Circuit Court for Baltimore City
Case No. 24-D-14-003641

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2716

September Term, 2016

MICAH D. CANE

v.

CARMEN D. CANE

Eyler, Deborah S.,
Graeff,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: November 2, 2017

On December 31, 2014, Carmen Cane, appellee, filed a Complaint for Absolute Divorce in the Circuit Court for Baltimore City against her then husband, Micah Cane, appellant. On March 22, 2016, Mr. Cane filed his own Complaint for Absolute Divorce. On November 2, 2016, the circuit court issued a Judgment of Absolute Divorce, granting Ms. Cane an absolute divorce and resolving other disputes, including child support and division of marital property.

On appeal, appellant presents several questions[1] for this Court's review, which we have reordered and consolidated, as follows:

1. Did the circuit court err or abuse its discretion in calculating the child support award and arrears?

[1] Appellant's original questions are as follows:

1. Did the [c]ircuit [c]ourt's final ORDER err or act arbitrarily in the calculation the Child support award?

2. Did the trial court act arbitrarily, or clearly wrong in allowing the Appellee income from her jewelry sales to not be included in her income calculations?

3. Does the [c]ircuit [c]ourts final Order err in calculating arrears?

4. Did the Trial courts Order err in transferring marital property (2010 Nissan Altima) to [Ms. Cane] without considering other remaining marital property open to litigation (2008 Nissan Titan)?

5. [Did the] trial court err when presented with dissipated marital property issues and in the Judgment of Absolute Divorce title them as "extant" and making no determination. When marital property was sold, destroyed by fire and stolen by [Ms. Cane] once the marriage had broken down for her own benefit and to deprive the [Mr. Cane] of the benefit of the property or value of the property for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown?

2. Did the circuit court err in dividing only some of the parties' marital property?

3. Did the circuit court err in failing to address Mr. Cane's argument regarding dissipated marital property?

For the reasons set forth below, we answer the first question in the affirmative, and therefore, we shall reverse the judgment of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On April 11, 1998, Mr. and Ms. Cane were married. The parties had two children together: J.C., born in December 1999, and W.C., born in May 2003.[2] Ms. Cane testified that she did not work or go to school during the parties' marriage, and "never invested in [her]self," because she and Mr. Cane agreed before they got married that she would stay home and raise the children "without the burden of work."

On January 28, 2015, the parties separated. Mr. Cane moved to Sparrows Point, Maryland, with J.C.

Ms. Cane initially had difficulty finding housing in Baltimore City because her credit was "destroyed," and she had difficulty finding a job that was good for her schedule and the needs of W.C., who was "struggling in school."[3] Her daughter informed her of an

[2] At the time of trial, J.C. was 16 years old and W.C. was 13 years old. Ms. Cane testified that she also had two adult daughters from other relationships.

[3] At some point during the parties' marriage, they refinanced their family residence. Ms. Cane testified that, at that time, she agreed to take her name off the mortgage to get "a better interest rate," but neither the bank nor Mr. Cane explained to her that she was "signing away [her] rights" to their house. Mr. Cane testified that, at some point around

available apartment near a good school in New York. Ms. Cane "test[ed] the waters" and received two job offers in that area. In April 2016, she moved to New York with W.C. At the time of trial, her monthly rent in New York was $850 plus utilities.

Ms. Cane testified that she worked as a waitress at Cracker Barrel three to five days per week from 8:00 a.m. to 2:00 or 3:00 p.m.[4] She was paid $7.50 per hour, in addition to tips from guests. Any tips that were left by customers would "go right in [her] pocket," but all tips were recorded in a computer at the end of the day, so they would be calculated and taxed accordingly.

Ms. Cane offered into evidence four weekly paystubs, which indicated that she received the following weekly income before taxes: $171 in tips and $145 in wages; $199 in tips and $181 in wages; $206 in tips and $216 in wages; and $229 in tips and $253 in wages. Her earnings fluctuated based on the number of hours worked, which ranged from approximately 20 to 33 hours on the four paystubs discussed, and the time during which she worked, i.e., the highest paystub reflected her income generated over a holiday weekend.

According to Ms. Cane's tax returns, her federal adjusted gross income was $6,265 in 2014 and $9,721 in 2015. She noted, however, that the income that she reported in her

the time of the parties' separation, Mr. Cane became unable to pay the mortgage on the family home, and he stopped paying it. The house subsequently went into foreclosure.

[4] Although the transcript reflects that Ms. Cane testified that she worked from "8:00 a.m. to 2:00 or 3:00 a.m.," she also testified that she worked while W.C. was in school, and she would pick him up from after-school football practice at 5:30 p.m. Accordingly, we infer that Ms. Cane's workday ends in the afternoon.

2015 tax return was unusually high that year because she had some credit card debt "forgiven," and she was required to report that as taxable income. Ms. Cane also identified a 2014 W-2 form, which reflected $6,264.50 in "wages, tips and other compensation" from Cracker Barrel.

When counsel asked Ms. Cane if she had "any other sources of income," the following discussion occurred:

> [MS. CANE:] Not on a regular basis. I make jewelry. It's a hobby, primarily, and on occasion I've done craft shows. And I can make several hundred dollars at these craft shows, you know, I have to pay to be in them and of course there's the cost of my stuff. With the amount of things I've bought over the years I'm not sure if it's ever been profitable.
>
> But last year I did one show, it was in June. It was here in Baltimore because I was down here for a hearing and I made $800 at that show. . . .
>
> [COUNSEL:] Was that a one-time event that $800?
>
> [MS. CANE:] Yes.
>
> [COUNSEL:] Okay.
>
> [MS. CANE:] And I haven't sold any jewelry or had any shows since. In prior years I've done approximately two or three of those things in a summer one year. I have no tax number. I never bought a business name.

On cross-examination, Ms. Cane testified that she made jewelry as a hobby and had been selling it for approximately four years. She made approximately $1,500 in jewelry sales in 2015, and she included that income in her 2015 tax return. She also stated that she held two "jewelry parties" in 2012 because she "was going on a trip." She noted, however, that she only made jewelry occasionally, when she felt like it, and she had not made any jewelry sales in the six months prior to trial. When asked whether she made jewelry as a

"means by which [she could] make extra income," Ms. Cane replied that she "would do it whether [she] could probably make money or not." Most of her jewelry had been sold to her friends, but she did make money selling jewelry "on occasion." She stated that she was "not a good businessperson," and her sales were limited to craft shows and house parties, which she attended "very infrequently."[5] The $800 that she made at the Baltimore show in June 2015 was the only money she made selling jewelry since the parties separated. Other than her waitress job at Cracker Barrel and her jewelry sales, Ms. Cane testified that she had no other "source of employment."

Mr. Cane testified that he was self-employed as a carpenter and contractor, operating under the business name M. D. Cane Services. Mr. Cane also worked for Remodel U.S.A. in 2015. He testified that he had no other sources of income.

Mr. Cane identified a statement detailing "all of the deposits on [his] business accounts, internet account, and operating account for the year of 2015."[6] He calculated his salary for that year by tallying his deposits and then subtracting "items that were not income, such as a personal loan that [he] received from [his] brother, . . . an insurance

[5] Mr. Cane, by contrast, testified that Ms. Cane held at least four jewelry parties in one year when they were living together, and he was aware that she was making money from sales, but he did not know how much.

[6] Counsel for Ms. Cane noted, and Mr. Cane did not disagree, that his 2013 tax return indicated that Mr. Cane's business income was $19,000, even though Mr. Cane testified that he was paid $73,000 in 2013 for a single project. Mr. Cane explained that there was "a huge difference between earning and what the cost of a project is," and approximately "two-thirds of the cost of the project is materials." He could not recall, however, precisely how much he "earned" from that job.

payment, . . . returns and credits that were not income, . . . bank fees and corrections that the bank had made," and "business expenses and purchases," which yielded an annual income of approximately $23,000.[7] Using the same method, Mr. Cane calculated his year-to-date salary, from January 2016 through August 2016, to be $16,228.53.

With respect to marital property, Mr. Cane indicated in his counter complaint that the parties owned one or more motor vehicles, and he requested his "share of the property or its value." At trial, the parties agreed that they jointly owned two vehicles: a 2008 Nissan Titan truck, which Mr. Cane valued at approximately $3,000; and a 2010 Nissan Altima, which Mr. Cane valued at approximately $10,000. Ms. Cane was listed as the primary owner on both titles because Ms. Cane "had better credit," and Mr. Cane was listed as a co-owner on both titles. Ms. Cane sought sole ownership of only the Altima, conceding that the "truck was always [Mr. Cane's]."[8] Similarly, Mr. Cane testified that the Altima was driven by Ms. Cane, and he agreed to execute the necessary documents to transfer ownership of the car to her.

Ms. Cane noted, however, that Mr. Cane had incurred a number of fines for traffic violations that were sent to her due to her name being listed first on the registration of the truck. She sent the fines to Mr. Cane via email, but he did not pay them, so the Motor

[7] Mr. Cane testified that the $23,000 figure included any income generated from his work for Remodel U.S.A.

[8] Ms. Cane stated that Mr. Cane needed to sign the title of the Altima so she could be the owner of the Altima, and she needed to sign the title of the truck so Mr. Cane could have ownership of the truck, "and then he would have his truck and I have my car."

Vehicle Administration suspended the registration, and the fines had increased from $2 to $112 and were "accruing 17 percent daily interest." Ms. Cane attempted to contact the Motor Vehicle Administration to inform them that the vehicle was in Mr. Cane's possession, but they told her that she "should have called them right away," and at that point "it was too late to transfer liability."

Mr. Cane testified that, when he moved out of the family residence, he took only clothing, a dresser, a footlocker, a television, and a 20-year-old stereo system, and he left behind a "four bedroom house that was fully furnished." He left behind the following items: pellet stove ($4,000); refrigerator ($1100); freezer ($800); Sleep Number bed ($4,000); television ($630); trundle bed (value unknown); stainless steel chimney ($1,500); boat ($3,000); boat electronics ($870); dining room furniture ($500); family room furniture ($500); washing machine ($900); and dryer ($300). Mr. Cane testified that, with the exception of the boat, which Mr. Cane purchased with money he inherited, all of the above items were marital property. He stated, however, that "everything that was in the home [had] either been sold, destroyed by fire, or damaged with exception of the two vehicles." Although he did not specify how every item was lost, he did testify that Ms. Cane sold the pellet stove, he assumed that the stainless steel chimney, which had been mounted on the outside of their family home and was removed, had been sold, and the electronics that were in his boat "had been removed and sold." Mr. Cane did not get any of the proceeds from the purported sale of these items.

Mr. Cane testified that he was "not seeking any monetary award for this case." He noted, however, that he would "love to have some consideration from some of the value as far as any past child support, but [he was] not seeking any kind of revenue from [Ms.] Cane for any of those items, including the car." He requested that, if the court found that he owed past child support, that the court "offset" any amount owed with "some of those marital asserts that were liquidated."

At the end of trial, the circuit court ordered the parties to submit proposed child support guidelines for all the potential possibilities of custody arrangements. On October 12, 2016, Ms. Cane submitted a Memorandum in Support of Determining Custody and Child Support, with attached proposed child support worksheets. Ms. Cane asked the court to "discredit" Mr. Cane's testimony that his annual income was $22,000, arguing that his monthly income was $4,491.08. She stated that her income, based on her paystubs, was $1450 in a four-week period. Based on these incomes, Ms. Cane submitted worksheets showing a basic child support obligation for each child of $964, with her obligation in the amount of $237 and Mr. Cane's obligation in the amount of $727. Thus, for the scenario where Ms. Cane would have sole custody of W.C. and Mr. Cane would have sole custody of J.C., Mr. Cane's portion of the $964 child support obligation for W.C. was $727, and her support obligation for J.C. was $237, resulting in a net monthly child support obligation by Mr. Cane in the amount of $490.

On October 18, 2016, Mr. Cane filed his proposed child support worksheets, arguing that Ms. Cane's paystubs showed that she earned $17,000, and this income, plus income

from her jewelry sales, resulted in a total annual income of $20,000. He argued that Ms. Cane's calculation of his salary was "grossly inconsistent with the evidence," asserting that his salary was $23,074 in 2015 and $21,638 in 2016. Mr. Cane submitted 12 worksheets representing different custody scenarios. In the situation where sole custody was ordered, he calculated a combined child support obligation of $612, where Ms. Cane would pay $275 for J.C. if he got sole custody, and he would pay $337 for W.C. if Ms. Cane got sole custody. Under that scenario, Mr. Cane would pay monthly child support in the amount of $62, reflecting Mr. Cane's proposed obligation ($337) for W.C., minus Ms. Cane's proposed obligation ($275) for J.C.

On November 2, 2016, the circuit court issued a Judgment of Absolute Divorce, granting Ms. Cane an absolute divorce on the ground of a one-year separation. With respect to marital property, the court ordered, by agreement of the parties, that Ms. Cane "shall be entitled to own as her separate property the Nissan Altima currently in her possession," and Mr. Cane "shall execute any documents necessary to transfer title to the Nissan Altima" to her.[9] The court found that, other than the vehicles, "the parties' marital property is extant as of the date of this Judgment of Absolute Divorce and the court makes

[9] Although the court acknowledged, as the parties agreed, that both vehicles, the Nissan and the truck, were marital property, the court did not make a similar order regarding Mr. Cane as the owner of the truck.

no determinations regarding marital property beyond memorializing Defendant's agreement to transfer title to the Nissan Altima."[10]

The court then addressed custody of the parties' children. It awarded sole legal and physical custody of W.C. to Ms. Cane and sole legal and physical custody of J.C. to Mr. Cane.

With respect to child support, the court ordered that, beginning on December 1, 2015, pursuant to the child support guidelines, Mr. Cane was to pay child support to Ms. Cane, for W.C., in the amount of $374. Attached to the court's memorandum was a child support guidelines worksheet, designated Court's Exhibit 1, which listed Ms. Cane's monthly income as $1,500 and Mr. Cane's monthly income as $2,023, a 42.6% v. 57.4% split of the parties' combined income. The guidelines sheet, which listed only W.C., contained a total child support obligation of $651, with Mr. Cane having a monthly child support obligation of $374. The court's order regarding child support does not appear to factor in Ms. Cane's child support obligation for J.C.

The court explained in its memorandum that it did not assign earnings based on Ms. Cane's jewelry "business" because it could not find that this "business" was profitable. It stated that it accepted Mr. Cane's testimony regarding his income.

With respect to child support arrearages, the court ordered as follows:

[10] The court explained in its accompanying memorandum, that Mr. Cane "testified that when he left the home, various valuables were left in the home. He contends [that Ms. Cane] sold various items and pocketed the money. Nevertheless, he advised the court he does not seek [remuneration]."

ORDERED that effective on November 2, 2016, [Mr. Cane's] arrearage is established in the amount of Eight Thousand, Two Hundred and Twenty-Eight Dollars ($8,228); and it is further

ORDERED that effective on December 1, 2016, and until the child support arrearage is paid in full, [Mr. Cane] shall pay arrearage at a rate of Seventy-Five Dollars ($75) per month[.]

DISCUSSION

I.

Child Support

Mr. Cane argues that the circuit court erred in awarding Ms. Cane $374 in monthly child support, for several reasons.[11] First, Mr. Cane assigns error regarding the "Sasi report" or the "Sasi document." He argues that the document "is an unsigned document provided to the Court by an unknown source," using "an arbitrary monthly amount of $1,500."

Counsel's reference to "the Sasi report" appears to be to Court's Exhibit 1.[12] The court made clear in its memorandum that this worksheet, i.e., "[t]he court's guidelines," was "based upon the parties' testimony offered at trial, [Ms. Cane's] pay stubs, and [Mr. Cane's] explanation of his income." Thus, it is clear that the "author" of Court's Exhibit 1 was the court, and the basis for the numbers used was the evidence adduced at

[11] Ms. Cane did not file a brief with this Court.

[12] Notations at the bottom of the worksheet indicate reliance on a program called "SASI-CALC."

trial, which supports the court's use of $1,500 as the mother's monthly income. Mr. Cane states no claim for relief in this regard.[13]

Appellant next argues that the child support award "fails to take into consideration the best interest of both children." We agree.

A parent has a legal obligation to provide support for his or her child, and child support is an "'obligation of the parent to the child, not from one parent to another.'" *Shrivastava v. Mates*, 93 Md. App. 320, 327 (1992) (quoting *Rand v. Rand*, 40 Md. App. 550, 554 (1978)). Maryland Code (2012 Repl. Vol.) § 12-202(a) of the Family Law Article provides:

> (a)(1) Subject to the provisions of paragraph (2) of this subsection, in any proceeding to establish or modify child support, . . . the court shall use the child support guidelines set forth in this subtitle.
>
> (2)(i) There is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines set forth in this subtitle is the correct amount of child support to be awarded.
>
> (ii) The presumption may be rebutted by evidence that the application of the guidelines would be unjust or inappropriate in a particular case.
>
> (iii) In determining whether the application of the guidelines would be unjust or inappropriate in a particular case, the court may consider:
>
> 1. the terms of any existing separation or property settlement agreement or court order, including any provisions for payment of mortgages or marital debts, payment of college education expenses, the terms of any use and possession order or right to occupy the family home under an agreement, any direct payments made for the benefit of the children required by

[13] Although Mr. Cane argues that Ms. Cane earned income from jewelry sales, Ms. Cane testified that jewelry sales were sporadic, and she had to pay for booth space and materials. The circuit court found that, because there was no evidence of Ms. Cane's expenses, it could not determine if Ms. Cane received any profit from her hobby, and it declined to include jewelry sales in her monthly earnings. We perceive no abuse of discretion in this finding.

> agreement or order, or any other financial considerations set out in an existing separation or property settlement agreement or court order; and
>
> 2. the presence in the household of either parent of other children to whom that parent owes a duty of support and the expenses for whom that parent is directly contributing.

Here, use of the guidelines required the court to determine the amount of child support that Ms. Cane was obligated to pay Mr. Cane for the support of J.C., which should have offset some of the amount that he owed Ms. Cane for the support of W.C. The circuit court, however, failed to do so. Accordingly, we reverse the judgment ordering Mr. Cane to pay $374 a month in child support to Ms. Cane and remand for further proceedings. At that time, the arrears can also be recalculated.

II.

Marital Property

Mr. Cane's next contention is that the circuit court erred "in transferring marital property (2010 Nissan Altima) to [Ms. Cane] without considering other remaining marital property open to litigation (2008 Nissan Titan)." In support, he merely cites Maryland Rule 2-602, which states, in pertinent part, as follows:

> (a) **Generally.** Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:
>
> (1) is not a final judgment;
>
> (2) does not terminate the action as to any of the claims or any of the parties; and
>
> (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

Mr. Cane appears to be correct. The record does not reflect that the court addressed the disposition of the truck.[14] On remand, the court can resolve that issue, as well as determine whether any marital property was dissipated and should be subject to a monetary award.[15]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[14] Although the failure to resolve this issue means that there has not been an appealable final judgment in this case, that does not preclude this Court from addressing the order to pay child support because it is appealable pursuant to Maryland Code (2013 Repl. Vol.) § 12-303(3)(5) of the Courts and Judicial Proceedings Article, which provides that a party may appeal from an interlocutory order directing the "payment of money." *See Bussell v. Bussell*, 194 Md. App. 137, 147 (2010) (An "order pertaining to payment of alimony or child support is immediately appealable.").

[15] Although Mr. Cane stated that he was not seeking a monetary award, he did ask the court to "offset" any child support arrears with some of the value of the property that he left behind. The court acknowledged that request stating that Mr. Cane "testified that he would like a credit against any potential obligation for child support." The court, however, did not address that issue in its memorandum or order.