Circuit Court for Howard County
Case No: C-13-FM-19-000364

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2320

September Term, 2019

IVO MELCAK

v.

LAURA LONA ACTIS

Graeff,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 5, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal stems from orders entered by the Circuit Court for Howard County denying exceptions to a magistrate's recommendations and increasing the child support obligation of Ivo Melcak, appellant, towards the care of his minor child with Laura Lona Actis, appellee. For the reasons that follow, we shall affirm the judgment of the circuit court.

BACKGROUND

On May 29, 2018, an Order of Support on Consent was entered in the Family Court of New York ("New York Order") setting Mr. Melcak's semi-monthly child support obligation towards the parties' minor child at $724.94. Pertinently, the New York Order mandated compliance with certain terms that were "agreed upon between the parties in the So Ordered Stipulation of Settlement ("Agreement")," without specifying the particular content contained within the Agreement.[1]

Thereafter, Ms. Actis moved to Florida and Mr. Melcak moved to Maryland. In March 2019, Mr. Melcak filed a "Request for Registration of a Foreign Child Custody Determination" in the Circuit Court for Howard County seeking to have the New York Order enrolled in Maryland. With his petition, Mr. Melcak attached two certified copies of the New York Order. Mr. Melcak did not, however, attach the Agreement referenced in

[1] Specifically, the New York Order ordered that "[a]dd on expenses are as agreed upon between the parties in the So Ordered Stipulation of Settlement dated May 20, 2018," that "the pro rata shares are as agreed upon in the parties May 29, 2018 Stipulation of Settlement," and that the "order of support was governed by Article III of the parties So Order Stipulation of Settlement dated May 29, 2018."

the New York Order.[2] The circuit court, thereafter, issued a notice of registration, notifying the parties that the New York Order would be enforceable as of the date of the registration absent a request for hearing to contest its validity within twenty days. No such request was made by either party.

Following the expiration of the twenty-day period, Mr. Melcak moved to modify his child support obligation in the circuit court, requesting a decrease due to the loss of his "[j]ob of 20 [years]" which would result in "[n]o income as of April 30, 2019." While the petition for modification was pending, Ms. Actis wrote to New York's family court and notified it that she had "reconciled" with Mr. Melcak. She further stated that she would like her "child support account…against Ivo Melcak administrative[ly] closed" and "wish[ed] to waive all arrears owed." Thereafter, the New York Office of Child Support Enforcement administratively closed the child support case, stating that "[a]ll obligations to [Ms. Actis had] ended and all delinquencies/arrears owed [to Ms. Actis] were negated and reduced to $0." Ms. Actis additionally notified the circuit court of the closure of the New York case.

Despite notifying both courts of the reconciliation, Ms. Actis filed an answer to Mr. Melcak's petition to modify child support. In August 2019, the parties appeared before a magistrate of the circuit court for a hearing on the modification petition. At the hearing, Mr. Melcak advised that court that he had lost his job, that he would have new employment

[2] Although Mr. Melcak asserts in his brief that the Agreement was submitted with the New York Order in the request to register the foreign judgment, the record reflects that the Agreement was not included with his submission.

beginning on September 1, 2019, and that he "would like to continue paying for [his] child with a modification based on the current salary from September 1st." He reiterated this statement, asserting that he wanted to "continue to pay the child support even though [the parties had] reconciled" and that he "would like [the court] to modify the child support." In response, Ms. Actis informed the court that she would let "[the court] and Mr. Melcak decide whether…to modify the original [support obligation]."

The court received testimony from Mr. Melcak. He testified that he lost his job at the end of April 2019. Despite this loss, he stated that he received $6,000 "as regular income for two months" in May and June of 2019 in lieu of severance pay. He testified to receiving another $6,000 in July, but did not expect to receive any income in August. He further testified that he would begin a new job for Emory University on September 1, 2019 where he would receive a yearly salary of $90,000. Mr. Melcak testified that he last paid his child support obligation in May. He notified the court that he was also paying child support for his son from a prior relationship and stated that "the child support is approximately $400 per month" from an "order…entered from 2007."

Ms. Actis testified that she was self-employed at a "performance and video studio" as an art director and that her income in 2018 was $41,000. She expected her income for 2019 to be similar. When prompted, she affirmed that she had "work-related daycare costs" for the minor child. She testified that their child started daycare at a Montessori school in July 2019, and that it cost $9,865 a year until the end of May 2020. She also testified that she had paid $1,700 for two months of summer school in 2019. Further, Ms.

Actis stated that she paid $65.00 a month for the child's health insurance coverage, and that the child does not have any unusual medical expenses.

Ultimately, the magistrate found that there had been a material change in circumstances warranting a modification of child support, noting that Mr. Melcak's income had decreased in the months of June and July and that he had no reported income for the month of August. Additionally, the child's commencement of Montessori school was deemed a change in circumstances. In calculating Mr. Melcak's unpaid June and July child support obligation, the magistrate determined that Mr. Melcak owed $1,300 per month. In doing so, the magistrate input the following figures into the child support guidelines: 1) $6,000 per month in income to Mr. Melcak, 2) $400 per month for Mr. Melcak's child support obligation for his other child, 3) $3,417 per month in income to Ms. Actis, 4) $850 per month for Ms. Actis' summer school expenses, and 5) $56 per month for Ms. Actis' health insurance payments.

In calculating Mr. Melcak's child support obligation as of September 1, 2019, the magistrate determined that Mr. Melcak should pay $1,505 per month. In doing so, the magistrate input the following figures into the child support guidelines: 1) $7,500 per month in income to Mr. Melcak (derived from his $90,000 yearly salary), 2) $400 per month for Mr. Melcak's child support obligation for his other child, 3) $3,417 per month in income to Ms. Actis, 4) $807 per month for Ms. Actis' monthly Montessori school expenses, and 5) $56 per month for Ms. Actis' health insurance payments.

At the conclusion of the hearing, the magistrate notified the parties that the child support guidelines were "presumptively correct unless there's any evidence presented why [it's] not in the best interest of the child…for there to be an order for something other than guidelines of child support" and that there was "absolutely no evidence of that." It was only after the magistrate put the recommendation on the record that Mr. Melcak referenced a "final agreement" entered into between the parties and attempted to show the magistrate his "budget." The court notified Mr. Melcak, however, that the "time for taking evidence [had] long passed" and that the matter was "concluded."

Mr. Melcak filed exceptions to the magistrate's report and recommendations. In his exceptions, Mr. Melcak argued that the magistrate used inaccurate information to calculate his child support obligation. First, Mr. Melcak asserted that he pays $800 per month in child support for his other child, not $400. Secondly, he argued that in the "New York Agreement and Final Order," Ms. Actis had agreed to pay daycare expenses for the child. In connection, Mr. Melcak argued that Ms. Actis was independently wealthy and worked primarily as a "hobby of work" rather than out of necessity. Third, Mr. Melcak argued that his debts, including owed taxes and owed housing, should have been considered in the calculation of support. Finally, he outlined his monthly budget to the court, arguing that he had a limited amount of money with which to pay the court ordered child support. In support of his exceptions, Mr. Melcak attached several documents that were not testified to or entered into evidence at the hearing before the magistrate, including: a photograph of

his son, his credit card balances, the Agreement, his outstanding New York state income tax, and his outstanding rent with the Rockefeller University.

Ms. Actis filed an opposition to Mr. Melcak's exceptions. On November 4, 2019, Mr. Melcak appeared with counsel for a hearing on his exceptions, but Ms. Actis did not appear. At the hearing, counsel for Mr. Melcak erroneously stated that the Agreement between Mr. Melcak and Ms. Actis has been submitted to the magistrate for consideration. It was not. Mr. Melcak's counsel used the Agreement to argue that the parties had agreed that Ms. Actis would be responsible for any work-related daycare expenses to offset the additional transportation costs that would be incurred by Mr. Melcak due to Ms. Actis's relocation to Florida.

In its memorandum opinion, the court determined that the magistrate "was correct in her findings and ultimate decision regarding child support." Accordingly, the court entered an order denying Mr. Melcak's exceptions and entered a separate order adopting the magistrate's recommendation to increase Mr. Melcak's child support obligation as specified. Mr. Melcak noted a timely appeal of these orders.

DISCUSSION

On appeal, Mr. Melcak raises the following questions for our consideration, which we consolidate, reorder, and rephrase for clarity:

1. Did the circuit court err in including in the child support guidelines the amount of $400 per month for the child support payments of Mr. Melcak's other child?

2. Did the circuit court err in failing to recognize the provisions agreed upon by the parties as set forth in the Agreement which was referenced, but not elucidated, in the New York Order?

3. Did the circuit court err in determining that Ms. Actis's daycare expenses qualified as "work-related daycare" as defined in §12-204(g)(1) of the Family Law Article?

For the following reasons, we shall affirm.

STANDARD OF REVIEW

"When reviewing a [magistrate]'s report, both a trial court and an appellate court defer to the [magistrate]'s first-level findings…unless they are clearly erroneous." *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014). "[R]eviewing courts give less deference to 'conclusory or dispositional' findings." *Id*. As we have previously stated, "absent a clear abuse of discretion, a [magistrate's] decision that is grounded in law and based upon facts that are not clearly erroneous will not be disturbed." *Kierein v. Kierein*, 115 Md. App 448, 452 (1997). Therefore, in reviewing a trial court's ruling on exceptions to a magistrate's findings of fact, "[i]t is only necessary for an appellate court to be able to determine [whether] the trial court abused its discretion." *Id*. at 456.

MR. MELCAK'S OUTSIDE CHILD SUPPORT OBLIGATION

Firstly, we will consider Mr. Melcak's claim of error with regard to the assessment of his preexisting child support obligation for another child. Mr. Melcak asserts that the circuit court "did not recognize support actually paid for [his] eldest child" in calculating his adjusted actual income. Specifically, he asserts that the court should have assessed his preexisting support obligation at $800 per month.

In considering Mr. Melcak's exceptions on this issue, the circuit court correctly reviewed the magistrate's first level findings under the clearly erroneous standard. *See Harryman v. State*, 359 Md. 492, 506 (2000) ("a [magistrate's] findings of fact from the evidence are prima facie correct and they will not be disturbed unless determined to be clearly erroneous."). A factual finding is "not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (internal citation omitted).

The court noted, as do we, that Mr. Melcak explicitly testified that, for his eldest child, "the child support amount is approximately $400 per month." The record reveals that he expressed this amount to the magistrate twice. While he stated that he pays "extra money to him because he's old and he needs much more money for activities and things," he did not specify to the magistrate the amount he expends for these additional activities. Further, at no point did Mr. Melcak communicate to the magistrate that he paid $800 in child support for his eldest child. Based on this evidence, it was not an abuse of the circuit court's discretion to determine that there was no clear error by the magistrate in assessing his pre-existing child support obligation.

Indeed, a circuit court is permitted to consider additional evidence at an exceptions hearing if "(A) 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 (B) the court determines that the additional evidence should be considered." Maryland Rule 9-208(i)(1). However, Mr. Melcak did not set forth in his exceptions any evidence that he wanted the court to consider in reassessing his preexisting child support obligation, nor did

he specify why he did not testify or provide documentation of the $800 amount to the magistrate. It was, therefore, not an abuse of the court's discretion to refrain from taking additional testimony or evidence from Mr. Melcak regarding this issue at the exceptions hearing.

CONSIDERATION OF THE NEW YORK AGREEMENT

We next turn to Mr. Melcak's claim of error with regard to the circuit court's failure to recognize the Agreement entered into between the parties in New York. In his brief, Mr. Melcak argues that the circuit court "did not recognize the existing [a]greement that was carefully bargained for," which included the parties' agreement regarding "transportation cost[s]" and "[w]ork-related daycare." Specifically, Mr. Melcak asserts that the Agreement states that Ms. Actis "would cover the costs for any preschool, private school, or daycare" for the child. This provision, he contends, was agreed upon, to "help neutralize [t]ransportation [c]osts."

We discern no abuse in the circuit court's discretion to disregard the Agreement. Firstly, the Agreement was not submitted to the magistrate for consideration. While Mr. Melcak submitted the New York Order with his request to register the foreign judgment in Maryland, our review of the record reveals that he failed to submit the Agreement when doing so. The Agreement was not entered into evidence as an exhibit at the modification hearing before the magistrate, nor did Mr. Melcak testify as to its existence or the contents therein. At most, Mr. Melcak made a vague reference to the Agreement *after* the magistrate put her oral recommendations on the record, stating "we had a final agreement of the New

York order" regarding "extracurricular activities" and "health insurance." This assertion was untimely.

Secondly, the circuit court was not required to consider the Agreement as additional evidence at the exceptions hearing because Mr. Melcak failed to set forth "the reasons why the evidence was not offered before the magistrate" as required by Maryland Rule 9-208(i)(1).

Lastly, even had the court considered the Agreement, Mr. Melcak repeatedly asserted to the magistrate his desire to have his child support obligation recalculated under Maryland law. Mr. Melcak seeks to have the Agreement considered so that the assessed work-related childcare expenses would be omitted from inclusion in his child support calculation. However, as the circuit court correctly stated, it was required to "include [] child care expenses in the basic obligation" under Maryland law. *See* Md. Code Ann., Fam. Law § 12-204(g)(1) ("actual child care expenses incurred on behalf of a child due to employment or job search of either parent shall be added to the basic obligation."). It was not, therefore, an abuse of court's discretion to determine that the magistrate did not commit clear error in "calculat[ing] child support based on Maryland law," rather than on the Agreement.

WORK-RELATED CHILD CARE EXPENSE

Lastly, Mr. Melcak argues on appeal that it was error to find that Ms. Actis had work-related childcare expenses because it did not fall within the definition of §12-204(g)(1) of the Family Law Article. We discern no abuse in the circuit court's discretion with regard to the inclusion of Ms. Actis's childcare expenses.

At the modification hearing, the magistrate heard testimony from Ms. Actis that she was "self-employed" at a "performance and video studio" as an "art direct[or]." When asked whether she had work-related daycare costs for the minor child, Ms. Actis responded that she did and testified that the child attended a Montessori school. Even after the magistrate directed Mr. Melcak to focus on "things that are relevant to child support" including "the cost of work-related daycare," Mr. Melcak failed to elicit any testimony from Ms. Actis on cross-examination that rebutted or refuted her testimony regarding her work-related daycare. Mr. Melcak additionally did not testify or submit documentation showing that Ms. Actis did not have work related childcare expenses.

Accordingly, it was not an abuse of discretion for the circuit court to find that there was no clear error in the magistrate's finding of work-related daycare expenses.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.