UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0223

September Term, 2016

LAURA ANNE BOUMA

v.

JASON CARL BOUMA

Meredith,
Nazarian,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: October 13, 2016

Laura Anne Bouma ("Mother") and Jason Carl Bouma ("Father") divorced in the Circuit Court for Howard County in 2012. They have one minor child ("J"); Father has legal and physical custody, and there has been a great deal of litigation over the schedule and terms of J's visitation with Mother. On January 28, 2016, the court entered an order directing both parties to "show cause why the Court should not suspend all access by [Mother] to [J] until such time that [Mother] can demonstrate to the Court's satisfaction that she is willing and capable of complying with the therapeutic visitation requirements as set for[th] in the Court's original Judgment of Absolute Divorce." After a hearing on April 28, 2016, the court found that Mother was not in compliance, that there had been no positive change in Mother's behavior since the divorce, and that J's best interests compelled the court to terminate Mother's access until she complied with specified therapy requirements. Mother appeals and we affirm.

I. BACKGROUND

Mother and Father married on June 20, 1998, and J was born on June 15, 2003. On June 7, 2011, Father filed a Complaint for Limited Divorce, which he later amended into a Complaint for Absolute Divorce. The procedural history of the case reflects high-volume, high-tension disputes over many issues, especially visitation, and the circuit court summarized it well in its April 28, 2016 Memorandum Opinion:

> . . . [On April 12, 2012, after a four day divorce hearing, t]he Court awarded [Father] sole physical custody and sole legal custody of [J]. The Court determined that [Mother]'s access was to be limited to two "therapeutic visitation sessions" per week with one of two specified therapists, but only so long as [Mother] was participating in "individual psychotherapy with

a qualified professional for purposes of further diagnosis and treatment of the mental health concerns as set forth in the report of Dr. Greenbaum." The Court issued an "Order of Clarification of the Judgment of Absolute Divorce" on May 22, 2012 identifying Dr. Brad Sachs as the "facilitator of the therapeutic visitation between the Defendant and child" and authorizing Dr. Sachs to determine the manner and frequency of the therapeutic visitation as appropriate for the therapeutic needs of the child. [Mother] appealed the Court's decision and judgment to the Court of Special Appeals . . . . The Court of Special Appeals affirmed the decision of the trial court . . . .

Litigation concerning the issues of custody and access began shortly after the Court's judgment of April 12, 2012. [Mother] filed her Motion for Interim Access Schedule and Other Relief and Motion for Expedited hearing on August 17, 2012. [Mother] then filed her "Complaint for Modification of Custody, Motion for Emergency Hearing and Other Relief With Exhibits" on November 14, 2012. The parties ultimately reached an agreement a year later that resulted in a Consent Order being entered on November 22, 2013. The Consent Order provided for supervised visitation by [Mother] subject to certain conditions including that the Defendant must participate in weekly therapy with one of two specified providers (or if the two providers become unavailable, then with a provider recommended by one of the named providers and agreed to by Dr. Paul Berman, who had performed a custody evaluation) and [Father] was required to engage in [sic] a therapist for the child and to make sure that the child received therapy for a period of at least one year.

. . . .

A merits hearing was begun on [Mother]'s Motion to Modify Custody and, other papers that had been moved to the merits hearing date, on June 8, 2015 . . . . The hearing concluded on June 9, 2015 and the Court placed a ruling on the record with an order to follow. The Court's Order was entered on June 16, 2015 and, pursuant to the Order, the Consent Order entered on November 22, 2013 was modified to provide for [Mother] to have access to the child one day per week from 10 a.m. until 6 p.m. While the Court's Order did not specify

whether the access was to be supervised or unsupervised, the parties responded to the Order as having provided for unsupervised access. [Mother]'s request that legal custody be modified was denied. . . .

[Mother] continued to file papers related to the issue of custody after the Court's Order of June 16, 2015. . . . [T]he Court issued a memorandum opinion[1] and order[2] that was entered on September 24, 2015 in which the Court made findings as to [Mother]'s lack of compliance with prior court orders and in which the Court ordered that all access be supervised. . . .

. . . After a review of the file, the Court believed that it would assist the Court in the discharge of its duties to hear testimony concerning the supervised visitation schedule. The Court, on its own motion, scheduled and conducted a hearing on December 18, 2015 during which testimony was taken. The Court declined to alter the access provisions. The Court issued the Show Cause Order that prompted the immediate hearing on or about January 28, 2016.

. . . .

. . . The Court granted sole physical and legal custody of the child to [Father] and limited access between the child to "joint therapeutic sessions with either Dr. Santoro or Dr. Sachs."

[Mother] filed an appeal to the Court of Special Appeals and the trial court was affirmed in an unreported decision filed on November 29, 2012. The Court of Special Appeals, specifically, affirmed the trial court's factual findings and

[1] The circuit court's recommendations for the future included, among other things, the provision that "[i]f [Mother] persists in discussing this case with [J] in violation of the Court's order, her visits and contact should be terminated."

[2] Among its terms, the Order modified the circuit court's June 10, 2015 Order "to provide that [J]'s visits with [Mother] be supervised by a supervisor acceptable to the Court. . . . The supervisor is to terminate the visit if [Mother] discusses this litigation or [Father] and his family with [J]."

affirmed that limiting and conditioning [Mother]'s access to the child to the therapeutic (supervised) sessions was not an abuse of discretion.

[Mother] filed her "Complaint for Modification of Custody, Motion for Emergency Hearing and Other Relief" on November 14, 2012. In her motion she alleged that the child's mental health had declined as a result of having been placed with [Father] and she asked for immediate custody of the child. [Mother] made additional allegations that [Father] had not been compliant with the counseling obligations under the judgment and that [Father] was alienating the child from [Mother]. Additionally, [Mother] asserted that [Father] was neglectful in his care of the child and that [Father] was abusing alcohol. The Court issued an Order on February 7, 2013 directing that Dr. Paul Berman conduct a custody evaluation. Dr. Berman completed his evaluation and produced a lengthy report on or about October 28, 2013. . . . Dr. Berman made recommendations that, as modified, were included in a Consent Order that was entered on November 22, 2013. The Consent Order contains the following at page 4:

> **"As an express condition of the access set forth herein,** Mother shall participate in weekly psychotherapy (and likely two times per week in the beginning as recommended by the therapist) with either Karen Freed, LCSW-C……or Deborah Marx, LCSW-C……, based upon the specific designation of said therapists by Dr. Berman, whom he believes are experts in working with individuals in Mother's circumstances as articulated by Dr. Berman in his custody evaluation and who are able to work as part of a treatment team with (the child's) therapist. Said therapy shall continue for a period of at least one year, and the cost for said therapy shall be paid for by the Mother. Said therapy shall commence on or before January 5, 2014. However, if therapeutic visits with neither Ms. Freed or Ms. Marx are able to continue to serve as the therapist for Mother, then Mother shall be permitted to utilize a substitute therapist

> recommended by Ms. Freed or Ms. Marx and approved by Dr. Berman." (emphasis added).
>
> . . . [O]n February 12, 2015 . . . [Mother] filed her Motion to Modify Custody. . . .
>
> . . . .
>
> [Mother]'s Motion to Modify Custody was heard by the Court on June 8-9, 2015 . . . . The Court denied [Mother]'s request for sole physical and legal custody of the child, but modified the access schedule to provide for unsupervised visitation with the child along with other expanded contacts between [Mother] and the child. . . .

(Footnotes and citation omitted.)

Both sides filed motions asking the court to reconsider its June 2015 custody decision, and Mother filed a flurry of other motions as well, so the court convened another hearing on September 10, 2015, and entered a new order on September 24, 2015 that required weekend visitations to be supervised. After a review hearing on December 18, 2015, the court modified the visitation schedule "to provide for less hours access on a weeknight believing that requiring supervision all day long once a weekend was not a workable option" and for weekend visitation on every other weekend.

Mother continued, however, to barrage the court with filings, as she had since the divorce. In this divorce case alone, Mother filed sixty-one pleadings between April 24, 2014 and November 16, 2015. These filings sought, among other things, modifications of custody, recusal of judges, new orders vacating or modifying earlier orders, and findings that Father, his attorney, or the Best Interests Attorney were in contempt. The court described these filings as "redundant" and "frivolous and without merit in the Court's

opinion," and most exceeded fifty pages in length. Over a slightly longer period (between January 1, 2014 and November 16, 2015), Mother also filed twelve petitions for protective orders, one criminal complaint, and two separate civil actions (these in Queen Anne's County). In response, the court issued a show cause order, held a hearing, and on November 16, 2015, issued a "pre-filing" order that required Mother to demonstrate to the Administrative Judge prior to filing any future pleading "that the pleading has merit and involves an allegation of a material change in circumstances that raises a new issue."

On January 28, 2016, the circuit court entered another Show Cause Order (the one at issue here), *sua sponte*, for Mother and Father to appear before the Court for a hearing and "show cause why the Court should not suspend all access by [Mother] to the child until such time that [Mother] can demonstrate to the Court's satisfaction that she is willing and capable of complying with the therapeutic visitation requirements as set for[th] in the Court's original Judgment of Absolute Divorce."

As the circuit court's April 28, 2016 Order recounted, the show cause hearing on April 8, 2016 was a relatively streamlined proceeding: "The Court accepted exhibits filed by [Mother],[3] heard testimony of a witness presented by [Mother][4] and heard argument

[3] Mother's evidence included two letters from the Board of Examiners of Psychologists dated in 2015, an email from a licensed, certified social worker dated June 30, 2014, custody evaluation letters dated June 13, 2012 and June 22, 2012, a "Note to File" from Mother's therapist dated April 14, 2014, a June 19, 2014 letter from Mother's therapist opining that it "would not be in [Mother]'s best interest nor in the long-term best interest of the child" for the court to change Mother's therapist, and a letter from September 2011 referencing the *pendente lite* consent order.

[4] More on this below.

of the parties." Father did not put on new evidence, but asked the court to take judicial notice of the entire record of the case, which it did. Father's counsel argued "that [J]'s interaction with this court, with officials, has been constant since the divorce trial in this case. It's not healthy," and contended that it would not stop "because [Mother] ha[d] made it very clear on the record numerous times, I will never stop filing." Father's counsel also argued that Mother's "intensive psychotherapy" never happened, that he had "seen no evidence that it is happening or has happened. And until that is addressed, this is going to be pointless."

In her presentation, Mother apologized for her numerous filings in September 2015 and argued that Father's attorney "ha[d] no evidence of [her] doing anything wrong. He likes to make things up." She pointed to Father as J's source of information about the court proceedings and argued that she provided no such information during her supervised visits. When asked whether she "believe[d] that [J] being interviewed by Child Protective Services, his being interviewed by police officers and his coming to court is good for him," Mother said that it was. Mother claimed that she *did* participate in therapeutic visitation and that "[a]ll [she] want[s] is unsupervised weekends which [she] should be having by now, every other weekend. And [she]'d be more than willing to come and go to a therapist of [the court's] choice with [J], to come down here."

Mother also offered testimony from Karen Mull, the visitation supervisor, who testified about Mother's visits with J. Ms. Mull testified that she had not seen Mother pass notes to J since September 24, 2015, and that discussions between Mother and J about court

arose when J asked questions and Mother answered them. She also testified about an incident that occurred when Father picked J up after a supervised visitation session, in which Father "gunned his engine and pulled very quickly and in a fast manner right in front of [Mother]'s car. . . . And I felt threatened. I felt the behavior was aggressive." During cross-examination, however, Ms. Mull read from her notes that Mother had instructed J to say something to her during the supervised visit on October 19, 2015.

The court took the matter under advisement, then issued a Memorandum and Order on April 28, 2016. In addition to the hearing record, the court incorporated the findings from the Memorandum Opinion of September 24, 2015, and found "that there has been no positive change in [Mother] since the Court placed its findings on the record on April 12, 2012." The court noted that it "predicted that [Mother] would not change when it announced its decision on April 12, 2012, and unfortunately the prediction has come true." (Footnote omitted.) The court ordered that all of Mother's access be suspended immediately and that the suspension continue until Mother "engage[s] in both individual therapy intended to assist her in becoming capable of co-parenting the child with [Father] . . . and when [Mother] has identified a second therapist that is acceptable to the Court that will conduct supervised therapeutic visitation two times per week." Mother filed a timely notice of appeal.

II. DISCUSSION

Mother challenges the circuit court's decision to change visitation on two grounds: that Father did not prove a material change of circumstances and that the court abused its

discretion when it suspended Mother's contact with J altogether.[5] Father disputes both points. He bore no burden to prove a material change of circumstances because the court ordered both parties to show cause, he says, and the court was within its discretion to suspend Mother's visitation.[6] We agree with Father that the show cause posture did not require him to prove a material change, and we see no abuse of discretion in the court's decision to suspend Mother's visitation with J.

We review child custody determinations using three interrelated standards of review:

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8–131(c)] applies.

[5] Mother phrases the Questions Presented as follows:

> I. Whether the Appellee Father satisfied his burden of proving a material change of circumstances to justify a change in the child's custody, as it relates to the Appellant Mother's access schedule.
>
> II. Whether the Circuit Court's Order, entered April 28, 2016, which modified Appellant Mother's access schedule to suspend all contact with the child, constituted an abuse of discretion.

[6] In his brief, Father also asks us to dismiss the appeal, pursuant to Maryland Rules 8-501(c) and 8-504(c), because Mother "failed to communicate with [Father]'s counsel regarding a stipulation of the facts . . . [and] failed to include as part of the Record Extract the docket entries that were referenced in the Court's April 28, 2016 Order . . . [as well as] a single pleading in this case." Mother opposed the Motion to Dismiss in her Reply, arguing that she had filed a Motion to Extend Time for Filing Transcript because the April 8, 2016 hearing transcript was not available at the time that she filed her brief and that she subsequently supplemented the record to include the transcript and docket entries, and she asked us to award her legal fees for opposing the motion. We acknowledge that the Extract doesn't comply strictly with the Rules, but without excusing the failure, deny Father's motion to dismiss and Mother's motion for attorneys' fees.

> [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.

In re Yve S., 373 Md. 551, 586 (2003). We give "due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses." *Id.* at 584. And we recognize that the trial court is vested broad discretion in making custody determinations:

> [I]t 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 he sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.

Id. at 585–86.

A. The Show Cause Order Was Directed To Both Parties.

Mother contends *first* that "Father had the burden of proving that a material change in circumstances had occurred since the previous custody Order, entered September 24, 201[5]." She challenges the circuit court's reliance "on evidence that occurred prior to but was not known at [prior hearings]" rather than "new evidence that become [sic] known since the entry of the September 24, 2015" Order. And because, she says, Father "fail[ed]

to present any evidence at the April 8, 2016 [show cause] hearing . . . he ha[d] not met the burden of proof."

Mother doesn't argue, nor could she, that the court lacked authority to issue the Show Cause Order. A show cause order "is a command by a court, directing a party to explain or justify, on or before the date indicated in the order, why the action described in the order should or should not occur." *Prince George's Cty. v. Vieira*, 340 Md. 651, 661 (1995). And a court can issue a Show Cause Order *sua sponte*, *see, e.g.*, *Peterson v. Orphans' Court for Queen Anne's Cty.*, 160 Md. App. 137, 154–55 (2004), so long as the order is "sufficiently definite, certain, and specific in its terms so that the party may understand precisely what conduct the order requires," *In re Dustin R.*, 445 Md. 536, 556 (2015) (quoting *Droney v. Droney*, 102 Md. App. 672, 684 (1995) (citations omitted)). "If the order is sufficiently definite, then parties must comply with the dictates of the order, and a party may be held in contempt for 'willful' noncompliance." *Id.* (citing *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 448 (2008)).

Mother's initial argument proceeds from the premise that Father sought a modification of the existing visitation schedule. That's not what happened. The order at issue followed a hearing in response to a Show Cause Order that directed *the parties* (not just Mother) "to show cause why the Court should not suspend all access by [Mother] to the child until such time that [Mother] can demonstrate to the Court's satisfaction that she is willing and capable of complying with the therapeutic visitation requirements as set for[th] in the Court's original Judgment of Absolute Divorce." And there is no issue with

the clarity of the Show Cause Order's terms, which directed both Mother and Father to prove that the circuit court should *not* suspend Mother's access to Child, notwithstanding any change in circumstances analysis, if they so chose to take on that burden.

As it happens, Father *didn't* want to dissuade the court from taking this step, and he was free not to do so. Mother obviously disagreed, so she assumed the burden of challenging the court's directive. The court eventually decided that she did not satisfy that burden, and we will address next whether the court abused its discretion in reaching the conclusion it did. But as an initial matter, we disagree with Mother that the court should have required Father to prove a material change in circumstances.

B. The Circuit Court Did Not Abuse Its Discretion By Suspending Visitation.

Second, Mother contends that the circuit court abused its discretion when it based its decision to suspend visitation on "the cold record used to reach the decision entered in the September 24, 2015, Order and Memorandum Opinion . . . [which] shows that Father did not meet his burden of proving that a material change in circumstances had occurred between the September 24, 2015, Order and the April 8, 2016, hearing." She asks us to vacate the April 28, 2016 Order and reinstate the September 24, 2015 Order, which would allow her some access to J. Father counters that the circuit court properly "acted pursuant to Section 9-101(b)[7] [of the Family Law Article of the Maryland Code] when it suspended

[7] Section 9-101(b) states as follows:

> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall

[Mother]'s access with the minor child," on the theory that Mother's conduct rose to the level of abuse. But the circuit court didn't rely on the abuse theory, and we need not go there. It is enough that the evidence before the court—both the evidence adduced at the hearing and in the record leading up to it—supported the court's finding that Mother was not complying with the court's long-standing therapeutic visitation directives and that J's best interests were served by terminating his contact with Mother until she complied.

The court originally had required therapeutic visitation in "an attempt to require therapy for [Mother] that would assist her in understanding that she was going to have to participate in co-parenting in a manner that supported the child and provided the child with the benefit of both parents participating in his upbringing." At the show cause hearing, Mother specifically told the circuit court judge that she had participated in a year of therapeutic visitation, but it had ended when the doctor no longer could continue, and she had not—in the intervening three years—found a new provider. Nor did she think it was necessary—"[a]ll [she] want[ed wa]s unsupervised weekends which [she] should be having by now, every other weekend. And [she]'d be more than willing to come and go to a therapist of [the court's] choice with [Child] . . . ." It's true that the court had tried alternatives, but the record revealed that those alternatives weren't working, and that J was

> deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

suffering as a result. In addition, Mother's own witness testified that Mother did in fact still talk to J about the case, which the court had prohibited both parties from doing.

Alongside those findings, the court noted that Mother's behavior had not changed since September 24, 2015. Mother continued to press for sole custody, and continued to insist, despite copious findings to the contrary, that J was being abused by Father and had to be separated from him. Mother continued to pepper the court with filings seeking to relitigate issues long since decided, filed petitions seeking protective orders, swore out a criminal complaint against Father, and sued him in another court. And a then-new report by the Department of Social Services painted an "entirely different picture" of J's circumstances than Mother painted:

> [I]t is concerning how [Mother's] involvement affects [J's] emotional well-being by encouraging him to focus on finding fault with his father and his father's relatives. It appears that she lacks insight into how enmeshed she is with [J]. It appears that she will go to great lengths to achieve her goal of getting full custody of [J].

At the end of the day, what matters here is the best interests of the child, and the record at the show cause hearing amply supports the court's finding that "[t]he child's welfare demands and requires that any visitation between the child and [Mother] be therapeutic visitation that is supervised and conducted by a qualified professional." The court ordered therapeutic visitation at the time of divorce, four years ago. On the current record, the court found that alternatives were not working, that J was suffering as a result, and that Mother's crusade to gain custody was, although genuine, counterproductive. The court was well within its discretion to suspend Mother's visitation until she can

demonstrate that she "is engaged in both individual therapy intended to assist her in becoming capable of co-parenting the child with [Father]," on terms that Mother should readily be able to satisfy.

MOTION TO DISMISS DENIED. JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. APPELLANT TO PAY COSTS.