

Circuit Court for Baltimore County  
Case No.: C-03-FM-19-004662

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1895

September Term, 2021

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BENJAMIN DAVID

v.

HEATHER DAVID

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Wells, C.J.,  
Nazarian,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, C.J.

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Filed: December 9, 2022

\*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, Benjamin David (“Father”), and appellee, Heather David (“Mother”), are the parents of two children, L and B. In the Circuit Court for Baltimore County, Father, proceeding *pro se*, moved to modify child support. Following a hearing, a family law magistrate recommended that Father’s motion be denied, finding that he had failed to establish a material change in circumstances. Father’s exceptions to the magistrate’s report were overruled, and the circuit court denied his motion for modification of child support. On appeal, Father presents the following issues, which we have condensed and rephrased as follows:<sup>1</sup>

1. Whether the circuit court erred in enforcing the parties’ unsigned partial marital settlement agreement; and

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<sup>1</sup> The issues, as presented by Father, are:

Issue 1: An unsigned partial marital settlement agreement that included a vague yet biased visitation schedule and child access drawn up in November of 2020 was wrongfully enforced by Judge Finifter on February 22, 2021 even though it was no longer appropriate.

Issue 2: Judge Mayer 1-5-22 and Magistrate Farmer 10-10-21 upheld Judge Finifter’s ruling on 3-10-21 that I voluntarily impoverished myself and I most definitely did not. Unwilling to modify child support based on no substantial change in circumstance, Judge Mayer and Magistrate Farmer disregarded the facts Judge Finifter could not have seen before making his decision. Judge Finifter was presented with a biased perversion of facts from the [Appellee’s] attorney and deferred to Andrew Hermann who took advantage of an unrepresented individual with no courtroom experience or exhibits to defend his attack.

Issue 3: The February 22, 2021 ruling by Judge Finifter, to enforce a modified unsigned partial marital settlement agreement that included custody of [L and B] made in November before Judge Byrnes has been detrimental to their best interest.

2. Whether the circuit court erred or abused its discretion by overruling Father’s exceptions and denying his motion to modify child support.

As we shall explain, Father’s challenges to the divorce judgment, as set forth in Issue 1, are untimely. Accordingly, we shall address the merits of Issue 2 only. For the reasons set forth below, we affirm the judgment of the circuit court.

### **FACTUAL BACKGROUND**

On September 26, 2019, Father filed a complaint for absolute divorce. Mother counterclaimed for divorce, child custody, and child support. On November 4, 2020, the parties participated in a settlement hearing and testified before Judge Byrnes. Both parties were represented by counsel. At the hearing, the parties reached a partial marital settlement agreement resolving all issues, with the exception of child support, and placed the terms of the agreement on the record. Following the hearing, Mother’s counsel prepared a partial marital settlement agreement reflecting the terms agreed upon at the hearing, but Father refused to sign it.

The court held hearing on the complaint for absolute divorce on February 22, 2021. Mother was represented by counsel; Father was self-represented. At the hearing, Mother argued that the parties had reached an enforceable agreement as to all issues, with the exception of child support, and requested that the court enforce the agreement. Father disputed that the parties had reached an enforceable agreement. He argued that, because his residence had changed since the settlement conference, the terms of the agreement pertaining to custody were no longer applicable.

The court made an oral ruling that the parties had reached an enforceable partial marital settlement agreement. The court determined that Father’s change in living arrangements following the parties’ agreement was not a basis for invalidating the agreement. The hearing proceeded and the parties’ presented testimony as to the grounds for divorce and child support.

Father testified that he had been employed during the marriage as a delivery driver with United Parcel Service (UPS), before injuring his knee on the job in May of 2020, which required knee replacement surgery. Father had received short-term disability benefits until November of 2021. At the time of trial, he was receiving no income and had filed for unemployment. Father stated that he had received a note from his doctor, Dr. Ebert, advising him that he was no longer able to work at UPS.<sup>2</sup>

According to Father, he was “looking for work” and had been working “odd jobs.” He indicated that he had “a few things in the mixing bowl,” including “trying to help people with their air filtration.” He had made efforts to secure a sedentary job and had interviewed for three jobs in the previous two months.

Mother stated that she “[did] not believe that [Father] was unable to work.” Her counsel argued that Father was capable of returning to work at UPS or obtaining employment at a similar salary. Mother introduced evidence of Father’s previous income

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<sup>2</sup> Father indicated to the court that he had forwarded the doctor’s note and other documents to the court in advance of trial. The doctor’s note was not admitted into evidence at trial.

at UPS of approximately \$80,000 and argued that the evidence supported a finding of voluntary impoverishment.

On March 10, 2021, the court entered a judgment of absolute divorce which incorporated, but did not merge, the partial marital settlement agreement. The court ordered Father to pay monthly child support in the amount of \$1,637.00. The court determined that Father owed child support arrearages totaling \$8,108.00 and ordered Father to pay \$135.00 per month toward the arrearages, beginning on March 1, 2021.

On May 18, 2021, Father filed a motion to modify child support, requesting a reduction in child support due to a substantial decrease in his income. Mother opposed the motion to modify child support on the ground that there had been no material change in circumstance.

On September 10, 2021, a hearing was held before a family magistrate on Father's motion. Father testified that, following the divorce trial, his application for workers' compensation benefits had been denied and he had obtained a settlement of his workers' compensation claim in the amount of \$37,000.000. Father entered into evidence a report from his treating physician, Dr. Ebert, indicating that he should find work that does not require "lifting, pulling or pushing." Father stated that he was currently working as a supervisor of home renovation projects, earning approximately \$2,000 per month.

The magistrate took the matter under advisement and, on November 2, 2021, filed his report and recommendations. The magistrate found that, following the entry of the divorce judgment, Father had voluntarily resigned from UPS and received a payment of

\$37,000.000 in settlement of his workers' compensation claim. The magistrate noted that Dr. Ebert's report had been submitted to the court at the divorce hearing.

Based on the timing of Father's resignation from UPS within days of the divorce judgment, the magistrate found that Father was fully aware of his intentions to voluntarily resign from UPS at the time of the merits hearing. The magistrate determined that the only new information submitted by Father was the voluntary separation agreement and the settlement agreement. Based on that information, the magistrate concluded that there had been no material change in circumstance warranting a change in support and recommended that the court deny Father's motion for modification of support.

Father filed exceptions to the magistrate's findings and recommendations, arguing that the magistrate had erroneously concluded that there had been no material change in circumstances, despite evidence that he had separated from UPS after the divorce hearing and was unable to continue working as a UPS driver. Mother answered Father's exceptions, arguing that Father's execution of an employment separation agreement and a settlement agreement did not constitute a material change in circumstances and, therefore, a change in support was not warranted.

On January 5, 2022, the court held a hearing on Father's exceptions. At the exceptions hearing, the court questioned Father regarding the evidence showing a material change in circumstances. Father stated that he was no longer working for UPS and that he was physically unable to work as a package delivery driver. Father explained that his current child support obligation was based on the income he had earned in 2019 while

employed with UPS, and that his income in 2020 had decreased following his separation from UPS.

The circuit court reviewed the magistrate’s findings that Father had been unable to work at UPS before and after the divorce hearing. With respect to Father’s income, the court considered the magistrate’s finding that Father’s income at the time of trial was \$0 and that the presiding judge had imputed income to him based on his previous earnings. The court also noted that at trial, Father had indicated that he was making efforts to find new employment and that he had some “things in the mixing bowl.”

The court issued an order the following day denying Father’s exceptions. The court explained:

The testimony adduced at both the divorce hearing and the Motion to Modify, as to [Father’s] ability to work at UPS, was remarkably similar. In each instance, [Father] testified that he was unable to return to UPS because of a knee injury and that his actual income was less than previously earned at UPS. Despite that, [a judge] ordered [Father] to pay child support based on previous earnings at UPS, computing income based on voluntary impoverishment.

At the heart of this dispute is [Father’s] disagreement with Judge Finifter’s calculation of income following the divorce hearing. However, a motion to modify is not an appeal. The [c]ourt may only modify a child support order upon a showing of a material change in circumstance. MD. CODE ANN., FAMILY LAW, 12-104(a). In this case, there was no material change between the divorce hearing and the Motion to Modify.

The court concluded that the magistrate’s findings were well supported by the evidence, and the decision to deny Father’s motion for modification was not clearly erroneous.

Father filed a timely appeal.

## STANDARD OF REVIEW

“When reviewing a [magistrate’s] report, both a trial court and an appellate court defer to the [magistrate’s] first-level findings (regarding credibility and the like) unless they are clearly erroneous.” *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014). A magistrate’s decision that is grounded in law and supported by facts that are not clearly erroneous will not be disturbed absent an abuse of discretion. *Kierein v. Kierein*, 115 Md. App. 448, 452 (1997) (citing *Bagley v. Bagley*, 98 Md. App. 18, 31-32 (1993)). The circuit court must exercise its own “independent judgment concerning the proper conclusion to be reached upon those facts.” *Domingues v. Johnson*, 323 Md. 486, 490 (1991). “Ultimately, [w]hether to grant a modification rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily used or the judgment was clearly wrong.” *Leineweber v. Leineweber*, 220 Md. App. 50, 61 (2014) (quoting *Ley v. Forman*, 144 Md. App. 658, 665 (2002) (in turn, citing *Dunlap v. Fiorenza*, 128 Md. App. 357, 363 (1999))).

## DISCUSSION

### I.

#### *Father’s Challenge to the Divorce Judgment*

Father challenges the divorce judgment, arguing that the court erred in incorporating the terms of an unsigned partial marital settlement agreement pertaining to visitation, as the visitation schedule is not in the children’s best interest.

A party has the right to appeal from a final judgment of a circuit court. Md. Code (1974, 2020 Repl. Vol.), Courts and Judicial Proceedings Article, § 12-301. “A ‘final



judgment’ is a judgment that ‘disposes of all claims against all parties and concludes the case.’” *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 660 (2014) (quoting *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 241 (2010)). Ordinarily, a notice of appeal must be filed “within 30 days after the entry of the judgment or order from which the appeal is taken.” Md. Rule 8-202(a). *See e.g., Lovero v. DaSilva*, 200 Md. App. 433, 441-42 (2011) (explaining that the failure to file notice of appeal within thirty days deprives the court of jurisdiction and terminates the right of appeal).

Here, the parties’ judgment of absolute divorce, which incorporated the terms of the partial marital settlement agreement, resolved the claims raised in the divorce action. The divorce judgment became final when it was entered on the docket on February 22, 2021. Accordingly, to the extent that Father sought to challenge the terms of the divorce judgment, he was required to file a notice of appeal no later thirty (30) days from that date. Because Father did not file a notice of appeal within the time required by Rule 8-202(a), his challenges to the terms of the divorce judgment are not properly before us and we do not have jurisdiction to review them.

## II.

### *Order Denying Father’s Motion for Modification of Support*

Father contends that the circuit court erred in adopting the magistrate’s finding that the evidence did not establish a change in circumstances warranting a modification of support because the magistrate disregarded evidence he submitted showing a change in his employment status and income.

Section § 12-104(a) of the Family Law Article (“FL”) of the Maryland Code, (1984, 2019 Repl. Vol.) authorizes a court to “modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.” Modification is appropriate “only if there is an affirmative showing of a material change in circumstances in the needs of the children or in the parents’ ability to provide support.” *Payne v. Payne*, 132 Md. App. 432, 442 (2000) (citations omitted); *see also Ley*, 144 Md. App. at 665. A change is material when it is both “relevant to the level of support a child is actually receiving or entitled to receive” and “of sufficient magnitude to justify judicial modification of the support order.” *Wheeler v. State*, 160 Md. App. 363, 372 (2004) (quoting *Wills v. Jones*, 340 Md. 480, 488-89 (1995)). “In making this threshold determination that a material change of circumstance has occurred, ... a court must specifically focus on the alleged changes in income or support that have occurred since the previous child support award.” *Wills*, 340 Md. at 489.

Here, the circuit court compared the evidence submitted at the divorce trial and the modification hearing and determined that the evidence was “remarkably similar.” Both the trial court and motions court had considered that Father was unable to work at UPS due to his knee injury, and that his actual income had decreased following his injury. Because the trial court had imputed income to Father based on an implicit finding of voluntary impoverishment, however, Father’s income was only one of the factors affecting the calculation of child support. *See Durkee v. Durkee*, 144 Md. App. 161, 182, 183-84 (2002) (explaining that voluntary impoverishment requires the consideration of numerous factors in determining that a parent has chosen to be incapable of providing adequate support); *see*

*also* FL §12-204(b)(1) (“if a parent is voluntarily impoverished, child support may be calculated based on a determination of potential income”).

The circuit court exercised its independent judgment in determining that, based on the evidence introduced at the modification hearing, Father had failed to establish a material change in circumstances. Accordingly, we perceive no abuse of discretion in the court’s decision adopting the magistrate’s recommendations and denying Father’s motion to modify child support.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
APPELLANT TO PAY COSTS.**