Circuit Court for Montgomery County

Family Law No. 123348

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2208

September Term, 2016

ALEX E. MARTIN

v.

LAURA O. MARTIN

Wright,
Kehoe,
Berger,

JJ.

Opinion by Wright, J.

Filed: November 13, 2017

Appellant/Cross-Appellee, Alex Martin ("Father"), sued Appellee/Cross-Appellant, Laura Martin ("Mother"), for an absolute divorce on October 22, 2014, in the Circuit Court for Montgomery County, after a year of separation. On March 26, 2015, the parties executed an agreement on alimony *pendente lite*, which the circuit court incorporated into a consent court order ("*Pendente Lite* Order"). On June 14, 2015, the parties entered into a custody agreement regarding their two minor children, which the circuit court incorporated into a consent custody order ("Custody Order").

The circuit court conducted a four-day trial on April 18, 2016. Following trial, the court ordered Father to pay $7,000.00 per month in child support and an additional sum for private school tuition for both children, even though one child attended public school. The court also ordered Father to pay $21,000.00 per month in indefinite alimony to Mother. Finally, the court applied the indefinite alimony award retroactively from September 1, 2015.

In this appeal, Father presents five questions for our review, and Mother presents two questions for our review, all of which we have re-ordered and re-worded:[1]

[1] In his brief, Father asks:

> I. May a trial court require one spouse to pay 100% of the other spouse's expenses as alimony when the recipient spouse also earns an income?
>
> II. May a trial court exclude one parent's income in full from its child support calculation?
>
> III. May a trial court apply a permanent alimony award retroactively to the *pendent lite* period when the parties previously entered into an agreement resolving *pendent lite* alimony?

I. Where the parties entered into a *pendente lite* consent order, did the circuit court err and/or abuse its discretion in awarding retroactive alimony?

II. Did the circuit court err in failing to expressly acknowledge Mother's income when calculating her alimony award?

III. Did the circuit court err in including child-related expenses in its calculation for alimony?

IV. Did the circuit court err in not including Mother's income in its child support calculations?

V. Did the circuit court err in requiring Father to pay one child's private school tuition when no evidence or argument was presented to the court on that issue?

VI. Did the circuit court err in not finding that Father's child support arrears were due from December 2014 through the date that the divorce judgment was entered?

IV. Did the court err or abuse its discretion in including certain child-related expenses in its calculations for alimony?

V. May a trial court decide *sua sponte* to require a parent to pay a child's private school tuition when no evidence or argument was presented at trial on the issue, neither party raised the issue at trial, the child does not attend private school, and the court decision directly contravenes the parties' custody agreement?

In her brief, Mother asks:

A. Did the Court err by not establishing the entire child support arrears due from December 2014 through the date the Judgment for Absolute Divorce was entered, failing to order a payment to the child support arrears, and failing to reduce the alimony arrears to judgment?

B. Did the Court err and/or abuse its discretion when calculating attorney's fees by failing to consider the resulting debt incurred by Cross-Appellant, and when it failed to include expert fees in the total amount of attorney's fees awarded to the Cross-Appellant?

VII. Did the circuit court err or abuse it discretion in failing to include expert fees when awarding attorney's fees to Mother?

For reasons to follow, we answer all questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

Father and Mother married in October 1992 and separated on October 3, 2013. Two children were born as a result of the marriage: a boy, born in 1999 ("Son"), and a daughter, born in 2002 ("Daughter").

From the beginning of the marriage, the parties assumed traditional breadwinner and caretaker roles. Father attended the University of Michigan for his undergraduate degree and business school at Harvard University. At the time of trial, Father worked as an executive recruiter in the global industrial manufacturing sector and earned approximately $300,000.00 a year, but that total fluctuated from year to year. Some years Father would make under $500,000.00, and other times he would make over $1,000,000.00. Between 2011 and 2015, Father earned, on average, approximately $728,000.00 per year.

Mother received an undergraduate degree from Purdue University and a Master's in Education from the National Louis University in Heidelberg, Germany. When the parties were first married, Mother worked steadily; however, when the parties' first child was born, her employment became more sporadic. Mother is the founder and executive director of a nonprofit organization.

During the marriage, Mother and Father jointly made decisions that they believed would help Father's career. The family moved eight times between 1993 and 2006 because of Father's work. Father and Mother also tried to create a business together that ultimately failed. They separated in October 2013. While separated, Father lived in a one-bedroom apartment while Mother lived in a separate apartment with the parties' two children. After a year of separation, Father filed for an absolute divorce on October 22, 2014.

On March 26, 2015, the parties entered into a comprehensive *pendente lite* agreement. Father agreed to pay $12,000.00 per month in alimony; $3,500.00 per month in child support; the family's health insurance premiums; $20,000.00 in attorney's fees; and $16,000.00 in debts incurred by Mother.[2] Father also agreed to pay the children's reasonable and necessary uninsured medical and dental expenses; annual and monthly fees at The Edgemoor Club; and Son's private school tuition. On March 30, 2015, the court held a *pendente lite* hearing on the issues of alimony, child support, child access, attorney's fees, and suit money. After the hearing, the parties' agreement was incorporated into a *Pendente Lite* Order.

In June 2015, the parties reached an agreement on custody, and that agreement was later incorporated into a Custody Order by the court. The Custody Order provided that the parties would share legal custody and make major decisions about the children's

[2] The agreement lists the debts as "debts for David Drew Clinic ($4,250.00), therapy with Dr. Andelman ($7,875.00), Metro and Metro accountant fee ($2,500.00), and Bank of America credit card debt ($1,465.00)."

education jointly. The Custody Order also laid out a framework on how to resolve disputes in the event of an impasse between the parties on a legal-custody decision. In the event of an impasse, both parties would be required to attend two mediation sessions with a parent coordinator, after which one of the parties would have a tie-breaking authority based on the subject matter. For decisions as to the children's education, Mother had the authority to make a tie-breaking decision to resolve an impasse. If Mother exercised her tie-breaking authority, she would have to pay the financial obligation associated with the education expense.

In April 2016, the circuit court presided over a four-day merits trial. The issues were alimony, child support, equitable distribution, and attorney's fees. Both parties agreed that indefinite alimony was appropriate for Mother, but both sides contested the amount the court should award.

On June 9, 2016, the circuit court announced its decision in an oral ruling. The court found that Father's income was $960,000.00 and Mother's income was $50,000.00; that Mother's indefinite alimony amount should be $21,000.00 a month; that Father should pay $7,000.00 a month in child support; that Father should pay all of the children's health care costs; that Father was to pay Son's private school tuition and Daughter's private school tuition, should she decide to attend; and that the party's marital assets be divided equally.

At the end of the oral ruling, Mother asked the circuit court what the effective date of the permanent alimony would be and sought a retroactive application to the *pendente lite* period. Thereafter, the parties filed memoranda regarding the effective date of the

permanent alimony, child support, and attorney's fees, as well as how to effectuate an equal division of marital assets. On August 9, 2016, the court held another hearing, at which Father argued, among other things, that the court's award of indefinite alimony to Mother in the amount of $21,000.00 should apply from the date of the divorce because the parties had an agreement regarding *pendente lite* alimony, which Father satisfied in full. Father also argued, in the alternative, that he should be given credit for the alimony payments he made during the *pendente lite* period. In the end, the court found as follows:

> So I think that I'm not required to give him credit. I think [Father's counsel] makes a reasonable argument that he should be entitled to some credit, and I think that it does give him some credit if the Court does make it retroactive to September 1st of 2015, which is what I shall order.

On August 19, 2016, the circuit court entered a Judgment of Absolute Divorce, in which Father was ordered to pay indefinite alimony retroactively from September 1, 2015.

Additional facts are included as they become relevant to our discussion below.

STANDARD OF REVIEW

Maryland Rule 8-131(c), which governs non-jury cases, provides:

> When 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 regarding to the opportunity of the trial court to judge the credibility of witnesses.

Specifically, Title 11 and 12 of the Family Law Article of the Maryland Code govern alimony and child support awards. *Reynolds v. Reynolds*, 216 Md. App. 205, 218 (2014). When examining alimony or child support awards, "we

review the trial court's factual findings for clear error, while each ultimate award is reviewed for abuse of discretion." *Id*. at 218-19. "A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) (citations omitted). "As long as the trial court's findings of facts are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we may have reached a different result." *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003) (citations omitted). An abuse of discretion occurs when "no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *North v. North,* 102 Md. App. 1, 13 (1994) (internal citations and quotations omitted).

The circuit court's decision that indefinite alimony was appropriate is a finding of fact, and is, therefore, reviewed under the clearly erroneous standard. *Roginsky v. Blake–Roginsky*, 129 Md. App. 132, 143 (1999). The award of alimony, on the other hand, "is left to the sound discretion of the [trial court] upon a consideration of the circumstances in each particular case[.]" *Moore v. Moore*, 218 Md. 218, 222 (1958). Thus, "[w]e review the amount of the alimony itself under an abuse of discretion standard." *Solomon v. Solomon*, 383 Md. 176, 196 (2004) (citation omitted) (emphasis omitted). Similarly, the circuit court's factual findings regarding child support "will not be disturbed unless they are clearly erroneous, and rulings based on those findings must stand unless the court abused its discretion." *Reuter v. Reuter*, 102 Md. App. 212, 221 (1994) (internal citations omitted).

DISCUSION

Retroactive Alimony

Father avers that the circuit court committed legal error and abused its discretion in granting Mother's indefinite alimony award retroactively. Father argues that it was improper for the court to make a ruling on alimony *pendente lite* because the parties had an agreement, which Father believed resolved all issues. He also contends that the court's ruling would require Father to pay for some expenses twice. He maintains, therefore, that this Court should remand to the circuit court all issues related to equitable distribution and a monetary award.

To properly address this issue, it is helpful to clarify the purpose and intent of alimony *pendente lite*. We recognize that, while "alimony and monetary awards are significantly interrelated," alimony *pendente lite* is a separate and distinct matter. *Strauss v. Strauss*, 101 Md. App. 490, 511 (1994). The purpose of alimony *pendente lite* is to maintain the status quo of the parties pending the resolution of the divorce case, and it is based solely on need. *Guarino v. Guarino*, 112 Md. App. 1, 10 (1996). In theory, one spouse can be awarded a certain amount in alimony *pendente lite* and then receive a lesser amount (or no alimony at all) after a merit trial. Similarly, the merits of the parties' trial arguments and evidence do not inform the decision of the circuit court when awarding alimony *pendente lite*.

Father claims that the *pendente lite* agreement that was incorporated into the Consent Order was the product of a "grand bargain, with each party making concessions." No matter how the bargain was, "[a] final divorce decree supersedes a

previous order for alimony *pendente lite*." *Speropulos v. Speropulos*, 97 Md. App. 613, 617 (1993) (citing *Lewis v. Lewis*, 219 Md. 313, 315 (1959)). Moreover, "[t]he court may award alimony for a period beginning from the filing of the pleading that requests alimony." Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 11-106(a)(2). Therefore, the circuit court is not confined by the four corners of the agreement made between the parties on alimony *pendente lite*, nor is the court barred from awarding indefinite alimony retroactively from a date preceding the divorce.

Father asks us to look to *Gordon v. Gordon*, 342 Md. 294 (1996), as evidence of Maryland's strong preference for settlements of family law cases and honoring settlement agreements. Father's reliance on *Gordon* is misplaced because, in that case, the Court of Appeals was faced with a settlement agreement which was incorporated in a judgment for absolute divorce. *Id.* at 296. To the contrary, the *pendente lite* agreement in the present case did not resolve any part of the issues to be considered at the merit trial because, as previously discussed, an award of alimony *pendente lite* is based solely on need and maintaining the status quo during litigation.

To be clear, the award of alimony is left to the discretion of the circuit court, and we will not disturb the decision "unless this Court is thoroughly satisfied that there has been a mistake in respect to the amount awarded." *Guarino*, *supra,* 112 Md. App. at 12 (quoting *Moore, supra*, 218 Md. at 222). Here, the court was well-within its authority to award Mother indefinite alimony retroactively from September 1, 2015, a date well after the date that Mother filed her pleading requesting alimony. Moreover, the court carefully considered the fact that Father had been paying *pendente lite* alimony to Mother

and, based on that fact, decided on a date of September 1, 2015, to give Father "credit" for those payments. Accordingly, we cannot say that the circuit court abused its discretion in awarding Mother retroactive alimony.

Alimony Calculations

Father argues that the circuit court erred in calculating the amount of the alimony award. He advances two specific arguments on this point, both of which we address below.

First, Father agrees that Mother is a candidate for indefinite alimony, but he claims that the circuit court erred when it declined to apply Mother's income when determining the amount of the award. Father avers that the court failed to account for Mother's income of $50,000.00 when it awarded her $252,000.00 per year in alimony, because the award amount would account for 100% of what the circuit court determined Mother would need to live as she was accustomed during the marriage. Father further avers that this failure to tie the amount of alimony to the required threshold of alleviating the disparity in the parties' standard of living amounted to both legal error and an abuse of discretion. Mother responds that the circuit court committed no error, because of the court's finding that there was a $910,000.00 difference in income between the two parties.

Father relies on *Solomon, supra,* 383 Md. at 197, and *Turner v. Turner*, 147 Md. App. 350, 392 (2002), to suggest that the circuit court must use a precise calculation to determine what is needed to alleviate the disparity between the parties' living standards. While it is true that the court must look at the amount needed to determine indefinite

alimony, "unconscionable economic disparity is more than a numerical calculation." *Innerbichler v. Innerbichler*, 132 Md. App. 207, 248 (2000) (citing *Ware v. Ware*, 131 Md. App. 207, 229 (2000)). Consequently, "[t]he determination of unconscionable disparity 'requires the application of equitable considerations on a case-by-case basis, consistent with the trial court's broad discretion in determining an appropriate award.'" *Id*. (quoting *Roginsky*, 129 Md. App. at 146-47). In analyzing the amount of the award, we must remember that "'[t]here is no bright line for determining the propriety of an alimony award[.]'" *Turner*, 147 Md. App. at 387 (quoting *Crabill v. Crabill*, 119 Md. App. 249, 266 (1998)). "[E]ach case depends upon its own circumstances to ensure that equity be accomplished." *Id*. (citations and quotations omitted).

Turning to the case at bar, there was sufficient evidence to support the circuit court's finding that Mother be awarded $252,000.00 in indefinite alimony. In addressing the requisite statutory factors, the court found that Father made $960,000.00 a year and Mother made $50,000.00 a year.[3] The court made these findings after examining the

[3] FL § 11-106(b) provides that the court, when making a determination concerning alimony, shall consider:

> (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
>
> (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
>
> (3) the standard of living that the parties established during their marriage;
>
> (4) the duration of the marriage;

parties' tax records, taking testimony from Father, and hearing testimony from two expert witnesses.

Father suggests that the circuit court made an error in not applying Mother's income. We disagree. There is evidence in the record to demonstrate that the court

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(5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;

(6) the circumstances that contributed to the estrangement of the parties;

(7) the age of each party;

(8) the physical and mental condition of each party;

(9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;

(10) any agreement between the parties;

(11) the financial needs and financial resources of each party, including:

(i) all income and assets, including property that does not produce income;

(ii) any award made under §§ 8-205 and 8-208 of this article;

(iii) the nature and amount of the financial obligations of each party; and

(iv) the right of each party to receive retirement benefits; and

(12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

considered Mother's income when determining the indefinite alimony award. The court stated:

> **Among the factors that I have actually looked at all the factors but specifically making reference to a number of them.** Among them are the abilities of the parties seeking alimony to be wholly or partly self-supporting. In this particular case, there were two experts who testified on that issue. One, Ms. Freeman, who testified that [Mother] was qualified to work as a training specialist and could make $74,000-plus and over a period of five to seven years earn as much as—sorry—earn up to as much as $130,000.
>
> Alternatively, that [Mother] could find a job as a private school teacher and could earn $56,000 per year. In general, I found that her opinions were based on overly optimistic assumptions and although I did that specifically with respect to the training that idea that she could begin at $74,480 and earn up to $130,000 I thought that was wildly optimistic and not supported by the evidence.
>
> On the other hand, the fact that she could go to work as a private school teacher and earn $56,000 I thought was more realistic. But frankly, found the testimony of Mr. Berg, who was called by [Mother] in this case to be more compelling and that indicated [Mother] was currently earning around $30,000 but that she, he acknowledged, could earn $45,000 to $50,000 in an administrative job rather easily. She could get a job teaching at a private school.
>
> He said he thought the starting would be in the 40s and could go up to $61,000. So based on that testimony, I find that the reasonable income for the defendant in this case for the purposes of alimony to be determined would be $50,000 per year.

(Emphasis added).

Moreover, the circuit court determined that the award was appropriate in light of the facts presented at trial. The court found that Mother and Father were married for over twenty-three years and, during that time, Father provided almost all of the financial support for the family while Mother sacrificed her career to raise the children and support Father as he went to Harvard Business School and became successful in his profession. It

is clear from the record that while the court did not expressly state that it imputed Mother's income in determining the alimony award, the court did examine Mother's income when determining the amount. The court also expressly acknowledged several other factors, including the parties' ages, their health, and the cause of the divorce. Nevertheless, a court need not identify every factor prior to making an alimony determination. *Digger v. Digger*, 126 Md. App. 361, 386 (1945) (Although "the court 'need not use familiar language or articulate every reason for its decision with respect to each factor . . . [i]t must clearly indicate that it has considered all factors.'") (Citations omitted).

Although not expressly argued, Father seems to assert that the circuit court could not award indefinite alimony in excess of Mother's financial statement, a position not supported by statute or case law. The husband in *Boemio v. Boemio*, 414 Md. 118 (2010), made this same assertion and the Court of Appeals rejected it then, and we reject it now. The *Boemio* Court found that the "circuit court acted within its discretion in declining to limit its award to the monthly expenses it found [the wife] needed based on her current financial statement." *Id*. at 131. The Court of Appeals noted:

> Additionally, as FL Section 11-106(b) requires, a court must consider, in making its award, the monetary and non-monetary contributions of the parties to the family as well as the standard of living that the parties established during their marriage. Here, the court found that [the wife's] sacrifices during the marriage enabled [the husband] to advance his career and succeed financially. The record reflects that [the wife] reduced her earnings by leaving higher paying jobs in order to have more time to devote to the children. This is a legitimate and important consideration.

Id.

Even if Mother does have more than the sufficient amount to cover her living expenses reflected on the financial statement, in light of Mother's sacrifices for her marriage, family, and Father's career, which culminated in his earning a salary close to one million dollars, we see no evidence of abuse of discretion by the circuit court. The court has "'wide latitude' conferred by the statute upon trial courts in assessing requests for indefinite alimony." *Blaine v. Blaine*, 336 Md. 49, 67 (1994) (citing *Tracey v. Tracey*, 328 Md. 380, 394 (1992)). Moreover, the Court of Appeals has rejected "a mechanical application of the statute that would limit the discretion of the court to fashion an appropriate alimony award." *Id*. at 68. Father is requesting a level of precision that is not required by the law, and one that we may not impose. Based on the facts presented at trial, the method in which the alimony award was calculated was reasonable, and we hold that the award was well within the discretion of the circuit court and does not offend the factors for consideration under FL § 11-106(b).

Father also avers that the circuit court improperly included child related expenses in the alimony award. Father contends that it was an abuse of the court's discretion and legal error to include the cost of the parent coordinator ($576.00 per month) in its calculations of Mother's needs. Father argues that the court should exclude this expense from the calculation in the alimony award because it is an expense for the children's benefit and because the parent coordinator is not a regular expense. We disagree.

Child support is a "parents' obligation to support their minor children." *Goldberg v. Miller*, 371 Md. 591, 603 (2002). "This obligation imposes a duty on the parent to

provide support and confers a right on children to receive it." *Id*. Moreover, what is (and is not) considered "child support" is governed by statute:

> When the General Assembly enacted the child support guidelines, and certain other portions of the child support chapter of the Family Law Article, it decided what specific expenses that are not part of the parents' basic child support obligation nevertheless constitute child support. Those expenses include actual child care expenses incurred due to either parent's employment; extraordinary medical expenses; special or private school expenses; expenses for transportation of the child between the parents homes; expenses related to medical support; and a requirement that a parent include the child in that parent's health insurance coverage. That is the extent of payments that are child support, or are in the nature of child support, under Maryland law.

Corapcioglu v. Roosevelt, 170 Md. App. 572, 591-92 (2006) (internal citations omitted).

The purpose of a parent coordinator, on the other hand, is to assist the parents in communicating about the child. It is more a resource for the parents, rather than a form of support for the children, since the children receive nothing directly from the parent coordinator. Moreover, that expense is a court-ordered expenditure that either party can use as needed. Since it is a resource for the parents, on its face, it is not an abuse of discretion to include such expense in the alimony award for Mother.

Father also suggests that the circuit court should strike this expense because it is not a regular expense for Mother that warrants alimony. This is contrary to the agreed upon Consent Order that states:

> "**The Parent Coordinator shall assist the parties** with developing a detailed and comprehensive parenting plan. This parenting plan shall include, but not limited to, protocols regarding communication between parents, communication between parents and children, and for decision-making and dispute resolution; and reasonably consistent parenting approaches, routines and rules between homes**. The Parent Coordinator shall also work with the parties** on implementation of

> the children's residential schedules in a way that recognizes the voice of the children and their needs and the family traditions regarding travel. The Parent Coordinator shall work with and support the Reunification Therapist and the reunification therapy process, and she shall mediate or attempt to resolve disputes between the parents relating to the children, as provided in Section 2.2, which is incorporated herein. The Parent Coordinator, in her discretion and subject to the terms of the Consent Order on reunification therapy, may coordinate the mental health services for the family by ensuring that the professional are in contact with each other and work together as a team to support the family. The Parent Coordinator may, with her discretion, speak with the children's medical and mental health providers, schools and teachers, other third parties, and each parent's attorney. The Parent Coordinator may, in her discretion, meet with the children as needed, either in or out of the presence of the parties, to solicit their needs and interest. To the extent recommended by the Parent Coordinator and approved by the Reunification Therapist, the timeline and process previously created with Sue Soler for the family moving forward will be facilitated by the parties."

(Emphasis added).

Relying on the facts at trial and the Consent Order, we hold it was within the discretion of the circuit court to include the parent coordinator expense in Mother's alimony award. Father would have us believe that the parent coordinator is a resource that is used only for significant impasses. On the contrary, the parent coordinator's primary role is to work with the parties to resolve conflicts *before* they become significant impasses. We see no error in the court's award because a reasonable finder of fact could determine that this was a service the parties planned to use regularly. The court did not abuse its discretion in including this expense in Mother's indefinite alimony award.

In her cross-appeal, Mother raises a question about the payment schedule, which we review for abuse of discretion. The circuit court established that Father's alimony

arrearage was $108,000.00, commencing from September 1, 2015, through the date that the Judgment for Absolute Divorce was signed on August 18, 2016. Mother asks us to reverse the court's order for Father to pay $15,000.00 toward the arrears every three months until the deficit is satisfied. Mother asserts that the court's ruling amounts to an "interest free loan," which she contends "causes a significant delay in [her] ability to recover the support which she is entitled, and which she very much needs immediately to pay off hundreds of thousands of dollars in debt."

While we may have come to a different arrangement in the payment schedule, we do not find that the circuit court abused its discretion in creating such schedule. The court ordered Father to pay alimony, child support, part of Mother's attorney's fees, and arrears for alimony and child support. It was reasonable for the court to create a schedule for repayment to ensure that Mother and children receive the money they are entitled to without creating a financial hardship for Father. Additionally, it was reasonable for the court to create a payment schedule that Father was required to adhere to, instead of a more ambiguous schedule.

Child Support

Both parties raise questions about the circuit court's ruling on the child support award, which we review for abuse of discretion.

A. Tutors and gym memberships

First, Father avers that the circuit court abused its discretion in rejecting the cost of tutors and gym memberships for the children without also reducing the total amount of the child support award. Again, Father relies on a very strict interpretation of Mother's

financial statement. Mother simply argues that she is "at a loss to understand the legal question" because the court "deviated from the application of the extrapolated Child Support Guidelines which included alimony income and imputed income and would have resulted in a child support award of $11,078.00" for Father.

"Child support orders ordinarily are within the sound discretion of the trial court." *Walker v. Grow*, 170 Md. App. 255, 266 (2006) (citations and quotations omitted). In addition, in high-income cases such as this, where the combined adjusted actual income of the parties exceeds $15,000.00 per month, the court has the discretion to go beyond the amount stated in the Child Support Guidelines. FL § 12-204(d). Here, the court used the parties' financial statements and the testimony at trial to reach its decision to award mother $7,000.00 in child support. That amount was not an arbitrary figure; rather, it was one that the court found to be appropriate after considering all the evidence.

B. Daughter's Private School Tuition

Next, Father asserts, with no legal support, that the circuit court abused its discretion in ordering him to pay private school tuition for both children. Father contends that it was improper for the court to make such an order, because it was not an issue at trial and because the parties had a custody agreement, which was incorporated into the Custody Order, that provided a framework for how the parents would share legal custody and make decisions about the children's education.

In custody cases, "[a] child's best interest is of paramount importance and cannot be altered by the parties to a child support agreement." *Knott v. Knott*, 146 Md. App. 232, 250 (2002). Furthermore, "[a] parent cannot agree to preclude a child's right to

support by the other parent, or the right to have that support modified in appropriate circumstances." *Lieberman v. Lieberman*, 81 Md. App. 575, 588 (1990). Using these guiding principles, we now turn to Father's arguments.

First, Father is incorrect in arguing that the circuit court made its decision to order Father to pay Daughter's private school tuition, should she choose to go to private school, without considering testimony. There was testimony that Son attended a private high school and that Father currently pays for Son's tuition. At the time, Daughter was in a public middle school. Although Father is correct in noting that no testimony was taken regarding Daughter's interest or desire to go to private school, that is not dispositive. The court found, rather, that it was "concerned about the other child [Daughter] being disenfranchised or being treated entirely differently than [her] older brother." Thus, while the cost of daughter's private school tuition was suppositional, it is clear that the court was considering Daughter's best interest when determining that award.

We have addressed the issue of a court ordering payment of private school tuition before and noted that there are a "multitude of different options for income expenditures available to the affluent" and that "children of wealth are entitled to every expense reasonable for a child of . . . affluence." *Smith v. Freeman,* 149 Md. App. 1, 32-33 (2002) (citations and quotations omitted). We also noted that private school is "among the extravagances enjoyed by families of substantial wealth." *Id*. ("Thus, child care that is not work related, private school, summer camp, lessons, luxury vacations, designer clothes and shoes, toys, travel, cultural and recreational activities, and other material privileges are among the extravagances enjoyed by families of substantial wealth.").

Applying that rationale here, in light of the parties' joint income and the fact that one child attended private school, it was reasonable and within the discretion of the court to order that Father pay for Daughter's tuition.

The parties in this case did come to an agreement about certain child custody issues, but it is clear from the record that the circuit court found that agreement to be insufficient to protect the child's interest. It is settled law that "equity courts have 'plenary authority to determine questions concerning the welfare of children.'" *Conover v. Conover*, 450 Md. 51, 82 (2016) (quoting *Stancill v. Stancill*, 286 Md. 530, 534 (1979)). The court "stands as a guardian of all children and may interfere at any time and in any way to protect and advance their welfare and interests." *Id.* (citation omitted).

Here, the custody agreement only created a framework, should the parents disagree, on whether Daughter should attend private school, and we find no clear error in the circuit court's finding that it was in the best interest of the child to alleviate any uncertainty about who shall pay for Daughter's tuition, should she choose to attend private school.[4]

[4] The Custody Agreement Consent Order is primarily silent on Son's and Daughter's schooling. It only states:

> 2.2.1 Boarding School for [Son]. Boarding school for [Son] is an open issue presently. The parties agree to discuss boarding school for [Son] and the cost thereof as soon as possible following the execution of this Agreement.
>
> 2.3 No Financial Obligation Imposed by Legal Custody Tie-Breaking Decision. Wife may not impose a financial obligation on Husband through use of her tie-breaking authority. Thus, Husband shall not be required to pay child-related expenses resulting from a legal custody tie-breaking

Father relies heavily on the child support agreement, which both parties consented to and was later incorporated into the Consent Order, to assert that it was clear error for the circuit court to make a ruling he believe runs afoul of the agreement. Father is mistaken, as that agreement does not take precedent over what the court believes is in the best interest for the child. "The law and policy of this State is that the child's best interest is of paramount importance and cannot be altered by parties." *Shrivastava v. Mates*, 93 Md. App. 320, 327 (1992) (citations omitted). Even if an agreement exists, the court "cannot be handcuffed in the exercise of [its] duty to act in the best interests of a child by any understanding between parents." *Stancill, supra*, 286 Md. at 535. Furthermore, the consent agreement expressly states that a court order, like the one issued by the court, supersedes the agreement made between the parties. Therefore, while we may have made a different ruling, to do otherwise is not an abuse of discretion. Our task is to review the court's ruling for clear error, not our absolute agreement. Finding none, we hold it was not an abuse of discretion for the circuit court to order Father to pay Daughter's private school tuition.

C. Child Support Arrears

Finally, Mother contends that the circuit court erred in setting Father's child support arrears at $1,362.58. Although Mother concedes that this amount was correct as of the hearing on June 9, 2016, Mother notes that the Judgment of Absolute Divorce was not entered until August of 2016. Mother maintains, therefore, that the arrearage amount

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decision by Wife without a joint agreement or order of the court providing for such payments.

was incorrect because the court failed to consider any arrearages that accrued from the time of the hearing to the time that the Judgment of Absolute Divorce was entered.

We disagree. Mother fails to cite, and we could not find, any Maryland case or statute that says that a court, in entering a judgment regarding child support arrears, is required to consider arrearages that accrue between the time that the court takes evidence and the time that the court enters its judgment on that evidence. Accordingly, we cannot say that the court erred.

Attorney's fees

Following trial, the circuit court ordered that Father pay Mother $52,054.00 for attorney's fees that she paid out of her non-marital funds, because of the large disparity in income between the parties.[5] Mother avers that the court abused its discretion in omitting certain expert fees when awarding her attorney's fees.

"The trial judge has discretion to grant or to deny a request for attorney's fees." *Frankel v. Frankel*, 165 Md. App. 553, 589 (2005) (citation omitted). In making that determination, the circuit court must consider: "(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the proceeding." FL § 11-110(c). "An award of attorney's fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (citation omitted).

[5] Father paid $51,933 in Mother's attorney's fees before being ordered to pay $54,054.00 by the circuit court. Mother's brief cites that the case cost $281,025.00 to litigate but there is no evidence in the record to support this contention.

Mother does not contest that the determination regarding attorney's fees is within the circuit court's discretion, nor does she argue that the court's award offends the statue. Relying on no legal authority, Mother avers that this amount was in error and/or an abuse of discretion because she went into debt paying the legal fees associated with the divorce. She also alleges that, while she went into debt, Father '"spent the parties' savings and his income on family expenses, his legal expenses and fees, and a substantial amount in personal entertainment and his girlfriend." Finally, again with no legal support, Mother claims that the court's decision to exclude the expert fees in the attorney's fees award was an abuse of discretion, again because of the debt incurred during litigation.

We find these arguments to be unavailing because they do not demonstrate that the circuit court committed any legal error, nor do they provide enough evidence for us to conclude that the court abused its discretion in awarding attorney's fees. From the record, it is clear that there was a need for Mother to defend the proceeding and that the circuit court considered the financial resources of both parties. The court's ruling relied primarily on the fact that "there's a huge economic disparity" between the parties. Accordingly, we find no evidence that the court's discretion was exercised arbitrarily or that the judgement was clearly wrong. We, therefore, see no error in the court's decision to limit the award of attorney's fees to $52,054.00.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID 1/3 BY APPELLEE/CROSS-APPELLANT AND 2/3 BY APPELLANT/CROSS-APPELLEE.