

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00471

September Term, 2016

FAITH EAST

v.

GEORGE KRUG

Graeff,
Berger,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: January 13, 2017

*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.

Appellant, Faith East, appeals the issuance of two orders of the Circuit Court for Queen Anne’s County, dismissing her Complaint for Modification of Child Custody and Petition for Contempt against appellee, George Krug.

She presents three questions for our review:

- I. Did the circuit court properly dismiss the Complaint for Modification of Child Custody?
- II. Did the circuit court properly dismiss the Petition for Contempt?
- III. Should venue be transferred to the Circuit Court for Anne Arundel County, where, as here, the court has indicated that it can no longer devote judicial resources to this case?

We answer the first two questions in the negative and thus, we shall remand this case to the circuit court for proceedings consistent with this opinion. We decline to address question three, as this issue is not properly before us.

BACKGROUND

Appellant, Faith East, and Appellee, George Krug, are the divorced parents of twin daughters—Katelyn Lee Krug and Cassandra Faith Krug—born June 1, 2010. Incorporated into their 2012 Judgment of Absolute Divorce was a shared custody agreement that both parties consented to.

However, shortly after the divorce, the parties filed numerous motions, including petitions for contempt, sanctions, exceptions, and appeals. Of particular importance to the present case is a Complaint to Modify Custody filed by East on July 15, 2013 and a Counter-Petition for Contempt and Custody filed by Krug on July 25, 2014. The matter was heard in the Circuit Court for Queen Anne’s County on September 5, and 22, 2014. Various witnesses testified, including the parties, who suggested that their joint legal and

shared physical custody arrangement was unworkable due to the parenting conduct and behavior of the other.

Following a two-day evidentiary hearing, the circuit court issued a Memorandum Opinion and Order on January 14, 2015, denying both East's Complaint to Modify Custody and Krug's Counter-Petition for Contempt and Custody, thereby maintaining the parents' joint legal and shared physical custody arrangement. The court provided the parties with an access schedule which amongst other things: established a detailed visitation plan, provided for child support and child care, and defined the parameters for communication between the parties. Because of his shift work as a firefighter, the schedule gave Krug visitation with the minor children one to two weekends per month and additional overnights during the week, for a total of eight overnights per month. Krug was also given priority in the selection of his weekly overnights. The court stated:

Because Mr. Krug will have fewer overnights each month, he shall have priority or the final word in the selection of his consecutive week days for his weekly overnights....

The court also issued an "Order Directing Conditions of Parental Behavior," which contained substantial restrictions regarding inappropriate behavior by the parents. Since the parties agreed to engage the services of a Parenting Coordinator to assist them in resolving anticipated conflicts or disputes, the court, issued an "Order for Appointment of Parenting Coordinator." The order stated: the "parties shall present any conflicts which arise between them regarding custody or access, in writing, to the Parenting Coordinator for discussion and possible resolution before filing with the Court."

In March 2016, East filed a Complaint for Modification of Child Custody and a Petition for Contempt. She alleged that circumstances had changed because Krug no longer worked weekends. As a result, he elected to have visitation with the children virtually every weekend, thus “preventing the minor children from having the contemplated weekend access to both parents.” East further alleged that Krug continued to “maintain a campaign of parental alienation” against her. She contended that he, in the presence of her minor children, called her names and attempted to disparage her character.

In his Answer, Krug admitted that he no longer worked the same shift and had thus, selected mostly weekends for visitation with his daughters. He denied, however, that he engaged in any activities that disparaged East’s character or adversely affected their minor children.

On April 25, 2016, the circuit court, without conducting a hearing, dismissed the Complaint,

noting that the Plaintiff has failed to allege any facts in her pleading which constitute a material and substantial change in circumstances justifying a modification of child custody, and further noting that many of the allegations contained within the Petition are more appropriately addressed with the Parenting Coordinator, who was appointed by this Court with the fully informed consent of both parties.

The second order issued by the court, dismissed East’s Petition for Contempt. The court again noted,

many of the allegations contained within the Petition are more appropriately addressed with the Parenting Coordinator, who was appointed by the Court with the fully informed consent of both parties and further

noting the voluminous nature of the file in this matter and judicial resources that have been exhausted by this Court in an effort to resolve the frivolous conflicts between the parties.

This appeal followed.

We shall recite additional facts as necessary to our discussion of the issues.

DISCUSSION

I. Motion to Modify Child Custody

East contends that the circuit court erred in dismissing her Complaint seeking modification of legal custody and visitation. She claims that the allegations presented in the Complaint demonstrated that a “material change in circumstances” had occurred, and thus the court should have modified the existing custody arrangement. She avers that, at a minimum, she should have been granted a hearing.

On review of a circuit court’s decision to grant a motion to dismiss a complaint, we determine whether the trial court was legally correct in its decision to dismiss. *Washington Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606, 618 (2010) (citing *McDaniel v. Am. Honda Fin. Corp.*, 400 Md. 75, 83 (2007)). We accept all well-pled facts in the complaint, and reasonable inferences that may be drawn therefrom, in a light most favorable to the plaintiff. *See Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003). As such, our standard of review is *de novo*.

A change of custody resolution is most often a chronological two-step process, requiring first that a material change of circumstances is found to exist. *See Wagner v. Wagner*, 109 Md. App. 1, 28-29 (1996). A material change of circumstances is a change “that affects the welfare of the child.” *Gillespie v. Gillespie*, 206 Md. App. 146, 171

(2012). 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. *Wagner*, 109 Md. App. at 28–29. The burden of proof is on the parent seeking modification of custody. *Id.* at 29.

In the case at bar, East argues that she pled several facts that demonstrated a material change in circumstances had occurred. She asserts that none of these facts were known by the trial court when it rendered its prior order and as a result, her Complaint was improperly dismissed. We agree.

In the Complaint, East asserted that Krug’s changed employment schedule constituted a material change of circumstances because it allowed him “to select virtually every weekend, [thus] preventing the minor children from having the contemplated weekend access to both parents.” East also averred that Krug has attempted to alienate her from the children by engaging in an “unrelenting campaign to disparage [her].” Specifically, she contended that Krug has called her a “pig” and “wished [that she] would die” in the presence of the minor children. As a result, the twins’ mental health and well-being has been effected, requiring them to “seek assistance from their school guidance counselor on a regular basis.”

The circumstances known to the trial court were established at the evidentiary hearing on September 5, 2014, 15 months prior to the filing of East’s Complaint to modify custody. At that time, Krug was employed as a firefighter in Howard County on a rotating duty assignment. His shift duty was 24 hours on, 48 hours off and one weekend off per month. Because of this schedule, the circuit court established a detailed access schedule. The court stated:

The nature of Mr. Krug's employment makes a flexible schedule somewhat difficult especially where the parties cannot agree on access times. Accordingly, the court will establish a set schedule for Mr. Krug's access to the children in the shared physical custody arrangement.

The shift duty of George Krug as a firefighter provides for two (2) free weekends in some months (January, March, August, October and December) and one (1) free weekend in others (February, April, June, July, September, November) in 2015. This is basically a 2, 1, 2, 1, monthly pattern. Accordingly, George Krug will have access to the children on all of his free weekends from Friday, after school or daycare, until Sunday afternoon at 6:00 p.m. when they will be returned to the residence of Faith East.

Thus, on the record before us, it is evident that the circuit court formulated the access schedule specifically to allow for Krug's unconventional work schedule and to ensure that both parents had overnight weekend visitation with their children. As such, the assertion that Krug's changed work circumstances resulted in a significant variance from the Court's original intent and order was sufficient to warrant a hearing. Furthermore, East's contention that Krug's conduct has caused the children to seek assistance from their school guidance counselor on a regular basis was new information and, viewed in the light most favorable to East, also warranted a hearing to determine whether the children's best interests were affected. The dismissal of the Complaint, without first conducting a hearing on the merits, was error.

II. Petition for Contempt

East also filed a Petition for Contempt wherein she alleged Krug had violated the court's previous order regarding parental conduct. Her Petition was dismissed in an order

dated April 25, 2016, wherein the court stated that “the allegations contained within the Petition are more appropriately addressed with the Parenting Coordinator, who was appointed by the Court with the fully informed consent of both parties....”

East argues that the circuit court improperly dismissed the Petition because her allegations were meritorious. Krug contends that dismissal was warranted because East failed to submit her complaints to the Parenting Coordinator prior to filing the Petition for Contempt in accordance with Paragraph 10 of the Order for Appointment of Parenting Coordinator.

A trial court’s ruling on a petition for contempt lies within that court’s discretionary authority. *See generally Art Form Interiors, Inc. v. Columbia Homes, Inc.*, 92 Md. App. 587, 599 (1992). Therefore, we will not reverse or vacate a trial court’s discretionary ruling unless we determine that the court abused its discretion. *See Id.*

Maryland Rule 15-206(c)(2) provides in pertinent part:

Unless the court finds that a petition for contempt is frivolous on its face, the court shall enter an order providing for (i) a prehearing conference, or (ii) a hearing, or (iii) both.

“An action is frivolous if it indisputably has no merit.” *Century I Condo. Ass’n, Inc. v. Plaza Condo. Joint Venture*, 64 Md. App. 107, 119 (1985) (citations omitted).

In the subject order, the judge made no expressed finding regarding the merits of the filed Petition. Rather, in dismissing the Petition he stated that the “allegations contained within the Petition are more appropriately addressed with the Parenting Coordinator.” However, in her Petition, East averred that she submitted her complaints to the Parenting Coordinator, but to no avail. She asserted:

The violations by the Defendant of the Court's orders have been brought to the attention of the Parenting Coordinator, who has been unable to require the Defendant to abide by the Court's orders.

As such, the allegations warranted a hearing on the merits or, at least, a determination by the court as to whether the complaints, as alleged in the Petition, were frivolous in nature.

III. Change of Venue

East argues, on appeal, for a change of venue, stating that “the Circuit Court for Anne Arundel County would be much better suited to manage and adjudicate the disputes between these parties.” She asserts that the Circuit Court for Queen Anne's County has “reached its limit with this case” and has “indicated its strong hostility to this case.”

Krug responds that a change of venue is not proper because East failed to file a Motion to Change Venue pursuant to Maryland Rule 2-327 and has not filed a Motion to Recuse any judicial official in Queen Anne's County. He asserts that the parties have no connection to Anne Arundel County, as neither party works or resides there, and Krug has never consented to a change of venue. Moreover, he notes that as the Plaintiff in this matter, East “chose the jurisdiction of which she now complains.”

Maryland Rule 8-131(a) provides that an appellate court normally will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court.” *Univ. Sys. of Maryland v. Mooney*, 407 Md. 390, 400 (2009). Here, East did not file a Motion to Transfer Venue in the Circuit Court for Queen Anne's County. Consequently, the venue issue was not addressed below and therefore, is not properly before us.

For reasons we have explained, the circuit court erred in dismissing East's Complaint for Modification of Child Custody and abused its discretion in dismissing her Petition for Contempt without holding a hearing. Accordingly, on remand, the circuit court shall expeditiously schedule an evidentiary hearing on the merits.

**ORDERS OF THE CIRCUIT COURT FOR
QUEEN ANNE'S COUNTY REVERSED.
CASE REMANDED TO THAT COURT
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY THE APPELLEE.**