

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CA11-1179

CYNTHIA WINGFIELD

APPELLANT

V.

JEFFREY WINGFIELD

APPELLEE

**Opinion Delivered** February 20, 2013

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT, SIXTH  
DIVISION  
[NO. DR-07-973]

HONORABLE TIMOTHY DAVIS  
FOX, JUDGE

AFFIRMED

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## WAYMOND M. BROWN, Judge

Appellant Cynthia Wingfield appeals from the trial court's order denying her motion to modify custody. She argues that the trial court erred in finding that she failed to demonstrate the existence of a material change in circumstances to support a change in custody. The court did, however, modify visitation by granting her two extra weeks with the child during the summer and by extending her usual visitation to include Sunday nights.<sup>1</sup> We find no error, and affirm.

The parties were divorced by decree filed on March 21, 2008. The court found that it was in the best interest of the child that custody be granted to Jeffrey. Cynthia appealed

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<sup>1</sup>We note that appellee did not appeal the court's modification of visitation, and this opinion only deals with the denial of appellant's motion.



that custody determination, and this court affirmed the trial court on appeal.<sup>2</sup> She filed a motion to modify custody on August 10, 2010. In the motion, she listed approximately nineteen allegations to support her position that a material change in circumstances had occurred. Jeffrey filed a response on August 18, 2010, essentially denying the allegations in Cynthia's motion. The trial court conducted a hearing on the motion on February 7–8, 2011. After hearing the testimony of numerous witnesses and viewing the exhibits submitted into evidence, the court concluded that Cynthia had failed to meet her burden. This appeal followed.<sup>3</sup>

Cynthia contends that the following allegations support her position that there has been a material change in circumstances to warrant that custody of the child be placed with her:

- 1) Jeffrey uses extreme corporal punishment.
- 2) Jeffrey verbally abuses the child.
- 3) The child's teachers notice a distinct difference in the child depending on which parent the child is going home with.
- 4) The child prefers to live with Cynthia.
- 5) Jeffrey will not allow the child to call Cynthia if the child is upset or crying.
- 6) Jeffrey has required the child to use a stop-watch or some other timing device while talking to Cynthia on the phone.
- 7) Jeffrey has failed to take care of the child's health needs.
- 8) Jeffrey plays games with visitation.

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<sup>2</sup>*Wingfield v. Wingfield*, 2009 Ark. App. 393 (unpublished).

<sup>3</sup>This is the second time this case is before us. We initially remanded it for supplementation of the record and rebriefing. *Wingfield v. Wingfield*, 2012 Ark. App. 509.



- 9) Jeffrey allows the maternal grandparents to have visitation and then he withdraws it.
- 10) Jeffrey has failed to meet the emotional needs of the child.
- 11) Jeffrey has refused Cynthia access to the child's medical records.
- 12) Jeffrey continuously contacts the child when the child is vacationing with Cynthia and wants to know all of the details of the trip.
- 13) Jeffrey has moved three times since the divorce, causing a lack of stability for the child.

These allegations were among those presented to the trial court. Many of the accusations made by Cynthia were denied or explained in detail by Jeffrey. The trial court was presented with all of the evidence, and it was its duty, not ours, to make credibility determinations.<sup>4</sup> We know of no cases in which the superior position, ability, and opportunity of the trial court to observe the parties carry as great weight as those involving children.<sup>5</sup> Although our review of the trial court is de novo, we will not reverse the trial court's findings unless they are clearly erroneous or clearly against the preponderance of the evidence.<sup>6</sup> The evidence supports the trial court's decision; accordingly, we affirm.

Affirmed.

WALMSLEY and GLOVER, JJ., agree.

*Hilburn, Calhoon, Harper, Pruniski & Calhoun, Ltd.*, by: *Sam Hilburn and Traci LaCerra*,  
for appellant.

*Mason & Harmon, PLLC*, by: *Monica L. Mason*, for appellee.

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<sup>4</sup>*Durham v. Durham*, 82 Ark. App. 562, 120 S.W.3d 129 (2003).

<sup>5</sup>*Dunham v. Doyle*, 84 Ark. App. 36, 129 S.W.3d 304 (2003).

<sup>6</sup>*Middleton v. Middleton*, 83 Ark. App. 7, 113 S.W.3d 625 (2003).