

Circuit Court for Montgomery County
Case No. 61975FL

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 0434

September Term, 2023

ALIREZA KALANTAR

v.

GLORIANA GALEANO, *et al.*

Leahy,
Reed,
Raker, Irma S.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: November 25, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In March of 2021, Alireza Kalantar, Appellant, filed a motion to modify custody for his son, N.K.G. Gloriana Galeano, Appellee, filed a counterclaim for custody as well. After a trial in February of 2022, Appellee was awarded primary residential custody of N.K.G. A separate trial was held on January 30, 31, and February 1 of 2023 on the issues of retroactive child support and attorney’s fees. Judge Marybeth Ayres of the Circuit Court for Montgomery County awarded the Appellee \$13,343 in retroactive child support and Appellee’s counsel \$121,890.25 in attorney’s fees from the Appellant. Based on additional facts, Appellant filed a second motion to modify custody, which resulted in another hearing before Judge Ayres on May 30, 31 and June 1 of 2023. Judge Ayres ruled that Appellant was granted primary residential custody of N.K.G. and awarded \$15,400 in attorney’s fees to Appellee. Appellant appeals both rulings by Judge Ayres.

In bringing his appeal, Appellant presents five questions for appellate review, which we rephrase as follows:

- I. Whether the trial court erred in awarding Appellee retroactive child support?
- II. Whether the trial court abused its discretion when it awarded \$121,890.25 in attorney’s fees to Appellee’s counsel on April 7, 2023?
- III. Whether the trial court abused its discretion when it awarded \$15,400.00 in attorney’s fees to Appellee’s counsel on June 13, 2023?
- IV. Whether the retroactive child support award and attorney fee awards were contrary to the best interest of the child?

- V. Whether Md. Code, Fam. Law § 12-103 violates due process and the equal protection of the law?¹

For the following reasons, we affirm the decisions of the Circuit Court for Montgomery County.

FACTUAL & PROCEDURAL BACKGROUND

Appellant and Appellee are the parents of their child N.K.G., born on January 2, 2007. Appellant and Appellee never married but entered into a custody and support agreement for N.K.G. on November 30, 2007. Under the initial custody and support agreement, Appellee had primary physical custody of N.K.G. and both parties had joint legal custody, with a parenting coordinator with tie-breaking authority appointed if there were impasses on important matters. The Circuit Court for Montgomery County required Appellant to pay \$1,250 a month in child support to Appellee.²

¹ Appellant's five questions as originally presented were as follows:

1. Whether the Circuit Court erred in awarding Ms. Galeano child support arrears of \$13,343.00?
2. Whether the Circuit Court erred in awarding attorney's fees of \$121,890.25 in April of 2023?
3. Whether the Circuit Court erred in awarding attorney's fees of \$15,400 in June of 2023?
4. Whether the fee and support awards and judgments are contrary to the best interests of the child?
5. Whether Md. Code, Fam. Law § 12-103 violates due process and equal protection of the laws guarantees?

² The child support guidelines form stated that the Appellee earned a monthly adjusted actual income of \$2,500 and the Appellant earned a monthly adjusted actual income of \$12,500 a month, which after following the guidelines resulted in a recommended child support order of \$1,264 a month to be paid by Appellant. The court then set the level at \$1,250.

Since this agreement was in place, Appellant married Vera Pirunova in 2020 and lives with Mrs. Pirunova and her son from a prior relationship in Charles County, Maryland. *Alireza Alain Kalantar v. Gloriana Galeano*, No. 1079/2022, at 5 (Md. App. Ct. April 18, 2023). Appellee gave birth to twin daughters with a person she is no longer with, and she has physical custody of the twins. *Id.* at 4.

On March 22, 2021, Appellant filed a Petition to Modify Custody and Visitation in the Circuit Court for Montgomery County. Appellant said that circumstances had changed because of the Appellee’s “unpredictable behavior,” “constant abuse of the minor child,” and “contempt of the [Appellant’s] visitation order” and Appellant requested full custody of N.K.G. Appellee answered the petition on May 10, 2021, and also filed a counter-motion to modify legal custody, access, and child support. Appellee asserted that Appellant’s income had substantially increased while she was now unemployed and her only income was Appellant’s child support and money from the father of her other children. Appellee requested sole legal custody and a continuation of physical custody, along with a modification of child support.

A trial for residential custody was held on February 22 through February 24 before Judge Bibi Berry of the Circuit Court for Montgomery County. On May 24, 2022, Judge Berry entered a written opinion that ordered that Appellee would maintain primary physical custody of N.K.G., with scheduled time for Appellant to be with N.K.G. The parties maintained joint legal custody of N.K.G. The next day, Appellant filed for an order of protection on behalf of N.K.G. which was denied. Additional details and motions related

to this hearing can be found in a prior opinion from this Court.³

After this ruling, on June 6, 2022, Appellant filed a motion to alter or amend the May 2022 ruling. Appellant alleged there were new developments since the ruling and requested an evidentiary hearing and the appointment of a Child Advocate Attorney. On July 29, Judge Berry held an evidentiary hearing and ruled on the issue orally that day. Judge Berry made a small modification to the custody arrangement requiring that N.K.G. had access to a phone to use to contact the other parent, subject to reasonable restrictions. Appellant then appealed this ruling and the court's decision not to appoint a Child Advocate Attorney. *See Alireza Alain Kalantar v. Gloriana Galeano*, No. 1079/2022 (Md. App. Ct. April 18, 2023). We affirmed the court's decision to not appoint a Child Advocate Attorney and to deny the motion to grant full physical custody. *Id.* at 21, 26.

In August of 2022, Appellant tried to enroll N.K.G. in a school near his home in Charles County. Appellee filed a temporary restraining order to prevent Appellant from enrolling N.K.G. in a new school and to have N.K.G. returned to Appellee's home, which the Circuit Court for Montgomery County granted. The temporary restraining order was extended, but never became a preliminary injunction because N.K.G. began attending school in Montgomery County. Appellant filed an order of protection in Montgomery County, which was denied, and then sought the same order in Charles County, which was granted. A hearing on that order of protection was heard in conjunction with the preliminary injunction denial on September 19, 2022. The order of protection was again

³ *See Alireza Alain Kalantar v. Gloriana Galeano*, No. 1079/2022 (Md. App. Ct. April 18, 2023).

denied. In September 2022, around this same time, N.K.G. moved out of Appellee's residence and moved in with his maternal uncle.

A separate trial on the issues of retroactive child support and attorney's fees was held from January 30 to February 1, 2023, before Judge Marybeth Ayres of the Circuit Court for Montgomery County.⁴ At this hearing, Appellee called a forensic accountant, Jeff Barsky, CPA to testify about Appellant's income. Mr. Barsky testified that Appellant's annual income was \$225,017. On cross-examination, Appellant presented receipts for expenses on his business credit card at Home Depot, Amazon, and Wayfair. Appellant's attorney walked through a few expenses from these receipts and pointed out that they were related to Appellant's businesses.⁵ With these receipts, Mr. Barsky concluded that some of the payments were, in fact, business expenses. Judge Ayres had the parties submit proposed findings of facts that would include additional fees from putting those proposals together. Appellant proposed that his annual income was \$132,421 and Appellee alleged the income was \$252,224.

Judge Ayres entered her written opinion on April 5, 2023. The court found Mr. Barsky to be credible and forthright. Judge Ayres began with the testified-to annual income of \$225,017 and subtracted from it \$5,579.49 based on the receipts from the business credit

⁴ This trial was originally scheduled for September 9, 2022. However, Appellant's counsel filed a motion to withdraw because the Appellant could not pay approximately a quarter of a million dollars in attorney's fees. As a result, on that day a judge postponed the hearing on attorney's fees and other matters to January 30, 2023.

⁵ Judge Ayres described these exhibits as trying to create a "gotcha moment" but they should have been shared prior to a trial about attorney's fees so that the lawyers were not raking up additional charges while the accountant has to resolve these issues.

card that Appellant presented.⁶ Therefore, the annual salary was \$219,437.51. Judge Ayres found this was a material change from the original support order and used the new salary to recalculate the child support order. Judge Ayres recalculated the child support for N.K.G. and found that Appellant was in arrears for \$13,343 based on the increased monthly support amount.

For the attorney's fees, with the Appellant's higher salary and his many other assets, the court found that Appellant could contribute significantly to Appellee's attorney's fees. Judge Ayres split the attorney's fee periods into three sections. For the first section of March 22, 2021, through May 25, 2022, Judge Ayres found that both parties' requests were reasonable, but Appellant produced protracted litigation and therefore Appellee was entitled to sixty percent of her attorney's fees for this period. For the second section of May 25, 2022, to preparation for the fees trial, Judge Ayres found that Appellant's actions were not substantially justified and Appellee was entitled to all of her attorney's fees being paid by Appellant. Lastly, for the work related to the fees trial, Judge Ayres found that Appellant's actions were justified but Appellant's lack of candor regarding his income made the trial more difficult and therefore Appellee was entitled to seventy-five percent of her fees being paid. Judge Ayres found the overall fee amounts were fair, reasonable, and

⁶ Judge Ayres wrote that she re-calculated this number based on the total amount from the business credit card, subtracting from it the expenses from receipts she found to be legitimate business expenditures, which were then annualized. Judge Ayres also noted that Appellant's lack of challenge to the remaining charges for which he did not produce receipts confirmed for her that they were personal charges.

necessary and therefore Appellee was entitled to a total of \$121,890.25 to be paid by Appellant.

On September 24, 2022, Appellant filed another petition for the modification of custody. A trial on these issues was finally held on May 30 through June 1, 2023, again before Judge Ayres. Judge Ayres gave her oral ruling on June 6, 2023. Judge Ayres ruled that Appellant would be granted primary residential custody of N.K.G. because there has been a material change in circumstances after N.K.G. moved out of Appellee's home. The parents would continue to share legal custody of N.K.G. Judge Ayres found that the change in custody was the result of N.K.G.'s alienation that was not substantially justified. As a result, she awarded \$15,400 in attorney's fees to Appellee.

Appellant appealed both decisions by Judge Ayres to award Appellee attorney's fees along with the decision to award retroactive child support.

STANDARD OF REVIEW

When reviewing cases that are tried without a jury, the scope of review is set out in Maryland Rule 8-131(c). For these actions, an appellate court will review both the law and the evidence, but we will not set aside a trial court's judgment unless it is clearly erroneous, and we will give due regard to the trial court's ability to have judged witnesses' credibility. Md. Rule 8-131(c); *see also Karen P. v. Christopher J.B.*, 163 Md. App. 250, 264 (2005). Conclusions of law will not be entitled to the deference of the clearly erroneous standard. *Della Ratta v. Dyas*, 414 Md. 556, 565 (2010).

A trial court's factual findings will not be clearly erroneous if competent or material evidence exists in the record to support the factual findings. *MAS Associates, LLC v.*

Korotki, 465 Md. 457, 474 (2019) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). This standard is “simply a highly deferential evidentiary review.” *Id.* Our task involves deciding whether there was “substantial evidence” to support the trial court’s factual findings, while viewing the evidence “in a light most favorable to the prevailing party.” *Liberty Mutual Ins. Co. v. Maryland Auto Ins. Fund*, 154 Md. App. 604, 609 (2004) (quoting *GMC v. Schmitz*, 362 Md. 229, 234 (2001)).

DISCUSSION

Award of Retroactive Child Support

A. Parties’ Contentions

Appellant argues that the trial court erred when it awarded \$13,343 in retroactive child support to Appellee. Appellant argues that the determination was based on false factual premises and faulty math. He alleges that it was unclear how the trial court arrived at its conclusion for Appellant’s income. Appellant criticizes the conclusions of Appellee’s expert and how he changed his conclusions during the proceeding. Based on Appellant’s own determination of his income, he argues there was no material change of circumstances that warranted a change in child support. Further, he argues that Appellee was not entitled to any support because the child, N.K.G., was no longer residing with Appellee and therefore the Appellee was no longer the custodial parent.

Appellee argues that the trial court did not abuse its discretion in deciding its award of retroactive child support. The trial court correctly calculated the number of months for which Appellee was entitled to retroactive child support. Appellee argues that the trial court properly found a material change in circumstances from the change in income calculated

by Appellee’s forensic accountant. Appellee asserts that the trial court was able to properly weigh the testimony and opinions of their expert and the trial court’s conclusions based on that testimony were support by the record. Lastly, Appellee argues she was entitled to retroactive child support during the period she was N.K.G.’s primary custodian.⁷

B. Standard of Review

When reviewing an award of retroactive child support, we apply the clearly erroneous standard from Rule 8-131(c) to the trial court’s factual findings and if that is met and sound principles of law were applied, then we will not disturb the trial court’s opinion unless there has been a clear abuse of discretion. *Boswell v. Boswell*, 352 Md. 204, 225 (1998) (citing *Davis v. Davis*, 280 Md. 119, 125–26 (1977)). Abuse of discretion “occurs when a trial judge . . . acts beyond the letter or reason of the law.” *David A. v. Karen S.*, 242 Md. App. 1, 23 (2019) (quoting *Garg v. Garg*, 393 Md. 225, 238 (2006)).

C. Analysis

The first issue is to determine the relevant time frame for retroactive child support. When a motion for modification of child support is filed, the court may change it based on “a showing of a material change in circumstance.” Md. Code, Fam. Law § 12-104(a). The modification of child support will not be retroactive but will change the child support amount starting from the “date of the filing of the motion for modification.” *Id.* at § 12-104(b).

⁷ Appellee also makes an argument that vacating the child support award will not automatically vacate the attorney’s fee awards. Since we find that the child support award was proper, we need not address this argument.

Appellee filed her Counter Motion to Modify Legal Custody, Access, and Child Support and Other Relief on May 17, 2021. Appellee was no longer requesting child support as of September 2022 because N.K.G. had moved out. Therefore, the relevant time period from May of 2021 to September of 2022, including both of those months,⁸ would be a total of seventeen months. We agree with the trial court on this length of time for calculating the retroactive support.

The next issue is whether there was a material change in the Appellant's circumstances that entitled the Appellee to a change in the child support calculation. Md. Code, Fam. Law § 12-104(a). The party seeking the modification has the burden to prove a material change occurred. *Corby v. McCarthy*, 154 Md. App. 446, 477 (2003) (citation omitted). A material change must meet two requirements: (1) the change must be “relevant to the level of support a child is actually receiving or entitled to receive”; and (2) the change must be “of a sufficient magnitude to justify judicial modification of the support order.” *Id.* (quoting *Wills v. Jones*, 340 Md. 480, 488–89 (1995)). A change that effects the income after the child support award was issued is relevant. *Id.* (citing *Wills*, 340 Md. 488).

The parties had a trial on January 30, 31, and February 1, 2023, to determine whether there was a material change in Appellant's income. At this trial, Appellee called to the stand a forensic accountant, Jeff Barsky, CPA, to testify to Appellant's income. Initially,

⁸ Judge Ayre's decision to include all of May despite the order coming on May 17, 2021 for the purposes of counting the months was within her discretion and we will not find that choice was “beyond the letter or reason of the law.” *David A.*, 242 Md. App. at 23.

Mr. Barsky testified that Appellant earned \$225,017 a year.⁹ Some of that total income number came from Mr. Barsky determining that Appellant used his business credit cards to pay for personal expenses. To rebut this, Appellant showed Mr. Barsky receipts from his business credit card from Home Depot, Amazon, and Wayfair that Mr. Barsky had classified as personal. With these receipts, Mr. Barsky concluded that some of the payments were, in fact, business expenses. The trial court found that the way this evidence was produced was done to surprise Appellee, since these receipts were never produced in discovery and no copies were provided to Appellee. The trial court concluded that because Appellant produced receipts from these few purchases but did not contest any of the other charges on his business card, this confirmed that the charges were personal and could be included in Appellant's income.¹⁰ As a result, the total income was reduced by \$5,579.49

⁹ Appellant did not further take steps to undermine the credibility of Mr. Barsky's conclusions at the hearing. The voir dire was very limited and there was no objection to his expertise in forensic accounting and tax accounting. Additionally, Appellant never called his own expert to rebut any of Mr. Barsky's conclusions.

We also credit Judge Ayres' finding that Appellant was "not candid" about his income and his testimony was geared towards "minimizing his assets and income in order to hide his net worth." These findings lend further support to the work performed by Mr. Barsky in the face of greater difficulty in uncovering Appellant's true income.

¹⁰ Appellant in his brief discussed these exhibits and attempted to recalculate the numbers. Appellant's attorney contended at trial and in his brief that every charge on these receipts were business charges. Appellant then testified that all the charges are expenses of one of his businesses. The total amount on these receipts Appellant found to be \$16,030.17, which differs from the amount Judge Ayres used in her calculations.

However, Judge Ayres did not credit all the expenses on these three receipts as business expenses and said that she deducted from the total expenses the "receipts that [she] found reflected legitimate business expenditures." The total number deducted being different from the total is not clearly erroneous based on the evidence discussed by Judge Ayres, and we will not displace Judge Ayres' finding of fact on what is or is not a legitimate business expense.

to \$219,437.51, which was a material change in income from the Appellant's income of \$150,000 in the 2007 agreement, since it is a nearly fifty percent increase in income. We agree with the trial court in its determination that Mr. Barsky and his conclusions were credible based on the evidence presented to the court. *Karen P.*, 163 Md. App. at 264 (citing Md. Rule 8-131(c)). We find that the annual income finding the trial court came to was not clearly erroneous.

Given the annual income of \$219,437.51, Judge Ayres calculated the child support the Appellant owed to the Appellee using the child support guidelines. The final amount owed by the Appellant was \$2,329 a month. Therefore, the arrearages would be the difference between the existing payments of \$1,250 a month and the new payment of \$2,329 a month, which would be \$1,079 a month. This value is then multiplied by the seventeen months that the Appellant owed this amount, less the four months of credited payments.¹¹ That final total is \$13,343 and we find no clear error in the calculation of these arrears. Therefore, we will uphold the retroactive child support to Appellee ordered by the court.

Attorney's Fees

A. Parties' Contentions

Turning to the attorney's fees, Appellant contends that the fee award was

¹¹ Appellant paid child support at the rate of \$1,250 from May 2021 until December 2022. Since Appellee was no longer requesting child support from September 2022 onwards, after N.K.G. moved out, the \$1,250 paid by Appellant for those four months can be credited back to him.

“[a]rithmetically [q]uestionable and [o]therwise [u]nsound.” Appellant first asserts that it is unclear how the circuit court came to its decision about the final fee number. Appellant also asserted error in the June 13, 2023, award because Appellant prevailed in getting full physical custody of N.K.G. Finally, Appellant claims that this award of attorney’s fees is not in N.K.G.’s best interest.

Appellee argues that Judge Ayres properly considered the issues required by statute. Judge Ayres properly determined the financial status of each party and analyzed the substantial justification of the parties during each relevant period. Appellee said that Judge Ayres’ conclusions and the amounts calculated were supported by the evidence from the invoices from Appellee’s counsel. For the June 13, 2023 award, Appellee argued that prevailing on the merits is not necessary for being awarded attorney’s fees. Lastly, the award of fees was justified in the context of Appellee having to respond to Appellant’s “aggressive” litigation tactics.

B. Standard of Review

An award of attorney’s fees is subject to the trial court’s discretion. *David A. v. Karen S.*, 242 Md. App. 1, 23 (2019) (citing *Petrini v. Petrini*, 336 Md. 453, 468 (1994)). We will not modify the award unless it is arbitrary or clearly wrong. *Frankel v. Frankel*, 165 Md. App. 553 (2005) (citing *Gravenstine v. Gravenstine*, 58 Md. App. 158, 182 (1984)).

C. April 7, 2023 Attorney’s Fees

When determining whether to assign costs and counsel fees to a party, a trial court

will follow Md. Code, Fam. Law § 12-103.¹² This statute requires a court to consider the financial status of the parties, the needs of the parties, and whether there was a substantial justification for bringing, maintaining, or defending the proceeding before the court awards attorney’s fees. Fam. Law § 12-103(b). A court is also permitted to look at whether a litigant engaged in conduct that produced protracted litigation. *Frankel*, 165 Md. App. at 590 (citing *Welsh v. Welsh*, 135 Md. App. 29, 42–43 (2000)). The trial court will have significant discretion in applying these factors to determine whether to award fees and how

¹² The statute’s text in full reads:

Award of costs and fees

- (a) The court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person:
- (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or
 - (2) files any form of proceeding:
 - (i) to recover arrearages of child support;
 - (ii) to enforce a decree of child support; or
 - (iii) to enforce a decree of custody or visitation.

Conditions for award of costs and fees

- (b) Before a court may award costs and counsel fees under this section, the court shall consider:
- (1) the financial status of each party;
 - (2) the needs of each party; and
 - (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

Whom cost and fees awarded to

- (c) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees.

Md. Code, Fam. Law § 12-103.

much to award. *David A. v. Karen S.*, 242 Md. App. 1, 39–40 (2019) (citing *Ruiz v. Kinoshita*, 239 Md. App. 395, 438 (2018)).

In addition to these factors, the award must be “reasonable, taking into account such factors as labor, skill, time, and benefit afforded to the client, as well as the financial resources and needs of each party.” *Id.* at 40 (quoting *Petrini v. Petrini*, 336 Md. 453, 467 (1994)). Reasonableness “‘is a factual determination within the sound discretion of the court,’ and ‘[t]he party requesting fees has the burden of providing the court with the necessary information to determine the reasonableness of its request.’” *Id.* at 40 (quoting *Nova Research, Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 448 n.4 (2008)).

Substantial justification requires the court to assess the merits of the case and “whether each party’s position was reasonable.” *Davis v. Petito*, 425 Md. 191, 204 (2012). Whether a party actually prevailed at trial “is a sufficient, but not a necessary, element of substantial justification.” *Id.* at 203. We will affirm a finding of substantial justification unless “it is clearly erroneous or involves an erroneous application of law.” *David A.* 242 Md. App. at 38 (quoting *State v. Braverman*, 228 Md. App. 239, 260 (2016)).

We find that for the April 7, 2023 attorney’s fees these factors were considered by Judge Ayres. Judge Ayres begins her opinion by analyzing the financial statuses and needs of both parties. She concluded that Appellee’s potential income was not high and would never be enough to pay the entire sum owed to her attorney, but Appellee’s needs were significant based on her need to take care of her two twins and another child she was pregnant with at the time of the hearing. She found Appellant “has more than sufficient assets, income and other financial means to contribute significantly” to the attorney’s fees.

Judge Ayres properly considered the financial status and needs of both parties, and as we discussed above, the findings related to Appellant’s income were proper.

Judge Ayres then turned to whether either party was substantially justified in bringing the actions, splitting her analysis into three time periods. The first time period was from March 22, 2021, from when Appellant filed his petition to modify custody, until May 25, 2022, when Judge Berry ruled on the issue of residential custody. Judge Ayres found that both parties were substantially justified in trying to modify the 2007 custody order. It was reasonable for Appellant to try to create a new access schedule for a now-teenage N.K.G. and to try to get more access generally since there was growing discord between the parties on that matter. It was also reasonable for Appellee to respond to these claims and try to modify the child support order based on her beliefs about the parties’ changed incomes. Even though the parties were substantially justified, Judge Ayres found that the Appellant “engaged in conduct that produced protracted litigation.” *Frankel*, 165 Md. App. at 590. This conclusion was supported by the Appellant’s behavior at and prior to the trial¹³

¹³ Judge Ayres describes an exchange where Appellant was asked numerous times why he requested a change in custody. The first time, Appellant said it was for a change in child support, the second time he answered and focused on his finances, and only on the third time did N.K.G. even come up as a reason to change custody. Judge Ayres concluded that the specific request for full custody instead of one overnight visit a week was not a sincere request for the benefit of N.K.G. but was for the purpose of reducing child support. Additionally, Judge Ayres pointed out text messages from prior to the initial filings to modify custody from Appellant that did not discuss a desire to live with his child full time, or concerns about safety, but instead a dispute over the access schedule.

Regarding Appellant’s assertion of child abuse by Appellee, multiple judges hearing this case concluded that the evidence did not support any abuse, but instead the evidence supported that Appellant had encouraged N.K.G. to challenge his mother. Judge Ayres specifically described Appellant as manipulating N.K.G. based on the prior opinions in the

and Judge Berry’s prior finding that the desire to change custody was not “entirely based on [N.K.G.]’s best interest.”¹⁴ Judge Ayres found that Appellant’s request for full custody to try to reduce child support caused protracted litigation since the parties could have settled for a compromised custody schedule or relied upon the parenting coordinator assigned to their case instead of going to court.¹⁵ Even though the requests for modification were reasonable, because Appellant produced protracted litigation, Judge Ayres awarded Appellee sixty percent of her attorney’s fees for this period, which totaled to \$42,099. Based on the reasoning of Judge Ayres and the other judges who heard this case and evaluated Appellant’s credibility, we do not find this decision was an abuse of discretion.

The second period was from May 25, 2022, after Judge Berry ruled on custody, to the preparation for the attorney’s fees trial that led to this appeal. Judge Ayres described the Appellant’s actions in this time period as doing “everything in his power to thwart” Judge Berry’s ruling. The first action was Appellant seeking an order of protection the day after the ruling. Then Appellant filed a motion to alter or amend the judgment, which

case and her own observations in court. The prior judges and Judge Ayres concluded that Appellant actively placed N.K.G. into these proceedings to use him “as a pawn in this case.”

¹⁴ Judge Berry’s opinion was supported by evidence that Appellee had been the primary caregiver for N.K.G. in all the years leading up to the proceedings and had “done a fine job.” Additionally, Appellant did not appear to be involved with N.K.G.’s day-to-day care and the child’s doctor could only recall seeing Appellant once or twice over 15 years.

¹⁵ And, in fact, as Judge Ayres pointed out, the revised schedule created by Judge Berry in May of 2022 was like what was proposed by the Appellee before proceedings even began.

resulted in only a minor change to cell phone access. He eventually appealed this ruling and lost. *See Kalantar*, No. 1079. Appellee had to seek a temporary restraining order after Appellant refused to return their child to the Appellee and tried to enroll him in a new school, which was granted and renewed. Lastly, Appellant sought another order of protection, which was denied in Montgomery County, but granted in Charles County, and then transferred back to Montgomery County to be heard as a part of this case, where it was then denied again. Judge Ayres concluded that all of Appellant’s actions were not substantially justified during this period because they were the result of a “win at all costs” approach. By contrast, Appellee’s actions, in filing a temporary restraining order, defending the order of protection and motion to alter or amend were all reasonable and necessary steps to respond to Appellant’s actions. As a result, Judge Ayres ruled that the Appellee was entitled to one hundred percent of her attorney’s fees being paid for this period, which totaled to \$62,125.¹⁶ Based on the record, we find that Judge Ayres did not abuse her discretion in granting all Appellee’s attorney’s fees for this period because she did not abuse her discretion in concluding that Appellant’s positions were not reasonable. *See David A.*, 242 Md. App. at 38. Where Appellee was only acting in response to unreasonable actions by the other party, she is entitled to have the other party pay for her attorney’s fees.

The final section was the work in preparing for and litigating the attorney’s fees

¹⁶ Judge Ayres noted that this cost did not include fees related to the appeal or the motion to modify since those matters were not resolved. The latter fees for the motion were resolved in the June 13 fees ruling.

trial. Appellant requested that Appellee pay his attorney’s fees as well, which Judge Ayres found to be unreasonable given the financial statuses of both parties. Judge Ayres also found that Appellant acted unreasonably in prosecuting the claim by trying to engage in gamesmanship with the expert, described above, and by bringing his child to these proceedings. Judge Ayres said that Appellee’s expert was “helpful and reasonable” and costs could have been reduced if Appellant was more forthcoming leading up to the hearing. Judge Ayres concluded that Appellant was justified in defending against Appellee’s claim for the entirety of her attorney’s fees when some of the litigation was a result of Appellee’s lack of cooperation. As a result, since most of the trial was about Appellant’s income and he was not forthcoming on that matter, Judge Ayres ruled that Appellee was entitled to seventy-five percent of her fees from this period, which totaled to \$17,666.25. We again find that there was no abuse of discretion in this final period based on Judge Ayres’ observations of the parties and their conduct during the litigation.

Looking at the fees overall, Judge Ayres found that Appellee “was primary reacting to the [Appellant]’s aggressive litigation tactics.” She found that Appellant was using his position of financial power to try to win the case, knowing that Appellee could not afford to fight him in court. As discussed in more detail below, one of the policy purposes of the attorney’s fee statutes is to prevent a party from abusing their resource advantage. *David A.*, 242 Md. App. at 36. Judge Ayres found the overall fee amounts were fair, reasonable, and necessary and therefore Appellee was entitled to a total of \$121,890.25 to be paid by

the Appellant.¹⁷ We agree with Judge Ayres ruling and find she did not abuse her discretion in splitting the attorney’s fees between the parties after considering the financial situations, needs, and the substantial justifications of their respective actions.

D. June 13, 2023 Attorney’s Fees

The second set of attorney’s fees were ordered on June 13, 2023, after Judge Ayres ruled on Appellant’s motion to modify custody. Judge Ayres ruled that Appellant would be granted primary residential custody of N.K.G. because N.K.G. moved out of Appellee’s home and created a material change in circumstances. While Judge Ayres noted that Appellant substantially prevailed in his motion, she found that the petition for modification was initiated by alienation and the need to put N.K.G. with his father. The motivations and the behaviors of the parties were not helpful for deciding the best interests of the child, but it was relevant for the attorney’s fees for Judge Ayres. Judge Ayres found that N.K.G.’s alienation was not substantially justified and therefore awarded \$15,400 in attorney’s fees to Appellee. This value only included the work for the childcare modification, not for any work used for putting liens on homes or enforcing the prior ruling.

Judge Ayres justified her finding of alienation by discussing how N.K.G appeared at trial, finding that “he took every opportunity to say bad things about” Appellee, his

¹⁷ Appellant disputed this total number and claimed that it did not add up to the total fees. However, in addition to the submitted amount of fees from prior to the trial, Judge Ayres had the parties submit proposed findings of facts and additional fees from putting those proposals together. For Appellee, this led to an increased balance from the work done to complete those tasks, which resolved the difference in the award and total fees.

mother.¹⁸ She also noted “snickering” between Appellant and N.K.G. during the trial while Appellee was on the stand and noted that the fact that N.K.G. was even here to witness the trial supported her finding of alienation. Additionally, Judge Ayres described the underlying facts for one of the orders of protection filed by Appellant as “fabricated” and originating from “a child who has no respect for his mother.” As a result, Judge Ayres concluded there was no substantial justification as Appellant’s position was not reasonable since it was borne out of manipulation. *See Davis v. Petito*, 425 Md. at 204 (defining substantial justification as “whether each party’s position was reasonable”). Based on the record and Judge Ayres findings, we agree that this change in custody was borne out of manipulation from Appellant and the alienation of a child from his mother. While it was proper for Judge Ayres to award custody to Appellant, the attorney’s fees are a separate consideration.

Appellant contends that these fees were unjustified because he prevailed on the merits and custody of N.K.G was ordered. Substantial justification does not require that a party succeed at trial. *Davis*, 425 Md. at 203 (“Prevailing on the merits is a sufficient, but not a necessary, element of substantial justification”); *see also Broseus v. Broseus*, 82 Md. App. 183, 200 (1990) (“Just because appellant prevailed on the custody issue does not preclude an award to appellee, so long as there was substantial justification for bringing or defending the proceeding”). Therefore, even though the Appellant was granted

¹⁸ Additionally, Judge Ayres found by a preponderance of the evidence that N.K.G. had deleted a happy birthday text from his phone “in an effort to not be forthcoming about the good parts of his mother.”

custody, it was still proper for Judge Ayres to assign costs to the Appellant, especially given the allegations at the proceeding and manufactured claims of abuse. We find that Judge Ayres did not abuse her discretion in awarding the June 13, 2023 fees to Appellee.

Judge Ayres did not abuse her discretion in ruling on the payment of attorney’s fees to the Appellee and we will affirm those awards.

Whether Retroactive Child Support and Attorney’s Fees Violates the Best Interest of the Child

Despite the awards being proper, Appellant next argues that imposing these awards violates the best interest of the child. Appellant contends that awarding fees to the Appellee will take money away from N.K.G. Appellant says not considering N.K.G.’s interests was erroneous given the magnitude and impact of the award. Appellee maintains that the child support was proper for the awarded period because it was when N.K.G. was living with Appellee. Appellee asserts that Appellant fails to address the issue in a meaningful way or cite any facts or authority.

We agree with Appellee on this issue and find that Appellant did not make a proper argument as to how the child support awards or attorney’s fees awards go against the best interest of the child. Appellant has the obligation “to pinpoint the errors raised on appeal and to support their contentions with well-reasoned legal argument.” *Fed. Land Bank of Balt., Inc., v. Esham*, 43 Md. App. 446, 458 (1979).¹⁹ By failing to do so on this point, we need not make the argument for the Appellant.

¹⁹ On this point, it should be noted that at the end of Appellant’s brief, there is a section entitled “Other” that contains a list of matters Appellant believes were in error, but

Additionally, Judge Ayres’ opinion did consider Appellant’s financial resources. She specifically discussed his “significant” assets, including a home in Charles County worth \$641,000, money in checking, savings, and retirement accounts, luxury vehicles, stock, and owning a restaurant with gross revenues in the millions of dollars. Judge Ayres also noted Appellant’s liabilities but noted that his testimony “was geared towards minimizing his assets and income in order to hide his net worth from the [Appellee] and the court.” She also specifically found that Appellant “has regularly lied when he believed it would benefit him financially.” These considerations undermine Appellant’s argument that this award of fees will take money away from the parties’ child. We will find no abuse of discretion in Judge Ayres’ considerations in the lower court.

***Whether Md. Code, Fam. Law §12-103 Violates
Due Process and Equal Protection Guarantees***

For this final claim, Appellant argues that Family Law § 12-303 is unconstitutional. He claims that usually departures from the general rule that parties must pay their own attorney’s fees mean that fees are awarded to the prevailing party. Appellant says that the §12-303 statute is different because a losing party can get fee awards so long as they have “substantial justification” in bringing the case. Appellant argues that “the purpose and effect of the statute is to foment litigation against the well-off.” According to Appellant, this statute puts the wealthier party at a disadvantage at the outset of the proceeding. Therefore, Appellant argues, the statute should be stricken as unconstitutional.

none contain any citations to the record or law. As a result, we will not take the opportunity to consider any of these issues.

Appellee argues that Appellant’s argument is “frivolous, at best” because he fails to articulate the kind of due process violation that is at issue or how there is an equal protection deprivation. Additionally, Appellee cites to the legislative history of § 12-103 as described in *David A. v. Karen S.*, 242 Md. App. 1 (2019).

We find that this issue was not properly presented before the court. Appellant does not clearly articulate whether this statute creates a substantive due process violation or a procedural due process violation, nor whether those rights arise out of the Federal or State Constitutions. It is not the function of this court “to attempt to fashion coherent legal theories to support appellant’s . . . claims.” *Konover Prop. Tr., Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 494 (2002). Nor is it our function “to delve through the record to unearth factual support favorable to . . . appellant.” *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 201, *cert. denied*, 406 Md. 746 (2008) (quotation marks and citation omitted). In the absence of proper arguments on this claim, we cannot rule on any alleged violations of these rights. If Appellant’s claim is that this is discrimination of the wealthier parties in family law actions, we find that argument has no merit.²⁰

Regarding Appellant’s argument that “the purpose and effect of the statute is to foment litigation against the well-off” we find that the policy considerations laid out in prior cases proves that to be untrue. In *David A. v. Karen S.*, this Court took the opportunity to analyze the history and purpose of § 12-103. 242 Md. App. at 34–37. The case involved

²⁰ In prior cases, wealth has been relevant to due process claims, but that is often because the less wealthy party has been barred from accessing the courts. *See, e.g., Boddie v. Connecticut*, 401 U.S. 371 (1971) (holding that the state cannot deny access to divorce courts solely because of the inability to pay court fees and costs).

whether the trial court could impose the attorney’s fees incurred by the appellee onto the appellant in a child custody battle. *Id.* at 16. The appellant argued that the appellee was not eligible to an award of attorney’s fees under § 12-103 because the appellee was a grandparent, not a parent. *Id.* at 24. The trial court held that the appellee was a *de facto* parent and therefore eligible for an award. *Id.* at 28. This Court then made it clear that § 12-103 differs from other fee shifting statutes on purpose. *Id.* at 34–35. The Court wrote:

Unlike fee shifting provisions in which a party's eligibility for an award depends on whether it prevailed in the action, § 12-103(a) does not even require consideration of which party prevailed, *see* Md. Rule 2-702(b) (describing fee shifting provisions in Family Law Article as not requiring that the receiving party “prevailed in the action or on any particular claim or issue in the action”). Instead, the statute provides broad authority for the court to award attorney's fees and costs in a custody, visitation, or child support proceeding “that are just and proper under all the circumstances,” subject only to the requirement that the court must first “consider” three things: (1) “the financial status of each party;” (2) “the needs of each party;” and (3) whether each party had a substantial justification for its position in the proceeding.

Id. at 34–35 (quoting Md. Code, Fam. Law § 12-103) (footnotes and citations omitted).

The *David A.* opinion then detailed the important policy considerations of § 12-103. *Id.* at 35–36. First, the statute gave parties who may not be able to afford counsel access to pro bono counsel because the attorney may be able to recover fees from the other party. *Id.* (citing *Henriquez v. Henriquez*, 185 Md. App. 465, 484 (2009), *aff'd*, 413 Md. 287 (2010) (noting the “important policy consideration[]” of allowing pro bono attorneys in family law cases)). Second, the statute helps to ensure that a party with a resource advantage is not incentivized to abuse that advantage in a family law proceeding. *Id.* at 36 (citing *Broseus v. Broseus*, 82 Md. App. 183, 201 n.9 (1990) (describing how the appellant may

have closed the marital bank accounts to force the appellee to borrow nearly all of her attorney's fees payments from family and friends). Third, the statute disincentivizes conduct that "produce[s] protracted litigation." *Id.* (quoting *Frankel v. Frankel*, 165 Md. App. 553, 590 (2005)). Finally, the statute allows courts to make equitable determinations over who should bear the costs of a dispute, which may include the best interest of the child. *Id.* (citing *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (listing its considerations of the parties' needs and resources, which included "the benefit to the child of awarding attorney's fees to the mother"))).

Based on this analysis, the purpose of § 12-103 is not to simply "award[] fees to the loser," as Appellant described. The statute allows the court to take a broader look at the needs and status of the parties and assign, at its own discretion, attorney's fees from one party to the other, without consideration of who won or lost. The purpose of § 12-203 is to increase access for all parties to family court, to ensure that a party in a disadvantaged position can have access to counsel, and prevent the wealthier party from abusing the court system. We find that none of these purposes constitute a violation of due process or equal protection.

CONCLUSION

Accordingly, we affirm the decisions of the Circuit Court for Montgomery County for retroactive child support and the awards of attorney's fees.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; COSTS TO APPELLEE.**