Circuit Court for Baltimore County
Case No. 03-C-14-010510

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 577

September Term, 2018

ABIYE WILLIAMS

v.

JEANINE WILLIAMS

Meredith,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: October 21, 2019

In 2018, the Circuit Court for Baltimore County granted appellant Abiye Williams ("Mr. Williams") a divorce from appellee Jeanine Williams ("Ms. Williams"), but denied Mr. Williams's requests to modify the custody and child support awards that had previously been granted to Ms. Williams. On appeal, Mr. Williams challenges the circuit court's decision not to modify child support. Additionally, Mr. Williams contends that the circuit court exceeded its authority by requiring Mr. Williams to temporarily turn over his passport to counsel during future visitations with his and Ms. Williams's three minor children. We conclude that the circuit court did not err in either regard, and so affirm.

BACKGROUND & PROCEDURAL HISTORY

Mr. and Ms. Williams were married in April 2009 in Rwanda and had three minor children together. After separating in August 2014, Ms. Williams relocated with the three children to Maine, where she moved into a shelter. Thereafter, Mr. and Ms. Williams filed counter-complaints for custody; in an order dated November 24, 2015, the Circuit Court for Baltimore County (1) awarded joint legal custody with primary physical custody of the children to Ms. Williams, and (2) ordered Mr. Williams to pay $1,100 per month in child support. At that time, Mr. Williams appealed the court's award of primary physical custody to Ms. Williams (but not the child support award). A panel of this Court affirmed in an unreported opinion.[1]

[1] *Williams v. Williams*, No. 2207, 2015 Term (filed July 14, 2016).

Subsequent to the circuit court's award of primary physical custody, Ms. Williams moved with the children from Maine to Michigan. In January 2017, Mr. Williams filed a Complaint to Modify Custody and Support; later, in September 2017, Mr. Williams filed a Supplemental Complaint to Modify Custody and Support. Notably, given the arguments Mr. Williams raises on appeal, the supplemental complaint did not argue that a material change in circumstances warranted a reduction of *his* child support payments. Rather, the complaint sought—presumably, in light of Mr. Williams's request for sole legal custody and primary physical custody of the children—for Mr. Williams to *receive* child support payments from Ms. Williams.[2] After a two-day trial in January 2018, the Circuit Court for Baltimore County (1) granted the parties a divorce; (2) found Ms. Williams in contempt of previous orders to properly consult with Mr. Williams regarding her living arrangements and the children's well-being; (3) and, finding no material change in circumstances, declined to modify custody.

Two additional points related to the circuit court's decision are relevant for the purposes of Mr. Williams's appeal. First, when announcing Mr. Williams's visitation rights,[3] the circuit court judge added: ". . . and at least for a period of two years, I would ask that counsel . . . would be available and willing to accept the passport of Mr. Williams when [] [the] children are in the State of Maryland, for two years." No

[2] At the same time, however, Mr. Williams's supplemental complaint stated that Ms. Williams "has no job, no employment opportunities, and no permanent residence for herself and the children in Michigan."

[3] Visitations were to occur only in Maryland or Michigan.

objection was raised. Second, when announcing its decision, the circuit court observed that "[a]s to child support, this Court did not hear any evidence that would suggest that there should be a change in the current child support[,]" and thus the previous order of $1,100 per month would remain intact.

After the court announced this decision, Mr. Williams's counsel, for the first time at the trial, expressly argued for modifying child support,[4] stating that "both parties' incomes are significantly different than they were three years ago." When the court responded that "nothing was submitted to me," Mr. Williams's counsel replied that "[Ms. Williams] never complied with discovery, I had no idea until today what her income was." Although the circuit court reminded counsel that "the record is closed at this point[,]" the circuit court stated that it would "reserve on the amount of child support[,]" and that counsel should "come up with a proposed number."

At a subsequent status hearing held in April 2018, the circuit court indicated its intent to leave child support set at $1,100 per month. In response, Mr. Williams's counsel noted that he had submitted a child support worksheet to the court that recommended that Mr. Williams's child support order should be adjusted to $665 per month.[5] When Mr.

[4] During closing arguments, when arguing for custody to be granted to Mr. Williams, Mr. Williams's counsel had stated that Mr. Williams would "waive [receiving] child support" from Ms. Williams.

[5] According to Mr. Williams, his total obligation should have been reduced to $887 per month (reflecting that Ms. Williams had started working, and that Mr. Williams's salary was lower), which, given his health insurance expenses for the children, would translate to a monthly payment of $665 to Ms. Williams.

Williams's counsel shortly thereafter reiterated that he had submitted guidelines to the court, the circuit court judge stated:

> And that's, that's fine and like I said, they will be made part of the physical Court file, but I am otherwise sticking with what, what I, what I stated, regardless of what the guidelines may say and whether I accepted the testimony of Mr. Williams as to change in financial circumstances. I ordered $1,100 a month and that's what, that's what it's going to be.

Subsequently, Mr. Williams filed a motion to alter or amend the judgment, partly on the basis that "the Court failed to calculate child support" pursuant to his submitted guidelines (*i.e.*, that the circuit court ignored that Mr. Williams's income had gone down while Ms. Williams's income had increased). In a written order dated July 10, 2018, the circuit court denied Mr. Williams's motion to alter or amend. With respect to the issue of child support, the order stated:

> The Court has considered child support and found at trial that insufficient evidence was presented to warrant a modification of child support amount . . . Since the entry of Judgment, the Court has also considered emails, child support worksheets, and phone conferences from and with counsel where neither side can agree on virtually anything regarding child support. Therefore, child support will remain at $1,100 per month for the three minor children of the parties."

Mr. Williams filed a timely appeal.

DISCUSSION

On appeal, Mr. Williams argues that the circuit court (1) erred by failing to modify child support pursuant to the Maryland Child Support Guidelines, and (2) exceeded its authority by requiring that he turn over his passport to his lawyer when visiting with his children.

"Child support orders are generally within the sound discretion of the trial court." *Knott v. Knott*, 146 Md. App. 232, 246 (2002). Though we review an ultimate child support award for an abuse of discretion, the factual findings underpinning an award are reviewed for clear error. *Reynolds v. Reynolds*, 216 Md. App. 205, 218-19 (2014); Md. Rule 8-131(c). "If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous." *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002). Moreover, "we give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Ley v. Forman*, 144 Md. App. 658, 665 (2002). Additionally, the denial of a motion to alter or amend a judgment is reviewed for an abuse of discretion. *Miller v. Mathias*, 428 Md. 419, 438 (2012).

I. The Circuit Court Did Not Err in Declining to Modify Child Support, Having Found No Material Change in Circumstances.

Mr. Williams primarily contends that the circuit court erred by not re-calculating child support pursuant to the worksheet that was submitted subsequent to the trial.[6] However, by focusing on the circuit court's treatment of the worksheet he submitted, Mr. Williams overlooks a critical threshold fact: the circuit court found that there was no change in material circumstances meriting a modification of child support. Absent a "material change in circumstances," a circuit court may not modify a child support

[6] Mr. Williams's brief contends that it is indiscernible from the record whether the circuit court applied the guidelines when determining child support: "[A]bsent from the record are written findings concerning the applicability of the Guidelines, the amount of child support that would have been required under the guidelines, how the order varies from the guidelines, and any reasons for departing from the Guidelines."

award. Md. Code (1999, 2012 Repl. Vol.), Family Law Article ("FL"), § 12-104(a) ("The court may modify a child support award subsequent to the filing of a motion for modification *and upon a showing of a material change of circumstance*.") (Emphasis added); *Horsley v. Radisi*, 132 Md. App. 1, 21 (2000) ("Once the support award is established, the trial court may only modify child support payments if there is an affirmative showing of a material change in circumstances in the needs of the children or the parents' ability to provide support."). As such, Mr. Williams's entire argument concerning child support only has merit if the circuit court's finding of "no change" in material circumstances was clearly erroneous.

Although the particular manner in which the child support issue was handled in the circuit court may have been less than ideal,[7] there was competent evidence before the

[7] As mentioned earlier, Mr. Williams did not expressly raise the issue of child support at trial until after the circuit court announced its decisions regarding the divorce, contempt, and custody. As the circuit court judge explained to Mr. Williams's counsel at that time: "the record is closed at this point." Had the circuit court simply left the matter there, at that stage in the proceedings, it would have been well within bounds denying a request to modify child support.

Nevertheless, after Mr. Williams belatedly raised the matter, the circuit court stated that it would "reserve" on the issue of child support. At the subsequent April 2018 status hearing, when Mr. Williams's counsel repeatedly noted that he had submitted a child support worksheet which, utilizing the Maryland Child Support Calculator, purportedly showed that Mr. Williams's child support payments should be reduced to $665 per month, the circuit court stuck with the $1,100 figure.

Had the circuit court otherwise found a material change in circumstances that merited modifying child support, it would have constituted error to simply disregard the guidelines when determining a modified award (*i.e.*, as the circuit court put it, "regardless of what the guidelines may say"). *See* FL 12-202(a)(2)(v) ("If the court determines that the application of the guidelines would be unjust or inappropriate in a particular case [to

(Continued…)

circuit court to support a conclusion that there had been no material change in the needs of the children, or in Mr. and Ms. Williams's ability to provide support. *Fuge*, 146 Md. App. at 180; *Horsley*, 132 Md. App. at 21. Though Mr. Williams stated that his income had decreased after taking on a new job with the U.S. Army Corps of Engineers, he did not specify precisely how much his income had decreased since November 2015, when the circuit court entered its original child support award.[8] Nor did Mr. Williams argue that he would no longer be able to provide support to the children. For example, while Mr. Williams's supplemental complaint stated that he had taken on a reduced income "in order to transition into [] this professional career path" with the Corps, the complaint simultaneously argued that he should be awarded custody because "said employment [*i.e.*, with the Corps] provides [Mr. Williams] a career path in his professional field, offering long term prospects for advancement." Indeed, Mr. Williams could hardly attempt to argue that he was less able to provide support for the children, given that his entire complaint was predicated on the desire to obtain custody of the children.

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modify child support], the court shall make a written finding or specific finding on the record stating the reasons for departing from the guidelines.").

However, as the circuit court explained in its written order denying Mr. Williams's motion to alter or amend the judgment, not only did it consider the child support worksheets, but it found "that insufficient evidence was presented [at trial] to warrant a modification of child support amount." In other words, the circuit court found that there had been no material change in circumstances, precluding a need to turn to the guidelines.

[8] Though the W-2 forms Mr. Williams submitted at trial show that Mr. Williams earned less in 2017 than he did in 2016, upon our review of the record, it does not appear that Mr. Williams's 2017 earnings were demonstrably lower than his *2015* earnings, which were the figures used to calculate the child support awarded in November 2015.

Similarly, although the trial court heard that Ms. Williams had found employment in Michigan, Ms. Williams also testified (through an interpreter) that she received social services in Michigan, including Medicaid for herself and the children. In a similar vein, we note that Mr. Williams's supplemental complaint argued for custody partly on the basis that Ms. Williams "has no job, no employment opportunities, and no permanent residence for herself and the children in Michigan," and during closing statements, Mr. Williams's counsel characterized Ms. Williams as "someone who can't hold down a job . . . she is almost the complete opposite of [] her husband[.]"

Additionally, as mentioned earlier, the circuit court's written order further explained that "neither side can agree on virtually anything regarding child support." Given that "we give due regard to the opportunity of the trial court to judge the credibility of the witnesses[,]" *Ley*, 144 Md. App. at 665, we cannot say based on this record that the circuit court was clearly erroneous if it found Mr. Williams's arguments unpersuasive as to whether there had been a material change in circumstances affecting the children's needs or his ability to provide support.[9] For instance, at trial Mr. Williams had argued that the three minor children were "emaciated" living in Michigan with their mother. And yet, photographs were introduced into evidence which, as the circuit court determined, showed the children looking "quite happy and [] healthy."

[9] Moreover, the circuit court judge was well familiar with the facts and context of the case, having entered the original child support judgment in 2015.

In short, we cannot say that the circuit court was clearly erroneous in finding that there had been no change in material circumstances meriting alteration of child support.

II. Mr. Williams's Argument Concerning His Passport Is Arguably Not Preserved; Nevertheless, the Circuit Court Did Not Exceed Its Authority.

Mr. Williams contends that the circuit court exceeded its authority when it *sua sponte* required Mr. Williams to turn over his passport to counsel during visitations with his children over the next two years. However, given that Mr. Williams did not (1) object to the circuit court's imposition of the requirement during trial, (2) raise the issue during the subsequent status hearing, or (3) raise the issue in his initial motion to alter or amend the judgment, the issue is arguably not preserved for appeal.[10] Md. Rule 8-131(a); *see, e.g., James B. Nutter & Co. v. Black*, 225 Md. App. 1, 26-27 (2015).

In any event, the circuit court did not exceed its authority in imposing such a requirement. *See Cohen v. Cohen*, 162 Md. App. 599, 608 (2005) ("[N]o precedent or statute requires that a condition to child custody or visitation be prayed for by one of the litigants before the court can impose that condition . . . the trial judge has broad discretion as to whether to impose that condition upon a parent's visitation/custody rights."); *Braun*

[10] Mr. Williams raised the passport issue for the first time in his First Amended Motion to Alter or Amend Judgment. Even then, though, Mr. Williams did not frame the issue with any legal argument or citation; the motion's entire treatment of the issue was one sentence, which reads in full: "That neither Plaintiff nor Defendant requested that counsel hold the passport of Plaintiff while the children are in Maryland for each access for the next two years."

The circuit court's written order denying Mr. Williams's post-judgment motions acknowledged that it was responding to the First Amended Motion as well as to the initial motion, but it did not specifically address the passport issue.

v. Headley, 131 Md. App. 588, 607 (2000) ("The Supreme Court has given no indication that the constitutional right to travel should be paramount over the state's interest in preserving the best interests of the children. Indeed, the state's duty to protect the interests of minor children has been recognized by the Supreme Court as 'duty of the highest order.'") (quoting *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984))[11]; *see also Katare v. Katare*, 283 P.3d 546, 549, 553 (Wash. 2012) (Requiring a father's attorney to hold the father's passport during child visitations was valid); *Moody v. Sorokina*, 830 N.Y.S.2d 399, 403 (App. Div. 2007) (". . . [N]or did the court exceed its authority in requiring [ex-wife] to surrender her Ukrainian passport during her periods of visitation with the parties' child[.]"). And given that Mr. Williams's visitations with his children must occur in either Maryland or Michigan—a requirement that Mr. Williams has *not* challenged—it was not particularly onerous to require that he temporarily hand over his passport (to his own lawyer, no less) during certain visits, as a safeguard against any impermissible foreign travel.[12]

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

[11] Needless to say, requiring Mr. Williams to temporarily turn over his passport would not impede his constitutional right to travel within the United States. *See generally Braun*, 131 Md. App. at 598; *Shapiro v. Thompson*, 394 U.S. 618 (1969), *overruled in part, Edelman v. Jordan*, 415 U.S. 651 (1974).

[12] In *Katare*, 283 P.3d at 548 n. 1, the Washington Supreme Court noted that India (the home country of the father in question) was not a signatory to the Hague Convention on the Civil Aspects of International Parental Abduction. We add that neither is Rwanda. *See* https://www.hcch.net/en/instruments/conventions/status-table/?cid=24.