

Circuit Court for Howard County
Case No. 13-C-17-111579

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 0289

September Term, 2022

ROBERT CATELLO

v.

BETSY POLICICCHIO

Berger,
Shaw,
Ripken,

JJ.

Opinion by Shaw, J.

Filed: January 17, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*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.

Appellant, Robert Catello, appeals an order from the Circuit Court for Howard County that modified his child support obligation and denied his motion for modification of custody and visitation. Appellant timely appealed and presents two questions for our review:

1. Did the circuit court err in calculating the Appellant's child support obligation?
2. Did the circuit court err in denying the Appellant's Motion to Modify Custody and Visitation based solely on facts that occurred before January 2020, without considering any other evidence?

BACKGROUND

Robert Catello and Betsy Policicchio were married on December 1, 2006, in Cabo, Mexico. The parties had their first child, G, on August 10, 2012, and their second child, N, was born on December 10, 2015. The parties separated in April 2015, and on May 22, 2017, Appellee, Betsy Policicchio filed a complaint for divorce in the Circuit Court for Howard County. A Judgment of Absolute Divorce was granted by the court in May 2018, and Appellee was awarded sole legal and sole physical custody of the minor children. As part of the judgment, Appellant, Robert Catello was to abstain from the use of all drugs and alcohol and remain in drug treatment, and if he failed to abstain from drugs or alcohol, failed to provide monthly drug testing, and failed to provide random urinalysis drug testing, Appellee was permitted to modify Appellant's access to the minor children in accordance with the best interests of the children.

The court initially reserved on the issue of child support due to Mr. Catello’s unemployment. A hearing was held on June 28, 2018, to determine his obligation and on July 3, 2018, Appellant was ordered to pay \$2,538.00 per month in child support. He filed a motion to modify child support in July 2019, and on December 18, 2019, the Circuit Court ordered him to pay \$896.00 per month in child support.

Appellant filed a motion to modify custody and visitation on February 14, 2020, and on September 20, 2021, Appellant filed a motion to modify child support. Following a two-day hearing, the court denied his motion for modification of custody and modified his child support obligation, increasing his payments to \$990.00 per month. Appellant timely appealed.

DISCUSSION

Standard of Review

Maryland Rule 8-131(c) provides:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

“A trial court’s findings are not clearly erroneous if ‘any competent material evidence exists in support of the trial court’s factual findings[.]’” *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)).

I. The Circuit Court erred in calculating Appellant’s child support obligation.

The Circuit Court explained:

To modify child support, the threshold question is whether there has been a material change in circumstances since the matter was last before the court. Md. Code, Fam. Law § 12-104(a); *Wheeler v. State*, 160 Md. App. 363, 372 (2004); *Corby v. McCarthy*, 154 Md. App. 446, 477 (2003). It is the burden of the party seeking a modification of support to prove that there has been a material change. *Corby*, 154 Md. App. at 477. However, “a material change in circumstances does not necessarily compel a modification” of support; rather, a decision regarding modification is left to the discretion of the court. *Smith v. Freeman*, 149 Md. App. 1, 21 (2002).

As of the March 2022 hearing, Appellant was obligated to pay Appellee \$896.00 per month in child support for the two minor children, and \$20.00 per month for arrears. Appellant testified at the hearing that expenses for the children had decreased because the youngest child was in elementary school and no longer required full daycare. Appellee confirmed that the child was in kindergarten. As a result, the court determined there had been a material change in circumstances that warranted “an examination and modification of child support.”

Appellee testified as to various expenses paid for childcare during the year, including aftercare and summer camp. The court ultimately found that Appellee had paid \$350.00 per week for the children to attend aftercare and eleven weeks of childcare during the summer. The court found that the work-related childcare expenses for both children, totaled \$19,014.00 for the year or \$1,584.50 per month, determining that while “one part of child support decreased, other areas increased.” The court, by order, modified Appellant’s child support obligation, increasing it from \$896.00 to \$990.00.

Appellant argues the court erred in its calculations. He asserts the court incorrectly calculated aftercare costs at \$350.00 per week and incorrectly determined that the cost of summer camp was \$4,664.00 per year. Appellee agrees that the court erred in calculating Appellant’s child support obligation. She contends the court erred in finding that costs for work-related childcare during the school year was \$350.00 per child, per week, instead of per month. There was also a 15% discount for the first child, which made the total monthly cost \$647.50 for both children. Appellee also asserts that the court improperly calculated the costs of summer camps and fees. She contends that her average childcare costs were \$1,164.00 instead of the \$1,584.50 that the court determined. According to her, Appellant’s child support obligation should be \$912.00 per month.

We agree with the parties. Based on the testimony given and exhibits admitted, it appears that the court did err in its calculations. We, therefore, remand for briefing by the parties, as to their positions regarding childcare costs and a reconsideration by the court of its child support determination.

II. The Circuit Court did not err in denying Appellant’s Motion to Modify Custody and Visitation.

When presented with a request to change custody, the court is required to engage in a two-step process: first, the court must assess whether there has been a material change in circumstance, and if a finding is made that there has been a material change, the court then proceeds to consider the best interests of the child. The court’s inquiry ceases if no material change is found. In evaluating a material change of circumstances, ‘material’ relates to a change that may affect the welfare of a child.

See Wagner v. Wagner, 109 Md. App. 1, 28 (1996).

Appellant argues he presented material changes in circumstances that required the court to modify custody and visitation. He argues the court erred in considering facts or evidence that occurred solely before January 2020. At oral argument, he argued that there were six material changes of circumstances, including his move, employment, a letter from Worcester County Health Department from May 2021 stating that he completed a substance use disorder evaluation and did not meet the criteria for substance use disorder treatment, eleven random and voluntary drug tests in 2020, completion of a court ordered NFRC Parenting Plan in 2020, and completion of probation in January 2021. Appellee argues that there is “ample evidence in the record to support [the] denial of Mr. Catello’s motion to modify custody and visitation.” She contends that the court’s decision was not arbitrary “nor was it clearly erroneous.”

Following testimony by both parties, Mr. Catello’s girlfriend, Ms. Policicchio’s expert, and argument of counsel, the court took the matter under advisement. On March 25, 2022, the court entered its Memorandum Opinion. On the issue of modification of child custody, the court held:

The completion of the in-patient program is insufficient to support a material change in circumstances. Additionally, when the Court is made aware that [Appellant] has failed to abide by the terms of the Court’s Order as set out in the Judgment of Absolute Divorce, the Court has no choice other than to find [an] insufficient basis for material change in circumstances.

In our review of the entirety of the record, we agree that the court neither erred nor abused its discretion in determining that there was not a material change in circumstances. While it is undisputed that Appellant completed an in-patient program in 2018, it is also

undisputed, based on Appellant's admission, that he failed to comply with the terms of the Judgment of Divorce regarding abstinence, testing, and treatment. The hearing court simply found that completion of the in-patient program was insufficient to support a material change, and that Appellant had failed to articulate any additional basis for modification. We find no support in the record for Appellant's assertion that the court did not consider his testimony regarding what he contends were material changes of circumstances. We hold that the court's findings are fully supported by the record and were not clearly erroneous, and the court did not abuse its discretion.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED IN
PART; REMANDED TO CIRCUIT COURT
WITH INSTRUCTIONS TO RECONSIDER
CHILD SUPPORT OBLIGATION. COSTS
TO BE PAID BY APPELLANT.**