

Respondent gave birth to K.J.L. in 2019. In 2020, Respondent was involuntarily admitted to the psychiatric ward at SSM St. Joseph Hospital-Wentzville. The day after she was admitted, a Consent Judgment of Paternity was entered, awarding third-party custody to Appellants, who are the paternal grandparents of K.J.L. The judgment awarded Respondent supervised visitation to

be coordinated with Appellants via text message at Appellants' discretion. Respondent was released from the hospital a few days later.

Several weeks after the Consent Judgment was entered, Respondent ended her relationship with K.J.L.'s father, who is Appellants' son. Appellants' son brutally assaulted Respondent, punching and kicking her so severely that he broke her nose and jaw, resulting in blood splatters throughout the car where the assault occurred. Appellants' son is now incarcerated for a different offense and is not a party to this appeal.

After their son assaulted Respondent, Appellants cut off contact between Respondent and K.J.L. by refusing visitation and failing to respond to nearly all of Respondent's text messages for an extended period of time. In 2021, Appellants filed a petition to adopt K.J.L. and terminate Respondent's parental rights due to abandonment. In response, Respondent filed a motion to set aside the custody judgment, which was denied. During the litigation, the court entered an order granting Respondent visitation through the Family Resource Center, and Respondent was able to see her son after more than a year of separation. After a few visits in 2021, the Family Resource Center closed and visitation paused until Appellants' adoption petition could be heard. Respondent filed a motion to modify on January 14, 2022, which is the subject of this appeal. The motion to modify alleged,

- a. That on or about August 19, 2020, the Intervenor's [sic] son assaulted Mother resulting in a fractured jaw and a broken nose. The police report to said incident is attached hereto as Exhibit A and incorporated in this motion as if fully set forth herein.
- b. That after said incident the Intervenor's stopped allowing Mother visitation with her minor child. A copy of the correspondence between intervenors and Mother is attached hereto as Exhibit B and incorporated in this motion as if fully set forth herein.
- c. That reasons to restrict Mother's visitation rights are no longer present and in support Mother sets forth as follows:

- i. Mother has sought help for her substance abuse issues and has been clean from illicit drugs as per the drug test results attached hereto as Exhibit C and incorporated in this motion as if fully set forth therein;
 - ii. Mother has received psychiatric treatment and is no longer in an abusive relationship; and
 - iii. That Mother is now gainfully employed and earning income as per the income and expense filed herein.
- d. That leaving visitation up to the discretion of the Intervenors has resulted in Mother not seeing the child and Mother request [sic] a custody order with a specific detained [sic] written schedule for custody and visitation.
- e. That the current custody decree is not in the child's best interests.

Appellants' adoption and termination petition was denied in 2022, and the court entered an order granting Respondent visitation at Rising Phoenix, a third-party supervisor. Mother had 30 supervised visits with K.J.L. at the Family Resource Center and Rising Phoenix. In 2023, Appellants filed a motion to continue the trial date, which the court granted. The court entered an interim custody order allowing Respondent's family members to supervise Respondent's visitation with her son.

At the hearing on Respondent's motion to modify, Appellants, Respondent, and K.J.L.'s Guardian ad Litem all testified. Following the evidence presented by both sides, the Guardian ad Litem recommended that Respondent receive sole physical custody of K.J.L. The circuit court entered its findings of fact, conclusions of law, and modification judgment in June 2024, awarding Respondent sole physical and legal custody of K.J.L. and giving Appellants visitation. In its findings, the circuit court found that Appellants were not credible. Appellants filed a post-trial motion that alleged that there were no findings pertaining to the change in circumstances of the child or custodians. In August 2024, the circuit court entered an amended judgment that outlined the changed circumstances for K.J.L. and Appellants.

This appeal follows.

Standard of Review

“When reviewing a motion to modify custody, we affirm the trial court’s custody determination unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.” *Hark v. Hark*, 567 S.W.3d 671, 677 (Mo. App. E.D. 2019). “This Court views the evidence and permissible inferences drawn from the evidence in the light most favorable to the judgment.” *Hightower v. Myers*, 304 S.W.3d 727, 732 (Mo. banc 2010). “When there is conflicting evidence, the trial court has the discretion to determine the credibility of witnesses, accepting all, part, or none of the testimony it hears.” *Tienter v. Tienter*, 482 S.W.3d 483, 488 (Mo. App. E.D. 2016) (quoting *McCreary v. McCreary*, 954 S.W.2d 433, 439 (Mo. App. W.D. 1997)). “Whether the trial court applied the correct legal standard in reviewing a motion to modify a child custody decree is a question of law,” and this Court reviews questions of law *de novo*. *Schiesswohl v. Spain*, 696 S.W.3d 907, 911-12 (Mo. App. S.D. 2024).

Analysis Point One – The Circuit Court did not Misapply the Law When it Modified the Child Custody Order

In their sole point on appeal, Appellants argue that the circuit court misapplied the law when it found that a change in circumstances had occurred with regard to Appellants or minor child so as to justify a custody modification, in that the court’s findings were on issues not pled by Mother. Appellants assert that the court’s findings in the Amended Findings of Fact, Conclusions of Law and Judgment of Modification were irrelevant and insufficient to allow modification of custody because they were “merely pretextual” and did not relate to the child or

his custodian. Appellants further claim that the judgment conflated the change of circumstance requirements with the best interest of the child factors.¹

Under Section 452.410.1, a court may not modify a custody decree unless it finds “that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child.”² “The finding of a change in circumstances is a threshold matter; *if* the trial court finds that a change of circumstances has occurred, then the court must take the additional step of determining whether a modification to the prior decree is in the child's best interests.” *Tienter*, 482 S.W.3d at 488-89. The Supreme Court of Missouri has repeatedly held that “the change in circumstances necessary to modify a prior custody decree must be a ‘substantial’ one.” *Russell v. Russell*, 210 S.W.3d 191, 196 (Mo. banc 2007). In custody modification cases, the factors in Section 452.375 guide the court’s best interest of the child determination. Section 452.375.2; *see also Tienter*, 482 S.W.3d at 489.

¹ We note that Appellants’ point on appeal is multifarious in violation of Rule 84.04(d) in that it argues that multiple misapplications of the law occurred because the basis on which the judgment was entered was not pled by Respondent and because Respondent was not entitled to the parental presumption, as well as arguing that there was insufficient evidence on which to justify a modification of custody. “A multifarious point is one that groups together multiple, independent claims rather than a single claim of error.” *Barbieri v. Barbieri*, 633 S.W.3d 419, 432 (Mo. App. E.D. 2021) (citing *Ivie v. Smith*, 439 S.W.3d 189, 199 n.11 (Mo. banc 2014)). Multifarious points are subject to dismissal, however, this Court may “exercise our discretion to provide *ex gratia* review.” *Crisp v. Missouri Sch. for Deaf, Dep’t of Elementary & Secondary Educ.*, 681 S.W.3d 650, 663 (Mo. App. W.D. 2023), *reh’g and/or transfer denied* (Dec. 19, 2023), *transfer denied* (Jan. 30, 2024). Under our standard of review, challenging a misapplication of the law is different from challenging the evidence upon which a judgment was based. While Appellants include only a direct misapplication of the law argument, their point on appeal also challenges the evidence under what would be either a no substantial evidence claim or an against the weight of the evidence claim. “These are distinct claims.” *Ivie*, 439 S.W.3d at 199 n.11. Both legal challenges include distinct analytical frameworks that require analysis of contrary evidence, of which Appellants have entirely failed to disclose to this court. In fact, Appellants’ argument highlights their own testimony, which the circuit court found to be offensive and not credible.

² All statutory references are to RSMo(2022).

In determining whether a substantial change in circumstances has occurred, a court must look at changed circumstances that “relate to the children or their custodian, not the noncustodial parent.” *Searcy v. Seedorff*, 8 S.W.3d 113, 116 (Mo. banc 1999). This requirement applies regardless of whether the custodian is a parent or a third party, reflecting this Court’s “desire to maintain a stable nurturing environment for the child.” *Id.* at 117. Furthermore, the parental presumption, which applies in an original child custody proceeding, does not apply in a custody modification proceeding. *Id.* Appellants argue that the circuit court misapplied this law by only considering a change in Respondent’s circumstances, not the circumstances of Appellants or K.J.L., and by applying the parental presumption. However, the record does not support their argument.

At the outset, the circuit court was not required to enter “written findings when determining the threshold issue of whether modification is warranted due to a change in circumstances.” *Tienter*, 482 S.W.3d at 489. Even so, the circuit court’s amended judgment outlines the changes regarding Appellants, Respondent, and K.J.L. In their point relied on, Appellants argue that the circuit court’s findings regarding Appellants and K.J.L. did not reflect what Respondent pled in her motion to modify custody, but Appellants do not develop this argument. As a matter of fact, Appellants ignore the actual contents of Respondent’s motion to modify, which alleged, first, that Appellants’ son assaulted Respondent so severely that multiple bones in her face were fractured, and second, that after the assault occurred Appellants refused to allow Respondent to visit her child. The motion further alleged that leaving visitation up to the discretion of Appellants resulted in Respondent not being able to see her child until she sought a custody order with a specific written schedule.

The circuit court's findings with regard to Appellants' changed circumstances were responsive to the specific allegations in Respondent's motion to modify. The circuit court found that a substantial change of circumstances in Appellants' behavior toward Respondent had occurred, pointing to Appellants' attempt to terminate Respondent's parental rights completely; their denial of the assault committed against Respondent and their portrayal of Respondent as delusional, despite significant evidence of the serious injury she suffered; and their refusal to let Respondent see her child without setting up visitation through the Family Resource center as changes in circumstances warranting modification of custody. Appellants have not explained how these findings are unrelated to Respondent's pleadings. We find that Appellants' failure to address the record is not a winning strategy.³

Appellants also argue that none of the stated changes support modification because not every change in a child's life is enough to trigger a modification of custody. While that may be true, interference with the custody and visitation rights of a parent can justify the modification of custody. *Keel v. Keel*, 439 S.W.3d 866, 880 (Mo. App. E.D. 2014). Appellants insist that they strictly adhered to the terms of their custody judgment by denying Respondent visitation except when it was arranged through the Family Resource Center. We find that this argument ignores the original custody arrangement, which granted Respondent supervised visitation to be coordinated directly with Appellants via text and did not require that visitation be arranged or supervised through anyone other than Appellants. Although Appellants had discretion over visitation, the plain language of the original custody judgment indicates that it was not within their discretion to deny visitation completely, as denying visitation would override the purpose of

³ We caution parties to take care to accurately represent the record in their briefs and at oral argument. This Court reviews the record in the light most favorable to the judgment, a standard of review that necessarily looks to the judgment's findings of fact.

the judgment in explicitly granting Respondent visitation. Furthermore, the judgment specifies that denying or interfering with visitation is non-compliance with the judgment. Appellants also repeatedly denied that Respondent reached out to them to request visits with K.J.L., despite evidence that Respondent repeatedly requested visitation with K.J.L. and Appellants ignored nearly every request for an extended period of time. Appellants did not allow visitation until a court specifically ordered them to do so nearly a year after Respondent's first request to see her son. The court's findings pertain to the circumstances surrounding Appellants' pattern of interference with Respondent's visitation, and such interference can be a change in a child's life sufficient to trigger a custody modification. *Searcy*, 8 S.W.3d at 118 ("A custodian's denial of the visitation rights of the noncustodial parent can be a change in circumstances that may justify modification of custody, especially where the evidence shows an unjustified and flagrant pattern of willful denial of visitation."). Although Appellants have attempted to use their position as both a sword and a shield by denying Respondent visitation and by denying that Respondent repeatedly requested visitation, in deference to the circuit court's findings and record we find that Appellants have engaged in a flagrant pattern of willful denial of visitation.

Appellants further argue that the circuit court "implicitly" used the parental presumption under Section 452.375. Appellants' only analysis with regard to this argument is that considering changes in Respondent's circumstances show that the circuit court misapplied the law by giving Respondent the benefit of the parental presumption when it should not have been applied. We are not persuaded and decline to further address such an argument.

As outlined above, the circuit court's findings regarding changes in circumstances that justify a modification of custody were proper and did not conflate the change of circumstance requirements with the best interest factors. While Appellants have refused to address or even

acknowledge all of the evidence at issue in this case, we are required to adhere to our standard of review, which requires us to view the facts in the light most favorable to the judgment.

Hightower, 304 S.W.3d at 732. Thus, we find that the circuit court did not misapply the law in awarding Respondent sole physical and legal custody of K.J.L. This point is denied.

Conclusion

For the foregoing reasons, this court affirms the judgment of the circuit court. This appeal is denied.



RENÉE D. HARDIN-TAMMONS, PRESIDING JUDGE

Angela T. Quigless, J., and
Thomas C. Clark II, J., concur.