

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 379

September Term, 2018

ROBERT E. DAY, JR.

v.

KIM MICHELLE STERRETT-DAY

Fader, C.J.,
Meredith,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: February 18, 2020

*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.

In this appeal, Robert E. Day, Jr. (“Husband”), appellant, contends that the Circuit Court for Howard County erred and abused its discretion in both granting the motion to modify alimony filed by his ex-wife, Kim Sterrett (“Wife”), appellee, and in denying his own motion to reduce his obligations to pay alimony, child support, and private-school tuition. Husband asks:

QUESTIONS PRESENTED

- I. Did the circuit court err or abuse it[]s discretion in awarding an extension of alimony?
- II. Did the circuit court err or abuse it[]s discretion in denying Appellant’s Motion to Modify Child Support, Alimony and Private School Tuition?

Because we find neither error nor abuse of discretion, we answer both questions in the negative, and affirm.

FACTS AND PROCEDURAL HISTORY

This appeal is the latest chapter in the parties’ long-running litigation, which began in October 2010 when Wife filed a complaint for limited divorce. At that time, two of the parties’ three children were still minors. Extensive proceedings in the Circuit Court for Howard County were conducted over a period of years to determine the issues of marital property, child support, and alimony, and eventually to determine ancillary issues, such as contempt proceedings regarding Husband’s failure to pay judgments that had been entered against him in favor of Wife. Rather than summarizing the entire history of the case, a convenient starting point to provide context for the issues before us in this appeal is the court’s 2013 Supplemental Memorandum Opinion (“the 2013

Order”), which was filed November 18, 2013, as an explanatory supplement to the court’s oral ruling announced from the bench on August 1, 2013. In the 2013 Order, the court made a number of findings that conclusively established a variety of points:

This matter is a highly contentious divorce. The Court heard testimony from numerous witnesses as well as the parties. It became clear to this Court that the [Husband] initially did not want the divorce[;] however he subsequently accepted the fact that the [Wife] wanted to end their marriage. [Husband’s] primary concern is to maintain his financial status and superiority and penalize the [Wife]. [Wife] testified that [Husband] stated to her that he was going to financially devastate her, and the Court finds this to be the true [sic]. [Husband’s] actions during the pendency of the 11 days of trial over 1½ years are demonstrative of the efforts he is willing to undertake to accomplish his goal. For example, the seven (7) emergency motions, a motion to quash, a number of motions to reconsider, a request for mental health evaluation of [Wife], and an appeal of an interim counsel fee award to the Court of Special Appeals. The Court issued an Interim Counsel Fee award in favor of [Wife] in the amount of \$20,000.00 and [Husband] spent over \$24,000.00 in counsel fees challenging that order, and subsequently lost on appeal. [Wife’s] income is approximately \$75,000.00 a year and her counsel fees are in excess of \$200,000.00, and there are not that many marital assets. Not only did [Husband] devastate [Wife] financially, [but] his actions towards [the parties’ daughter], and the lack of compliance with court orders for counseling, have contributed to the child’s estrangement from [Wife] and has had an adverse effect on the mother-daughter relationship, which may have serious long term consequences.

As previously stated, [Husband] initially did not want a divorce, and his actions during the pendency of this matter have demonstrated his intent to do whatever he can do to devastate [Wife].

The court made the following findings about Husband’s income before determining that his actual income was close to \$300,000 per year, a sum that Husband continues to challenge on the basis of evidence that did not persuade the court:

[Husband’s] Income – [Husband] is in sales. During the pendency of this litigation he was employed by Smith Micro, which is a software

company, as a Vice President. He had previously been employed by Bridgeport, which is also a software company, and did a lot of international travel. [Husband] also wrote a book on International Sales, and presents himself as an expert on international sales and marketing. Based on the exhibits that were admitted into evidence . . . , in 2009 [Husband] earned \$329,556.00, and in 2010 earned \$419,022.00, and in 2011 earned \$340,422.00, and in 2012 earned \$257,809.00. His base pay was approximately \$190,000.00 and he also received commissions and bonuses which include awards of stock. [Husband's] boss at Smith Micro was/is [Husband's] best friend. [Wife] testified that [Husband] has followed his boss, Mr. Cameron, for three of [Husband's] past four jobs. [Husband] corroborated [Wife's] testimony.

[Husband] testified that on February 28, 2013 he was terminated from Smith Micro. When questioned about a severance package, [Husband] testified that he did not have one and that he had to negotiate one with his boss after his boss returned from vacation. The timing of [Husband's] loss of employment is troublesome. As a finder of fact[,] the Court is allowed to use its own experiences, and is aware that it is commonplace in the business industry to award a severance package upon the termination of an employee, and not after the termination. One consideration when negotiating a severance is ability or inability to compete or seek employment with a competitor. In this matter [Husband] has been gainfully employed for many years, earning an average of \$300,000.00 a year, with stock options, commissions, and bonuses[;] and 2 days before [] this case is [sic] concluded, [Husband] is terminated by his best friend, and without receiving a severance package. The discussion and/or negotiation of a severance package after termination of employment is extremely unusual and is not commonplace. Additionally, [Husband's] demeanor when testifying, his lack of concern about losing his job and his statement that losing his job is a learning experience for his children, adds to the Court's concern. [Wife] argues that [Husband's] loss of employment was planned in order to avoid paying alimony and/or child support.

The Court finds that [Husband's] loss of employment was orchestrated by [Husband] in order to avoid paying child support and/or alimony and the Court will impute income for [Husband].

In determining [Husband's] income, the Court considers § 12-201(b)(3), which defines "actual income." The Court also takes into account § 12-203(b)(2)(i), which provides the Court with guidance as to proper documentation of income. Subsection (b)(2)(i) provides that "the

court may require that parent to provide copies of federal tax returns for the 3 most recent years.”¹ The Court has tax returns for at least three years, and notes that in 2010, the year the parties separated, [Husband] earned \$419,000, which is the most [Husband] has ever earned. In 2011 [Husband] earned \$340,422.00 and in 2012 he earned \$257,809.00. The Court will average tax years 2011 and 2012, which is the most accurate assessment of [Husband’s] actual income and earning capacity. The Court finds that [Husband’s] actual income for purposes of calculating child support and alimony, if any, is \$299,115.00 a year.

Next, the court turned to Wife’s request for alimony. It considered and analyzed all the factors set forth in FL § 11-106(b). Notably, it found that Husband was able to meet his needs while also meeting those of Wife (*see* FL § 11-106(b)(9)), and that Husband had superior financial resources (*see* FL § 11-106(b)(11)), due in part to the fact that Wife had had to deplete her non-marital assets to pay her attorneys’ fees, whereas Husband testified that he had no debt and was able to maintain the parties’ lifestyle “from

¹ Maryland Code (1984, 2012 Repl. Vol.), Family Law Article (“FL”), § 12-203(b) addresses verification of parental income for the computation of child support, and provides:

(b)(1) Income statements of the parents shall be verified with documentation of both current and past actual income.

(2)(i) Except as provided in subparagraph (ii) of this paragraph, suitable documentation of actual income includes pay stubs, employer statements otherwise admissible under the rules of evidence, or receipts and expenses if self-employed, and copies of each parent’s 3 most recent federal tax returns.

(ii) If a parent is self-employed or has received an increase or decrease in income of 20% or more in a 1-year period within the past 3 years, the court may require that parent to provide copies of federal tax returns for the 5 most recent years.

the bonuses and stock he received and from other liquid assets.” Pertinent to these factors, the court found:

Prior to February 2013 [Husband] earned substantial income. The Court has found that [Husband’s] loss of employment was orchestrated and that his income is calculated at \$299,115.00 a year. Per the Court’s previous Order, [Husband] has custody of one child and [Wife] has custody of another child. [Husband] has been paying the bills associated with the family home and child support to [Wife]. He is also required to pay a share of [Son]’s [the parties’ youngest child’s] private school but he has not been consistent with those payments. He has not paid alimony to [Wife], and has more than sufficient income to support himself while also paying support for [Wife].

* * *

[Husband] earns substantial income, or has the ability to earn substantial income, and has a number of valuable assets. [Wife] earns very little compared to [Husband]. The parties have about the same in retirement assets which is approximately \$240,000.00 each. [Wife] however has had to liquidate non-marital assets to pay her counsel fees, whereas [Husband] has liquidated joint marital assets to pay his counsel fees. The liquidation of joint marital assets to pay legal fees may not be considered dissipation under Maryland case law[;] however, the liquidation of the joint assets has reduced the parties’ financial resources.

The court determined that Wife was entitled to seven years of rehabilitative alimony in the amount of \$3,500 per month:

After a review of the § 11-106(b) factors and reviewing [Wife’s] financial statement, the Court finds that [Husband] shall pay to [Wife] rehabilitative alimony in the amount of \$3,500.00 per month for a period of seven (7) years commencing November 1, 2010. [Husband’s] alimony payments shall be paid in accordance with an Earnings Withholding Order.

[Wife] requested alimony in the complaint that was filed in October 2010. There was un-contradicted testimony that [Husband] has not paid any amount of alimony to [Wife] since [Wife] moved out of the marital home. In fact, [Husband] testified that he has not paid alimony to [Wife]. [Husband] had earned over \$400,000.00 in the year the parties separated

and for the next two (2) years, earned over \$300,000.00 each year, while [Wife] earned between \$60,000.00 and \$75,000.00 a year. An award of retroactive alimony is appropriate in this case. Therefore, [Husband's] alimony arrearage as of November 1, 2013 is calculated as \$126,000.00, which is 36 months at \$3,500.00 a month.

Since [Husband] has demonstrated an unwillingness to pay alimony[,] a judgment in the amount of the arrearage should be entered against [Husband] and in favor of [Wife].

Therefore, in accordance with this Court's Order of even date, within ten (10) days of entry of this Order, [Husband] shall pay to [Wife] \$3,500.00 as and for rehabilitative alimony, effective November 1, 2010, and a judgment [shall] be entered against [Husband] and in favor of [Wife] in the sum of \$126,000.00 for alimony arrears as of November 30, 2013.

At the time the 2013 Order was filed, the parties each had custody of one of their minor children. The amount Husband owed for child support for the (younger) child in Wife's custody ("Son"), was \$1,886.00 per month more than the amount Wife owed for child support for the (older) child in Husband's custody ("Daughter"). Husband was ordered to pay that sum (\$1,886.00 per month) to Wife through May 2014, when Daughter was due to graduate from high school, after which there would be no further child support obligation with respect to Daughter. For the period beginning June 2014, Husband was ordered to pay Wife \$2,963.00 per month in child support for Son until his graduation from high school, which was expected in 2017.

The court identified and valued each item of marital property. The court declined to make a monetary award, but did order the property to be divided equitably.

The court recognized that the marital home was "the parties' primary asset," although they also owned a condominium unit in Ocean City on which Husband had "a

history of not paying the mortgage or taxes[.]” The court granted Wife’s request that the marital home be sold, and explained:

The Court in making this decision recognized that [Wife] has been primarily a stay at home parent who worked part-time in order for the children to attend private school. She has also made significant non-monetary contributions to the family while [Husband] was able to build and develop his sales and marketing skills and have an earning capacity of at least \$300,000.00 a year. The Court is also taking [into] consideration that [Son] is attending private school at a cost of approximately \$25,000.00 a year and [Husband] no longer wants him to attend [private school] and is unwilling to pay his share of the tuition.

Based upon the length of the marriage, the relevant contributions of the parties, and other factors described above, the Court will (1) sell the marital home and the [Wife] will receive the net proceeds of the sale. By receiving the full proceeds from the sale of the marital home [Wife] will be able to continue to pay for [Son]’s private school tuition, as well as to recoup some of the funds that she was entitled to when [Husband] liquidated a marital account of \$80,000.00 without [Wife’s] consent in order to pay his legal fee. Therefore, within thirty (30) days, the parties shall list the house for sale with a real estate agent who subscribes to the Multiple Listing Service (MLS) for a mutually agreeable listing price. The house will be sold for the best price obtainable. If the parties cannot agree on an agent and/or a listing price with that time period, upon application by either party, the Court will appoint a Trustee to sell the property. . . . The net proceeds will be distributed to [Wife]; (2) The Ocean City Condo, if it has not been sold at foreclosure, will be transferred to [Wife]. The property has no value and [Husband] has demonstrated a desire to no longer own that property by willfully failing to pay the mortgage and fees and allowing the property to go into foreclosure. [Wife] is willing to pay the mortgage and fees, and therefore, the Ocean City property shall be transferred to [Wife][.]

Finally, the court ordered Husband to contribute \$100,000.00 toward Wife’s attorneys’ fees:

In this case, there is evidence that [Husband] filed numerous motions as well as motions to reconsider when the ruling was not in his favor. [Husband] also appealed an award of interim counsel fees of \$20,000.00,

and spent approximately \$25,000.00 in counsel fees for the appeal, and subsequently lost the appeal. This case was originally set for a three (3) day hearing[;] however, . . . [Husband's] change in counsel, his counsel's unfortunate medical problems, as well as counsel's delays, caused this matter to be unnecessarily extended to 11 days. Additionally, [Husband's] lack of compliance to Court orders for counseling, as well as for distribution of assets, caused additional litigation and unnecessary counsel fees. [Husband] liquidated a joint marital asset without [Wife's] consent of approximately \$80,000.00 and paid his counsel. [Wife] liquidated approximately \$14,000.00 of a joint asset, and liquidated a pre-marital asset to pay a portion of her counsel fees. The Court found that [Wife's] statement that [Husband] was going to "financially devastate" her to be credible. At least \$100,000.00 of the fees are unnecessary and are due to [Husband's] actions and conduct. Therefore, [Wife] shall be awarded \$100,000.00 in counsel fees, which will be reduced to a judgment in favor of [Wife].

All of the findings and actions laid out above—including the court's findings that Husband had voluntarily impoverished himself by orchestrating the termination of his employment on the eve of trial "in order to avoid paying child support and/or alimony," the imputation to Husband of an annual income of \$299,115.00, the alimony and child support awards, and the \$100,000.00 contribution to Wife's counsel fees—were affirmed by this Court in an unreported opinion filed on October 15, 2015. *Day v. Sterrett*, No. 2148, Sept. Term 2013 (2015). Accordingly, these legal rulings are the "law of the case." *See Stokes v. American Airlines, Inc.*, 142 Md. App. 440, 446 (2002) (describing the law of the case doctrine as "a subset of the doctrine known as 'the mandate rule'" which "prevents trial courts from dismissing appellate judgment and re-litigating matters already resolved by the appellate court."). As we noted in *Stokes*, "[o]nce an appellate

court has answered a question of law in a given case, the issue is settled for all future proceedings.” *Id.*²

In our previous opinion, filed in this case on October 15, 2015, we observed: “Mr. Day’s [*i.e.*, Husband’s] various challenges rest primarily on his assertion that the circuit court erred in determining that his annual income was \$299,115.00 for the purpose of evaluating each award.” Slip op. at 11. We rejected Husband’s contention that the trial court’s imputation of an annual income just shy of \$300,000 was an error. We noted that “the [trial] court’s statement that Mr. Day ‘orchestrated’ his job loss sufficiently conveys a finding that his impoverishment was ‘voluntary.’” Slip op. at 14. We found no error in the trial court’s conclusion of voluntary impoverishment, stating: “In the instant case, the circuit court relied on circumstantial evidence to infer that Mr. Day’s testimony that he lost his job involuntarily was unworthy of belief.” Slip op. at 16. Pointing out that “the [trial] court credited Ms. Sterrett’s [*i.e.*, Wife’s] testimony that Mr. Day had expressed his intention to ‘financially devastate’ Ms. Sterrett in the divorce action,” slip op. at 18, we concluded that we were “satisfied that the finding of voluntary impoverishment was adequately supported and did not require additional explanation.” *Id.* We held: “The [trial] court reasonably concluded that Mr. Day’s average income from 2011 and 2012 afforded a realistic approximation of his earning capacity.” Slip op. at 23. And we

² On June 30, 2016, a judgment was entered in favor of Wife against Husband in the amount of \$8,500.00, which represented half of Son’s tuition, or \$1,000 per month for the school year. Nevertheless, Husband did not pay the amount ordered, and Wife drew funds from her retirement account to pay the tuition and enable Son to graduate with his class.

observed: “The court was not required to accept Mr. Day’s more pessimistic projection that a person with his background might take an ‘entry level’ position with a base salary between \$100,000.00 and \$150,000.00.” *Id.*

On October 13, 2016, Husband, through counsel, filed a Complaint for Modification of Child Support, Alimony and Private School Tuition, complaining that, because he did not have the ability to pay the amounts previously ordered, he should be relieved from his court-ordered obligations to pay child support, alimony, and a contribution of \$1,000 per month toward Son’s private school tuition. He asserted that he would demonstrate, at the hearing, that a material change in circumstances had occurred, entitling him “to receive a reduction in the previous ordered amounts of support.” The complaint recounted that Husband recently had been found in contempt for his failure to pay, jailed, and released pursuant to a writ of *habeas corpus*.

On October 24, 2016, Wife filed a response to the complaint. She noted that she had had to defend this case *pro se* because she could not afford to hire an attorney due to Husband’s consistent failure to abide by court orders regarding support, alimony, contribution to her attorneys’ fees, and tuition payments. Wife noted that Husband had employed fourteen attorneys since October 2010. She asked that his complaint be denied. Furthermore, Wife requested that the previously-ordered rehabilitative alimony be modified to indefinite alimony, because Husband’s refusal to pay Wife the support to which she was entitled had impaired her career and her ability to become wholly self-supporting.

Three other issues were also pending at or around the same time. The first was a purge review hearing, which emanated from proceedings on June 24, 2016 (when Husband had been found in civil contempt for his consistent non-payment of his obligations to Wife) and August 23, 2016 (when Husband did not pay the purge amount and was sent to jail). He was released on September 30, 2016, pursuant to the writ of *habeas corpus* he obtained, but, because the court had not conducted a review of Husband's present ability to pay the purge at the time he was jailed for failing to pay it, the matter needed to be set for a purge review hearing. The second issue was Wife's petition for the court to hold Husband in contempt for his failure to comply with court-ordered obligations during the period June 2016 through September 2016. The third issue was Husband's motion for recusal of the specially-assigned trial judge.

The issues were all heard together during five days of hearings over a period of seven months: November 23, 2016; February 6, 2017; and June 5, 6, and 7, 2017. The court denied the motion to recuse, ruling from the bench at the conclusion of the November 23 hearing, and Husband has not contested that ruling in his brief in this appeal.

The court held the other issues *sub curia*. On March 30, 2018, the court issued an opinion and order that: denied Husband's complaint for modification of alimony, child support, and tuition payments; granted Wife's request for a modification of alimony; and ordered Husband to continue paying Wife \$3,500 in rehabilitative alimony each month for four additional years, commencing in November 2017.

Husband noted this appeal. After a brief was filed by counsel for Husband, Wife declined to file a brief.

STANDARD OF REVIEW

The motions at issue here were, in essence, competing motions to modify: Husband sought to be relieved of his obligations to pay alimony, child support, and a contribution toward Son’s private school tuition, and Wife sought to have the order for Husband to pay rehabilitative alimony—which she has never been paid—modified to an order to pay indefinite alimony.

We set forth the standard of review of an alimony award in *Malin v. Mininberg*, 153 Md. App. 358, 414-15 (2003):

When reviewing a trial court’s award as to alimony, an appellate court will not reverse the judgment unless it concludes that “the trial court abused its discretion or rendered a judgment that was clearly wrong.” *Crabill v. Crabill*, 119 Md. App. 249, 260, 704 A.2d 532 (1998). Moreover, “appellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Tracey*, 328 Md. at 385, 614 A.2d 590. *See also Durkee*, 144 Md. App. at 173, 797 A.2d 94; *Caccamise v. Caccamise*, 130 Md. App. 505, 513, 747 A.2d 221 (“The standard of review for alimony awards is the clearly erroneous standard . . .”), *cert. denied*, 359 Md. 29, 753 A.2d 2 (2000); *Digges*, 126 Md. App. at 386, 730 A.2d 202. **As long as the trial court’s findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we might have reached a different result.** *Reese v. Huebschman*, 50 Md. App. 709, 712, 440 A.2d 1109 (1982).

(Emphasis added.)

In addition, because this case was tried before the court, our review is undertaken pursuant to Maryland Rule 8-131(c), which 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.

We view the trial court proceedings in the light most favorable to the prevailing party; if substantial evidence supports the court's conclusion, it is not clearly erroneous, and we will not disturb it. *Maryland Metals, Inc. v. Metzner*, 282 Md. 31, 41 (1978). "A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996).

DISCUSSION

In his brief, Husband complains that the trial court did not credit the evidence he offered to show that he could not pay the amounts the court ordered; Husband asserts that the trial court's finding "that the appellant's income is \$300,000 is clearly erroneous." He contends: "There was simply no evidence presented to permit the extension of alimony." "[T]he record is devoid of any evidence" to support the court's conclusion that he was actually working behind the scenes for his current wife's company. And, viewing the evidence as a whole, "there simply was not a factual or legal basis to extend alimony for an additional four (4) years."

We are not persuaded that the trial judge's conclusions were clearly erroneous. It is not for us, sitting as an appellate court, to re-weigh the evidence or re-try the case. As

the Honorable Charles E. Moylan, Jr., explained, writing for this Court in *Starke v. Starke*, 134 Md. App. 663, 683 (2000):

Resolving disputed credibility and weighing disputed evidence are matters, of course, in the unfettered control of the fact finder. Where either the credibility of a witness or the weight of the evidence is in dispute, therefore, there is no way in which a fact finder, with such matters properly before him, could ever be clearly erroneous for not being persuaded.

I. The grant of Wife’s motion for additional alimony

Wife’s request to extend alimony indefinitely was filed pursuant to FL § 11-107(a), which provides: “Subject to § 8-103 of this article, the court may extend the period for which alimony is awarded, if: (1) circumstances arise during the period that would lead to a harsh and inequitable result without an extension; and (2) the recipient petitions for an extension during the period.” The grant of such a motion is within the court’s discretion. “[A] major theme throughout the statute [FL § 11-101 et seq.] is one of **empowering a judge to arrive at an equitable result based on a particular set of facts.**” *Blaine v. Blaine*, 97 Md. App. 689, 700 (1993) (emphasis added), *aff’d*, 336 Md. 49 (1994).

The trial court explained its reasons for granting Wife’s motion for additional alimony as follows:

[Wife] filed for an extension of alimony prior to the expiration period. In her petition she argues that she is still not wholly self-supporting and had to liquidate funds from her retirement funds in order to pay for her daily living expenses in addition to paying for the child’s private school as well as the mortgage. [Husband] has refused to pay child support, alimony and private school tuition in the amounts ordered. Additionally, [Husband’s] lifestyle is disparate from [Wife’s]. **[Husband] has built his [current] wife’s business and now lives a lavish lifestyle in the suburbs**

of Washington, DC, and is able to take vacations, entertain potential clients, etc., while claiming to look for employment and not earning income.

There have been changes since alimony was awarded in this case. [Wife] was employed full time and earning approximately \$75,000.00 a year. She is now working full time and earns approximately \$109,000.00 a year. She has been the primary parent who has paid for their minor child to continue attending private school. She has had to bear the brunt of all expenses for the minor child with very little financial assistance from [Husband]. [Husband] was ordered to contribute toward the expense of private school and has refused to do so. [Husband] did not want the child to continue to attend private school. He was successful in persuading [the parties' middle child, now in college] to leave the Park School and attend Oakland Mills High School. He wanted [Son] to leave private school as well and attend public school; however, this Court determined it was in [Son]'s best interest to continue to attend private school.

[Husband] contends that his situation has become worse since alimony was awarded. He asserts that he is basically unemployed, has had a few jobs earning little income, and has numerous judgments against him. He also went to jail as a result of a contempt finding. As a result of the judgments[,] his driver's license is suspended and he lost his passport. The Court finds that the loss of passport and driver's license are due to the support arrearage and judgments that have been entered against [Husband]. **The Court does not find [Husband's] assertion of not being able to be employed to be credible. He is capable of employment and has chosen to make it appear as if he is seeking employment while assisting his [current] wife in the development of her company. [Husband] is utilizing his skills and knowledge from his years of experience in the area of sales and marketing to grow and develop his [current] wife's business.** On paper it appears that [Husband] does not have sufficient income to meet his needs and is attempting to find employment when in fact **he is working behind the scenes with his [current] wife's company.**

This Court previously found that [Husband's] primary motive in this matter was to maintain his financial status and superiority over [Wife] and to punish [Wife] for filing for divorce. **[Wife] has asserted and testified on a number of occasions that [Husband] told her that he was going to financially devastate her, and this Court has found that assertion to be credible.** [Husband's] actions during the pendency of the original trial which was to be 3 days but lasted 11 days, and **his recent actions have**

been consistent in this vein. Moreover, [Wife] has counsel fees of approximately \$300,000.00 that she incurred, and is subject to additional litigation, whereas [Husband] does not have outstanding legal fees. From what has been presented, [Husband's] legal fees have been paid, and his [current] wife's company, Soul Tree, has paid [Husband's] attorney's fees for prior hearings in this matter.

Additionally, [Husband], after losing an appeal refuses to pay the financial obligation that was originally ordered. An example is the most recent appeal that [Husband] lost and has failed to pay, causing [Wife] to again file pleadings with this Court to pass an order forcing [Husband] to pay.

In the original award the Court awarded [Wife] the marital home which was to be sold and the proceeds would be the property of [Wife]. **The Court reasoned that by receiving the full proceeds from the sale of the marital home [Wife] would be able to continue to pay for [Son]'s private school tuition, as well as to recoup some of the funds that she was entitled to receive when [Husband] liquidated a marital account of \$80,000.00 without [Wife's] consent in order to pay his legal fee.** [Husband] appealed the decision and remained in the marital home. **During the appeal [Husband] failed to pay the mortgage or properly maintain the home. When the appeal was denied [Husband] vacated the home and left [Wife] with an asset that was valueless even though the Court intended for [Wife] to have an asset with value in order to adjust the equities.** The Court also allowed the parties to retain certain retirement assets[;] however[, Wife] had to withdraw funds from those assets in order to avoid losing the home.

Furthermore, [Husband] has not complied with the original order for the transfer of property and had to be forced to do so by this Court. He did not initially sign the deed for the transfer of the condominium until the Court found him in contempt and he was ordered to do so. The Court previously found that [Husband] did not care for that property and it was in foreclosure. The property meant something to [Wife] and she wanted to get it out of foreclosure and maintain the property. Had she received alimony as ordered she would have been able to do so and maintain that property. [Husband] did not comply with the title transfer nor did he pay alimony and [Wife] subsequently sold the condominium in a short sale. **[Husband] has shown that he will do anything possible to cause [Wife] financial devastation and hardship even after their divorce.**

For these reasons, the Court finds that [Wife's] request should be granted. **Equity requires an extension of alimony in order to avoid a harsh result.** Therefore, [Wife's] request for an extension of alimony shall be granted and alimony shall be extended for a period of four years. In the next four years, [Wife] will be able to obtain a Master's degree and specialized training in her field which will significantly increase her earnings capacity, as well as allow her financial stability in repaying the debt that [Husband] incurred that [Wife] is responsible for repaying.

(Emphasis added.)

There was substantial evidence in the record to support these findings, and the grant of Wife's motion was not an abuse of discretion. Competent, material evidence of Husband's behind-the-scenes activity with his current wife's business existed; there was evidence that, despite his claims of not working for Soul Tree, Husband had held himself out as an officer with that company. His resume touted his experience "le[ading] the relaunch of an educational industry startup that provides e-learning, development, online university, and teacher professional development." His resume also boasted that he "led the business development efforts that enabled the company to close two significant transactions with the state of Maryland and the state of West Virginia." He conceded that the "educational industry startup" so described was Soul Tree.

Although there was evidence that Soul Tree had won two important contracts from the states of Maryland and West Virginia, Husband testified that only "[o]ne was with Soul Tree[.]" Husband then tried to explain that the resume was one he "used while I was unemployed to fluff myself so I can be employed[.]" He asserted that he had changed his resume as a result of the prior proceedings in this case, "[b]ecause this Court

and [Wife] had a problem with it. Me fluffing my resume last time, and he [the trial judge] cited it in his findings. So, I'm not going to cite them.”

Husband claimed to be unemployed and without any financial resources. He testified that his current wife paid all the bills. Yet Husband was able to pay undergraduate tuition at the Catholic University of America for the parties' daughter and employ a succession of attorneys. Wife, on the other hand, testified that she is some \$300,000 in debt to her prior attorneys and facing the possibility of being sued by them.

The court awarded Wife four additional years of rehabilitative alimony, which was supported by Wife's testimony that it would take her another five years to complete a master's degree, which, she believed, would provide broader opportunities to her. As the Court of Appeals made clear in *Tracey v. Tracey*, 328 Md. 380, 391 (1992), “the purpose of alimony is not to provide a lifetime pension, but where practicable to ease the transition for the parties from the joint married state to their new status as single people living apart and independently.” The trial court's award of additional rehabilitative alimony was consistent with this policy, and the court concluded that the need for additional alimony was caused by Husband's intentional sabotage of the court's plan for Wife's transition from married life to single life. The court had evidence before it regarding Husband's longstanding refusal to pay the support it had previously ordered, and it had ample evidence that Husband had thwarted the court's intentions regarding the awards the court had made in the 2013 Order.

The court had initially envisioned, when it entered the 2013 Order, that seven years would be sufficient time to enable Wife to become wholly self-supporting, but Wife testified that Husband had made her completion of a graduate program difficult by refusing to assist with Son while Wife attended classes and refusing to pay Wife what she was owed. The evidence indicated that Wife had had to raid her retirement accounts to pay bills that should have been covered by the awards the court made in the 2013 Order, but that Husband simply refused to pay.

The court had intended for Wife to realize a significant amount of proceeds from the sale of the marital home, but Husband refused to vacate the house while his appeal was pending, failed to pay the mortgage, and damaged the property. Wife had to dip into her retirement account to save the one significant asset the court awarded her from being lost in foreclosure, and she had to pay for repairs to make the marital home more marketable. At the time of trial, the marital home was without heat or air-conditioning because Wife could not afford to fix the systems.

Wife was in her early fifties at the time of trial, and was attempting to complete a graduate degree to enhance her professional credentials. But, due to Husband's vindictive behavior, she was not in as favorable a financial position as the court had intended she would be if Husband had complied with the 2013 Order.

In sum, we find neither error nor abuse of discretion in the court's decision to extend Wife's alimony four more years. It was justified by Husband's unexcused failure

to comply with the court's previous orders, was supported by substantial evidence, and was equitable under the circumstances of this case.

II. Husband failed to demonstrate a material change in circumstances

Husband argues in his brief that the court erred in refusing to grant his motion to reduce his financial obligations. Husband contends that he "proved he never earned anywhere near" the \$299,115 in annual income the trial court imputed to him in the 2013 Order. Husband points to evidence that he supplied, and argues that the trial court committed reversible error because it did not find that evidence credible. But, as we noted above, the court was not obligated to find Husband's evidence or testimony credible. The assessment of credibility is best performed by the trial court.

And Husband gave the trial court ample reason to question his credibility. Husband admitted he did not pay any sums under the 2013 Order when he cashed out retirement accounts in 2016; rather, he testified that he "paid [his] judgments with that and I paid other living expenses. I paid tuition for [Daughter] and a variety of things." Husband testified that he did not use those funds to satisfy his obligations under the 2013 Order because "I had many other bills I had to pay to live off of." He paid nothing toward child support, alimony, or school expenses for Son.

Husband bore the burden of persuading the trial court that there had been a material change in circumstances to prevail on his motion to modify. But the evidence persuaded the trial court that Husband was still not paying what the court had ordered, and still claiming he could not afford it despite somehow continuing to enjoy a high

standard of living, that the trial judge described as “lavish.” Husband failed to present the court with evidence that it found sufficiently credible to find a material change in circumstances supporting a reduction in the amounts he was ordered to pay. We perceive neither factual error nor abuse of discretion in the court’s conclusions.

**JUDGMENTS OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**