Circuit Court for Montgomery County
Case No. C-15-FM-22-006669

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1512

September Term, 2023

MONICA GORMAN

v.

JOHN GORMAN

Friedman,
Shaw,
Harrell, Glenn T, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 9, 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 persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

In 2020, the Maryland General Assembly codified Maryland's common law of voluntary impoverishment. The new law, like the common law before it, requires the circuit court to consider the "totality of the circumstances" in deciding whether a parent has voluntarily impoverished themselves. Because the circuit court here considered only the parent's intent and did not consider the totality of the circumstances, we will vacate the prior decision and remand without affirming or reversing for the circuit court to conduct the proper analysis. Moreover, because the decision regarding voluntary impoverishment informs the entire child support analysis, we vacate that as well.

BACKGROUND

Our resolution of the issues obviates the need for a detailed recitation of the facts at this stage. Appellant Monica Gorman ("Mother") and Appellee John Gorman ("Father") were married in 2008 and resided together in Massachusetts. A child, E., was born in 2015. Mother worked as an executive at New Balance Athletics. In March of 2021, Mother, with E., left the family home and moved to Maryland. Although Mother could have continued to work for New Balance remotely, she instead accepted appointment to serve as a Deputy Assistant Secretary at the United States Department of Commerce at a lower salary. Approximately a year and a half later, she was asked to move to the White House where she continues to serve as a Special Assistant to the President of the United States at an even lower salary.

Father filed a complaint for absolute divorce in 2022 and Mother filed an answer and counter-complaint. The circuit court conducted a three-day hearing in July of 2023. The court made an oral ruling and followed that up, one month later, with a written custody

order, including a child support award. Mother noted a timely appeal of the circuit court's determination that, by leaving New Balance and going to work for the federal government at lower salaries, she had voluntarily impoverished herself. She also appealed from the circuit court's computation of her childcare expense.

DISCUSSION

In 2020, after a comprehensive study, the Maryland General Assembly enacted new child support guidelines. Acts of 2020, chs. 383, 384 (H.B. 946, S.B. 847). As noted above, in this same legislation, the General Assembly, for the first time, codified Maryland's common law of voluntary impoverishment. *Id.* This was accomplished in two separate sections of the Family Law ("FL") Article. In the definition section of the subtitle, the legislature added a definition of the term: "Voluntarily impoverished' means that a parent has made the free and conscious choice, not compelled by factors beyond the parent's control, to render the parent without adequate resources." FL § 12-201(q). The legislature then created a two-step process for resolving disputes about whether a parent is voluntarily impoverished. FL § 12-204(b)(2). The court must first "make a finding as to whether, based on the *totality of the circumstances*, the parent is voluntarily impoverished." FL § 12-204(b)(2)(i) (emphasis added). And then, "if the court finds that the parent is voluntarily impoverished," it must then "consider the factors specified in [FL] § 12-201(m) ... in

determining the amount of potential income that should be imputed to the parent." FL § 12-204(b)(2)(ii).[1]

[1] Although not required for the resolution of the instant appeal, we note that the factors that a circuit court must consider in determining "potential income" are:

(1) the parent's employment potential and probable earnings level based on, but not limited to:

  (i) the parent's:

    1. age;

    2. physical and behavioral condition;

    3. educational attainment;

    4. special training or skills;

    5. literacy;

    6. residence;

    7. occupational qualifications and job skills;

    8. employment and earnings history;

    9. record of efforts to obtain and retain employment; and

    10. criminal record and other employment barriers; and

  (ii) employment opportunities in the community where the parent lives, including:

    1. the status of the job market;

    2. prevailing earnings levels; and

    3. the availability of employers willing to hire the parent;

(2) the parent's assets;

(3) the parent's actual income from all sources; and

(4) Any other factor bearing on the parent's ability to obtain funds for child support.

FL § 12-201(m).

We hold that the legislature, in enacting these two provisions, did not intend to change the common law regarding voluntary impoverishment.[2] Specifically, when the legislature instructed circuit courts to consider the "totality of the circumstances" in § 12-204(b)(2)(i) it did not just mean those circumstances listed in FL § 12-201(q) concerning the parent's intent, but intended to include the common law factors that Maryland courts have always applied, namely:

1. [the parent's] current physical condition;
2. [the parent's] … level of education;
3. the timing of any change in employment or other financial circumstances relative to the divorce proceedings;
4. the relationship between the parties prior to the initiation of divorce proceedings;
5. [the parent's] efforts to find and retain employment;
6. [the parent's] efforts to secure retraining if that is needed;
7. whether [the parent] has ever withheld support;
8. [the parent's] past work history;

[2] In coming to this conclusion, we have reviewed the bill files for both House Bill 946 (2020) and Senate Bill 847 (2020), which became Chapters 383, 384 (2020) after then-Governor Lawrence Hogan, Jr. allowed them to become law without his signature. We observe that in adopting these cross-filed bills, the General Assembly was principally concerned with the modification of the child support guidelines and there was little discussion of the codification of the common law of voluntary impoverishment. For example, the Floor Report from the House Judiciary Committee reported that the purpose of codifying the definition of voluntary impoverishment was "to promote transparency and limit improper determinations." Floor Report, HB 946 (2020); *see also* Fiscal & Policy Note, HB 946 (2020). There was no suggestion in either of the bill files that the General Assembly's intent was to change the common law test.

9. the area in which the [parent] live[s] and the status of the job market there; and

10. any other considerations presented by ether [parent].

See e.g., Sieglein v. Schmidt, 224 Md. App. 222, 248 (2015) (citations omitted); *see also* CYNTHIA CALLAHAN & THOMAS C. RIES, FADER'S MARYLAND FAMILY LAW (7th ed. 2021), at § 6-12.

Reviewing the transcript of the circuit court's oral ruling and its written order, we observe that it considered only Mother's intent in accepting her current position and none of the other factors required by Maryland law. This was an error of law and requires us to vacate the order and remand for the circuit court to consider the totality of the circumstances before deciding whether Mother has voluntarily impoverished herself by accepting her country's call to service. If, on remand, the circuit court finds again that mother has voluntarily impoverished herself, it must then consider all factors listed in FL § 12-201(m) to calculate her potential income rather than simply use her income at New Balance—two jobs ago—as a proxy.[3]

[3] As a result of our holding vacating the circuit court's finding that Mother had voluntarily impoverished herself, we must vacate the child support award as a whole. We also note that both Mother and Father have objected to the circuit court's computation of Mother's childcare expenses. Mother complains that by substantially reducing the childcare component, the circuit court failed to consider the "actual family experience" as is required by FL §12-204(g)(2). Father doesn't appear to contest Mother's point but argues instead (without having noted a cross-appeal) that Mother's calculation of her actual childcare expenses includes payment to the nanny for time spent on things other than childcare. On remand, the parties will be permitted to make these arguments and, if the circuit court in the exercise of its discretion permits, produce fresh evidence relevant to this issue. The circuit court should then, in the context of a new child support order, consider Mother's calculation of her childcare expenses anew.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS VACATED. CASE REMANDED WITHOUT AFFIRMING OR REVERSING FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE EQUALLY DIVIDED.