

Circuit Court for Montgomery County
Case No. 100317FL

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1300

September Term, 2022

JEFFREY S. MILLER

v.

LAUREN M. MILLER

Friedman,
Ripken,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 20, 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 MD. R. 1-104(a)(2)(B).

Jeffrey S. Miller challenges the order of the Circuit Court for Montgomery County finding him in contempt and enforcing the marital separation agreement he entered into with his former spouse, Lauren M. Miller.¹ For the reasons we discuss below, we affirm the order of the circuit court.

BACKGROUND

Jeffrey and Lauren married in 1990. They separated in 2009 and entered a separation agreement in January 2012. Under the terms of that agreement, Jeffrey agreed to pay Lauren alimony in the amount of \$10,416.67 per month for ten years and \$6,250.00 per month on an indefinite basis thereafter. Jeffrey also agreed to pay Lauren a monetary award of \$7 million, comprised of \$2.5 million to settle joint bank accounts, \$3 million from the sale of the marital home, and \$1.5 million for Lauren’s interest in Jeffrey’s company, “World Recycling.” The separation agreement was incorporated but not merged into a judgment of absolute divorce, which the circuit court issued in March of 2012.

Jeffrey stopped making full payments to Lauren in 2014.² In July 2021, Lauren filed a petition for contempt and motion to enforce the separation agreement in the Circuit Court for Montgomery County. Lauren requested (1) that Jeffrey be held in contempt, (2) that a

¹ For clarity, we refer to the parties by their first names, Jeffrey and Lauren. *See generally* MD. R. 8-111(b).

² Jeffrey suffered Stevens-Johnson toxic epidermal necrolysis. This condition is triggered suddenly and causes one’s skin to rapidly slough off. Jeffrey was induced into a coma for two months and spent another two months in the hospital in recovery after waking up. Jeffrey resumed partial payments to Lauren after recovering.

judgment be entered against Jeffrey for all monies due under the separation agreement, including both past due alimony and the monetary award, and (3) attorneys' fees.

After a hearing, the circuit court issued an order granting Lauren's requested relief. *First*, the circuit court held Jeffrey in contempt for failure to pay alimony and the monetary award. In arriving at its decision, the circuit court found that Jeffrey had the ability to pay both alimony and the monetary award:

[Jeffrey] stated that his current home in Annapolis is valued at over \$1.8 million and held in a trust in his name—a trust he allegedly has no control over; his two children with his current wife attend private school at the cost of \$50,000 to \$60,000 per year; he sold two pieces of real property in recent years and netted over \$400,000 but did not make any payment to [Lauren]; he recently bought a 2020 Jeep and a 2020 Maserati; he owns two cars, yet neither [Jeffrey] nor his current Wife work outside the home; he lists \$35,000.00 in monthly expenses, but no income; he liquidates assets and diverts or uses the funds for his own purposes and makes no attempt to pay [Lauren] the amounts due under the terms of the Agreement. From his Financial Statement, it is evident [Jeffrey] is not going into debt to support his exorbitant and extravagant lifestyle. [Jeffrey's] response is that "he did the best he could" and that his failure to comply with the payments required by the Agreement was unintentional. The Court disagrees.

After finding Jeffrey in contempt, the circuit court imposed a sanction of \$100,000.00, and set a purge provision that allowed Jeffrey to avoid the sanction if he made alimony payments to Lauren of \$6,250.00 per month for 60 months.³ If Jeffrey failed to make the alimony payments as ordered, then the \$100,000.00 sanction would be reduced to a judgment against him.

³ By the time of the hearing, more than ten years had elapsed since the separation agreement was signed. As a result, by its terms, Jeffrey's alimony obligation had diminished from \$10,416.67 per month to \$6,250.00 per month. The purge provision was therefore consistent with the terms of the separation agreement.

Second, the circuit court granted Lauren’s motion to enforce the separation agreement. As pertinent here, the circuit court ordered Jeffrey to pay Lauren \$330,867.01 for alimony arrearages for the period of 2014 through 2022, and \$250,000.00 for the settlement of the joint bank accounts.

Third, the circuit court ordered Jeffrey to pay \$60,992.003 in attorneys’ fees.

Jeffrey noted this timely appeal.

DISCUSSION

Jeffrey raises several challenges to the circuit court’s order, which we distill into three broad issues: (1) whether the circuit court erred in finding Jeffrey in contempt for failure to pay the monetary award; (2) whether the circuit court erred in ordering Jeffrey to pay Lauren pursuant to the separation agreement; and (3) whether the circuit court erred in granting an award of attorneys’ fees to Lauren.

I. THE CONTEMPT ORDER

We turn first to Jeffrey’s challenges to the court’s order holding him in contempt. A court’s exercise of its contempt powers may be direct or constructive, and it may be civil or criminal. Direct contempt occurs in the presence of the judge presiding over court, whereas constructive contempt occurs outside court. *Breona C. v. Rodney D.*, 253 Md. App. 67, 73 (2021). Civil contempt is meant to coerce a contemnor into present or future compliance with a court order, while criminal contempt punishes a contemnor for past misconduct. *Dodson v. Dodson*, 380 Md. 438, 448 (2004).

The circuit court found Jeffrey in constructive civil contempt. An order holding a person in constructive civil contempt is only valid if it: “(1) imposes a sanction;

(2) includes a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and (3) is designed to coerce the contemnor’s future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct.” *Breona C.*, 253 Md. App. at 74. We will not disturb a contempt order unless it is based on a factual finding that is clearly erroneous or is an abuse of discretion. *Id.* at 73.

Jeffrey asserts two main errors as to the circuit court’s contempt finding and the accompanying sanction and purge provisions: (1) that delinquency in payment of a monetary award cannot form the basis for the circuit court’s contempt finding; and (2) that the circuit court abused its discretion in fashioning an arbitrary sanction.⁴ Neither argument has merit.

A. The Validity of the Contempt Order

We first address Jeffrey’s challenge to the contempt finding itself. As noted above, the circuit court held Jeffrey in contempt for failure to pay alimony *and* failure to pay the monetary award. There is no question that a circuit court may enforce an alimony award

⁴ Jeffrey also asserts that the circuit court erred by holding him in contempt for payments missed before the three-year statute of limitations. Jeffrey did not, however, raise the issue of the statute of limitations at all at the contempt hearing. We ordinarily do not decide issues on appeal unless they plainly appear by the record to have been raised in the circuit court. MD. R. 8-131(a); *see also Concerned Citizens of Cloverly v. Montgomery County Planning Bd.*, 254 Md. App. 575, 603 (2022) (“a passing reference to an issue, without making clear the substance of the claim, is insufficient to preserve an issue for appeal”); *Gadekar v. Phillips*, 36 Md. App. 715, 719 (1977) (holding that asserting an issue in a pleading is insufficient to preserve the issue for appellate review). His only reference to it was in his reply to Lauren’s contempt petition. This was not sufficient to preserve it for our review.

by contempt, and Jeffrey does not challenge the circuit court’s order on that basis. Instead, Jeffrey argues that contempt may not be used to enforce a monetary award because a monetary award is considered a “debt” and a court cannot enforce a debt through a finding of contempt. Jeffrey, however, misconstrues the law of contempt in Maryland.

Under the Maryland Constitution, the use of incarceration to enforce a “debt,” including by way of contempt, is prohibited. MD. CONST., art. III § 38.⁵ A monetary award is a “debt” as contemplated by the Constitution. Therefore, failure to pay a monetary award cannot be grounds for incarceration. *McAlear v. McAlear*, 298 Md. 320, 351-52 (1984). Here, however, Lauren has not requested, and the circuit court has not imposed, any term of incarceration as a sanction for Jeffrey’s contempt.

So long as incarceration is not part of the sanction, a court may use contempt to enforce the lawful terms of its own orders. FL § 8-105(a) (empowering a court to enforce judgment of absolute divorce by contempt); *Droney v. Droney*, 102 Md. App. 672, 691-92 (1995) (applying FL § 8-105). The circuit court held Jeffrey in contempt for his failure to pay alimony and his failure to pay the monetary award, as mandated by the judgment of absolute divorce—and in doing so did not impose incarceration. The circuit court,

⁵ Article III, section 38 provides:

No person shall be imprisoned for debt, but a valid decree of a court of competent jurisdiction or agreement approved by decree of said court for the support of a spouse or dependent children, or for the support of an illegitimate child or children, or for alimony (either common law or as defined by statute), shall not constitute a debt within the meaning of this section.

MD. CONST., art. III, § 38.

therefore, did not err in using contempt to enforce the monetary award that was incorporated into the judgment of absolute divorce.

B. The Validity of the Purge Provision and the Sanction

We next turn to Jeffrey’s argument that the circuit court erred in setting the purge provision and the sanction. Jeffrey first argues that the purge provision is unlawful because it requires him to do the same thing that he was ordered to do under the separation agreement by paying Lauren \$6,250.00 per month in alimony. It is true that a court may not impose a *sanction* that is the same as the *purge provision*. *Kowalczyk*, 231 Md. App. at 210. If the two were the same, there would be no way for the contemnor to avoid the sanction. *Id.* Here, however, the purge provision set by the circuit court was not the same as the sanction, it was the same as the judgment the court was seeking to enforce. Thus, to avoid the sanction, Jeffrey only had to do that which he had already promised in the separation agreement, and had been ordered to do in the judgment of absolute divorce. It was not unlawful for the circuit court to set a purge provision consistent with Jeffrey’s pre-existing obligations.

Jeffrey next argues that the sanction set by the circuit court of \$100,000.00 is both “grossly disproportionate” and “akin to compensatory damages.” Jeffrey is correct that a contempt sanction may not award compensatory damages. *Dodson*, 380 Md. at 454. But Jeffrey has not explained how a valid sanction is transformed into, or is in any way analogous to, compensatory damages. Moreover, we have found no authority—and Jeffrey does not direct us to any—that creates such a proportionality requirement. In any event, we are not persuaded that the sanction of \$100,000.00 is disproportionate. It may be coercive,

but it is within Jeffrey's ability to pay. *See Breona C.*, 253 Md. App. at 73-74 (noting that a sanction is meant to be coercive). As a result, the circuit court did not abuse its discretion in setting the sanction.

We conclude that the circuit court did not err in its order finding Jeffrey in contempt for his failure to pay alimony and to pay the monetary award.

II. ENFORCEMENT OF THE SEPARATION AGREEMENT

Jeffrey next argues that the circuit court erred by miscalculating alimony arrearages and in finding that he did not make a final \$250,000.00 payment to settle joint bank accounts.⁶ The same deferential standard of review applies to each: we will not set aside the circuit court's factual findings unless they are clearly erroneous. MD. R. 8-131(c); *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002). With this in mind, we review Jeffrey's challenges.

A. Alimony Arrearages

The circuit court ordered Jeffrey to pay \$330,867.01 in alimony arrearages for the period of 2014 through 2022. Jeffrey argues that the circuit court both miscalculated alimony arrearages and abused its discretion by refusing to admit his exhibit purporting to show that he owes a lower balance than Lauren claimed. We disagree.

⁶ Jeffrey also asserts that the circuit court erred in accounting for closing costs upon the sale of the former marital home and in calculating interest due under the promissory note representing Lauren's interest in World Recycling. Our review of the record shows, however, that Jeffrey did not raise these specific issues with the circuit court. Because no opportunity was given for the circuit court to decide these issues, they are not preserved and we do not review them. MD. R. 8-131(a).

At the hearing, Lauren offered an exhibit showing images of checks she received and calculations of missed payments for the period between 2014 and 2022, amounting to \$330,867.01. Jeffrey offered his own exhibit showing images of checks issued and a calculation of payments which concluded that his arrearages amounted to only \$225,078.36 for the same period. Lauren attacked Jeffrey's exhibit on cross-examination on the grounds that it contained duplicate entries. As a result, the circuit court refused to admit Jeffrey's exhibit. Given the defects, it was not an abuse of discretion for the circuit court to do so. Furthermore, because there was competent evidence to support the circuit court's calculations of alimony arrearages—Lauren's exhibit—the circuit court did not err in ordering Jeffrey to pay \$330,867.01 plus interest.

B. Bank Accounts Payment

Jeffrey also argues that the circuit court erred in finding that he did not make the required final payment of \$250,000.00 to settle joint bank accounts. Jeffrey testified at trial that he made the payment. In support of his argument, Jeffrey points to two emails sent by Lauren in 2015 in which she made no reference to Jeffrey's late payment of \$250,000.00. Jeffrey posits that, because Lauren made no mention of a missing payment of \$250,000.00 in the emails, he must have made the payment (otherwise Lauren would have mentioned it). By contrast, Lauren testified that she never received the payment.

The circuit court credited Lauren's testimony, finding that she kept meticulous records. When a circuit court is presented with conflicting evidence on issues of fact, we defer to the trial court's factual findings. The circuit court did not err in finding Lauren's testimony to be more credible than Jeffrey's.

III. ATTORNEYS' FEES

Finally, Jeffrey argues that the circuit court erred in awarding Lauren attorneys' fees. He asserts that Lauren's counsel did not take the steps necessary for the circuit court to award attorneys' fees because he (1) failed to provide expert testimony, and (2) failed to detail, in conformity with Maryland Rule 2-703(f)(3), the work performed, broken down by hours worked, rates charged, and comparisons with customary rates for similar services. Again, neither argument has merit.

First, we have specifically held that expert testimony is not necessary to establish whether attorneys' fees are reasonable. *Zachair, Ltd. v. Driggs*, 135 Md. App. 403, 438 (2000) (noting that Driggs could not identify authority suggesting that expert testimony is necessary to establish reasonableness of attorneys' fees). The circuit court, therefore, did not err in awarding Lauren attorneys' fees despite the lack of expert testimony.

Second, a party seeking an award of attorneys' fees must present billing records that are sufficiently detailed to allow a client—and the court—to know with some precision what services have been performed. *Bd. of Trs., Cmty. Coll. of Baltimore County v. Patient First Corp.*, 444 Md. 452, 485-86 (2015). We will not disturb a circuit court's findings on reasonable attorneys' fees unless clearly erroneous. *Myers v. Kayhoe*, 391 Md. 188, 207 (2006).

Here, Lauren's counsel presented an exhibit showing copies of the retainer agreement and fifty pages of entries showing the work done on Lauren's behalf. The exhibit detailed the specific work done, identified the attorneys who performed the work, noted the number of hours worked and the hourly rates for different attorneys, and summarized

both the total fees incurred per date and the total fees overall. While the factors listed in Maryland Rule 2-703(f)(3) are provided to guide the circuit court in the exercise of its sound discretion, a circuit court “need not comment or make explicit findings as to each factor.” *Bd. of Trs.*, 444 Md. at 485. The record here demonstrates that the circuit court had a sufficient factual basis for determining its award of attorneys’ fees. Thus, the circuit court did not err in awarding Lauren attorneys’ fees.

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