

Circuit Court for Montgomery County
Case No. C-15-FM-24-001571

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1243

September Term, 2024

JUSTIN C GILBERT

v.

MCOCS

Graeff,
Kehoe, S.,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 13, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Justin Gilbert, appellant, and Jennifer Smith are the parents of two minor children. In 2024, the Montgomery County Office of Child Support, appellee, filed a complaint against appellant in the Circuit Court for Montgomery County seeking to establish child support for Ms. Smith. At a hearing before a magistrate, Ms. Smith testified that she had primary custody of both minor children from March 2024 to May 2024, and primary custody of one of the minor children thereafter. Appellee also introduced documentation from the Maryland Department of Labor indicating that appellant had earned a total of \$67,298.86 in 2023. Appellant, on the other hand, testified that he had only earned \$54,000 during that year, and further claimed that he expected his income to decline in the future because “the winter months are slower” forcing him to work less hours.

The magistrate ultimately found appellant’s testimony regarding his income not to be credible. Based on its findings regarding appellant’s and Ms. Smith’s income, and in accordance with the Maryland Child Support Guidelines, the magistrate issued a report recommending that appellant be ordered to pay \$1,181 per month in child support for the two minor children for the period between March and May 2024. Based on Ms. Smith’s testimony that one of the minor children had not been living with either parent since May 2024, the magistrate recommended that the amount of child support be reduced to \$824 per month effective June 1, 2024.

Appellant filed exceptions claiming that the magistrate “failed to look at [his] net income after taxes,” “failed to make recommendations for visitation . . . which would lessen [sic] the overall child support claim[,]” and made “recommendations [that] exceed[ed] [his] monthly income in the later months of the year.” However, the Court

subsequently dismissed those exceptions pursuant to Maryland Rule 9-208(g) because appellant had not filed a certificate indicating that he had ordered a transcript of the hearing before the magistrate. On August 13, 2024, the court entered a final judgment adopting the magistrate’s recommendations. This appeal followed.

On appeal, appellant claims that: (1) the court erred in calculating the amount of child support that he owed because he did not earn as much income as appellee claimed; (2) he has “lost [his] weekend visits with [his] son” and is “trying to correct this” in a separate child custody case; and (3) he “believe[s] [he] need[s] a lawyer” because if he had a lawyer he would have been able to “negotiate[] a fair monthly payment for [his] son.” For the reasons that follow, we shall affirm.

As to appellant’s first claim, Maryland Rule 9-208(f) provides that “[a]ny matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.” And this Court has previously held that “if [an] appellant’s sole basis for appeal was that the [magistrate]’s factual findings, such as they are, were clearly erroneous, [appellant’s] failure to file exceptions [is] fatal to such an argument.” *Miller v. Bosley*, 113 Md. App. 381, 393 (1997) (“In short, in all cases lacking timely exceptions, any claim that the [magistrate]’s findings of fact were clearly erroneous is waived.”). Here, appellant filed exceptions, but those exceptions were dismissed because he did not provide the court with a transcript of the hearing before the magistrate. Appellant does not contend on appeal that the dismissal of his exceptions was error. Consequently, appellant’s

challenge to the magistrate’s factual findings regarding his income is waived and not properly before us.¹

Appellant’s remaining contentions also do not require reversal. The fact that appellant may have lost weekend visits with his son does not affect the validity of the court’s child support order as it was not an issue the court was required to resolve in this case. Moreover, appellant did not claim in the circuit court that he had a right to an attorney. Nor did he request a continuance so that he could obtain counsel. Consequently, to the extent that he is asserting that the court somehow erred in allowing him to proceed without counsel, that claim is not preserved for appellant review. *See* Maryland Rule 8-131(a) (“Ordinarily, an 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[.]”). Because appellant has not demonstrated any error in the court’s child support order, we shall affirm.

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

¹ In any event, we cannot say that the magistrate’s decision to accept appellee’s evidence regarding appellant’s income, and to reject appellant’s contrary testimony regarding his income, was clearly erroneous.