Circuit Court for Montgomery County
Case No. 158281FL

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 423

September Term, 2024

MICHAEL KENEKE CURTIS

v.

SKYLAR ELIZABETH BATLINER

Graeff,
Berger,
Getty, Joseph M.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Graeff, J.

Filed: October 25, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from an order issued by the Circuit Court for Montgomery County granting in part, and denying in part, a Petition for Modification of Custody, Child Support, and Other Relief filed by appellant, Michael Keneke Curtis ("Father"). On appeal, Father presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the court abuse its discretion in failing to award Father primary physical custody of the minor child?

2. Did the court abuse its discretion in denying Father's motion to alter and/or amend the modification order?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Marital Agreement and Petition to Modify

Father and appellee, Skylar Elizabeth Batliner ("Mother"), married on July 1, 2016, and separated on November 16, 2019. They are the parents of one minor child, A., born in August 2016.[1]

On August 6, 2020, the parties entered into a Marital Settlement Agreement (the "Agreement"), which settled all matters "arising from their marital relationship," including custody and child support. The Agreement provided for joint legal, and shared physical, custody of A. pursuant to an agreed upon schedule. During the school year, the Agreement provided for A. to be primarily in the care and custody of Mother, with Father

[1] We use initials for the minor child to protect the child's privacy.

having custody one weekend every month from Friday at 5:00 p.m. to Sunday at 5:00 p.m. The parties agreed that Father would also have custody of A. at least two additional weekends during the school year, provided he give Mother notice at least seven days in advance. Father would have primary custody of A. during the summer break, with Mother having custody one weekend per month from Friday at 5:00 p.m. to Sunday at 5:00 p.m. and at least two additional weekends, provided she give notice to Father at least seven days in advance.

The Agreement also set forth a schedule for holidays and stated that the parties agreed "to meet each other at a mutually agreed upon half-way point between their residences to exchange the minor child." The parties agreed that Father would pay Mother $800.00 per month in child support and would continue to make payments for Mother's Honda CRV in the amount of $300 per month until the note was paid in full. The Agreement was incorporated into a judgment of absolute divorce docketed on November 30, 2020.

On May 8, 2023, Father filed a Petition for Modification of Custody, Child Support and Other Relief, alleging "a material change in circumstances concerning the welfare of the minor child." He alleged that, since the Agreement, Mother had become "transient," lacked "appropriate stable housing," and was "unable to provide appropriate care" for A. Father noted that Mother had remarried after the parties' divorce, and she was abused by her new husband. She then moved back in with Father in the late summer of 2022, and A. began attending Wolfe Street Academy, the school zoned for Father's residence.

Mother now intended to move from Baltimore to Virginia Beach with A. to live with a friend. Father argued that it was in the best interest of A. to continue attending Wolfe Street Academy and for Father to have primary custody of A. He asserted that he was able to provide A. with stability and predictability because he had stable housing and employment. Father requested that the court award him primary physical custody of A., with the parties to maintain joint legal custody. Father also requested that Mother pay child support and Father's attorney's fees associated with the petition to modify.

On July 21, 2023, Mother filed an answer to Father's petition for modification, admitting the allegation that there had been a material change in circumstances. She denied, however, that she had unstable housing, was unable to care for A., and that it was in the best interest of A. for Father to have primary physical custody. The court scheduled a hearing on the petition for modification.

II.

Hearing on Petition for Modification

A.

Father's Testimony

On January 2 and 3, 2024, the court held a hearing on the petition to modify. Father described A. as "very active, very curious, very kind, and respectable." He testified that he has a "normal parental bond" with A. and talked to him four to five times per week.

Father stated that, in negotiating the Marital Settlement Agreement, he agreed to Mother having primary physical custody of A. during the school year because Father had

an untreated medical condition that Father "didn't understand" and was living with friends and family members to help pay off debt. He "didn't feel like [he would] be the best parent at that time." At the time of the hearing, however, this medical condition, sleep apnea, had been treated and resolved.

In October 2021, while employed at T. Rowe Price, Father purchased a house in Baltimore, where he resided at the time of the hearing. He chose the house "because of its close proximity to Wolfe Street Academy," which at the time was ranked as one of the top five schools in Baltimore City.

At the time of the Agreement, Mother was renting a house in Virginia Beach and living with a friend. She resided there until March 2021, when she moved in with her sister. Sometime before August 3, 2021, Mother remarried and moved in with her new husband, J. T. Father learned of the marriage via Facebook. A. attended his first year of school in Shenandoah, Virginia. Father testified that A. witnessed domestic violence during the time of Mother's marriage to J.T., stating that Mother told him of an incident on A.'s first day of school involving physical abuse between Mother and J.T. While A. was in the back seat of a car waiting to be dropped off at school, J.T. "opened the car door and attempted to pull [Mother] out, [and] she responded by punching him in the face."

Mother resided with J.T. until August 2022, when she fled to a women's shelter in Virginia to escape domestic violence in the marriage. Mother stayed at the shelter for approximately one month.

Mother then moved to Baltimore, with A. and her other son, G.,[2] to stay with Father. A. attended Wolfe Street Academy for his entire first-grade year. Mother and Father were not in a romantic relationship at the time, Mother was not employed, and she was pregnant with her third child, Am., the daughter of J.T. Am. was born in October 2022, while Mother resided in Baltimore with Father. Father testified that he supported Mother while she, A., G., and Am. lived with him. He preferred that Mother not work "[w]hile pregnant" and "shortly thereafter." Father deducted $500 from his child support obligation in exchange for her living in his home. He sometimes paid for her and the children's clothing, as well as baby furniture and gear, and he provided groceries and transportation. Father also paid for a babysitter to assist Mother with childcare. In general, A. had a "good relationship" with his younger siblings.

Father testified that the plan was for A. to remain at Wolfe Street Academy after his first-grade year. Mother, however, relocated to Chesapeake, Virginia in April 2023. Father offered to buy Mother a house in Baltimore or pay rent "as long as she resided within a reasonable distance . . . in Maryland." Father gave Mother "close to $2000 for a security deposit. . . [t]he last week of April 2023." He testified that it would be in A.'s best interest to "see both of his parents, as well as his siblings," and Mother living close by would be a way to accomplish that.

[2] G. was born in 2021 after Mother started a brief relationship with a former classmate following the parties' divorce. G.'s father was not involved in his life.

Prior to Mother relocating, Father and Mother had an argument, and Mother asked that he confirm that she was permitted to take A. wherever she went. Father confirmed that she could take him, and "the next day she made plans to move to Chesapeake." A. went with Mother to Chesapeake in April, but he returned to stay with Father in May to finish the remainder of the school year at Wolfe Street Academy. A. often stayed with his paternal grandmother, Ruth Curtis. Father testified that A. spent overnights with his grandmother "[b]ecause he has a relationship with his nana," not for childcare purposes.

Father discussed his daily routine with A. from May until July 2023, during the time A. was in Father's custody. Father would walk A. to school and "try to get as much work done before he came back." After school, Father and A. would usually go to the library. Father prepared A.'s meals and arranged his hygiene. Father and Mother agreed that yelling or corporal punishment did not "work with either of [them]," so generally he used a "timeout" to discipline A. A. had some "school behavioral issues" and "accidents" while he attended Wolfe Street Academy.

Mother communicated "sparingly" with A. from May until July 2023, and she did not visit him during that time. Mother requested to see A., but Father was only "amenable to her seeing [A.] . . . at a home that was neither [his] nor hers." He proposed that Mother see A. at his mother's residence or at the home of Mother's sister. Mother opposed this arrangement, even though she had previously agreed to meeting at A.'s grandmother's house for custody exchanges.

A. visited Mother the weekend of July 7, 2023. Sometime that weekend, Father sent Mother an email informing her that he would have to delay A.'s pickup. A., however, was "not made available" to him when he contacted Mother "a couple of times" to regain custody. In an email dated August 7, 2023, Father asked Mother when A. would be available for pickup to attend a summer camp that A. was registered for in Baltimore. Mother did not give "a clear or concrete answer" about A. attending summer camp, and A. did not attend the non-refundable camp that summer.[3] Sometime after July 7, 2023, Mother requested that Father attend mediation, but Father was not sure "what specifically [they would] be talking about," and he did not attend. Father did not regain care and custody of A. after A's July 2023 visit with Mother.

Father did not see A. on his birthday, August 3, 2023, but he did not specifically ask to see A. Father also did not express any concerns regarding A. starting school in August. Father's first visit with A. after July 2023 was in October, when Father stayed in a hotel 10 minutes from Mother's new residence. He next visited A. in November. Father attempted to arrange for visitation over Thanksgiving, but Mother and her boyfriend, Timothy Russell, who Mother relied on for transportation, were "under the weather." Father next saw A. on December 20, 2023, for an extended visit over the holiday.

[3] Mother filed a Petition for Contempt and Enforcement on November 1, 2023, alleging that Father failed to pay $1,500 in child support. Father testified that he did not pay child support in July 2023, because A. "was completely in [his] care for the month of June," and Mother "mentioned that [Father] would not have to [pay] for the months that [A.] [wa]s with [him]. He did not pay the full amount in August 2023 because he deducted half the cost of the non-refundable camp, $250.00, from the support obligation. The court ultimately denied Mother's Petition for Contempt and Enforcement as moot.

Father testified that he did not have concerns about Mother's personal ability to care for A., but he was concerned that she was dependent on other people because she did not have employment or transportation of her own.[4] Father was concerned about "what would happen to [A.]," if something happened to Mother's partner, Mr. Russell.

Father testified that he maintained contact between A. and his family, and he was "[s]omewhat" in contact with Mother's side of the family. A. visited with Father's extended family on Christmas Day and Memorial Day 2023. Father reached out to Mother's extended family to arrange for visitation while he had custody of A. Mother did not have any contact with her family while A. was in her care. Although the parties had joint legal custody of A., Father testified that Mother did not include him in all the decisions, including "[u]nilaterally moving to Chesapeake, Virginia" and deciding not to have A. vaccinated for COVID-19.[5] Father testified that Mother did not inform him of her spring 2021 move from Norfolk, her move to Shenandoah, or her move to Chesapeake in April 2023.

On September 19, 2023, after Mother had already enrolled A. in school in Chesapeake, Virginia, Father received an email communication from Mother with

[4] Pursuant to the Agreement, Father continued to make a $300 monthly payment for Mother's vehicle. Mother's husband, J.T., however, sold the vehicle without his consent.

[5] Mother initially opposed vaccination, but later agreed that Father could have A. vaccinated for COVID-19. When Father took A. to CVS to get vaccinated, however, the vaccine was out of stock. A. had still not received the vaccine when the hearing took place.

information about A.'s school, teacher, and school documents. On November 14, 2023, Mother emailed Father regarding an altercation at school involving A. Father testified that A. had told him about the altercation prior to Mother sending the email. Father stated that the "pattern" for communication was that A. notified him of events at school, and he "might get an email later on from [Mother] saying that's what happened." Father did not communicate with the school about the altercation, but he discussed the matter with A. and "consoled him about it."

Father testified that he was listed only as an emergency contact for school, and he was not authorized to pick up A. from school or access his school records. Father was not registered for ParentVUE, the communications portal for A.'s school, despite Mother advising him that ParentVUE was the platform used for school communication.

At the time of the hearing, Father worked for Tibit, LLC, and he made more than $180,000 annually. A. was listed as a dependent on Father's health, vision, and dental benefits. Father worked from 7:00 a.m. to 3:00 p.m. most days, but he could choose his own hours. He also had the ability to work from home. Father stated that, if he were granted primary physical custody of A., he would allow Mother to have access to him. The current distance between Father and Mother was 240 miles, the same distance as when the Marital Settlement Agreement was entered as an order in November 2020.

With regard to visitation arrangements after A. moved to Chesapeake with Mother, Father stated that Mother did not make it easy for him to see A. on his birthday. Although she did not decline visitation, "she didn't respond or didn't respond in a timely manner,

which would have the same effect," and she then proposed an arrangement that she knew Father would not accept. Father admitted, however, that Mother informed him of the plan for A.'s birthday and suggested that he visit afterward, but he did not.

B.

Testimony of Robert Guth

Robert Phillip Guth, Jr., the fiancé of Mother's sister, Cali Delamater, testified next. He had known Mother and Father for approximately eight years. He had a bond with A. in the past, but he had not seen him as much as he would like because Mother did not respond to his calls or texts. He had not seen A. since summer 2023. Mother lived with Mr. Guth and her sister for approximately two months in Front Royal, Virginia. Mother moved out to live with J.T., and after a month or two, Mother "cut off contact" with her sister and Mr. Guth. Mr. Guth did not have concerns about A. living with J.T., but he did have concerns about G., Mother's second child. Mother had shown him concerning bruises and burns on G. Mother told him that the burns were caused by a new hot water heater. Mother moved out of the residence because J.T. was "abusive, verbally, and physically."

Mr. Guth met Mr. Russell, Mother's then-partner, two times. Mr. Guth made a joke that Mr. Russell did not like, and Mr. Russell "started stepping into [his] face." Mr. Guth "apologized to make it easier for" everyone to "get along." Mr. Guth believed that he would be able to see A. in the future when Mother "decides that she's either comfortable with this guy enough or moves on to another." If A. was in Father's care,

Mr. Guth did not see any issues visiting him, even with the distance, because he could pick up A. and drop him off at A.'s paternal grandmother's house.

Mr. Guth expressed concerns about Mother maintaining primary custody of A. because "she's all over the place, the kids aren't regimented . . . and there was no routine." Mother was unable to resolve conflict with a conversation, and instead, "whenever she's proven wrong or whenever she gets mad, she just yells" or hangs up the phone. He believed she needed a therapist to help her. Mr. Guth testified that it would be in the best interest of A. for Father to have primary custody.

On cross-examination, Mr. Guth admitted that Mother's sister had blocked Mother's calls, had told Mother to "kill herself," and that he had called Mother a "whore" in the past. He also conceded that, based on stories from Mother, he previously had "said it was dangerous to leave [A.] with [Father]." Mr. Guth said that he no longer had safety concerns about A. being in the care of Father, but he stated that he was not "super close with him."

C.

Testimony of Paternal Grandmother

Ruth J. Curtis, A.'s paternal grandmother, testified that she had a very close bond with A. and had consistently been in his life. She noted that Father and A. were also "very close," and Mother was "a very loving mother," who "really does care for [A.]."

Ms. Curtis testified about an altercation that involved J.T. A. was "traumatized" by the incident. The next day, when she and Father drove with A. past the path leading to

J.T.'s residence, A. "started shaking" and saying that he did not "want to go there." A. also began to "shy away" from Ms. Curtis. Ms. Curtis offered for Mother and A. to stay in a hotel with her and Father after the incident.

Ms. Curtis also learned from Mother that CPS was investigating the residence in December or January of 2022 because G. had been burned by water. Ms. Curtis contacted a sheriff from Prince William County, Virginia, as well as a battered women's program, in an effort to assist Mother. Ms. Curtis testified that Mother had told her that J.T. "had attacked her while she was pregnant" and did not assist her with any household work.

Since July 2023, Ms. Curtis had seen A. two times. A. often had cold symptoms when he visited, more so than when he resided with Father. When A. visited, he liked to sleep with her in her king size bed, bathe in the jacuzzi tub, go to church, cook, and "just have fun." A. had stayed with Ms. Curtis from June 17 until July 2 or 3, 2023.

If Father were awarded primary physical custody, Ms. Curtis would be able to assist him however he needed. She was not employed at the time, had her own car, and could stay with Father and A. "[i]f he ha[d] to take care of any business." If A. had any event at his school, she "would definitely show up for it." She had a history of supporting both Father and Mother. Ms. Curtis struggled with her recommendation for primary physical custody, stating:

> I've fought with this a long time, and I do believe this child should be with the mom. But there's been some things that I just don't want to choose because either way a child in a way should be with their parents. . . . It's hard . . . I've battled with this because I don't want to do this to any woman. But when you have to look upon the child, then you have to counter [to] do just that.

Ms. Curtis testified that A. "would be better off with his dad in one location, one school . . . [where h]e can have activity or extracurricular activity instead of . . . four and five hour drives . . . . Something more meaningful."

Since the divorce in 2020, Mother's communication with Ms. Curtis was limited to arranging for pickup of A. because Ms. Curtis's home was the midpoint between the parties. She also met Mother at other locations, including Mother's residence, to facilitate custody exchanges. Ms. Curtis had interacted with Mother's other children during custody exchanges. Ms. Curtis acknowledged that she and Mother had discussed Mother's concerns with regard to the methods of discipline Father used during the time they were married.

D.

Mother's Testimony

Mother testified that she lived in Chesapeake, Virginia, with her boyfriend, Timothy Russell, and her children, seven-year-old A., two-year old G., and one-year old Am. Mr. Russell also had an 11-year-old daughter, O., from another relationship, who resided at the home on alternating weekends. At the time of the hearing, Mother had lived with Mr. Russell for almost a year.

J.T. is Am.'s father. She and J.T. were separated, but not yet divorced, at the time of the hearing. G.'s father, B., is someone Mother had known since preschool. Their romantic relationship lasted approximately three months. Mother was not in contact with B. and did not seek child support from him. B. had been exhibiting symptoms of

"schizophrenia" and told Mother "he didn't want to be a part of [G.'s] life." When B. told Mother that he did not want Mother to have G. and "wanted to sacrifice [G.] in the woods before [his] first birthday," she left. B.'s family did not wish to have contact with Mother or G. Neither B. nor J.T. had any current relationship with A.

After the parties divorced in 2020, Mother lived in Norfolk, Virginia, with A., and she gave birth to G. Mother then moved in with her sister in Front Royal, Virginia, from May 2021 to July 2021. Mother moved out of her sister's residence because there were "a lot of altercations happening between [her] and [her] sister's fiancée, Robert Guth, such as him name-calling and saying inappropriate things around the children that [she] didn't like."

In the summer of 2021, Mother moved in with J.T., in Shenandoah, Virginia. A. primarily was in Mother's care, and Father did not often ask for visitation. Mother informed Father that she was moving in with J.T. "one to two weeks" before the move and Father was concerned that A. was moving out of Mother's sister's house. At the time she moved in with J.T., they had been dating for approximately one month. After Father learned that she and J.T. had married, Father asked if she "would like him to sign papers releasing custody so that [J.T.] would have the opportunity to adopt him if [she] saw fit."

In August 2022, Mother moved out due to domestic violence. Near the end of their relationship, J.T. cut off Mother's "modes of transportation and access to finances," and during that time, her Honda CR-V "went missing." Mother engaged law enforcement to get it back, but she was unsuccessful. Mother moved to a battered women's shelter in

Luray, Virginia. Father was supportive of Mother's move to the shelter, but he did not offer to take A. while she was there. A. and Mother stayed at the shelter for approximately one month before moving in with Father in Baltimore. Mother had not reached out to J.T.'s family or pursued divorce on the "advice of the women's shelter."

Mother resided with Father in Baltimore from the early fall of 2022 until April of 2023. Mother was not employed while she resided with Father, and she agreed that Father could deduct $500 from her monthly child support payment to pay for her rent and utilities.[6] Mother gave birth to Am. while she resided with Father in 2022.

Mother described her typical day while she resided with Father. She would wake up with her younger son, G., then get A. ready for school, and prepare breakfast. Sometimes A. would eat breakfast provided by the school if they were running late. Typically, she walked him to school, but on occasion, Father would walk him there. After school let out at 2:30 p.m., A. would come home, change into "relaxed clothes," eat a snack, complete his homework, and then have free time. Mother described A.'s relationship with his siblings, as follows:

> [F]or [G.] and [A.], they are best friends and also sworn enemies sometimes. They fight and then they love each other. And they are very rough and tumble. With [Am.], that is [A.'s] probably favorite person in the world. And what he calls her sissy bean. . . . He wants to be involved in every step

[6] Mother testified that, subsequent to the divorce, she was briefly employed at a 7-Eleven and a Dollar Tree, but she "had to quit due to childcare issues." She also took occasional babysitting jobs if she was permitted to bring her children along. Mother had not renewed her child care accreditations since she stopped working. Mother received foods stamps, WIC, and Medicaid. She had $1650 in income from child support and benefits, although she indicated on her financial statement that she had no income.

> of the process with her. Sometimes t[oo] involved and I have to kind of tell him to be careful when he tries to pick her up and things like that.

In the evenings, the kids would play at the house, hang out, read, watch movies together, and have dinner. Sometimes they would run errands. Mother was still "getting the hang of being a mom to [her] . . . daughter and navigating life with the three babies." At bedtime, Mother would bathe the boys together, read them a book, maybe sing a song, and then tuck them in. The boys had separate bunk beds, but they often slept in the same bed by choice. Mother drove a Ford Expedition while residing with Father.

Mother decided to leave Father's house and move to Chesapeake in April 2023 because Father was making repeated sexual advances to her that made her "extremely uncomfortable." Starting soon after Mother moved in with Father, and while she was pregnant with Am., Father would ask Mother "to do sexual favors for him and make threats as though he would no longer let [her] live with him if [she] didn't." Mother informed Father that she would be finding another place to live because his home was not a "healthy environment" for her and the children, and she did not want them to witness her and Father fighting about it.

There was a lot of "back and forth" with regard to Mother's decision to move out. Father at one time "was okay" with her moving and offered to pay a down payment on a new place. He then, however, told Mother that he wanted her to stay in Baltimore and would pay for her to rent a separate apartment close by. Mother stated that Father "would be in full control of [where she lived]" and that if she tried to leave the area, Father would attempt to take A. from her.

In April 2023, the parties discussed Mother's plans to move. They decided that it would "make more sense" to let A. finish out the school year at Wolfe Street Academy, and she would take him to her new residence as soon as the school year ended. On the day that Father knew Mr. Russell was driving to Baltimore to pick up Mother and her other children, Father left the house, stopped responding to Mother's calls, and removed all the car seats from the home. Father also left A. at the house, so A. ended up going with Mother and Mr. Russell to Chesapeake. Because Father would not respond to her calls, Mother attempted to enroll A. in school in Chesapeake. The parties eventually agreed that A. would return to Baltimore to finish the school year, and A. would return to live with Mother "[a]s soon as he was out of school." After A. returned to Baltimore, Mother stated that she and Father discussed her having extra time with A. over the summer, since A. spent the remaining part of the school year with Father, during her assigned custody period.

In June 2023, after school let out, Mother reached out to Father over email and telephone in an attempt to speak to A. and arrange for visitation. Father informed Mother that she could see A. at his mother's house or at her sister's house, and A. could not go to Mother's residence because Father felt it was unsafe. Father denied Mother's offer to meet Mr. Russell and see her new residence. Mother did not see A. from April 2023 until early July 2023, but she did maintain telephone contact with him. Although Mother considered "rotat[ing]" the schedule based on Father's concerns about "moving [A.] around" and "not knowing" about her new partner and their home, she "very quickly

decided that that was definitely not in [A.'s] best interest at all" because Father was "making it very difficult for [her] to have access" by limiting the visitation locations.

In early July 2023, Mother arranged for visitation with A. She could not recall "an exact agreement" as to the length of the visit, but she was willing to keep A. for as long as Father agreed. Father did not seem to have "much interest in trying to get [A.] back . . . other than [to attend] the summer camp." Regarding the camp, Mother stated that she never got a response on the schedule, and Father "wasn't willing to give [her] a date that [she] would be getting him back." On July 8, 2023, Mother sent Father an email stating that A. wanted to stay with Mother longer and requesting permission to keep him. Father agreed. In a subsequent communication exchange in September 2023, Mother waited more than a week to respond to Father's request for visitation because she "had to come up with a good schedule to figure out what would be the best routine."

Mother's residence in Chesapeake had three bedrooms, two and a half bathrooms, a playroom, living room, "decent size kitchen," and a "bonus room" for the dog. A. shared a room with G. There was a yard in the back, but Mother did not "really have the kids play back there" because the surrounding neighbor's yards were overgrown and the children preferred to play at the playground. After school, A. liked to play with his friends in the neighborhood and at the park.

On Mother's Day 2023, A. was staying with Ms. Curtis, but no one in Father's family arranged for A. to have either an in-person or remote visit with Mother. When

Mother called Ms. Curtis's home in an attempt to speak to A., Ms. Curtis advised that she would have A. call Mother back, but "it never happened."

Mother testified that she had visited A.'s school to meet his teacher, for school events and orientation, and for a parent-teacher conference. Mother and Mr. Russell currently had a "shared vehicle," and Mr. Russell's parents and her great-uncle Bob lent the family an extra vehicle when needed.

A. enjoyed reading and science experiments. Outside the home, the family enjoyed walking the dog to the neighborhood gas station, and going to amusement parks, the botanical gardens, and local holiday events. In the summer, the children often went to Mr. Russell's parents' backyard swimming pool and trampoline.

With regard to disciplining A., Mother testified that she typically put him in "time out, quiet time" to "stop and redirect," and she waited for A. to "calm down before doing any type of discipline." Mother had observed Father "yelling, sending [A.] to his room, and pulling his ear" when disciplining A. She worried that this discipline was "too physical," and she did not want A. to "feel like he's at risk of being physically injured if he makes a mistake." When she discussed her concerns with Father, he stated that she was "being too soft on [A.]."

A. was scheduled to see a therapist and a psychiatrist because he had "experienced a lot of change," and "it would be good for him to have someone to talk to" and monitor his emotional state. Mother consulted with Father about A. seeing a mental health

professional, and he agreed to the plan of care but discussed getting a second opinion on certain issues.

Mother provided A.'s current school with the existing custody information and confirmed with the school that Father had the right to call "anytime he wants." Father had not informed Mother of any difficulties accessing the school portal prior to his testimony at the hearing. Mother also testified that she sent an email, which was admitted into evidence, to Father inquiring about the exact dates of the summer camp he registered A. to attend, and she did not consent to paying for any of the camp.

Mother had three sisters. Her two younger sisters had not seen A. since the divorce in 2020 because they lived far away and were not close with family. They had never met G. Mother stated that she was in good physical health, but she "struggled with depression and anxiety." She had seen therapists in the past to get help, but she was not currently under the care of a mental health provider. She did not take any medications. Mother testified that she had never been the subject of a child protective proceeding.

E.

Father's requested relief

At the end of the hearing, Father requested the court to award him primary custody during the school year, with Mother having visitation in accordance with Father's original schedule set forth in the Marital Settlement Agreement. Mother would then have custody during the summer months. Father withdrew his request for child support.

III.

Circuit Court's Ruling

On February 27, 2024, the circuit court issued an oral opinion regarding Father's petition for modification of custody. Because the issue on appeal involves the court's award of physical custody, we will discuss the court's ruling in that regard.

The court ruled that "it remain[ed] in the best interest of [A.] that the current order remain largely as it currently stands." The court modified the order, however, to provide that Father have custody of A. for the entire summer, with Mother getting one week of vacation time with A. instead of multiple weekends.[7]

In explaining its ruling, the court detailed the changes in Mother's life since the divorce, including having two additional children, as well as different residences with different romantic partners, two of whom were violent. It found that there had been a material change in circumstances based on Mother's "relationship and residential instability."

The court then addressed the best interest of A., stating that it had "considered all of the factors that are outlined in *Taylor v. Taylor* and *Montgomery County Department of Social Services v. Sanders* and considered each and every one of them." The court stated that, in a modification, it was not "required to engage in the entire analysis and put it all on the record," and it was sufficient to say that it had "considered each and every one of th[e]

[7] The court made this modification due to the geographic distance between the parties and the "stress and strain on [A.] to have frequent changes between the parties."

factors and [it was] very familiar with th[em]." The court stated that its "remarks about the best interest of the child will touch on the factors among those which the [c]ourt in this case deems to be most relevant."

The court stated that, based on the evidence, it was convinced that Mother is a good mother, she loves her children, and A. loves her. The court expressed concern, however, about Mother's judgment, noting that she had placed "herself and by extension [A.] in dangerous situations." The court also stated that Mother appeared to have low self-esteem, noting her testimony that she suffered from depression and anxiety. It stated that Mother required therapy, and that would be a condition of its order.

The court next considered A.'s stability, noting that he had been "bounced around . . . from residence to residence, from school to school," from a male figure in the household to another male figure in the household. The court stated its concern with having "this child in a situation where he's in danger." The court ultimately found, however, that Mother had been in a "good relationship" for more than a year, and there were "no safety concerns there."[8] The court referred to photographs of Mr. Russell with Mother and the children, and it noted that Mr. Russell's daughter had "a very good relationship with [A.]."

The court stated that A. was in school and "one of the worst things" that it could do was "to move him out of that school . . . in the middle of the school year." Noting that A. was in second grade, the court found that it was not good for "a child of that age to get

[8] The court noted that there was no evidence that Mr. Russell was violent.

bounced around again to another school." The court also found that it was in A.'s best interest to maintain the relationships he had with his siblings.

The court found that it was in the best interest of A. that "the current order remain largely as it currently stands," with A. to remain with Mother during the school year. The court did slightly modify the order with regard to summer custody. It changed the order from giving Father primary custody in the summer with Mother having one weekend per month, plus two additional weekends, to giving Father custody for the entire summer, with Mother having only one week of visitation instead of multiple weekends. The court noted the challenge of the geographic distance between the parties, stating that if they lived closer to each other, it "would likely consider a week on/week off situation, but that's not practical under the circumstances." The court modified the summer visitation to allow A. to "have an extended time with Father" and to limit "the amount of back and forth."

The court also ordered Mother to participate in mental health treatment to support her in caring for A. and in her "relationship issues" with other family members. The court noted that mental health treatment would also assist Mother in her decision making and judgment "so that . . . [A.] will be less likely to be put in harm's way." The court ordered Mother to "provide written verification to Father on a monthly basis of her participation in mental health therapy." On March 6, 2024, the clerk entered the court's signed Contempt and Custody Modification Order.

IV.

Motion to Alter and/or Amend

On March 8, 2024, Father filed a Motion to Alter and/or Amend the Contempt and Custody Modification Order pursuant to Maryland Rule 2-534.[9] Father reasserted allegations that he previously made and further stated that he found out after the hearing that Mother was pregnant with Mr. Russell's child. He alleged that she had been pregnant since November 2023 and "intentionally concealed" the pregnancy from Father and the court.[10] Father argued that Mother's new pregnancy was "of major concern . . . as it continue[d] to show [Mother's] rash and reckless decision-making." Father also alleged that Mr. Russell had a "possible criminal history," involving charges of grand larceny and statutory burglary, which he discovered from a search of the Virginia Case Search database. The database search results were attached as exhibits.

[9] Rule 2-534 provides as follows:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgement to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

[10] Father attached a screenshot of Mother and Timothy Russell's birth registry as an exhibit to the motion.

Father argued that he was the "only stable party." Based on Mother's instability, need for mental health treatment, poor judgment, Mr. Russell's "questionable history," and Mother's recent pregnancy, Father argued that it was in the best interest of A. to grant Father "primary and residential physical custody of [A.] with reasonable access visitation to [Mother] starting the summer of 2024."

Mother filed an opposition to Father's motion to alter or amend, noting that such a motion was "not a vehicle to re-litigate a case." She stated that the alleged criminal charges filed against Mr. Russell were 13 years old, they were disposed of by a *nolle prosequi*, and Father did not show how the dated charges were relevant to the custody determination. She also noted that Father provided "no compelling reason" for not offering the records at the modification hearing. Moreover, Father's motion to amend was based on facts not in the record, but Father failed to file an affidavit related to those facts, in contravention of Rule 2-311.[11]

On April 5, 2024, the court issued an order denying Father's Motion to Alter and/or Amend the Contempt and Custody Modification Order.[12]

This appeal followed.

[11] Rule 2-311(d) provides as follows:

> **Affidavit. —** A motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

[12] Father did not request a hearing on his motion to alter and/or amend.

DISCUSSION

Father contends that the circuit court abused its discretion in failing to award him primary physical custody of A. He argues that the court did not properly articulate the factors it considered in its decision to allow A. to remain primarily in Mother's custody. Father also argues that the court "made the [Mother] the focus of the decision rather than [A.'s] best interest." Additionally, Father contends that the court abused its discretion in failing to grant his motion to alter or amend in light of the additional evidence he presented regarding Mother's pregnancy and Mr. Russell's criminal history.

Mother did not file a brief in this appeal.

I.

Standard of Review

This court engages in "a limited review of a trial court's decision concerning a custody award." *Wagner v. Wagner*, 109 Md. App. 1, 39, *cert. denied*, 343 Md. 334 (1996). We apply three interrelated standards of review. *In re Yve S.*, 373 Md. 551, 586 (2003). First, we review factual findings for clear error. *In re R.S.*, 470 Md. 380, 397 (2020). Second, we review whether the court erred as a matter of law without deference, under a *de novo* standard of review. *Id.* Finally, ultimate conclusions of the court, "when based upon 'sound legal principles' and factual findings that are not clearly erroneous, will stand, unless there has been a clear abuse of discretion." *Id.*

Father's contentions here involve the court's ultimate custody determination. In reviewing a custody decision, "an appellate court does not make its own determination as

to a child's best interest." *Gordon v. Gordon*, 174 Md. App. 583, 637 (2007). The circuit court has broad discretion because it sees the witnesses and hears the testimony, and therefore, 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." *In re Yve S.*, 373 Md. at 586.

We review a custody decision under the abuse of discretion standard. *Gordon*, 174 Md. App. at 638. "There is an abuse of discretion where no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles." *Bord v. Baltimore County*, 220 Md. App. 529, 566 (2014) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). "To constitute an abuse of discretion, the 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." *Cousins v. State*, 231 Md. App. 417, 438, *cert. denied*, 453 Md. 13 (2017).

II.

Request to Modify Custody

Trial courts employ a two-step process when considering a request to modify child custody. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). They first determine the threshold question whether "there has been a 'material' change in circumstance." *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005). "[I]f the court determines there has

been a material change in circumstance, then it proceeds to consider the best interests of the child." *Jose v. Jose*, 237 Md. App. 588, 599 (2018).

Here, there is no dispute that there was a material change of circumstances. The challenge here is the court's decision regarding the best interest of A.

Several factors guide the court's consideration of the best interest of the child. *Id.* In *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1977), this Court set forth the following factors:

> 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

(Internal citations omitted).

Later, in *Taylor v. Taylor*, 306 Md. 290, 304-11 (1986), the Supreme Court of Maryland expanded on the factors enumerated in *Sanders*. The *Taylor* factors include: (1) capacity of the parents to communicate and to reach shared decisions affecting the child's welfare; (2) willingness of parents to share custody; (3) fitness of parents; (4) relationship established between the child and each parent; (5) preference of the child; (6) potential disruption of child's social and school life; (7) geographic proximity of parental homes; (8) demands of parental employment; (9) age and number of children; (10) sincerity of parents' requests; (11) financial status of the parents; (12) impact on state or federal assistance; (13) benefit to parents; and (14) any other factors as appropriate.

While the factors set out in *Sanders* and *Taylor* are instructive to a trial court's custody determination, "no one factor serves as a prerequisite to a custody award." *Santo v. Santo*, 448 Md. 620, 629 (2016). Indeed, this Court has emphasized that "[u]nequivocally, the test with respect to custody determinations begins and ends with what is in the best interest of the child." *Azizova v. Suleymanov*, 243 Md. App. 340, 347 (2019), *cert. denied*, 467 Md. 693 (2020).

Father's primary argument in his brief is that the court failed to articulate the relevant factors that led to the court's best interest determination. At oral argument, however, counsel conceded, appropriately, that the court did not have to explicitly address each factor on the record. *See generally Long v. Long*, 141 Md. App. 341, 351 (2001) ("[M]ere lack of an explicit discussion of each of the factors on the record by the trial court does not necessarily mean that the trial court erred."). Father asserts, however, that the court failed to consider the best interest of A. and instead focused on Mother. We disagree.

The court here specifically stated that it "considered each and every" factor outlined in *Taylor* and *Sanders*, and in considering the best interest of A., it would "touch on the factors among those which [it] deems to be most relevant." Our review of the record shows that the court carefully considered the best interests of A. in finding that primary physical custody should remain with Mother.

The court indicated that several factors weighed in favor of Mother maintaining primary physical custody of A., including that Mother was a "good mother," there was no

dispute she loved her children, and A. loved her. Although the court noted Mother's past instability and exposure of A. to dangerous situations, it found that, at the time of the hearing, "things [we]re in order," Mother was in a "good relationship" with Mr. Russell, and there were "no safety concerns" or evidence that Mr. Russell was violent. The court noted the need for A. to have stability, stating that it would be detrimental for A. to "get bounced around again to another school" and "one of the worst things" it could do was disrupt A.'s current school enrollment mid-year. Noting the challenge of the geographic proximity of the parental homes, the court modified the order to allow Mother one week of vacation time during the summer, instead of multiple weekends, to reduce "the stress and strain on [A.] to have frequent changes between the parties."

The court also considered A.'s positive relationship with his siblings, noting that it was in A.'s best interest that those relationships be "maintained in a healthy state."[13] The court was "cautiously optimistic" that Mother's relationship with Mr. Russell was "a positive thing for [A.]."

To be sure, the court did discuss Mother's choices and need for therapy. We disagree, however, that the court improperly made Mother the focus of the decision instead of A.'s best interests. The court made clear that its decision to require Mother to undergo monthly mental health treatment was so she would be "supported in her caring for [A.]," finding that monthly therapy would "be beneficial to her to in her decision making and

[13] Mother testified A. and G. "love[d] each other" and were "best friends" despite occasional sibling conflict, and Am. was A.'s "favorite person in the world." She testified that A. and G. had separate bunk beds, but they preferred to sleep together.

her judgment so that . . . [A.] will be less likely to be put in harm's way." The court specifically noted: "Again, what I'm doing is for the *best interest of [A.]*." (Emphasis added). The record reflects that the court did not improperly consider Mother's interests above A.'s in ordering mental health treatment. Rather, it required Mother to attend therapy *in* the best interests of A.

Father also contends that there was no evidence that Mother's past history of exposing A. to an unstable and violent environment had changed. We disagree. The court found that Mother had been in a "good relationship" with Mr. Russell for "over a year," and there were no current safety issues. Although Mother testified that she was considering moving again to a better neighborhood, she stated that, if they did decide to move, they "would be staying in the same area, so . . . [A.] could go to the same school." Mother also testified that A. had a daily routine at their current residence and that "everything [wa]s very happy and functioning well." The court noted that the evidence showed that Mr. Russell's daughter had "a very good relationship with [A.]."

The court was in the best position here to assess the evidence and determine what disposition would best promote the welfare of A. *In re Yve S.*, 373 Md. at 586. As indicated, we afford substantial deference to circuit court decisions regarding custody modifications. *Wagner*, 109 Md. at 32. On this record, we cannot conclude that the court

abused its discretion in its assessment of the best interest of A. nor in its decision to deny Father's request for primary physical custody of A.

III.

Motion to Alter and/or Amend

Father next contends that the court "erred by failing to grant the Motion to Alter and/or Amend" based on the discovery of "additional evidence critical to the issues raised in the case as well as the articulated concerns raised by the Court." He asserts that the court's failure to review its order in light of evidence of: (1) Mother's pregnancy with a third child from a third domestic partner since the divorce; and (2) Mr. Russell's criminal background was an abuse of discretion.

We review the denial of a motion to alter or amend judgment filed pursuant to Md. Rule 2-534 for an abuse of discretion. *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 362-63 (2017).[14] In the circumstances where a circuit court is addressing a motion to alter or amend based on evidence that could have been, but was not, presented at trial,

> the discretion of the trial judge is more than broad; it is virtually without limit. What is, in effect, a post-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight. The trial judge has boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have

[14] Md. Rule 2-534 provides, in pertinent part, as follows:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

> been raised earlier but were not or to make objections after the fact that could have been earlier but were not. Losers do not enjoy carte blanche, through post-trial motions, to replay the game as a matter of right.

Shini Ping Li v. Tzu Lee, 210 Md. App. 73, 97 (2013) (quoting *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002)), *aff'd*, 437 Md. 47 (2014).

Here, the court did not abuse its discretion in denying Father's motion to alter or amend. Father contends that the court should have considered the criminal charges brought against Mr. Russell because they were relevant to the court's concern with Mother's history of abusive partners and exposure of A. to domestic violence. Father, however, provides no explanation for why he did not present this evidence at the modification hearing. The court was well within its discretion to deny Father's attempt to re-litigate the custody determination based on information that could have been explored earlier. *Schlotzhauer v. Morton*, 224 Md. App. 72, 85 (2015), *aff'd*, 449 Md. 217 (2016) ("When a party requests that a court reconsider a ruling solely because of new arguments that the party could have raised before the court ruled, the court has almost limitless discretion not to consider those [arguments]."). Moreover, Father's contentions regarding Mr. Russell's criminal history and Mother's new pregnancy were "based on facts not contained in the record," but they were not supported by affidavit as required by Maryland Rule 2-311(d). We perceive no abuse of discretion in the court's decision to deny Father's motion to alter or amend.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.