Circuit Court for Montgomery County
Case No.: C-15-FM-22-005629

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 439

September Term, 2023

ALI HAMIEH

v.

LAILA AMHAZ

Wells, C.J.,
Berger,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 2, 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).

Appellant, Ali Hamieh ("Father"), and appellee, Laila Amhaz ("Mother"),[1] appeared before the Circuit Court for Montgomery County to resolve issues relating to custody of their three minor children. Prior to the custody hearing, Father filed a motion to postpone the hearing, which was denied. The parties appeared for the hearing, Mother with counsel and Father *pro se*, after which Mother was granted custody of the children and awarded child support. Father files this appeal challenging the court's denial of his motion to postpone and the court's award of child support and arrearages to Mother. Finding no error or abuse of discretion, we shall affirm. We discuss.

BACKGROUND

On September 27, 2022, Father filed a complaint for absolute divorce. At that time, Father was represented by counsel, Manuel Machin. On November 23, 2022, the court issued a scheduling order that, among other things, set a custody hearing for May 8 and 9, 2023.

On January 31, 2023, Mr. Machin filed a motion to withdraw his appearance asserting that Father sought "to terminate [his] representation."[2] On February 9, 2023, the court entered an order striking the appearance of Mr. Machin. That same day, the court sent Father a "Notice to Employ New Counsel[,]" pursuant to Md. Rule 2-132(c), which asserted that "unless new counsel enters his/her appearance in this case within fifteen (15)

[1] Mother did not file a brief on appeal.

[2] In a pleading later filed by Father, he explained that Mr. Machin "made a lot of mistakes at hearings, like misstating my salary to the Court" and that he was "very inexperienced and has only been a lawyer for a few years."

days after service upon you of this notice, your lack of counsel shall not be grounds for postponing any further proceedings concerning the case." It also noted that "[w]ithout legal counsel, you face the risks of dismissal, judgment by default, and assessment of court costs against you."

On March 31, 2023, Sharon Diamant filed an entry of appearance on Father's behalf. However, less than three weeks later, on April 19, 2023, Ms. Diamant filed a "substitution of counsel[,]" which stated in full: "Please substitute Ali Hamieh, *pro se*, as his own Counsel, and strike the appearance of Sharon Diamant and Diamant Gerstein, LLC in this matter." It was signed by Father.[3]

On April 25, 2023, Father filed a *pro se* motion to postpone the custody hearing. Therein, he explained that he "had questions and concerns with Ms. Diam[a]nt's representation[,]" and that "[i]nstead of addressing my concerns, Ms. Diam[a]nt was upset and said she would no longer represent me."[4] Accordingly, he asserted that "the Court needs to postpone the trial so that I can find a new lawyer who will provide the Court with my evidence."

On May 2, 2023 – less than one week before the scheduled custody hearing – Father's third attorney, Darin Rumer, entered his appearance. Father filed a renewed

[3] Although not determinative to the issues presently before us, Father challenges the propriety of Ms. Diamant's "substitution of counsel" under Md. Rule 2-132(a), which we address, *infra*.

[4] Ms. Diamant filed a response to Father's motion disputing these assertions. The record also reflects that in the letter notifying Father that Ms. Diamant intended to withdraw her appearance, she asserted that Father "indicated [he] no longer want[ed her] help."

motion to postpone the custody hearing, wherein he challenged Ms. Diamant's withdrawal of appearance and asserted that the court should postpone the custody hearing in order to "receive full and complete evidence[.]" Father's counsel noted that he was "available and willing to represent [Father] in this matter, but cannot conceivabl[y] acclimate and prepare for a two day custody trial wi[th] less than two weeks' time[,]" adding that he had a medical appointment on the date of the hearing which could not be rescheduled. On May 3 and 4, 2023, the court denied both of Father's motions to postpone.

On May 8, 2023, the parties appeared for the custody hearing. Mother appeared with counsel and Father appeared *pro se*. At that time, Mother had sole custody of the children pursuant to a final protective order entered in a separate proceeding. That protective order, entered in October of 2022, granted Father supervised access to the children and required his payment of $3,000 per month in emergency family maintenance to Mother.

At the custody hearing, both parties testified to their income and introduced witnesses. In relevant part, Father testified that he earned approximately $128,000 per year working in cybersecurity. Mother testified that she earned $38 per hour, roughly thirty hours a week, working as a surgical assistant. Further, Mother testified that she was spending $3,000 for work-related childcare each month.

Ultimately, the court granted Mother sole legal and primary physical custody of the children, with a graduated access schedule to Father. Further, the court found that Father earned $10,666 per month, that Mother earned $5,694 per month, and that Mother incurred $3,046 in monthly childcare expenses. The court granted a monthly child support award of

$4,237 to Mother, retroactive to November of 2022,[5] and assessed $7,422 in arrearages against Father. The court calculated arrearages based upon the difference between the ordered child support and the emergency family maintenance payments already made by Father for the six months prior to the May 2023 hearing.[6]

Father timely filed this interlocutory appeal, where he presents the following two issues for review: [7]

> I. Whether the court erred in denying appellant's motions to postpone custody trial.
>
> II. Whether the . . . court erred in its calculation of child support and child support arrearage.

Additional facts will be supplied as necessary.

STANDARD OF REVIEW

A trial court's ruling on a motion to postpone is "within the sound discretion of the trial judge." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). Thus, "[a]bsent an abuse of that discretion[,] we historically have not disturbed the decision to deny a motion for

[5] Although the court stated that arrears would be calculated based upon child support beginning with "Mom's counter complaint which was filed October 14, 2022[,]" the record reflects that the court calculated them beginning in November of 2022, when Father's payments of emergency family maintenance under the final protective order started.

[6] Specifically, the court multiplied the $1,237 difference between child support ($4,237) and the emergency family maintenance paid by Father ($3,000) times six.

[7] Although appellate jurisdiction is not challenged in this appeal, we note that our review of the issues presented by Father is permitted pursuant to Md. Code Ann., Courts and Judicial Proceedings ("CJP") §§ 12-303(3)(v) and (x). CJP § 12-303(3)(v) (permitting interlocutory appeal from an order for "the payment of money"); CJP § 12-303(3)(x) (permitting interlocutory appeal from an order "[d]epriving a parent . . . of the care and custody of his child").

continuance." *Id*. This is true "even where the ground for the requested continuance is the withdrawal of movant's counsel from the proceedings." *Fontana v. Walker*, 249 Md. 459, 463 (1968).

Further, regarding the award of child support, "we review the trial court's factual findings for clear error, while each ultimate award is reviewed for abuse[] of discretion." *Reynolds v. Reynolds*, 216 Md. App. 205, 218-19 (2014); *see also Gladis v. Gladisova*, 382 Md. 654, 665 (2004) ("Child support awards made pursuant to the Guidelines will be disturbed only if there is a clear abuse of discretion."). "A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996).

Accordingly, unless we find the denial of a motion to postpone or a child support award to be "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable[,]'" they will not be disturbed on appeal. *McLennan v. State*, 418 Md. 335, 353-54 (2011) (further quotation marks and citation omitted) (quoting *Gray v. State*, 388 Md. 366, 384 (2005)). Finally, in our review on appeal, we "will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c).

DISCUSSION

I. THE COURT DID NOT ERR IN DENYING FATHER'S MOTIONS TO POSTPONE.

Father contends that the court erred in denying his motions to postpone for several reasons. First, he asserts that the court erred in "fail[ing] to articulate any basis" in denying his motions. Second, he maintains that Ms. Diamant failed to comply with the provisions

of Md. Rule 2-132 in withdrawing her appearance, and thus that the court's denial of his motions to postpone constituted error. Finally, he asserts that the facts implicate an exceptional circumstance where the denial of a postponement is an abuse of discretion, adding that the court's denial of his motions to postpone violated his due process rights. We disagree.

The Supreme Court has made clear that only in "exceptional situations" will a denial of a motion to postpone constitute reversible error. *Plank v. Summers*, 205 Md. 598, 605 (1954). In *Touzeau*, 394 Md. at 669-70, the Court enumerated three such circumstances: (1) when "the continuance was mandated by law," (2) when "counsel was taken by surprise by an unforeseen event at trial," or, (3) "in the face of an unforeseen event, counsel [or *pro se* litigant] had acted with diligence to mitigate the effects of the surprise[.]" However, the Court noted that its "reticence to find an abuse of discretion in the denial of a motion for continuance has not been ameliorated[.]" *Id*. at 674. "[N]or have we found it to be an 'exceptional situation,' when the denial has had the effect of leaving the moving party without the benefit of counsel." *Id*.

Further, we note that judges are "presumed to know the law and to properly apply it." *Bangs v. Bangs*, 59 Md. App. 350, 370 (1984); *Lapides v. Lapides*, 50 Md. App. 248, 252 (1981) ("The exercise of a judge's discretion is presumed to be correct[.]"). Accordingly, the court is not required to "articulate every step in [its] thought processes." *Bangs*, 59 Md. App. at 370. Moreover, the presumption that the court properly exercised its discretion "is not rebutted by mere silence." *Id*.

Here, we are unpersuaded that the court abused its discretion in denying Father's motions to postpone the custody hearing. Father initially sought to postpone the hearing to "find a new lawyer" less than two weeks before it was scheduled to occur. He did so after the matter had been pending for over seven months, the hearing had been scheduled for over five months, and after Father had already discharged two prior attorneys. Mother opposed the postponement, noting that she had already "exhausted significant resources[,]" and had "several witnesses from out of state who have made plans to be present" at the hearing. Further, Father's third counsel, retained the week before the hearing, was unavailable on the scheduled hearing date. We cannot say that the court's denial of Father's requests under these facts was "well removed from any center mark imagined" by this Court. *McLennan*, 418 Md. at 353-54 (quotation marks and citations omitted).

Nor are we persuaded that Ms. Diamant's alleged noncompliance with Md. Rule 2-132(a) indicates an abuse of discretion on behalf of the circuit court. Md. Rule 2-132 provides two different means by which an attorney may withdraw their appearance:

> (a) **By notice**. – An attorney may withdraw an appearance by filing a notice of withdrawal when (1) the client has another attorney of record; or (2) the attorney entered a limited appearance pursuant to Rule 2-131(b), and the particular proceeding or matter for which the appearance was entered has concluded.
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> (b) **By motion**. – When an attorney is not permitted to withdraw an appearance by notice under section (a) of this Rule, the attorney wishing to withdraw an appearance shall file a motion to withdraw. Except when the motion is made in open court, the motion shall be accompanied by the client's written consent to the withdrawal or the moving attorney's certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal and advising the client to have another attorney enter an appearance or to notify the clerk in writing of the client's intention to proceed

> in proper person. Unless the motion is granted in open court, the court may not order the appearance stricken before the expiration of the time prescribed by Rule 2-311 for responding. The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice, or injustice.

Father asserts that Ms. Diamant's substitution of counsel "did not comport with Md. Rule 2-132 and was not legally correct" because subsection (a), which permits withdrawal of appearance by notice, "requires that **new counsel** be employed[,]" and Father had not retained new counsel. Additionally, he asserts that Ms. Diamant failed to comply with subsection (b), because "[n]o motion was filed" as required under that subsection.

Assuming, *arguendo*, that Father is correct, he cites no support for the position that Ms. Diamant's alleged noncompliance with the rule indicates an abuse of the court's discretion, and this Court is not aware of any. Further, we note that the substitution of counsel included Father's "written consent to the withdrawal" as required under the rule, thus we are unpersuaded that there was any resulting prejudice. Md. Rule 2-132(b). The court was well within its discretion in denying Father's motions to postpone under the record before us. *Kadish v. Kadish*, 254 Md. App. 467, 507 (2022) (finding no abuse of discretion when considering the "entire record").

Finally, Father's assertions that the circumstances required postponement under *Touzeau* and that his due process rights were violated by the court's denial were not raised before the circuit court. Thus, they are not properly before us on appeal. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

Even had Father properly raised these issues before the circuit court, they are unpersuasive. Citing to *Touzeau*, Father asserts that he "was taken by surprise by an unforeseen event" – here, the withdrawal of Ms. Diamant's appearance – and "acted diligently to seek new counsel[.]" However, there is no surprise in the record before us. Father does not dispute that he signed the substitution of counsel withdrawing Ms. Diamant's appearance; the record even reflects that he followed up with Ms. Diamant to confirm that she received his signed copy. *See Touzeau*, 394 Md. at 674-75 (affirming denial of motion for continuance where there no "element of surprise"); *Butkus v. McClendon*, 259 Md. 170, 174 (1970) (same); *Hughes v. Averza*, 223 Md. 12, 18 (1960) (same).

Nor are we persuaded by Father's assertion that he failed to understand the consequences of signing the substitution of counsel. Father had been warned of the consequences of proceeding *pro se* at least once in this case – in the court's Notice to Employ New Counsel – including that he would "face the risks of dismissal, judgment by default, and assessment of court costs" without counsel. Finally, we note that the cases Father cites to in support of the assertion that he was denied due process and the "opportunity to be heard in a meaningful manner" deal with circumstances where a parent or a parent's witness was prohibited from testifying. *See Wells v. Wells*, 168 Md. App. 382, 397 (2006); *A.A v. Ab.D*, 246 Md. App. 418, 447 (2020). Here, Father was not prohibited from testifying nor calling witnesses to testify on his behalf, and indeed, he successfully did.

II. THE COURT DID NOT ERR IN ITS CALCULATION OF CHILD SUPPORT AND ARREARAGE.

Father asserts that the court erred in calculating child support to include Mother's childcare expenses because Mother "failed to provide evidence of the actual cost of childcare." Specifically, he asserts that Mother "produced one singular invoice dated February 20, 2023, while the hearing was on May 8, 2023" and she failed to provide current documentation for the children's aftercare and daycare expenses. We disagree.

Mother testified to spending over $3,000 per month for work-related childcare. She provided documentation of afterschool costs totaling $313 per week for the two older children and testified that she paid $390 weekly for the youngest child. Based upon this evidence and testimony, the court calculated childcare expenses to be $3,046 per month.[8] Father did not offer any evidence or testimony to refute these amounts.

Instead, the court explained that it "credit[ed Mother's] testimony[,]" and this Court will give due regard to the trial court's credibility determinations. *Payne v. State*, 243 Md. App. 465, 478 (2019) ("We do not disturb the hearing court's credibility assessments unless clearly erroneous.").[9] Accordingly, we hold that there was "competent or material evidence

[8] The court multiplied the weekly childcare costs by 52 weeks to get a monthly average of $3,046.

[9] The court noted concern regarding Father's credibility, including that it appeared that he and the supervisor he hired for his court-ordered supervised visitation with the children appeared to be working "in tandem with each other[:]"

> The fact that Father got this woman to supervise after letting go of two other people is very concerning to the [c]ourt. Clearly the two are in tandem with

(continued…)

in the record to support the court's conclusion" as to childcare expenses for the children. *Lemley*, 109 Md. App. at 628.

Finally, Father challenges the court's child support and arrearage calculations, including that the court failed to consider his financial circumstances, failed to consider the costs of supervised visitation and reunification therapy, and erroneously calculated arrearages to a date prior to when Mother testified that she began paying for work-related childcare. However, because Father failed to raise these assertions before the circuit court, they are not properly before us on appeal.

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

each other. And the fact that you would manipulate the court system in this way before a custody trial is very concerning to the [c]ourt.