

Circuit Court for Caroline County  
Case No. C-05-FM-19-000245

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 694

September Term, 2024

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JILLIAN LUNA

v.

ALBERTO LUNA

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Wells, C.J.,  
Arthur,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, C.J.

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Filed: July 7, 2025

\* 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 Rule 1-104(a)(2)(B).

Appellant, Jillian Luna (“Mother”), filed this appeal from an order of the Circuit Court for Caroline County denying her motion to revise an order for payment of child support. She contends the court’s calculation of the appropriate amount of child support, and the rationale for later denying her motion to revise the order for child support, was based on an erroneous finding regarding the parties’ custody schedule. Appellee, Alberto Luna (“Father”), concedes the court’s calculation does not accurately reflect the parties’ custody arrangement. For the reasons set forth below, we vacate the judgment of the circuit court and remand for further proceedings.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

The parties are the parents of two minor children. On December 12, 2019, the court entered a judgment of absolute divorce which incorporated but did not merge the parties’ marital settlement agreement. Consistent with the agreement, the court awarded the parties joint legal custody of the children. Mother was awarded primary physical custody. Father was granted visitation every other weekend, from Friday evening to Monday morning. Father was ordered to pay Mother \$1,500.00 per month in alimony for period of 33 months, and child support in the amount of \$1,681.00 per month.

On December 22, 2022, Mother filed a motion to modify child support. As grounds for her motion, she alleged Father’s income had significantly increased. In addition, Mother maintained the amount of child support should be recalculated in the light of the expiration of Father’s obligation to pay alimony.

On June 2, 2023, the court held a hearing on Mother’s motion.<sup>1</sup> On January 29, 2024, the court issued a memorandum opinion and order reducing the amount of Father’s child support obligation. The court determined the expiration of the order to pay alimony did not constitute a material change in circumstances for purposes of modifying child support. The court found, however, Father’s income increased from approximately \$120,000.00 to \$186,429.00 while Mother’s income increased by “some disputed amount.” The court concluded that the increases in the parties’ earnings constituted a material change in circumstances, so it was in the children’s best interest to modify their level of support. The court then ordered Father’s child support obligation be reduced to \$1,600.00 per month.

On February 9, 2024, the court issued an amended order for modification that included the Child Support Guidelines Worksheet which, due to clerical error, was not attached to the January 29, 2024, order. According to the worksheet, the children spent 182 overnights with Mother each year, and 183 overnights with Father. The recommended amount of child support, per the worksheet, was \$1,665.00, but the amount of child support in the amended order remained \$1,600.00.

On March 7, 2024, Mother filed a motion to revise the February 9, 2024, order pursuant to Maryland Rule 2-535. She claimed the court, in calculating the recommended amount of child support per the guidelines, failed to recognize she had primary physical custody of the children. According to Mother, per the custody provisions of the judgment

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<sup>1</sup> The hearing also addressed a petition for contempt filed by Mother.

of divorce, which were never modified, she has 261 overnights with the children each year, and Father has 104 overnights, which would make Father’s child support obligation \$2,803.00 per month. Mother asked the court to use its revisory power to “correct the number of overnights and resulting support obligation[.]” Father did not file a response to Mother’s motion.

On May 9, 2024, the court issued an order denying Mother’s motion to revise, stating:

The [c]ourt denies [Mother’s] request to revise the child support order on newly alleged facts that parties split overnight visits unequally, with 261 overnights per year with [Mother] and 104 overnights per year with [Father], because the issues of modification and child custody were not before this [c]ourt, [Mother] failed to present at trial any evidence or dispute about the custody and visitation schedule, and the [c]ourt does not find fraud, mistake, or irregularity.

Mother filed this timely appeal from the May 9, 2024, order.<sup>2</sup>

## **DISCUSSION**

### **A. Parties’ Contentions**

Mother contends the court abused its discretion in denying her motion to revise the February 9, 2024, order modifying child support. She asserts she had no burden to present evidence regarding the parties’ custody schedule because the issue of custody was not before the court. Mother maintains that, per the parties’ custody schedule, she has 287 overnights with the children per year and Father has 78.

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<sup>2</sup> The May 9, 2024, order also addressed Mother’s motion to revise provisions of the February 9, 2024, order which related to Mother’s petition for contempt. Neither party challenges the court’s ruling regarding the contempt provisions.

Father concedes the court’s allocation of overnights does not accurately reflect the existing custody arrangement. According to Father, however, Mother has 261 overnights per year and he has 104. He asks that we nonetheless affirm the court’s denial of Mother’s motion to revise because the court “likely” reallocated the parties’ respective number of overnights to “offset [a] disparity” which, Father claims, was “created by [Mother’s] refusal to disclose all her income.”

### **B. Standard of Review**

“[F]or a period of thirty days from the entry of a law or equity judgment a circuit court shall have unrestricted discretion to revise it.” *Md. Bd. of Nursing v. Nechay*, 347 Md. 396, 408 (1997) (quoting *Platt v. Platt*, 302 Md. 9, 13 (1984)) (some internal quotation marks omitted); *see also* Md. Rule 2-535(a); Md. Code Ann., Cts. & Jud. Proc. (“CJP”) § 6-408. “[T]he discretion reposed in the trial court ‘is a discretion which must be exercised liberally, lest technicality triumph over justice.’” *Nechay*, 347 Md. at 408 (quoting *Eshelman Motors v. Scheftel*, 231 Md. 300, 301 (1963)).

“[A] motion to exercise revisory power will not toll the time for filing an appeal [of the underlying judgment or order] unless the motion is filed within ten days of the judgment or order.” *Furda v. State*, 193 Md. App. 371, 377 n.1 (2010). Where, as in this case, “a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion.” *Id.*

“An appeal from the denial of a motion asking the court to exercise its revisory power is not necessarily the same as an appeal from the judgment itself. Rather, the

standard of review is whether the trial court abused its discretion in declining to revise the judgment.” *Bennett v. State Dep’t of Assessments & Tax’n*, 171 Md. App. 197, 203 (2006) (quoting *Green v. Brooks*, 125 Md. App. 349, 362 (1999)). “A court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous.” *Guidash v. Tome*, 211 Md. App. 725, 735 (2013).

### **C. Analysis**

In Maryland, if the parties’ combined monthly income is \$30,000 or less, as in this case, the court must follow the child support guidelines when awarding child support set forth in Maryland Code Annotated (1984, 2019 Repl. Vol., 2024 Supp.), Family Law (“FL”) Article §§ 12-201 through 12-204. *Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018). The guidelines establish one formula for cases where one parent has sole or primary physical custody and a modified formula for cases of “shared physical custody.” *Compare* FL § 12-204(l) *with* FL § 12-204(m).

“‘Shared physical custody’ means that each parent keeps the child or children overnight for more than 25% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support.” FL § 12-201(o)(1). Both formulas account for the parents’ incomes, but the shared physical custody formula also accounts for “the percentage of time the child or children spend” with each parent. FL § 12-204(m)(2). In cases of shared physical custody, the child support obligation provided in the schedule is “divided between the parents in proportion to their respective adjusted actual incomes.” FL § 12-204(m)(1). Each parent’s share is then “multiplied by the percentage of time the child or children spend with the other parent[.]” FL § 12-

204(m)(2)(i).

In denying Mother’s Rule 2-535 motion, the court implicitly found, under the extant custody arrangement, the parties split overnight visits equally. The court did not explain the basis for its finding, and there is no support for it in the record.<sup>3</sup> The schedule in the judgment of divorce grants Father three overnights every other week. By the terms of the parties’ settlement agreement, Father has additional overnight custody during the week and on certain holidays, but evidently not enough to support a finding that overnights are shared equally between the parties.

Father concedes the court’s calculation of the recommended amount of child support does not accurately reflect the parties’ custody schedule. He suggests, however, the court properly used its discretion to “allocat[e] more overnights to [him] that he actually exercises in practice” “in [an] effort to offset Mother’s bad faith failure to report all her gross income.” We are not persuaded. “While a trial court may deviate from the [child support] guidelines if application thereof would be unjust or inappropriate, the court must make specific written or oral findings supporting such deviation,” including how the amount of child support ordered by the court varies from the guidelines and how the finding serves the best interests of the child. *Shrivastava v. Mates*, 93 Md. App. 320, 329 (1992)

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<sup>3</sup> It is conceivable the court mistakenly relied on a child support worksheet prepared by Father and filed with the court on July 26, 2019, before the judgment of divorce was entered. In that worksheet, Father indicated he had 183 overnights with the children and Mother had 182.

(discussing former FL § 12-202(a)(2)(iv), currently FL § 12-202(a)(2)(v)). Here, however, the court made no such findings.

We conclude the court abused its discretion in denying Mother’s motion to revise the February 9, 2024, order as the ruling was based on a clearly erroneous factual conclusion regarding the existing custody arrangement. Accordingly, we vacate the May 9, 2024, order denying the motion to revise the February 9, 2024, order, and remand for further proceedings to determine the number of overnights each party spends with the children per year. On remand, the trial court may receive evidence regarding the parties’ current income and any other evidence necessary to determine the appropriate amount of child support. *See Taylor v. Taylor*, 306 Md. 290, 313 (1986) (observing that, on remand, the trial court “in the exercise of its discretion may receive additional evidence to supplement the existing record”); *Long v. Long*, 141 Md. App. 341, 353 (2001) (“On remand, the circuit court, in its discretion, may receive additional evidence.”).

**MAY 9, 2024, JUDGMENT OF THE  
CIRCUIT COURT FOR CAROLINE  
COUNTY REVERSED IN PART.  
PROVISIONS OF THAT ORDER  
DENYING MOTHER’S MOTION TO  
REVISE THE FEBRUARY 9, 2024, ORDER  
REGARDING CHILD SUPPORT  
REVERSED. ALL OTHER PROVISIONS  
OF THE MAY 9, 2024, ORDER REMAIN IN  
EFFECT. CASE REMANDED TO THE  
CIRCUIT COURT FOR CAROLINE  
COUNTY FOR FURTHER PROCEEDINGS  
CONSISTENT WITH THIS OPINION.  
APPELLEE TO PAY COSTS.**