UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1690

September Term, 2013

DAVID A. SAMUELS

v.

LINDA O. RIMERMAN f/k/a LINDA O. SAMUELS

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: October 30, 2015

As is unfortunately all too common, the parties have bitterly disputed the specifics of their divorce, post-settlement. By the start of the circumstances relevant to the instant appeal, the circuit court docket had amassed 762 entries, a truly astounding number. That number swelled to 1251 entries by the time the record extract was submitted to this Court.

We review David A. Samuels's (Appellant) appeal from four separate orders of the Circuit Court for Montgomery County,[1] following the twelve he has appealed so far in the course of family law proceedings between him and his former wife, Linda O. Rimerman (Appellant).[2] The first appeal noted on October 21, 2013, was from an order entered on September 25, 2013 denying Mr. Samuels's motion for reconsideration of the court's order dated May 29, 2013 directing that Mr. Samuels pay $8,412.50 in attorney's fees to Ms. Rimerman for costs incurred preparing for two hearings addressing, *inter alia*, visitation issues. The second appeal was also noted on October 21, 2013 from another order dated September 25, 2013 denying reconsideration of the circuit court's decision on

[1] In an order dated May 8, 2014, this Court ordered that Appellant file a brief not to exceed 45 pages in length addressing therein all issues raised on appeal for the appeals noted on October, 21, 2013, November 25, 2013, and January 8, 2014. Because all four appeals are on the same record, and the notices were filed before the record was transmitted to this Court, Rule 8-421(b) requires that they be docketed as one action on appeal.

[2] Ms. Rimerman changed her name sometime after the divorce decree was entered. Although many of the initial orders in the underlying proceedings refer to her as Linda Samuels, we will refer to her as Ms. Rimerman.

May 10, 2013 to set aside, as a fraudulent conveyance, a property transfer made by Mr. Samuels.

The third notice of appeal was filed on November 25, 2013. It concerns a hearing that was held on October 10, 2013, in which the court addressed Ms. Rimerman's request for appellate attorney's fees and Mr. Samuels's petition to modify child support. On October 31, 2013, the court ordered Mr. Samuels to pay $84,627.83 for Ms. Rimerman's attorney's fees and modified Mr. Samuels's child support obligation to $3,000 per month.

Finally, on December 18, 2013, the court ordered Mr. Samuels to pay $16,016.20 to Ms. Rimerman for costs and fees she incurred from preparing for and participating in the October 10, 2013, hearing. Mr. Samuels filed the fourth and final notice of appeal proceeding under this case number (No. 1690, September Term, 2013) on January 8, 2014.[3]

[3] After Mr. Samuels submitted his last notice of appeal, he filed numerous motions in this Court, including, *inter alia*: on January 14, 2014, a motion requesting that we stay the judgments of the circuit court and extend the time to transmit the record; on February 7, 2014, a motion to strike Ms. Rimerman's civil appeal information report; on April 21, 2014, an emergency motion to vacate the circuit court's April 7, 2014, orders (which are not before this Court in this appeal) and a request that the trial court hold a hearing to set bond. On May 8, 2014, we denied each of these motions but granted others regarding the addition of transcripts to the record and regarding an increased page limit for the appellant's brief. On May 7, 2014, Ms. Rimerman filed a motion to, *inter alia*, strike portions of Mr. Samuels's record extract that were not before the circuit court at the time Mr. Samuels's noticed his appeal and to dismiss Mr. Samuels's appeal for failing to comply with the Maryland Rules governing appellate procedure because he did not include in the extract parts of the record necessary to decide the appeal. We denied Ms. Rimerman's request to dismiss the appeal. On July 3, 2014, Ms. Rimerman filed a second motion to strike the record extract and dismiss appeal, alleging again that parts of Mr.

(Continued . . .)

Mr. Samuels presents five questions for our review, which we have reordered and then slightly rephrased:

I. Did the trial court abuse its discretion by ordering Mr. Samuels to pay Ms. Rimerman $8,412.50 in attorney's fees for the hearings on January 24, 2013 and February 8, 2013, addressing visitation with their daughter?

II. Did the trial court commit error by characterizing as a fraudulent conveyance Mr. Samuels's transfer of his interest in an investment property from his name to a legal entity, which he controls; and did the court abuse its discretion by ordering that the fraudulent conveyance be set aside?

III. Did the court abuse its discretion in ordering Mr. Samuels to pay Ms. Rimerman $84,627.83 in attorney's fees and expert witness fees she incurred for various appellate court matters from 2011 through the present?

IV. Did the trial court abuse its discretion by establishing a new child support order in the amount of $3,000 per month?

V. Did the trial court abuse its discretion by ordering Mr. Samuels to pay Ms. Rimerman $16,016.20 in attorney's fees for the costs associated with the hearing on October 10, 2013?

(. . . continued)
Samuels's amended record extract were not before the circuit court. Mr. Samuels filed responses on July 9 and July 24, 2014, in which he agreed (to an extent) with Ms. Rimerman and requested that we redact the offending pages.

Pursuant to Maryland Rule 8-501(m), this Court may dismiss an appeal for failure to comply with an order requiring the parties' submissions to conform with our rules regarding the content of record extracts, or we may require the appellant to pay the costs incurred by the appellee associated with supplementing the extract. Here, the contents of record extract and of Ms. Rimerman's appendix make it possible for us to reach a decision on the merits of the case, which is "always a preferred alternative." *See Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007). For this reason, we deny Ms. Rimerman's motion to dismiss the appeal, but we shall impose on Mr. Samuels the additional costs of reimbursing Ms. Rimerman for her expenses in printing the appendix to her brief. *Id.* (citing Md. Rule 8-501(m)).

We hold that the circuit court's factual determinations were not clearly erroneous and that the court did not abuse its discretion in ordering Mr. Samuels to pay Ms. Rimerman's attorney's fees in the various proceedings. We conclude the court did not err in its determination that Mr. Samuels's property transfer was a fraudulent conveyance and did not abuse its discretion in setting aside the conveyance. Finally, we hold that the circuit court did not err and did not abuse its discretion in calculating child support. We therefore affirm the judgments of the circuit court.

I. Attorney's Fees for the January 24, 2013, and February 8, 2013, hearings

A. Factual and Procedural Background

The circumstances surrounding the court's May 29, 2013, award of attorney's fees to Ms. Rimerman relate to proceedings in the fall of 2012 and winter of 2013. We described these circumstances as well as the history of the parties' litigation in our unreported opinion, *Samuels v. Rimerman*, No. 2528, Sept. Term, 2012 (January 13, 2014) (footnote omitted), *cert. denied*, 437 Md. 637 (2014):

> On February 26, 2007, Mr. Samuels and Ms. Rimerman entered into a separation and custody agreement, which was incorporated into a judgment of absolute divorce on April 10, 2007. Pursuant to the terms of the agreement, the parties had joint legal custody of the couple's three minor children, but Ms. Rimerman had primary physical custody.[5] Since that date, the parties have litigated extensively, and this is not the first of

[5] At the time of the divorce, the couple's two older sons were minors, but they have since become emancipated by age. Many of the previous orders discuss all three children. Due to the older boys' ages, however, this appeal concerns Daughter only. Daughter was born in 2000.

their disputes to reach us. *See Samuels v. Samuels*, No. 2272, Sept. Term 2011 (Mar. 14, 2013); *Samuels v. Samuels*, No. 1615, Sept. Term 2011 (Oct. 5, 2012); *Samuels v. Samuels*, No. 0090, Sept. Term 2011 (Oct. 5, 2012).

* * *

[On] February 15, 2011, [Ms. Rimerman filed a] petition to modify custody, wherein she sought sole legal custody of Daughter. On March 11, 2011, Mr. Samuels responded with a motion to change custody and a motion to compel a mental examination of Ms. Rimerman. Following a July 13, 2011, hearing, on August 1, 2011, the court entered an order that, *inter alia*, deferred ruling on the cross-petitions for a modification of legal custody and appointed John Lefkowits, Ph.D., as a reunification therapist between Daughter and Mr. Samuels.

On August 18, 2011, the court held a status hearing, and the parties reported progress with Dr. Lefkowits's reunification therapy. Accordingly, on August 30, the court entered an order to continue the reunification therapy and reserved ruling on the change of custody. On October 18, 2011, however, the court entered an order granting sole legal custody of Daughter to Ms. Rimerman.

In late October 2011, after consultation with Daughter's therapist, Karen McClelland, LCSW, Dr. Lefkowits recommended additional reunification therapy sessions. Mr. Samuels wanted Dr. Lefkowits to terminate the therapy. At a December 7, 2011, status hearing, Dr. Lefkowits testified that, after hearing the recommendation for additional sessions, Mr. Samuels became angry with him and threatened to take him to court and spend $30,000 per year on legal fees. Dr. Lefkowits stated that Mr. Samuels also attempted to intimidate him by threatening to subpoena him. On November 7, 2011, Dr. Lefkowits sent a letter to the court, informing the court of his resignation from the case. Dr. Lefkowits wrote that he thought continued therapy was advisable because Daughter had been upset by Mr. Samuels's actions.

In the letter, Dr. Lefkowits described an incident that occurred at a reunification therapy session as related to him by Daughter: after Dr. Lefkowits left to speak to Ms. Rimerman, Mr. Samuels forced Daughter to call Mr. Samuels's mother, and this person made some negative remarks about Ms. Rimerman. Daughter also stated that she was upset because Mr. Samuels would not let her end the call. Dr. Lefkowits informed the court that this incident had upset Daughter to the point of tears. Dr. Lefkowits informed the court that, in his "nearly twenty years" of "work[ing] with numerous high conflict couples," he had never encountered threatening and

intimidating behavior like that exhibited by Mr. Samuels. In closing, Dr. Lefkowits recommended against further reconciliation therapy and suggested the court appoint a parent coordinator.

Following Dr. Lefkowits's resignation, Mr. Samuels filed a Motion for Court Ordered Visitation Schedule for Weekly Visitation with His Two Minor Children as Well as Unimpeded Electronic and Telephonic Access. Ms. Rimerman filed a motion for the appointment of a parent coordinator and also opposed Mr. Samuels's motion. Ms. Rimerman wanted the court to appoint a parent coordinator, in part, because Mr. Samuels went to Daughter's school, unannounced, on November 6, 2011. At the December 7 hearing, Dr. Lefkowits testified that Daughter feared Mr. Samuels was going to kidnap her, and she borrowed her teacher's cell phone to call Ms. Rimerman.

On December 7, 2011, the court conducted a hearing on pending motions. Dr. Lefkowits recommended that Mr. Samuels attend anger management therapy. After Dr. Lefkowits made this statement, Mr. Samuels made a rude gesture toward Dr. Lefkowits: "Mr. Samuels just flipped me the bird. In open Court. He just gave me the finger, to be colloquial about it." Ms. McClelland also testified that Daughter no longer felt comfortable on visits with Mr. Samuels, and she, too, recommended the appointment of a parent coordinator.

On December 13, the court entered an order denying both Mr. Samuels's and Ms. Rimerman's motions. Additionally, the court ordered Mr. Samuels to participate in individual counseling for anger management and parenting skills. Further, the court ordered that Mr. Samuels could have visitation with Daughter every other weekend, and these visits would be supervised by James Fenner or Frank Banner. . . .

* * *

At the May 24 status hearing, the court heard testimony from the parties, Ms. Tillery, Ms. McClelland, Daughter, and Dara Goldberg, LCSW. Ms. Tillery testified that Mr. Samuels was attending therapy, but he had selected Ms. Goldberg instead of one of the court ordered therapists. The court afforded no weight to Ms. Goldberg's testimony, however, because the court found that Mr. Samuels had provided an incomplete history to her. Ms. Tillery stated that Mr. Samuels was hostile toward her and had accused her of surveilling him.

Daughter testified that she felt nervous during visits with Mr. Samuels, especially when Mr. Samuels evaded Mr. Fenner. Additionally, Daughter stated that Mr. Samuels would tell her how much visitation cost, and that he

could buy her an iPhone if he did not have to pay for Mr. Fenner. Mr. Samuels asserted that Ms. Tillery, Ms. McClelland, and the court were conspiring against him.

On May 25, 2012, the court entered an order denying Mr. Samuels's motion to recuse Judge Savage. Additionally, the court ordered supervised visitation between Mr. Samuels and Daughter to continue, and the court set nine specific dates for visitation to occur from 5:00 to 7:00 p.m. Mr. Fenner was ordered to continue to supervise. The order also stated: "[I]f visitation is proceeding appropriately, visitation may transition to unsupervised visitation following the September 9, 2012 visit, if the parties mutually agree after consultation with [Ms. McClelland]." The court set a status hearing for October 17, 2012.

On June 18, 2012, the court entered an order granting attorneys' fees to Ms. Rimerman in the amount of $7,600 for the period December 28, 2011, to May 23, 2012.

Between the entry of the May 25 order and the October 17 status hearing, Mr. Samuels filed numerous motions and petitions, including a Motion to Eliminate all Visitation Restrictions Which Are In Violation of Plaintiff's Constitutional Rights, Claim For Emotional Distress and Undue Financial Hardship, Defendant's Contempt of Court, and an emergency motion to enforce visitation. He also served subpoenas *duces tecum* on Ms. McClelland and Ms. Rimerman, and deposition notices for Ms. McClelland and Ms. Rimerman. Ms. Rimerman opposed each motion and filed motions for protective orders and to quash the subpoenas. Prior to the October 17 status hearing, the court quashed Mr. Samuels's subpoenas *duces tecum*. Additionally, Ms. Rimerman filed a request for attorneys' fees and sanctions.

On October 17, 2012, the court conducted a status hearing. Daughter testified that she felt nervous and stressed before and after visits with Mr. Samuels. Daughter stated that Mr. Samuels would tell her that she bore "a lot of responsibility" for the court proceedings, that Mr. Fenner was not needed for visits, and that Mr. Fenner cost him a lot of money. Daughter told the court that Mr. Samuels would ask inappropriate questions and say negative things about Ms. Rimerman. When the court asked Daughter how she would design visitation, the following colloquy ensued:

> [DAUGHTER]: I don't really know, because ***I don't want to have visitation*** because I don't think it's going anywhere.
>
> THE COURT: When you say, "Not going anywhere," it's not--

> [DAUGHTER]: It's not making, it's not rebuilding our relationship. ***It's just making it worse.***

(Emphasis added).

Daughter stated that, if the court ordered visitation, she wanted supervision to continue.

Ms. McClelland testified that visits with Mr. Samuels made Daughter feel anxious and unsafe. Specifically, Ms. McClelland stated that Daughter "doesn't ever know what's going to happen on a visit and it makes her anxious. She doesn't know how you're going to behave. She doesn't know if there's going to be drama." Additionally, Ms. McClelland testified that Daughter, "on three occasions . . . told [her] that [Daughter]'s not even sure whether she wants to continue with visitation." Ms. McClelland recommended that, if visitation were to continue, it should be supervised.

On November 2, 2012, the court entered an Order for Visitation that, *inter alia*, ordered Mr. Samuels and Daughter to participate in six sessions of reunification therapy with Dr. [Kelly] Zinna, and ordered Mr. Samuels to pay $750 in expert fees for the services of Ms. McClelland. Additionally, the order denied Mr. Samuels's motion to eliminate all visitation restrictions. The order also stated "that following the six sessions, Plaintiff and [Daughter] shall have unsupervised visitation every other weekend for day visits, lasting between 3-4 hours, on either Saturday or Sunday." The court appeared to deny Ms. Rimerman's motion for attorneys' fees. Ms. Rimerman filed a motion for reconsideration, seeking attorneys' fees for the period between May 25, 2012, and October 17, 2012. Mr. Samuels filed a motion for reconsideration of the $750 expert witness fee.

On February 5, 2013, the court entered an amended order of visitation that was identical to the order of November 2, 2012, except the amended order reserved ruling on Ms. Rimerman's request for attorneys' fees. At the same time, the court also denied Mr. Samuels's motion for reconsideration of the $750 expert witness fee.

On February 7, 2013, the court entered an order and opinion addressing Ms. Rimerman's request for attorneys' fees. The court ordered Mr. Samuels to pay $6,381.27 in attorneys' fees to Ms. Rimerman for the period May 24, 2012, to October 17, 2012. On February 21, 2013, Mr. Samuels filed a notice of appeal.

Meanwhile, reunification therapy was not proceeding apace. [On January 10, 2013, after only two sessions of reunification therapy, Dr. Kelly Zinna resigned after she determined that she could not provide

therapeutic services because the sessions had the potential to be psychologically harmful to daughter.] At a status hearing on January 24, 2013, Dr. Zinna stated that Ms. Rimerman was cooperative with the therapy process, and Dr. Zinna felt no "pushback . . . or resistance" from Ms. Rimerman, nor did Dr. Zinna feel that Ms. Rimerman was alienating Daughter from Mr. Samuels. With respect to Mr. Samuels, however, Dr. Zinna indicated that she had to remind him numerous times not to say negative things about Ms. Rimerman, not to discuss the cost of therapy, and not to talk about the case with Daughter.

Dr. Zinna also described specific incidents that occurred during the two therapy sessions between Mr. Samuels and Daughter that led her to believe further therapy would be harmful to Daughter. For example, at one point Daughter stated that she did not like Mr. Samuels's girlfriend and did not want to be around her; Mr. Samuels responded by telling Daughter, "You're just going to have to get over it." Dr. Zinna stated that the Daughter became upset when Mr. Samuels told her that things could go back to normal once they "got through" the six reunification sessions.

Dr. Zinna testified that Daughter exhibited a significant decline between the first and second sessions. Dr. Zinna described Daughter's "emotional decline" as follows:

> The first session she was, like I said, you know, wanted this relationship, she was very stoic, you know, didn't seem emotional at all, seemed to — you know, very willing to engage in the process. And the second session, she was quick to disintegrate into being very upset, tears, just much more emotionally fragile, and I just saw that from one session to the next, and realized that the process was not therapeutic for her at all, and had the potential to be harmful.

Dr. Zinna further testified about Daughter's decline:

> [W]hat I attributed it to was that there was no change in her father's behavior, and that he was not open to changing. He wanted to get through the six sessions, check the box, and move on, and he would say that to her, that "Once these six sessions are done, things can go back to normal. We can have regular visitation," and she became upset, just, I believe, thinking, "Well, nothing's changed. And you're still not listening to me, you're still not respectful of what I want in this process. You don't seem to care about my feelings."

* * *

> On February 8, 2013, the court resumed the status hearing which had been continued from January 24. Ms. McClelland testified that Daughter had cried after the first session of reunification therapy. Ms. McClelland stated that Daughter had told her she was shaking during the session, and she was very anxious. Ms. McClelland reported a return of troublesome behavior, such as lying about homework and stress eating, which she attributed to the therapy sessions with Mr. Samuels. In response to the court's question about visitation with Mr. Samuels and Daughter's best interests, Ms. McClelland responded: "I don't think she should have access right now, because I think her father needs psychological help. And I don't think these reunification sessions are working. And that's because Mr. Samuels is still not able to empathize with his daughter."
>
> On March 1, 2013, the court entered an opinion and order that, *inter alia*, suspended visitation between Mr. Samuels and Daughter for a period of six months. Additionally, the court ordered Mr. Samuels to undergo a mental examination and to initiate any therapy recommended by this evaluation. The court stated that, prior to the resumption of visitation between Mr. Samuels and Daughter, Mr. Samuels would need to petition the court and demonstrate that he had completed the mental examination and attended any therapy recommended. [The circuit court held Ms. Rimerman's request for attorney's fees *sub curia*.]

Id., slip op. at 3-12 (footnote omitted).

We affirmed the circuit court's March 1 order, and held that the circuit court's factual findings were not clearly erroneous nor were its orders—regarding custody, temporary suspension of Mr. Samuels's visitation with Daughter, requiring Mr. Samuels to undergo a mental health examination—an abuse of discretion. *Id.*, slip op. at 18-19, 21. We also affirmed the court order requiring Mr. Samuels to pay expert witness fees for Ms. McClelland and to pay Ms. Rimerman's attorney's fees for the period between the May 24, 2012, status hearing and the October 17, 2012.[6] *Id.*, slip op. at 28-30.

[6] Mr. Samuels provided this Court with the psychologist's report written after he submitted to the mental health examination as required by the circuit court. Because the (Continued . . .)

On February 14, 2013, Ms. Rimerman's attorney filed an affidavit of attorney's fees incurred responding to Mr. Samuels's emergency motion and for attending the associated the January 24 and February 8, 2013, hearings. Three months later, on May 29, 2013, the circuit court entered an order and memorandum opinion awarding Ms. Rimerman $8,412.50 for the attorney's fees that she incurred for defending against Mr. Samuels's motion. In its opinion, the court articulated the applicable law and its rationale for awarding attorney's fees to Ms. Rimerman. With respect to the parties' finances, the court incorporated by reference its findings in its June 18, 2012, order,[7] which discussed the financial status of each party and the needs of each party. The court noted that there had "been no credible evidence received by the Court indicating that the respective financial status or needs of each party ha[d] changed since that time." (Footnote omitted). Thus, the court focused on whether there was substantial justification for Mr. Samuels's actions. The court concluded, with respect to Mr. Samuels's emergency motion for visitation, that Mr. Samuels did not have substantial justification for filing the motion because Dr. Zinna's withdrawal from the case and the breakdown in the reunification therapy sessions were "directly attributable to Mr. Samuels'[s] want of real

(. . . continued)
report was filed subsequent to date that Mr. Samuels filed his notice of appeal, this evidence was not before the circuit court during the pendency of the issues in this appeal; therefore, we do not consider the psychologist's report in this opinion.

[7] We affirmed the circuit court's June 2012 attorney's fees order in an unreported opinion. *See Samuels v. Samuels*, No. 756, Sept. Term 2012, slip op. at 1-14 (April 21, 2014).

participation in the sessions." This conclusion was based on the same set of facts and findings that we affirmed in our January 13, 2014, unreported opinion, *Samuels v. Rimerman*, No. 2528, Sept. Term, 2012, discussed *supra*.

After his motion for reconsideration was denied on September 25, 2013, Mr. Samuels noticed an appeal on October 21, 2013.

B. Discussion

Mr. Samuels argues that the trial judge abused her discretion or erred as a matter of law in awarding Ms. Rimerman $8,412.50 for the attorney's fees she incurred for the two visitation hearings related to Mr. Samuels's 2013 visitation motion. Ms. Rimerman counters that the court's decision awarding attorney's fees was grounded in facts and law and was not an abuse of discretion.

The attorney's fee award here is governed by Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL") § 12-103. Section (a) provides that a court may award attorney's fees in any case in which a party:

> (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or
>
> (2) files any form of proceeding:
> (i) to recover arrearages of child support;
> (ii) to enforce a decree of child support; or
> (iii) to enforce a decree of custody or visitation.

FL § 12-103(a). The statute further provides that before a court may award costs and attorney's fees, the court shall consider:

> (1) the financial status of each party;

(2) the needs of each party; and

(3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

FL § 12-103(b). However, "[u]pon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees." FL § 12-103(c).

The Court of Appeals has instructed that in considering an award under Section 12-103, "the 'absence of substantial justification of a party for prosecuting or defending the proceeding,' would, without good cause, result in an award of attorneys' fees and costs to the other party, so long as those fees and costs are reasonable." *Davis v. Petito*, 425 Md. 191, 201 (2012); *see Wagner v. Wagner*, 109 Md. App. 1, 52 (1996) (noting that a finding of "unreasonable conduct" on the part of one party mandates a court to award attorney's fees to the opposing party). "Essentially, substantial justification, under both subsections (b) and (c) of Section 12-103, relates solely to the merits of the case against which the judge must assess whether each party's position was reasonable." *Petito*, 425 Md. at 204. However, if a judge determines that the party did have substantial justification under section 12-103(b), the judge "then must proceed to review the reasonableness of the attorneys' fees, and the financial status and needs of each party." *Id.*

We review for abuse of discretion a court's decision to award attorney's fees under FL § 12-103. *Frankel v. Frankel*, 165 Md. App. 553, 588 (2005). A court abuses

its discretion "'where no reasonable person would take the view adopted by the [trial] [c]ourt . . . or when the court acts without reference to any guiding principles.'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418 (2007) (quoting *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005)). We have explained that "'[i]f there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.'" *Thomas v. Capital Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 453 (2009) (quoting *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005)).

It is important to bear in mind the impetus for the January 24 and February 8, 2013, hearings. On November 2, 2012, the court entered an order for visitation in which Mr. Samuels and his Daughter were to participate in six sessions of reunification therapy with Dr. Zinna. However, as we noted in our January 13, 2014, unreported opinion (finding no error in the circuit court's factual conclusions), "Dr. Zinna indicated that she had to remind [Mr. Samuels] numerous times not to say negative things about Ms. Rimerman, not to discuss the cost of therapy, and not to talk about the case with Daughter." *Id.*, slip op. at 10-11. We continued, "Dr. Zinna stated that Ms. Rimerman was cooperative with the therapy process, and Dr. Zinna felt no 'pushback . . . or resistance' from Ms. Rimerman, nor did Dr. Zinna feel that Ms. Rimerman was alienating Daughter from Mr. Samuels." *Id.*, slip op. at 10. We noted that "Dr. Zinna concluded that continuing with reunification therapy at this time had the potential to cause psychological harm to Daughter, and she resigned." *Id.*, slip op. at 12. On March 1,

2013, the court entered an opinion and order that, *inter alia*, suspended visitation between Mr. Samuels and his Daughter for a period of six months and deferred Ms. Rimerman's request for attorney's fees in defending Mr. Samuels's motion. We affirmed the court's March 1, 2013, order in our opinion filed on January 13, 2014.

In the underlying memorandum opinion, the circuit court discussed the standard for awarding attorney's fees under section 12-103 and concluded that Mr. Samuels did not have substantial justification in prosecuting the motion to compel Dr. Zinna to provide reconciliation therapy because "it was Mr. Samuels's unwillingness to change his negative behaviors that led to the therapy process breaking down, which [in turn] led him to file the Visitation Motion." It then concluded that awarding attorney's fees was appropriate pursuant to FL § 12-103(b). The court reviewed the attorney's fees invoices and the affidavit in support thereof submitted by Ms. Rimerman's counsel, and found that Ms. Rimerman incurred $8,412.50 in reasonable attorney's fees and ordered Mr. Samuels to pay the fees.

Mr. Samuels asserts that the court's award of attorney's fees was arbitrary because contrary to the court's findings, he was not responsible for the breakdown in the reunification therapy. We cannot agree that the court's award was arbitrary, because as we noted in *Samuels v. Rimerman*, No. 2528, Sept. Term, 2012, the circuit court's determination was not clearly erroneous—i.e., there was evidence to support the court's conclusions.

Mr. Samuels also asserts that the court did not correctly apply the law because it did not consider the parties' respective financial circumstances. At the outset we observe that, because the court determined that Mr. Samuels did not have substantial justification for his position, the court was actually able to award Ms. Rimerman attorney's fees on that basis alone under section 12-103(c) and was not required to consider all of the section 12-103(b) factors. *See Petito*, 425 Md. at 201. Nevertheless, the court did, in fact, address the financial circumstances of the parties by incorporating by reference its June 18, 2012 Attorney Fee Memorandum Opinion (affirmed in *Samuels v. Samuels*, No. 756, Sept. Term 2012, slip op. at 1-14 (April 21, 2014)), which described the parties' financial circumstances. Further, in the May 29, 2013, memorandum opinion, the court stated, "[t]here has been no *credible* evidence received by the Court indicating that the respective financial status or needs of each party has changed since that time." (Emphasis added). The court also noted that "[Ms. Rimerman] issued a subpoena duces tecum for [Mr. Samuels]'s financial records prior to the Status Hearing on October 17, 2012[, but] [Mr. Samuels] failed to produce records."

This Court has directed that the "'trial court does not have to recite any 'magical' words so long as its opinion, however phrased, does that which the statute requires.'" *Horsley v. Radisi*, 132 Md. App. 1, 31 (2000) (quoting *Beck v. Beck*, 112 Md. App. 197, 212 (1996)); *see Meyr v. Meyr*, 195 Md. App. 524, 553-54 (2010) (holding that the trial court did not err in failing to "specifically recite the statutory factors in its award of attorney's fees," because the court's memorandum opinion demonstrated that it had

considered the factors). Although Mr. Samuels contends that the circuit court failed to consider a reduction in his salary as evidenced by payroll processing documents that he provided to Ms. Rimerman at an April 8, 2013, hearing, the circuit court noted that there had been no new "credible evidence" presented to the parties' finances, thus showing that the court did consider the section 12-103(b) factors, even if the court did not reference specific pieces of evidence.

Finally, Mr. Samuels asserts that the circuit court erred in not considering a different allocation of fees and that the fact that the majority of Ms. Rimerman's fees were incurred to advance her position. The circuit court has substantial discretion to award attorney's fees, and accordingly, it was within the court's discretion to award them to Ms. Rimerman. In sum, the circuit court's memorandum opinion gave a detailed explanation supporting the award of attorney's fees—we hold that there was no abuse of discretion.

II. Fraudulent Conveyance

A. Factual and Procedural Background

In January 2013, Mr. Samuels conveyed a piece of property that included the former marital home, located on Edge Park Court in Potomac, Maryland (the "Potomac property"), to a limited liability company controlled by him. Mr. Samuels was the sole owner of the marital property after he purchased Ms. Rimerman's interest in the home in April 2011. When she learned of the conveyance, Ms. Rimerman filed an ex parte motion for a temporary restraining order, preliminary injunction, final injunction to set

aside fraudulent conveyance, and attachment of property on March 18, 2013. Ms. Rimerman alleged, *inter alia*, that Mr. Samuels transferred the property to the LLC with the intent to hinder, delay, or defraud her from attaching the property to satisfy her judgments against Mr. Samuels. The next day, she filed a notice of *lis pendens* on the Potomac property. Mr. Samuels opposed Ms. Rimerman's ex parte motion to set aside fraudulent conveyance on March 22, 2013, and, on March 26, filed a motion to strike Ms. Rimerman's ex parte motion.

The circuit court held a hearing on April 26, 2013. Mr. Samuels testified that he signed an affidavit of consideration on January 18, 2013, transferring the Potomac property to an entity named Roberts Property, LLC. He stated that his reason for transferring the property was to protect himself and his reputation from lawsuits brought by tenants in his real estate investment and management services business. He maintained that he had other assets that Ms. Rimerman could attach to satisfy her judgments against him.

At the hearing, Ms. Rimerman testified to the content of the parties' 2007 separation agreement in which Mr. Samuels agreed to pay 90 percent of their children's college application and tuition expenses, and testified that Mr. Samuels had not paid for his youngest son's college application expenses and had recently told his oldest son that he would no longer pay his tuition. Ms. Rimerman also testified to the outstanding judgments that she had against Mr. Samuels—judgments that Mr. Samuels had not paid as of the hearing. Mr. Samuels testified that he had paid some college expenses and

tuition for the rest of the year for the parties' eldest son. He also testified that he was unaware of other college expenses mentioned by Ms. Rimerman in her testimony.

On May 10, 2013, the circuit court entered an order (the "May 10 order") and accompanying memorandum opinion in which it found that the judgments against Mr. Samuels constituted liens on his property, and, under Maryland Rule 2-621, Ms. Rimerman had the right to levy Mr. Samuels's property to satisfy those judgments. After finding several "badges of fraud," the court concluded that Mr. Samuels's conveyance of the property to the LLC showed an actual intent to hinder, delay, or defraud present or future creditors, citing Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL") § 15-207. The court entered an order setting aside the conveyance as a fraudulent conveyance, or alternatively, allowing Ms. Rimerman to garnish or levy the property as if the conveyance had not been made.

B. Discussion

Mr. Samuels alleges that the circuit court abused its discretion by characterizing his transfer—one made through a no-consideration deed of the Potomac property from his name to Roberts LLC, an entity where he is the sole member—as a fraudulent conveyance. Mr. Samuels claims that the court was not presented with sufficient evidence to conclude that he had an actual intent to hinder, delay, or defraud Ms. Rimerman as required by CL § 15-207. Ms. Rimerman retorts that the circuit court, as the trier of fact, was in the best position to judge the credibility of the parties and make the determination of whether the transfer was a fraudulent conveyance.

Maryland adopted the Maryland Uniform Fraudulent Conveyance Act in 1975. 1975 Md. Laws, ch. 49, § 3 (recodified at CL § 15-201, et. seq.). The Act provides that all conveyances of property intended to delay, hinder, or defraud creditors are fraudulent, and may be void as to the creditors. CL § 15-207. A conveyance is defined broadly as "every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intangible property, and also the creation of any lien or incumbrance." CL § 15-201(c). Thus, the definition of conveyance includes the transfer of real property at issue in the instant case.

The party alleging that a conveyance should be set aside as fraudulent initially bears the burden of proving the existence of the fraud. *Sullivan v. Dixon*, 280 Md. 444, 448-449 (1977) (citations omitted). Nevertheless, "[i]t is well established in this State that facts and circumstances may be such as to shift the burden to the grantee to establish the bona fides of the transaction." *Berger v. Hi-Gear Tire and Auto Supply Inc.*, 257 Md. 470, 475 (1970) (citations omitted). The Court of Appeals has long recognized this procedure:

> From the nature of the case, a creditor attempting to set aside a conveyance as fraudulent can seldom prove as an independent fact the knowledge of or participation in the fraud of the grantor by the grantee. That knowledge or participation must be gathered from the various facts and incidents composing the transactions and its environment. The primary presumption here as elsewhere is in favor of innocence and good faith, but a state of facts may be shown which will negative that presumption and cast upon the grantee the burden of proving his good faith and nonparticipation in the fraudulent purpose of the grantor.

Wellcraft Marine Corp. v. Roeder, 314 Md. 186, 189 (1988) (quoting *McCauley v. Shockey*, 105 Md. 641, 646 (1907)).

The Court in *Wellcraft* then enumerated nine generally recognized indicia of fraud, noting that the list is not exhaustive:

1. insolvency or indebtedness of the transferor;
2. lack of consideration for the conveyance;
3. relationship between the transferor and transferee;
4. the pendency or threat of litigation;
5. secrecy or concealment;
6. departure from the usual means of business;
7. transfer of the debtor's entire estate;
8. reservation of benefit to the transferor;
9. retention by the debtor of possession of the property.

Id. at 189-90 (citing *Berger*, 257 Md. at 476). Although "'a single badge of fraud may stamp a transaction as fraudulent, it is more generally held that while one circumstance recognized as a badge of fraud may not alone prove fraud, where there is a concurrence of several such badges of fraud an inference of fraud may be warranted.'" *Berger*, 257 Md. at 476-77 (quoting 37 Am. Jur. 2d, Fraudulent Conveyances, § 10 (1968)). Thus, where such an inference of fraud is warranted, it "shift[s] the burden of production to the grantee to justify the deed of trust." *Wellcraft*, 314 Md. at 190 (quoting *Berger*, 257 Md. at 475).

Here, the circuit court found several badges of fraud. We quote the circuit court's memorandum opinion:

[T]he . . . "badges of fraud" taint the conveyance and show Mr. Samuels'[s] "actual intent . . . to hinder, delay, or defraud" Ms. Rimerman as a judgment creditor. The relationship between the transferor, Mr. Samuels, and Roberts LLC, which Mr. Samuels is the sole member of, is clear—they are one and the same.

* * *

Mr. Samuels'[s] decision to create the LLC and convey the property departs from his usual method of doing business. While it may be true, as Mr. Samuels argues, that it is a common business practice to transfer real estate to an LLC, it has not been *his* business practice until recently. Mr. Samuels had been leasing the Potomac Home at least since March 2011, but did not form a company for "real estate investment and management services" until November 27, 2012. He then finally conveyed the property on January 18, 2013 to seek its limited liability protection.

Mr. Samuels testified that he formed the LLC to protect himself from lawsuits. While this may be true for some property owners, it is unpersuasive here. The Court does not find it credible that he, the chief financial officer of a company and the owner of multiple properties, would wait almost two years to form Roberts LLC if his primary motivation was to protect himself from lawsuits.

More telling is the timing of Roberts LLC's formation. The Court of Special Appeals affirmed money judgments totaling $50,570.85 on October 5, 2012. *The next month*, Mr. Samuels filed Roberts LLC's Articles of Formation. The imminent threat of enforcing the money judgment is underscored by the fact that within a week of the conveyance on January 18, 2013, Ms. Rimerman sought to correct Mr. Samuels'[s] name in the judgment index. The motion sought to correct Mr. Samuels['s] name from "David E. Samuels" to "David A. Samuels" so that outstanding judgments against him were properly indexed and recorded. D.E. #835.

In opposing the correction, Mr. Samuels stated that his name should read simply as "David Samuels" stating that he "does not use his middle initial professionally." D.E. #844. However, Roberts LLC's Articles of Organization, the "No Consideration Deed," and the "Affidavit of Consideration" all use the name "David A. Samuels."[8] These documents

[8] "The land records reflect "David A. Samuels" as the property owner.

> were dated *two weeks prior* to the filing of his opposition. Even in the context of this seemingly innocuous motion to correct [Mr. Samuels's] name, [his] motives appear suspect and his credibility suffers.
>
> Mr. Samuels also retains de facto possession of the Potomac Home as the LLC's sole member (subject to any leasehold interest of current tenants) and reserves the benefits derived from the Potomac Home. He continues to earn rents from leases, and is able to sell the property that by his own testimony has approximately $250,000 in equity. The end result of the conveyance is that very little has changed from Mr. Samuels'[s] perspective with one significant exception: Ms. Rimerman's money judgments cannot be satisfied by levying on the Potomac Home.
>
> In response, Mr. Samuels stated that Ms. Rimerman can seek to levy or garnish his other assets. Implicit in this assertion is the admission that there *are* money judgments that he is obligated to pay. He does not deny that he has not yet paid them. Instead of meeting his obligations, he is forcing Ms. Rimerman to go through the levy process and, at the same time, is hindering and delaying that process by reducing the assets available to her. Mr. Samuels made it clear in his testimony that he intends to further restrict her remedies by conveying his remaining properties to LLCs.

The circuit court then concluded that "Mr. Samuels[] has demonstrated 'actual intent . . . to hinder, delay, [and] defraud' Ms. Rimerman from collecting her money judgments."

Mr. Samuels argues that the circuit court's reliance on *Berger v. Hi-Gear Tire & Auto Supply* is erroneous because the circumstances of that case and corresponding "badges of fraud" do not align with the facts of the instant case. For example, Mr. Samuels asserts that, because he was not near insolvency and because Ms. Rimerman could have sought the judgment from his other assets, the conveyance of the property to the LLC was not done with an intent to defraud Ms. Rimerman.

In considering the facts of this case, we note that "Maryland Rule 8-131(c) requires that the judgment of the trial court be left undisturbed unless clearly erroneous

and due regard will be given to the opportunity of the trial court to judge the credibility of the witnesses." *Wellcraft*, 314 Md. at 189. As discussed in the circuit court's opinion above, much of the evidence involved a credibility determination about Mr. Samuels's intentions. We disagree with Mr. Samuels's contention that the circuit court's reliance on *Berger* was error. The court relied on *Berger* for general statements of law that are certainly applicable to the case at hand. Moreover, Mr. Samuels's contention that he had other assets and was not near insolvency certainly does not cause us to reconsider whether the court misapplied the law—which provides that no single badge of fraud is dispositive; rather, his contentions further demonstrate his own intransigence in failing to pay the outstanding money judgments against him.

After a thorough review of the record, we hold that the circuit court's evidentiary conclusions were not clearly erroneous, nor did the circuit court abuse its discretion in setting aside the transaction as a fraudulent conveyance.

III. Expert Witness Fees on Appellate Matters and Attorney's Fees for Appeals One Through Four and Six Through Ten

A. Factual and Procedural Background

On May 23, 2013, Ms. Rimerman filed motions for an award of attorney's fees for having prevailed on appeals taken by Mr. Samuels, including certain denied petitions for certiorari, as well as for an advance award for appeals she was still defending. She requested attorney's fees for the following cases, all captioned *Samuels v. Samuels* or *Samuels v. Rimerman*: Case No. 0090 (September Term 2011) comprising appeals one and two; Case No. 1615 (September Term 2011) comprising appeals three and four; Case

No. 2272 (September Term 2011) comprising appeal six; Case Nos. 756 & 1679 (September Term 2012) comprising appeals seven and eight; and Case No. 2528 (September Term 2012) comprising appeal nine. Mr. Samuels opposed each of Ms. Rimerman's motions for attorney's fees.

On October 10, 2013, the circuit court held a hearing on Ms. Rimerman's motions for appellate attorney's fees and on Mr. Samuels's petition for a reduction in child support, discussed in more detail *infra*. Ms. Rimerman introduced invoices from her attorneys that detailed the legal work undertaken for the appeals and the costs associated with that work and for preparation for the present hearing. Ms. Rimerman called Mr. John Weaver, an attorney barred in Maryland, as an expert on attorney's fees. The circuit court accepted Mr. Weaver as an expert on attorney's fees, appellate attorney's fees, and advance appellate attorney's fees based on his substantial experience in these matters.[9] Specifically, Mr. Weaver was called to testify about what fees are necessary and reasonable for appellate work in the family law field and what fees were reasonable for Ms. Rimerman to incur to defend the appeals brought by Mr. Samuels.

First Mr. Weaver looked at the bill summaries and the full bills. After analyzing the full bills, which correlated each entry with an appeal, he compared the bills to the bill

[9] Mr. Weaver has been previously accepted as an expert on attorney's fees, appellate attorney's fees, and advance appellate attorney's fees by the Circuit Court for Frederick County and as an expert on attorney's fees and appellate attorney's fees by the Circuit Court for Montgomery County. Mr. Weaver also served as a family law magistrate in Montgomery County.

summaries.[10] Mr. Weaver then discussed each appeal individually, describing the reasonableness of the fees incurred for each of the ten appeals that had been filed as of that date. Based on a based on a review of the decisions, of the briefs, and of the record extracts, and all the other documents that he looked at, it was his opinion that the fees charged for the appellate work were fair, reasonable, and necessary. Mr. Weaver also described his experience with advance appellate fees and stated that the advance fees requested by Ms. Rimerman were very reasonable, because, in his experience, attorney's fees for appellate matters were usually approximately $30,000, so it was rare for the costs of an appeal to be as low as $15,000, which is what Ms. Rimerman's attorneys were asking for as an advance appellate attorney's fee award.

The circuit court issued an order and memorandum opinion on October 31, 2013, in which it granted Ms. Rimerman's motions for attorney's fees for appeals one through four and six and Ms. Rimerman's motion for advance attorney's fees for appeals seven through ten. The court found that Mr. Samuels had significant financial resources, including a salary of $220,000, additional income from dividends and interest of nearly $7,000 per year, in addition to various savings and retirement accounts. With regard to Ms. Rimerman's income, the circuit court found that her current annual income was $74,808. The court found that the appeals taken by Mr. Samuels had depleted Ms. Rimerman's financial assets and thus, the need for an award of appellate attorney's fees

[10] The court ruled that it would not rely solely on the bill summaries but would also look at the underlying billing documents in making its determination.

existed. The court then analyzed each appeal in turn and determined that appeals one through four and six—the appeals that had already been decided in favor of Ms. Rimerman by this Court—were taken without substantial justification. The circuit court considered the reasonableness of the fees incurred by Ms. Rimerman for all appeals, and, informed by Mr. Weaver's expert testimony, found them to be reasonable. Finding the fees reasonable and the appeals with no substantial justification, the circuit court awarded Ms. Rimerman attorney's fees for defending the appeals brought by Mr. Samuels. The court also awarded Ms. Rimerman $6,000 in compensation for expert witness fees incurred for the October 10, 2013, hearing. Finally, the court examined the incurred and advance fees sought in appeals seven through 10 and concluded they were reasonable. The court reduced the amount to judgments in favor of Ms. Rimerman in the amounts of $63,342.49, $15,285.34, and $6,000.

B. Discussion

Mr. Samuels argues that the circuit court abused its discretion in awarding appellate attorney's fees for appeals one through four and six and in awarding advance appellate attorney's fees for appeals seven through ten because it did not appropriately consider the section 12-103(b) factors.

We have said repeatedly that the circuit court is in the best position to make determinations concerning an award of attorney's fees in family law cases. *Ridgeway v. Ridgeway*, 171 Md. App. 373, 388 (2006); *see Randolph v. Randolph*, 67 Md. App. 577, 581 (1986) (declining to address appellee's petition for attorney's fees, which she filed in

the appellate court, "because there are various factors to be considered, including the financial status, resources, and needs of each of the parties . . . with which the trial court is familiar"); *Wallace v. Wallace,* 46 Md. App. 213, 230 (1980) (declining to award attorney's fees to appellee but remanding the issue to the circuit court for consideration of the request).

Our cases instruct that the trial court may award attorney's fees attendant to prosecuting the appeal from an award of alimony. *Ridgeway*, 171 Md. App. at 388. For example, in *Randolph v. Randolph*, we stated that section 12-103 contemplates an award of appellate attorney's fees when an appeal is taken from a decision resolving alimony and child custody issues. 67 Md. App. at 581. In *Ridgeway v. Ridgeway*, we observed:

> [T]he general rule in Maryland is that a party to a divorce proceeding may be required to pay reasonable counsel fees for services rendered to his or her spouse, both in the trial court and on appeal, when it appears that the spouse's income is insufficient to care for his or her needs.

171 Md. App. at 390 (citing *Eberly v. Eberly,* 12 Md. App. 117, 128-29 (1971)). Thus, the circuit court may award attorney's fees for appeals that have concluded and for appeals that are presently being defended. *Id.* at 391. The award of these attorney's fees is within the circuit court's discretion. *Id.* at 390-91.

Maryland Rule 1-341 similarly provides for an award of attorney's fees if the litigation was pursued in bad faith or was substantially unjustified.[11] Before imposing

[11] Maryland Rule 1-341 states, in part:

> **(a) Remedial Authority of Court.** In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding

(Continued . . .)

sanctions under Rule 1-341, a judge must make two separate findings that are subject to scrutiny under two different, but related, standards of appellate review. "First, the judge must find that the proceeding was maintained or defended in bad faith and/or without substantial justification. This finding will be affirmed unless it is clearly erroneous or involves an erroneous application of law." *Inlet Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 267-68 (1991). "Second, the judge must find that the bad faith and/or lack of substantial justification merits the assessment of costs and/or attorney's fees. This finding will be affirmed unless it was an abuse of discretion." *Id.* "[T]o constitute substantial justification, the parties position should be 'fairly debatable' and 'within the realm of legitimate advocacy.'" *Id.* at 268 (quoting *Newman v. Reilly*, 314 Md. 364, 381 (1988)). A proceeding maintained "in bad faith" means "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *Id.* (citing *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 766 (1980); *Johnson v. Baker*, 84 Md. App. 521, 581 (1990)).

In its memorandum opinion, the circuit court stated its reasoning for awarding Ms. Rimerman attorney's fees for defending the appeals:

(. . . continued)

> was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

> Throughout the course of this litigation, [Mr. Samuels] has engaged in a consistent pattern of "bleeding" [Ms. Rimerman], who must first defend against [Mr. Samuels]'s numerous filings made without substantial justification or in bad faith in the trial court, then request attorney's fees for these filings, which in turn, are then eroded when [Mr. Samuels] inevitably appeals the awards. The appeals addressed not only attorney's fees, but every substantive issue determined by the [trial court]. [Mr. Samuels]'s actions amount to gamesmanship, serving no purpose other than to harass [Ms. Rimerman] and drain her funds. Taken as a whole, [Mr. Samuels]'s nine appeals at issue are yet another example of his pattern of filing an onslaught of unjustified claims with the net effect of oppressing [Ms. Rimerman]. . . . [Mr. Samuels] has persistently pursued litigation that [the trial court] can only describe as vexatious, wanton, and oppressive.

Mr. Samuels articulates several reasons that, in his view, demonstrate that the circuit court erred or abused its discretion in awarding the appellate attorney's fees. First, he asserts that the court erred in failing to consider the parties' financial situations. However, contrary to Mr. Samuels's assertions, the court heard testimony and received evidence regarding the financial resources and needs of the parties. In the opinion accompanying the order for attorney's fees, the circuit court set forth detailed findings and, as discussed above, found that Mr. Samuels's had several hundred thousand dollars' worth of assets and an income of $220,000, while Ms. Rimerman had an income of $74,808. Further, the court noted that Ms. Rimerman's income and previous alimony buy-out had been totally consumed by her attorney's fees. Finally, the court was apprised of the nature of the costs and fees incurred for the appeals and found them to be reasonable.

Next, Mr. Samuels asserts that the circuit court abused its discretion in finding that the appeals were pursued in bad faith or without substantial justification. But plainly the

court considered each appeal and found appeals one through four and six to have been taken by Mr. Samuels without substantial justification. The court's reasoning—that Mr. Samuels pursued these appeals without substantial justification—is reinforced by our consistent holdings against Mr. Samuels in his appeals.

Mr. Samuels makes bald assertions that Ms. Rimerman's counsel was working on a contingency fee basis in violation of Rule 1.5 of Professional Conduct. However, Mr. Samuels provides no proof of a contingency fee arrangement, instead citing to the billing records produced by Ms. Rimerman for the October 10, 2013, hearing. The fact that Ms. Rimerman had not yet paid her attorneys for costs incurred during the appeals does not indicate a contingency fee arrangement. Each bill stated that payment was due upon receipt. The circuit court received ample evidence in the form of billing records, affidavits from Ms. Rimerman's attorneys, and expert testimony from Mr. Weaver, and concluded that the fees charged to Ms. Rimerman by her attorneys were fair and reasonable.

Mr. Samuels's next argument, is that the circuit court had little information from which it could base its award of advance appellate attorney's fees and that the court erred in relying upon *Ridgeway v. Ridgeway*, *supra*. However, the record shows Mr. Weaver testified that $15,000 in advance attorney's fees is a reasonable amount and, in fact, likely represents a significant discount on the actual cost of defending against the appeals, which, according to Mr. Weaver, normally amount to $30,000. The circuit court properly relied on *Ridgeway* as legal authority supporting the award. "[W]hether or not the court

and the parties use the term 'privileged suitor,'" the court may award advance appellate attorney's fees if the court determines that the spouse's income is insufficient to pay the reasonable expenses of prosecuting or defending an appeal. *Ridgeway*, 171 Md. App. at 390-91. Here, the court considered the relative financial situations of the parties and found that "[Ms. Rimerman] is rapidly depleting her financial assets in order to pay attorney's fees at both the trial and appellate court levels." Further, the circuit court noted that "[Ms. Rimerman] has testified numerous times that her alimony buy-out agreed upon in 2010 has been totally consumed by her attorney's fees." Thus, we find no error in the circuit court's conclusion that Ms. Rimerman was a privileged suitor—even if it did not use that term—and we consequently hold that the court did not abuse its discretion in awarding advance appellate attorney's fees.

For some unknown reason, Mr. Samuels finds significant the fact that in the prior appeals we did not remand the case to the trial court nor did we recommend sanctions against either party. He also contends Ms. Rimerman improperly requested attorney's fees nearly one year subsequent to issuance of the opinions in the first three appeals. On their face, these contentions do not demonstrate an abuse of discretion. Further, Mr. Samuels does not provide citations to case law or statutes that compel the conclusion that the above contention equate to the circuit court having abused its discretion in its award of attorney's fees.

"It is not our function to seek out the law in support of a party's appellate contentions." *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997) (citing *von Lusch*

v. State, 31 Md. App. 271, 282 (1976), *rev'd on other grounds*, 279 Md. 255 (1977)); *see Oroian v. Allstate Ins. Co.*, 62 Md. App. 654, 658 (1985) (citations omitted) (holding that appellants waived argument on an issue by failing to cite authority for their position in their brief). Accordingly, Mr. Samuels waived review of the contentions for which he has cited no legal authority.

Mr. Samuels also argues that the circuit court abused its discretion in awarding expert witness fees for the services that Mr. Weaver rendered in analyzing Ms. Rimerman's appellate attorney's fees because the court found Mr. Weaver to be a credible expert despite the fact that he did not review Mr. Samuels's appellate briefs. First, this assertion is contradicted by Mr. Weaver's testimony in which he stated that he "read every brief that has been filed, whether it was appellant's, appellee, or any reply brief" with the exception of appeals one and two, where he read the record extract and this Court's opinion. Further, given the court's conclusions that Mr. Samuels pursued the appeals without substantial justification and that Ms. Rimerman's financial resources had been drained by this litigation, it was reasonable for the court to award the costs to Ms. Rimerman, including expert witness fees and attorney's fees.[12]

Thus, for the many reasons discussed above and based on the court's detailed considerations of the circumstances of each appeal and of the parties' finances, we hold

[12] "Costs" as used in FL § 12-103 has been interpreted to mean "suit money," and not to mean court costs. *Corapcioglu v. Roosevelt*, 170 Md. App. 572, 589 n.6, 592-93 (2006) (holding that the circuit court did not err in determining that expert fees were costs).

that the circuit court did not err or abuse its discretion in awarding appellate attorney's fees to Ms. Rimerman. We also hold that the circuit court did not abuse its discretion in awarding Ms. Rimerman $6,000 in expert witness fees for Mr. Weaver's services.

Modification of Child Support

A. Factual and Procedural Background

On June 11, 2013, Mr. Samuels filed a petition for reduction in child support based on the emancipation of his younger son, a request to modify life insurance obligations, and a request for a hearing. Mr. Samuels incorporated his long form financial statement into this petition on June 26, 2013. On June 27, 2013, Ms. Rimerman filed a response and opposition to Mr. Samuels's petition and requested attorney's fees and a hearing, which Mr. Samuels opposed on July 2, 2013. On August 1, 2013, Ms. Rimerman renewed her petition to enforce an earlier earnings withholding order after Mr. Samuels failed to pay child support following his loss of employment, which Mr. Samuels opposed on August 6, 2013. Attached to his opposition, Mr. Samuels produced documents purportedly showing his unemployment and decreased financial means. On August 12, 2013, Ms. Rimerman filed an updated financial statement with the court. On August 22, 2013, Mr. Samuels filed an updated financial statement.

Also on August 22, 2013, the court held a hearing and directed the parties to conduct discovery to prepare for a merits hearing on the issues of child support and appellate attorney's fees on October 10, 2013 in an order signed August 26, 2013 (entered September 10, 2013). On September 26, 2013, Ms. Rimerman filed a motion for

sanctions and a default judgment after Mr. Samuels failed to respond to interrogatories and requests for production propounded by Ms. Rimerman. Mr. Samuels opposed Ms. Rimerman's motion in an opposition filed on October 1, 2013. On October 7, 2013, Ms. Rimerman filed a line requesting an entry of an order for sanctions after Mr. Samuels continued to fail to respond to discovery requests. Mr. Samuels filed a motion to strike the October 7 line on October 9, 2013, after he incorporated his responses to interrogatories into the record.[13]

On October 10, 2013, the circuit court held a hearing on Mr. Samuels's petition to reduce child support, on Ms. Rimerman's petition to enforce earnings withholding order, and on Ms. Rimerman's motions for appellate attorney's fees, which was discussed in more detail *supra*. The parties' testified to their respective financial situations and to their children's expenses. Ms. Rimerman stated that she received a salary of approximately $72,000. Mr. Samuels testified to his recent unemployment and his new position and salary. During his testimony, Mr. Samuels described his property holdings, investment accounts, and retirement accounts. He also introduced Ms. Rimerman's 2011 and 2012 federal tax returns as evidence of Ms. Rimerman's dividend and interest income.

The circuit court issued an order and memorandum opinion on October 31, 2013, in which it granted in part and denied in part Mr. Samuels's petition to reduce child

[13] Mr. Samuels stated that he had a broken fax machine, and so was unable to fax Ms. Rimerman his responses.

support and granted in part and denied in part Ms. Rimerman's petition to enforce earnings withholding order. In its memorandum opinion, regarding payment of the college expenses for the parties' youngest son, the court found the expenses to be $3,100, and, pursuant to the parties' 2007 consent order—providing that Mr. Samuels would contribute 90% toward the college expenses while Ms. Rimerman would contribute 10%—entered judgment in favor of Ms. Rimerman in the amount of $3,000. Regarding the amount of child support for the parties' remaining minor child, Daughter, the court found Ms. Rimerman's annual income to be $74,808 and Mr. Samuels's annual income to be $226,735, which was a "cautious" estimate of Mr. Samuels's income by the court. As a result of the parties' high incomes, the court determined this to be an "above-the-guidelines" case. Therefore, the court focused on Daughter's expenses to ensure that each party contributed to maintain her standard of living. After considering the expenses Ms. Rimerman pays as the parent with primary custody of Daughter, the court found the minor child's monthly expenses to be $3,925. The court calculated Mr. Samuels's child support obligation to be $2,952 if it were to set child support according to the guidelines; however, because the court recognized that this was an above-the-guidelines case, it exercised its discretion to increase Mr. Samuels's child support obligation to $3,000. The circuit court exercised its discretion in consideration of the child support guidelines, the monthly expenses analysis, and the assumption that Daughter's expenses will increase as she advances through high school. The court also found Mr. Samuels to be $7,466.50 in

arrears, and ordered that Mr. Samuels pay an additional $500 per month in child support until his arrearage is satisfied.

B. Discussion

Mr. Samuels argues that the circuit court abused its discretion and erred in reducing his monthly child support obligation by only 19% when the number of children he was supporting decreased by 50%, i.e. the court erred in reducing his obligation by $700, to $3,000, for one minor child from $3,700 for two minor children. Ms. Rimerman contends that the court was well within its discretion to award child support in the amount of $3,000 per month.

Pursuant to FL § 12-104, a court may modify a child support award after the filing of a motion for modification, upon a showing of a material change of circumstance and in the best interests of the child. *See Wagner v. Wagner*, 109 Md. App. 1, 28 (1996) (discussing, as prerequisites to modification, the twin considerations of change in circumstances and the incorporation of the best interests of the child). To determine a modification of child support in most circumstances, the circuit court must apply the child support guidelines in FL § 12-204 to ascertain the support obligation a parent owes to that child. *Goshorn v. Goshorn*, 154 Md. App. 194, 218 (2003), *cert. denied*, 380 Md. 618 (2004). "Up to a combined monthly income of $15,000, as it does in this case, FL § 12-204 requires that the child support determination be based on the parents' incomes, rather than the expenses of the child. F.L. § 12–204(d), (e)." *Fitzzaland v. Zahn*, 218 Md. App. 312, 329-31 (2014). However, if the parents' incomes exceed $15,000, the statute

allows the court to "use its discretion in setting the amount of child support." FL 12-204(d).

"When the chancellor exercises discretion with respect to child support in an above Guidelines case, he or she 'must balance the best interests and needs of the child with the parents' financial ability to meet those needs.'" *Smith v. Freeman*, 149 Md. App. 1, 20 (2002) (quoting *Unkle v. Unkle*, 305 Md. 587, 597 (1986)). "'[T]he parties' financial circumstances [are] among the relevant factors the trial court must consider." *Walker v. Grow*, 170 Md. App. 255, 267 (2006) (quoting *Freeman*, 149 Md. App. at 20). "Accordingly, even in a case in which the statutory schedule of basic child support obligations does not apply, the trial court must ascertain each parent's 'actual income'" to determine if the income falls above or below the guidelines. *Id.* (citing FL § 12-204(d) (providing for the court's use of "discretion in setting the amount of child support" when the "combined adjusted actual income exceeds the highest level specified in the schedule")); *Johnson v. Johnson*, 152 Md. App. 609, 622 (2003) (using the statutory definition of "actual income" to determine that a "bonus" received by the obligor should be included in the calculation, which caused the combined income to exceed [the highest amount in the guidelines]).

"The court must verify the parents' income statements 'with documentation of both current and past actual income.'" *Walker*, 170 Md. App. at 283 (quoting FL § 12-203(b)(1)). "[S]uitable documentation of actual income includes pay stubs, employer statements otherwise admissible under the rules of evidence, or receipts and expenses if

self-employed, and copies of each parent's 3 most recent federal tax returns." FL § 12-203(b)(2)(i). In an appeal of a court's decision to modify an award for child support, we review the trial court's factual findings regarding the parties' income for clear error, "while each ultimate award is reviewed for abuse[] of discretion." *Reynolds v. Reynolds*, 216 Md. App. 205, 218-19 (2014).

Mr. Samuels asserts that the circuit court erred in ignoring the child support guideline cap of $1,942 per child. As discussed above, the circuit court was not obligated to follow the guideline cap because the parties' income was well above the highest income level specified in the guidelines. The parties had a combined income of more than $26,000 per month—the highest income level specified in the guidelines is $15,000 per month. FL 12-204(d) states: "If the combined adjusted actual income exceeds the highest level specified in the [guidelines] schedule in subsection (e) of this section, the court may use its discretion in setting the amount of child support." Mr. Samuels's citation to section 12-202(a) is inapplicable because that section allows a court to deviate from the guidelines if the court makes a finding that the guidelines would be "unjust or inappropriate in a particular case." FL § 12-202(2)(ii). The court made no such finding in this case, instead deviating from the guidelines as a result of the parties' high income levels pursuant to FL § 12-204(d).

Mr. Samuels also contends that the circuit court erred in ignoring a lower child support figure that was discussed at a prior hearing, at a time when Mr. Samuels was unemployed. The court was under no obligation to set the support amount in accordance

with the amount proposed at the prior hearing—at the instant October 10, 2013, hearing, circumstances had materially changed due to evidence presented that Mr. Samuels had obtained employment with an annual salary of at least $220,000. There was no reason for the court to willfully ignore this new evidence in favor of a figure proposed when Mr. Samuels was unemployed.

Mr. Samuels also argues that the circuit court erred in not imputing Ms. Rimerman's income to full-time status; in not considering a $70,000 obligation to Ms. Rimerman entered into by Mr. Samuels in lieu of alimony; and in not considering Mr. Samuels's contractual obligation to pay 90% of college tuition for his two sons.

Mr. Samuels and Ms. Rimerman submitted detailed financial statements, along with extensive documentation, for the court to review. Ms. Rimerman testified that she worked 30 hours per week, which was considered full-time in her position, and that she did not have the option to work additional hours. The court, sitting as the finder of fact, did not err in giving weight to Ms. Rimerman's testimony. Regarding Mr. Samuels's contractual obligations to pay Ms. Rimerman in lieu of alimony and to pay his sons' college expenses, neither of these obligations is considered income by the applicable statutory definition. *See* FL § 12-201(b)(3). In its memorandum opinion modifying child support, the trial judge considered both parties' gross wages and found that Mr. Samuels had not produced credible evidence that Ms. Rimerman had voluntarily impoverished herself and had not shown "any other reason why the Court should impute additional

income to [Ms. Rimerman]." We find no error in the circuit court's decision to not impute additional income to Ms. Rimerman.

Mr. Samuels also contends that the circuit court abused its discretion or erred in basing the child support calculation on his income in his new position, interest, and dividends, instead of his past year's income while not including approximately $2,200 of interest and dividend income listed Ms. Rimerman's 2012 tax return. FL § 12-203 requires income statements of parents to be "verified with documentation of both current and past actual income," and provides that, among other forms of documentation, copies of federal tax returns constitute suitable documentation. FL § 12-203(b)(2)(i).

Regarding Mr. Samuels's income, the court had in its possession the financial statements of the parties, the parties' tax returns, and a letter from Mr. Samuels's new employer indicating that he would be earning a base salary of $200,000 plus a guaranteed $5,000 quarterly bonus. With regard to Mr. Samuels's interest and dividend income, at the October 10 hearing, Ms. Rimerman went through Mr. Samuels's 2011 and 2012 tax returns line-by-line to demonstrate how the interest and dividends should be counted as part of Mr. Samuels's income. Mr. Samuels initially disputed his interest and dividend income, saying "It shows a net loss for the past year. It's all been loss." After further questioning, he admitted that he made "[a] few thousand dollars" in interest and dividends, but qualified it by stating that "[i]t varies from year to year." He then admitted that his 2012 tax return showed income from interest and dividends totaling $6,735.

Thus, the circuit court was within its discretion in determining the annual income of Mr. Samuels to be $226,735.

However, with regard to Ms. Rimerman's interest and dividend income, it appears that the court considered Ms. Rimerman's long-form financial statement and did not consider the interest and dividend income that Ms. Rimerman earned, as shown on her 2012 federal tax return. After introducing Ms. Rimerman's 2011 and 2012 tax returns into evidence, Mr. Samuels questioned Ms. Rimerman on her wages. However, he did not explicitly direct the circuit court's attention to the dividends and interest indicated on the tax returns. Looking at the record charitably, the only mention of Ms. Rimerman's interest and dividend income was in Mr. Samuels's rebuttal argument, where he stated "I have losses on my properties and [Ms. Rimerman] has interest in my dividend on her tax return and not once in a certain period of time have we ever used any of that." That statement is not a paragon of clarity, and we do not discern from the transcript of the October 10 hearing any other statement indicating that Mr. Samuels asked the circuit court to consider Ms. Rimerman's interest and dividend income in its calculations. We conclude that the circuit court did not clearly err in failing to include Ms. Rimerman's interest and dividend income in its analysis.

We hold that the circuit court did not err nor abuse its discretion in awarding child support in the amount of $3,000 per month and in ordering Mr. Samuels to pay an additional $500 per month in child support until his $7,466.50 arrearage is satisfied.

IV. Attorney's Fees for the Issues Litigated at the October 10, 2013, Hearing

In its October 31, 2013, memorandum opinion, the circuit court found that due to Mr. Samuels's unreasonable noncompliance with discovery for the October 10, 2013 hearing, it would award Ms. Rimerman reasonable attorney's fees in an amount to be determined after she submitted fee affidavits. On November 20, 2013, Ms. Rimerman's attorney, Thomas M. Weschler, Jr. filed attorney's fees affidavits pursuant to the October 31, 2013, memorandum opinion. To the affidavits, Mr. Weschler attached bills detailing the fees and costs incurred preparing for the October 10 hearing on Ms. Rimerman's petition for appellate attorney's fees and on Mr. Samuels's petition to modify child support, amounting to $5,657.84 and $10,358.36 for the respective issues. Mr. Weschler affirmed that the fees and costs were necessary and reasonable. Further, Mr. Weschler affirmed that, with regard to the appellate attorney's fees, the fees and costs were a direct result of having to appear and present testimony on the reasonableness of the fees, and, with regard to defending the petition for child support, the costs and fees were a direct result of Mr. Samuels's unilateral failure to pay child support, his unreasonable noncompliance with requests for discovery, and his failure to disclose his income and employer.

On November 25, 2013, Mr. Samuels filed oppositions to the two affidavits for attorney's fees. After considering Mr. Weschler's affidavits, Mr. Samuels's oppositions, and the circuit court's October 31, 2013, memorandum opinion, the court entered two

orders on December 18, 2013, awarding attorney's fees to Ms. Rimerman in the amounts stated in Mr. Weschler's affidavits.

Mr. Samuels now contests the court's award of $16,016.20 in attorney's fees to Ms. Rimerman for costs she incurred in defending against Mr. Samuels's petition to modify child support. He asserts that the award should be vacated for five reasons, each of which we find to be unpersuasive.

First, Mr. Samuels argues that the award should be vacated because the circuit court, in its October 31, 2013, order, denied all other requests for relief. However, in the memorandum opinion accompanying the court's order, the court stated that it would grant Ms. Rimerman attorney's fees after she submitted fee affidavits; thus, the court did not deny this particular request for relief. Second, Mr. Samuels argues that the award should be vacated because he prevailed at the hearing by receiving a reduction in child support pursuant to his petition, however, the court may award attorney's fees even to a non-prevailing party. *Broseus v. Broseus*, 82 Md. App. 183, 200 (1990) (holding that husband's prevailing on child custody issue did not preclude award of attorney's fees to wife, so long as there was substantial justification for bringing or defending proceeding).

Third, Mr. Samuels argues that the award should be vacated because the parties could have settled on the amount offered by Judge Savage at the conclusion of the August 26, 2014 hearing. However, as noted with respect to his arguments concerning child support, Mr. Samuels's income increased in the interim between the August and October hearings as a result of his new employment. This gave Ms. Rimerman and the

circuit court a strong justification to proceed to the October 10 hearing and base the award on the evidence presented there. Mr. Samuels argues that the award should be vacated because the parties could have mediated and resolved the matter informally; however, parties are not required to settle to reduce legal expense.

Fourth, Mr. Samuels argues that the award should be vacated because Ms. Rimerman defended her position against Mr. Samuels's petition to modify child support. We agree with the circuit court that Ms. Rimerman cannot be faulted for defending her position, and, moreover, the undisputed evidence shows that Mr. Samuels unilaterally stopped paying the previously set amount of child support, $3,700, in June 2013.

Finally, Mr. Samuels argues, without providing support in the record for his assertions, that the award should be vacated because Ms. Rimerman "never filed her long-form financial statement with the [c]ourt on a timely basis;" her "subpoenas were improperly issued after discovery had closed and less than 5 days prior to the 10/10/13 hearing;" and she "failed to appropriately respond to [Mr. Samuels's] subpoena." Given the discretion afforded to the trial court to assess and award attorney's fees, we need not consider these contentions; however, we note that we would not have considered them in any event because Mr. Samuels did not provide citations to the record to support his assertions. Maryland Rule 8-504(a)(4) requires that a party's brief shall include "[a] clear concise statement of the facts material to a determination of the questions presented" and shall make reference "to the pages of the record extract supporting the assertions." If a party fails to provide citations to the record, we may decline to consider the issue raised.

Davidson v. Seneca Crossing Section II Homeowner's Ass'n, Inc., 187 Md. App. 601, 646-47 (2009) (citing *Beck v. Mangels*, 100 Md. App. 144, 149 (1994)). "[O]ur function is not to scour the record for error once a party notes an appeal and files a brief." *Fed. Land Bank of Baltimore, Inc. v. Esham*, 43 Md. App. 446, 457 (1979) (citing *von Lusch v. State*, 31 Md. App. 271, 281-82 (1976), *rev'd on other grounds*, 279 Md. 255 (1977); *State Roads Comm'n v. Halle*, 228 Md. 24, 32 (1962)).

As discussed in detail above, the circuit court had ample evidence of the parties' financial circumstances and the respective justifications (or lack thereof) for prosecuting or defending the actions. Given the circuit court's conclusions that Mr. Samuels pursued the appeals without substantial justification and that Ms. Rimerman's financial resources had been drained by this litigation, it was reasonable for it to award the costs, including expert witness fees and attorney's fees, for obtaining fees to defend the appeals. We hold circuit court's award of attorney's fees to Ms. Rimerman for defending Mr. Samuels's petition to modify child support and for pursuing appellate attorney's fees was not an abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT, INCLUDING THE COSTS OF PRINTING THE APPENDICES TO THE APPELLEE'S BRIEFS.