Circuit Court for Prince George's County
Case No. CAD1624479

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1802

September Term, 2021

RODERICK BARNETT

v.

DOMINIQUE BARNETT

Arthur,
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 9, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Roderick Barnett ("Father") appeals an order of the Circuit Court for Prince George's County recalculating his monthly child support obligation and the child support arrearages that he owes to appellee Dominique Barnett ("Mother"). Father presents three questions, which we have condensed as follows:

1. Did the Circuit Court for Prince George's County err in its recalculation of [Father's] ongoing child support obligation[?]
2. Did the Circuit Court for Prince George's County err in its recalculation of [Father's] child support arrearages[?]
3. Did the Circuit Court for Prince George's County err in holding a child support modification hearing on December 13, 2021, when the in banc court only ordered for recalculation of arrearages[?]

Finding no error or abuse of the court's discretion, we shall affirm the judgment.

BACKGROUND

Mother and Father are the parents of two children, who were born in 2008 and 2011, respectively.

In April 2017, the court granted Mother an absolute divorce, granted the parties joint legal custody, awarded primary physical custody to Mother, set forth a visitation schedule for Father, and ordered Father to pay $2,620.15 in monthly child support. In an unreported opinion, this Court affirmed the judgments. *Barnett v. Barnett*, No. 590, Sept. Term, 2017 (filed Feb. 5, 2018).[1]

[1] While the appeal was pending, Father moved to modify his child support obligations. The court took no action on the motion, probably because of the pendency of the appeal. *See*, *e.g.*, *County Comm'rs of Carroll Cnty. v. Carroll Craft Retail, Inc.*, 384 Md. 23, 45 (2004) (stating that, "[o]nce the appeal was pending, the Circuit Court was certainly prohibited from exercising its jurisdiction in a way that would affect the subject matter of the appeal or appellate proceeding").

On August 29, 2019, Father filed a motion for modification of child custody and child support. Mother moved to "dismiss" the motion, and the Prince George's County Office of Child Support moved to assess $79,225.10 in arrearages against Father.

After three days of hearings, the court issued an order that was dated January 15, 2021, but not entered on the docket until January 27, 2021. In that order, the court denied Father's motion for modification of custody, assessed Father's arrearages at $79,225.10, and reduced the amount of the arrearages to a judgment.

Father pursued in banc review before a panel of three circuit court judges. On November 4, 2021, the in banc panel affirmed the denial of Father's motion for modification of custody, but remanded the issue of child support "for recalculation of the guidelines and redetermination of arrearages."

The record extract does not contain the in banc court's ruling. From other materials in the record, however, it appears that the in banc court remanded for a recalculation of child support because at least one of the children was no longer attending a private school and because the parties' income had increased.

On December 13, 2021, the court held a hearing on remand. As a result of the hearing, the court issued a written order that was dated December 23, 2021, but not entered on the docket until January 25, 2022.

In the order, the court reduced Father's arrearages from $79,225.10 to $44,389.55 by giving him a credit for the amount that he had been overcharged on his child support obligations since August 19, 2019, the date of his motion for modification. In addition, the court reduced Father's child support obligation from $2,620.15 per month to

$1,688.00 per month "beginning and accounting from January 27, 2021," the date of its prior order.

At the hearing on December 13, 2021, the court had explained the factual predicate for its decision. The court found that the parents' monthly adjusted actual income was $13,754.00, of which Father's income made up 59.3 percent. The court also found that the basic child support obligation was $2,619.00 per month. The court computed the expenses for work-related childcare and health insurance, which yielded a total child support obligation of $3,171.00 per month. After giving Father credit for $192.00 in monthly health insurance payments, the court concluded that his proportionate share of the child support obligation was $1,688.00 per month.[2]

In reaching its decision, the court rejected Father's testimony that his income was less than the court found it to be. The court also rejected Father's testimony that his health insurance expenses were higher than the court found them to be. The court stated that it did not find "any" of Father's testimony to be "credible." The court added that it had "no idea" where Father's income figure "came from." It expressed frustration about Father's inability to show precisely how much he was paying per month for health insurance.

In computing the reduction in Father's arrearages, the court relied on its computation of what Father's monthly child support obligation ought to have been, beginning on the date when he filed his motion for modification. The computation gave

[2] ($3,171.00 x .593) - $192.00 = $1,880.40 - $192.00 = $1,688.40.

Father credit for the $1,700.00 per month that he had been charged for private school tuition at a time when the child was attending public school.

Father timely filed this appeal.

STANDARD OF REVIEW

In general, we review child support calculations for abuse of discretion. *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018); *accord Shenk v. Shenk*, 159 Md. App. 548, 554 (2004); *Petitto v. Petitto*, 147 Md. App. 280, 318-19 (2002). Accordingly, the "decision to modify a child support award 'will not be disturbed on appeal unless the court acted arbitrarily or its judgment was clearly erroneous.'" *Petitto v. Petitto*, 147 Md. at 307 (quoting *Lieberman v. Lieberman*, 81 Md. App. 575, 595 (1990)). When reviewing factual findings, the appellate court must "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c).

Findings are not clearly erroneous if they are "'supported by credible evidence[.]'" *See Leineweber v. Leineweber*, 220 Md. App. 50, 60 (2014) (quoting *Kierein v. Kierein*, 115 Md. App. 448, 453 (1997)).

DISCUSSION

Father, representing himself, contends that the circuit court erred in calculating his ongoing child support obligation by failing to credit his payment for the children's health insurance and other expenses. On the premise that his monthly child support obligation should be lower than the court found it to be, Father contends that the court erred in recalculating his child support arrearages. Father also contends that the court erred because it gave him credit against the arrearages only from August 2019, when he moved

for modification, and not from May 2017, when his child support obligation began. Lastly, Father asserts that the court "went beyond the scope" of the in banc order by holding a hearing and establishing a new child support order.

Mother, also representing herself, does not respond specifically to Father's contentions, but asserts that the judgment of the circuit court should be affirmed.

Contrary to Father's first contention, the court did not err or abuse its discretion in calculating his ongoing child support obligation. The court considered Father's various factual contentions, but was unpersuaded by them. It is almost impossible for a court to be clearly erroneous when it is simply not persuaded of something. *See*, *e.g.*, *Bricker v. Warch*, 152 Md. App. 119, 137 (2003).

Relying on the factual contentions that the circuit court declined to accept, Father argues that the court gave him insufficient credit against the arrearages. The court, however, was not required to accept his contentions. The court was entitled to find, as it did, that Father's evidence was unpersuasive. It is not our role, as an appellate court, to second-guess the circuit court's factual determinations. *See* Md. Rule 8-131(c).

The court did not err or abuse its discretion in making its decision retroactive only as to the date of the motion for modification in August 2019. Under Maryland Code (1984, 2019 Repl. Vol.), § 12-104(b) of the Family Law Article, "[t]he court may not retroactively modify a child support award prior to the date of the filing of the motion for modification." Accordingly, the court's discretion to retroactively modify a child support award extends only "up to the date of the filing of the petition for said modification[.]" *Ley v. Forman*, 144 Md. App. 658, 677 (2002).

Finally, although Father asserts that the circuit court erred in holding a child support modification hearing after the in banc court ordered a recalculation of the amount due under the child support guidelines and a recalculation of arrearages, he puts forth no argument in support of his position. Hence, he has not adequately presented the issue for appellate review. *See*, *e.g.*, *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004).

Even if Father had adequately presented the issue, however, we would find no error or abuse of discretion. The in banc court ordered the circuit court to recalculate the amount of support under the child support guidelines. The court was well within its discretion when it conducted a hearing in connection with the task that the in banc court had ordered it to perform.[3]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] Father raises a number of new issues in his reply brief. We decline to address any issues raised for the first time in a reply brief. *See*, *e.g.*, *Anderson v. Burson*, 196 Md. App. 457, 476 (2010).