Circuit Court for Prince George's County
Case No. CAD14-09796

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2210

September Term, 2016

STEPHANIE NUNEZ

v.

MATTHEW GRAY

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

JJ.

Opinion by Arthur, J.

Filed: August 7, 2017

Under a consent order, two unmarried parents had joint legal custody of their daughter, and the father had primary physical custody. The order required the parties to communicate in good faith about major decisions concerning their daughter's religion and to reach joint decisions in their daughter's best interest. Despite the consent order, the mother had the daughter baptized without informing the father.

Representing himself, the father filed a petition for contempt and a motion to modify legal custody, in which he sought sole legal custody of the daughter. The mother moved for a modification of custody and visitation and sought child support.

The Circuit Court for Prince George's County granted the father's motion to modify custody, awarded him sole legal custody of the daughter, and denied the mother's motion. The mother appealed. We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Events Before the Motion to Modify

Matthew Gray ("Father") and Stephanie Nunez ("Mother") are the unmarried parents of a daughter ("Daughter"), born in 2011. While dating, the parties attended a non-denominational Christian church, where Daughter was christened. Daughter has been attending a non-denominational church since birth.

By a consent order dated May 15, 2015, the Circuit Court for Prince George's County granted Father and Mother joint legal custody of the child, while Father retained primary physical custody. The parties agreed that Daughter "would continue to be raised Christian."

The court ordered Mother and Father to "cooperate and communicate with each other with regard to major decisions concerning their minor child's education, health care and religion and to discuss these issues in good faith and make good faith attempts to reach joint decisions in the best interest of their minor child." The court also ordered the parties to "keep each other informed as to . . . where they will travel when the child is in their custody."

Under the consent order, Mother was granted weekly visitation. In addition, the order stated that in one year, if the parties did not reach an agreement on additional visitation for Mother after conferring in good faith, Mother could proceed with a petition to modify visitation. The parties agreed that Mother would not have to show a material change in circumstances for her petition to be granted.

B. The Motions to Modify

On August 5, 2016, Father, representing himself, filed a petition for contempt and a motion to modify legal custody. Father requested that he be granted sole legal custody and that the court hold Mother in contempt because she had violated the consent order by having Daughter baptized in a Catholic church without his knowledge or consent. He asserted that, through her unilateral decision about the baptism, Mother had breached the provision of the consent order requiring that major decisions regarding Daughter's religion be joint and be discussed in good faith. He also asserted that when Mother travelled with Daughter out of state without informing him of her intent to do so, she had breached the provision of the consent order requiring that the parties to "keep each other informed as to . . . where they will travel when the child is in their custody."

Mother filed a petition to modify custody, visitation, and support on September 17, 2016. She requested sole legal and primary physical custody of Daughter, and child support from Father.

C. Modification and Contempt Hearing

On November 17, 2016, the circuit court conducted a hearing on both parties' petitions. Both parties were represented by counsel at the hearing.

1. Father's Case

Father is employed by the Department of State as a procurement analyst and earns approximately $66,000 annually. He currently lives in Bowie with his wife ("Wife") and Daughter. His four-level townhome has three bedrooms, two and one-half bathrooms, and a living room, backyard, deck, and garage. Daughter has her own room and her own bathroom.

Daughter was enrolled at a public elementary school at the time of the hearing. The school is approximately a five-minute drive from the home. Father also enrolled Daughter in Celebree, an after-school program.

Father testified that he filed the petition for contempt because of "a pattern of behavior that [Mother] had shown." He said that Mother had Daughter baptized in a Catholic church without notifying him. Father became aware of the baptism only when Daughter returned home and informed him of it.

Father saw photographs online of Mother and Mother's family at the baptism, which led him to believe that she had planned it and that "it was a major event." Father

introduced pictures from Instagram, which showed Mother, her brothers, her younger sister, a cousin, and Daughter dressed up at the baptism.

Father said that Daughter had been christened at a non-denominational Christian church and that she had attended non-denominational Christian churches for her entire life. Father acknowledged that Catholics are Christians, but explained that Catholicism has specific rites and sacraments that other Christian churches do not have.

Father testified that when he asked Mother why she had Daughter baptized in the Catholic church when Daughter had never participated in that faith, Mother said that she had started attending the church a few months earlier and that she wanted to share the experience with Daughter. In Father's view, Mother had the right to practice whatever faith she wished, but he believed that it was improper for her to have Daughter baptized without communicating with him.

Father recognized that he could not prevent Mother from taking Daughter to her church, but he did not think that Daughter "should be forced to perform any sacraments or any of the rituals or [rites] of passage until she's old enough to make those decisions on her own."[1] He believed the differences in the two churches could be confusing and stressful for a young child.

Father claimed that when Daughter returned home from the baptism, she was upset and confused, and said that she did not want to get baptized. He asserted that Mother did not tell him about the baptism because she knew that he would have objected

[1] Presumably, Father was referring to Catholic sacraments such as Eucharist, Penance, and Confirmation.

to it. He posited that if Mother were mature and if she communicated well, she would have reached out to him before having Daughter baptized.

Father and Mother communicated through email and, occasionally, through text-messages. Father said that when he saw Mother, he tried not to say anything other than hello. He testified that after Mother was served with his contempt petition, she told him that if he did not drop the case, she was "going to come for everything[,]" which he believed to be a reference to a child-support action that was pending in Washington, D.C. Before that conversation, Father said that Mother had not asked for any additional visitation with Daughter.

Father testified that Mother claimed to have been unemployed for the past two months, but he expressed skepticism as to the veracity of her claim. At the time of the hearing, he believed that Mother lived in an apartment owned by her grandmother in the Columbia Heights neighborhood of Washington.

Father charged that Mother violated the consent order not only by having Daughter baptized, but also by taking Daughter to New York and South Carolina without notifying him. He said that when he and Wife travelled with Daughter, they always sent Mother an email to notify her.

Father testified that Mother had been consistent in her visits with Daughter, except for her allotted visitation on Wednesdays. He claimed that Mother did not pick Daughter up from school on Wednesdays until almost a year after entry of the consent order.

In concluding his direct testimony, Father said that Mother had shown that she would not abide by the consent order and that she had no respect for their established

agreement. He requested sole legal custody, and especially authority over religious activities. He asserted that Mother had proved that she would make unilateral decisions without communicating with him, and he did not believe that she should have the authority to make certain decisions alone.

On cross-examination, Father reiterated that he attempted to limit his communication with Mother to email and text-messages because, he said, Mother had not been honest at times, and he wished to document their interactions. He instructed Mother to communicate with him through an email account that he shared with Wife. He agreed that Wife sometimes responded to Mother's emails. He did not believe that Wife's access to the email account was a problem, because as his wife, she "ha[d] access to everything [he] ha[d] access to." He said that Wife's access was not harmful to Daughter because Wife was a "pillar of stability for [Daughter] when [Mother] was nowhere to be found."

Father acknowledged that Mother loved Daughter, but asserted that she was not a responsible adult or a responsible parent. He believed that Mother was selfish and often put her own interests before Daughter's interests.

Wife, whom Father married in November 2014, testified that she had known Daughter since she was one year old and that Daughter had primarily resided with Father. At the time of the hearing, Wife was unemployed, but volunteered at Daughter's elementary school.

Wife said that she and Father would send Mother emails, but that Mother was not always responsive. Wife corroborated Father's testimony that they had no advance

indication that Daughter was going to be baptized and that they found out about it only after Daughter informed them of it. She believed that the baptism confused Daughter.

Wife testified that she has had communication problems with Mother. At one point, Wife said, Mother told her that she did not want to talk to her because Wife "stole her man" and was "stealing her daughter." Wife testified that she loves and cares for Daughter as if she were her own child. She said that Mother had not requested any additional visitation time since the entry of the consent order.

On cross-examination, Wife testified that she was integrally involved with Daughter's daily life and did not want to treat her any differently because she was not her biological child. Wife acknowledged that she sometimes responded to Mother's emails to Father, but she felt that it was appropriate to do so at times.

Wife and Father had joint access to the email account. Wife admitted that if Mother wanted to communicate privately with Father regarding Daughter, she could not do so via that email account. Still, Wife believed that she was privy to discussions between Father and Mother regarding Daughter, because Daughter lived with Wife and Father Monday through Friday and every other weekend.

2. Mother's Case

Mother testified that she had resided with her grandmother in Northwest Washington, D.C., since 2011. She said that she was currently in school full-time, studying to be a medical assistant.

Mother complained about Wife's access to her communications with Father. Mother said that she wanted to have "open communication" with Father regarding Daughter, and she did not wish to feel "belittled" or "ganged up on."

Mother described her visitation schedule as follows: "Every Wednesday from 5:30 until 8 o'clock, I have [Daughter] for dinner and . . . I'll get her two weekends one month, then every other month it's three weekends out of the month." To visit Daughter on Wednesdays, Mother rode the bus and Metro for an hour and a half, picked Daughter up from daycare, spent three hours with her, and then took public transportation back to Washington, D.C., for another two hours. She said that she consented to Father's choice in daycare even though it was very distant from her home because she "was willing to do whatever it took to go see [her] daughter."

Mother claimed that she had requested additional visitation, but that her requests usually were not granted. She said that she wanted to be able to be present for Daughter just as Father and Wife were. She wanted her access to Daughter to be an even split with Father, and nothing more.

Mother agreed that Father was a great father, that he took care of the logistical aspects of Daughter's life, and that he cared for Daughter and loved her. However, she wished he communicated more regarding "day to day things." She believed that Wife was a good influence on Daughter, that Daughter loved Wife, and that Wife loved Daughter.

On cross-examination, Mother said that she lived with her grandmother and another person who rented a room from her grandmother. She did not have a car, which

impeded her ability to transport Daughter. She said that her grandmother would transport Daughter if the need presented itself, although that had not yet happened.

Mother claimed that she did not tell Father that she was going to have Daughter baptized in a Catholic church, because they did not have an open line of communication. She acknowledged that she could have sent Father an email informing him that she was going to have Daughter baptized, but that she did not. Mother contended that because she and Father had agreed to raise Daughter as a Christian, the baptism was not a major decision. After further questioning, however, she conceded that the baptism was a major religious decision, which she made without any discussion with Father.

3. Circuit Court Ruling

In a lengthy oral opinion, the court began by stating that in the consent order the parties agreed to cooperate and communicate with each other regarding major decisions that concern Daughter's religion. The parties were to confer in good faith and "make good faith attempts to reach joint decisions in the best interest of [Daughter]."

The trial judge expressed his understanding, as a Catholic himself, that Catholics are Christians. Nonetheless, the court was unpersuaded by Mother's argument that because the parties agreed to raise Daughter as a Christian, a Catholic baptism was not a major decision. The court determined that Mother willfully violated the consent order by having Daughter baptized in a Catholic church without any notice to Father, and it found her in contempt of court.

The court expressed concern that on two occasions Mother had taken Daughter out of state without notifying Father. Although the court did not believe the out-of-state

travel to be an express violation of the consent order, the court said that it violated "the spirit of the agreement" and was "indicative of a problem between the parties."

The court observed that the parties had agreed to joint legal custody, which it previously approved. According to the court, joint legal custody requires mature conduct and an ability to communicate effectively regarding Daughter's best interests. The court found that Mother was not currently capable of mature conduct and had not shown the ability to communicate regarding Daughter's best interests. For those reasons, the court granted Father's motion to modify and gave him sole legal custody of Daughter.

As to Mother's motion to modify, the court acknowledged that under the consent order she did not need to show a material change in circumstances. The consent order could not, however, change the legal standard that any modification must be in the child's best interests. The court found that a change in physical custody or visitation was not in Daughter's best interests.

The court said that Mother had the right to practice whatever religion she chose. However, she had agreed to an order that required her to communicate with Father regarding decisions about Daughter's religion. Although Mother would be allowed to bring Daughter to church with her, the court ordered that Daughter not receive any additional sacraments or do anything more than attend church with Mother. The court reasoned that the unilateral baptism was a violation of the consent order. In the court's view, the baptism, in addition to the trips with Daughter out of state, demonstrated that joint custody was not appropriate.

The court did not take issue with Father's decision to communicate via email or text-messages for purposes of preserving a record. However, it said that communication should be between Father and Mother on an email account to which Wife did not have access.

The court concluded by reiterating that Mother had not shown the ability to act in a mature fashion and that she evidenced a failure to communicate regarding essential issues. Because she could not be trusted to do so, the court it found that it was not in Daughter's best interest for Mother to have legal custody.

On December 16, 2016, the court entered a written order that reflected its ruling. In brief, the court granted Father's motion to modify and awarded him sole legal custody. The court ordered Mother not to have any religious sacraments conferred upon Daughter and ordered Father to establish a new email address that he alone would use to communicate with Mother regarding Daughter.[2] The court denied Mother's motion to modify and ordered that the remaining provisions of the consent order were to remain in full force and effect.

Mother noted this timely appeal.

QUESTIONS PRESENTED

Mother presents six questions for review, which we have rephrased and consolidated into four:

[2] We interpret the court's order to include the sacraments of Eucharist, Penance, and Confirmation (*see supra* n.1), as well as the spiritual training associated with receiving those sacraments.

1. Did the circuit court err or abuse its discretion in granting Father's motion to modify custody?

2. Did the circuit court err by denying [Mother's] request for additional visitation?

3. Did the circuit court err by ordering [Mother] not to administer or confer any religious sacraments on the child?

4. Is the circuit court's ruling an improper or punitive sanction arising from its finding [Mother] in contempt of the 2015 Custody Order?[3]

For the reasons discussed below, we answer all questions in the negative.

Consequently, we shall affirm the circuit court's judgment.

DISCUSSION

I. Standards of Review

[3] Mother presented the questions as follows:

1. Did the circuit court err by modifying custody without finding that a material change in circumstances had occurred?

2. Did the circuit court err by modifying custody without evaluating factors relevant to the best interests of the child?

3. Did the evidence in the record support the circuit court's findings and ruling?

4. Did the circuit court err by denying Appellant's request for additional visitation?

5. Did the circuit court err by ordering Appellant not to administer or confer any religious sacraments on the child?

6. Is the circuit court's ruling an improper or punitive sanction arising from its finding Appellant in contempt of the 2015 Custody Order?

Maryland appellate courts review child custody determinations using three, interrelated standards of review. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). As this Court has noted:

> [First], [w]hen the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. Rule 8-131(c)][4] 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.

Reichert v. Hornbeck, 210 Md. App. 282, 304 (2013) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)); *accord Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) (appellate court will not disturb "decision founded upon sound legal principles and based upon factual findings that are not clearly erroneous" absent showing of "clear abuse of discretion") (citation omitted).

This Court gives "'due regard . . . to the opportunity of the lower court to judge the credibility of the witnesses.'" *Reichert*, 210 Md. App. at 304 (quoting *In re Yve S.*, 373 Md. at 584). It is within the trial court's sound discretion 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." *In re Yve S.*, 373 Md.

[4] Rule 8-131(c) provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

at 585-86. "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[.]" *Id.* at 586. The trial court "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.*

If there is any competent, material evidence to support the trial court's findings, we cannot hold that those findings are clearly erroneous. *Hosain v. Malik*, 108 Md. App. 284, 303-04 (1996). To constitute an abuse of discretion, "'[t]he decision . . . has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *McAllister v. McAllister*, 218 Md. App. 386, 400 (2014) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)).

II. Custody Modification Framework

Resolution of a custody-modification request requires a two-step process. First, the circuit court must find that there has been a material change in circumstances since the last custody order. *Gillespie*, 206 Md. App. at 170. "A material change in circumstances is a change in circumstances that affects the welfare of the child." *Id.* at 171. If the court finds that a material change has occurred, it considers what custody arrangement would be in the best interests of the child. *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005) (citing *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996)).

The two steps of this changed circumstances analysis are often interrelated in that each addresses the same paramount concern, the child's best interests:

> [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.

Gillespie, 206 Md. App. at 171 (quoting *McCready v. McCready*, 323 Md. 476, 482 (1991)).

Courts making determinations of custody in light of changed circumstances may, and regularly do, consider the following factors:

> [A]mong other things, the fitness of the persons seeking custody, the adaptability of the prospective custodian to the task, the age, sex and health of the child, the physical, spiritual and moral well-being of the child, the environment and surroundings in which the child will be reared, the influences likely to be exerted on the child, and, if he or she is old enough to make a rationale [sic] choice, the preference of the child.

Reichert, 210 Md. App. at 305 (quoting *Wagner*, 109 Md. App. at 39); *accord Braun v. Headley*, 131 Md. App. 588, 610-11 (2000) (citing *Montgomery Cnty. v. Sanders*, 38 Md. App. 406, 420 (1977)) (noting similar factors).

"Courts are not limited or bound to consideration of any exhaustive list of factors in applying the best interests standard, but possess a wide discretion concomitant with their 'plenary authority to determine any question concerning the welfare of children within their jurisdiction[.]'" *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503-04 (1992) (citation omitted); *see Taylor v. Taylor*, 306 Md. 290, 303 (1986) (in noting "'transcendent importance'" of child's best interests, stating that no one factor "has

talismanic qualities and that no single list of criteria will satisfy the demands of every case") (internal citation omitted).

In the end, in light of these various factors, the trial court is in the best position to determine what is in the child's best interest, and the ultimate determination of which parent should be awarded custody rests within its sound discretion. *See Robinson v. Robinson*, 328 Md. 507, 513-14 (1992).

III. Modification of Custody

Mother disagrees with the circuit court's assessment of the evidence and its ultimate decision based on that assessment. Particularly in view of the highly deferential standard of appellate review of the findings by the court that saw and heard the witnesses, we see no clear error or abuse of discretion.

Mother first contends that the court erred because, she says, it did not consider or determine whether a material change in circumstances warranted a modification of custody. In support of her contention, Mother argues that "[t]he trial court did not even use the phrase 'material change in circumstances' in connection with the Father's request to modify custody." Although the court did not enunciate the term "material change in circumstances," we disagree that the court failed to find a material change.

"[T]he question of 'changed circumstances' may infrequently be a threshold question, but is more often involved in the 'best interest' determination." *McCready*, 323 Md. at 482. The test of a material change in circumstances is whether the change is in the best interest of the child. *McMahon*, 162 Md. App. at 596. "Consequently, if a court concludes, on sufficient evidence, that an existing provision concerning custody or

visitation is no longer in the best interest of the child and that the requested change is in the child's best interest, the materiality requirement will be satisfied." *Id.* It follows that, if a court finds that a change in custody is in the child's best interests, it has implicitly found a material change in circumstances.

We are unpersuaded that the trial court was clearly erroneous in finding that the existing custody provision was no longer in Daughter's best interest, and thus implicitly finding that there had been a material change in circumstances. Father offered evidence of several changes that supported the court's conclusion that joint legal custody was no longer in Daughter's best interest. Even though the court did not explicitly announce that there was a material change in circumstances, it clearly considered a variety of factors in concluding that a change in circumstances that affected the welfare of the child had occurred since the entry of the consent order. Those factors included Mother's unilateral decision to have Daughter baptized in a Catholic church and Mother's failure to inform Father, on two occasions, that she had taken Daughter out of the State.

Father established a material change in circumstances by proving that the parties' inability to communicate and work together made joint legal custody no longer viable. Mother violated the consent order, under which she had agreed "to cooperate and communicate" with Father "with regard to major decisions concerning their minor child's education, health care[,] and *religion* and to discuss these issues in good faith and make good faith attempts to reach joint decisions in the best interest of their minor child." (Emphasis added). The court was not clearly erroneous in its finding that a baptism was a major religious decision, nor was it clearly erroneous in its determination that Mother

violated the consent order by having Daughter baptized without even consulting with Father.

Furthermore, Mother twice travelled with Daughter out of state without informing Father. Although the court said that Mother's conduct merely violated "the spirit of the agreement," it would have been within its rights to find that Mother had violated the provision in the consent order, under which the parties "agreed to keep each other informed as to . . . where they will travel when the child is in their custody[.]"

The court opined that Mother's errors of judgment were "indicative of a problem between the parties." The court recognized that joint legal custody requires mature conduct by the parents and an ability to effectively communicate regarding the best interest of the child. The court found that, as a result of the baptism and the two trips out of state, Mother was not capable of mature conduct and did not demonstrate an ability to effectively communicate regarding the best interest of the child.

The record here is clear that the trial court concluded, on sufficient evidence, that joint legal custody was no longer in Daughter's best interest. The materiality requirement, therefore, was satisfied even though the court did not explicitly refer to a material change in circumstances.

Mother next contends that the court erred by modifying custody without evaluating factors relevant to the best interests of the child. She complains that in its decision the court referred only to the parents' ability to communicate.

The premise of Mother's argument is incorrect: the court based its decision on Mother's inability to make mature decisions as well as the parents' inability to communicate.

In any event, Mother's argument is unpersuasive, because a trial court is not required "to articulate every fact upon which [it] relies," as long as it sufficiently considers the relevant issues. *See*, *e.g.*, *Cousin v. Cousin*, 97 Md. App. 506, 518 (1993); *see also Flanagan v. Flanagan*, 181 Md. App. 492, 533 (2008) ("[u]nder discretionary review, a trial judge's failure to state each and every consideration or factor does not, without demonstration of some improper consideration, constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion") (citations and quotation marks omitted); *Malin v. Mininberg*, 153 Md. App. 358, 429 (2003) ("although consideration of the [statutory] factors [regarding a monetary divorce award] is mandatory, the trial court need not go through a detailed check list of the statutory factors . . . because a judge is presumed to know the law") (citations and quotation marks omitted).

Here, the court's ruling shows that it evaluated the child's best interests in determining custody. The court reviewed the pertinent factors in light of the evidence presented and reached a discretionary conclusion. It was not required to place any specific amount of weight or focus on any one of the numerous factors courts regularly consider, to the exclusion of others. It was entirely within the court's discretion, in delivering its extemporaneous, oral ruling, to discuss some factors and not others. *See Taylor*, 306 Md. at 303.

Mother challenges the court's findings that she was not capable of mature conduct and had evidenced a failure to communicate effectively regarding essential issues and Daughter's best interest. She claims that the findings are unsupported by the record evidence. She specifically complains that Father erected barriers to communication by electing to communicate with Mother only by email or text-message. We disagree that the court's findings were either unsupported or clearly erroneous.

The record reflects that, in clear contravention of the consent order, Mother had Daughter baptized and took Daughter out of State on two occasions without informing Father. Those facts alone are sufficient to support the court's findings.

The court did not ignore Father's refusal to communicate with Mother except by email or text-message. Having seen and heard both parents, the court was entitled to conclude that Father might want to have a documentary record of communications with her. Furthermore, the record establishes that Father has not shown the unwillingness to communicate that Mother has shown, especially regarding essential issues concerning Daughter. For example, Father testified that he lets Mother know whenever he and Wife travel with Daughter.

Nor did the court ignore Wife's access to the email communications between Mother and Father and its potential to inhibit Mother's ability to communicate with Father. To the contrary, the court ordered Father to establish a separate email account, to which Wife would not have access, in order to ensure that Mother could communicate confidentially with him.

It was well within the court's broad authority to fault Mother, and not Father, for the parties' inability to communicate and to find that it was Mother who evidenced an inability to behave maturely. The court's decision to credit Father's testimony was not clearly erroneous. *See Petrini v. Petrini*, 336 Md. 453, 472 n.14 (1994) ("it was well within the court's discretion to decide which witnesses it found to be credible"); *Michael Gerald D. v. Roseann B.*, 220 Md. App. 669, 687 (2014) ("[i]t is not our role, as an appellate court, to second-guess" credibility determinations made by the trial court); *see also McCready*, 323 Md. at 485 (deferring to trial court's assessments of the credibility of parents seeking custody). Evidence of the parents' inability to communicate is, by itself, a sufficient reason to refuse to grant joint legal custody. *See Cousin*, 97 Md. App. at 517 (citing *Hughes v. Hughes*, 80 Md. App. 216, 233 (1989)).

The parents' capacity to communicate and to reach shared decisions affecting the child's welfare "is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate[.]" *Taylor*, 306 Md. at 304. "Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future." *Id.* Mother does not point to any evidence that the parents had a "strong potential" for cooperation in the future.

In light of the court's well-supported findings, we see no abuse of discretion in the decision that it was in Daughter's best interest to award Father, her primary caretaker, sole legal custody. *See Baldwin v. Baynard*, 215 Md. App. 82, 109-12 (2013) (holding

that trial court did not abuse its discretion in granting sole legal custody to mother where the parents struggled to communicate, neither parent had expressed desire for joint custody, and mother had been primarily responsible for child's education and medical needs); *Maness v. Sawyer*, 180 Md. App. 295, 318 (2008) (holding that court did not abuse its discretion in awarding sole legal and physical custody to mother where the parents had a history of disagreements, including major dispute over sale of property they owned); *Cousin*, 97 Md. App. at 516-17 (holding that court did not abuse its discretion in granting sole legal custody to mother where parties could not agree on major issues in raising children and mother had always been decision maker in the children's lives); *Leary v. Leary*, 97 Md. App. 26, 38 (1993) (holding that court did not abuse its discretion in awarding sole custody of children to mother where the record was "replete with examples of the parties' lack of ability to communicate" and mother had been "the principal caretaker of the children"), *abrogated in part on other grounds by Fox v. Wills*, 390 Md. 620 (2006).

IV. Request for Additional Visitation

Mother asserts that the court erred in denying her request for additional visitation without evaluating the best interests of the child. We disagree with the premise that the court did not evaluate Daughter's best interests.

When it denied Mother's motion, the court had just admonished Mother for her willful violations of the consent order. In addition, the court had just concluded that Mother was incapable of "mature conduct" and that she had not shown "an ability to

effectively communicate regarding the best interest of the child[.]" The court proceeded to grant Father sole legal custody.

Immediately thereafter, the court concluded that it was not in Daughter's best interests to modify Mother's visitation rights. Before ruling on the motion to modify, the court need not repeat the same best-interest analysis that it had just performed only moments earlier. Based on the analysis that the court had already articulated, it was evident that for the same reasons that it had granted Father sole legal custody, it did not believe that it was in Daughter's best interests to grant Mother's additional visitation rights.

Mother did not show that she was capable of mature conduct; she had not shown "an ability to effectively communicate regarding the best interest" of Daughter; and when Daughter was in her care, she willfully violated the consent order. Understandably, the court did not grant Mother more visitation when she used her visitation time to disobey its previous orders. We see no abuse of discretion on the court's part.

V. Order Not to Have Religious Sacraments Conferred upon or Administered to Daughter

Mother contends that the court erred when it ordered her not to have any further religious sacraments administered to or conferred upon Daughter. In support of her contention, Mother relies on *Kirchner v. Caughey*, 326 Md. 567 (1992), which requires "a clear showing that a parent's religious practices have been, or are likely to be, harmful to the child before the court will interfere in those religious practices." *Id.* at 576. Mother argues that the court erred because the record did not establish that it would be

harmful to Daughter for Mother to have any further religious sacraments administered to or conferred upon her. Mother misapprehends the nature and purpose of this aspect of the court's order.

In the original consent order, Mother and Father agreed to communicate in good faith about major decisions concerning their daughter's religion and to reach joint decisions in their daughter's best interest. The trial court found that Mother had willfully violated that provision of the order by having Daughter baptized in a Catholic church without Father's knowledge or consent. As a result of that finding, the court granted Father sole legal custody, which "carries with it the right and obligation to make long range decisions involving education, *religious training*, discipline, medical care, and other matters of major significance concerning the child's life and welfare." *Taylor*, 306 Md. at 296 (emphasis added).

In ordering Mother not to have any further religious sacraments administered to or conferred upon Daughter, the court was not erroneously prohibiting religious practices in the absence of proof that they were harmful.[5] Rather, the court was adding detail to its decision to grant Father sole legal custody, including the "right and obligation to make long term decisions" about Daughter's "religious training." *Id.* The parent who does not have legal custody is "necessarily obliged to exercise authority over the child during periods of visitation, but . . . '[t]his residuum should be exercised so as not to conflict with the long range decisions and policies made by the parent having legal custody.'"

[5] The court, however, did hear evidence that when Daughter returned home from the baptism, she was upset and confused, and said that she did not want to get baptized.

Kirchner v. Caughey, 326 Md. at 579 (quoting *Taylor*, 306 Md. at 296 n.4). Especially in light of Mother's willful violation of her earlier agreement to communicate in good faith about major decisions concerning Daughter's religion and to reach joint decisions in Daughter's best interest, it was reasonable for the court to include a provision prohibiting Mother from having any further religious sacraments administered to or conferred upon Daughter.

Notably, the court did not prohibit Mother from taking Daughter to church. To the contrary, the court recognized that although "there may be some confusion with [Daughter] attending two different churches which worship the same God in two different ways, . . . that's the kind of confusion that a five-year-old child can deal with." The court's comments echo those of the Court of Appeals:

> "There may also be a value in letting the child see, even at an early age, the religious models between which it is likely to be led to choose in later life. And it is suggested, sometimes, that a diversity of religious experience is itself a sound stimulant for a child."

Kirchner v. Caughey, 326 Md. at 579 (quoting *Felton v. Felton*, 383 Mass. 232, 234-35 (1981)).

Father has been steadfast in his desire for Daughter to be raised in a non-denominational Christian church. The court granted Father sole legal custody, and Mother's decisions should not conflict with the Father's long-range decisions about religious training. As the court implicitly recognized, Daughter's mere attendance of services at a Catholic church does not ultimately conflict with Father's decision to have Daughter raised in a non-denominational Christian church. Having religious sacraments

conferred upon Daughter, on the other hand, would directly contravene Father's decision about religious training. Accordingly, the court did not err in ordering Mother to not have any further religious sacraments administered to or conferred upon Daughter.

VI. The Court's Decision to Modify Custody Was Not a Punitive Sanction Arising Solely From Mother's Contempt

Mother argues that the court granted Father's motion to modify custody as a punitive sanction arising from her contempt of the consent order and that she was never given an opportunity to purge the contempt finding. She claims that the contempt finding was the sole basis for modification of custody because, she says, the court did not consider whether a material change in circumstances had occurred and did not evaluate the best interests of the child. We do not agree.

As previously discussed, the court considered Daughter's best interests in modifying custody. *See supra* Part III. The court found that Mother "evidenced a failure to communicate, [and] a failure to have any mature record of an ability to communicate regarding . . . essential issues." As a result, it found that it was not in Daughter's best interest that Mother have legal custody.

The record does not reflect a court that granted Father's motion to modify custody solely as a punitive sanction stemming from the contempt finding. Rather, Mother's actions persuaded the court that joint custody was no longer in Daughter's best interests.

The court conducted a thorough hearing that gave Mother and Father an ample opportunity to offer their competing accounts of custody. After a thoughtful review of the evidence, the court determined that it was in Daughter's best interest for Father to

have sole legal custody. We see no basis to conclude that the circuit court's ruling was an improper or punitive sanction, and the court did not err or abuse its discretion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.