

Circuit Court for Baltimore County
Case No. 03-C-19-000432

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 603

September Term, 2023

EXAU GUEVARA IGLESIAS

v.

YANCY F. CASTRO DE GUEVARA

Graeff,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, Joseph M., J.

Filed: December 18, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal concerns a circuit court order directing the Appellant, Exau Guevara Iglesias, to pay child support to Appellee, Yancy Castro De Guevara. The parties appeared for a hearing before a magistrate, who then filed his findings and recommendations along with a proposed order. The magistrate’s report found that the Appellant voluntarily impoverished himself, and imputed income to him based on an analysis of his previous annual income compared to the annual income based upon the minimum wage. The proposed order used the Appellant’s imputed income to calculate and award both monthly child support and any arrearages. This order was then adopted and signed by a circuit court judge.

The Appellant filed a pro se informal brief that raised two issues on appeal. The Appellee did not file a brief. We have rephrased the two issues as follows:¹

1. Did the circuit court improperly calculate child support by imputing income to the Appellant?
2. Should the circuit court have also imputed income to the Appellee?

For the reasons set forth below, we affirm the judgment of the Circuit Court for Baltimore County.

FACTS AND PROCEDURAL HISTORY

The parties married in April 2008 and have three children together. On April 9, 2019, Appellee filed a Complaint for Absolute Divorce in the Circuit Court for Baltimore

¹ The Appellant’s informal brief states the two issues as follows: (1) “[The] Circuit Court improperly calculated child support”; and (2) “The Circuit Court unfairly imputed income only to the Appellant and should have imputed income to both parties.”

County. The court entered a Judgment of Absolute Divorce in December 2022, which granted Appellee primary physical custody and reserved child support for a future hearing.

Both parties appeared with counsel before a magistrate for a merits hearing regarding child support on April 21, 2023. Both parties testified, were subject to cross-examination, and entered exhibits during the proceeding.

The Parties' Testimony

The Appellee has four children, three with Appellant, ranging from two to 10-years-old. She testified that since 2020 she has worked 25 hours a week at Sonic and makes about \$15 per hour. She said she has discussed working more hours with her boss, but he cannot give her more hours to work. Appellee pays her mother to watch her two-year-old child² when she is at work, and all the children during summer vacation. However, she testified that she cannot afford to pay her mother to watch all four children while she is at work. Therefore, Appellee testified, she is unable to work 40 hours a week because she has no one to take the children to and from school or to help with after-school care.

Appellant testified that he works 20 hours a week at a liquor store and that his current income is \$1,470 per month. He previously worked at a restaurant with paid vacation and holidays, but said he quit³ because he wanted the ability to spend weekends

² The two-year-old is not the Appellant's child.

³ The Appellant went back and forth between saying he quit versus saying he was laid off due to his schedule for child access. He stated he had access through the court from Friday to Wednesday morning one week, and Monday afternoon to Wednesday morning the next week. He testified this schedule was in place from September 2021 until April 2022.

with his children. Since his schedule with the children has changed,⁴ he testified that he has sought additional employment, but he could not accept other jobs because the work hours would conflict with his hours at the liquor store.

On cross-examination, he testified that in 2021 he earned over \$40,000, and in 2022 he earned approximately \$20,000. He denied that he was voluntarily impoverishing himself and stated that he had no intent to quit his job and not pay child support. Both parties testified that they are physically able to work.

The Magistrate's Report

One week after the hearing, the magistrate filed his findings and recommendations. The report summarized the testimony given by both parties, and then stated the applicable law and the magistrate's findings. The report noted the factors a court should consider when determining if a parent is voluntarily impoverished. These include:

1. his or her current physical condition;
2. his or her respective level of education;
3. the timing of any change in employment or other financial circumstances relative to the divorce proceedings;
4. the relationship between the parties prior to the initiation of divorce proceedings;
5. his or her efforts to find and retain employment;
6. his or her efforts to secure retraining if that is needed;
7. whether he or she has ever withheld support;
8. his or her past work history;
9. the area in which the parties live and the status of the job market there; and
10. any other considerations presented by either party.

John O. v. Jane O., 90 Md. App. 406, 422 (1992).

⁴ At the time of the hearing, he stated that he did not have the children overnight.

The magistrate calculated Appellee’s income as \$1,679.16 per month and stated that her “explanation regarding her care of the minor children [is] a reasonable explanation for why she has not sought other employment.” The magistrate did not find that she voluntarily impoverished herself.

Next, the report restated Appellant’s testimony that his income was approximately \$20,000 in 2022 even though it was undisputed that the Appellant previously earned approximately \$40,000 per year. The report noted that the Appellant has “no physical impediments preventing him from working,” and that “[i]n the past five days, he only worked two of the five days” in the evenings and does not currently have the minor children.

The report stated that other than the Judgment of Absolute Divorce, which granted the Appellant overnight access starting in June 2023, there was no agreement in place that granted Appellant overnight access with the children. The court found that even with the arrangement set to take effect in June 2023, the Appellant “should be able to work full-time in a restaurant.”

Finally, after considering the factors outlined in *John O.*, the magistrate found that the first, third, fifth, sixth, and ninth factors weighed heavily against the Appellant and that he voluntarily impoverished himself. The magistrate then explained how he calculated the Appellant’s income for child support purposes, stating:

The Court will use \$40,602.00 as [Appellant’s] income for 2021 and years prior, which equates to \$3,383.50 gross monthly income. The Court will use minimum wage for years beyond 2021. In 2022, minimum wage was \$12.50 per hour, which equates to \$2,166.66 gross monthly income. In 2023,

minimum wage is \$13.25 per hour, which equates to \$2,296.66 gross monthly income.

After accounting for how much Appellant has paid in child support payments versus what he should have paid, the magistrate determined that the child support arrearage should be set at \$25,000 and, as of January 1, 2023, monthly child support should be \$707. The report then set forth the magistrate's recommendations in the form of an order, which stated:

Based on the testimony of the parties, the Findings, and the Child Support Guidelines attached hereto, the Court makes the following Recommendations:

The Court recommends that [Appellant] pay [Appellee] child support in the following amounts:

1. \$834.00 for the support and maintenance of the minor children of the parties . . . for the time period from filing of the [Appellee's] Complaint for Absolute Divorce on April 9, 2019 until October 31, 2019 . . . ;
2. \$978.00 for the time period from November 1, 2019 until December 31, 2021, for the minor children of the parties . . . ;
3. \$667.00 for the time period of January 1, 2022 until December 31, 2022 for the minor children of the parties . . . ;
4. \$707.00 from January 1, 2023, for the minor children of the parties

The Court recommends that [Appellant] pay an additional \$143.00 per month, for a total of \$850.00 per month, starting June 1, 2023, with arrears to be set at \$25,000 as of said date.

No exceptions were filed to the magistrate's report. The circuit court judge entered the order on May 16, 2023, which stated that the court read and considered the magistrate's findings and recommendations, and that no exceptions were filed. The court then

incorporated the magistrate’s recommendations, stated above, into the order. This appeal followed.

DISCUSSION

Both issues on appeal challenge factual findings by the magistrate, specifically whether the court properly calculated child support and imputed income. However, the Appellant failed to file any exceptions to the magistrate’s report. This is fatal to his appeal.

Maryland Rule 9-208(f) informs our analysis in this case. That subsection states:

Within ten days after recommendations are placed on the record or served . . . a party may file exceptions with the clerk Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

Md. Rule 9-208(f). Since the Appellant did not file any exceptions to the magistrate’s report on these issues, he cannot raise them now on appeal.

Additionally, when reviewing a magistrate’s report, “both a trial court and an appellate court defer to the [magistrate’s] first-level findings . . . unless they are clearly erroneous.” *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014) (citing *In re Priscilla B.*, 214 Md. App. 600, 623–24 (2013)). Even if we found, pursuant to Rule 9-208(f), that “justice require[d]” us to consider these issues on appeal, we must afford great deference to the fact-finding of the magistrate. *In re Priscilla B.*, 214 Md. App. at 623. Based on the thorough report submitted to the Circuit Court, it is clear that the magistrate considered all of the testimony presented as well as the exhibits entered during the hearing. Based upon Maryland statutes and caselaw concerning these two issues, the magistrate’s findings were

not clearly erroneous. Therefore, we affirm the judgment of the Circuit Court for Baltimore County.

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