REL: March 12, 2021

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190828 and 2190829

Leslie Cantrell Russell

v.

Christopher Thomas Self

Appeals from Blount Circuit Court
(DR-09-95.03 and DR-09-95.04)

EDWARDS, Judge.

Leslie Cantrell Russell ("the mother") and Christopher Thomas Self ("the father") were divorced by a 2010 judgment of the Blount Circuit

Court ("the trial court"). In the 2010 divorce judgment, the trial court awarded the parties joint legal custody of their two children, A.S. ("the son") and E.S. ("the daughter"); awarded the mother sole physical custody of the children; and awarded the father visitation every other weekend, every Wednesday night, and alternating weeks every June and July. The mother sought a modification of the father's visitation in 2018; that action was concluded by an agreement of the parties that continued visitation as outlined in the 2010 divorce judgment.

In February 2019, the mother filed a petition seeking modification of the father's visitation based on his arrest on drug-related charges; that action was assigned case number DR-09-95.03. Contemporaneously with the filing of her petition, the mother also sought and received an ex parte order suspending the father's visitation rights. On February 27, 2019, the parties reached an agreement, which the trial court incorporated into its pendente lite order, allowing the father to have supervised visits with the children every other weekend from 8:00 a.m. to 5:00 p.m. on Saturdays and from 1:00 p.m. to 6:00 p.m. on Sundays; the children's paternal grandparents were designated the supervisors of the father's visits. In

addition, the agreement permitted the daughter to choose whether or not to visit with the father. In October 2019, the trial court amended the pendente lite visitation order to allow the father to have unsupervised visits every other weekend between the hours of 7:00 a.m. and 10:00 p.m. on Saturdays and "until 6:00 p.m. on Sundays"; the amended order also permitted the father to have overnight visitation but required that such overnight visitation be supervised by the paternal grandparents.[1] The daughter was still permitted to choose whether or not to visit the father.

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[1]The visitation provision in the amended pendente lite order reads, in its entirety:

> "[The visitation] schedule shall continue with the following modifications:
>
> > "a. Saturday visitation may begin at 7 am and continue overnight until Sunday at 6 pm
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> > "b. [The father's] visitation may be unsupervised between the hours of 7 am and 10 pm (or until the visitation ends at 6 pm on Sundays). Which means that if the children stay overnight during the [father's] visits, the paternal grandparents must be present."

The provision does not specify what time visitation is to begin on Sundays if the father does not exercise overnight visitation and the children return to the home of the mother.

In September 2019, the father filed a petition seeking modification of his child-support obligation; that action was assigned case number DR-09-95.04. After the mother informed the father that she would be relocating to Decatur from Oneonta because she had taken a position as a high-school principal, the father filed an objection to her relocation, to which the mother responded by pointing out that the address to which she was relocating was less than 60 miles from the father's residence. The father later amended his petition to request a modification of custody based on the mother's relocation.

After a trial held on July 13, 2020, the trial court entered a single judgment in both cases awarding the father physical custody of the son, declining to modify visitation regarding the daughter, ordering the mother to pay child support to the father, and ordering the father to pay to the mother $7,533 for his child-support arrearage. After her postjudgment motions were denied, the mother timely appealed..

We begin our review of the trial court's judgment with the oft-stated applicable standard of review in mind. A trial court's judgment in a child-custody case based on testimony presented ore tenus is presumed to be

correct. See Ex parte Bryowsky, 676 So. 2d 1322, 1324 (Ala. 1996). As our supreme court has explained, "[t]he trial court is in the best position to make a custody determination -- it hears the evidence and observes the witnesses." Ex parte Bryowsky, 676 So. 2d at 1324. Accordingly, we have observed that, "[i]n 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). As an appellate court, we are not permitted to reweigh the evidence or to substitute our judgment for that of the trial court. Phillips v. Phillips, 622 So. 2d 410, 412 (Ala. Civ. App 1993). This court can reverse a trial court's custody judgment only when that judgment is so unsupported by the evidence that the judgment is plainly and palpably wrong or when an abuse of the trial court's discretion is demonstrated. Phillips, 622 So. 2d at 412.

The father, as the party seeking to modify an existing custody award to the mother, was 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). As the McLendon court explained, showing a favorable change in the noncustodial parent's circumstances is not sufficient, because "[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. Thus, in order to support the change in custody, the father was required to show that a change in the son's custody would promote the son's best interests and offset the inherent disruption in the son's life naturally caused by a change in custody.

The father testified at the July 13, 2020, trial that he was 42 years old and that he had battled an addiction to prescription drugs in 2018 and early 2019. He admitted that he had purchased prescription drugs for which he had no prescription, including Adderall, benzodiazepines, and opiate-based narcotic painkillers. According to the father, he typically

purchased the drugs from people located in Oneonta, but he said that he could not recall how he had located or contacted his dealers. He also said that he did not know if those persons were still living in or around Oneonta.

The father said that he had last used unprescribed prescription drugs on January 30, 2019, the date on which he was arrested for possession of Adderall, benzodiazepines, and, possibly, opiate-based narcotic painkillers during a traffic stop. The father admitted that, during his active addiction, he had kept the various prescription drugs in his house, albeit locked in a gun safe, and that he had likely taken those drugs during periods the children were in his care. He said that he had attended an inpatient drug-treatment program and that he had also attended intensive outpatient treatment and Alcoholics Anonymous meetings since his release from the treatment program. He denied any use of nonprescribed drugs at the time of the trial.

The father, who is a certified public accountant, also testified that he was unemployed, having been laid off from his position as a controller of a fabrication plant in March 2020 when the COVID-19 pandemic began.

He said that he had sent resumes to at least four companies, including an accounting firm in Cullman and an equipment company in Tarrant. The father admitted that he lived in a house owned by his parents and that he did not pay rent. He said that he did pay for utilities and for upkeep and any repairs to the property. The father also admitted that his vehicle had been repossessed for his failure to make payments and that his father-in-law had purchased a truck for him to drive; he said that he paid the monthly payment on the truck to his father-in-law. The father further admitted that he was not current on his child-support obligation, although he did not indicate the amount of his arrearage.

The father testified that he had a close relationship with the son. He described the activities that they engaged in, including turkey hunting, deer hunting, and the son's extracurricular sports, which the father helped coach. He also commented that the son was particularly close to an uncle in Oneonta who also hunted with the son. According to the father, he typically saw the son seven days per week, when considering all the activities in which they were engaged. He explained that he was concerned about the driving that he would have to do to attend the son's

activities if the son were to move to Decatur and also expressed concern that the son would not have the opportunity to play sports on the school teams in Decatur because of the larger number of students vying for positions on those teams. In addition, the father complained that, if the son were to join school sports teams in Decatur, the son would have to attend summer workouts, which, the father indicated, would impact the father's summer visitation with the son.[2] The father also commented that it would be difficult for him to spend time with the children and his two children from his present marriage if the son were allowed to move to Decatur.

Cynthia Self, the father's mother, testified that she had seen the children regularly, although perhaps not as much in the month before the trial, and that she had a good relationship with both of them. She, too, testified that the father had been laid off from his employment as a result of the COVID-19 pandemic, but she admitted that she had simply made

[2]We presume that the son would also have to attend summer workouts in Oneonta and that the father's actual concern was the fact that he would be required to transport the son back and forth to Decatur for those workouts if the mother retained custody.

the assumption that the father was laid off because of the pandemic. She admitted that the father lived in a house that she and her husband owned, but she indicated that she was not aware if he paid rent to them for living there. She also admitted that the father had had a drug problem.

The mother testified that she had been an assistant principal or a principal in the Oneonta school system for approximately nine years. She explained that she desired to seek a position as a school superintendent in the future and that she had been advised to seek experience at all schooling levels and from other areas in order to increase her attractiveness as a candidate for a superintendent position. She said that she had learned of the principal position at Decatur High School when she was contacted by the board administrators about the position. Although she said that she had initially turned down the offered position, she said that she had later decided to consider the position, had visited the school several times, and had discussed the idea of relocating with the son, the daughter, and her husband. She indicated that the children had had differing opinions about the idea but that the daughter, who had been opposed to the idea, had come to her and told her, before she had applied

for the job, that she would understand if the mother wanted to take the job. When asked if she could have remained in Oneonta and still taken the new position, the mother indicated that she could have but that it was unlikely that she would have been able to retain the position because, she said, she was told that the school board expected its principals to be involved in the community surrounding the schools they led.

The mother was cross-examined about the "report card" for the Decatur school system, which, according to the testimony, was lower than that of the Oneonta school system. The mother testified that the school systems had different compositions, with Decatur having a larger percentage of students under the poverty rate, which, she indicated, impacted the scores. She also noted that she intended to address some of the problems that Decatur High School was encountering were to be addressed in her administration, including certain issues involving credentialing and the failure to administer standardized testing to all students, during her administration. The mother also commented that, if she maintained custody of the children, the son and the daughter would be in advanced-placement or dual-enrollment classes and would have a

variety of electives to choose from at Decatur High School and opined that they would not be negatively impacted by the lower scores of the Decatur school system.

The son testified that he was 11 years old and that he had completed the 5th grade. He said that he enjoyed math and that he played baseball and basketball and intended to play football in the upcoming season. He explained that the father had coached his baseball and basketball teams and was very involved in his life. According to the son, he and the father have a "real good relationship" and he "gets along real good" with his stepmother and his half brothers. The son admitted that he also had a "pretty good" relationship with his mother, his stepfather, the daughter, and his half brother, J.T.R. The son described the mother's new house in Decatur as being in a good neighborhood and said that he liked the house. He indicated that he "would deal with" the move to Decatur if he had to but that he did not want to move. He said that he would prefer to live with the father in Oneonta, where he could attend the school he had attended since kindergarten, remain involved in sports, and continue his existing friendships.

The daughter testified that she was 16 years old and that she had completed the 10th grade. She, too, described the mother's new house in Decatur as being in a nice neighborhood and added that the neighborhood had a nearby pond in which the son and her half brother, J.T.R., could go fishing. She explained that she had begun practicing with the Decatur High School volleyball team, had become involved in a high-school sorority, and had secured a part-time job in Decatur. According to the daughter, she had initially been opposed to the idea of the move, but, she said, she had since changed her mind and thought of it as a "fresh start" for everyone. She added that the son had initially told the mother that he wanted to move but that, after a visit with the father, he had changed his mind. She testified that she and the mother had a "super close" relationship but that her relationship with the father was not as close. The daughter related her growing suspicions about the father's drug use caused by his conduct in 2018 and the resulting arrest of the father in 2019, which, she indicated, had negatively impacted her trust of the father.

On appeal, the mother argues that the trial court erred in modifying custody of the son. She specifically contends that the father did not present sufficient evidence to meet the standard set out in Ex parte McLendon. Relying on Glover v. Singleton, 598 So. 2d 995, 996 (Ala. Civ. App. 1992), the mother points out that the son's stated desire to live with the father is not a sufficient basis for a change in custody. She also contends that the father's apparent improvement in his circumstances by allegedly conquering his drug addiction is also insufficient to support a change of custody. See Johnson v. Johnson, 262 So. 3d 1229, 1236 (Ala. Civ. App. 2018). In addition, relying on Mardis v. Mardis, 660 So. 2d 597, 599 (Ala. Civ. App. 1995), and the plurality opinion in Alverson v. Alverson, 28 So. 3d 784, 787 (Ala. Civ. App. 2009), the mother argues that the trial court did not have sufficient reason to separate the children.

Indeed, the mother is correct "that rehabilitative measures taken by the noncustodial parent -- standing alone -- are insufficient to warrant a change in custody." Johnson, 262 So. 3d at 1236. The mother is similarly correct that the son's stated desire to live with the father in Oneonta could not be solely determinative of the custody issue. We have often explained

that " '[t]he preference of the child, regardless of h[is] 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 v. Knight, 949 So. 2d 160, 166 (Ala. Civ. App. 2006) (quoting Glover, 598 So. 2d at 996).

However, although the mother is correct that "Alabama law generally encourages trial courts not to separate siblings," E.F.B. v. L.S.T., 157 So. 3d 917, 925 (Ala. Civ. App. 2014), she is incorrect that the father was required to establish a "compelling reason" to separate the siblings before the trial court could have done so. This court rejected the requirement that a custody judgment that separates siblings must be supported by a "compelling reason" for doing so in A.B. v. J.B., 40 So. 3d 723, 729 (Ala. Civ. App. 2009); see also Stocks v. Stocks, 49 So. 3d 1220, 1232 (Ala. Civ. App. 2010) (recognizing that the holding of A.B. rejected the requirement that the separation of siblings be supported by a "compelling reason"). In A.B., this court explained that, under Alabama law, "siblings may be separated if the trial court concludes, based on sufficient evidence in the record, that the separation will serve the best interests of the children at issue." 40 So. 3d at 729. We have also

explained that "the law more specifically requires a trial court to assess the best interests of each child individually when determining the custody arrangement that best suits the interests of each child." E.F.B., 157 So. 3d at 925. We are aware that Johnson v. Johnson, 66 So. 3d 784, 786-87 (Ala. Civ. App. 2011), reiterates the "compelling reason" requirement; however, that case appears to be an aberration in our caselaw after A.B., and we take this opportunity to overrule it.

Upon review of the trial court's judgment, it is clear that the trial court's decision to modify custody of the son is not based solely on his stated desire to live with the father or on the sole fact that the father had overcome his addiction. The trial court observed in its judgment that the father had been very involved with the son and determined that he was a fit custodian despite his previous issues with addiction. The trial court also properly considered the son's testimony regarding his desire to live with the father. Thus, we are not convinced by the mother's argument that those two factors could not "solely" form the basis for the trial court's decision.

Insofar as the mother contends that the trial court could not properly separate the son and the daughter, we also cannot agree that the separation of the siblings supports reversal of the trial court's judgment. The evidence relating to the son and the daughter in the present case was quite divergent, indicating that the daughter had undertaken the relocation to Decatur with excitement but that the son did not desire to leave his life in Oneonta. In its judgment, the trial court clearly explained how it had considered the son's particular best interests and found that the relocation to Decatur with the mother would be more of a disruption to the son's life than a change of physical custody to the father would be. See Martin v. Ellis, 647 So. 2d 790, 792 (Ala. Civ. App. 1994) (affirming a custody-modification judgment and noting that the child "would be 'uprooted' to a certain extent, regardless of whether custody remained with her mother or was awarded to her father").

The evidence supports the trial court's conclusion. The son testified that he enjoyed a close relationship with his father and desired to remain in Oneonta to attend the same school, which was academically superior to those in the Decatur school system, and that doing so would allow him

to participate in the same sporting activities and to retain his existing friendships. In contrast, the evidence indicated that the daughter had embraced the relocation to Decatur and enjoyed a particularly close relationship with the mother but had a more strained relationship with the father. Thus, we cannot conclude that the evidence does not support the trial court's conclusion that, in this particular case, the separation of the children would serve their respective best interests. See E.F.B., 157 So. 3d at 925 (explaining that a trial court should consider "the best interests of each child individually" when making a custody determination).

The mother has presented arguments based on valid legal principles relating to the modification of custody, but the mother fails to recognize that the trial court did not base its decision on the sole factor of the change in the father's circumstances or solely on the son's desire to live with the father. Instead, the trial court was faced with a combination of factors that it determined supported the conclusion that the son's best interests would be materially promoted by the change of custody. Chief

among those factors was the mother's decision to accept employment in and to move to Decatur.

"Although a change in the custodial parent's residence does not necessarily justify a change in custody, it is a factor for a trial court to consider when determining whether to modify custody." Martin, 647 So. 2d at 792. The mother's decision to relocate, although certainly understandable, impacts the son, and, in light of the ore tenus presumption, we cannot revisit the trial court's determination that the son's best interests would be materially promoted by awarding his custody to the father so that the son could remain in Oneonta at the school he has attended since kindergarten and with the extended family and friends with whom he has substantial relationships. Accordingly, we affirm the judgment of the trial court awarding custody of the son to the father.[3]

2190828 -- AFFIRMED.

2190829 -- AFFIRMED.

Moore, Hanson, and Fridy, JJ., concur.

Thompson, P.J., dissents, with writing.

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[3]The mother raises no argument relating to the provisions governing visitation with the daughter or to the child-support obligation imposed upon her. Thus, those issues are waived. Chamberlin v. Chamberlin, 184 So. 3d 1016, 1024 (Ala. Civ. App. 2014).

THOMPSON, Presiding Judge, dissenting.

I respectfully dissent.

The record demonstrates that, in 2017, Leslie Cantrell Russell ("the mother") became concerned that her former husband, Christopher Thomas Self ("the father"), had a substance-abuse issue. The mother, who had sole physical custody of the parties' two minor children pursuant to the parties' divorce judgment, filed an action seeking to modify the father's visitation. The parties reached an agreement in 2017 to continue the father's visitation unchanged, and the trial court incorporated that agreement into a June 2018 judgment.

The mother initiated the current action shortly after the father was arrested on January 30, 2019, on drug charges. The father later asserted a claim seeking a modification of custody based on the mother's move to Decatur from Oneonta for employment.

At the ore tenus hearing in the current modification action, the father admitted that he had had an addiction to and had been abusing prescription medications for three years before his January 30, 2019, arrest on drug charges. Therefore, he conceded, he was abusing

prescription drugs at the time of the 2017 action and at the time the June 2018 judgment was entered in that action. The father admitted that, in that earlier proceeding, he "most likely" had represented that he was "not any longer addicted to drugs at that time," and he admitted that, when the parties entered into their agreement and the trial court entered its judgment in June 2018, his denial of his addiction was "most likely" not truthful.

Following his January 30, 2019, arrest on drug charges, the father attended a two-week substance-abuse program in February 2019 and participated in drug court. The father testified that he currently attends weekly recovery-support meetings. A little over a year after his arrest on drug charges, the father testified that he was no longer addicted to prescription medications. However, as the mother noted, the father had made that representation at the time the parties reached the agreement upon which the 2018 modification judgment was based, and the father's claims that he did not have a substance-abuse issue were not truthful at that time. The mother points out that there are several other aspects of the father's testimony that strain credibility, including his insistence that

he "could not recall" what medications, or how much (i.e., more than a handful or less than a handful) of each type of prescription medication, were in his possession when he was arrested. The father purported to be unable to recall how, or from whom, he had purchased his prescription drugs when he was abusing those substances. The father also insisted that he had kept all the prescription drugs he had purchased from other people in a locked safe in his house, but he admitted that he had those medications with him when he was arrested in 2019.

The only "material change" in circumstances to warrant a modification of custody of the son that the father identified was the mother's move to Decatur for her employment. The father stated that when the mother and the children had lived in Oneonta, and before January 30, 2019, he had exercised visitation in excess of that granted under the divorce judgment and the June 2018 modification judgment. Thus, it is clear that, although the father was active in the son's life, the mother encouraged that relationship. The father stated that he was concerned that his relationship with the son would be materially changed by the reduction in that extra visitation time that he had exercised before

January 30, 2019. The father stated that if the son enrolled in extracurricular sports in Decatur, the father might not be able to attend as many events as he had when the son was in Oneonta. I note that the same would be true of the mother's ability to attend the son's athletic events if custody were modified.

Further, as the mother pointed out, beginning in early February 2019, the trial court had substantially restricted the father's visitation because of the father's arrest on drug charges and his addiction issues.[4] Pursuant to a June 15, 2020, order of the trial court, the father was permitted to resume his normal visitation schedule with the son, and that normal schedule of visitation began on June 21, 2020, only three weeks before the July 13, 2020, ore tenus hearing in this matter. The father presented no evidence indicating that the court-imposed reduction in his visitation between February 2019 and June 2020 due to his own conduct

[4]The father's visitations were initially restricted to supervised visits during certain hours on the weekends. Later, the trial court allowed the father unsupervised visits during the day on some weekends, but it required that any overnight visitations be supervised by the children's paternal grandparents.

had damaged his relationship with the son. However, he insisted that the mother's move would cause that relationship to be damaged.

Of more concern to me is the father's disregard of the likelihood that, if custody of the son was modified, the son and the daughter would be separated and their relationship would suffer; the father dismissed questions on that issue by stating that the son had told him that he and the daughter "barely speak anyway."

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).

The fact that the father testified that he has changed his life and is no longer abusing prescription medication is not, in itself, enough to meet

the McLendon standard; "[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. "The burden imposed by the McLendon standard is typically a heavy one, recognizing the importance of stability." Ex parte Cleghorn, 993 So. 2d 462, 468 (Ala. 2008) (footnote omitted). In modifying custody when a custodial parent changes residences, a trial court may not simply consider the benefits to the child of remaining in his or her community; rather, the trial court must also consider the disruption to the child in changing from one parent's home to the other parent's home.

At the time of the July 13, 2020, hearing, the father stated that he had been sober for approximately 18 months and that he had only weeks earlier resumed normal visitation with the parties' son. The record does not support a determination that the mother's move would interfere with the father's custodial periods as set forth under the earlier judgments. The father was not employed at the time of the hearing, and much of his testimony amounted to speculation regarding how future employment

might impact the amount of time the could spend with the son and/or the father's new family. The evidence establishes that the mother has encouraged the relationships between the father and the son and between the son and his extended paternal family. In fact, allowing a custody modification based on a reduction in visitation in a situation in which a custodial parent has obligingly allowed visitation in excess of that set forth in a custody judgment would have a dampening effect for such parental cooperation in the future and in other cases.

> "It is the policy of the courts to encourage amicable agreements between the parties in custody matters, because such agreements benefit all the parties, and the children in particular. Ex parte Couch, 521 So. 2d 987, 990 (Ala. 1988). That policy would be frustrated if 'agreed-upon changes to a custody arrangement [could] be considered to be relinquishment of a part[y's] rights under the previous custody judgment.' Watters v. Watters, 918 So. 2d 913, 917 (Ala. Civ. App. 2005)."

Cochran v. Cochran, 5 So. 3d 1220, 1228 (Ala. 2008).

After carefully reviewing the evidence in the record, I disagree with affirming the trial court's custody-modification judgment. The record establishes that the mother has provided the son a stable, supportive environment and that she has encouraged his relationship with the father.

The evidence does not support a conclusion that the mother's change of residence endangered the son's physical or emotional health. See Cochran v. Cochran, supra. The opportunities for the son in the mother's new community were similar to those offered in Oneonta, except for the proximity to the father. In fact, the son was initially enthusiastic about the move until it occurred.

The father presented evidence indicating only that he did not want the son living further away from him, that that move would be inconvenient for him, and that it might damage his relationship with the son; notably, the father did not mention whether the significant reduction in visitation with the son caused by the father's substance-abuse issues had had any impact on that relationship. Although the son indicated a preference to remain in Oneonta, the preferences of a child are a factor in a child-custody action, but they are not determinative. C.E. v. C.C.H., 922 So. 2d 934, 937 (Ala. Civ. App. 2005).

Moreover, the trial court's judgment operates to separate siblings. After reviewing the evidence in the record, I do not believe that the evidence is sufficient to establish that separating the son and the

daughter is in the best interests of either child or that the father has demonstrated a sufficient reason for doing so. A.B. v. J.B., 40 So. 3d 723, 729 (Ala. Civ. App. 2009) ("[O]ur caselaw more accurately holds that siblings may be separated if the trial court concludes, based on sufficient evidence in the record, that the separation will serve the best interests of the children at issue."). In its August 6, 2020, modification judgment, the trial court found that an award of custody to the father was in the son's best interests and that an award of custody of the daughter to the mother was in the daughter's best interests. However, in reaching our holding in A.B. v. J.B., supra, "[w]e did not mean that, in reaching that determination, the trial court should disregard the relationship between the children and inquire into the best interests of each child in isolation." K.U. v. J.C., 196 So. 3d 265, 274 (Ala. Civ. App. 2015). In this case, the trial court made no determination regarding whether separating the son and the daughter was in their best interests. The son was 11 years old at the time of the modification hearing, and he had lived his entire life with the daughter. I question whether an 11-year-old child is capable of understanding the significant impact, both currently and in the future, of

a separation from a sibling. This is particularly true in this case, when the daughter's relationship with the father, and her willingness to visit him, has been strained by the father's own conduct regarding his addiction. Thus, in this case, it seems clear that the siblings will have contact with each other only during the mother's visitation periods with the son. There is no evidence indicating that it is in the daughter's best interests to have a more distant relationship with yet another family member, i.e., her brother, that would result from the separation of these siblings.

A judgment that separates siblings should be a rare and unusual occurrence. I believe that, in determining whether it is within siblings' best interests to live in separate households, more evidence than a preference of a young child not to move to another town must be considered, and I do not agree with the implication in the main opinion that the significance of the loss of daily contact with a sibling is ameliorated by proximity to friends and the same extracurricular activities available in the other town.

The evidence does not support the conclusion that there has been either a material change in circumstances in this case sufficient to modify

custody or the conclusion that a change in custody would promote the son's best interests. The father did not meet his burden under the McLendon standard, and he did not present sufficient evidence to warrant separating these siblings. For those reasons, I dissent.