UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1569

September Term, 2014

ROGER LYNN REED

v.

AMANDA DERINGER REED

Meredith,
Hotten,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: September 22, 2015

*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.

In *Reed v. Deringer*, No. 1813, September Term 2012 (November 25, 2013), we vacated an order of the Circuit Court for Kent County modifying appellant Roger Reed's ("Husband") child support obligations to his ex-wife, appellee Amanda Deringer Reed ("Wife"). We held that the evidence before the court did not support a finding that Husband had voluntarily impoverished himself, and that the court had erred in relying on dated information about Husband's mortgage payment history in calculating his actual income. And we remanded "for the court to make findings about the source/sources and amount of [Husband]'s actual income at the time of the modification hearing and for recalculation of his child support obligation." The court did as we directed, and in the process reduced Husband's monthly child support obligation from $650 per month to $485 per month retroactively. Husband appeals again, and we affirm.

I. BACKGROUND

Husband and Wife were divorced in 1999, after a seven-year marriage. They have two children, both of whom are now adults, but at the time relevant to this appeal, their son still had not yet turned eighteen. Our earlier opinion captures well the history of this child support dispute up through the October 25, 2012 Opinion and Order at issue in the previous appeal, so we pick up the story at that point.

In our unreported opinion in Case No. 1813 of the September 2012 Term, we reviewed a circuit court order overruling Husband's exceptions to the findings and recommendation of a Master. The Master had found, citing the factors in *John O. v. Jane O.*, 90 Md. App. 406, 422 (1992), that Husband had voluntarily impoverished himself and

that Husband's actual income was higher than he had claimed. As a result, the court had ordered Husband to pay Wife $650 per month in support of the parties' son, effective June 1, 2012; to pay an additional 25% of that amount ($162.50) per month against accumulated arrearages; and to provide health insurance for the son if it became available at a reasonable cost through his employment. We reviewed the findings against the *John O.* factors, though, and held that they "plainly [did] not support the conclusion that [Husband] '"made the free and conscious choice, not compelled by factors beyond his . . . control, to render himself . . .without adequate resources."'" Slip op. at 11 (quoting *Durkee v. Durkee*, 144 Md. App. 161, 182 (2002) (internal quotations omitted)). And although we "perceive[d] no error in the court's finding that Husband was earning more income than his tax returns reflected," *id*. at 12-13, we found that the court's calculation of Husband's income had been skewed by the assumption that Husband had been paying his home mortgage for a year when, in fact, he hadn't been. Accordingly, we vacated the child support order and, as quoted in the introduction, remanded for a new calculation of Husband's actual income and resulting child support obligation.

On remand, the court entered a Memorandum and Order that walked through a new set of calculations. "Upon further review of the parties' financial status in 2011, as well as the parties' financial records in 2009 and 2010," the court found that Wife earned $81,638 annually and that Husband earned "approximately $44,932 annually," down from its earlier figure of $62,232.00 per year. The court showed its work, as it were, both as to the revised calculation of Husband's annual income in keeping with Md. Code (1999, 2006 Repl.

Vol.), § 12-201(h) of the Family Law Article ("FL") and its decision, based on the Child Support Guidelines, to order child support of $485.00 per month:

> [Husband]'s sources and amount of income are derived as follows:
>
> [Husband]'s Schedule C of his 2011 tax return indicate[s] no income. However, the same return shows expenses for his vehicle in the amount of $10,332.00, advertising in the amount of $1,178.00, mortgage in the amount of $51,900.00, legal and professional services in the amount of $1,839.00, and office expenses in the amount of $4,578.00. The total of these expenses is $69,827.00. [Husband] indicated that the mortgage expense was for his home and the transportation expense was for the vehicle he drove for business and personal use. The Court finds that the remaining expenses are reasonable and necessary business expenses, and should be excluded from being defined as income for child support purposes. However, in calculating income pursuant to [FL] § 12-201(h), the Court derives [Husband]'s annual earnings by adding his personal vehicle expense and home mortgage payment, which would be $62,232.00.
>
> Taking into consideration the uncontroverted testimony that [Husband] was in default of his home mortgage in 2011, the Court recalculated [Husband]'s income to reflect a prorated amount. [Husband] received two Notices of Intent to Foreclose in 2011. According to the Notice of Intent dated January 23, 2012, [Husband] defaulted on his loan on August 1, 2011. The date of the most recent payment was July 18, 2011. [Husband]'s Notice of Intent to Foreclose dated February 6, 2012, indicates that [Husband] defaulted on this mortgage on August 20, 2011. The date the most recent loan payment was received by Wells Fargo was July 22, 2011. At the time the Notice of Intent to Foreclose was dated, [Husband]'s mortgage loan was 170 days past due. From January 1, 2011 until August 20, 2011, for nearly eight months, [Husband] made his monthly mortgage payments. By dividing [Husband]'s annual mortgage expense of $51,900.00 by twelve (12) months, the Court finds that [Husband]'s monthly mortgage payments are approximately $4,325.00. Over the period of eight (8) months, [Husband] paid approximately

> $34,600.00 toward his home mortgage. By adding the personal vehicle expense to the prorated annual mortgage payment, [Husband] had the ability to pay $44,932.00 in 2011. In dividing that amount by twelve (12), the Court finds that [Husband] earned, or had the potential to earn, approximately $3,744.33 per month in 2011.[1] Therefore, the Court finds that in 2011, [Husband]'s child support obligation would have been $485.00 monthly.

(Footnotes omitted.) The accompanying Order directed Husband to pay child support in the amount of $485.00 per month retroactive to September 5, 2012, to pay an additional 25% of that amount toward arrearages, and "[i]f this matter becomes arrears only, then the arrears shall be paid at the rate of the current Order until the arrears are paid in full." Husband filed a timely Notice of Appeal.

II. DISCUSSION

Husband's income has been an elusive target throughout this litigation, not least because of a persistent gap between the income Husband reported on his 2011 tax return (zero dollars) and the observable reality of money he paid for his home and his car, among other things (tens of thousands of dollars). Husband would have the Master, the circuit court, and us believe that he is destitute, but from a factual perspective, he has persuaded nobody that this is true. When the case was last here, we "perceive[d] no error in the court's finding that [Husband] was earning more income than his tax returns reflected" and,

---

[1] At this point, the court dropped the following footnote: "'Potential income' means income attributed to a parent determined by the parent's employment potential and probable earnings level based on, but not limited to, recent work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community. [FL] § 12-201[(h)](1)."

contrary to the contentions in Husband's brief,[2] we expressed no disapproval of the Master's or circuit court's overall method of estimating Husband's income. Instead, we took issue with the finding that Husband had voluntarily impoverished himself and from the inclusion of certain mortgage payments in the court's calculation, and we sent the case back so that the court could "make findings about the source/sources and amount of [Husband]'s actual income at the time of the modification hearing and for recalculation of his child support obligation."

That is precisely what the court did. On remand, the court made no finding of voluntary impoverishment, nor did it order Husband to provide health insurance coverage (the second issue in his last appeal). In order to calculate Husband's child support obligation, then, the court needed to determine Husband's "actual income," FL

---

[2] Husband's brief lists three Questions Presented:

I. The circuit court erred in finding the car and truck expenses itemized on the Defendant's Schedule C are not reasonable and necessary business expenses and instead, used those expenses to derive the Defendant's income.

II. The circuit court erred by once again basing the Defendant's income on the past payment of his home mortgage, an expense not paid for nearly a year prior to the modification hearing, after the Court of Special Appeals found this method of income computation clearly erred.

III. The circuit court erred by once again basing the Defendant's child support obligation on potential income despite the fact that the COSA found that Defendant was not voluntarily impoverished and upon remand, ordered to use actual income to calculate child support.

§ 12-201(h)(1), rather than his "potential income," the standard for a parent who is has voluntarily impoverished himself. FL § 12-201(h)(2). Husband's actual income was a matter of disputed fact, and the court was not obliged reflexively to enter the "zero" that Husband submitted on his 2011 tax return. *See Tanis v. Crocker*, 110 Md. App. 559, 572 (1996) (noting that the court is not required to consider tax returns to resolve dispute about spouse's income). But determining Husband's income was not as simple as looking at a W-2—Husband is self-employed, has a variety of businesses and streams of revenue, and habitually mingles personal and business expenses. And despite his claims of poverty, Husband did, in fact, make payments on his home mortgage during the relevant time period and pay for a vehicle he used both for personal and business purposes.

We reverse a trial court's findings regarding the amount of Husband's actual income and the resulting child support calculation only if they are clearly erroneous, *Malin v. Mininberg*, 153 Md. App. 358, 407 (2003), and we find no error here. Under these circumstances, any calculation of Husband's income is bound to be an estimate, and a rough one at that. In the absence of anything more reliable or precise from Husband, the court used Husband's aggregate house and vehicle payments as a proxy for his actual income, *after* deducting expenses it found to be business expenses and, as we directed, *after* deducting Husband's missed mortgage payments. The court determined the number of missing mortgage payments from the documents *Husband* submitted—statements from his lender pinpointing the timing and extent of his default—and reduced his potential income by that amount. And the result of this calculation was a reduction in Husband's now-historic child support obligation from $650.00 per month to $485.00 per month, a

savings of twenty-five percent. We cannot adopt Husband's theory of his income without second-guessing the Master's and circuit court's conclusions that Husband's actual income for the relevant time period exceeds the income he reported on his 2011 tax return. But we agreed with those conclusions the last time around, and we see no basis in fact or law to conclude otherwise now.

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