Circuit Court for Montgomery County
Case No. 18707 FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2110

September Term, 2019

MARGO LIBA KATZPER

v.

YEHUDA ALON BRODY

Graeff,
Kehoe,
Wells,
JJ.

Opinion by Graeff, J.

Filed: July 6, 2020

Margo Liba Katzper ("Mother") and Yehuda Alon Brody ("Father") were divorced in 2002 and are the biological parents of one child, Y.B., who was born on August 24, 2001. In November 2018, Father had sole legal and primary physical custody of Y.B., but Y.B. began living with a third party. On January 3, 2019, Mother filed emergency motions for modification of child custody and child support. While the motions were pending, Mother continued to pay child support for Y.B. to the Child Support Enforcement Agency ("CSEA"), who held the funds in escrow pending the outcome of the emergency motions. On August 24, 2019, before a hearing on the motions, Y.B. turned 18 years old and became emancipated. On December 12, 2019, the Circuit Court for Montgomery County denied Mother's emergency motions to modify child custody and support.

On appeal, Mother presents three questions for our review,[1] which we have consolidated into one:

> Did the circuit court err in denying Mother's emergency motions to modify child custody and support based on a determination that the child was emancipated at the time of the hearing on the motions?

[1] Mother presented the following three questions:

1. Did the trial court err in the denial ruling of the Appellant[']s Emergency Motion to Modify Custody, due to age of the child at the time of the hearing, without taking into account the motions filing date and circumstances to the delay in hearing?

2. Did the trial court err in the denial of the Appellant[']s Emergency Motion to Modify Child Support without holding the previously scheduled hearing?

3. Did the trial court err in the denial of the Appellant[']s Emergency Motion to Modify Child Support, due to the age of the child at the time of the hearing, without taking into account the Motions filing date?

For the reasons set forth below, we shall affirm, in part, and vacate, in part the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father were married on May 20, 2001. On July 30, 2001, Mother filed a complaint for absolute/limited divorce.

On September 27, 2001, the court entered a Consent Order, awarding Mother sole legal and physical custody of Y.B., the parties' only son, with visitation to Father. On October 8, 2002, the court entered a Judgment of Absolute Divorce and incorporated the Consent Order. The court further ordered Father to pay child support to Mother in the amount of $325 per month, beginning on October 1, 2002. On April 23, 2012, the court entered a Modified Consent Order that increased Father's obligation to pay child support to Mother to $370 per month, beginning on May 1, 2012.

On July 15, 2015, Father filed a motion to modify custody, asserting that Y.B. was living with Father. On June 14, 2016, the court entered an Order granting Father's motion to modify custody, providing Father with primary physical custody and sole legal custody of Y.B., granting regular access to Mother, and ordering Mother to pay child support to Father in the amount of $1,014 per month, beginning on October 1, 2015. The court further ordered Mother to pay arrearages of $6,712, in increments of $200 per month.

On January 3, 2019, Mother filed two emergency motions, one to modify child support (Docket Entry ("D.E.") # 260), and another to modify child custody (D.E. #258). Mother stated that there was a material change in circumstances because Y.B. had not been living with his Father, and since November 19, 2018, he had been "couch surfing" in

Baltimore with third parties. The court initially denied Mother's emergency motions on January 4, 2019, for failure to serve Father with the motions.

On August 6, 2019, after Mother made several unsuccessful attempts to serve Father, the court entered an order granting Mother's request for alternative service by posting notice. The Montgomery County Sheriff's Office posted notice to Father on August 28, 2019, and on October 1, 2019, it filed a Record of Service on Father. On August 24, 2019, while these service issues were ongoing, Y.B. turned 18 years old.

On October 24, 2019, Father filed an answer to Mother's emergency motion to modify child support and a motion to dismiss Mother's emergency motion to modify custody. Father argued that, because Y.B. was 18 years old and emancipated, Mother's motion to modify custody was moot.

On October 31, 2019, the circuit court scheduled two hearings on the pending motions. The court scheduled the hearing on Mother's motion to modify custody and Father's motion to dismiss on November 15, 2019, and the hearing on Mother's motion to modify child support on February 27, 2020

On November 15, 2019, the court held a hearing on Mother's motion to modify custody and Father's motion to dismiss. Father's counsel explained that Y.B. had finished high school and was fully emancipated. Mother did not dispute this fact. As a result, the court stated that it did not "have any authority to do anything in the custody arena."

The parties then discussed child support, even though a separate hearing was scheduled on the issue for February 2020. Mother explained that Y.B. had not lived with Father since November 19, 2018, and in December 2018, a "third-party family . . . took

him in[.]" She explained that she had been paying support to the CSEA, but a portion of it had not been released to the Father because the CSEA was "waiting for the outcome of these hearings and an order that says who to release it to."

The court determined that Mother had paid approximately $8,000 in child support during the relevant period, the time when she filed the motion to modify until Y.B. turned 18 (January to August). The court stated that it would follow up with the CSEA regarding the amount Mother paid, as she was obligated to do as the payor and non-custodial parent. The court indicated that it was "probably true" that Mother was entitled to have that money back, stating that it was "somewhat odd." Mother then stated that CSEA was waiting for "an order that says who to release [the money] to." Counsel for Father then stated that Y.B. "was in and out of a rehab program" and then living with friends. He proffered that Father had consented to the release of the funds back to Mother, but Father was asking for "attorney's fees incurred in connection with the motion to modify custody" because, after Y.B. became emancipated in August, Mother should have voluntarily withdrawn the motion to modify custody. Because Mother did not do so, Father filed to dismiss the motion to modify custody.[2] The court stated that, after speaking with CSEA, it would "end up doing an order that wraps both the request from [F]ather and your request for the return of the funds and you'll get that promptly[,] although probably not today."[3]

[2] There is no issue on appeal regarding attorney's fees.

[3] Mother proffered that, in addition to child support, she had been paying the third-party family separately "because they were taking care of [Y.B.]." The court responded that, if she was asking for reimbursement from Father for the additional money she had given to the third-party family, that was a civil issue, not a child support issue.

On December 12, 2019, the court entered a Custody Order ("Order") finding that "[t]he parties have one child in common, Y.B., [who] is now eighteen (18) years old, no longer in high school, and is therefore emancipated. Neither parent has an obligation to pay child support for Y.B."[4] The court then:

> **ORDERED**, that Plaintiff's Emergency Motion to Modify Child Custody (D.E. # 258) be, and is hereby **DENIED**; and it is further
>
> **ORDERED**, that Plaintiff's Emergency Motion to Modify Child Custody (D.E. # 260) be, and is hereby **DENIED**; and it is further
>
> **ORDERED**, that Plaintiff's Request for Order of Default (D.E. #285) be, and is hereby **DENIED**; and it is further
>
> **ORDERED**, that Defendant's Verified Motion to Dismiss Plaintiff's Emergency Motion to Modify Custody (D.E. #287) be, and is hereby, **DENIED**, as moot.[5]

[4] Prior to issuing the Order, the court entered a memorandum notice on December 5, 2019, removing the February 27, 2020, hearing on Mother's motion to modify child support from the docket.

[5] This Order makes no mention of Mother's motion to modify child support, instead twice denying the motion to modify child custody. The reference to D.E. #260, however, cited in the Order as Mother's motion to modify custody, is Mother's motion to modify child support. Accordingly, we conclude, based on this reference, the court cancelling the hearing on the motion to modify child support, and the docket entry stating that the motion to modify child support was denied, that the court's Order contains a typographical error, and the court intended to deny Mother's motion to modify child support in addition to denying the motion to modify child custody. *See Prince George's Cty. v. Commonwealth Land Title Ins. Co.*, 47 Md. App. 380, 386 (1980) (quoting *Bostwick v. Van Vleck*, 82 N.W. 302, 303 (Wis. 1900)) (A clerical error is "a mere omission to preserve of record, correctly in all respects, the actual decision of the court."); *Estime v. King*, 196 Md. App. 296, 304–05 (2010) (Maryland courts "have consistently held that docket entries are presumptively correct, and will be considered dispositive evidence . . . *unless* there is a conflict between the docket entries and the transcript of proceedings in a particular action.").

STANDARDS OF REVIEW

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

> We point out three distinct aspects of review in child custody disputes. When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Md. Rule 8-131(c)] applies. [Secondly,] [i]f 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.

In re Yve S., 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 122–26 (1977)) (emphasis omitted; some alterations added in *In re Yve S.*).

This Court described the standard of review for a modification of child support as follows:

> When presented with a motion to modify child support, a trial court may modify a party's child support obligation if a material change in circumstances has occurred which justifies a modification. Whether to grant a modification rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily used or the judgment was clearly wrong. *Dunlap v. Fiorenza*, 128 Md. App. 357, 363, 738 A.2d 312, *cert. denied*, 357 Md. 191, 742 A.2d 520 (1999). When an action has been tried without a jury, we will review the case on both the law and the evidence. We will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and we give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Md. Rule 8–131(c).

Ley v. Forman, 144 Md. App. 658, 665 (2002).

DISCUSSION

Mother argues that the court erred by denying her motions to modify custody and support. She asserts that, "[b]y denying [her] Motions on the basis that [Y.B.] is now

emancipated," the court denied her the ability to be heard and the ability to address the material change in circumstances warranting retroactive child support to the date she filed the motions.

Father argues that Mother was not entitled to child support because she did not have physical or legal custody during the period in which Mother sought child support, i.e., when she filed for modification on January 3, 2019, to Y.B.'s 18th birthday on August 24, 2019. He asserts that only a custodial parent may seek child support.

The parties do not dispute that Y.B. became emancipated on his 18th birthday on August 24, 2019. Because Y.B. was no longer a child at the time of the court's hearing on Mother's modification motions on November 15, 2019, the circuit court did not have jurisdiction over Mother's custody claim. *See* Md. Code (2019 Repl. Vol.), § 1-201(b)(5) of the Family Law Article ("FL") ("An equity court has jurisdiction over . . . custody or guardianship of a child[.]"); Md. Code Ann. (2019 Repl. Vol.), § 1-401(a) of the General Provisions Article ("GP") ("The age of majority is 18 years[,]" and "an individual at least 18 years old is an adult[.]"); *In re Dany G.*, 223 Md. App. 707, 716 (2015); *Miller v. Miller*, 247 Md. 358, 363 (1967), *superseded by constitutional amendment on other grounds*, ("[A]bsent jurisdiction over children, a court has neither the power nor a right to judicially determine questions concerning custody and visitation rights."); *Wagner v. Wagner*, 109 Md. App. 1, 22–23, *cert. denied*, 343 Md. 334 (1996).[6] Accordingly, the court properly

[6] Md. Code (2019 Repl. Vol.), § 1-401(b) of the General Provisions Article provides an exception to this rule, which allows individuals who are 18 years old and enrolled in secondary school to continue to receive child support until the age of 19 or the occurrence of one of a number of circumstances. This exception does not apply in this case because

dismissed Mother's emergency motion to modify custody.

We next turn to the denial of Mother's motion for modification of child support. FL § 12-104(a) provides that "[t]he court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance." A trial court has discretion to apply a modification effective as of the filing date. *Tanis v. Crocker*, 110 Md. App. 559, 570 (1996). If the circuit court grants such a modification, it also has the authority to order the CSEA to release some or all of the support payments held in escrow to the payor non-custodial parent. *See Prince George's Cty. Office of Child Support Enforcement ex rel. Polly v. Brown*, 236 Md. App. 626, 633–35 (2018).

Here, at the hearing, the court indicated that it was going to issue an order requiring the CSEA to release to Mother the payments she made between the filing date and Y.B.'s emancipation, a time when Y.B. was not residing with Father. The order, however, merely denied the motion to modify custody, which we have interpreted as also denying the motion to modify child support. Accordingly, we vacate that portion of the order and remand to the circuit court to clarify its decision on the motion to modify child support.[7]

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED, IN PART, AND VACATED, IN PART. CASE REMANDED FOR

---

the record indicates that Y.B. had already finished high school. *See Richardson v. Boozer*, 209 Md. App. 1, 11–12 (2012) (defining the scope of "secondary education" within the meaning of GP § 1-401's predecessor).

[7] We leave it to the circuit court to determine whether an additional hearing is necessary.

FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT EVENLY BETWEEN THE PARTIES.