Circuit Court for Baltimore County
Case No. 03-C-17-10269

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 77

September Term, 2020

MATTHEW HUFF

v.

LINDSEY HUFF

Graeff,
Nazarian,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 12, 2021

Lindsey Huff ("Mother") filed, in the Circuit Court for Baltimore County, a petition for contempt alleging that Matthew Huff ("Father") had failed to pay his court-ordered portion of the transportation costs Mother had incurred over a five-month period while visiting with the parties' minor children pursuant to a custody schedule set forth in a Judgment of Absolute Divorce entered by the court. Following a hearing, the court found Father in contempt based on his failure to pay an appropriate share of the transportation costs. The court also amended its Judgment of Absolute Divorce to include, as part of Mother's transportation costs, "mileage at a rate of $0.58 per mile and tolls." Using that formula, the court set a purge provision of $4,397.17, which represented Father's share of Mother's "mileage and tolls" over the prior five-month period. The court then deducted that amount from Mother's then-existing arrears.

In this appeal, Father raises two questions:

1. Did the court err in finding Father in contempt and in calculating Father's share of Mother's transportation costs to include "mileage and tolls?"

2. Did the court err by amending its Judgment of Absolute Divorce to define transportation costs as "mileage at the rate of $0.58 per mile and tolls" rather than actual expenses incurred, without considering the best interest of the children?

For reasons to follow, we hold that, although the circuit court did not err in finding Father in contempt, the court did err in using its amended definition of "transportation costs" to calculate Father's purge provision. We also hold that the court erred in amending the term "transportation costs" in its Judgment of Absolute Divorce to include "mileage

and tolls" without considering the best interest of the minor children. We, therefore, reverse in part and affirm in part the court's judgment.

BACKGROUND

Mother and Father were married but were later divorced by way of a Judgment of Absolute Divorce (the "Divorce Judgment") entered by the circuit court in February of 2019. At the time of the divorce, the parties had two minor children (the "Children"). Per the terms of the Divorce Judgment, the parties were to have shared physical custody of the Children according to an access schedule. That access schedule included a provision that stated that, in the event that Mother, an active-duty service member with the United States Navy, was deployed or received a change of station, she would have access to the Children during all school breaks, holidays and weekends. The provision also stated: "Any transportation costs during any deployment or change of station will be shared according to their shared income percentage, currently at 65/35, Mother and Father respectively." Those percentages were based on Mother's gross monthly income of $5,862 and Father's gross monthly income of $3,159. The court also ordered, based on the parties' income, that Mother would pay Father $1,0000 per month in child support and an additional $100 per month toward the balance of her arrears which totaled $7,950.

On Oct. 29, 2019, Mother filed a Petition for Contempt against Father. In that petition, Mother alleged that, on Sept. 6, 2019, she was transferred from "Naval Operational Support Center Baltimore to Mid-Atlantic Maintenance Center in Norfolk, Virginia." Mother alleged that, since the date of her transfer, she had driven from Norfolk

to Baltimore County to pick up and then drop off the Children on six different weekends. Mother claimed that, over those six weekends, she had driven 5,933 miles and that, per the U.S. Internal Revenue Service's (IRS) standard mileage rate of $0.58 per mile, her transportation costs over that period totaled $3,441.14. Mother alleged that Father was supposed to pay 35% of those costs, or $1,204.40, but had failed to do so. Mother asked the circuit court to find Father in contempt for failing to pay that amount. Mother also asked the court to "pass an order clarifying the method by which transportation costs are to be calculated pursuant to the Judgment of Absolute Divorce."

On Feb. 26, 2020, the court held a hearing on Mother's contempt petition. At that hearing, Mother provided records to the court indicating that, from Sept. 13, 2019, to Feb. 25, 2020, she had incurred transportation costs totaling $12,000, which included "tolls and mileage." Mother maintained that Father should have paid 35% of that amount, or approximately $4,200, but that he had only paid $29.22. Mother asserted that the $0.58 per mile included "wear and tear" on her vehicle, which, at the time, was a 2018 Kia Nero Hybrid. Mother also submitted documentation showing that, between Sept. 13, 2019, and Feb. 25, 2020, she drove over 20,000 miles and paid over $200 in tolls while driving between Norfolk and Baltimore County to effectuate her visitation.

During the hearing, Father admitted that he had only paid Mother $29.22 for her transportation costs, but he added that he was willing, and had attempted, to pay more. Father also stated that he was willing to pay 35% of Mother's gas and tolls as the transportation costs. Father ultimately disagreed, however, with Mother's calculation of

her transportations costs, particularly her use of the IRS standard mileage rate of $0.58 per mile. He asserted that "transportation costs" should only include those costs that Mother actually had incurred, such as fuel costs and tolls. He argued that the Divorce Judgment did not define "transportation costs" to include reimbursement for mileage and that Mother's use of the IRS's standard of $0.58 per mile was arbitrary and potentially inflated given that Mother drove a hybrid vehicle. He further argued that the term "transportation costs" was not sufficiently definite to support a finding of contempt.

Ultimately, the circuit court found Father in contempt based on his almost complete failure to pay any of Mother's transportation costs. The court explained that, although "there were many options that were offered" on "how to calculate" the transportation costs, Father "just didn't do anything."

The court thereafter established a purge provision of $4,397.17, which the court derived from Mother's purported transportation costs of approximately $12,000. In making that determination, the court stated that assessing a standard rate for mileage was "typically the way it's done" and had "been done in many, many cases." After setting the purge amount, the court deducted that amount from Mother's current arrears of $7,950.00, effectively purging the court's finding of contempt. The court then amended the divorce judgment and ordered that, from the date of the hearing, Father was to pay 35% of Mother's "transportation costs regarding the minor [C]hildren's visitation - specifically mileage at the rate of $0.58 per mile and tolls." The court later issued a written order detailing its findings.

DISCUSSION

I.

Father's Contentions[1]

Father first contends that the circuit court erred in finding him in contempt. He contends that the term "transportation costs" in the Divorce Judgment was not sufficiently definite, certain, and specific to support a contempt finding. He argues further that the court erred by defining the term "transportation costs" during the contempt hearing and then finding him in contempt based on that new definition.

Standard of Review

"Generally, this Court will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed." *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016). "But where the order involves an interpretation and application of statutory and case law, we must determine whether the circuit court's conclusions are 'legally correct' under a *de novo* standard of review." *Id.*

Analysis

"Civil contempt proceedings are 'intended to preserve and enforce the rights of private parties to a suit and to compel obedience' with court orders and decrees." *State v. Crawford*, 239 Md. App. 84, 110 (2018) (citing *Dodson v. Dodson*, 380 Md. 438, 448 (2004)). "Civil contempt proceedings are generally remedial in nature and are intended to coerce future compliance." *Id.* (citations and quotations omitted). "An obligor's failure to

[1] Mother did not file a brief in the instant case.

pay court-ordered support payments can constitute constructive contempt." *Bradford v. State*, 199 Md. App. 175, 193 (2011).

"In a civil contempt proceeding for failure to pay child support, the moving party must prove, by clear and convincing evidence, that the 'alleged contemnor has not paid the amount owed[.]'" *Id.* at 195 (citing Md. Rule 15-207(e)(2)). If a finding of contempt for failure to pay child support is made, the court must issue a written order that specifies, among other things, any sanctions imposed for the contempt and how the contempt may be purged. Md. Rule 15-207(e)(4).

"Before a party may be held in contempt of a court order, the order must be sufficiently definite, certain, and specific in its terms so that the party may understand precisely what conduct the order requires." *Droney v. Droney*, 102 Md. App. 672, 684 (1995). Moreover, "one may not be held in contempt of a court order unless the failure to comply with the court order was or is willful." *Dodson*, 380 Md. at 452.

We hold that the circuit court did not err in finding Father in contempt for failing to pay his share of the transportation costs. Although the parties disputed whether Mother's transportation costs should be calculated using the IRS standard mileage rate of $0.58, there was no dispute that Father should have paid, at a minimum, 35% of Mother's fuel and toll costs over the five-month period at issue. There was also no dispute that, in that time, Father paid Mother, at most, $29.22 in transportation costs, despite the fact that Mother traveled over 20,000 miles and paid over $200 in tolls while driving between Norfolk and Baltimore County to visit with the Children. Even if we take into

consideration the fact that Mother drove a hybrid vehicle, it is clear that Father's payment of $29.22 was woefully short of the 35% in fuel and toll costs he admitted he owed pursuant to the Divorce Judgment. Thus, even without Mother's claim for mileage reimbursement, the court had sufficient evidence to find that Father had failed to meet his court-ordered obligation to pay 35% of Mother's transportation costs.

That said, we hold that the circuit court erred in calculating the retroactive transportation costs based on the mileage rate of $0.58 and tolls and then setting Father's purge provision using that amount. Applying that new definition of "transportation costs" retroactively was unreasonable, given that the Divorce Judgment did not define transportation costs in such a way.[2] Moreover, as discussed in greater detail below, the court's decision to define "transportation costs" in such a way constituted a modification of the prior support order. Thus, at the very least, the court should not have assessed those costs against Father for the time period prior to the filing of Mother's petition for contempt. *See Ley v. Forman*, 144 Md. App. 658, 677 (2002) ("Maryland law does not permit a court to modify a child support award prior to the date of the filing of a motion for modification.").

In sum, the circuit court did not err in finding Father in contempt based on his near-total failure to pay any of Mother's transportation costs, including the amount he admitted

[2] Md. Code, Family Law § 12-204(i) provides that "the following expenses incurred on behalf of a child may be divided between the parents in proportion to their adjusted actual incomes: . . . any expenses for transportation of the child between the homes of the parents." The question for the lower court was not if there were transportation cost incurred but the amount obligated to be paid by father.

he owed. The court did, however, err in calculating Father's purge amount under the $0.58 per mile standard rate and tolls and then applying that purge amount to Mother's arrears. Under the circumstances, the court should have limited Mother's transportation costs over the prior five-month period to those costs actually admitted, *i.e.*, fuel and tolls, and then set Father's purge provision using that amount. Accordingly, we affirm the court's finding of contempt but reverse the court's finding as to Father's purge provision.

II.

Father next claims that the circuit court erred in amending its definition of "transportation costs" without considering the best interests of the Children. We agree.

To be sure, the court's amendment of its definition of transportation costs in the Divorce Judgment did not technically "modify" the support award. The Divorce Judgment allowed for the apportionment of Mother's transportation costs in the event that Mother was deployed or restationed, and the court, in clarifying its definition of transportation costs, did not alter the percentages of the transportation costs for which each of the parties were responsible.

Nevertheless, the practical effect of the court's decision was apparent. Over the course of the five-month period in which Mother claimed reimbursement for her transportation costs at a rate of $0.58 per mile and tolls, Father's share of those costs exceeded, on average, $800 a month. Were those costs to continue at that rate, Father would be entitled to less than $200 of the $1,000 he was supposed to receive from Mother

in child support under the Divorce Judgment. Such a drastic reduction in Father's support award was unreasonable without further analysis.

Certainly, we are not suggesting that Mother did not incur substantial transportation costs in traveling over 20,000 miles from Norfolk to Baltimore County during the five-month period at issue. Rather, we hold that the record before us lacks sufficient evidence to justify the circuit court's decision to impose such a substantial sum against Father, where that sum radically reduced the amount that Father would receive from Mother in child support. Without a more in-depth inquiry into the financial status of the parties and the practical effect that the court's decision would have on the amount of child support Father was supposed to receive from Mother, we cannot say that the current support obligations are fair to either party or the Children. *See Lacy v. Arvin*, 140 Md. App. 412, 423 (2001) ("One of the purposes of the child support guidelines is to permit ready and fair calculation of the financial obligation of child support that parents owe so that when parents are no longer living together . . . the child nevertheless receives the full measure of financial support to which he is entitled[.]").

In that same vein, the record is devoid of any indication that the circuit court considered the best interest of the children in modifying its definition of transportation costs and then determining Father's share of those costs based on the new definition. Under the circumstances, it was appropriate for the court to do so. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018) ("In exercising its discretion [to award transportation costs], the trial

court must balance the best interests and needs of the child with the parents' financial ability to meet those needs.") (citations and quotations omitted).

In sum, we hold that the circuit court erred in modifying the Divorce Judgment without conducting a more thorough inquiry into the impact that such a modification would have on the parties' financial condition, the support award, and the best interest of the Children. We therefore reverse that portion of the court's judgment and remand the case so that the court can conduct such an inquiry.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED IN PART AND AFFIRMED IN PART; COSTS TO BE PAID BY ONE-HALF BY APPELLANT AND ONE-HALF BY APPELLEE.