Circuit Court for Prince George's County
Case No. CAD15-18102

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0206

September Term, 2019

JAMES ROBINSON

v.

DIANE ROBINSON

Fader, C.J.,
Beachley,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: April 22, 2020

In 2014, James Robinson, the appellant, and Diane Robinson, the appellee, entered a marital settlement agreement (the "Agreement") in which Mr. Robinson agreed to pay Ms. Robinson monthly alimony indefinitely, "subject to court modification." In 2016, the Circuit Court for Prince George's County incorporated, but did not merge, the Agreement into a judgment for absolute divorce. In 2018, Mr. Robinson moved for a modification or termination of alimony. After a hearing, the court found that Mr. Robinson had not demonstrated a material change in circumstances relevant to his alimony obligation and, therefore, denied the motion. We discern no legal error or abuse of discretion, and will therefore affirm.

BACKGROUND

The Agreement provides that Mr. Robinson "shall pay directly to [Ms. Robinson], as indefinite alimony," $3,000.00 per month initially, increasing to $3,600.00 per month "following the entry of a judgment of Absolute Divorce." That amount was to be reduced to the extent of Ms. Robinson's share of Mr. Robinson's retirement benefits, but otherwise would continue until Ms. Robinson remarried or either party died. The Agreement provided expressly "that the amount of indefinite alimony payable hereunder is subject to court modification." In early 2016, the court issued a decree granting the parties an absolute divorce. The decree incorporated, but did not merge, the Agreement.

In September 2018, Mr. Robinson filed a motion to modify the indefinite alimony award. In his written submission, he alleged that since the date of the judgment of absolute divorce, he "ha[d] suffered some financial hardships," namely that he: (1) had to file for bankruptcy; (2) owed back taxes of $8,000 to the Internal Revenue Service; (3) was "not

currently gainfully employed[] due to . . . medical issues"; and (4) was "forc[ed] . . . to file [for] and receive disability" pay because of his medical issues. Mr. Robinson claimed that he "w[ould] not be able to maintain a normal life[ ]style in order to care and provide for himself" if he "continue[d] to make the requisite Alimony payments." He asked the court to reduce or strike the alimony award.

The Motions Hearing

The court held a hearing on the motion for modification during which it received evidence and heard testimony from only one witness, Mr. Robinson.[1] The evidence adduced included the following:

- At the time of the hearing, Mr. Robinson was employed full-time with the Department of Defense. Mr. Robinson did not testify that he had been out of work at any time and, to the contrary, produced pay records indicating that he had been employed throughout the relevant time period. Indeed, Mr. Robinson testified that his salary had increased from $131,053 in 2014, when the parties entered into the Agreement, to $145,148 at the time of the hearing.

- At the time of the hearing, Mr. Robinson also was receiving military retirement pay. A portion of his benefits—$491 per month—was paid to Ms. Robinson, thus reducing his alimony obligation by the same amount. Mr. Robinson's net retirement pay is approximately $1,206 per month.

- Disability pay that Mr. Robinson began receiving in 2003 had increased to $1,113 per month.

[1] The record received by this Court contains a transcript of only the second of two hearing days. In response to an order to show cause, Mr. Robinson asserted that he was only "asked a few questions about his expenses" during the first day of the hearing and that "the questions presented on appeal in this matter can be resolved without an examination of the transcript from the" first day of the hearing. Ms. Robinson has not suggested otherwise.

- Mr. Robinson received health insurance through Tricare, the civilian health care program for military personnel, retirees, and their families. He also maintained vision and dental insurance through his employer.

- None of the expenses about which Mr. Robinson testified had increased significantly since 2014. Those expenses included his mortgage (which had increased by $47), car payment, and charges for cable, Internet, lawn care service, life insurance, water, gas, car insurance, and vision and dental insurance.

- Mr. Robinson had filed a petition for Chapter 13 bankruptcy, which he testified was "on hold" pending the outcome of the modification proceeding. Mr. Robinson had proposed a plan to the bankruptcy court pursuant to which his monthly payments would increase from $191 to $1505. Neither that plan nor any other had been approved by the bankruptcy court. Mr. Robinson did not identify any change in circumstances since 2014 that had caused him to file for bankruptcy. He asserted that he filed for bankruptcy because he did not "have the financial means . . . to pay [his] bills" each month.

During the hearing, Mr. Robinson's counsel sought to elicit testimony regarding her client's medical conditions. Ms. Robinson objected. When asked how the testimony would be relevant, Mr. Robinson's counsel proffered that her client had stage three kidney disease and would likely be unable to work in the future. She also proffered that Mr. Robinson would testify that he would need to "have conversations with his doctors about the possibility of now being on dialysis and what this means and how this impacts his daily life." She argued that not reducing his alimony payment in light of that medical condition would be "harsh and inequitable." Mr. Robinson's counsel conceded, however, that his medical condition did not currently affect either his income or his expenses. For that reason, the court found the testimony irrelevant to Mr. Robinson's alimony obligation and, therefore, sustained Ms. Robinson's objections to the testimony. The court declined to "speculate as to what future illness is going to do to his income," but observed that

should any material change in Mr. Robinson's circumstances occur, he could seek a modification of his alimony obligation "at the appropriate time."

At the end of the hearing, the court denied the motion for modification. The court concluded that Mr. Robinson had not met his burden to show a material change in his circumstances that was relevant to his alimony obligation because his income had increased since he entered the Agreement while his expenses had not.

Mr. Robinson timely appealed.

DISCUSSION

In reviewing a circuit court's determination as to the modification of alimony, "we 'defer[] to the findings and judgments of the trial court.'" *Ridgeway v. Ridgeway*, 171 Md. App. 373, 383 (2006) (quoting *Simonds v. Simonds*, 165 Md. App. 591, 606 n.4 (2005)). "We will not disturb an alimony determination 'unless the trial court's judgment is clearly wrong or an arbitrary use of discretion.'" *Ridgeway*, 171 Md. App. at 383-84 (quoting *Blaine v. Blaine*, 97 Md. App. 689, 698 (1993), *aff'd*, 336 Md. 49 (1994)); *see also Malin v. Mininberg*, 153 Md. App. 358, 414-15 (2003). "A trial court's findings are 'not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion.'" *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)), *cert. denied*, ___ Md. ___, 2020 WL 1900361 (March 11, 2020). We "will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings." *Malin*, 153 Md. App. at 415 (quoting *Tracey v. Tracey*, 328 Md. 380, 385 (1992)).

THE COURT DID NOT ERR OR ABUSE ITS DISCRETION IN DENYING THE MOTION FOR MODIFICATION OF ALIMONY.

Mr. Robinson argues that the circuit court incorrectly applied the law in determining whether to modify alimony. Specifically, he asserts that the applicable standard, as identified in statute, is "as justice and circumstances require," not whether there has been a material change in circumstances. He also contends that the circuit court erred in excluding testimony regarding his medical issues. We hold that the court did not err in the standard it applied, nor did it abuse its discretion in its ultimate determination.

After a court has entered an alimony order, it may modify that award pursuant to § 11-107(b) of the Family Law Article. *Ridgeway*, 171 Md. App. at 384. As applicable here, § 11-107(b) provides that "on the petition of either party, the court may modify the amount of alimony awarded as circumstances and justice require."[2] Md. Code Ann., Fam. Law § 11-107(b) (Repl. 2019).

In applying § 11-107(b), our courts have long held that "the court may modify a decree for alimony . . . 'if there has been shown a material change in circumstances that justify the action.'" *Ridgeway*, 171 Md. App. at 384 (quoting *Lieberman v. Lieberman*, 81 Md. App. 575, 595 (1990)); *see also Lott v. Lott*, 17 Md. App. 440, 444-45 (1973) ("It is . . . established that the equity court which made the original award of alimony may modify that award if thereafter there comes about material change in circumstances which justify the action." (quoting *Stansbury v. Stansbury*, 223 Md. 475, 477 (1960))); *Cole v. Cole*, 44

[2] The provisions of § 11-107(b) are "[s]ubject to § 8-103 of this article," which does not permit modification of an alimony award if the parties agreed it is not subject to modification or if alimony is waived. Neither situation applies here.

Md. App. 435, 439 (1979) (same) (collecting cases). The party seeking to modify alimony bears the burden of proving that the "circumstances and justice require" a change, by "demonstrat[ing] through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification." *Langston v. Langton*, 366 Md. 490, 516 (2001). We therefore discern no error in the standard the court applied to Mr. Robinson's motion.

We also hold that the court did not abuse its discretion in determining that Mr. Robinson had not met that standard. In 2014, Mr. Robinson entered into the Agreement, thereby voluntarily assuming an obligation to pay Ms. Robinson indefinite alimony on a monthly basis. According to the evidence, since 2014: (1) his total income increased; and (2) his expenses remained largely consistent. Mr. Robinson thus failed to demonstrate any change in circumstances since 2014 that reduced his ability to pay alimony.

Mr. Robinson argued to the circuit court that two factors justified a modification of alimony: (1) a significant change in his medical condition; and (2) that he had filed for Chapter 13 bankruptcy. Mr. Robinson contends that the circuit court erred in sustaining objections to his testimony regarding his medical condition, which he alleges was "*per se* relevant" to his motion. We disagree.

"Evidence is relevant . . . if it ha[s] any tendency to make the existence of a material fact more or less probable[.]" *Anderson v. Litzenberg*, 115 Md. App. 549, 571 (1997) (quoting *Kelly Catering v. Holman*, 96 Md. App. 256, 271, *aff'd*, 334 Md. 480 (1994)).

"Trial judges have wide discretion in determining the relevance of evidence." *State v. Simms*, 420 Md. 705, 724 (2011) (quoting *Young v. State*, 370 Md. 686, 720 (2002)). Here, Mr. Robinson conceded that his health concerns had no effect on his current income or expenses. Instead, he argued to the circuit court that his health concerns were preoccupying his attention and that they ultimately would require him to stop working, which would result in a future reduction in income. The court correctly observed, however, that accepting Mr. Robinson's argument would require it to "speculate as to what future illness is going to do to his income." As the court noted, if the situation Mr. Robinson predicted were to come to pass, he could file a new motion to modify at that point. As of the date of the hearing, however, his health concerns had not adversely affected his ability to pay alimony. The circuit court therefore did not err in sustaining Ms. Robinson's objection to testimony about Mr. Robinson's medical condition.

Mr. Robinson also contends that the circuit court abused its discretion in concluding that his bankruptcy filing did not justify modification of his alimony obligation. But as the circuit court observed, Mr. Robinson never explained why he filed for bankruptcy. Mr. Robinson did not identify any diminution in income or any new or increased expenses that compelled him to file for bankruptcy, nor did he explain how his total post-bankruptcy expenses compared to his total pre-bankruptcy expenses. It is the case, of course, that filing for bankruptcy does not necessarily worsen a debtor's overall financial position. To the contrary, the entire purpose of a Chapter 13 bankruptcy is to *improve* the debtor's overall financial position, generally by discharging certain debts and reducing or spreading out

payment obligations. *See Carroll v. Logan*, 735 F.3d 147, 151 (4th Cir. 2013) ("Chapter 13 proceedings provide debtors with significant benefits: For example, debtors may retain encumbered assets and have their defaults cured, while secured creditors have long-term payment plans imposed upon them and unsecured creditors may receive payment on only a fraction of their claims."). Thus, the mere fact that Mr. Robinson filed for bankruptcy, without more, does not demonstrate a change in circumstances since 2014 that reduced his ability to pay alimony.

Mr. Robinson also contends that the court failed to consider as circumstances justifying a modification of alimony (1) a projected increase in the payments he would owe under a proposed bankruptcy plan and (2) his "impending foreclosure." These contentions have no merit. As Mr. Robinson conceded before the circuit court, although he had proposed a bankruptcy plan, the court had not accepted it. Indeed, the bankruptcy proceedings were "on hold" pending the outcome of his motion for modification of alimony.[3] In any event, Mr. Robinson did not present any evidence of an actual obligation under an approved bankruptcy plan.

Similarly, Mr. Robinson did not present evidence of an "impending foreclosure" on his house. At one point in his testimony, Mr. Robinson said that if the court did not reduce his alimony obligation, he was "going to have to put [his] house up for sale or go into

[3] Notably, alimony is non-dischargeable in bankruptcy, *see Klass v. Klass*, 377 Md. 13, 24-25 (2003); 11 U.S.C. §§ 101(14A) (defining "domestic support obligation" to include "alimony"), 523(a)(5) (generally exempting from discharge "a domestic support obligation"), 1328(a) (exempting from discharge in Chapter 13 bankruptcy debts specified in, among other provisions, 11 U.S.C. § 523(a)(5)), which may explain why the bankruptcy court was awaiting the result of this challenge before moving forward.

foreclosure" because he "can't afford to make the payments with the increase in the Chapter 13 [bankruptcy plan] and [his] other monthly obligations." However: (1) he provided no evidence of being delinquent in his mortgage payments, much less of a threat of foreclosure; (2) as already explained, there was no approved plan for his Chapter 13 payment obligations; (3) he did not present evidence of increases in other monthly obligations; and (4) when later asked whether he had testified that he "w[as] going to sell [his] house if [he] need[ed] more money," he responded, "I didn't say that. I think you misinterpreted what I said."

As an alternative to his request for a reduction of his alimony obligation, Mr. Robinson requested that the circuit court terminate that obligation entirely pursuant to § 11-108(3) of the Family Law Article. That section provides that "alimony terminates . . . if the court finds that termination is necessary to avoid a harsh and inequitable result." Mr. Robinson contends that the court abused its discretion in determining that notwithstanding his competing expenses, medical issues, and bankruptcy filing, continuing his obligation to pay alimony would not produce a "harsh and inequitable result." For largely the same reasons set forth above, we disagree. Mr. Robinson did not demonstrate that his circumstances in 2018 and 2019 were any worse, with respect to his ability to pay alimony, than when he undertook that obligation in 2014.

In sum, taking the court's opinion as a whole and considering all of the evidence presented, we conclude that the circuit court neither committed legal error nor abused its discretion in determining that Mr. Robinson failed to carry his burden to demonstrate "a

material change in circumstances" that would justify modifying or terminating his alimony obligation. *Ridgeway*, 171 Md. App. at 384 (quoting *Lieberman*, 81 Md. App. at 595).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.