

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
CONSOLIDATED CASES

No. 1776

SEPTEMBER TERM, 2011

Nos. 0749 & 1278

SEPTEMBER TERM, 2013

DARYL ANTHONY GREEN

v.

ANGELICA REEDER-GREEN

Eyler, Deborah, S.,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah, S., J.

Filed: October 19, 2015

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

In these three consolidated appeals, Daryl Green (“Green”), the appellant, challenges certain rulings made by the Circuit Court for Prince George’s County relative to custody, visitation, child support, and attorneys’ fees. The appellee is Angelica Green-Reeder (“Reeder”),¹ who is Green’s ex-wife and the mother of their child. He presents four questions, which we quote:

I. Did the trial court err and abuse its discretion in not acting in the best interest of the child by denying custody to [Green], severely restricting access and then completely terminating all access without following the applicable rules of law, including due process, jurisdiction, res judicata, collateral estoppel [sic]?

II. Did the trial court err and abuse its discretion by denying [Green’s] motions for contempt – physical access denials and daily telephone access against [Reeder] and sanctions against [Reeder’s attorney], and ignoring [Green’s] relief for attorneys fees?

III. Did the trial court err by not vacating or otherwise modifying the child support order?

IV. Did the trial court err and abuse its discretion when ordering a judgment against [Green] for legal and BIA fees?

For the following reasons, we shall vacate the judgment against Green for attorneys’ fees and remand for the entry of a reduced judgment. We otherwise shall affirm the orders of the circuit court.

FACTS AND PROCEEDINGS

¹ While the appellee’s name appears as Angelica Reeder-Green in the case caption, she uses the name Angelica Reeder in her filings. Thus, we shall refer to her by that name.

Green and Reeder have one child together, Mya, born January 31, 2005. On May 19, 2007, the parties were married. On September 30, 2009, Reeder moved out of the marital home.

In March 2010, both parties filed complaints for limited divorce in the Circuit Court for Prince George’s County, Case Nos. CAD10-07094 (Green’s case) and CAD10-07539 (Reeder’s case). They each asked the court to order joint custody. By order of October 19, 2010, the two divorce cases were consolidated. Reeder subsequently filed a supplemental complaint for absolute divorce.

On January 10, 2011, the court held a one-day merits hearing in the consolidated cases. Both parties were represented by counsel. The contested issues concerned custody, visitation, and child support. At the conclusion of hearing, the court placed its findings on the record. With respect to custody, the court found that both parties were fit and that most of the best interest factors did not weigh in favor of one parent over the other. The court found, however, that there was “no record of mature conduct on the part of the parents evidencing the ability to effectively communicate,” and thus concluded that joint legal custody was not appropriate. The court found that split custody on a week-on-week-off basis would not be in Mya’s best interest. Rather, it determined that Mya needed “stability and set schedules” in order to be prepared for school and that Reeder was better able to provide that stability. On that basis, the court determined to award Reeder sole legal custody and primary physical custody of Mya and to grant Green

alternating weekend visitation during the school year, with additional access during the summer and holidays.

On January 31, 2011, the court signed a judgment of absolute divorce. It was entered on February 8, 2011. The court granted Reeder an absolute divorce on the ground of a mutual and voluntary separation. The court awarded Reeder sole legal and primary physical custody of Mya and established a visitation schedule. Under that schedule, Mya was to be in Green's custody every other weekend beginning after school on Friday and ending at 5 p.m. on Sunday, extended to 5 p.m. on Monday if that day was a holiday. Green was directed to pick Mya up at her school on Fridays and to drop her off at the Oxon Hill Police Station on Sundays. Green also was to have Mya in his custody for four weeks during the summer, one-half of spring break, one-half of Christmas break, Father's Day, and, in alternating years, Thanksgiving. The court ordered Green to pay \$407 per month in child support. The child support order was made retroactive to March 1, 2010, the month Reeder filed her complaint. As a result, Green was found to owe \$3,663 in child support arrears and was ordered to pay an additional \$93 per month (for a total of \$500 per month) toward the arrears.

On February 8, 2011, Green noted an appeal to this Court. On February 18, 2011, he moved to alter or amend the divorce judgment and for a new trial. By order entered May 6, 2011, Green's post-trial motions were denied. On April 18, 2012, this Court affirmed the judgment of divorce. *See Green v. Reeder-Green*, No. 2857, Sept. Term 2010 (filed Apr. 18, 2012).

Meanwhile, on February 7, 2011 (the day before the divorce judgment was entered), Reeder moved for modification and contempt against Green, alleging that he was refusing to drop Mya off at the police station on Sunday evenings following his weekend visits, but was instead keeping her until Monday morning and taking her directly to school.

On August 5, 2011, Reeder filed a motion for an emergency hearing alleging that Green had Mya in his custody and was refusing to return her. The court held a hearing that same day and denied the motion.

Four days later, Reeder filed another motion for an emergency hearing, alleging that Green had abducted Mya and taken her to the Virginia Beach area and was refusing to return her. The court held a hearing that same day, determined that emergency relief was not warranted, issued a show cause order for Green, and set the matter in for a show cause hearing on September 19, 2011.

On September 12, 2011, Green filed a motion to modify custody and visitation. The following day, he filed a motion for contempt against Reeder for denial of visitation and moved to recuse the assigned judge, who was the same judge who had presided over the divorce hearing.

A week later, on September 19, 2011, the parties appeared for a hearing on the pending cross-motions for contempt, the cross-motions for modification of custody and visitation, and on Green's motion to recuse. Both parties represented themselves at the

hearing. The court first heard argument from Green on his motion to recuse and denied it.

Reeder and Green both testified on their cross-motions for contempt and for modification of custody and visitation. Reeder testified that Green had not returned Mya on Sunday evening, as required under the divorce judgment, on any of his weekend visits from January 2011 through May 2011. She produced e-mails from Green telling her that he would not be bringing Mya to the police station for Sunday night drop-off. These emails were admitted into evidence. Reeder acknowledged that she had denied Green his court-ordered visitation on one occasion – Father’s Day – but explained that she did so because there was an open warrant for Green’s arrest at that time and she feared that he would be arrested while Mya was in his care.

Reeder further testified that Green had kept Mya in his custody for 46 consecutive days during the summer (July 1, 2011 through August 16, 2011), sixteen days beyond the end of his court-ordered summer custody period. Mya only had been returned to Reeder’s custody when a sheriff’s deputy went to Green’s house and removed her.

In his testimony, Green admitted that he had violated the custody schedule set forth in the divorce judgment by keeping Mya until Monday morning on multiple occasions. He argued that it made more sense to have the pick up and drop off be at Mya’s school because it cut down on contact between the parties. Green further testified that he missed Mya’s kindergarten closing ceremony because Reeder failed to advise him of the date; that he lost a potential job with a company that contracts with the federal

government because Reeder made calls to federal government agencies in an attempt to ascertain whether Green was then employed with them; and that he lost another job because Reeder had him arrested on false charges.

At the conclusion of the hearing, the court ruled from the bench. It denied the parties' cross-motions to modify custody and visitation, finding that neither party had made a threshold showing that there had been a material change in circumstances since the January 2011 divorce hearing. The court found both parties in contempt. The court found that Reeder had denied Green visitation on Father's Day, in direct violation of the court order, and that Green had refused to return Mya on Sunday evenings "throughout the spring," also in direct violation of the court order. The court deferred disposition on the contempt petitions until October 21, 2011. The court did not enter a written order memorializing these rulings.

On September 28, 2011, Green noted an appeal, later designated by this Court as No. 1776, Sept. Term 2011 ("Appeal 1776/11"). This is the first of the three consolidated appeals.

On October 21, 2011, the court held its disposition hearing on the contempt petitions. The court sentenced Reeder to two days in jail and Green to seven days in jail, but suspended both sentences conditioned on the parties' future compliance with the custody order. The court did not enter a written order setting forth the contempt dispositions.

In late 2011 and early 2012, Reeder moved to modify custody and visitation and Green moved to modify custody, visitation, and child support. As we shall explain, the order disposing of those motions is not before us in the instant appeal. In July and August, 2012, the court held hearings on the pending motions. On October 3, 2012, the court entered an “Order for Custody, Visitation, Child Support and Other Relief,” dated September 12, 2012, modifying and superseding the visitation and custody provisions of the divorce judgment (“the October 2012 Custody Order”). Specifically, the court found that Green had kept Mya in his custody for 16 days in August 2011 after she should have been returned to Reeder; had denied Reeder any communication with Mya for the entire month of July and the 16 days in August; and had refused to tell Reeder where he and Mya were during that period. In light of these findings, the court determined that there had been a material change in circumstances and that it would be in Mya’s best interest to eliminate Green’s 4-week summer custody period and, instead, continue the alternating weekend custody throughout the year, with the drop-off time on Sunday extended to 6 p.m. The court also modified the drop-off location, changing it from the Oxon Hill Police Station to the Brandywine Children’s Rights Council (“CRC”), a “Safe Haven Center” designed to facilitate custody transfers. The court ordered Green to pay all of the costs associated with a Best Interest Attorney (“BIA”)² who had been appointed to represent Mya’s interests at the July and August 2012 hearings. Green petitioned for *in*

² The BIA was appointed at Green’s request on January 6, 2012.

banc review of the October 2012 Custody Order pursuant to Rule 2-551. The *in banc* panel affirmed with respect to all but one issue, which is not relevant to the issues in this appeal.

Less than a month later, Green filed a petition for contempt for denial of visitation and denial of medical information, which he subsequently amended. In November 2012, Reeder filed a cross-motion for contempt for failure to pay child support and violation of the visitation order. Reeder and Green each moved to modify custody, visitation, and child support; and Green moved to disqualify the trial judge, to dismiss Reeder’s petition for contempt and motion to modify, to order the appointment of a Court Appointed Special Advocate (“CASA”) for Mya, and to order a mental health evaluation for Mya.

On November 28, 2012, the court held a hearing. Green and Reeder represented themselves at the hearing. The court denied Green’s motion to dismiss. Reeder advised the court that because Green had not attended an orientation session for the CRC, the center would not permit custody transfers to occur at that location. The court admonished Green to complete orientation, but ordered that until such time as his orientation was complete, drop-offs could continue at the Oxon Hill Police Station. The court continued the matter until January 28, 2013.

On that date, Green appeared with counsel and Reeder represented herself. The court heard argument and denied Green’s motions to recuse, to appoint a CASA, and for a mental health evaluation for Mya. The court was advised by Reeder and counsel for Green that after Green had completed his CRC orientation, an incident had occurred that

resulted in Green’s access to the center being terminated.³ Counsel for Green asked the court to order that the custody exchanges on Sundays be held at the Oxon Hill Police Station or, in the alternative, that the court permit a family member of Green’s to drop off Mya in his place.

The court ruled that Green had temporarily forfeited his right to visitation by making himself “not welcome” at the CRC. The court advised the parties that so long as the drop-off location was “unavailable” to Green, he would not have any weekend visits with Mya. The court set the matter in for a merits hearing on March 25, 2013. The court did not enter a written order memorializing its rulings.

On March 25, 2013, the merits hearing went forward. Both parties were represented by counsel and each testified.⁴ Counsel for Reeder argued that the court should find Green in contempt of the October 2012 Custody Order because he had failed to pay child support, had failed to pay the BIA fees, and had failed to pay one-half of the out-of-pocket expenses for Mya’s medical care. Counsel asked the court to award Reeder attorneys’ fees and to enter judgment in that amount and in the amount of unpaid child support and unpaid medical bills.

³The CRC prohibits videotaping during custody or visitation exchanges. On January 6, 2013, Green was videotaping on his phone as he entered the CRC vestibule. His access to the CRC was terminated as a result of this violation.

⁴ The transcript of the March 25, 2013 hearing in the record appears to be incomplete. It includes only the testimony of Green and Reeder. In its oral ruling, however, the court references testimony from Green’s adult daughter.

Counsel for Green argued that he had taken reasonable steps to comply with the child support order; that he had not paid the BIA fees because his challenge to that order remained pending before the *in banc* panel; and that he had not paid the medical expenses because he only had received the bill six days before the hearing. Counsel noted that Green had not had any visits with Mya since January 28, 2013 because he was prohibited from entering the CRC and that Reeder had denied him court-ordered phone access “on several occasions” during that time. Counsel asked the court to permit Green’s adult daughters and his mother to drop off Mya at the CRC and to order Reeder not to bring family members with her to the custody exchanges.

Reeder testified that Green had not paid any child support between October 2012 and March 2013. The Friday before the hearing, however, he made two \$500 lump sum payments. She explained that he also had not paid the one-half of the BIA fees that were in her name and that that debt now was in collection. With respect to Mya’s medical expenses, Reeder testified that she had provided documentation to Green of her out-of-pocket expenses, but that he had refused to pay. His half of those expenses amounted to \$850. She testified that she could not afford her attorneys’ fees. An invoice reflecting her expected attorneys’ fees, which amounted to \$1,850, was admitted into evidence. Finally, she testified that in the interim between the October 2012 Custody Order and the November 28, 2012 hearing, when Green did not have access to the CRC because he had failed to complete orientation, he had routinely violated the custody order by keeping Mya from Friday until Monday for weekend visitation.

Reeder maintained that she was facilitating Green's court-ordered daily phone calls with Mya. She purchased Mya her own cell phone, made sure Green had the phone number, and never restricted Mya from making or receiving texts or phone calls from Green. She testified that Green rarely ever called Mya, however. Rather, he would text her every day at 6pm and ask her to call him back. Mya usually called him, but not always.

Green testified that he was unemployed and had been supporting himself with assistance from his adult daughters and his parents for many months. He had not made any mortgage payments since May 2010 and did not own a car.⁵ He explained that he had done some contract work for several IT companies between September 2012 and January 2013 and had earned a total of \$2,500. He was asked about how he had afforded to make two \$5,000 payments on his child support arrears in September and October 2012; how he had afforded his attorney's \$8,000 retainer; and how he had afforded to retain counsel to represent him in his then pending *in banc* review and in other legal actions he had pursued relative to Reeder. Green replied that he had borrowed money for all of those expenses. Green also testified that he had paid his half of the BIA fees (\$1,500), but had been unable to afford to pay Reeder's half of the fees.

⁵ Green testified that his mortgage had been in foreclosure but that, because of irregularities in the loan documents discovered during the foreclosure proceedings, the action had been dismissed. He was under the impression that, as a result, he no longer was required to pay his mortgage.

Green testified that he was being denied the phone access with Mya because Reeder did not require her (Mya) to call him every day at 6pm. When asked why he didn't simply call Mya himself, he suggested that Reeder might accuse him of harassment if he did that. Green complained that Reeder had interfered with his access to Mya by refusing to meet him in the parking lot of the CRC when he was not yet cleared to have access to the center. During his testimony, Green stated that he was withdrawing his motion to modify child support on advice of counsel.

At the conclusion of all of the testimony, the court put its findings on the record. It found that Reeder was not in contempt of the October 2012 Custody Order because she had complied with the visitation and telephone access provisions. It found that Green was in contempt of the custody order because he had failed to pay child support and was in arrears of \$783.74, and because he had failed to pay Reeder's share of the BIA fees. The court ordered that a judgment be entered against Green in the amount of those fees. The court reserved on the contempt petition with respect to Green's payment of one-half of out-of-pocket medical expenses because it found that Green only had received the bill in March 2013. The court modified the October 2012 Custody Order to permit Green's adult daughters and/or his mother to perform custody exchanges at the CRC and to permit Reeder's mother to perform custody exchanges in her stead. The court also modified the time of the exchanges from 6 p.m. to 7 p.m. on Sundays. The court scheduled a disposition hearing on the contempt findings for April 11, 2013 and a hearing on the reserved contempt petition for May 6, 2013. Finally, the court ordered Green to pay

Reeder's attorneys' fees, which he found would reasonably amount to \$2,850, \$1,000 more than the amount testified to by Reeder.

The court signed an order to this effect on March 28, 2013. That order was not entered, however, until May 10, 2013. Meanwhile, on May 6, 2013, on motion filed by Reeder, the court entered judgment against Green in the amount of \$2,850 for attorneys' fees.

On May 22, 2013, Green noted an appeal to this Court, which was designated No. 749, Sept. Term 2013 ("Appeal 749/13"). This is the second of the three consolidated appeals.

On July 2, 2013, this Court entered an order with respect to Appeal 1776/11. We found that the circuit court had failed to enter written orders pursuant to Rule 2-601(a) memorializing the oral rulings made at the September 19, 2011 and October 21, 2011 hearings. We thus remanded the matter to the circuit court without affirmance or reversal with directions that the court enter a written order. We explained that after the court entered a written order, we would treat Green's appeal as having been filed on the same day as, but, after the entry of that order. On July 19, 2013, the circuit court entered an order consistent with this Court's directive.

Finally, on August 16, 2013, Green noted the third of the three consolidated appeals, designated No. 1278, Sept. Term 2013 ("Appeal 1278/13"). His notice of appeal stated that he was appealing from the "hearings held on 11-28-2012, 1-28-2013" and "the judgment entered in this case on January 30, 2013." The latter date is the day the court

entered a “Docket Entries” sheet listing the rulings made by the court at the January 28, 2013 hearing. The court did not enter an order memorializing its November 28, 2012 and January 28, 2013 rulings, however.

We shall include additional facts in our discussion of the issues.

DISCUSSION

I.

The Orders on Appeal

Before turning to the issues, we shall clarify the specific orders properly challenged in the three consolidated appeals. As explained, Appeal 1776/11 was noted by Green on September 28, 2011, within thirty days of the September 19, 2011 hearing. The matter subsequently was remanded to the circuit court for it to enter a written judgment, pursuant to Rule 2-601(a). The circuit court entered its judgment on July 19, 2013. Pursuant to Rule 8-602(d), Green’s September 28, 2011 notice of appeal is treated as having been filed on July 19, 2013, following the entry of the circuit court order. Thus, Appeal 1776/11 is timely as to the rulings made at the September 19, 2011 and October 21, 2011 hearings.

Green noted Appeal 749/13 on May 22, 2013, within thirty days of the entry of the May 10, 2013 order that memorialized the court’s rulings at the March 25, 2013 hearing. Thus, the rulings made in that order all are properly before us in the instant appeal.

Finally, Appeal 1278/13 was noted on August 16, 2013. In his notice of appeal, Green stated that he was appealing from the rulings made by the court at the November

28, 2012 and January 28, 2013 hearings. His notice of appeal was not filed within thirty days of those proceedings. As mentioned, however, the court did not enter a written judgment in accordance with Rule 2-601(a) with respect to those rulings. Because this Court has jurisdiction over the consolidated appeals by virtue of the timely notices of appeal in Appeal 1776/11 and Appeal 749/13, we shall, in the interest of judicial efficiency, address all of Green’s properly raised contentions of error and direct, on remand, that the court enter a written order memorializing its November 28, 2012 and January 28, 2013 rulings.

II.

Denial of Custody and Restriction of Visitation

This Court recently explained the standard of review that applies to custody decisions:

“[T]his Court reviews child custody determinations utilizing three interrelated standards of review. The Court of Appeals described the three interrelated standards in the case of *In re Yve S.*, 373 Md. 551, 819 A.2d 1030 (2003):

[W]e point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. Rule 8–131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court’s] decision should be disturbed only if there has been a clear abuse of discretion.

Id. at 586, 819 A.2d 1030. Therefore, the reviewing court gives “due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.” *Id.* at 584, 819 A.2d 1030. Further, we acknowledge that “it is within the sound discretion of the [trial court] to award custody according to the exigencies of each case, and . . . a reviewing court may interfere with such a determination only on a clear showing of abuse of that discretion. Such broad discretion is vested in the [trial court] because only [it] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; [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” child. *Id.* at 585–86, 819 A.2d 1030.

Reichert v. Hornbeck, 210 Md. App. 282, 303-04 (2013) (citation omitted).

On a motion to modify custody or visitation, it is the moving party’s burden “to show that there has been a material change in circumstances since the entry of the final custody order and that it is now in the best interest of the child for custody [or visitation] to be changed.” *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008), *aff’d* 408 Md. 167 (2009). “In [the custody and visitation modification] context, the term ‘material’ relates to a change that may affect the welfare of a child.” *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). While courts ordinarily engage in a “two-step process in evaluating a petition to modify custody, the two-steps are often interrelated.” *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012).

“[I]n the more frequent case . . . there will be some evidence of changes which have occurred since the earlier [custody] determination was made. Deciding whether those changes are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child. Thus, the question of “changed circumstances” may infrequently be a threshold question, but is more often involved in the “best interest” determination, where the question of stability is but a factor, albeit an important factor, to be considered.”

Id. at 171 (quoting *McCready v. McCready*, 323 Md. 476, 482 (1991)).

In the case at bar, as best we can determine, Green challenges the circuit court’s denial of his motions for modification of custody and visitation at the September 19, 2011 and March 25, 2013 hearings and challenges what he characterizes as the court’s “termination” of his visitation with Mya at the January 28, 2013 hearing. We address each decision in turn.

At the September 19, 2011 hearing, the court found that neither party had met the burden of showing that there had been a material change of circumstances affecting Mya’s best interest since the entry of the custody and visitation order in the parties’ divorce judgment. The evidence presented by Green with regard to his motion was his testimony that Reeder had denied him visitation on Father’s Day, had caused him to miss Mya’s kindergarten graduation ceremony, and had caused him to lose job opportunities. In Reeder’s testimony, she acknowledged that she had denied Green visitation on Father’s Day. She also testified Mya was below grade-level when she began first grade in September 2011.

Even assuming that the court credited all of this testimony, its finding that this evidence did not rise to the level of a material change of circumstances affecting Mya’s best interest was not erroneous. Both parties had violated the court order, by their own admission. Both parties argued that the other party’s access to Mya should be more limited. Simply put, the parties’ inability to communicate and to share joint or physical custody of Mya was evident at the time of the divorce hearing and remained evident nine

months later, at the time of the September 19, 2011 hearing. The court did not err by ruling that this did not justify a modification of the custody or visitation provisions of the divorce judgment.

At the January 28, 2013 hearing, the court denied certain procedural motions and set the matter in for a merits hearing to take place on March 25, 2013. Also at that hearing, the court learned from Reeder and from counsel for Green that Green had been barred from entering the CRC for custody exchanges because he had violated the CRC's rules. Given that the October 2012 Custody Order that was then in effect required Green to drop Mya off at the end of his weekend visitation period at the CRC, the court found that Green had "forfeited" his weekend visits until such time as he was permitted to enter the CRC or until the court could consider the merits of the pending motions to modify custody and visitation at the scheduled March 25, 2013 merits hearing. This was a limited suspension of Green's weekend visitation, not a "termination" of visitation. As the court found, Green's own misconduct—violating the CRC's rules by videotaping the exchange—is what made him unable to comply with the October 2012 Custody Order, leaving the court with little choice as to what to do before the merits hearing could be held. And, the reason the court had modified the custody exchange provision, by means of the October 2012 Custody Order, so that exchanges would take place at the CRC instead of the police station was because of the history of conflict during custody exchanges. In light of these facts, the court did not err or abuse its discretion by

maintaining the status quo under the October 2012 Custody Order until the merits hearing.

We similarly perceive no error by the circuit court in denying, in part, Green’s motion to modify custody and visitation at the March 25, 2013 hearing. As discussed, at that hearing, the court decided to modify the October 2012 Custody Order to allow Green’s adult daughters and his mother, as well as Reeder’s mother, to substitute for them during custody exchanges. It otherwise declined to modify the custody order. Green does not point to any erroneous findings made by the trial court at that hearing. The findings made supported the court’s decision to modify the October 2012 Custody Order to allow Green to be able to resume alternate weekend visitation.

Finally, Green posits that the court ignored evidence showing that Reeder had moved five times since the entry of the divorce judgment; that Mya has attended three different schools over that same period of time; that Reeder married a “known drug dealer”; that Reeder is unfit to parent Mya because she has not provided her a stable home or learning environment; that she refuses to communicate with him about Mya; and that she has, on multiple occasions, made false abuse accusations against him. While these same allegations are peppered throughout the multitude of motions filed by Green in the circuit court, he did not present evidence supporting any of these claims at any of the hearings resulting in the orders challenged in the instant appeal.

III.

Denial of Contempt Petitions

Green contends the circuit court erred by denying his petitions for contempt that alleged violations of the visitation provisions of the divorce judgment and the October 2012 Custody Order. Under the authority of *The Pack Shack, Inc. v. Howard County*, 371 Md. 243, 254 (2002), however, the denial of a motion for civil contempt is not reviewable on appeal. Accordingly, this issue is not properly before us.

IV.

Child Support

Green contends the circuit court erred when it *initially* calculated child support and ordered him to pay \$407 per month in current support, plus \$93 per month toward his arrears, and in failing to modify the child support order to decrease his obligation. These issues are not properly raised in the instant appeal.

As discussed, Green was ordered to pay child support in the divorce judgment. Green appealed from the divorce judgment and challenged the calculation of child support. On April 18, 2012, this Court affirmed the judgment of the circuit court. That decision is conclusive as to the propriety of the original child support order and is not subject to further review in this Court.

In its October 2012 Custody Order, which superseded the custody provisions of the divorce judgment, the circuit court found that Green had accrued \$10,210 in arrears and ordered him to continue to pay \$407 per month in current child support and \$93 per month toward his arrears. In addition, the court ordered Green to make lump sum child support payments amounting to \$10,000 to purge his contempt. Green sought *in banc*

review of those rulings before a three-judge panel of the circuit court. On May 10, 2013, the *in banc* panel affirmed in part and remanded in part the decision of the circuit court. Having sought and received *in banc* review of the propriety of the child support provisions of the October 2012 Custody Order, Green is foreclosed from challenging that order in the instant appeal. *See* Md. Rule 2-551(h) (“Any party who seeks and obtains review under this Rule has no further right of appeal.”).

Finally, on November 21, 2012, Green filed a motion to modify child support. That motion remained pending at the time of the March 25, 2013 hearing. During that hearing, however, Green withdrew his motion to modify child support and, as such, it was not ruled upon by the court. Having failed to seek relief before the circuit court, Green may not now be heard to argue that that court erred by not modifying his child support in the May 10, 2013 order.

Thus, none of the orders of the circuit court properly before us for review in the instant appeal calculated, modified, or ordered child support. For this reason, we decline to address Green’s contentions of error with respect to the amount of the child support order.

V.

Attorneys’ Fees and BIA Fees

Green contends the circuit court erred by ordering him to pay \$2,850 in attorneys’ fees in the May 10, 2013 order because Reeder did not meet her burden of showing that that amount was reasonable and because that amount was not supported by competent

evidence in the record. He argues, moreover, that the court erred by crediting Reeder's testimony that she could not afford to pay her attorneys' fees and had to borrow money to pay them, while rejecting his identical testimony that he had borrowed money to pay his attorneys' fees.

Pursuant to Md. Code (1984, 2012 Repl. Vol.), section 12-103(a) of the Family Law Article ("FL"), the court had discretion to award fees to either party in this child custody and visitation dispute. In exercising its discretion, it was obligated to consider the financial status of each party, the needs of the parties, and "whether there was substantial justification for bringing, maintaining, or defending the proceeding." FL § 12-103(b). The court credited Reeder's testimony that she could not afford to pay her attorneys' fees and that she had proceeded self-represented at various stages of the litigation due to her inability to pay. The court rejected Green's testimony that he could not afford to pay his attorneys' fees. It is the province of the court to assess the credibility of witnesses and this Court will not second guess those findings on appeal.

The court also found that Green, not Reeder, bore the blame for the conflicts that gave rise to the cross-motions to modify custody and for contempt. It found that Green, not Reeder, was in contempt of the October 2012 Custody Order. It is implicit in these rulings that Reeder was justified in maintaining her action and in defending against Green's action.

Having made the required findings, we perceive no error by the court in deciding to order Green to pay Reeder's attorneys' fees. We agree with Green, however, that the

only evidence before the court as to the amount of Reeder's fees was an invoice in the amount of \$1,850 and Reeder's testimony that this was the total amount she expected to pay. Accordingly, there was no factual basis for the court's decision to award Reeder an additional \$1,000 in attorneys' fees. We thus shall vacate the May 6, 2013 judgment entered against Green for \$2,850 in attorneys' fees and remand with directions that the court modify its May 10, 2013 order to reflect an award of \$1,850 in attorneys' fees and to enter a new judgment in that amount.

Finally, Green contends the court erred by ordering him to pay all of the BIA's fees. We decline to consider this contention of error because it was reviewed *in banc* by a three-judge panel of the circuit court and may not be challenged in the instant appeal.

**ORDER OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY
AWARDING THE APPELLEE \$2,850 IN
ATTORNEYS' FEES VACATED WITH
DIRECTION TO ENTER REVISED
ORDER AWARDING THE APPELLEE
\$1,850 IN ATTORNEYS' FEES. COURT
FURTHER DIRECTED TO ENTER
ORDERS MEMORIALIZING ITS ORAL
RULINGS OF NOVEMBER 28, 2012 AND
JANUARY 28, 2013. ORDERS,
INCLUDING THE TWO TO BE
ENTERED, OTHERWISE AFFIRMED.
COSTS TO BE PAID $\frac{3}{4}$ BY THE
APPELLANT AND $\frac{1}{4}$ BY THE APPELLEE.**