Circuit Court for Anne Arundel County
Case No. 02-C-13-175683

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0234

September Term, 2017

COLLEEN CONAWAY

v.

SCOTT WILLIAMS

Meredith,
Wright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: February 6, 2018

In this matter (initially encompassing a child access dispute), Appellant, Coleen Conaway, is displeased ultimately with the decision of the Circuit Court for Anne Arundel County denying her an award against Appellee, Scott Williams, for contribution toward her attorney's fees and her motion to cite Appellee in contempt for failure to pay child support. Over five days of hearings, the parties presented evidence regarding custody, visitation, attorney's fees and child support issues, much of which is now not relevant for present purposes because the issues on appeal have narrowed considerably.

Conaway offered initially the following queries for our consideration:

> I. Based on the [trial] court's findings of facts and opinion, did the court abuse its discretion in ordering family counseling once a month and unsupervised visitation for Appellee [with] the minor children;
> II. Did the court err in finding that Appellee's behavior did not amount to abuse of the minor child [Son] and in granting Appellee unsupervised visitation with the minor children;
> III. Did the court abuse its discretion in denying Appellant attorney's fees?
> IV. Did the court abuse its discretion and err in denying Appellant's motion to cite Defendant in contempt for failure to pay child support when he earned $105,000 per year?

At oral argument before us on 2 January 2018,[1] counsel for Appellant withdrew Questions I and II because, since the appeal was taken and her brief filed, the parties executed a consent order, approved by the circuit court, regarding these disputes, thus mooting them. We are left, therefore, to consider Questions III and IV only.

[1] Appellee did not submit a responsive brief with this Court or appear at oral argument.

Facts and Legal Proceedings

The parties have two young children together - 9-year-old Son and 6-year-old Daughter. The circuit court, on 25 April 2014, granted the parties an absolute divorce. The parties entered into a consent order (approved by the circuit court), on 29 April 2014, delineating the terms of custody, visitation, and child support.[2] Williams resided in Hawaii at the time the circuit court granted the divorce and acquiesced in the consent order. The consent order granted Conaway sole legal and primary physical custody of the minor children, with Williams granted "phase in" visitation to increase incrementally on a specific schedule. Williams was granted also one dinner visit each week, and visitation every other weekend from Saturday at 8:00 a.m. to Sunday at 8:00 p.m.

Subsequently, Williams returned to Maryland and, on 14 April 2016, filed a petition to modify custody, visitation, and child support, seeking joint legal and physical custody of the minor children.[3] Conaway, opposing Williams's petition, requested the circuit court grant him supervised visitation only. On 15 November 2016, she filed also a motion to cite Williams in contempt of the consent order for, among other things,[4] failing to pay the court-ordered child support according to the terms of the consent order.

[2] Pursuant to the consent order, Williams was to pay Conaway $1,350.00 per month in child support.

[3] Williams contended that joint legal and physical custody of the minor children was warranted because "since the granting of an [a]boslute [d]ivorce and entry of the [c]onsent [o]rder, [he] has relocated to [Maryland, and] is residing in Bowie [in adjoining Prince George's County,] and has adequate facilities for regular visitation with the minor children."

[4] Conaway claimed also that Williams failed to take the minor children to their extracurricular activities pursuant to the consent order.

The circuit court held an extensive hearing on the motion to cite Williams in contempt and the modification requests. Williams asserted that his relocation to Maryland from Hawaii was a material change in circumstances warranting the modification of the earlier custody and visitation order. Further, he averred that Conaway's alleged denial of his visitation rights was a material change warranting modification.

After five days of hearings (January 24-27 and 30 of 2017), the circuit court denied Williams's petition, finding not only that his relocation to Maryland was not a material change in circumstances, but also baseless his allegations that Conaway had denied him visitation of the children.[5] The circuit court continued. The judge found that the deteriorating mental health of Son, diagnosed with attention defect-hyperactive disorder and oppositional defiance disorder, required stability in his environment and special personal attention be given him to help ameliorate his conditions. The circuit court, finding Son's deteriorated mental state to be a material change in circumstances,[6] "considered the

[5]The circuit judge found that

> With respect to the material change issue, I do not find that there is a material change based upon where [Williams] has lived from time to time because the parties know that there could be changes in where he lived when they entered into the consent order, and it covered and sets forth different arrangements for visitation depending on where he lived.
>
> With respect to the issue of whether [Conaway's] denial of visitation was a material change, I do not think that it was a material change because based upon the very lengthy closing and my notes from the testimony, [he] failed to take his opportunities for visitation most of the times that he missed his visits. So[,] I do not find it credible that [Conaway] was intentionally denying [Williams] visitation.

[6] The judge found that "the issues between the parents involving, not only threats of legal activity, but actual contempt filings, [] criminal charges, [] peace orders, and

appropriate factors[7] and granted [Conaway continuing] sole legal and primary physical custody." The circuit court retained Williams's original visitation terms, as provided in the 29 April 2014 consent order.

As to the motion to cite Williams in contempt for failure to pay child support, the judge found no basis to do so. The circuit court concluded that Williams did not have the ability to pay child support at that time[8] and that

> given the facts in this case where there is a no-contact [order as between the parents] which made it very difficult for anything to happen without [him] fearing that he would be prosecuted for violating the no-contact, his understanding or lack of understanding of what exactly would be contact I think is a reason enough . . . to not find him in contempt [for failure to take the children to various activities.]

The judge, addressing the final issue asserted in the parties' pleadings, i.e., contribution to their respective attorney's fees, found that

> based on the fact that I did not find a material change, and the nature of this proceeding, and the difficulties with [Son], I do think both parties had a basis to seek these proceedings. [Williams], I do believe, was more inappropriately litigious in this case because of his feelings that he is being persecuted, which the [c]ourt doesn't really see. I think [Conaway] is very protective and cautions, but I don't think – and given the fact that [she] has had help and the similarity of the amounts, and [his] unknown case income, I am not going to shift attorney's fees either way. So each to pay their own attorney's fees.

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protective orders were a material change" in circumstances because of their disruptive and chaotic effect on the family dynamic.

[7] The circuit court, when going "through a number of custody factors . . . [to] decide what is in the best interest of the children[,]" took issue with the character and reputation of Williams, his behavior as a father, his domicile, and his abandonment of the children.

[8] The circuit judge, in finding that Williams did not have the ability to pay child support, explained that "[he] did not have a steady job. He had these other cash jobs. And I don't find him in contempt [for failing to pay the full amount of child support] on that."

Analysis

I. Appellant's Request for Contribution Toward Her Attorney's Fees.

a. Her Arguments.

Appellant contends that the circuit court abused its discretion in denying her contribution towards her attorney's fees. Specifically, the circuit court erred: (1) "by failing to [consider appropriately] the financial status of each party when making its decision"; (2) "by finding that Appellee's cash income was unknown"; and, (3) "by finding that both parties had a basis or substantial justification for bringing or defending this action." There was, as Appellant sees it, ample evidence presented over the course of the five days of hearings justifying an award of contribution to her attorney's fees.

b. Did the Circuit Court Judge Abuse Her Discretion In Denying This Request?

Md. Code (1957, 2013 Repl. Vol., 2015 Supp.), § 12-103 of the Family Law Article ("Fam. Law") guides a circuit court when assessing a party's request for contribution to his or her attorney's fees. Fam. Law. § 12-103, states that

> **Award of costs and fees**
>
> (a) 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:
>
> (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or
>
> (2) files any form of proceeding:
>
> (i) to recover arrearages of child support;
>
> (ii) to enforce a decree of child support; or
>
> (iii) to enforce a decree of custody or visitation.
>
> **Conditions for award of costs and fees**
>
> (b) 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.
>
> **Whom cost and fees awarded to**
>
> (c) 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.

A trial court must consider the Fam. Law. § 12-103(b) three factors before it grants or denies a party's request for attorney's fees. *Leineweber v. Leineweber*, 220 Md. App. 50, 65, 102 A.3d 827, 836 (2014). We review a circuit court's grant or denial of counsel fees under an abuse of discretion standard. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487, 798 A.2d 1195, 1209 (2002). "'An award of attorney's fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong.'" *Leineweber*, 22F0 Md. App. at 65, 102 A.3d at 836 (quoting *Petrini v. Petrini*, 336 Md. 453, 468, 648 A.2d 1016 (1994) (citations omitted)). Trial judges are presumed to know the law, and are not required in all instances to explain every step of his or her logic when reaching a decision. *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426, 914 A.2d 113, 125 (2007); *Zorich v. Zorich*, 63 Md. App. 710, 717, 493 A.2d 1096, 1099 (1985) ("trial judges are presumed to know the law, not every step in their thought process needs to be explicitly spelled out.").

Examining the circuit court's opinion in the present matter, it is clear that the trial judge considered the three Fam. Law § 12-103(b) factors in the course of denying Appellant's request for contribution. The evidence presented at the five-day trial reflected the circuit court's exercise of its independent judgment in this regard.

Considering the financial status and need of each party, the judge found that Appellant's parents assisted in paying her attorney's fees. Moreover, given the evidence (or absence thereof), the circuit court found to be unknown the total sum of Appellee's assets. Although conceding that Appellee was the more litigious party in this case, the judge found further that both parties litigated their various contentions justifiably. There was a similarity in the parties' respective attorney's fees incurred in litigating their positions.[9] Contrary to Appellant's assertion "that there was ample evidence over the course of the five[-]day trial" warranting an award of contribution to her attorney's fees, we cannot say that the circuit court's judgment was wrong clearly or arbitrary. The circuit court need not explain every step of its logic to meet the standard of Fam. Law. § 12-103(b). On the record of this case, we find as in-bounds the exercise of the circuit court's discretion denying Appellant's petition for contribution to her attorney's fees.

II. **The Contempt Petition.**

a. *The Short Answer*.

Appellant asserts that the circuit court abused its discretion and erred in denying her motion to hold in contempt Appellee for failure to pay fully and timely the ordered child support. As she saw it, Appellee had the clear "ability to pay the full $1,350.00 in child support [for the month of] January 2017 and failed to pay it." Moreover, Appellee provided no justification further for his failure to pay child support in January 2017.

[9] The evidence showed that Appellant's attorney's fees were $12,840.00 and Appellee's were $12,084.00.

The scope of appellate review regarding contempt is as follows:

> (a) Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudge him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action.

Md. Code (1973, 2013 Repl. Vol.) § 12–304(a) of the Courts and Judicial Proceedings Article ("CJP"). The language in CJP § 12–304 erects two prerequisites

> before an appeal may be successfully maintained in a contempt case. Firstly, there must be an order or judgment passed to preserve the power or vindicate the dignity of the court and, secondly, the appeal must be prosecuted by the person adjudged to be in contempt.

Becker v. Becker, 29 Md. App. 339, 344–45, 347 A.2d 911, 915 (1975) (quotation marks omitted). The right to appeal a contempt order is limited to a party that has been adjudged to be in contempt because the right is granted by statute only. *Pack Shack, Inc. v. Howard County*, 371 Md. 243, 247, 808 A.2d 795, 797 (2002) (citing *Prince George's County v. Beretta U.S.A. Corp.*, 358 Md. 166, 747 A.2d 647 (2000)). Stated another way, the right to appellate review of a decision regarding civil or criminal contempt belongs "only to those adjudged in contempt, not to those who unsuccessfully seek to have another held to be contemptuous."[10] *Tyler v. Balt. Cnty.*, 256 Md. 64, 71, 259 A.2d 307, 310 (1969).

[10] We note an exception to this rule. It was explained in *Tyler v. Balt. Cnty.* that

> [t]here may be occasional instances in which the order imposing the punishment for civil contempt or refusing to impose the order for civil contempt is so much a part of or so closely intertwined with a judgment or decree which is appealable as to be reviewable on appeal as part of or in connection with the main judgment . . . .

The contempt power exists as a tool employed to maintain the integrity, independence, and existence of the judiciary. *Muskus v. State*, 14 Md. App. 348, 358, 286 A.2d 783, 788 (1972). It does not operate to shroud litigants with any substantive rights. *Id.* In the present proceeding, we can find no jurisdictional basis to consider Appellant's challenge to the circuit court's denial of her request to hold Appellee in contempt.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

256 Md. 64, 71, 259 A.2d 307, 310 (1969). The continued vitality of this exception was called into question in *Pack Shack, Inc. v. Howard County*, where the Court of Appeals explained that

> the continued vitality of this exception, which was a very narrow one to begin with, is highly doubtful. Although we need not reach that issue here, because we have concluded that the contempt ruling and the declaratory judgment are not closely intertwined, that exception very likely would not apply when the appeal is filed by a person who was not held in contempt, however closely related and intertwined it is with other orders or judgments also pending appeal. *Tyler* simply does not support affording the losing party to a contempt action the right of appeal.

Pack Shack, Inc., 371 Md. at 260, 808 A.2d at 805 (2002). *Tyler* made clear nevertheless that only those who have been held in contempt of court (whether in a civil or criminal context) have the right to appellate review, and the right is not available to those who sought unsuccessfully to have another held in contempt. *See Becker v. Becker*, 29 Md. App. 339, 345, 347 A.2d 911, 915 (1975).