

Circuit Court for Howard County
Case No. 13-C-15-104940

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 596

September Term, 2020

TORI SHAWY

v.

HAZI MOHAMED CHAOUI

Arthur,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 7, 2021

*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.

This case presents a single issue: whether the circuit court erred in its calculation of the amount Ghazi Mohamed Chaoui owed to Tori Shawy as reimbursement for taxes Ms. Shawy paid on alimony she received in 2018. We hold that the court did not err and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Tori Shawy, appellant, and Ghazi Mohamed Chaoui, appellee, were granted an absolute divorce on February 5, 2016. Shortly before their divorce, the parties signed a Divorce Settlement Agreement (the “Agreement”), which was subsequently incorporated but not merged into the judgment of divorce. The Agreement provides that Mr. Chaoui is to pay \$3,850 per month to Ms. Shawy as permanent alimony “for the rest of [her] natural life as long as she remains single.”¹ The Agreement further requires Mr. Chaoui to pay Ms. Shawy’s income taxes resulting from his alimony payments, providing as follows:

Husband and wife agree that Ghazi Mohamed Chaoui shall pay taxes due by Tori Shawy to the Internal Revenue Service on alimony and shall use a tax deduction of all alimony amount paid to Tori Shawy.

On May 6, 2019, Ms. Shawy filed a Petition for Contempt alleging that Mr. Chaoui had failed to reimburse her for taxes she paid on alimony for 2017 and 2018. At the outset, we note that the only issue in this appeal is the amount of income taxes due for alimony payments in 2018. In her petition, Ms. Shawy alleged that the income taxes attributable to 2018 alimony payments amounted to \$6,370.49. She alleged that, because alimony

¹ The Agreement also provided that, in the event of Mr. Chaoui’s unemployment, the alimony would be reduced to \$1,500 per month.

payments constituted 44.4% of her 2018 income, Mr. Chaoui should reimburse her 44.4% of the total income taxes she owed for 2018.

Mr. Chaoui responded to the petition, admitting that he owed Ms. Shawy a reimbursement for income taxes, but averred that he only owed \$2,525. For his calculation, he subtracted all of Ms. Shawy's itemized deductions from the amount of alimony he paid, and then consulted a tax table to find the amount due on that amount of taxable income.

The Circuit Court for Howard County held a merits hearing on August 2, 2019. Both parties appeared as self-represented litigants, which we shall see produced a less than clear and complete record. Neither party presented any documentary evidence or expert witness testimony at the hearing. Despite multiple filings with numerous attachments, the only *evidence* before the court was Ms. Shawy's and Mr. Chaoui's testimony.

At the beginning of her testimony, Ms. Shawy testified that Mr. Chaoui paid a total of \$48,701.76 in alimony in 2018. According to Ms. Shawy, \$7,386 of the total amount represented 2017 arrears paid in July 2018, and the remainder (\$41,315.76) represented Mr. Chaoui's regular monthly alimony payments (she contended that additional arrearages accumulated in 2018 as well). Later, when she was addressing her allegation that Mr. Chaoui failed to pay the full \$46,200 of regular monthly alimony payments due in 2018, she agreed that Mr. Chaoui paid \$3,850 each month from January to July 2018, but only paid \$3,470 (representing direct mortgage payments) each month from August to December. According to this version of her testimony, Mr. Chaoui paid a total of \$44,300

in regular monthly alimony payments in 2018.²

In his response to Ms. Shawy's petition, Mr. Chaoui initially accepted Ms. Shawy's contention that he paid \$48,701.76 in 2018. Based on that figure, he testified that Ms. Shawy's income taxes amounted to \$2,525. In concluding that he owed Ms. Shawy \$2,525, he used the \$48,701.76 alimony figure and from that he deducted \$26,143.76, representing all of Ms. Shawy's 2018 itemized deductions, and applied the tax table to the balance of \$22,558. Upon the court's inquiry at the hearing, however, Mr. Chaoui stated that he paid a total of \$46,200 in alimony in 2018. In this version of Mr. Chaoui's testimony, he indicated that he reduced the \$46,200 by the standard deduction of \$10,000, and applied the tax table to the balance of \$36,200. Yet, despite the substantially different alimony and deduction amounts in these two calculations, he claimed he still owed only \$2,525. Mr. Chaoui also provided other testimony that contradicted both the \$48,701.76 and the \$46,200 alimony figures that he alluded to in his testimony.

The circuit court issued an order on March 25, 2020, accepting Mr. Chaoui's argument that he only owed \$2,525 in tax reimbursement based on \$46,200 in alimony payments minus the \$10,000 standard deduction.³ Ms. Shawy filed a Motion for Reconsideration on April 13, 2020. In that motion, she advanced several alternative methods of calculating the tax reimbursement, with results ranging from \$4,253 to \$10,359.

² During her cross-examination of Mr. Chaoui, Ms. Shawy stated that Mr. Chaoui had paid \$379.74 per month less than he owed from August to December 2018. Applying that number results in a total payment of \$44,301.30.

³ The court also ordered Mr. Chaoui to pay \$1,898.70 in alimony arrearages.

In response to Ms. Shawy’s motion, the court issued a revised order on July 24, 2020, recognizing an error in its original calculation of the tax reimbursement. In its revised order, the court rejected Mr. Chaoui’s calculation that he only owed taxes based on \$36,200 (*i.e.*, \$46,200 in alimony less the \$10,000 standard deduction), and instead calculated the taxes based on \$46,200 without any deductions. Confronted with inconsistent testimony from both parties concerning the amount paid to Ms. Shawy in 2018, the court provided its reasoning for the amended order in a footnote:

The Court notes that [Ms. Shawy] avers that the alimony paid in 2018 was not \$46,200.00, but was actually in the amount of \$48,701.76, due to [Mr. Chaoui] owing \$7,386.23 in arrearages. She further represents that [Mr. Chaoui] paid only \$41,315.52 in alimony, mostly by paying her mortgage, interest, and taxes with part of her alimony. Given the litigious behavior of both parties, and the inability to agree on the amount of alimony *actually* paid to [Ms. Shawy] in 2018, the Court finds that \$46,200.00 shall be used in calculating the 2018 tax amount because that is what should have been paid to [Ms. Shawy].

The court then consulted the 2018 tax table published by the Internal Revenue Service and concluded that \$46,200 of income would result in a tax burden of \$6,109. Because Mr. Chaoui had already paid \$2,525 pursuant to the original order, the court’s revised order required him to pay the difference of \$3,584.

We conclude that the court did not err or abuse its discretion in determining the amount of reimbursement due to Ms. Shawy for taxes resulting from Mr. Chaoui’s 2018 alimony payments.⁴

⁴ After noting her appeal, Ms. Shawy filed subsequent motions in the circuit court regarding this issue. We need not discuss these motions in order to resolve this appeal.

DISCUSSION

Ms. Shawy’s principal argument is that, in calculating the tax reimbursement, the court erred by using \$46,200, the amount that “should have been paid,” instead of \$48,107.76, the amount that “was actually paid.” She argues that both parties agreed in their pleadings that the total alimony paid in 2018 was \$48,107.76. We note, however, that Ms. Shawy did not produce any evidence indicating that Mr. Chaoui previously agreed that he had paid \$48,107.76 in 2018. The only evidence before the court was the parties’ testimony. There was simply no evidence before the court concerning any alleged admission made by Mr. Chaoui in his pleadings. *See Date v. Harbor Bank of Md.*, 107 Md. App. 362, 368 (1995) (“[A]ppellants did not file these alleged [bankruptcy] schedules at the trial. Thus, it was entirely appropriate for the trial court to resolve the issue without consideration of such schedules, regardless of appellants’ counsel’s broad based assertions.”). Indeed, after Mr. Chaoui referenced a document he had attached to his responsive pleadings, the court made the parties aware of the fact that it had no evidence other than their testimony:

I don’t have any exhibits that have been admitted in this hearing from either one of you. By referring to something that you filed does not make it evidence for me to consider. Having something marked is not considered evidence for me to consider. As I told you both when we started this, I cannot help you and give you advice on how to admit documents. You are referring to something that you filed with a response that is not before this Court. The only thing that I have is the yellow pad that I’m using to take notes. I don’t have any documents.

We commend the trial judge for his unequivocal warning to both parties that their respective positions could suffer from a dearth of evidence.

In the end, the court correctly observed that the parties did not agree on the total amount of alimony Mr. Chaoui paid in 2018. Moreover, the parties’ testimony—the only evidence provided to the trial court—was confusing and contradictory. Ms. Shawy testified to three different amounts of alimony she received in 2018. She testified at one point that the “total alimony paid in 2018 was \$48,615 plus the alimony arrears of \$7,386. So the total he paid was \$48,701.76.” Ms. Shawy’s math is obviously incorrect as the sum of \$48,615 and \$7,386 is \$56,001. Nevertheless, she persisted in her assertion that Mr. Chaoui paid \$48,701.76 in 2018. At another point during her testimony, Ms. Shawy advanced significantly different numbers. She alleged that Mr. Chaoui paid the full \$3,850 per month required by the Agreement for January through July 2018, but only paid \$3,470 each month in August through December 2018. This testimony, if correct, would result in monthly alimony payments totaling \$44,300 for 2018. Adding to that amount the \$7,386 she alleged Mr. Chaoui paid in 2018 representing 2017 arrearages would result in a total payment of \$51,686 for 2018.

Mr. Chaoui, on the other hand, testified that he paid \$3,850 per month for every month in 2018 except for September and October, when he paid \$3,470.26. His calculations would result in a total payment of \$45,440.52 in regular monthly alimony payments in 2018 which, when coupled with the 2017 alimony arrearages he paid in 2018, would far exceed \$46,200. At another point in his testimony, he told the court that he paid \$46,200 in 2018.

In summary, the parties provided at least five different amounts for 2018 alimony payments, for which there was no supporting documentary evidence. Faced with this

conflicting evidence of questionable qualitative value, the court did not err in calculating the tax reimbursement based on \$46,200 of alimony income. That amount, \$46,200, represented the regular monthly alimony payment required by the Agreement (\$3,850 per month times twelve months). Moreover, the court’s use of \$46,200 is supported by the fact that the parties agreed that Mr. Chaoui paid *at least* \$46,200 in alimony in 2018. *See Omayaka v. Omayaka*, 417 Md. 643, 652 (2011) (“If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.” (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004))); *Leavy v. Am. Fed. Sav. Bank.*, 136 Md. App. 181, 200 (2000) (“[I]f there is any competent, material evidence to support the factual findings below, the weight and value of such evidence must be left to the trier of facts, as it is not our function to determine the comparative weight of conflicting evidence.” (alteration in original) (quoting *Carling Brewing Co. v. Belzner*, 15 Md. App. 406, 412 (1972))). Because Ms. Shawy’s argument at trial and on appeal is based on her assertion that Mr. Chaoui “agreed” that he paid \$48,107.76 in 2018—an assertion not supported by the record—her argument fails.

Finally, Ms. Shawy argues that the court erred by using the amount that “should have been paid” for its tax reimbursement calculation for 2018, while setting a formula for calculating the 2019 tax reimbursement based on the amount “actually paid.” The basis for her argument is the court’s statement concerning the amount of tax reimbursement for 2019:

It is not clear from [Ms. Shawy’s] motion the exact amount of alimony she was paid in 2019. However, the IRS releases a tax and earned income credit table each year. The Court recommends that the parties shall take the

amount of alimony that was actually paid (i.e., the amount of alimony that [Mr. Chaoui] has actually paid to [Ms. Shawy] in the 2019 calendar year versus the amount of alimony that [Mr. Chaoui] was to pay in the 2019 calendar year), and review the 2019 IRS 1040 Tax and Earned Income Credit Tables to find the amount of tax for a single person. That amount shall be what [Mr. Chaoui] pays to [Ms. Shawy] as reimbursement for her 2019 taxes due to alimony.

We first note that, because the court did not know the amount of alimony Mr. Chaoui paid in 2019, the formula it suggested was merely a recommendation, and, in any event, Ms. Shawy does not challenge the 2019 tax reimbursement in this appeal. The court's recommendation to the parties for 2019 and beyond does not undermine its decision regarding the tax reimbursement due for 2018 *based on the evidence presented*.⁵

We therefore hold that, on the only issue presented in this appeal, the circuit court did not err in ordering Mr. Chaoui to pay \$6,109 to Ms. Shawy as a tax reimbursement on \$46,200 in alimony paid in 2018.⁶

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

⁵ Ms. Shawy also argues that the court's ruling on the 2018 tax reimbursement was inconsistent with its determination that Mr. Chaoui owed arrearages for 2018. Specifically, she claims that, because the court determined that Mr. Chaoui owed \$1,898.76 in alimony arrearages for 2018, the court implicitly found that he had not paid \$46,200 in 2018. We conclude that these determinations are not in conflict—the undisputed evidence was that Mr. Chaoui paid 2017 arrearages during calendar year 2018 that, when added to his regular 2018 alimony payments, exceeded \$46,200 in payments in 2018.

⁶ As previously noted, Mr. Chaoui previously paid Ms. Shawy \$2,525, leaving a balance due of \$3,584.