Circuit Court for Caroline County
Case No. 05-C-09-013179

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 670

September Term, 2018

TROY HINTERMEISTER

v.

DIANNA HINTERMEISTER

Meredith,
Leahy,
Wells,

JJ.

Opinion by Leahy, J.

Filed: October 15, 2019

Troy Hintermeister appeals from a decision by the Circuit Court of Caroline County denying his request for attorney's fees against his ex-wife, Dianna Hintermeister, the appellee in this case. The sole issue he presents on appeal is whether the court clearly erred in denying an award of fees. Because we discern no error in the circuit court's fact-finding and because the court's decision to deny fees was a sound exercise of its discretion, we affirm.

BACKGROUND

The Circuit Court for Caroline County awarded Dianna[1] a judgment of absolute divorce ("Judgment") on July 19, 2010. As relevant to this appeal, that judgment ordered as follows:

> ORDERED that pursuant to the parties' agreement placed on the record in open court, **Wife shall receive an amount equal to forty percent (40%) of Husband's "disposable retired pay"** (as defined by 10 U.S.C. § 1408), to which Husband became entitled as a result of his service with the United States Air Force, together with a pro rata share of any future cost-of-living increases with respect thereto. **The Court hereby retains jurisdiction to enter an Order and to modify the provisions of any Order for the purpose of its acceptance by the United States as a Constituted Pension Order (or other Order acceptable to the United States) to accomplish the award made to Wife herein**; and it is further,
>
> ORDERED, **that Husband shall execute such documents and perform such acts as may be necessary or required so that Wife shall receive her share of Husband's disposable retired pay directly from the Defense Finance and Accounting Service[2]** (or other appropriate government agency) and so that Wife shall be awarded the maximum possible former spouse survivor annuity, including but not limited to any

[1] Meaning no disrespect, we refer to the parties, who share the same last name, by their first names for the sake of clarity.

[2] The Defense Finance and Accounting Services ("DFAS") is an agency that provides payment services for the United States Department of Defense.

> forms which Husband is required to execute by the United States in order to effectuate the terms of this Judgment of Absolute Divorce; and it is further,
>
> ORDERED, that until such time as Wife commences receiving payments directly from the Defense Finance and Accounting Service (or other appropriate government agency), Husband shall pay directly to Wife an amount equal to Forty Percent (40%) of Husband's disposable retired pay together with 40% of any further cost-of-living increases granted with respect to Husband's disposable retired pay; and it further,
>
> ORDERED, that **Husband shall not pursue any course of action which would defeat, reduce or limit Wife's right to receive her share of Husband's retired or retainer pay as set forth in this Judgment of Absolute Divorce**, and it is further,
>
> ORDERED, that for so long as Wife continues to occupy the marital residence, her portion of Husband's retired pay awarded to her by this Judgment of Absolute Divorce shall be deposited into the joint bank account maintained by the parties. After Wife vacates the marital residence, Wife's portion of Husband's retired pay awarded to her by this Judgment of Absolute Divorce shall be paid directly to her[.]

(Emphasis added).

On the same day that the court entered the judgment of divorce, the court also entered a constituted pension order ("CPO") that included, among other things, a provision "[t]o accommodate the marital property distribution between the parties." The CPO set out that Troy "entered active military service on March 24, 1987, retired April 1, 2009, and the parties were married for all but Thirty-seven (37) months that [Troy] performed service creditable for retired pay to the date of divorce[.]"

According to the order, Dianna's award of 40% of Troy's disposable retired pay was to "be paid to her pursuant to the normal pay and disbursement cycle for retired pay or for survivor benefit annuity payments, as the case may be, directly by the Service or entity responsible for making payments to [Dianna] commencing upon completion of applicable service requirements." The order noted that the court "retain[ed] jurisdiction to

modify the provisions of this Order for purposes of its acceptance by the United States as a Constituted Pension Order (or other Order acceptable to the United States) under the Uniformed Services Former Spouses Protection Act."

A "Judgment of Absolute Divorce" and an "Order," respectively, were noted on the docket on July 19, 2010.[3] The comment on the docket entry for the Order reads:

> Motion: 28 Sequence: 0 Create Initials: TBL Create Date: 07/21/2010 DORD – Constituted Pension Order Copy to Plaintiff and Philip L Gundlach, Esq. Filed: 07/19/2010

Troy's Payments of Disposable Retirement Pay

Following the divorce, Troy began paying directly to Dianna $770 per month, which he calculated to be 40% of his disposable retirement pay. Dianna moved out of the marital residence in April 2011, but rather than the payments going through DFAS, Troy continued to pay her directly. Dianna later testified before the magistrate that she accepted Troy's direct payments because she "didn't want to cause any more problems and everything so I was just taking what he was paying when he paid, whatever time he paid."

In December 2016, Troy emailed Dianna and announced that he had been overpaying her "for some 6 yrs." and would reduce her payments not only to reflect what he considered to be the correct amount at 40% ($742.88), but also to deduct the $1,944 he claimed that he had overpaid since 2011. Dianna responded that she would seek future

[3] When viewed on MDEC, at least when viewed with the credentials of court personnel, the docket entry for the Order is accompanied by the image of a yellow lock, denoting that the attachment is sealed from public view. By contrast, the entry for the Judgment is accompanied by the symbol for a PDF, denoting that a digital copy of the filing is viewable by the public.

payments through DFAS, to which Troy replied by email, "read the divorce decree[, it] says nothing about going to DFAS. If I owed you money you would want it now. I knew that you were going to do this, go [*sic*] to DFAS will go directly against the decree."

Despite Troy's warning, Dianna faxed DFAS a copy of the divorce decree and a copy of Troy's leave and earnings statement, and she requested that DFAS pay her directly 40% of Troy's disposable retirement benefits. In a letter dated January 20, 2017, DFAS responded to Dianna by letter, indicating as follows:

> The division of the member's military retirement is conditioned on you vacating the marital residence as stated on page 2 of your court order. Please be advised that federal regulation prohibits this agency from honoring any court order that makes a former spouse's payments under the USFSPA conditional on the occurrence of some event. This is because there is no federal law or regulation that gives DFAS Garnishment Operations the authority to determine whether the condition in the court order or agreement has been satisfied. . . .
>
> Therefore, you will need to provide this agency a certified copy of a clarifying or an amended court order that awards you a portion of the above named member's disposable military retirement as your property without being conditioned on some event in accordance with the requirements of the above referenced federal regulation.

(Emphasis removed).

The same day that DFAS sent its letter to Dianna, she also received a letter from Bruce D. Blum, Esquire. Mr. Blum's letter advised Dianna that he represented Troy "in the matter of the monthly payments to you pursuant to the Judgment of Absolute Divorce[.]" He stated that, enclosed with the letter was Dianna's payment for January 2017, "a smaller amount than before, because Mr. Hintermeister discovered that he has been overpaying you for many years." Exactly two months later, Mr. Blum sent a second letter to Dianna informing her that "[t]he time has now come for Mr. Hintermeister to

correct the previous overpayments in full" and expressing Mr. Blum's hope that Dianna would "show . . . integrity" and accept the lower payments.

Dianna obtained counsel (different from the attorney who represented her in 2010), who sent a letter to Mr. Blum on May 4, 2017, alerting him that Dianna did not accept that there had been overpayment, nor did she accept Troy's decision to reduce her payments. Counsel asked Mr. Blum to explain how Troy's calculations were consistent with deductions permitted by DFAS. Counsel also advised that Dianna "has asked DFAS to take over enforcement of the order[,]" but that "DFAS state[d] that there need[ed] to be a change to the judgment due to some conditional language that was placed in the original order concerning the payment of child support." Because the circuit court retained jurisdiction over the judgment, Dianna's counsel informed Mr. Blum that she intended "to request a modification of this order to be complaint with DFAS." Dianna's counsel enclosed a copy of the January 20 letter from DFAS.

Mr. Blum responded by letter on May 26, 2017, stating that he and Troy "read the Judgment of Absolute Divorce differently than you do." He asserted, "I do not believe that the Circuit Court has authority to modify an Order it never issued, because your client never caused it to issue, or for that matter be drafted."

Motion to Modify

On July 25, 2017, Dianna filed a motion to modify the judgment of absolute divorce, noting that the Judgment expressly reserved the court's retention of jurisdiction "to enter an Order and to modify the provisions of any Order for the purpose of its acceptance by the United States as Constituted Pension Order[.]" Dianna informed the court that she

vacated the marital residence and asked the court to amend the Judgment "to remove the provision that makes direct payment conditioned on [Dianna] vacating the marital residence[.]"

Troy responded by filing a motion to dismiss (which, conspicuously, he failed to include in his Record Extract in this Court, *see* Md. Rule 8-501(c) (governing the contents of record extracts)). In his motion, Troy asked the court to dismiss the action because Dianna failed to allege a change of circumstances and "modification is not a remedy at law just because a party realizes she made a bad deal or mistake of law." Through counsel, Troy asserted that it was "clear" that Dianna never prepared a CPO and "has not done so to this day." He continued:

> This Court retained jurisdiction to enter and modify any Constituted Pension Order that [Dianna] might prepare, and not to modify the Judgment of Absolute Divorce itself without a change of circumstances. Therefore, **there IS no Order to modify** and [Dianna's] sole prayer in the Motion, that the Judgment "be amended to remove the provision that makes direct payment conditioned on [Dianna] vacating the marital residence" also fails to state a claim upon which relief can be granted. . . .

(Emphasis added). Troy then asserted that Dianna filed her motion "without substantial justification and therefore in bad faith" and asked the court to order her to pay Troy's attorney's fees.

Dianna opposed the motion to dismiss. She asserted that Troy misstated the law that DFAS required a separate order when an amended order would suffice, and the Judgment clearly permitted amendments to "effectuate" its intent. Dianna also sought fees against Troy, asserting that he was in violation of the Judgment and "refused to cooperate[.]" Separately, Dianna filed a petition asking the court to adjudge Troy in

contempt "for willfully failing to comply with the Order of Court with respect to the provision that requires him to cooperate."

Hearing

At the motions hearing held before the magistrate on October 30, 2017, Mr. Blum again asserted, "what actually happened here is that [Dianna] should have drafted a . . . constituted pension order [*sic*] whatever was required if she wanted the payments to go through the Federal Government seven years ago, but she didn't." He reiterated: "To this moment in time when the parties did start to talk about this in December of 2016, we have not been presented with a constituted pension order. So, *there's still no order* in place to take the money directly from the government and give it to [Dianna]." (Emphasis added). And again: "the judgment of absolute divorce clearly says that she's to prepare a different order *and never did so*[.]" (Emphasis added).

The magistrate then asked Mr. Blum if he thought Dianna "should have an order to [] get the payment through the Government[,] to which he responded: "I'm saying that [] it was in her hands all along . . . to draft such an order [and] submit to my client . . . *and she has never, ever done so*." (Emphasis added). The magistrate then asked Mr. Blum if his problem was that Dianna was "asking for a different order" such as a CPO. Mr. Blum responded, "No my issue is that *they're not asking for a different order*, they want you to modify *the one and only order*." (Emphasis added). Following their colloquy, the magistrate denied Troy's motion to dismiss and proceeded to an evidentiary hearing.

Following testimony by both parties, Troy's renewed motion to dismiss, which the court denied, the court took the matter under advisement.

Report & Recommendation

The magistrate issued her report and recommendation on February 5, 2018. The magistrate observed that, on January 19, 2010, the same day the court issued the Judgment of Absolute Divorce, the court "also issued a Constituted Pension Order." "It [wa]s unclear" to the magistrate "why no one mentioned the existence of the Constituted Pension Order." The magistrate continued by asserting, "[i]f the Constituted Pension Order was never submitted that needs to be done." Without information about whether the CPO was filed and, if not, why not, the magistrate "decline[d] to rule on the Motion to Dismiss or the Motion for Modification[.]" The magistrate did, however, find Troy in contempt because "[n]othing in the Judgment of Absolute Divorce authorized him to reduce the payments" or recoup any alleged overpayments. She recommended as follows:

1. That the parties advise the Court within fifteen days of their receipt of the Recommendation if the Constituted Pension Order was submitted with the Judgment of Absolute to DF[A]S.
2. That the parties within fifteen days of their receipt of the Recommendation [explain] why modification of the Constituted Pension Order was not considered.
3. That the Plaintiff be found in Contempt of Court and that he be permitted to purge the contempt by reinstating the payment amount he made to Defendant prior to the December 2016 payment reduction and cease collection of any alleged overpayment until such time as DF[A]S confirms in writing that his calculations are correct.
4. That regardless of the outcome of the verification process both parties be enjoined from collecting any overpayment or arrearage until a Court has determined what is appropriate.
5. That the Court reserve on the issue of attorney fees pending further proceedings.

Troy filed exceptions to the magistrate's report and recommendation, asking the circuit court to reject the recommendations and deny Dianna's motion to modify. In his

filing, he acknowledged that the online docket entries reflected that a CPO was filed the same day as the Judgment of Absolute Divorce. The docket entry, though, was merely where "the mystery of the missing CPO" began, Troy said. Troy went on to question the existence of the CPO:

> Plaintiff states categorically that he never received a copy of a CPO, **if one ever truly existed. Plaintiff questions its existence** because Defendant never brought a copy of such CPO to light either, during the entire round of litigation ending in the appearance before the Family Magistrate on October 30, 2017. Moreover, since the CPO could just have been presented to the government to result in the direct payments, **Plaintiff must presume that Defendant never received the allegedly sent and entered CPO either.**
>
> The mystery is further enhanced by the wording of the [Judgment]. . . . **If a CPO had been entered the same day as the [Judgment], why would the [Judgment] need to retain jurisdiction to enter one?**

(Emphasis added).

On March 20, 2018, Dianna filed with the court a line to which she attached a letter from DFAS, dated February 28, 2018, indicating its acceptance of the CPO. Dianna noted in her filing that DFAS's acceptance of the CPO rendered moot her motion to modify. This led Troy to modify his exceptions to the report and recommendation, expanding the reasons he deserved attorneys' fees both because Dianna's motion to modify was without merit because a CPO was issued in 2010 and because litigation on the meritless motion should have included additional procedural steps, including discovery. Troy also reasserted his position that he was not in contempt because no provision of the Judgment prohibited him from reducing payments unilaterally. He explained to the court that, because the underlying issue is moot, he "would like to therefore close the matter and walk away," but

he could not do so until the court addressed the issue of fees and costs. Attached to his filing, Troy included a list of 12 expenditures related to the motion to dismiss, which added up to $9,813.46.

Hearing on Troy's Exceptions

The parties appeared before the circuit court on March 27, 2018, for a hearing on Troy's exceptions. Dianna's counsel began by explaining that after receiving the magistrate's report and recommendation, she learned that the CPO "had been scanned into MDEC but was shielded. So, it was not something that was available to view on the MDEC system. It was shielded because it contains the parties[']' social security numbers." Counsel explained that they had since filed the CPO with DFAS and were waiting for DFAS to determine how much Troy would owe since the parties still disputed the proper computation.

After the court confirmed that neither attorney was counsel back during the divorce action in 2009, Troy argued in favor of his exceptions. His counsel began by asserting that the onus was on Dianna, "as the moving party[,] to have discovered this CP[O]." He agreed that the language of the Judgment was "very confusing," in that it suggested there was no CPO, but insisted that an assessment of fees was appropriate because Dianna "le[d] us through a litigation that was completely unjustified." Dianna's counsel responded by asking the court to consider that Troy could have simply agreed to "just t[ake] out a couple [] qualifying words, so she could get paid" and his refusal to do so "was unreasonable and . . . went against what the Order required him to do."

The court announced that, as a court of equity, it would take the matter under advisement until DFAS issued the first payment to Dianna, and the court could learn whether and by how much Troy had over- or underpaid all those years. The court reasoned that, "as far as assigning equities," the correct payment amount "might be the last piece of the puzzle" and would allow the court to "exercise some degree of equity in deciding [] which direction anything should go." Additionally, the court noted the confusing language of the Judgment but reasoned that, back when the Judgment and CPO were drafted, Dianna's former counsel "probably w[a]s not expecting that six years later everything would be electronic and something would be shielded and hiding in [] ether world somewhere." Troy's counsel interjected that a hard copy should still exist in the court file despite the files moving to MDEC, to which the court responded, "and to be fair, and granted Ms. Jennings[']s office is not to[o] far away, but if that existed . . . then also you could have" checked the file. So, the court reasoned that it should "presume that neither party knew about it for some reason[.]" The court concluded by reiterating that it would take the matter under advisement and, ultimately, seek to balance the equities in deciding whether to assign fees:

> . . . [O]bviously it's a real shame that everyone had to incur cost, time and effort and [Troy] had to fly up here and all the rest of it, but . . . it's hard to ascribe a whole lot of blame to one person or one party over the other when they all seem to have been . . . under [] the same misconceptions[.] But . . . my gut tells me right now is at least wait to see if there has been some major inequity in the payments and situation with that, and I think I'll just plug that in somehow in deciding if there's any equity in awarding fees either way. . . .
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> * * *
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> . . . I would think if there's any dramatic over or under payment for all that period of time that's probably going to be something that would make sense

> to try to correct through some kind of equitable decision as opposed to dragging everyone back to incur more expenses[.]

On May 1, 2018, Dianna filed another line with the court, this time attaching a deposit memo from DFAS that indicated that Troy's monthly payments would be $885.60, noting that before she filed the CPO Troy had reduced his payments to $620 per month. Troy filed a response noting the $885.60 was a pre-tax award and represented that Dianna would receive only $761.73 after taxes—nearly equal to the $770 per month that Troy had paid for seven years. Again, Troy renewed his motion for attorneys' fees, asserting that while Dianna, "and especially her counsel, were grossly negligent, he makes no accusations of intentional wrongdoing."

The court issued an order on May 30, stating as follows:

> . . . [T]his Court is satisfied that the history of payments made by [Troy], along with the acceptance of the same by [Dianna], underscores the proposition that all parties were unaware of the existing Court Order, which ultimately rendered the issue moot. Additionally, this Court does not find that sanctions are appropriate under Rule 1-341 and the recent case law cited in [Troy's] Response to Line.

The court ordered that "no adjustment of equities is required nor ordered[,]" "both parties are therefore responsible for their own expenses and attorney fees[,]" and Dianna was to pay any outstanding court costs. Troy noted his timely appeal the following week, presenting a single issue for our review:

> "Was the Circuit Court clearly erroneous when it failed to award fees for the filing of the underlying Motion for Modification of Judgment of Absolute Divorce, when the relief requested therein already existed?"

DISCUSSION

Troy's sole contention on appeal is that the circuit court clearly erred by denying his request for attorney's fees. In Troy's view, "[t]his case is the epitome of bad faith and a lack of substantial justification." On page four of his opening brief in this Court, Troy states, without citation to the record extract, that he moved to dismiss Dianna's motion to modify the Judgment "because the relief therein requested, the power to receive direct payments from the federal government, *already existed in the form of the CPO*, and had existed since 2010." (Emphasis added). *But see* Md. Rule 8-504 (mandating that a party's briefing reference "the pages of the record extract supporting the assertions"). This is incorrect. As we set out above, Troy asserted, through counsel, in his motion to dismiss Dianna's motion to modify that "there IS no Order to modify."

Nevertheless, Troy insists that Dianna's counsel "SHOULD have known" because "even [a] cursory analysis" and inspection of the file would have revealed the 2010 CPO. Ignorance, he says, "is not a legal excuse." Troy "cannot fathom a clearer example of lack of substantial justification that to file for relief that already exists."

Dianna responds that the circuit court did not abuse its discretion by determining that sanctions were inappropriate in this case. According to Dianna, both parties were unaware of the CPO when she filed her motion and its existence was shielded from the parties' view on the MDEC portal. She maintains that she had substantial justification to bring the motion to modify because, as the magistrate found, she was at Troy's mercy, and Troy had reduced his payments to $620 per month when DFAS calculated the correct monthly payment to be $885.60 per month. By the divorce judgment's own terms, Dianna

says, she was permitted to file a motion to modify. Additionally, Dianna avers that the action was brought in good faith and that she "made efforts to resolve the issue at hand" prior to filing her motion to modify. She argues that the doctrine of unclean hands precludes Troy's argument because, contrary to the court's order requiring him to cooperate in effecting modifications relating to the payment of his retirement benefits, "Troy intentionally obstructed its modification."

The court's authority to award attorney's fees in actions brought in bad faith or without substantial justification is set out in Maryland Rule 1-341:

> **Rule 1-341. Bad faith – Unjustified proceeding.**
> (a) **Remedial Authority of the Court.** In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party of the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

The Court of Appeals has opined recently that the history of Rule 1-341 and the cases interpreting it make clear that the rule "'was intended to function primarily as a deterrent' against abusive litigation." *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 19 (2018) (citations omitted). As such, "an award of attorney's fees is considered 'an "extraordinary remedy," which should be exercised only in rare and exceptional cases.'" *Id.* (citations omitted).

When this court reviews a trial court's decision to grant or deny attorney's fees under Rule 1-341, we review two separate findings by the court, applying "different, but related, standards of review" to the two findings. *Id.* at 20. The first finding is whether a

party brought or defended an action without substantial justification or in bad faith. *Id.* at 20-21. We review this finding for clear error, viewing the evidence in the light most favorable to the party that prevailed below. *Id.* "The burden of demonstrating that a court committed clear error falls upon the appealing party. So long as 'there is any competent material evidence to support the factual findings of the [] court, those findings cannot be held to be clearly erroneous.'" *Id.* at 21 (citation omitted). The second finding the trial court must make is that "the acts committed in bad faith or without substantial justification warrant the assessment of attorney's fees." *Id.* This finding we review for abuse of discretion—meaning we will not reverse the trial court's decision unless the appellant demonstrates a "clear abuse." *Id.* (quoting *Univ. of Md. Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 401 (2017)).

Troy's appeal challenges only the court's first finding. The Court in *Christian* explained that a claim or litigation position lacks substantial justification if "a party [has] no 'reasonable basis for believing that the claims would generate an issue of fact for the fact finder,' and the claim or litigation must not be 'fairly debatable, [must] not [be] colorable, or [must] not [be] within the realm of legitimate advocacy.'" *Id.* at 22 (citations omitted). The court should base its decision on "'an examination of the merits' under the totality of the circumstances presented to the court[.]" *Id.* at 23 (citations omitted).

Regarding the merit of each parties' position and who was at fault for the needless litigation in this case, the trial court found "it[] hard to ascribe a whole lot of blame to one person or one party over the other when they all seem to have been . . . under [] the same misconceptions[.]" The court reached this determination by considering the fact that the

language of the Judgment suggested a CPO had not been drafted, as well as the fact that MDEC shielded the CPO from the parties. Although the court accepted Troy's position that Dianna's counsel could have checked the physical record in the circuit court "if that existed," the court pointed out that Troy's counsel could have just as easily checked the file. Based on this, the court "presume[d] that neither party knew about [the CPO] for some reason[.]"

Based on the totality of the circumstances in this case, viewing the facts in the light most favorable to Dianna, we cannot say that Troy proved that the trial court's assessment was in error. The trial court was clearly correct in finding that neither party knew that the court issued a CPO in 2010. Troy's counsel stated repeatedly at trial and in his court filings that there "[WA]S no ORDER to modify." Even after the magistrate's order made clear that there was a CPO issued in July 2010, Troy filed exceptions doubting the existence of such an order. We see no error, then, in the trial court concluding that Dianna did not know that there was a CPO and there must be some reason why both parties didn't know. Nor do we see clear error in the trial court's assessment that, if there was a CPO discoverable in the hard file in the circuit court, it was equally discoverable to both parties.

The record in this case demonstrates that Dianna did not file the motion to modify in bad faith or without substantial justification. A dispute existed between the parties as to what amount equaled 40% of Troy's disposable retirement pay. Dianna sought to have DFAS determine the correct amount and pay her share directly to her, as was contemplated by the provisions the parties agreed to in the Judgment of Absolute Divorce. When DFAS informed Dianna that it could not grant her application based on the Judgment because it

contained conditional language relating to her vacating the marital residence, she sought Troy's consent to removing the conditional language as the letter from DFAS suggested. The Judgment provided that "husband shall execute such documents and perform such acts as may be necessary or required so that Wife shall receive her share of Husband's disposable retired pay directly from [DFAS.]" Rather than consenting to Dianna's requested modification, Troy's counsel sent a letter asserting that the trial court lacked authority to modify the order and informing her that he "w[ould] certainly respond appropriately" if Dianna wanted to litigate the matter. As the magistrate pointed out, if the end result of filing the CPO *or* an amended Judgment with DFAS was "that the payments will be made through this third party, what difference does it make." Throughout his arguments in open court and paper filings, Troy never offered a cogent reason why he would not simply agree to the modification.

Even if Dianna was not justified in seeking to modify the Judgment as the DFAS letter suggested she should, Troy has offered no argument in his briefing as to how trial judge abused his broad discretion. *See Blue v. Arrington*, 221 Md. App. 308, 321 ("[W]e have repeatedly declined to address arguments that are not properly briefed" (citing Md. Rule 8-504(a)(6))). In fact, Troy's briefing misstated our standard of review in this case by failing to acknowledge that the decision to deny attorney's fees is a discretionary ruling. *Cf.* Md. Rule 8-504(a)(5) (mandating that briefs include "[a] concise statement of the applicable standard of review for *each* issue").

We conclude that the trial judge's decision was not an abuse of discretion based on this record. The trial judge made clear that he was basing his decision on what he

considered to be an equitable result given the circumstances. He acknowledged and considered Troy's arguments, including the unfortunate fact that Troy incurred the added expense of flying up from Texas. The trial judge concluded, however, that the circumstances did not justify an award of attorney's fees.

Given the trial court's finding that neither party knew about the CPO "for some reason," we cannot say that the trial court clearly erred or abused its discretion by denying Troy's motion for attorney's fees in this case.

JUDGMENTS OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.