Circuit Court for Montgomery County
Case No. 151449FL

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1486

September Term, 2022

JERMAINE C. TYLER

v.

NATASHA CHARISSE HEWLETT

Berger,
Arthur,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 12, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In the Circuit Court for Montgomery County, Natasha Charisse Hewlett ("Mother"), the appellee, filed petitions for contempt and to modify custody against Jermaine C. Tyler ("Father"), the appellant, pertaining to the parties' minor child ("Child").[1] After a merits hearing, the court found that there was a material change of circumstances and that it was in the best interests of Child for Mother to have sole legal and primary residential custody, with parenting time for Father. The court found Father in contempt for willful failure to pay child support and included in its order a purge amount. It also found that Father had failed to pay his share of medical and extracurricular activity expenses for Child and entered judgment in favor of Mother for those amounts.

Father, representing himself,[2] noted this appeal, raising five questions, which we have rephrased as follows:

I. Did the trial court err in finding a material change in circumstances warranting a modification of custody?
II. Did the trial court err in admitting several of Mother's exhibits?
III. Did the trial court err in finding Father in contempt for failure to pay child support?
IV. Did the trial court err in finding that Father owed Mother the cost of half of Child's medical expenses and extracurricular expenses?
V. Did the trial court err in denying Father's motion for recusal?[3]

[1] We are using relationships instead of names to refer to the people involved in this case out of concern for Child's privacy. Doing so should not be taken as a sign of disrespect.

[2] Father was represented by counsel at the merits hearing in circuit court. Mother was *pro se* below and has not participated in this appeal.

[3] Father phrased his questions presented as follows:

> 1. Whether the circumstances have materially changed since the prior custody determination warrant modification.

For the reasons to follow, we shall affirm in part and vacate and remand in part the judgment of the circuit court.

FACTS AND PROCEEDINGS

The parties married in January 2011 and divorced in June 2019. Child was born on April 14, 2012. The judgment of absolute divorce, entered on June 24, 2019, required Father to pay Mother $31 per month in child support.

On February 21, 2020, the court entered a consent custody order awarding the parties shared physical custody of Child "on a week-on-week-off basis[.]" The order further provided "that during the summer months, the parties shall each have a two (2) week vacation period with the minor child ("Vacation Access"), with the dates each party proposes for their Vacation Access provided to the other, in writing, by no later than April 1st of each year." The parties were to have joint legal custody of Child, with Mother having tie-breaking authority as spelled out in the order.

On January 11, 2022, Mother filed a petition for contempt, alleging that Father had failed to pay the ordered child support. That same day, she filed a petition to modify custody, alleging:

2. Whether, even if there are changed circumstances, there was a lack of a fair hearing where the pro se movant was allowed to prove her case with unauthenticated documents, many of which was hearsay.
3. Whether there is no credible evidence establishing that Appellant owes any child support and reimbursable expenses.
4. Whether any claim for reimbursable expenses is barred by res judicata.
5. Whether the trial judge should have vacated the determination and recused herself retroactively given her blatant conflict of interest.

> (1): The child has missed SEVERAL days of school during the 2021-2022 school year. In fact, the child missed 27 days of school during the fall semester (2021). ALL BUT ONE of those absences correspond to times when Father had the child. These absences are not excused, and the child is turning into a truant under Father's poor watch. As of today (Jan 10, 2022) the child has NOT BEEN TO SCHOOL ONCE [yet] this year (and has been with Father the whole time). Father's behavior in this regard is bizarre and bad for the child. The child's grades are now suffering as a direct result. (2): The child is diagnosed with ADHD. Medication and [an Individualized Education Plan] are recommended by professionals. Father is refusing to cooperate, and the child is not getting help as a result.

Mother asked the court to grant her sole physical and legal custody of Child, with reasonable visitation for Father.

The hearing on Mother's petitions was held on June 21 and 22, 2022. Mother and Father testified, and over 50 exhibits were moved into evidence.

On July 25, 2022, the court issued a memorandum opinion and order, docketed on August 3, 2022. The court "did not find [Father] credible throughout his testimony." It held Father in contempt for willful refusal to pay child support, with a purge amount of $713, the amount it determined he had not paid. The court found that Father had failed to pay $4,209.22 of Child's extraordinary medical expenses (for dental, orthodontics, and therapy) and entered judgment against him for that amount. It further found that Father had failed to pay $177.50 of Child's extracurricular activities (for basketball and football) and entered judgment against him for that amount as well. Finally, the court found that there had been a material change in circumstances warranting a modification of custody, and that it would be in Child's best interests for Mother to have sole legal and primary physical custody of Child, with visitation for Father as spelled out in the order.

We shall supply additional facts below as needed.

DISCUSSION

I.

Modification of Custody

When faced with a request to change an existing custody or visitation order, Maryland courts are to engage in a two-step process. *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). "First, the court must ascertain whether there has been a 'material' change in circumstance." *A.A. v. Ab.D.*, 246 Md. App. 418, 433 n.10 (2020) (quoting *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005)). Second, "'[i]f a finding is made that there has been such a material change, the court then proceeds to consider the best interests of the child as if the proceeding were one for original custody.'" *Gillespie*, 206 Md. App. at 170 (quoting *McMahon*, 162 Md. App. at 594).

We review child custody decisions using three interrelated standards of review:

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Second,] if it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion."

Gillespie, 206 Md. App. at 170 (quoting *In re Yve S.*, 373 Md. 551, 586 (2003)). The abuse of discretion standard recognizes "the trial court's unique opportunity to observe the demeanor and the credibility of the parties and the witnesses." *Santo v. Santo*, 448 Md. 620, 625 (2016) (quotation marks and citation omitted). An abuse of discretion "may arise when no reasonable person would take the view adopted by the trial court[,]" "when the

court acts without reference to any guiding rules or principles[,]" or when "the court's ruling is clearly against the logic and effect of facts and inferences before the court[.]" *Id.* at 625-26 (cleaned up). In all custody and visitation determinations, the best interest of the child is the overarching consideration. *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013).

The court found on the evidence presented that there was a change in circumstances affecting the best interests of Child and then, after considering the relevant custody factors, found that it was in Child's best interests to change custody. In his brief, Father does not challenge the latter finding. He maintains that the court erred in finding a material change in circumstances by "basically rel[ying] upon the two purported factors listed in [Mother's] petition [to modify]: missed days of school and lack of therapy." He asserts that the court's finding about the number of days Child missed school was inaccurate and, although Child did not go to therapy, the court erred in finding fault with him for that.

In fact, the court gave three bases for its finding of a material change in circumstances: 1) Father's failure to provide Child with necessary medical treatment; 2) Father's failure to communicate with Mother; and 3) Father's failure to ensure that Child attended school. To some extent they were intertwined, although the court addressed them separately.

With respect to mental health therapy, the court explained:

> [T]he ongoing failure to supply this child with necessary medical care [is] a material change in circumstances. [Father] has refused to execute the necessary consent form for the child's therapist to speak to a mental health professional that the [Father] took the child to without consent from [Mother]. [Father] refuses to sign the form, notwithstanding he continues to insist the child should see a therapist—a different therapist, that the child has experienced trauma at school and has been diagnosed with anxiety as a result,

> that the child has expressed suicidal ideations due to the trauma alleged, and that these issues are emergent.

Father argues: "To be sure, the child did not go into therapy. It is hardly [Father's] fault. [Mother] has had tiebreaking authority." This argument reveals a lack of appreciation of tiebreaking authority in a shared custody situation. Tiebreaking authority in one parent does not give the other parent license to be deliberately difficult to the detriment of the children. Father's duty to cooperate with Mother and Child's health care providers so Child would receive the therapy and other medical care he needed remained, regardless of Mother's tiebreaking authority. The court found that Father "has refused to execute the necessary consent form for the child's therapist to speak to a mental health professional that [Father] took the child to without consent from [Mother,]" that he insisted that Child see "a different therapist," and refused to communicate with Mother and share information about Child's mental health. The evidence supported this finding.

Father does not address the court's second finding, that his failure to communicate with Mother likewise was a material change in circumstances. The court observed:

> [Father] has refused to consistently communicate with [Mother] about the child and has been nonresponsive to her when she has sought to share or receive information or come to agreement about matters impacting the child's welfare.
>
> * * *
>
> [Father] has ignored [Mother] when she tries to communicate with him about the child, including about the child's health, activities, and general welfare, on multiple occasions.

The court gave the following example, unrelated to the issue of therapy:

> [Father] gave no meaningful response to [Mother's] request to spend time with the child on his birthday in April. [Mother] asked early on, and [Father] kept putting her off until a week before the child's birthday, and then he claimed he had plans. The court does not find this claim credible and believes [Father] deliberately did not respond. [Father] claims he offered to spend the birthday together, which he had to know [Mother] would reject given the history of these parties, including the domestic violence filings against [Mother] by [Father] that were denied at the final stage. It seems to the court to be a tactic, to provoke [Mother] and to give a false impression of cooperativeness. It is not credible.

The court went on to say: "The conflict between the parties seems . . . to be largely manufactured, fueled, and fanned by [Father]. The evidence showed that [Father] has no intention of communicating effectively with [Mother] or helping to get important services and care for the parties' son." There was ample evidence in the record to support the court's finding that Father was being deliberately unresponsive to Mother's efforts to communicate.

Finally, with respect to Child's school attendance, or lack of it, Father asserts that the court erred in finding "that 48 days of school were missed" and that the reason for the absences was lack of diligence on his part. In calculating the number of absences, the court relied on an exhibit introduced by Mother, the school's "Daily Attendance Profile" for Child, which showed approximately 48 absences during the 2021-2022 school year. That document gave a detailed breakdown of the date and reason for each absence. Father argues the court should have relied on an exhibit he introduced, the school's "Progress Report Card" through the third quarter of the school year, which suggested that Child had been absent 20 times. Unlike the detail in the "Daily Attendance Profile," the report card, which was the most recent Child had received as of the date of the hearing, merely gave an

aggregate number of absences for Child for each quarter. Reconciling these competing exhibits was within the purview of the hearing judge, as factfinder. The court did not err in choosing to rely upon the more detailed "Daily Attendance Profile" instead of the report card to determine the number of Child's absences.

Father argues that "many of the absences [from school] were due to [the] Covid-19 quarantine" not lack of diligence on his part. The court rejected Father's testimony to that effect and found that he had engaged in manipulative behavior with respect to Child's school attendance. For example,

> On one occasion, [Father] waited for [Mother] to drop the child off at school, and then immediately picked him up and removed him from school without a word to [Mother]. [Mother] did not know how to reach the child and she contacted the school, police and child welfare trying to find out what happened to the parties' son. There was no reasonable cause for the child to be out of school, and certainly no cause to take the child surreptitiously as [Father] did. After taking the child out of school, [Father] wrote the school asking if the child was absent and what the cause was[.]

The record evidence supported the court's findings about the reasons for Child's absences from school. We note that in making its best interests finding, the court commented that the evidence "shows that [Father] cannot be responsible for getting the child to school[.]"

For all these reasons, the court did not err or abuse its discretion in finding a material change in circumstances, based on Father's conduct, that was negatively affecting Child's welfare, or in modifying physical and legal custody and visitation as it did.

II.

Mother's Exhibits

Father contends the court erred in admitting Mother's exhibits. He argues that "unauthenticated writings" "permeated the entire case[.]" He asserts that "[t]here is no need to go item by item" to show why each item should not have been admitted in evidence.

On the contrary, Rule 8-504(a)(4) requires a brief to include "[a] clear concise statement of the facts material to a determination of the questions presented," with "[r]eference . . . to the pages of the record extract or appendix supporting the assertions." Moreover, the brief shall provide "[a]rgument in support of the party's position on each issue." Md. Rule 8-504(a)(6). Mother introduced more than 40 exhibits into evidence. It is not the function of this Court to compose legal arguments in support of Father's appellate challenge to each of Mother's exhibits. *See Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 201, 203 (dismissing appeal where appellant failed to provide sufficient reference to pages in the record extract supporting the facts asserted, noting that this Court "cannot be expected to delve through the record to unearth factual support favorable to [the] appellant" (quotation marks and citation omitted)), *cert. denied*, 406 Md. 746 (2008). *Accord Reynolds v. Reynolds*, 216 Md. App. 205, 225-26 (2014) ("We therefore shall not comb through the 2,904 pages of extract in this case—much less the record itself—in order to find factual support for appellant's alleged point of error.").

In this type of circumstance, we might exercise discretion to address Father's arguments to the extent the issues are readily discernible and specific. We shall not do so here, however, because he has failed to preserve any of these issues for review. Under

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[.]"

Father maintains the court erred by admitting Mother's exhibits 4, 11, 15, 23, 36 and 43. Mother's Exhibit 4 was an expense sheet showing the costs of Child's dental care. When the court asked Father's counsel whether he had any objection to the exhibit, counsel stated: "No objection." Mother's Exhibit 11 was an expense report detailing the costs of Child's extracurricular activities. Again, when the court asked Father's counsel whether he had any objection to the exhibit, counsel stated: "No objection."

Mother's Exhibit 15 was Child's record of school attendance. Father asserts that this exhibit was "was received before counsel even had an opportunity to object." That argument is belied by the record. When Mother identified this document, the court expressly gave defense counsel an opportunity to object. The court stated: "I'll give you a moment to take a look at it. Let me know if there's any objection." No objection was made.

Mother's Exhibit 23 consisted of communications from Mother to Father about Child's dental care, as well as an invoice and contract from the dentist's office, which showed that there had been no response from Father. The court asked whether there was an objection to the admission of this exhibit, to which Father's counsel responded: "I will not object." Likewise, Father's counsel stated that he did not object to Mother's Exhibit 36, a communication from her to Father about Mother's desire to enroll Child to play on a flag football team.

Finally, Mother's Exhibit 43 consisted of excerpts from her bank account statement reflecting payments to Child's therapist. Mother testified: "Your Honor, Exhibit 43 is a, my . . . checking banking account and it's all the payments that were made [to the therapy provider] that had the, half of the cost is not paid for." Once again, the court asked whether there was any objection to this exhibit, and Father's counsel confirmed: "I have no objection."

The challenges to the admission of Mother's exhibits that are discernible and specified in Father's brief are not preserved for review and therefore will not be considered.

III.

Contempt

Father's challenge to the trial court's contempt finding centers on the amount of the child support the court found he did not pay. He contends the trial court erred in ascertaining that sum.[4]

The court's finding of failure to pay child support was based on the 25-month period from February 2020 through February 2022, inclusive. In its opinion, the court stated:

> With respect to the child support base amount, the evidence showed that, **except for payments made in May and June 2020**, Defendant failed to pay his child support of $31 per month under the court's order entered June 24, 2019, between Feb 2020, and Feb 2022. On March 1, 2022, pursuant to the court's order entered March 8, 2022, the child support was modified such that Plaintiff now owed Defendant.
>
> * * *

[4] Mother's contempt petition was based on Father's failure to pay child support and failure to pay his share of extraordinary medical and dental expenses and of Child's extracurricular activities. The court's contempt finding was based solely on Father's failure to pay child support.

> Between Feb 2020 and Feb 2022, Defendant owed $775. Plaintiff's Exhibit 1 shows Defendant only paid two times. Defendant presently owes $713. This court finds Defendant's failure to pay was willful and contumacious. There is no contention Defendant lacked the ability to pay $31 per month or lacks the ability to pay the full amount he owes now. Accordingly, the court finds Defendant in contempt for his willful refusal to pay the child support, and shall sanction Defendant in the amount of $1,000, to be reduced to judgment against Defendant if he fails to pay. Defendant may purge himself of his contempt by paying $713 within five (5) days of the court's order.

(Emphasis added.) In essence, the court correctly calculated that at $31 per month, the total child support obligation for that 25-month period was $775. It found that Father only paid two months of child support, $62, during that period, and therefore the amount of child support not paid was $713 ($775 - $62 = $713).

Mother testified at the hearing as follows:

> So, Your Honor, he stopped in February. Then he reestablished in May. He paid me in May and June of 2020 and then he just stopped after that and I haven't received any payments after that.

Apparently, Mother's Exhibit 1, which Father did not include in the Record Extract, shows that, from February 2020 to February 2022, Father paid child support in February 2020 and May 2020.[5]

Father argues that the court's finding that he failed to pay all but two of the child support payments at issue was clearly erroneous, because the evidence showed that he made three payments – in February, May and June. We disagree. Although Mother's

[5] None of the exhibits offered or introduced in evidence are included in the Record Extract. Under Rule 8-501(c), the record extract "shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal[.]" In this case, exhibits relevant to Father's arguments on appeal should have been included.

testimony was that he made two payments, in May and June, and her Exhibit 1 apparently shows that he made two payments, in February and May, both show that two payments were made. There is no evidence presented by Mother, or by Father, that he made three payments. The court credited Mother's testimony that two payments were made and calculated the unpaid child support on that basis.

Father also asserts that there was a prior finding about child support owed that covered this same time. He is wrong about that too. Although the order directing payment of child support was entered in 2019, the time frame at issue in this contempt proceeding – February 2020 through February 2022, inclusive – was not the subject of a prior finding.[6]

IV.

Expenses

(a)

Extraordinary Medical Expenses

Earlier in the history of this case, on May 29, 2019, a merits hearing was held on divorce and child support.[7] The order resolving those issues was issued on May 31, 2019 and was entered as a judgment of absolute divorce on June 24, 2019. In its order, the court made findings of fact on several issues, including those pertinent to child support. On those

[6] On November 21, 2022, the court entered an order that assessed Father's child support arrearages at $1,608.39. That order is not presently before this Court.

[7] The judge who presided over the May 29, 2019 hearing is not the same judge who presided over the hearing that resulted in the judgment being challenged in this appeal.

findings, the court filled out a Child Support Worksheet, from which it determined that Father would be obligated to pay child support of $31 per month to Mother.

Under Maryland law, extraordinary medical expenses are to be included in the calculation of child support. Specifically, section 12-204(h)(2) of the Family Law Article ("FL") of the Maryland Code provides that such expenses "incurred on behalf of a child shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted actual incomes." FL § 12-201(g)(1) and (2) define "extraordinary medical expenses" to mean "uninsured costs for medical treatment in excess of $250 in any calendar year[,]" including "uninsured, reasonable, and necessary costs for orthodontia, dental treatment, vision care, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed mental disorders."

On the Child Support Worksheet, at section 11 "Expenses," the court listed $747 per month for work-related childcare, $54 per month for health insurance, and $0 per month for extraordinary medical expenses, cash medical support, and additional expenses. In the last paragraph of its order, in language couched in terms of the future, the court stated that the parties shall divide Child's extraordinary medical and dental expenses "50/50" and that,

> [t]he parties shall reach an agreement as to who is going to incur such expense at the time of service, that party shall seek reimbursement from the other party within thirty (30) days from the date of purchase. Every month, on the 1st of each month, the party who purchased the expense will notify the other in writing, which shall include e-mail, will submit by email to the other party, the receipt for the expense, and the other party shall have fifteen (15) days from the receipt of the email to reimburse the other party for their 50% share of the extraordinary medical and/or dental expense.

In the opinion issued after the June 21-22, 2022 hearing central to this appeal, the court found that, contrary to the directive in the June 24, 2019 judgment of absolute divorce "[t]he parties did not reach [an] agreement as to who will incur the expense. *It is evident that* [*Mother*] *reached out and submitted expenses to* [*Father*] *and received no response or reimbursement*." (Emphasis added.) The court continued:

> These expenses include:
>
> $299.52 (Dental, Pl.'s Ex. 4)
> $662.92 (Dental, Pl.'s Ex. 6)
> $190 (Therapy, Pl.'s Ex. 11)
> $1,596 (Braces, Pl.'s Ex. 23)
> $5,670 (Therapy, Pl.'s Ex. 43)
>
> The total of the expenses is $8,418.44, of which [Father] owes 1/2, or [$]4,209.22.

On appeal, with respect to extraordinary medical expenses, Father argues:

> must [sic] [of the expenses] were incurred prior to any such obligation and the subject of prior hearings. They could not be revisited in this proceeding under the guise of contempt.
>
> Moreover, a prior order, dated April 14, 2021, continued joint custody and provided [Mother] with a tie breaking vote if they could not agree on specified issues; however, she was not to use the tie breaker authority to bind [Father] financially. She did precisely that. The medical and dental expenses would be covered by insurance, but [Mother] refuses to use the physicians and dentists who would accept insurance.

(Internal record references omitted.)

Father is incorrect that extraordinary medical expenses were a basis for the contempt finding. We agree, however, that the court erred by including two items incurred before the May 29, 2019 evidentiary hearing in calculating the $4,209.22 judgment entered against him. Those items, which total $962.44, are $299.52 (Dental, Pl.'s Ex. 4), incurred on May

7, 2019, and $662.92 (Dental, Pl.'s Ex. 6), incurred on March 26, 2019. Both could have been introduced into evidence at the May 29, 2019 hearing. As we explained in *Lieberman v. Lieberman*, 81 Md. App. 575, 597 (1990), "the doctrine of res judicata applies in the modification of alimony and child support and the court may not 'relitigate matters that were or should have been considered at the time of the initial award'" (quoting *Lott v. Lott*, 17 Md. App. 440, 444 (1973)). Although there was a material change of circumstances in this case regarding custody, there was no change relating to extraordinary medical expenses.

From the Child Support Worksheet, it appears that, although evidence was admitted regarding childcare expenses and health insurance costs, no evidence of extraordinary medical expenses was introduced. Accordingly, those two items should not have been included in the court's determination of extraordinary medical expenses owed by Father to Mother. The correct amount of the judgment against Father for extraordinary medical expenses should have been one-half of $7,456, which equals $3,728.[8]

We find no merit to the remainder of Father's argument, regarding tie-breaking authority and insurance coverage. The court found based on the evidence before it that when Mother made requests to Father to pay one-half of extraordinary medical expenses she had incurred on behalf of Child, he ignored the requests and gave no response. If he

[8] The court also ordered, with respect to pre-June 24, 2019 extraordinary medical expenses, that within 10 days, Mother was to produce to Father her statement of amounts owed and supporting documents, and that Father either pay one-half of them or contest them, in which case a hearing would be held. This directive also was in error, for the same reason.

had had concerns about which providers were being used, he should have spoken up then. Moreover, Mother's tie-breaking authority is not relevant to this issue.

We shall vacate the court's judgment with respect to extraordinary medical expenses and direct on remand that the court enter a new judgment against Father in the amount of $3,728 for those expenses.

(b)

Extracurricular Activities Expenses

The court's February 21, 2020 consent order stated with respect to the cost of extracurricular activities for Child:

> [T]he parties shall equally share the costs of all extracurricular activities in which the minor child is enrolled after decision is made about such extracurricular activity as a legal custody decision concerning the welfare of the minor child pursuant to this Order . . . No party may refuse to share such costs except to the extent such party has a reasonable and bona fide inability to afford his or her shared costs, which should be communicated during the process of reaching a decision about the extracurricular activity[.]

In its opinion in the case at bar, in addressing the cost of extracurricular activities, the court stated:

> The court is without evidence that the expenses incurred were agreed upon. However, the parties are required to operate in good faith. [Father] did not act in good faith when [Mother] contacted him about activities. He ignored [Mother's] correspondence to him made in effort to advise him and get agreement about activities, as he often ignored correspondence. [Father] contends that he had difficulty using [Our Family Wizard]. The undersigned does not credit that contention, especially since [Mother] tried multiple times to get [Father] to send her the error message [Father] claimed he was getting, and he would not do it.

It went on to find that "[Father] has unreasonably withheld consent for the child to participate in extracurricular activities." With respect to the cost of those activities, the

court determined that "[Father] owes the amount of $140 (basketball) and $215 (football), [Mother's] Ex. 11, a total of $355/2 = $177.5[0]."

The evidence shows that the expenses for extracurricular activities were incurred in February 2020. We see nothing to suggest that they were, or could have been, the subject of a prior hearing and order. The court made a credibility finding that Father ignored Mother's correspondence about Child's enrollment in extracurricular sports activities. Accordingly, the court did not err in finding that Father owes Mother $177.50 for such expenses. We shall affirm the judgment against Father for that amount.

V.

Recusal

A judge "is required to recuse himself or herself from a proceeding when a reasonable person with knowledge and understanding of all the relevant facts would question the judge's impartiality." *In re Russell*, 464 Md. 390, 402 (2019). A party attempting to demonstrate that a judge is not impartial faces a high burden because there is a strong presumption in Maryland "'that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified.'" *Nathans Assocs. v. Mayor & City Council of Ocean City*, 239 Md. App. 638, 659 (2018) (quoting *Jefferson-El v. State*, 330 Md. 99, 107 (1993)), *cert. denied*, 463 Md. 539 (2019). We have explained:

> To overcome the presumption of impartiality, the party requesting recusal must prove that the trial judge has "a personal bias or prejudice" concerning him or "personal knowledge of disputed evidentiary facts concerning the proceedings." *Boyd* [*v. State*, 321 Md. 69, 80 (1990)]. Only bias, prejudice, or knowledge derived from an extrajudicial source is "personal." Where

> knowledge is acquired in a judicial setting, or an opinion arguably expressing bias is formed on the basis of information "acquired from evidence presented in the course of judicial proceedings before [her]," neither that knowledge nor that opinion qualifies as "personal." *Boyd*, 321 Md. at 77[.]

Id. (quotation marks omitted) (quoting *Jefferson-El*, 330 Md. at 107). When bias, prejudice, or partiality is alleged, this Court reviews a trial judge's decision on a motion to recuse for abuse of discretion. *See Scott v. State*, 175 Md. App. 130, 150 (2007).

Typically, the question of recusal "is decided, in the first instance, by the judge whose recusal is sought." *Surratt v. Prince George's Cnty.*, 320 Md. 439, 464 (1990). There are, however, "some circumstances in which the judge whose impartiality is questioned should not himself or herself decide the merits of a recusal request." *Id*. at 465. When the "asserted basis for recusal is personal conduct of the trial judge that generates serious issues about his or her personal misconduct, then the trial judge must permit another judge to decide the motion for recusal." *Id*. at 466. "[T]he recusal motion must set forth facts in reasonable detail sufficient to show the purported personal misconduct; mere conclusions as to lack of impartiality will not suffice. And it should be supported by affidavit or testimony or both." *Id*. at 467.

From June 2019 to February 2021, Judge David Boynton was specially assigned to this case. At some point, Father filed a complaint against the United States Department of the Treasury with the federal Equal Employment Opportunity Commission ("EEOC"), which resulted in litigation. According to Father, Judge Boynton's wife "is [a] named subject" in that matter. On that basis, Father filed a motion to recuse Judge Boynton, which Judge Boynton granted. Judge Bibi Berry then was specially assigned to this case.

Four weeks after Judge Berry's opinion and order was docketed, Father filed an "emergency motion to recuse" her and to transfer the action to another court.[9] He asserted bias because she "may have" received documents and information in the federal EEOC portal pertaining to Father's pending litigation; "allowed and accepted as evidence" prior rulings by Judge Boynton "which manifested negative bias" toward Father and used them to assess his credibility; used "similar language and manifestations of recused Judge David Boynton" in her opinion, referenced his pending litigation, and discredited his testimony; did not appoint a Best Interest Attorney; and declined to shield or redact documents Father deemed sensitive. Further, Father "reasonably fears" the prior rulings and opinions by Judge Boynton "tainted and impaired" Judge Berry's impartial assessment of his character and credibility; "reasonably believes" that due to his ongoing litigation Judge Berry "may be acting in a retaliatory manner and such actions can negatively impact the child's well-being"; and thinks that Judge Berry is biased because the treasurer for her 2020 election campaign was a person who, based on her name, "appears" to be "a close family relative of Judge David Boynton[,]" who also was on the ballot. Father "reasonably believes" the circuit court "cannot serve in the interest of justice fairly" because of a "perceived private and public relationship" between Judges Berry and Boynton and his wife. Finally, Father maintains that by presiding over this case, Judge Berry created "an unacceptable

[9] In addition, within 10 days after the opinion and judgment was docketed, Father filed a motion for reconsideration, which had the effect of staying the period for filing a notice of appeal. The eventual ruling on that motion is not a subject of this appeal.

appearance of impropriety" and that her "remaining on this matter would not promote public confidence."

On September 22, 2022, Judge Berry entered an order denying Father's motion to recuse and to transfer. It stated that Father "failed to show any credible or reasonable basis" for her recusal.

Before this Court, Father contends Judge Berry was biased and should have recused herself because she had "communications" with Judge Boynton, "an issue [she] even discussed in her opinion." We find no merit in this contention.

Father's assertions of bias against Judge Berry are based on speculation and guesswork about supposed connections and communications between Judge Berry and Judge Boynton and/or his wife and supposed knowledge Judge Berry may have acquired about Father's EEOC litigation, none of which is supported by the record and some of which is based on out-of-context information. For example, Judge Berry did refer to Judge Boynton in her opinion, but not in any way that would evidence bias. In the context of finding that Father was not able to effectively communicate with Mother, Judge Berry observed:

> [Father's] communications with [Mother] tend to sway from the pertinent topics, and do not appear to this court to be designed to resolve anything or to make decisions for the child's benefit. Even a request to swap weekends so he can have Father's Day turned into a commentary about [Father's] supposed grave concerns about [Mother], past grievances, and even claims of discrimination and abuse of power of Judge Boynton. Pl.'s Ex. 9.

This reference to Judge Boynton does not reveal an improper communication between Judge Berry and Judge Boynton or any other evidence of bias.

We see nothing in the record to support Father's contention that Judge Berry was or appeared to be biased or impartial in her handling of this case. Accordingly, she did not abuse her discretion in denying Father's motion to recuse.[10]

JUDGMENT AGAINST THE APPELLANT FOR $4,209.22 VACATED AND CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR ENTRY OF NEW JUDGMENT FOR $3,728.00 AGAINST THE APPELLANT; JUDGMENT OTHERWISE AFFIRMED.

COSTS TO BE DIVIDED EQUALLY BETWEEN THE APPELLANT AND THE APPELLEE.

[10] We note that Father filed a motion to reconsider the denial, which was denied by another judge.