

Circuit Court for Harford County
Case No. 12-C-18-000466

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1977

September Term, 2021

MELISSA GAIL MILLIGAN

v.

RONALD JAY MILLIGAN, JR.

Kehoe,
Beachley,
Shaw,

JJ.

Opinion by Shaw, J.

Filed: February 7, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

This appeal stems from an order by the Circuit Court for Harford County, reducing Appellant's indefinite alimony award of \$4,000.00 per month to \$3,000.00 per month. At a hearing on Appellee's complaint and Appellant's counter-complaint to modify alimony, the Magistrate found a material change in circumstances and recommended that Appellant's indefinite alimony be reduced. Appellant and Appellee filed exceptions, which were denied by a circuit court judge. Appellant timely appealed and presents the following questions for our review:

1. Did the Circuit Court err in finding statutory termination of child support constituted a material change in circumstance, when such termination was already considered in the original Order?
2. Did the Circuit Court err in modifying Appellant's indefinite alimony award from \$48,000.00 per year, payable \$4,000.00 per month to \$3,000.00 per month, or \$36,000.00 per year?

For the reasons discussed below, we reverse.

BACKGROUND

Melissa Milligan, Appellant, and Ronald Milligan, Appellee, were married on December 11, 1999. The parties have one child, who was born in February of 2002. On February 20, 2018, Appellee filed a Complaint for Limited Divorce in the Circuit Court for Harford County, requesting custody of the parties' minor child and child support. The parties' daughter was sixteen years old and lived primarily with Appellee. On March 26, 2018, Appellant filed a Counter-Complaint for Immediate Support and Maintenance, requesting both *pendente lite* and indefinite alimony. Appellee was employed as a medical device executive and his earnings were comprised of a base salary, commissions, and

incentives ranging from \$217,000-\$508,000 yearly. Appellant was employed as a mammography technician, working part time, making approximately \$31,616 yearly.

Following a hearing on September 7, 2018, a Magistrate issued a report recommending that effective October 1, 2018, Appellee pay Appellant *pendente lite* alimony in the amount of \$3,500 per month, and Appellant pay Appellee *pendente lite* child support in the amount \$1,000 per month. Appellant's child support obligation of \$1,000 and Appellee's "monthly payment on the loan secured by the vehicle driven by [Appellant] . . . in the amount of \$962.00 per month" offset Appellee's alimony obligation reducing the direct payment of *pendente lite* alimony to \$1,538 per month. Appellant timely filed exceptions.

On December 6, 2018, the circuit court entered a *pendente lite* order that stated, effective January 1, 2019, Appellee shall: (i) be responsible for the monthly car loan payment of \$962, separate, and apart from his *pendente lite* alimony obligation, and (ii) pay Appellant *pendente lite* alimony in the amount of \$2,500 per month, based on the Magistrate's initial recommendation that Appellee pay Appellant \$3,500 offset by Appellant's \$1,000 child support obligation.

The case proceeded to trial on three days, June 10-11, 2019, and November 8, 2019. The court issued its written opinion in December 2019, granting Appellee an absolute divorce and sole legal and physical custody of the minor child. The court calculated the projected 2019 earnings of both parties and found that Appellee earned 6.8 times the amount of Appellant. As a part-time radiologic technician, Appellant earned \$32 per hour and worked an average of thirty-eight hours every two weeks, grossing approximately

\$1,216 every two weeks or \$31,616 per year. Appellant had sought full-time employment and the court attributed \$66,000 of income to Appellant in calculating alimony.

As a medical device executive Appellee's income varied. Appellee switched jobs in 2021 and his base salary was \$108,000. Upon successful achievement of quotas, he had the capacity to earn an additional \$115,000 per year, totaling approximately \$223,000. In calculating Appellee's projected 2019 earnings, the court used his gross pay for the first five months of the year which was \$182,909.77 or \$37,181.95 per month, and "extrapolated it to twelve months which would have him earning approximately \$446,183.44 for 2019."

In deciding alimony, the court stated:

[Appellant] ha[d] no serious illnesses, infirmities or disabilities which would prevent her from becoming self-supporting. . . . It is clear that post-divorce the standard of living of the parties will be unconscionably disparate. As is obvious, [Appellee's] earnings capacity has no realistic upward limitation (other than possibly changes to his pay plan) whereas [Appellant], assuming full-time, is maxed out.

The court acknowledged Appellant's *pendente lite* alimony award and child support obligation, noting that her child support payments "will end in May when their daughter reaches her eighteenth birthday and finishes her high school studies." After considering various alimony factors, the court granted Appellant "an award of permanent alimony of \$4,000 per month beginning January 1, 2020. When added to her potential full-time earnings of \$66,000 per year that would give her a gross income of approximately \$114,000 per year which should be enough for a moderate standard of living." In addition to awarding Appellant indefinite alimony, pursuant to FL § 11-106(c)(2) (based on a determination that "the respective standards of living will be unconscionably disparate"),

the court granted Appellant a monetary award of \$200,000 based on marital assets and investments pursuant to Family Law § 8-205 and ordered Appellee to pay \$50,000 toward Appellant's attorney's fees. On March 20, 2020, the circuit court amended the judgment to include the division of the jointly titled timeshare and the return of the automobile to Appellee.

On October 14, 2020, Appellee filed a Complaint to Modify Alimony requesting, in part, that the court decrease his alimony obligation because his income had substantially decreased and there was a material change in circumstances “in that the parties’ child has become emancipated, and the [Appellant] is no longer paying [Appellee] \$1,000 per month in child support.” Appellant filed an Answer to the Complaint, agreeing that their daughter became emancipated and child support had ceased. She denied that there was a material change in circumstances and requested that Appellee’s complaint be denied. Appellant subsequently filed a counter-complaint to modify alimony seeking to increase the amount of the award.

A hearing was held on August 3, 2021, before a Magistrate and he issued a report and recommendations finding that Appellee had in fact earned \$648,169 in 2019 and that he purported to earn approximately \$200,000 less in his financial statements by changing jobs. The Magistrate found that Appellant filed three separate financial statements listing various wages and expenses including the anticipatory purchase of a new house and leading the court to believe she wanted full-time employment while continuing to work part-time. The Magistrate stated that he did not find either party credible regarding income. The emancipation of the parties’ daughter and cessation of child support were the only matters

that the Magistrate “comfortably accepted as fact” and determined was a material change of circumstances.

Following the hearing, the Magistrate recommended that, effective September 1, 2021, Appellee’s indefinite alimony obligation be modified to \$3,000 per month. Appellant and Appellee both filed exceptions to the Magistrate’s report and recommendations. The court denied both parties’ exceptions. Appellant timely appealed.

STANDARD OF REVIEW

Our standard of review is governed by Maryland Rule 8-131(c), which states: “[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “If 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.” *L.W. Wolfe Enterprises, Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. 339, 343 (2005).

“Although the factual determinations of the circuit court are afforded significant deference on review, its legal determinations are not.” *Id.* at 344. “[W]here the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are ‘legally correct’ under a *de novo* standard of review.” *Walter v. Gunter*, 367 Md. 386, 392 (2002).

DISCUSSION

Modification

“The court may modify the amount of alimony awarded as circumstances and justice require.” Md. Fam. Law. § 11-107(b). “In so doing, however, it may not relitigate matters that were or should have been considered at the time of the initial award.” *Lott v. Lott*, 17 Md. App. 440, 444 (1973). “A party requesting modification of an alimony award must demonstrate through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification.” *Ridgeway v. Ridgeway*, 171 Md. App. 373, 384 (2006) (internal citations omitted). An alimony award will not be disturbed unless the court abused its discretion or was clearly wrong in making the award. *Blaine v. Blaine*, 336 Md. 49, 74 (1994).

In *Cole v. Cole*, this court held that the circuit court erred in entering a modification order increasing husband’s alimony obligation from that in the divorce decree. 44 Md. App. 435, 436 (1979). In her request for modification, wife averred:

‘since the passage of the [Divorce] Decree . . . [she] has been unable to provide support and maintenance for the minor children of the parties and support and maintenance as alimony because of the great increase of prices and costs’ and that she and *three* of the minor children ‘are in need and suffer from want of support and care.’

Id. at 438 (footnote omitted) (emphasize in original). Husband appealed, arguing that “since the divorce [wife’s] income had increased to the point that it was ‘sufficient to provide adequately for her own needs’ and ‘to enable her to contribute to the support of the three minor children in her custody.” *Id.* Both parties agreed that changes in their circumstances had occurred since the divorce. *Id.* at 439.

Husband argued that “the changed circumstances evidenced in the record [did] not support the [court’s order], either with respect to *any* increase in alimony or with respect to the *amount* of increased child support.” *Id.* (emphasis in original). At the time of the modification hearing, the record showed husband’s annual income had increased and he acquired assets “most of which was developed after the divorce.” *Id.* at 440. The record also showed that wife’s income increased. *Id.* At the time of the hearing, she obtained higher earning employment and received dividends from stocks. *Id.*

This Court held that there was no material change in circumstance to justify an increase in alimony, simply because of changes in income. *Id.* at 445. Although, we found that both parties’ incomes increased since the divorce decree, we noted that an increase in the former wife’s alimony award was not warranted because “[t]here [was] no indication in the record that her standard of living had changed since the divorce.” *Id.* at 440. Further, “even though the former husband’s income has substantially increased since the divorce, there is nothing in the record to indicate that the initial award was not commensurate with the standard of living to which the appellee was then entitled.” *Id.* at 443.

In resolving that case, we separated the increase in alimony from child support. We affirmed the court’s increase in child support based on the husband’s increased income because children are entitled to share in the higher standard of living enjoyed by their parents. *Id.* at 446.

On the issue of alimony, we concluded that the alimony award should not have been modified because the “appropriate circumstances” to justify modification were not supported by the record. *Id.* Between wife’s increased income and the prior alimony award

under the divorce decree, there was a “lack of any evidence that her actual needs exceeded that figure” *Id.* at 441. We held that divorced parties do not have a continuing right to share in the future accumulated wealth of their former spouse. *Id.* at 445.

Material Change in Circumstance

i. Cessation of Child Support

In the original order, here, the circuit court calculated Appellee’s earnings as \$446,183.44 for 2019 and “attribute[d] annual earnings to [Appellant] of \$66,000. . . . Using [Appellee’s] projected 2019 annual earnings, [Appellant] would earn 14.7% of what [Appellee] does or, . . . he will earn 6.8 times what she does.” The court awarded [Appellant] “permanent alimony of \$4,000 per month beginning January 1, 2020.” The court reasoned:

In terms of actual assets, [Appellant] has very little. . . . Her real assets are the property currently in her apartment and \$5,000 in savings as well as her jewelry. She has no other source of income other than her salary. She owes her attorney over \$50,000. She currently gets \$3,500 per month in alimony, reduced to \$2,500 to account for child support. *Her child support obligation will end in May when their daughter . . . reaches her eighteenth birthday* and finishes her high school studies. She has no retirement benefits to speak of and her main financial obligations are her living expenses.

(Emphasis added.)

Appellee argues that the cessation of Appellant’s child support obligation is a material change in circumstances. He contends that the court did not err and the original alimony award was properly modified, based on Appellant’s reduction in monthly expenses of \$1,000. Appellant argues that the termination of Appellant’s obligation to pay child support is not a material change in circumstances. Appellant asserts, that at the time

of the court's divorce ruling, child support was expected to terminate in five (5) months and was recognized as temporary, whereas Appellant's alimony award was not.

As we see it, in awarding Appellant alimony in the amount of \$4,000, the divorce court was well aware of the termination of child support in May and the decrease to occur four months later. The judge stated prior to awarding alimony, that her child support obligation would end in May, and he then granted "an award of permanent alimony of \$4,000 per month beginning January 1, 2020. When added to her potential full-time earnings of \$66,000 per year that would give her a gross income of approximately \$114,000 per year which should be enough for a moderate standard of living." The court's statement makes it clear that the court considered the termination of child support in making its ultimate determination.

As a result, the court hearing the modification request, erred in finding a material change in circumstance when termination of child support was anticipated by the court and included in its initial determination regarding alimony. Maryland case law makes clear that a court may not relitigate matters that were considered at the time of the original award. *Blaine*, 336 Md. at 71.

ii. *Decrease in Appellee's Income*

Appellee also argues that his substantial decrease in income constitutes a material change in circumstances. Appellee contends that his base salary is now \$108,000, and upon successful achievement of quotas he can earn an additional \$115,000 per year, totaling approximately \$223,000. According to him, his new compensation package constitutes a substantial decrease in annual income as compared to his 2019 earnings.

Appellant argues that despite Appellee’s “various changes in employment . . . specifically in 2020, [Appellee has] amassed \$825,779.00 in [his] retirement accounts.” However, “at the time of divorce it was closer to \$500,000.” As a result, Appellant argues that Appellee is not credible. She points to his testimony estimating his earnings to be approximately \$300,000 when he actually earned over \$600,000 in 2019.

In his report, the Magistrate referenced both Appellant’s and Appellee’s financial statements. Appellee’s 2021 financial statement showed investments and bank accounts totaling \$898,779.50. His statement also listed various amounts in medical, automobile, and gratuitous expenses.

During the pendency of this action, [Appellant] has filed three separate financial statements. In her earliest financial statement, she lists her gross monthly wages as \$2,845.15.... This financial statement was dated November 23, 2020 and purports to show a deficit of \$3,461.50.

* * *

The second financial statement filed by [Appellant] is signed on June 15, 2021. This financial statement makes no changes in [Appellant’s] income. It is listed as gross earnings from wages of \$2,845.15. It purports to show a deficit of \$3,582.51 per month. The deposition of [Appellant] was held on June 16, 2021, the day after she signed the first amended financial statement. Despite having been signed on the day before the deposition, the new financial statement was not made available to counsel for [Appellee] until after the conclusion of the Deposition. It was filed with the Court on June 16, 2021 with the counter-complaint of [Appellant]. A second amended financial statement was signed by [Appellant] on July 23, 2021. The financial statement shows a substantial increase in the [Appellant’s] income from her employment. Gross wages are stated to be \$5,051 per month. The financial statement purports to show a deficit of \$1,103.42.

The Magistrate noted:

In this case, both parties are seeking modification, but the evidence presented by both parties failed to meet the ‘credible’ standard. As to the [Appellee],

his financial statement is filled with expenses that appear to be questionable.... One expense is listed as both an expense and deduction from income, essentially counting the same expense twice.... As to his income, his projection of an annual income of \$223,000 annually is without any credibility whatsoever. After having earned substantially more than his stated projected income from his prior employer[.]... In this regard, it is noted that [Appellee] allowed the Court in 2019 to project his income for that year well below the actuality.

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[Appellant's] credibility is no better than [Appellee's] credibility. Despite having led the Court to believe in 2019 she was looking for and wanting to work full time, she has continued to work well below full time.... [Appellant's] credibility is further damaged substantially by the gamesmanship with reference to the financial statements. Despite having signed a financial statement on the day before the deposition, and that financial statement having been filed just hours after the conclusion of the deposition, the new financial statement was withheld from counsel for [Appellee] during deposition, leaving counsel unable to inquire about the substantial changes appearing on the new financial statement.

Based on the lack of credibility between the parties, the Magistrate stated:

[r]eviewing the evidence presented, the only matter that can be comfortably accepted as a fact is the emancipation of the parties' child and the elimination of the \$1,000 per month as child support. Thus, we know that [Appellant] has had a decrease in her expenses of \$1,000 per month. The decision of the Court in 2019 was to the effect of \$3,000 per month after her payment of child support. Having had a reduction in her expenses of \$1,000, her need for alimony would be reduced by that amount.

The Magistrate recommended “[t]hat effective September 1, 2021, the indefinite alimony obligation of [Appellee], be modified to the sum of \$3,000 per month.” At the exceptions hearing, following argument, the judge stated:

So addressing the change in circumstances first, which is required to be found in order to modify the alimony, I think that that has been demonstrated and Magistrate . . . found that it had been demonstrated, as well, because of the change in job and the change in income of [Appellee]. So really, the reduction of alimony is technically not a reduction because

that's how much she had been receiving up until the time that the child was emancipated. I have to agree, as I said, with the Magistrate's findings that none of these financial statements are credible, and I think he commented on the gamesmanship that had been played. In looking at them again, I tend to agree with that.

In our view, the Magistrate did not consider Appellee's change in employment to be a material change in circumstance as he did not find Appellant's or Appellee's financial statements credible. The judge agreed with the Magistrate, yet stated that "the change in job and the change in income" were changes in circumstances. The judge then found that the evidence presented by the parties lacked credibility. We hold that, on this record, there was no basis for a finding of material change in circumstances.

In sum, we hold the court erred in modifying the alimony award of \$4,000. Although the termination of child support could constitute a material change in circumstance, in this case, such termination was anticipated and considered by the awarding court in its determination. Likewise, a substantial increase or decrease in income could constitute a material change in circumstance, however in this case, the court did not find that Appellee's income substantially increased or decreased because it did not find the financial statements of the parties were credible.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY REVERSED;
COSTS TO BE PAID BY APPELLEE.**