Circuit Court for Carroll County
Case No. 06-C-11-059416

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 489

September Term, 2020

KRISTIN BARKER

v.

STEVEN BLAND

Nazarian,
Wells,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: July 19, 2021

Kristin Barker (now Kristin Estes) ["Mother"] and Steven Bland ["Father"] are the parents of a minor child, who was born in 2007.[1] In 2011, Mother filed a petition in the Circuit Court for Carroll County, seeking an order regarding custody and support. Issues of custody, support, and visitation became final on July 20, 2011, pursuant to a consent order.

In 2019, Mother filed a petition with the court, seeking to modify child support and requesting other relief. The court issued an order, that was not signed by Mother, that incorporated the terms of a settlement agreement that the parties entered on the record. In a separate order, the court granted Father's request for attorney's fees.

Mother filed a motion to alter or amend both orders, which the court denied. This appeal followed, in which Mother presents three questions for our review:

1. Did the trial court err in concluding that [Mother] waived the right to challenge the court's entry of the child support and attorney's fees orders because she had not filed exceptions to the Magistrate's report and recommendations?

2. Was it an error for the trial court to order child support based on an agreement between parents, without applying child support guidelines or explaining how the deviation from the guidelines was in the child's best interest?

3. Did the court abuse its discretion when it awarded attorney's fees to [Father] based on [Mother's] efforts to get a judicial determination whether the agreement was in the best interest of the child, and without considering the financial status and needs of the parties?

[1] The parties were apparently never married.

Because Mother consented to the order modifying child support, she is not entitled to an appeal from that order. Accordingly, we shall dismiss that appeal. We find no error or abuse of discretion in the order for attorney's fees or in the order denying the motion to vacate that order, and they shall be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

The parties' child, "R.", was born in 2007. In 2011, Mother petitioned the court for an order regarding custody and child support. On July 20, 2011, a consent order, signed by both parties, was entered, which provided that the parties would have joint legal custody of R., Mother would have primary physical custody, Father would have reasonable visitation, and Father would pay Mother $125 per week in child support. In 2012, a consent order was entered, which increased Father's child support payments to $564 per month.

In 2014, Father filed a motion to modify child support on grounds that he had become unemployed. Following a hearing before a magistrate, the court issued an order reducing Father's child support obligation to $239 a month, which was based on imputed income equal to the federal minimum wage.

In July 2019, Mother filed a petition to modify child support. In support of her petition, Mother asserted that, since the 2014 modification order, Father had earned an associate degree but had made no effort to find employment. Mother requested that the income to be imputed to Father be increased to $17-20 an hour. Mother further requested that the schedule for claiming R. as a dependent for tax purposes be modified in her favor, and that Father be ordered to pay his share of R.'s extraordinary medical expenses.

The parties and their respective counsel appeared for a hearing before a magistrate on November 21, 2019. When the case was called, the parties were engaged in settlement negotiations. The case was passed to allow the parties to continue discussions. Approximately 45 minutes later, the case was recalled, and counsel represented that the parties had reached an agreement.

Father's attorney put the terms of the agreement on the record, stating the parties agreed that Father's child support obligation be increased to $315 per month. In addition, the parties agreed that Father would make a one-time payment of $300 to Mother, representing his share of the extraordinary medical expenses, and that Father would forgo claiming R. as a dependent for the 2019 tax year.

The parties were then sworn and asked about their consent to the terms. Mother affirmed that she discussed the agreement fully with her attorney and was satisfied with his advice, she voluntarily and freely agreed with the terms of the agreement as stated on the record, the agreement resolved all of the issues in her motion to modify, and she believed the agreement to be in the best interest of R. Father made similar affirmations.

The magistrate found that the parties had entered into the agreement knowingly and voluntarily. Mother's attorney agreed to prepare a consent order to submit to the court for approval. Meanwhile, a temporary order was issued that incorporated the terms of the parties' agreement. The parties were ordered to appear at a status review hearing on December 20, 2019 in the event that the proposed consent order was not received by the court by that date.

The consent order was not submitted to the court prior to December 20, 2019, and the review hearing went forward. Both parties appeared with counsel. Counsel for Mother explained that he prepared a consent order that incorporated the terms of the parties' agreement, but that, "on [Mother's] further reflection on the matter she feels that in all good conscience that she cannot agree to the child support provision . . . because the [c]ourt hasn't had the opportunity to examine it[.]" Counsel stated that Mother now felt the agreement was not in the best interest of the child, and that she had a "very solid argument" that "the child deserves more than . . . she is currently getting[,]" but counsel did not explain the basis of the argument. Counsel requested the court to reset the hearing on Mother's motion for modification of child support.

Father's attorney argued that Mother was bound by the consent agreement and requested that the court sign the consent order, which was submitted to the magistrate along with "guidelines."[2] In addition, Father requested that Mother be ordered to compensate him for attorney's fees in the amount of $825, representing three hours of his attorney's time to travel to and appear at the status hearing, which he would not have incurred if Mother had signed the consent order that incorporated terms she already agreed to.

[2] We presume, as does Mother, that what was submitted to the magistrate was the child support guidelines worksheet that is attached to the court's January 10, 2020 order of modification and which indicates that, based on the income and expense information shown, Father's child support obligation is $315.

The magistrate stated that he would review the agreement on the record and, if the consent order was consistent with the terms placed on the record, he would recommend that the court sign the order. The issue of attorney's fees was held *sub curia*.

On December 23, 2019, the magistrate issued a report and recommendations. The magistrate found that the parties, who were both represented by counsel, had knowingly and voluntarily had come to an agreement which they acknowledged on the record. The magistrate found that the parties' proposed order substantially conformed to the terms of the agreement placed on the record and recommended that the court sign the order.

The magistrate also recommended that the court grant Father's request for attorney's fees, finding that the agreement was binding on the parties once it was placed on the record. Mother's subsequent "misgivings" about the agreement were not a valid basis for her refusal to sign the consent order. The magistrate concluded that Mother's "unwillingness to cooperate" with entry of the proposed consent order was unjustified.

Mother did not file exceptions to the magistrate's recommendations. The court accepted those recommendations and, on January 10, 2020, entered the consent order. On the same date, in a separate order, the court ordered Mother to pay Father's attorney's fees.

On January 21, 2020, Mother filed a "Request to Modify or Set Aside Judgments." Mother asserted that she "believed she had mistakenly agreed to a support amount well below the Maryland child support guidelines, effectively waiving support to which the minor child is entitled." In a footnote, Mother represented that her monthly income and R.'s health insurance costs were inconsistent with the figures that appear in the child support worksheet submitted with the proposed consent order. Mother further represented

that, after the agreement was put on the record, there had been an increase in the federal minimum wage, and the income to be imputed to Father should be increased accordingly. Mother claimed that, if the revised income and expense information were applied, Father's child support obligation would be greater than the amount she had agreed to.

Mother requested that the court vacate the January 10, 2020 order and schedule a hearing on modification of child support. Mother also requested that the court set aside the attorney's fees award, arguing that the court erred in focusing on the validity of the agreement reached by the parties instead of the best interest of the child, and the court failed to consider the statutory factors for an award of costs.

The court held a telephonic hearing on Mother's motion to modify or set aside judgments on June 19, 2020.[3] Counsel for Mother explained that, after the settlement agreement was placed on the record, she "realized maybe she had made a mistake and maybe the agreement was not in the child's best interest." Counsel conceded that the child support worksheet in the court's file reflected the child support obligation that the parties agreed to, but the information regarding Mother's income and R.'s health insurance costs was incorrect. Counsel argued that the court erred in signing the consent order without applying the child support guidelines or making a determination that the agreement was in the best interest of the child.

Father's counsel assured the court that the child support guidelines were considered during settlement negotiations, and the child support worksheet that was attached to the

[3] The hearing was held by telephone due to the COVID-19 emergency.

January 10, 2020 consent order was based on a guidelines calculation. Father requested an award of attorney's fees incurred to defend Mother's request to modify or set aside the judgments.

The court found that Mother had waived her right to challenge the court's order because she had not filed exceptions to the magistrate's report and recommendations. The court nonetheless addressed the merits of Mother's motion, stating that, even if timely exceptions had been filed, there was no reason to set aside the January 10, 2020 child support order. The judge acknowledged that the court was "not a rubber stamp for parents' agreements as it relates to child support or custody or child access[,]" and that the court had a legal obligation to consider the child's bests interest, which "prevails over everything." The court noted that, according to the worksheet that was submitted, the amount of child support the parties agreed to was consistent with the guidelines, and the January 10, 2020 order "honored both the parties' agreement and the Best Interest Standard[.]" Accordingly, the court denied Mother's motion to modify or set aside the order of modification.

The court found that Mother had no basis to set aside the court's order because she failed to file exceptions, but the court declined Father's request for additional attorney's fees to defend the motion. Finally, the court denied Mother's motion to vacate the prior award of attorney's fees. This timely appeal followed.

STANDARD OF REVIEW

If filed within ten days after the entry of judgment, "a motion to revise a court's judgment, however labeled, . . . will be treated as a Rule 2-534 motion." *White v. Prince*

George's County, 163 Md. App. 129, 140 (2005) (citation and internal quotation marks omitted).[4] In pertinent part, Maryland Rule 2-534 provides:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

On a 2-534 motion, "Appellate review of a court's ruling is typically limited in scope." *Rose v. Rose*, 236 Md. App. 117, 129 (2018) (citing *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015), *aff'd* 449 Md. 217 (2016)). Generally, "the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion." *Id.* (quoting *Schlotzhauer*, 224 Md. App. at 84.).

An abuse of discretion occurs when "'no reasonable person would take the view adopted by the [trial] court' or when the court acts 'without reference to any guiding rules or principles.'" *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (citation omitted). Such an abuse may also occur when "the court's ruling is 'clearly against the logic and effect of facts and inferences before the court' or when the ruling is 'violative of fact and logic.'" *Id.* (citation omitted).

Because Mother's Request to Modify or Set Aside Judgments is deemed filed within ten days after the court's January 10, 2020 orders modifying child support and

[4] Mother filed her Request to Modify or Set Aside Judgments on January 21, 2020, eleven days after entry of the consent order. Because the tenth day after the entry of the consent order fell on a court holiday (Martin Luther King Jr. Day), however, Mother's motion is deemed filed within ten days, pursuant to Maryland Rule 1-203(a)(1).

awarding attorney's fees, those orders are also subject to appellate review.[5] We shall set forth the standard of review applicable to those rulings, as necessary, in the analysis that follows.

ANALYSIS

I. Consent Order for the Modification of Child Support

As a preliminary matter, Father contends that Mother's consent to the January 10, 2020 order modifying Father's child support obligation precludes an appeal from that order. We agree.

Consent judgments are "agreements entered into by the parties which must be endorsed by the court," and "reflect the agreement of the parties 'pursuant to which they have relinquished the right to litigate the controversy.'" *Barnes v. Barnes*, 181 Md. App. 390, 407–08 (2008) (quoting *Hearn v. Hearn*, 177 Md. App. 525, 534 (2007)). "By agreeing to settle[,] the parties give up any meritorious claims or defenses they may have in order to avoid further litigation." *Smith v. Luber*, 165 Md. App. 458, 468 (2005) (quoting *Long v. State*, 371 Md. 72, 86 (2002)).

[5] *See Johnson v. Francis*, 239 Md. App. 530, 541 (2018) (explaining that, although an appeal must generally be filed within 30 days of the entry of the judgment or order from which the appeal is taken, Maryland Rule 8-202(c) "provides for an exception that tolls the running of that appeal period while the court considers certain motions, including motions to alter or amend that are filed within ten days of entry of the judgment or order[.]"

"It is a well-settled principle of the common law that no appeal lies from a consent decree." *Barnes*, 181 Md. App. at 409-410 (quoting *Suter v. Stuckey*, 402 Md. 211, 222 (2007)). As the Court of Appeals explained in *Suter*, 402 Md. at 224:

> The rule that there is no right to appeal from a consent decree is a subset of the broader principles underlying the right to appeal. The availability of appeal is limited to parties who are aggrieved by the final judgment. A party cannot be aggrieved by a judgment to which he or she acquiesced. . . . The rationale for this general rule "has been variously characterized as an 'estoppel', a 'waiver' of the right to appeal, an 'acceptance of benefits' of the court determination creating 'mootness', and an 'acquiescence' in the judgment."

(internal citations omitted). Moreover, "[t]he public policy of promoting settlement agreements by ensuring finality is another reason to disallow appeals from consent judgments." *Id*. at 225.

When, as in this case, "the parties entered into an agreement in open court, which under Maryland law is binding upon the parties,' intending that the court will subsequently reduce the agreement to a written order, the legal principles regarding consent orders are 'equally applicable' to the resulting order." *Barnes*, 181 Md. App. at 409 (quoting *Smith*, 165 Md. App. at 470–71). "[W]here the underlying bargaining was not unconscionable nor the product of duress, '[t]he fact that one of the parties may have changed his or her mind shortly before or after the submitted consent order was signed by the court does not invalidate the signed consent judgment.'" *Id.* at 410 (quoting *Chernick v. Chernick*, 327 Md. 470, 484 (1992)).

One narrow exception to the general rule provides that a consent order may be appealed "[i]f there was no actual consent because the judgment was coerced, exceeded

the scope of consent, or was not within the jurisdiction of the court, or for any other reason consent was not effective[.]" *Suter*, 402 Md. at 224 n.10. Mother does not dispute that she consented to the terms of the order, nor does she contend that her consent was coerced or was otherwise invalid.[6] She claims, however, that, because the consent order relates to child support, and because the court did not make an independent determination that the terms of the order were consistent with the best interest of the child, it is "clearly" subject to appellate review. Mother cites *Knott v Knott*, 146 Md. App. 232 (2002) and *Kovacs v. Kovacs*, 98 Md. App. 289 (1994) in support of this contention. In both cases, her reliance is misplaced.

In *Kovacs*, we held that the trial court erred in adopting a ruling of an arbitration panel - which the married parties had agreed would resolve disputed issues, including child custody and support – without independently determining whether the decision of the arbitration panel was in the best interest of the children. *Id.* at 300-301. *In Knott*, we held that the trial court erred in failing to exercise any discretion to modify an interlocutory consent order for child support (or its functional equivalent) in consideration of the child's best interest. *Knott*, 146 Md. App. at 261- 62. In both cases, we applied the standard in § 8-103(a) of the Family Law Article ("FL"), which provides that, "[t]he court may modify

[6] In any event, Mother would be precluded from asserting that she did not consent or that her consent was invalid as she did not file exceptions to the magistrate's finding that she knowingly and voluntarily consented to the terms that were placed on the record. *See Barrett v. Barrett*, 240 Md. App. 581, 587 (2019) (a party's failure to timely file exceptions to the [magistrate's] report and recommendation in a domestic relations case "forfeits any claim that the magistrate's findings of fact were clearly erroneous.") (quoting *Miller v. Bosley*, 113 Md. App. 381, 393 (1997)).

any provision of a deed, agreement, or settlement with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child." *Kovacs*, 98 Md. App. at 299-300; *Knott*, 146 Md. App at 260. Because the agreement that was placed on the record in the case before us was for the modification of a final order for child support, however, FL § 8-103 is no longer applicable. *Reese v. Huebschman*, 50 Md. App. 709, 711, *cert. denied*, 293 Md. 547 (1982)

In *Reese*, we examined Article 16, § 28 of the Maryland Code, which was the predecessor statute to FL § 8-103. *Id.* at 711. The earlier statute, which is virtually identical to FL § 8-103, provided that "whenever any deed or agreement shall make provision for, or in any matter affect the care, custody, education or maintenance of any infant child or children of the parties, the court has the right to modify the deed or agreement in respect to the infants as to the court may deem proper, looking always to the best interests of the infants." We explained that:

> [t]his section clearly means that when the court incorporates a separation agreement, which contains a provision providing for child support, into a divorce decree, the [judge], in his [or her] discretion, may modify the amount of child support agreed upon by the parties. However, when the decree becomes enrolled, it is res judicata between the parties and [Art. 16 § 28] no longer applies. Any issue that was litigated or could have been litigated in the divorce proceeding may not be relitigated in a subsequent petition to modify the support. The basis of a petition to modify child support may only be an issue that was not and could not have been raised earlier, viz., a change in the circumstances of the parties.

Reese, 50 Md. App. at 711.[7]

[7] Although the parties to this case were apparently never married, we see no reason why this rationale would not be equally applicable where the only issues before the court are child custody and support.

We reiterated the difference between the legal standard for modification of an interlocutory order or agreement regarding the care, custody, or support of a minor child and the legal standard that applies to a modification of a final order in *Knott*, 146 Md. App. at 239, stating:

> [b]ecause the order appealed was interlocutory, the correct standard for modification of an order concerning care, custody or support of a minor child is the best interest of the child pursuant to FL [§] 8–103. Such orders are subject to revision at any time before the entry of a final judgment that adjudicates all of the claims by and against all of the parties. Md. Rule 2–602(a)(3). The basis for modification of a final order concerning care, custody, or support of a minor child is material change of circumstances, pursuant to FL [§] 12–104.

In considering whether a modification of a final order for child support is warranted under FL § 12-104, the "focus [is] upon the alleged changes in income or support that occurred after the child support award was issued." *Petitto v. Petitto*, 147 Md. App. 280, 306–07 (2002). *See also Walsh*, 95 Md. App. at 714 (to invoke the continuing jurisdiction of the court and effect a change in a prior judgment, a party must present a case that, by reason of a substantial change in circumstances, is not the same as the case previously decided.") Upon a finding of a material change in circumstances, "the court must apply the guidelines in [FL §§ 12-202 to 12-204] to determine the level of support to which the child is currently entitled." *Rivera v. Zysk*, 136 Md. App. 607, 619 (2001) (citation omitted).

Here, Mother agreed that there was a material change in circumstances that justified a modification of support and agreed to an order that would increase Father's child support payment to $315 per month. In doing so, she "relinquished her right to litigate the

controversy" and to have the court determine whether and to what extent there had been a change in income and/or support and what the parties' respective child support obligations would be under the guidelines.[8] Accordingly, Mother's appeal from the January 10, 2020 consent order modifying child support shall be dismissed.

II. Attorney's Fees

Mother contends that the court's order awarding Father attorney's fees must be reversed because (1) she was justified in seeking a determination that the parties' agreement was in the child's best interests, and (2) the court did not consider the financial status or needs or each party. We disagree.

"We review an award of attorney's fees in family law cases under an abuse of discretion standard." *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 756 (2017) (citing *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002)). An award of attorney's fees will not be reversed "unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong.'" *Id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 468 (1994)).

Pursuant to FL § 12-103(b), a court may award costs and counsel fees in an action for the modification of child support after considering "(1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding." In 1993, the General Assembly

[8] The court was presented with a worksheet containing information to support a determination that the level of support agreed to was consistent with the guidelines and was, therefore, the proper amount of support. *See* FL § 12-202(a)(2)(i) (""There is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines set forth in this subtitle is the correct amount of child support to be awarded.")

amended the statute to include a mandatory award of expenses, under subsection (c) of the statute. *See Davis v. Petito*, 425 Md. 191, 202 (2012). Subsection (c) provides that, "[u]pon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party costs and counsel fees."

If the court finds that each party had substantial justification for "bringing or defending their respective positions in the proceeding," the court must determine the reasonableness of the parties' attorney's fees and then assess the parties' financial needs and status before making an award. *Id.* at 206. If, however, the court determines that one party lacked substantial justification, as the court did in this case, the reasonableness of the fees "would then be the only consideration."[9] *Id. See also Guillaume v. Guillaume*, 243 Md. App. 6, 27 (2019) ("the financial circumstances of the parties are not part of the calculus for an award under FL § 12-103(c)."") (citing *Davis*, 425 Md. at 206.)

"The question of substantial justification is a matter of law." *Reese*, 50 Md. App. at 715 (1982). In the context of a request for an award of attorney's fees, "to constitute substantial justification, the parties' position should be 'fairly debatable' and 'within the realm of legitimate advocacy.'" *Inlet Assocs. v. Harrison Inn Inlet, Inc*., 324 Md. 254, 268 (1991) (citing *Newman v. Reilly*, 314 Md. 364, 381 (1988)). We will affirm a finding of substantial justification "unless it is clearly erroneous or involved an erroneous application

[9] Mother does not contend that the amount of the attorney's fees awarded was unreasonable.

of law." *David A. v. Karen S.*, 242 Md. App. 1, 38 (2019) (citations and internal quotation marks omitted).

As we have already concluded, Mother was bound by the terms of the agreement that the parties placed on the record. Accordingly, we find no clear error in the court's acceptance of the magistrate's determination that Mother's unwillingness to cooperate with submitting the consent order to the court was unjustified. Moreover, after deciding that Mother's position was unjustified, the court was not required to consider the financial status or needs of the parties. Accordingly, we conclude that the court did not err or abuse its discretion in granting Father's request for attorney's fees or in denying Mother's motion to amend or alter its order.

APPEAL FROM THE JANUARY 10, 2020 ORDER MODIFYING CHILD SUPPORT DISMISSED. JUDGMENTS OF THE CIRCUIT COURT FOR CARROLL COUNTY OTHERWISE AFFIRMED. APPELLANT TO PAY COSTS.