Circuit Court for Prince George's County
Case No.: CAD17-09392

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 385

September Term, 2018

MYA HAWES

v.

CHARLES HAWES

Meredith,
Kehoe,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 31, 2018

By order entered on April 17, 2018, the Circuit Court for Prince George's County granted an absolute divorce to appellee, Charles Hawes, from Mya Hawes, appellant, and awarded the parties joint legal and physical custody of their two minor children. Neither party was ordered to pay child support and appellant's request for retroactive child support was denied. On appeal, appellant raises a single issue for our review: Whether the circuit court abused its discretion in denying appellant's request for retroactive child support. For the reasons set forth below, we answer this question in the negative and, accordingly, affirm the judgment of the circuit court.

BACKGROUND

The parties, who married on November 19, 2009, separated in May 2015. On April 7, 2017, Mr. Hawes filed a complaint for absolute divorce requesting joint legal and shared physical custody of the couple's two daughters, 15-year-old Anaia and 10-year-old Azaria. He also requested a monetary award, valuation and division of marital property, legal fees, and other relief. Ms. Hawes filed a counterclaim for absolute divorce on May 15, 2017, requesting joint legal and primary physical custody of the children, "both *pendente lite* and permanently," possession and use of the marital home and family property, and an equitable division of marital property. She also requested child support consistent with the Maryland Child Support Guidelines, legal fees, and "all such other and further relief[.]"

Property and child access mediation resulted in a resolution of all issues except child custody and child support. The parties proceeded to trial on those issues on March 29, 2018.

Evidence produced at trial shows that Mr. Hawes was out of work, due to an on-the-job injury, when he filed his complaint for absolute divorce and at the time Ms. Hawes filed her counterclaim. He began working again in July 2017. His pay stubs show he earned $37,440 annually.

Mr. Hawes testified that he picked his daughters up from school every day and that, although the girls were with Ms. Hawes every other Saturday, he had visitation with the children every weekend. He took the children to cheerleading practice every Tuesday and Thursday, and every Tuesday, his oldest daughter stayed at his house overnight. He also testified that he provided the children dinner in the evenings, either reheating food he had prepared or purchasing fast food. The children spent the summer with Mr. Hawes in 2016. According to Mr. Hawes, his daughters had maintained this schedule consistently for the preceding two years; however, the schedule had changed recently due to the pendency of the trial in this case.

Mr. Hawes claimed that he helped provide for his daughters by depositing money for his children's care into a joint bank account accessible by Ms. Hawes. He did not, however, bring any bank records to corroborate that testimony. He also testified that he paid $4,500 for the children to participate in cheerleading, and that he purchased their clothes.

Ms. Hawes testified that the children lived primarily with her, and that she typically dropped them off at school in the morning and picked them up from Mr. Hawes's house in the evening. She confirmed that both girls spend the night at Mr. Hawes's house on Fridays

and every other Saturday, and that their oldest daughter spends the night with her father on Tuesdays. Ms. Hawes reported that her annual income was $65,000 per year, that she paid $325 per month for their daughters' health insurance, and that she had spent $400 in annual out-of-pocket medical expenses for both children. She further testified that she was unable to pay every bill in full every month, and that, in 2017, Mr. Hawes had given her only $200 to care for their children. She also claimed that when she asked Mr. Hawes to pay child support, he stated that "[h]e doesn't feel like he should pay child support because he sees his kids everyday."

The court calculated Ms. Hawes's annual income as $65,000 and Mr. Hawes's yearly income as $37,440.

In granting joint physical custody, the judge increased the amount of time Mr. Hawes would spend with his daughters. In so far as custody was concerned, the court's order read:

> ORDERED, that the minor children shall reside with [Mr. Hawes] every other week, from Wednesday after school through Monday morning, unless Monday falls on a school holiday, in which event the minor children shall remain with [Mr. Hawes] until Tuesday morning; and it is further,
>
> ORDERED, that the minor children shall reside with [Ms. Hawes] every other week, from Monday afternoon until Wednesday of the following week; and it is further,
>
> ORDERED, that the minor children shall spend five (5) weeks with each party every summer (Sunday through Sunday); . . . .

The court noted that the child support guidelines recommended that Ms. Hawes pay Mr. Hawes $26 per month. The judge found, however, that because the amount was

nominal and that it was in the best interest of the children to deviate downward from the support guideless and order no child support. The court also ruled that no child support arrears was owed.

In response to a question from Ms. Hawes's attorney regarding whether the court intended to award retroactive child support to her client, the following discussion occurred:

> THE COURT: Was there a child support order prior to today?
>
> [APPELLANT'S COUNSEL]: No, Your Honor.
>
> THE COURT: So I don't know what I would make retroactive. But even if your argument is that the court should calculate the guidelines based on her being the primary [in the] schedule that was in existence, the court recognizes my duty and obligation to do what is consistent with the best interest. And I cannot ignore the fact that I have found credible and true that this father picked these children up every day after school, thus responsible for that care, whatever that is. Whatever that care is.
>
> I also found his testimony true that while there wasn't a court ordered amount because there wasn't, that he routinely and regularly provided for the care of these children because there wasn't an order. So considering all of that, considering what is in the best interest of these children, even noting that no support is being ordered at this time, if the court takes the mother's counsel's argument to consider the prior circumstances, the court would still find that there is still no arrearage to be ordered at this time.

(Emphasis added.)

DISCUSSION

A court may order retroactive child support under Md. Code Ann. (2012 Repl. Vol.), § 12-101 of the Family Law Article (F.L.), which states:

> (a)(1) Unless the court finds from the evidence that the amount of the award will produce an inequitable result, for an initial pleading that requests child support pendente lite, the court shall award child support for a period from the filing of the pleading that requests child support.

***

> (3) For any other pleading that requests child support, the court may award child support for a period from the filing of the pleading that requests child support.

(Emphasis added.)

Ms. Hawes argues that the trial court erred in failing to award retroactive child support pursuant to F.L. § 12-101(a)(1). She bases that argument on the assertion that she requested child support *pendente lite* in her initial pleading (counterclaim). She asks us to remand this matter to the circuit court for additional findings to determine the amount of retroactive child support.

Mr. Hawes argues that F.L. § 12-101(a)(1) is inapplicable because Ms. Hawes's counterclaim "did not request *pendente lite child support*, nor did it request that child support be awarded retroactively to the date of filing the Counterclaim." He contends that the court was well within its discretion under F.L. § 12-101(a)(3) in not making an award of retroactive child support. We agree with Mr. Hawes. In her counterclaim, Ms. Hawes never asked for *pendente lite* child support. Therefore, as Mr. Hawes points out, F.L. 12-101(a)(1) is here inapplicable.

Ms. Hawes makes a second contention, but one made for the first time during oral argument before this panel. She claims that Mr. Hawes had either actual or constructive notice that she was seeking child support *pendente lite* based on her discovery requests. That contention is without merit for two reasons. First, the contention is not supported by anything in the record. Second, even if the contention was supported by the record, § 12-

101(a)(1) would still be inapplicable. As § 12-101(a)(1) plainly states, for that section to be applicable, *pendente lite* child support must be requested in the initial pleading.

Because Ms. Hawes failed to ask for *pendente lite* child support in her initial pleading, § 12-101(a)(3) is applicable – not § 12-101(a)(1).

"By its plain language, section 12-101(a)(3) leaves to the discretion of the court that which section 12-101(a)(1) makes mandatory." *Chimes v. Michael*, 131 Md. App. 271, 295 (2000).

In order for Ms. Hawes to prevail in this appeal, she would have to demonstrate that the court's denial of *pendente lite* child support was an abuse of discretion. This is a very heavy burden, as explained in *Pasteur v. Skevofilax*, 396 Md. 405, 418-19 (2007):

> The analytical paradigm by which we assess whether a trial court's actions constitute an abuse of discretion has been stated frequently. In *Wilson v. John Crane, Inc.*, 385 Md. 185, 867 A.2d 1077 (2005), for example, we iterated
>
> > [t]here is an abuse of discretion "where no reasonable person would take the view adopted by the [trial] court[ ]" . . . or when the court acts "without reference to any guiding principles." An abuse of discretion may also be found where the ruling under consideration is "clearly against the logic and effect of facts and inferences before the court[ ]" . . . or when the ruling is "violative of fact and logic."
> >
> > Questions within the discretion of the trial court are "much better decided by the trial judges than by appellate courts, and the decisions of such judges should be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred." In sum, to be reversed "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that courts deems minimally acceptable."

> 385 Md. at 198-99, 867 A.2d at 1084 (quoting *In re Adoption/Guardianship No.* 3598, 347 Md. 295, 312-13, 701 A.2d 110, 118-119 (1997)). An abuse of discretion, therefore, "should only be found in the extraordinary, exceptional, or most egregious case." *Wilson*, 385 Md. at 199, A.2d at 1084.

Here, the circuit court believed Mr. Hawes's testimony that he "routinely and regularly provided for the care of [his] children" during the separation.[1] That care included providing meals for the children on many evenings and during the weekends when he had visitation rights, buying their clothes, and paying $4,500 for both girls to participate in cheerleading. Moreover, as the trial judge pointed out, Mr. Hawes never disobeyed a circuit court order. Under such circumstances we cannot say that the trial court abused its discretion when it denied Ms. Hawes's counsel's oral request for retroactive child support.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[1] Maryland Rule 8-131(c) states:

> 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.