REL: July 26, 2019

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2170922

C.M.L.

v.

C.A.L.

2170983

C.A.L.

v.

C.M.L.

Appeals from Lauderdale Circuit Court
(DR-04-605.03)

On Application for Rehearing in Case No. 2170983

DONALDSON, Judge.

This court's opinion of May 10, 2019, is withdrawn, and the following is substituted therefor.

C.M.L. ("the father") appeals and C.A.L. ("the mother") cross-appeals from a judgment of the Lauderdale Circuit Court ("the trial court") modifying their divorce judgment. The mother challenges the portion of the judgment modifying the custody of C.L. ("the child") to grant the father sole physical custody. The father challenges the portion of the judgment ordering the mother to pay the father a monthly amount of child support that deviates from the child-support guidelines in Rule 32, Ala. R. Jud. Admin. ("the Rule 32 guidelines"). We affirm the judgment as to the change in custody. We reverse the judgment as to the amount of child support ordered, and we remand the cause to the trial court.

Facts and Procedural History

The mother and the father were married in 1999, and the child was born in 2002. On June 15, 2005, the trial court entered a judgment divorcing the parties that incorporated the parties' agreement. The divorce judgment provided, among other

things, that the parties would have joint legal custody of the child and that the mother would have sole physical custody of the child. The divorce judgment also specified the father's visitation times with the child and ordered the father to pay the mother $541 a month for child support; the father's child-support obligation was subsequently changed to $507 a month by an order of the trial court entered on September 24, 2007. After the entry of the divorce judgment, the father remarried, and the mother has remarried three times. Both parties have two other children who are the child's half siblings. The father now lives in Winfield, and the mother lives in Killen.

On October 3, 2016, the father initiated the underlying action by filing a complaint seeking to modify provisions in the divorce judgment to obtain sole legal and physical custody of the child and child support from the mother. The father also sought to limit the mother's visitation with the child following any change of physical custody. In the complaint, the father alleged that the mother's husband, G.B., had a criminal history involving sexual offenses, including being charged on October 3, 2016, with indecent exposure, and that the mother was leaving the child with G.B. overnight while she

was traveling as part of her job. The father amended his complaint to further allege that, before the mother's relationship with G.B., the mother had had two previous marriages and that incidents of domestic violence had occurred during the mother's relationships with those former husbands. The mother filed an answer denying the father's allegations.

On October 6, 2016, the father filed a motion seeking pendente lite physical custody of the child pursuant to Rule 65(b), Ala. R. Civ. P. On October 11, 2016, the trial court entered an ex parte order granting the father pendente lite physical custody of the child. The mother filed a motion to dissolve that grant of custody.

On November 17, 2016, the mother filed a counterclaim seeking, in pertinent part, an order directing the father to pay for a child-support arrearage and finding the father in contempt; the mother alleged that the father had made insufficient child-support payments since 2008. The father filed a reply, alleging that he had fully paid child support in accordance with informal agreements he had reached with the mother.

On December 12, 2016, and January 30, 2017, the trial court conducted a hearing during which it received ore tenus testimony on the issue of pendente lite custody. At the conclusion of the hearing, the trial court stated that it was not dissolving the ex parte order granting the father pendente lite custody of the child.

On May 10, 2017, the trial court appointed a guardian ad litem for the child. On May 15, 2017, and June 20, 2017, the trial court conducted a trial. In addition to the evidence presented at trial, the trial court incorporated all the evidence received at the hearing held on the issue of pendente lite custody into the trial. The following facts regarding the mother's former husbands are not disputed. On June 8, 2006, the mother married J.M., her second husband, who lived in her home with the child and the mother's daughter. The mother's third child was born on December 5, 2007, while the mother and J.M. were separated. The mother and J.M. were granted a divorce on June 27, 2008. On February 18, 2011, the mother married S.F., her third husband, who lived in the mother's home with her children. On April 11, 2013, the mother and S.F. were granted a divorce. On February 7, 2015, the mother

married G.B., her fourth husband, who lived in her home with the children. The mother filed for a divorce in October 2016. The mother and G.B. were granted a divorce while the present action was pending.

The mother testified regarding an incident in 2007 in which her second husband, J.M., fired a pistol while threatening to commit suicide at their home. The mother testified that the child was not present during that incident. The mother testified regarding threats, harassment, and stalking by her third husband, S.F., at her home, a hotel room, and her workplace. She testified that S.F. was eventually charged with and pleaded guilty to domestic violence in the third degree. In her testimony, the mother admitted that she had not removed S.F. from the pickup list at the child's school.

As stated in the trial court's April 26, 2018, judgment, undisputed evidence indicates the following regarding G.B.:

> "On February 7, 2015 [the mother] married her fourth husband, [G.B.], and moved him into her home with her daughter and two sons.
>
> "[G.B.] has a history of criminal sexual activity. On October 15, 2008, [G.B.] was charged in the District Court of Cullman County, Alabama with Sexual Abuse 2nd Degree [§ 13A-6-67(a)(2), Ala. Code

> 1975,] of a [minor]. On March 23, 2009, [G.B.] was found guilty of Sexual Abuse 2nd Degree. On March 27, [2009,] [G.B.] appealed his conviction to the Cullman County Circuit Court and on September 19, 2011, entered a plea of guilty to Harassment (§ 13A-118(1)(a)[, Ala. Code 1975]). ...
>
> "[The mother] failed to disclose [G.B.]'s Cullman County criminal sexual history and conviction to [the father].
>
> "On October 22, 2015, [G.B.] was charged with Indecent Exposure [(offense date of October 9, 2015)] to a [minor] in the Municipal Court of Killen, Alabama .... On June 15, 2016, [G.B.] plead [sic] guilty to the amended charge of Public Lewdness. Killen Municipal Court Judge, Cliff Wright, ordered [G.B.] 'to immediately register as a sex offender.' ...
>
> "[The mother] failed to disclose [G.B.]'s Killen Municipal Court conviction to [the father].
>
> "On September 29, 2016, Killen police investigated a second report on [G.B.] for Indecent Exposure to a twenty eight year old female. On October 3, 2016, [G.B.] was charged in Lauderdale County with Indecent Exposure .... On May 1, 2017, following a trial, Lauderdale County District Judge Carole C. Medley found [G.B.] guilty as charged and specifically found 'that the evidence presented in this cause, as well as consideration of the similar, bordering identical facts in the Municipal Court of Killen, Alabama ... conviction, overwhelmingly met the burden of proof to find that the crime committed was sexually motivated.' Judge Medley ordered [G.B.] to serve one year (365 days) in the Lauderdale County Detention Center effective immediately, register as a Sex Offender with the Lauderdale County Sheriff's Office and comply with all regulations set out by the Sex Offender Registration Notification Act (SORNA). On May 2, 2017, [G.B.]

> filed [a] notice of appeal to the Lauderdale County Circuit Court. ..."

Matthew Holden, a police officer with the Town of Killen, testified that had known the father for approximately 15 years. He testified that he contacted the father in October 2016, informing him that he had arrested G.B. for the second time regarding a charge of indecent exposure. Holden testified that he had sometimes contacted someone if he felt that a child was in danger. The father testified that, after he found out about G.B.'s criminal history, he filed the complaint in this case seeking custody of the child. The father testified that he was worried about the danger resulting from the child's living with a sex offender and that the child and the mother's other children would often be left by themselves with G.B. because the mother had a job that required her to travel.

Kelly Muston testified that she registered and monitored sex offenders with the Lauderdale County Sheriff's Department and that G.B. had reported to her after the October 9, 2015, incident that led to his guilty plea to the charge of public lewdness. According to Muston, public lewdness is not generally considered a sex crime that requires registration as a sex offender, but, she said, the municipal court that

received G.B.'s guilty plea had nevertheless ordered G.B. to do so. Muston testified to having talked to the mother and G.B. and that, because G.B. had not been ordered to comply with all the requirements of the Alabama Sex Offender Registration and Community Notification Act, § 15-20A-1 et seq., Ala. Code 1975 ("SORNA"), she told G.B. and the mother that G.B. was required only to register as a sex offender for 24 months and did not have any work or living restrictions involving children. According to Muston, she had a duty to keep G.B.'s registration confidential, but that duty did not extend to the mother and G.B. Muston testified that, if the mother had notified anyone else, that conduct "may have caused other issues" but it would not have violated G.B.'s registration terms.[1] Muston testified that, in October 2016, G.B. moved to another county and no longer reported to her.

Regarding the October 9, 2015, incident that led to G.B.'s guilty plea to public lewdness, the mother testified that she had concluded that the incident was alcohol-related and that she did not believe any harm had occurred to the minor involved. The mother testified that she did not tell

[1]The nature of the "other issues" is not explained in Muston's testimony.

anybody about the case to protect G.B. and to protect her children from embarrassment at school. The mother testified that she found out about a 2008 incident in Cullman County after G.B. had been arrested for the 2015 incident. G.B. had been charged in Cullman County with sexual abuse of a minor who was the sister of his then wife, had been found guilty of the charge, but, on appeal to the circuit court, had eventually pleaded guilty to harassment. The mother testified that she had been informed that the minor involved in that incident later recanted her story, that G.B. had remained married to his wife at that time for another two years, that they had two children after the incident, and that G.B. denied that the incident happened. The mother testified that she did not inform anyone of the incident in Cullman County after she had learned of it.

According to the mother, after G.B. was arrested and charged with indecent exposure for the second time in 2016, she became concerned that living with him was a problem. The mother admitted that there were occasions when G.B. was alone with her children. According to the mother, she divorced G.B. immediately after that incident and changed her job to be with

the children more. The mother testified that she had not seen anything to cause her concern about G.B. being around the children before the incident in 2016 but that she had decided that she would not want to take a chance with him being around the children. At the time of the trial in this case, G.B. had been found guilty of indecent exposure resulting from the incident in 2016 and was required to register as a sex offender and to comply with all the requirements of SORNA.

The mother testified that the father has been a good father to the child, and she did not have a reason to believe that he will not continue to be a good father. The father testified that he did not have any concerns about the mother's parenting abilities but was concerned more with the company the mother keeps and the effect of keeping such company upon the child. The trial court received testimony regarding the parties' communications, their previous modification cases, their conversation after G.B.'s second arrest for indecent exposure, visitation matters, their relationships with the child, their daily routines with the child, their text messages regarding a disciplinary matter with the child, their employment and income, the father's house, the father's

marriage, the father's medication, and the father's alcohol intake.

As a consequence of the pendente lite custody order, the child left the high school he attended in the mother's custody ("the former high school") and began attending the high school in the father's location ("the current high school"). The father testified that, despite the child's initial struggles with a few tests in a subject, the child's grades overall have been consistent at the two high schools. The child's profile from the former high school indicated that the child had made mostly A's, one B, and one C in the first nine weeks of the 2016-2017 school year. A report card from the current high school indicates that the child made mostly A's, a few B's, and a couple of C's the first semester of the 2016-2017 school year.

According to the mother and the father, the child loves football and being part of a high-school football team. The child was on the football team of the former high school when the child was in the mother's custody. The mother testified that the child would have to wait a year before playing in a game with the football team of the current high school, if a

judgment granted the father sole physical custody of the child, but that the child could play right away for the football team of the former high school if she retained sole physical custody. The father testified that the child was practicing for the football team of the current high school and could play in games that year if a final judgment granted him sole physical custody of the child.

The father testified that the child was very popular and had more friends at the current high school than at the former high school. The mother testified that the child had told her that he liked going to school at the current high school and that the child had anxiety over the possibility of going back to the former high school because of the recent events and how people would treat the child. The mother testified that the pendente lite change in custody had had a negative effect on the child's relationships with her other children, herself, the child' friends at the former high school, and the mother's relatives. The mother testified that the change in custody has been stressful for the child and that she would enroll the child in counseling if the child returned to her custody. The

father testified that the child was a well adjusted 15-year-old who did not need therapy.

In the judgment, the trial court recounted the following statements regarding the child made by the guardian ad litem at the trial:

> "In his report to the Court, Dustin McCown, Esquire, Guardian ad Litem for the child ... stated that the child was unwavering in his decision to stay with his father. Due to the child spending every week-end with his father in Winfield, Alabama, he had friends there and wants to attend school there. In the opinion of the Guardian ad Litem, the child can have success in Winfield."

The trial court further found the following facts regarding child support that are not disputed:

> "On September 24, 2007, Lauderdale County Circuit Judge, Jimmy Sandlin, entered an order modifying [the father's] child support obligation to $507.00 each month effective September 1, 2007. On October 5, 2007, an income withholding order for said amount was entered. ...
>
> "[The father's] child support obligation was paid by withholding order through February of 2008.
>
> "Beginning in March of 2008 the parties initiated a process of altering [the father's] child support obligation [without court approval] by calculating guideline support based upon their respective current incomes."

Regarding the informal alterations to the child-support obligation, the father testified that, several times after

2008, he and the mother had agreed to recalculate his monthly child-support obligation based on the Rule 32 guidelines. The father testified that he had fulfilled his monthly obligations according to their agreements, which provided for less child support than the actual court-ordered amount. The mother testified that she had cooperated with the father in reaching the agreements but that she thought the father had obtained court orders modifying the child-support obligation based on their agreements. The father denied telling the mother that he was going to obtain court orders approving their agreements. The mother testified that she had not been aware that the father's income had increased a few times after 2009 and that the father had continued to pay the agreed-upon amount based on a lower reported income.

On April 26, 2018, the trial court entered its judgment modifying the physical-custody provision of the divorce judgment to provide that the father would have sole physical custody of the child and to grant visitation to the mother. In the judgment, the trial court declined to hold the father in contempt but ordered the father to pay a total of $25,983.34, representing his child-support arrearage and interest, through

monthly installments of $577.41, holding that the parties could not modify the child support ordered by the court by agreements that were not incorporated into orders of the court. The trial court ordered the mother to pay child support to the father, determining her monthly obligation as follows:

> "[The mother's] support obligation for the minor child of the parties as determined by application of the Child Support Guidelines, RULE 32 ALABAMA RULES OF JUDICIAL ADMINISTRATION is $604.24 each month. However, the Court declines to impose said support request/obligation on [the mother] due to extended periods of non-support in the past. Instead, the Court veers from Rule 32 and imposes an obligation of $100.00 per month which [the father] may deduct from his monthly payment of $577.41."

(Capitalization in original.)

On May 22, 2018, the father filed a motion to alter the provision in the judgment regarding the mother's child-support obligation. The father argued that the evidence presented at trial did not support a finding that the application of the Rule 32 guidelines would constitute a manifest injustice or would be inequitable. See Rule 32(A)(ii), Ala. R. Jud. Admin. On June 12, 2018, the trial court entered an order denying the father's motion.

On July 11, 2018, the father filed a notice of appeal to this court. On July 24, 2018, the mother filed a cross-appeal

to this court. This court consolidated the appeals ex mero motu. We have jurisdiction over these appeals pursuant to § 12-3-10, Ala. Code 1975.

Discussion

I. Appeal (No. 2170922)

In his appeal, the father argues that the trial court exceeded its discretion in ordering child support in an amount that deviated from the Rule 32 guidelines. In general, child-support matters are within the discretion of the trial court, and we will not reverse a judgment on those matters unless the trial court exceeded its discretion or the "the judgment is plainly and palpably wrong." Douglass v. Douglass, 669 So. 2d 928, 930 (Ala. Civ. App. 1995).

"Rule 32(A) and (C), Ala. R. Jud. Admin., provide a method of determining the amount of child support according to the parents' combined incomes and a schedule of basic child-support obligations." DeYoung v. DeYoung, 853 So. 2d 967, 969 (Ala. Civ. App. 2002). At the time the trial court entered its judgment in April 2018, Rule 32(A), Ala. R. Jud. Admin., provided, in relevant part:

> "Guidelines for child support are hereby established for use in any action to establish or modify child

support, whether temporary or permanent. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the establishment or modification of child support, that the amount of the award that would result from the application of these guidelines is the correct amount of child support to be awarded. A written finding on the record indicating that the application of the guidelines would be unjust or inappropriate shall be sufficient to rebut the presumption if the finding is based upon:

> "....
>
> "(ii) A determination by the court, based upon evidence presented in court and stating the reasons therefor, that application of the guidelines would be manifestly unjust or inequitable.
>
> "(1) Reasons for Deviating from the Guidelines. Reasons for deviating from the guidelines may include, but are not limited to, the following:
>
> > "....
> >
> > "(g) Other facts or circumstances that the court finds contribute to the best interest of the child or children for whom child support is being determined.

"The existence of one or more of the reasons enumerated in this section does not require the court to deviate from the guidelines, but the reason or reasons may be considered in deciding whether to deviate from the guidelines. The court may deviate from the guidelines even if no reason enumerated in

> this section exists, if evidence of other reasons justifying deviation is presented."[2]

"When the court determines that the application of the guidelines would be manifestly unjust or inequitable and then deviates from those guidelines in setting a support obligation, the court must make the findings required by Rule 32(A)(ii), Ala. R. Jud. Admin." DeYoung, 853 So. 2d at 970. "[E]ven when a trial court states its reasons for deviating from the child-support guidelines, the decision to deviate is still subject to review to determine whether the deviation is justified by the particular circumstances of that case." Green v. Green, 264 So. 3d 898, 902 (Ala. Civ. App. 2018).

In its judgment, the trial court ordered the mother to pay the father $100 a month and stated that it had deviated from the Rule 32 guidelines "due to extended periods of [the father's] non-support in the past." The father's past noncompliance with the provisions of the September 2007 judgment setting his child-support obligation, however, does not provide a valid basis to reduce the child support owed by the mother following the change of custody.

[2]Rule 32(A)(1) was amended effective January 1, 2019, to add a new subsection (A)(1)(g) and to designate former subsection (A)(1)(g) as subsection (A)(1)(h).

> "'Although child support is paid to the custodial parent, it is for the sole benefit of the minor children.' State ex rel. Shellhouse v. Bentley, 666 So. 2d 517, 518 (Ala. Civ. App. 1995). 'Parental support is a fundamental right of all minor children .... The right of support is inherent and cannot be waived, even by agreement.' Ex parte University of South Alabama, 541 So. 2d 535, 537 (Ala. 1989). This court has consistently held that a parent's noncompliance with a divorce judgment does not justify the termination of child support owed by the other parent. See McWhorter v. McWhorter, 705 So. 2d 423 (Ala. Civ. App. 1997); Floyd v. Edmondson, 681 So. 2d 583 (Ala. Civ. App. 1996); State ex rel. Shellhouse v. Bentley, 666 So. 2d 517 (Ala. Civ. App. 1995); Phillippi v. State ex rel. Burke, 589 So. 2d 1303 (Ala. Civ. App. 1991) (all holding that a parent's obligation to pay court-ordered child support is never contingent on the receipt of court-ordered visitation). See also S.F. v. State ex rel. T.M., 695 So. 2d 1186 (Ala. Civ. App. 1996) (requiring a father to pay child support even where the mother's sexual assault of the father had resulted in the conception of the child)."

Abel v Abel, 824 So. 2d 767, 768–69 (Ala. Civ. App. 2001).

In this case, the child does not receive any benefit from the reduction of the amount of the mother's child-support obligation, and there is no indication that the mother is unable to meet that obligation. The judgment establishes an arrearage owed by the father to resolve the issue of his past inadequate child-support payments but then also justifies reducing the amount of the mother's child-support obligation

on the same basis. Furthermore, not only did the child not receive the benefit of full child-support payments by the father, the judgment compounds the detriment by reducing the amount of future child-support payments. "A child's right to support from his parent is fundamental, and child support is for the sole benefit of the minor child." Floyd v. Abercrombie, 816 So. 2d 1051, 1056 (Ala. Civ. App. 2001). We cannot discern any injustice or inequity that justifies the reduction of the mother's payments for child support. Therefore, we conclude that the father's inadequate payments of child support in the past does not provide a valid basis for deviating from the Rule 32 guidelines.

II. Cross-Appeal (No. 2170983)

In her cross-appeal, the mother argues that the father failed to meet his burden of proof for a change of custody.

> "'When evidence in a child custody case has been presented ore tenus to the trial court, that court's findings of fact based on that evidence are presumed to be correct. The trial court is in the best position to make a custody determination--it hears the evidence and observes the witnesses. Appellate courts do not sit in judgment of disputed evidence that was presented ore tenus before the trial court in a custody hearing. See Ex parte Perkins, 646 So. 2d 46, 47 (Ala. 1994), wherein this

Court, quoting Phillips v. Phillips, 622 So. 2d 410, 412 (Ala. Civ. App. 1993), set out the well-established rule:

> "'"'Our standard of review is very limited in cases where the evidence is presented ore tenus. A custody determination of the trial court entered upon oral testimony is accorded a presumption of correctness on appeal, Payne v. Payne, 550 So. 2d 440 (Ala. Civ. App. 1989), and Vail v. Vail, 532 So. 2d 639 (Ala. Civ. App. 1988), and we will not reverse unless the evidence so fails to support the determination that it is plainly and palpably wrong, or unless an abuse of the trial court's discretion is shown. To substitute our judgment for that of the trial court would be to reweigh the evidence. This Alabama law does not allow. Gamble v. Gamble, 562 So. 2d 1343 (Ala. Civ. App. 1990); Flowers v. Flowers, 479 So. 2d 1257 (Ala. Civ. App. 1985).'"
>
> "'It is also well established that in the absence of specific findings of fact, appellate courts will assume that the trial court made those findings necessary to support its judgment, unless such findings would be clearly erroneous.'

"Ex parte Bryowsky, 676 So. 2d 1322, 1324 (Ala. 1996).

"The law is well settled that '[a] parent seeking to modify a custody judgment awarding

> primary physical custody to the other parent must meet the standard for modification of custody set forth in Ex parte McLendon[, 455 So. 2d 863 (Ala. 1984)].' Adams v. Adams, 21 So. 3d 1247, 1252 (Ala. Civ. App. 2009). The custody-modification standard set forth in Ex parte McLendon, 455 So. 2d 863 (Ala. 1984), requires that
>
> > "'the noncustodial parent seeking a change of custody must demonstrate (1) "that he or she is a fit custodian"; (2) "that material changes which affect the child's welfare have occurred"; and (3) "that the positive good brought about by the change in custody will more than offset the disruptive effect of uprooting the child." Kunkel v. Kunkel, 547 So. 2d 555, 560 (Ala. Civ. App. 1989) (citing, among other cases, Ex parte McLendon, 455 So. 2d 863, 865–66 (Ala. 1984) (setting forth three factors a noncustodial parent must demonstrate in order to modify custody)).'
>
> "McCormick v. Ethridge, 15 So. 3d 524, 527 (Ala. Civ. App. 2008)."

Walker v. Lanier, 180 So. 3d 39, 42 (Ala. Civ. App. 2015).

At the trial, the mother testified that the father was a good parent and that she saw no reason that he would not continue to be a good parent to the child. On appeal, the mother asserts a number of alleged facts regarding the father but without specifically asserting that the father is an unfit parent. To the extent that the mother raises the issue of the father's fitness as a parent, we do not discern any facts,

individually or in totality, that compelled the trial court to conclude that the father was an unfit parent.

The mother argues that insufficient evidence supports the trial court's finding that a material change of circumstances occurred, citing K.E.W. v. T.W.E., 990 So. 2d 375, 380 (Ala. Civ. App. 2007), in which this court stated:

> "A material change of circumstances occurs when important facts unknown at the time of the initial custody judgment arise that impact the welfare of the child. Mock v. Mock, 673 N.W.2d 635, 638 (N.D. 2004). A custodial parent's change of environment that endangers the child's physical or emotional health, safety, or well-being constitutes a material change of circumstances. Id. Undoubtedly, a custodial parent's actions that expose a child to a registered sex offender is a material change of circumstances affecting the physical and emotional health, safety, and well-being of the child. Id."

For over a year and a half, the mother and the child lived with G.B. in the same residence. In October 2015, G.B. was charged with indecent exposure in an incident involving a 15-year-old female. He pleaded guilty to an amended charge of public lewdness, and he was required to register as a sex offender for that offense. The mother also discovered in connection with the 2015 incident that a prior incident had occurred in Cullman County in 2008 from which G.B. was charged with sexual abuse of a minor in the second degree and found

guilty, but he pleaded guilty to harassment on appeal to the circuit court. The mother asserts that she was justified in allowing G.B. to remain in the residence because Muston had informed her that G.B. was not restricted from living with children and that she had been told that the incident in Cullman County did not happen. The mother testified that she did not notify the father, any of her children, or anyone else of the 2015 incident because she wanted to protect G.B. and her children from embarrassment. Although the mother asserts that Muston told her that G.B.'s conviction must remain confidential, Muston testified that her duty was to keep track of G.B.'s registration as a sex offender, that the registration was not public knowledge, but that the mother would not have violated G.B.'s registration terms if she had notified the father because her conduct was separate from Muston's duties.

After the 2015 incident, the mother remained married to G.B. and the child lived with them. Although G.B. was not required to comply with all the SORNA requirements in connection with the 2015 incident, on October 3, 2016, G.B. was again charged with indecent exposure, and he was

subsequently found guilty of that offense and ordered to register as a sex offender and to comply with all the SORNA requirements. The mother testified that there were times when G.B. had been alone with her children and that she did not want to take a chance with G.B. being around the children after the 2016 incident. The evidence, therefore, supports a finding that G.B., as a registered sex offender ordered to comply with the requirements of SORNA, posed a danger to the child. The mother does not point to any evidence showing that the threat to the child's health, safety, or welfare was any different in 2016 than in 2015 or before. Therefore, the mother's exposing the child to G.B. constituted a material change in circumstances. See K.E.W. v. T.W.E., supra.

The mother lastly argues that insufficient evidence showed that the benefits from the change in custody more than offset the disruption caused by uprooting the child. In addition to the matters discussed, the judgment finds that incidents of domestic violence occurred in the mother's marriages before her marriage to G.B. and that such incidents occurred at the child's home. The mother asserts that the child's health, safety, and well-being were not endangered by

the incidents of domestic violence. The mother, however, does not cite any legal authority regarding custody and domestic violence. "Rule 28(a)(10)[, Ala. R. App. P.,] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived." White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008). Therefore, we need not discuss whether a change of custody was warranted by the trial court's findings of domestic violence.

As discussed, the evidence supports a finding that, before the incident in October 2016 and the mother's filing for a divorce, the mother became aware that G.B. had been charged in 2008 with sexual abuse of a minor after G.B. had been charged for indecent exposure involving a minor in October 2015. Although the mother is no longer married to G.B., J.M., or S.F., the trial court could have considered the circumstances in her past relationships in determining the likelihood that the mother could place the child in circumstances affecting his safety or welfare. See D.N. v. J.H., 782 So. 2d 323, 326 (Ala. Civ. App. 2000) (reversing a judgment denying father's petition to modify custody, noting

that the evidence indicated that "the mother's lifestyle choices show an inclination that increases the likelihood that she will place the minor child in a dangerous or abusive situation").

The mother asserts that the change in custody disrupted the child's relationship with her, his half siblings on his mother's side, her parents, and some of his friends and interfered with his ability to play football. The evidence does not indicate that the change in custody prohibits the child from ever playing football in high school, and, in the father's physical custody, the child is able to be around his half siblings on his father's side as well as his stepmother's family. The evidence supports findings that the child prefers staying in the father's custody to attend the current high school, that the child has closer friends in Winfield, and that the child experiences anxiety over a potential return to the former high school. Although a child's preference is not dispositive on a custody-modification determination, a trial court may assign much weight to the custody preference of a child of sufficient age and discretion. Williams v. Williams,

189 So. 3d 98, 104 (Ala. Civ. App. 2015).[3] We cannot substitute our judgment for that of the trial court, and we conclude that it was within the trial court's purview to weigh the evidence on this issue and determine that the change in custody more than offset the disruption in the child's life. See Walker v. Lanier, supra.

Conclusion

For the foregoing reasons, as to the mother's cross-appeal, we affirm the judgment insofar as it changes custody to sole physical custody in the father. As to the father's appeal, we reverse the portion of the judgment ordering the mother to pay an amount of child support that deviates from the Rule 32 guidelines, and we remand the cause for proceedings consistent with this opinion.

[3]The mother asserts that the guardian ad litem had limited exposure to the case and advocated only for the child's personal wish to live with the father instead of the child's best interests. The guardian ad litem was present at the trial and met with the child twice in different settings. We see no indication in the record that the guardian ad litem's exposure in the case was unduly limited or that he did not advocate for the best interests of the child.

2170922 -- OPINION OF MAY 10, 2019, WITHDRAWN ON APPLICATION FOR REHEARING IN CASE NO. 2170983; OPINION SUBSTITUTED; REVERSED AND REMANDED.

2170983 -- APPLICATION GRANTED; OPINION OF MAY 10, 2019, WITHDRAWN; OPINION SUBSTITUTED; AFFIRMED.

Thompson, P.J., and Moore, Edwards, and Hanson, JJ., concur.