Circuit Court for Frederick County
Case No. 10-C-05-001730

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 776 & 1726

September Term, 2019

HEIDI ROSENCRANTZ RYDER

v.

CHARLES RYDER

Fader, C.J.,
Nazarian,
Wilner, Alan M.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 2, 2020

* 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.

When this child support dispute was last before us, we remanded it to the Circuit Court for Frederick County, without affirming or reversing, to determine what child support should have been as of December 2015, when Heidi Rosencrantz Ryder ("Mother") filed her petition to modify child support. Our decision provided that under the unusual circumstances of the case, Mother did not need to prove a material change in circumstances as a prerequisite to a modification. Instead, we held that the court should determine support without regard to the parties' 2010 consent order, and if the court ordered a child support amount that deviated from the Guidelines, it needed to explain its reasons on the record, as Maryland Code (1984, 2019 Repl. Vol.), § 12-202 of the Family Law Article ("FL"), requires.

The circuit court held the hearing, reaffirmed Charles Ryder's ("Father") child support obligation of $600 per month, and explained its reasoning. The court then considered Mother's request for attorneys' fees and denied it. Mother appeals and we affirm.

I. BACKGROUND

Mother and Father were divorced in 2006. Our earlier opinion addressed the background and circumstances through 2018, *see Ryder v. Ryder*, No. 1834, Sept. Term, 2016, 2018 WL 3084560 (Md. App. June 21, 2018), and we pick up the story there.

A. Our June 21, 2018 Opinion.

In 2015, Mother filed a motion to modify child support and Father filed a counter-motion of his own. After a hearing before a magistrate and an exceptions hearing in the circuit court, both motions and both parties' requests for attorneys' fees were denied.

Mother appealed. The dispute revolved primarily around whether there had been a material change in circumstances since the parties had resolved their last child support dispute in a consent order entered in 2010.

On appeal, we reviewed the circumstances surrounding the entry of the 2010 consent order. We held that although the child support amount had been agreed, the order's deviation from the Child Support Guidelines had never been justified on the record:

> As previously mentioned, the parties filed abbreviated financial statements prior to the 2010 hearing. Plugging that data into the Maryland Child Support Enforcement Administration's Calculator suggests that, if the Child Support Guidelines had been followed, Father's monthly child support obligation would have been about $1,667. Before the magistrate held a hearing on the merits of the parties' contentions, they entered into an agreement to child support which was read into the record. The magistrate accepted the parties' agreement without further scrutiny. **But if the 2010 agreement departed from the Guidelines—and it clearly did—then the magistrate was required to take an additional step before entering an order reflecting the parties' agreement.**

Ryder, 2018 WL 3084560, at *4 (emphasis added) (footnote omitted). We explained that "[i]n a 'below the guidelines' case . . . , use of the Child Support Guidelines is mandatory." *Id.* (*citing Guidash v. Tome*, 211 Md. App. 725, 737 (2013) and *Tannehill v. Tannehill*, 88 Md. App. 4, 11 (1991)). The court was required to "explain why a departure from the Guidelines is in the best interests of the children" and those findings were a "mandatory prerequisite for a departure from the Guidelines." *Id.* We held that the magistrate's failure to make the findings the law required meant that "the 2010 support order [did] not have the sort of preclusive effect that generally results [] when a party fails to timely point out to

the court that the order is defective." *Id.* at *5. We found the 2010 consent order "irremediably flawed," and remanded the case to the trial court, without affirming or reversing the circuit court's order, for a hearing on Mother's petition to modify child support." *Id.* We explained that "[b]ecause of the deficiencies in the 2010 proceeding, the court's focus should not be on whether there has been a change in material circumstances from 2010, but rather on what the appropriate level of child support for the children should be." *Id.*

We also framed the issues for the court to determine on remand. *Id.* at *6. We noted that Mother had been receiving an untaxed adoption subsidy for the three children of around $2,500 monthly from the Maryland Department of Human Resources, funds she didn't share with Father. *Id.* at *2. We explained that although the adoption subsidy didn't fit the statutory definition of "actual income," the subsidy was not necessarily irrelevant to the calculation of child support because it could support a decision to "depart from the Guidelines when their application would be [] 'unjust or inappropriate in a particular case.'" *Id.* at *6 (quoting FL § 12-202(a)(2)). Finally, we clarified that Father had the burden at the hearing to persuade the court that any departure from the Child Support Guidelines was in the children's best interests, and that if the court entered an order that included a child support obligation that departed from the Guidelines, it needed to make the required findings on the record. *Id.*

B. The Remand.

The case returned to the circuit court. After the initial hearing date was postponed,

Mother filed an amended motion to vacate the 2010 consent order, which Father opposed. The court rescheduled the hearing for May 30, 2019.

The court opened that hearing by stating that "[w]e're here to modify child support," and counsel for Mother reminded the court of his motion to vacate the 2010 consent order. Counsel argued that if the motion were granted, the hearing on the modification of child support would be unnecessary. Counsel asserted further that our opinion had rendered the 2010 consent order *void ab initio*, and that the trial court should vacate the order and re-set child support to $1,700 per month:

> [MOTHER'S COUNSEL]: I had filed a motion to vacate the 2010 court order. . . . [S]hould that motion be granted, we don't need a modification, and we would be happy with getting a judgment pursuant to the order that was existing prior to the December 10, 2010, which the Court of Special Appeals indicated was irremediably flawed; that there's nothing that can be done with that order, and that that order does not have any type of conclusive effect on the parties' rights in this case.
>
> And, so, we are going back to a time in 2010, and saying that, because that order was void ab initio, against public policy, and so forth that there's nothing really to modify; it's like it doesn't exist. If the Court fought with us with regard to and oppose that that [] order is a nullity [*sic*].
>
> And, so, the only other order that was existing is the order that we believe is the real order, so that [Father] would be obligated to continue to pay $1,700 per month, from December 10th, 2010, as he was required to prior to that date . . . .

Counsel for Father responded that according to our opinion, the hearing was meant to address the "petition to modify child support that [Mother] filed in late 2015" and that the parties were not there to "[argue] about the 2010 order." Mother's counsel then offered an alternative interpretation:

> Well, I think that it is true that the Court said lots of different things, but the bottom line is [] that the Court of Special Appeals did take and suggest [a rehearing] was one way to deal with things.
>
> But, also, within the order from the Court of Special Appeals is a recognition that the 2010 order was irremediably flawed; that it doesn't have any preclusive effect. And, so, essentially, without saying the word void, without saying that it was a nullity, that's what, in fact, they said. And if, in fact, that order is a nullity, void ab initio, then there's nothing to modify. There is simply nothing to modify. That order doesn't have any [e]ffect.

The parties spent the remainder of the hearing arguing over the next steps in the case. Counsel for Father asserted that we had ordered a hearing to determine child support while counsel for Mother continued to argue that a rehearing was unnecessary and that child support should be reset to $1,700 and Father ordered to pay arrearages dating back to 2010 (a total of $113,000).

The court ruled that it would determine child support as of Mother's 2015 petition and, after learning that the parties were not prepared to provide evidence on their respective incomes, continued the hearing. The court also denied Mother's motion to vacate the 2010 consent order.

On September 19, 2019, the parties presented and questioned witnesses, offered evidence, and argued about what the child support amount should be. The court brought the parties back to court a week later and ruled from the bench. The court found that at the time of Mother's motion, Mother's monthly income was $2,965 and Father's was $8,569. Because the parties had three children, the court found that "the guideline amount should have been $1,882" per month. However, the court found that "a deviation from the

guidelines would be appropriate" because, in its view, "it would be unjust" to order an arrearage of $23,424 against Father over a year after all of the children had emancipated. The court found that Father had made "faithful payments" of $600 per month, as the parties had agreed in 2010, and had continued to make those payments after two of the children emancipated. The court stated that it was "undisputed that [Mother] received and continue[d] to receive over $2,500 per month" via the adoption subsidy, payments that amounted to $75,000 tax-free over the relevant time period. And the court found that the adoption subsidy, although not income, supported a deviation from the Child Support Guidelines. After noting that there was no evidence that the children, by this point all adults, had incurred additional expenses or unmet needs, the court found that $600 was the appropriate monthly child support as of the time of filing, and the court denied Mother's motion to modify child support. The court also denied Mother's request for attorneys' fees.

Mother filed two notices of appeal, one appealing the denial of her motion to vacate the 2010 consent order and one appealing the denial of her petition to modify child support and request for attorneys' fees. The two appeals were consolidated.

II. DISCUSSION

Our 2018 opinion defined the scope of the remand and, in turn, the issues before us now: did the circuit court determine what child support should have been as of Mother's 2015 petition to modify, and, if the child support amount differed from the Guidelines calculation, did the court explain its rationale for deviating from the Guidelines? *Ryder*,

2018 WL 3084560, at *5–*6. Mother's brief lists four challenges to the court's decisions,[1] two of which we can resolve summarily.

First, Mother's attempt to resurrect her motion to vacate the consent order didn't survive our last opinion in this case. Although we recognized that the 2010 consent order was flawed, the "important task for the parties and the court [was] to establish what Father's current child support obligation should be without regard to the 2010 order." *Ryder*, 2018 WL 3084560, at *5. We remanded the case "to the circuit court without affirmance or reversal for *another hearing on Mother's petition to modify child support*." *Id.* (emphasis added). The validity if the 2010 consent order was not raised in the earlier appeal, and we never opined on that question or authorized further proceedings to address it. To the extent Mother disagreed with the scope of our 2018 decision or believed that we should (or could) have vacated the 2010 consent order in that opinion, she needed to raise those issues in a petition for a writ of *certiorari* to the Court of Appeals. They are not before us on this posture.

Second, we decline to review Mother's contention that she did not receive a fair trial

[1] Mother listed the Questions Presented in her brief as follows:

> 1. Did the trial court err as a matter of law in dismissing Plaintiff's amended motion to vacate judgment without a hearing?
>
> 2. Did the trial court abuse its discretion in denying Plaintiff's motion for modification?
>
> 3. Did the trial court abuse its discretion in failing to award Plaintiff/Appellant costs and attorney fees?
>
> 4. Did Appellant receive a fair and impartial trial?

because it is not supported in her brief. Mother's entire argument on the fair trial issue consists of three short sentences:

> A[t t]he conclusion of the September 26, 2019 hearing the trial judge permitted counsel for [Father] to harass counsel for [Mother]. This was not the only time during the litigation. [Mother] will further detail this argument upon oral argument.

Maryland Rule 8-504(a)(6) requires that a party raise in its brief "[a]rgument in support of the party's position on each issue," and if it doesn't, under Rule 8-504(c) this court can "dismiss the appeal or make any other appropriate order with respect to the case." Without any way of knowing if this claim was raised and decided in the trial court, factual support for the allegation that counsel was harassed, authority establishing the standard of fairness that allegedly was violated, or analysis of how that standard was met, we are unable to evaluate this claim.

This leaves the two issues that do relate directly to the proceedings on remand.

A. The Trial Court Denied Mother's Petition to Modify Custody Properly.

Third, Mother argues that the trial court erred when it denied her petition to modify child support. Father responds that Mother failed to meet her burden and that the court followed our 2018 instructions on the remand. We agree with Father that the trial court didn't err.

Normally, a court can "modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstances." FL § 12-104(a). But the last round of proceedings altered the usual formula in this case. Because of the flaws in the 2010 consent order, we held that Mother did not need to

demonstrate a material change in circumstances:

> There is no doubt that a parent must show a material change in circumstances in order to modify a child support order. **But an implicit premise to this rule is that the extant order is legally sufficient. In the present case, the 2010 order was not.** Moreover, and what is most important, at no time has any magistrate or court made a finding that $600 a month in child support for three children was in their best interests. But such a finding is a mandatory prerequisite for a departure from the Guidelines.
>
> We recognize that, in 2010, Mother did not request that the magistrate do what the law requires. Nor did Mother file exceptions to the magistrate's proposed order. Under normal circumstances, the latter failure would preclude us from taking the problem in the 2010 proceeding into consideration in resolving this appeal. But the statutory duty of the court—or the magistrate, as the case may be—to make the analysis and findings required by [FL] § 12–202(a)(2)(i) exists independently of a request by a parent. This is because the court's focus must be on the best interest of the child, and not what the parents may think is in their best interest. **Accordingly, the 2010 support order does not have the sort of preclusive effect that generally results after when a party fails to timely point out to the court that the order is defective.**

Ryder, 2018 WL 3084560, at *5. This left the court on remand to determine afresh the appropriate amount of child support as of the time Mother filed her 2015 motion to modify and, if that amount differed from the guidelines, to make the necessary findings on the record. *See id.* at *6.

The trial court accomplished those tasks. The "child support guidelines are designed to 'remedy the low levels of most child support awards relative to the actual cost of rearing children' and 'improve the consistency and equity of child support awards.'" *Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018) (*quoting Tannehill*, 88 Md. App. at 11). If the

parties make less than $15,000 combined, the court is required to follow the Guidelines in setting the support amount. *See* FL § 12-204(e). There is "a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines," and that presumption may be "rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case." FL § 12-202(a)(2)(i)-(ii). If a court finds the Guidelines figure inappropriate, it must "make a written finding or specific finding on the record stating the reasons for departing from the guidelines." FL § 12-202(a)(2)(v). That finding must include: (1) the child support amount under the Guidelines; (2) how the court's order varies from the Guidelines; and (3) how the court's finding serves the best interests of the children. FL § 12-202(a)(2)(v)(2)(A)-(C).

The court started here by calculating the parties' incomes, consulting the Child Support Guidelines, and finding that "the guideline amount should have been $1,882." From there, the court determined that "a deviation from the guidelines" was appropriate. The court cited Father's consistent monthly payments of $600, the fact that all three children had emancipated, Mother's receipt of the full adoption subsidy for the support of the children, and the absence of evidence that the children had any unmet needs. The court explained that the variance was in the best interests of the children because "it would be unjust or inappropriate to saddle [Father], . . . one year and three months after the final emancipation with an arrearage of $23,424." The court found that the $2,500 Mother received monthly supported the family, which was in the children's best interests, and indebting Father after all children had emancipated would not be in the children's best

interests. The court did as we directed—it conducted a hearing consistent with our opinion, determined the appropriate child support amount as of the correct time period, and justified its decision in a manner that satisfied FL § 12-202(a)(2)(v)—and the result fell well within the court's discretion on this record.

B. The Trial Court Did Not Abuse Its Discretion When It Declined To Award Mother Attorneys' Fees.

Finally, Mother asserts that the court abused its discretion when it denied her request for costs and attorneys' fees. Father responds that he has paid all he was required to pay and that the court didn't abuse its discretion when it denied Mother's request. We agree with Father.

We review the denial of an attorneys' fee award for abuse of discretion. *Abdullahi v. Zanini*, 241 Md. App. 373, 425 (2019) (*citing Petrini v. Petrini*, 336 Md. 453 (1994)). We will not reverse a court's decision unless it was "arbitrary or clearly incorrect or both." *Abdullahi*, 241 Md. App. at 425 (*quoting Huntley v. Huntley*, 229 Md. App. 484 (2016)). Under FL § 12-103(a)(1), "a court *may* award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person . . . applies for a decree or modification of a decree concerning the . . . support . . . of a child of the parties[.]" (emphasis added). The court must consider each party's financial status, the parties' needs, and whether the proceeding was substantially justified. FL § 12-103(b).

In evaluating Mother's request in this case, the court found that neither party was entitled to costs or fees from the other:

> After reviewing the statutes on payment of attorney[s'] fees, I

> don't find that anyone here acted in bad faith in any way in either prosecuting or defending this proceeding. I don't find that it would be appropriate, based on [Mother's] financial abilities that she pay his, nor do I find that it would be appropriate under [Father's] financial circumstances that he should pay her attorney[s'] fees.

The court also noted that "some of the lack of discovery and failure of discovery assisted the [c]ourt in making its decision not to award attorney[s'] fees." In reaching its conclusion, the court considered the appropriate factors, including the justification and good or bad faith in the parties' litigation positions, and their relative financial needs and resources. We see no abuse of discretion in the court's decision to require both sides to bear their own costs and attorneys' fees here.

* * *

One other point bears a brief mention. At the conclusion of the circuit court hearing and during his rebuttal in this court, counsel for Mother wondered aloud whether opposing counsel and the trial court would have treated him differently if he were not a Black attorney, and he argued to this Court that racism is real. We see nothing in the record of this case suggesting that race played any role in the issues in this case or that the race of anyone involved in the case played any role in the proceedings or the decisions of the trial court. Even so, we acknowledge, as Chief Judge Barbera did this month on behalf of the entire Judiciary, that racism indeed is real:

> We have been fortunate in Maryland to have had a longstanding commitment to a Judiciary that looks like the people it serves—and an equal commitment to access to justice. We must, however, recognize the economic and racial disparities that persist in our justice system. We cannot

> eliminate them until we make certain that all voices are heard and respected and that the perspectives and experience of all realign our practices to make good the promise of equal justice under law.
>
> To answer President Lincoln, we will do better in Maryland because we must, until we achieve what a true democracy requires: equality for all people. Our duty and fealty to the constitutions of our state and country command that we strive toward equality. Let us, in reaffirming our commitment to equal justice under law for all, make it know that, in Maryland, the lives of people of color do matter.

Chief Judge Mary Ellen Barbera, "Statement of Equal Justice Under Law," June 9, 2020.

This fact doesn't alter the analysis or outcome of this case, but we did not want silence on this point to leave any doubt.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. APPELLANT TO PAY COSTS.