Circuit Court for Montgomery County
Case No. 114791FL

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2201

September Term, 2022

CRYSTAL WITHERSPOON

v.

BRIAN COESTER

Friedman,
Ripken,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 10, 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. R. 1-104(a)(2)(B).

Crystal Witherspoon ("Mother"), a self-represented litigant, challenges the ruling of the Circuit Court for Montgomery County denying her motion for contempt and reducing Brian Coester's ("Father") child support obligation. For reasons that we discuss below, we dismiss Mother's appeal of the circuit court's contempt ruling and affirm its ruling reducing Father's child support obligation.

BACKGROUND

Mother and Father are the parents of two minor children. In 2017, the parties entered into a Consent Order that was approved by the circuit court. Pursuant to the terms of the Order, Father was obligated to pay Mother $2,000 a month in child support. The Order also required the parties to share all extraordinary medical expenses and all extracurricular activity expenses. For years, however, Father failed to make child support payments, often sending Mother partial payments or no payment at all. He also failed to reimburse Mother for extraordinary medical expenses and extracurricular activity expenses. As a result, Mother filed a petition for contempt. In response, Father filed a motion to modify his child support obligation. The circuit court held a hearing on both motions.

At the hearing, Mother testified that Father, a commercial real estate agent, had failed to make the required child support payments. Mother alleged that, in her view, Father had left a lucrative real estate business, started a new business, and in that new business was intentionally making less money to avoid making child support payments. In support of that theory, Mother introduced the Operating Agreement of Father's current real estate business. Mother pointed out that the Operating Agreement gave Father controlling and

tie-breaking authority and, therefore, in Mother's view, Father had the ability to increase his salary but chose not to do so.

Father argued that his salary had significantly decreased since the Consent Order was filed. Father testified that his former business had failed, he had filed for bankruptcy, his new business was doing badly, and that both he and the business were in significant debt. Father also explained that under the Operating Agreement although he had controlling and tie-breaking authority, the Operating Agreement had specific requirements that had to be met before any partner could distribute profits or make changes. Those requirements, Father testified, had not been met. Father also testified that he had received job offers to work elsewhere, but all of those offers would have required him to relocate and that he chose not to take them so that he could be with his children.

The circuit court ruled in favor of Father on both motions. The circuit court found, *first*, that although Mother had successfully shown that Father failed to pay child support, she nonetheless had failed to provide a sufficiently detailed accounting of how much Father had failed to pay. Thus, the circuit court denied Mother's petition for contempt. S*econd*, the circuit court found that Father had proven that there had been a material change in his financial circumstances and, therefore, reduced Father's child support obligation. This timely appeal followed.

DISCUSSION

Mother appeals[1] these adverse decisions to this Court but fares no better here. Not because she fails to present a sympathetic case, but because of the rules by which this Court's choices are constrained.

I. CONTEMPT

First, Mother appeals from the denial of her motion for contempt.

Appeals of denials of contempt—unlike appeals from grants of contempt—are simply not appealable judgments. MD. CODE, COURTS & JUD. PROC. ("CJ") § 12-304; *Pack Shack, Inc. v. Howard Cty.*, 371 Md. 243, 247, 254 (2002) (holding that CJ § 12-304 does not allow a right to an appeal by "a party who unsuccessfully seeks to have another party held in contempt"); *Kadish v. Kadish*, 254 Md. App. 467, 509 (2022) (declining to hear appeal of circuit court's finding that alleged contemnor was not in contempt of court for failing to pay child support). Thus, although we might like to agree with Mother,[2] we have

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[1] Father did not file a brief.

[2] Indeed, we think Mother's argument is likely correct. Maryland law is clear that child support is paid for the benefit of the children not the custodial parent. *See, e.g., Walker v. Grow*, 170 Md. 255, 265-66 (2006). Here, the evidence was clear and undisputed that Father repeatedly failed to make child support payments and that the amount of that shortfall was substantial if not precisely quantified. The circuit court stated that "it is abundantly clear that Mr. Coester has not paid all of the amounts that are owed to Ms. Witherspoon." Rather than trying to ascertain the amount of Father's shortfall, the circuit court denied the petition and awarded these children nothing. This, in effect, punishes the children for the failures of their parents. And we see no reason that this result is compelled by law or by Rule. MD. R. 15-207(e)(2); *see also Rawlings v. Rawlings*, 362 Md. 535, 562 (2001) (affirming circuit court's finding of contempt for failure to pay child support where the parties did not dispute that Father did not pay in accordance with the child support order). In fact, we think the Rule says the exact opposite: that the party alleging contempt has the burden to show a failure of payment, not to quantify the precise amount of the

no jurisdiction to entertain that aspect of her appeal. We must, on our own motion, dismiss Mother's first claim.

II. MATERIAL CHANGE IN CIRCUMSTANCE

Second, Mother asserts that the circuit court erred in granting Father's motion to modify his child support obligation. According to Mother, Father was voluntarily impoverished, and that the circuit court should therefore have denied his motion to modify the child support obligation. Mother obtains no recourse here.

Maryland law provides that a circuit 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." MD. CODE, FAM. LAW ("FL") § 12-104(a). A change of circumstances is considered "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 basis for a court to find a "change in circumstance relevant to a modification of child support." *Drummond v. State*, 350 Md. 502, 510-11 (1998).

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shortfall. MD. R. 15-207(e)(2). Of course, providing an itemized and detailed accounting is surely helpful. *See Rawlings*, 362 Md. at 562 (party petitioning the court in this case provided certified record from the Child Support Enforcement Unit that showed accounting of amount owed). Regrettably, however, we cannot definitively resolve the issue because we lack jurisdiction. CJ § 12-304.

In Maryland, a parent is "voluntarily impoverished" when 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). In such cases, the circuit court must "make a finding as to whether, based on the totality of the circumstances, the parent is voluntarily impoverished," FL § 12-204(b)(2)(i) and "if the court finds that the parent is voluntarily impoverished," the circuit court must "consider 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).

Whether to grant a motion to modify child support rests within the sound discretion of the circuit court and its decision 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 circuit court's factual findings unless they are clearly erroneous. *Id.*

In this case, the circuit court carefully considered the respective financial situations of the parties and determined that Father's change of employment constituted a material change in circumstances. Moreover, the circuit court determined that Father's salary decrease was involuntary. The circuit court specifically held:

> [Father] was previously making, approximately, $200,000 a year and now is making $70,000 a year. This is a material change in circumstances. [Mother] argues that the court should impute income to [Father] and that he

isn't making the same $200,000 a year that he previously made and that he should still be making that amount.

[Father] testified that he has a high school degree and was making $200,000 a year in the real estate market in a business he created. He explained that the success of that business was based on his ability to work with people and to make contacts to enhance the marketability of his company and his skill set.

Although there wasn't much information about the downfall of the company, [Mother] argued that the problem was from [Father] going through someone's email and getting in trouble for doing so. That caused the downfall and the ultimate need of the dissolution of the business. [Father] then, ultimately, had to file bankruptcy and was unable to work as he closed out the business and managed the bankruptcy.

He began to start a new company in real estate that worked within the confines of some requirements of him continuing to be able to work in the real estate market. He had two partners in the recent past, but now it is just him and one other partner, as the third partner wasn't working out, including the[m] listening to him in renting office space that they couldn't really afford and didn't really need.

Of the two existing partners, [Father] testified that only he is getting income and that that is $70,000 a year. The other [business] partner is waiving his income to allow more money … for the company to launch and to turn profitable, hopefully. [Father] explains how if he were to get another job, it would have to be in the real estate area as that is where his skill set is and working for someone else would not be as profitable as … $70,000 a year. He is working full-time. He isn't not working and there was no evidence that he could do something else and make more money than what he is doing now.

[Mother] also testified that it was difficult for her to find a job after she had been involved in this business, apparently, due to whatever caused the dissolution, kind of left a black mark, it sounded like, on people's records or their resumes, and she testified that it was difficult, based on that, for her to find employment. Presumably, the same would be [true] for [Father] as well, perhaps more, if he was the one who was involved more extensively in that business.

Based on that, the court [finds that there has been a material change in circumstances, and] does not find that [Father] is voluntarily impoverished [and therefore] is not going to impute income for him for the purposes of calculating child support.

In the circuit court's view, Mother did not successfully prove her case that Father had voluntarily impoverished himself. We see no error in this finding. Given our deferential standard of review, we hold that the evidence was sufficient and that the circuit court did not abuse its discretion in finding that Father's decrease in income constituted a material change in circumstance as that term is defined in the statute and our case law. Moreover, there was significant evidence that Father had not voluntarily impoverished himself. As such, the circuit court did not abuse its discretion by decreasing Father's child support obligation. We, therefore, affirm that aspect of the circuit court's decision.

APPEAL FROM DENIAL OF CONTEMPT DISMISSED. JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY MODIFYING CHILD SUPPORT IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.