Circuit Court for Howard County
Case No. 13-C-10-082423

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0297

September Term, 2020

WILLIAM DAVID CHALK

v.

CHRISTINA CHALK

Kehoe
Arthur,
Leahy,

JJ.

Opinion by Arthur, J.

Filed: June 4, 2021

This appeal arises from a court's denial of a father's motion to modify his child support and alimony obligations. After a hearing, the court found that there had been no material change to justify a modification of alimony and that the appropriate amount of the father's monthly child support obligation should remain the same. We shall remand to the circuit court for additional findings and for a reevaluation of the father's child support and alimony obligations in light of those findings.

FACTUAL AND PROCEDURAL BACKGROUND

The parties to this case are William David Chalk ("Father") and Christina Chalk ("Mother"). Father and Mother were married in 1996. Together they have two children, born in 1999 and 2003. Father and Mother were divorced in December 2013.

A. The 2013 Divorce

At the time of the divorce in 2013, the court awarded joint legal and shared physical custody of the children and determined that Mother's home would be the children's primary residence. The court ordered Father to pay $10,000 a month in child support. The court also ordered Father to pay $3,900 a month in rehabilitative alimony for 89 months, until June 2021, when the younger child was expected to finish high school.

At the time of the divorce, Father was an equity partner in a major national law firm, earning a yearly income of $1.57 million. In the court's words, Father, at that time, had "reached the pinnacle of his profession." Mother worked part-time as an attorney for a federal agency, earning a yearly income of $119,000. Because of her part-time work schedule, the court found that Mother had voluntarily impoverished herself.

Consequently, the court imputed a yearly salary of $204,000 to her.

B. The Contempt Petition and the Motion to Modify

In August 2018, Mother petitioned the court to hold Father in contempt because of his failure to pay the full amount of his alimony and child support obligations. Within two weeks, Father responded by moving for the termination or modification of the alimony award and for the modification of the child support obligation.

In support of his request, Father argued that since the divorce there had been a material change in circumstances that warranted a reduction in child support and alimony. Father argued that his oldest child was now emancipated and was no longer in high school, that the expenses of the younger child had decreased significantly, and that Father now has child support obligations for two children with another woman. In addition, Father claimed to have incurred business losses and increased expenses since 2013.

Nine months after filing his motion, in May 2019, Father learned that his firm was severing its relationship with him after 25 years and that his employment would be terminated. He cited his loss of employment as an additional ground for modification.[1]

C. Circuit Court Proceedings

The circuit court conducted a modification hearing that took up four days in late 2019 and early 2020. Although the evidence confirmed that Father had lost his job and

[1] While Father's motion was pending, a magistrate recommended that he be held in contempt for failing to pay alimony and child support. By the end of the trial, Father had made about $120,000 of the $291,000 in support and alimony payments that had come due since August 2018. He had arrearages of more than $171,000.

his seven-figure income, the court announced, at the end of the last day of the hearing, that it found no material change of circumstances to warrant a modification of alimony. The court reserved judgment on the question of child support.

In a subsequent written opinion, dated April 30, 2020, the court elaborated on its denial of Father's request for a modification or termination of his alimony obligations. The court stated that Father had made the same arguments as he did in 2013, when the court found that 89 months of rehabilitative alimony was appropriate. Father did not argue that he lacked "the ability to pay rehabilitative alimony"; rather, "he argue[d] that [Mother] does not have a need for alimony."

The court found no new grounds to justify departing from the 2013 alimony award. The court concluded that "[e]xcept for a slight increase in income by [Mother] and an increase in certain accounts, which was expected, there have been no other significant changes to warrant [] termination or [a] modification of rehabilitative alimony."

In its written decision, the court did find "that there ha[d] been a material change that warrants the court to [reexamine Father's] monthly child support obligation," because the parties' oldest child had graduated from high school in 2018 and now attends a local university.

Because this is an above-guidelines case,[2] the court recognized that it must

[2] The Family Law Article outlines a schedule of child support obligations proportional to the "combined adjusted actual income" of the parties. Maryland Code (1984, 2019 Repl. Vol.), § 12-204(e) of the Family Law Article ("FL"). The statutory

exercise its discretion in "examin[ing] the needs of the child[ren] in light of the parents' resources and determin[ing] the amount of support necessary to ensure that the child[ren]'s standard of living does not suffer because of the separation." *Voishan v. Palma*, 327 Md. 318, 332 (1992).

The court proceeded to examine the parties' income and expenses.

1. Father's Income

Father's financial statement indicated that, in 2018 and preceding years, his compensation consisted of an annual distribution of the firm's profits as well as monthly "draws" or advances on his next annual distribution. Father would receive draws from February through December and a large, lump-sum distribution in January of the following year. Father had received his most recent lump-sum distribution, in the amount of $838,658, in January 2019. The distribution represented his share of the profits that the law firm earned in 2018.

In May of 2019, when Father was informed that his relationship with the firm was coming to an end, he began to negotiate a severance package. He continued receiving monthly draws of $33,500 until September 2019. From October 2019 until December

schedule ends at a combined adjusted actual income of $15,000. A case involving parties with a combined monthly income above that figure is considered an "above guidelines" case. In such cases, "the court may use its discretion in setting the amount of child support." FL § 12-204(d).

2019, he received $33,580 a month in severance pay.[3] In January 2020, he received a final severance payment in the amount of $472,466. Father testified that, under his agreement with the firm, he would not receive another annual partnership distribution.[4]

The court reviewed Father's "earning statement for the pay period ending September 30, 2019," the date when Father switched from receiving draws to receiving severance payments. The court wrote that the earning statement presented Father's "year-to-date total compensation received up to September 30, 2019 as $1,174,097," a number that included the monthly draws from February through September 2019 and the $838,658 distribution that Father had received in January 2019. Combining that $1,174,097 figure with the three months of severance payments that Father would receive in the final months of 2019, the court found Father's compensation for 2019 to be $1,274,837.[5]

At the modification hearing, Father testified that, although he had received the $838,658 partnership distribution in January 2019, it was earned in 2018. Father reported the distribution to the IRS as income earned in 2018 and argued that it should be

[3] According to Father's testimony and brief, his severance package included monthly payments of $33,500. The additional $80 that the court included in Father's severance payment is evidently a cell phone allowance provided by the firm.

[4] Father would eventually receive the return of his capital contribution. A return of capital, however, is not income. *Leeder v. Leeder*, 884 P.2d 494, 499 (N.M. Ct. App. 1994); *cf. Heyn v. Fidelity Trust Co.*, 174 Md. 639, 648 (1938) (stating that a payment from paid-in surplus capital and not from earnings is a distribution of capital, and not income).

[5] $1,174,097 + 3($33,580) = $1,174,097 + $100,740 = $1,274,837.

considered 2018 income for child support purposes. The court responded that Father's assertion was "not credible." The court cited FL § 12-201(b)(1) for the proposition that "payments are considered 'actual income' in the year they are received."[6]

In the years leading up to the termination of his employment, Father's practice had declined, as had his compensation. In anticipation of the prospect that his association with his firm might come to an end, Father had purchased a business franchise and two rental properties in Ocean City. Father testified that the franchise has yet to turn a profit and that the income from the rental properties has not covered the cost of the needed renovations. Therefore, he contended that his only 2020 income is the final severance payment from his former firm, which totaled $472,466. The court did not find that Father had any sources of income in 2020 other than the final severance payment.

Nonetheless, just after it mentioned the $472,466 severance payment that Father received in January 2020, the court "f[ound] that [Father's] yearly income is $1.274 million," apparently for 2020. For purposes of calculating child support, the court found "[t]hat [Father's] monthly adjusted income is $102,336.00," or over $1.2 million a year.

2. <u>Mother's Income</u>

Mother's most recent financial statement indicated that her monthly wages were $15,980 and that she received $2,316 per month in "other gross income." Her yearly salary from her employment was $219,552. The court found that Mother was still

[6] In fact, § 12-201(b)(1) does not discuss whether a payment is income when it is received, as opposed to when it is earned (and thus subject to taxes). Section 12-201(b)(1) simply states that "'[a]ctual income' means income from any source."

voluntarily impoverished because she was working part-time, and it imputed a salary of $243,243 a year to her. Mother admitted that she would earn $243,243 if she worked full time.

Mother's "other gross income" comes from an interest in oil and gas leases. In 2013, the court did not include those sums in the computation of income, because those "revenues would fall as the reserves were depleted." For the same reason, the court decided not to include Mother's income from the oil and gas leases in her gross income in 2020 even though it appears to approach $20,000 a year (or almost 10 percent of her annual wages).

Mother currently rents a portion of her home to a college student. She receives $650 a month in rent from the tenant. The court did not include the net rental income in its computation of Mother's income.

Father argued that Mother receives fringe benefits from her employer that qualify as actual income under FL § 12-201(b)(3)(xvi).[7] The court did not include these benefits in its computation of Mother's income.

3. Father's Expenses

The court found that in 2013 the parties' lifestyle, "while comfortable, was modest and less grand than what they could have afforded." In the years since the divorce,

[7] Section 12-201(b)(3)(xvi) defines "actual income" to include "expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business to the extent the reimbursements or payments reduce the parent's personal living expenses."

however, "[Father's] lifestyle has become much more lavish."

According to the court, Father had purchased a waterfront home and paid his mortgage of $600,000 in full in January 2019. The court stated that Father "now owns a jet boat and a jet ski(s) [sic]," as well as a Tesla and a Cadillac Escalade, both of which he paid for in cash.[8] The court did not note that Father already owned a boat and the waterfront home, in Pasadena in Anne Arundel County, at the time of the divorce in 2013.

The court went on to observe that Father had spent $38,000 in two months in vacation vouchers from a timeshare and had purchased a $34,000 engagement ring. Father had made those purchases before he learned that he would lose his job and his partnership income in May 2019, but after he had stopped making his court-ordered child support and alimony payments.

The court also observed that Father had spent an unspecified sum on "beach property renovations." The expenditures were for improvements to Father's rental properties, to make them more marketable.

Finally, the court observed that during the modification hearing Father bought a third "beach property" in Ocean City in cash for approximately $209,000, using funds from his final $472,466 severance payment.

The court found that Father now has two additional children with another woman

[8] More precisely, Father paid off the debt on a Tesla and paid $38,000 in cash for a used Escalade. The Escalade replaced a Jeep that he had used to transport his younger children. He traded in a more expensive Tesla when he purchased the Tesla that he was driving at the time of the trial.

and that he pays $3,500 a month in child support for them. Father is currently married to yet another woman and has two stepchildren, but he failed to list any expenses for them, even though they live with him. In his final financial statement, Father pegged the minor child's expenses at $1,359 a month, a figure that did not include child support. The court found that that figure was "way too low."

On the subject of Father's employment status, the court mentioned Father's testimony that "he is looking for employment and utilizing the services of a recruiter." The court did not expressly consider the difficulty that Father would face in obtaining comparable employment, with comparable compensation, as a middle-aged corporate lawyer, with few clients.[9]

The court dismissed Father's contention that his obligations should be reduced because he had lost his highly compensated position as an equity partner in a major national law firm and was no longer employed. As grounds for its conclusion, the court cited Father's purchase of "a third vacation property" less than 30 days after his employment ended. Father's actions, the court wrote, "are not consistent with [those of] someone who is concerned about his income, expenses, and expenditures."[10]

[9] Father testified that his billing rate had been $985 an hour at his former firm. We are permitted to observe that that rate far exceeds the customary rate for lawyers in Baltimore, where Father had practiced. *See Estate of Castruccio v. Castruccio*, 247 Md. App. 1, 51 (2020).

[10] As previously stated, the third property is not a vacation property, but an investment property, from which Father hopes to derive tax-sheltered income to replace some of the income that he used to earn from the law firm. In her brief, Mother recognized that the Ocean City properties are investment properties.

4. Mother's Expenses

The court found that since the divorce, Mother's lifestyle was "comfortable," but was "not lavish."

Although the 2013 divorce order had granted the parties joint custody, the court found that "[Mother] has had sole custody of the children and has been primarily responsible for their care, including paying tuition and expenses." In her most recent financial statement, Mother listed her expenses for the younger child as $8,527.53, which included $13,300 per year in tuition, plus costs for schoolbooks, testing expenses, tutoring, an SAT prep course, and a college essay-writing class. The court found that Mother alone shouldered the cost of educating the child.

The court, however, also found that Mother had attributed expenses to the minor child that were also attributable to Mother's emancipated child and the tenant (e.g., "homeowner's insurance, taxes, gas and electric, condo fees, etc."). The court recognized that Mother would incur most of those expenses regardless of whether she had children.

5. Denial of Father's Motion to Modify Child Support

Ultimately, the court opined that since 2013 "the minor child's expenses have risen as the needs of a seventeen-year-old (i.e., clothes, car insurance, travel, camps, sports, and extracurriculars) are quite different from that of a ten-year-old (the age he was at the time of divorce)." Extrapolating from the guidelines on the supposition that Father's adjusted actual income was $102,336 a month, the court found that the recommended amount of child support would be $14,122 a month if the cost of tuition were included. Ultimately, the court left the child support award at $10,000 a month,

which was between Mother's estimate of the expenses and the number extrapolated from the guidelines. The court found "that [Father] has the financial capacity to meet the child's needs."

Finally, the court ordered Father to pay more than $171,000 in child support and alimony arrearages.

QUESTIONS PRESENTED

In his brief, Father presented two questions, which we have reorganized and reworded:

1. Did the circuit court fail to make necessary findings to support its finding of Father's 2020 income?

2. Did the circuit court err or abuse its discretion in its finding of Father's 2019 income?

3. Did the circuit court err or abuse its discretion in its finding of Mother's income?

4. Did the circuit court fail to make necessary findings regarding the actual needs of the remaining minor child?[11]

[11] The questions presented in Father's brief are:

1. Did the trial Court commit reversible error and fail to make necessary findings in declining to reduce or terminate [Father's] alimony obligation?

2. Did the trial Court commit reversible error and fail to make necessary findings in declining to reduce [Father's] child support obligation?

STANDARD OF REVIEW

"When an action has been tried without a jury, we will review the case on both the law and the evidence. We will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and we give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Ley v. Forman*, 144 Md. App. 658, 665 (2002) (citing Md. Rule 8-131(c)).

"[A] trial court may modify a party's child support obligation if a material change in circumstances has occurred which justifies a modification." *Id.* The decision "to grant a modification rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily used or the judgment was clearly wrong." *Id.* (citing *Dunlap v. Fiorenza*, 128 Md. App. 357, 363 (1999)).

"A party requesting modification of an alimony award must demonstrate 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. Langston*, 366 Md. 490, 516 (2001); *accord Ridgeway v. Ridgeway*, 171 Md. App. 373, 384 (2006). The court may modify a decree for alimony at any time upon a showing of a material change in circumstances that justify the action. *Ridgeway v. Ridgeway*, 171 Md. App. at 384. "We will not disturb an alimony determination 'unless the trial court's judgment is clearly wrong or an arbitrary use of discretion.'" *Id.* at 383-84 (quoting *Blaine v. Blaine*, 97 Md. App. 689, 698 (1993), *aff'd,* 336 Md. 49 (1994)).

DISCUSSION

The trial court found that the emancipation of the parties' oldest child was a material change in circumstances that warranted the reexamination of Father's child support obligation. The next step should have been a calculation of the parties' income. The determination of each party's adjusted actual income should be the "initial step in *any* proceeding to establish or modify child support, as the judge must first determine whether the parents' combined adjusted actual income falls within, above, or below the schedule range." *Voishan v. Palma*, 327 Md. 318, 330 (1992) (emphasis in original).

The amount of actual income "is a factual finding that is required in every case." *Walker v. Grow*, 170 Md. App. 255, 284 (2006). "[E]ven in a case" such as this one, "in which the statutory schedule of basic child support obligations does not apply, the trial court must ascertain each parent's 'actual income.'" *Walker v. Grow*, 170 Md. App. at 267 (citing FL § 12-204(d)); *see also Johnson v. Johnson*, 152 Md. App. 609, 615 (2003) ("'the central factual issue is the "actual adjusted income" of each party[]'") (quoting *Reuter v. Reuter*, 102 Md. App. 212, 221 (1994)).

I. Father's 2019 Income

The court found Father's 2019 income to be $1.274 million. To calculate Father's 2019 income, the court relied on a statement from Father's former firm indicating that his year-to-date earnings through September 30, 2019 were $1,174,097.48. The court then added the three severance payments of $33,580 that Father received for each remaining

month of the year.[12] Father contends that this finding is clearly erroneous because the earnings statement included a large portion of Father's income from 2018.

In January of 2019, Father received his partnership distribution for 2018 in the amount of $838,658.32. That sum constitutes Father's share of the partnership's profits that were earned by the firm in 2018. This $838,658.32 payment made by the firm to Father is denoted on the year-to-date earnings statement as "Distribution Prior Year."

Father contends that because 2018 is the year in which the partnership earned the money, the distribution should be considered 2018 income for child support purposes. Father reported his partnership distributions as income on his tax returns in the year they were earned by the firm, not the year when he actually received them. Accordingly, the $838,659.32 distribution received in January 2019 was reported on his 2018 tax returns.[13]

The court found Father's argument "to be not credible." The court asserted that "payments are considered 'actual income' in the year they are received." As support for its assertion, the court cited FL § 12-201(b)(1), which defines "actual income" as "income from any source." Section 12-201(b) says nothing about when income is deemed to be earned.

[12] $1,174,097.48 + (3)$33,580 = $1,274,837.48.

[13] Father does not deny that some portion of his 2019 earnings statement reflects 2019 income. From February 2019 through September 2019, Father received monthly draws of $33,500. In October, November, and December of 2019, Father received severance payments of $33,580. All of these payments are rightly considered 2019 income by all parties and the court.

It is well settled that, for federal tax purposes, partners are deemed to have earned their share of a partnership's income in the year in which the partnership earned the income. *See*, *e.g.*, *First Mechs. Bank v. C.I.R.*, 91 F.2d 275, 279 (3d Cir. 1937) (holding that "[t]he income due each partner in a partnership . . . is taxable to him for the year in which it was received by the partnership, whether or not it is distributed to him in that year"); *see also United States v. Baker*, 233 F.2d 195, 196-97 (10th Cir. 1956) ("where the income is earned and received by a partnership, . . . the income is taxable to the individual parties during the year of receipt by the partnership"); *Burke v. C.I.R.*, 90 T.C.M. (CCH) 635 (T.C. 2005), *aff'd*, 485 F.3d 171 (1st Cir. 2007) ("a partner is taxable on his distributive share of partnership income when realized by the partnership despite a dispute among the partners as to their respective distributive shares[]").

Despite this well-established principle, Mother argues that the court's finding for Father's income for 2019 was correct. In her view, "the way income is treated for tax purposes is not dispositive of how it should be treated under the child support guidelines."

On one hand, we see no reason for a discrepancy between how income is calculated by the IRS for tax purposes and how income should be calculated by a court for the purposes of alimony and child support. It would certainly be reasonable to conclude that because taxes are owed on partnership distributions in the year when the income is earned by the partnership, they should be considered income in the same year for child support purposes.

On the other hand, Father cites no authority for the proposition that a court is

required to treat a distribution as income for child support purposes the same way that it appears on his tax returns, nor are we aware of such authority. We cannot say the court erred or abused its discretion on that basis alone.

Nevertheless, a court is still required to be consistent in how it determines a party's yearly income for child support. Father argues that the court was inconsistent in its treatment of Father's January 2019 distribution – that the court counted the payment towards both 2018 and 2019. We agree.

During the hearing, the court said that it considered money to be income for child support purposes in the year when it is received, not when it is earned:

> We know that [Father's] income [for 2019] is going to be 1.2 million. And I agree with [Mother], the sum of money that he received from January 1st of 2019 to September, which is on Exhibit 5 was $1,174,097.48. I don't care if it was earned 2018.

Immediately thereafter, however, the court cited Father's tax returns as a basis for determining his income: "When you look at the tax returns he I believe – what? Got [$]1.4 million distribution in '17 and 1.2 in '18. Now [referring to 2019] we're hearing they're pretty much the same."

As previously stated, Father's tax returns reported the partnership distributions as income in the year when they were earned, not in the year when they were received. Thus, by relying on the tax returns as a basis for determining Father's income in some years but not in others, the court appears to have taken inconsistent approaches: for 2019 the court based its income determination on the amount of money that Father received, while in earlier years the court based that determination on the amount that Father

reported on his tax returns. In addition, the court double-counted the distribution that Father received in January 2019: the court treated that distribution both as 2019 income (because Father received it in 2019) and as 2018 income (because Father reported it as income in 2018).

We shall remand for a determination of Father's 2019 income that is consistent with the determinations of Father's income in previous years.

II. Father's 2020 Income

Father argues that the court, in apparently finding that his 2020 compensation was $1.274 million, made no specific factual findings about the sources of his income. He contends that the court simply extrapolated from its finding of his 2019 income under the false premise that there had been no changes. In doing so, Father argues, the court ignored undisputed facts indicating that his 2020 income would be substantially less than his 2019 income.

When this case was tried in late 2019 and early 2020, the parties and the circuit court faced the difficult task of predicting what Father's future income would be. Father was unemployed and arguably unlikely to find employment that would pay him more than a fraction of what he had previously earned. Nonetheless, the court was skeptical that Father's prospects were as bleak as he portrayed them, because Father was still expending enormous sums of money even while he was in default on his court-ordered obligations to his ex-wife and one of his children. In response, Father attempted to show that many of the expenditures, such as buying and renovating the investment properties and eliminating some of his debt by paying off his mortgage and buying cars with cash,

were rational efforts to generate future income to replace the lost income from his law practice and to improve his cash flow.

Although it is not entirely clear what factual basis the court had for its finding that Father's 2020 income would equal his 2019 income, we need not decide whether the court erred or abused its discretion in making that finding. The case must return to the circuit court for a reevaluation of Father's income in 2019, and for other purposes. *See* section III, below. When the case returns to the circuit court, the court should reevaluate Father's income in 2020 (and 2021), using historical data, such as tax returns and other records of earnings and expenses.

III. Mother's Income

At the time of the divorce in 2013, the court found Mother to be voluntarily impoverished, as she worked part-time, and it imputed a salary of $204,000 a year to her. At the modification hearing in 2019 and 2020, the court found Mother still to be voluntarily impoverished and imputed a salary of $243,243 to her. Father argues that the court's finding for Mother's income is clearly erroneous because it omitted various items of income.

Mother's financial statements reflected that she earned $19,122.83 in oil and gas royalties in 2018 and $12,919 in 2019 through August 2019. As it did in 2013, the court declined to include those royalties in Mother's income because the "revenues would fall as the reserves were depleted."

While the oil and gas reserves may produce a declining amount of income as the reserves are depleted, that does not change the fact that, until they are depleted, the

royalties fall squarely within the definition of income. "'Actual income' means income from any source." FL § 12-201(b)(1). "For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, 'actual income' means gross receipts minus ordinary and necessary expenses required to produce income." FL § 12-201(b)(2).

The court did not remove the royalties from Mother's income calculation because of a necessary expense incurred to produce income, but rather because the income would dwindle over time. It was error to exclude them from Mother's income calculation for the purposes of child support.[14]

Likewise, the $650 a month that Mother receives from renting her basement to a tenant should also be included in her income (net of the expenses attributable to the tenancy). The court did not provide an explanation of why this rent was not to be included. Mother's contention that "$650 a month is not a material sum" is of no consequence to the definition of actual income. Six hundred fifty dollars a month is $7,800 a year, or more than three percent of Mother's wages.

Lastly, Father argues that the court erred in failing to include various employer-

[14] It is true that, in excluding the royalties from a computation of Mother's income in 2020, the court did exactly what it did at the time of the divorce in 2013. Father, however, apparently did not challenge the 2013 decision. An error is no less of an error because it is unchallenged. Mother does not argue that Father is estopped from asserting that her royalties were part of her income in 2019 and 2020 because he did not contest that issue in an appeal from the 2013 decision. Nor does Mother argue that res judicata bars a court from reexamining this issue now that the circuit court has found a material change in circumstances.

paid fringe benefits in its calculation of Mother's income. He cites the employer's contributions to the Federal Employees Retirement System or "FERS," to Mother's Thrift Savings Plan or "TSP," to her 401(a) retirement account, and to a Federal Employee Health Benefit Plan or "FEHB." Father cites *Walker v. Grow*, 170 Md. App. 255, 284 (2006), which stated that "'expense reimbursements or in-kind payments' received from an employer 'that reduce the parent's personal living expenses' are required by statute to be included in the actual income calculation." *Id.* (quoting FL § 12-201(b)(3)(xvi)).

None of these benefits fall within the ambit of § 12-201(b)(3)(xvi), because none of them are expense reimbursements or in-kind payments. Father cites no other authority specifically requiring a court to find that employer-paid fringe benefits like these qualify as income for alimony and child support purposes under the Family Law Article. Accordingly, we will not consider it.

IV. Needs of the Remaining Minor Child

Father contends that the court failed to determine the actual needs of the remaining minor child. Instead, he says, the court merely listed the various expenses that were incurred by both parents in relation to their child. He argues: "it would be impossible to say whether [the child] will lose the benefit of a certain lifestyle without first knowing the expenses associated with maintaining that lifestyle." He urges us to reverse the order requiring him to continue to pay $10,000 a month in child support.

Because this case must return to the circuit court for a reevaluation of the parents' actual adjusted income, we need not decide whether the court erred or abused its discretion in its decision regarding the appropriate level of child support. For purposes of

guidance on remand, however, we observe that Father has cited no case that requires a court to make a specific numerical finding about the expenses attributable to a child. The expenses are just one factor (along with parties' financial circumstances, their age and physical condition, their station in life, etc.) in determining child support in above-guidelines cases. *See*, *e.g.*, *Smith v. Freeman*, 149 Md. App. 1, 20 (2002). In this case, it is reasonably clear that Mother was spending something less than $8,527.53 a month on the child, but that the actual expenses might have been greater had Father not been withholding support.

V. Remand

On remand, the court is directed to reexamine the findings of Father's 2020 and 2019 income, as well as Mother's income, in accordance with this opinion. Based on those findings, the court should reconsider the denial of Father's motion to modify his monthly child support obligation.

Because the court's denial of Father's motion to modify or terminate alimony was based on erroneous findings and the court's opinion that no material changes have occurred, the court should reconsider the denial of that motion as well.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE EVENLY DIVIDED BETWEEN THE PARTIES.