Rel: July 22, 2022

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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2022

2200786

John Carlton Corbitt

v.

Sara Renee Galyon Corbitt

Appeal from Morgan Circuit Court (DR-19-900148.01)

HANSON, Judge.

John Carlton Corbitt ("the father") appeals from a judgment entered by the Morgan Circuit Court ("the trial Court") modifying an earlier judgment entered by the 22d Judicial Circuit of Missouri ("the Missouri court") that dissolved the marriage of the father and Sara Renee

Galyon Corbitt ("the mother"). The trial court's judgment, among other things, awarded the mother sole legal and sole physical custody of the parties' children, A.J.C. and C.W.E.C. We affirm the trial court's judgment in part, reverse it in part, and remand the cause.

Background

On February 15, 2013, the Missouri court entered a judgment that divorced the parties ("the divorce judgment"). The divorce judgment awarded the parties joint custody of the children, who were born on August 21, 2004, and June 29, 2009, respectively; further, the father was ordered to pay the mother child support in the amount of $879 per month. It also contained provisions governing the parties' respective custodial periods. After the parties divorced, the parties relocated to Tipton County, Tennessee. Thereafter, the father filed in the Tipton County Chancery Court ("the Tennessee court") a petition to modify his child-support obligation, averring that he had been laid off from his employment. The Tennessee court reduced the father's child-support obligation to $650 per month. Subsequently, each party relocated to Morgan County.

In February 2020, the mother filed in the trial court a petition to modify the custody award, the father's child-support obligation, and the provisions governing the parties' respective custodial periods that had been included in the divorce judgment. The mother asserted in her petition that the father had been "purposefully underemployed in an effort to keep his child-support at a lower rate" and that the parties' sharing of joint custody of the children was not working because, the mother said, the parties could not agree on educational, extracurricular, and medical matters regarding the children. The father filed an answer to the mother's petition and a counterclaim requesting that he be awarded sole physical custody of the children and an amount of monthly child support calculated pursuant to Rule 32, Ala. R. Jud. Admin. The father, subsequently, filed an amended counterclaim requesting that the trial court hold the mother in contempt for violating the divorce judgment by preventing A.J.C. from visiting with the father.

On April 15, 2021, a trial was conducted. Before testimony was taken, the trial court reiterated its understanding of an agreement the parties had reached about the children giving testimony. Thereafter, the trial court stated the following:

> "I can't be present when I'm not in this courtroom with you and your children at your home, but what my preference is is that you leave their testimony alone so they don't have to repeat it to you. ... Your attorney will be in there to guide the testimony as best that they can[,] best[] as best [sic] that anybody can when someone else testifies. So any kind of punishment or retribution or even prying into what [the children] testified to should be avoided and, you know, if the [children] -- hopefully whatever we do here will get things back on track, and y'all will never have to use the court system again. ... So if you have to come back, and I learn from the [children] that they were pried into after they were asked to testify, put forth to testify, then, obviously, that would play into how the Court would view, you know, whatever parenting skills might be up for grabs or up for trial, so just try to avoid that."

In confirming the trial court's understanding of the parties' agreement, the mother's counsel stated: "Your Honor, I think we've come to an agreement that with respect to the children testifying that we would consent to have that done without the parties present." The mother's counsel clarified that each party's counsel, along with the court reporter, would be present while the children testified. The trial court allowed for a response from the father's counsel, and the father's counsel responded: "Just other than [sic] we would invoke the rule and so forth, have all of the witnesses other than the parties outside."

The father brought forth three witnesses, who all claimed to be observers of the father's relationship with the children. One witness,

William Corbitt, who is the children's paternal grandfather, testified that the father had spent as much time as possible with the children and that the children had seemed to enjoy their time with the father. Corbitt testified that it had been approximately one year since he had last seen A.J.C. spend time with the father but that C.W.E.C. had continued to visit with the father. The other two witnesses, Chris Herbison and Mike St. Pierre, testified that they had observed the father's interactions with the children. Herbison testified that the father's parenting style was "nothing out of the ordinary" and that the father was a disciplined and responsible adult who loved the children and wanted "nothing but the best for his children." St. Pierre testified that he had witnessed the father correcting the children whenever they had done something wrong but added that the father had never raised his voice when doing so. According to St. Pierre, the father always explained to the children what they had done wrong before punishing them. One of the punishments that St. Pierre had observed the father implement on the children was requiring them to perform push-ups.

The father's testimony centered mainly on A.J.C.'s refusal to visit with him. The father claimed that the mother had "poisoned" the minds

of the children and that that was the reason that A.J.C. refused to visit with him. According to the father, the mother or the children's maternal grandmother had bribed A.J.C. by offering to purchase a vehicle for his use if he did not visit with the father. The father also contended that the mother was unwilling to coparent because, he said, the mother did not agree with his ideas or decisions about the children's education, health care, and religious training. The father argued that the mother did not discipline the children, especially A.J.C., enough or as forcefully as she should. The father further testified that the mother had supported A.J.C.'s idea of attending a vocational school instead of a college or university. Finally, the father testified that he had never been purposefully underemployed and that his current annual salary was $80,000.

The mother testified that she was employed part-time as the Director of Faith Formation for the Messiah Lutheran Church in Madison and earned an annual salary of $22,500. The mother added that she earned an additional $3,600 per year from that same church because she had performed data administration for the church as well. The mother testified that she was a candidate to become a deacon in the

Evangelical Lutheran Church, which, she said, would allow her to become a full-time employee. However, at the time of trial, the mother was still a part-time employee at Messiah Lutheran Church, and she stated that she occasionally took care of dogs for extra income. Although the mother testified that she had earned extra income from taking care of dogs in the year the trial took place, the mother clarified that she was not guaranteed that income every year going forward.

In response to the father's contention that she had prevented A.J.C. from visiting with the father, the mother testified that she had actually encouraged A.J.C. to visit with the father or, at the very least, to spend time with the father at an archery range. The mother further explained that she had not bribed A.J.C. by promising him a vehicle if he did not visit the father; rather, the mother testified, she had been contemplating providing A.J.C. with a vehicle so that he could, among other things, drive himself to visit with the father.

The mother further testified that C.W.E.C. had been tested and accepted into an educational program for gifted students. According to the mother, that program would have allowed C.W.E.C. to engage in projects and activities that a regular school curriculum did not include.

The school attended by C.W.E.C. had required both parents to consent to his being taken out of class for three hours per week to engage in the program activities. However, according to the mother, the father believed that the program was a waste of time and allowed C.W.E.C. only to observe the other students in the program as they performed program projects and activities.

Additionally, the mother testified that, at school, A.J.C. had made a remark about a firearm and that he had been reported to school administrators based on that remark. A school-resource officer then went to both parties' homes to perform home visits. Because A.J.C. had been suspended from school, the home visits were necessary for A.J.C. to be allowed to return to school. The school-resource officer inspected the mother's home for any weapons. The mother did not have any firearms in her home and did not resist the school-resource officer's inspection of her home. In contrast, according to the mother, the father possessed firearms in his home, and he initially forbade the officer's inspection of his home. Because the father did not initially allow the school-resource officer to inspect his home, A.J.C. was not immediately allowed to return to school; only after several weeks had passed did the father allow the

school-resource officer to inspect his home to facilitate A.J.C.'s return to school.

The mother also testified that A.J.C. had had streptococcal pharyngitis on seven occasions over the course of one year, affecting his tonsils; A.J.C.'s physician recommended that he undergo a tonsillectomy to prevent any further tonsil infections. Although the mother scheduled a tonsillectomy at a medical center, that medical center subsequently canceled the planned surgery because the father had not given consent to the surgery. The father also prevented C.W.E.C. from getting an influenza vaccine and prevented A.J.C. from getting a human papillomavirus ("HPV") vaccine, both of which, the mother testified, are vaccines that are recommended for children by the Centers for Disease Control and Prevention ("the CDC"). There was also evidence indicating that C.W.E.C.'s ophthalmologist had found a scar on C.W.E.C.'s retina and had recommended genetic testing to assess how to proceed with treatment; however, the father had opposed the ophthalmologist's recommendation and insisted that C.W.E.C. proceed immediately to enrollment in a clinical trial of a certain alternative treatment, without

having discovered the exact medical condition that affected C.W.E.C.'s eyes.

C.W.E.C.'s testimony was brief, but it revealed that, when he had visited with the father, the father had implemented painful punishments. C.W.E.C. testified that the father would order him to do push-ups as punishment for things that C.W.E.C. believed did not merit a punishment. C.W.E.C. explained that the father would give him a time limit on a task and, that if C.W.E.C. did not complete the task within that time limit, the father would punish C.W.E.C. by making him do push-ups. C.W.E.C. admitted that, because he was "scrawny," push-ups were particularly painful for him to perform. C.W.E.C. added that on at least one occasion, the father had spanked C.W.E.C. and hit him on the head. C.W.E.C. also testified that the father had not allowed him to participate in the program for gifted students.

A.J.C. testified that he remembered that when he was younger, the father would "beat up" C.W.E.C. Throughout his testimony, A.J.C. recounted that the father had had mood swings and that, during those mood swings, the father had become violent. A.J.C. stated that he had typically experienced nausea, stomach problems, migraines, and panic

attacks when he visited the father. A.J.C. further testified that, during his visits with the father, he had always tried to prevent the father's mood swings from occurring. A.J.C., in explaining how he would prevent the father's mood swings, stated: "If it[']s people, making sure those people[] keep up his mood, controlling the conversation, controlling where objects are placed, how they're dusted." A.J.C. further stated that the father would make the children do push-ups and withhold food as forms of punishment. Additionally, A.J.C. said that the father was "cheap" and that the father had provided old and uncomfortable mattresses for both children to sleep on. A.J.C. further explained that the father would make the children pay for things that they had accidentally broken; any money that the children received as gifts from relatives and saved was used to pay the father if they accidentally broke an object in the father's home. A.J.C. also testified that if they wanted to go out to eat while visiting with the father, the children would have to pay for both their meals and the father's meal.

A.J.C. reported that, after ceasing his visits with the father, he no longer suffered from nausea, stomach problems, migraines, or panic attacks. A.J.C. testified that he had also attended counseling sessions to

process the anxiety that he had gone through during the time that he had visited with the father. After completing the counseling sessions, A.J.C. testified, he had contacted the father through telephone calls and had on occasion gone to an archery range with the father. A.J.C. admitted that he had never told the father about the anxiety that he had experienced because he feared that the father would retaliate against C.W.E.C.

On May 4, 2021, the trial court entered a judgment that, among other things, modified the custody of the children. The trial court recited the following findings of fact:

> "An anxious and suspecting relationship has developed between [A.J.C.] and his father. [A.J.C.] has not spent any significant time with this father since the summer of 2020. [A.J.C.] states his father has withheld food as punishment and has been manipulating the family. [A.J.C.] has refused to visit with the [father]. [A.J.C.] does see a counselor and has made some progress concerning the relationship he has with his father by developing mental tools to manage his anxiety. The [father] is also suspicious of [A.J.C.] and attributes his failure to visit to [A.J.C.'s having been] offered a vehicle in exchange for refusal to visit. [C.W.E.C.] has maintained a relationship with his father but wants more certainty.
>
> "...The parties cannot reach an agreement on crucial matters involving their children.
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> "...The evidence revealed that [A.J.C.] has sought counseling and that the [father] has participated in some calls and a visit with [A.J.C.] since [A.J.C.] began refusing to see him. [A.J.C.]'s testimony and demeanor reveals that he has

real anxiety about seeing the [father] privately or overnight. Regardless of the reasons behind the anxiety, the Court finds that it is a factor which must be addressed if the relationship will be remedied. When [A.J.C.] first refused to see the [father], the [father] called the police into the situation on two occasions. [The mother] made reasonable efforts to encourage visitation. The [father] expressed his belief that the counseling has helped [A.J.C.].

"....

"The [mother] earns $1,900 per month, has no costs for child care, and has enrolled the children in Allkids for health insurance. The [father] earns $6,666 per month, has no child care, and no costs for health insurance for the children.

"There has been sufficient/material change of circumstance to warrant a change of custody. It is in the best interest of the children to modify the prior Orders in this case.

"Having considered the same, it is hereby ORDERED as follows:

" ... The [mother] is awarded sole legal and physical custody of the minor children subject to the [father]'s visitation as set out below. The parties shall consult one another concerning substantial decisions involving the children. However, if the parties cannot agree, the [mother] shall have the sole rights and responsibilities to make major decisions concerning the children, including, but not limited to, the education of the children, health care, and religious training.

" ... The [father] shall have visitation with the minor children any time the parties agree. If the parties cannot agree, the [father] shall have visitation as set out in the schedule attached as exhibit 'A.'

> " … The [father] shall have full access to the school, medical, and legal records of the minor children.
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> " … The [father] shall pay monthly child-support in the amount of $1,088 to the [mother] until child-support terminates according [to] the child-support laws/regulations of the State of Missouri. …
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> "….
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> "The [father] shall not withhold food from the minor children as a form of discipline, punishment, or for any other reason."

The trial court further directed that, if the parties could not agree on visitation as to C.W.E.C., the father was to have "standard visitation" with C.W.E.C. In A.J.C.'s case, the trial court directed the parties and A.J.C. to "make all reasonable efforts with A.J.C.'s counselor to establish a relationship with the [father] suitable for visitation." Again, the trial court allowed the parties to come to an agreement with respect to the father's visitation with A.J.C. However, if the parties could not agree on visitation, the trial court's judgment permitted the father to, at the very least, exercise visitation with A.J.C. from June 1, 2021, through November 1, 2021, via telephone on two occasions per week and also at any joint-counseling session approved by A.J.C.'s counselor. After

November 1, 2021, the level of in-person visitation between A.J.C. and the father was to increase incrementally.

Both parties filed timely postjudgment motions pursuant to Rule 59(e), Ala. R. Civ. P., asking the trial court to alter, amend, or vacate the judgment. The mother specifically requested that the trial court clarify visitation times between the father and C.W.E.C. The father argued that the trial court had erred in awarding sole physical and sole legal custody to the mother, alleging that there was insufficient evidence to support the custody award; that the trial court had erroneously refused to allow the father to introduce relevant evidence; that the trial court had erred in failing to hold the mother in contempt; and that the trial court had incorrectly computed his child-support obligation because, the father said, the mother had failed to disclose certain supplemental income. Subsequently, the trial court granted the mother's postjudgment motion and amended the visitation schedule in the modification judgment. The trial court denied the father's postjudgment motion, and the father timely filed a notice of appeal from the judgment as amended.

In Camera Interview with Children

On appeal, the father contends that the trial court violated his due-process rights because the trial court conducted an in camera interview with the children that was held outside the presence of the parties. According to the father, the trial court did not give him an opportunity to defend himself from the children's damaging testimony. We disagree.

Before any testimony at trial had been taken, the trial court asked counsel for the parties to state their agreement that the parties had reached about how the children would testify. The mother's counsel stated: "Your Honor, I think we've come to an agreement that with respect to the children testifying that we would consent to have that done without the parties present." The mother's counsel clarified that each party's counsel would be present, along with the court reporter, while the children testified. The trial court then permitted a response from the father's counsel, who stated: "Just other than [sic] we would invoke the rule and so forth, have all of the witnesses other than the parties outside."

Although the father adamantly argues that the trial court did not allow him an opportunity to defend himself, the father's counsel was present during the children's testimony, and, through his counsel, the

father had an ample opportunity to test the veracity of the children's testimony. Further, the father's counsel failed to object to the terms of the parties' agreement as stated by the mother's counsel so as to preserve his due-process issue for appellate review. Our supreme court has held:

> "'Specific objections or motions are generally necessary before the ruling of the trial judge is subject to review, unless the ground is so obvious that the trial court's failure to act constitutes prejudicial error.' Lawrence v. State, 409 So. 2d 987, 989 (Ala. Crim. App. 1982). See also Ex parte Works, 640 So. 2d 1056, 1058 (Ala. 1994)(recognizing that '[t]he purpose of requiring a specific objection to preserve an issue for appellate review is to put the trial judge on notice of the alleged error, giving an opportunity to correct it before the case is submitted to the jury')."

Ex parte J.W.B., 230 So. 3d 783, 791 (Ala. 2016).

Denial of Admission of Evidence

The father next argues that the trial court erroneously refused to let him introduce into evidence testimony regarding certain events that had occurred before 2017. The father specifically argues that the trial court erred in denying the admission of "evidence of issues resulting from the custody and visitation awarded by" the Missouri court and the Tennessee court; evidence concerning his role in toilet training the children, who were 16 years old and 12 years old at the time of trial; evidence indicating that A.J.C. had experienced respiratory problems

while living in the basement of one of the mother's homes; evidence concerning changes in the children's sleep schedules; and evidence suggesting that the mother had purposefully been underemployed. We disagree.

The record reveals that the father did attempt to introduce testimony about A.J.C.'s having respiratory problems, and the father attempted to testify that those respiratory problems stemmed from A.J.C.'s living in the basement of the mother's home. However, when the mother's counsel objected to that testimony, the trial court asked whether the father had personal knowledge about the living conditions in the basement or if he had even been inside the mother's home, to which the father responded negatively, after which the trial court sustained the objection to the father's testimony. See Rule 602, Ala. R. Evid., and Rogers v. Rogers, 307 So. 3d 578, 590 (Ala Civ. App. 2019) (stating that a fact witness must have personal knowledge of the subject matter of the testimony). With respect to the mother's employment, the record is silent on whether the father sought to prove that the mother could have acquired higher paying employment. The other three categories of allegedly erroneously excluded evidence that the father alludes to in his

brief are vaguely described, and no offer of proof was made such that we cannot assess whether the trial court exceeded its discretion in denying admission of this testimony or evidence. See Harbert v. Harbert, 721 So. 2d 244, 225 (Ala. Civ. App. 1998) (stating that, unless the gesture would be futile by virtue of the trial court's attitude, an offer of proof is necessary to preserve the objection to a trial court's ruling). Lastly, the father argues that the mother, for her part, was allowed to testify concerning events occurring before 2017; however, the father did not lodge any objection to the mother's testimony. As stated above, specific objections or motions must be raised before the trial court, the purpose of the specific objection being to put the trial judge on notice of the alleged error and to afford it an opportunity to correct the alleged error. Ex parte J.W.B., 230 So. 3d at 791. Therefore, we find no reason to reverse the judgment under review based on the trial court's denial of the admission of evidence proffered by the father, including evidence relating to certain events occurring before 2017.

Custody Modification and Visitation Award

The father further argues that the trial court's judgment modifying custody is not supported by the evidence. The father argues that the

custody modification was based "solely on the preference of [A.J.C.]" and that A.J.C.'s testimony was speculative at best. Specifically, the father posits that the trial court haphazardly credited A.J.C.'s testimony without further investigating A.J.C.'s account about his having experienced anxiety while visiting with the father, claiming that this court should reverse the trial court's judgment and remand this cause. We disagree.

> "Where, as in the present case, there is a prior judgment awarding joint physical custody, '"the best interests of the child"' standard applies in any subsequent custody-modification proceeding. Ex parte Johnson, 673 So. 2d 410, 413 (Ala. 1994) (quoting Ex parte Couch, 521 So. 2d 987, 989 (Ala. 1988)). To justify a modification of a preexisting judgment awarding custody, the petitioner must demonstrate that there has been a material change of circumstances since that judgment was entered and that '"it [is] in the [child's] best interests that the [judgment] be modified"' in the manner requested. Nave v. Nave, 942 So. 2d 372, 376 (Ala. Civ. App. 2005) (quoting Means v. Means, 512 So. 2d 1386, 1388 (Ala. Civ. App. 1987)).
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> "Also, we note the presumption of correctness accorded to a trial court's judgment:
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> > "'When [an appellate court] reviews a trial court's child-custody determination that was based upon evidence presented ore tenus, [it presumes] the trial court's decision is correct: "'A custody determination of the trial court entered upon oral testimony is accorded a presumption of correctness on appeal, and we will not reverse unless the

> evidence so fails to support the determination that it is plainly and palpably wrong....'" Ex parte Perkins, 646 So. 2d 46, 47 (Ala. 1994), quoting Phillips v. Phillips, 622 So. 2d 410, 412 (Ala. Civ. App. 1993) (citations omitted). This presumption is based on the trial court's unique position to directly observe the witnesses and to assess their demeanor and credibility. This opportunity to observe witnesses is especially important in child-custody cases. "In child custody cases especially, the perception of an attentive trial judge is of great importance." Williams v. Williams, 402 So. 2d 1029, 1032 (Ala. Civ. App. 1981).'

"Ex parte Fann, 810 So. 2d 631, 633 (Ala. 2001)."

Ex parte Blackstock, 47 So. 3d 801, 804-05 (Ala. 2009).

In his brief, the father cites Bishop v. Knight, 949 So. 2d 160 (Ala. Civ. App. 2006), for the proposition that "'the preference of the child, regardless of ... age and maturity, is not determinative of the issue of custody but is merely a factor the trial court may consider in reaching its decision.'" Bishop, 949 So. 2d at 166 (quoting Glover v. Singleton, 598 So, 2d 995, 996 (Ala. Civ. App. 1992)). We note that the trial court heard extensive testimony not only from the children, but also from three of the father's character witnesses, the father himself, and the mother. Additionally, the trial court's judgment indicated specific findings of fact,

which show that the trial court did not base the custody modification solely upon A.J.C.'s preference of which parent he would like to live with.

The father also cites Vick v. Vick, 688 So. 2d 852 (Ala. Civ. App. 1997) in support of his contention that the trial court should have declined to consider A.J.C.'s testimony because, the father says, that testimony was speculative at best. We distinguish Vick from the present case because the trial court in Vick determined that one witness's testimony tending to indicate that the father in that case had been denied visitation was speculative. The pertinent witness in Vick contributed nothing else of potential evidentiary value. Here, the witness whose testimony the father contends to have been "speculative at best" is A.J.C. himself, who at the time of the trial was 16 years old and who gave extensive testimony about the father.

We further note that, in both Bishop and Vick, the parents who sought modification of existing custody awards had been required to meet the burden imposed by Ex parte McLendon, 455 So. 2d 863 (Ala. 1984):

> "In Ex parte McLendon, we held that the trial court cannot order a change of custody '"unless [the parent] can show that a change of the custody will materially promote [the] child's welfare."' 455 So. 2d at 865 (quoting Greene v. Greene, 249 Ala. 155, 157, 30 So. 2d 444, 445 (1947)). We noted in Ex parte McLendon that '[i]t is important that [the parent] show that

> the child's interests are promoted by the change, i.e., that [the parent seeking the change in custody] produce evidence to overcome the "inherently disruptive effect caused by uprooting the child."' 455 So. 2d at 866."

Ex parte Cleghorn, 993 So. 2d 462, 466-67 (Ala. 2008). Thus, when an earlier custody award designates one parent as a child's physical custodian, "[t]he parent seeking the custody change must show not only that [he or] she is fit, but also that the change of custody 'materially promotes' the child's best interest and welfare." Ex parte McLendon, 455 So. 2d at 866. However, in this case, unlike in Bishop and Vick, the divorce judgment awarded the parties joint custody of the children, which award was not modified by the Tennessee court. When there is a prior judgment awarding joint physical custody, "the best interests of the child" standard applies in any subsequent custody-modification proceeding. See Ex parte Johnson, 673 So. 2d 410, 413 (Ala. 1994). A petitioning parent's burden of persuasion under "the best interests of the child" standard, the standard that applies in this case, is lower than the burden that must be met under the McLendon standard, the standard that applied in Bishop and Vick. See Johnson, 673 So. 2d at 413 (describing the burden of persuasion under the McLendon standard as a "stricter standard").

The father next argues that this case is similar to Bird v. Brandy, 192 So. 3d 1165 (Ala. Civ. App. 2015), in which this court reversed the judgment of the trial court in that case. This court's reversal of the trial court's judgment in Bird stemmed from the fact that the trial court's findings in that case had been based purely on speculation. We determined that the trial court in Bird had based its judgment on the possibility of the occurrence of a future event, i.e. the prospect of the mother's potential future relocation. The uncertainty of the potential future event at issue in Bird renders that case distinguishable. Although the father posits that A.J.C.'s testimony regarding A.J.C.'s having suffered anxiety while with the father was speculative, that testimony was not about possible future events; rather, A.J.C.'s testimony was based on concrete past events and recollections, and A.J.C. provided several particular examples of instances when he had felt anxious in the father's home.

The father also argues that the trial court's visitation award was improper with respect to A.J.C. The father cites to S.A.N. v. S.E.N., 995 So. 2d 175 (Ala. Civ. App. 2008), in which we determined that the trial court's visitation restrictions in that case were not necessary to protect a

child from a noncustodial parent who had been convicted of sexual abuse. The trial court in this case did not restrict the father's visitation with A.J.C. based on an existing criminal conviction; the father's visitation with A.J.C. was instead restricted based on testimony presented to the trial court regarding the father's conduct directed toward the children. In W.K.D. v. B.L.D., 694 So. 2d 11 (Ala. Civ. App. 1997), this court affirmed a trial court's judgment, in which the mother in that case was awarded sole physical custody of the parties' 15-year-old daughter. 694 So. 2d at 12. In W.K.D., this court stated that, "[b]ased on the finding of sexual abuse, coupled with other factors (i.e., the child's age, her maturity and intellectual level, her express fear of her father, and her preference to live with her mother)," the trial court did not exceed its discretion in awarding physical custody to the mother. 694 So. 2d at 13. In this case, A.J.C., who is 16 years old, testified that he had suffered stomach problems, migraines, and panic attacks when he had visited the father. Therefore, the trial court acted within its discretion when restricting the father's visitation with A.J.C. and setting forth a visitation schedule that would slowly increase the amount of time that A.J.C. spent visiting with the

father. We perceive no reason to disturb the visitation provisions of the trial court's judgment.

The father next contends that the trial court erroneously modified custody of C.W.E.C. The father contends that there was not sufficient evidence upon which the trial court could have based its custody modification. Again, we disagree.

C.W.E.C. testified that the father had punished him for reasons that, according to C.W.E.C., did not merit a punishment. C.W.E.C. offered as an example an incident when the father had administered a punishment for not completing a task within the time that the father had specified. C.W.E.C. testified that the father's most common punishment for him was forcing him to do push-ups. Because he was "scrawny," C.W.E.C. testified, push-ups were painful for him; moreover, C.W.E.C. testified that the father knew this and had often threatened to require him to do push-ups. C.W.E.C. also testified that the father had prevented him from participating in an educational program for gifted students that C.W.E.C. had qualified for, simply because the father believed that the program was a waste of time. The father also opposed the children's receipt of routine influenza and HPV vaccines recommended by the CDC.

Not only did the father oppose the administration of those recommended vaccines, but he also opposed medical treatments that had been recommended for both children by their physicians. Therefore, the trial court could have properly determined that it was in the best interests of C.W.E.C. to be in the sole legal and physical custody of the mother.

Modification of Child-Support Award

The father next argues that the trial court erred in determining that a modification of child support was warranted, because, he says, the mother failed to show any material change in circumstances warranting an increase in child support. We disagree.

> "At the outset, we note that our standard of review in this case is very limited. Alimony, child support, and their subsequent modifications are matters that rest within the trial court's discretion, which will not be disturbed on appeal absent an abuse of discretion that is so unsupported by the evidence as to be plainly and palpably wrong. Brannon v. Brannon, 477 So. 2d 445 (Ala. Civ. App. 1985). A presumption of correctness attaches when the trial court receives ore tenus evidence, and, unless the evidence shows the trial court to be palpably wrong, we must affirm the judgment. Blankenship v. Blankenship, 534 So. 2d 320 (Ala. Civ. App. 1988)."

Cooper v. Cooper, 550 So. 2d 439, 439-40 (Ala. Civ. App. 1989). A child-support modification is warranted when "'a material change of circumstances that is substantial and continuing'" is shown by the party

seeking the modification. Dimoff v. Dimoff, 606 So. 2d 159, 161 (Ala. Civ. App. 1992)(quoting Moore v. Moore, 575 So. 2d 95, 96 (Ala. Civ. App. 1990)). Factors that indicate a change of circumstances include a material change in the needs, conditions, and circumstances of the children. Id.

In R.D.F. v. R.J.F., 271 So. 3d 831 (Ala. Civ. App. 2018), the parties shared joint custody of the parties' three younger children, and the father had sole physical and sole legal custody of the parties' oldest child. 271 So. 3d at 832-33. After evidence was presented at trial, the trial court awarded the mother sole physical and sole legal custody of all four children, and the trial court ordered the father to pay child support in accordance with Rule 32, Ala. R. Jud. Admin. This court held that the trial court in R.D.F. had had the authority to modify an award of child support incident to that court's custodial award because the trial court had been tasked with determining the proper custodial arrangement. 271 So. 3d at 838.

In this case, the trial court was also tasked with determining a proper custodial arrangement for the children. As discussed above, the trial court, in this case, modified custody of the children. A modification

of the custody of the children is inherently a material change in circumstances. See In re A.M.W., 313 S.W.3d 887, 891 (Tex. App. 2010) (stating that "a change in custody of a child is, in and of itself, a material and substantial change"). In accordance with R.D.F., we conclude that the trial court did not err when it exercised its discretion to modify the father's child-support obligation because the trial court modified custody of the children.

Calculation of Child-Support Award

Further, the father argues that the trial court erred in its child-support calculation because, he says, the trial court failed to consider all of the mother's extant sources of income. We cannot determine how the trial court calculated the mother's monthly gross income, therefore, we reverse the trial court's judgment as to the amount of the child-support award.

> "Rule 32(E), Ala. R. Jud. Admin., states in pertinent part: 'A standardized Child Support Guidelines Form and Child Support Obligation Income Statement/Affidavit Form shall be filed in all actions to establish or modify child support obligations.' (Emphasis added.) That rule further provides that 'in stipulated cases the court may accept the filing of a Child Support Guideline Notice of Compliance Form.'
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> "The Alabama Rules of Judicial Administration were promulgated by our Alabama Supreme Court. Our supreme

court has held that the word 'shall' usually indicates that the requirement is mandatory. Ex parte Brasher, 555 So. 2d 192 (Ala. 1989). 'However, "shall" may also be construed as being permissive where the intent of the legislature would be defeated by making the language mandatory.' Id. at 194. Here, however, we are not concerned with legislative intent. Instead, we are concerned with the plain language of our supreme court. Our supreme court has consistently held that the word 'shall' is mandatory when used in a rule promulgated by that court. See Waites v. University of Alabama Health Services Foundation, 638 So. 2d 838 (Ala. 1994); Ex parte Head, 572 So. 2d 1276 (Ala. 1990); Jefferson County Commission v. F.O.P., 543 So. 2d 198 (Ala. 1989). 'The decisions of the supreme court shall govern the holdings and decisions of the court of appeals....' (Emphasis added.) § 12-3-16, Alabama Code 1975.'

"We hold, therefore, that the word 'shall' in Rule 32(E), Ala. R. Jud. Admin., mandates the filing of a standardized Child Support Guidelines Form and a Child Support Obligation Income Statement/Affidavit Form. In stipulated cases, however, the trial court may accept the filing of a Child-support Guideline Notice of Compliance Form. We further hold that stipulated cases, i.e., where the parties have agreed upon a child support amount in compliance with the guidelines, are the only exceptions to the requirement of filing a child support guideline form and income affidavit forms. See Comment, Rule 32, Ala. R. Jud. Admin. We presume that if the parties have agreed upon an amount for child support in compliance with Rule 32, then, if an appeal is taken by either party, the amount of child support will not be an issue before an appellate court. Without the child support form and the income statement forms, it is difficult and sometimes impossible for an appellate court to determine from the record if the trial court did or did not correctly apply the guidelines in establishing or modifying child support obligations."

Martin v. Martin, 637 So. 2d 901, 902-03 (Ala. Civ. App. 1994).

The record reflects that the standardized "Child Support Guidelines" form (Form CS-42) prepared by the trial court in conformity with Rule 32(E), Ala. R. Jud. Admin., determined the mother's monthly gross income to be $1,900, which is an amount that does not match the amount that the mother disclosed at trial. Additionally, the record does not reflect the submission of any Form CS-41, "Child Support Obligation Statement/Affidavit," in which the parties might have set forth their sources of income so as to allow us to determine whether the trial court correctly applied the guidelines.

At trial, the mother disclosed that she received $22,500 as a yearly salary from part-time employment as the Director of Faith Formation for the Messiah Lutheran Church and an additional $3,600 per year from that same church because she performed data administration for it as well. Upon asking for clarification of her average yearly income, the mother admitted that her average yearly income was $26,100, which would mean, by comparison with Rule 32 and the pertinent forms, that the mother's monthly gross income is $2,175 and not $1,900. Because we cannot determine how the mother's monthly gross income of $1,900 was

calculated, that part of the trial court's judgment regarding child support is reversed, and we remand this case for the trial court to fully comply with Rule 32, Ala. R. Jud. Admin., especially Rule 32(E), in making a determination of child support.

Contempt

Finally, the father contends that the trial court erred in failing to hold the mother in contempt for purportedly violating the provisions governing his custodial periods with A.J.C. as set forth in the divorce judgment. The father specifically argues that the mother willfully failed and refused to allow the father to visit with A.J.C.

> "[W]hether a party is in contempt of court is a determination committed to the sound discretion of the trial court, and, absent an abuse of that discretion or unless the judgment of the trial court is unsupported by the evidence so as to be plainly and palpably wrong, this court will affirm."

Stack v. Stack, 646 So. 2d 51, 56 (Ala. Civ. App. 1994). This court was presented with similar facts in Shellhouse v. Bentley, 690 So. 2d 401 (Ala. Civ. App. 1997). There, the parties' 15-year-old daughter refused to visit with the mother in that case. Although the father in Shellhouse had transported the daughter to meet with the mother, the daughter refused to leave the father's vehicle in the absence of the application of physical

force. The trial court in Shellhouse adjudged the father in contempt for "'willfully and intentionally interfering'" with visitation between the mother and the daughter. 690 So. 2d at 402. This court reversed, however, holding that "[t]here was no evidence to indicate that the father ha[d] willfully or intentionally interfered with the visitation schedule." 690 So. 2d at 403.

> "There are circumstances where it is reasonable, equitable and to the best interest of children that they not be required to visit with a non-custodial parent because of their unwillingness or fear to do so. Such a determination could be made by a trial court in a case where the evidence reasonably satisfied that court that it was not in the best interest of children to be made to visit with a non-custodial parent where they were so unwilling to visit that parent that adverse psychological damage would result and that no good would result from forced visitation. However, such a case is rare and the exception, for it is an extreme decision that restricts an otherwise relatively qualified parent from visiting his or her child.
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> "On the other hand, regardless of a child's fears and wishes, a trial court may, and normally should, require visitation even if it is forced upon a child, for the desires of a child might be given absolutely no credence in visitation litigation when the trial court is reasonably satisfied from the evidence that a child is merely parroting the wishes of the custodial parent, or that the child is too immature to form a considered opinion, or where the child expresses fears or unwillingness to visit without any reasonable basis or foundation."

Hagler v. Hagler, 460 So. 2d 187, 189 (Ala. Civ. App. 1984).

The trial court determined that the facts of this case, taken as a whole, constituted exceptional circumstances warranting a determination that it is not in the best interests of A.J.C. to be forced to immediately visit in-person with the father. The record supports the proposition that A.J.C.'s unwillingness stemmed from having experienced stomach problems, migraines, and panic attacks while visiting the father; thus, the trial court could have properly determined that forced in-person visitation could cause A.J.C. "adverse psychological damage." Hagler, 460 So. 2d at 189. A.J.C. testified that he had been the one who had refused to visit with the father and added that the mother had actually encouraged him to visit the father or to meet him at an archery range to spend some time together. The mother confirmed A.J.C.'s testimony and stated that, besides using physical force, there was nothing else she could do. Accordingly, on the authority of Shellhouse and Hagler, we conclude that the trial court did not err in deciding not to find the mother in contempt of the court.

Conclusion

For the reasons set forth herein, the judgment of the trial court is affirmed except as to the amount of the child-support award, which is

reversed. The cause is remanded for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

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