Circuit Court for Harford County
Case No. 12-C-15-001089 CT

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0289

September Term, 2017

CHRISTOPHER FERGUSON

v.

JANAY PARHAM

Wright,
Graeff,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wright, J.

Filed: October 22, 2018

Appellant, Christopher Ferguson, challenges the child support order entered by the Circuit Court for Harford County. The circuit court found Ferguson to be voluntarily impoverished, imputed income to him, and determined the child support he owed to appellee, Janay Parham, based on that imputed income. The court also included the expense of the parties' daughter's daycare in its child support calculation. On September 6, 2017, Ferguson filed this timely appeal.

Ferguson presents four questions for our review, which we have renumbered, reworded, and consolidated for clarity:[1]

[1] In his brief, Ferguson asks:

> 1. Was the trial court's decision to impute income on [a]ppellant legally correct when:
>
> a. Maryland [R]ule 12-201 states that potential income is only considered "if a parent is voluntarily impoverished;"
>
> b. Appellant provided evidence he did all he could to keep his job, all he could to secure employment after losing his job, and secured employment;
>
> c. Appellant's marriage, paid for by [a]ppellant's wife's family and [a]ppellant's wife's employment does not meet the definition of income as defined by Maryland [R]ule 12-201;
>
> d. The trial court relied on testimony in a magistrate's exception hearing that was not presented to the magistrate when Maryland [R]ule 9-208 requires that "[magistrate] exceptions shall be decided on the evidence presented to the magistrate."
>
> 2. Was the trial court's decision to not follow the child support guidelines for the period it did not impute income to [a]ppellant and follow the guidelines for the period where it did impute income to [a]ppellant legally correct when Maryland [R]ule 12-202 states that in any proceeding to

1. Did the trial court properly exercise its discretion when it chose not to follow the magistrate's recommendations?

2. Did the trial court properly exercise its discretion when it included child care expenses in the child support calculation?

3. Did the trial court properly exercise its discretion when it found appellant to be voluntarily impoverished and imputed income to him?

4. Did the trial court properly exercise its discretion in the way that it applied the child support guidelines to calculate the parties' support obligations?

For the reasons below, we answer the first three questions in the affirmative and answer the fourth question in the negative. We reverse the judgment of the circuit court on the fourth issue and remand the case for further proceedings as to the application of the child support guidelines.

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establish or modify child support, whether *pendente lite* or permanent, the court shall use the child support guidelines?

3. Was the trial court's decision to include before and after school child care expenses in the child support calculation legally correct when these expenses were not required for either parent to work or seek employment as required by Maryland [R]ule 12-204?

4. Was the trial court's decision to overrule the magistrate's findings legally correct when the magistrate's findings included no legal errors and were based on the evidence and testimony in the transcript?

5. Did the trial court abuse its discretion by imputing income to [a]ppellant, selectively applying the child support guidelines, including unnecessary before and after school child care expenses in the child support calculations, overruling the magistrate's findings, and allowing testimony in a magistrate's exceptions hearing that was not presented to the magistrate?

BACKGROUND

Ferguson and Parham have 50-50 shared physical custody over their daughter and under that arrangement Ferguson paid Parham monthly child support. Under the parties' arrangement, Ferguson was originally required to pay Parham $484.00 a month in child support and an additional $100.00 a month toward his child support arrearage.

On April 15, 2016, Ferguson filed a petition for modification of child support, asserting that his termination from employment resulted in a material change in financial condition.

A. First Child Support Modification Hearing and Exceptions Hearing

The parties appeared before a magistrate for their first child support modification hearing on August 1, 2016, and appeared for their first exceptions hearing on August 16, 2016. Ferguson testified that he was terminated from employment because his commute and his responsibility to pick up the parties' daughter from daycare made it difficult to fulfill his work requirements. He also testified that he spoke with Parham about moving their daughter to a daycare location closer to his workplace but that this did not occur. In response, Parham stated that she preferred to keep their daughter at the same daycare location because it offered her a "stable and familiar environment[.]" Finally, Ferguson testified that he was seeking new employment, but that he had not applied for unemployment benefits because he is "fundamentally opposed to government assistance."

As a result of the hearings, Ferguson's child support obligations were suspended effective April 15, 2016, and a follow-up hearing was scheduled for November 3, 2016.

B. Second Child Support Modification Hearing and Exceptions Hearing

During the follow-up hearing and at the exceptions hearing on January 12, 2017, the parties provided testimony related to Ferguson's financial status. Ferguson testified that he was still unemployed, and that he applied for unemployment benefits but was denied. When asked to explain the reason for his denial, Ferguson said, "I was supposed to call. I did not." Parham then testified that Ferguson was an experienced accountant and held a Lean *Six Sigma* certification,[2] and based on these qualifications, it was her opinion that "he had been given a sufficient amount of time to obtain some form of employment, and the suspension of his child support obligations should not be extended." Parham argued that the circuit court should impute income to Ferguson based on his qualifications.

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[2] "Lean *Six Sigma* is a business strategy in which the focus is to improve the bottom line and increase customer satisfaction. In [other] terms, Lean *Six Sigma* is the following:"

> 1. It is a data-driven approach and methodology to analyze the root causes of manufacturing and business problems/processes by eliminating defects (driving toward six standard deviations between the mean and the nearest specification limit), and dramatically improving the product.
>
> 2. It improves the employee's knowledge of business management to distinguish the business from the bottom line, customer satisfaction, and on-time delivery. Thus, *Six Sigma* is not just process-improvement techniques but a management strategy to manage the projects to financial goals.
>
> 3. It combines robust design engineering philosophy and techniques with low risks (Lean *Six Sigma* tools: measure, analyze, develop, and verify).

Salman Taghizadegan, *Essentials of Lean Six Sigma* 1-2 (2006).

The circuit court remanded the matter to the magistrate for a determination of whether Ferguson had voluntarily impoverished himself, how much income should be imputed to him, and whether and when Ferguson's support obligations should be reinstated.

C. Final Child Support Modification Hearing and Exceptions Hearing

The parties appeared for their final support modification hearing on February 6, 2017, and appeared for their final exceptions hearing on April 13, 2017.

1. Ferguson's Employment and Financial Status

As mentioned above, Ferguson filed a petition for modification of child support on April 15, 2016, stating that his termination from employment resulted in a material change in financial condition. Ferguson testified that he was terminated from his job because his long commute and his responsibility to pick up his daughter from daycare made it difficult for him to meet his work obligations. He explained that he tried to address this issue by first attempting to speak to Parham about moving their daughter to a more convenient daycare location and then by attempting to transfer to a different role in the company. Both of these efforts proved unsuccessful.

After being terminated, Ferguson did not immediately apply for unemployment benefits, as he was "not comfortable accepting government assistance of any form." Ferguson eventually applied for unemployment benefits and was informed that he was eligible to receive $430.00 a week, effective July 15, 2016. However, Ferguson did not make the required weekly filings and did not receive unemployment benefits.

At the modification hearing, Ferguson told the circuit court that he accepted a contract position with MedStar that would begin on February 13, 2017, and would pay him $43.00 an hour. However, at the exceptions hearing on April 13, 2017, Ferguson testified that the contract position had been cancelled, and that he was employed in that position for only a month. Additionally, Ferguson informed the court that he had received a standing offer for a full-time position as an Internal Audit Director for PepsiCo, but that he had not yet accepted this position because doing so would require him to relocate to Plano, TX, Purchase, NY, or Chicago, IL.

Parham also testified that Ferguson is an experienced accountant, and that he holds a Lean *Six Sigma* Certification. Based on Ferguson's qualifications and Parham's research on the "job market between Baltimore and Washington," Parham argued that it had taken Ferguson too long to secure employment, and that the circuit court should find that Ferguson voluntarily impoverished himself.

In response, Ferguson testified that he was "no longer a Lean *Six Sigma* professional," as he had not renewed his certification since 2013. Additionally, he explained that he sent out "at least 75 different resumes" in order to apply to positions in Maryland, Delaware, and Washington, D.C. Despite this, before receiving the offer for his contract position, the only offer he received was for the position at PepsiCo.

In further support of her argument on voluntary impoverishment, Parham testified that Ferguson was recently married in Texas, and that he had the "means and ability to pay for a wedding and multiple flights to and from Texas while having his child support obligations suspended." Ferguson did not disclose the wedding to Parham or the circuit

court until December 2016. When asked by the court about his marriage, Ferguson stated that he does not receive any support from his now wife.

2. Parham's Employment and Financial Status

Parham is employed in a civilian position with the United States Army. At the time of the original hearing, her salary was $77,490.00 a year. Effective October 15, 2016, her salary was raised to $80,073.00. Finally, as of January 21, 2017, her salary was raised to $82,377.00.

Parham paid $312.00 a month for her daughter's work-related daycare, and she also paid $192.00 a month for her daughter's health and dental insurance.

3. Childcare Expenses

At the time of the hearings, the parties' daughter was enrolled at a daycare facility called "Celebree." Though Parham regularly paid for their daughter's daycare, Ferguson made six payments to Celebree. Specifically, he paid $584.00 to Celebree each month from April through August 2016, before he knew that his child support obligations were suspended; he also paid $312.00 in February 2017.

Ferguson testified that he used both the before- and after-care services while their daughter was in his custody. However, he argued that because he was unemployed and could have supervised his daughter from home, childcare services were not necessary. Therefore, he asserted that he should not be responsible for any portion of the cost. Parham testified that she preferred to keep their daughter at her current daycare location because it offered her a "stable schedule for day care[,]" especially in light of the possibility that Ferguson might find a job at any time.

4. Magistrate's Recommendations

The magistrate found that "[Ferguson] lost his job because of conflicts he had with regard to caring for his daughter and his work situation," not due to any effort to voluntarily impoverish himself. However, the magistrate determined that Ferguson could have received unemployment benefits of $430.00 a week, effective July 15, 2016, and that Ferguson's failure to do so constituted voluntary impoverishment. The magistrate therefore imputed to Ferguson income of $1,863.00 a month.

The magistrate also determined that childcare expenses should be included in the child support calculations. Finally, the magistrate recommended that Ferguson be reimbursed for the childcare payments he made while his obligations were suspended, as well as that which he made in February 2017.

Based on the finding of voluntary impoverishment and the parties' financial statuses at the time,[3] the magistrate applied the child support guidelines to make a recommendation for the support arrangement between the parties.[4]

5. Trial Court's Order

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[3] At the time of the hearing, Ferguson was scheduled to begin his contract position at MedStar, which would have paid him $7,453.00 a month.

[4] The magistrate recommended that effective April 15, 2016, Parham owed Ferguson $767.00 a month; effective July 15, 2016, Parham owed Ferguson $351.00 a month; effective October 15, 2016, Parham owed Ferguson $367.00 a month; effective January 21, 2017, Parham owed Ferguson $388.00 a month. Beginning February 13, 2017, Ferguson would pay Parham $323.00 a month. Finally, the magistrate recommended that, due to Ferguson's above-mentioned childcare payments, a support arrearage of $3,232.00 would be created to be paid at the rate of $323.00 per month.

The circuit court found that it was proper to expect Ferguson to have found new employment four months after he was terminated. Therefore, the court suspended Ferguson's child support obligations from April 16, 2016, until August 16, 2016, and imputed income to him effective August 17, 2016. The court imputed income to Ferguson at a level of $7,465.00 per month, which was "slightly more than one-half his previous earnings, but commensurate with his compensation for his brief recent contractual employment[.]" The court then applied the child support guidelines to determine the level of child support that the parties would owe[5] and determined that Ferguson would be awarded a credit against child support arrearages in the amount of $2,236.00 for the child care costs he paid from April through August 2016.

Additional facts will be included as they become relevant to our analysis, below.

DISCUSSION

I. Trial Court's Decision to Overturn Magistrate's Findings

Ferguson contends that "[t]he [circuit] court is required to give discretion to the magistrate's findings and report unless the report seems to be wrong on its face," and that the circuit court's decision to part from the magistrate's recommendations was a "deliberate attempt to skirt the laws of Maryland[.]" In making this assertion, Ferguson does not cite any legal authority to support his position, and we are not convinced by his argument.

[5] The circuit court found that effective August 17, 2016, Ferguson owed Parham $381.00 a month; effective October 15, 2016, Ferguson owed Parham $357.00 a month; and effective January 21, 2017, Ferguson owed Parham $334.00 a month.

This Court has previously explained that there are two levels of fact-finding undertaken by magistrates, each of which must be treated differently by trial courts. "First-level facts," which must be afforded deference by the trial court, "are those that answer the What?, Where? And How? questions." *Levitt v. Levitt*, 79 Md. App. 394, 398 (1988). "The [magistrate's] primary responsibility is to develop the first-level facts." *Id.* at 399. On the other hand, "[s]econd-level facts are conclusions and inferences drawn from first-level facts." *Id.* at 398. Trial courts are not required to give any deference to a magistrate's findings on "second-level facts," which ultimately lead to the conclusion of the case. *See id.* at 398-99; *see also Wenger v. Wenger*, 42 Md. App. 596, 607 (1979) (explaining that "second-level, conclusionary 'facts' . . . are the ultimate province of the chancellor.").[6] As this Court stated in *Kierein v. Kierein*:

> [T]he trial court must always independently determine what to make of those [first-level] facts. In other words, the trial court may not defer to the [magistrate] as to the ultimate disposition of the case. The ultimate conclusions and recommendations of the [magistrate] are not simply to be tested against the clearly erroneous standard, and if found to be supported by evidence of record, automatically accepted. That the conclusions and recommendations [of the magistrate] are well supported by the evidence is

[6] The following explanation from this Court's opinion in *Wenger v. Wenger* provides additional guidance on the difference between first-level and second-level facts:

> A [trial court] may defer to the [magistrate] on such first-level facts as that a husband makes $50,000 a year; the yearly orthodontia bill is $1500; the rent is $300 a month; the bank account of thus and so is thus and so. On the other hand, such second-level, conclusionary "facts" as the wife's ultimate need or the husband's ultimate ability to pay are dispositional in nature and are the ultimate province of the [trial court].

Wenger, 42 Md. App. at 607.

> not dispositive if the independent exercise of judgment by the chancellor on those issues would produce a different result.

Kierein v. Kierein, 115 Md. App. 448, 453 (1996) (internal citations omitted).

In this case, Ferguson avers that the circuit court was required to give deference to the magistrate's report unless it was found to be "wrong on its face." Specifically, the magistrate found that, based on the circumstances, Ferguson did not voluntarily impoverish himself. Ferguson contends that this finding was supported by the record, and therefore, the "trial [court's] decision to ignore the magistrate's findings . . . [was] indicative of a deliberate attempt to skirt the laws of Maryland, the rules of the court, and arbitrarily rule in a manner favorable to [Parham]."

Ferguson's argument fails to recognize the distinction between first- and second-level facts and the different ways each must be treated by trial courts. The magistrate made findings on first-level facts related to Ferguson's alleged voluntarily impoverishment, including the events that led up to Ferguson's termination, the steps that Ferguson made to secure new employment, and the effort that he took to obtain unemployment benefits. The magistrate concluded that Ferguson only voluntarily impoverished himself as related to the unemployment benefits he could have obtained, but not as to his employment.

Parham then filed exceptions challenging the magistrate's recommendation on Ferguson's voluntary impoverishment. In adjudicating Parham's challenge, the circuit court was required to give deference to the magistrate's first-level findings of fact, or the "What?, Where? And How? Questions." *Levitt*, 79 Md. App. at 398. The record reflects

that such deference was given. The circuit court was not, however, required to give any deference to the magistrate's second-level findings of fact, or legal conclusions. Instead, the court was required to undertake an independent analysis of the facts, and it did just that. *See Kierein*, 115 Md. App. at 453 ("[T]he trial court may not defer to the [magistrate] as to the ultimate disposition of the case."). As a result, the court arrived at the conclusion that Ferguson voluntarily impoverished himself, both in terms of unemployment benefits and in terms of finding new employment.

In spite of Ferguson's contention that the circuit court was compelled to follow the magistrate's recommendation, the fact that "the conclusions and recommendations of the [magistrate] are well supported by the evidence is not dispositive if the independent exercise of judgment by the [trial court] on those issues would produce a different result." *Kierein*, 115 Md. App. at 453 (citation omitted). Therefore, the circuit court did not abuse its discretion when it concluded, differently from the magistrate, that Ferguson had voluntarily impoverished himself.

Ferguson separately asserts that "[t]he trial court erroneously allowed testimony not presented to the magistrate [to be admitted] in [the] magistrate's exceptions hearing and relied on that testimony in determining that [he] was voluntarily impoverished," in violation of Md. Rule 9-208(i)(1).[7] Specifically, Ferguson argues that Parham presented

[7] Md. Rule 9-208(i)(1) states:

> **(i) Hearing on Exceptions.**
>
> (1) Generally. The court may decide exceptions without a hearing, unless a request for a hearing is filed with the exceptions or by an opposing

three pieces of evidence in her exceptions to the magistrate's report and in her testimony at the exceptions hearing that were not presented in front of the magistrate: (1) that Ferguson "is an experienced Certified Public Accountant and holds a Lean *Six Sigma* certification;" (2) that Ferguson "[p]aid for trips for him and [their] daughter to fly back and forth to Texas;" and (3) that Ferguson "did not reach out to [Parham] to make a pack-up arrangement for [their] daughter during [the] performance flag period and in turn did not use all of his available resources . . . to remain employed."

After reviewing the record from the modification hearing on February 6, 2017, we conclude that Ferguson's argument is factually incorrect, as all three of these facts were introduced at the magistrate hearing. Therefore, the circuit court did not err by considering the above-mentioned three arguments in finding that Ferguson was voluntarily impoverished.

II. Child Care Expenses

Ferguson avers that the circuit court erred by including the cost of the parties' daughter's before- and after-school daycare in the child support calculations.

According to Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL") § 12-204(g)(2), "actual child care expenses incurred on behalf of a child due to employment or

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> party within ten days after service of the exceptions. The exceptions shall be decided on the evidence presented to the magistrate unless: (A) the excepting party sets forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the magistrate, and (B) the court determines that the additional evidence should be considered. If additional evidence is to be considered, the court may remand the matter to the magistrate to hear and consider the additional evidence or conduct a de novo hearing.

job search of either parent shall be added to the basic [child support] obligation and shall be divided between the parents in proportion to their adjusted actual incomes." Courts determine the amount of such expenses by analyzing the "actual family experience." FL § 12-204(g)(2)(i). In *Lorincz v. Lorincz*, 183 Md. App. 312, 323 (2008), this Court explained that the phrase "'due to employment' means due to actual current employment, not long range preparation for potential employment." Similarly, we "[deemed] the phrase 'due to job search' to be . . . limited to a direct and immediate relationship between the child care and the job search and not to embrace some more distant and attenuated philosophical association between the two." *Id.*

Here, Ferguson contends that, since he was at home throughout the day while he was unemployed,[8] he could have watched their daughter. Therefore, he asserts that it was unnecessary for Parham to enroll their daughter in a daycare program, and that he should not be responsible for any portion of the daycare expense. In response, Parham argues that since Ferguson was "seeking employment and could have become employed at any moment," it was necessary to enroll their daughter in the daycare program to ensure that she had a "stable routine," and to guarantee that Parham would receive her work-related childcare subsidy. Therefore, Parham contends that childcare expenses should be included in the child support calculations.

We agree with Parham. As the circuit court noted, "Mr. Ferguson had only recently lost his job and was actively engaged in a search[.]" Given the possibility that

[8] Ferguson was unemployed for almost ten months from April 15, 2016, until February 13, 2017.

Ferguson might find a job at any time, it was in their daughter's best interest, as well as the parties' best interest, for Parham to secure a spot in daycare for their daughter and to secure eligibility for her work-related childcare subsidy. Though Ferguson may have been available to watch their daughter for some period of time, the length of time in which he would be available was uncertain. This uncertainty was the result of his ongoing job search, and the possibility that he could obtain full-time employment at any time. The connection between Ferguson's job search and the parties' need for childcare for their daughter is sufficiently "direct and immediate" to satisfy the standard set out by this Court in *Lorincz*. *See Lorincz*, 183 Md. App. at 323. As such, the circuit court did not err by including childcare expenses in the child support calculations.

III. Voluntary Impoverishment

Ferguson also challenges the circuit court's determination that he rendered himself voluntarily impoverished.

This Court has previously stated that "a parent shall be considered 'voluntarily impoverished' whenever the parent has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources." *Goldberger v. Goldberger*, 96 Md. App. 313, 327 (1993). The parent's intentions regarding their child support payment is irrelevant; rather, the focus is simply on whether the parent "has become impoverished by choice[.]" *Wills v. Jones*, 340 Md. 480, 494 (1995).

In determining whether an individual is voluntarily impoverished, courts consider the following factors:

1. his or her current physical condition;

2. his or her respective level of education;

3. the timing of any change in employment or financial circumstances relative to the divorce proceedings;

4. the relationship of the parties prior to the divorce proceedings;

5. his or her efforts to find and retain employment;

6. his or her efforts to secure retraining if that is needed;

7. whether he or she has ever withheld [child] support;

8. his or her past work history;

9. the area in which the parties live and the status of the job market there; and

10. any other considerations presented by either party.

Goldberger, 96 Md. App. at 327.

If a circuit court finds that a party is voluntarily impoverished, the court's finding "will be affirmed if, after viewing the record in the light most favorable to the prevailing party, [the finding] is supported by any competent, material evidence in the record." *Dillon v. Miller*, 234 Md. App. 309, 319 (2017) (citing *Sieglein v. Schmidt*, 224 Md. App. 222, 252 (2015)).

Ferguson contends that "[t]he court's finding of voluntary impoverishment and its rationale for such a finding is not supported by the record." We are unpersuaded by Ferguson's argument.

At the hearing on April 13, 2017, the circuit court explained how it arrived at its decision that Ferguson was voluntarily impoverished. For example, the court stated

"with regard to Mr. Ferguson's training, education and experience, he obviously has the ability to be employed at a very high level." The court went on to explain that "[Ferguson] could have made better efforts to keep [his] last job and that [he] did not exert all efforts that [he] could have to find a [new] job." The court also considered the fact that Ferguson was approved for unemployment benefits, but that he deliberately chose not to receive them.

Further, the circuit court cited Ferguson's wedding in Texas, and his ability to go back and forth between Texas, as evidence that "he had access to funds" and that his "needs are being met by someone else."[9] Finally, the court expressed its opinion that Ferguson was "picking and choosing and/or not using . . . the standing opportunity with PepsiCo."

[9] Ferguson contends that it was improper for the court to consider his marriage in Texas, and the fact that his wife is employed in Texas, when determining whether he was voluntarily impoverished. He argues that the trial court should have only considered his "actual income," as defined by FL § 12-204(g)(2). Since, according to Ferguson, neither the money provided by his wife's family to help pay for his wedding nor his wife's employment fit into the definition of "actual income," neither of these factors should have been considered by the court in its voluntarily impoverishment analysis.

However, the scope of what courts may consider when making a determination of voluntary impoverishment is not limited by FL § 12-201. Rather, courts consider the ten factors from *Goldberger*, listed *supra*. 96 Md. App. at 327. The tenth factor permits trial courts to analyze "any other considerations presented by either party." This factor is sufficiently broad to allow the trial court to consider Ferguson's wedding in Texas and his wife's employment as evidence of his access to financial resources. However, even if it were impermissible for the court to consider Ferguson's marriage in the course of its analysis, there is more than enough other evidence in the record to justify the court's finding of voluntary impoverishment. Therefore, we are not convinced by Ferguson's argument.

Considering the court's explanation, we conclude that there is, at the very least, "competent evidence on the record" to support its finding of voluntary impoverishment. Therefore, the court did not commit reversible error in making this determination.

IV. Application of the Child Support Guidelines

Finally, Ferguson argues that the circuit court erred in its application of the child support guidelines. Specifically, Ferguson contends the court erred when, instead of ordering Parham to pay him child support during the four-month period after his termination, it merely suspended his support obligations during that time.

The child support guidelines, as set out in FL §§ 12-201, *et seq.*, were created "to ensure that awards of child support are 'based on specific descriptive and numeric criteria[.]'" *Allred v. Allred*, 130 Md. App. 13, 17 (2000) (quoting *Voishan v. Palma*, 327 Md. 318, 322 (1992)). They "are premised on the concept that 'a child should receive the same proportion of parental income, and thereby enjoy the same standard of living, he or she would have experienced had the child's parents remained together.'" *Voishan*, 327 Md. at 322.

In "any proceeding to establish or modify child support," a trial court must use the guidelines to determine the proper amount of support to be provided. FL § 12-202(a)(1); *see Petrini v. Petrini*, 336 Md. 453, 460 (1994) (explaining that "[w]hile the [child support guidelines] were merely advisory when they were first adopted, their use became mandatory when ch. 58 of the Acts of 1990 was enacted."). When courts employ the guidelines to determine the proper amount of support to be awarded, there is a rebuttable presumption that the amount of support determined is correct. FL § 12-202(a)(2)(i).

The Code does give trial courts some discretion to deviate from the guidelines if "the court determines that the application of the guidelines would be unjust or inappropriate in a particular case." FL § 12-202. However, in doing so, the Code requires that "the court shall make a written finding or specific finding on the record stating the reasons for departing from the guidelines." *Id.* That finding shall state:

> A. the amount of child support that would have been required under the guidelines;
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> B. how the order varies from the guidelines;
>
> C. how the finding serves the best interests of the child; and
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> D. in cases in which items of value are conveyed instead of a portion of the support presumed under the guidelines, the estimated value of the items conveyed.

Id.

In this case, the circuit court stated, "four months [was] a reasonable period of time for the [c]ourt to permit [Ferguson] to find a new job and to relieve him of his obligations of support during that period of time." As such, the court suspended Ferguson's child support obligations from April 16, 2016, until August 17, 2016. During that four-month time period, neither Ferguson nor Parham were required to pay child support to the other.[10] Effective August 17, 2016, the circuit court imputed income to Ferguson at a rate of $7,465.00 per month and ordered him to begin paying child support to Parham on that date.

[10] Conversely, during this same time period, the magistrate determined, by applying the child support guidelines, that Parham would pay child support to Ferguson. *See supra* n.5.

Ferguson argues that the circuit court erred when it did not apply the guidelines to the four months after he was terminated. Specifically, he avers that the court was required to either apply the child support guidelines during that period or to make a "written finding or specific finding on the record stating the reasons for departing from the guidelines." By not applying the guidelines, and by not explaining the reasons for its not applying the guidelines, Ferguson argues that the circuit court committed reversible error.

We agree with Ferguson. As explained in the magistrate's recommendations, a straightforward application of the child support guidelines would have resulted in Parham paying child support to Ferguson during the four-month period after Ferguson was terminated from employment. The circuit court departed from these guidelines when it did not require either party to pay child support to the other during that time. As explained above, under FL § 12-202(v)(1), the circuit court was required to make specific findings to explain its departure from the guidelines. However, a review of the record and the circuit court's order reflects that the court did not make these required findings. Therefore, the court's explanation of its departure from the guidelines is not sufficient to satisfy the mandates of FL § 12-202(v)(1).

Thus, we reverse the judgment of the circuit court on this issue and remand the case for further proceedings on the application of the child support guidelines during the four months after Ferguson was terminated from employment. The court should either directly apply the child support guidelines to determine the support obligations of the parties during the four months at issue or, if the court finds that there is sufficient reason

to justify deviating from the guidelines, it should make an oral or written finding stating "the amount of child support that would have been required under the guidelines; how the order varies from the guidelines; [and] how the finding serves the best interests of the child[.]" FL § 12-202(v)(1).

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY REVERSED; COSTS TO BE PAID BY APPELLEE.