UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2020

September Term, 2014

HENRY STEVENSON-PEREZ

v.

LANA PAULS

Eyler, Deborah S.,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 27, 2016

A father filed for contempt to enforce an order regarding visitation. The court rejected his claims and charged him with the mother's attorneys' fees. He appeals those decisions. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The appellant and defendant, Henry C. Stevenson-Perez, M.D., and the appellee and plaintiff, Ms. Lana Pauls, are parents to one minor child (a daughter), born in August of 1998. Dr. Stevenson-Perez and Ms. Pauls were never married to each other.

In September of 2010, Ms. Pauls filed for custody of the child in the Circuit Court for Montgomery County. On November 1, 2012, the court entered an order granting Ms. Pauls sole legal and physical custody. The order gave Dr. Stevenson-Perez visitation rights, including some regular hours, some holidays, and three weeks each summer. The order mandated that both parties communicate by email, "open[ing] and answer[ing] all emails."

For a time, things seem to have gone smoothly. Although Dr. Stevenson-Perez apparently missed or ignored several emails regarding vacation scheduling, he raised no complaints about access to his daughter for some time.

Sometime in September 2013, however, Dr. Stevenson-Perez claims that he suddenly lost all contact with his daughter. At a later hearing, Ms. Pauls asserted that the child no longer wished to see Dr. Stevenson-Perez because he had made a derogatory comment about her appearance.

In contravention of the court's order, Dr. Stevenson-Perez did not email Ms. Pauls about the situation until January 2014. Instead, Dr. Stevenson-Perez left "stickies" on

Ms. Pauls's door,[1] but Ms. Pauls never received them. In addition, Dr. Stevenson-Perez called and emailed his daughter directly, to no avail.

In January 2013, and on at least one prior occasion, Ms. Pauls emailed Dr. Stevenson-Perez about missing child support payments. In his first email to Ms. Pauls since at least September 2013, Dr. Stevenson-Perez responded by informing Ms. Pauls that he was filing the next day to have the court hold her in contempt for "completely den[ying his] access to [the child] for the past six months."

On January 13, 2014, Dr. Stevenson-Perez, representing himself, moved that the court hold Ms. Pauls in contempt for allegedly hindering his visitation. Through counsel, Ms. Pauls opposed the motion and moved for attorneys' fees under Md. Code (1984, 2012 Repl. Vol.), § 12-103 of the Family Law Article ("FL").

After at least one postponement, a magistrate conducted a contempt hearing on September 3, 2014. Dr. Stevenson-Perez called himself and two of his neighbors to the stand. He denied having previously heard that his daughter did not want to see him because of the derogatory comment that he had allegedly made. During cross-examination, however, he was confronted with several documents suggesting his awareness of that claim. In addition, Dr. Stevenson-Perez admitted under cross-examination that he did not email Ms. Pauls at all from at least September 2013 to January 8, 2014, which was the first time he complained to Ms. Pauls about any lack of

[1] We assume that Dr. Stevenson-Perez is referring to what are referred to generically as "adhesive note pads" or, more commonly, "Post-its." We are confident that he was not describing email. At any rate, the notes never reached Ms. Pauls, allegedly because of the actions of the minor child and the family dog.

access to their daughter. He admitted that he intentionally avoided writing emails because they were not "the path of least resistance."

At the close of Dr. Stevenson-Perez's case, Ms. Pauls moved for judgment. The magistrate asked Dr. Stevenson-Perez if he could explain how the evidence suggested that Ms. Pauls was in contempt of the November 2012 order. Dr. Stevenson-Perez could point only to Ms. Pauls's absence when he came to pick up his daughter, but the magistrate did not believe that her absence was sufficient to show that she intentionally disobeyed the court's orders. In addition, the magistrate noted that Dr. Stevenson-Perez repeatedly failed to observe the court's requirement to communicate with Ms. Pauls via email, not "stickies."

The magistrate granted judgment without hearing Ms. Pauls's case, recommending that Ms. Pauls not be held in contempt of court. The magistrate informed Dr. Stevenson-Perez that if he wanted a judge to review the recommendation, he had ten days to file written exceptions that stated the reasons for objecting to the magistrate's recommendation. The magistrate specifically stated that "[i]f you write the perfect exceptions, and you file them on the eleventh day, they will be dismissed as being untimely."

Dr. Stevenson-Perez filed exceptions on Tuesday, September 16, 2014, the thirteenth calendar day after the magistrate's recommendation. He claims to have relied on the advice of the circuit court's Family Law Self-Help Center that the ten-day requirement did not include weekends. *But see* Md. Rule 1-203(a) ("[i]f the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are

counted"). The circuit court declined to consider the untimely exceptions, but does not yet appear to have entered an order formally denying the contempt motion.[2]

The circuit court held a hearing on attorneys' fees on October 10, 2014. At the hearing, Dr. Stevenson-Perez claimed that he relied on the Family Law Self-Help Center's advice in filing for contempt. For that reason, he argued that it would be unfair to assess attorneys' fees against him. The circuit court heard the testimony, received the transcript from the hearing before the magistrate, and adjourned to take the matter under advisement.

On November 6, 2014, the clerk docketed an order granting Ms. Pauls's motion for attorneys' fees. In an opinion accompanying the order, the circuit court concluded that Dr. Stevenson-Perez did not have substantial justification to file for contempt. The court observed that Dr. Stevenson-Perez admitted violating the November 2012 custody order's requirement that he communicate with Ms. Pauls by email and that he made no credible attempt to work things out with Ms. Pauls before filing for contempt. The court further observed that Dr. Stevenson-Perez was unable "to specify any part of the visitation provisions in the Order that [Ms. Pauls] had violated." The court also observed that Ms. Pauls had substantial justification for defending against the motion.

[2] Although Dr. Stevenson-Perez filed his exceptions on the thirteenth calendar day after the magistrate's recommendation, he was technically only a day late. Because the magistrate ruled on Wednesday, September 3, 2014, the tenth day was Saturday, September 13, 2014. Consequently, under Md. Rule 1-203(a)(1), Dr. Stevenson-Perez had until "the end of the next day that [was] not a Saturday, Sunday, or holiday" – Monday, September 15, 2014. He filed the following day.

Although Ms. Pauls had incurred $10,149.68 in fees and expenses, the circuit court assessed only $5,200.18 – the amount that she still owed to her lawyers – against Dr. Stevenson-Perez. In reaching its decision, the court took note of $190,000.00 in annual income that it had imputed to Dr. Stevenson-Perez earlier in the case. Dr. Stevenson-Perez did not inform the court that he was 65 years old, now retired, and living on only about $60,000.00 per year in pension and Social Security benefits.

Dr. Stevenson-Perez noted an appeal on November 26, 2014, 55 days after the magistrate's recommendation that the contempt motion be denied and 20 days after the circuit court assessed the attorneys' fees against him.

QUESTIONS PRESENTED

Dr. Stevenson-Perez presented six questions, which we have rephrased and consolidated as follows:

1. Did the magistrate err in recommending that judgment be entered against Dr. Stevenson-Perez at the close of his case on his Petition for Contempt?
2. Did the circuit court err by assessing Ms. Pauls's attorneys' fees against Dr. Stevenson-Perez?

For the reasons that follow, we conclude that we do not have jurisdiction over the first question, and we answer the second in the negative.

DISCUSSION

Dr. Stevenson-Perez asserts several reasons in support of his claims of error.

First, he challenges the magistrate's decision not to hold Ms. Pauls in contempt of court. He argues that the magistrate mischaracterized the record and ignored substantial

evidence in his favor. We do not reach this issue, however, as we do not have jurisdiction over it.

Second, Dr. Stevenson-Perez challenges the court's decision to levy some of Ms. Pauls's attorneys' fees against him. He contends again that the court mischaracterized the record and ignored substantial evidence in his favor. He further contends that Ms. Pauls did not sustain her burden in showing that he had no substantial justification to file for contempt. He contends that allowing the circuit court to retain records he believes are false constitutes a fraud upon the court.

Dr. Stevenson-Perez also presents two non-evidentiary grounds for his appeal. He claims that he was entitled to rely on the advice of the Family Law Self-Help Center, as a branch of the circuit court system. He also claims that the court should not have imputed $190,000.00 of income to him in assessing his ability to pay Ms. Pauls's attorneys' fees, as he had retired at 65, as he claims is his legal right.

Ms. Pauls contends that under § 12-103 of the Family Law Article she needed only to show that she had substantial justification for defending the contempt action, and that Dr. Stevenson-Perez lacked substantial justification for bringing it. She argues that she has easily sustained that burden. While we do not agree with Ms. Pauls's precise characterization of the standard, we find no error in the circuit court's determination that Dr. Stevenson-Perez was responsible for her attorneys' fees, and we affirm.

I. This Court Lacks Appellate Jurisdiction over an Appeal from the Magistrate's Recommendation

Unless otherwise allowed by law, a party generally may appeal only "from a final judgment entered in a civil or criminal case by a circuit court." Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article ("CJP"). Ms. Pauls correctly asserts that the magistrate's recommendation is not an appealable, final judgment.

"[T]o constitute a final judgment," a circuit court ruling "must, among other things, be an unqualified final disposition of the matter in controversy." *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 262 (2009) (quotation marks omitted). In other words, the "ruling must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding." *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 565 (2010) (quotation marks omitted). In addition, the ruling must "be set forth on a separate document," Md. Rule 2-601(a), which must "be signed by either the clerk or the judge, depending on the type of judgment." *Hiob v. Progressive American Ins. Co.*, 440 Md. 466, 497 (2014). Finally, the clerk must make a proper record of the judgment. *See* Md. Rule 2-601(a)-(c).

The magistrate's recommendation not to hold Ms. Pauls in contempt is not a final judgment. A magistrate "is not a judicial officer[] and is not vested with judicial powers." *See Harryman v. State*, 359 Md. 492, 505 (2000). A magistrate can make findings and recommendations (*see* Md. Rule 9-208(e)), but those findings and

recommendations do not become orders unless and until a court approves them. *See* Md. Rule 9-208(h); *Anthony Plumbing of Maryland, Inc. v. Attorney General*, 298 Md. 11, 16 (1983) ("[t]he master's findings do not finally dispose of the litigation in the trial court; they may be excepted to by the parties and are not binding until confirmed and implemented by the trial court").

Here, we have no court order, let alone any final judgment, on the issue of whether Ms. Pauls should be held in contempt. Although the circuit court ruled that it would not "consider" Dr. Stevenson-Perez's untimely exceptions, it has not formally "direct[ed] the entry of the order or judgment as recommended by the master." Md. Rule 9-208(h)(1)(B). Dr. Stevenson-Perez, therefore, has no basis to appeal on the issue of contempt.[3]

In any event, even if the court had formally adopted the magistrate's recommendation, the decision not to hold someone in contempt is ordinarily not appealable. CJP § 12-304 addresses interlocutory appeals from findings of contempt, but it "clearly and unambiguously limits the right to appeal in contempt cases to persons adjudged in contempt." *Pack Shack, Inc. v. Howard Cnty.*, 371 Md. 243, 254 (2002). In other words, if the court had held Ms. Pauls in contempt, she would have the right to appeal; Dr. Stevenson-Perez, however, would have no right to appeal if the court had declined to hold Ms. Pauls in contempt.

[3] Even if the magistrate's recommendation were appealable, which it is not, Dr. Stevenson-Perez would have been required to note his appeal "within 30 days after entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a). Dr. Stevenson-Perez, however, noted his appeal 55 days after the recommendation.

II. The Circuit Court Did Not Err in Ordering Dr. Stevenson-Perez to Pay Ms. Pauls's Legal Expenses

Employing § 12-103 of the Family Law Article, the circuit court ordered Dr. Stevenson-Perez to pay $5,200.18 of Ms. Pauls's legal expenses. Although that order is no more of a final judgment than the magistrate's recommendation against a finding of contempt, this Court has allowed a person to appeal such an order under CJP § 12-303(3)(v), which authorizes appeals from "interlocutory orders entered by a circuit court in a civil case . . . [f]or . . . the payment of money." *Lieberman v. Lieberman*, 81 Md. App. 575, 582 (1990).[4]

[4] It is debatable whether *Lieberman* was correctly decided. An order "for . . . the payment of money," within the meaning of § 12-303(3)(v), is an order in which a court of equity commands a person to pay money upon pain of contempt. *See Anthony Plumbing*, 298 Md. at 19-20; *Della Ratta v. Dixon*, 47 Md. App. 270, 277-86 (1980). An order "for . . . the payment of money" is not "a simple judgment for money damages." *Della Ratta*, 47 Md. App. at 277-78. In a domestic proceeding, an order "for . . . the payment of money" includes a *pendente lite* order to pay alimony or to fund a spouse's case (*i.e.*, an order to pay "suit money"). *See Pappas v. Pappas*, 287 Md. 455, 462-63 (1980) (quoting *Chappell v. Chappell*, 86 Md. 532, 536-37 (1898)); *accord Anthony Plumbing*, 298 Md. at 20 ("[t]he types of orders previously held by this Court to be orders for the 'payment of money' are orders for alimony, child support, and related counsel fees"); *see also Yamaner v. Orkin*, 310 Md. 321, 325 (1988) (an order for the payment of money is "equitable in nature" and "proceed[s] directly to the person so as to make one against whom it operates directly and personally answerable to the court for noncompliance"). By contrast, if a court imposes sanctions under Rule 1-341 against a litigant who has proceeded in bad faith or without substantial justification, it has not entered an order "for . . . the payment of money," because "[t]he court does not have available to it as a sanction for violation the sanction of imprisonment for contempt." *Id.* (citing *Simmons v. Perkins*, 302 Md. 232, 236 (1985); *Kerr v. Kerr*, 287 Md. 363, 371 (1980)). In this case, the order certainly bears some resemblance to an order under Rule 1-341, because it entails a finding that Dr. Stevenson-Perez lacked substantial justification. Under the controlling authority of *Lieberman*, however, we are constrained to conclude the order is an order "for . . . the payment of money," which Dr. Stevenson-Perez has the right to appeal under § 12-303(3)(v).

A. FL Section 12-103

The general rule is that, unless a law or other rule applies, parties bear their own litigation costs, including attorneys' fees. *See*, *e.g.*, *Montgomery v. Eastern Correctional Inst.*, 377 Md. 615, 637 (2003). However, FL § 12-103 authorizes an award of attorneys' fees in certain circumstances:

> (a) *In general*. — 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:
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> * * *
>
> (2) files any form of proceeding:
>
> * * * *
>
> (iii) to enforce a decree of custody or visitation.
>
> (b) *Required considerations*. — 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) *Absence of substantial justification.* — 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.

In summary, in cases covered by the statute, including cases involving a proceeding to enforce a decree of visitation, the circuit court *may* award costs and counsel fees (FL § 12-103(a)), provided that it considers the parties' financial status, the

parties' needs, and the existence of substantial justification to bring, maintain, or defend the proceeding. FL § 12-103(b). Furthermore, if the court finds that a party lacked substantial justification either to prosecute or defend the proceeding, the court *must* award costs and counsel fees to the other party "absent a finding of good cause to the contrary." FL § 12-103(c).

B. The Court's Decision and Dr. Stevenson-Perez's Contentions

In this case, the court found that Dr. Stevenson-Perez lacked substantial justification for filing the petition for contempt, which effectively was a proceeding to enforce a decree of visitation. The court considered the parties' needs and financial status. Finally, the court found no good cause why Dr. Stevenson-Perez should not pay some of Ms. Pauls's fees.

As nearly as we can tell, Dr. Stevenson-Perez assigns three errors to the circuit court's decision to assess Ms. Pauls's attorneys' fees against him. First, Dr. Stevenson-Perez contends that the circuit court had insufficient evidence to conclude that he lacked substantial justification to bring the contempt motion. He asserts that the circuit court ignored and discounted favorable evidence, mischaracterized the record, and did not hold Ms. Pauls to her burden of proof. Second, Dr. Stevenson-Perez contends that he was entitled to rely on the alleged advice of the Family Law Self-Help Center in filing the motion for contempt. Third, Dr. Stevenson-Perez contends that the circuit court improperly imputed income to him, despite his retirement.

The circuit court correctly applied FL § 12-103, and we affirm its order.

C. The Standard of Review

When we examine the circuit court's factual conclusions, including the facts upon which it determined whether a lawsuit was brought with substantial justification, we do not reverse the circuit court unless its findings were "clearly erroneous." *Bontempo v. Lare*, 444 Md. 344, 363 (2015); Md. Rule 8-131(c). "Findings are not clearly erroneous if 'any competent material evidence exists in support of the trial court's factual findings.'" *Bontempo v. Lare*, 444 Md. at 363 (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). We do not re-weigh the evidence and second-guess the trial court's findings. There is either competent, material evidence to support the court's determination, in which case we affirm, or there is no competent material evidence on point, in which case we reverse.

"We review the trial court's award of counsel fees in a domestic case for abuse of discretion." *Fitzzaland v. Zahn*, 218 Md. App. 312, 332 (2014) (citing *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002)). "[A]n abuse of discretion occurs when a decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011) (quoting *King v. State*, 407 Md. 682, 711 (2009)).

D. Dr. Stevenson-Perez's Evidentiary Claims Are Unpersuasive

In determining that Dr. Stevenson-Perez lacked any substantial justification for the action, the circuit court reached a sound legal conclusion based on competent, material

evidence and was not clearly erroneous. The circuit court considered the transcript from the earlier hearing and noted that Dr. Stevenson-Perez was unable to point the magistrate to evidence of even one example where Ms. Pauls violated the original order. The court also noted that Dr. Stevenson-Perez had in fact violated the order by not communicating via email, as mandated. The court pointed to Dr. Stevenson-Perez's failures to communicate effectively, both before and after he filed his motion for contempt. These examples represent competent, material evidence that Dr. Stevenson-Perez had no substantial justification to file for contempt.

Even if the court agreed with Dr. Stevenson-Perez's allegation that Ms. Pauls intentionally hid the child from him, it would not have been clearly erroneous to find that Dr. Stevenson-Perez had no substantial justification for moving for contempt. The circuit court found that Dr. Stevenson-Perez had made no attempts, under the terms of the order, to resolve the issue with Ms. Pauls before resorting to the courts. This is enough to uphold the circuit court's determination. Nor would the court have been clearly erroneous in finding a lack of substantial justification based on Dr. Stevenson-Perez's inability to articulate any actual violation of the order.

In short, because the circuit court was not clearly erroneous in concluding that Dr. Stevenson-Perez had no substantial justification to move for contempt, any other claims that the circuit court ignored or misinterpreted the evidence must also fail. We will, however, discuss two of Dr. Stevenson-Perez's chief arguments of evidentiary insufficiency.

Dr. Stevenson-Perez contends that our review of the record will reveal Ms. Pauls's "admissions of willful violation of the in-force November [2012 custody order]," which will compel us to hold that he must have had substantial justification to file for contempt. He cites to the two hearings, asserting that both contain Ms. Pauls's explicit admissions that she knew of and violated the court's order. We do not agree.

After a thorough review of the trial transcripts to which Dr. Stevenson-Perez refers, we simply cannot find any support for his belief that "in two separate court hearings [September 3, 2014 and October 10, 2014], [Ms. Pauls] admitted to fulfilling" the elements of contempt. Ms. Pauls never took the stand at either hearing. At best the evidence showed that she and the child were not home when Dr. Stevenson-Perez arrived for visitation. The magistrate was not required to accept Dr. Stevenson-Perez's contention that their absence amounted to proof of an intentional violation of the existing order. As previously stated, however, even if the magistrate believed that Ms. Pauls had openly defied the order (which he was not required to do), Dr. Stevenson-Perez still needed to attempt to communicate by email to resolve the problem before he would have substantial justification to come to court.

Dr. Stevenson-Perez cites *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), which concerns motions to set aside a verdict for fraud on a federal court. He contends that the circuit court, by allegedly misinterpreting the record, has filled the record with false information, which he says constitutes a fraud on the court (*i.e.*, a fraud on itself). Suffice it to say that if the circuit court had so grossly misinterpreted the record as to require our intervention, we would find that the circuit court was clearly

erroneous and reverse for the circuit court to reconsider the evidence. Under the deferential standard that we are required to apply (*see Bontempo v. Lare*, 444 Md. at 363), we are unpersuaded that the court's findings were clearly erroneous.

We are not here to re-weigh the evidence or to tell the circuit court how to interpret it. The circuit court's findings were supported by competent, material evidence, and established that Dr. Stevenson-Perez lacked substantial justification for the contempt motion.

E. Reliance on the Advice of the Court's Free Family Law Center Is Not Proof that Dr. Stevenson-Perez Had "Substantial Justification"

Dr. Stevenson-Perez asserts that he was entitled to rely on the advice he claims to have received from the "taxpayer-supported Family Law Center," as it "is a duly-recognized functional component of the Montgomery County Court, for the benefit of self-petitioners." Dr. Stevenson-Perez contends that his "proper adherence to the procedures, policies, and legal recommendations of the court's own taxpayer-supported . . . Family Law Center constitutes sufficient precedent to prove a sufficient legal justification in the initiation & maintenance of" his motion for contempt. We disagree.

Dr. Stevenson-Perez claims that there is no precedent precisely on point, and we have not found any. We shall assume, however, that had Dr. Stevenson-Perez fully and completely explained the situation to the Family Law Center and received bad advice, upon which he relied in good faith, he would be insulated from an allegation that he brought his contempt proceeding in bad faith. *See, e.g.*, *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 449 (2012). But good faith and substantial justification are

not exactly the same thing. Bad legal advice does not create a "substantial" factual justification for bringing a claim. *See Davis v. Petito*, 425 Md. 191, 204 & n.8 (2012) (explaining that substantial justification prong of FL § 12-103 requires trial judge to assess reasonableness of party's position both in law and in fact). As the circuit court was not clearly erroneous in determining that Dr. Stevenson-Perez lacked substantial justification, we affirm.

F. Dr. Stevenson-Perez Did Not Preserve the Issue of Whether His Age and Retirement Altered His Ability to Pay Ms. Pauls's Attorneys' Fees

Dr. Stevenson-Perez contends that the court imputed "imaginary income to a legally-retired litigant[] who is living on a fixed income." The court did indeed impute $190,000.00 of income on Dr. Stevenson-Perez. However, this should not have come as a surprise to Dr. Stevenson-Perez, and it was not a surprise in the proceedings at issue here. As the circuit court noted in its opinion, the court had "previously . . . imputed earnings to Defendant in the amount of $190,000.00 per year." In her motion for fees, Ms. Pauls reminded the court that it had previously imputed that income to Dr. Stevenson-Perez, but he does not appear to have taken any action to inform the court that the imputation of income was incorrect, or that his employment status or income had changed since the court first imputed those earnings to him. Consequently, we deem the issue to have been waived.

Typically, this court "will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a). One of the key reasons for this rule is "so that the trial court can pass

upon, and possibly correct any errors in the proceedings." *Maryland State Bd. of Elections v. Libertarian Party of Maryland*, 426 Md. 488, 517 (2012).

In considering a party's finances for determining an award of counsel fees in family law cases, the court may consider a party's potential income if the party is voluntarily impoverished. *See Digges v. Digges*, 126 Md. App. 361, 384 (1999). In April of 2011, the circuit court determined that Dr. Stevenson-Perez was voluntarily impoverished and could have earned $190,000.00 per year. The court imputed that amount of income to him, and Dr. Stevenson-Perez did not appeal the decision. More important, Dr. Stevenson-Perez, as far as the record reflects, never informed the court of any change of circumstances, such as his reaching the legal retirement age, which would justify altering the income the court imputed to him.

Even more so than in many cases, the guiding purpose of Md. Rule 8-131(a) shines brightly here. Dr. Stevenson-Perez is not complaining that the circuit court made the wrong decisions; he is complaining that it failed to make a decision that he failed to request. Perhaps if Dr. Stevenson-Perez had asked the circuit court to adjust the amount of imputed income or informed the court that he was currently living on his retirement benefits, the court would have not have imputed $190,000.00 per year in income to him. Or perhaps the court would not have altered the imputed income, but we would at least have a record and a decision to review, rather than Dr. Stevenson-Perez's bald factual assertions that he is legally retired and should no longer have income imputed to him.

At any rate, the issue is completely unpreserved for our review, and we do not have the factual record necessary to decide the issue even if we so desired.

CONCLUSION

For the foregoing reasons, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS, INCLUDING THE COST OF APPELLEE'S APPENDIX, TO BE PAID BY APPELLANT.