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**ARKANSAS COURT OF APPEALS**

DIVISION I

No. CV-21-372

CHRISTINA MORRIS

APPELLANT

V.

CHAD MORRIS

APPELLEE

Opinion Delivered October 5, 2022

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. 04DR-10-1411]

HONORABLE DOUG SCHRANTZ,  
JUDGE

AFFIRMED

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**STEPHANIE POTTER BARRETT, Judge**

Christina Morris appeals the Benton County Circuit Court order changing custody of the parties' two minor children, J.M. and C.M., to appellee Chad Morris. On appeal, Ms. Morris argues that the circuit court erred (1) in prohibiting evidence predating the July 13, 2018 order; (2) in prohibiting testimony regarding a statement made by Mr. Morris's now adult son, Austin, to his then counselor; and (3) in finding a material change in circumstances and that it was in the best interest of the children to change custody to Mr. Morris. We affirm.

Chad and Christina Morris were married in 2005 and have two children, J.M. and C.M. C.M. was born with a genetic defect and was later diagnosed with autism. On August 24, 2011, the parties were divorced in Benton County, and custody of the children was placed with Ms. Morris subject to standard visitation by Mr. Morris. On November 3, 2017, Ms. Morris filed a petition for contempt and for modification after learning Mr. Morris's

income had increased. Mediation was ordered between the parties, and it took place on July 9, 2018. On July 13, 2018, the circuit court entered an order (hereinafter, “July 2018 Order”) finding there had been a material change of circumstances since the 2011 divorce decree, and it was in the best interest of the minor children that the prior orders be modified as to custody and child support. The July 2018 Order stated Ms. Morris would remain the primary custodian but modified Mr. Morris’s standard visitation, increased his child support obligations, and dismissed Ms. Morris’s petition for contempt.

On October 23, 2019, Mr. Morris filed a petition for modification of custody, alleging that since the entry of the July 2018 Order, there had been a material change of circumstances, including the following: (1) both children had excessive absences from school; (2) C.M. had been repeatedly taken to hospitals, resulting in painful and unnecessary medical testing, including spinal taps, with no additional diagnosis; (3) between February 21, 2019, and October 4, 2019, there were twelve separate incidents in which Ms. Morris called the police for various reasons, including “being spied on, hacked, house broken into, holes drilled into the house, wires and walls for spying, and things stolen and returned.” Four of the phone calls concerned C.M.’s “bad behavior and needing help with controlling and disciplining.” In each police report, the officers found Ms. Morris’s claims unfounded. That same day, an ex parte order was entered immediately changing custody from Ms. Morris to Mr. Morris.

On November 6, 2019, the circuit court entered a temporary order changing custody to Mr. Morris subject to standard visitation with Ms. Morris. On November 18, 2019, Mr. Morris filed an emergency petition to suspend visitation after Ms. Morris took C.M. to the

emergency room via ambulance, despite the recommendation of C.M.'s psychiatrist, Dr. Crouch, that C.M. not be taken to any type of emergency room unless there was a clear physical injury requiring immediate treatment. When Mr. Morris arrived at the emergency room, C.M. was immediately released to him because there was no evidence she was having a seizure as alleged by Ms. Morris. The emergency petition also alleged Ms. Morris sent a sheriff's deputy to Mr. Morris's home to perform a wellness check on C.M. after Ms. Morris noticed a skin irritation on her leg, which Mr. Morris had explained to Ms. Morris was from wearing "high rise" socks, and C.M. had a "meltdown" when officers woke her at 9:40 p.m. to check her leg. The officers found no evidence of a skin irritation. On December 17, 2019, a second temporary order was entered discontinuing Ms. Morris's midweek visitation.

At the final hearing on Mr. Morris's petition to modify custody, Dr. John Childers, a court-appointed psychologist, testified that

Ms. Morris appears to display, what I would call a number of false beliefs and delusions based on incorrect inferences about external reality and that these beliefs were firmly held. The central theme of her delusions appears to be that she's being persecuted conspired against, spied on, or harassed.

Dr. Childers recommended Ms. Morris follow up with a psychiatrist for further evaluation of cluster C personality disorder traits before she could resume supervised visitation. Dr. Crouch, C.M.'s psychiatrist, testified that after C.M. returned from Pennsylvania, where Ms. Morris had taken her for additional medical testing, "[C.M.] was in the most psychotic and manic state that I've ever seen a child in my entire career. . . . [S]he was paranoid. She was delusional. She was hallucinating. She was afraid of inanimate objects. She was just terrified for no apparent reason." Dr. Crouch further testified that despite his having

repeatedly told Ms. Morris C.M.'s problems are behavioral issues, Ms. Morris was insistent that more tests be run on C.M. Between April and October 2019, C.M. was taken to seven different children's hospitals for medical examinations with no additional diagnosis given. During her own testimony, Ms. Morris admitted that C.M.'s symptoms were not deemed to be medical by providers in Arkansas, which led her to search elsewhere.

Susan Kilpatrick, the children's counselor, testified that C.M. struggled with anxiety and trauma after returning from Pennsylvania, and "there was a lot of fear that she would have to go back through that sort of testing again, particularly focusing on needles from what I believe was a spinal tap." She testified that J.M. was exhibiting signs of depression and "really struggling with having missed school and getting back in the swing of things." Ms. Kilpatrick's testimony also revealed that Ms. Morris had discussed the court proceedings with the children, as J.M. had told her, "Dad did not talk about court much, but mom said she hoped we would be able to live with her and that we needed to live with her so C.M. could get proper medical care."

On December 16, 2020, the circuit court entered an order finding a material change of circumstances warranting modification of custody to Mr. Morris. The circuit court made the following findings and orders: (1) Mr. Morris is the only parent with authority to make medical decisions on behalf of the children; (2) because the testimony of Dr. Crouch and Dr. Childers was credible, it is in the children's best interest that Ms. Morris be entitled to exercise only supervised visitation in Arkansas; (3) the children were not to be taken outside Arkansas by Ms. Morris without permission of the circuit court; (4) Ms. Morris is prohibited

from discussing the court case or related matters with the children during her visits; and (5) the children are to continue with counseling.

On appeal, Ms. Morris argues that the circuit court erred in not allowing evidence concerning records or events that took place prior to the July 2018 Order. The evidence she wished to admit included the children's medical records, the children's educational records, evidence regarding Mr. Morris's time with the children, and alleged evidence of Mr. Morris stalking Ms. Morris. Ms. Morris did not proffer these records for our review. However, the circuit court has discretion to restrict evidence in a modification proceeding to facts arising since the prior order modifying custody. *Campbell v. Campbell*, 336 Ark. 379, 985 S.W.2d 724 (1999). While the July 2018 Order was entered as a result of a petition for contempt, the end result involved a change of custody. The circuit court found a material and substantial change of circumstances had occurred and that it was in the best interest of the children that prior orders be modified. A custody order is a decree assigning the custody of a child. *Davis v. Sheriff*, 2009 Ark. App. 347, 308 S.W.3d 169; *Campbell*, 336 Ark. 379, 985 S.W.2d 724. We hold that the circuit court did not err in excluding evidence concerning records or events that took place prior to the July 2018 Order.

Next, Ms. Morris argues that the circuit court erred by denying relevant evidence related to a statement made by Mr. Morris's now adult son, Austin, to his then counselor, Ms. Kilpatrick. Ms. Morris's counsel questioned Ms. Kilpatrick about whether she treated Austin and whether Ms. Kilpatrick had disclosed to Ms. Morris any concerns Austin had about C.M. and J.M. being in Mr. Morris's care. Mr. Morris's counsel objected, and the

circuit court ruled that Ms. Kilpatrick was bound by patient-therapist privilege to not disclose that information.

The decision to admit or exclude evidence is within the sound discretion of the circuit court, and this court will not reverse a circuit court's decision regarding the admission of evidence absent a manifest abuse of discretion. *Mitchell v. State*, 2018 Ark. App. 253, 549 S.W.3d 375. An abuse of discretion is a high threshold that does not simply require error in the circuit court's decision, but requires that the circuit court acted improvidently, thoughtlessly, or without due consideration. *Id.* Moreover, this court will not reverse a circuit court's evidentiary ruling absent a showing of prejudice. *Id.*

A patient has the right to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment, and the physician at the time of communication is presumed to have authority to claim the privilege on behalf of the patient. Ark. R. Evid. 503(b).

In addition to being privileged communication, this evidence was also impermissible hearsay. Rule 801(c) of the Arkansas Rules of Evidence defines hearsay as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Ark. R. Evid. 801(c). In this case, the proffered statement was impermissible hearsay.

Finally, Ms. Morris argues that the circuit court erred in finding a material change in circumstances. In custody cases, this court considers the evidence de novo and does not reverse unless the circuit court's findings of fact are clearly erroneous. *Skinner v. Shaw*, 2020 Ark. App. 407, 609 S.W.3d 545; *Harrison v. Harrison*, 102 Ark. App. 131, 287 S.W.3d 601

(2008). A finding is clearly erroneous when, although there is evidence to support it, this court is left with a definite and firm conviction a mistake has been made. *Id.* It is well established that in order to change custody, a circuit court must first determine a material change in circumstances has occurred since the last order of custody; and if that threshold requirement is met, it must then determine who should have custody, with the sole consideration being the best interest of the children. *Geran Williams v. Geran*, 2015 Ark. App. 197, 458 S.W.3d 759.

Ms. Morris contends that the sole material change in circumstance was C.M.'s change in behavior. She further alleges the evidence does not support that C.M.'s behavior constitutes a material change in circumstance or that her own behavior caused that change. However, the circuit court's ruling on material change in circumstances was much broader. The circuit court found that Ms. Morris unnecessarily subjected C.M. to traumatic medical examinations, Ms. Morris was suffering from paranoid delusions that caused her children distress, Ms. Morris discussed court proceedings with the children, and J.M. was unnecessarily and unfairly impacted by Ms. Morris's numerous medical quests for C.M. We hold that the evidence presented is sufficient to support the circuit court's conclusions.

The evidence before the circuit court showed an abnormal change in C.M.'s behavior during the spring of 2019. While we have previously held that abrupt behavioral issues in a child is sufficient to support a finding of material change in circumstances, C.M.'s behavior alone was not the only factor leading to this decision. *See Faulkner v. McCain*, 2020 Ark. App. 541, 613 S.W.3d 746. At the same time this change in behavior began, Ms. Morris was suffering from paranoid delusions and had placed twelve phone calls to the

Bentonville Police Department, with each call resulting in the officers finding her claims unfounded. Further, as a result of Ms. Morris's quest to receive a medical diagnosis for C.M.'s behavior, C.M. experienced numerous traumatic and unnecessary medical examinations. C.M. and J.M. received excessive absences because of C.M.'s hospital stays and were dropped from their school district. Further, Ms. Morris discussed court proceedings with the children, insisting if they did not live with her, C.M. would not get the help she needed. Accordingly, we hold that sufficient evidence supports the circuit court's finding of a material change in circumstances.

We must next consider whether it was in the children's best interest for Mr. Morris to have primary custody. A circuit court considers many factors in determining the best interest of children in custody-modification cases, including the psychological relationship between the parent and the child, the need for stability and continuity in the child's relationship with the parents and siblings, and the past conduct of the parents toward the child. *Myers*, 2009 Ark. App. 541, 334 S.W.3d 878.

The previously discussed evidence is ample proof that it is in the best interest of the children for Mr. Morris to have custody. Mr. Morris is able to provide stability for the children, and since being in Mr. Morris's care, C.M. and J.M. are excelling academically, socially, and emotionally. Ms. Kilpatrick noted that J.M. "started to connect with kids his own age and was having a good school year," and C.M. "seemed a lot calmer and a lot more sure of herself."

The court is guided only by the rule that the welfare of the children is the primary concern in determining whether an order should be changed. *See Geren Williams*, 2015 Ark.



App. 197, at 10, 458 S.W.3d at 766. We hold that there was sufficient evidence to support the circuit court's determination that custody be placed with Mr. Morris.

Affirmed.

GLADWIN and GRUBER, JJ., agree.

*Bishop Law Firm*, by: *Matt Bishop*, for appellant.

*Kezhaya Law PLC*, by: *Matthew A. Kezhaya*, for appellee.