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ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-23-252

PAULA MARIE GRAF

APPELLANT

V.

ERIC SCOTT GRAF

APPELLEE

Opinion Delivered March 27, 2024

APPEAL FROM THE SHARP COUNTY
CIRCUIT COURT
[NO. 68DR-18-48]

HONORABLE ADAM G. WEEKS,
JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

This is an appeal of postdivorce proceedings. Appellant, Paula Marie Graf, and appellee, Eric Scott Graf, separated in 2016 and were divorced in 2018 by an Arizona court. The parties have four children: an adult son with significant disabilities born in 2001 (adult son “AS”), a teenage daughter born in 2006 (teen daughter “TD”), a younger teenage daughter born in 2009, (teen daughter two “TD2”), and a younger son born in 2010 (younger son “YS”). Eric was awarded custody of TD and YS, and they live in Arizona. Paula was awarded custody of AS and TD2, and they live in Arkansas. The present litigation concerns the circuit court’s February 2023 order that granted Eric’s motion to change custody of TD2 to him. Paula argues that two of the circuit court’s findings are clearly erroneous: (1) that there had been a material change in circumstances since the last custody order and (2) that it was in their daughter’s best interest to change custody. We affirm.

We perform a de novo review of child-custody matters, but we will not reverse a circuit court's findings unless they are clearly erroneous. *Wallis v. Holsing*, 2023 Ark. App. 137, 661 S.W.3d 284. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.* We recognize and give special deference to the superior position of a circuit court to evaluate the witnesses, their testimony, and the child's best interest. *Id.*

Modification of custody is a two-step process: first, the circuit court must determine whether a material change in circumstances has occurred since the last custody order; and second, if the court finds that there has been a material change in circumstances, the court must determine whether a change of custody is in the child's best interest. *Wallis, supra.* The best interest of the child is the polestar in every child-custody case; all other considerations are secondary. *Id.* A child-custody determination is fact specific, and each case ultimately must rest on its own facts. *Id.* The combined, cumulative effect of particular facts may together constitute a material change. *Id.* We will not substitute our judgment for that of the circuit court, which observed the witnesses firsthand. *Id.*

With this framework in mind, the evidence showed the following. When Paula was granted custody of AS and TD2, the 2018 Arkansas order commanded that AS was not to reside with Paula and TD2 "until such time as [Paula] petitions the Court and is granted permission by this Court." In August 2019, Eric filed a petition to change custody of TD2 to him. Eric alleged that there had been a material change in circumstances, including that (1) Paula was living with her boyfriend; (2) Paula was telling TD2 about Eric's perceived

shortcomings; (3) Paula withheld gifts and communications that Eric had sent to TD2; (4) Paula would not permit TD2 to speak on the phone to him or his family without her (Paula) also being on the phone; (5) the police had been called multiple times to Paula's residence; and (6) AS had been in Paula's home with TD2, contrary to the prior order forbidding it.

Paula responded and denied Eric's allegations. She accused Eric of poisoning the children's minds against her, calling her terrible names in front of the children, and questioning TD2 about activities and behavior in her home. Paula also accused Eric of failing to assist with his part of the children's extensive medical expenses. She filed a motion seeking additional support for AS, who has special needs beyond what his SSI benefits covered.

AS had been living as a patient at an Arkansas mental-health hospital, but upon his discharge in March 2019, he began living in a supportive facility in Bryant, Arkansas. AS is a large adult man with autism, delusional thinking, and some difficulty controlling his emotional outbursts. He did well at the supportive facility with appropriate care. In August 2020, Paula checked AS out and moved him back into her home in Ash Flat, Arkansas. This prompted Eric to file a motion for emergency custody of TD2 because Eric asserted that AS had in the past sexually assaulted animals and committed assault and battery on family members. Eric's emergency motion was denied.

In August 2022, Eric filed another motion to change custody alleging that TD2 was afraid of AS who was not supposed to be living in the home; TD2 reported that AS had killed a cat; TD2 was exposed to Paula's live-in boyfriend who had drug and other criminal

charges pending; Paula's boyfriend kept dangerous, illegal tattoo tools in the home; and illegal prescription drugs were kept hidden in the child's clothes drawer. Paula filed a general denial to Eric's motion. Paula and her boyfriend, Shawn, married in December 2022.

The matter was set for a hearing in January 2023. Thirteen-year-old TD2 was allowed to testify without her parents being present in the courtroom. TD2 made her preference clear that she wanted to live with her father in Arizona, not with her mother. TD2 was fearful of AS at times, and she witnessed Paula and Shawn arguing loudly and fighting. Paula did not deny that law enforcement had been called to her house a few times due to arguments between her and Shawn. Shawn believed that law enforcement had been called out to the house about ten times. Nonetheless, Paula thought it best that TD2 remain with her; she was sure that if custody of TD2 were given to Eric, he and his family would ensure that TD2 lost contact with her. Paula did not believe that AS was ever a threat to TD2, and she said he had been moved to another facility. Paula presented a psychological evaluation into evidence demonstrating that she was psychologically stable and able to parent her children without any problems.

An Ash Flat police officer testified that he had been out to Paula's house in response to a domestic disturbance. During one of those calls (which Shawn had made), the officer saw red marks around Shawn's neck and face; Paula was given a citation, and Shawn left the residence. The officer confirmed there had been more calls to the police, sometimes by Paula and sometimes by Shawn.

Eric testified that he lives with his wife and YS in Arizona and that TD lives with his parents. He expressed concern about Shawn and Paula's frequent arguments that led to the police being summoned, and he was concerned about AS, who had lived in Paula's house and presented a danger to TD2.

The circuit court concluded that there were material changes in circumstances. Both parties had remarried, and Paula had violated prior court orders that prohibited AS from living in Paula's home with TD2. The circuit court found that it was in TD2's best interest to be in Eric's custody.

Paula appeals asserting that there were no material changes in circumstances and that it was not in TD2's best interest to change custody. She asserts that her violation of the prior court order that prohibited her adult son from being around TD2 did not rise to the level that warranted a change of custody. Paula argues that finding her in contempt rather than changing custody would have been a better decision. Paula has not demonstrated clear error in the circuit court's findings. Paula's argument essentially asks us to reweigh the evidence, which the appellate court will not do. *Szwedo v. Cyrus*, 2020 Ark. App. 319, 602 S.W.3d 759. As we have frequently stated, there are no cases in which the superior position, ability, and opportunity of the circuit court to observe the parties carry as great a weight as those involving minor children. *Skinner v. Shaw*, 2020 Ark. App. 407, 609 S.W.3d 454.

In deciding whether a modification of custody is in a child's best interest, the circuit court should consider factors such as the psychological relationship between the parents and the child, the need for stability and continuity in the relationship between parents and the

child, the past conduct of the parents toward the child, and the reasonable preference of the child. *Skinner, supra*.

These parties could not or would not co-parent effectively. Paula had openly defied a court order that she not allow AS to be around TD2. Shawn and Paula had frequent brushes with the law and problems with physical, loud arguments in the home. TD2 expressed a clear desire to live with her father. We have reviewed the court's findings, the record as a whole, and the applicable case law. We conclude that the court's finding of a material change in circumstances and that it was in TD2's best interest to change custody is not clearly erroneous.

Affirmed.

HIXSON and BROWN, JJ., agree.

R.T. Starken, for appellant.

Castleberry Law Firm, PLLC, by: *Kenneth P. "Casey" Castleberry*, for appellee.