Circuit Court for Anne Arundel County
Case No. 02-C-10-157360

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2155

September Term, 2022

MATTHEW C. SULLIVAN

v.

LINDSEY L. VADASZ

Wells, C.J.,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 3, 2023

*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. R. 1-104(a)(2)(B).

In 2020, appellant Matthew C. Sullivan ("Father") and appellee Lindsey L. Vadasz ("Mother") each filed motions to modify child support and custody of their two minor children. Following a hearing, the Circuit Court for Anne Arundel County denied the parties' requests to modify custody, but issued an order increasing Father's child support obligation and ordering him to pay arrearages. On appeal, Father argues that the circuit court (1) erred in calculating his child support obligation and arrearages, and (2) unduly prejudiced him by not allowing him to present his case in the manner of his choosing. For the reasons we discuss below, we affirm the order of the circuit court.

FACTS AND LEGAL PROCEEDINGS

Mother and Father married in 1998 and have four children together. In January 2012, the parties divorced and were awarded joint legal and shared physical custody of their four children on an alternate week schedule. In addition, Father was ordered to pay Mother $719 per month in child support.

In 2013, Mother and Father reached a mediated parenting plan altering the terms of custody, support, and visitation. They agreed to continue joint legal and shared physical custody, but because of the children's numerous school-related and extracurricular activities, Mother's house would serve as "the hub where the children [would] spend most of their nights." The children could, however, choose to spend any number of overnights with Father. The parties agreed that Father would provide health insurance coverage for the children, as well as pay for all medical expenses not covered by insurance and all school related costs. Father further agreed to pay Mother $1,150 per month in child support. The mediated parenting plan specified that Mother and Father had chosen to apportion child

support based on shared custody, even though the children would stay overnight with mother more often. The circuit court incorporated, but did not merge, the parenting plan into a second order on custody and visitation.

In 2018, Mother and Father again voluntarily modified their parenting plan. This time, they agreed to continue joint legal custody but would allow the children to choose one home as their primary residence while maintaining the freedom to visit the other parent. The children would spend alternate weekends with each parent, and holidays and vacation days would be equally divided.

In January 2019, Mother filed a motion to modify child support on the grounds that Father's salary had significantly increased due to a change of employment, whereas she remained unemployed. Following a hearing, the family magistrate found that Mother was voluntarily impoverished, but nonetheless recommended that Father pay Mother $2,100 per month in child support, retroactive to the date Mother filed her motion to modify. Because the recommendation would create an arrearage, the magistrate further recommended that Father pay an additional $400 per month until the arrearage was extinguished. The circuit court approved and adopted the magistrate's recommendations.

In January 2020, Father filed the current motion to modify child support and custody. In his motion, Father claimed that Mother demonstrated abusive behavior towards the children, inhibited their ability to spend time with him, and had remained unemployed for more than eight years without making good faith efforts to obtain employment. Father sought sole legal and physical custody of the two minor children, a change to the child support order, and retroactive downward adjustment of his child support obligation as

reimbursement for "recurring significant child-support-related expenses to which [Mother had] refused to contribute."[1]

While Father's motion to modify was still pending, in June 2021, Mother filed a petition for contempt and to enforce the court's orders, alleging that Father had reduced his child support payments to $1,500 per month in violation of the court's January 2019 order. In addition, she asserted that Father failed to pay child support at all in August 2020, November 2020, January 2021, February 2021, May 2021, and June 2021.

Following a hearing on Mother's motion for contempt, the family magistrate recommended that the contempt petition be dismissed because Father's motion to modify custody was still pending. The magistrate also noted that because two of the parties' children had become emancipated since Father had filed his motion, regardless of whether custody was ultimately modified there was a material change in circumstances that warranted review of Father's child support obligation. Moving forward, the parties agreed that Father would pay $1,750 per month until the motion for modification was resolved. The circuit court again approved and adopted the magistrate's findings.

Following the contempt hearing, Mother filed her own motion to modify custody, access, and child support, seeking sole legal and primary physical custody of the parties' minor children. She argued that, despite the parties having shared physical custody, the two minor children spent most of their nights with her and she therefore bore additional

[1] By the time Father filed his motion, the parties' two eldest children were over the age of 18.

expenses for food, clothing, and other household items. She also asserted that Father's income had again increased, warranting a recalculation of his child support obligation.

In December 2022, the circuit court held a hearing on the motions for modification. At the hearing, Father, representing himself, informed the court that he sought modification of custody because Mother was cruel and abusive to the children. Mother countered that Father only wanted to modify custody to decrease his child support obligation.

Mother testified that Father failed to pay child support since August 2022, and prior to that had made only partial payments, causing her to incur significant credit card debt to make up for the loss. Mother denied being abusive to the children and described her relationship with them as the "typical arguing and the typical challenges" faced by a parent of teenage girls. Mother acknowledged that she had no relationship with her adult daughter L. but insisted that she had a good relationship with her other three children. She stated that the children were "with [her] all but every other weekend," except on some occasions over the years when they had stayed with Father for a few weeks or months. In addition, Mother stated that although she had requested sole legal and primary physical custody, she did not believe the custody order needed to deviate from the original arrangement.

Father then testified that since the implementation of the 2013 parenting plan, he had provided "100 percent of [the children's] support." He acknowledged that the children spent "the lion's share of the time at their mother's house," but reasoned that it was because he had to be the primary breadwinner, whereas Mother did not work and could be home with the children. Father also claimed that the children told "horror stories about what it's like to be with [Mother], various levels of mostly verbal and emotional abuse," which

caused them to reside with him for weeks or sometimes months, including in 2017 through part of 2018 when Mother had been living in Texas. Father acknowledged that after Mother returned from Texas, custody reverted to the "status quo in the 2013 order." Father further acknowledged that, despite the child support order in effect, he did not pay child support while Mother was living in Texas and the children were with him, and that he was not paying Mother any child support at the time of the hearing because the children had started living with him in August 2022. Father denied trying to "shortchange" Mother on child support, and said he did what he believed was "right and appropriate."

At the hearing, Father called the parties' adult daughter, T., as a witness. T. testified about an altercation between her and Mother in 2021, when T. was an adult, that had resulted in Mother's arrest and same day release. T. claimed to be fearful of Mother after that event but described no other incidents of physical abuse by Mother between 2013 and 2021. T. said that Mother was very supportive of her younger sisters and did not testify about any instances of abusive behavior towards them. She added that, for the most part, she felt safe and comfortable living in Mother's house.

At the end of the hearing, the circuit court found that there was no material change in circumstances that warranted a change in custody, but amended the parenting plan to state that the minor children were free to stay overnight at Father's home whenever they wished. The court further found that it was appropriate to modify the orders regarding child support and arrearages. The court requested that Mother and Father each file child support

guidelines worksheets using the court's findings with regard to the parties' incomes.[2] After the parties filed the worksheets, the circuit court ordered Father to pay Mother $3,951 per month in child support through an earnings withholding order. The court further found Father to be $61,946 in arrears and ordered the arrearage to be paid "up to the maximum amount per month allowable by law through the Office of Child Support Enforcement."

Father filed a timely notice of appeal of the court's order.

DISCUSSION

I. CHILD SUPPORT

In his first issue, Father contends that the circuit court erred when it increased his child support obligation and assessed arrearages retroactive to January 2020, when he filed his motion to modify. Specifically, Father argues that by increasing his child support obligation based on the number of overnights the children spend with Mother, the circuit court "de facto [granted] primary custody to [Mother]" rather than the "conceptual 50/50 split of custody" that he and Mother had agreed to in the 2013 parenting plan. Father further argues that the nearly two-year delay between the filing of his motion and the hearing should not be held against him by "backdating" the child support increase because the delay was caused by Mother's avoidance of service and other matters outside of his control. Neither argument is persuasive.

[2] Because Mother and Father's combined income exceeded the maximum amount specified in the child support guidelines, the parties' child support obligations were not statutorily determined. Rather, the circuit court was able to "use its discretion in setting the amount of child support." MD. CODE, FAM. LAW ("FL") § 12-204(d), (e).

Whether to grant a motion to modify child support rests within the sound discretion of the circuit court and will not be disturbed absent legal error or abuse of discretion. *Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020) (quoting *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018)). When an action has been tried without a jury, we review the case on both the law and the evidence. MD. R. 8-131(c); *Ley v. Forman*, 144 Md. App. 658, 665 (2002). We give due regard to the opportunity of the circuit court to evaluate the credibility of the witnesses, and we will not set aside the court's factual findings unless they are clearly erroneous. *Id.*

Maryland law provides that a circuit court is permitted to "modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance." MD. CODE, FAM. LAW ("FL") § 12-104(a). A change is material when it is both "'relevant to the level of support a child is actually receiving or entitled to receive'" and "'of sufficient magnitude to justify judicial modification of the support order.'" *Wheeler v. State*, 160 Md. App. 363, 372 (2004) (quoting *Wills v. Jones*, 340 Md. 480, 488-89 (1995)). A "change in the income pool from which the child support obligation is calculated" is a common change in circumstance relevant to a modification of child support[.]" *Drummond v. State*, 350 Md. 502, 510-11 (1998).

Although agreements between divorcing parties "are generally favored by the courts as a peaceful means of terminating marital strife and discord," parents may not waive or bargain away their children's right to receive support. *Gordon v. Gordon*, 342 Md. 294, 301 (1996). *See also Walsh v. Walsh*, 333 Md. 492, 504 (1994) ("[T]his Court [has] made it clear that agreements between the parents were not binding on a court ordering child

support."); *Corapcioglu v. Roosevelt*, 170 Md. App. 572, 606 (2006) ("A parent may not bargain away the child's right to support, and modification of that support, from the other parent."). As such, "child support, regardless of any parental agreement, is always subject to court modification" if it would be in the best interests of the child. *Guidash v. Tome*, 211 Md. App. 725, 740 (2013). The circuit court was, therefore, not bound by the "conceptual 50/50 split" in the parties' parenting plan.

Moreover, we note that FL § 12-104(b) explicitly permits the court to retroactively modify a child support award to correspond with the date of the filing of the motion for modification. It is "within the discretion of the [circuit] court to determine whether and how far [to] retroactively … apply a modification of a party's child support obligation." *Ley*, 144 Md. App. at 677; *see also Stevens v. Tokuda*, 216 Md. App. 155, 177-78 (2014) (quoting *Petitto v. Petitto*, 147 Md. App. 280, 310 (2002)) ("'[t]he decision to make a child support award retroactive to the filing of the [relevant motion] is a matter reserved to the discretion of the trial court.'").

The circuit court carefully considered the respective financial situations of the parties and accounted for changes in circumstances, including the emancipation by age of the parties' two oldest children, the increase in Father's income, and the amount of time the minor children actually stayed with each parent. The court was permitted to deviate from the terms of the parties' parenting plan and modify child support based on the children's best interests, and there was ample evidence to support the circuit court's factual findings. As such, the court did not abuse its discretion by increasing Father's child support obligation or assessing arrearages.

II. PRESENTATION OF FATHER'S CASE

Father next asserts that the circuit court abused its discretion by not giving him adequate time to present his case and by preventing him from calling a witness of his choosing, in the order of his choosing. Again, we are not persuaded.

At the start of the December 8, 2022 modification hearing, the circuit court explained to the parties that, although the hearing was set for two days, the court was unavailable the following day, or for the rest of the year. Thus, if the hearing could not be completed in one day, it would have to be carried over until late February 2023. Father stated that one day was likely enough to complete the hearing, but one of his witnesses would not be available until that afternoon. The court permitted Father to hold that witness over until the afternoon session and informed the parties that it would split the remainder of the available time evenly between Mother's and Father's presentation of their cases.

Father called Mother as his first witness and examined her at length. The circuit court then asked Father to be the next witness, to be sure it heard from him, "given the time [limitations]." Father agreed. After his testimony, the court advised Father that he had 12 minutes left in the morning session to present witnesses. When Father informed the court that he had two more witnesses, the court warned that there would not be time for both in the afternoon because it would not be fair to infringe upon Mother's allotted time during the afternoon session. Father opted to call his last witness that afternoon without trying to examine the second witness before the lunch break.

When the afternoon session began, Father told the court that he wanted to request a continuance, but the circuit court advised that he could not do so in the middle of the trial.

Father then called the parties' daughter, L., as his last witness. Mother's attorney objected, arguing that L. had been in the courtroom all day and Father was only given time in the afternoon because he'd said his witness was not available in the morning. Father responded that he had planned to call his two oldest daughters, L. and T., but T. was not available that morning and he had run out of time to call L. He explained that if he only had time for one witness in the afternoon, he preferred to call L.

The circuit court explained to Father that it would be inappropriate for him to call L. as a witness both because he had not identified L. as a potential witness, and because L. had been sitting in the courtroom throughout the hearing and her testimony could be affected by what she had heard. Father said he understood and opted to call T. as his final witness.

Father now complains that the circuit court prevented him from "presenting [his] case as intended and removed [his] ability to present critical relevant testimony" by unfairly precluding L., "a critical witness," from testifying at all. Father asserts that he did not intend to testify and only used part of his allotted time doing so at the court's request, which prevented him from calling L. as a witness during the morning session.

As a general rule, "[t]rial judges have the widest discretion in the conduct of trials." *City of Bowie v. Mie Properties, Inc.*, 398 Md. 657, 684 (2007) (cleaned up). It is the "'responsibility [of] the trial judge to weigh and balance the rights, interests, and reasons of the parties,'" and make decisions that are "'consistent with the spirit of the law while subserving the ends of justice and fairness to the parties.'" *St. Joseph Med. Ctr., Inc. v. Turnbull*, 432 Md. 259, 275 (2013) (quoting *Langrall, Muir & Noppinger v. Gladding*, 282

Md. 397, 400-01 (1978)). We will not second guess the exercise of the court's discretion in the absence of clear abuse. *Turnbull*, 432 Md. at 275; *City of Bowie*, 398 Md. at 684.

Here, the circuit court informed the parties before the hearing started that if it was not completed that day, it would be carried over to the new year. Both Mother and Father agreed to limit the hearing to one day. Father cannot now claim error based on a time limitation to which he agreed. *See City of Bowie*, 398 Md. at 684 (noting that the trial court's discretion includes "the number of days allotted for trial").

In addition, contrary to Father's assertion, litigants do not have an unfettered right to present their case however they choose. Indeed, it is precisely the role of the trial judge to balance the rights and interests of both parties to ensure the fairness of the proceedings. The circuit court clearly explained to Father why L. could not be called as a witness after being present in the courtroom throughout the hearing. And although Father characterizes L. as a "critical witness" to his case, he has not provided any information, either to the circuit court or on appeal, about what he expected her testimony to be and how it would differ from other evidence that had been presented. Thus, there is nothing in the record to suggest that it was an abuse of discretion for the circuit court to not allow L. to testify.

ORDER OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.