

Circuit Court for Baltimore County
Case No. 03-C-15-007215

UNREPORTED*

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 507

September Term, 2018

LISELOTTE DAVIS

v.

DAVID KARAOLIS

Berger,
Friedman,
Gould,

JJ.

Opinion by Gould, J.

Filed: July 10, 2019

*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.

Liselotte Davis appeals from the decision of the Circuit Court for Baltimore County awarding \$40,000 in attorney’s fees to her ex-husband, David Karaolis. For the reasons stated below, we affirm.

FACTS AND LEGAL PROCEEDINGS

The parties to this action were divorced in 2013. They have three children.

This matter came before the circuit court after Ms. Davis filed an amended petition requesting an increase in child support from Mr. Karaolis based on allegations that their children’s expenses had increased, Mr. Karaolis had a substantial salary increase, and Mr. Karaolis had received a promotion and payments from a joint business venture. Mr. Karaolis opposed the motion and countersued for a reduction in child support because he was unemployed and because Ms. Davis’ income had substantially increased. The circuit court held four days of hearings on the motions.

At the end, the trial judge stated, “I have listened for four days. I have taken extensive notes. I’ve looked at the exhibits.” The record reflects that the court analyzed and considered Mr. Karaolis’ finances, including his income, loans, distributions from businesses, use of retirement funds, recoveries from lawsuits, attorney’s fees for other litigation, payments for health insurance, credit card bills, payments for the children’s clothes, sports gear, personal expenses, his purchase of a house, his expenses for the house, and that he had been unemployed for 18 months. As to Ms. Davis, the court considered her income, distributions, payments made by her for treatment of her daughter, and tuition

payments for the three children.¹ The record also reflects that the court assessed the credibility of the witnesses, finding that Ms. Davis had not always accurately represented the facts.²

The court made numerous detailed findings which, given the nature of Ms. Davis' arguments on appeal, we summarize as follows:

1. After the divorce, Mr. Karaolis bought a new house and paid \$180,000 towards the purchase, incurred related expenses, and bought furniture. The court found that these expenses were not unreasonable.
2. Although Mr. Karaolis received a \$400,000 distribution from Karagen Pharmaceuticals, Inc. ("Karagen"), a joint business venture with Ms. Davis, he lost his job four months later.
3. Ms. Davis is the sole employee of Karagen and a \$3.3 million payment was made to Karagen in 2015 from which Ms. Davis gave herself a \$198,000 bonus, which she attributed to her accountant's advice, as well as a distribution of \$472,000.
4. Ms. Davis issued additional checks to herself from Karagen for large sums of money without a memo ledger on some of the checks, although she characterized them as reimbursement.
5. Ms. Davis wrote several checks to her father from Karagen in the approximate amount of \$200,000, some of which were identified as repayment of a loan, but she did not make any payment to Mr. Karaolis' mother who also loaned money to Karagen.
6. Ms. Davis issued a check in the amount of approximately \$799,000 to Karagen's VanGuard Financial Investment account.

¹ The parties' Judgment of Divorce provides that Mr. Karaolis is not responsible for tuition payments.

² As stated by the court, "I find that - - and I want to say this as delicately as possible, that in a number of instances, Ms. Davis, you, you kind of exaggerated what the facts were. That's from my perspective. And when you do that, and when it is apparent based on other evidence, it calls into question your credibility on everything else."

7. Mr. Karaolis did not have a substantial increase in income and did not “[choose] to quit his job ... through intentional misconduct and otherwise” and that his actions did not amount to “intentional impoverishment,” as Ms. Davis contended.
8. Mr. Karaolis was forced to resign from his job but continued to pay child support, the children’s health benefit payments, and otherwise provided for his children, even though he was unemployed for 18 months.
9. It made no sense to assert that Mr. Karaolis quit his job, after working for his employer for 10 years and after receiving a promotion, just to avoid paying child support and then continue to pay it.
10. Contrary to Ms. Davis’ claims, Mr. Karaolis’ unemployment did not adversely affect the payment of the children’s health insurance benefits.
11. Mr. Karaolis was able to pay child support and the children’s health benefits with the assistance of loans from his mother, a business distribution, and settlement of lawsuits.
12. The \$476,000 that Mr. Karaolis received from his mother was a loan from her retirement funds and not a gift.
13. Mr. Karaolis testified that he had to use between \$40,000 to \$50,000 from his retirement funds to pay his expenses.
14. Mr. Karaolis received an additional \$450,000 from the settlement of a lawsuit against Ms. Davis and Karagen but incurred substantial attorney’s fees in connection with the lawsuit.
15. Mr. Karaolis incurred substantial attorney’s fees defending a different lawsuit filed by Ms. Davis that the trial court in that case had determined to be frivolous.
16. Mr. Karaolis incurred over \$71,000 in attorney’s fees for the modification motion, including three contempt hearings.
17. Mr. Karaolis incurred over \$380,000 in attorney’s fees for various litigation involving Ms. Davis.

18. Even if Mr. Karaolis would not have resigned, Ms. Davis would have been unable to show a substantial increase in Mr. Karaolis' income, as prior to his resignation, his income had increased by only \$700 per month.
19. Mr. Karaolis applied for over 100 jobs during his unemployment.
20. Mr. Karaolis paid the credit card balance for the parties' four credit cards, which he attributed to Ms. Davis and which he considered to be substantial.
21. The three children have changed schools since the divorce.
22. Ms. Davis spent \$40,000 for an in-patient facility for their oldest daughter and wants Mr. Karaolis to contribute to that amount, but there was no evidence that the daughter needed to be in that facility or be there for the length of time she was there.
23. The oldest daughter has added transportation costs for the school she currently attends, but there was no testimony that she needs to attend that particular school or that Ms. Davis pursued less expensive education alternatives for her.
24. The second daughter is attending a private school, but there was no testimony that Ms. Davis pursued less expensive education alternatives.
25. Transportation and babysitter costs appear unnecessary because Ms. Davis has a flexible schedule.
26. Ms. Davis' income has increased, at a minimum by \$2,667 per month since the divorce, but that Ms. Davis has not filed tax returns for 2015 and 2016, so "the Court ...question[ed] the true nature and extent of her income and resources."

Based on these findings, the circuit court denied Ms. Davis' motion and granted Mr. Karaolis' motion, reducing his monthly child support payments from \$3,207 to \$2,997.

On December 20, 2017, Mr. Karaolis filed a motion for sanctions and for an award of attorney's fees of \$76,295.96, which was supported with letters and an email from Mr. Karaolis' counsel to Ms. Davis' counsel, an extract from Ms. Davis' deposition testimony, and a Statement of Attorney's Fees with 18 pages of itemized charges. Ms. Davis opposed the motion, without any supporting exhibits.

On April 10, 2018, the circuit court issued an order awarding to Mr. Karaolis \$40,000 in attorney’s fees, which was 52 percent of his request. It is from this order that Ms. Davis filed her appeal.³

DISCUSSION

I. Standard of Review

An appellate court reviews a trial court’s award of attorney’s fees in a domestic case for abuse of discretion and the award “should not be modified unless it is arbitrary or clearly wrong.” Ledvinka v. Ledvinka, 154 Md. App. 420, 432 (2003) (quotations omitted). An appellate court evaluates the trial court’s “application of the statutory criteria as well as the consideration of the facts of the particular case.” Id. “Consideration of the statutory criteria is mandatory in making an award and failure to do so constitutes legal error.” Id. (quoting Petrini v. Petrini, 336 Md. 453, 468 (1994) (in turn citing Carroll County v. Edelmann, 320 Md. 150, 177 (1990))).

A court abuses its 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.” Aventis Pasteur, Inc. v. Skevofilax, 396 Md. 405, 418 (2007) (citations omitted) (cleaned up); see also YIVO Inst. for Jewish Research v. Zaleski, 386 Md. 654, 663 (2005) (citation omitted) (“If there is any competent material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.”).

³ On January 2, 2018, Ms. Davis filed a motion to alter or amend judgment, which was denied.

As stated by the Court of Appeals, “this Court is not a fact-finder, and we cannot set aside the [trial court]’s credibility assessments” Smallwood v. State, 451 Md. 290, 309 n.15 (2017) (citation omitted).

II. The Award of Attorney’s Fees is Supported by the Record

Section 12-103 of the Family Law Article of the Maryland Annotated Code (“FL”) provides that before awarding attorney’s fees and costs, a court must consider the financial status of each party, the needs of each party, and whether there was substantial justification in bringing the proceeding.⁴ Consistent with this statute, the court’s April 10th order stated:

Now upon consideration of Defendant/Counter-Plaintiff David Karaolis’ Motion for Sanctions and For Award of Attorney’s Fees and Exhibits (#88000) and any Response by Plaintiff/Counter-Defendant Liselotte Davis, the evidence presented at the merits hearing, the court’s findings, including but not limited to the financial status and needs of the respective parties, the

⁴ Although Mr. Karaolis brought his request for attorney’s fees under Maryland Rule 1-341, the circuit court appropriately resolved it under FL § 12-103(a) (1984, Repl. Vol. 2012), with both parties’ acquiescence. Section 12-103 provides as follows:

...

(b) Before a court may award costs and counsel fees under this section, the court shall consider:

- (1) the financial status of each party;
- (2) the needs of each party; and
- (3) whether there was a substantial justification for bringing, maintaining, or defending the proceeding.

(c) Upon 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.

lack of substantial justification of Plaintiff Liselotte Davis in prosecuting an increase in child support and the reasonableness of Defendant/Counter-Plaintiff David Karaolis' attorney's fees and costs, it is this 10th day of April 2018, by the Circuit Court for Baltimore County, pursuant to Family Law Article § 12-103:

ORDERED that the request for attorney's fees is granted as follows:

Plaintiff/Counter-Defendant Liselotte Davis shall pay unto Defendant/Counter-Plaintiff David Karaolis' an attorney's fees contribution in the amount of Forty Thousand Dollars (\$40,000.00) within Thirty (30) days. In the event Plaintiff/Counter-Defendant Liselotte Davis fails to pay attorney's fees as ordered, upon written Motion, this court shall reduce the award to a judgment.

Ms. Davis argues that the court's order is deficient on a number of fronts. She contends that the court did not provide its analysis or make findings of fact to support its conclusions. As to the parties' financial status, Ms. Davis contends the circuit court's factual findings were limited to determining their respective income and to observations about monies received from each other and loans to Mr. Karaolis from his mother. Also, as Ms. Davis sees it, the court failed to make any findings about the substantial justification factor and she insists that contrary to the court's findings, her motion to increase Mr. Karaolis' child support obligation was substantially justified.

We reject Ms. Davis' arguments. In Meyr v. Meyr, 195 Md. App. 524, 553-54 (2010), the trial court issued an order awarding attorney's fees without stating the rationale and analysis behind its decision. This Court held that although the order awarding attorney's fees "did not specifically address the parties' financial needs and resources," the trial court's findings in its memorandum and judgment of divorce "demonstrated that the

court had engaged in the requisite analysis.” Id. As such, the court “[found] no error in the failure to reiterate them in the order regarding attorney’s fees.”⁵ Id. at 554.

Nor do we find error here. Although the circuit court did not reiterate its numerous findings in its April 10, 2018 order, it did not need to. As in Meyr, the court’s detailed findings, articulated in its December 6, 2017 ruling on the underlying merits of the cross-motions, are more than sufficient to support the court’s award of attorney’s fees. As such, we have no difficulty fully crediting the court’s representations in its order that it had considered the evidence, its prior factual findings, and the requisite factors in ruling on Mr. Karaolis’ motion for attorney’s fees.⁶

⁵ Ms. Davis claims that “[w]hile these older cases, which espouse the view that if there is evidence in the record, no apparent analysis need be made by the trial court, have not expressly been overruled by this Court, the fact that Karaolis does not cite a case decided since 1990 demonstrates that this rationale is no longer a viable basis to affirm the trial court.” This court is unaware of any change that occurred in 1990 related to an appellate court’s review of an attorney’s fees award. In any event, the Meyr case was decided in 2010.

⁶ Ms. Davis also argues that when awarding attorney’s fees, this court should exercise discretion liberally in her favor because she is a privileged suitor. “The foundation of the privileged suitor status of the wife is to raise her pecuniary posture as litigant in domestic cases from an impecunious supplicant to one of equal status with her husband.” Link v. Link, 35 Md. App. 684, 688 (1977). Further, “[i]t is well settled that reasonable counsel fees are allowable to the wife as a privileged suitor in a divorce suit so as to permit her to be adequately represented, irrespective of the merits of her case.” Jackson v. Jackson, 13 Md. App. 725, 734 (1971) (citations omitted). In the context of a request for alimony, a “privileged suitor” is one “without means” or “destitute of the pecuniary means of carrying on her suit.” Ridgeway v. Ridgeway, 171 Md. App. 373, 390 (2006) (quotations omitted). Given the court’s findings regarding Ms. Davis’ financial status and needs, her argument that she is a privileged suitor misses the mark.

The cases cited by Ms. Davis do not alter our conclusion. Ms. Davis relies upon Davis v. Petito, 425 Md. 191, 206 (2012), which stated that in deciding a motion for attorney’s fees in a child support case, the circuit court should perform a “systematic review of economic indicators in the assessment of the financial status and needs of the parties.” That’s true: the court should undertake a thorough analysis, and the record reflects that it did so in this case.

Ms. Davis also relies on Gillespie v. Gillespie, 206 Md. App. 146 (2012), for the proposition that if legal fees are challenged, the basis for the court’s decision should be stated. That’s true too. But the order found wanting in Gillespie was not supported by any findings of fact, and the court neither explained its decision nor stated that it had considered the relevant statutory factors. Id. at 179. Here, the order states that the court considered its prior factual findings and the relevant factors. The order in this case therefore, does not have the shortcomings found in Gillespie.⁷

Accordingly, we find that the court did not abuse its discretion in awarding attorney’s fees to Mr. Karaolis.⁸

⁷ Ms. Davis also cites Ledvinka, where “the trial court failed to make findings of fact to justify the award of attorney’s fees.” 154 Md. App. at 432. Again, here, the order is sufficient because the court previously made numerous factual findings related to the factors that must be considered.

⁸ Ms. Davis relies upon Lemley v. Lemley, 109 Md. App. 620 (1996), to argue that the award of attorney’s fees to Mr. Karaolis was in error because he allegedly can afford to pay his attorney. Ms. Davis’ reliance on Lemley is misplaced. In Lemley, the court stated that “[i]t is unreasonable to require Mr. Lemley to pay for the benefit of professional counsel for the opposing party, while being unable to afford that benefit for himself. In light of these factors, the chancellor clearly erred in his decision to award Mrs.

III. The Circuit Court did not Abuse its Discretion in Determining the Amount of Attorney's Fees Awarded to Mr. Karaolis were Reasonable

A “trial judge is vested with a high degree of discretion in making an award of fees.” Lieberman v. Lieberman, 81 Md. App. 575, 600 (1990) (citing Lapides v. Lapides, 50 Md. App. 248, 251 (1981)). A trial judge is also presumed to know the law and follow it, Aventis Pasteur, 396 Md. at 426 (quoting State v. Chaney, 375 Md. 168, 179 (2003) (in turn quoting Ball v. State, 347 Md. 156, 206 (1997))), and does not need to articulate each item or factor considered in reaching a decision. See Chaney, 375 Md. at 180 n. 8 (quoting John O. v. Jane O., 90 Md. App. 406, 429 (1992) (“The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal.”)).

Mr. Karaolis’ motion requested \$76,295.96 in attorney’s fees and costs, supported by a Statement of Attorney’s Fees by his counsel, Stuart C. Axilbund, submitted under penalty of perjury. Mr. Axilbund’s statement included an 18-page detailed itemization of the work performed, the hourly rates at which his work was billed, and fees and expenses incurred. Mr. Axilbund verified the accuracy of the information and confirmed that the hourly rate of \$325 was the agreed upon rate with his client. He also swore under oath that based on his 27 years of experience, the hourly rate was lower than the customary rate in the prevailing legal community.

Lemley \$10,000 in attorney’s fees.” 109 Md. App. at 634. No similar facts have been established here.

Ms. Davis' opposition disputed many of the assertions made by Mr. Karaolis and argued that Mr. Karaolis improperly included certain time entries related to other cases.⁹

The court awarded Mr. Karaolis \$40,000 in attorney's fees after considering "the reasonableness of Defendant/Counter-Plaintiff David Karaolis' attorney's fees and costs." Ms. Davis argues that the court erred because it failed to explain the basis for finding that the fees were reasonable or even that it reviewed the invoices. We disagree.

Here, the order expressly states that the court reviewed the motions, meaning it also reviewed the itemized charges attached as an exhibit to Mr. Karaolis' motion. In any event, the court did not rubber stamp the amount of legal fees requested, but instead reduced the fees by over \$30,000, significantly more than the fees for the entries that Ms. Davis specifically challenged.

Ms. Davis cites to Fitzzaland v. Zahn, 218 Md. App. 312, 333 (2014) (quoting Lieberman, 81 Md. App. at 600-02), for the four factors courts must consider on motions for attorney's fees, specifically "(1) whether the [fee amount awarded] was supported by adequate testimony or records; (2) whether the work was reasonably necessary; (3) whether the fee was reasonable for the work that was done; and (4) how much can reasonably be

⁹ The total dollar amount of the entries that Ms. Davis challenged is approximately \$6,220, which is far less than the discount applied to Mr. Karaolis' fee request.

afforded by each of the parties.”¹⁰ Ms. Davis’ contentions to the contrary, the record reflects that the court considered each of these factors.

As to the first factor, Mr. Karaolis’ well-supported motion delineated the tasks performed in preparing and litigating Mr. Karaolis’ case, the time each task required, and his counsel’s hourly rate of \$325. As in Fitzzaland, “there was sufficient information in the record from which the court could determine, directly and inferentially, the appropriate amount for an attorney’s fee award.” See Fitzzaland, 218 Md. App. at 334.

As to the second factor, the circuit court’s findings of fact highlight the lack of substantial justification for Ms. Davis’ motion. Ms. Davis alleged in her motion to modify child support that Mr. Karaolis had a substantial salary increase, but his salary went up by only \$700 per month. Similarly, Ms. Davis accused Mr. Karaolis of “intentional impoverishment,” when instead he was forced to resign from his job but continued to pay child support, health benefit payments, and otherwise provide for his children.

Additionally, Ms. Davis alleged that Mr. Karaolis had received payments from a joint business. While true, it paled in comparison to the distributions of more than \$472,000, \$198,000, and \$799,000 that Ms. Davis received. Ms. Davis also alleged that her children’s expenses had increased, but the court found that there was no evidence that many of the increased expenses were necessary.

¹⁰ These four factors encompass the factors of “labor, skill, time, and benefit afforded to the client, as well as the financial resources and needs of each party” enumerated in Petrini, 336 Md. at 467 (citing Brown v. Brown, 204 Md. 197, 213 (1954)) and cited by Ms. Davis.

As to the third factor, Mr. Karaolis’ attorney testified that his hourly rate was below the customary rate charged.¹¹

Finally, as to the fourth factor, the court’s findings of fact evidence that it both understood and considered what each party could reasonably afford. For example, the court found that Ms. Davis’ income has increased at a minimum by \$2,667 per month since the divorce, but that Ms. Davis has not filed tax returned for 2015 and 2016, so the court “question[ed] the true nature and extent of her income and resources.”

We therefore find that the circuit court adequately assessed the reasonableness of the attorney’s fees before making its award.

CONCLUSION

The circuit court considered the relevant factors in awarding attorney’s fees. We therefore affirm.

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY AFFIRMED; COSTS TO
BE PAID BY APPELLANT.**

¹¹ It is noteworthy that in Fitzzaland, decided five years ago in 2014, the court found that \$360 was a reasonable hourly rate. 218 Md. App. at 335. Mr. Karaolis’ attorney charged \$325.