Circuit Court for Baltimore County
Case No. 03-C-08-013323

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 439

September Term, 2017

LARRIER WALKER, JR.

v.

JANELLE SAMPSON DAWKINS

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 12, 2018

*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.

On October 21, 2015, Larrier Walker Jr., appellant, filed a petition to modify child support in the Circuit Court for Baltimore County in the continuing child custody and support case between he and Janelle Dawkins, appellee. In December 2015, before the court ruled on the motion to modify child support, Dawkins filed a motion to transfer jurisdiction to the Commonwealth of Virginia, where she had moved with the two minor children in 2010. The circuit court, following discussions with a judge in Accomack County, Virginia, bifurcated the proceeding, transferring the child custody proceeding to Virginia, while retaining the child support case. Walker appealed that decision, and this Court affirmed. *See Walker v. Dawkins*, No. 1012, Sept. Term 2016 (filed May 11, 2017).

A magistrate issued a report on August 16, 2016, recommending a modification of child support. Both parties filed exceptions. Following hearings held on October 25 and December 16, 2016, the circuit court entered orders on January 12, 2017, denying the exceptions and ordering that Walker pay child support in the amount of $565 per month, effective January 1, 2016, as well as $60 per month towards an arrearage.[1] Walker

[1] Dawkins filed a timely motion to alter, which was granted on March 8, 2017. Accordingly, the court supplemented the January 12, 2017 order by requiring both parties to exchange income and tax documentation annually.

To the extent that Walker finds fault with the circuit court for denying his motion to alter filed within ten days of the March 8, 2017 order, we agree with Walker that such a motion was timely. Dawkins's timely motion to alter the January 12, 2017 order tolled the period for the parties to file a revisory motion and/or an appeal. *See Bacon & Assocs., Inc. v. Rolly Tasker Sails (Thailand) Co., Ltd.*, 154 Md. App. 617, 626 (2004) (observing that a revised judgment constitutes a new final judgment). Accordingly, Walker's motion to amend was timely, and the court erred in concluding that he had invoked the court's revisory power pursuant to Rule 2-535(b).

(continued)

appealed, raising seven questions for our review. For the reasons stated below, we affirm the judgment, with the exception of the child support calculation, which we remand for clarification.

Preliminarily, we decline to review several of Walker's issues because they are not preserved. Generally, this Court will not review an issue, unless it was presented to the circuit court. *See* Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). On appeal, Walker contends that the court erred in failing to take into account the transportation expenses of the parties in its child support calculation, pursuant to Maryland Code (1984, 2012 Repl. Vol., 2017 Suppl.), Family Law Article ("F.L."), § 12-204(i)(2). Walker, however, never asked the court to factor those costs in, and, therefore, the issue is not preserved.[2]

Additionally, Walker asserts that the court violated his due process rights and erred in failing to schedule a hearing on the petition to modify child support in a timely fashion. Walker, however, fails to present any argument or legal theory as to these issues, and we will not review them. *See Benway v. Md. Port Admin.*, 191 Md. App. 22, 32 (2010) (observing that "it is not our function 'to seek out the law in support of a party's appellate

The court's denial of Walker's motion to alter is, however, of no moment to our decision because we shall address the merits of Walker's appeal.

[2] Furthermore, the statute provides that these costs "**may** be divided between the parents in proportion to their adjusted actual incomes." F.L. § 12-204(i) (emphasis added). Accordingly, the court has discretion to factor in transportation costs.

contentions'" (quoting *Diallo v. State*, 186 Md. App. 22, 33 (2009), *aff'd in part, vacated in part on other grounds*, 413 Md. 678 (2010))).

Turning to Walker's preserved arguments, he argues that the court failed to provide a credit for health insurance purchased for the children and also that the court should have calculated the modification of child support from the date of the filing of the petition (October 21, 2015), not January 1, 2016. Walker also contends that the court erred in requiring him, but not Dawkins, to notify the court of a change in employment and/or address.

In reviewing the recommendation of a magistrate, this Court has observed that circuit courts ought to defer to the fact-finding of magistrates, so long as those facts are not clearly erroneous. *In re Priscilla B.*, 214 Md. App. 600, 623 (2013). We cautioned, however: "'[W]hat must be carefully observed . . . is that the great deference is paid to the fact-finding of the master as opposed to the recommendation of the master. . . . [T]he chancellor must make his own independent disposition.'" *Id.* (emphasis omitted) (quoting *Wenger v. Wenger*, 42 Md. App. 596, 604 (1979)). Stated differently, we review *de novo* questions of law: "'[W]hen the trial court's decision involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct.'" *Prince George's Cnty. Office of Child Support Enforcement ex rel. Polly v. Brown*, __ Md. App. __, No. 2417, Sept. Term 2016 (filed Apr. 5, 2018), at *6 (quoting *Clickner v. Magothy River Ass'n, Inc.*, 424 Md. 253, 266 (2012)).

As to the date of the recalculation, Walker contends that the court erred in requiring his tax returns to make the modification. He points out that F.L. § 12-203(b)(2)(i) provides that "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." He posits that his provision of his 2015 pay stubs was sufficient to demonstrate his income in 2015 and that the court should have used October 21, 2015, as the date of modification. Walker cites *Tanis v. Crocker*, 110 Md. App. 559 (1996), in support of this proposition.

Walker fails to appreciate, however, that in that case, we stated: "[The statute] makes clear that it is within the trial court's discretion whether and how far retroactively to apply a modification of a party's child support obligation up to the date of the filing of the petition for said modification." *Id.* at 570. Furthermore, it is within a court's discretion to require a party to produce tax returns in seeking a modification of child support.[3] *Id.* at 572. As such, the court was not required to calculate the modification from October 21, 2015.

Walker also argues that the court erred in requiring only him to notify the court of a change in employment and/or address; he is correct. Section 12-101(c)(1) of the Family Law Article provides that, any support order "shall include a statement that each party is required to notify the court and any support enforcement agency ordered to receive

[3] Indeed, pursuant to F.L. § 12-203(b)(2)(ii), the court was within its authority to require Walker to produce his tax returns for the past five years because he claimed that his income had decreased more than 20% in a one-year period.

payments, within 10 days of any change of address or employment[.]" As such, any subsequent order following remand should make clear that Dawkins is under a similar obligation.

Finally, Walker contends that the court failed to take into account the amount of health insurance he pays for the children. Section 12-204(h)(1) of the Family Law Article provides that "[a]ny actual cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible shall be added to the basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes." He also maintains that the court erred in interpreting the September 8, 2009 order between the parties. Following the December 16, 2016 exceptions hearing, the court stated: "There's no reason to have them [the children] dually insured." The September 8, 2009 order, however, provides that Dawkins will provide primary insurance coverage for the children, "and [Walker] shall furnish to [Dawkins] a medical and dental insurance card through his provider[,] which shall be the secondary health and dental insurance coverage for the children."

We note that in the January 12, 2017 order, the court remarked that Walker "made no argument as to why duplicate insurance was necessary for the best interest of the children." It is unclear whether the court was terminating Walker's requirement to obtain secondary insurance for the children. We, therefore, remand for clarification as to this issue.

If Walker is no longer required to carry secondary health insurance for the children, then he is not entitled to a credit on his child support payment. Any secondary health

insurance he carries for the children will be at his own expense. If the court did not end Walker's requirement to continue to carry secondary health insurance for the children, then the court should factor those payments into the child support calculation, pursuant to F.L. § 12-204(h)(1). If Walker is required to carry secondary health insurance for the children, then the court has the discretion to give credit to him from the date of the order or from the date of the petition.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AS TO CHILD SUPPORT CALCULATION REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. REMAINDER OF JUDGMENT IS AFFIRMED. COSTS TO BE PAID HALF BY APPELLEE AND HALF BY APPELLANT.