Circuit Court for Montgomery County
Case No. 191281-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 94

September Term, 2018

JEFFREY P. MILLER

v.

ELLEN O. MILLER

Fader, C.J.
Wright,
Leahy,

JJ.

Opinion by Wright, J.

Filed: April 23, 2019

Dr. Jeffrey Miller ("Dr. Miller"), appellant, filed a "Motion to Terminate and/or In the Alternative, Reduce Alimony," against his former wife, Ellen Miller ("Ms. Miller"), appellee, in the Circuit Court for Montgomery County.[1] Following a three-day hearing, the circuit court issued an "Order and Opinion" denying Dr. Miller's motion. Dr. Miller appeals the circuit court's judgment and presents the following questions for review, which we have reworded and consolidated as follows:[2]

1. Did the circuit court abuse its discretion in denying Dr. Miller's petition for termination or modification of alimony?

For the reasons provided below, we answer this question in the negative and affirm the judgment of the circuit court.

---

[1] Ms. Miller did not submit a brief or otherwise participate in this appeal.

[2] Dr. Miller presented his question to the Court as follows:

> 1. Was the [circuit court's] decision clearly erroneous when denying Dr. Miller's petition for termination or modification of alimony based on a finding that there was no substantial change in circumstances?
>
> 2. Was the [circuit court's] decision clearly erroneous when it failed to consider Ms. Miller's failure to take steps to become self-supporting or partially self-supporting?
>
> 3. Was the [circuit court's] decision clearly erroneous in ordering Dr. Miller to be the source of a lifetime pension to Ms. Miller, notwithstanding Ms. Miller's failure to manage properly her spending and her failure to manage her assets and failure to make attempts to become self-supporting or partially self-supporting?
>
> 4. Was the [circuit court] clearly erroneous and did [it] create a harsh and inequitable result to Dr. Miller by not terminating or reducing his alimony payments to Ms. Miller[?]

BACKGROUND

(a) Divorce Proceedings and Dr. Miller's "Motion to Terminate and/or In the Alternative, Reduce Alimony"

Dr. Miller and Ms. Miller were married on March 11, 1972. About 26 years later, the parties began litigation related to their divorce. On September 3, 1998, the parties litigated *pendente lite* alimony[3] and attorney's fees, and on February 4, 1999, a *pendente lite* order was signed. In relevant part, the order established that Dr. Miller was to pay $1,900.00 a month in *pendente lite* alimony, backdated to December 1, 1998, and that Dr. Miller would contribute $5,000.00 toward Ms. Miller's attorney's fees *pendente lite*.

On October 25, 2000, the circuit court issued its Judgment of Absolute Divorce, thereby terminating the parties' marriage. In its judgment, the circuit court incorporated, but did not merge,[4] a Memorandum of Understanding ("MOU") that the parties entered on October 10, 2000. The MOU contained the parties' agreements on issues related to division of property, alimony, and attorney's fees. On the issue of alimony, the parties agreed that Dr. Miller would pay Ms. Miller $3,600.00 a month until his death, or until Ms. Miller died or was remarried.

[3] "We have stated that the purpose of alimony *pendente lite* is to maintain the status quo of the parties pending the final resolution of the divorce proceedings, and that the award is based solely upon need." *Guarino v. Guarino*, 112 Md. App. 1, 10 (1996) (quotations and citation omitted).

[4] "[W]here the parties intend a separation agreement to be incorporated but not merged in the divorce decree, the agreement remains a separate, enforceable contract and is not superseded by the decree." *Johnston v. Johnston*, 297 Md. 48, 58 (1983).

About sixteen years later, on October 13, 2016, Dr. Miller filed a "Motion to Terminate and/or In the Alternative, Reduce Alimony." In his motion Dr. Miller argued that his upcoming retirement, and the subsequent reduction in income that it would cause, constituted a "substantial and material change in circumstance, justifying a cessation and termination of his alimony obligation." Ms. Miller filed her Answer on February 22, 2017, and requested that the circuit court deny Dr. Miller's request. As described below, a three-day hearing on Dr. Miller's motion took place from January 9 to 11, 2018.

(b) Dr. Miller's Financial Condition

Dr. Miller, who was 72 years old at the time of the hearing, testified that he retired from his dental practice on December 31, 2017. He decided to retire because of various medical problems, including leukemia, vision issues, and wrist and knee pain. Through his final year of employment, Dr. Miller earned $188,463.00 a year. Dr. Miller's December 29, 2017 financial statement reflected that he had net assets in the amount of $2,886,019.00.

At trial, Dr. Miller called Michael Creamer ("Mr. Creamer") to testify as an expert in the field of financial planning, retirement planning, and retirement and cash flow analysis. Mr. Creamer explained that he conducted a "Monte Carlo" simulation[5] to

[5] The United States District Court for the Eastern District of Louisiana has explained Monte Carlo simulations as follows:

> A Monte Carlo simulation is a risk assessment model that accounts for variability and uncertainty in risk factors . . . . The Environmental Protection Agency endorses this methodology for evaluating risk arising from environmental exposures. The simulation creates a large number of model estimates by selecting alternative values for the model's

determine when Dr. Miller could be expected to run out of money. To conduct his simulation, Mr. Creamer used an expected age of death of 92 years old, based on the age at which Dr. Miller's father passed away. Mr. Creamer also used an asset balance of $1,388,023.00.[6] Based on those factors, as well as other variables such as Dr. Miller's current age, the average rate of return on his assets, and estimated inflation, Mr. Creamer concluded that there was a 96% chance that Dr. Miller would run out of money at age 82 if he were to pay $3,500.00 a month in alimony. Dr. Creamer, however, testified that there was "no substantial statistical probability of an adverse financial consequence to [Dr. Miller] in continuing to pay alimony at the current rate for the next five years."

> assumptions. The assumption values are selected from distributions of likely values which are specified by the analyst. The assumption values take the form of a range using all possibilities between a minimum and a maximum value for whatever variables are uncertain. The completed simulation produces a range of results based on the random input values, each with a corresponding likelihood. For example, if the model generated a particular result during only 30% of the simulations, there is only a 30% chance that that result will occur in an individual trial. The model is particularly useful when reaching an exact numerical result is impossible or infeasible and the data provide a known range—a minimum and maximum, for example—but leave the exact answer uncertain.

Burst v. Shell Oil Co., 104 F. Supp. 3d 773, 782-83 (2015) (internal quotations, citations, and footnote omitted).

[6] $1,388,023.00 was the amount of money in Dr. Miller's Morgan Stanley IRA Portfolio at the time Mr. Creamer perform his Monte Carlo simulation. Importantly, "at [Dr. Miller's] instruction, Mr. Creamer *did not include* in his calculations an inheritance account or the proceeds from the sale of [Dr. Miller's] dental practice in [Dr. Miller's] assets."

In response, Ms. Miller called Joseph Estabrook ("Mr. Estabrook") to testify as an expert in forensic accounting, income, investment returns, and income tax issues. Mr. Estabrook also performed a financial analysis to determine when Dr. Miller could be expected to run out of money.[7] There were two major differences between Mr. Estabrook's analysis and that of Mr. Creamer. First, whereas Mr. Creamer estimated Dr. Miller's age of death by using the age at which Dr. Miller's father passed away, Mr. Estabrook used government-published life expectancy statistics to determine that Dr. Miller's estimated age of death was 85 years old. Additionally, Mr. Creamer did not include assets from an account inherited by Dr. Miller, nor did he include assets from the sale of Dr. Miller's dental practice, *see supra* n.6; Mr. Estabrook, on the other hand, included both assets in his calculations.

Mr. Estabrook produced two sets of results from his analysis. The first set of results assumed that Dr. Miller would continue to pay $2,185.00 a month on his home equity line of credit. Based on this payment, Mr. Estabrook concluded that if Dr. Miller were to continue paying the current level of alimony, Dr. Miller would run out of money just after age 84, or just before his expected date of death. The second set of results, however, assumed that Dr. Miller would pay only the minimum required payment of $464.68 a month on the line of credit. Under these circumstances, Mr. Estabrook

[7] Mr. Estabrook's financial analysis was not a Monte Carlo simulation. According to Mr. Creamer, Mr. Estabrook assumed that Dr. Miller's assets would grow at a static rate of 5% per year, while Mr. Creamer's Monte Carlo simulation accounted for the possibility that Dr. Miller's assets might grow at 5% annually, or have a different, even negative, rate of return.

concluded that under the current alimony structure, Dr. Miller would not run out of money until age 88, well past his expected date of death.[8]

(c) Ms. Miller's Financial Condition

Ms. Miller, who was 68 years old at the time of the hearing, worked only sporadic part-time jobs during the marriage.[9] According to her Social Security statement, Ms. Miller earned $22,127.00 in 2000, which was the most that she earned at any point in her work life. Ms. Miller moved to Israel in 2006; though she worked various part-time jobs when she first moved, she has made no effort to obtain employment since 2014. Ms. Miller attributes her lack of employment to "her age, her health (hand contracture and spinal stenosis), difficulty finding minimum wage work, and an overall difficulty in finding suitable employment in Israel."

At trial, Dr. Miller called Anthony Bird ("Mr. Bird"), an expert in vocational rehabilitation counseling, to testify about the employment opportunities available to Ms. Miller in Israel. Mr. Bird testified that, based on her previous work in child-care, and on the job market in Israel, Ms. Miller could obtain part-time employment in the field of child care in no more than two months. Mr. Bird further explained that if Ms. Miller supplemented such a position with work as a part-time nanny or babysitter, she could be expected to earn about $18,000.00-$19,000.00 per year.

---

[8] As did Mr. Creamer, Mr. Estabrook also concluded that there was "no substantial statistical probability of an adverse financial consequence to [Dr. Miller] in continuing to pay alimony at the current rate for the next five years."

[9] Ms. Miller worked in "administrative positions in various synagogues and in part-time childcare positions [for] around 22 hours/week."

Dr. Miller also presented evidence related to Ms. Miller's alleged financial irresponsibility. As the circuit court stated, "despite [Ms. Miller's] unemployment, testimony revealed that [she] had access to substantial funds since the divorce[.]" Though she accumulated over $1,000,000.00 in assets since 2000, Ms. Miller "chose to save little, if any, of [that] money." Instead, she apparently gifted various assets to family members or, in other instances, could not remember how funds were spent.

Despite her limited savings, Ms. Miller has "lived comfortably and has spent money with little discretion." She lives alone in a three-bedroom apartment in Israel, frequently travels business-class airline accommodations, and takes privately chauffeured cars to visit friends in Israel. "Evidence [further] revealed that [Ms. Miller has withdrawn] over $140,000.00 in cash since 2014."

D. The Circuit Court's "Opinion and Order"

On February 13, 2018, the circuit court entered its "Opinion and Order" denying Dr. Miller's request for modification or termination of alimony. The court explained its decision as follows:

> While retirement is certainly a "change in circumstances," an increase or decrease in the payor's income, or any change in the financial circumstances involved, is one of the totality of circumstances to be considered by the trial court in acting on the request of modification. *Blaine v. Blaine*, 336 Md. 49, 73 (1994). Retirement alone, is not necessarily a material change in circumstances. Rather, *the Court must consider whether the reduction of wages resulting from retirement materially impacts [Dr. Miller's] ability to continue payment to [Ms. Miller]* and whether the facts and circumstances of the case, and justice, warrant a modification or in the alternative, if termination is necessary to avoid a harsh and inequitable result.

Using a "Monte Carlo" analysis, [Dr. Miller's] financial analyst, Mr. Creamer, testified that considering variables like current age, average rate of return, estimated annual inflation, age at death of [Dr. Miller's] father and [Dr. Miller's] Social Security benefits, and considering only [Dr. Miller's] . . . assets balance of $1,388,023.00, a continued support obligation of $3600.00/month would force [Dr. Miller] to exhaust his retirement assets at the age of 82, well before the 92 years of expectancy [Mr.] Creamer assumed. At the same time, Mr. Creamer testified that there was no substantial statistical probability of an adverse financial consequence to [Dr. Miller] in continuing to pay alimony at the current rate for the next five years. It is important to note that at [Dr. Miller's] instruction, Mr. Creamer *did not include in his calculations* an inheritance account or the proceeds from the sale of [Dr. Miller's] dental practice in [Dr. Miller's] assets. On the other hand, [Ms. Miller's] financial expert, Mr. Estabrook, *did consider those assets* resulting in a total starting balance of $1,961,154.00. Mr. Estabrook opined that assuming [Dr. Miller] continued to pay the alimony amount currently established, he was unlikely to run out of assets past his statistical mortality age (87 years), an age calculated using well[-]established and long[-]used factors to predict [Dr. Miller's] age at death. Mr. Estabrook agreed with Mr. Creamer that there was no substantial probability of an adverse financial consequence to [Dr. Miller] in continuing to pay alimony at the current rate for the next five years.

Much was made by [Dr. Miller] of [Ms. Miller's] less[-]than[-]modest lifestyle and lavish spending since the parties' divorce. In addition, [Dr. Miller] repeatedly reminded the Court of [the magistrate judge's] 1998 admonition to [Ms. Miller] at the *pendente lite* hearing wherein [the magistrate judge] warned, "the policy is that the parties are to be self-supporting to the extent possible." The Court finds neither [Ms. Miller's] lifestyle nor [the magistrate judge's] words from [20] years ago relevant to the Court's analysis. (Moreover, the Court notes that the *pendente lite* hearing at which [the magistrate judge] spoke occurred two years before [Dr. Miller] agreed to pay alimony to [Ms. Miller] at the rate of $3600.00/month). Rather, this Court must determine whether [Dr. Miller's] retirement materially affects [his] ability to pay alimony of $3600.00/month as the parties agreed. While the Court finds that [Dr. Miller's] retirement is a change of circumstances, the Court further finds that such change is *not material to [Dr. Miller's] ability to pay the current amount*. The evidence shows [Dr. Miller] has substantial assets and the Court finds as a matter of fact [Dr. Miller] will not diminish those assets prematurely by continuing to pay [Ms. Miller] the agreed upon amount. Other than [Dr. Miller's] father living to the age of 92, there is no evidence before the Court [that Dr.

> Miller] will also do so. The Court finds [Ms. Miller's] expert, Mr. Estabrook's, prediction of [Dr. Miller's] ability to pay *more compelling and more accurate* than that of Mr. Creamer in that the analysis correctly used reliable actuarial predictors and considered the entire amount of assets available to [Dr. Miller], as the Court disagrees [that Dr. Miller's] inheritance and the proceeds from the sale of his dental business cannot be used as overall assets. In calculating alimony, money is money and the Court does not distinguish between assets.
>
> Accordingly, this Court concludes [Dr. Miller's] total assets will be more than sufficient to support him well into retirement and at the same time, allow him to continue to support [Ms. Miller] at the current rate of $3600.00/month. [Dr. Miller] will not be subject to an existence of "unremitting turmoil" as a result. The result is neither harsh nor inequitable and . . . accordingly, this Court will not terminate [Dr. Miller's] obligation. Moreover, circumstances and justice do not necessitate a modification. For the reasons stated herein, [Dr. Miller's] [M]otion to Terminate and/or in the Alternative, Reduce Alimony is hereby denied.

(Footnote omitted) (emphasis added).

Additional facts will be included as they become relevant to our discussion below.

STANDARD OF REVIEW

This Court explained the standard for reviewing a circuit court's determination on the modification of alimony as follows:

> In reviewing an award of alimony we defer to the findings and judgments of the trial court. We will not disturb an alimony determination unless the trial court's judgment is clearly wrong or an arbitrary use of discretion.

Ridgeway v. Ridgeway, 171 Md. App. 373, 383-84 (2006) (cleaned up).[10] An abuse of discretion arises "when no reasonable person would take the view adopted by the [trial

[10] The Court of Appeals recently explained the recent increase in use of "cleaned up" as a parenthetical. The parenthetical "signals that the current author has sought to improve readability by removing extraneous, non-substantive clutter (such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-

court] or when the court acts without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 626 (2016) (citation and quotation omitted).

In *Ridgeway*, 171 Md. App. at 384, we further explained that:

> The doctrine of *res judicata* applies in the modification of alimony and the appellate court may not re-litigate matters that were or should have been considered at the time of the initial award.
>
> [Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL")] §§ 11-102 to 11-112 govern the award of alimony in Maryland. FL § 11-107(b) addresses the modification of alimony awards and provides that, subject to § 8-103 of this article and on the petition of either party, the court may modify the amount of alimony awarded as circumstances and justice require. A party requesting modification of an alimony award must demonstrate through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification. Upon a proper petition, the court may modify a decree for alimony at any time if there has been shown a material change in circumstances that justify the action.

(Cleaned up).

DISCUSSION

Generally, the purpose of alimony is "to provide an opportunity for the recipient spouse to become self-supporting." *Tracey v. Tracey*, 328 Md. 380, 391 (1992) (quotations and citation omitted). For this reason, "the statutory scheme [governing the distribution of alimony] generally favors fixed-term or so-called rehabilitative alimony" over indefinite alimony. *Id.* "[R]ehabilitative alimony [is] not . . . appropriate in every

---

bracketed changes to capitalization) without altering the substance of the quotation." *Lopez v. State*, 458 Md. 164, 195 n.13 (2018).

case[,]" *id*., and the Code permits courts to award indefinite alimony under certain circumstances. *See* FL § 11-106(c).[11]

Despite these principles that guide a circuit court's award of alimony, "Maryland has long recognized and enforced spousal support agreements." *Gordon v. Gordon*, 342 Md. 294, 300 (1996). In line with this recognition, spouses are expressly authorized to "make a valid and enforceable . . . agreement that relates to alimony[.]" *See* FL § 8-101(b). Here, without the circuit court's involvement, Dr. Miller and Ms. Miller established an agreement as to alimony in their October 10, 2000 MOU. The parties specifically agreed that Dr. Miller would pay Ms. Miller $3,600.00 a month until Dr. Miller died, or until Ms. Miller remarried or died. Dr. Miller now requests that the circuit court terminate or modify the agreement. For ease of discussion, we will start our analysis by focusing on Dr. Miller's request for a modification.

A. <u>Modification</u>

[11] FL § 11-106(c). **Award for indefinite period**

(c) The court may award alimony for an indefinite period, if the court finds that:

(1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or

(2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

Dr. Miller asserts that his alimony obligation should be adjusted because he "has reached a legitimate retirement age and has no further earned income." He further avers that the MOU should be modified because Ms. Miller "moved from the United States to Israel, [and] she has not paid [United States] or Israeli income tax on her alimony or on [United States] social security or on Israeli social security." In sum, he contends that the parties' financial circumstances have changed to an extent that the original alimony arrangement is no longer warranted.

Whether ordered by the circuit court or agreed to by the parties, alimony is almost always subject to modification by the court. *Brodak v. Brodak*, 294 Md. 10, 29 (1982) ("An award of alimony is always subject to change if the circumstances . . . of the parties change."); *see also* FL § 8-103(c).[12] An alimony award may be modified "if there has been shown a material change in circumstances that justifies the action." *Lieberman v. Lieberman*, 81 Md. App. 575, 595 (1990) (emphasis omitted); *see also* FL § 11-107(b) (explaining that a circuit court "may modify the amount of alimony awarded as

---

[12] FL § 8-103(c) governs a circuit court's authority to modify an alimony agreement, and states the following:

> (c) The court may modify any provision of a deed, agreement, or settlement with respect to alimony or spousal support executed on or after April 13, 1976, regardless of how the provision is stated, unless there is:
>
> (1) an express waiver of alimony or spousal support; or
>
> (2) a provision that specifically states that the provisions with respect to alimony or spousal support are not subject to any court modification.

As neither of the two exceptions to the general rule exist here, the circuit court had the authority to modify or terminate the parties' MOU as it related to alimony.

circumstances and justice require."). The party requesting a modification has the burden of proving that ample justification exists. *See Langston v. Langston*, 366 Md. 490, 516 (2001), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516 (2005).

We review the circuit court's factual findings here under the clearly erroneous standard. *See L.W. Wolfe Enterprises, Inc. v. Maryland National Golf L.P.*, 165 Md. App. 339, 343-44. In conducting such a review, "[o]ur task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record[.]" *Id.*; *see also Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 343 (2000) ("[W]e must consider the evidence in the light most favorable to the prevailing party and decide . . . whether the trial judge's conclusions of fact were . . . supported by a preponderance of the evidence.") (quotations and citations omitted).

Here, in its "Opinion and Order," the circuit court found "as *a matter of fact* [that Dr. Miller] will not diminish [his] assets prematurely by continuing to pay [Ms. Miller] the agreed upon amount." (Emphasis added). To arrive at this conclusion, the circuit court explained that, based on the predictive variables and assets utilized in the analyses, it found "Mr. Estabrook's prediction of [Dr. Miller's] ability to pay *more compelling and more accurate* than that of Mr. Creamer[.]" (Emphasis added).

This Court has previously stated "that the facts and circumstances of the case must justify the court exercising its discretion to grant the requested modification." *Ridgeway*, 171 Md. App. at 384 (quotations and citations omitted). A review of the record establishes ample support for the circuit court's factual finding that Dr. Miller would be able to satisfy his alimony obligations throughout his retirement. The circuit court found

that Mr. Estabrook's analysis was "more accurate" than Mr. Creamer's because Mr. Estabrook (1) included *all* of Dr. Miller's assets in his analysis; and (2) used government-published statistics, rather than Dr. Miller's father's age of death, to determine Dr. Miller's estimated age of death. Notably, both parties' experts agreed that there was almost no possibility that Dr. Miller would face adverse financial consequences by continuing to pay alimony at the current rate for the next five years. Though the circuit court's "Order and Opinion" does not limit its application to the next five years, it is important to note that if Dr. Miller faces adverse financial consequences after those five years, he may at that time petition the circuit court for a modification.[13]

Accordingly, we hold that the circuit court's factual findings were not clearly erroneous, and that the court's refusal to modify alimony was not an arbitrary abuse of discretion.

Dr. Miller avers that *Ridgeway* supports his position that his retirement justifies a modification in his alimony obligation. However, his argument is not compelling, as *Ridgeway* is distinguishable from this case. Here, the parties presented substantial

[13] As an additional point, we agree with the circuit court that the evidence presented about Ms. Miller's lifestyle is not relevant to our analysis. Even if it was, the evidence Dr. Miller presented at trial is not compelling. For example, Dr. Miller would have the circuit court alter his alimony obligation based on the notion that Ms. Miller could continue working until she is 72 years old. However, Dr. Miller provided no explanation as to how his experts determined that Ms. Miller could work until this age. Further, the age of eligibility for government pension benefits in both the United States and in Israel is younger than 72 years old. Therefore, even if Ms. Miller's employment or financial condition were relevant here, we would attach little, if any, weight to Dr. Miller's argument.

evidence as to Dr. Miller's ability to satisfy his alimony obligations beyond his retirement, and the circuit court concluded that Dr. Miller would be able to do so. In *Ridgeway*, however, there was no dispute that appellant's retirement constituted a material change in circumstances warranting the court's consideration of the petition for modification. *Ridgeway*, 171 Md. App. at 384. There, the court determined that, "although appellant was properly entitled to a reduction in the amount of his monthly alimony payments, some alimony continue[d] to be due." *Id.* at 385 (quotations omitted). We were not persuaded in *Ridgeway* that the circuit court's decision to reduce, but not terminate alimony, was an arbitrary exercise of discretion.[14] *Id.*

Because of the distinctions between the cases, Dr. Miller's reliance on *Ridgeway* does not alter our conclusion that the circuit court did not abuse its discretion in refusing to modify Dr. Miller's alimony obligations.

B. Termination

Dr. Miller contends that his alimony payments should be terminated because continuing his obligations would "harshly and inequitably" force him to run out of money at, or just before, his expected age of death. Further, he asserts that "termination of alimony for Ms. Miller is justified based on her intentional, careless, and uncontrolled spending, coupled with her lack of saving money from a large sum that came through her hands during the post-divorce judgment."

[14] Dr. Miller also cites *Bogan v. Bogan*, 60 S.W.3d 721 (2001), a case decided by the Supreme Court of Tennessee, to support his position on modification. We need not consider this decision, as this Court is not bound by the law of Tennessee.

Under FL § 11-108(3), a circuit court may terminate alimony "if the court finds that termination is necessary to avoid a harsh and inequitable result." This Court has explained that "termination of alimony to avoid a harsh and inequitable result does not operate as a matter of law[, but] requires a court to examine facts and circumstances to determine whether harsh and inequitable results exist." *Bradley v. Bradley*, 214 Md. App. 229, 236-37 (2013). Put differently, "the presence of a 'harsh and inequitable result' is not an objective, absolute standard; rather, it is a subjective classification, most appropriately determined by a trial court judge in whose judgment the exercise of sound discretion in such matters is reposed." *Blaine v. Blaine*, 97 Md. App. 689, 706 (1993), *aff'd* 336 Md. 49 (1994).

Here, the circuit court concluded that Dr. Miller's "total assets will be more than sufficient to support him well into retirement and at the same time, allow him to continue to support [Ms. Miller] at the current rate of $3,600.00/month." The circuit court therefore determined that Dr. Miller faced no harsh or inequitable result from the continuation of alimony. As explained above, we conclude that the circuit court's factual findings as to Dr. Miller's ability to pay are supported by substantial evidence in the record, and the circuit court did not abuse its discretion in determining that Dr. Miller was not entitled to a termination of alimony.

C. <u>Dr. Miller's Alternative Arguments</u>

As a final step in our analysis, we will address the other arguments that Dr. Miller raises in support of his contention that his alimony payments should be terminated or modified. First, Dr. Miller argues that the circuit court erred in failing to consider that

Ms. Miller has allegedly not taken adequate steps to become self-sufficient. In making this argument, Dr. Miller confuses the purpose of rehabilitative alimony with the standards for modifying or terminating alimony. Dr. Miller does properly allude to the general purpose of alimony, which is "to provide an opportunity for the recipient spouse to become self-supporting." *Tracey*, 328 Md. at 391 (quotations and citation omitted). However, circuit courts terminate alimony only upon finding "that termination is necessary to avoid a harsh and inequitable result," FL § 11-108(3), and modify alimony only when there exists "a material change in circumstances that justify the action." *Lieberman*, 81 Md. App. at 595 (emphasis omitted). Despite the general aim of rehabilitative alimony, there is no requirement that courts must consider the receiving spouse's efforts to become self-sufficient when deciding whether to terminate or modify alimony. Therefore, Dr. Miller's argument does not alter our conclusion.[15]

---

[15] Similar to his argument that Ms. Miller has not taken adequate steps to become self-sufficient, Dr. Miller also argues that alimony should be terminated or modified because Ms. Miller has voluntarily impoverished herself. Dr. Miller specifically argues that Ms. Miller's failure to secure employment in Israel, despite her alleged capability to do so, is a basis for changing his alimony requirements.

This Court has explained that "a [person] is considered 'voluntarily impoverished' whenever the [person] has made the free and conscious choice . . . to render himself or herself without adequate resources." *St. Cyr v. St. Cyr*, 228 Md. App. 163, 179 (2016) (quotations and citation omitted). Though circuit courts are not required to consider an individual's voluntary impoverishment for alimony purposes, courts do consider "the ability of the party seeking alimony to be wholly or partly self-supporting." *Id*. (quoting FL § 11-106(b)(1)).

Here, as was the case above, Dr. Miller conflates a pre-alimony consideration with an after-the-fact basis for modification or termination. *See* FL § 11-106(b) (listing the factors that courts are to consider when determining an alimony award). If Dr. Miller were appealing a circuit court's award of alimony, he would be well within his rights to

Dr. Miller also contends that alimony should have been modified because the current arrangement creates a "lifetime pension" for Ms. Miller. To support this contention, Dr. Miller cites *Tracey v. Tracey*, 328 Md. 380 (1992). In that case, the Court of Appeals heard an appeal from the circuit court's original grant of indefinite alimony at the time of divorce. *Id*. at 382-85. In reaching its decision, the Court stated that "[t]he purpose of alimony is not to provide a lifetime pension," and that "the alimony statute does not consign the [paying spouse] to a life of unremitting toil." *Id*. at 390-91. Dr. Miller avers that those same principles justify terminating or modifying his alimony payments.

Dr. Miller's argument is unavailing. Importantly, the *Tracey* Court scrutinized the circuit court's *original* award of alimony *at the time of divorce*. As such, the Court analyzed the statutory considerations for alimony to determine whether the circuit court abused its discretion in formulating the alimony arrangement. *Id*. at 385-86. Here, however, Dr. Miller's appeal does not arise from a circuit court's original award of alimony at the time of divorce. Rather, he asks this Court to *modify or terminate* the alimony agreement that he entered 16 years ago. In applying the proper standards for

---

raise the allegation that Ms. Miller is not earning as much income as she may be able to. In this appeal, however, Dr. Miller requests that we terminate or modify the agreement that established the current alimony arrangement. Ms. Miller's attempts to obtain employment have no bearing on whether Dr. Miller's alimony payments should be altered to "avoid a harsh and inequitable result," FL § 11-108(c)(3), nor on whether a "material change in circumstances" justifies a modification of those payments. Therefore, as above, our conclusion remains the same.

terminating or modifying alimony, we have already concluded there is no justification for such a change.

Even if the principles from *Tracey* did apply to this case, we conclude that the circuit court's findings of fact are support by substantial evidence in the record. Specifically, there is more than ample evidence to support the circuit court's finding that Dr. Miller's assets are sufficient to cover both his own expenses and his alimony obligations for at least five years, if not for the rest of his life. This arrangement will not subject Dr. Miller to "a life of unremitting turmoil," and the circuit court did not abuse its discretion in refusing to modify or terminate Dr. Miller's alimony obligations.

CONCLUSION

Based on the above, we hold that the circuit court did not err in denying Dr. Miller's "Motion to Terminate and/or In the Alternative, Reduce Alimony," and we therefore affirm the circuit court's judgment.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.