UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1610

September Term, 2015

YONELLE MOORE

v.

TIMOTHY TAYLOR

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: September 9, 2016

This case involves the validity of an order from the Circuit Court for Prince George's County modifying an award of child support based upon a material change of circumstance. We perceive no error and affirm the judgment of the trial court.

FACTS AND PROCEEDINGS

The parties are parents of one minor child for whom Timothy Taylor ("Father") pays child support. In July 2014, Father moved *pro se* to modify an order requiring him to pay $1,500 per month in child support. In November 2014, Yonelle Moore Lee ("Mother") through counsel, filed an answer. Thereafter, Father retained counsel who filed an amended petition seeking to reduce Father's child support and modify the access schedule.

An evidentiary hearing was held on April 8, 2015 in the Circuit Court for Prince George's County. The only witnesses were Father and Mother. The trial judge issued an order dated May 7, 2015 and docketed May 11, 2015 that denied Father's request to reduce child support and made minor changes to the access schedule.[1] On May 20, 2015, pursuant to Rules 2-534 and 2-535, Father moved to alter or amend the May 7 order as it pertained to the denial of his request to reduce his support obligation. The court heard argument on that motion and, at the conclusion of the hearing, reduced Father's child support to $250 per month retroactive to the date Father requested a modification. The trial court confirmed its ruling in an order dated August 5, 2015 and entered September 4, 2015 from which Mother noted a timely appeal.

[1] The judgment concerning child access has not been appealed.

STANDARD OF REVIEW

"[A] motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion." *Miller v. Mathias*, 428 Md. 419, 438 (2012). The Court of Appeals has defined abuse of discretion as "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id*. at 454 (internal citations omitted). The decision to modify a child support award "is left to the sound discretion of the trial court, so long as the discretion was not arbitrarily used or based on incorrect legal principles." *Tucker v. Tucker*, 156 Md. App. 484, 492 (2004) (quoting *Smith v. Freeman*, 149 Md. App. 1, 21 (2002)).

DISCUSSION

Mother presents a single issue on appeal which we rephrase as follows: Did the trial court abuse its discretion in reducing Father's child support obligation without finding a material change in circumstance? We answer this question in the negative.

In Maryland, a trial court "may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance." Md. Code (2012 Repl. Vol.) § 12-104(a) of the Family Law Article. In *Wills v. Jones*, 340 Md. 480 (1995) the Court of Appeals discussed the meaning of "material change of circumstance":

> The "material change in circumstance" requirement limits the circumstances under which a court may modify a child support award in two ways. First, the "change of circumstance" must be relevant to the level of support a child is actually receiving or entitled to receive. Second, the requirement that the change be "material" limits a court's authority to situations where a change is of sufficient magnitude to justify judicial modification of the support order.

Id. at 488-89 (footnote omitted) (citation omitted). When determining whether a material change of circumstance has occurred, a court must compare the alleged change of circumstance to the circumstance at the time of the previous order. *Id.* at 489.

Given this legal framework, we direct our attention to the present case. At the hearing on the motion to reduce child support, Father argued that he had experienced a material change of circumstances by losing his job. He provided a letter from his soon-to-be-former employer explaining that his employment was being terminated as a result of a customer revoking his security clearance. The letter further encouraged him to seek other employment opportunities with the employer. Mother did not dispute this characterization of Father's unemployment. Father testified that he was receiving unemployment benefits but was actively looking for jobs. He also testified that he was taking classes to maintain his skills as a software engineer. Despite Father's involuntary loss of employment, the trial court initially denied his motion to reduce his child support obligation.

The trial court relied on Father's level of training and experience as its rationale for not reducing child support. Hopeful that Father would quickly find new employment, the trial court stated, "I understand [Father has] been unemployed however, he's in a very attractive position having the skill level that he does I think that's a matter of time." The trial court therefore denied the motion to reduce Father's child support obligation, as confirmed by the May 7, 2015 order.

Father timely moved to alter or amend the trial court's order pursuant to Rules 2-534 and 2-535. At the hearing on this motion, Father's counsel informed the court that Father still had not yet found new employment. The trial judge decided to amend the

May 7 order to reduce Father's child support. In amending its previous order, the trial court stated in relevant part:

> Let's do this scenario. Let's talk about the child support. The guidelines sheets were set in, and I may have erred on the side of the job market being so positive for him. I thought he'd get a job right away. He didn't.
>
> I think he's entitled to a downward modification of the child support. I think that he lost his job. I think the evidence, if we're agreed on the facts, that he had to take his retirement money to make payments on the bills and all that went with it, his financial situation is truly a wreck. For want of a better word, I can't think of one.
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> They apparently have a house that's under water with the mortgage payment being $2,000 and rented for 900. I assume that's the market rent that you could get.
>
> His salary is significantly down, to the point where he had a very high paying, $150,000 a year, in the computer industry. Now he's giving golf lessons and had to go back to school to get recertified.
>
> Based on all those factual circumstances, I don't think that he voluntarily -- it's just not a question of voluntary impoverishment as nearly as I can tell.

The record supports the trial court's conclusion that Father involuntarily lost his job. In addition, the trial judge expressly found that Father's income was "significantly down" from his previous income of $150,000 per year. The trial judge proceeded to adopt the income and expense amounts set forth on a Maryland Child Support Guidelines Worksheet.[2] In doing so, the circuit court accepted Father's testimony that he earned $1366 per month (or $16,392 per year) as of the date of the hearing. This monthly income was comprised of Father's unemployment compensation plus four hours a week giving golf lessons. In summary, the trial court's finding that Father's income was substantially

[2] Neither party challenges the trial court's mathematical calculation of child support pursuant to Md. Code (2012 Repl. Vol.) § 12-202 of the Family Law Article.

reduced due to an involuntary loss of employment satisfies the "material change in circumstance" requirement explicated in *Wills*. Indeed, the trial court's analysis is supported by our decisions in *Sczudlo v. Berry*, 129 Md. App. 529, 538 (1999) and *Rivera v. Zysk*, 136 Md. App. 607, 619 (2001), where we held that an involuntary loss of employment may constitute a material change in circumstances.

Mother argued that Father could have prevented his firing or remedied the situation with his employer. Mother only raised this issue in her Response to Motion to Alter and Amend. She did not raise these issues at the hearing, nor did she ever provide any evidence to support these contentions. We are tasked with determining whether the trial court abused its discretion; we do not make findings of fact that were not substantiated on the record. *Miller*, 428 Md. at 438. Accordingly, we decline to consider whether Father could have prevented his firing or remedied his employment situation.

Mother also invites us to consider whether the trial court should have given more weight to the fact that Father maintained over $5,000 in his bank account during his period of unemployment. We decline to do so. Father testified that large deposits to that account were attributable to hardship withdrawals from his 401k account. Our only task on appeal is to determine whether the trial court abused its discretion. *Miller*, 428 Md. at 438. The trial court was clearly justified in declining to include the 401k withdrawals as income for child support purposes.

That the circuit court modified Father's child support obligation on a motion to alter or amend does not change the result. A trial court's discretion on a motion to alter or

amend "is more than broad; it is virtually without limit." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002).

In summary, the trial court correctly applied the "material change in circumstance" standard and acted within its sound discretion when it reduced Father's child support obligation. We therefore affirm.

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