Circuit Court for Frederick County
Case No. C-05-001730

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1834

September Term, 2016

HEIDI ROSENCRANTZ RYDER

v.

CHARLES RYDER

Kehoe,
Reed,
Salmon, James, P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: June 21, 2018

This is an appeal from a judgment of the Circuit Court for Frederick County which denied Heidi Rosencrantz Ryder's petition to modify an existing child support order. The appellee is the children's father, Charles Ryder. Mother raises two issues, which we have reworded:

> (1) Did the trial court abuse its discretion when it failed to calculate child support according to Family Law Article ("FL") § 12-202?
>
> (2) Was the trial court's finding that there was insufficient evidence of a material change in the parties' circumstances clearly erroneous?

In light of the unusual circumstances of this case, we will remand the court's judgment without affirmance or reversal for a new hearing on the petition.

I. Background

A. Marital History

The parties were married on September 5, 1998. They adopted three children—twin boys, born in 1999, and a girl, born in 2000. At the time of the adoption, the parties entered into an Adoption Assistance Agreement (the "Assistance Agreement") with the Maryland Department of Human Resources. The Assistance Agreement provided for payment of a monthly adoption assistance payment to the parties to help defray the expenses of raising the children. The parties' relationship deteriorated and Mother filed an action for divorce in 2006. An amended judgment of absolute divorce was filed on September 22, 2006. It provided that the parties had joint legal custody of the children and that Mother had physical custody. The divorce judgment ordered Father to pay $1,700 per month in child

support. In 2008, Father filed a motion to modify child support, which was resolved by entry of an order stating that Father consented to pay $1,700 for monthly child support.

B. The 2010 Proceedings

In 2010, Father filed another motion to modify child support. He alleged that Mother had voluntarily impoverished herself by refusing to obtain employment, but was instead living on the child support and the adoption assistance payment, which at the time was $2200 per month. The parties filed abbreviated financial statements. These documents stated that Mother's monthly income was between $100 and $300; that Father's monthly income was $6,448; and that he paid $141 each month in health insurance premiums for the children. In addition to child support, the parties also disagreed as to visitation, although the particulars of that dispute are not clear from the record.

The matter came before a magistrate for a hearing on October 4, 2010. Mother and Father were both represented by counsel. The lawyers first informed the court that the parties had reached an agreement as to the visitation dispute. The terms were read into the record and Mother and Father were voir dired by their respective counsel as to their understanding of, and consent to, the terms of the agreement. After a discussion at the bench with counsel concerning child support, the magistrate declared a recess for the parties to reach an agreement. When the proceedings resumed, counsel informed the magistrate that they had worked out an agreement as to child support. Both parties were again voir dired by counsel. The terms of the agreement were incorporated into a consent

order entered on November 16, 2010. In relevant part, the order: (1) reduced Father's monthly child support obligation from $1,700 to $600; (2) required Father to continue to provide health insurance for the children "as long as he is obligated to pay child support;" (3) recited that Mother was seeking employment; and (4) provided that Father "shall not seek a modification of child support based solely upon [Mother's] obtaining employment" unless Mother sought "a modification of child support based upon incurring work related child care expenses." A consent order was entered on December 10, 2010.

C. The Present Proceedings

On December 18, 2015, Mother filed a petition to modify the consent order, alleging a variety of changed circumstances. Father filed a counter-motion to reduce child support on February 16, 2016, and Mother responded to that motion on March 8, 2016. On June 13, 2016, Mother and Father, both represented by counsel, appeared before a magistrate for a hearing.

At the hearing, Father contended that there had been no material change in circumstances since 2010. Father also argued that the adoption subsidy should be credited against his child support obligation. Specifically, he asked the court to calculate the child support obligation based on the guidelines and then reduce that number by the amount of the adoption subsidy. For her part, Mother asked for an increase in child support due to changes in the children's needs and the economy, and she requested that child support should be modified according to the guidelines. Mother conceded that the then-current

adoption subsidy was $2,583.85 monthly. However, she contended that the adoption subsidy was not income, as the concept is defined in FL § 12-201[1], and that it should not be considered as income when calculating child support under the guidelines.

The magistrate found that Mother's gross monthly income was $2,587, and Father's monthly income was $7,642. The magistrate stated that she was unable to decide what change in circumstances had occurred to justify a change in child support:

> The one thing that's most concerning to me is that [the 2010] order is – I don't know what the circumstances [were] at that time. There's no guidelines worksheet. There's no language in the order that says why the parties came to this agreement for $600 a month. It's clear that they were receiving the adoption subsidy, but looking at this caser straight on, there's no worksheet, there's no identification of

[1] FL § 12-201 states in pertinent part (emphasis added):

> (a) In this subtitle the following words have the meanings indicated.
> Actual income
> (b)(1) "Actual income" means income from any source.
> * * *
> (3) "Actual income" includes:
> (i) salaries;
> (ii) wages;
> (iii) commissions;
> (iv) bonuses;
> * * *
> (4) Based on the circumstances of the case, the court may consider the following items as actual income:
> (i) severance pay;
> (ii) capital gains;
> (iii) gifts; or
> (iv) prizes.
> (5) **"Actual income" does not include benefits received from means-tested public assistance programs, including temporary cash assistance, Supplemental Security Income, food stamps, and transitional emergency, medical, and housing assistance.**

> what the circumstances were then, there's no testimony of that today. I can't decide what, if anything, has changed since then to justify a change in child support.

The magistrate denied the motion for modification of child support, finding there was no material change of circumstances. She also denied the parties' respective requests for attorney's fees.

Mother filed exceptions, alleging that the magistrate ignored the law and policy of the State by failing to apply the child support guidelines, which is the required standard under FL § 8-103. In response, Father filed an opposition to Mother's exceptions, stating that the magistrate correctly found that Mother failed to prove a material change in circumstances, and even if she did, Mother failed to show that a modification of any agreement between the parties would be in the best interests of the children. On August 16, 2016, Mother and Father appeared for an exceptions hearing in the Circuit Court for Frederick County. As the hearing drew to a close, the court told counsel for both parties its initial impressions (emphasis added):

> My practice, when someone would present an agreement to me when it came to child support, was always to ask, is this in accordance with the guidelines, all right, and if the answer was no and I was told that the amount was actually less than the guidelines, the next question I would ask is, **why is it in the best interest of the children to deviate downward from the guidelines?** All right?
>
> Now - - and, of course - - and I'm sure counsel is aware of this - - periodically the Department of Human Resources will come back and audit files in all the courts and see whether or not there are cases where the court allowed a downward deviation, and they frown on that, but **the question always is, is there a reason why it's in the best interest of the children**, and then that's the opportunity for the parties to place on the record, maybe certain expenses are, are being paid over and above, maybe it has to do with a division of the physical time between the

> parties in terms of their access or custody rights. There may be any number of reasons why the parties believe that the figure that they are using is in the best interest of the children when you consider everything.
>
> Now, sometimes you even see cases where there is no child support figure, where it simply says that both parties are generally chargeable with the obligation of support, and I think that triggers the same inquiry by the court: **Why is this in the best interest of the children?**

On September 20, 2016, the circuit court issued an order stating the following:

> This matter having come before the court on August 16, 2016 for oral argument from Plaintiff's exceptions to the Family Magistrate's findings and recommendations delivered in court on June 13, 2016, as well as the Magistrate's subsequent written Report and Recommendation. Upon consideration of the transcript from the Magistrate's hearing, and after hearing oral argument and applying the applicable rules of procedure and relevant law, it is hereby this 20th day of September, 2016, by the Circuit Court for Frederick County, Maryland; Ordered, that Plaintiff's Motion for Exceptions is hereby DENIED.

Mother then filed this appeal.

II. The Standard of Review

"[T]he amount to be awarded for child support is governed by the circumstances of the case and is entrusted to the sound discretion of the trial judge, whose determination should not be disturbed on appeal unless he arbitrarily used his discretion or was clearly wrong." *Karanikas v. Cartwright*, 209 Md. App. 571, 596 (2013) (brackets and citations omitted). The scope of that discretion is significantly circumscribed in cases, such as the present one, in which the parents' combined incomes do not exceed the maximum combined monthly actual income under the Maryland Child Support Guidelines set out in FL § 12-204.

Nonetheless, the court retains the authority to depart from the Guidelines in an appropriate case. *See* FL § 12-202(a)(2).

A court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous. We review *de novo* contentions that the trial court committed legal error. *Guidash v. Tome*, 211 Md. App. 725, 735 (2013). The factual findings by a magistrate are to be reviewed by the trial court for clear error. *Domingues v. Johnson*, 323 Md. 486, 496 (1991). Absent such error, an appellate court will not disturb the trial court's fact-finding. *Ibid.*

Finally, a court can abuse its discretion by making a decision that is:

> well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

North v. North, 102 Md. App. 1, 14 (1994).

III. Analysis

We see this case differently than did the circuit court and the magistrate. The relief we are granting to the parties is influenced by a defect in the 2010 order.

A. The Circuit Court's 2016 Decision

As *Domingues*, 323 Md. at 496, and other cases have made clear, the circuit court's role in proceedings that are referred to a magistrate is to make an independent evaluation of the magistrate's recommendations and explain why it accepted or rejected the

magistrate's findings. The circuit court's explanation of the basis for its decision referred to "applicable rules of procedure and relevant law" without further elaboration. This broadly-worded explanation is not sufficient in light of the defects in the 2010 proceeding that we will now address.

B. The Problem with the 2010 Magistrate's Order

As previously mentioned, the parties filed abbreviated financial statements prior to the 2010 hearing. Plugging that data into the Maryland Child Support Enforcement Administration's Calculator[2] suggests that, if the Child Support Guidelines had been followed, Father's monthly child support obligation would have been about $1,667. Before the magistrate held a hearing on the merits of the parties' contentions, they entered into an agreement to child support which was read into the record. The magistrate accepted the parties' agreement without further scrutiny. But if the 2010 agreement departed from the Guidelines—and it clearly did—then the magistrate was required to take an additional step before entering an order reflecting the parties' agreement. We will explain.

In a "below the guidelines" case such as the present one, use of the Child Support Guidelines is mandatory. *Guidash*, 211 Md. App. at 737; *Tannehill v. Tannehill*, 88 Md. App. 4, 11 (1991). The amount of support that results from the application of the Guidelines

[2] The current Child Support Guidelines became effective on October 1, 2010. *See* 2010 Laws of Maryland Chapter 263. The hearing was held on October 4th of that year.

is presumptively "the correct amount of child support to be awarded." FL § 12-202(a)(2)(i). The presumption is rebuttable, and parents may agree to support arrangements that are inconsistent with the Guidelines. However, if the agreed-upon support is different from what would result from the application of the Guidelines, the court **must** explain why a departure from the Guidelines is in the best interests of the children. Specifically, FL § 12–202(a)(2)(i) states (emphasis added):

> 1. If the court determines that the application of the guidelines would be unjust or inappropriate in a particular case, the court **shall make a written finding or specific finding on the record** stating the reasons for departing from the guidelines.
>
> 2. The court's finding shall state:
>
> A. the amount of child support that would have been required under the guidelines;
>
> B. how the order varies from the guidelines;
>
> C. **how the finding serves the best interests of the child**; and
>
> D. in cases in which items of value are conveyed instead of a portion of the support presumed under the guidelines, the estimated value of the items conveyed.

The failure to make these findings when the court departs from the child support guidelines is reversible error. *Guidash*, 211 Md. App. at 738 (citing *Knott v. Knott*, 146 Md. App. 232, 253 (2002) ("[In entering a consent order as to child support], the court committed reversible error by failing to consider the guidelines and the impact of the agreement upon the financial resources of the parents or the financial needs of [the minor child]."). The *Knott* Court further explained (emphasis added):

> [N]either the give and take of the negotiations [between the parents] nor the eventual agreement, in and of itself, can ever be a sufficient reason for deviation from the guidelines. The court's analysis, when reviewing matters affecting care

> and support of children, begins with the guidelines and ends with an assessment of the impact of the agreement upon the financial resources of the parents and the financial needs of the child vis-a-vis the best interest of the child standard.

146 Md. App. at 257.

As both the magistrate and the trial court commented in the 2016 proceeding, the magistrate in the 2010 proceeding failed to make the findings required before entering an order departing from the Guidelines. There is no doubt that a parent must show a material change in circumstances in order to modify a child support order. But an implicit premise to this rule is that the extant order is legally sufficient. In the present case, the 2010 order was not. Moreover, and what is most important, at no time has any magistrate or court made a finding that $600 a month in child support for three children was in their best interests. But such a finding is a mandatory prerequisite for a departure from the Guidelines.

We realize that, in 2010, Mother did not request that the magistrate do what the law requires. Nor did Mother file exceptions to the magistrate's proposed order. Under normal circumstances, the latter failure would preclude us from taking the problem in the 2010 proceeding into consideration in resolving this appeal. But the statutory duty of the court—or the magistrate, as the case may be—to make the analysis and findings required by § 12–202(a)(2)(i) exists independently of a request by a parent. This is because the court's focus must be on the best interest of the child, and not what the parents may think is in their best interest. Accordingly, the 2010 support order does not have the sort of preclusive effect

that generally results after when a party fails to timely point out to the court that the order is defective.

At this point, we think the more important task for the parties and the court is to establish what Father's current child support obligation should be without regard to the 2010 order, which we view as irremediably flawed. Therefore, we will remand this case to the circuit court without affirmance or reversal for another hearing on Mother's petition to modify child support. Because of the deficiencies in the 2010 proceeding, the court's focus should not be on whether there has been a change in material circumstances from 2010, but rather on what the appropriate level of child support for the children should be. We have the following comments to assist the parties and the court in that undertaking.[3]

The parties appear to agree that the adoption subsidy that Mother receives from the Maryland Department of Human Resources is not "actual income" as that term is defined in FL § 12-201(b)(1). From this premise, Mother argued that the adoption subsidy should not be considered at all when calculating child support under the guidelines. In contrast, Father asserted that the adoption subsidy is money Mother has at her disposal and therefore should be a cause for deviating from the Guidelines. This issue was not resolved at the

[3] In his brief, Father asserts that Mother "was required to present the 2010 court with guidelines, but she didn't." Father is correct that Mother didn't present the magistrate with the Guidelines but FL § 12-202(a)(2)(iii) imposes an independent duty upon the court to justify a deviation from the Guidelines, whether or not the parties raise the issue.

circuit court level because the magistrate found that Mother failed to show that there was a material change in circumstances.

Although there is not a lot of information in the record about the adoption subsidy, we agree with the parties that the subsidy does not fit into the statutory definition of "actual income" for purposes of calculating child support. This does not mean, however, that the payments are necessarily irrelevant for purposes of calculating child support, because FL § 12-202(a)(2) provides that the court may depart from the Guidelines when their application would be "would be unjust or inappropriate in a particular case."

Under FL § 12-202(a)(2)(i), the amount derived by application of the child support guidelines is presumptively correct. Therefore, Father has the burden of persuading the court that, in order to yield a just and appropriate amount of child support, the court must consider the adoption subsidy. *See* FL § 12-202(a)(2)(ii). Additionally, Father has the burden to persuade the court that a departure from the Guidelines will be in the children's best interests. *See* FL § 12-202(a)(2)(iii). Before the court enters an order permitting a departure from the Guidelines, the court must make the findings required by FL § 12-202(a)(2)(v).

THIS CASE IS REMANDED TO THE CIRCUIT COURT FOR FREDERICK COUNTY WITHOUT AFFIRMANCE OR REVERSAL FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED BETWEEN THE PARTIES.