

Circuit Court for Baltimore County
Case No. 03-C-94-001519

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1085

September Term, 2021

ALLA P. GAKUBA

v.

CHRYSOLOGUE GAKUBA

Berger,
Nazarian,
Arthur,

JJ.

Opinion by Nazarian, J.

Filed: July 25, 2022

* 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.

Alla P. Gakuba (“Alla”) and Chrysologue Gakuba (“Chrysologue”)¹ divorced twenty-seven years ago. Alla appeals an order of the Circuit Court for Baltimore County denying her motion to modify alimony and for sanctions against Chrysologue. We affirm.

I. BACKGROUND

We have recounted the factual allegations and procedural history in detail in two earlier appeals, *Gakuba v. Gakuba*, No. 50, Sept. Term 2016, slip. op., 2017 WL 1057446, at *1–*2 (Md. App. Mar. 21, 2017) and *Gakuba v. Gakuba*, No., 1170, Sept. Term 2018, slip. op., 2020 WL 3888978, at *1–*2 (Md. App. July 10, 2020), but a brief sketch of the background affords some context for the narrow question before us. The parties divorced in 1995, there was a flurry of litigation in the years after, a pause between 2001 and 2015, and renewed litigation since, primarily (as here) over alimony. Our March 2017 and July 2020 opinions addressed much of the factual background and procedural history, and we pick up the story where the latter left off.

On November 5, 2018, Alla filed a motion (labeled a complaint) to modify alimony, asserting that she was entitled to an increase in alimony because of the disparity in the parties’ incomes and because the cost of living had increased. Chrysologue filed a response and refuted Alla’s factual assertions. Alla also filed a motion for sanctions on May 27, 2021, asking the court to sanction Chrysologue for his failure to respond to her written discovery requests. The circuit court held a hearing on both motions on August 21, 2021. Chrysologue appeared in person and Alla appeared via Zoom, with both parties

¹ As before, we use the parties’ first names purely for clarity. We mean no disrespect.

representing themselves.

Alla testified first, although the Zoom connection made the hearing difficult to transcribe. The court began by asking Alla to describe the change in circumstances that would justify an increase in alimony, and then the court alternated back and forth between the parties. Alla's principal arguments for modifying alimony were that her health insurance was canceled, she was unable to find a job, her health problems had increased, and mainly, that her income decreased while Chrysologue's income had increased. To support that argument, Alla offered a summary she prepared that described the parties' respective incomes and finances. It appears from the court's exhibit log that it was not admitted into evidence; Alla submitted exhibits to the court before the hearing, but it doesn't appear that she offered them formally into evidence.

Chrysologue gave a detailed account of his current income, which includes social security, distributions from retirement accounts, and dividend payments from stocks. He retired in 2015 and his tax returns for 2015-2020, which were admitted into evidence, revealed that his income was significantly lower in 2018-2020. The circuit court reserved its oral ruling and entered a written judgment on August 27, 2021 that denied the motion to modify and the motion for sanctions. The court reasoned that Alla had "failed to prove that circumstances and justice require an increase in alimony."

II. DISCUSSION

Alla raises five issues in her brief,² one that we resolve summarily and four that boil down to two. Alla argues that the court erred when it failed to assign a new judge to the current round of litigation. But she didn't raise this issue in her current motions, and we decline to address it for the first time on appeal.³ Md. Rule 8-131(a); *see also Surrect v. Prince George's Cnty.*, 320 Md. 439, 468 (1990) (“[I]n order to trigger the recusal procedure we . . . prescribe, a motion must be timely filed.”). Alla's main complaint stems

² Alla listed four Questions Presented in her brief:

I. Is it legal for the Judge: intentionally not to admit the real evidence from subpoenas of Mr. Gakuba's secret brokerages and banks? Manipulating zoom hearing where Mr. Gakuba (Defendant) was given his presentation first, not Ms. Gakuba; where a technician inserted so much noise and echoes that Ms. Gakuba could hear only some separate words. And then Denied Ms. Gakuba's Complaint to Modify Alimony.

II. Is it legal for the Judge improper communicate with only one party—Mr. Gakuba, and for Ms. Gakuba's presentation the zoom was cut off, and her presentation was limited for just 15 min. with the Judge only asking her questions?

III. Did the Judge is favor only one party—Mr. Gakuba, is prejudice to Ms. Gakuba—and wrongly Denied Ms. Gakuba's Motion for Sanctions?

IV. Did the circuit court made an error when it failed to assigned a new judge to this new case “Complaint to Modify Alimony?”

For his part, Chrysologue adopts Alla's Questions Presented.

³ Even if we were to address the issue, we find it without merit. *See Surrect v. Prince George's Cnty.*, 320 Md. 439, 465 (1990) (“When [judicial] bias, prejudice or lack of impartiality is alleged, the decision is a discretionary one, unless the basis asserted is grounds for mandatory recusal. It will be overturned only upon a showing of abuse of discretion.”) (citation omitted).

from the court’s denial of her motion to modify the alimony award, but she disagrees as well with the court’s decision not to sanction Chrysologue. We will address both decisions.

In reviewing a circuit court’s determination as to the modification of alimony we defer to the findings of the trial court. *Ridgeway v. Ridgeway*, 171 Md. App. 373, 383 (2006). “We will not disturb an alimony determination ‘unless the trial court’s judgment is clearly wrong or an arbitrary use of discretion.’” *Id.* at 383–84 (*quoting Blaine v. Blaine*, 97 Md. App. 689, 698 (1993)). “A trial court’s findings are ‘not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.’” *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (*quoting Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). We “‘will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.’” *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003) (*quoting Tracey v. Tracey*, 328 Md. 380, 385 (1992)).

A. The Court Did Not Err Or Abuse Its Discretion In Denying The Motion For Modification Of Alimony.

First, Alla argues that the trial court erred when it denied her motion to modify alimony because, she says, Chrysologue’s income is ten times more than hers, because she is entitled to more alimony based on an increasing cost of living, and because Alla believes that Chrysologue has “secret” accounts he has not disclosed. Chrysologue responds that the court did not err or abuse its discretion. The circuit court agreed with Chrysologue and we see no error in its rulings.

Maryland Code (1984, 2019 Repl. Vol.), Section 11-107(b) of the Family Law

Article (“FL”) authorizes courts to modify alimony orders under certain circumstances. The overarching standard is that “the court may modify the amount of alimony awarded as circumstances and justice require.” FL § 11-107(b). In applying this section, however, our courts have held that a party seeking to modify alimony first must prove that “there has been shown a material change in circumstances that justify the action.” *Ridgeway*, 171 Md. App. at 384 (quoting *Lieberman v. Lieberman*, 81 Md. App. 575, 595 (1990)). The party seeking to modify alimony bears the burden of proving that “circumstances and justice require” a modification, by “demonstrat[ing] through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification.” *Langston v. Lansgton*, 366 Md. 490, 516 (2001).

The parties throw insults at each other in their briefs, and both attempt to re-hash events twenty-seven years (or longer) in the making. But our narrow role here requires us to stick to the testimony and evidence presented at the modification hearing.⁴ Ultimately,

⁴ Alla raises numerous issues with the conduct of the circuit court during the modification hearing, but they are without merit. She asserts that background noise was intentionally inserted into the hearing. The transcript reveals that there were indeed technical issues during the Zoom hearing and that Alla’s virtual testimony was difficult to hear at times, and some of it was not transcribed because of audio issues. But the court took great care throughout the hearing to resolve the issues, including having a court technician investigate and work directly with Alla during breaks. The court paused the hearing multiple times to find a workable solution and eventually asked Alla to call in at the end of her testimony instead of using Zoom so that her testimony could be heard clearly. At the start of the hearing, Alla stated that she could see and hear the court. Some parts of the transcript contain unintelligible words, but the court reporter otherwise was able to transcribe her testimony. And once the court ended the Zoom call and switched to a phone hearing, the issues resolved.

Alla also contends that Chrysologue presented testimony first. This is simply not true. Alla testified first, Chrysologue cross-examined her, and then Chrysologue testified

the parties presented different and conflicting views of their relative finances and the court resolved them. Alla’s testimony failed to persuade the court that the parties’ financial circumstances had *changed* materially and in a way that would justify an increase to the permanent alimony award. To the contrary, the court credited Chrysologue’s tax returns for 2015-2020, which portrayed his income as decreasing since he retired.⁵ Taking the court’s ruling as a whole and in light of the evidence the parties presented, we conclude that the circuit court neither committed legal error nor abused its discretion in determining that Alla failed to carry her burden to demonstrate a “material change in circumstances” that would justify modifying the alimony obligation. *Ridgeway*, 171 Md. App. at 384 (quoting *Lieberman*, 81 Md. App. at 595).

B. The Court Did Not Abuse Its Discretion When It Denied Alla’s Motion For Sanctions.

Next, Alla argues that the court erred or abused its discretion when it denied her request to impose sanctions against Chrysologue for what she categorizes as “his disobedience of all court[] orders” and his failure to produce documents during the course of discovery.

Maryland Rules 2-432 and 2-433 govern discovery sanctions, where, as here, a party

next. The testimony flowed back and forth between the court and both parties at times, all in ways that recognized the purpose of the hearing and the fact that both parties appeared *pro se*. From our review of the record, Alla was afforded a full and fair hearing on the issues she presented.

⁵ Alla asserts that Chrysologue’s exhibits were admitted secretly, but in fact, they were admitted in open court. The court stated “I want to put on the record that the tax returns that [Chrysologue] presented as exhibits are accepted and have been admitted into evidence”

moves immediately for sanctions instead of for the court to compel discovery. Rule 2-432(a) explains that a party may move for immediate sanctions “without first obtaining an order compelling discovery” when “a party fails to serve a response to interrogatories under Rule 2-421 or to a request for production or inspection under Rule 2-422, after proper service.” In turn, Rule 2-433(a) states that “[u]pon a motion filed under Rule 2-432(a), the court, if it finds a failure of discovery, *may* enter such orders in regard to the failure as are just” (Emphasis added.)

As far as we can discern from the record, Chrysologue didn’t respond to Alla’s requests for discovery until the motions hearing, at which time he disclosed his tax returns and other documents. And from a discovery standpoint, that failure may well have been sanctionable, and we would defer to a trial judge’s decision to impose sanctions. At the same time, the court took great pains to be flexible and accommodating to both unrepresented parties, and we cannot say that the court abused its discretion by opting not to impose sanctions on Chrysologue here. Most of the acts Alla cited in her motion have nothing to do with this specific discovery dispute, or even this alimony motion, and the court demonstrated great patience in working through both sides’ allegations and aggravations to get to the final answer. At bottom, the court wasn’t required to sanction Chrysologue for this discovery failure, and the court didn’t abuse its broad discretion in declining to impose sanctions under these circumstances.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**