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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-74

	Opinion Delivered September 15, 2010
RETA J. ERWIN APPELLANT	APPEAL FROM THE BAXTER COUNTY CIRCUIT COURT [NO. DR-2006-587-3]
V.	HONORABLE JOHN PUTNAM, JUDGE
RANDY S. ERWIN APPELLEE	AFFIRMED IN PART; REVERSED AND REMANDED IN PART

JOHN MAUZY PITTMAN, Judge

This is an appeal from a postjudgment domestic-relations decree arising out of contempt motions concerning child visitation and support. For reversal, appellant contends that the trial court erred in denying her visitation with her minor child and in calculating the amount of the children's medical bills and necessities owed to appellant by appellee. We affirm in part, reverse in part, and remand.

The parties in this case were divorced by an order of May 4, 2007. The divorce decree awarded the parties joint custody of their three children and made no provision for child-support payments, providing instead that each party was responsible for half of the necessary expenses of the children. Two of the children subsequently attained their majority, the only remaining minor being a sixteen-year-old boy. On July 30, 2009, an agreed order was entered, stating that it was in the boy's best interest to grant sole custody to the appellee-

father, and making the following provision for the appellant-mother's visitation:

> Visitation shall begin with the mother having visitation with the parties' minor child every other week for a three-hour period to be in a public place after the first visit with the counselor unless the counselor thinks it is not in the child's best interest.

After a contempt hearing held just over one month later on August 3, 2009, the trial court modified the order to provide that appellant and her son would each attend separate counseling sessions until the counselor determined that joint counseling sessions would be in the boy's best interest. Appellant was denied all visitation. In addition, appellee was required to pay appellant $995.80 as his share of past medical expenditures made for the children during their minorities.

Appellant first argues that the trial court erred in completely denying her visitation. We agree. In reviewing domestic-relations cases, we consider the evidence de novo but will not reverse a trial court's findings unless they are clearly erroneous or clearly against the preponderance of evidence. *Huey v. Huey*, 90 Ark. App. 98, 204 S.W.3d 92 (2005). The trial court maintains continuing jurisdiction over visitation orders and may modify or vacate those orders at any time when it becomes aware of a material change in circumstances or of facts not known to it at the time of the initial order. *Meins v. Meins*, 93 Ark. App. 292, 218 S.W.3d 366 (2005). However, although visitation is always modifiable, courts require more rigid standards for modification than for initial determinations in order to promote stability and continuity for the children and in order to discourage repeated litigation of the same issues. *Id.* Thus, the party seeking a change in visitation has the burden to demonstrate a

material change in circumstances that warrants such a change. *Hass v. Hass*, 80 Ark. App. 408, 97 S.W.3d 424 (2003). The polestar consideration is the best interest of the child; factors to be considered in the best-interest determination include (1) the wishes of the child; (2) the capacity of the party desiring visitation to supervise and care for the child; (3) problems of transportation and prior conduct in abusing visitation; (4) the work schedule or stability of the parties; and (5) the relationship with siblings or other relatives. *Id.*

The prior order provided for appellant to have visitation with the minor child following joint counseling. The present order makes no provision for visitation or for joint counseling. On the record before us, we can find no evidence of a material change in circumstances during the month between the two orders that would support such a change. There is evidence that the boy has a good deal of animosity for appellant, but nothing to show that this has been exacerbated. Likewise, there is testimony that appellant and the initial counselor had a disagreement and the ordered counseling never occurred, but nothing to show that the circumstances were so clearly appellant's fault that it would be impracticable to obtain counseling elsewhere. We therefore reverse on this point and remand for the trial court to enter an order consistent with this opinion, recognizing that any evidence of changed circumstances occurring after this appeal was lodged may, if requested, be taken into consideration in the ultimate determination regarding visitation.

We find no error with respect to appellant's argument that the trial court erred in

calculating the amount that appellee owed to appellant for the children's necessities. Appellant appeared at trial with receipts purporting to represent her expenditures for the children's necessities and demanding reimbursement of one-half of the total amount, arguing that this was required by the original joint-custody order making each parent responsible for one-half of the children's necessary expenses. However, there was evidence that, since the entry of the original decree, appellee had in fact had physical custody of two of the children in his home while appellant had custody of only one child. The trial judge reasoned that, in the absence of a complete itemization of expenditures, it was impossible to determine the amount of setoff to which appellee was therefore entitled. The judge limited himself to finding the amount of the medical bills that appellee had not paid, for which appellant had not been reimbursed. On the record before us, we cannot say that the trial judge clearly erred in either his method or his computations, and we therefore affirm on this point.

Affirmed in part; reversed and remanded in part.

VAUGHT, C.J., and KINARD, J., agree.