

Circuit Court for Howard County, Maryland
Case No.: C-13-FM-19-002334

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 237

September Term, 2021

MOHAMAD SARIHIFARD

v.

DEANA MALLAMAS

Kehoe,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: November 8, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Mohamad Sarihifard appeals from a judgment of the Circuit Court for Howard County awarding child support to Deana Mallamas. Mr. Sarihifard presents one issue, which we have reworded:

Did the trial court err when it found that Mr. Sarihifard’s monthly income was in excess of \$30,000?¹

We will affirm the judgment of the circuit court.

BACKGROUND

Mr. Sarihifard and Ms. Mallamas are parents of two minor children. In December 2019, Ms. Mallamas filed an action against Mr. Sarihifard for child custody and child support. On August 12, 2020 the circuit court awarded Ms. Mallamas sole physical custody of both children. A hearing concerning child support and attorneys’ fees was held in the circuit court on March 15, 2021, where the court awarded \$5,860 per month in child support to Ms. Mallamas.

At the hearing, the court found that Ms. Mallamas had a monthly income of \$2,835, a figure not in dispute. Calculating Mr. Sarihifard’s income, however, was more problematic. He is the owner of an automobile rental business, Auto One, Inc. t/a Rent a Wreck of Glen Burnie (“Auto One”). Mr. Sarihifard’s IRS form W-2 for 2020 reports an annual earned

¹ Mr. Sarihifard articulates his contention as follows:

Whether the trial court abused its discretion when it determined that Appellant’s monthly income exceeds \$30,000.00 when the evidence at trial established an actual monthly income of only \$4,500.00?

income of \$42,000. Mr. Sarihifard testified that he made \$3,500 per month in 2020, and is making \$4,500 per month in 2021. The evidence before the trial court suggested otherwise.

The court heard extensive testimony regarding Mr. Sarihifard's spending with Auto One's corporate bank accounts. There were purchases for alcohol, lunches, coffee, donuts, dinner, gas, and groceries. Other than Mr. Sarihifard, Auto One does not have any employees. Mr. Sarihifard testified that the spending in question was on Auto One "vendors". There were over \$400,000 in draws on the Auto One corporate account in 2019. Mr. Sarihifard conceded that Auto One had over \$980,000.00 in gross deposits in 2019, yet only listed \$666,260.00 in gross deposits on Auto One's corporate tax statements.

Moreover, although Mr. Sarihifard conceded that he makes and receives payments for Auto One through Venmo and Zelle, and that he had been subpoenaed for those statements during discovery, Mr. Sarihifard failed to provide them to Ms. Mallamas. Mr. Sarihifard still had not provided those statements by the date of the hearing, explaining "you don't need it."

When calculating Mr. Sarihifard's income, the court found that "[Mr. Sarihifard] has not been forthcoming in discovery" but declined to "just take everything that has a draw after it and treat that as income[.]" Instead, the court calculated Mr. Sarihifard's income by adding his \$4,500 monthly income from his paystub to the \$315,691, the "difference between the deposits proven and the deposits admitted to the government[.]" The court explained that "it's clear to me that when you look at these bank records, when you look at this, you know, constant spending at liquor stores, at restaurants, at coffee shops, all over

the place, it's clear to me that he was using the company bank accounts as his personal spending spree, for his personal purchases.” Using the Maryland child support guidelines as a basis, the court attributed \$2,835 in monthly income to Ms. Mallamas and \$30,830 in monthly income to Mr. Sarihifard, extrapolating a child support calculation of \$5,860 per month to Ms. Mallamas. Mr. Sarihifard appeals the court's judgment.

THE STANDARD OF REVIEW

Maryland's child support guidelines are found in title 12, subtitle 2 of the Family Law Article. The statutory scheme sets out a formula for calculating child support in cases when the parents' combined monthly incomes are \$15,000 or less. *See* Md. Code, Fam. Law § 12-204. In the present case, the trial court found that the parties' combined monthly incomes were over \$32,000 per month. In “above the guidelines” cases such as the one before us, we review the trial court's decision setting the amount of support for abuse of discretion. *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018); *Karanikas v. Cartwright*, 209 Md. App. 571, 596 (2013).

A court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous. We exercise de novo review over the trial court's legal reasoning and review the court's fact-finding for clear error. *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010). Absent legal error or clearly erroneous fact-finding, we will reverse the trial court's decision only if we conclude that the trial court abused its discretion. In Maryland, the classic articulation of this

standard is found in former Chief Judge Alan M. Wilner’s opinion for this Court in *North v. North*, 102 Md. App. 1, 14 (1994):

The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

THE PARTIES’ CONTENTIONS

Mr. Sarihifard contends that it was an abuse of the trial court’s discretion to find that he earns \$30,830 per month when his paystubs demonstrate a monthly income of \$4,500. He argues that the court erred when it concluded that his withdrawals from Auto One’s accounts (as proven at trial) should be treated as part of his actual income for child support purposes, and that it is not “possible to track, at least to infer, a mathematical basis” for the court’s calculations. Mr. Sarihifard also points to the fact that the child support award (\$5,860 monthly) is higher than the circuit court’s *pendente lite* order (\$1,000 monthly) as support for his argument that the trial court abused its discretion.

Ms. Mallamas responds that the trial court’s analysis regarding Mr. Sarihifard’s income was “reasonable and straightforward” in light of the testimony and evidence before the court. She further maintains that the child support award was within the scope of the trial court’s discretion.

ANALYSIS

Family Law § 12-204(a)(1) provides that “[t]he basic child support obligation shall be divided between the parents in proportion to their adjusted actual incomes.” Actual income “means income from any source.” Fam. Law § 12-201(b)(1). Actual income of a person who is self-employed is defined as “gross receipts minus ordinary and necessary expenses required to produce income.” Fam. Law § 12-201(b)(2). “There is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines set forth in this subtitle is the correct amount of child support to be awarded.” Fam. Law § 12-202(a)(2)(i). “If the combined adjusted actual income exceeds the highest level specified in the schedule in subsection (e) of this section, the court may use its discretion in setting the amount of child support.” Fam. Law § 12-204(d). In such circumstances, “[e]xtrapolation from the schedule may act as a ‘guide,’ but the judge may also exercise his or her own independent discretion.” *Otley v. Otley*, 147 Md. App. 540, 562 (2002) (quotation marks and citation omitted).

“The amount of actual income that drives the specific amount of the support award under the guidelines is a factual finding that is required in every case.” *Walker v. Grow*, 170 Md. App. 255, 284 (2006). The General Assembly has “afforded trial courts the latitude to consider all the relevant circumstances in a particular case before making any determination about what should be considered in calculating a parent’s support obligation.” *Petrini v. Petrini*, 336 Md. 453, 463 (1994). Here, the trial court considered a number of relevant circumstances, including the fact that Mr. Sarihifard is the sole owner

of Auto One,² a company that grossed nearly a million dollars in revenue in 2019. It also considered the fact that Auto One has no employees other than Mr. Sarihifard, and that there were extensive charges of a personal nature paid from the corporate bank account. It considered the fact that there was over \$300,000 in unreported income for Auto One in 2019. All of this evidence was relevant and provided the basis for the trial court’s factual findings regarding Mr. Sarihifard’s income and in the calculation of awarding his child support obligation.

The trial court’s conclusions as to Mr. Sarihifard’s monthly income are findings of fact, which we review for clear error. In this exercise, we must “give due regard to the opportunity of the trial court to judge the credibility of witnesses.” Md. Rule 8-131(c). Moreover, “[i]f there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *L.W. Wolfe Enterprises, Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (quoting *Yivo Institute For Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005)).

Mr. Sarihifard’s arguments to the contrary notwithstanding, there was ample evidence to support the circuit court’s findings. Courts are not required to credit a party’s claims as to their income when the evidence before the court indicates otherwise. *See Johnson v. Johnson*, 152 Md. App. 609, 620 (2003) (“In the case *sub judice*, adoption of appellant’s position would produce an absurd result. It would require the court to engage in the fiction

² Although Mr. Sarihifard testified that Ms. Mallamas owns 5% of Auto One, the circuit court found that not credible since the tax returns in evidence demonstrated that Mr. Sarihifard is the sole owner.

that appellant earned \$81,500 annually when, in fact, he received over fifty percent more.”).

Returning to the case before us, there was substantial evidence showing that Mr. Sarihifard’s actual income (as the term is defined for child support purposes³) was significantly higher than what he reported for income tax purposes. It is actual income that counts for purposes of calculating child support. In short, the court did not err in characterizing the additional sums as Mr. Sarihifard’s income. *See Bryant v. Bryant*, 220 Md. App. 145, 163 (2014) (ruling that the trial court did not err when characterizing proceeds above husband’s salary as income given the circumstances related to the payment of those sums by husband’s employer).

Although he uses different terminology in his brief, Mr. Sarihifard’s argument is that the court’s calculation of his income was erroneous and illogical. In our view, the court’s conclusions as to his income were based on the evidence presented to the court and were reasonable. The court added \$315,961 (the difference between Auto One’s gross deposits proven and gross deposits admitted to the government) to Mr. Sarihifard’s \$4,500 monthly income for a total annual income of \$369,961. The court then divided that amount by twelve to get a monthly income for Mr. Sarihifard of \$30,830. Because this amount exceeded the highest monthly income specified in the child support guidelines schedule, the court was free to use its discretion in setting the child support award. *See Fam. Law*

³ *See Fam. Law* § 12-201(b)(1), which defines “actual income” as “income from any source.”

§ 12-204(d). Using the SASI-CALC program, the court extrapolated the child support award.

Additionally, Mr. Sarihifard argues that the court’s ruling should be remanded “for further proceedings intended to determine Appellant’s actual monthly income[.]” He asserts that the court “generate[d] evidence where there [was] none,” and suggests that the court should have continued the hearing or sought additional discovery from the parties. We do not agree.

In its bench opinion, the circuit court noted that Mr. Sarihifard had been convicted of perjury, had failed to provide financial records in discovery⁴ and had given evasive answers at trial as to his financial status.⁵ Mr. Sarihifard fails to acknowledge that the burden was on him—and not the trial court—to prove that certain payments should be excluded from his income. *See Walker v. Grow*, 170 Md. App. 255, 284-85 (2006) (“If a party contends that all or some of that amount is to be excluded from his or her actual income, that party has the burden of persuasion in excluding it.”). Mr. Sarihifard certainly had the opportunity

⁴ In its assessment of the evidence at the close of the hearing, the trial court characterized Mr. Sarihifard as being “very, very, uncooperative” in terms of responding to discovery requests.

⁵ The trial court stated that there are three possible reasons why a witness answers questions in evasive ways. The first is that the witness didn’t understand the question, either because of a language barrier or because the question was unclear. The second is that the witness is “just plain stupid.” The third is that the witness “is not being honest.” The court further explained that there was no language barrier and that Mr. Sarihifard “[is not] a stupid man.” The court concluded that “he was not being honest” in his testimony and provided examples of responses the court concluded were less than candid.

to present evidence to the trial court that the payments from Auto One should be excluded from his income. He failed to do so, and any prejudice Mr. Sarihifard may have suffered because of the absence of additional facts or evidence was waived. *See Stern v. Stern*, 58 Md. App. 280, 297 (1984) (holding that a party cannot object on appeal to deficiencies in the record caused by his refusal to provide discovery or other litigation misconduct).

Finally, with regard to the difference between the circuit court’s *pendente lite* and permanent support orders, this Court has previously held that “the same evidence that would necessitate a relatively small award of *pendente lite* support may very well justify a much larger award of support in the final decree.” *Payne v. Payne*, 73 Md. App. 473, 481 (1988). We have explained that *pendente lite* orders “after all, are designed to provide for purely temporary needs on a short term basis[.]” *Id.* The fact that the child support award is larger than the *pendente lite* support awarded to Ms. Mallamas does not support Mr. Sarihifard’s argument that the court abused its discretion in the final child support award.

**THE JUDGMENT FOR THE CIRCUIT
COURT FOR HOWARD COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**