

Circuit Court for Baltimore County
Case No.: 03-C-17-001588

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1083

September Term, 2022

YOUNGJIN YU

v.

TAMI YU

Leahy,
Tang,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: September 19, 2023

*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).

This case, before us for the second time, has its origins in a divorce action filed in the Circuit Court for Baltimore County by appellee, Tami Yu (“Wife”), against appellant, Youngjin Yu (“Husband”). After a trial in January 2019, the circuit court issued a memorandum opinion and order that, among other things, granted an absolute divorce in favor of Wife, awarded Wife indefinite alimony of \$3,000 per month, directed the parties to share equally in the value of Husband’s 401(k), granted Wife one-half of the marital portion of Husband’s pension, and awarded Wife attorneys’ fees. Wife filed motions to amend and for reconsideration. On 28 October 2019, the court issued a supplemental memorandum opinion and amended order that directed the alimony to be paid through an earnings withholding order and ordered Husband to pay an additional \$500 per month toward alimony arrearages. Both parties filed notices of appeal. In a prior unreported opinion, *Yu v. Yu*, No. 1214, Sept. Term, 2019 (filed 2 April 2021), we vacated the circuit court’s judgment solely as to the division of Husband’s 401(k) account, but affirmed the judgment in all other respects.

While that appeal was pending, but prior to the issuance of our opinion, Husband filed in the circuit court a petition to terminate alimony. Wife filed a petition for contempt and, later, an amended petition for contempt. The parties filed a joint motion to consolidate the petition to terminate alimony and the contempt petition, which the court granted. A hearing on both petitions was held on 14 June 2022. In a memorandum opinion and order entered on 24 June 2022, and an amended memorandum order filed on 11 July 2022, the court denied Husband’s request to terminate alimony, but modified retroactively the award of alimony so as to reduce it to \$2,000 per month. The court found also Husband to be in

constructive civil contempt of the court’s amended order of 28 October 2019 for failing to pay alimony and alimony arrearages. The court imposed a sanction and set forth a purge provision. In addition, the court set a date for an inquiry into whether Husband paid the alimony arrearages. Ten days later, Husband filed a motion for reconsideration. On 27 July 2022, the court denied Husband’s motion for reconsideration. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the circuit court erred or abused its discretion in denying Husband’s petition to terminate alimony. For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

The parties were married in South Korea on 1 June 1988 and, thereafter, moved to the United States. Wife worked as a medical claims examiner for Prudential Insurance. Husband attended college and earned a degree in electrical and computer engineering. In April 1997, Husband accepted a job at Lockheed Martin in Maryland. When the parties moved to Maryland, Wife was pregnant with the first of the parties’ two sons. The parties agreed that Wife would not seek employment, but instead, would be a stay-at-home mother. The parties’ first son was born in September 1997, and their second son was born in December 1999.¹ In 2004, the parties moved to a large five-bedroom home in Perry Hall (“the marital home”).

¹ At all times pertinent to this appeal, both sons were emancipated.

On 16 February 2017, Wife filed a complaint for limited divorce and, about a year later, she filed a complaint for absolute divorce. Husband filed a counter-complaint for absolute divorce. In June 2017, Wife started working as a stock clerk at a Target store. Husband purchased Wife’s share of the marital home for \$77,000. She moved out on 15 November 2017. By that time, Wife received an inheritance of \$238,270 from her mother’s estate. She used the \$77,000 received for her interest in the marital home, \$15,000 from a marital account, and part of her inheritance, to purchase a townhome in Rosedale for \$213,000, furnishings, and a vehicle.

After a four-day trial in the Circuit Court for Baltimore County, the court granted Wife an absolute divorce, awarded Wife indefinite alimony in the amount of \$3,000 per month, directed that the parties share equally in the value of Husband’s 401(k), granted Wife one-half of the marital portion of Husband’s pension, and awarded Wife attorneys’ fees.

A. Petition to Terminate Alimony

While the divorce case was on appeal, Husband filed a petition to terminate alimony in which he asserted that “several material changes in circumstances” occurred that warranted the termination of his obligation to pay alimony. Those material changes in circumstance included that Husband had been terminated from his employment at Lockheed Martin, the worsening of his chronic health issues since the divorce (which rendered him “incapable of continued employment”), his need for “extensive surgery,” and his need to “be isolated from [the] public amidst the *Covid-19* pandemic” because he was immune-compromised.” Husband contended that his financial resources had been

devasted, that the alimony award “created substantial financial hardship[,]” and that it “led to increased debt, health issues and overall financial ruin.” He argued that he “simply does not have funds with which to pay his own modest living expenses, let alone alimony to” Wife. Husband asserted also that Wife had more assets than him. He claimed that she “received a substantial award of retirement assets” from him; \$77,000 for her share of the equity in the marital home, which caused him to incur an increased mortgage; a marital IRA totaling \$19,500; cash in the amount of \$15,000 that she withdrew from the parties’ savings account; \$10,000 from a joint checking account with her mother; and, a “significant inheritance” from her mother.

B. Amended Petition for Contempt

In her amended petition for order of contempt, Wife asserted that Husband stopped paying alimony when he lost his job at Lockheed Martin. The last payment received by Wife was on 24 July 2020. She claimed the amount due from that date through 8 October 2021 was \$47,538.54. Wife also claimed that, pursuant to the court’s amended order of 28 October 2019, Husband was required to pay \$500 per month for alimony arrearages, but he owed still \$7,500. In addition, Wife asserted that Husband failed to pay her attorneys’ fees of \$20,000, as ordered by the court. That amount had been reduced to a judgment, but writs of garnishment on Husband’s known bank accounts were “to no avail[,]” and he failed to pay anything toward that judgment. Wife requested that Husband be held in contempt, re-ordered to comply with the court’s outstanding orders, and resume paying monthly alimony and arrearages. She requested also that Husband pay immediately her attorneys’ fees of \$20,000 as well as attorneys’ fees incurred in filing her petition for contempt.

C. The Parties' Finances

A hearing on the petition to terminate alimony and the amended petition for contempt was held on 14 June 2022. Husband testified that on 1 April 2021, after he lost his job, he retired and began receiving pension benefits. He acknowledged that, from the time of his termination from employment until the day of the hearing, he did not make any alimony payments. He claimed that he did not have the ability to make the payments because he had no income. He explained that even before he lost his job, when his paycheck was garnished for his alimony obligation, he was having difficulty keeping up with his own monthly expenses.

Husband testified that he had only one bank account, which was at Bank of America, and that his account at a credit union had been closed, although he had a loan from that institution. The total monthly payment from his pension was \$2,009.23, but after deductions for taxes, the net amount of \$1,511.73 was deposited directly into his account at Bank of America.

The court admitted in evidence Husband's long form financial statement, about which he was questioned at the hearing. Husband valued the five-bedroom former marital home, where he lived alone, at \$400,000, the same value he used when he valued the house in 2018. He acknowledged that he had not had the house reappraised. The balance on Husband's mortgage was \$270,378.26. The financial statement showed, among other things, a monthly mortgage expense of \$2,089.61 and other household expenses totaling \$2,972.23. Husband testified that his gas and electric bill was \$174 per month, but he was

delinquent and had a balance due of \$529.80. Husband testified also that his house was in need of repairs and that he had had a temporary repair done for a leak in the roof.

Husband included on his financial statement an expense of \$67 per month for Korean ancestral ceremony dues, although he testified that he did not send that money to his family in Korea in 2022. Prior to the divorce, Husband sent \$800 to \$1,000 per month to his mother in Korea. A credit union statement showed that on 18 August 2020, an outgoing wire in the amount of \$800 was sent to Korea and, on 31 January 2021, there was a transfer of \$1,000, which Husband testified was for the ancestral ceremony. Husband claimed he had not sent any monetary wires to Korea since 2021.

Husband listed a monthly credit card payment of \$1,000, but acknowledged that he charged his health and dental insurance payments to his credit card. He made a monthly payment to his attorney, but that amount was not included on his financial statement. Husband owed \$5,459.96 on his car loan. He listed a total of \$2,117.05 per month for expenditures relating to his car and transportation which included \$603.68 for his car payment, as well as expenses for repairs, upkeep, and insurance.

When Husband's COBRA coverage ended, he purchased health insurance from CareFirst at a monthly cost of \$1,100.51. He had also monthly extraordinary medical expenses in the amount of \$123.47, which was for out-of-pocket expenses such as co-payments. On his financial statement, Husband listed \$119.43 for dental expenses relating to a crown, but he testified that he had not yet incurred that expense. Husband listed also a loan for periodontal work in the amount of \$5,297 and a loan in the amount of \$32,000

for dental implants, but at trial acknowledged that he did not borrow actually those amounts.

Husband valued his 401(k) at \$594,396, but, at the hearing, he testified that the last time he checked, the value was actually \$780,000. An April 2022 statement showed the 401(k) had a value of \$857,000.

Husband received quarterly dividends from investments. In April 2021, he received \$14,576.07 in that category. In July 2020, he received from Lockheed Martin a lump-sum payment for unused vacation time in the amount of \$6,097.98. At about that same time, he withdrew, without penalty, \$44,985 from his retirement account. Husband claimed that Wife was in possession of certain bonds that he valued at \$10,000.

Wife earned \$15.90 per hour working at a Target store. In 2021, she earned \$26,254. In September 2021, she began receiving monthly retirement payments of about \$1,961 from Husband's pension. Her total monthly net income from her pension and wages was \$3,549.50 and her monthly deficit in living expenses was \$1,357.58. Wife's paycheck was deposited into her account at Bank of America. She had another account at Wells Fargo where her pension check was deposited. She used that account for her larger expenses, such as taxes, automobile insurance, and homeowner's insurance.

She did not have a mortgage because she purchased her home, in part, with the money Husband paid to purchase her share of the marital home and cash she inherited from her mother. She had a Charles Schwab account with a balance of \$10,000 that was left from her inheritance. She had another Charles Schwab account for her 401(k). She anticipated receiving a pension benefit from her work at Prudential Insurance in the amount

of \$170 per month, before taxes, but she would not start receiving that until she turned 65 or 67 years old.

Wife’s monthly expenses included taxes, insurance, a home warranty, and any home repairs that might come up. She received health insurance through her employment at Target at a cost of about \$80 per month. Her health insurance coverage had a deductible of about \$3,300. Wife had a balance of about \$5,000 on her credit card. She testified that the balance included litigation expenses and that she transferred expenses from one zero-interest credit card to another. She paid \$30,000 in attorneys’ fees when her portion of Husband’s 401(k) was transferred to her.

With respect to alimony, Wife received the first payment in November 2019. She did not receive any payments after the earnings withholding order ended when Husband lost his job at Lockheed Martin. Wife admitted that she possessed EE bonds that were to be divided between the parties pursuant to the judgment of divorce. The total value of the bonds was about \$10,000, but she had cashed out her half of the bonds about two years prior to the hearing. Wife admitted also that she had possession of 3 medals that belonged to Husband’s father.

D. Health

Husband testified that he had numerous health issues, including a seizure disorder, rheumatoid arthritis (“R.A.”), chronic obstructive pulmonary disease (“COPD”), osteoporosis, “hyper-cholesterol,” “auto immune disease,” joint pain and muscle aches, extreme fatigue, cataracts, and periodontal disease that resulted in the loss of 17 teeth. In addition, he experienced episodes of passing out on a daily basis, falling asleep, problems

with his vision, and forgetfulness. Husband testified that since 2016, he sometimes sleeps for 20 straight hours and is sometimes on bedrest for two to three straight weeks.

Husband explained that, as a result of R.A., he experienced joint pain and swelling, stiffness, and a fatigue that caused him to pass out or fall asleep, even at work. It affected also his vision. He had a seizure disorder for “30 some years” and took daily medication to control it. His last seizures were in 1993 and 1995, but because he lived alone for the past six years, he did not know if he had had any seizures during that time. Husband took prescription medications for joint and muscle aches and vitamin C and folic acid for osteoporosis. As for his COPD, Husband claimed that he was unable to do “any cardio related activities” and that he had trouble going up steps. He acknowledged that he smoked for 30 years or more and was still smoking. As a result of his periodontal disease, Husband had emergency surgery and received a temporary denture. He was supposed to go back for additional treatment, but did not because of the divorce.

Wife acknowledged that Husband had a seizure disorder since the time they were married, but testified that his medications controlled his seizures. The last seizure Wife recalled occurred in the early 1990s. Wife acknowledged also that Husband had periodontal and eye issues and that he had some work done on his teeth prior to their separation. She testified that none of his medical issues impacted his ability to work or his day-to-day activities. Wife stated that Husband still played golf.

Wife had cataracts that will require surgery. She had also plantar fasciitis, atrial fibrillation, and high blood pressure, and she wore a brace on her wrist. She took high

blood pressure and cholesterol control medications and a full dose of aspirin for her atrial fibrillation.

E. Employment

Husband did not pursue new employment after his termination from Lockheed Martin. He testified that he did not pursue a job in retail, like Wife, because of his problems with falling, fatigue, and falling asleep. He maintained that medicines he took suppressed his immune system so that he was susceptible to infections. As a result, he had to be very careful about going out in public. Husband testified that he had fallen while working in his former office environment and that he could not imagine “moving stuff and falling with heavier equipment” in a retail environment. He concluded that a job in retail was “not an option” for him.

Wife, who has a high school education and had taken a few college classes, testified that she started working at a Target store when the parties separated. She worked about 35 hours per week, from 4 a.m. to 12:30 p.m., and was “cross trained to do everything” at the store, including stocking and pricing.

F. Travel and Social Activities

Husband testified that he traveled to Korea in June 2019. In 2020, he flew to Florida where he went to the beach and out to dinner. He paid for the trip using his credit card. In January 2020, he went to New Jersey to visit work colleagues. He visited also a hotel in Northeast, Maryland, a couple of times. Husband testified about visiting “Eastport” in Annapolis where there were “very good trail[s] you can walk.” He ate there and one time had a drink, but “couldn’t even function[,]” so he checked into a hotel. In August 2020, he

traveled to Virginia Beach with his son and went also to Rehoboth Beach. He returned to Florida in 2021 because his son was moving from Florida to Virginia. He flew to Florida and then drove to Virginia with his son. In May 2021, he spent one night in Bethlehem, Pennsylvania. In 2021, he went skiing once or twice. In 2022, he drove to Vermont with a friend and went skiing. On cross-examination, Husband stated that he did not ski when he was in Vermont, but then said that he tried on his friend's skis and spent time on the bunny slope. He acknowledged that he went snow tubing at Roundtop in 2020. He also acknowledged that on 28 January 2020, he purchased a ski jacket for \$136.74 at the Baltimore Ski Warehouse. Husband testified that he went ice skating with friends in Rockville, but he denied he skated actually. On cross-examination, however, he stated "I stayed there, held it but I didn't really ice skate because kind of wobbly. Yeah."

Wife testified that she went to Arizona in January 2022 to visit her sisters who live there.

The Circuit Court's Decision

The circuit court denied Husband's petition to terminate alimony, but decided that a modification of the alimony award was warranted. After reviewing the evidence, the court found that Husband's termination from employment at Lockheed Martin constituted a material change in circumstances. The court determined that:

[g]iven the material change in circumstance to the pecuniary conditions of the parties, circumstances and justice require a modification of alimony retroactive to [Husband's] July 9, 2020 termination from Lockheed. The Court retroactively reduces the alimony from \$3,000 per month to \$2,000 per month.

The court found that Husband was in constructive civil contempt of the court’s amended order and that, even with the modification of alimony, he had an outstanding alimony obligation of \$48,000. The court found further that Husband’s existing alimony arrearage was \$4,500.18, and that he “repeatedly and continuously failed to meet his ongoing obligation and is in constructive civil contempt of the” amended order. In a written order finding Husband to be in constructive civil contempt, the court imposed a sanction of 10 days in jail, “with a deferred report date to the Baltimore County Detention Center of September 21, 2022[.]” The court ordered that Husband may purge his contempt by paying alimony arrearages of \$4,500.18, paying \$5,000 toward the ongoing outstanding alimony obligation of \$48,000 prior to 20 September 2022, and resuming monthly alimony payments beginning 1 August 2022, as required. The court ordered Husband to appear in court on 20 September 2022 for the court to assess whether the sanction had been purged.

STANDARD OF REVIEW

In reviewing a case, such as this, that has been tried without a jury, we “review the case on both the law and the evidence.” Md. Rule 8-131(c). We “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* *See also Keys v. Keys*, 93 Md. App. 677, 688 (1992) (“[E]specially in the arena of marital disputes where notoriously the parties are not in agreement as to the facts, . . . we must be cognizant of the [trial] court’s position to assess the credibility and demeanor of each witness.”). “If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *L.W. Wolfe*

Enters., Inc. v. Maryland Nat'l Golf, L.P., 165 Md. App. 339, 343 (2005) (quoting *Yivo Inst. for Jewish Rsch. v. Zaleski*, 386 Md. 654, 663 (2005)). “Although the factual determinations of the circuit court are afforded significant deference on review, its legal determinations are not.” *Id.* at 344. “[W]here the order involves an interpretation and application of Maryland statutory and case law, [we] must determine whether the lower court’s conclusions are ‘legally correct’ under a *de novo* standard of review.” *Walter v. Gunter*, 367 Md. 386, 392 (2002).

DISCUSSION

Husband contends that the circuit court erred or abused its discretion in denying his petition to terminate alimony.² Neither party challenges the circuit court’s authority to modify the alimony award, the court’s finding that Husband’s retirement constituted a material change in circumstances, or the court’s decision to modify Husband’s alimony obligation by reducing his monthly obligation. Husband’s challenge on appeal is limited to the court’s denial of his petition to terminate alimony. In support of that contention, he argues that the circuit court failed to consider a form attached to Wife’s 2021 tax return that showed business income of \$93,680 and that the evidence showed an unconscionable economic disparity in which his standard of living was so inferior to Wife’s that alimony should have been terminated.

² We note that Husband’s petition requested termination of alimony, but did not seek, in the alternative, a modification. During closing argument at the hearing on the petition, Husband’s counsel asked that if the court was not inclined to terminate alimony, it consider a modification.

Section 11-108 of the Family Law Article (“FL”) of the Maryland Code provides for the termination of alimony on the death of either party, on the marriage of the recipient, or if the court finds that it “is necessary to avoid a harsh and inequitable result.” The court must examine the facts and circumstances “to determine whether harsh and inequitable results exist.” *Bradley v. Bradley*, 214 Md. App. 229, 237 (2013). “The presence of a ‘harsh and inequitable’ result is not an objective, absolute standard; rather, it is a subjective classification, most appropriately determined by a trial court judge in whose judgment the exercise of sound discretion in such matters is reposed.” *Blaine v. Blaine*, 97 Md. App. 689, 706 (1993), *aff’d*, 336 Md. 49 (1994). Accordingly, we review the court’s denial of the motion to terminate alimony for abuse of discretion. An abuse of discretion occurs when “no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles.” *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quotation marks and citation omitted).

A. Wife’s Income Tax Return

Husband contends that the circuit court failed to consider a form attached to Wife’s 2021 tax return that showed business income of \$93,680. At the hearing on Husband’s petition to terminate alimony, Wife was questioned about her finances, including her income, expenses, and financial statement. She was questioned also about her tax returns. Her 2020 and 2021 returns were admitted in evidence. Wife testified about the income she earned from her employment at Target, where she earned about \$15.90 per hour and worked about 35 hours per week. Her 2021 tax return listed income of \$26,254, which included both her wages from Target and income from her share of Husband’s pension.

Wife’s 2020 tax return showed income of \$15,253. Her 2020 income was less due to time she took off from work because of the Covid-19 pandemic. Wife explained that, although she had a deficit each month, she was able to manage when not receiving alimony by withdrawing money from her share of Husband’s 401(k) and by cashing out an IRA she inherited from her mother.

Wife’s 2021 federal income tax return included an attached form identified as Form 8995, “Qualified Business Income Deduction Simplified Computation.” Her name and taxpayer identification number appeared on the top line of the form. The form included taxable income before a qualified business income deduction of \$93,680 and a net capital gain of \$228. Husband maintains that because the court did not mention that income, it failed to consider all of Wife’s assets when denying his petition to terminate alimony and, as a result, reversal is required. We are not persuaded.

Husband has not directed us to any place in the record to show that Wife was questioned about that form or the business income listed on it. Our review of the transcript did not reveal such questioning. Nor did our review of the transcript reveal any argument by counsel with respect to Form 8995 or the business income listed on it.

In his motion for reconsideration of the denial of his petition to terminate alimony, Husband argued, among other things, that the court’s determination that Wife operated at a monthly deficit of approximately \$1,357.58 would be incorrect if her monthly expenses for attorneys’ fees were removed from her long form financial statement. He asserted that Wife’s “monthly excess” of income “taken in conjunction with income received through her employment, inheritance, retirement assets, and 401k [r]eceived from [Husband]

demonstrates that [Wife] no longer has a need for alimony and is satisfactorily self-sufficient.” Husband asserted that Wife’s “income has significantly increased since the parties’ divorce[,]” and that:

[Wife’s] monthly income from pension and wages is on average Four Thousand Five Hundred and Eighty Dollars and Four Cents (\$4,580.04) per month, calculated at One Thousand Nine Hundred and Eighty Dollars and Four Cents (\$1980.04) in pension income and Two Thousand Six Hundred Dollars (\$2,600.00) in monthly wages. In addition, [Wife] receives additional monthly income from overtime work, out of shift pay, holiday pay and bonuses along with her IRA interests, including an inherited IRA, dividends, and pension. [Wife] is further eligible for social security beginning February 2023.

Husband noted Wife’s receipt of money pursuant to a Qualified Domestic Relations Order (“QDRO”), her receipt of her share of the equity in the marital home, her inheritance, her receipt of her share of a marital IRA, and money she withdrew from a marital bank account. Husband asserted that Wife failed to disclose properly those assets, stating:

[Wife] failed to properly disclose these assets in [her] Long Form Financial Statement in addition to several IRA accounts held in [her] name. [Wife’s] Long Form Financial Statement failed to disclose her full assets as did [Wife’s] exhibit did not [sic] include all of her IRA. [Wife] has significant assets as heretofore mentioned and testified to by [Wife] at the parties’ merits hearing.

According to Husband, Wife’s gross income for 2021 was over \$106,000 whereas his gross income for 2021 was \$73,503. At no point in his petition to terminate alimony or in his motion to reconsider did Husband argue that Wife had business income or suggest that the court should consider the Form 8995.

On appeal, Husband argues, for the first time, that the trial court failed to consider the Form 8995. He asserts that “the [c]ourt did not investigate that form.” Husband argues further:

[Wife’s] tax return shows on Form 8995 . . . a “business income” of \$93,680. With a net capital gain of \$228, resulting in a figure of \$93,452 (and with an income limitation of \$18,690). . . . [Wife] did not testify to these figures from Form 8995 in the June 14 hearing. And these figures were not in her financial statement. The court did not *mention* and thus did not consider these figures in the memorandum opinion. With the “business income” from Form 8995 of \$93,452 (*if this figure can be added to her stated income*) – her income and assets continued to be significant and demonstrate her self-supporting lifestyle.

Husband asserts also that Wife’s tax return “plainly shows business income that the trial court should have considered – but did not.” Husband maintains that Wife “did not file an amended return if the original return was inaccurate. Thus, the IRS Form 8995 in her tax return demonstrated business income that must be examined or considered.”

Wife repudiates Husband’s assertions. She maintains that, as she testified at the merits hearing, she is employed at Target, that she does “not have any other income[.]” and that “there is plainly some error on her 2021 return evidencing a business income amount[.]” She argues that the “trial court properly did not calculate any business income of [hers], . . . as she never had any business income, and still does not.”

Contrary to Husband’s assertion, the court was not required, on its own initiative, to investigate the form attached to Wife’s 2021 tax return. Nor was it required to mention the form in its memorandum opinion. Husband bore the burden of raising the issue of Wife’s alleged business income in the circuit court and seeking a ruling on that issue, but he did not do so. Except for certain issues of jurisdiction, this Court “[o]rdinarily . . . will

not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). This ensures that the trial court has the opportunity to rule on and possibly correct any errors. *State v. Bell*, 334 Md. 178, 189 (1994). Use of the word “ordinarily” in Rule 8-131(a) connotes that the appellate court has discretion to consider issues that were not preserved. We may “decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” Md. Rule 8-131(a). The prerogative to review an unpreserved claim of error is to be exercised rarely and only when doing so furthers, rather than undermines, the purposes of the rule. *Jones v. State*, 379 Md. 704, 714 (2004); *Conyers v. State*, 354 Md. 132, 150-51 (1999). Here, in what appears to be a matter of trial tactics, Husband did not raise adequately the issue of Form 8995 during the hearing on his motion to terminate alimony or in his motion to reconsider and the court did not specifically reference it. We decline to consider the issue.

B. Unconscionable Economic Disparity

Husband contends that the trial court abused its discretion in denying his petition to terminate alimony because the evidence showed an unconscionable economic disparity in which his standard of living was inferior, qualitatively and quantitatively, compared to Wife’s standard of living. In support of his contention, Husband repeats many of the arguments he made at the hearing on the petition to terminate alimony. He maintains that Wife “is fully self-sufficient” and points to the fact that Wife is employed, lives in a home with no mortgage, has “significant assets,” and “has no health issues,” while he “is retired, lives in a home with repair concerns, has a mortgage and has significant and numerous

health issues.” According to Husband, his change in circumstances, specifically his retirement and “worsening health problems,” justified the termination of alimony. He asserts that “the trial court inexplicably discounted” his health issues and his opinion that “retirement from full time work (or even part-time work) is best for him going forward.” We are not persuaded.

Our role is not to reweigh evidence nor assess credibility. *Qun Lin v. Cruz*, 247 Md. App. 606, 629 (2020) (“[A] reviewing court may not decide on appeal how much weight must be given to each item of evidence[.]” (quoting *Santiago v. State*, 458 Md. 140, 156-57 (2018))). See also *Smith v. State*, 415 Md. 174, 185 (2010) (“Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.”). Instead, “[i]f there is any basis in the record for reaching a given finding, we allow that finding to stand.” *Long v. Long*, 129 Md. App. 554, 567 (2000).

Here, the evidence, especially Husband’s own testimony, supported the circuit court’s determination that Husband failed to meet his burden to prove that termination of alimony was necessary to avoid a harsh and inequitable result. After reviewing the evidence presented at the hearing, the court found, among other things, that there was no credible evidence to suggest that Husband’s health-related concerns interfered with his ability to work and that his “testimony as to his health-related troubles and newfound health focus were repeatedly belied by competing testimony.” The court found that Husband’s “testimony was replete with contradiction,” concluding that his claim that he is physically

unable to work was not credible “given the other activities he admitted engaging in, such as ice-skating, trail-walking in Eastport, skiing and snow-tubing.” The evidence established that Husband worked previously while having periodontal disease and a seizure disorder, the latter of which was controlled by medication. Husband’s testimony about his need to sleep and rest conflicted with his travel experiences and his engagement in physical activities. That contradictory testimony supported the court’s conclusion that Husband’s claims about his inability to work were not credible.

The court determined further that Husband’s standard of living had not changed and that his “testimony as to his financial obligations was not credible[.]” Those determinations were supported by the evidence. The court referred specifically to Husband’s financial statement, which included “purported loans, which he later acknowledged were not actually taken out or due.” Husband admitted at the hearing that he had not taken actually the loans listed on his financial statement. The court took note of the undisputed fact that Husband continued to live alone in the five-bedroom marital home which had a mortgage, but also “substantial equity.” That determination was based on a prior valuation of the home in the divorce case. Husband did not produce any evidence showing that the value of the home had declined. The court took note also of Husband’s education and work history, his age, and his decision not to pursue a job in retail in order to avoid a public environment because of his health issues. As we have noted already, the court did not credit Husband’s claim that he was unable physically to work, given the other physical activities he admittedly engaged in. That determination was supported by Husband’s testimony.

The trial judge observed first-hand the parties' demeanors and assessed their credibility. It is not our job to re-weigh the credibility of the parties or resolve any conflicts in the evidence. As there was ample evidence to support the circuit court's determinations, reversal is not warranted.

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