Circuit Court for Montgomery County
Case No. 79460FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 82

September Term, 2023

ALAN CORNFIELD

v.

ELIZABETH FERIA

Beachley,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: February 8, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Alan Cornfield ("Father") and appellee Elizabeth Feria ("Mother") are the parents of C.C., born in August 2002. The Circuit Court for Montgomery County granted Father primary physical custody of C.C. in September 2014. In May 2019, C.C. began living with Mother, and in June 2019 the parties agreed that Mother would have *pendente lite* primary custody of C.C. A multi-day trial was held in January and February 2020 concerning custody, child support, and attorney's fees. The final day of trial was scheduled to be held in March 2020, but was postponed until September 2020 due to COVID-19. Because C.C. turned 18 in August 2020, the only remaining issues at that time were retroactive child support and attorney's fees. The court issued an order on January 12, 2022, awarding Mother retroactive child support and attorney's fees. Father appealed that order, and a panel of this Court vacated and remanded the judgment for reconsideration because the circuit court based its award on a document that was not admitted into evidence. *Cornfield v. Feria*, No. 1958, Sept. Term 2021 (filed Sept. 15, 2022).

On remand, the court issued an amended order, awarding Mother a total of $168,000 in retroactive child support and $54,411.80 in attorney's fees and costs.[1] Father again appeals and presents the following questions for our consideration:

> I. Did the [c]ircuit [c]ourt abuse its discretion in making its child support award?
>
> II. Did the [c]ircuit [c]ourt abuse its discretion in making its award of attorneys' fees?

Because we hold that the circuit court's child support calculation contained mathematical

[1] The court also ordered Father to pay 90% of the Court Appointed Child Advocate's fees.

errors and an improper methodology, we shall vacate both the child support and attorney's fees awards and remand to the circuit court for further proceedings.

BACKGROUND

In 2010, the parties reached a custody agreement granting Mother physical custody of C.C. In 2014, the circuit court modified the custody order, granting Father primary physical custody of the child.[2]

In May 2019, C.C. ran away from Father's house and moved in with Mother. Father filed emergency motions to enforce the 2014 custody order and to have Mother found in contempt. Mother opposed Father's motions and filed her own motion to modify the custody order, in which she also requested child support. On May 31, 2019, the circuit court granted Father's emergency motions and ordered that C.C. be returned to Father's custody. On June 28, 2019, the parties entered into a consent agreement providing that C.C. would reside with Mother pending a merits hearing on Mother's motion to modify.

On September 17, 2019, Mother filed an emergency motion requesting child support dating back to May 2019. She attached to this motion a financial statement dated September 16, 2019. That financial statement indicated that Mother had a monthly income of $4,855, and total monthly expenses of $11,869, including $8,841.50 in expenses for C.C. Mother's net worth according to her financial statement was $277,137.75, with real estate comprising the majority of her assets.

Father filed a financial statement on January 8, 2020, reflecting a monthly income

[2] The parties were granted joint legal custody of the child.

of $45,280 and total monthly expenses of $12,276. The financial statement indicated that Father had a net worth of $10,864,000, primarily in "Stocks/Investments."

Trial commenced on January 13, 2020. The first two days of trial consisted of evidence relating to custody, a matter not relevant to this appeal. On January 15, 2020, Mother filed an amended financial statement, reflecting a monthly income of $5,108 and total monthly expenses of $15,772. Because the amended financial statement was filed after trial began, the court granted Father's motion to exclude it, leaving the September 2019 financial statement as the only one in evidence for Mother.

On the third day of trial, Father testified concerning his finances. He stated that his financial statement was "close to being accurate," but was "based on old information." His financial statement reflected that he was spending $4,848 per month on expenses for C.C., but he admitted on cross examination that he did not have any expenses related to C.C. at the time of trial, aside from health insurance.

Mother testified that her financial statement was accurate as of September 2019, but that she had incurred additional expenses since that time. Specifically, Mother testified that she spent "around $2,000" on new hockey gear for C.C. after Father refused to return C.C.'s old hockey gear.[3] She also spent $3,200 on security for C.C. during his hockey games and wrestling matches to ensure that Father complied with C.C.'s wishes regarding

[3] However, on cross examination Mother testified that the $1,155 per month listed on her September 2019 financial statement as "sports" expenses included the cost of equipment. It is unclear whether the $2,000 she spent on hockey equipment was in addition to the equipment cost already included in the financial statement.

communication with Father.[4] Additionally, Mother testified that she had spent large sums of money since September 2019 on various services to help C.C. get into college. These expenses included $6,500 for tutoring, $8,290 for ACT courses, and $4,500 for "college prep." Mother stated that she hoped to send C.C. to a $7,000 summer camp that would help "prepare him for life at college." During the fourth day of trial on February 24, 2020, Mother testified that she was considering buying C.C. a car, "depending on where he's [going to] college," and that she anticipated a car payment of $250 per month.

As mentioned above, the final day of trial was postponed until September 2020 due to COVID-19. In the interim, C.C. turned 18 and began attending college. Thus, as of September 2020, custody and ongoing child support were no longer at issue. The only remaining issues relevant to this appeal were Father's obligation for retroactive child support from June 2019 to August 2020 and Mother's attorney's fees. Mother's attorney filed multiple affidavits throughout the course of the trial, indicating the total amount for legal services and costs. The final affidavit reflected a total of "$50,586.45 for services and $3,825.35 for costs."

The court entered an order on January 12, 2022, finding that Mother's monthly income was $5,108 and her monthly expenses were $15,772. The court stated that these findings were based on Mother's January 2020 financial statement, a document that was not admitted into evidence. Father appealed that order, and a panel of this Court vacated

[4] The June 28, 2019 consent agreement provided that: "[C.C.] decides . . . when and how to communicate with and see his father. At this point in time the communication between his father and [C.C.] will be by text only."

and remanded for further findings because of the court's reliance on Mother's unadmitted January 2020 financial statement. *Cornfield v. Feria*, No. 1958, Sept. Term 2021 (filed Sept. 15, 2022).

The circuit court entered its amended order on February 10, 2023. In that order, the court made the following findings relevant to this appeal:

> [Mother's] financial statement dated September 6, 2019, [sic] reflects her monthly net income from wages as $4,258 and other income as $597 for a total of $4,855. Her monthly expenses are listed as $11,869. She gave sworn testimony which this court credits that she also has spent $2,000 ($166/mo.) on hockey gear, $3,200 ($266/mo.) for security for the minor child, $6,500 ($541/mo.) for college preparation, and will need $250 per month to provide a car for the minor child to drive. The [c]ourt finds the total of her reasonable and necessary monthly expenses to be $13,292. In contrast, [Father's] financial statement . . . reflects that his monthly net income is $45,280.00, and his total expenses amount to $12,276.00. Given the long history in this case of [Father] refusing [to] pay child support until ordered by the [c]ourt to do so, this [c]ourt finds ample justification and in fact necessity for bringing this action for the enforcement of the prior child support Order. Given the history of high conflict in this case, this [c]ourt also finds justification for the need of a Court Appointed Child Advocate (CACA). The [c]ourt also finds as fair, reasonable and necessary the attorney fees requested by [Mother's] counsel and the CACA. It is evident that [Mother] is unable to pay for these necessary legal fees and that [Father] is more than capable of paying the just amount for child support and attorney's fees.

The court awarded Mother $168,000 in retroactive child support, representing $12,000 per month for 14 months. The court also awarded Mother's counsel "attorney's fees in the amount of $50,586.45 for services and $3,825.35 for costs[.]" Additionally, the court ordered Father to pay 90% and Mother to pay 10% of the Court Appointed Child Advocate's fees. Father filed this timely appeal from the amended order.

DISCUSSION

I. Child Support Calculation

Father first argues that the court erred in its calculation of child support. He avers that the court erred in two ways: (1) the court included Mother's personal expenses in its determination of C.C.'s needs; and (2) the court's determination of C.C.'s needs erroneously included the duplication of certain expenses and the inclusion of the $250 per month car expense for the entire 14 months of retroactive support.

Mother does not directly respond to Father's arguments, but instead argues that Father failed to disclose financial information in discovery, and that, because this is an "above-guidelines" case, we should defer to the trial court's discretion in establishing a child support award.

In cases where the sum of the parties' monthly income exceeds $30,000, the circuit court is given great discretion in determining an appropriate child support award. *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018); Md. Code (1984, Repl. Vol. 2019), § 12-204(d) of the Family Law Article ("FL"). In an above-guidelines case, "'[t]he trial court need not use a strict extrapolation method to determine support[,]' but 'may employ any rational method that promotes the general objectives of the child support Guidelines and considers the particular facts of the case before it.'" *Id.* (second alteration in original) (quoting *Malin v. Mininberg*, 153 Md. App. 358, 410 (2003)). "The conceptual underpinning of [the Income Shares] model is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had

the child's parents remained together." *Kaplan v. Kaplan*, 248 Md. App. 358, 386–87 (2020) (emphasis removed) (quoting *Voishan v. Palma*, 327 Md. 318, 322 (1992)). "[W]e will not disturb a 'trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion.'" *Id.* at 385 (quoting *Ruiz*, 239 Md. App. at 425). "As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we may have reached a different result." *Id.* (quoting *Malin*, 153 Md. App. at 415).

Although not addressed by either party, we initially note that the court's child support calculation contains an internal mathematical error. The court found that Mother's total monthly expenses were $13,292. The court arrived at this number by adding several expenses Mother discussed in her testimony ($166 per month for hockey gear, $266 per month for security, $541 per month for college preparation, and $250 per month for car payments) to the monthly expenses listed in her September 2019 financial statement ($11,869). However, the sum of these amounts is $13,092, exactly $200 less than the court's actual finding. Whether the error was mathematical or typographical, this additional $200 is not accounted for in the court's written findings. The court then ordered Father to pay $12,000 per month in child support, which is 90.3% of $13,292. Because the court ordered that Father pay 90% of the child advocate's fees as well, it appears that the court may have used the 90:10 income ratio to determine child support, and then rounded to the nearest multiple of 100. However, while 90% of $13,292 is $11,962.80, 90% of $13,092 is only $11,782.80. Had the court used $13,092 instead of $13,292, we surmise

that the court may have rounded up to $11,800 rather than the $12,000 amount it landed upon. The court will have the opportunity to correct any mathematical errors on remand.

We turn to Father's specific arguments concerning the court's child support calculation. Each of these arguments relies on the assumption we have made already—that the court arrived at its monthly child support award simply by assessing 90% of the monthly expenses to Father and rounding to the nearest multiple of 100. First, Father argues that the court erred by failing to exclude Mother's personal expenses from its findings concerning C.C.'s needs. Second, Father argues that the court incorporated certain fixed expenses, such as the $2,000 Mother paid for new hockey gear, by dividing the total by twelve to determine the monthly expense, and then multiplying the monthly expense by fourteen to determine the total amount of child support Father owed for the months C.C. was living with Mother. Father argues that this methodology required him to pay Mother more than the original cost of the fixed expenses. Third, he argues that the court erred by including the $250 monthly car payments in its calculation of Mother's monthly expenses for all fourteen months because Mother did not purchase a car for C.C. until March 2020 at the earliest. Finally, Father argues that the court erred by adding the cost of the college preparation services to Mother's monthly expenses when that expense was already included in her September 2019 financial statement, thus effectively counting the expense twice. We shall address each of these arguments in turn.

We first consider Father's argument that the court improperly included Mother's personal expenses in its child support calculation. The circuit court found that "the total

of [Mother's] reasonable and necessary monthly expenses [was] $13,292." Without explaining how it arrived at the child support payment, the court ordered Father to pay $12,000 per month for the fourteen months C.C. lived with Mother. As we discussed above, it appears that the court intended that Father pay 90% of the child's living expenses. However, $12,000 is approximately 90% of what the court found to be Mother and C.C.'s combined monthly expenses, which included her own *personal* expenses. The financial statement the court referenced and relied on indicated that Mother incurred monthly expenses for C.C. in the amount of $8,841.50. Thus, the court erred in basing its calculation, in part, on the $11,869 figure reflected in Mother's financial statement, which included her monthly personal expenses of $3,027.50. Notably, the total of C.C.'s monthly expenses, if we include both the $8,841.50 from Mother's financial statement and the additional amounts the court credited from Mother's testimony, would be only $10,064.50, and 90% of that amount ($9,058) is approximately $3,000 less than the $12,000 per month the court ordered.

As this Court stated in *Kaplan*, "in exercising its significant discretion in an above-Guidelines case, the trial court may employ any rational method in balancing 'the best interests and needs of the child with the parents' financial ability to meet those needs.'" 248 Md. App. at 388 (quoting *Ruiz*, 239 Md. App. at 425). Factors relevant to setting child support in an above-guidelines case include "the parties' financial circumstances, the 'reasonable expenses of the child,' . . . and the parties' 'station in life, their age and physical condition, and expenses in educating the child.'" *Id.* at 387 (alteration in original) (quoting

Smith v. Freeman, 149 Md. App. 1, 20 (2002)). Under certain circumstances, a court may determine that it is in the best interests of the child to award child support in an amount higher than the custodial parent's current child-related expenses. *See, e.g.*, *Jackson v. Proctor*, 145 Md. App. 76, 89–92 (2002) (holding that child support award higher than custodial parent's expenses for child was not an abuse of discretion where non-custodial parent had a significantly higher income and custodial parent's expenses were consistent with her lower income).

Here, however, the court did not explain its methodology for determining the child support award. It appears that the trial court was attempting to use a method similar to that approved by the Supreme Court in *Voishan*, 327 Md. at 325, where the trial court determined child support by apportioning the "reasonable expenses of the child" between the parents according to the parents' respective incomes. The circuit court did not make a finding concerning C.C.'s needs, and it appears to have based its award on the combined expenses for Mother and C.C. in Mother's household. Although Father undoubtedly has the financial ability to pay $12,000 in monthly child support, the court's apparent methodology of requiring Father to pay 90% of Mother and C.C.'s combined expenses requires that we vacate the judgment and remand for further proceedings. We shall discuss Father's other arguments for purposes of guidance on remand.

Father next argues that the court's methodology for converting fixed expenses to monthly expenses resulted in over-compensation for those expenses. There were three expenses that the court incorporated into Mother's monthly expenses: $2,000 for hockey

gear, $3,200 for security, and $6,500 for college preparation. The court converted these fixed expenses into monthly expenses by dividing them by twelve, resulting in amounts of $166 per month for hockey gear, $266 per month for security, and $541 per month for college preparation. The potential problem with this methodology is that the court applied these monthly expenses to a *fourteen*-month timeframe in arriving at the total child support award. On remand, the court may clarify whether the claimed expenses are one-time expenses that may be apportioned over a period of 14 (or fewer) months, or whether the expense is a recurring expense that may appropriately be apportioned monthly. For example, if the $2,000 expense for hockey gear was a one-time expense until C.C. turned 18, the expense could properly be allocated over 14 months ($142.85 per month). On the other hand, if the security expense of $3,200 is a recurring annual expense, the proper allocation would be $266.66 per month for each of the 14 months.

Father further argues that the court included $250 per month for car payments even though Mother had not yet incurred that expense. Mother testified that she was planning to buy a car for C.C., and stated: "[I]f we buy a car it would be like $250 a month probably." It was clear from Mother's testimony that, as of February 24, 2020, she had not yet purchased a car for C.C. and was not certain that she would do so in the future. Rather, she testified that whether she purchased a car for C.C. "depend[ed] on where he's [going to] college." Indeed, at the time of Mother's testimony, C.C. did not yet have his driver's license. At the September 2020 hearing, it was established that C.C. was attending a college in Pennsylvania, but there was no evidence (or even a reference) about whether

Mother had purchased a car. The circuit court, however, included the $250 car payment in its child support calculation for the entire time C.C. was in Mother's care, beginning in July 2019. At a minimum, the court ordered Father to pay $1,800 (90% of the $250 car payment for eight months) for an expense that Mother was indisputably not incurring during that eight-month period. This constitutes clear error. On remand, the court may in its discretion receive additional evidence to determine whether Mother incurred any "car payment" expense for C.C. during the relevant 14-month period.

Father's final argument concerning the child support award is that the court duplicated the amount claimed for college preparation. The circuit court included in its calculation of Mother's monthly expenses both the full amount provided in her financial statement plus $541 per month ($6,500 divided by twelve) as derived from Mother's testimony.

On her September 2019 financial statement, Mother indicated that she was spending $2,050 per month on "tutoring/college consultant/preparation." In a footnote, Mother stated: "The most critical need is for a contribution to these expenses so as to bring [C.C.] up to the very best chance he can have to succeed in school and with his college preparation and choices. I have retained consultants for these issues." Mother further testified: "Applerouth, the preparation for ACT has been $8,290, Applerouth. College, college prep 4,500. The tutors at VarsityTutors I have paid somewhere around 6,500. And all of these

have been since September through now."[5] On cross examination, Mother explained that these expenses are not divided into monthly payments, but rather that she pays upfront, "[a]nd if he needs more hours, I have to pay again." Thus, the court could reasonably have concluded that the amounts that Mother testified to were in addition to the expenses for college preparation in her September 2019 financial statement. It is unclear why the court only included the $6,500 for tutoring and not the $8,290 for ACT prep and $4,500 for college preparation. One potential explanation is that, because Mother testified that C.C. had completed ACT prep prior to trial, the court may have determined that only the $6,500 was a legitimate additional expense. Once again, our concerns about "tutoring/college consultant/preparation" and related "additional expenses" should be clarified on remand.

II. Attorney's Fees

In most cases, before a court may award attorney's fees and costs in a child support case, the court must consider the following factors:

> (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.

FL § 12-103(b). Although a trial court has a high degree of discretion in making an attorney's fees award, consideration of the statutory factors is mandatory. *Best v. Fraser*, 252 Md. App. 427, 438 (2021) (quoting *Frankel v. Frankel*, 165 Md. App. 553, 589

[5] Notably, when converted to monthly expenses, these three expenses equal $1,607.50—less than the $2,050 per month Mother included on her September 2019 financial statement.

(2005)). Alternatively, if the court determines that "there was an absence of substantial justification of a party for prosecuting or defending the proceeding," the court, absent a finding of good cause, "shall award" costs and counsel fees. FL § 12-103(c).

Because child support and attorney's fees awards are closely interrelated, we shall vacate and remand the attorney's fees award for further findings. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 198 (2016). We remind the court that, on remand, it may consider all aspects of the parties' finances, including assets, debts, and income. *See Davis v. Petito*, 425 Md. 191, 206 (2012) (FL § 12-103 "contemplates a systematic review of economic indicators in the assessment of financial status and needs of the parties[.]"). In addition, in the event the court awards costs and counsel fees, it should articulate whether it is awarding the fees pursuant to FL § 12-103(b) or (c).[6]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE EQUALLY DIVIDED.

[6] The circuit court may also consider any counsel fees incurred since the entry of the last award.