Circuit Court for Montgomery County
Case No. 87541FL

UNREPORTED*

IN THE APPELLATE COURT**

OF MARYLAND

No. 0873

September Term, 2022

GRACE NYBLADE

v.

ADAM SANTO

Leahy,
Beachley,
Moylan, Charles E.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 26, 2023

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

**During the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal is the latest chapter in an ongoing child custody dispute that has spanned more than a decade, as reflected by the docket entries exceeding 100 pages. Appellant, Grace Nyblade ("Mother")[1] appeals from the denial of her June 3, 2021, motion to alter or amend a final custody order entered on May 25, 2021 ("May 2021 Order"), and her June 6, 2022, motion for unsupervised visits with her 17-year-old son, D.[2] The May 2021 Order awarded appellee, Adam Santo ("Father"), primary physical custody and sole legal custody of the children and ordered that Mother "shall continue to have supervised calls and visits[.]" In the first adjudication of the matter in 2011, the circuit court issued an order awarding joint physical and legal custody to Mother and Father but split the tie-breaking authority between the parties—a decision that was affirmed by this Court and by the Supreme Court of Maryland[3] in *Santo v. Santo*, 448 Md. 620 (2016). In 2013, the circuit court modified the order again to include the services of a parenting coordinator.

[1] Because the parties formerly shared the same surname, to simplify and bring clarity to the historical record we shall refer to Ms. Nyblade as "Mother" and Mr. Santo as "Father" throughout this opinion, as the Supreme Court of Maryland did in *Santo v. Santo*, 448 Md. 620 (2016), and mean no disrespect thereby.

[2] When this litigation began, the parties had two minor children, A. and D. A. turned 18 in December 2021, and became emancipated from the court's custody jurisdiction during the course of this litigation. D. turned 17 in June 2023. To protect their privacy, we will refer to the children only by A. and D. ("the boys" or "the children").

[3] In the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

Six years later, following another custody trial, the circuit court issued an order ("September 2019 Order") that preserved the joint custody arrangement, but withheld the grant of tie-breaking authority to either party. There followed several cycles of motions to modify custody and the attendant custody hearings and new orders bearing on the division of the children's time with each parent; their therapists; and, their education, religion, and health. The children's wishes became a significant consideration as they grew older, and one of the children attained majority within months of the underlying May 2021 Order. Mother and Father's animosity and fractured communication have continued unabated throughout the proceedings.

On July 25, 2022, Mother noted this appeal from the denial of her motion to alter or amend the May 2021 Order and her motion for unsupervised visits, and she presents three questions for our review, which we have reworded as follows:[4]

[4] Mother phrased the questions presented in her brief as follows:

"**Question 1:** Whether the court erred by conducting numerous review hearings after a custody trial and decision to award shared custody with liberal physical access to both parents, and by modifying that decision to revoke the mother's custody and access to the children except for supervised visits, all without a trial of any alleged changed material circumstances, or finding of abuse or neglect?

Question 2: Whether the court correctly applied the best interests of the child standard when it modified the parents' adjudicated custody of their sons to revoke the mother's custody and unsupervised access, all without another trial, evidence of parental unfitness, or that she had intended to cause them actual or likely injury?

Question 3: Whether the court erred by disregarding the well-articulated custodial preferences of competent teenagers based on emotional abuse by Father and his wife, Mother's supportive parenting, and their contentment with her?"

I. Did the trial court err when, after conducting numerous review hearings, it modified a prior custody order finding a material change in circumstances?

II. Did the trial court err or abuse its discretion when it modified Mother's access to her child[5] from joint legal custody with liberal visitation to supervised visitation, without a finding of parental unfitness or actual or likely injury to the child?

III. Did the trial court abuse its discretion in declining to follow the child's stated custody preference?

For the reasons stated below, we hold that the trial court did not err in its May 2021 Order that restricted Mother's access to supervised visitation. *First*, we conclude that the trial court had good cause to conduct evidentiary review hearings following the entry of the September 2019 Order, and that the evidence adduced at the review hearings showed a material change in circumstances warranting a modification of custody. *Second*, we hold that the trial court did not abuse its discretion in limiting Mother's access to the children to supervised visitation because Mother repeatedly violated the September 2019 Order. *Third*, we discern no abuse of discretion in the trial court's order that Mother claims diverged from children's stated custody preference. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

Mother and Father were married in 2001 and divorced in 2011. Following a custody trial, on February 17, 2011, the Circuit Court for Montgomery County, Maryland, issued

[5] Although Mother's question presented refers to "the parents' adjudicated custody of their sons[,]" we refer to only one child because, as noted above, the oldest of the parties' two sons has attained the age of majority.

the initial custody order awarding Mother and Father joint legal and physical custody of their minor children, with tie-breaking authority to Father for legal decisions on which the parties could not agree. *Santo*, 448 Md. at 643-44. Less than two years later, following a slew of motions filed by both parties, the court held a hearing in May 2013, and modified the custody order to, among other things, "facilitate joint legal custody through the use of a parenting coordinator." *Id.* at 624-25. In the meantime, in September 2012, Father remarried and had a daughter, L.

In 2014, Father moved to modify custody, seeking sole custody of his sons, so that "the children [would] not remain in a combat zone forever." *Id.* at 625. Following another custody trial, the circuit court preserved the joint custody arrangement but ruled that Father would have tie-breaking authority over the boys' education, religion, and medical issues, and that Mother would have tie-breaking authority over selection of the children's therapists. She entered a corresponding custody order on February 5, 2015 ("February 2015 Order"). *Id.* at 643-44. That order provided, among other things, that "[t]he [c]hildren shall reside primarily with Father" and "[t]he [c]hildren shall be with Mother three times monthly, weekends one, two and four, during the school year, from Sunday at 12:00 noon until Tuesday at school." For school breaks, "[t]he [c]hildren shall be with Mother all of Spring Break and Winter Break . . . , and Summer School Break, from eight days after school recess until eight days before school resumption[.]" Father noted an appeal, arguing that the trial court abused its discretion in awarding joint custody to two individuals who do not communicate to reach shared decisions for their two children. *Id.*

at 626. We affirmed this split of the tie-breaking authority and the award of joint legal custody, and the Maryland Supreme Court affirmed in July 2016. *See Santo*, 448 Md. at 643-44.

Mother's Motion to Modify Custody – June 27, 2018

In June 2018—three days after the children arrived to spend the summer with Mother pursuant to the February 2015 Order—Mother filed a motion to modify custody, alleging, among other things, the children's "relationship with their stepmother has deteriorated so badly that the [] [c]hildren no longer wish to reside with [Father]." Mother requested sole legal and primary physical custody of the children, and that Father have visitation access. Father opposed the motion.

On September 18, 2018, Father filed an emergency motion to enforce the February 2015 Order, alleging that, since August 26, 2018, the boys had refused to return to his custody. Father requested that the court enter an order permitting him to enter the children in family therapy with a therapist of his choosing. At the request of both parties,[6] the court re-appointed David Bach, Esq., as the children's best interest attorney ("BIA") with the authority to waive privilege. The court also appointed Rebecca L. Snyder, Psy.D. (later replaced by Michelle Sarris, LCSW-C), as the family therapist.

[6] Father filed a partial opposition to Mother's motion to re-appoint David Bach, Esq., opposing only Mother's request regarding how to allocate the BIA's fees, not the appointment of the BIA.

Custody Modification Trial

The custody modification hearing was held on five days over eleven weeks beginning on May 6, 2019. On the first day of trial, the parties agreed to a summer access schedule in which the children would alternate weeks between the parties. On the second and third days of the trial, Father called Michelle Sarris, the children's appointed therapist, as his witness. Ms. Sarris testified that since May 8, the second day of trial, she had conducted approximately 12 two-hour sessions with the boys and Father that sometimes included the children's stepmother, Deborah Schechner. She noted that the boys' relationship with their stepmother was a source of conflict, and she recommended that stepmom "need[ed] to step back and let dad step up and be the parent" because "Dad pretty much sat on the fence and let [stepmom] be, not disciplinarian, but the authoritative one in the home." However, Ms. Sarris had noticed positive changes between D. and his stepmother and Father. With respect to Father's progress, Ms. Sarris testified that "[t]hey've made a lot of progress, a great deal" as "Dad has taken over and is parenting and is setting limits and is getting involved when there's an issue."

As for Mother's progress, Ms. Sarris testified that family therapy is "very hostile when [Mother] is present." Ms. Sarris explained that Mother, in the presence of the children, would repeatedly make comments that she "didn't want to participate" in family therapy and "doesn't want to co[-]parent" with Father. Ms. Sarris noted that family therapy had "gotten so toxic that . . . it's counterproductive" such that "when [Mother] comes in there's an agenda to basically point out everything bad about dad." Ms. Sarris explained

that she initially reached out to Mother "to get her assistance with encouraging [the boys] to come back" to therapy, however, Mother, who worked as a therapist, stated that "[s]he was not comfortable" and "that she didn't want to proceed." Ms. Sarris testified about her concern that the boys were being exposed to court documents in the case, noting "[t]here's a lot of danger" in showing the boys court documents because "you're putting them on a level of an adult, when they're not. You're giving them information that may or may not be true about their other parent" and often "is disparaging of the other parent."

Mother testified that since the start of school in September 2018, through May 2019, the children had been residing with her primarily "[b]ecause they were refusing to reside anywhere else." When asked why she filed a motion for modification of custody, Mother listed, "[d]eterioration of [the boys'] relationship with their father, deterioration of their relationship with their stepmother, in my opinion, inappropriate discipline and a lack of awareness of normal teenage behavior." Mother testified that the children refused to return to Father's custody on August 26, 2018, and thereafter, Mother began transporting the children to and from school. When asked why Mother did not want to participate in family therapy with Ms. Sarris, Mother explained that "[i]t [was] very difficult to be in a room where the only person showing me compassion is a 13-year-old. Ms. Sarris spent no time double-checking anything with me. She made lots of judgements. She called me lots of names. She told me what I was not allowed to feel, which is so difficult." Finally, Mother testified that she is "very close to the boys" and asked for the children to be placed in her primary physical care with Father having visitation on the weekends.

At the start the fourth day of trial, the judge provided a synopsis of the *in camera* interview she had with the children, in which she concluded: "I have no doubt, based on what they said, that they love you both, but they are living in a warzone."

Father testified next that, prior to August 2018, when the boys resided primarily with him, he "was lax [] in the discipline" and "stepmom[] was doing too much of it." Father explained that after approximately six weeks of the children being in Mother's care, Mother emailed Father a letter from the boys that listed forty-four reasons why the boys wanted to "stay with Mom" and requested that Father "sign the proposed custody" order that Mother previously sent to Father earlier that spring. Apart from a few text messages demanding that Father "sign the custody proposal," Father did not see or hear from the boys next until early September 2018, and briefly on Halloween. Father stated that his visits with the boys did not start becoming consistent until Ms. Sarris intervened, and family therapy commenced. Critically, Father testified that during the eleven months the boys lived with Mother, A.'s weight increased by 56 pounds from May 2018, to April 2019. D's weight increased by 42.5 pounds. In addition, Father testified that A. went from being in the honor roll with a 3.42 GPA to a 2.42 GPA and D.'s grades also dropped from a GPA of 3.71 down to a 3.28 GPA.

Finally, on July 26, 2019—the last day of trial—the parties, including Mr. Bach, the BIA, presented closing arguments.[7] Notably, Mr. Bach argued in closing that although his

[7] In addition to the witnesses described above, the children's stepmother, Deborah Schechner, testified as Father's witness and Jennifer McClure, who lived in Mother's house at the time, testified as a witness for Mother.

"clients' position is that they wanted to continue to reside with their mother and feel very strongly about that," Mother's "case is about winning" and contended that he did not believe Mother's motion "ha[d] anything to do with the boys' best interests." He recommended "that the children be with the father during the school year Monday through Friday and every other weekend with the mother and possibly dinners with Wednesday evenings."

The Court's Ruling

On August 28, 2019, the parties returned to hear the judge's ruling. After addressing the factors enumerated in *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977) (collectively the "*Taylor-Sanders* factors"), the court ruled as follows:

> I find myself once again trying to fashion an arrangement that will be in the interests of these boys while also trying to work around the realities of the parents' deeply antagonistic relationship. **These boys have been pawns in this relationship for a very long time and these are the people who are supposed to shield them from these things, but mom has egged the boys on against dad.** I have to say dad was slow to rectify it, but once he recognized what it was, he took action in a positive way and I think has been very patient with the process which can be extremely heart-wrenching, and I think it took father a while to understand that [stepmom] really can't be the person who's making the decisions about discipline and other things.
>
> **But I find myself coming back to the same place which is mother's refusal to collaborate with father in the interest of her sons.** She refuses to do [it], I don't see any rational outcome other than to basically use what I'll call the status quo ante. . . . The boys will also continue working with Ms. Sarris in family therapy. Father should also be part of those sessions as Ms. Sarris suggests.
>
> **The boys will reside primarily with their father.** They will attend school in their father's neighborhood. These people will continue to have

> joint legal custody without tie-breaker authority for either, which means that they will need to agree in order to change what is in place today . . .
>
> Mother will have parenting time with [D.] and [A.] on the first and third weekends of each month during the school year from Friday after school until Sunday at 6:00 p.m. . . .
>
> . . . . The parents will continue the week on/week off in the summer which is different from what it was originally or in the order that was in place from the last proceedings. . . .

(Emphasis added). On September 23, 2019, the court entered an amended custody and access order with the operative provisions that superseded the February 2015 Order.[8]

Nine Subsequent Review Hearings

2nd Review Hearing[9]

At the second review hearing on January 10, 2020, Ms. Sarris testified under oath that Father had "stepped up to the plate with parenting" and that the boys and Father were making progress in therapy. Contrary to Ms. Sarris's recommendation, however, stepmom had not joined the therapy sessions. Ms. Sarris reported that, following the first review hearing, A. stated that "Mom took him out of school and took him to an attorney . . . presumably to have an attorney represent him since he's of age[.]" After counsel for both parties addressed the court, Mr. Bach proffered that "the boys seem great" but noted

[8] On October 7, 2019, the court entered an interlineated amended custody order that corrected a provision in the September 2019 Order to clarify that Mother's motion was denied "in part and granted in part," reflecting the fact that custody was altered from joint custody with a split of tie-breaking authority to joint custody without any tie-breaking authority as well as minor changes to the visitation schedule.

[9] Nothing relevant to this appeal occurred at the first review hearing, where the parties presented their arguments regarding the division of fees for Mr. Bach and Ms. Sarris.

that they "are not happy with the current schedule. They say they miss their mom quite a bit." Mother's counsel argued that it would be appropriate to "consider setting a review date out in a few months" in which "the boys' wishes were taken into account somewhat."

A little less than six months before the next scheduled review hearing, on January 28, 2020, Father moved for an emergency hearing to restrict Mother to supervised visits, alleging, among other things, that Mother had repeatedly violated the court's order not to discuss the litigation with the children, and had facilitated A.'s meeting with a private attorney about moving for change in custody.[10] Father contended that these actions result in the boys feeling as though they can control what the rules are and where they should live. Mother filed an opposition to Father's motion, alleging, among other things, that "the boys, being 13 and 16, [] have begun to take matters into their own hands[.]" The next day, on March 6, 2020, Father filed a supplemental motion for an emergency status hearing, asserting that as of March 4, 2020, Mother had unilaterally taken the children full-time, in violation of the September 2019 Order, and requested an emergency hearing and a revision to supervised visitation with Mother.

3rd Review Hearing

The court addressed Father's emergency motion at the third review hearing on June 22, 2020. Present at the hearing were Father, Mother, their attorneys, Mr. Bach, Ms. Sarris,

[10] On January 29, 2020, A., who had turned 16 in December 2019, petitioned to change custody to Mother, which Father opposed.

and A.'s attorney.[11] Father contended that the boys had resided with Mother since early March 2020, that Mother had caused the boys' resistance to him, and that the boys' grades had suffered, their weight had increased, and their social activities were reduced to "next to nothing[.]" Father urged the court to decide that Mother's visitation be supervised and that the boys temporarily move to Florida to live with Father's parents during the COVID-19 school closures, so that they could be removed from the conflict, away from both parents. Mother opposed the boys' relocation to Florida, arguing that it was "against [the boys'] wishes." Mr. Bach concluded that it was not in the boys' best interest to stay with their mother, despite their strong desire to do so. At the court's request, Ms. Sarris also addressed the court, not under oath, and reported that they had a "terrible" phone session and two video sessions wherein the boys "berated [] Father." Ms. Sarris identified Mother as the party "undermin[ing]" the therapy and said she believed that D. "really needs to be extracted from this whole mess." The court decided to speak to the boys.

4th & 5th Review Hearings

Two days later, the judge conducted *in camera* interviews with A. and D. in the presence of Mr. Bach. The children expressed their frustrations with Father and the rules at his house and D. stated that he wanted to live with Mother during the week and visit Father every other weekend, while A. stated that what he "want[ed] to do is get away from" Father.

[11] A.'s attorney stated that A. did not want to continue working with Ms. Sarris and wished to remain with his mother.

On August 17, 2020, the parties returned for a fifth review hearing. Father reiterated his proposal to send the boys to his parents in Florida and complained that he had only seen the boys for a total of 90 minutes since the last review hearing in June. Mother argued that she facilitated two visits with Father, that the boys passed their classes despite COVID-19, and their weight was appropriate. She opposed moving the boys to Florida. Mother's counsel initially stated that "[m]y client would like to testify if you're allowing testimony from the parties," but later retracted that request when the court noted that it would expose Mother to cross-examination.

Mr. Bach reported that the boys did not want to return to Father or go to Florida, but Mr. Bach admitted that he was "not really getting a lot of good communications with the boys[.]" Ms. Sarris agreed that the boys "needed to be extracted from this conflict that they've been in the middle of for years." Father's counsel asked for a follow-up hearing and the court took the matter under advisement.

On September 4, 2020, the court entered an "emergency status review order," finding that "Mother routinely disobeys the Court's Orders and the boys have adopted her view" and that "Father is entitled to a relationship with his children. Mother's interference has done enough damage." The court ordered that "Mother has one month . . . to demonstrate compliance" with the September 2019 Order and if she failed to comply, it would grant Father's request to send the boys to his parents in Boynton Beach, Florida. On October 8, 2020, Father filed a motion to implement the September 4 emergency status

review order, alleging that Mother has been in violation of the September 23 custody order since January 2020, and that he had not seen the boys since March 2020.

6th Review Hearing

On October 29, 2020, the parties appeared for a sixth review hearing. During this review hearing, the judge interviewed the boys *in camera* for the third time, during which they expressed their desire to stay with Mother rather than go to Florida; however, D. also expressed that he "do[es]n't want to disconnect from dad." After hearing from Mr. Bach and Ms. Sarris, the court took the matter under advisement. On December 9, 2020, the court granted Father's motion to supplement the record with the boys' grades which showed that A. was failing every single class and D. was failing two of his classes with C's in the remaining classes.

On November 23, 2020, the court entered a "temporary custody and show cause order" that granted Father temporary sole physical and legal custody of the boys "under the condition that they reside with [Father]'s parents in Florida[.]" The court also ordered that "Mother shall not have contact with the children . . . except under the guidance of the family therapist or other professional supervisor on which the parties mutually agree." Finally, the court ordered that if Mother fails to transport the children to Ms. Sarris's office and leave them there on December 2, 2020, then she shall show cause why she should not be held in contempt.[12]

[12] A. and Mother noted an appeal from the court's November 23, 2020 order. A. and Mother later filed a notice of voluntary dismissal of their appeals and A. withdrew his petition to change custody on February 5, 2021.

In February 2021, Mother filed an emergency motion to return the children to Maryland from Florida, alleging that the COVID-19 restrictions regarding online learning had lifted and that Father "ha[d] completely blocked [] Mother, and members of her family, from any communication with the children[.]" On March 3, 2021, the court entered a "further order regarding custody and access" that ordered the boys to return to Maryland in the temporary sole physical and legal custody of Father, with a hearing to be scheduled by separate order. On March 10, 2021, Mother moved to alter or amend the court's March 3 order to permit access and visitation with Mother. Father opposed the motion.

7th Review Hearing

The parties appeared for their seventh review hearing a few weeks later. Mother argued that she had not seen the boys since December 2020, and requested a hearing on her motion for a forensic interview of the boys and her motion to remove Ms. Sarris as the family therapist, which she had filed that morning. Father argued that Mother "has not attempted to undertake any supervised access" with the boys since they returned or while they were in Florida. Mr. Bach reported that "[r]ight now, the boys want to see their mother" but that based on his interviews with the boys' individual therapists, "any contact with mother should be supervised." The court instructed that she wanted Mother to "demonstrate to a supervisor that she doesn't need supervision" and "that she understand that her relationship with those boys is totally divorced, for lack of a better word, with the relationship between her and dad, or them and dad."

8th Review Hearing

At the eighth review hearing on April 23, 2021, Father stated that no supervised visits had taken place due to Mother's failure to respond to any communications to arrange one. Mother argued there were no grounds for supervised visitation and contended that the reason she did not follow-up about supervised visits was because Father insisted on using Ms. Sarris, which Mother opposed, instead of the mutually agreed-upon supervisor, Maeve McGrath. The parties agreed at the hearing to use Ms. McGrath or someone else from her company, Supervised Visitation Investigations ("SVI"), and set a schedule for supervised visits before the next review hearing. The court entered an order for supervised visits between Mother and the boys, finding, among other things, that "Mother's behaviors continue to indicate that there is a need for supervised visitation." The court ordered that Mother shall have a phone call with the children for one-hour every Wednesday and an in-person visit with the boys every Friday after school, supervised by Ms. McGrath. The court also ordered that "Mother shall have NO CONTACT with the children outside of these supervised visits[.]" (Emphasis in original).

9th Review Hearing

At the hearing held on May 12, 2021, Mother called Robin Hayden from SVI to testify regarding Mother's supervised visits with the boys. Ms. Hayden related that she conducted three such visits. Ms. Hayden observed that the boys "greeted their mom" and "were happy to see her, very affectionate." She reported that Mother "was appropriate with the children" and that "there were no safety concerns." Next, Mother testified under oath

that she finds supervised visits "difficult" and requested that the court to allow her to take the boys to see her parents in Bellingham, Washington, for two weeks during the summer, unsupervised, and to allow her more time with the boys.

Mother stated that the boys "are sufficiently [] afraid that their father has enough power to put me in jail if they don't do everything he says, and I don't know that that trauma is ever going to go away." Mother also contended that "the assertion by [Father's counsel] and even by Mr. Bach that [the boys'] grades are somehow spectacular and shiny, only when they live with their father, is blatantly false." During cross-examination, when asked how she would ensure that the boys return to Father's custody, Mother stated that "[i]t's not my job to repair [the boys'] relationship with their dad because I didn't break it." In his closing, Mr. Bach argued that "the reason the [supervised] visits are going well is because we have a supervisor" and that the court should continue with supervision for the time being.

The judge continued supervised visits and told the parties that she would submit a final custody order within the week. The court expressed "concern[] that the way mom has talked about [custody], and the way she views how [custody] ought to go is dangerous." The court agreed to Mother's counsel's request to "schedule another status hearing after we've had some more supervised visitation."

The next day, on May 13, Mother filed another motion to modify custody and child support, requesting sole legal and physical custody of the minor children. The court later found this motion to be moot by the entry of the May 2021 Order.[13]

May 2021 Final Order Regarding Custody and Access

On May 25, 2021, the court entered a "final order regarding custody and access," finding that the "primary issue continues to be Mother's inability to recognize the need for [the boys] to have the right to love and respect each parent, without fear of Mother's reprisal." In her order, the judge summarized Mother's complaints from the May 12, 2021, hearing as follows:

- "Father put her 'in jail' by removing the children, completely missing the fact that she brought it on herself;
- The boys don't do well in school, and don't turn their work in, which is unfounded;
- That Dad tries to cover up the alleged school problems with an IEP and resource classes; and
- Dad uses school 'as a 'shiny' thing' that's not real."

The court found that:

> Mother said the Court had ordered a 'deck of cards' for her; that she couldn't answer the Court's question about encouraging the boys to have a relationship with Father; that she could not help the boys to 'like' their Father, because he didn't do what she wanted; that 'the boys don't have autonomy, and that's not what repair looks like' and 'it isn't my (Mother's) fault; it is his (Father's) fault.' It is clear to the court that Mother has work to do.

[13] Many months later, on February 28, 2022, Mother filed a motion to alter or amend an order entered on February 18, 2022, holding that Mother's May 13, 2021 motion to modify was moot and requested an evidentiary hearing. Father opposed. On April 4, 2022, the court denied Mother's motion to alter or amend. No appeal was taken from this order.

The order contained the court's findings under 10 of the 17 factors set forth in the Maryland Parenting Plan Instructions (2020).[14] The court ordered that Father shall have primary physical custody and sole legal custody of the boys, that Mother shall continue to have supervised calls and visits with the boys, and that "[u]nsupervised visits can begin

[14] The Maryland Parenting Plan Instructions may be found here: *Maryland Parenting Instructions*, MD. JUDICIARY (2020), https://mdcourts.gov/sites/default/files/court-forms/ccdrin109.pdf (last visited May 8, 2023). The circuit court considered the following 10 factors: (1) Stability for the children; (2) Foreseeable Health and Welfare of the Children; (3) Frequent, regular and continuing contact with the children and those who act in their best interest; (4) Your ability to share the rights and responsibilities of raising the children; (5) The children's physical and emotional security and development needs; (6) Protection from conflict and violence; (7) How you plan to meet the day-to-day needs of the children, including education, socialization, culture and religion, food, shelter, clothing and mental and physical health; (8) How well you a) place the children's needs above your own, b) protect the children from negative effects of any conflict or c) maintain the children's relationship with individuals who may have a significant relationship with the children; (9) Ages of the children; and (10) Success or failure of prior court orders or agreements. *Id.* at 2.

The remaining factors included in the Maryland Parenting Plan are: (11) Maintaining the child(ren)'s relationship with each of you, siblings, other relatives, and important adults in their lives; (12) Military deployment and its effect on the relationship with the child(ren); (13) Each of your responsibilities before separation; (14) Location of your homes as it relates to your abilities to coordinate parenting time, school, and activities; (15) Your relationship with each other, including how you communicate and co-parent without disrupting the child(ren)'s lives; (16) Your ability to resolve future disputes without needing to go to court; (17) Child(ren)'s preference, if age appropriate; (18) Child(ren)'s other needs and interests; and (19) Any other factor you consider relevant. *Id.*

Although the court utilized the factors listed in the Maryland Parenting Plan Instructions, which are similar to but not exactly the same as the *Taylor-Sanders* factors, we note that "[c]ourts 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 the children within their jurisdiction[.]'" *Bienenfeld v. Bennett-White*, 91 Md. App. 488, 503-04 (1992) (cleaned up); *see also Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1978).

when Mother comes to the realization that the children are not pawns, and that their relationship with her is separate and apart from their relationship with Father."

On June 3, 2021, Mother filed a motion to alter or amend the May 2021 Order, which was filed 10 days from the entry of order and tolled the time for filing an appeal.[15] In her motion, Mother asserted that "[t]here has never been a full hearing with witnesses and testimony at any time regarding the Court's [May 2021] Order." Mother also challenged the court's finding under factor 8 of the Maryland Parenting Plan[16] that, "[t]his has been a struggle. The parents have been in and out of Court for custody matters since 2013. There have been multiple proceedings, and several multi-day cases in 13 of the [sic] years since the case began. It is hard to describe it as anything other than a war." Mother contended that the court "failed to consider or acknowledge the fact that the Father has completely alienated anyone whatsoever who is associated with Mother, including the children's maternal grandparents" and requested that the custody order be corrected to "properly consider Factor 8," "include an objective measure under which Mother can resume unsupervised visitation," and, "provide for an actual evidentiary hearing[.]" This

[15] *See* Md. Rule 8-202(c); *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 68 & n.11 (2013) ("a notice of appeal filed within 30 days after the entry of the trial court's ruling on a timely motion filed under Rule 2-533 or 2-534 . . ., confers on this Court the authority to review the ruling on such post trial motion, as well as the earlier judgment.") (citing *B & K Rentals & Sales Co. v. Universal Leaf Tobacco Co.*, 319 Md. 127, 132-33 (1990)).

[16] Factor 8 listed on the court's May 2021 order asks each parent how well they "a) place the children's needs about your own, b) protect the children from negative effects of any conflict or c) maintain the children's relationship with individuals who may have a significant relationship with the children").

motion, along with Mother's March 10 and May 13 motions, remained pending until the underlying hearing on June 24, 2022.

Events Leading to the Underlying Hearing on June 24, 2022

On February 16, 2022, the parties appeared for another hearing before another circuit court judge,[17] during which the court addressed Mother's (1) March 10, 2021 motion to alter or amend the March 3, 2021 order; (2) the June 3, 2021 motion to alter or amend the May 2021 Order; and (3) the May 13, 2021 motion to modify custody and child support. The court concluded that the May 2021 Order was a "final" custody order that mooted both the March 10 motion to alter or amend and the May 13 motion to modify custody, but not Mother's request to modify child support. The court deferred ruing on the June 3, 2021 motion to alter or amend and scheduled a hearing on that motion for June 24, 2022.

Before the rescheduled hearing took place, in May 2022, Mother informed the court that she had left Maryland to live in Ferndale, Washington, and the court ordered supervised visitation via video through Montgomery County's Family Division Services. On June 6, Mother moved for unsupervised visits with D. On June 23, 2022, Mother filed a supplement to her June 3, 2021 motion to alter or amend, wherein she refuted the court's factual findings in the May 2021 Order. Among other things, Mother asserted that she never complained, as the prior judge found, that Father "put her in jail" or that she was handcuffed. Instead, she clarified that she testified that the boys—not Mother—were

[17] The judge who had presided over the earlier proceedings retired from the bench before the February 16, 2022 hearing.

handcuffed by law enforcement. In like fashion, Mother disputed a series of additional findings in the May 2021 Order.

June 24 Hearing

After hearing arguments from the parties, on June 24, 2022, the court issued an oral ruling denying both (1) Mother's June 6, 2022 motion for unsupervised visits and (2) Mother's June 3, 2021 motion to alter or amend. Addressing Mother's complaints raised in her June 3 motion, the court first held that "there clearly was an evidentiary hearing that took place that led to this [May 2021] final order[,]" as "[counsel] refer[red] to [Mother's] testimony in [the] May 12 hearing on a number of occasions." With respect to the factual findings contained within that order, the court stated that: "I understand [Mother] believe[s] that [the trial judge] interpreted the testimony incorrectly" but the court "cannot grant the motion to alter or amend [the May 2021 O]rder based upon the perceived inaccuracies in her interpretation of the testimony or the evidence that was presented at that point in time." The court explained that it had "heard no legal argument as to any deficiencies regarding the order[.]"

Next, the court addressed Mother's June 6 motion for unsupervised visits, which the court treated as a new motion to modify custody. Acknowledging the supervised visitation observation forms submitted by Mother, the court held that it "ha[s]n't heard a material change in circumstances that would lead [the court], at this point in time, to change or modify the supervised access."

On June 28, 2022, the court entered a corresponding order denying Mother's June 3, 2021 motion to alter or amend and Mother's June 6, 2022 motion for unsupervised visits. Mother appealed on July 25, 2022.

DISCUSSION

I. STANDARD OF REVIEW

We review the trial court's denial of a motion to alter or amend under Maryland Rule 2-534[18] for abuse of discretion. *Barrett v. Barrett*, 240 Md. App. 581, 591 (2019) (citing *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 96-97 (2013)). That discretion is "'always tempered by the requirement that the court correctly apply the law applicable to the case.'" *Id.* (quoting *Rose v. Rose*, 236 Md. App. 117, 130 (2018)).

Ordinarily, in reviewing "an action . . . tried without a jury, we apply the clearly erroneous standard of review to the trial court's factual findings and review the court's decision for legal error." *Basciano v. Foster*, 256 Md. App. 107, 128 (2022); Md. Rule 8-131(c). In child-custody disputes, the best interests of the child "guides the trial court in its determination, and in our review" and "'is always determinative.'" *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)). In *Santo v.*

[18] Maryland Rule 2-534 states, in relevant part, that:

> 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.

Santo, the Supreme Court of Maryland articulated the standard of review that should apply in reviewing a custody determination:

> We review a trial court's custody determination for abuse of discretion. This standard of review accounts for the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses.
>
> Though a deferential standard, abuse of discretion may arise when no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles. Such an abuse may also occur when the court's ruling is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic. Put simply, we will not reverse the trial court unless the decision is well removed from any center mark imagined by the reviewing court.

Santo, 448 Md. at 625-26 (cleaned up). We grant the trial court broad discretion "'because only [the trial court] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child.'" *Burak v. Burak*, 455 Md. 564, 617 (2017) (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)).

II.

Review Hearing and Modification of Prior Custody Order.[19]

A. Parties Contentions

Mother argues that the trial court erred by conducting multiple review hearings that "revoked Mother's custody and right of access to her children without an adjudication of changed circumstances or abuse." Citing to *Frase v. Barnhart*, 379 Md. 100 (2003),

[19] In her brief, Mother repeats a number of issues raised in her May 13, 2021 motion to modify custody. As explained in note 13, *supra*, no appeal was taken from the court's disposition of that motion, and therefore, we do not address Mother's contentions raised on appeal relating to her May 13, 2021 motion.

Mother contends that the trial court erred by keeping the custody case open for an extended period during which the trial court "revoked Mother's custody and blocked her from her sons based only on video hearings presenting repetitive heated arguments by counsel, unsworn opinions by Ms. Sarris, and snippets of isolated testimony." Second, Mother argues that the trial court's "*sua sponte* modification" of the September 2019 Order "without a trial and adjudication of changed circumstances was contrary to well-established law."

Father counters that the trial court did not err in conducting multiple review hearings that resulted in the May 2021 Order, and asserts that the trial court "received voluminous post-trial evidence" in various forms including "testimony from the court-appointed therapist, direct testimony from the parties, admissions through counsel, documents, and third-party witnesses." According to Father, whether the court proceeding at which the evidence was presented was referred to as a "trial" or a "hearing" is immaterial because Mother "had every opportunity to present her own evidence" and did, in fact, call witnesses, including herself, to testify under oath. Quoting *Frase*, 379 Md. at 121, Father asserts, "[f]or good cause, the court may hold a case open for a reasonable period to consider additional evidence, not available at trial but which the court finds necessary to a proper decision." Father notes that Mother herself requested additional review hearings after her request for additional access with the children was denied. Finally, Father argues that, even if a material change in circumstances would have been required for the trial court

to act, Mother's actions of withholding the children from him and violating the court orders clearly constituted such a change.

B. Applicable Law

i. Propriety of Multiple Review Hearings

We first address the propriety of holding a custody case open to conduct subsequent review hearings. Both parties cite to *Frase v. Barnhart*, 379 Md. 100 (2003), albeit for different reasons. *Frase* involved a third-party custody dispute between Ms. Frase, the mother, and a couple, the Barnharts, over the custody of Ms. Frase's three-year old son, Brett. *Id.* at 102. Ms. Frase was arrested on a failure-to-appear bench warrant based on an earlier charge of possession with intent to distribute marijuana and spent the next eight weeks in the county detention center. *Id.* at 104. Upon her arrest, Ms. Frase asked her mother to place Brett and Ms. Frase's other son, Justin, with a couple that Ms. Frase knew; however, Ms. Frase's mother, who had custody of Justin, instead placed the children with a different couple, the Barnharts. *Id.* Later, after Ms. Frase recovered Brett from the Barnharts, the Barnharts filed for custody of Brett. *Id.* at 105. After a two-day evidentiary hearing, the master found that Ms. Frase should be awarded custody of Brett because the Barnharts could not prove that Ms. Frase was unfit or that they were "the psychological parents of the child in question[.]" *Id.* at 105-06.

On review, the circuit court implemented the recommendations of the master as follows: the court (1) awarded custody of Brett to Ms. Frase, "'provided that she make application for housing at Saint Martin's House'" (2) established 'visitation' between Brett

and Justin every other weekend, (3) directed that the visitation occur at Ms. Frase's mother's house, if she agreed, otherwise at the home of the Barnharts, (4) ordered that 'the issue of visitation' be mediated, (5) required Ms. Frase to continue to cooperate with the Family Support Group and the county Department of Social Services, and (6) scheduled 'this matter' for review in two months." *Frase*, 379 Md. at 106-08. At the scheduled review hearing, the parties appeared and presented a summary of the mediation session and heard arguments. *Id.* at 109. The master "was upset that Ms. Frase had not made arrangements to move to St. Martin's house," however, "[n]o decision was made at the review hearing, other than to schedule another such hearing" in three months. *Id.*

On appeal, the Supreme Court held that the conditions included as part of the award of custody to Ms. Frase were impermissible. *Id.* at 126. Critically, with respect to conducting periodic review hearings, our Supreme Court held, in relevant part, that:

> **In the normal custody case, especially when the dispute has been between a natural parent and a third party, subjecting a parent, found fit to have custody, to periodic future review hearings essentially converts an order that should effectively end the dispute into something more like a *pendente lite* order.** Particularly when coupled with a caveat that the parent and child live at the specific place chosen by the court, it puts a serious damper on the parent's ability to make long-range plans for herself or the child and effectively removes the parent's discretion to provide a home and make day-to-day decisions regarding his welfare. In so doing, it significantly infringes on and thus acts as a substantial, albeit partial, deprivation of the parent's legal and physical custody.

Id. at 119 (emphasis added). The Court delineated the court's role in a private custody dispute:

> It is to take evidence and decide the dispute, so that the child and other parties can get on with their lives. The court does not retain jurisdiction until the

> child turns 21, or even 18. **Although the matter of custody, visitation, and support may always be reopened upon a showing of changed circumstances, the court's jurisdiction over the particular dispute ends when the dispute is resolved, which the law anticipates will occur within a reasonable time after the evidentiary hearing. Those kinds of cases are not to be strung out indefinitely, as though they were CINA cases.**

Id. at 120-21 (emphasis added). The Court noted that "[f]or good cause, the court may hold a case open for a reasonable period to consider additional evidence, not available at trial but which the court finds necessary to a proper decision." However:

> **What [the court] may not do . . . is to proceed to make findings that would dictate a particular result and then subject the favored party to conditions inconsistent with that result and to continuing review hearings.** When it does that, the case never ends; the child and the parties remain under a cloud of uncertainty, unable to make permanent plans. The court seemingly reserves the power to alter the custody arrangement at any time, even in the absence of a new or amended petition, based upon a later review of circumstances known or predicted to exist at the time of the initial determination. That is procedurally impermissible.

Frase, 379 Md. at 120-21 (emphasis added).

ii. Material Change in Circumstances

Mother next contends that the trial court erred in changing custody from joint legal custody to supervised visitation without a full trial on the alleged material change in circumstances. The Family Law Article grants the circuit court continuing equitable jurisdiction over custody matters. Maryland Code (1984, 2019 Repl. Vol.), Family Law Article ("FL"), § 1-201(c). The statute provides: "In exercising its jurisdiction over the custody, guardianship, visitation, or support of a child, an equity court may: . . . (4) from time to time, set aside or modify its decree or order concerning the child." FL § 1-201(c)(4). "Because the court retains continuing jurisdiction over the custody of minor

children, no award of custody or visitation, even when incorporated into a judgment, is entirely beyond modification, and such an award therefore never achieves quite the degree of finality that accompanies other kinds of judgments." *Frase*, 379 Md. at 112.

In deciding whether to modify custody or visitation, a circuit court engages in a two-step process. First, it determines whether there has been a material change in circumstances. *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996); *see also McMahon v. Piazze*, 162 Md. App. 588, 594 (2005). "In this context, the term 'material' relates to a change that may affect the welfare of a child." *Wagner*, 109 Md. App. at 28. Second, if the court finds that there has been a material change in circumstances, it "then proceeds to consider the best interests of the child as if the proceeding were one for original custody." *McMahon*, 162 Md. App. at 594. That entails evaluation of the factors laid out in *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1977), *Taylor v. Taylor*, 306 Md. 290 (1986), and related cases.

In *McCready v. McCready*, 323 Md. 476 (1991), our Supreme Court explained that a final custody or visitation order must not be modified without a threshold showing of a material change in circumstances because "[t]he desirability of maintaining stability in the life of a child is well recognized and a change in custody may disturb that stability," and because "**[a] litigious or disappointed parent must not be permitted to relitigate questions of custody endlessly upon the same facts, hoping to find a [judge] sympathetic to his or her claim.**" *Id.* at 481 (emphasis added). "[T]he circumstances to

which change would apply would be the circumstances known to the trial court when it rendered the prior order." *Wagner*, 109 Md. App. at 28.

In *McCready*, the Court also addressed the "interaction between concepts of 'best interest of the child' and 'material change of circumstances" in child custody cases. *Id.* at 478. There, mother and father had one child, Erin, before separating, and when the parties appeared in court for a hearing to determine temporary custody, they agreed to the entry of an order of joint legal and physical custody with a specific schedule for shared physical custody. *Id.* The agreement provided for Erin to be with her mother during the week and her father from Friday evening every week to Monday evening one week and Tuesday evening the next, due to mother's work schedule, which required her to work weekends. *Id.* at 479. Five weeks later, mother found employment during the week, and unsuccessfully attempted to negotiate with Father for a change to the custody schedule that would allow mother to see Erin on some weekends. *Id.* Mother filed a complaint for primary physical custody of Erin, which the father opposed. *Id.*

After a three-day trial, the court decided that the best interest of the child required a change from joint physical custody to primary physical custody by the father with liberal visitation to mother. *McCready*, 323 Md. at 479-80. Mother appealed, and our Supreme Court held, in relevant part, that:

> The desirability of maintaining stability in the life of a child is well recognized, and a change in custody may disturb that stability. **Stability is not, however, the sole reason for ordinarily requiring proof of a change in circumstances to justify a modification of an existing custody order. A litigious or disappointed parent must not be permitted to relitigate questions of custody endlessly upon the same facts, hoping to find a**

> **chancellor sympathetic to his or her claim.** An order determining custody must be afforded some finality, even though it may subsequently be modified when changes so warrant to protect the best interest of the child. . . .
>
> * * *
>
> **In the limited situation where it is clear that the party seeking modification of a custody order is offering nothing new, and is simply trying to relitigate the earlier determination, the effort will fail on that ground alone. . . .**
>
> * * *
>
> In the more frequent case, however, there will be some evidence of changes which have occurred since the earlier determination was made. **Deciding whether those changes are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child.** Thus, the question of 'changed circumstances' may infrequently be a threshold question, but is more often involved in the 'best interest' determination, where the question of stability is but a factor, albeit an important factor, to be considered.

Id. at 481-82 (emphasis added). *See also Bienenfeld v. Bennett-White*, 91 Md. App. 488, 500 (1992) (holding that there was sufficient evidence of changed circumstances to justify a best interests review and custody modification when "the parties had failed to cooperate with respect to the religion and education of the children and the mother had attempted to prevent the father from visiting the children.").

C. Analysis

We start by specifying that only Mother's June 3, 2021 motion to alter or amend the May 2021 Order is properly before us based on Mother's appeal from the court's final order dated June 28, 2022. Mother's briefing does not challenge the circuit court's denial of her June 6, 2022 motion for unsupervised visits. Accordingly, the merits of the circuit court's September 2019 Order and the various orders that flowed from Mother's violations of that order are not before us. Those orders and the review hearings are only relevant to

the extent that they informed the procedural and evidentiary history leading to the trial court's May 2021 Order. We note that at the ninth review hearing, held on May 12, 2021, the trial court heard testimony and took evidence on which the May 2021 Order was largely based.

We do not agree with Mother that the trial court erred in conducting multiple review hearings after awarding joint legal custody in the September 2019 Order. Both parties cite to *Frase v. Barnhart*, which clearly states that, "[f]or good cause, the court may hold a case open for a reasonable period to consider additional evidence, not available at trial but which the court finds necessary to a proper decision." *Frase*, 379 Md. at 121. Here, in 2019, the trial court expressed concerns about giving the parents joint legal custody, again, given the lengthy history of the case before it documenting the parents' "significant difficulties co-parenting." Because under its September 2019 Order neither parent would have tie-breaking authority, the court observed that "they're going to have to get help to agree," so the court decided to "schedule a hearing in four months to monitor progress." Indeed, Mother proved the court correct when, after the second review hearing, Mother violated the September 2019 Order by not returning the children to Father's house, discussing the custody case with the boys, and encouraging the children to not follow the existing custody order.

The *Frase* opinion proscribes "mak[ing] findings that would dictate a particular result and then subject the favored party to conditions inconsistent with that result and to continuing review hearings." *Frase*, 379 Md. at 121. Here, the court awarded the parties

joint legal custody, and then *Mother* repeatedly violated that order. In fact, the court acted well within its discretion to modify the September 2019 Order in May 2021, based upon Mother's repeated and unjustified denial and interference with Father's visitation. *See* FL § 9-105 ("if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions: (1) order that visitation be rescheduled; (2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order . . ."). Mother's contention that the court erred in modifying the September 2019 Order from joint custody to supervised visitation in the May 2021 Order without a specific finding of a material change in circumstances fails because her repeated violations of the September 2019 Order constitute a material change in circumstances that justified a change to the custody order. *See Domingues v. Johnson*, 323 Md. 486, 500 (1991) ("A change of circumstances which, when weighed together with all other relevant facts, requires a court to revise its view of what is in the future best interest of a child, is a sufficient change. It is neither necessary nor desirable to wait until the child is actually harmed to make a change which the evidence shows is required."); *see also McMahon v. Piazze*, 162 Md. App. 588, 596 (2005) ("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 element will be satisfied.").

Mother argues that the trial court erred in modifying the existing custody order without a full trial on Mother's allegation of change of material circumstances. We find no merit to this argument. We note that Mother was given both notice and the opportunity to present evidence at several of the review hearings leading up to the May 2021 Order, which she did. *See Wagner v. Wagner*, 109 Md. App. 1, 23-24 (1996) (holding in the context of custody cases that "it is sufficient if there is at some stage, an *opportunity* to be heard *suitable to the occasion* and an opportunity for judicial review at least to ascertain whether the fundamental elements of due process have been met.") (emphasis in original). Indeed, at the ninth review hearing prior to the entry of the May 2021 Order, Mother presented two witnesses to testify under oath including herself. *Cf. Burdick v. Brooks*, 160 Md. App. 519, 526-27 (2004) (holding that a mother was deprived of due process of law when the circuit court ordered a change in custody after a fifteen-minute status conference "[b]ecause the court did not provide notice of a possible custody determination," the mother "had no 'opportunity for an **effective argument** on the issue of custody.'") (quoting *Van Schaik v. Van Schaik*, 90 Md. App. 725, 739 (1992)) (emphasis in original). At no point did the court prevent Mother from presenting evidence or testimony challenging Father's arguments requesting that Mother be restricted to supervised access. In fact, during the fifth review hearing, Mother was provided the opportunity to testify but declined after the court noted she would be subject to cross-examination.

In sum, we discern no error in the court's modification of the September 2019 Order after holding a series of review hearings and an evidentiary hearing on May 12, 2021, and

hold that the court did not abuse its discretion when it denied Mother's motion to alter or amend the May 2021 Order.

III.

Supervised Visitation

A. Parties' Contentions

Citing to *Boswell v. Boswell*, 352 Md. 204, 209 (1998), Mother argues that "[t]he court may restrict 'liberal visitation' only upon a showing of abuse or neglect." Mother avers that the trial court erred by restricting her access to the children to supervised visitation after it had already adjudicated her to be a fit parent at the time it awarded her shared legal custody and never subsequently found Mother to "be a perpetrator of abuse or neglect, including emotional abuse." Mother also disputes a number of the trial court's factual findings upon which it relied "to revoke [Mother's] rights and restrict her to supervised visits without a trial[,]" contending that the findings were unsupported by the evidence. Mother's principal complaint with respect to the court's findings is that "no evidence supports Father's assertions that Mother had refused to return the parties' sons to him[.]" Mother avers that she did not fail to answer the judge's question about encouraging the boys to have a relationship with their father. Instead, she testified that "she had encouraged the relationship, but Father had refused." Mother takes issues with the court's other findings contained in the May 2021 Order, including, that "Father put her in jail by removing the children, completely missing the fact that she brought it on herself[,]" and that "Dad uses school 'as a 'shiny' thing, that's not real."

Father responds that the trial court repeatedly found that Mother's actions harmed the children and the court had sufficient evidence to restrict Mother to supervised access. Father disputes Mother's interpretation of *Boswell* and directs our attention to *Boswell's* warning that "[a]s to visitation, the non-custodial parent has a right to liberal visitation with his or her child at reasonable times and under reasonable conditions, but this right is not absolute." (quoting *Boswell*, 252 Md. at 220). In his brief, Father includes findings and other statements by the court depicting "actual emotional harm" to the children such as "Mom overreacts. She's inappropriate in trying to protect herself. That ends up leading the boys unprotected and basically in a warzone. Her declaration that she won't co-parent is bad for the boys." Father argues that the record in this case is replete with findings of "both actual harm ('Mother's interference has done enough damage') **and** potential harm ('the way [Mother] views how this ought to go is dangerous.'). (Emphasis supplied by Father).

B. Governing Law

The right of a parent to visitation is not absolute and may be curtailed by the State when it is in the best interest of the child or necessary to protect the child from abuse or neglect. *See North v. North*, 102 Md. App. 1, 12 (1994) ("'[a] parent whose child is placed in the custody of another person has a right of access to the child at reasonable times. The right of visitation is an important, natural and legal right, although it is not an absolute right, but one which must yield to the good of the child.") (quoting 2 NELSON, *Divorce*, § 15.26 (2d ed.)). If the evidence produced before the trial court clearly indicates that it is for the best interests of the child, either parent may be denied the right of access. *See*

Boswell, 352 Md. at 220-21 ("In situations where there is evidence that visitation may be harmful to the child, the presumption that liberal unrestricted visitation with a non-custodial parent is in the best interests of the child may be overcome."). Here, Mother does not challenge a denial of *all* access to the Santo children; only a limitation on access. Thus, the "ultimate question is whether that limitation is a reasonable one[.]" *North*, 102 Md. App. at 12; *see also Boswell*, 352 Md. at 220. "The determination of what is reasonable, in this context, is a matter resting within the trial court's discretion." *North*, 102 Md. App. at 12 (citing *Odunukwe v. Odunukwe*, 98 Md. App. 273, 288 (1993)).

As noted in *Boswell*, FL § 9-101 governs the specific steps the trial court must take in determining custody and visitation in cases when a parent has been found to have committed abuse or neglect. *Boswell*, 352 Md. at 227-28. It provides:

> (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.
>
> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, **except that the court may approve a supervised visitation arrangement that assures the physiological, psychological, and emotional well-being of the child**.

FL § 9-101 (emphasis added). Pursuant to FL § 9-101(a), the court must engage in a two-step process. *See Baldwin v. Baynard*, 215 Md. App. 82, 106 (2013). First, the court must consider whether there are reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding. *Id.*; FL § 9-101(a). The preponderance of the evidence standard applies when the court determines whether reasonable grounds exist.

See Volodarksy v. Tarachanskaya, 397 Md. 291, 308 (2007). Second, the court must determine whether it has been demonstrated that there is no likelihood of further abuse or neglect by the party previously found to have to have abused or neglected his or her child. FL § 9-101(b); *Baldwin*, 215 Md. App. at 106 (citing *In re Yve S.*, 373 Md. 551, 587 (2003)).

However, FL § 9-101 does not require that a parent must be found unfit or to have abused the child before imposing *supervised* visitation. *See Baldwin*, 215 Md. App. at 108 ("the circuit court was not required to base its decision regarding supervised visitation solely on § 9-101 of the Family Law Article" because "the source of the court's authority to make custody and visitation determinations does not stem from § 9-101 alone."); *Domingues v. Johnson*, 323 Md. 486, 500 (1991) ("In the first place, it is not necessary that a parent be declared unfit before joint or sole custody can be changed from that parent."). As explained in *Baldwin*:

> Section 9-101(b) of the Family Law Article does not preclude custody or unsupervised visitation only upon a finding of a likelihood of further abuse; rather, the statute precludes **custody or unsupervised visitation** *absent a specific finding by the circuit court that there is no likelihood* of further child abuse or neglect by the party.

215 Md. App. at 107 (italics emphasis in original; bold emphasis added). Moreover, our Supreme Court has held that:

> [p]ursuant to the doctrine of *parens patriae*, the State of Maryland has an interest in caring for those, such as minors, who cannot care for themselves. *See Boswell*, 352 Md. at 218-19. **We have held that "the best interests of the child may take precedence over the parent's liberty interest in the course of a custody, visitation**, or adoption dispute." *Boswell*, 352 Md. at 219; *see also In re Adoption No. 10941*, 335 Md. at 113 (stating that "the

> controlling factor … is …what best serves the interest of the child"). **That which will best promote the child's welfare becomes particularly consequential where the interests of a child are in jeopardy, as is often the case in situations involving sexual, physical, or emotional abuse by a parent.** As we stated in *In re Adoption/Guardianship No. A91-71A*, 334 Md. 538 (1994), the child's welfare is "a consideration that is of 'transcendent importance'" when the child might otherwise be in jeopardy. *Id.* at 561 (citation omitted). **Therefore, visitation may be restricted or even denied when the child's health or welfare is threatened.**

In re Mark M., 365 Md. 687, 705-06 (2001) (emphasis added) (cleaned up).

C. Analysis

Mother relies on *Boswell's* instruction that "[i]n cases where a change in custody or visitation is requested on the basis of actual or potential harm to the child, courts apply a best interest of the child standard concurrently with adverse impact, granting the modification or restriction only upon a showing of actual emotional or physical harm to the child." *Boswell*, 353 Md. at 225. Applying the *Boswell* ruling to the case before us does not lead us to conclude the trial court erred or abused its discretion because the circumstances in the instant case are markedly different from those in *Boswell*. There, our Supreme Court reversed the trial court's decision to restrict visitation to the non-custodial parent because it was based solely upon the non-custodial parent's sexual orientation and the idea that visitation in the presence of the non-custodial parent's *partner* was detrimental to the child without a finding of actual harm to the child. *Boswell*, 352 Md. at 228, 236-38 ("The need for a factual finding of harm to the child requires that the court focus on evidence-based factors and not on stereotypical presumptions of future harm."); *see also North*, 102 Md. App. at 14-16. As Father points out, *Boswell* also cautioned that "the above

formulation [of finding actual harm] does not require a court to sit idly by and wait until a child is actually harmed by liberal unrestricted visitation." *Boswell*, 352 Md. at 237. Instead, "[i]f there is sound evidence demonstrating that a child is likely to be harmed down the road, but there is no present concrete finding of harm, a court may still consider a child's future best interests and restrict visitation." *Id.*; *see also Domingues*, 323 Md. at 500.

Moreover, our caselaw has evolved since *Boswell* was decided to clarify that "the circuit court [is] not required to base its decision regarding *supervised* visitation solely on section 9-101 of the Family Law Article because "the source of the court's authority to make custody and visitation determinations does not stem from § 9-101 alone." *Baldwin*, 215 Md. App. at 108 (emphasis added).

Here, the record does not show whether the court relied upon FL § 9-101 in limiting Mother's access to the children to supervised visitation; however, the court had discretion to impose supervised visitation without reliance upon FL § 9-101. The circuit court made ample findings on the record that Mother's actions following the entry of the September 2019 Order were detrimental to the boys' best interests. *See, e.g.*, ("Mother routinely disobeys the Court's Orders and the boys have adopted her view"); ("Father is entitled to a relationship with his children. Mother's interference has done enough damage."); ("the boys find themselves in a warzone" and Mother "routinely undermine[s] what gets determined."). Therefore, we hold that the court's decision to restrict Mother's access to the child to supervised visitation was in the child's best interests and well-supported by the record.

Mother's brief on appeal challenges many of the subsidiary facts found by the court in its May 2021 Order. As the court noted at the June 24, 2022 motions hearing, however, it "heard no *legal* argument as to any deficiencies regarding the [May 2021 O]rder" and could not "grant the motion to alter or amend [the May 2021 O]rder based upon the perceived inaccuracies in [the court's] interpretation of the testimony or the evidence that was presented at that point in time." (Emphasis added). The court recited those factual findings in support of its determinations that Mother refused to co-parent with Father and that her actions violated the court's orders and were contrary to the children's best interests. Our review of the record reveals considerable evidence that Mother actively sought to undermine Father's relationship with his children, and that Mother did not appreciate her children's need to have a healthy and loving relationship with Father.

We believe that the evidence before the trial court supported its ultimate finding that Mother's access to the children should be limited to supervised visitation. We note that the trial judge who issued the May 2021 Order had observed the parties, the witnesses, the children, and all of the evidence for over a decade. *See Burak v. Burak*, 455 Md. 564, 617 (2017) (quoting *In re Yve S.*, 373 Md. 551, 585-86 (2003)). We cannot say that the court abused its discretion in concluding that there had been a material change in circumstances, and that the best interests of the children warranted a modification of Mother's visitation rights. *See* Md. Rule 8-131(c).

IV.

Child Custody Preferences

Finally, Mother asserts that the court erred by disregarding the well-articulated custody preferences of competent teenagers, who told the court they preferred to reside with Mother full-time over Father. Mother avers that the boys' preferences "were a mandatory factor that the circuit court erroneously ignored."

Father responds that the trial court was not required to honor the children's stated custody preferences. Father points to the court's finding that the children's statements were presented "in a very practiced way" and that "there is no question in [the court's] mind that mom manipulates them."

The preference of a child or children is a relevant, but not dispositive, factor for the court to consider when awarding custody. *See Ross v. Pick*, 199 Md. 341, 353 (1952) ("[T]he child's own wishes may be consulted and given weight if he is of sufficient age and capacity to form a rational judgment. . . . It is not the whim of the child that the court respects, but its feelings, attachments, reasonable preference and probable contentment."); *Montgomery Cnty. Dept. of Soc. Servs. v. Sanders*, 38 Md. App. 406, 420 (1978); *Leary v. Leary*, 97 Md. App. 26, 48 (1993), *abrogated on other grounds by Fox v. Wills*, 390 Md. 620, 625, 633-34 (2006)). *See also Boswell*, 352 Md. at 222 ("Regarding the child's preference factor, we have stated that it is simply one factor to be considered, within the context of all other relevant factors.").

We find no merit in Mother's argument. To be sure, the children's preferences are *one* of the *Taylor-Sanders* factors the court must consider in determining a custody arrangement that is in the best interests of the children.[20] It is evident from the record that the trial judge was acutely aware of the children's stated custody preferences as the court conducted at least three *in camera* reviews with the children, during which they expressed their desire to reside with Mother. Accordingly, the record does not support Mother's contention that the trial court ignored the children's preferences. We decline to hold, as Mother requests, that because the trial court's custody determination did not align with her wishes and the children's "practiced" statements, that the trial court erred.

The overarching standard in child custody determinations is always the best interests of the child, even if the determinations are contrary to the child's stated preference. The record contains substantial evidence in support of the trial court's conclusion that Mother failed to act in her children's best interests, such as Mother's voluntary decision to forgo any contact with her children because she disliked the requirement of supervised visitation, her repeated violations of court orders, and the boys' failing grades while in Mother's custody. Furthermore, we note that Mr. Bach, the BIA—appointed at the request of *both* parties—repeatedly counseled the court that it was in the children's best interests to limit Mother's access to supervised visitation. Accordingly, we find no abuse of discretion by

[20] We note that the court utilized the factors contained in the Maryland Parenting Plan Instructions (2020) rather than the *Sanders-Taylors* factors, both of which list the children's custody preferences as a relevant factor. *See Maryland Parenting Plan Instructions, supra* note 14.

the court in fashioning a custody order that did not follow D.'s stated preference. We affirm.

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