Circuit Court for Prince George's County
Case No.: CAD16-35713

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

2229

September Term, 2023

Michael Cristler

v.

Ashley Cristler

Wells, E. Gregory, C.J.
Berger, Stuart R.
Wilner, Alan M.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wilner, J.

Filed: August 12, 2024

Michael Cristler and Ashley Drapeau got married in Massachusetts in May of 2012. At some point, they adopted J., a special needs child who was born in September 2013, and at some later point, the three of them moved to Prince George's County, Maryland. The appellate briefs do not tell us precisely when the adoption and the move occurred, but the exact dates are not important to this case.

By mutual agreement, Michael and Ashley separated in September 2016, and, in October 2017, they entered into a written settlement agreement that, among other things, provided for (1) the disposition of their marital property, (2) shared care, custody, and support of J., (3) a mutual waiver of alimony and the payment of child or spousal support from one parent to the other, and (4) the mediation of disputes concerning the interpretation, construction, and enforcement of the Agreement.

With respect to custody, paragraph 9 sets forth a schedule under which each parent would have physical custody of J. the same number of days each year. Consistent with that, in paragraphs 42 and 43, they acknowledged that their actual and potential incomes were approximately equal and that they would share the basic expenses for J. equally, with neither party making any direct payment to the other.

In conformance with that Agreement, the parties were divorced a month later, in November 2017. Ashley has since remarried.

Unfortunately, the shared custody arrangements fell into conflict, which, in September 2018, led to cross petitions to modify the custody arrangements but resulted only in a May 2019 court award of final decision-making authority to Ashley.

That brought a respite to judicial activity until 2023. On January 11 of that year, Ashley filed a motion for physical and legal custody of J. and child support, which triggered a counter motion for similar relief by Michael in May of that year. On March 10, 2023, the court denied Michael's motion to dismiss Ashley's petition. On March 29, Pawnee Davis, Esq., of the P.A. Davis Law Office, entered her appearance for Michael and, on May 12, filed a countermotion to modify custody and support on the ground that Ashley had exercised her tie-breaking authority inappropriately.

Although the settlement agreement required the parties to participate in at least four hours of mediation in the event of such a dispute, they had, in fact, engaged in only two hours of mediation. Michael notes that fact in the Statement of the Case section of his brief but did not raise it as an issue in the argument section. Ashley responded that the parties had made as much

progress as possible in their June 23, 2022 mediation and that any further effort in that regard would simply have added unnecessary expense.

That issue was raised again on the third day of trial on November 21, 2023, in the context of Michael's motion to dismiss Ashley's request for a modification of the custody arrangements. After having then engaged in three days of trial, the court found the motion to dismiss untimely and denied it for that reason. We find no reversible error in that decision. To send the case back for an additional two hours of mediation after three days of trial would have made utterly no sense. The parties were, and remain, as far apart as they ever were.

On March 1, 2023, the court set trial dates of July 10 and 11, 2023. At Michael's request, but ultimately with the consent of Ashley after an initial denial by the court, the trial was postponed until September 27 and 28, 2023, with a carryover date of November 21, 2023. That was Michael's third motion to postpone the trial.

Very early on the morning of September 27 – at 4:08 a.m. – Michael's attorney (Ms. Davis) informed Ashley's attorney (Matthew D. Alman) that due to back pain she would not be appearing for trial, and she did not in fact appear.

She was not too disabled to file another motion, at 8:15 a.m., to postpone the trial – the fourth such motion filed on behalf of Michael.[1]

The postponement issue initially came before Judge Wytonja Curry at 9:01 a.m. Ashley's attorney opposed a postponement, noting that he had spoken with Ms. Davis the day before and "she sounded fine." Judge Curry responded that her judicial assistant had contacted Ms. Davis to determine whether she could participate remotely from her home, which she declined.

At that point, the matter was referred to Judge Kelsey, the Administrative Judge, before whom Michael contended that this would be the first continuance. Judge Kelsey immediately corrected him, noting that there had been several prior continuances. Mr. Alman contended that this was the fourth continuance requested by Michael.

Judge Kelsey determined from a review of the file that the person "who may really be suffering here is the child with no final outcome," that "the court's primary goal is to consider the best interest of the child," that the problem "seems to be a continuing matter with respect to your attorney," and

[1] At 8:47 a.m., Judge Curry's judicial assistant emailed Ms. Davis inquiring whether she could participate in the hearing from home, noting that the court could obtain a zoom link for her. At 10:05 a.m., Ms. Davis responded that she was lying down and could not get up. At 10:29 a.m., she informed the aide that she had a telemedicine appointment with her doctor scheduled for 1:00 p.m. Altogether, it appears that, despite her back pain, she sent nine emails that morning.

"that this case has to move forward." Accordingly, she denied the request for another continuance, and the case was returned to Judge Curry for trial.

The September 27 session dealt with testimony by Ashley in support of her petition to alter the custody and support arrangements, including cross-examination by Michael, which continued on the 28th.

On November 6, Michael's attorney filed a fifth motion for continuance, claiming she had a scheduling conflict. The court denied that motion.

The final day of trial was on November 21, 2023, which was largely for the purpose of allowing Michael to present his case. No attorney appeared for Michael, even though a month had elapsed since Ms. Davis's bout with back pain.[2]

After a few preliminaries, Michael asked to recall Ashley to complete his cross-examination. Ashley's attorney objected. Michael responded that there were discrepancies in Ashley's financial statements, that he did not have the opportunity to review earlier, and that he needed only ten minutes, which the court allowed. Nonetheless, the court sustained the objection, ruling that, although she would allow him the ten minutes to inquire about any new

[2] At the conclusion of the hearing on September 28, the court inquired whether Michael's attorney (Ms. Davis) was still representing him, and Michael replied, "[a]s of right now, I believe so." It seems that Ms. Davis was still in the case. She filed the appellate brief for Michael on May 21, 2024 and a reply brief on July 11, 2024.

matters, he would not be permitted to engage in further cross-examination regarding matters dealt with in September.

The trial itself ended on November 21. The case ended five weeks later when, on December 28, 2023, the court entered its Amended Opinion and Order. In a victory for Michael, the court denied Ashley's Petition for a Modification of Custody, declaring that "no change in circumstance has taken place in this matter. Both parties agree that the minor child has a straight A average and that many of his prior disorders have improved" and that the difficulty the parties had in communicating was resolved by giving Ashley tie-breaking authority.

In a victory for Ashley (and J.), the court concluded that Ashley's income had become "significantly divergent" from Michael's and that, pursuant to the Maryland Child Support Guidelines, Michael was obligated to pay child support in the amount of $546 per month, commencing from February 1, 2023 (the filing date of the modification order), which created a deficit of $6,552 as of December 28, 2023. The court ordered that deficit to be discharged by an additional payment of $50 per month commencing January 1, 2024.

Michael has appealed, raising four complaints, which we shall take in order:

1. The court erred when it denied Michael's attorney's motion to postpone the modification trial and required Michael to proceed without counsel.

The parties agree that a decision to grant or deny a motion to postpone a hearing is within the discretion of the court. Rule 2-508; *Touzeau v. Diffinbaugh*, 394 Md. 654, 669 (2006); *Attorney Grievance v. O'Neill*, 477 Md. 632, 661 (2022). A reviewing court, in determining whether that discretion has been abused, looks to determine whether it was exercised in an arbitrary or capricious manner, whether it was manifestly unreasonable, without reference to any guiding rules or principles, and is violative of fact or logic. *Touzeau, supra.*

We do not take lightly that the impact of denying the motion to postpone left Michael without an attorney for the September 27 hearing. It is not clear from the briefs why Ms. Davis was unable to participate remotely on the 27th – only that she declined to do so. She says in her brief that "it was painful and difficult to move around and walk," which would have been largely unnecessary had she accepted the court's invitation to participate remotely from her home. Nor does she explain why she could not participate on September 28, much less in November. We do know that she was able to file a postponement motion at 8:15 a.m. on September 27.

This was the fourth postponement requested by or on behalf of Michael. In denying this request, the court expressed legitimate concern about the interest of J., who was allegedly and ultimately found to having been denied a significant measure of child support. We find no abuse of discretion in denying the motion to postpone.

2. Failure to follow Rule 16-302 and the county's Case Management Plan

Rule 16-302(b) requires each County Administrative Judge to develop and, upon approval by the Chief Justice of the Maryland Supreme Court, to implement a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court of the county. The Circuit Court for Prince George's County has adopted such a plan that contains provisions for settlement conferences and ADR in an effort to resolve disputes amicably, without the time and expense of a trial.

Michael complains that those techniques were not afforded in this case and that, had they been, it is "possible that there would have been a settlement of some or all of the issues." He complains that there was no scheduling conference, no pretrial conference, no discovery deadline or, nothing to "facilitate an amicable resolution."

This case was specially assigned to Judge Wytonja Curry in 2019. That is permissible under the Prince George's County Case Management Plan. If a case is so assigned, that judge is responsible for the effective management of the case, including the selection of a trial date, so long as it is consistent with case time standards. Motions for a postponement are handled by the assigned judge. Judge Curry was, in fact, the judge who tried the case and rendered the judgment.

Michael did request a scheduling conference and complained about the lack of a Pretrial Statement in June 2023, when the July trial dates were pending, which was denied That was part of a motion to continue those trial dates. As noted, those trial dates were eventually postponed, but the request for administrative relief was not renewed with respect to the September proceedings. At that point, but for Ms. Davis's back pain, both sides were prepared to try the case.

We do not condone the court's failure to follow in full the requirements of the case management plan, but it seems at least doubtful that there was any likely prospect of the parties settling this case, and the need to resolve the child support issue, which had been pending for nearly ten months, was a pressing one. As the court later found, since February, J. was being deprived of $546

per month in child support and Michael was filing one motion to postpone after another.

3. The court abused its discretion in limiting Michael's cross-examination and not permitting impeachment evidence.

Michael began his cross-examination of Ashley on the afternoon of September 27. Ashley contends that he cross-examined her "during the entire afternoon," which Michael does not deny, and he continued that cross-examination for nearly the entire morning of the 28th, at the end of which he said that he had no further questions "at this time."

The September hearings involved the presentation of Ashley's case, including cross-examination by Michael. The November hearing was for the presentation of Michael's case. He said that he wanted to recall Ashley to present evidence regarding her financial statement that needed clarification.

The court agreed that he could recall Ashley as his witness. It stated "if there is something new that you need to [ ] recall her for a particular purpose, I will allow you to do that. But we are not going to reiterate the testimony that we have exhausted in this case," to which Michael responded, "Yes ma'am."

Michael treats that as an impermissible denial of cross-examination. Apart from the fact that he appeared to accept the court's ruling, Rule 5-611 (a)

requires the court to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." See also *Stouffer v. State*, 118 Md. App. 590, 625 (1997); *Myer v. State*, 403 Md. 463, 476 (2008).

Michael was not denied the right to cross-examine Ashley. He exercised that right in September.

The issue of Ashley's bank statements arose at the end of the November 21 hearing when, following cross-examination by Ashley's attorney, Michael wanted to recall Ashley to answer questions regarding her financial statements, that Michael claimed were fraudulent. In response to the court's question, Michael said that his attorney had that information earlier. At that point, the testimony had been concluded and final arguments were about to begin. We find no error in the court's refusal to reopen the evidentiary part of the case.

4. The evidence did not support the child support award.

As noted, in its Amended Opinion and Order, the court found that child support of $546 per month was due from Michael, although it did not recite the

calculations regarding that determination in its Opinion but simply noted that Ashley had provided sufficient information for the purpose of making that determination. That number was calculated in accordance with the Child Support Guideline Worksheet.

That worksheet shows Ashley's monthly income to be $8,422 and Michael's monthly income to be $14,724. The issue is where the $8,422 number came from. Ashley's evidence showed there were three sources. One, about which there appears to be no controversy, arises from monthly disability benefits in the amount of $2,035.68 that she receives from the Veterans Administration. A second source is $4,166.67 per month from the 20 hours per week that she works for George Washington University.

The third is from the 30 hours a week she works for the Center for Integrative Medicine. That appears to be a contractual employment that does not produce monthly or weekly checks. Evidence was produced of checks totaling $21,670 over a 11-month period. The court considered only the $13,315 she earned from January to June of 2023, which amounted to $2,219 per month.

Michael complains that the court should not have considered the check for January 2023 because it was for work performed in 2022, but, as Ashley

notes, if the court had done that and counted instead one-fifth of the $10,900 Ashley earned in 2023, her income would have been even less.

CONCLUSION

There were some lapses in this case, which, in large part, were due to Michael's persistent effort to avoid trial on Ashley's petition and his attorney's unexcused absence from all three of the hearings conducted by the court. We find no reversible error.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.

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