Circuit Court for Anne Arundel County
Case No. C-02-FM-15-000859

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2464

September Term, 2016

JAMES-ALAIN LAPLANCHE

v.

DENISE GRIMES, *et al.*

Reed,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 14, 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.

Appellee Denise Grimes ("Ms. Grimes") had an affair with Appellant James Laplanche ("Laplanche") while she was married to Keith Grimes ("Mr. Grimes"). She later gave birth to twins. Mr. and Ms. Grimes have provided care for the twins since their birth.

Ms. Grimes instituted a complaint in the Circuit Court for Anne Arundel County seeking to establish Laplanche's paternity of, and financial obligation to provide child support for, the twins. A family law Magistrate recommended that Laplanche should not have to take a paternity test, but the circuit court declined that recommendation and ordered a paternity test. Once the test showed that Laplanche was the father of the twins, the circuit court ordered that the twins continue living with the Grimeses, and required that Laplanche pay a backdated award of child support for the twins in addition to attorneys' fees.

Laplanche presents five questions for our review—three of which relate to the exceptions hearing, and two of which relate to the paternity hearing. In regards to the exceptions hearing, Laplanche argues that the circuit court erred when it: (1) found that Ms. Grimes rebutted the presumption of legitimacy by a preponderance of the evidence; (2) found that it was in the best interest of the twins to order the paternity test; and (3) allowed Mr. Grimes to present additional evidence at the exceptions hearing even though he was not an excepting party. In regards to the paternity hearing, Laplanche argues that the circuit court erred when it: (1) backdated the child support award; and (2) awarded attorneys' fees to Ms. Grimes. We affirm the circuit court.

Mr. Grimes, the husband of Ms. Grimes who was added as a defendant in the complaint for paternity and child support filed against Laplanche, also raises three

allegations of error by the circuit court. Mr. Grimes argues that the circuit court erred when it: (1) failed to reimburse him for the cost of a DNA test between himself and the twins; (2) did not advise him as to whether he would be responsible for child support if he and Ms. Grimes were to divorce; and (3) miscalculated Laplanche's income for child support purposes. As explained below, however, we decline to address his allegations of error.

BACKGROUND

Mr. and Ms. Grimes married in 1995. Mr. Grimes adopted Ms. Grimes's child from a previous relationship. The couple subsequently had three children together.

In January 2014, Mr. and Ms. Grimes began experiencing problems in their marriage. Around the same time, the couple met Laplanche at salsa dancing lessons. In February 2014, Laplanche and Ms. Grimes began an affair. The affair continued for about three months, with Laplanche and Ms. Grimes engaging in sexual intercourse on numerous occasions without using any form of contraception. Because of the couple's marital problems, Mr. Grimes moved out of the house that he shared with Ms. Grimes for two months—from the end of March 2014 until the end of May 2014.

On April 16, 2014, Ms. Grimes discovered that she was pregnant. Subsequent testing showed that she was pregnant with twins. She informed both Laplanche and Mr. Grimes of her pregnancy. Mr. Grimes had previously undergone a vasectomy, so he did not think that the twins could be his. Laplanche and Ms. Grimes continued their sexual relationship for another few months. Laplanche bought prenatal vitamins for Ms. Grimes,

suggested an obstetrician for her to visit, and accompanied her to and paid for some of those visits. Laplanche also visited the Grimes family. Before the twins were born, Laplanche and Ms. Grimes considered placing them for adoption. Laplanche filled out the preliminary adoption paperwork, and noted on the forms that he was the twins' father. Ms. Grimes eventually decided against placing the twins for adoption, and she did not file the paperwork.

The twins were born on December 3, 2014. Mr. and Ms. Grimes have raised the twins since their birth. Laplanche visited the twins in the Grimes's home on three occasions soon after their birth, but he has not seen them since Ms. Grimes filed for a protective order against him. Laplanche never sought custody of, or visitation with, the twins.

On March 9, 2015, Ms. Grimes filed a complaint in the Circuit Court for Anne Arundel County seeking to establish Laplanche's paternity of, and financial obligation to provide child support for, the twins. She subsequently dismissed the complaint voluntarily and without prejudice. Ms. Grimes then filed a "Motion to Reconsider or Reopen Case," which was denied by the circuit court. Ms. Grimes then filed a "Renewed Petition to Establish Paternity and Child Support" against Laplanche on July 10, 2015. The circuit court ordered that Ms. Grimes file an amended complaint that added Mr. Grimes as a defendant along with Laplanche.

After a hearing on the amended complaint, a family law Magistrate submitted a Report and Recommendations finding that Ms. Grimes failed to rebut the presumption of

legitimacy—that children born during a marriage are presumed to be the legitimate children of the mother's husband (here, Mr. Grimes). The Magistrate also recommended that it was not in the best interest of the twins to order a paternity test. Ms. Grimes filed timely exceptions in the circuit court to the Report and Recommendations of the Magistrate. Although Mr. Grimes was not the party that filed exceptions, he filed a "Motion to Consider Evidence at the Exceptions Hearing," which asked the circuit court to consider the results of a DNA test between himself and the twins. The circuit court granted Mr. Grimes's motion.

Following a hearing on the exceptions filed by Ms. Grimes, the circuit court, in a written opinion, declined the Report and Recommendations of the Magistrate. The circuit court found that Ms. Grimes had satisfied her burden of proof to rebut the presumption of legitimacy under "the clear weight of the record," and that it was in the best interest of the twins to order a paternity test. Importantly, the circuit court found:

> [Laplanche] testified that he and [Ms. Grimes] began a relationship in February 2014, that they engaged in unprotected sexual intercourse during that relationship, and that he had no medical issue that would prevent him from fathering a child. [Laplanche] also testified that, after [Ms. Grimes] told him she was pregnant and that she believed he was the father, they continued their sexual relationship, he bought her vitamins, offered [obstetric] advice to her, went to her doctor's appointments, and otherwise assisted [her] with her pregnancy. [Laplanche] testified that he and [Ms. Grimes] discussed placing the children up for adoption, visited an adoption agency, and signed adoption papers identifying him as their father. After the [c]hildren were born, [Laplanche] visited them, and requested visitation at his home. As the Magistrate

> observed, the [c]hildren appear mixed-race. [Mr. and Ms. Grimes] are white; [Laplanche] is black. Finally, a witness testified that [Laplanche] told him that he was the [c]hildren's father.

Based on these findings of fact, the circuit court concluded that Ms. Grimes successfully rebutted the presumption that Mr. Grimes was the father of the twins. The circuit court also found that ordering a paternity test was in the best interests of the twins because: the twins are in a stable home with the Grimeses; ordering the paternity test would not embarrass the twins because the Grimeses already believe that Laplanche is the father, and the twins are young and appear to be of mixed-race; and ordering the test would benefit the twins because if Laplanche was found to be the twins' father he would have to pay towards their support. Thus, the circuit court ordered Laplanche to take a paternity test.

The results of the paternity test established that Laplanche was the father of the twins. Therefore, following a paternity hearing, the circuit court entered an order finding that Laplanche was the father. The circuit court then entered an amended order giving Ms. Grimes sole legal and physical custody over the twins (Laplanche waived his right to custody and visitation), requiring Laplanche to pay child support for the twins backdated to the filing date of the original complaint for support—March 9, 2015—and awarding $14,742 in attorneys' fees to Ms. Grimes. Laplanche noted a timely appeal to this Court.

ANALYSIS[1]

Laplanche and Mr. Grimes both raise a number of questions for our review.

I. Laplanche's allegations of error

Laplanche argues that the circuit court erred in its consideration of issues related to the exceptions hearing and also in its consideration of issues related to the paternity hearing.

Laplanche frames each of his arguments under multiple and various standards of review. We will, therefore, address each of Laplanche's arguments under the appropriate standard. Generally, we "will not set aside the judgment of the [circuit court] on the evidence unless clearly erroneous." Md. Rule 8-131(c). Under this standard, "[i]f any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous." *Webb v. Nowak*, 433 Md. 666, 678 (2013) (citations omitted). Questions of law, however, are reviewed *de novo*. *Clickner v. Magothy River Ass'n, Inc.*, 424 Md. 253, 266 (2012) (citation omitted). "[W]hen the appellate court

[1] Ms. Grimes, in her brief, moved to dismiss a portion of Laplanche's appeal because he failed to file an appeal within 30 days after the circuit court ordered him to take a paternity test. Ms. Grimes does not cite to any authority for the proposition that a party must appeal an order to take a paternity test, in the context of a larger case for paternity and child support, within 30 days of that order. Moreover, we think Ms. Grimes is incorrect. A party can only appeal from a final judgment. Md. Code Ann., Cts. & Jud. Proc. § 12-301 ("[A] party may appeal from a final judgment entered in a civil … case by a circuit court."). An order to *take* a paternity test is not a final judgment. Therefore, Laplanche could not have had to file an appeal within 30 days after the circuit court ordered him to take a paternity test.

views the ultimate conclusion of the [circuit court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [circuit court's] decision should be disturbed only if there has been a clear abuse of discretion." *In re: Yve S.*, 373 Md. 551, 586 (2003) (citations omitted).

For the reasons explained below, we affirm the circuit court.

A. Exceptions hearing

Laplanche presents three questions for our review regarding the exceptions hearing. According to Laplanche, the circuit court erred when it: (1) found that Ms. Grimes rebutted the presumption of legitimacy by a preponderance of the evidence; (2) found that it was in the best interest of the twins to order the paternity test; and (3) allowed Mr. Grimes to present additional evidence at the exceptions hearing even though he was not an excepting party.

If a child is born or conceived while a couple is married, then the circuit court must complete two steps before it can order a paternity test. The circuit court must first find that the party that requested the paternity test (either parent, or a third party) has successfully rebutted the presumption of legitimacy—that a child born or conceived during the marriage is presumed to be the legitimate child of the mother's husband—by a preponderance of the evidence. Md. Code Ann., Fam. Law ("FL") § 5-1027(a), (c)(1) ("At the trial, the burden is on the complainant to establish by a preponderance of the evidence that the alleged father is the father of the child. … There is a rebuttable presumption that the child is the legitimate

child of the man to whom its mother was married at the time of conception."); *see also* Md. Code Ann., Est. & Trusts ("ET") § 1-206(a) ("A child born or conceived during a marriage is presumed to be the legitimate child of both spouses."). Then, the circuit court must find that ordering the paternity test is in the best interest of the child. *Kamp v. Dep't of Human Services*, 410 Md. 645, 672 (2009). Only after the circuit court makes these two findings can it order a paternity test.

i. Rebutting the presumption of legitimacy by a preponderance of the evidence

Before the circuit court can order a paternity test, it must find that the presumption of legitimacy contained in Section 5-1027(c)(1) of the Family Law ("FL") Article and Section 1-206(a) of the Estates and Trusts ("ET") Article has been rebutted by a preponderance of the evidence. FL § 5-1027(a), (c)(1); ET § 1-206(a). Rule 5-301(a) discusses how a presumption operates in civil cases:

> [I]n all civil actions a presumption imposes on the party against whom it is directed the burden of producing evidence to rebut the presumption. If that party introduces evidence tending to disprove the presumed fact, the presumption will retain the effect of creating a question to be decided by the trier of fact … .

Md. Rule 5-301(a). Thus, in regards to legitimacy, there is a rebuttable presumption that the child is the legitimate child of the man to whom the child's mother was married at the time of conception. If one party introduces evidence to rebut that presumption, then the circuit court must decide whether the evidence is, in fact, sufficient to rebut the presumption.

The circuit court, in its memorandum opinion, described the factual findings that it considered to reach the conclusion that Ms. Grimes had successfully rebutted the presumption of legitimacy. According to the circuit court:

> [Laplanche] testified that he and [Ms. Grimes] began a relationship in February 2014, that they engaged in unprotected sexual intercourse during that relationship, and that he had no medical issue that would prevent him from fathering a child. [Laplanche] also testified that, after [Ms. Grimes] told him she was pregnant and that she believed he was the father, they continued their sexual relationship, he bought her vitamins, offered [obstetric] advice to her, went to her doctor[s'] appointments, and otherwise assisted [her] with her pregnancy. [Laplanche] testified that he and [Ms. Grimes] discussed placing the children up for adoption, visited an adoption agency, and signed adoption papers identifying him as their father. After the [c]hildren were born, [Laplanche] visited them, and requested visitation at his home. As the Magistrate observed, the [c]hildren appear mixed-race. [Mr. and Ms. Grimes] are white; [Laplanche] is black. Finally, a witness testified that [Laplanche] told him that he was the [c]hildren's father.

Based on these findings of fact, the circuit court concluded that Ms. Grimes had rebutted the presumption that Mr. Grimes was the father of the twins.

Laplanche points to five reasons to support his argument that Ms. Grimes did not successfully rebut the presumption of legitimacy by a preponderance of the evidence.

First, Laplanche argues that the circuit court abused its discretion[2] when it relied solely on the complexion of the twins—the Grimeses are both white, Laplanche is black,

[2] Regarding the standard of review, Laplanche argues that the circuit court reached its decision by relying on one factor above all others. This contention is reviewed under the abuse of discretion standard. *See In re: Yve S.*, 373 Md. at 586 ("[W]hen the appellate

and the twins appear to be of mixed-race—to rebut the presumption of legitimacy without requiring any expert testimony as to the genetic background of any of the parties. But Laplanche's characterization of the circuit court's reasoning is not accurate. As reproduced above, the circuit court listed many other factors, in addition to the Magistrate's observation that the twins appeared to be of mixed-race, on which it based its determination that Ms. Grimes successfully rebutted the presumption of legitimacy. And as the circuit court noted, a significant number of these factors were brought to light through Laplanche's own testimony. Therefore, we cannot say that listing the Magistrate's observation of the twins' skin color as one of many factors that rebutted the presumption of legitimacy was an abuse of discretion on the part of the circuit court.[3]

Second, Laplanche argues that the circuit court erred as a matter of law[4] when it determined that the presumption was rebutted when there was no expert testimony to

court views the ultimate conclusion of the [circuit court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [circuit court's] decision should be disturbed only if there has been a clear abuse of discretion.") (citations omitted).

[3] We do, however, caution trial judges about using the appearance of skin color to determine questions related to paternity. Mixed-race relationships and mixed-race children are commonplace. The rainbow of human colors includes many variations that reflect complex genetic information that would be best explored, if at all, through expert testimony.

[4] We view the contention of whether expert testimony was required to establish the time of conception and whether third-party testimony was required to establish non-access as a question of law. Questions of law are reviewed *de novo*. *Clickner*, 424 Md. at 266 (citation omitted).

establish the time of conception, and no third-party testimony to establish Mr. Grimes's non-access to the home during the period when Ms. Grimes conceived. Although Laplanche is correct that there was no expert testimony presented to the circuit court to calculate the date that Ms. Grimes conceived, we can piece together enough information about when the twins were conceived from the evidence in the record. We know that Ms. Grimes discovered that she was pregnant on April 16, 2014. We also know that the twins were born on December 3, 2014. Therefore, the twins had to have been conceived sometime between February (a full 40 weeks before December) and April 2014 (when Ms. Grimes took the pregnancy test). Laplanche testified that he began a sexual relationship with Ms. Grimes in February, without using any form of contraception, and that it lasted for about 3 months. That means that according to Laplanche's own testimony, the twins were conceived during the time that Laplanche and Ms. Grimes were engaged in their unprotected sexual relationship. And, importantly, Mr. Grimes had undergone a vasectomy prior to the time that the twins could have been conceived—making any further evidence about Mr. Grimes's non-access to the home cumulative and unnecessary. Thus, even without expert testimony, it is clear that Laplanche could have fathered the twins, while Mr. Grimes could not have done so, whether or not he had access to the home. Therefore, the circuit court did not err as a matter of law when it found that Ms. Grimes successfully

rebutted the presumption of legitimacy without expert testimony regarding the time of conception and without third-party testimony about non-access.[5]

Third, Laplanche argues that the circuit court's factual finding that "a witness testified that [Laplanche] told him that he was the [c]hildren's father" was clearly erroneous because the record does not include any such testimony.[6] Laplanche is correct—the witness only testified that Laplanche told him that Laplanche *may* be the father, but not that Laplanche actually was the father. Therefore, the circuit court erred when it found that the witness testified that Laplanche said he was the father of the twins. This error, however, is subject to the harmless error analysis. *In re: Yve S.*, 373 Md. at 616-17 ("[I]t has long been

[5] Laplanche's argument regarding third-party testimony of non-access is incorrect for another reason. Laplanche bases his argument—that Ms. Grimes was required to prove through third-party testimony that Mr. Grimes did not have access to the marital home during the period that she could have conceived the twins, and that she failed to do so—on Section 5-1027(c)(2) of the Family Law Article. The statute provides:

> The presumption set forth in this subsection *may* be rebutted by the testimony of a person other than the mother or her husband.

FL § 5-1027(c)(2) (emphasis added). Laplanche urges us to read the statute to mean that third-party testimony regarding non-access is *required* to rebut the presumption. Laplanche, however, does not read the statute correctly. The statute does not require that third-party testimony establish non-access of the husband. It merely *allows* third-party testimony, along with all other forms of evidence, to rebut the presumption. Therefore, Laplanche's argument that third-party testimony of non-access is required has no basis.

[6] This argument, that the circuit court erred when it found that the witness testified that Laplanche said he was the father of the twins, challenges the circuit court's findings of fact. It is, therefore, reviewed under the clearly erroneous standard. *Webb*, 433 Md. at 678 ("If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous.") (citations omitted).

settled policy of this court not to reverse for harmless error. … [T]his Court will not reverse for an error below unless the error was both manifestly wrong and substantially injurious. … [The harmless error analysis] require[s] the resolution of whether the error significantly affected the interests of the complaining party.") (citations omitted). Under a harmless error analysis, we cannot say that the circuit court's inclusion of the witness's supposed testimony "significantly affected" Laplanche. *See id.* at 617.

As outlined above, the circuit court provided a multitude of other reasons as to why it found that Ms. Grimes successfully rebutted the presumption of legitimacy. The evidence of the witness's testimony was the last of a list of evidence which, the circuit court found, overcame the presumption of legitimacy. The circuit court did not indicate that it considered this evidence more important than any of the other factors. We think that the testimony was a minor piece of evidence among several that led the circuit court to determine that the "clear weight of the record … demonstrates that [Ms. Grimes] satisfied her burden of proof." Therefore, we hold that the circuit court's inclusion of this witness testimony factor, while error, was harmless.

Fourth, Laplanche argues that the unfiled adoption paperwork does not qualify as an affidavit of parenthood under Section 5-1028 of the Family Law Article,[7] and therefore

[7] Section 5-1028(d)(1) of the Family Law Article provides that "[a]n executed affidavit of parentage constitutes a legal finding of paternity." FL § 5-1028(d)(1).

is insufficient to rebut the presumption of legitimacy.[8] Laplanche once again misses the mark. The circuit court did not find that the unsigned adoption papers rose to the level of an affidavit of parenthood. The circuit court merely found that Laplanche's conduct in pursuing the placement of the twins for adoption and in acknowledging that he was the father of the twins in the paperwork, was another factor that militated towards rebutting the presumption of legitimacy. We do not see any error in this finding.

Fifth, Laplanche argues that the trial court did not make an explicit finding that the Ms. Grimes rebutted the presumption of legitimacy by a preponderance of the evidence, thereby abusing its discretion when it ordered the paternity test.[9] But the circuit court did do so. To reiterate, the circuit court, in its memorandum opinion, described the factual findings that it considered to reach the conclusion that Ms. Grimes had successfully rebutted the presumption of legitimacy by a preponderance of the evidence. *See supra* Part I.A.i. at *9. Because of these factual findings, the circuit court stated that "the clear weight of the record … demonstrates that [Ms. Grimes] satisfied her burden of proof." It is clear to us, therefore, that the circuit court explicitly found that Ms. Grimes successfully rebutted

[8] We view Laplanche's argument as one that the circuit court erred as a matter of law by incorrectly comprehending the legal significance of the unfiled adoption paperwork. Questions of law are reviewed *de novo*. *Clickner*, 424 Md. at 266 (citation omitted).

[9] This contention regarding the circuit court's ultimate conclusion that Ms. Grimes rebutted the presumption of legitimacy by a preponderance of the evidence is reviewed under an abuse of discretion standard. *See In re: Yve S.*, 373 Md. at 586.

the presumption of legitimacy by a preponderance of the evidence; therefore, it did not abuse its discretion when it ordered the paternity test.

ii. Best interest of the twins

Laplanche also contends that the circuit court abused its discretion in the second step of the paternity test standard when it found that it was in the best interest of the twins to order the test. Laplanche directs us to the *Kamp* "best interest" factors to support his argument that he should not have to pay child support for the twins. *See Kamp*, 410 Md. at 661. According to Laplanche's reading of the factors, because Ms. Grimes is married, because he has had no contact with the twins, and because the Grimeses provide a stable home for the twins, it was not in the best interests of the twins to order the paternity test. We disagree with Laplanche's mechanistic reading of the *Kamp* factors.

Kamp provides a list of non-exhaustive criteria to determine whether it is in the best interests of the child to order a paternity test. *Id.* The *Kamp* Court considered:

> the stability of the child's current home environment, whether there is an ongoing family unit, and the child's physical, mental, and emotional needs. An important consideration is the child's past relationship with the putative father. Finally, other factors might even include the child's ability to ascertain genetic information for the purpose of medical treatment and genealogical history.

Id. (citations omitted). The central theme of the *Kamp* factors is "the court's paramount concern of protecting the child's best interests." *Id.* The circuit court's consideration of the *Kamp* "best interest" factors are reviewed for an abuse of discretion. *Id.* at 662.

Laplanche misunderstands the significance of the *Kamp* "best interest" factors. Laplanche urges that each factor is to be read mechanistically as a conditional sentence—for example, *if* the child's current home environment is stable, *then* the circuit court may not order a paternity test; *if* the putative father does not have past relationship with the child, *then* the circuit court may not order a paternity test. This is not correct. Rather, the proper reading of the *Kamp* factors is that the stability of the child's current home environment and the putative father's past relationship with the child, for example, are important elements for the circuit court to consider, under the facts presented in each individual case, in its "paramount concern of protecting the child's best interests." *Kamp*, 410 Md. at 661.

Here, as explained above, the most important thing for the circuit court to consider is the holistic determination of the best interest of the twins. The circuit court did just that. Mr. and Ms. Grimes have raised the twins since their birth and the twins are an important part of the Grimes family. Laplanche, on the other hand, has made it clear that he does not want custody of, or even visitation with, the twins. It is abundantly clear, therefore, as the circuit court determined, that the best interest of the twins is for them to remain in the care of the Grimeses, and to have Laplanche pay towards their support.

An examination of the *Kamp* "best interest" factors does not disturb this conclusion. The circuit court considered the "stability" factor and determined that the fact that Mr. and Ms. Grimes have provided care for the twins since their birth meant that the twins should

remain in their care. Laplanche, however, cannot claim a benefit from the Grimeses care for the twins by preventing the circuit court from ordering a paternity test. The circuit court considered the "mental and emotional needs" factor and found that because the Grimeses already believe that Laplanche is the father, and because the twins are young, then ordering a paternity test to verify the identity of the twins' father would do no further harm to the mental and emotional need of the twins. The circuit court considered the "relationship" factor and concluded that Laplanche cannot prevent the circuit court from ordering a paternity test by citing the fact that he has pursued no relationship with the twins. And, finally, the circuit court considered the "genetic information" factor—"the child's ability to ascertain genetic information for the purpose of medical treatment and genealogical history"—and decided that it also militates in favor of ordering the paternity test. The fact that this is an unusual case—a married couple (the Grimeses) who were raising twins as part of their stable family, suing a third-party (Laplanche), with whom the wife had had an affair, for child support for the twins that the couple acknowledged were a product of the affair—does not affect our view of the outcome of the *Kamp* "best interest" factors.[10]

[10] The *Kamp* "best interest" factors to order a paternity test have been applied to a number of variant factual patterns. The factors have been applied when two men, who could each be the father of the child, were vying for paternity of the child. *Evans v. Wilson*, 382 Md. 614, 629 (2004); *Turner v. Whisted*, 327 Md. 106, 116 (1992). The factors have also been applied when "the man who [was] the presumed father of the child" and who "had acknowledged the child as his own … during the marriage, [and] for … years after the parties divorced … [sought] to rebut the presumption that he [was] the father and, thereby … renounce[d] … his acknowledgment of paternity." *Kamp*, 410 Md. at 665. This case is different—a married couple acknowledged that the children were fathered by the

Because a holistic analysis of the best interest of the twins favored ordering Laplanche to take a paternity test, the circuit court did not abuse its discretion when it ordered the test.

iii. Mr. Grimes as a non-excepting party

Laplanche's final contention regarding the exceptions hearing is that the circuit court erred as a matter of law when it permitted Mr. Grimes to present additional evidence at the exceptions hearing even though he was not an excepting party. That evidence took the form of the results of a DNA test between Mr. Grimes and the twins. While we agree with Laplanche that the circuit court erred in allowing Mr. Grimes to enter this evidence, we hold that the error was harmless.

Maryland Rules 2-541(h) and 9-208(l)(1) govern whether additional evidence can be presented at the exceptions hearing. Both Rules use the exact same language and state:

> The exceptions shall be decided on the evidence presented to the magistrate unless: (1) the *excepting party* sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the magistrate, and (2) the court determines that the additional evidence should be considered.

Md. Rule 2-541(h) (stating the rules regarding exceptions hearings in general matters); 9-208(l)(1) (stating the rules regarding exceptions hearings in family law matters)

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third-party paramour and then sued the third-party paramour for child support when he denied paternity. But, as explained above, the "best interest" factors inform our decision under these facts as well.

(emphasis added). Thus, according to the plain language of the Rules, only the excepting party can provide additional evidence to be presented at the exceptions hearing.

Here, Mr. Grimes was not an excepting party and, therefore, could not enter additional evidence. The Magistrate recommended that *Ms. Grimes* failed to successfully rebut the presumption of legitimacy, and that *Ms. Grimes* failed to prove that it was in the best interest of the children to order the paternity test. Only Ms. Grimes excepted to the Magistrate's recommendations. Because only Ms. Grimes was the excepting party, and not Mr. Grimes, only she could be permitted to enter additional evidence under the Rules.[11]

This error, however, is also subject to the harmless error analysis. *In re: Yves S.*, 373 Md. at 616-17. The circuit court, in its written opinion, did not mention the evidence that

[11] Although we recognize that the circuit court assigned the party designations in a peculiar, and possibly incorrect, manner, Mr. Grimes, as a non-excepting party, should still have not been permitted to enter evidence at the exceptions hearing. Mr. Grimes's interests aligned with the interests of Ms. Grimes—the Grimeses both wanted to keep the twins, but have Laplanche pay child support. The circuit court, however, had required Ms. Grimes to amend her complaint for child support against Laplanche to add Mr. Grimes as a *defendant* in the case. The circuit court erroneously assumed that, as often happens, Mr. Grimes would contest Ms. Grimes's claim that Laplanche was the father of the twins. In reality, Mr. and Ms. Grimes agreed throughout this lawsuit that Laplanche was the father. Thus, we think that the circuit court should have either not added Mr. Grimes to the lawsuit at all, or it should have added him as a co-plaintiff together with Ms. Grimes. When the Magistrate ruled that Ms. Grimes had not rebutted the presumption of legitimacy and that it was not in the best interests of the twins for Laplanche to take a paternity test, only Ms. Grimes, as the plaintiff and losing party, filed exceptions to the Report and Recommendations of the Magistrate. Mr. Grimes, as a defendant and technically a prevailing party, did not file exceptions. Because Mr. Grimes did not file exceptions to the Magistrate's findings, the Rules prevent him from presenting additional evidence at the exceptions hearing.

it allowed Mr. Grimes to present at the exception hearing—the results of a DNA test between himself and the twins—as a factor that persuaded it to find that Ms. Grimes had rebutted the presumption of legitimacy. The circuit court never even seemed to consider the evidence added by Mr. Grimes. And, even if the circuit court had considered the evidence, it was cumulative to the other evidence already presented that indicated that Mr. Grimes was not the father—most notably the fact that he had undergone a vasectomy prior to the time period that Ms. Grimes conceived. Under a harmless error analysis, we cannot say that the circuit court's inclusion of Mr. Grimes's additional evidence at the exceptions hearing "significantly affected" Laplanche. *See id.* at 617. Thus, although the circuit court erred when it permitted Mr. Grimes to present evidence at the exceptions hearing, its error was harmless and is not grounds for reversal.

B. Paternity hearing

Laplanche also presents two questions for our review regarding the paternity hearing. According to Laplanche, the circuit court erred when it: (1) backdated the child support award; and (2) awarded attorneys' fees to Ms. Grimes.

i. Backdating the child support award

After the circuit court found that Laplanche was the father of the twins, it retroactively awarded Ms. Grimes child support from Laplanche beginning on March 9, 2015—the day that she filed her original complaint. The circuit court stated:

> The Court believes that the statutory presumption [is] that support awards should … be retroactive to the date in which

> the request was made within the meaning of that statute. [The Court] believe[s] that the award in this case should begin on March … 9th, 2015. That is to say that absent some circumstance … [that such an award would not be] in the best interest of the child … the Court … should award child support back to the date of the pleading in which it was originally requested. Here that would be the original pleading, notwithstanding the fact that [Ms. Grimes] subsequently withdrew her request, the circumstances of which the Court does not find relevant. The clear statutory interpretation would be … [that the award should be] back to the filing in which the request was originally made.

Thus, the circuit court found that even though Ms. Grimes voluntarily dismissed her original complaint for child support that she filed on March 9, 2015, the child support award should retroactively begin from that date.

Laplanche contends that the circuit court committed legal error when it backdated its award because Ms. Grimes voluntarily dismissed the complaint that she filed on March 9, 2015. Laplanche argues that the dismissal and later amendment of the original pleading created a new and distinct pleading, which superseded the original dismissed pleading and prevented the circuit court from using the original pleading's filing date as a basis for a retroactive support award.

Therefore, Laplanche argues that the child support award should only have begun from July 10, 2015—the date that Ms. Grimes filed her "Renewed Petition to Establish Paternity and Child Support." We disagree.

Section 12-101(a) of the Family Law Article provides the circuit court with the authority to retroactively award child support:

> (a)(1) Unless the court finds from the evidence that the amount of the award will produce an inequitable result, for an initial pleading that requests child support pendente lite, the court shall award child support for a period from the filing of the pleading that requests child support.
>
> * * *
>
> (3) For any other pleading that requests child support, the court may award child support for a period from the filing of the pleading that requests child support.

FL § 12-101(a)(1), (3). Thus, when the child support request is of the pendente lite variety, the circuit court must award the child support retroactively from the date of the pleading that requests the support, as long as the award does not produce an inequitable result. For any other form of child support request, the circuit court may use its discretion to award the support retroactively from the date of the pleading that requests the support.

We are persuaded that the policy consideration behind the legislature's grant of power to the circuit court to award child support retroactively from the date of the pleading that requests the support—the best interests of the child—supports the conclusion that the circuit court can award the support retroactively to the date of an original pleading that was voluntarily dismissed and later re-filed. Because of the nature of the judicial process, there can be a significant delay between the filing of the initial complaint for child support and the receipt of the first child support payment. Without a provision that authorizes an award of retroactive child support, the child can lose out on valuable support from one parent during this time period. Thus, the legislature empowered the circuit court to award child support retroactively from the date of the pleading that requests the support to protect the

best interests of the child. It would not make much sense for a technical problem in the original pleading, which causes a party to dismiss the pleading voluntarily before later re-filing it, to prevent the circuit court from retroactively awarding child support from the date of that original pleading. The child would ultimately lose out because of this technicality. Therefore, we conclude that the circuit court can award the support retroactively to the date of an original pleading that was voluntarily dismissed and later re-filed.

The history of FL § 12-101(a) supports this conclusion. The provision allowing a retroactive award of child support was first enacted in 1984. Acts of 1984, ch. 204. In 1993, the legislature amended the statute to make mandatory a retroactive award of pendente lite child support, while still allowing the circuit court to use its discretion to award child support retroactively in a non-pendente lite context. Acts of 1993, ch. 366. The Floor Report from the Senate Judicial Proceedings Committee regarding House Bill 1207, which later became the 1993 amendments to FL § 12-101(a), explains the reasoning behind the amendments:

> In some counties, it can take 3 to 4 months to get a pendente lite hearing before the domestic relations master. If exceptions to the master's report are filed, it can take another 60 days for a ruling on the exceptions and the entry of an order for child support. Accordingly, there can be a 4 to 6 month delay between the time child support is first requested and the time it is finally awarded. This delay can result in a financial emergency for the custodial parent if the noncustodial parent is not making voluntary payments. … It is expected that if child support awards are made mandatorily retroactive, more

> noncustodial parents will voluntarily contribute towards the support of their minor children following [the] separation of the parties.

Floor Report, Senate Judicial Proceedings Committee, H.B. 1207 (1993). Thus, the intent of the legislature in proposing and passing the 1993 amendments was to fashion a child support award that was truly in the best interests of the child. The legislature felt that if it empowered the circuit court to award retroactive child support from the date of the original pleading that requests the award—in some cases the retroactive award is mandatory and in some cases it is in the circuit court's discretion—children, in general, would receive more support. Allowing procedural delays and pleading technicalities to prevent the circuit court from awarding retroactive child support does not further the intent of the legislature.

Here, we see no legal error in the circuit court's discretionary ruling to backdate the child support award to the date of the filing of the original pleading for child support, and we reject Laplanche's claim that the circuit court erred in this regard. On March 9, 2015, Ms. Grimes filed a complaint for child support against Laplanche. Subsequently, the parties voluntarily dismissed the complaint without prejudice. Ms. Grimes filed a "Motion to Reconsider or Reopen Case," which was denied by the circuit court. Ms. Grimes then filed a "Renewed Petition to Establish Paternity and Child Support" against Laplanche on July 10, 2015. The circuit court, after finding that Laplanche was the father of the twins, ordered Laplanche to pay child support for the twins retroactive to the filing date of the original complaint for support. Because we hold that the circuit court can award the support

retroactively to the date of an original pleading that was voluntarily dismissed and later re-filed, we hold that the circuit court did not legally err in so doing.

ii. Attorneys' fees

Laplanche's final argument is that the circuit court abused its discretion when it awarded attorneys' fees to Ms. Grimes based only on the complexion of the twins. Once again, Laplanche's argument does not have merit.

Section 12-103 of the Family Law Article allows the circuit court to award attorneys' fees in child support cases. We reproduce the statute in full:

> (a) The court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person:
>
> (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or
>
> (2) files any form of proceeding:
>
> (i) to recover arrearages of child support;
>
> (ii) to enforce a decree of child support; or
>
> (iii) to enforce a decree of custody or visitation.
>
> (b) Before a court may award costs and counsel fees under this section, the court shall consider:
>
> (1) the financial status of each party;
>
> (2) the needs of each party; and

> (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.
>
> (c) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees.

FL § 12-103. Thus, the circuit court can award attorneys' fees to a party in a child support case after the circuit court considers the financial status and needs of each party, and after it finds that there was no substantial justification for the other party to prosecute or defend the proceeding. "Decisions concerning the award of counsel fees rest solely in the discretion of the trial judge." *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (citation omitted).

We hold that the circuit court did not abuse its discretion when it determined that Laplanche did not have substantial justification for defending Ms. Grimes' claim that he was the father of the twins. A party lacks substantial justification for defending a proceeding when it lacks "a reasonable basis for believing that a case will generate a factual issue for the fact-finder at trial." *Intel Assoc. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991) (citation omitted). Here, the circuit court found "that there was every indication and likelihood from day one that [Laplanche] was and would be proven to be the father of the twins … ." Laplanche reads this statement from the circuit court to mean that the circuit court premised its award of attorneys' fees only on the twins' complexion. We, however, understand the circuit court to be referring to its findings of fact outlined above, which the circuit court found had easily rebutted the presumption of legitimacy. *See supra* Part I.A.i.

at *9. Taking into account all of the facts found by the circuit court that indicated that Laplanche was the twins' father, we cannot say that there was "a reasonable basis for believing that [the] case [would] generate a factual issue for the fact-finder at trial." *See Intel Assoc.*, 324 Md. at 268. In fact, Laplanche acknowledged that it was possible that he was the father of the twins. Therefore, the circuit court did not abuse its discretion, based on its findings of fact, when it awarded attorneys' fees to Ms. Grimes based on Laplanche's lack of substantial justification for defending the paternity proceeding.

II. Mr. Grimes's allegations of error

Mr. Grimes submitted a *pro se* brief to this Court as an appellee. In his brief, Mr. Grimes argues against Laplanche's positions, but also presents three questions of his own. Mr. Grimes argues that the circuit court erred when it: (1) failed to reimburse him for the cost of a DNA test between himself and the twins; (2) did not advise him as to whether he would be responsible for child support if he and Ms. Grimes were to divorce; and (3) calculated Laplanche's income for child support purposes.

We first note the problems with Mr. Grimes's status as a party to this appeal. Although Mr. Grimes's interests aligned with the interests of Ms. Grimes—the Grimeses both wanted to keep the twins, but have Laplanche pay child support—the circuit court had Ms. Grimes amend her complaint for child support against Laplanche to add Mr. Grimes

as a defendant in the case.[12] Because the circuit court ruled for the plaintiff, Ms. Grimes, below, Mr. Grimes was required to file a notice of appeal to participate in this appeal. He did not do so. Second, even if we consider Mr. Grimes to be a plaintiff below (either because he had the same interests as Ms. Grimes, or because the circuit court erred in its designation of the parties), then he would have been required to cross-appeal if he wanted to present these questions that were not submitted by Laplanche on appeal. *Maxwell v. Ingerman*, 107 Md. App. 677, 681 (1996) ("[I]f a timely cross-appeal is not filed, we will ordinarily review only those issues properly raised by the appellant."). He did not do so. Thus, Mr. Grimes's lack of status as a party to this appeal prevents us from examining his three questions presented.

There is another problem that prevents us from reaching the merits of the additional questions presented by Mr. Grimes. Maryland Rule 8-504(a) governs the content of an appellate brief, and provides:

> **(a) Contents.** A brief shall … include … :
>
> * * *
>
> (6) Argument in support of the party's position on each issue.
>
> * * *

[12] As mentioned above, *supra* n.11, we think that the circuit court incorrectly added Mr. Grimes as a defendant to the case.

Md. Rule 8-502(a)(5)-(6). According to the Rule, an appellate brief must include argument in support of the party's position for each question presented. Compliance with the Rule is mandatory, and non-compliance prevents us from reaching the questions presented. *Id.* at (c) ("For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case … ."); *Donati v. State*, 215 Md. App. 686, 743-44 (2014) ("Because appellant has not presented sufficient legal … argument for this Court to address this claim, we decline to consider it."). Here, Mr. Grimes presented three additional questions for our review, but did not include any legal argument at all to support his claims of error. Worse still, he does not discuss these three allegations of error any further than merely mentioning the questions presented. Because of the omission of legal arguments to support his positions, we decline to reach the merits of the three questions presented by Mr. Grimes.

CONCLUSION

In sum, because we hold that the circuit court did not err in its rulings regarding the exceptions hearing and the paternity hearing, we affirm the circuit court on the questions presented by Laplanche. Additionally, because of the problems with Mr. Grimes's status as a party on appeal and the content of his brief, we decline to reach the merits of Mr. Grimes's appeal.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.