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

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3141

September Term, 2018

JAMES-ALAIN LAPLANCHE

v.

DENISE GRIMES

Berger,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: March 30, 2020

This is the second visit to this Court by James-Alain Laplanche and Denise Grimes concerning their twin children. Below, the circuit court found that Laplanche had failed to establish the existence of a material change of circumstances and, therefore, refused to modify the original order with respect to custody and visitation. The circuit court also found that Grimes successfully demonstrated a material change in circumstances, but nevertheless still declined to modify the original order with respect to the amount of child support. We hold that both of these decisions were in error. We, therefore, remand the matter to the Circuit Court for Anne Arundel County to reconsider modifications of the order regarding custody, visitation, and child support.

BACKGROUND

Our prior opinion discussed the relevant facts:

> In February 2014, Laplanche and Ms. Grimes began an affair. … On April 16, 2014, Ms. Grimes discovered she was pregnant. Subsequent testing showed [that] she was pregnant with twins. … 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. … Laplanche never sought custody of, or visitation with, the twins. …
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> [T]he 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 interest of the twins. … Thus, the circuit court ordered Laplanche to take a paternity test.
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> The results of the paternity test [conclusively] 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 rights to custody and visitation), requiring [him] to pay child support for the twins.

Laplanche v. Grimes, Case No. 2464, Sept. Term 2016, slip op. at 2-5 (unreported opinion) (filed Sept. 14, 2017) ("*Laplanche I*").

In his first appeal before this Court, Laplanche argued that the circuit court had erred in finding that Grimes produced sufficient evidence to overcome the rebuttable presumption that her husband was the father of the twins. *Laplanche I*, slip op. at 8; *Sider v. Sider*, 334 Md. 512, 526 (1994) ("In Maryland, a child born to a married woman is presumed to be the offspring of the woman's husband."). It is worth emphasizing that by the time of his first appeal, Laplanche knew that he was the twins' father based on the DNA test but nevertheless sought to have this Court determine that he would have no parental rights or responsibilities. We were not persuaded and held that Grimes had overcome the presumption and that the circuit court had not erred in ordering the DNA test which confirmed that Laplanche was the twins' father. *Laplanche I*, slip op. at 11-12, 18. We also affirmed the circuit court's order requiring Laplanche to pay retroactive child support. *Id.* at 22-24.

Some months later, Laplanche returned to circuit court seeking, for the first time, visitation with the twins. Grimes opposed the award of visitation and, at the same time, asked the court to increase the child support award. The circuit court found that Laplanche

had failed to establish a material change of circumstances and that Grimes had not presented sufficient evidence to justify a modification of child support. As a result, the circuit court denied both motions. These timely cross-appeals followed.

DISCUSSION

I. CUSTODY AND VISITATION

A party seeking to change a custody order must first demonstrate that "there has been a material change in circumstances." *Green v. Green*, 188 Md. App. 661, 688 (2009). "A material change of circumstances is a change of circumstances that affects the welfare of the child." *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012). As noted above, in the original order, Laplanche was found to have waived any claims for custody and visitation. Moreover, the original order stated that Laplanche could only have visitation with the twins if Grimes consented.[1] In moving for modification, Laplanche argued that his new-found desire for visitation with the twins constituted a material change of circumstances. While the circuit court credited Laplanche for showing that he now "genuinely want[ed] to be increasingly involved in the [twins'] lives," it found that Laplanche had failed to demonstrate a material change in circumstances. The court explicitly ruled that the law had not yet recognized "a prong by which a changed sort of mental state could serve as a foundation for … a … material change[] [of] circumstances."

[1] We observe that no Maryland court could have ordered such a restrictive limitation on Laplanche's visitation without his consent.

There is a strong appeal to the circuit court's view that a party shouldn't be able to unilaterally change his or her mind and thereby trigger a material change in circumstances. On reflection, however, we observe that, in proper circumstances, this Court has found that a party's unilateral decision was sufficient to trigger a material change of circumstances. Thus, for example, in *Wagner v. Wagner*, we held that a mother's unilateral action of relocating her daughter such that the father had no contact for two months constituted a material change in circumstances. 109 Md. App. 1, 33 (1996). Similarly, in *Barrett v. Ayres*, we held that a party's unilateral decision to terminate the paternal grandparents' visitation was a material change in circumstances warranting modification of the visitation agreement. 186 Md. App. 1, 19-20 (2009). We do not think that just because the material change in circumstances was caused by the unilateral, volitional choice of one party it should, as a matter of law, preclude a finding of a material change of circumstances.

Maryland courts have long recognized the value of children having continual contact with both the custodial and non-custodial parents. *Domingues v. Johnson*, 323 Md. 486, 502-03 (1991) (discussing the importance of "regular, frequent, and welcomed visitation" to the "parent-child relationship"). Maryland not only permits but encourages parents to participate in the lives of their children.[2] Because Laplanche is seeking more

[2] Even convicted murderers, sex offenders, and child abusers get to spend time with their children. *See generally* FL § 9-101.2(b) (permitting supervised visitation for a parent convicted of first-degree or second-degree murder of the other parent, another child of the parent, or any family member living in the household of either parent so long as it is in the best interests of the child); FL § 9-101(b) (permitting visitation by a parent suspected of abusing a child on a finding "that there is no likelihood of further child abuse or neglect by

parental involvement with the twins, from none to some, we think his change of heart can (and does) constitute a material change in circumstance. We remand the matter to the circuit court to determine what amount of visitation by Laplanche will be in the best interest of the twins.

No one should read too much into this opinion. We are not holding that *any* change of heart will be sufficient to constitute a material change in circumstances. A desire for a minor change is still very unlikely to qualify. Only where, as here, a parent's change of heart potentially alters the entire landscape of a custody arrangement, can a unilateral, volitional change constitute a material change in circumstances.

II. CHILD SUPPORT

Grimes has cross-appealed the circuit court's denial of her counter-motion for a modification of the child support award. Laplanche did not cooperate in discovery but the circuit court determined that his income had increased "significantly"—by at least $66,750—since it was last calculated.[3] The circuit court found that Laplanche's increased income constituted a material change in circumstances, but because it is an above-

the party" and that in the absence of such a finding, supervised visitation may be approved pursuant to an "arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child"). It would be inconsistent to deny visitation to Laplanche—who has committed no such atrocities—merely because of his previous litigation strategies.

[3] We do not take Laplanche's failure to participate in discovery lightly. We remind him to provide all relevant discovery or risk the serious consequences provided in our Rules.

guidelines case, the court exercised its discretion in determining that the increase did not warrant a corresponding increase in the amount of child support owed. *See* MD. CODE, FAMILY LAW ("FL") § 12-204(d) ("If the combined adjusted income exceeds the highest level specified in the [child support guidelines] … the court may use its discretion in setting the amount of child support.").

We agree with the circuit court that the significant increase in Laplanche's income created sufficient evidence of a material change in circumstances but we disagree with the circuit court's conclusion that the increase should not factor into amount of child support. The Court of Appeals has recognized that "a change that affects the income pool used to calculate the support obligation" is a material change in circumstances. *Wills v. Jones*, 340 Md. 480, 488 n.1 (1995); *see also Smith v. Freeman*, 149 Md. App. 1, 21 (2002) (highlighting that the father's increase in income justified the circuit court's finding of a material change in circumstances). Such an increase, therefore, is a relevant consideration to the child support inquiry.

We also reject the circuit court's finding that the prior level of child support was "sufficient" to meet that the twins' needs. That isn't the test. The question, rather, is whether the twins are entitled to share in the increase in the standard of living that Laplanche is enjoying. The answer to that question is clearly yes. *Petitto v. Petitto*, 147 Md. App. 280, 307 (2002) (discussing why "changes in income" are relevant and material to the court's determination of an appropriate child support amount). Although this is an above-guidelines case and the circuit court's discretion is at its zenith, the circuit court still

must consider what portion of Laplanche's increased income should be provided in increased child support. We, therefore, reverse and remand to permit the circuit court to determine the appropriate increase.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 50% BY APPELLANT AND 50% BY APPELLEE.