Circuit Court for Harford County
Case No. 12-C-11-001444 DL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1003

September Term, 2017

AERON ALBERTI

v.

MARLENE MARIE TINE, f/k/a MARLENE MARIE ALBERTI

Kehoe,
Shaw Geter,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: April 20, 2018

Marlene Marie Reynolds[1] and Aeron Alberti differed as to the appropriate custody and support arrangements for their minor child (the "Child"). Their disagreements eventually came before the Circuit Court for Harford County, which granted Ms. Reynolds's requests to modify custody and to increase child support. Mr. Alberti has appealed the court's judgment.

He asserts that the judgment must be reversed because the trial court abused its discretion by: (1) allowing the court-appointed custody evaluator to testify and by giving undue weight to her testimony; (2) denying his complaint to modify custody but granting Ms. Reynolds's counter-complaint for modification of custody; (3) reducing the number of overnights that the Child spent at his home: and (4) granting Ms. Reynolds's request to modify child support.

We will affirm the court's judgment.

Background

The parties were married on August 30, 2008 and resided in Havre de Grace. The Child was born in 2010, and is the only offspring of the marriage. The parties separated in 2011. Ms. Reynolds relocated to Bel Air, while Mr. Alberti remained in the marital home in Havre de Grace. On October 27, 2011, the court entered a final consent order for custody of the child. Under the terms of the order, the parties had joint legal custody and

[1] Ms. Reynolds was formerly known as Marlene Marie Alberti, and then Marlene Marie Tine.

shared joint physical custody of the child. Ms. Reynolds had primary physical custody, and Mr. Alberti had overnight visitations on every Tuesday, alternating Thursdays, alternating weekends from Friday through Sunday, and alternating holidays. Both parties had two non-consecutive weeks of physical custody during the summer. On June 1, 2012, the parties entered into a marital settlement agreement. The marital settlement agreement and the final consent order were incorporated but not merged into the parties' judgment of absolute divorce, dated June 28, 2012.

In 2013, Ms. Reynolds moved to Millington, Maryland. Ms. Reynolds has family in the area, but the primary reason for the move was employment-related. As a result of the move, on October 4, 2013, the parties entered into a consent order modifying the parties' prior custodial agreement. The parties agreed that they would continue shared physical custody of the child and Mr. Alberti's access would be modified to every Thursday after school and alternating weekends from Friday through Monday. The parties did not modify the terms of their prior agreement that related to holidays and summer access. Mr. Alberti remarried and this union has been blessed by a daughter. (At the time of trial, Mr. Alberti and his spouse were expecting twins.) The Child's relationships with her half-sister and her step-mother were very close. Additionally, the Child was enrolled in an elementary school in Millington and did well there. This brings us to the events that gave rise to this appeal.

In March, 2016, Ms. Reynolds informed Mr. Alberti that she was planning on marrying Brian Reynolds, a resident of Milton, Delaware. She proposed to relocate to

Milton with the Child. Mr. Alberti objected to the move and the parties were unable to reach an agreement as to custody and access. Shortly thereafter, Mr. Alberti filed a complaint to modify custody seeking legal and physical custody. Ms. Reynolds filed a counter-complaint on May 19, 2016. In addition to a modification of the custody arrangements, Ms. Reynolds sought an increase in child support.

There were several *pendente lite* filings and a proceeding before a magistrate that are not germane to the issues on appeal. The circuit court held a trial on the merits on June 7 and 8, 2017 before the Honorable Angela M. Eaves. The witnesses were Mr. Alberti, Ms. Alberti (Mr. Alberti's wife), Ms. Reynolds, and Moira Ricklefs, the court-appointed custody evaluator from the Office of Family Court Services. Although the parties disagreed as to some issues, the evidence established that the Child had excellent relationships with both of her parents, her step-mother and Mr. Reynolds. She was doing well in school, but because the elementary school in Millington is closing, she will have to change schools regardless of where she is living.

The testimony of Ms. Ricklefs played a large part in the court's decision. Ms. Ricklefs testified that the Child would have to change schools regardless of any court order because the elementary school in Millington was closing. She believed that, while the Child would adjust to moving to Mr. Alberti's residence, it would be preferable for the Child to remain with Ms. Reynolds after her move to Milton because then the child would only be changing schools, not schools and primary households.

After the hearing, the court issued a bench opinion. After reviewing the factors from *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406 (1977), the court made several findings that are important to our resolution of the issues on appeal:

- The court found that both Ms. Reynolds and Mr. Alberti were fit parents for physical custody, but the court concluded that it was in the Child's best interest for Ms. Reynolds to remain as the parent with primary physical custody.

- Although the court recognized that there was conflicting testimony as to the travel times between Havre de Grace and Millington as opposed to Havre de Grace and Milton, the increase in distance that would result from Ms. Reynolds's relocation to Milton was "not significant."

- Instead of requiring Mr. Alberti to come to Ms. Reynolds's residence to pick up and drop off the Child, the court set Smyrna, Delaware as a pick up/drop off location. It selected Smyrna because that community is approximately half-way between Havre de Grace and Milton.

- The court eliminated the Child's mid-week overnight visitations with Mr. Alberti during the school year but increased such visitations during the Summer. The net result was a reduction of nights that the Child would spend at Mr. Alberti's home.

- The court granted Ms. Reynolds's petition to modify child support, requiring Mr. Alberti to pay $1,624.83 per month, retroactive to the date that Ms. Reynolds filed her pleading seeking modification of child support.

The Standard of Review

Decisions as to child custody, visitation, and support are matters of a trial court's discretion, and those decisions are reversed on appeal only if that discretion is abused. *See, e.g., Davis v. Davis*, 280 Md. 119, 125–26 (1977) (custody); *Reynolds v. Reynolds*, 216 Md. App. 205, 218–19 (2014) (child support). 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. We review the trial court's legal reasoning *de novo*, and its findings of fact for clear error. *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010). Finally, in very rare circumstances, a court can abuse its discretion by reaching an unreasonable or unjust result even though it has correctly identified the applicable legal principles and applied those principles to factual findings that are not clearly erroneous. In *North v. North*, 102 Md. App. 1, 14 (1994), this Court surveyed a number of cases defining the concept of "abuse of discretion" and concluded:

> The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

Analysis

1. Ms. Ricklefs's Testimony

At the beginning of trial, Mr. Alberti's counsel requested that the trial court exclude witnesses from the courtroom. The Court granted the request, instructing "those individuals in the gallery that are witnesses in this matter" to leave the courtroom. When Ms. Reynolds called Ms. Ricklefs as a witness later in the proceeding, Mr. Alberti objected, asserting that she had been present in the courtroom in violation of the rule on witnesses and had not been disclosed as a witness by Ms. Reynolds in discovery or other pretrial documents. Ms. Reynolds's counsel responded that Ms. Ricklefs had been

subpoenaed to testify and that Mr. Alberti's counsel had received a copy of the subpoena. After examining a copy of the subpoena, the court overruled the objection.

To this Court, Mr. Alberti asserts that the trial court erred because Ms. Ricklefs violated the court's order excluding witnesses from the courtroom and because the court's ruling was not consistent with another of its evidentiary rulings, specifically, one preventing him from calling Mr. Reynolds as a witness because he had not identified him as a witness in pre-trial disclosures. Neither argument is persuasive.

"When there has been a violation of a sequestration order, whether there is to be a sanction and, if so, what sanction to impose, are decisions left to the sound discretion of the trial judge." *Redditt v. State*, 337 Md. 621, 629 (1995). The *Redditt* Court also observed that "[v]iolation of a sequestration order does not result in a per se exclusion of the witness's testimony." *Id.* This is because:

> the ascertainment of the truth is the great end and object of all the proceedings in a judicial trial, we think that the complete exclusion of the testimony of witnesses for a violation of the sequestration rule is not lightly to be imposed as a penalty upon even an offending party.

Id. (quoting *Frazier v. Waterman Steamship Corp.*, 206 Md. 434, 446 (1955) (quotation marks and brackets omitted)).

We conclude that the trial court did not abuse its discretion in allowing Ms. Ricklefs to testify. Initially, it's important to note that there was no "offending party" in this case. Ms. Ricklefs was not an ordinary witness, but rather a court-appointed evaluator whose role was to provide an unbiased and objective evaluation of the Child's and parties'

circumstances. This evidence is particularly helpful to courts in custody and visitation matters as the court decides what is in a child's best interest.

Mr. Alberti also asserts that the trial court erred by placing undue weight on Ms. Ricklefs's testimony. But this is not a basis for appellate relief. A reviewing court must "give due regard to the opportunity to judge the credibility of the witnesses." Md. Rule 8-131(c). For this reason, in cases that are not tried before a jury, an appellate court "must give due regard to the opportunity of the trial court to judge the credibility of the witnesses, and to judge the weight to be attached to the evidence." *Bausch & Lomb Inc. v. Utica Mut. Ins. Co.*, 355 Md. 566, 587 (1999) (citations omitted).

2. and 3. Child Custody and the Reduction in Overnights at Mr. Alberti's Home

We will address Mr. Alberti's next two contentions together.

There is no dispute between the parties as to the governing law in cases such as the present one.

Cases involving changes in child custody visitation orders involve two distinct steps. First, the court must decide whether there has been a material change in the parents' or child's circumstances. *Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). A change is "material" if it may affect the child's welfare. *McReady v. McReady*, 323 Md. 476, 481 (1991). The parties do not dispute that Ms. Reynolds's remarriage and move from Millington to Milton, Delaware, constitutes a material change. After that threshold is crossed, the court considers the best interest of the child as if it were an original custody

proceeding. *Wagner*, 109 Md. App. at 28. In *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. at 420–21, we set out a non-inclusive list of criteria for a child custody decision:

> (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference of the child; (6) material opportunities affecting the future life of the child; (7) age, health and sex of the child; (8) residences of parents and opportunity for visitation; (9) length of separation from the natural parents; and (10) prior voluntary abandonment or surrender.
>
> While the court considers all the above factors, it will generally not weigh any one to the exclusion of all others. The court should examine the totality of the situation in the alternative environments and avoid focusing on any single factor[].

(Citations omitted).

As the Court of Appeals noted in *Domingues v. Johnson*, 323 Md. 486, 492 (1991), in child custody disputes often "both parents are entirely 'fit' to have legal and/or physical custody of a child, but joint custody is not feasible." In such cases, the court must exercise its discretion to make the decision. *Id.* at 500.

Returning to the case before us, and evaluating the court's decision in light of the appropriate standard of review, we conclude that the trial court applied the correct legal principles to resolving the custody and visitation disputes. We have reviewed the trial court's factual findings against the evidence in the record. It is clear to us that the court's factual findings were not clearly erroneous. In this context, "not clearly erroneous" does not mean "unchallenged." The evidence presented by the parties differed sharply as to

certain issues, but there was material, competent evidence supporting each of the court's findings. The trial court made it clear that it found Ms. Ricklefs's testimony to be persuasive, particularly as to identifying the Child's best interest. This lies within the trial court's province as the fact-finder, and we will not disturb the court's conclusions as to the probative weight of the evidence before it.

This brings us to the third part of the concept of "abuse of discretion." For Mr. Alberti to prevail, he must convince us that the trial court's custody and overnight visitation decisions were: "well removed from any center mark imagined by the reviewing court," or "beyond the fringe of what that court deems minimally acceptable," or were rulings that did not "logically follow from the findings upon which [they] supposedly rest[]," or had "no reasonable relationship to [their] announced objective." *North,* 102 Md. App. at 14.

Mr. Alberti contends that the trial court abused its discretion when it denied his request for primary custody and reduced the child's overnights with him. He raises three specific contentions.

First, he asserts that the court should not have considered Mr. Reynolds's "needs, wants or station in life when he didn't testify, there was no evidence to support these facts, and even if there was, have no bearing on a best interest analysis." We read the record differently.

At trial, Mr. Alberti took the position that, although Ms. Reynolds was free to marry, she was not free to relocate to Milton—in other words, that Mr. Reynolds should move to Millington if Ms. Reynolds wished to retain primary physical custody. The court did not find this contention to be persuasive. It's difficult to conceive that a court could in light of its finding that the differences in distance and driving time from Havre de Grace to Millington and Havre de Grace to Milton were not significant. Later in its opinion, the Court specifically addressed Mr. Alberti's argument that, in lieu of Ms. Reynolds moving to Milton, Mr. Reynolds should move to Millington:

> I think the expectation that Mr. Reynolds [should be required to] uproot his own life in order to move closer to [Father's residence] . . . is born more out of frustration than out of practicality and the feasibility of the ages of the adults in this case.
>
> Mr. Reynolds didn't testify, but I have had the opportunity to observe him in the courtroom, and I don't mean to offend him [but] he's not twenty. He is a gentleman of some maturity . . . and I would not expect that people of some maturity would have to uproot their lives just because they married someone who shares a child with another parent and they want their spouse to be able to reside with them . . . .

We do not read the court's comment as taking Mr. Reynolds's "needs, wants or station in life" into account in deciding what was in the Child's best interest. Instead, it was a recognition that married couples generally wish to live together. Ms. Reynolds has the right to marry, and the right to live where she wishes. The court could no more require Mr. Reynolds to move to Millington to accommodate Mr. Alberti than it could require Mr. Alberti to move to Millington or, for that matter, Milton, to accommodate Ms. Reynolds.

Second, Mr. Alberti asserts that the court concluded that the fact that "Appellant and his Wife were expecting twins put him in an inferior position to care for [the Child] compared to Appellee who has no other children." Although the trial court noted that Mr. Alberti and his spouse were expecting twins, a change that the court characterized as "significant," there is nothing in the court's opinion that supports the contention that the trial court weighed this fact against Mr. Alberti.

Third, Mr. Alberti asserts that the trial court failed to consider the Child's relationship with her half-sister. This is not correct. The court noted that, even with the reduced time that the Child would be spending in Mr. Alberti's household, "there will be times when she is still going to be able to see Mr. Alberti and Mrs. Alberti, and [her half-sister] as well as her two brothers yet to be born in the case."

Fourth, Mr. Alberti argues that the court abused its discretion by reducing the number of overnight visitations that the Child will have at his home. He points out that, when the Child was about a year old, the parties agreed that Mr. Alberti would have:

> access [on] alternating weekends, every Tuesday overnight, and every other Thursday overnight as well as alternating holidays and two weeks of summer vacation, totaling approximately 140 overnights per year.
>
> In October 2013, the parties modified their access schedule when Mother relocated to Millington to grant Father access on alternating weekends from Friday through Monday morning and every Thursday overnight, as well as the same holiday and summer access schedule as set forth in the prior order, resulting in the same 140 overnights per year.
>
> . . . .

> Pursuant to the current Order, [the Child] is with Father on alternating weekends from Friday to Sunday, in service days only when they fall on Mondays, alternating weeks during the summer, alternating Spring Break and the same holiday schedule as set forth in the parties' original Order. [E649] This schedule results in Father having only 80-87 days with [the Child] depending on whether he has Spring Break that year. This is a significant change in the amount of time [the Child] and Father will spend together.
>
> . . . .
>
> While a relocation to Milton, Delaware would significantly impact Appellant's ability to participate in [the Child's] day to day life, it is not such a distance that additional access time between Father and [the Child] was impossible. For instance, the court could have granted Father access on more than just every other weekend - giving Father three weekends a month, or the 1st, 3rd and 5th weekends of each month, or even alternating weekends plus all three day weekends. The trial court could have reversed the schedule in the summer so that [the Child] is with Father the majority of the summer and Mother on alternating weekends plus a week or two for vacation. The trial court could have granted Father access to [the Child] every Spring Break and the majority of Winter Break with the parties splitting only the Christmas Eve/Christmas Day holiday. As delineated above, the trial court had a myriad of possible visitation options that would have given [the Child] more time with Father, closer to 110-120 days per year - far more comparable to what [the Child] was accustomed.

Mr. Alberti is correct; there are certainly alternative visitation arrangements that would have resulted in the Child's spending more nights with Mr. Alberti. But those hypothetical arrangements must be evaluated against the fact that the Child will be living in, and attending school in, Milton.

We recognize the importance of frequent contact with both parents is critical to a child's well-being. However, such contact is not the only factor that the trial court must consider. Other factors will contribute to a child's welfare. These interests will typically include participating in social events, athletic programs, community based youth groups, and extra-curricular functions. In addition to regular contact with both parents, such

activities (and those included herein are not intended to be exhaustive) are significant factors in the happiness and well-being of children. They are part and parcel of a normal childhood and the Child is entitled to participate in them even if her parents live approximately 100 miles from one another. Spending every weekend, or even most weekends, with Mr. Alberti would significantly constrain the Child's ability to participate in such activities both now and in the future.

In summary, we are not persuaded that the trial court impermissibly weighed Mr. Reynolds's interest in deciding this case. As to Mr. Alberti's other contentions, there was evidence in the record—including, but not limited to, Ms. Ricklefs's testimony—that adequately supports the court's ultimate conclusion. Accordingly, we are unable to state that the trial court's decision was "well removed from any center mark imagined by the reviewing court," or "beyond the fringe of what [the appellate] court deems minimally acceptable." *North,* 102 Md. at 14.

4. Child Support

Prior to trial, both parties requested that the court modify the existing child support order. The court took evidence as to the parties' incomes and, in its oral findings, stated:

> The child support will be retroactive to the date of filing in this matter, and I was not able to do the calculation because they're updating the calculator on the court system, and I wasn't able to do it. But looking at the exhibits submitted by the parties, the tax returns, I would attribute $80,000 a year to mom, which then is a monthly gross figure of $6,667 a month and for dad, a hundred and thirty-nine thousand thirty-three a year, breaking that down to $11,586 a month in this case. I'm not sure where the health care premiums - who has the health care premium for [the Child]. Ms. Reynolds does. That should be factored in as well.

The parties' combined monthly income, i.e., $18,253, exceeds the upper limit of the maximum combined monthly income in Maryland's current basic child support guideline schedule, which is currently $15,000. *See* FL § 12-204(e). The parties agree that the court's reference to "the calculator" meant the Maryland Child Support Calculator established by the Child Support Enforcement Administration. The court's direction for the parties to use "the calculator" indicates that the court intended that child support should be determined by application of the Income Share Model, in other words, by extrapolation.

The court directed Ms. Reynolds's counsel to prepare a written order. The court subsequently signed the order prepared by Ms. Reynolds's counsel, which provided, among other things, that Mr. Alberti would pay $1,624.83 in monthly child support "retroactive to May 19, 2016." Mr. Alberti's counsel did not object to this part of the court's decision or the order.

Mr. Alberti asserts that the trial court erred when it modified his child support obligation. *First*, he contends that the court abused its discretion by failing to provide an explanation of its basis for the award. *Second*, he argues that the court erred by making the award retroactive to the date that Ms. Reynolds filed her request for modification. *Third*, he posits that the court erred because it made its decision even though there was no

evidence as to the amount of the Child's health insurance as required by Family Law Article ("FL") § 12-204(h)(1).[2] None of these contentions are persuasive.

Mr. Alberti's first argument is based on the fact that the parties' combined incomes exceed $15,000 a month, which is the highest monthly income figure in the current version of the Maryland Child Support Calculator. He points out, correctly, that FL § 12-204(d) provides that, when the combined incomes exceed the highest level in the schedule, "the court may use its discretion in setting the amount of child support." He faults the trial court for failing to explain the basis for its conclusion that the appropriate child support amount was $1,624.83.

In support of this contention, Mr. Alberti relies on *Voishan v. Palma*, 327 Md. 318, 332 n.5 (1992), for the proposition that:

> **it is an abuse of discretion** for a trial judge to mechanically extrapolate from the guidelines without making a determination regarding the needs of the child.

(Emphasis added by Mr. Alberti).

This contention is not persuasive.

Initially, Mr. Alberti's argument is based on a misreading of the Court's opinion in *Voishan.* The language that he relies upon is taken from a footnote quoting a decision by

[2] Section 12-204(h)(1) states:

> Any actual cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible shall be added to the basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes.

the Colorado intermediate appellate court. The issue in *Voishan* was how courts should calculate child support in "over the guidelines cases." The **holdings** of *Voishan* (which are in the main text of the opinion, and not in footnotes) are as follows (italicized emphasis in original; bold emphasis added):

> [T]he general principles from which the schedule was derived should not be ignored. See § 12-202(a), which provides that "in *any* proceeding to establish or modify child support ... the court shall use the child support guidelines set forth in this subtitle." To effectuate the legislative intent to improve the consistency of child support awards, trial judges should bear in mind the guidelines' underlying principles when deciding matters within their discretion. **Extrapolation from the schedule may act as a "guide,"** but the judge **may** also exercise his or her own independent discretion in balancing
>
> > "the best interests and needs of the child with the parents' financial ability to meet those needs. Factors which should be considered when setting child support include the financial circumstances of the parties, their station in life, their age and physical condition, and expenses in educating the children."

Id. at 328–29 (citations, and footnotes omitted).

and:

> [T]he guidelines do establish a rebuttable presumption that the maximum support award under the schedule is the minimum which should be awarded in cases above the schedule. Beyond this **the trial judge should examine the needs of the child in light of the parents' resources and determine the amount of support necessar**y to ensure that the child's standard of living does not suffer because of the parents' separation. **Further, the judge should give some consideration to the Income Shares method [i.e. extrapolation]**[3] **of apportioning the child support obligation.**

[3] Maryland's child support guidelines are based on the Income Shares model. *Voishan*, 337 Md. at 322.

Id. at 331–32 (footnote omitted).

In short, there is nothing in *Voishan* that prohibits a court from basing an above the guidelines award on the Income Shares Model, that is, by extrapolation. On the other hand, *Voishan* clearly suggests that, when confronted by an above the guidelines case, a court should explain the basis of its decision, even if that decision is to set child support according to the Income Shares Model. It would have been preferable for the trial court to have done so in this case. However, the court's failure to do so isn't a basis for reversal.

As this Court explained in *Davidson v. Seneca Crossing Section II Homeowner's Association, Inc.*, 187 Md. App. 601, 628 n.4 (2009):

> The trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision. Unless it is clear that he or she did not, **we presume the trial judge knows and follows the law.** The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal. Furthermore, in reviewing a judgment of a trial court, 'the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court.

(Citations, quotation marks, and bracketing omitted. Emphasis in original).

At trial, neither Ms. Reynolds nor Mr. Alberti argued that extrapolation was inappropriate.[4] Additionally, neither party presented evidence as to the actual costs incurred by them in caring for the Child. In other words, it appears that both parties were

[4] In fact, in their closing arguments, both lawyers appeared to downplay the significance of the child support issue. (Wife's counsel: "She doesn't care about child support." (E. 214); Husband's counsel: "We haven't spent more than 30 seconds on child support. It never comes up. It's doesn't matter. He doesn't care." (E. 212)).

comfortable with the notion of the court's using the Income Shares Model as a means of calculating child support and tailored their presentations accordingly. The court cannot be faulted for adopting the same approach and it was not necessary for the court to expressly articulate the point. *John O. v. Jane O.*, 90 Md. App. 406, 429 (1992) ("The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal.").

Second, Mr. Alberti argues that the court erred because it did not consider the health care premium. But, in the excerpt from the court's opinion that has been previously quoted, the court did instruct counsel to factor the amount of health insurance into the support calculation. It appears from the record that Ms. Reynolds pays the Child's healthcare premium, and Mr. Alberti does not challenge this fact on appeal. Additionally, in his brief, Mr. Alberti does not explain how the health care premium would affect the child support number. This is an insufficient basis for us to set aside that portion of the court's ruling.

Finally, Mr. Alberti argues that the court erred in making the award retroactive to the date of the filing of Ms. Reynolds's pleading requesting modification. He points out that before the judgment that is the subject of this appeal, he had approximately 140 overnight visitations with the Child, a figure that was reduced to between 80 and 87 as a result of the judgment. He asserts that:

> However, the parties were operating under the October 2013 Order through the date of trial. By ordering that the child support be retroactive to the date of filing

> the trial court ordered the Appellant to pay child support based on Appellee having sole custody even though the parties were exercising shared custody.
>
> The trial court abused its discretion in granting the modification retroactive to the date of filing when the parties were exercising shared custody through the date of the trial. At the very least, the Court should have ordered two calculations—one based on shared custody from the date of filing through the date of the judge's oral opinion on June 15, 2017 and the other based on sole custody from June 15, 2017 forward.

In response, Ms. Reynolds asserts:

> Appellant's child support under the 2013 Order was $190.00 per month based on a substantially lower annual salary than he earns now. During the instant case, Appellant introduced his tax return for 2016 into evidence and testified that he earned $150,000 that year. [The trial court] ultimately attributed an income of $139,330.00 to Appellant for 2016. It is not an abuse of her discretion to order Appellant to retroactively increase the level of support as his income was substantially higher in 2016 than the 2013 Order reflected. It is within the chancellor's sound discretion to make such a determination and enter such an order.

The difficulty with Mr. Alberti's argument is that it is unpreserved, that is, he did not present it to the trial court, either before the judgment was entered or afterwards in a motion to alter or amend the judgment.

Maryland Rule 8-131(a) provides that, other than for jurisdictional matters:

> [o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

This rule give appellate courts the discretion to address unpreserved issues. *See, e.g.*, *Gittin v. Haught-Bingham*, 123 Md. App. 44, 48 (1998). However, this discretion is one

that should be exercised only in "extraordinary but limited" circumstances. *Beeman v. Dep't of Health & Mental Hygiene*, 107 Md. App. 122, 159 (1995). This is because:

> considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

Chaney v. State, 397 Md. 460, 468 (2007)

Mr. Alberti's argument should have been presented to the trial court, and we will not consider it for the first time on appeal.[5] The trial court cannot be faulted for failing to consider arguments that weren't made to it.

THE JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.

[5] Were we to consider the argument, we would affirm this aspect of the court's judgment. The trial court certainly had the authority to enter a retroactive support order. See FL § 12-101(a)(3) ("[T]he court may award child support for a period from the filing of the pleading that requests child support."). Moreover, Ms. Reynolds presented a sufficient factual basis to justify entry of a retroactive order.