

Circuit Court for Montgomery County  
Case No.: 0000125541FL

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1495

September Term, 2017

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PHILLIP GALBRAITH

v.

REBECCA GESHELIN

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Woodward, C.J.  
Leahy,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 13, 2018

\*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.

Appellant, Phillip Galbraith, appeals the Circuit Court for Montgomery County’s denial of his motion to reconsider the court’s decision denying his motion to modify child support. He presents one question for our review, which we quote:

Was the trial court’s denial of the Appellant’s Motion for Modification of Child Support and Motion to Reconsider without granting the Appellant a hearing he requested, legally correct when Maryland Rule 2-311(f) requires the trial court to hold a hearing before rendering a decision disposing of a claim or a defense?

Because no such hearing was required, we affirm.

### **BACKGROUND**

Mr. Galbraith and Rebecca Geshelin, appellee, are the parents of a 10-year-old child. In September of 2014, the parties divorced, and an order detailing custody and child support was issued by the Circuit Court for Prince George’s County. In June of 2016 Mr. Galbraith, a self-represented litigant, filed a motion to modify custody and child support in the Circuit Court for Montgomery County. On February 15, 2017, a hearing on the motion was held, which according to Mr. Galbraith, lasted six hours. He claims that the court denied the motion because, “neither party had offered financial evidence” that warranted a change.<sup>1</sup> He did not appeal that decision.

Three months later, on May 26, 2017, Mr. Galbraith again filed a motion to modify child support claiming that Ms. Geshelin’s income was 25% greater than the income used to originally calculate child support, and that his income was 25% less than that used in the original calculation. Notably, no hearing was requested in this motion. Ms. Geshelin

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<sup>1</sup> The transcript from the February 15, 2017 hearing is not in the record before us.

responded by filing a motion to dismiss, noting that Mr. Galbraith “failed to allege any changes in circumstance in the very brief period since this case was last adjudicated.” Mr. Galbraith filed a reply in opposition wherein he requested a hearing for the first time. On August 25, 2017, the court dismissed Mr. Galbraith’s motion for modification of child support, without a hearing. Mr. Galbraith then filed a motion to reconsider, specifically referencing Maryland Rule 2-311(f). The court also denied that motion, without a hearing.

### **DISCUSSION**

Mr. Galbraith’s sole contention is that the court erred in denying his motion without holding a hearing pursuant to Maryland Rule 2-311(f). The rule provides:

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response...Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

First, we note, that the February 15<sup>th</sup> hearing on the merits of Mr. Galbraith’s first motion to modify custody and child support was Mr. Galbraith’s opportunity to present financial evidence that could have demonstrated a material change in circumstances and a need for a modification. “The burden of proving a material change in circumstances is on the person seeking the modification.” *Corby v. McCarthy*, 154 Md. App. 446, 477 (2003). In his brief, Mr. Galbraith admits that during the February 15<sup>th</sup> hearing, “no evidence of financial records was presented by the appellant regarding his income or the income of the Appellee that would be used in the calculation of child support.”

Secondly, in *Hill v. Hill*, we held that a motion to modify child support amounts to a motion to alter or amend a judgment pursuant to Maryland Rule 2-534, and therefore, “because Rule 2-311(f) does not require that a hearing be held on motions to alter or amend judgments,” the circuit court did not err in denying Mr. Galbraith’s second motion for modification of child support and motion to reconsider without a hearing. 188 Md. App. 26, 44 (1997), *cert. denied*, 349 Md. 103 (1998). Furthermore, the second motion came on the heels of the first motion for which a hearing was held and he did not allege any change in circumstances from the February 15, 2017 hearing.

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