**UNREPORTED**

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 010

September Term, 2014

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JOHN HARRISON FRYE, SR.

v.

MELISSA LYNN MATHER

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Meredith,
Arthur,
Leahy,

JJ.

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Opinion by Meredith, J.

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Filed: December 1, 2015

In this case, we are called upon to determine whether the Circuit Court for Harford County erred when it ordered John H. Frye, Sr. ("appellant" or "Father") to pay child support to his former wife, Melissa L. Mather ("appellee" or "Mother").[1]

## QUESTIONS PRESENTED

Appellant presents the following questions for our consideration, which we have reordered:

1. Did the trial court err in admitting testimony beyond the scope of the remand?

2. Did the trial court err in determining the medication, handicap accessible van with a wheel chair lift and a motorized ceiling track lift system are extraordinary medical expenses [under Maryland Code, Family Law Article ("F.L.") § 12-201(g)]?

3. Did the trial court err in ordering that child support shall extend until the child's [nineteenth birthday]?

For the reasons that follow, we conclude that the court did not abuse its discretion in admitting evidence on the alleged expenses, but did err in certain findings. We vacate the orders of the Circuit Court for Harford County filed on November 19, 2013, and February 12, 2014, and remand for the entry of a revised judgment consistent with this opinion.

## FACTS AND PROCEDURAL HISTORY

The parties to this case married in 1984, and separated in 1998. In January 2000, they entered into a Voluntary Separation Agreement that was later incorporated, but not merged, into the judgment of absolute divorce entered on February 29, 2000. Pertinent to the issues presented in this appeal, the parties agreed, in their Voluntary Separation Agreement, that

[1]Ms. Mather has not filed a brief in this appeal.

appellant would have custody of the parties' two older children, who were twelve and fourteen at the time of the parties' divorce, and appellee would have custody of the parties' youngest child ("Child"), who was four. Each party agreed to be responsible, generally, for the children in his or her care; neither party was to pay the other child support.

Child has been diagnosed with mitochondrial depletion disorder, a genetic condition that has caused significant and permanent impairments. Seeking contribution from Father for some of the major expenses Mother expected to incur as a consequence of Child's chronic medical condition, Mother filed a petition for child support on May 21, 2010. Appellant answered by denying any financial obligation, citing the parties' separation agreement, in which appellant and appellee each agreed to be responsible for the children in their care. Appellant argued that he had cared for the parties' older children without any financial contribution from appellee, and that appellee should be precluded now from expecting him to contribute anything toward Child's care.

On March 25, 2011, appellee filed an amended petition for child support, alleging that Child's severe disabilities have caused her to incur "extraordinary medical expenses," which constitutes a material change in circumstances and justifies the entry of an order requiring appellant to pay child support. Appellee specifically asserted that Child's medication cocktail, a ceiling-track-mounted lift to be used in moving Child between his bedroom and the bathroom, and a handicapped van equipped with a wheelchair lift were all items that were necessary for Child due to his medical condition. Appellee also asserted that she was

incurring costs for work-related child care because, due to Child's medical condition, he was "not a child who can be left at home" unattended.

Hearings were held on the amended petition on May 19, 2011, and September 28, 2011. On October 12, 2011, the court entered a temporary child support order requiring appellant to pay $1,577.00 per month in child support retroactive to January 1, 2011, and $75 per month toward arrears. The order also required appellant to continue to include Child on Father's health insurance. The order provided that "child support . . . shall terminate on July 8, 2013 [Child's 18th birthday] unless it is determined that the child is entitled to support by the parties beyond his eighteenth (18th) birthday . . . in which case child support may be extended[.]"

The court's oral explanation of these rulings provides context for the issues currently raised. The court explained:

> [BY THE COURT]: If there's a material change in circumstances, it doesn't matter that the parties made an agreement; the Court can change that agreement.
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> [Child] has mitochondrial depletion disorder characterized by hearing loss. He has been wearing hearing aids since the age of two. He [h]as low vision. He can only see things up close clearly. He has hypotonia. He's got low muscle tone. He's got sleep apnea, and he uses a CPA[P]. He has been hospitalized three times in his life, as far as I've heard, in terms of the testimony here, which is remarkable given his condition. He has severe constipation which requires enemas, stool softener or laxatives. It also requires disimpacting. And he needs a catheter to urinate. He has to have a breathing tube at times; chest physical therapy. He can't sit, walk or stand without support. Considerable support. His hands, the muscles in his hands are very constricted. He can't hold an object, and even needs braces to open his hands.

He can't feed himself. He has to drink through a straw in order to swallow. He needs to have his food cut into very small pieces.

These are significant issues. He was much younger when the parties divorced and much smaller, so, sure, the physical toll that that would take on any one individual might not be that great, but he's 16 years of age now. He's grown considerably, which then makes his physical limitations even more severe.

It doesn't require expert testimony for me to look at the pictures of [Child] to understand what his medical condition is, to see what medical costs have been incurred. There's not a great leap, if any leap, to then understand as he gets bigger, one person can't lift him alone. It takes some device, some physical contraption, if you will, in order to lift him to get him from point A to point B, regardless of how short in proximity point A to point B might be.

* * *

[Caring for Child] is expensive. It is an expensive cost. Now while I appreciate the arguments that [appellee's counsel] has made with respect to an adult destitute child . . . we're not at that point yet.

As I indicated from the outset, the Court always retains jurisdiction to modify a support order where there is a material change in circumstances. So upon reaching the age of 18, it's clear to me that [Child]'s needs aren't going to suddenly and miraculously improve where there won't be a need for the kind of financial and physical support that he'll need, but we're not at that point where I have to make a decision.

I can't order indefinite child support. There has to be some filing that requires support to continue beyond the age of 18, so I'm not going to be able to do that, although [appellee] has asked the Court to decide that he needs it.

* * *

Now I have heard a great deal about the costs that it will take to care for [Child], and I do believe that these are reasonable and necessary costs, which is what the law requires me to do.

Now, I know that there has been testimony about [appellee and her husband] hav[ing] bought a home, and that if they put a [ ] deck on it, why couldn't they use the money to pay for a lift, for example, or any of these other

costs? I have also heard testimony about [Child]'s costs are covered by insurance. **Nobody saw, really, the benefit of providing me with the actual documentation of any of those things**. That's what it requires. It doesn't require that I just accept at face value, even if it's under oath, that those things are true. So this is what I am going to do at this point. I am going to impose a temporary order for support at this point, and you all have homework to do . . . .

**[Y]ou've got to do the research, and you've got to get the information. Not just come in and say, [Child] needs this and he needs that, and he needs to have this covered, and we both should pay for it.**

There may be programs out there to address those costs, but you've got to do the homework out there. So telling me that the vendor may have called — the vendor for the lift may have called the insurance company and that they told you that it's not covered — not good enough. That's not really competent evidence that I need to satisfy — that satisfies your burden of proof on that issue. It could be true, but somebody, and the [parties] should be working together to call these folks, divvy up the work, call these folks and figure out what can be covered by what programs.

* * *

So at this point, what I am going to do, I think I have sufficient information regarding the parties' incomes at this point.

Now, here are the things that I am going to require be included as the reasonable and necessary costs. Of course the parties' incomes are what they are. I think [appellee's counsel] accurately figured out the health insurance expenses[.] . . . So those numbers are plugged in in this case.

Now, the fact that neither [of the specialized caretakers paid by appellee to care for Child] showed up in court doesn't mean that there aren't these work-related child care expenses. Of course there are work-related child care expenses in this case. He's not a child who can be left at home. The next-door neighbor sometimes watches him before [appellee] can get home. . . .

So I'm just not convinced of all of these costs as put forth by [appellee] in this matter. So at this point, I am only willing to allot a maximum of $300 for those work-related child care expenses, which I believe you have at $802, so that figure becomes $300.

> The extraordinary medical expenses, I am satisfied. That is pretty clear. He has to have the cocktail in this case to assist him with his breathing and other day-to-day just basic functioning in order to get oxygen into his system at this point, and there is sufficient documentation regarding those costs are $500. So those are the numbers I am plugging in at this point.
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> . . . I am putting the burden on [the parties] to come up with something more; otherwise, at . . . the end of February 2012, then at that point, barring any additional — lack of additional information, this Order is the Order that becomes the final child support order, unless somebody files something to modify that and to show me otherwise there is another material change of circumstances.
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> In terms of the effective date, you know, I recognize that [appellee] has covered these costs for a significant period of time, and also that [appellant], his expectation was not to have any additional child support, but I also do know that the Petition was filed back on . . . May 21, 2010, and an amended petition filed March 25, 2011.
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> I do think at this point in terms of the best interest of the child that I will make it retroactive to some degree, but not to the date of the filing of the Original Petition that was filed by [appellee]. I am going to backdate this to January of 2011. So January 1, 2011, is when this became effective.
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> So I know that there are some arrears that are occasioned by the entry of an Order, but I would also at this point only add an additional $75 a month in addition to cover the arrears in addition to any current support that the Order requires.
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> I am not going to award either side attorney's fees at this point. Each party will be responsible for their own attorney's fees.

Appellant appealed, and appellee cross-appealed. Neither party supplemented the circuit court record with any additional information and, accordingly, on February 27, 2012,

the temporary order entered October 12, 2011, became the operative child support order in this case. Both parties also later filed supplemental notices of appeal.

On December 18, 2012, this Court filed an unreported opinion dealing with the parties' appeal and cross-appeal. *John Harrison Frye, Sr. v. Melissa Lynn Mather*, No. 1861, Sept. Term 2011. Appellant raised three questions in his 2012 appeal: 1) Did the trial court err in awarding child support? 2) Did the trial court err in awarding extraordinary medical expenses? 3) Did the trial court err in awarding child care expenses? We answered the first question "no," but we answered the second and third questions "yes" because we could not discern the rationale for the court's rulings regarding extraordinary medical expenses or work-related child care expenses. We observed:

> In this case, the circuit court awarded $500 in extraordinary medical expenses for the medication prescribed for [Child]'s breathing. The circuit court made this award based upon appellee's testimony that a medication cocktail had been prescribed to [Child], and her submission of five unfilled prescriptions written by [Child]'s physician, along with an article from a medical journal explaining the treatment of mitochondrial disease. Appellant provided no testimony from any expert that the medication was not medically indicated. Rather, appellant's argument boils down to this: Because [Child] has survived for two years without the medication after it was prescribed, it is unnecessary.
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> We decline to accept this contention. Appellee provided evidence of medical necessity to the circuit court in the form of: (1) prescriptions signed by a medical doctor — who, by definition, is trained to determine whether a patient requires a specific medication — and (2) an article from Current Treatment Options in Neurology, a medical journal, explaining the necessity of each medication for the condition with which [Child] has been diagnosed. Appellee testified that the most expensive medication would cost $225. As the cost of the medications is, therefore, an "expense[ ] over $100 for a single illness or condition" "necessary [ ] for . . . treatment for a[ ] chronic health problem," the cost constitutes an extraordinary medical expense. F.L. § 12-201(g).

> Four of the five medications prescribed to [Child] are identified in the article provided by appellee as having the following approximate prices: (1) Coenzyme Q10 – about $200 per month (included in the exhibit is a printout from an online pharmacy listing the price of this medication as $225 for a 28-day supply); (2) Riboflavin – $5; (3) L-Creatine – $20; and (4) L-Carnitine – $70 for tablets and $30 for liquid. No price was provided as to lipoic acid, the final medication prescribed. The total cost of the medications listed above is, therefore, at most between $295 per month and $320 per month. Thus, the evidence introduced at trial documented a figure lower than $500. Given that the price of one medication is unknown, the total cost could be higher than these subtotals. Beyond stating that there was "sufficient documentation regarding th[e] costs[,]" the circuit court gave no indication of how it reached the figure of $500. As a result, we are unable to determine that there is material evidence to support the factual findings of the trial court that [Child]'s medication would cost $500 per month. As such, we conclude that the circuit court abused its discretion in awarding as an extraordinary medical expense the amount of $500 for [Child]'s medication. [FN 9 OMITTED] Accordingly, **we vacate the order of $500 and remand for a determination of extraordinary medical expenses, and an explanation of the basis for the determination.**

Slip op. at 21-23 (emphasis added). In footnote 9, we further observed:

> Although appellee introduced into evidence quotes for installation of a ceiling track lift system in the amounts of $8,998 and $10,370, and a quote for a handicapped accessible van for $69,247.60, the circuit court stated that the award for extraordinary medical expenses was based solely on the cost of [Child]'s medication. **As to the lift system and the van, the circuit court** noted that appellee had not researched whether the costs could be covered by insurance or aid from charitable agencies, but **did not explain further why it declined to include in the award the costs asserted by appellee**.

Slip op. at 23 (emphasis added). As to appellee's claim for work-related child care expenses, we stated:

> Appellant contends that the circuit court erred in awarding $300 per month in child care expenses. Appellant argues that "[i]t is evident that the [circuit] court did not accept [a]ppellee's testimony with respect to the necessity of child care expenses of $802 dollars per month. However, the [circuit] court offered absolutely no explanation as to why it awarded the particular number of $300 for child care expenses." Appellant asserts that where, as here, child care expenses are speculative, such an award is improper.

> Appellee responds that the circuit court did not err in awarding child care expenses. Appellee contends that an award of child care expenses in addition to the basic child support obligation is mandatory, and that, as she has a full-time job requiring her to pay for child care, the circuit court correctly added the cost to appellant's basic child support obligation. On cross-appeal, appellee argues that the circuit court failed to base the award on the evidence introduced at trial, consisting of a list of child care payments from May 2010, which she contends totals in excess of $300 per month. Appellee asserts that, as such, the circuit court erred in failing to award more than $300 per month in child care expenses.
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> Appellee testified that [Child] has roughly three-and-a-half months of school vacation over the course of a year, during which appellee must pay for full-time care. For those three-and-a-half months (fifteen weeks), appellee would, therefore, pay approximately a total of $4,425 for child care at Treasure Island. Appellee testified that she requires after-school care for [Child] for the remaining eight-and-a-half months of the year. The cost for after school care for those eight-and-a-half months (thirty-seven weeks) would be approximately $4,810 at Treasure Island. The total yearly cost would be approximately $9,235, or $769.58 per month. The circuit court stated that it was "not convinced of all of the[ ] costs as put forth by [appellee]" and that it was "only willing to allot a maximum of $300 for [ ] work-related child care expenses[.]" **The circuit court offered no explanation of the grounds for its determination of $300 per month**, and, based on the record before us, we can discern no basis for a determination of child care costs in this amount. Accordingly, we conclude that the circuit court abused its discretion in awarding child care expenses in the amount of $300 per month. **We vacate the order of $300 and remand for a determination of the cost of the work-related child care expenses, and an explanation of the basis for the determination.**

Slip op. at 23-26 (emphasis added).

In her 2012 cross-appeal, appellee raised five issues. Our opinion stated that the first two of the cross-appeal issues "concern[ed] the same subjects raised on appeal by appellant" in his second and third questions presented; consequently, these two issues were not specifically addressed in the unreported opinion of this Court. The other issues presented by

appellee on her cross-appeal concerned whether the circuit court erred in not making its award retroactive to May 21, 2010, the date of the filing of the original petition, and "in awarding only $75 per month payable on the arrears"; whether the court abused its discretion in declining to award attorney's fees; and whether the court "erred in failing to order that child support extend beyond [Child]'s eighteenth birthday." Only the last question is at issue in the instant appeal, and we will discuss it later in this opinion.

Although we vacated the child support awards and remanded the case for further consideration of the rulings regarding extraordinary medical expenses and work-related child care expenses, we affirmed the other judgments of the circuit court. These included the circuit court's finding that a material change in circumstances existed, that no attorney's fees would be awarded, and that the child support would terminate upon Child's 18th birthday. The mandate of this Court was: "Judgment of the Circuit Court for Harford County affirmed in part and reversed in part as stated in the opinion; costs to be paid 1/2 by appellant and 1/2 by appellee."

The remand hearing was held on June 21, 2013. The following colloquy reflects a disagreement regarding the matters that were to be addressed on remand:

> [BY THE COURT]: This matter, then, is back before me on remand from the Court of Special Appeals with respect to two primary issues: The cost of [Child]'s medication and the after school care costs.
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> So are there any other issues that you all were aware of in terms of the remand based on the opinion?
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> [BY APPELLEE'S COUNSEL]: Yes, Your Honor. I think the Court's opinion instructs this Court to make a determination of the extraordinary medical expenses not restricted to the medication.

It refers on page 23 of its opinion, it goes through a fairly detailed analysis of the cocktail, which was the medication that they were referring to, and at the same time they talk about, particularly cited in footnote nine on page 23, which reads, "Although appellee," which is my client, "introduced into evidence quotes for installation of a ceiling track lift system in the amount of eighty nine hundred and change and 10,000 and change, and a quote for a handicapped accessible van for sixty-nine thousand and change, the circuit court stated that the award for extraordinary medical expenses was based solely on the cost of [Child]'s medication. As to the lift system in the van, the circuit court noted that the appellee had not researched whether the cost would be covered by insurance or aid from charitable agencies, but did not explain further why it declined to include in the award the cost asserted by the appellee."

The final sentence of that paragraph where that footnote is cited says, "Accordingly, we vacate the order of $500 and remand for a determination of extraordinary medical expenses and an explanation of the basis for that determination."

So I respectfully suggest that the Court is instructing this Court to make a determination and an explanation of that determination on all the extraordinary medical expenses, not just restricted to the medication.

[BY THE COURT]: [Ms. Appellant's Counsel?]

[BY APPELLANT'S COUNSEL]: Your Honor, I agree with Your Honor's initial reading of the Opinion directing it back to this Court. I think Your Honor was very clear that she was not going to include these items, and, in fact, we came back for a second hearing, and you had ordered to determine whether or not anybody had additional information to present in that regard, and there was no further information to present.

I believe that the direction from the Court of Special Appeals is specifically limiting it to the medication expense for [Child] and its determination of what they were in that regard.

[BY THE COURT]: In any event, I guess the burden is still with respect to the Court having to determine what the extraordinary medical expenses are, whether it's medication alone or whether it's medication and other things, but the ultimate decision still rests with the Court for making that finding and providing some basis for that finding.

> Then any disagreement with respect to the after school care costs as part of the issue on remand as well?
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> [BY APPELLANT'S COUNSEL]: No, Your Honor. It's my understanding it was just the work-related child care expenses and an explanation.
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> [BY APPELLEE'S COUNSEL]: I think that's correct, Your Honor. The Court's decision, as I read it in that regard, again, it's the same language from remand for determination of costs for the work-related child care costs and an explanation. So we are here today for a determination of both those issues and the Court's explanation for those issues.
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> I am prepared to assist the Court in its determination, because, obviously, there was insufficient or confusing evidence at the time of the trial when the Court rendered its decision to make a ruling that the Court of Special Appeals was satisfied with.
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> [BY THE COURT]: Let me have you go ahead and proceed then, [Mr. Appellee's Counsel], with respect to any witnesses that you want to call to amplify the record regarding both the issues on remand.

Only appellee testified at the remand hearing. Because one of appellant's contentions in this appeal is that appellee's testimony was not sufficient to support certain of the trial court's conclusions, we will discuss appellee's testimony in greater detail later in this opinion.

On November 19, 2013, the trial court filed a memorandum opinion in which it made the following findings:

> In accordance with Maryland law, "extraordinary medical expenses incurred on behalf of a child shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted actual income." Md. Ann. Code, Fam. Law Art. § 12-204(h)(2). These expenses are defined as "uninsured expenses of over $100 for a single illness or condition . . . [and] includes uninsured, reasonable, and necessary costs for . . . treatment for any chronic health problem." Md. Ann. Code, Fam. Law Art. § 12-201(g).

First, with respect to [Child]'s medical condition, the unrefuted testimony during both hearings is that [Child]'s medical condition is permanent and chronic and he needs medication to treat it.[FN 6 OMITTED] When the parties were before this court in 2011, [appellee] testified that although Dr. Cox [Child's pediatrician] had prescribed medication for [Child], appellee had not filled the prescription because "the insurance does not pay for it, and it's very costly" — with the most expensive medication costing $225.00 for a 28-day supply. If [appellee] had filled the prescriptions, they would have cost between $225.00 to $320.00 a month. As of September 28, 2011, she had not filled the prescriptions. However, **at the hearing on June 21, 2013, [appellee] provided evidence that [Child]'s extraordinary medical expenses are $47.42 a month for his medication, and that she began incurring this expense in March 2013,** but only for one medication. She explained that [Child] was only taking one of the medications at this time because his doctor wants to determine whether using any of them are medically contraindicated if taken singly, in combination with each other, or because of side effects. There is no credible evidence that negates the need for medication.

Second, given his size and lack of independent mobility, [Child] also needs a customized van that accommodates his wheelchair in order to transport him. At the first hearing, [appellee] testified that the van she was using was a 2004 model and that she was experiencing a number of problems with it, and it would cost $69,247.60 to replace it. [FN 7 OMITTED] By the second hearing, [appellee] had purchased a 2012 Chevrolet Express which was financed in part by trading in the 2004 vehicle as well as a 2011 Chevrolet Equinox. [FN 8 OMITTED] **She purchased the van on July 30, 2012, and the monthly payments are $735.00.** And, in order to get [Child]'s wheelchair into the new van, **she paid $4,770.00 on August 10, 2012 for a van lift**. Requests for grant funding or reimbursement by a health insurance plan were denied. **Given [Child]'s medical condition and relative immobility, this court finds that he needs a means of transportation large enough to accommodate his wheelchair — a van, and a means to get the wheelchair into the van.**

Finally, **[Child] also needs a ceiling track lift system to move him mainly between his bed and the bathroom.** At the 2011 hearing, [appellee] testified that she had estimates for a ceiling track lift system which would cost between $6,185.00 and $10,370.00. **She paid $8,998.00 for the ceiling track lift system in November 2012.** Although [appellant] has argued that the motorized ceiling track lift system is not necessary because a manual lift could be used to lift [Child] or because [appellee] does not use a lift at [appellee's

> second] residence in Delaware, for the following two reasons this court is not persuaded by that argument.
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> First, [Child] is no longer a small boy and his condition has worsened as he has gotten older. His size and condition make it impractical to move him even with a manual lift that is covered by insurance. And, [appellee] has testified that she has back problems that make it painful to move [Child] using only a manual lift. Certainly, if she has to move him several times a day, over time her back problems would worsen. Hence, a motorized lift used over a long time would be much easier on her back and on [Child]. Second, [appellee's] primary residence is in Maryland where [appellee] was working, where [Child] attends school, and where they reside as a family with [appellee's husband]. This is in contrast to the much shorter periods of time [appellee and her husband] and [Child] spend at the Delaware residence. Therefore, the fact that [appellee] does not use a lift at the Delaware residence does not mean one is not needed there. Nor does the lack of one invalidate the overwhelming need for a motorized system at the primary residence in Maryland.
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> For the reasons stated above, therefore, **this court finds that the extraordinary medical expenses for [Child] include the medications prescribed by Dr. Cox, the handicap accessible van and wheelchair lift, and the motorized ceiling track lift system**. All of these things are reasonable and necessary costs given [Child]'s permanent chronic medical condition. **For the child support calculation in this case, this court will include as extraordinary medical expenses, $47.42 a month for the medication and $735.00 a month for the van payment. The expenses of $4,770.00 and $8,998.00 for the van lift and the ceiling track lift, respectively, will be amortized beginning with the month in which those payments were incurred and will end in July 2014 when [Child] turns 19 years old and the obligation to pay child support ends.**

(Emphasis added.)

The court adopted these findings in its order, which separated the relevant payment requirements into five different time periods in an attempt to adjust appellant's child support obligations according to appellee's expenses during each time period. The court prepared and appended to its opinion and child support order of November 19, 2013, five separate

guidelines worksheets, one for each of the five time periods. The court determined that, for the period of January 1, 2011, through December 31, 2011, appellee incurred work-related child care expenses of $365 per month; therefore, pursuant to the guidelines, appellant's child support obligation for that time period was $1,236.34 per month.

For the period January 1, 2012, through July 31, 2012, the court found that appellee incurred no recoverable child care expenses; therefore, the guidelines amount of child support owed by appellant for those seven months was $949.70 per month. (It is not clear from the record when appellee stopped working in 2012.)

For the period August 1, 2012, through October 31, 2012, during which period the van and the van lift were purchased, the court determined that appellant's child support obligation under the guidelines was $1,682.39 per month.

For the period November 1, 2012, through February 28, 2013, during which period the ceiling track lift system was purchased, the court included amounts for the van and van lift, as well as the ceiling track lift system, and the court determined that appellant's child support obligation under the guidelines was $2,018.50 per month.

Finally, for the period March 1, 2013, through July 31, 2014, during which time the court continued to include amounts for the van, van lift, and ceiling track lift system, and during which time appellee also incurred a monthly medication expense of $47.42, the court determined that appellant's child support obligation under the guidelines was $2,595.69.

On December 2, 2013, appellant filed a motion to alter or amend, pursuant to Rules 2-534 and 2-535, urging the court to revise its November 19, 2013, order. Appellant asserted

that the court should find that the medication, the van, van lift, and ceiling track lift system are not extraordinary medical expenses within the ambit of F.L. § 12-201(g), and remove all of those expenses from consideration when computing child support. In the alternative, appellant urged the court to remove the $8,998.00 expense attributed to the purchase of the ceiling track lift system for lack of supporting evidence. And appellant asserted that the court had erred in ordering the payments to continue past Child's 18th birthday (*i.e.*, July 8, 2013). Appellant also pointed to an apparent arithmetic error that resulted in the court erroneously setting the amount of monthly support at $2,595.69 rather than $2,055.00, even if the court did not make any of the other changes requested by appellant.

On December 17, 2013, appellee filed a response and a cross-motion to revise, arguing that she was no longer employed and that the court had erred in not attributing to her an income figure of $0 when calculating appellant's child support obligation. On December 26, 2013, appellant filed a response.

On February 7, 2014, appellant filed an amended motion to alter or amend. It was essentially the same as the motion filed on December 2, 2013, except that it added evidentiary support for the earlier motion's assertion that appellee had failed to testify as to the cost of the ceiling track lift. On February 12, 2014, the court granted the amended motion in part, but only with respect to the arithmetic error. The circuit court amended the child support obligation for the period of March 1, 2013, through July 31, 2014, from $2,595.69 per month to $2,055.00. All other provisions of the November 19, 2013, order

were reaffirmed. This appeal followed.[2] As noted, appellee has not filed a brief in this Court.

## STANDARD OF REVIEW

Because this was an action tried without a jury, our review is conducted pursuant to Maryland Rule 8-131(c), which provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

We are also mindful of what this Court said regarding child support in *Knott v. Knott*, 146 Md. App. 232, 246-47 (2002):

> Child support orders are generally within the sound discretion of the trial court. However, "where the order involves an interpretation and application of Maryland statutory and case law, [the] Court must determine whether the trial court's conclusions are 'legally correct' under a de novo standard of review." *Walter v. Gunter*, 367 Md. 386 at 392, 788 A.2d 609 (citing *In re Mark M.*, 365 Md. 687, 782 A.2d 332 (2001)). *See also Jackson v. Proctor*, 145 Md. App. 76, 90, 801 A.2d 1080, 1089 (2002) (noting that "we will not disturb the trial court's determination as to child support, absent legal error or abuse of discretion").

[2]On February 12, 2014, the court denied appellee's cross-motion to revise. Appellee asked for reconsideration in a letter to the court dated February 19, 2014, and the court, in a memorandum opinion filed on February 20, 2014, denied that request.

## DISCUSSION

### 1. Consideration of issues beyond the scope of remand

Appellant contends that the circuit court, on remand, should not have considered the ceiling track lift, the van, and the van lift, because those items were all acquired after the initial proceedings, but before the remand, and none of those items are "extraordinary medical expenses" in any event. In our view, the order of remand was not as limited as appellant contends. In our 2012 opinion, we stated that we could not effectively review the amount the circuit court had recognized as extraordinary medical expenses because the court did not explain "how it reached the figure of $500." Slip op. at 23. We vacated the order allowing $500 for extraordinary medical expenses and "remand[ed] *for a determination of extraordinary medical expenses*, and an explanation of the basis of the determination." We did not restrict the court from taking additional evidence. Nor did we preclude the court from considering updated financial information. *Cf. Fuge v. Fuge*, 146 Md. App. 142 (2002) (where we ordered the circuit court to consider updated financial information upon remand of a monetary award). In *Fuge*, we stated:

> When the extent of the marital property has changed due to an appellate decision, the trial court should rethink whether its original method of allocation is still "equitable" in light of the new circumstances. Further, the court must carefully consider whether there have been any other changes in circumstance since its original award that may have caused the equities to shift, justifying a different allocation of the marital property.

*Id.* at 176-77 (footnote omitted).

Given the fact that the circuit court in the present case was tasked with reconsidering the amount of child support that would be appropriate during a period subsequent to the date

of the original hearing, we perceive no abuse of discretion in the court's willingness to hear evidence that might bring the court up to date.

**2. Extraordinary medical expenses**

Appellant contends that the court erred in finding that any of the proffered expenses — for the medication, the van, the van lift, and the ceiling track lift system — were extraordinary medical expenses within the meaning of F.L. § 12-201(g). He further contends that the court clearly erred in its finding that appellee paid $8,998.00 for the ceiling track lift system because there was no testimony or evidence to support such a finding. Appellant argues that none of those items should have been considered by the court on remand.

**A. F.L. § 12-201(g) and F.L. § 12-204(h)**

F.L. § 12-201(g) defines "extraordinary medical expenses":

> (1) "Extraordinary medical expenses" means uninsured expenses over $100 for a single illness or condition.
>
> (2) "Extraordinary medical expenses" includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed medical disorders.

F.L. § 12-204(h) provides:

> (1) Any actual cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible shall be added to the basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes.
>
> (2) Any extraordinary medical expenses incurred on behalf of a child shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted actual incomes.

"In the case of medical expenses, a court only has authority to order payment for extraordinary medical expenses, as that term is narrowly defined in F.L. § 12–201(g)." *Bare v. Bare*, 192 Md. App. 307, 317 (2010). We explained in *Bare* that the guidelines are intended to cover a child's "ordinary" medical expenses under the basic guidelines amount. We stated: "[T]he child support payments imposed under the F.L. § 12–204(e) schedule are designed to cover typical costs of raising children, including ordinary medical expenses such as the medications and co-payments for which Mrs. Bare sought reimbursement." *Id*. Therefore, the court's requirement that, in addition to the guidelines amount, the Bares should split *all* medical expenses, "without regard to whether they are ordinary or extraordinary, effectively requires Mr. Bare to pay twice for ordinary medical expenses." *Id*.

Neither the appellee nor the circuit court cited any case deciding whether a handicap accessible van, van lift, or ceiling track lift system fall within the statutory definition of "extraordinary medical expense." But we see no reason that such unusual health care expenses would be covered by the basic guidelines amount "designed to cover *typical* costs of raising children." *Id*. (emphasis added).

In the circuit court, appellee directed the court's attention to Internal Revenue Service Publication 502, titled "Medical and Dental Expenses," which provides that certain expenses can be deducted as medical expenses on Schedule A, Form 1040, including capital improvements to a home to "pay for special equipment installed in a home, or for improvements, if their main purpose is medical care for . . . your dependent," "the difference between the cost of a regular car and a car specially designed to hold a wheelchair," and the

cost of "special equipment installed in a car for the use of a person with a disability." In our previous opinion in this case, we did not indicate whether such equipment could be characterized as extraordinary medical expenses for child support purposes. We simply stated that the circuit court "did not explain further why it declined to include in its award the costs asserted by appellee." Slip Op. at 23 n.9.

On remand, the circuit court found as a fact that Child's "medical condition is permanent and chronic," and causes Child to have a "lack of independent mobility" that requires "a customized van that accommodates his wheelchair in order to transport him." Under the circumstances, it was not a clearly erroneous finding for the circuit court to conclude that the cost of the van and van lift were extraordinary medical expenses that should be shared by Child's parents above and beyond the basic guidelines amount of support.

Although the same might be said of a ceiling track lift system, there is no evidence in the record to support the trial court's finding that appellee "paid $8,998.00 for the ceiling track lift system in November 2012." Appellee introduced a quote she had received from a vendor of lift systems, but she conceded she did not purchase the lift from a vendor. There was no testimony or documentary evidence supporting the actual cost of the ceiling track lift that was acquired from an unidentified individual at an unstated price, despite the fact that appellant had served a subpoena upon appellee for her to bring to court documentation to support her claimed expenses. Appellee was cross-examined on this point:

> [BY APPELLANT'S COUNSEL]: Did you bring a [copy of the] check for paying for the lift? The ceiling track lift?
>
> [BY APPELLEE]: No.

Q. I see that you've provided us with a copy of the check for the van lift, but you didn't for the ceiling track lift?

A. Right. We bought it from a family that had a child that pas[sed] away that was getting rid of it. So we were able to purchase it from a private person, not through a vendor.

Q. Oh, okay. So these invoices [actually, vendor quotes] that you provided to the Court do not truly reflect what you paid for the lift?

A. Well, at the time of the hearing, that's what we were attempting to get, but since then, right, things have changed, and we've purchased what we can afford.

Because there is no evidence in the record to support the trial court's finding that appellee spent $8,998.00 to purchase the ceiling track lift, the court's finding in that regard is clear error, and there was no evidence by way of either testimony or documents to prove the amount appellee paid for a ceiling track lift system. Consequently, it was clear error for the circuit court to require appellant to pay any amount to reimburse appellee for a ceiling track lift system.

With respect to the van, the court included only the monthly payments being made by appellee to acquire the van (after trading in two other vehicles to reduce the net purchase price of the van). Consequently, the court made a reasonable effort to amortize the cost of the van over the life of the loan, and only the monthly payment was included in the child support calculation as an extraordinary medical expense. We conclude that the inclusion of the $735 payment on the van was neither clearly erroneous nor an abuse of discretion.

Similarly, there was evidence that the acquisition of the van lift was a reasonable and necessary expense incurred as a consequence of Child's medical condition. But, although

the court made an attempt to amortize the purchase price over the useful life of the lift, the court inexplicably divided the cost by 24 (months) even though appellee had testified that she expected the lift to provide seven-and-a-half years of service, *i.e.*, 90 months, as her previous lift had. Consequently, rather than including $198.00 a month, the court should have included only $53.00 per month for the amortized expense of the van lift.

Finally, the court did not err in "includ[ing] as extraordinary medical expenses, $47.42 a month for the medication[.]" By its plain terms, F.L. § 12-201(g)(1) defines "extraordinary medical expenses" as "uninsured expenses over $100 for a single illness or condition." As noted above, appellee's monthly expenses incurred as a direct consequence of Child's medical condition far exceeded $100, and the medication expense was incurred as a consequence of the same "chronic health problem." Accordingly, the circuit court did not err in finding that the monthly medication expense of $47.42 was part of appellee's "extraordinary medical expense[ ]" under the statute.

**3. Extending child support until Child's nineteenth birthday**

Appellant points out that, in its original order of October 12, 2011, the trial court determined that his child support obligation would cease once Child turned eighteen. Appellant contends that this finding became the law of the case when this Court did not rule in favor of appellee's argument when appellee argued during the 2012 appeal that we should vacate the circuit court's ruling on this point. Our review of the record confirms that appellant is correct.

The order of October 12, 2011, provided, in pertinent part:

> ORDERED, that child support and earnings withholding (with the exception of arrearages, if any) shall terminate on July 8, 2013, unless it is determined that the child is entitled to support by the parties beyond his eighteenth (18th) birthday, (whether or not there is a material change in circumstance), in which case such child support may be extended by further Order of this Court[.]

The "Final Child Support Order" entered on February 27, 2012, contained the same provision.

In appellee's 2012 cross-appeal to this Court, appellee's fifth question presented was: "Whether the circuit court erred in failing to order that child support extend beyond [Child]'s eighteenth birthday?" In our December 18, 2012, opinion, we concluded the ruling was not in error, stating:

> Appellee contends, on cross-appeal, that the circuit court erred in not extending the child support order past [Child]'s eighteenth birthday. Appellee argues that Maryland imposes a duty on the parents of adult disabled children to support those children. As [Child] was sixteen at the time the child support order was entered, appellee asserts that "[i]t would unquestionably be in the best interest of equity to decide how much child support [Child] will need both now and after he turns eighteen."
>
> **In general, a child is no longer legally entitled to the support of a parent upon reaching the age of majority. See Kirby v. Kirby, 129 Md. App. 212, 215 (1999) ("[A] court cannot require a parent to support a child after the child reaches the age of eighteen."); Quarles v. Quarles, 62 Md. App. 394, 403 (1985) ("A [parent] may not be compelled to support a child after [the child] reaches majority.").** F.L. § 13-102(b), however, provides that "[i]f a destitute adult child is in this State and has a parent who has or is able to earn sufficient means, the parents may not neglect or refuse to provide the destitute adult child with food, shelter, care, and clothing." A "destitute adult child" is defined as "an adult child who[ ] has no means of subsistence[ ] and [ ] cannot be self-supporting, due to mental or physical infirmity." F.L. § 13-101(b). A parent, therefore, "has a duty to support an incapacitated adult child[.]" Sininger v. Sininger, 300 Md. 604, 608 (1984). "[S]uch an adult child is to be treated on equal footing as a minor child" under the provisions of the Family Law article. Id.

> In this case, the circuit court noted that neither of appellee's petitions for modification requested that child support be effective beyond [Child]'s eighteenth birthday, stating "I can't order indefinite child support. [FN 15 OMITTED] There has to be some filing that requires support to continue beyond the age of 18, so I'm not going to be able to do that, although [appellee] has asked the Court to decide that he needs it." Appellee has pointed to no legal authority, and we know of none, requiring a circuit court to award child support for a disabled child beyond the age of eighteen prior to the child's eighteenth birthday. [FN 16 OMITTED] Again, absent any legal authority for the argument or information as to the manner in which the circuit court acted arbitrarily or contrary to law, we are unable to conclude that the circuit court abused its discretion.

Slip op. at 31-33 (emphasis added). We further noted: "It is clear from the case law, however, that a parent's child support obligation under [F.L.] § 12-204 ceases upon the eighteenth birthday of the child. Nothing in [F.L.] § 1-201(b) alters this principle." Slip op. at 32 n.15.

In *Corby v. McCarthy*, 154 Md. App. 446, 478 (2003) — which was a case that concerned an adult destitute child — this Court discussed the law of the case doctrine:

> In Maryland, "once a decision is established as the controlling legal rule of decision between the same parties in the same case it continues to be the law of the case." *Kline v. Kline*, 93 Md. App. at 700, 614 A.2d 984; see *Hagez v. State*, 131 Md. App. 402, 418, 749 A.2d 206 (2000); *People's Counsel v. Prosser Co.*, 119 Md. App. 150, 176, 704 A.2d 483, *cert. denied*, 349 Md. 494, 709 A.2d 139 (1998). In general, the law of the case doctrine "prevents trial courts from dismissing appellate judgment and relitigating matters already resolved by the appellate court." *Stokes v. American Airlines, Inc*., 142 Md. App. 440, 446, 790 A.2d 699 (2002), *cert. denied*, 369 Md. 179, 798 A.2d 552 (2002). The doctrine also applies when we revisit a prior decision of this Court involving the same parties and the same claim. *Id*.; *see also Turner v. Housing Authority*, 364 Md. 24, 31–32, 770 A.2d 671 (2001); *Korotki v. Springer*, 218 Md. 191, 193–194, 145 A.2d 767 (1958); *Hawes v. Liberty Homes, Inc*., 100 Md. App. 222, 230, 640 A.2d 743 (1994). Therefore, when an appellate court "answered a question of law in a given case, the issue is [usually] settled for all future proceedings." *Stokes*, 142 Md. App. at 446, 790 A.2d 699.

Here, the circuit court gave no reason on remand for extending the child support order past Child's 18th birthday. In its oral ruling in 2011, which eventually resulted in the entry of a final order on February 27, 2012, the court had observed that, in the absence of "some filing that requires support to continue beyond the age of 18," it could not order that child support extend until Child's 19th birthday. Appellee specifically appealed that ruling in her cross-appeal, and this Court held that the ruling was not error. Consequently, the circuit court should not have revisited the ruling on remand. Moreover, even when appellant filed a post-judgment motion that pointed out this error, the circuit court gave no explanation to justify the change in its ruling. Under these circumstances, the court's child support order must terminate on July 8, 2013.

## CONCLUSION

To summarize our rulings, on remand, the circuit court should revise its previously prepared child support guidelines worksheets as follows:

a. Because none of the rulings we have made in this opinion require any alteration to Worksheets 1 and 2, covering the period of January 1, 2011, through July 31, 2012, neither of those worksheets should be altered.

b. Worksheet 3, covering the period August 1, 2012, through October 31, 2012, should be revised by reducing the Extraordinary Medical Expenses under 4.c. from $933.00 (which included $735 for the van payment plus $198 for an allocated portion of the cost of the van lift) to $788 (which includes $735 for the van payment plus $53 for an allocated

portion of the van lift). After making that adjustment, the child support obligation for the period August 1, 2012, through October 31, 2012, should be recalculated.

c. Worksheet 4, covering the period November 1, 2012, through February 28, 2013, should be revised by reducing the Extraordinary Medical Expenses under 4.c. from $1,361.00 (which included $735 for the van payment, plus $198 for an allocated portion of the cost of the van lift, plus $428 for a portion of the ceiling track lift system) to $788 (which includes $735 for the van payment, plus $53 for an allocated portion of the van lift, and no amount for the ceiling track lift system). After making that adjustment, the child support obligation for the period November 1, 2012, through February 28, 2013, should be recalculated.

d. Worksheet 5, covering the period March 1, 2013 through July 31, 2014, should be revised by reducing the Extraordinary Medical Expenses under 4.c. from $2096.00 (which included $735 for the van payment, plus $198 for an allocated portion of the cost of the van lift, plus $428 for a portion of the ceiling track lift system, plus $48 for the medicine, plus $687 for an erroneous, unknown expense) to $836 (which includes $735 for the van payment, plus $53 for an allocated portion of the van lift, plus $48 for the medicine expense, and no amount for the ceiling track lift system or any other expense). The time period covered by this worksheet should end on July 31, 2013 (the month during which Child turns 18). After making that adjustment, the child support obligation for the period March 1, 2013 through July 8, 2013, should be recalculated. (Appellant's child support payment for the month of July 2013 should be prorated to terminate on July 8, 2013.)

After revising the worksheets and recalculating the appellant's child support obligation as outlined above, then, because appellant's child support obligation for his minor child terminated on July 8, 2013, the court should be in a position to ascertain any arrears and enter an appropriate order.

Our rulings in this appeal are not intended to foreclose Child (or any guardian for Child) from pursuing support from appellant for a destitute adult child.

**JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED IN PART AND REVERSED IN PART AS SET FORTH IN THIS OPINION. CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY BETWEEN APPELLANT AND APPELLEE.**