

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 00710

September Term, 2016

EARNEST NEAL

v.

TERESA NEAL

Kehoe,
Nazarian,
Maloney, John M.,
(Specially Assigned),

JJ.

Opinion by Maloney, J.

Filed: June 9, 2017

*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 the denial of Earnest Neal’s (“appellant”) exceptions to a magistrate’s recommendations on the issue of *pendente lite* support in Prince George’s County Circuit Court. In denying appellant’s exceptions, the trial judge found that the magistrate had substantial basis for her recommendation that appellant pay Teresa Neal (“appellee”) \$6,000 per month in *pendente lite* alimony, \$2,000 per month in child support and \$8,000 in *pendente lite* attorneys’ fees. A timely appeal followed.

Before this Court, appellant presents one question for review:

Did the circuit court err by denying appellant’s exceptions?¹

For the following reasons, we shall affirm the ruling of the circuit court denying appellant’s exceptions.

BACKGROUND

Appellant and appellee were married in Prince George’s County on April 30, 1999. One child was born of the marriage, currently age 16. The parties separated in August of 2015. Both appellant and appellee filed for divorce, and their cases were consolidated. In her complaint, appellee requested *pendente lite* relief.

The *pendente lite* hearing occurred before a magistrate on February 24, 2016. Appellant represented that he was an employee and owner of Atlantic Systems Groups, Inc. (“ASG”), and that he received his salary in bi-weekly paychecks of \$7,275.04. In addition to his salary, appellant stated that he received dividends and distributions.

Appellant also testified that his salary as Vice President of ASG was \$160,000 and

¹ The specific question presented in appellant’s brief is “[d]id the chancellor err by denying the exceptions?”

that, in addition, he received approximately \$80,000 and \$100,000 per year in draws from the business. ASG has a corporate expense account that pays for some of his personal expenses such as his mortgage, utilities and car payments. The payment of these expenses is in addition to his paycheck. However, appellant also testified that he reimburses the company for some of those expenses. Outside of his salary, he occasionally received monetary awards for his bowling accomplishments; for example, he received \$15,000 in 2015.

Appellee represented to the magistrate that she was unemployed and had not received any income since December of 2014. She also testified that appellant had previously paid for all of the expenses for the parties, including the mortgage, property taxes and groceries. While both parties submitted financial statements prior to the *pendent lite* hearing, the magistrate found that discovery was ongoing between the parties, as the discovery deadline was March 28, 2016 (approximately one month later).

At the conclusion of the *pendente lite* hearing, the magistrate found that appellant earned \$8,600 per month in addition to his annual salary of \$160,000. It was also found that appellee was unemployed and had incurred \$10,975 in attorneys' fees in comparison to appellant's attorneys' fees of \$13,145.52.

As a result, the magistrate recommended that appellant pay appellee \$6,000 per month in *pendente lite* alimony, \$2,000 per month in child support and \$8,000 in *pendente*

lite attorneys’ fees.² It was also recommended that appellant continue to provide healthcare to appellee and the minor child, and that appellee pay the mortgage for the marital home, which was \$4,200 per month.

In making those recommendations, the magistrate stated that what she was “listening for [was] need and ability to pay.” The magistrate acknowledged the complexity of the finances before her and commented that “this is a case where experts need to come in But I do find that there is a need.” She found that “[appellant has] been paying out of whatever account [he] paid approximately \$8,600 in addition to what [his] salary is.” With regard to appellee, the magistrate found that “there definitely is a need.”

Appellant filed exceptions to the magistrate’s recommendations, and an exceptions hearing was held on June 3, 2016 to review only the recommendations for child support, alimony and attorneys’ fees. In reviewing the recommendations, the trial judge found that appellant’s income was “at least \$240,000.” The trial judge stated that he had been in business himself, and he understood that there was “a lot more wiggle room” with regard to tax advantages and write-offs. In denying appellant’s exceptions, the trial judge found that there was substantial basis for the magistrate’s recommendations.

A timely appeal followed.

STANDARD OF REVIEW

² While appellee incurred \$10,975 in attorneys’ fees, the magistrate recommended that appellant pay \$8,000, as a portion of appellee’s attorneys’ fees were from a previous domestic violence matter between the parties.

It has been held that “[d]eference will be accorded to the facts as found by the [m]aster, but this only applies to ‘first-level’ facts. First-level facts are those that answer the What?, Where? and How? questions.” *Levitt v. Levitt*, 79 Md. App. 394, 398 (1989). Accordingly, “[d]eference is not accorded to ‘second-level’ facts or to recommendations. Second-level facts are ultimate conclusions drawn from first-level facts.” *Id.*

In a case where the magistrate fails to determine the first-level facts, “the [c]hancellor has only two courses to follow—to hear further evidence or remand to the [m]aster to make the findings.” *Id.* at 402. Additionally, if a party asserts that the facts found by the magistrate are without foundation in the record, the trial judge must then use his or her independent judgment. *See Bagley v. Bagley*, 98 Md. App. 18, 30 (1993).

However, in cases where the determined facts have a foundation in the record before the magistrate, the “master’s findings of fact are given deference under the clearly erroneous rule.” *Id.*

DISCUSSION

a. **Reasons for Denying Exceptions—Alimony and Child Support**

On appeal, appellant argues that the trial judge failed to state his reasons on the record for denying each of appellant’s exceptions. Appellant points to the words of the trial judge at the exceptions hearing, where the trial judge stated that “[b]asically, to me it comes down to [appellant] saying, you know, just too much money. I don’t have all this money However, [the magistrate] found to the contrary. I see that she’s provided to me a substantial basis for her conclusions.”

Appellant claims that, when reviewing a magistrate’s recommendations, the trial judge must use his or her independent judgment in deciding each question. The above quote, appellant asserts, shows that the trial judge failed to use an independent decision-making process when he denied appellant’s exceptions.

In contrast, appellee contends that appellant is using the incorrect standard for a trial judge’s review a magistrate’s recommendations. Specifically, appellee states that a judge uses his or her independent judgment when reviewing recommendations only when there is a lack of evidence to support the magistrate’s findings. Appellee cites to *Bagley* for the proposition that, when the findings are supported by evidence, the trial court reviews under a clearly erroneous standard. 98 Md. App. 18. Specifically, “[w]here the findings are supported by evidence and therefore not clearly erroneous, the trial judge is left with discretion to determine the proper disposition of the case.” *Id.* at 31.

Appellee insists that the record coupled with the trial judge’s understanding of self-employment income evidences that the correct standard was used in determining the support awarded based on appellant’s income. Furthermore, appellee argues that appellant’s testimony before the magistrate supports the conclusion that he made at least \$240,000 in annual income.

We held in *Bagley* that “[a]s a general rule, a master’s findings of fact are given deference under the clearly erroneous rule.” *Id.* at 30. Again we note that appellant challenged the magistrate’s recommendations for child support, alimony and the award of attorneys’ fees. The awards of child support and alimony involve a review and

determination of the parties' income. At the exceptions hearing, the trial judge reviewed the record, which included appellant's testimony as to his income, and the trial judge found a substantial basis for denying appellant's exceptions.

In finding a substantial basis, it is clear that the trial court did not find the magistrate's recommendations to be "clearly erroneous." The trial judge also stated that he used his understanding of how self-employment income works based on his experience in business to determine appellant's income, which is a necessary determination for awarding child support and alimony. This understanding is sufficient to show that the trial judge used his independent judgment coupled with his review of the record to deny appellant's exceptions.

b. Reasons for Denying Exceptions—Attorneys' Fees

With regard to the award of attorneys' fees, we look to the Family Law Article. The trial court must consider "(1) the financial resources and financial needs of both parties; and (2) whether there was a substantial justification for prosecuting or defending the proceeding." Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 11-110(c). When the magistrate awarded appellee attorneys' fees at the *pendente lite* hearing, she stated that, when analyzing the income disparity between the parties, "it's not even a fair fight."

At both the *pendente lite* and exceptions hearing, it was found that appellee was unemployed and that appellant earned at least \$240,000 annually. Appellee was awarded \$2,000 per month in child support and \$6,000 per month in alimony at the *pendente lite*

hearing, and appellee was also ordered to pay the mortgage on the marital home, which was \$4,200 per month. After that paying the mortgage, appellee would have \$1,800 in disposable income each month from the alimony awarded.

In comparison to appellant's salary, which was determined to be \$240,000, the trial court had substantial justification in awarding attorneys' fees to appellee after considering the needs of appellee and the parties' financial statuses. There also was no evidence presented that the case was unjustly brought. Therefore, we will not disturb the award of attorneys' fees.

c. Granting a De Novo Hearing

Appellant also alleges that the trial judge failed to grant him a *de novo* hearing in accordance with Maryland Rule 9-208(i)(1). Appellant contends that the record before the trial judge lacked any findings about appellant's income and expenses and, as such, the reviewing judge must use his or her independent judgment to make determinations. Appellant further argued that, because of the alleged lack of necessary findings, the trial judge should have conducted a *de novo* review to consider additional evidence.

In response, appellee states that the record before the magistrate contained more than enough evidence of the parties' incomes and expenses to justify the magistrate's recommendations. As such, any *de novo* hearing on these facts would have resulted in unnecessary additional time for the court and a waste of expenses for the parties.

The general rule is that an exceptions hearing is to be decided on the evidence presented to the magistrate. Maryland Rule 9-208(i)(1). Using his or her discretion, a trial

judge may determine that additional evidence should be considered or grant a *de novo* hearing provided that the moving party states with particularity the new evidence he or she wishes to present and provides an explanation for why the evidence was not initially presented to the magistrate.

In his request for exceptions, appellant stated that he wanted the trial court to consider additional evidence, and he asked for a *de novo* hearing. However, Maryland Rule 9-208(i)(1) allows the trial judge to exercise his or her discretion in allowing additional evidence in an exceptions hearing.

Here, there is nothing in the record to suggest that appellant objected to the exceptions hearing continuing on the record before the magistrate. In fact, there is no evidence that appellant further requested this relief at the actual hearing before the trial judge. Lastly, the trial judge was clear that he found the magistrate presented him with substantial evidence on the record to make his determinations.

Under Maryland Rule 9-208(i)(1), the trial court was acting within its discretion when it proceeded with the hearing based on the evidence provided to the magistrate. As such, we find that the trial judge did not err by not considering additional evidence or granting appellant's request for a *de novo* hearing.

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