify that the commute was difficult for T. and pointed out that T. slept in the car on the way to school in the mornings. Although T. was late to school two or three times, Ms. Sampson did not allege that the distance between her home and the school was the reason for being late. T. was also absent on at least two occasions due to illness but never missed school because Ms. Sampson chose not to make the drive.

Both parties agreed that T. is doing very well at her school in Virginia. She has been accepted into a "gifted math program" and an "accelerated reading" program, and her report card stated that she had "conquered" kindergarten.

At the conclusion of the hearing, the circuit court set forth its opinion on the record. It recognized modification of the existing custody order would only be possible if there had been a "material change in circumstances." And, despite both parties' belief that the existing custody arrangement should be modified, the evidence presented to the court indicated that T. was "doing well" and "thriving" under the current custody order, and that her enrollment in school in Virginia had not impacted her. For that reason, the court concluded that there had been no material change in circumstances and denied both Ms. Sampson's complaint and Mr. Shelton's counterclaim seeking modification of the custody order.

Discussion

Ms. Sampson contends that the circuit court abused its discretion in denying her complaint seeking modification of the physical and legal custody of T. She claims that the evidence presented to the court demonstrated that a "material change in circumstances" had occurred, and thus the court should have modified the existing custody arrangement.

We review the circuit court's factual findings for clear error and its conclusions of law de novo. *Gillespie v. Gillespie*, 206 Md. App. 146, 170–71 (2012) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). As for the court's "ultimate conclusion," we review that for an abuse of discretion. *Id.* (quoting *In re Yve S.*, 373 Md. at 586). An abuse of discretion occurs "where no reasonable person would take the view adopted by the [circuit] court" or when the court acts "without reference to any guiding rules or principles." *North v. North*, 102 Md. App. 1, 13 (1994) (internal quotation marks and citations omitted).

Modification of custody is, we note, a "quite different situation[]" from an original award of custody, and the two situations "should be different, recognizing the importance of the child's need for continuity." *Levitt v. Levitt*, 79 Md. App. 394, 397 (1989). An order determining custody must be awarded "some finality," and a "litigious or disappointed parent must not be permitted to relitigate questions of custody endlessly upon the same facts, hoping to find a [court] sympathetic to his or her claim." *McCready v. McCready*, 323 Md. 476, 481 (1991). For these reasons, an existing custody arrangement "should not be disturbed unless there is some strong reason affecting the welfare of the child," and modification must be justified by a "change in conditions" that "affects the welfare of the child and not of the parents." *Levitt*, 79 Md. App. at 397–98. In short, "if a child is doing well in the custodial environment, the custody will not ordinarily be changed." *Id.* at 397.

A circuit court presented with a request for a change in the custody arrangement is impelled to engage in a "two-step analysis." *McMahon v. Piazze*, 162 Md. App. 588, 593–94 (2005). The circuit court must first "assess whether there has been a 'material' change in circumstance," *id.* at 594, a burden of proof which rests on the parent seeking modification of custody, *Wagner v. Wagner*, 109 Md. App. 1, 29 (1996). And, if the court finds that there has been such a material change, it must then "consider the best interests of the child as if the proceeding were one for original custody." *McMahon*, 162 Md. App. at 594.

A material change in circumstances is a change "that affects the welfare of the child." *Gillespie*, 206 Md. App. at 171. Unless a "material change in circumstances is found to exist, the court's inquiry ceases." *Wagner*, 109 Md. App. at 28. A court will not

find a material change if the "circumstances known to the trial court when it rendered the prior order" have not changed, or if the "evidence of change is *not strong enough*," that is, "the change itself does not relate to the child's welfare." *Id.* at 28–29 (emphasis in original). In either event, "there can be no further consideration of the best interests of the child because, unless there is a material change, there can be no consideration given to a modification of custody." *Id.* at 29.

On appeal, Ms. Sampson mentions several factors that, in her view, demonstrated that a material change in circumstances had occurred. She asserts that she had become a "stay-at-home parent," allowing her to provide "full time care" for T. instead of sending her to daycare; that T. was "bonded" to her family and "thriving" at her Maryland home; that Mr. Shelton's commute to work limited the time he spent with T.; that Mr. Shelton failed to "discuss important issues," including T.'s medical appointments and extracurricular activities, with Ms. Sampson; that Mr. Shelton made "negative comments" to T. that "could be construed as homophobic"; and that T. had to commute from Maryland to Virginia to attend school. Ms. Sampson does no more than list these factors, however, and provides no argument to support how these factors constitute a material change in circumstances.

Notwithstanding the foregoing representations, the circuit court concluded that Ms. Sampson had not shown that a material change had occurred. The court began its analysis by recognizing that there were "pluses and minuses" at both of T.'s homes. At Ms. Sampson's home, T. was able to spend time at home with a parent who was not working and to interact with her siblings, while at Mr. Shelton's home T. was able to attend

daycare with her friends, observe a parent who could demonstrate the responsibilities of working full-time, and be an only child. Neither home appeared, to the court, to be superior to the other. Rather, the court was presented with what it described as "two very good parents" and two households that were "great" for T.

Contrary to Ms. Sampson's contention that Mr. Shelton failed to discuss "important issues" with her, the court found that Mr. Shelton did provide "information about [T.]" to Ms. Sampson, including information about her allergies and some of her visits to her pediatrician. Though the circuit court did not delve into how, if at all, Mr. Shelton's commute to work affected its decision that there had been no material change in circumstances, we note that evidence was presented at the hearing that the length and frequency of his commute was known to both parties at the time the initial custody order was entered and that Mr. Shelton had, in fact, begun teleworking more frequently since the entry of that order. Finally, although the court made no finding regarding the "negative comments" Mr. Shelton allegedly made to T., we presume that, in light of all the other evidence presented to it, the court did not consider those alleged remarks to be of any consequence in determining whether a material change had occurred.

The court's opinion makes it clear that its principal concern was whether T.'s enrollment in school in Virginia constituted a material change in circumstances. But, although her enrollment in school was the only real change that had occurred since the entry of the initial custody order in May of 2011, the court pointed out that this was not an "unforeseen" development and it would only be considered a material change in circumstances "if it has affected [T.] in some way." The court then went on to find, based

on the evidence before it, that attending school in Virginia, while maintaining the week-to-week physical custody arrangement, had not "impacted [T.]"

On the contrary, the court found that T. was "doing well" and "thriving" under the current custody arrangement. The commute between Maryland and Virginia had been "her life" for the last three years and, in the court's view, was something that T. had "become accustomed to." While acknowledging that T. had missed "a couple" days of school due to illness, the court pointed out that that would have occurred no matter "which parent she was with or which school she was going to." And, as for the fact that she was late for school a similar number of times, the court declared that there was "nothing about the long commute that caused her to be late." Furthermore, though Mr. Shelton had observed that T. was tired on Mondays, the court suggested that "that's going to be true" even if the physical custody arrangement was modified, given that weekend visitation with the noncustodial parent would result in T. being brought back and forth between the households "on Sunday night or Monday morning regardless." Most importantly, the court found that the distance between her Maryland home and her Virginia school had not kept T. from doing well in school and, quoting her most recent report card, declared that she had "conquered kindergarten." Based on these findings, the court concluded that there had been no adverse impact on T.'s welfare, and thus no material change in circumstances that would allow it to consider modifying the existing physical custody arrangement.

Furthermore, there had been no material change in circumstances, averred the court, that would require it to consider modifying the parties' joint legal custody of T. Significantly, the court acknowledged that it was not being asked to make an initial

decision regarding legal custody and the question before it was not whether Ms. Sampson and Mr. Shelton could "get along." Instead, as the court put it, it was only tasked with determining whether there had been a material change in circumstances since the entry of the custody order that would warrant modification of the existing joint custody arrangement. The determinative question, the court declared, was whether Mr. Shelton had abused his tie-breaking authority when he enrolled T. in school in Virginia. As the court put it, "if Mr. Shelton abused his authority, then there probably is a material change in circumstances. If he didn't, then there probably isn't." By finding that there had been no material change in circumstances, the court, by implication, found that Mr. Shelton had not misused his tie-breaking authority.

Nor can we say that such a conclusion was an abuse of discretion. After reviewing the communications between the parties regarding T.'s school enrollment—namely, the e-mail from Mr. Shelton written on February 10, 2013, and received by Ms. Sampson in March, and then the two e-mails written on April 12—the court determined that Mr. Shelton had made an effort to communicate with Ms. Sampson regarding the school decision. It further found that Mr. Shelton asked for Ms. Sampson's suggestions on where to enroll T. in school and Ms. Sampson filed her complaint to modify custody before the parties could "provide any further information" to each other about schools or "reach out" and discuss the issue. It was only after Ms. Sampson filed her complaint, at which point discussion between the parties ceased, that Mr. Shelton enrolled T. in school in Virginia. In light of these facts, it was reasonable for the court to conclude that Mr. Shelton had not

misused his tie-breaking authority and that, consequently, there had been no material change in circumstances to justify modification of the legal custody arrangement.

In sum, there was simply no evidence presented at the hearing to demonstrate that there had been a material change in circumstances that had affected T.'s welfare. In the absence of a material change in circumstances, the circuit court did not abuse its discretion in declining to modify the existing custody arrangement.

We note, as did the court below, that, as T. gets older and becomes more involved with after-school activities and is assigned more homework, the current physical custody arrangement may become an untenable situation. If and when that time comes, however, it will be up to the parties to work out an arrangement between themselves or, if necessary, to seek the court's assistance in modifying the custody arrangement.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.