

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1169

September Term, 2015

ALAN CORNFIELD

v.

ELIZABETH FERIA

Eyler, Deborah S.,
Nazarian,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 27, 2017

*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.

Alan Cornfield appeals from an order of the Circuit Court for Montgomery County, awarding counsel fees and reasonable expenses sought by appellee, Elizabeth Feria, and an award of fees to the court-appointed best interest attorney.

Cornfield presents two questions for our review, which we have slightly recast:¹

1. Did the court abuse its discretion in granting the Motion for Counsel Fees and Reasonable Expenses?
2. Did the court abuse its discretion in ordering Cornfield to pay all of the Best Interest Attorney’s fees?

Finding no abuse of discretion, we shall affirm the judgments of the circuit court.

FACTS and PROCEEDINGS

Cornfield and Feria are the parents of C., who was born in August 2002, some eight years into their relationship. In July 2009, Feria filed a complaint for custody.

In November 2009, the court appointed a best interest attorney (“the BIA”) to represent C.’s interests in the proceedings. In March 2010, the parties reached an agreement regarding custody, which was memorialized in a Consent Custody Order. Pursuant to the agreement and order, C.’s primary residential custody was granted to Feria. No issues of custody or visitation are presented in this appeal – we are here dealing only with Cornfield’s dispute with the trial court’s award of fees and expenses.

¹Cornfield’s questions presented *verbatim* are:

1. Whether the Circuit Court erred in granting Appellee’s Motion for Counsel Fees and Reasonable Expenses?
2. Whether the Trial Court erred when it required the Appellant to pay all of the outstanding fees owed to the best interest attorney?

In November 2013, Cornfield filed a Petition for Modification of Custody, seeking “sole legal custody of [C.] or, in the alternative, joint legal custody with tie-breaking authority,” and “primary physical custody of” C.² The court scheduled a hearing for September 8, 2014, and ordered each party to file a “long form financial statement.”

In February 2014, Feria filed a Motion for Counsel Fees and Reasonable Expenses, in which she requested “an immediate award of” \$50,000 for “counsel fees and expenses[] necessary for her to defend” Cornfield’s petition. Feria later filed a supplement to the motion.

In March 2014, the court ordered that a “complete private custody evaluation” of the parties and C., and designated Paul C. Berman, Ph.D., as the “Custody Evaluator.” The court ordered Feria to pay \$1,000, and Cornfield to pay \$7,000, toward the Custody Evaluator’s retainer.

In April 2014, Feria filed a Motion to Compel Discovery and for Sanctions. She contended that Cornfield had failed to file a financial statement and had “produced no documents” in response to requests for his tax returns, documents necessary to prepare a tax return, and documents relating to bank accounts. Cornfield filed an opposition to the motion, stating: “In an effort to streamline the litigation in this matter, Dr. Cornfield has stipulated that he has the ability to pay a reasonable sum of attorney’s fees, although Dr. Cornfield generally disputes that any award of fees to Ms. Feria is appropriate.”

² The underlying reasons for the requested custody modification, which resulted in the award of C.’s residential custody to Cornfield, are found in greater detail in *Feria v. Cornfield*, No. 1882, Sept. Term, 2015, currently pending before this Court.

The court denied the Motion to Compel Discovery and for Sanctions, and deferred Feria’s Motion for Counsel Fees and Reasonable Expenses, and supplement, “to be heard at the hearing” on Cornfield’s [custody] petition.

On September 8-15, 2014, the court heard Cornfield’s petition and Feria’s motion and supplement. Following the hearing, Feria filed a Renewed Motion for Attorneys’ Fees and Expenses, and the BIA filed a Petition for Fees and Costs. In October 2014, the court ordered the parties to pay the BIA “outstanding fees and costs in the amount of \$30,219, with [Feria] paying the amount of \$3,021, and [Cornfield] paying the amount of \$27,198.”

In January 2015, the BIA filed an “Affidavit and Request for Judgement [sic],” asserting that Feria “made no payment toward the fees ordered by” the court, and “request[ed] that judgment be entered against” her. Feria responded that she was “without funds to pay” the BIA, and asked the court to hold the request “in abeyance . . . until after consideration of the financial circumstances of the parties . . . and a decision with respect to her application for reasonable attorneys fees.”

In February 2015, the court held a hearing on Feria’s motion. At the hearing, the BIA made an oral motion requesting attorney’s fees for his services, stating that, subsequent to the September 2014 hearing, additional time resulted in an additional \$9,100 in fees.

The Hearing

Feria testified that she operates EF America Inc., a bookkeeping and payroll service, and a real estate business known as Elizabeth Feria Enterprises. Feria stated that she and Cornfield commenced their relationship eight years prior to C.’s birth.

Feria testified that, at the time of the hearing, she was four months in arrears on the payment of her home mortgage and three months in arrears on office rent. She stated that, in 2014, her income from EF America Inc. was “somewhere around [\$]33 or \$35,000,” and that her income from Elizabeth Feria Enterprises would not exceed \$10,000. She further stated that, in 2013, her total income was \$58,000.

During her testimony, Feria submitted into evidence an invoice prepared by her counsel that indicated, as of September 22, 2014, the total amount owed by Feria “for professional services rendered” was \$148,639.99.

Feria also submitted into evidence a second financial statement, which was completed seven months after she filed her February 2014 financial statement, in which she “solemnly affirm[ed] under the penalties of perjury that” as of October 8, 2014, she had \$584,400 in assets and \$735,231 in liabilities. Feria further affirmed that her monthly income was \$4,961 and her monthly expenses totaled \$5,304.

Feria testified that in June 2014, she, her sisters, and C. took a trip “to climb Kilimanjaro,” for which she spent “a total of \$11,000.” Feria also testified that, in 2012, she and C. visited her sister in London.

During cross-examination, Feria testified that, during her relationship with Cornfield, he told her that “he makes over . . . \$1,000,000 just on bank interest.” Feria

stated that she owns real estate worth \$525,000, which is subject to a \$349,000 mortgage balance. She also stated that she owns two vehicles: a 2004 Lexus truck and a 2012 Mercedes auto. She admitted that, in March 2014, she traveled to Peru; in 2013, she and C. traveled to Tahiti; and in 2012, she and C. traveled two times to Peru. Feria stated that her mother paid for the “tickets” to Peru.

Also during cross-examination of Feria, Cornfield offered into evidence a U.S. Corporation Income Tax Return for 2013, in which EF America Inc. declared a total income of \$386,575. The return reported deductions of \$81,890 for salaries and wages, \$78,156 for office supplies, \$21,246 for legal and professional fees, and \$9,743 for car expenses, as well as various other expenses, a total of \$218,411. Cornfield also submitted into evidence a 2013 U.S. Income Tax Return for Elizabeth Feria Enterprises (an S Corporation) reporting a total income of \$83,671, with deductible expenses in the amount of \$76,534, including \$48,753 for salaries and wages, and \$8,965 for auto expenses.

Cornfield also submitted into evidence “Profit & Loss” statements prepared by Feria. As to EF America Inc., Feria stated that, from January 2014 through August 2014, the business had a gross profit of \$163,653.44, and total expenses of \$163,828.50. As to Elizabeth Feria Enterprises, Feria stated that, from January 2014 through August 2014, the business had income of \$54,031.70, and total expenses of \$54,152.75.

Finally, Cornfield submitted into evidence monthly statements of charges to an American Express credit card in Feria’s name. Feria testified that the credit card account

is “a corporate account” paid from a “business bank account.” The statements reflect the following charges, *inter alia*:

- In January 2014, three charges totaling \$1,292 for items from the Washington Capitals, and six charges totaling \$794.46 at Liberty Mountain in Pennsylvania.
- On February 17, 2014, two charges totaling \$559.87 at a “beauty/barber shop” known as “Red Door Salon.”
- On March 6, 2014, two charges totaling \$496.62 at a jewelry, watch, and silverware store known as “Santafe Duty Free.”
- From May 2013 to May 2014, charges for items at Saks Fifth Avenue, Nieman Marcus, and Bloomingdale’s totaling more than \$12,000.00.
- From November 2013 to June 2014, charges for items from iTunes totaling about \$1,427.29.

During redirect examination, Feria testified that, in addition to the income declared in the profit & loss statements, she expected to receive two commissions totaling \$25,000.

Cornfield testified that his business operates in five offices, employs 22 people, and that the annual “gross receipts of these organizations” is “[a]bout \$2,000,000.” Cornfield stated that he had “not filed a long form financial statement,” and did not remember whether he had been ordered to do so.

In May 2015, the court issued a Memorandum Opinion in which it stated, in relevant part:

[Feria] operates a small business in Wheaton focusing mainly on real estate transactions. Her 2013 W2 shows earnings of \$58,000 and she estimates her 2014 earnings to be \$40,000. [Feria] testified she is currently three months behind in both her home mortgage and commercial rent for her business office. [Feria] noted that there is a potential for her to earn between

\$10,000 and \$20,000 from two pending commissions, though neither have been realized.

To date, [Cornfield] has not filed a long form financial statement. [Cornfield] is the owner of a business providing chiropractic services. The business has five offices and 22 employees with gross receipts totaling approximately two million dollars annually. [Cornfield] has made statements regarding a personal wealth in excess of a million dollars.

* * *

Upon review of the evidence, this [c]ourt finds that [Cornfield's] financial status vastly outweighs [Feria's]. After considering the financial status and needs of each party, the [c]ourt concludes that [Cornfield] has the resources to pay a portion of [Feria's] legal fees as well as all of the BIA's fees and that there is good cause to require him to pay these sums. As stated above, the [c]ourt finds that the litigation [preceding and following the September 2014 hearing] was not brought in bad faith and that [Feria] was justified in maintaining her claims. Conversely, several of the discovery requests made by [Cornfield] were in an attempt to adequately verify [Feria's] financial resources, noting that the income stated by [Feria] was inconsistent with her spending patterns. Though not unwarranted, the [c]ourt finds this hypocritical as [Cornfield] has also, and more successfully, engaged in these same tactics having managed to essentially evade the filing of any solid piece of financial information. [Cornfield] indeed stipulated that he has the ability to pay reasonable attorney's fees in order to streamline the litigation is [sic] this matter; a stipulation that specifically did not include [Feria's] legal fees. Despite the limitation on this stipulation, the evidence supports the finding that [Cornfield] has the ability to contribute to [Feria's] legal fees from his substantial resources.

[Feria's] original Motion for Attorneys' fees requested relief of \$50,000.00, the amount expended litigating the modification hearing before Judge Johnson. [Feria's] counsel has since submitted an updated accounting. This accounting includes \$1,645.00 in fees relating to the drafting of a consent order after the . . . hearing as well as \$14,775.00 in fees relating to a BIA initiated motion. The [c]ourt finds it appropriate to award [Feria] the sum of these expenses totaling \$66,420.00. The [c]ourt will note that even with this award [Feria] will still owe over \$100,000.00 in attorney's fees.

The Best Interest Attorney's ledger regarding services rendered in this case reflects an outstanding balance of \$11,859.90 in fees and expenses. The [c]ourt has reviewed the affidavit and the statements and finds that the fees

and expenses incurred were necessary and reasonable. The [c]ourt notes that [Cornfield] has already paid \$24,500 toward the outstanding balance. While payment of the BIA was originally to be jointly and severally between the parties, the [c]ourt’s findings above regarding [Cornfield’s] ability to pay are applicable to this request as well. As such, [Cornfield] is to pay the current outstanding balance of \$11,859.90.

DISCUSSION

I. Counsel Fees and Expenses

We review “[t]he award of counsel fees . . . under the abuse of discretion standard.” *Meyr v. Meyr*, 195 Md. App. 524, 552 (2010) (citation omitted). “A circuit court’s decision in this regard will not be reversed unless a court’s discretion was exercised arbitrarily or the judgment was clearly wrong.” *Id.* (internal citation and quotations omitted).

Md. Code (1999, 2012 Repl. Vol.), § 12-103(a) of the Family Law Article (“FL”), empowers a court to award costs and counsel fees to “enforce a decree of custody.” FL § 12-103(b) includes the required considerations for an award and provides:

Before a court may award costs and counsel fees under this section, the court shall consider:

- (1) the financial status of each party;
- (2) the needs of each party; and
- (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

Cornfield contends that the court abused its discretion in several aspects. First, he claims that the court ordered payment of the fees and expenses for “[t]he mere fact that [he] has superior resources.” We disagree. Of course, the relative resources of the parties is a factor to be considered by the court in considering such an award. The court expressly

granted the motion on the additional grounds that the litigation was justified, and that Cornfield, in order to “evade the filing of any solid piece of financial information,” had “stipulated that he has the ability to pay reasonable attorney’s fees.” There is insufficient merit to Cornfield’s argument to justify reversal.

Cornfield next claims that “no reasonable person would have reached the . . . court’s conclusion that an award of fees was warranted in this case,” for the following reasons:

- Feria “spent significant sums of money, which could have been used to pay her attorney and litigation costs, on non-essential luxury items;”
- “It is clear” that Feria’s “actual [2013] income grossly exceeded” \$58,000;
- Feria “clearly hides her income by claiming unwarranted business expenses;”
- “The trial court also improperly discounted [Feria’s] assets,” including her residence and vehicles;
- Cornfield “has incurred . . . significant costs associated with the” BIA and court custody evaluator; and,
- Feria’s testimony was “unbelievable” and “disingenuous.”

Even had the court agreed that the challenged purchases were improper, that Feria had used business income to pay personal expenses, or that Feria was required to use the equity in her home and vehicles to pay her counsel, Cornfield’s income and assets would still be vastly superior. Also, the amount that the court ordered Cornfield to pay was less than 40% of the total amount owed by Feria to her counsel, and, as the court noted, Feria “will still owe over \$100,000.00 in attorney’s fees.” Moreover, Cornfield argues that,

having previously been ordered to pay the fees of the BIA and child custody evaluator, the court should not have ordered contribution to Feria’s counsel fees. Cornfield cites no authority for that proposition, and we have found none.

Finally, with respect to the believability of Feria’s testimony, we give due regard to the opportunity of the trial court to judge her credibility. *See* Rule 8-131(c) (an appellate court “will give due regard to the opportunity of the trial court to judge the credibility of . . . witnesses”).

For these reasons, we conclude that a reasonable person could have reached the court’s conclusion that an award of fees was warranted on this record. We find no abuse of the court’s considerable discretion.

Cornfield next contends that the court’s determination that he “had the ability to pay from his substantial resources” was improper, because “the record is devoid of information regarding [his] financial status.” We are not persuaded, and hasten to add that any sparsity of the record relating to his financial condition due in large part to his failure to provide financial information as ordered. Cornfield testified that the “gross receipts” of his business are “[a]bout \$2,000,000.” Also, Feria testified that, during her relationship with Cornfield, he stated that “he makes over . . . \$1,000,000 just on bank interest.” We give due regard to the opportunity of the trial court to find this testimony credible. The record is sufficient to support the court’s orders based on Cornfield’s ability to pay.

Finally, Cornfield claims that the court’s determination of Feria’s 2013 and 2014 income was “clearly erroneous,” because “the only logical conclusion that this Court or

anyone else can draw[] is that [Feria] has additional income which enables her to spend in this manner, and her tax returns are misleading and obviously inaccurate.” We again point out, even had the court concluded that Feria underreported her income and filed “misleading” or “inaccurate” tax returns, Cornfield’s income and assets were vastly superior and adequate to justify the award.

The trial court expressly and carefully considered each party’s financial status, noting that Cornfield’s status “vastly outweighs” that of Feria. The court expressly considered each party’s needs, noting that Feria “is currently . . . months behind in both her home mortgage and commercial rent for her business office,” and Cornfield “stipulated that he has the ability to pay reasonable attorney’s fees.” Finally, the court expressly considered whether there was substantial justification for bringing, maintaining, or defending the proceeding, finding that the litigation preceding and following the September 2014 hearing “was not brought in bad faith and that [Feria] was justified in maintaining her claims.” These considerations were sufficient to support the granting of the Motion for Counsel Fees and Reasonable Expenses.

The court did not abuse its discretion in granting the Motion for Counsel Fees and Reasonable Expenses.

II. Fees of the Best Interest Attorney

Cornfield contends that the court “abused its discretion in requiring [him] to pay the remaining . . . fees owed to the” BIA. In a custody action, Family Law Article § 1-202(a) provides that “the court may: (1) . . . (ii) appoint a lawyer who shall serve as a best interest

attorney to represent the minor child . . . and (2) impose counsel fees against one or more parties to the action.” The Court of Appeals has stated that, “whenever a court assesses guardian ad litem fees . . . , the court should consider various factors, such as those articulated in [FL §] 12–103(b)[.]” *Taylor v. Mandel*, 402 Md. 109, 134 (2007). The court’s consideration of the factors articulated in FL § 12-103(b) in resolving the Motion for Counsel Fees and Reasonable Expenses was likewise sufficient to support the court’s assessment of the BIA’s fees.

Cornfield also asserts that “[n]o reasonable person could adopt the . . . court’s conclusion that an award [of the BIA’s fees] was equitable and just in this case,” for the same reasons that he argues that “no reasonable person would have” awarded Feria counsel fees. For the reasons we stated earlier in addressing Feria’s motion, we conclude that a reasonable person could adopt that conclusion in resolving the BIA’s request.

In conclusion, we find no abuse of the trial court’s discretion in ordering Cornfield to pay counsel fees, reasonable expenses of litigation, or the BIA’s fees, nor in the amounts ordered.

**JUDGMENTS OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**