Circuit Court for Montgomery County
Case No.: 151449FL

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2233

September Term, 2022

JERMAINE C. TYLER

v.

NATASHA CHARISSE HEWLETT

Nazarian,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 21, 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 its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Appellant, Jermaine C. Tyler ("Father"), and appellee, Natasha Charisse Hewlett ("Mother"), are the parents of a child born April 14, 2012 (the "Child"). They divorced in June 2019, litigated a prior appeal to this Court, and now return on Father's appeal from the underlying order modifying his child support obligations.

In the prior appeal, we reviewed the child custody order entered by the Circuit Court for Montgomery County on August 3, 2022, on Mother's petition for contempt and to modify custody. *See Tyler v. Hewlett*, No. 1486, slip op. at 1 (Md. App. filed June 12, 2023) (hereafter cited as "*Tyler I*"). The August 3 judgment held Father in contempt for nonpayment of child support obligations and entered a purge amount of $713 reflecting Father's then child support arrearage; modified physical and legal custody by awarding Mother sole legal and primary residential custody with visitation for Father; and ordered Father to pay his share of extracurricular activities and extraordinary medical expenses incurred after the judgment of absolute divorce entered on June 24, 2019. *Id.* at 1, 6. In *Tyler I*, we vacated the court's judgment with respect to the extraordinary medical expenses after determining that the order directing Father reimburse Mother $481.22 for dental services rendered to the Child in March and May of 2019 was barred by the doctrine of *res judicata* because Mother should have litigated Father's obligation to pay those expenses during the evidentiary hearing preceding the divorce judgment. *Id.* at 8-9. We directed the circuit court, on remand, to enter a new judgment against Father in the amount of $3,728 for those expenses, and affirmed the court's judgment in all other respects. *Id.* at 9,11.

The events the led to this appeal occurred while Father's appeal *Tyler I* was still pending in this Court. During an evidentiary hearing on October 7, 2022, the circuit court

addressed Mother's related petition to modify Father's child support obligation in light of the custody change. In an order on November 21, 2022, the circuit court: 1) increased Father's child support obligation to $554 per month; 2) established unpaid child support in the amount of $1,608.39 through August 3, 2022; and 3) required Father to pay $481.22 for dental services rendered to the Child in March and May of 2019—the same payment that we vacated in our prior decision. *Id.* at 8. Father noted this timely appeal from the child support order entered November 21, 2022.[1] He raises four issues that we restate as follows:

> I. Did the circuit court commit clear error in miscalculating Father's child support obligation based on mistakes regarding the Child's health insurance expenses and by imputing income to Father despite his "leave without pay" employment status?
>
> II. Did the circuit court err in entering judgment against Father for $481.22, as reimbursement for the Child's dental expenses?
>
> III. Did the circuit court demonstrate bias that warranted granting Father's motion seeking recusal?
>
> IV. Did the circuit court err in denying Father's motion to alter or amend the judgment, or in the alternative for a new trial?[2]

[1] On December 1, 2022, Father moved to alter or amend the child support order. *See* Md. Rule 2-534; Md. Rule 8-202(c). The circuit court denied that motion on January 19, 2023. Father noted this timely appeal on February 17, 2023. *See generally Edery v. Edery*, 213 Md. App. 369, 383-84 (2013) ("when the entry of a final judgment . . . is followed by the filing, within 10 days, of a Rule 2-534 or 2-535 motion, the deadline for noting an appeal to this Court . . . is 30 days from the notice of withdrawal of the motion or 30 days from the ruling on the motion, under Rule 8-202(c).").

[2] In his *pro se* brief, Father frames the issues as follows:

(continued)

For reasons that follow, we will affirm the circuit court's decisions to modify child support and to deny Father's demand for recusal. But we must vacate and remand the Child Support Order entered November 21, 2022, for recalculation of the amounts Father owes in monthly child support and child support arrearage.

BACKGROUND

As we recounted in *Tyler I*, when Mother and Father divorced in June 2019, they consented to joint legal custody and shared physical custody on a "week-on-week-off basis," with Father paying monthly child support of $31. *See Tyler I*, slip op. at 1. In January 2022, Mother filed a petition for contempt, alleging Father failed to pay child support, accompanied by a motion seeking to modify custody and child support, alleging, among other things, that the Child was missing school and treatment for health issues when in Father's care. *Id* . at 2. After a hearing, the circuit court entered the Child Custody Order on August 3, 2022.

As reflected in the order, the court found Father in contempt for willfully refusing to pay child support. *See id.* To purge the contempt, the court ordered Father to pay $713

"Issue 1. Did the Circuit Court err in making its child support award?

Issue 2. Did the Circuit Court err in issuing and entering its Judgements? [sic]

Issue 3. Whether the Trial Judge should have vacated the determination and recused herself retroactively/nunc pro tunc.

Issue 4. Did the Circuit Err in Denying Appellant's Motion to Alter or Amend Judgement [sic], for New Trial and Request for Hearing."

Mother did not file a brief.

in monthly child support arrears; $4,209.22 for his half of extraordinary medical expenses incurred for dental, orthodontic, and therapy services; and $177.50 for half of the Child's extracurricular activities. The court also found that there was a material change in circumstances warranting modification of custody, and then awarded Mother sole legal and primary physical custody, with Father having the Child on three weekends per month and specified summer vacation and holiday dates. Because "[n]o evidence was submitted regarding child support[,]" the court set a hearing on child support. Meanwhile, Father noted a timely appeal to this Court.

On October 7, 2022, while Father's appeal in *Tyler I* was pending, the circuit court held a hearing on Mother's request to modify Father's child support obligation based on the material change in physical custody. The presiding judge denied Father's motion to recuse on ground of bias. At the conclusion of that hearing and by order entered November 21, 2022, the court increased Father's monthly child support to $554. The court also entered judgment against Father for $1,608.39 in child support arrearage as of August 3, 2022, and for "$481.22 for reimbursement of dental expenses[.]" Father noted this timely appeal.

We include additional facts concerning the underlying child support order in our discussion.

STANDARDS GOVERNING REVIEW

The 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." Maryland Code (1984, 2019 Repl. Vol., 2023 Supp.), Family Law Article ("FL"), § 12-

104(a). As this Court has explained, this means there must be "an affirmative showing of a material change in circumstances in the needs of the children or the parents' ability to provide support." *Payne v. Payne*, 132 Md. App. 432, 442 (2000) (citations omitted). Even when modification is warranted, courts "may not retroactively modify a child support award prior to the date of the filing of the motion for modification." FL § 12-104(b); *see Damon v. Robles*, 245 Md. App. 233, 240 (2020). A decision to modify child support "is left to the sound discretion of the trial court, so long as the discretion was not arbitrarily used or based on incorrect legal principles." *Walker v. Grow*, 170 Md. App. 255, 266 (2006) (quotation marks and citation omitted).

"[T]here is a strong presumption . . . that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified. Consequently, the decision to recuse oneself ordinarily is discretionary and will not be overturned except for abuse." *Conner v. State*, 472 Md. 722, 738 (2021) (internal citations and quotations omitted).

DISCUSSION

I. Modification of Father's Child Support Obligation

Father challenges the circuit court's increase of his monthly child support obligation to $554 and the corresponding arrearage judgment of $1,608.39 as of August 3, 2022. In his view, the circuit court "used a legally improper and inequitable process in determining [his] income" given the "non-pay status" of his employment and also "erred in the determination of the health insurance expense included in the calculation[.]"

After reviewing the hearing record, we address the imputed income and health insurance challenges in turn. For reasons that follow, we conclude that the court did not err in imputing income to Father but that the evidentiary record does not support the health insurance expense that the court used to calculate Father's child support obligation.

A. The Relevant Record

The record contains conflicting evidence concerning expenses for the Child's health insurance. First, the Child Support Worksheet from a hearing on March 8, 2022 (regarding Mother's contempt petition and motion to modify custody and support) shows that the circuit court factored into its support calculation $293 for Mother's health insurance expenses and $230 for Father's.

Second, for the child support hearing on October 7, 2022, Mother presented her financial statement dated October 4, which itemized her monthly medical/dental expenses as follows:

D.MEDICAL/DENTAL	**MOTHER**	**CHILD**	**TOTAL**
Health Insurance	$297.58	$127.28	$424.86

Third, in Father's financial statement for the October 7 hearing, he listed the amount of health insurance expense attributable to his two children as $212, which is half of his total monthly health insurance expense of $424.

Fourth, during the October 7 hearing, when asked how she calculated the cost of the Child's health insurance, Mother explained that she estimated that 30 percent of her

monthly premium was attributable to coverage for the Child, based on the cost of adding him to her plan:

> THE COURT: Okay. And the amount that you have for health insurance, that's just for your child?
>
> [MOTHER]: Yeah. I separated it out. So if you look at my earnings statements, you'll see that I pay $252 per pay period. When you total that up, it's about $500. I separated it out, about 30 percent for the [C]hild, because if I was on my own, I would probably be paying 30 percent less. If that makes sense.
>
> THE COURT: Probably?
>
> [MOTHER]: Yeah. It's – when you look at the figures, it depends if you do plus one or family. I did plus one, so it was a little higher for the plus one rather than doing family. And I can't change it now.
>
> THE COURT: Okay. Do you have anything to indicate what the family and the family plus one is?
>
> [MOTHER]: I do not, Your Honor. I didn't bring that with me.
>
> THE COURT: Okay. So explain how you got to the health insurance number for . . . . you[r] son. Just explain again how you got to that number.
>
> [MOTHER]: Yeah. Based off of my previous – because I did this before where I break it down and I did bring in the actual breakdown and I just completely forgot today.
>
> But it's around 30 percent that you're paying for a difference, a 30 percent difference. So when I did that, I took out –
>
> THE COURT: Thirty percent difference from –
>
> [MOTHER]: From doing single.
>
> THE COURT: From one to –
>
> [MOTHER]: Just one person to move into individual plus one. Self plus one. That's what it's called. Self plus one.
>
> [COUNSEL FOR FATHER]: Your Honor, I'm going to object on the grounds that there is a -- there's best evidence of the answers to these

questions rather than her speculation or approximation, would be the actual chart for the insurance company.

THE COURT: Mm-hm.

[COUNSEL FOR FATHER]: Her testimony isn't really admissible given the fact that there is a readily available resource[] that she could have brought but didn't bring today to prove that number.

THE COURT: Right. I'm just asking . . . her how she got to figures that are on the financial statement . . . that's already received.

[MOTHER]: Mm-hm.

THE COURT: So I just want to know how you got to them.

[MOTHER]: Right.

THE COURT: It is a problem.

[MOTHER]: Okay.

THE COURT: But I'm going to overrule the objection because of the nature of my question. This is just what did you do to get to this figure. Okay.

[MOTHER]: Yes, Your Honor. Mm-hm.

THE COURT: So you said there was a 30 percent difference . . . .

[MOTHER]: Yes, Your Honor.

At the hearing, Father testified with respect to his employment income, and presented supporting documentation. Beginning around August 28, 2022, he was placed on leave without pay from his job with the United States Treasury. When asked about his prospects for receiving pay soon, Father testified that he "d[id] not have full confidence," citing "the federal investigation into my EEO matter" involving "discrimination[,]" which he expected to lead to "[t]ermination." Although he admitted that he was "not unable to work," he did not have a plan for reemployment or any current income.

On cross-examination, Father confirmed the itemized expenses on his updated financial statement, including the monthly amounts he budgeted for dining out with his two sons ($440 for his one-year-old and the Child); the Child's allowance ($100); the Child's cell phone ($65 for a second phone not provided by Mother); and childcare for his younger son ($1,000). Father also testified that he recently sold his house, then contributed $75,000 in sale proceeds to his fiancée for her purchase of a house, but clarified that even though he included a $27,000 mortgage liability on his financial statement, he is not a party to that mortgage. He also admitted that he used sale proceeds to prepay some of the monthly expenses itemized on his October 4 financial statement, including his younger son's "childcare for the remainder of the year[,]" as well as his "TV and internet[.]"

In the court's Child Support Obligation Worksheet (dated October 7, 2022, and filed with the court's child support order on November 21, 2022), Father's "Monthly Actual Income-Before Taxes" is listed as $10,089. Mother's health insurance expense for the Child is listed as $242. There is no health insurance expense itemized for Father. The recommended amount of child support for Father is $554.

After reviewing the evidence regarding income and expenses in light of the new custody schedule, the court concluded that Father should pay $554 in monthly child support, explaining:

> With respect to the incomes, I calculate [Mother's] income at $13,799.20 a month; and that's from the pay statement, as well as the monthly earning VA earnings. . . .
>
> [Father], with respect to [Father], the leave without pay to me connotes a temporary circumstance. I have no idea of the circumstances really of the leave, how long, or even why, except that he asserts it's relating to an EEO

action. I'm not willing to accept that [Father] earns no income based on his unsupported testimony, especially given his financial statement, which I have considered that was signed four days ago. His assertion that he incurs expenses of $9,910 a month; that he says his . . . [fiancée] isn't paying any of his bills, and she lives with him, so I can infer that he's paying her expenses. He has at least $12,459 in savings according to his financial statement.

He indicates that he's incurring a number of expenses. He's able to keep up, pay $160 for lawn and yard care; so, you know, he wants to make sure the home looks pretty. He pays for his therapist. I think that's important. He says he pays $440 a month . . . for dining out for a child who is about 15 months old, and a 10-year-old child, that's a goodly amount; and an allowance of $100 a month to a 10-year-old child. Okay.

He pays $225 for purchasing clothing for the child, 275 in total; and he has funds left over to make his $200 a month religious contribution, which I certainly think is important; but I also think that supporting one's own child is important.

He indicated on his financial statement that he had $75,000 worth of real estate assets, although now he says he doesn't. He indicated on his financial statement that he had $27,000 of mortgage, though now he says it isn't his.

Given what he, himself, has indicated that he's able to afford on a monthly basis, I think it is absolutely appropriate that he pay child support. The parties are within the guidelines. I think [counsel] is right with respect to the . . . approximate overnights. I've included 134 overnights in the guidelines.

With respect to the therapy costs, I can't, I have to have sufficient evidence of . . . . an extraordinary medical, extraordinary medical expense cost, and I just do not. With respect to the work-related childcare, the testimony was that the work-related childcare was not all work-related. Some of it, and . . . work-related childcare is a very specific category. So what I did was, because one of those three days was not for . . . . work, it's for therapy, I calculate the work-related childcare over 42 weeks as opposed to 52 because the month . . . . the summer, I took out because different things happened during the summer, realizing it might not be, that some of these figures we're using, including the overnight and things like that . . . . and we can't really get too exact; but I calculate the work-related childcare per month at $455 a month; ***the health insurance expense at 242***; and there's an

> extraordinary medical expense that was reflected in the financial statement which I credit at $78 a month. That brings the recommended child support to 554 a month that I'm going to order that [Father] pay; and it will be retroactive to the date of my custody order where I change the custody, and I will have to calculate that. . . .
>
> So, I will do that and include that in my order. And I will include the arrearage amount in my order that . . . [Father] will owe[.] . . .
>
> [S]o, I will . . . calculate the child support from August 3rd; but the ongoing support will be from, well, he's in arrears at this point for October; and so, . . . ongoing support will be . . . from November 1st. I'll assess the arrears, reduce that to judgment. . . .
>
> ***I think the . . . . sufficient evidence was provided that [Father] owes [Mother] $481.22 as reimbursement for medical expenses.*** I will order that. I will reduce that to judgment. And I think that concludes our business for today.

(Emphasis added).

The Child Support Order entered on November 21, 2022 is consistent with this bench ruling. The court ordered Father to pay $554 per month in child support, and entered judgments for a child support arrearage in the amount of $1,608.39 through August 3, 2022 and for "reimbursement of dental expenses" in the amount of $481.22.

B. Health Insurance Expense

Under FL § 12-204(h)(1), "[a]ny actual cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible shall be added to the basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes." Here, the court stated in its bench ruling that Mother's monthly health care expense for the Child was $242, then used that figure to calculate Father's child

support obligation in its Child Support Worksheet. The court did not include any health insurance expense for Father in its calculation.

Father disputes this "determination of the cost and allocation of health insurance[,]" arguing that the court used figures that are "not based upon any amount discernable in the record." In support, Father points out that the $242 "shown on the Court's October 7 Guidelines worksheet attributed" to Mother does not match "the amount of the child's share of health insurance on [Mother's] financial statement page 3[,]" which is $212.

We cannot discern from the record before us how the court reached the $242 figure that it used to calculate Mother's health insurance expense factored into its modified award of child support. That number does not correspond to either Mother's financial statement, which listed her health insurance expense for the Child as $127.28, or to her testimony at the October 7 hearing, when she estimated her health insurance expense to be 30% of the $504 monthly health insurance premium shown on her pay records, which would amount to $151.20.

Given that Mother did not present any evidence of health insurance expenses other than her financial statement and testimony, the record does not support the circuit court's determination that her monthly expense is $242. Nor did the court explain why its calculation from October 7 differs from its March 8 calculation by excluding Father's claimed health care expense of $212. Consequently, we must vacate the Child Support Order and remand for further proceedings to clarify and correct the support calculation to accurately account for each parent's health insurance expenses.

C. Father's Income

Although Father does not challenge the circuit court's finding that a material change in custody warranted modification of his child support obligation, he contends that the court erred in imputing income to him because he was on leave without pay during investigation of an employment-related discrimination claim. In Father's view, "[t]here was no evidence to support a finding that this was a temporary cessation that could be absorbed from savings or other financial resources."

We are not persuaded, however, that the circuit court erred in imputing employment income to Father. As Father points out, the court rejected his contention that his income was "zero" and instead determined his support obligation "based on [Father's] Statement of Earnings and Leave that was [his] Exhibit 2 at the October 7, 2022 hearing[,]" which showed his salary at that time. Father concedes that the $10,089 in monthly income attributed to him in the court's Child Support Worksheet corresponds to that salary.

It is the responsibility of the circuit court, rather than this Court, to resolve conflicts in the evidence, assess the credibility of the witnesses, and draw inferences based on those determinations. *Cf. Petrini v. Petrini*, 336 Md. 453, 470 (1994) (emphasizing the importance of "the trial court's opportunity to observe the demeanor and the credibility of parties and witnesses"); *Frazelle-Foster v. Foster*, 250 Md. App. 52, 84 (2021) (recognizing that "[e]valuation of the evidence lies within the sound discretion of the trial court" where issue was whether evidence supported divorce on requested grounds). The court expressly found that Father failed to establish that his leave without pay status was more than temporary. The record is sufficient to support that factual finding, given the

short length of time since Father was placed on leave without pay status; Father's failure to provide information for the court to evaluate the nature, duration, and potential consequences of his EEO claim; Father's admission that he was able to work; the lack of evidence corroborating Father's expectation of employment termination; his lack of any plan for substitute employment; his continuation of expenses that may be viewed as discretionary; and his recent use of proceeds from the sale of his home to assist his fiancée in purchasing a home and to prepay childcare and utility expenses.

Based on this record, the circuit court's conclusion that Father's income could and would resume was not clearly erroneous. On remand for recalculation of child support, however, the court may consider new evidence it finds relevant to the determination of Father's employment status and income.

II. Dental Expenses

Father next contends that the circuit court erred in entering judgment for $481.22 in extraordinary medical expenses, for the same dental expenses incurred in 2019 that this Court disallowed in *Tyler I*. We agree.

The circuit court's inclusion of these extraordinary medical expenses in its November 21, 2022 order predates our unreported opinion in *Tyler I*, where we vacated the earlier order requiring Father to reimburse Mother for those particular dental expenses, explaining:

> Earlier in the history of this case, on May 29, 2019, a merits hearing was held on divorce and child support. The order resolving those issues was issued on May 31, 2019 and was entered as a judgment of absolute divorce on June 24, 2019. In its order, the court made findings of fact on several issues, including those pertinent to child support. On those findings, the

court filled out a Child Support Worksheet, from which it determined that Father would be obligated to pay child support of $31 per month to Mother.

***

On the Child Support Worksheet, at section 11 "Expenses," the court listed $747 per month for work-related childcare, $54 per month for health insurance, and $0 per month for extraordinary medical expenses, cash medical support, and additional expenses. In the last paragraph of its order, in language couched in terms of the future, the court stated that the parties shall divide Child's extraordinary medical and dental expenses "50/50" and that,

> [t]he parties shall reach an agreement as to who is going to incur such expense at the time of service, that party shall seek reimbursement from the other party within thirty (30) days from the date of purchase. Every month, on the 1st of each month, the party who purchased the expense will notify the other in writing, which shall include e-mail, will submit by email to the other party, the receipt for the expense, and the other party shall have fifteen (15) days from the receipt of the email to reimburse the other party for their 50% share of the extraordinary medical and/or dental expense.

In the opinion issued after the June 21-22, 2022 hearing central to this appeal, the court found that, contrary to the directive in the June 24, 2019 judgment of absolute divorce "[t]he parties did not reach [an] agreement as to who will incur the expense. *It is evident that [Mother] reached out and submitted expenses to [Father] and received no response or reimbursement*." (Emphasis in original.) The court continued:

> These expenses include:
>
> ***$299.52 (Dental, Pl.'s Ex. 4)***
>
> ***$662.92 (Dental, Pl.'s Ex. 6)***
>
> $190 (Therapy, Pl.'s Ex. 11)
>
> $1,596 (Braces, Pl.'s Ex. 23)
>
> $5,670 (Therapy, Pl.'s Ex. 43)

> The total of the expenses is $8,418.44, of which [Father] owes 1/2, or [$]4,209.22.

On appeal, with respect to extraordinary medical expenses, Father argues:

> must [sic] [of the expenses] were incurred prior to any such obligation and the subject of prior hearings. They could not be revisited in this proceeding under the guise of contempt.
>
> Moreover, a prior order, dated April 14, 2021, continued joint custody and provided [Mother] with a tie breaking vote if they could not agree on specified issues; however, she was not to use the tie breaker authority to bind [Father] financially. She did precisely that. The medical and dental expenses would be covered by insurance, but [Mother] refuses to use the physicians and dentists who would accept insurance.

(Internal record references omitted.)

Father is incorrect that extraordinary medical expenses were a basis for the contempt finding. ***We agree, however, that the court erred by including two items incurred before the May 29, 2019 evidentiary hearing in calculating the $4,209.22 judgment entered against him. Those items, which total $962.44, are $299.52 (Dental, Pl.'s Ex. 4), incurred on May 7, 2019, and $662.92 (Dental, Pl.'s Ex. 6), incurred on March 26, 2019. Both could have been introduced into evidence at the May 29, 2019 hearing.*** As we explained in *Lieberman v. Lieberman*, 81 Md. App. 575, 597 (1990), "the doctrine of res judicata applies in the modification of alimony and child support and the court may not 'relitigate matters that were or should have been considered at the time of the initial award'" (quoting *Lott v. Lott*, 17 Md. App. 440, 444 (1973)). Although there was a material change of circumstances in this case regarding custody, there was no change relating to extraordinary medical expenses.

From the Child Support Worksheet, it appears that, although evidence was admitted regarding childcare expenses and health insurance costs, no evidence of extraordinary medical expenses was introduced. Accordingly, ***those two items should not have been included in the court's determination of extraordinary medical expenses owed by Father to Mother.*** The correct amount of the judgment against Father for extraordinary medical expenses should have been one-half of $7,456, which equals $3,728.8.

Tyler I, at 7-8 (emphasis added).

Although we acknowledge that the circuit court did not have the benefit of our decision that Father cannot be required to pay one-half of the Child's dental expenses from 2019, we must vacate the November 21, 2022 order requiring Father to pay $481.22 for dental expenses.

III. Recusal

Father renews his complaint that the circuit court judge was so biased against him that she erred in denying his request that she recuse herself. In *Tyler I*, we addressed Father's request to recuse Judge Bibi Berry, concluding there was no legal or factual basis for doing so:

> A judge "is required to recuse himself or herself from a proceeding when a reasonable person with knowledge and understanding of all the relevant facts would question the judge's impartiality." *In re Russell*, 464 Md. 390, 402 (2019). A party attempting to demonstrate that a judge is not impartial faces a high burden because there is a strong presumption in Maryland "'that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified.'" *Nathans Assocs. v. Mayor & City Council of Ocean City*, 239 Md. App. 638, 659 (2018) (quoting *Jefferson-El v. State*, 330 Md. 99, 107 (1993)), *cert. denied*, 463 Md. 539 (2019). We have explained:
>
> > To overcome the presumption of impartiality, the party requesting recusal must prove that the trial judge has "a personal bias or prejudice" concerning him or "personal knowledge of disputed evidentiary facts concerning the proceedings." *Boyd* [*v. State*, 321 Md. 69, 80 (1990)]. Only bias, prejudice, or knowledge derived from an extrajudicial source is "personal." .Where knowledge is acquired in a judicial setting, or an opinion arguably expressing bias is formed on the basis of information "acquired from evidence presented in the course of judicial proceedings before [her]," neither that knowledge nor that opinion qualifies as "personal." *Boyd*, 321 Md. at 77[.]

Id. (quotation marks omitted) (quoting *Jefferson-El*, 330 Md. at 107). When bias, prejudice, or partiality is alleged, this Court reviews a trial judge's decision on a motion to recuse for abuse of discretion. *See Scott v. State*, 175 Md. App. 130, 150 (2007).

Typically, the question of recusal "is decided, in the first instance, by the judge whose recusal is sought." *Surratt v. Prince George's Cnty.*, 320 Md. 439, 464 (1990). There are, however, "some circumstances in which the judge whose impartiality is questioned should not himself or herself decide the merits of a recusal request." *Id*. at 465. When the "asserted basis for recusal is personal conduct of the trial judge that generates serious issues about his or her personal misconduct, then the trial judge must permit another judge to decide the motion for recusal." *Id*. at 466. "[T]he recusal motion must set forth facts in reasonable detail sufficient to show the purported personal misconduct; mere conclusions as to lack of impartiality will not suffice. And it should be supported by affidavit or testimony or both." *Id*. at 467.

From June 2019 to February 2021, Judge David Boynton was specially assigned to this case. At some point, Father filed a complaint against the United States Department of the Treasury with the federal Equal Employment Opportunity Commission ("EEOC"), which resulted in litigation. According to Father, Judge Boynton's wife "is [a] named subject" in that matter. On that basis, Father filed a motion to recuse Judge Boynton, which Judge Boynton granted. Judge Bibi Berry then was specially assigned to this case.

Four weeks after Judge Berry's opinion and order was docketed, Father filed an "emergency motion to recuse" her and to transfer the action to another court. He asserted bias because she "may have" received documents and information in the federal EEOC portal pertaining to Father's pending litigation; "allowed and accepted as evidence" prior rulings by Judge Boynton "which manifested negative bias" toward Father and used them to assess his credibility; used "similar language and manifestations of recused Judge David Boynton" in her opinion, referenced his pending litigation, and discredited his testimony; did not appoint a Best Interest Attorney; and declined to shield or redact documents Father deemed sensitive. Further, Father "reasonably fears" the prior rulings and opinions by Judge Boynton "tainted and impaired" Judge Berry's impartial assessment of his character and credibility; "reasonably believes" that due to his ongoing litigation Judge Berry "may be acting in a retaliatory manner and such actions can negatively impact the child's well-being"; and thinks that Judge Berry is biased because the treasurer for her 2020 election campaign was a person who, based on her

name, "appears" to be "a close family relative of Judge David Boynton[,]" who also was on the ballot. Father "reasonably believes" the circuit court "cannot serve in the interest of justice fairly" because of a "perceived private and public relationship" between Judges Berry and Boynton and his wife. Finally, Father maintains that by presiding over this case, Judge Berry created "an unacceptable appearance of impropriety" and that her "remaining on this matter would not promote public confidence."

On September 22, 2022, Judge Berry entered an order denying Father's motion to recuse and to transfer. It stated that Father "failed to show any credible or reasonable basis" for her recusal.

Before this Court, Father contends Judge Berry was biased and should have recused herself because she had "communications" with Judge Boynton, "an issue [she] even discussed in her opinion." We find no merit in this contention.

Father's assertions of bias against Judge Berry are based on speculation and guesswork about supposed connections and communications between Judge Berry and Judge Boynton and/or his wife and supposed knowledge Judge Berry may have acquired about Father's EEOC litigation, none of which is supported by the record and some of which is based on out-of-context information. For example, Judge Berry did refer to Judge Boynton in her opinion, but not in any way that would evidence bias. In the context of finding that Father was not able to effectively communicate with Mother, Judge Berry observed:

> [Father's] communications with [Mother] tend to sway from the pertinent topics, and do not appear to this court to be designed to resolve anything or to make decisions for the child's benefit. Even a request to swap weekends so he can have Father's Day turned into a commentary about [Father's] supposed grave concerns about [Mother], past grievances, and even claims of discrimination and abuse of power of Judge Boynton. Pl.'s Ex. 9.

This reference to Judge Boynton does not reveal an improper communication between Judge Berry and Judge Boynton or any other evidence of bias.

We see nothing in the record to support Father's contention that Judge Berry was or appeared to be biased or impartial in her handling of this case. Accordingly, she did not abuse her discretion in denying Father's motion to recuse.

Tyler I, at 9-11.

In this appeal, Father invokes his prior allegations of bias against Judge Berry and points to what he contends is further evidence of Judge Berry's bias from both "her conduct and oral rulings" during hearings on March 8, 2022 and October 7, 2022. Father contends that during the March 8 hearing, "Judge Berry['s] bias was shown by giving [Mother] a substantial advantage" when she provided guidance to Mother by pointing that that if she did not call Father as a witness, the court "won't have any evidence of his income." In addition, Father argues that during the October 7 hearing, "Judge Berry['s] bias led her to get the facts wrong[,]" to admit the disallowed dental expenses over his objections, and to miscalculate his monthly child support in an amount that "has caused a significant financial burden on" him. Father asserts that his "motion for recusal should have been granted *nunc pro tunc*" given the "intentional" errors "due to now known bias given she is no longer assigned to the case."

Our prior decision forecloses any challenge based on the record that we reviewed in that case. Father's new claims of bias are also not supported in the record underlying this appeal. Once again, Father has not submitted an affidavit or evidence other than cherrypicked excerpts from two hearing transcripts. Even then, he does not point to any improper "personal knowledge of disputed evidentiary facts concerning the proceedings[.]" *See Boyd*, 321 Md. at 75.

Nor do we discern any bias from Judge Berry, either toward Mother or against Father. As explained in *Tyler I*, Father's bald assertions of bias based on speculation, guesswork, and misstatements of fact and law do not support recusal. *See Tyler I*, at 11.

The cited excerpt from the March 8 motion hearing before Judge Berry shows nothing more than the judge explaining to an unrepresented litigant the potential evidentiary consequences of not questioning the opposing party about his claims. This does not constitute unfair bias requiring recusal.

Nor does the Child Support Order entered on November 21, 2022, support Father's claim of bias. Significantly, the October 7 evidentiary hearing upon which Judge Berry predicated that order was conducted by Magistrate Lili Khozeimeh, again, with Father represented by counsel and Mother *pro se*. The fact that months after the hearing and rulings challenged here, this Court would hold that Father cannot be required to reimburse Mother for $481.22 in dental expenses, does not constitute evidence of bias.

After reviewing the record, we detect no improper knowledge of disputed evidentiary facts pertaining to this child support dispute. Nor was there any inappropriate judicial assistance or resistance to either party. Instead, the transcripts and orders show an even-handed consideration of the parties' evidence and arguments. On this record, the denial of Father's demands for Judge Berry's recusal was not an abuse of discretion.

IV. Motion to Alter or Amend

In his last assignment of error, Father contends that the circuit court erred in denying his motion to alter or amend the November 2022 Judgment "without justification." Yet Father does not identify any specific grounds, offer supporting argument, or cite to the record.

We will not conjure reasons where an appellant has supplied none. *See* Md. Rule 8-504(a)(6) (Appellate briefs must contain "[a]rgument in support of the party's position

on each issue."). That appellate courts will not "rummage in a dark cellar" to find support for appellate contentions is well-established. *See HNS Dev., LLC v. People's Counsel for Balt. Cnty.*, 425 Md. 436, 459 (2012) ("The brief provides only sweeping accusations and conclusory statements" and "we are disinclined to search for and supply HNS with authority to support its bald and undeveloped allegation"); *Comptroller v. Aerial Prods.*, 210 Md. 627, 644-45 (1956) (collecting cases).

Consequently, Father's failure to provide legal analysis to support his appellate contention constitutes a waiver of that argument. *See, e.g.*, *HNS Dev.,* 425 Md. at 459; *Honeycutt v. Honeycutt*, 150 Md. App. 604, 618 (2003) ("The Estate argues that the circuit court was legally incorrect when it granted the Bank's Motion for Summary Judgment; however, the Estate failed to adequately brief this argument, and thus, we decline to address it on appeal." (footnotes omitted)); *Wallace v. State*, 142 Md. App. 673, 684 n.5, *aff'd*, 372 Md. 137 (2002) ("Arguments not presented in a brief or not presented with particularity will not be considered on appeal." (cleaned up)).

JUDGMENT AGAINST APPELLANT ENTERED ON NOVEMBER 21, 2022 VACATED AND CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY BETWEEN APPELLANT AND APPELLEE.