Circuit Court for Baltimore City
Case No.: 24-D-22-001585

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1440

September Term, 2024

BENJAMIN NEWKIRK

v.

SHARTICE NEWKIRK

Reed,
Tang,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: November 4, 2025

*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. Rule 1-104(a)(2)(B).

Benjamin Newkirk ("Father"), appellant, appeals from an order denying his petition to modify child support for his minor daughter with his former wife, Shartice Newkirk ("Mother"), appellee. In Father's view, the family law magistrate in the Circuit Court for Baltimore City erred in admitting hearsay and predicating her credibility assessment on such hearsay, then abused her discretion by failing to treat his employment termination, which occurred just days after the court entered a consent order setting his monthly child support at $1,392, as a material change in circumstances meriting modification of that obligation. Mother responds that Father did not meet "the legal standard for a material change in circumstances" because his "[j]ob loss result[ed] from misconduct . . . including sleeping on duty and missing calls[,]" and he failed to account for actual and anticipated income from his landscaping business.[1]

For reasons that follow, we conclude that the circuit court did not err or abuse its discretion in declining to modify Father's child support obligation.

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[1] Mother, who was represented in the circuit court proceedings but is now self-represented, elected to file an informal brief, as permitted by Md. Rule 8-502(a)(9), this Court's Administrative Order of December 19, 2022, and "informal briefing protocols" issued by the Chief Judge of this Court. *See* Guidelines for Informal Briefs, June 23, 2023, appended to Administrative Order dated December 19, 2022, available at https://www.courts.state.md.us/sites/default/files/import/cosappeals/pdfs/adminorderinformalbriefs.pdf. Father, who was not represented by counsel during the modification proceedings in circuit court, is represented in this appeal.

FACTUAL AND LEGAL BACKGROUND

Divorce Judgment and Child Support Order

Father and Mother married in 2011 and divorced in August 2023. They have one child, a daughter born in 2010 ("the Child"). During their marriage, Father also "pretty much raised" Mother's daughter from a previous relationship.

In the Judgment of Absolute Divorce ("JAD") entered on August 15, 2023, the court recognized that the parties agreed to share joint legal custody of the Child and that Mother would have primary physical custody, with Father having "reasonable and liberal visitation[.]" In addition, "by agreement of the Parties, [Father] shall pay child support . . . in the amount of $1,392.00 per month for current support as described in the Parties' Term Sheet[.]" Father's "continuing obligation to pay child support" extends until the Child turns eighteen or graduates high school, whichever is later. By agreement, the court also ordered both parents to "contribute to [the Child's] tuition at" her private school, "as described in the Parties' Term Sheet[.]"

Modification Petition and Hearing

On September 7, 2023, Father filed a Petition to Modify Child Support. At an evidentiary hearing on June 21, 2024, both Mother and Father testified.

At the outset, the magistrate asked Father why his petition "was filed not even a month after the Judgment of Absolute Divorce wherein the parties entered an agreement regarding child support with [Father] to pay $1,392 for" the Child. Father explained that he "was terminated from [his] employment at Aberdeen [Police Department] August the 21st . . . of 2023." His annual salary had been "about $58,000."

After Father presented a termination email, the court asked whether he knew "this was a possibility at the time" he agreed to pay $1,392 in monthly child support. Father answered that he "knew that there was some cha[n]ges," but "didn't expect" to be "terminated[.]" On cross-examination, Father denied that he was "terminated because [he] stopped going to work" but admitted "[t]here were several grounds. Conduct unbecoming, failure to follow policies."

Father testified that he receives an annual pension of $41,754.60 after retiring from the Baltimore Police Department. He had "applications in" with "several agencies and pending some CDL training." In 2022, he also received "over $50,000" in "drop funds," which "is an investment program or funds that [he] had to enroll in after completing 20 years of service." But he "spent that DROP money paying off debts. All of it, paying debts."

Father conceded that he did not make all of the payments due to Mother under the JAD. In addition to missing all but four of his monthly child support payments, he missed payments toward the $25,000 he agreed to pay Mother on a designated schedule ending on April 30, 2025, as well as payments toward the Child's private school tuition at an agreed rate of 62% "up to $650" per month. After he fell behind on child support, Father's license was suspended until he made payments of $1,000 on April 15, 2024, and $2,480 on April 19, 2024.

When counsel for Mother asked about his income from "a landscaping business," Father claimed that he did "[a]s much as" he could, but denied making "a little over $2,000 a month from that[.]" Instead, he estimated making "[a]bout $400 a month" from the ten to fifteen customers he currently had, charging "[f]rom $20 to maybe about $60" per cut.

The court asked Father whether there was a reason he "didn't mention the landscaping income when I asked you about your current situation?" Father answered that he

> didn't think about it. Because what happened with the landscaping business, about prior to being hired at Aberdeen, I was doing it pretty substantially. But by working full-time at Aberdeen I lost a lot of customers that fell off. So I'm just doing what's kind of left over. I didn't think it was enough money to mention at $400 a month, $400 or $500.

After confirming Father made $400 during that March and April following his termination, the court asked whether he had "any other sources of income[.]" He replied that he was "[m]ostly cutting grass" and would help when friends asked him "to do jobs that they have" but "[i]t's not an employment though."

Mother testified that Father "very rarely ever sends" money, just "when his license gets suspended[,]" but "still spends time with the kids" and was "planning a trip to Disneyworld in August[.]" Their daughter began attending the same private high school as her stepsister, for which annual tuition is $21,000 and monthly payments are $2,130 over ten months.

When asked about Father's termination, Mother answered, without objection, that she heard that he quit:

> **[Counsel for Mother]:** Now, in reference to [Father] being terminated, what do you know in reference to that?
>
> **[Mother]:** Not a lot about that. I knew – I was told he quit. I was told he quit his job and everything happened like right after we went to Court. And he was . . . bragging to mutual friends that we have that that's what he was going to do anyway. So I didn't really care when it came back to me, I just figured we'll just have to deal with that when the time comes.

Mother "make[s] $75,000 from [her] City job" and "around $10,000 to $15,000" from "a part-time" job working approximately twenty-two hours every two weeks, doing "inspections at houses for disabled people[,]" on which she relies to "pay the tuition[.]" She pays $211 each pay period for health insurance that covers the Child and the entire family, including Father's "three children and [her] three."

"[I]n reference to the landscaping business," before their divorce, Mother "and the girls also helped out" by cutting grass and handling "the paperwork[.]" They were so busy that "he was turning away customers, because he couldn't do too much and spread himself so thin in all of the geographical areas" from "Baltimore City, Baltimore County and Harford County[.]" According to Mother, "we were making about $300 to $500 a day, not a week . . . [b]ecause he would always do 10 jobs a day during the week. And there was a lot of money in the landscaping" and because Mother "used to do the paperwork, . . . [she] had the spreadsheets of it."

In rebuttal, Father admitted that he had not "kept track of" his landscaping income, that he commingled his business funds with his personal funds, and that "what [Mother] said about the landscaping is partially true." Yet his Aberdeen policing job was "a lot more demanding than Baltimore . . . at the Harbor," where he "had a lot of leeway[,]" and because "it was a 12 hour shift, [he] had to let the majority, if not all of those customers, fall off last summer[.]"

The court then asked Father "[t]o speak to the allegation that you quit your job" and "told people you were going to quit your job. And then a week after the hearing you got terminated . . . with no reason listed in the letter." Father insisted he

> did not quit my job in Aberdeen. I knew there was a pending hearing for – I actually fell asleep at work, missed some calls. I didn't think that was an offense that I would be fired for. But by not being there for a year I was . . . a probationary employee. . . . I started [in] November of 2022.

In closing, counsel for Mother argued that modification was not warranted because it was "highly suspicious, to say the least, that he was terminated six days" after they "went to Court on August the 15th[,]" which followed "four months of negotiation" during which "[t]here was no mention of him being possibly terminated or anything of that nature." Likewise, Father's belated acknowledgement that he earned at least $400 monthly for landscaping work was also "highly suspicious," impeaching his credibility. Despite receiving a pension and continuing the landscaping business, he failed to pay any child support until forced to do so in order to reactivate his driver's license, when he was able to come "up with $3,500 within four days[.]" Counsel also questioned where Father was "getting the money" to take the children to Disney World in August and pointed out that Father had not yet "signed over the deed" as required under the JAD. Counsel maintained that Father "has the ability to make the money" for child support and "can't impoverish" himself "to avoid paying" it.

Complaining he had "been severely misrepresented," Father sought "to clear a few things up" in closing. He insisted that he "did not expect to be terminated from Aberdeen[,]" but once he was, "that put [him] in a serious financial crisis" because of the "tremendous decrease in funds." He also explained that he "spent that DROP money paying off debts. All of it, paying debts. So I don't have a bankroll of money sitting in the bank to just pay whatever I want."

Although he did pay $7,000 toward the initial $10,000 due in September 2023 on the $25,000 he owed Mother under the JAD, Father did not pay full child support in the amount ordered because he did not "have the money tree sitting in the back." Instead, he "used the online calculator to recalculate what the child support would be with my pension and . . . tried to make payments based on that amount, which [he] wasn't able to do every month." He made two payments, in December and February or March, before his license was suspended. When "Child Support . . . told [him] they couldn't do anything" to help until he paid "the additional $2,500" in child support arrearage, Father "did not have that in cash," so he "put that on a credit card" and "still owe[d] that money" and was "using [his] credit card to pay bills, which is a huge amount now."

As for the Disney trip, Father testified that he "had enough points where we can fly" for a total of $53. He planned to stay in "a six bedroom house" where his friend lives for "four days[,]" and "he's going to let [them] use his vehicle."

At the conclusion of the hearing, the magistrate took "the matter under advisement[,]" stating that she would "issue a written report and recommendation explaining what I believe should happen in the case based on the law as applied to the evidence that was presented here today." After confirming Father's email address, the magistrate told him that, in addition to mailing a copy of the report, "we also have been sending out a courtesy via email the day it drops in the mail so there's no delay."

Magistrate's Report and Recommendations

On June 21, 2024, the magistrate filed her Report and Recommendations, proposing the following "Findings of Fact":

The divorce hearing was held on August 15, 2023, wherein Father was ordered to pay child support. Father filed the petition at issue on September 7, 2023, due to a change in his employment status. Effective August 21, 2023, Father was "terminated" from employment with the Aberdeen Police Department (APD). Father began work with APD in November of 2022 and was still in his probationary period. Father testified that he was terminated for unbecoming conduct and failure to follow policy; however, the letter submitted by Father does not include any specific reason for the termination. Mother suggested that Father has voluntarily impoverished himself by quitting his job, as he indicated he would do to mutual friends. Father denies same.

Father initially testified that his only source of income was his pension from the Baltimore City Police Department, where he retired from. Father earns $41,754.50 annually from the pension. However, upon further examination from counsel, the Court learned that Father . . . earns approximately $400 per month doing landscaping. Mother suggested that Father's landscaping business was very lucrative at one time, and she believes that Father can earn more than $400 monthly. Mother was involved in bookkeeping for the business when the parties were together, so she has firsthand knowledge of how much Father earned at the time (with the assistance of family). Father testified that he lost much of his customer base when he began work in Aberdeen. Father was unable to provide documentation of his monthly income from the landscaping business.

Father testified that he also does "random side jobs" for friends as needed. There was no additional evidence presented concerning the type, frequency, or income produced from the side jobs. Lastly, in 2022, Father received over $50,000 in deferred retirement option plan (DROP) funds. Father testified that he has used all the DROP funds to pay down debt and has had to utilize credit to make child support payments and cover other bills. Father reportedly has several employment applications pending and is hoping to obtain a job with the Maryland State Highway Patrol, or obtain his commercial driver's license (CDL).

Mother is employed with the city of Baltimore where she earns $75,000 annually. Mother also works part time earning $26 per hour working 21 hours bi-weekly. Mother also pays for a family health insurance plan, which includes Minor Child. Mother pays $211 bi-weekly for seven individuals. Minor Child will also attend [private school], where the tuition is $21,000 annually. As of June 12, 2024, Father owes child support arrears in the amount of $6,214.73; all of which is due to Mother.

(Footnotes omitted.)

In her "Conclusions of Law," the magistrate recommended that Father's Petition to Modify Child Support be denied:

> Based upon the evidence, the Court finds that since the August 2023, Judgment of Absolute Divorce: 1) Father's employment with the Aberdeen Police Department ended. When modifying a Child Support Order, use of the Child Support Guidelines is mandatory, pursuant to § 12-202 of the Maryland Family Law Article, to establish the parties' respective duty of support to Minor Child. Additionally, § 12-202 establishes a presumption that the amount of child support which would result from the application of the guidelines is the correct amount of support to be awarded.
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> Given the dispute concerning Father's business income, Father's lack of candor, and Father's failure to provide any specific, corroborating proof of his business income, the Court is unable to properly recalculate the child support guidelines. The Court did not find Father's testimony credible concerning his business income, and suspects that he earns more than $400 monthly from landscaping. Moreover, the Court finds the timing of Father's "termination" from APD to be consequential. Considering the foregoing, Father's request for modification must be denied at this time.

On July 16, 2024, the Child Support Administration directed Father's bank to "seize and attach $7,606.00 from" his accounts for arrearages.

On July 23, 2024, Father filed his "Notice of Exception" challenging the magistrate's Report and Recommendation. In support, Father disputed the magistrate's finding that his "testimony regarding [his] business income" was not credible, asserting that the court should "re-examine the evidence presented and take into account the challenges of documenting income in a cash-based business." Claiming that the magistrate "did not adequately consider [his] current financial circumstances," Father maintained that "[a] fair and accurate assessment of [his] income will support [his] request for a modification of child support."

After denying Father's motion to stay enforcement of the bank seizure, on July 26, 2024, the circuit court denied Father's exceptions because they "were filed more than 10 days after the recommendations of the [m]agistrate were placed on the record or served on the parties[.]" On August 6, 2024, Father noted this timely appeal.

STANDARDS GOVERNING REVIEW OF CHILD SUPPORT MODIFICATION

This Court recently summarized the statutory standards governing child support in the Family Law Article ("FL") of the Maryland Code, recognizing that

> [t]he General Assembly created the guidelines, FL § 12-204(e), based on the Income Shares Model, which relies on the understanding that "'a child should receive the same proportion of parental income, and thereby enjoy the same standard of living, he or she would have experienced had the child's parents remained together.'" The Model "establishes child support obligations based on estimates of the percentage of income that parents in an intact household typically spend on their children."
>
> If the parties' combined monthly adjusted income is under $30,000 (or $360,000 annually), the circuit court must apply the guidelines.

Sims v. Sims, 266 Md. App. 337, 384 (2025) (citations omitted). *See* FL § 12-204(a)(1).

These guidelines, which set monthly child support at a presumptively appropriate amount, require the parents to report their actual income. *See* FL § 12-204(a)(2). Under FL § 12-201(b), "actual income" means any compensation source, including salary, wages, commissions, pension income, and "expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business to the extent the reimbursements or payments reduce the parent's personal living expenses."

Because "child support should be calculated based on the parent's current income" and "currently existing circumstances[,]" *Johnson v. Johnson*, 152 Md. App. 609, 621-22

(2003) (emphasis omitted), "court[s] may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance." FL § 12-104(a). "The court may not retroactively modify a child support award prior to the date of the filing of the motion for modification." FL § 12-104(b).

To determine if a material change of circumstances has occurred for purposes of modifying a parent's child support obligation, the trial court "must specifically focus on the alleged changes in income or support that have occurred since the previous child support award." *Wills v. Jones*, 340 Md. 480, 489 (1995). A change of circumstances is "material" if it is both "relevant to the level of support a child is actually receiving or entitled to receive" and "of sufficient magnitude to justify judicial modification of the support order." *Id*. at 488-89.

A "change in the income pool from which the child support obligation is calculated" is an established basis for a court to find a "change in circumstance relevant to a modification of child support[.]" *Drummond v. State*, 350 Md. 502, 510-11 (1998). Under FL § 12-203(b)(1), "[i]ncome statements of the parents shall be verified with documentation of both current and past actual income." *See Ley v. Forman*, 144 Md. App. 658, 669 (2002).

On appeal from the denial of a petition to modify child support, this Court, giving due regard to the factfinder's opportunity to evaluate the credibility of witnesses, will affirm factual findings if there is competent and material evidence in the record to support them. *See Anderson v. Joseph*, 200 Md. App. 240, 249 (2011). We review the court's decisions on legal questions, including its legal conclusions based on its factual findings, without deference. *See Caldwell v. Sutton*, 256 Md. App. 230, 263 (2022). Whether to grant a parent's motion to modify child support rests within the sound discretion of the circuit court. *See Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020); *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018); Md. Rule 8-131(c). In this context, "[a] court abuses its discretion when its decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Sims*, 266 Md. App. at 388 (cleaned up). *See Sumpter v. Sumpter*, 436 Md. 74, 85 (2013); *North v. North*, 102 Md. App. 1, 14 (1994).

DISCUSSION

Father challenges both the fairness of the modification proceedings and the result, presenting three issues that we consolidate and restate[2] as follows:

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[2] The questions presented in Father's brief are:

1. Did the Circuit Court commit a reversible error when it found by clear and convincing evidence that Appellant being terminated from his employment was not a material change in circumstances to modify the amount of child support, despite the fact that [h]e was unable to keep up with payments because of the change in income, which resulted in the suspension of his driver's license, making it more difficult to generate income to keep up with said payments?

2. Did the Circuit Court commit a reversible error when [the] Magistrate . . . allowed uncorroborated hearsay evidence that was in direct contradiction to actual physical evidence?

3. Did the Circuit Court commit a reversible error when [the] Magistrate . . . attributed characterizations to Appellant without corroborated evidence?

I. Did the magistrate err in admitting "uncorroborated hearsay evidence" or "attribut[ing] characterizations to" Father "without corroborated evidence?"

II. Did the circuit court abuse its discretion in denying Father's petition to modify his child support obligation?

As a threshold matter, Mother contends that Father failed to file exceptions to the magistrates' Report and Recommendations within the timeframe prescribed by Maryland Rule 9-208(f)[,]" so that "the findings became final and binding at the Circuit Court level." In addition, Mother disputes Father's claim that the court relied on uncorroborated hearsay. On the merits of modification, Mother argues that "[j]ob loss resulting from misconduct does not satisfy th[e] standard" for modifying child support and that his "failure to disclose all income, including business earnings and DROP funds, violates Maryland Family Law requirements and prevents accurate recalculation of child support."

Addressing Father's contentions in turn, we explain why none merits relief from the denial of his petition to modify child support. [3]

I.
Procedural and Evidentiary Challenges

A. Effect of Father's Failure to Timely File Exceptions

As a threshold matter, we agree with Mother that Father's failure to timely file exceptions to the magistrate's Report and Recommendations within the ten-day period

[3] Because Mother did not note an appeal, we will address the five alternative questions she presents in her brief, to the extent they are relevant, in the context of the issues raised by Father. *See generally* Md. Rule 8-201(a) (With exceptions not applicable here, "the only method of securing review by the Appellate Court is by the filing of a notice of appeal within the [thirty-day] time prescribed in Rule 8-202.").

specified by Md. Rule 9-208(f)[4] narrows appellate review. The magistrate filed her Report and Recommendations on June 21, 2024. Under Md. Rule 9-208(f), "[a]ny matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise." As this Court has recognized, "[a] party's failure to timely file exceptions forfeits any claim that the [magistrate's] findings of fact were clearly erroneous." *Barrett v. Barrett*, 240 Md. App. 581, 587 (2019) (cleaned up). *See, e.g.*, *Miller v. Bosley*, 113 Md. App. 381, 393 (1997); *see also In re J.R.*, 246 Md. App. 707, 749 (2020) (holding that this Court was not required to address "the merits of assumed errors in" various orders because appellant did not file exceptions or otherwise object). Because Father did not file timely

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[4] Md. Rule 9-208, governing exceptions to a family law magistrate's report and recommendations, provides in pertinent part:

> (f) **Exceptions. —** Within ten days after recommendations are placed on the record or served pursuant to subsection (e)(1)(B) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. *Any matter not specifically set forth in the exceptions is waived* unless the court finds that justice requires otherwise.
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> * * *
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> (i) **Entry of orders. —**
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> (1) **In General. —** Except as provided in subsections (i)(2) and (i)(3) of this Rule,
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> * * *
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> (B) if exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate or take other appropriate action.

(Emphasis added.)

exceptions, the circuit court did not err in adopting the magistrate's findings of fact. Father is therefore limited to appealing "the court's adoption of the [magistrate's] application of law to the facts." *Green v. Green*, 188 Md. App. 661, 674 (2009).

Even if Father had timely filed these exceptions, we are not persuaded that relief would be warranted. Focusing on the magistrate's finding that his "testimony regarding [his] business income" was not "credible," Father complains that the magistrate "did not adequately consider [his] current financial circumstances" and failed to "take into account the challenges of documenting income in a cash-based business." We are satisfied the evidence supports the magistrate's findings that Father lacked candor regarding his business income and that he failed to present sufficient evidence to establish that he was unable to pay child support in the amount set in the JAD. Specifically, Father himself testified that he failed to report income from landscaping and odd jobs, which he admitted amounted to at least $400 per month, while claiming that he lacked documentation for such income. Given that evidentiary record, we discern no error in factual findings regarding both Father's credibility and ability to pay the amount that he agreed to pay before his Aberdeen Police Department employment ended.

B. Hearsay Challenges

Father challenges the legality of the magistrate's admission of what he contends is "uncorroborated hearsay evidence from [Mother] regarding statements [Father] allegedly made to unknown persons who were not in court to testify" and regarding Mother's beliefs about how much more money Father could earn "doing landscaping." Mother responds that Father's "claim that the Circuit Court relied on uncorroborated hearsay lacks any evidentiary basis and undermines the credibility of his appeal."

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Hearsay is inadmissible unless an exception applies. *See* Md. Rule 5-802.

Mother's testimony about Father's history of earnings from landscaping was not hearsay because it was predicated on her personal knowledge from working in that business. Although Mother did testify about out-of-court statements made by "mutual friends" who told her that Father "was bragging" that "he quit his job . . . right after we went to Court[,]" Father did not object. Nor did Father timely challenge the magistrate's factual finding that "Mother suggested that Father has voluntarily impoverished himself by quitting his job, as he indicated he would do to mutual friends. Father denies same."

As a result, Father waived any hearsay challenge he had. *See* Rule 2-517(a) ("An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived."); Md. 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[.]").

These preservation requirements ensure that evidentiary issues are brought "to the attention of" the magistrate or court when it "can pass upon, and possibly correct any errors in the proceedings." *Chimes v. Michael*, 131 Md. App. 271, 288 (2000) (cleaned up). Having failed to object when the magistrate could have excluded any hearsay testimony, or to file exceptions when the circuit court could have disregarded such evidence, Father cannot complain that the court considered hearsay. In any event, the admission of the challenged testimony did not impact the court's ultimate ruling that Father failed to provide sufficient evidence of his past, current, projected, and potential income from which his child support obligation could be recalculated.

C. DROP Funds

Father also argues that the court erred in "bas[ing] its decision off the fact that 2 years prior to the hearing, [he] received $50,000.00 in deferred retirement option plan funds." In his view, the court unfairly disregarded his testimony "that he used most of the funds to pay off debt" in deciding that he "was lying to avoid supporting his child." Mother responds that the court appropriately cited this income, along with Father's belated admission that he earned at least $400 per month, only as evidence that undermined Father's claim "that his sole income was his police pension[.]"

Father's challenge to this factual finding is both unpreserved and unpersuasive. Having failed to file timely exceptions, Father cannot challenge the court's finding that in 2022, he received over $50,000 in DROP (deferred retirement option plan) funds. Yet we note that the court did expressly recognize that he used such funds "to pay down debt[.]" Moreover, Father's own testimony supports that finding.

We are not otherwise persuaded that the court erred or abused its discretion in considering Father's failure to acknowledge all sources of income as a factor undermining his credibility and obstructing the court from recalculating his child support obligation under the statutory standards. This Court does not re-weigh evidence because "[i]t is not our role, as an appellate court, to second-guess the trial judge's assessment of a witness's credibility." *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020).

II.
Denial of Petition to Modify Child Support

Father next contends that the circuit court erred

> when it found by clear and convincing evidence that [Father] being terminated from his employment was not a material change in circumstances to modify the amount of child support, despite the fact that [h]e was unable to keep up with the payments because of the change in income, which resulted in the suspension of his driver's license, making it more difficult to generate income to keep up with said payments[.]

We disagree.

When establishing child support under the statutory guidelines, courts must determine the income of each parent. *See* FL § 12-204. To do so, the court calculates each parent's "[a]ctual income" and, depending on the parent's employment circumstances, "[p]otential income."[5] *See* FL § 12-201(b), (i), (m).

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[5] Under FL § 12-201(m),

> "[p]otential income" means income attributed to a parent determined by:
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> (1) the parent's employment potential and probable earnings level based on, but not limited to:
> (i) the parent's:
> 1. age;
> 2. physical and behavioral condition;
> 3. educational attainment;
> 4. special training or skills;
> 5. literacy;
> 6. residence;
> 7. occupational qualifications and job skills;
> 8. employment and earnings history;

(continued…)

Contrary to Father's contention, his employment termination was neither disregarded, nor discounted. The magistrate, without directly addressing whether Father's termination was for misconduct that amounted to voluntary impoverishment,[6] merely cited "the timing of [that] 'termination,'" "the dispute concerning [his] business income, [his] lack of candor, and [his] failure to provide any specific, corroborating proof of his business income," as grounds for concluding that Father did not satisfy his burden of showing that his employment termination merited reduction of his child support. When Father failed to

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> 9. record of efforts to obtain and retain employment; and
> 10. criminal record and other employment barriers; and
> (ii) employment opportunities in the community where the parent lives, including:
> 1. the status of the job market;
> 2. prevailing earnings levels; and
> 3. the availability of employers willing to hire the parent;
> (2) the parent's assets;
> (3) the parent's actual income from all sources; and
> (4) any other factor bearing on the parent's ability to obtain funds for child support.

[6] Potential income may be imputed to a parent whom the court determines is "voluntarily impoverished," which means the parent makes "the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources." *Goldberger v. Goldberger*, 96 Md. App. 313, 327 (1993). To assess a claim of voluntary impoverishment, the court "ask[s] whether [the parent's] current impoverishment is intentional, that is, by his own choice, of his own free will[.]" *Stull v. Stull*, 144 Md. App. 237, 248 (2002). Among the factors to be considered in determining whether the parent has "freely been made poor or deprived of resources" are "the timing of any change in employment or financial circumstances relative to the divorce proceedings[,]" as well as the parent's "efforts to find and retain employment[,]" "whether [the parent] has ever withheld support[,]" the parent's "past work history[,]" and other relevant "considerations presented by either party." *Goldberger*, 96 Md. App. at 327 (cleaned up). *See* FL § 2-201(m).

file timely exceptions to the magistrate's recommendations, the circuit court adopted those factual findings and reached the same legal conclusion.

The court did not err or abuse its discretion in doing so. Although Father's employment terminated, whether he quit or was fired for misconduct was not material. Instead, the core problem was that the magistrate and court were "unable to properly recalculate the child support guidelines" because Father did not present sufficient evidence to credibly establish the actual and potential amount of his income.

The record we detailed above supports that conclusion. Father admitted that he did not report his landscaping business income and could not document it, either before or after his employment with the Aberdeen Police Department ended. Even if, as Father testified, the number of his accounts and the time he invested in the business diminished for the nine-month period from November 2022 until August 2023 while he was working at Aberdeen Police Department, the magistrate could reasonably infer that, post-termination, Father could and would earn more from his landscaping business. Based on Mother's testimony that when she and other family members assisted him in the landscaping business, Father's daily receipts sometimes exceeded $500, the evidence also supports the factual finding that his post-termination earnings were likely more than the $400 per month that he admitted earning but failed to report.

Because Father's business income was not factored into his monthly child support obligation under the JAD, the magistrate reasonably questioned whether and how much Father's payment would change when his actual and potential income was factored into the calculation of child support under the statutory rubric. In addition, because Father did not present credible evidence of his past, present, or potential business income, the magistrate recommended that Father's petition to modify his child support obligation be denied.

Based on this record, even if losing his job constituted a material change in circumstances, Father failed to present sufficient evidence of his actual and potential income so that his child support obligation could be recalculated. Consequently, the circuit court did not err or abuse its discretion in denying modification on the ground that Father did not satisfy his burden of establishing that his monthly obligation to pay $1,392 for child support should be reduced.

ORDER OF JULY 25, 2024, BY THE CIRCUIT COURT FOR BALTIMORE CITY, DENYING APPELLANT'S PETITION TO MODIFY CHILD SUPPORT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.