Circuit Court for Prince George's County
Case No. CAD09-20878

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3418

September Term, 2018

KHAYANGA NAMASAKA

v.

MARK BETT

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: September 12, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Khayanga Namasaka ("Mother"), appeals a judgment by the Circuit Court for Prince George's County that granted appellee Mark Bett's ("Father") motion to modify child support. Perceiving no error, we affirm the circuit court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The parties, who were divorced in 2010, have two minor children. Although not relevant to this appeal, we note that the 2010 divorce decree required Father to pay $2,221 per month in child support. In June 2012, Father filed his first motion to modify child support, which ultimately led to an agreement between the parties reducing Father's support obligation to $1,432 per month. That agreement, based on a child support guidelines worksheet submitted by the parties, was incorporated into an Order dated October 4, 2012. Relevant to this appeal, that guidelines worksheet reflected Mother's earnings of $9,000 per month and Father's earnings of $10,833 per month, resulting in Father's obligation to pay $1,432 per month in child support based on a shared custody formula.

On November 12, 2013, Father filed his second motion to modify support, alleging a material change in circumstances due to a reduction in his income to $2,610 per month. The merits hearing for that second motion was originally set before a magistrate on September 3, 2014, but the parties consented to a continuance of that hearing. In granting the continuance, the magistrate ordered that "the parties shall provide proof of income" at the next hearing. At the next hearing on October 15, 2014, the magistrate expressed concern about Father's representations of his self-employment income and, as a result, the magistrate continued the case again to allow Father to arrange for his accountant to testify

about his personal and business tax returns.

The parties appeared again before the magistrate on November 20, 2014. At that hearing, Father's accountant, Amani Ahmed, C.P.A., testified as an expert witness. Through Ms. Ahmed, Father introduced his 2011, 2012, and 2013 personal income tax returns as well as the 2011, 2012, and 2013 tax returns for two of his companies: Keassons, Inc. and Soibett Enterprises, LLC. Because a third company, HPW Properties, LLC, was formed in 2012, only 2012 and 2013 tax returns were produced for that company. After Ms. Ahmed testified that Father's 2013 individual tax return showed that he earned only $12,309 in gross annual income, the magistrate extensively questioned her. In the course of the magistrate's examination, Ms. Ahmed conceded that two additions should have been made to Father's 2013 income: 1) a $17,387 addition related to a depreciation deduction on the HPW Properties tax return that was merely a paper expense, i.e. a tax deduction that was not an out-of-pocket expense to Father; and 2) a $3,000 increase related to Father's receipt of capital gains. Adding those two adjustments to Father's stated 2013 income increased Father's gross annual income to over $32,000. According to Ms. Ahmed, Father's income had decreased due to a changing real estate landscape involving fewer foreclosures and short sales. After concluding the evidentiary part of the hearing, the magistrate scheduled closing arguments for January 7, 2015.

After hearing closing arguments on January 7, 2015, the magistrate concluded that Father had established a material change in his financial circumstances since the October 4, 2012 Order, specifically that Father's income had decreased from $10,833 per month as reflected in the 2012 Order to $2,718 per month. In calculating the child support guidelines

pursuant to the shared custody formula, the magistrate made no change to Mother's income or to the number of Father's overnight visitations (128). Applying the guidelines, the support obligation for the two children changed dramatically. Instead of Father paying Mother $1,432 per month as required by the 2012 Order, the magistrate determined that Father would now *receive* $368 per month from Mother. The magistrate's findings and recommendations were placed on the record at the conclusion of the January 7, 2015 hearing.

Mother filed exceptions to the magistrate's recommendations, and the circuit court, after a hearing, issued an "Opinion and Order of Court" in which the court denied Mother's exceptions.[1] Mother timely noted this appeal.

STANDARD OF REVIEW

In a court trial, "the appellate court will review the case on both the law and the evidence" and the court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous," giving "due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). In a case such as this where the magistrate rather than the trial judge determined the credibility of the witnesses, the provision of Rule 8-131(c) requiring us to give "due regard" to the trial court's evaluation of the witnesses is inapplicable. *In re Danielle B.*, 78 Md. App. 41, 61 (1989). In *Danielle B.*, we articulated the appropriate standard of review:

[1] Mother's exceptions were originally denied without explanation by a different judge. On Mother's appeal, we vacated that decision and remanded the case for further proceedings. *Namasaka v. Bett*, No. 776, Sept. Term 2015 (filed Sept. 8, 2016).

> [W]hat we review on appeal is precisely what the juvenile court judge had before him. Our review, then, would be whether, based on the written testimony, the juvenile court judge was clearly erroneous in adopting the factual findings of the [magistrate] and whether he erred in adopting her recommendations that the petitions be dismissed.

Id. at 62. Moreover, "the question of whether to modify an award of 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.'" *Tucker v. Tucker*, 156 Md. App. 484, 492 (2004) (quoting *Smith v. Freeman*, 149 Md. App. 1, 21 (2002)).

DISCUSSION

I.

Mother first argues that the court misconstrued Md. Code (1984, 2012 Repl. Vol.), § 12-203(b) of the Family Law Article ("FL"), which provides:

> (b) *Verification of income.* — (1) Income statements of the parents shall be verified with documentation of both current and past actual income.
>
> (2) (i) Except as provided in subparagraph (ii) of this paragraph, suitable documentation of actual income includes pay stubs, employer statements otherwise admissible under the rules of evidence, or receipts and expenses if self-employed, and copies of each parent's 3 most recent federal tax returns.
>
> (ii) If a parent is self-employed or has received an increase or decrease in income of 20% or more in a 1-year period within the past 3 years, the court may require that parent to provide copies of federal tax returns for the 5 most recent years.

Mother points out that the statute requires that the parents' "current and past actual income" must be "verified with documentation." Turning to her allegation of error, Mother claims that the trial court erred in interpreting FL § 12-203(b). In her brief, she writes that, whereas the statute "says, unequivocally, that one is required to present receipts and expenses (if self-employed), **and** copies of the last three tax returns[,]" the trial court

allowed Father to prove his income with *only* his tax returns. As Mother sees it, Father's failure to produce his business receipts and expenses constituted a clear violation of the statute.

We review an interpretation and application of a statute to determine "whether the trial court's conclusions are 'legally correct' under a *de novo* standard of review." *Schisler v. State*, 394 Md. 519, 535 (2006). We need not spend much time addressing Mother's statutory interpretation argument, however, because we rejected the same argument in *Tanis v. Crocker*, where we stated:

> Appellant argues that § 12–203(b)(2)(i) required the trial court to consider each of appellee's pay stubs, receipts and expenses (because appellee is self-employed), and his three most recent federal income tax returns. We disagree. Section 12–203(b)(2)(i) simply lists several documents that are suitable documentation of a parent's actual income. In order to establish his or her actual income, a party to a child support case could produce any one, two, or all three of the items listed in § 12–203(b)(2)(i). Additionally, § 12–203(b)(2)(ii) states that a trial court *may,* when certain criteria are met, require a party to produce income tax returns for his or her last five years. It is not mandatory. Section 12–203(b) does not require that a parent's income tax returns be considered in order to resolve a dispute concerning that parent's income.

110 Md. App. 559, 572 (1996).

Here, the trial court concluded that Father complied with the statute by producing his three most recent personal and business tax returns.[2] The court's interpretation of the statute was consistent with our decision in *Tanis*, and consequently we see no error.

[2] As noted previously, only 2012 and 2013 tax returns were produced for HPW Properties, LLC because it was a relatively new company.

II

Mother next argues that the court erred in finding "a material change in circumstances . . . based on [Father's] change in income in a single year from October 4, 2012 to November 2013." As best we can glean from her brief, Mother appears to argue that the trial court erred in relying on only this single year to find a material change in circumstances. Mother correctly acknowledges that, "[a]s a practical matter, the court compares the guidelines worksheet from the [operative] court order to the proposed guidelines worksheet for the requested change."

In this case, the court used the proper legal analysis as acknowledged by Mother in her appellate brief. The court noted that the extant child support order at the time of the modification hearing—the October 4, 2012 Order—was based on Father's income of $10,833 per month. The court then noted that the magistrate determined that Father's 2013 income was $2,718 per month. We agree with the court that Father's reduction in monthly income from $10,833 in October 2012 to $2,718 in 2013 constituted a substantial change in circumstances warranting a modification of child support.[3]

Mother also contends that the court abused its discretion in refusing to consider Father's 2014 income up to the November 20, 2014 hearing. However, Mother first raised the issue of Father's 2014 income during closing arguments on January 7, 2015, long after

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[3] In this section of her brief, Mother asserts that Father failed to produce a tax return or any other documentation for a company identified as Pinnacle Properties, LLC. Mother failed to preserve this argument for appellate review because she never requested any relief related to Pinnacle when Ms. Ahmed testified that, although she had prepared a tax return for Pinnacle, she did not have Pinnacle's documentation with her.

the evidentiary portion of the modification hearing had concluded. Our review of the record reveals that the only mention of Father's 2014 income during the evidentiary hearing was: 1) Ms. Ahmed's testimony that, as of the date of the hearing in November 2014, she had not performed any work concerning Father's 2014 income; 2) the introduction of a profit and loss statement for Keassons, Inc. covering the period between January 1, 2014, and November 17, 2014; and 3) Father's testimony on cross-examination that the profit and loss statement indicated "a loss for 2014," although he had hope for financial improvement. Mother made no effort to introduce any evidence of Father's 2014 income. We reject Mother's claim that the court abused its discretion in not considering Father's 2014 income because Mother failed to raise that issue during the evidentiary hearing. *See* Maryland Rule 8-131(a) (providing that, ordinarily, an appellate court will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court").

III.

Mother's final argument concerns the magistrate's reliance on Ms. Ahmed's expert testimony. In this regard, Mother's principal concern is that Ms. Ahmed "did not verify the information, but **assumed** the expenses listed and provided by [Father] were directly related to income production for the businesses, and further assumed they were customary and necessary."

We note that the weight to be given to expert testimony is a question for the fact finder. "The trier of fact may believe or disbelieve, accredit or disregard, any evidence introduced. We may not—and obviously could not—decide upon an appeal how much

weight must be given, as a minimum to each item of evidence." *Walker v. Grow*, 170 Md. App. 255, 275 (2006) (quoting *Great Coastal Express, Inc. v. Schruefer*, 34 Md. App. 706, 725 (1977)).

Here, Ms. Ahmed, a certified public accountant licensed in Maryland, was accepted as an expert without objection. Ms. Ahmed not only prepared Father's personal tax returns, but she also prepared tax returns for his three companies. She verified that she had personally done most of the bookkeeping for both Soibett Enterprises and HPW Properties, although she acknowledged that she does not independently verify all business receipts and expenses. Moreover, the magistrate extensively examined Ms. Ahmed, resulting in Ms. Ahmed making some upward adjustments to Father's income. By accepting Ms. Ahmed's testimony concerning Father's income, the magistrate obviously found her credible. As the fact finder, it was well within the magistrate's prerogative to assess Ms. Ahmed's credibility, and we discern no error in the magistrate's reliance on her expert testimony.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.