IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-CA-01162-COA

EKATERINA V. BLAGODIROVA **APPELLANT**

v.

JOSE C. SCHROCK **APPELLEE**

DATE OF JUDGMENT:	09/14/2020
TRIAL JUDGE:	HON. JACQUELINE ESTES MASK
COURT FROM WHICH APPEALED:	MONROE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	JAK McGEE SMITH
ATTORNEYS FOR APPELLEE:	JASON D. HERRING MICHAEL SPENCER CHAPMAN
NATURE OF THE CASE:	CIVIL - CUSTODY
DISPOSITION:	AFFIRMED IN PART; REVERSED AND RENDERED IN PART - 11/01/2022
MOTION FOR REHEARING FILED:	

BEFORE WILSON, P.J., WESTBROOKS AND EMFINGER, JJ.

WESTBROOKS, J., FOR THE COURT:

¶1. Ekaterina Blagodirova appeals from the chancery court's child-custody modification order that granted Jose Schrock sole physical custody of J.R.[1] and Blagodirova visitation rights. After review, we affirm in part and reverse and render in part.

FACTS AND PROCEDURAL HISTORY

¶2. Blagodirova, who was a Russian immigrant, and Schrock, who was from Paraguay, married on November 21, 2006, in Las Vegas, Nevada. Later, they moved to Tupelo, Mississippi, and Blagodirova gave birth to their only son, J.R., in October 2007. The couple

[1] For the privacy and protection of the minor child, we use initials.

later filed a joint complaint for divorce due to irreconcilable differences on August 6, 2013, in Monroe County, Mississippi (where Schrock resided). Both parties signed a Separation and Property Settlement Agreement (the "Agreement") and agreed to certain child custody terms relating to their son J.R.[2] The parties agreed to joint custody of J.R., with Blagodirova having sole physical custody and Schrock having visitation.[3] Schrock also agreed to a monthly $500 child support payment. The chancery court issued its final decree of divorce with the Agreement attached on October 17, 2013.

¶3. After her divorce from Schrock, Blagodirova remained in Tupelo. She later began a romantic relationship with Andres Maldonado De La Rosa (Maldonado), J.R.'s soccer coach and an undocumented immigrant from Mexico. Maldonado and Blagodirova married on August 27, 2014, and Maldonado moved into Blagodirova's home around that time. Although Blagodirova and Maldonado divorced on April 2, 2015, he continued to live in Blagodirova's home. Blagodirova testified that she only divorced Maldonado because an immigration attorney[4] told her that a divorce was in her and Maldonado's best interests. The chancery court, however, determined that no reason existed for the divorce. In any event, Maldonado and Blagodirova would later remarry on September 18, 2018.

---

[2] The final divorce decree incorporated the Agreement by reference.

[3] Visitation rights in this case consist of time with the minor child every other weekend and alternating holidays.

[4] The identity of the immigration attorney has not been disclosed or determined, and no immigration attorney testified or corroborated this fact.

I. Petition For Child Custody Modification

¶4. One night, Maldonado was driving in the car with Blagodirova and J.R. when they were stopped at a roadblock, and Maldonado was subsequently arrested for not having a driver's license. After his arrest, he was deported to Hidalgo, Mexico. During that time, Blagodirova went to visit him. Sometime later, Maldonado re-entered the United States without citizenship and once again began residing with Blagodirova and J.R.

¶5. On June 4, 2018, Schrock filed a complaint requesting modification of the Agreement, requesting the court to grant him sole physical custody of J.R. and terminate his child support obligations because there had been "substantial and material changes in circumstances adverse to the best interests of [J.R.] . . . " since the divorce, without alleging any specific material change or adverse effect. Blagodirova filed a combined answer and counter-complaint. In her counter-complaint, she requested an increase in Schrock's child support payments, arguing that since the divorce, J.R.'s expenses and Schrock's income have "substantially and materially increased."

¶6. Discovery ensued. In Schrock's answers to interrogatories, he "claim[ed]" that Blagodirova or Maldonado had abused and neglected J.R.[5] Accordingly, the court appointed Thomas M. Brahan as a guardian ad litem (GAL) for the limited purpose of investigating Schrock's "allegations of abuse or neglect." The court then granted leave for Blagodirova

[5] The parties' interrogatories and answers to the interrogatories are not a part of this record on appeal.

to amend her counter-complaint. In her amended counter-complaint, Blagodirova additionally requested an award of attorney's fees pursuant to Mississippi Code Annotated section 93-5-23 (Rev. 2021), were the GAL to find that Schrock's "allegations of abuse or neglect" without foundation or, in other words, frivolous. Blagodirova and Schrock's child-custody modification hearing was held on February 13, 2020.

II. Child Custody Hearing

A. Jose Schrock

¶7. During the hearing, Blagodirova's attorney questioned Schrock about the material change in circumstances he allegedly suggested in his answers to interrogatories, along with his reasons for allegedly being the more fit parent. While the interrogatories and answers to the interrogatories have not been made a part of the record on appeal, the GAL outlined what the GAL referred to as Schrock's "allegations." In summary, the "allegations" about Blagodirova were as follows: (1) "encouraged [J.R.] to lie to [Schrock] about [Maldonado's] deportation;" (2) on multiple occasions whooped J.R. with a belt and yelled at him very loudly; (3) raises puppies that J.R. sometimes cleans and feeds; (4) has J.R. fixing his own lunch when Maldonado is not there; (5) let J.R. have an accident on his motorcycle; (6) absent when Maldonado hit J.R. in the chest at Walmart and rubbed his hand around J.R.'s face; and (7) that Maldonado was an undocumented Mexican with an illegal driver's license. Schrock testified that he filed his complaint soon after Maldonado "was deported" and "start[ed] hitting [his] son." Schrock also testified that he did not have knowledge of

Maldonado's citizenship status until the deportation.[6]

B. Ekaterina Blagodirova

¶8. Blagodirova testified that she had been working as a registered nurse at North Mississippi Medical Center for a year and a half. She worked fourteen days of each month from 7:00 p.m. to 7:30 a.m. Blagodirova further testified she knew Maldonado was an undocumented immigrant, but she believed the only consequence would be that he was deported back to Mexico. Blagodirova also acknowledged that while she was aware that Maldonado obtained an Illinois driver's license, she did not know that it was illegal. She further testified that she did tell J.R. not to tell Schrock about Maldonado's arrest, but only because she explained to J.R. "that's called privacy." She testified she did not tell J.R. to lie.

C. Andres Maldonado De La Rosa

¶9. Maldonado testified that he has been in the United States since around 1998. He did not marry Blagodirova until 2014 and from that point on lived with her and J.R. Maldonado testified that he would make J.R. breakfast and lunch and take him to school in the mornings and to his extracurricular activities. Maldonado testified that after remarrying Blagodirova, he obtained an illegal Illinois driver's license. He further stated that Blagodirova knew that he was obtaining the driver's license so that he could drive J.R. around without being deported.

¶10. Maldonado denied calling J.R. names. He also denied ever hitting J.R. or causing his

[6] It appears from the record that the deportation took place in 2017.

nose to bleed. The GAL summarized the incident:

> According to [J.R.], he and Andres were at Wal-Mart. They had been grocery shopping. [J.R.] wanted to shop for something as a gift for his mother. Andres would not let him. [J.R.] became very upset and threw a fit. [J.R.] says that Andres hit him in the chest and then rubbed his hand around on [J.R.]'s face, and his nose began to bleed. Andres states that he did not 'hit' [J.R.] in the chest, but pushed him back in his seat to snap his seatbelt. Andres says he was trying to rub the top of [J.R.]'s head to calm him down and take it easy, [J.R.] was still mad and bucking around.
>
> . . . .
>
> [J.R.] stated that Andres did apologize to him. [J.R.]'s mother says she checked [J.R.] out, and he was not hurt. She states that [J.R.] gets occasional nose bleeds. This is a single incident. At its worst, Andres over-reached or over-corrected [J.R.] when [J.R.] pitched a fit when he didn't get his way.

D. J.R.

¶11. The court found that J.R., at twelve years old, was competent to testify. J.R. testified that he received good grades (all As and one B) in school and generally was not absent from school. J.R. also admitted that his mother and Maldonado are the ones who attend his school functions. He further testified that he played soccer until he was eight years old, and that he began boxing later on. He practiced boxing six days of the week and attended boxing competitions, with Maldonado taking him to boxing practice and Blagodirova taking him to his competitions.

¶12. J.R. denied ever being hit by Maldonado with a belt. He also stated that a "long time ago" he felt as though Maldonado did not care about him when Maldonado called him "fat" or "stupid." But J.R. also provided conflicting testimony about the time that he was in the

Walmart parking lot with Maldonado and his nose began to bleed. Initially, J.R. testified that Maldonado did not hit him but instead put his hand on his head. During examination by the court, however, J.R. testified that Maldonado hit him in the chest and "rubbed his hand in [his] face." J.R. also provided conflicting testimony about how Maldonado's arrest made him feel. He first testified that he did not know how he felt when Maldonado was arrested at the roadblock, but he later said he felt "scared."

¶13. J.R. testified that overall, Blagodirova has been a good mother, but he preferred to spend more time with Schrock. He also testified that while Blagodirova did hit him with a belt, it was a "long time ago." He admitted that two years prior, Blagodirova threw "some candy and a toy" at him but that he could not remember if she was playing around. He also testified that he did not like it when Blagodirova cursed at him.

E. Guardian Ad Litem Thomas Brahan

¶14. After a thorough and proper investigation, prior to trial, the GAL submitted his preliminary report, stating he did not find any evidence of abuse and neglect. Likewise, after Schrock rested his case-in-chief, the GAL testified to the same finding. The GAL reported that he did not find any evidence of abuse and neglect warranting a change in child custody.

III. Final Judgment

¶15. The chancery court entered its final judgment on September 14, 2020. In agreement with the GAL, the court found that "there has been conflict in [Blagodirova's] home, but that the proof did not rise to the level to trigger the domestic violence presumption in Section 93-

5-24(9)." However, the court found that the totality of the circumstances warranted a change in custody. In summary, the court concluded that the following circumstances, when taken together, constituted a material change: (1) Blagodirova married Maldonado, an undocumented immigrant who illegally entered the United States; (2) Blagodirova has provided Maldonado with a place to live since he was deported to Mexico but illegally re-entered the United States; (3) Maldonado obtained an illegal Illinois driver's license; (4) Blagodirova preferred for J.R. to stay with Maldonado while she was away from home; (5) twenty or more dogs were in Blagodirova's home; (6) Blagodirova placed J.R. in extracurricular activities that he was not interested in, such as boxing; and (7) J.R. preferred to live with Schrock.

¶16. The court stated this material change caused an adverse effect on J.R. because (1) "[Maldonado's] pattern of conduct is not supportive of a positive environment" (providing Maldonado's causing J.R.'s nose to bleed and Maldonado's erratic driving on the Natchez Trace as examples); (2) Maldonado failed to "resolve his residency status"; (3) Blagodirova failed to provide alternative caretakers for J.R.; (4) J.R. "preferred to spend more time with [Schrock]; and (5) Blagodirova told J.R. "not to disclose any of her 'private business.'" The court then considered the *Albright*[7] factors and evaluated what was in the best interest of J.R. The court found that the factors weighed in favor of Schrock. Accordingly, the court modified the Agreement, which had given Blagodirova sole physical custody of J.R., to grant

[7] *Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983).

Schrock sole physical custody instead. The court also ordered each party to pay their respective attorney's fees. Blagodirova now appeals.

STANDARD OF REVIEW

¶17. "A chancellor must be manifestly wrong, clearly erroneous, or apply an erroneous legal standard . . . for this Court to reverse." *Johnson v. Gray*, 859 So. 2d 1006, 1012 (¶31) (Miss. 2003); *Munday v. McLendon*, 287 So. 3d 303, 309 (¶25) (Miss. Ct. App. 2019). "So long as there is substantial evidence in the record that, if found credible by the chancellor, would provide support for the chancellor's decision, this Court may not intercede simply to substitute our collective opinion for that of the chancellor." *Butler v. Mozingo*, 287 So. 3d 980, 983 (¶10) (Miss. Ct. App. 2019) (quoting *Hammers v. Hammers*, 890 So. 2d 944, 950 (¶14) (Miss. Ct. App. 2004)). "The chancellor's interpretation and application of the law is reviewed de novo." *Stuckey v. Stuckey*, 341 So. 3d 1030, 1036 (¶13) (Miss. Ct. App. 2022) (internal quotation marks omitted) (quoting *Jones v. Jones*, 332 So. 3d 365, 371 (¶12) (Miss. Ct. App. 2021)); *see also Smith v. Smith*, 318 So. 3d 484, 491 (¶18) (Miss. Ct. App. 2021).

DISCUSSION

¶18. Blagodirova argues that the court erred by (1) modifying the Agreement and granting Schrock physical custody; (2) failing to award her attorney's fees; and (3) denying her motion to compel the completion of Schrock's financial disclosure statement.

I. Child Custody Modification

¶19. Blagodirova first argues that the court erred by modifying the Agreement as it pertains

to child custody. Obtaining an order modifying child custody is a high bar to meet. It is "a jolting, traumatic experience." *Lambert v. Lambert*, 872 So. 2d 679, 684 (¶22) (Miss. Ct. App. 2003). Therefore, to succeed on a request for modification, "the non-custodial party must prove: (1) that a [material] change in circumstances has transpired since issuance of the custody decree; (2) that this change adversely affects the child's welfare; and (3) that the child's best interests mandate a change of custody." *Mabus v. Mabus*, 847 So. 2d 815, 818 (¶8) (Miss. 2003); *Sheridan v. Cassidy*, 273 So. 3d 783, 786 (¶10) (Miss. Ct. App. 2018).

A. Material Change in Circumstances

¶20. There must be an "unforeseeable" change "in the overall living conditions" of the child to constitute a material change in circumstances. *Tucker v. Tucker*, 453 So. 2d 1294, 1297 (Miss. 1984); *Hill v. Hill*, 942 So. 2d 207, 210 (¶8) (Miss. Ct. App. 2006); *Powell v. Powell*, 976 So. 2d 358, 362 (¶11) (Miss. Ct. App. 2008); *see also Page v. Graves*, 283 So. 3d 269, 275 (¶23) (Miss. Ct. App. 2019); *Giannaris v. Giannaris*, 960 So. 2d 462, 469 (¶12) (Miss. 2007). And "[t]he chancellor must consider the totality of the circumstances when determining whether such a material change in circumstances has occurred." *Munday*, 287 So. 3d at 310 (¶28).

¶21. The court determined that there had been a material change in Blagodirova's overall living conditions since the divorce decree with the Agreement attached. The court reasoned that a material change in circumstances occurred when Blagodirova "married [Maldonado], who is illegally present in the United States," because Maldonado "entered this country

illegally, was deported, then re-entered this country again illegally, and has been provided a residence by [Blagodirova]." The court also found that there was a change in Blagodirova's overall living condition, because (1) she "entrusts [Maldonado] to the care of the child while she is working or away from the home," (2) Maldonado "was involved in [the] commercial breeding of dogs," (3) J.R. participated in extracurricular activities he did not have an interest in, and (4) J.R. preferred to have more time with Schrock. We agree with the chancery court's legal conclusion and affirm that there had been a material change in circumstances, but we find the chancery court's application of the law misplaced. *See generally Roark v. State*, 303 So. 3d 759, 761 (¶10) (Miss. Ct. App. 2020) (affirming trial court's decision for different reasons). When determining whether a material change in circumstances had occurred, it is the custodial parent's actions that are the focal points of the analysis and how those actions changed the environment of the home.

¶22. Since the divorce decree, Blagodirova has married, divorced, and remarried Maldonado. Typically, such action—that a custodial parent remarries—by itself, does not constitute a material change in circumstances. *See Page*, 283 So. 3d at 275 (¶23); *Kreppner v. Kreppner*, 341 So. 3d 132, 138 (¶37) (Miss. Ct. App. 2022); *Robinson v. Lanford*, 841 So. 2d 1119, 1123 (¶14) (Miss. 2003). However, in this instance, Blagodirova's actions in context were sufficient to constitute a material change. After Maldonado was deported to Mexico, but while Blagodirova and Maldonado were divorced, Blagodirova visited Maldonado in Mexico for a short period of time. Later, when Maldonado returned to the

United States illegally; Blagodirova provided residence to him, even though she had knowledge of his continued undocumented status. With this knowledge, Blagodirova then remarried Maldonado without any plan or recourse for Maldonado to obtain citizenship and who at any moment could have been deported once again. When considering these circumstances together, Blagodirova's actions created a material change in circumstances. However, that is not the end of our analysis. We next address whether this material change had an adverse effect on the child.

B. Adverse Effect on the Child

¶23. "If, after examining the totality of the circumstances, a material change in circumstances in the custodial home is found to have occurred, the court must separately and affirmatively determine that this change is one which adversely affects the child." *Munday*, 287 So. 3d at 310 (¶28) (internal quotation mark omitted) (quoting *Bredemeier v. Jackson*, 689 So. 2d 770, 775 (Miss. 1997)). "While numerous factors may go into the initial consideration of a custody award," *Holmes v. Holmes*, 958 So. 2d 844, 847 (¶14) (Miss. Ct. App. 2007), "only that behavior of a parent which clearly posits or causes danger to the mental and emotional well-being of a child (whether such behavior is immoral or not), which is sufficient basis to seriously consider the drastic legal action of changing custody." *Lambert*, 872 So. 2d at 684 (¶22); *Gainey v. Edington*, 24 So. 3d 333, 337 (¶15) (Miss. Ct. App. 2009); *Gilliland v. Gilliland*, 984 So. 2d 364, 368 (¶12) (Miss. Ct. App. 2008).

1. The chancery court failed to specify the adverse effect.

¶24. Notably, the court determined that the "totality of the circumstances" adversely affected J.R., without stating how J.R. was adversely affected. The chancery court, under the adverse-effect section of its order, stated "that the totality of circumstances constitutes a material, substantial and adverse change in circumstances regarding the child." After again stating what circumstances constituted a material change, the chancery court concluded that "this combination of factors satisfies this prong of the applicable standard." However, the court failed to describe what effect the material change had on J.R. *See Sturgis v. Sturgis*, 792 So. 2d 1020, 1025 (¶19) (Miss. Ct. App. 2001) ("Where there is no specific identification of the alleged change in circumstances, this Court is placed in the position of attempting to guess what the chancellor determined was a proper basis for a change in custody."). This, alone, is reversible error. *Sturgis*, 792 So. 2d at 1025 (¶21).

2. The facts do not support an adverse effect.

¶25. The court manifestly erred by finding that there was an adverse effect on J.R. *See Gainey*, 24 So. 3d at 336 (¶9). For a chancery court to grant a petition for child-custody modification, the court must find that a material change in circumstances has occurred *since* the divorce decree *that* adversely affects the child. *Id*. at 337 (¶10). In this case, no credible evidence showed how Blagodirova's knowledge of Maldonado's undocumented status or her decision to provide him a home harmed J.R.'s emotional well-being. *See id.*

¶26. An "isolated incident" or the "unwarranted striking of a child" is insufficient to find an adverse effect. *Tucker*, 453 So. 2d at 1297. In *Giannaris*, the mother of S.G., Elizabeth,

"refused to swap days with [the father] Stephen and instead kept S.G." *Giannaris*, 960 So. 2d at 465 (¶4). Later, Stephen brought an action for a change in custody on the ground that Elizabeth's home was up for foreclosure. *Id*. at 466 (¶5). The chancellor granted Stephen custody because the chancellor concluded that Stephen's transfer to San Diego constituted a material change and that Elizabeth's failure to cooperate with Stephen constituted an adverse effect. *Id*. at (¶6). On appeal, this Court affirmed the chancellor's ruling and determined that "although the chancellor did not specifically state" that Elizabeth's failure to cooperate with Stephen (the adverse effect) "constituted a change in circumstances, the facts imply" that it is. *Id*. Overturning this Court's decision, our Mississippi Supreme Court stated "[t]he chancellor erred in finding [a] material changes in circumstances and then disuniting isolated incidents to find an adverse [e]ffect on S.G." *Id*. at 469 (¶12). First, our Supreme Court decided that the relocation of a non-custodial parent did not constitute a material change. *Id*. More relative to our analysis here is when the Supreme Court stated that this Court "erred in attempting to divine the chancellor's intent, by disregarding his stated reasons, and then relying upon implied facts." *Id*. at 469 (¶13). The Supreme Court held that "Stephen 'failed to show that the mental and emotional well-being of the child was in any danger as a result of living with' Elizabeth." *Id*.

¶27. Likewise, in *Butler*, this Court held that "the chancellor's de facto determination that the change adversely affected R.M. [was] not supported by substantial evidence in the record." *Butler*, 287 So. 3d 980, 981 (¶1). Mozingo, the father of R.M., petitioned for a

change in custody. *Id*. at 982 (¶3). Since the agreed order of custody, the mother, Butler, had moved five times, given birth to another child, and had her "driver's license [suspended] for an unpaid traffic violation." *Id*. at 982 (¶5). Although this Court found "the lack of stability in Butler's household . . . [because] Butler has moved five times" to have constituted a material change, we held that there was no evidence of an adverse effect, because "the evidence adduced at trial [ran] counter to such a determination: . . . R.M. was in 'good health,' 'active,' and 'bright.'" *Id*. at 984 (¶¶15-16).[8]

¶28. For the same reasons provided in *Giannaris*, we find that Schrock failed to show how J.R. was emotionally or mentally in danger. *Giannaris*, 960 So. 2d at 469 (¶13). While the chancery court did find that Maldonado "harshly treat[ed] the child" and provided one example of Maldonado causing J.R.'s nose to bleed as an adverse effect, this isolated incident is insufficient to find an adverse effect. The chancery court also referred to Maldonado's erratic driving on the Natchez Trace as evidence of an adverse effect on J.R. This, too, was insufficient.[9]

¶29. Here, like in *Giannaris*, the chancery court disunited isolated events to find an adverse

---

[8] *Cf. Potts v. Windham*, 56 So. 3d 589, 593 (¶14) (Miss. Ct. App. 2011) (affirming the chancellor's determination that even though the "new husband argued in front of the child; Felicia used curse words in front of the child; Felicia's husband criticized the child; and two occasions of physical violence had occurred between Felicia and her husband . . . [these incidents] were insufficient to warrant a modification of custody").

[9] Although the partial dissent highlights that we must not reweigh the evidence, we reverse based on the lack of substantial evidence in the record to support the chancery court's ultimate judgment.

effect. *Id*. at 469 (¶12). Though the chancery court determined in part that the commercial breeding of dogs, J.R.'s lack of desire in extracurricular activities, and Maldonado's undocumented status constituted a material change, the chancery court did not consider any of these circumstances when determining whether J.R. was adversely affected. In any event, none of these circumstances, whether in isolation or taken together, exhibited an adverse effect on J.R. While these circumstances, may have had some effect, we hold that the evidence does not support a finding of an *adverse* effect. *See Ballard v. Ballard*, 434 So. 2d 1357, 1360 (Miss. 1983).

¶30. Moreover, despite there being a material change in circumstances, J.R. remained in good health. *Butler*, 287 So. 3d at 984 (¶15); *Ballard*, 434 So. 2d at 1360. In *Ballard*, the Mississippi Supreme Court held that the chancellor's decision to modify custody was unsupported by the evidence when the record showed that the child "was a well-behaved and well-adjusted child, of pleasant temperament, making good grades in school." *Id*. So, too, in *Butler*, the child remained in good health and maintained good grades in school. *Butler*, 287 So. 3d at 984 (¶¶15-16).

¶31. Thus, similarly and in the case at bar, J.R. did not have any behavioral issues. According to the record, despite the ongoing child custody battle, J.R. continued to do well in school; he was almost never absent or late from school; he maintained his good grades, which were mainly As; and he was known to be a good kid with a good attitude. He also has not received any psychological counseling. Moreover, J.R. stated that he had a good

relationship with both Blagodirova and Maldonado and that Blagodirova was a good mom.

¶32. Therefore, we hold that the chancery court manifestly erred by finding an adverse effect. There was no credible evidence showing how Blagodirova's knowledge of Maldonado's undocumented status or her decision to provide him a home harmed J.R.'s emotional well-being. Without evidence in the record of a pattern of conduct that harmed J.R.'s emotional or mental well-being, the chancery court did not have facts in the record to support a modification of child custody. We reverse the chancery court's order modifying child custody.

C. Best Interest of the Child

¶33. The third inquiry is whether the child's best interest mandates a child custody modification. However, without first finding the material change in circumstances that adversely affects the child, the best interest of the child question is not triggered. *Powell*, 976 So. 2d at 361-62 (¶13). "[F]ailing to prove a change in circumstance detrimental to the children's best interests" means the "case [falls] short of the point where such issues could be considered by the chancellor." *Mabus*, 847 So. 2d at 820 (¶20). Since we hold that the material change in the circumstances did not adversely affect J.R., we need not address the best interest of the child. *See Albright v. Albright*, 437 So. 2d 1003, 1005 (Miss. 1983). Notwithstanding, we next address Blagodirova's other two issues of error regarding attorney's fees and her motion to compel the completion of Schrock's financial disclosure statement.

II. Attorneys' Fees

¶34. Blagodirova next argues that the court failed to separate out the attorney's fees related to the GAL's investigation of abuse and neglect from fees incurred on other matters. Blagodirova asserts that *she* should have been awarded $5,000 in attorney's fees for successfully defending unsubstantiated allegations of abuse and neglect. We disagree.

¶35. "The issue of whether to award attorneys' fees in a divorce case constitutes a discretionary matter left to the chancellor, and this Court is reluctant to disturb such a finding." *Rogers v. Rogers*, 94 So. 3d 1258, 1267 (¶29) (Miss. Ct. App. 2012) (quoting *Young v. Young*, 796 So. 2d 264, 268 (¶11) (Miss. Ct. App. 2001)). Under Mississippi law, "if after [an] investigation . . . or final disposition by . . . family court allegations of child abuse are found to be without foundation, the chancery court shall order the alleging party to pay all court costs and reasonable attorney's fees incurred by the defending party in responding to such allegation." Miss. Code Ann. § 93-5-23.

¶36. Although the GAL concluded that the incidents in question did not rise to the level of abuse and neglect, the GAL did not find that the allegations were frivolous. Therefore, we find that the court acted within its discretion both when the court ordered each party to pay his or her own attorney's fees and in regard to the GAL fees when the court ordered Schrock to pay all costs submitted by the GAL in an affidavit.

III. Financial Disclosure Statement

¶37. Blagodirova finally argues that the court erred by failing to require Schrock to

completely fill out certain expenses on his financial disclosure statement. However, the court never reached the question of whether Schrock should have filled out the financial disclosure statement in its entirety because the court found that: (1) Blagodirova stipulated to all financial matters pursuant to their Agreement, and (2) failed to show how Schrock committed fraud on the court.

¶38. Under Uniform Chancery Court Rule 8.05,[10] the court has the authority to excuse each party from the mandatory disclosures and to employ sanctions for the failure to submit complete financial disclosure statements. Blagodirova asserts through speculation alone that Schrock committed fraud on the court. *Collins v. Collins*, 188 So. 3d 581, 587 (¶12) (Miss. Ct. App. 2015). Frankly, neither of them submitted full and complete financial disclosure statements and we have held that the failure to do so, alone, is insufficient to find that Schrock committed fraud on the court. *O'Steen v. O'Steen*, 304 So. 3d 697, 701 (¶12) (Miss. Ct. App. 2020) ("[T]he mere nondisclosure to an adverse party and to the court of facts pertinent to a controversy before the court does not add up to 'fraud upon the court' for purposes of vacating a judgment under Rule 60(b)."). We find that the court did not abuse its discretion here.

CONCLUSION

[10] "Unless excused by Order of the Court for good cause shown, each party in every domestic case involving economic issues and/or property division shall provide the opposite party or counsel, if known, the following disclosures . . . [and] [t]he failure to observe this rule, without just cause, shall constitute contempt of Court for which the Court shall impose appropriate sanctions and penalties." UCCR 8.05.

¶39. We hold that the chancery court manifestly erred by modifying custody based on the finding of an adverse effect on the child. Therefore, we reverse the chancery court's child-custody modification order and render judgment in favor of Blagodirova. We further hold that the court did not abuse its discretion in ruling on attorney's fees or by denying Blagodirova's motion to compel the completion of Schrock's financial disclosure statement.

¶40. **AFFIRMED IN PART; REVERSED AND RENDERED IN PART.**

WILSON, P.J., McDONALD AND LAWRENCE, JJ., CONCUR. EMFINGER, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. McCARTY, J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. CARLTON, P.J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED BY BARNES, C.J., GREENLEE AND SMITH, JJ.

CARLTON, P.J., CONCURRING IN PART AND DISSENTING IN PART:

¶41. I disagree with the majority's decision to reverse and render the chancellor's order modifying child custody, and I therefore respectfully concur in part and dissent in part. The majority agrees with the chancellor's finding that a material change in circumstances occurred in this case. However, the majority finds that this material change did not have an adverse effect on J.R.

¶42. "To modify child custody, the noncustodial parent must prove that (1) 'a material change of circumstances has occurred in the custodial home since the most recent custody decree'; (2) 'the change adversely affects the child'; and (3) the modification is in the child's best interest." *Jones v. Jones*, 332 So. 3d 365, 372 (¶14) (Miss. Ct. App. 2021) (quoting *Stewart v. Stewart*, 309 So. 3d 44, 83 (¶126) (Miss. Ct. App. 2020)). "In analyzing whether

a material change of circumstances has occurred, the chancellor must consider the totality of the circumstances." *Id*. (quoting *Domke v. Domke*, 305 So. 3d 1233, 1240 (¶17) (Miss. Ct. App. 2020)). "If, after examining the totality of the circumstances, a material change in circumstances in the custodial home is found to have occurred, the chancellor must separately and affirmatively determine that this change is one which adversely affects the child." *Id*. (quoting *Munday v. McLendon*, 287 So. 3d 303, 310 (¶28) (Miss. Ct. App. 2019)). When reviewing a chancellor's decision regarding child custody, "[w]e give substantial deference to a [chancellor's] factual findings, recognizing that in this regard, the [chancellor] has the ultimate discretion to weigh the evidence the way [she] sees fit in determining where the child's best interest lies." *Stewart*, 309 So. 3d at 84 (¶128) (internal quotation mark omitted). As the supreme court recognized in *Irle v. Foster*, 175 So. 3d 1232, 1237 (¶20) (Miss. 2015), "[w]e must afford the chancellor's findings deference and consider only whether credible evidence supports those findings."

¶43. After the chancellor found that a material change in circumstances occurred in this case, the chancellor next examined whether this material change had an adverse effect on J.R. The chancellor acknowledged that Blagodirova had completed her training as a nurse and was employed at a local hospital working only at night. The chancellor held that "[t]his otherwise positive development takes on an adverse complexion because of [Blagodirova's] complete reliance on [Maldonado], whose immigration status was undisputed, to provide care and transportation for the child while she is at work." The chancellor explained that

Blagodirova "has been displeased with the notion of the child being with [Schrock] while she is unavailable and prefers for the child instead to be with [Maldonado]." The chancellor acknowledged that Maldonado "appears to have an interest in [J.R.]," but she found that Maldonado's "pattern of conduct is not supportive of a positive environment." The chancellor then provided specific examples demonstrating Maldonado's "poor manner of presence in the home," including "instances of [Maldonado] harshly treating the child, in one instance causing his nose to bleed, where the proof was that the child already had a sensitivity to nose bleeds, and another time becoming enraged and driving chaotically with both [Blagodirova] and [J.R.] in the automobile." The chancellor recognized that J.R. testified as to his preference to be with Schrock.

¶44. The chancellor also found Maldonado's illegal presence in the United States concerning, stating that "no evidence was offered that [Maldonado] has consulted further . . . [with an attorney] to resolve his residency status, or that he was any intention of doing so." The chancellor noted that Maldonado was taken into custody while he was driving an automobile with J.R. as passenger, and Maldonado was later deported. He then illegally re-entered the United States. The chancellor opined that "[b]y [Maldonado's] obtaining an Illinois driver's license using misleading information, it appears that his intent is to prolong his illegal presence in this country." The chancellor also found that while Blagodirova works the night shift, she has not provided other alternatives for childcare for J.R., and instead relies on Maldonado to care for and transport J.R., despite Blagodirova's awareness that

Maldonado could be taken into custody and deported again. The chancellor additionally found that Maldonado "inserted himself in [J.R.'s] relationship with [Blagodirova] and [Schrock] while [Blagodirova] was out of the country, including involving law enforcement to support his presence."

¶45. The chancellor found that "[t]his combination of factors satisfies this prong of the applicable standard," and she ultimately determined that "the totality of circumstances constitutes a material, substantial and adverse change in circumstances regarding the child."

¶46. After my review and in light of the deference we must afford a chancellor's factual findings, I find that there is substantial credible evidence in the record before us to support the chancellor's determination that the material change in circumstances adversely affecting J.R. developed in Blagodirova's home. I therefore would affirm the chancellor's order modifying child custody.

BARNES, C.J., GREENLEE AND SMITH, JJ., JOIN THIS OPINION.