

Circuit Court for Anne Arundel County
Case No. C-02-FM-18-003681

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 655 and 1520

September Term, 2021

PAUL V. BENNETT

v.

KAREN M. BENNETT

Wells, C.J.
Leahy,
Shaw,

JJ.

Opinion by Wells, C.J.

Filed: May 31, 2022

*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.

Paul Bennett (“Husband”) and Karen Bennett (“Wife”) were divorced by way of judgment entered in the Circuit Court for Anne Arundel County. Prior to the divorce, the parties executed a settlement agreement in which Husband agreed to pay alimony, attorney’s fees, and other expenses to Wife. The settlement agreement was incorporated, but not merged, into the divorce judgment.

Sometime later, Wife filed a petition for contempt alleging that Husband had failed to make the agreed-upon payments. Shortly thereafter, Husband filed a motion to modify alimony. Following a hearing, the court denied Husband’s motion and granted, in part, Wife’s petition for contempt. The court ordered Husband to pay alimony arrearages, attorney’s fees, and other expenses to Wife.

Wife thereafter filed a motion to reduce the attorney’s fees and other expenses to judgment. The trial court granted that motion and ordered that a judgment be entered against Husband for that amount.

After Husband filed separate appeals of the trial court’s orders, we consolidated those appeals. In this consolidated appeal, Husband presents five questions, which we have rephrased and combined into four questions for clarity. They are:

1. Did the trial court err in refusing to consider Wife’s spending habits and financial circumstances in ruling on Husband’s motion to modify alimony?
2. Did the trial court err in denying Husband’s motion to modify alimony?
3. Did the trial court err in calculating the amount Husband owed in alimony arrearages, attorney’s fees, and other expenses?

4. Did the trial court err in finding Husband in contempt and in granting Wife’s motion to reduce the attorney’s fees and other expenses to judgment?

For reasons to follow, we hold that the trial court did not err. We therefore affirm the judgments of the circuit court.

BACKGROUND

Husband and Wife were married in 1986. In 2018, Husband filed for divorce.

Term Sheet and Divorce Judgment

On July 5, 2018, the parties executed a “Term Sheet” as part of the divorce. Per that document, Husband agreed to pay \$6,000.00 per month to Wife in alimony from July 2018 to December 2019. Husband would then pay \$8,000.00 per month until June 2023, at which point he would pay \$9,750.00 per month indefinitely. Husband also agreed to make a one-time payment of \$15,000.00 to Wife for attorney’s fees. That payment was due on December 31, 2018.

The Term Sheet also included terms related to the marital home and the parties’ debt obligations. Regarding the marital home, the parties’ agreed that Wife would vacate the home by July 20, 2018, and that the home would be immediately listed for sale. The parties agreed that, upon Wife’s move, Husband would pay the mortgage and would “assume any and all responsibility for the house and its contents and will keep [it] in good condition so long as it is listed for sale.” Regarding their debt, the parties acknowledged that there existed various income tax debts, some of which operated as liens on the marital home and some of which were in the parties’ individual names. The parties agreed that each would

be responsible for his or her own individual tax liabilities. The parties agreed that the liens on the marital home would be satisfied upon the sale of the home. The parties agreed that, if the proceeds from the sale of the home were not sufficient to satisfy the lien, then Husband would be solely responsible for paying the remaining amount owed.

On December 15, 2018, the circuit court entered judgment granting the parties an absolute divorce. The parties' Term Sheet was incorporated, but not merged, into that judgment.

Wife's Petition for Contempt

On December 27, 2019, Wife filed a petition for contempt alleging that Husband had failed to pay the full amount of alimony. Wife also alleged that Husband had failed to pay the attorney's fees and various other expenses, as set forth in the Term Sheet.

Husband's Motion for Modification of Alimony

On April 1, 2020, Husband filed a motion for modification of alimony. Husband claimed that he had suffered a significant decrease in income and had incurred various debt obligations since the divorce. Husband claimed that his financial circumstances "made it impossible for him to pay the current alimony amount each month." Husband requested that his alimony obligation be reduced.

Hearing on Contempt Petition and Motion for Modification of Alimony

On April 6, 2021, a hearing was held on Wife's contempt petition and Husband's request for modification. At that hearing, Husband, a practicing attorney, testified that he worked as a partner in a law practice. Husband testified that, when he entered into the Term

Sheet in 2018, he was “making a good income” but that, shortly thereafter, he “began to experience a drop in income.” Husband also testified that his income had “almost always fluctuated month to month, year to year” and that he “might make a very small amount” one month and then he “might make a very large amount” the next month.

Husband testified that his yearly income was \$325,000.00 in 2017, \$370,000.00 in 2018, \$316,000.00 in 2019, and \$297,000.00 in 2020. In support of those figures, Husband introduced his income tax returns for those years. According to those tax returns, Husband’s gross income was \$325,000.00 in 2017, \$370,897.00 in 2018, \$317,139.00 in 2019, and \$311,612.00 in 2020. Husband testified that he had only earned \$35,000.00 in the first quarter of 2021 and that, consequently, he was expected to earn only \$140,000.00 that year.

Husband testified that, since the divorce, he had paid Wife \$15,000.00 for attorney’s fees, \$26,011.46 for additional expenses, and \$176,754.78 for alimony. In support, Husband introduced a spreadsheet that he had created reflecting those payments. Husband also asked the trial court to take judicial notice of the parties’ amended financial statements, and the court agreed.

Regarding the marital home, Husband testified that the home had remained on the market for approximately 18 months following the divorce. Husband testified that, during that time, he had to pay the mortgage. Husband testified that the house eventually sold for \$90,000.00 less than the asking price. Husband stated that, when the house was sold, there

was a deficiency in the amount owed, so he had to execute a promissory note with the builder to pay off the balance.

Regarding the tax debt, Husband testified that he had been unable pay off the debt. Husband stated that he had since accrued additional tax debt.

On cross-examination, Husband testified that, after the divorce, he travelled to Hawaii approximately eight times, sometimes spending several months in Hawaii in one trip, and that he had since moved to Hawaii for non-business-related reasons. Husband was also confronted with his bank statements, which showed that, since the divorce, he had vacationed in various other places, made significant cash withdrawals, incurred significant expenses, and bought an engagement ring and other gifts for his current fiancée.

Wife testified regarding Husband’s obligations under the Term Sheet. In so doing, Wife provided documentation showing that, per the Term Sheet, Husband should have paid her \$6,000.00 per month in alimony from July 2019 through December 2019 and \$8,000.00 per month from January 2020 through the date of trial. Wife’s documentation showed that Husband also should have paid \$15,000.00 in attorney’s fees and \$2,617 for a 2018 tax obligation that she had incurred on his behalf. Wife then testified and provided documentation showing that, as of the date of the hearing, Husband had paid her \$157,524.43 in alimony and \$6,183.50 in “miscellaneous expenses.”

As to her financial situation, Wife testified that she was using the alimony for her daughter’s college tuition. Wife testified that she currently lived with her parents and that she owed them \$58,593.00 for money they had loaned to her since the divorce that she had

used for moving expenses, attorneys’ fees, and other expenses. On cross-examination, Wife testified about her spending habits.

At the conclusion of the hearing, the trial court asked Husband and Wife to each submit a written “proposed findings of fact and conclusions of law.” The court then held the matter under advisement and ordered the parties to return to court at a later date so that the court could put its findings on the record.

Husband thereafter filed his proposed findings of fact and conclusions of law for the trial court’s consideration. In it, Husband argued that his alimony should be reduced because he had demonstrated that, since the divorce, he had suffered a “significant drop in income” and had incurred “unanticipated expenses related to the marital home.” Husband also argued that, when considering the parties’ financial statements and Wife’s spending habits, it was evident that Husband was “in worse economic condition” than Wife and that, as a result, his alimony should be reduced.

Trial Court’s Findings and Order

On June 9, 2021, the parties returned to court, and the trial court placed its findings on the record. First, the court found that Husband had failed to show that there had been a material change in circumstances to warrant a modification of his alimony obligation. The court found that Husband had not shown a significant drop in his yearly income, as evidenced by his 2017-, 2019-, and 2020-income tax returns, which showed that Husband had earned \$325,000.00, \$317,139.00, and \$311,612.00, respectively. While recognizing Husband’s claim that he had earned only \$35,000.00 through the first three months of 2021,

the court also noted Husband’s testimony regarding fluctuations in his salary. The court concluded that the decrease in Husband’s 2021 income was likely temporary and did not justify a change in his alimony obligation. The court also noted that, although Husband’s move to Hawaii may have affected his income, that move “was done purely for a personal desire and not for a business necessity.”¹

The trial court also discussed Husband’s overall financial circumstances since the divorce. The court found that Husband had “an issue managing his money and overspending rather than him not having enough money to pay his alimony obligation.” The court noted Husband’s eight trips to Hawaii, his eventual relocation to Hawaii, his substantial cash withdrawals, and his substantial spending on dining out, entertainment, and gifts for his fiancée.

The trial court then discussed the sale of the marital home and Husband’s tax obligations. The court found that neither circumstance justified a change in Husband’s alimony amount. The court found that both obligations were expressly included in the Term Sheet and that, as a result, neither could be considered a material change. The court also found that Husband had failed to meet his burden of showing that the extended time it took to sell the marital home, and the expenses incurred as a result, constituted a material change.

¹ Husband argues that the trial court relied on “speculation” in determining that any reduction in his income since moving to Hawaii was voluntary. Husband is wrong. Husband testified that his move to Hawaii was a personal decision. Thus, the court had an evidentiary basis for concluding that, to the extent that Husband’s move to Hawaii affected his salary, that effect could be discounted because Husband’s decision to move was voluntarily.

The trial court also considered Wife’s financial circumstances. The court noted that Wife had been employed as a teacher for the last 17 years. The court noted that, when the Term Sheet was executed, Husband “made no complaint about [Wife’s] income.” As to Wife’s current situation, the court found that, according to her financial statement, Wife had “a small excess of \$723 per month.” The court found that the agreed-upon alimony amount met Wife’s financial needs. The court concluded that there were “no new circumstances of [Wife’s] financial situation that exists that would amount to a material change that would necessitate a reduction in alimony under these circumstances.”

Lastly, the trial court declined to consider Husband’s argument that his alimony should be modified because he was in a worse financial position than Wife. The court disregarded that argument because Husband “did not assert in his pleading that [Wife’s] spending or her financial circumstances were the basis for his request [to modify] his alimony obligation.” The court then stated that Husband’s motion to modify alimony was denied.

As to Wife’s petition for contempt, the trial court found Husband in contempt. The court found that Husband had failed to pay the full alimony amount and certain other expenses, as set forth in the Term Sheet. The court found that Wife had presented credible evidence establishing that Husband had paid a total of \$165,024.20 since the divorce. The court rejected Husband’s claim that he had paid a larger amount, finding that “he did not provide credible documentation to support his claims.” After noting that Husband should have paid \$236,000.00 in alimony from July 2018 to April 2021, the court found that

Husband had an outstanding obligation of \$70,975.80. The court found that Husband also owed Wife \$15,000.00 for attorney’s fees and \$2,614.00 for the 2018 tax obligation, as set forth in the Term Sheet.

On July 2, 2021, the trial court entered an order denying Husband’s motion to modify alimony and granting, in part, Wife’s petition for contempt.² The court ordered Husband to pay to Wife \$70,975.80 for the alimony arrearages, \$15,000.00 for the attorney’s fees, and \$2,614.00 for the 2018 tax obligation. Husband timely appealed.

Wife’s Motion to Reduce Attorney’s Fees and Other Expenses to Judgment

On October 1, 2021, Wife filed a motion alleging that Husband had failed to pay the \$15,000.00 for the attorney’s fees and the \$2,614.00 for the 2018 tax obligation. Wife asked the trial court enter judgment against Husband in the amount of \$17,614.00. On November 9, 2021, the court granted Wife’s motion and entered judgment against Husband for that amount. Husband timely appealed.

Husband’s two appeals were later consolidated into the instant appeal. Additional facts will be supplied below.

STANDARD OF REVIEW

“When reviewing an action tried without a jury, we review the judgment of the trial court ‘on both the law and evidence.’” *Baltimore Police Department v. Brooks*, 247 Md. App. 193, 205 (2020) (citing *Banks v. Pusey*, 393 Md. 688, 697 (2006)). We “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will

² The court denied some of Wife’s allegations, none of which are relevant here.

give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). Issues of law, however, are reviewed *de novo*. *Brooks*, 247 Md. App. at 205.

DISCUSSION

I.

Husband first argues that the trial court erred in refusing to consider Wife’s spending and financial circumstances in ruling on his motion for modification of alimony. Husband contends that the court’s decision, which was based on his failure to plead, was arbitrary and capricious. He asserts that the court “used the pleadings not as a basis for fair inquiry as to the merits of the case, but instead as a trap.”

Wife argues that the trial court’s decision was proper because Husband did not assert in his motion for modification that those issues were a basis for modifying his alimony obligation. Wife contends, in the alternative, that Husband’s claim is without merit because the record shows that the court did consider her financial circumstances in ruling on Husband’s motion.

We hold that the trial court did not err in refusing to consider Wife’s spending and financial circumstances as a basis for Husband’s request for modification. “A trial court’s authority to act in a case is limited by the issues framed by the pleadings.” *Dietrich v. State*, 235 Md. App. 92, 102 (2017) (citations and quotations omitted). “As a result, a trial court has no authority, discretionary or otherwise, to rule upon a question not raised as an issue by the pleadings[.]” *Id.* (citations and quotations omitted).

Here, Husband did not argue in his pleading that his alimony obligation should be modified because of Wife’s spending and financial circumstances. Rather, Husband’s sole claim was that his own income and financial situation rendered his current alimony obligation unmanageable. Thus, we cannot say that the court erred in refusing to consider that argument.

To the extent that Husband is suggesting that the trial court was somehow required to consider Wife’s financial circumstances before ruling on his motion for modification, he does not cite any authority for that proposition. Nevertheless, that argument is without merit because the court did consider Wife’s financial circumstances in making its decision. During trial, the court heard testimony regarding Wife’s spending habits and general financial circumstances, and the court took judicial notice of Wife’s financial statement. Later, when the court ruled on Husband’s motion, the court prefaced its ruling by stating that it had considered “all the testimony” and “evidence presented.” Then, while issuing its ruling, the court expressly referenced Wife’s financial situation and noted that, according to her financial statement, Wife had “a small excess of \$723 per month.” The court concluded that there were “no new circumstances of [Wife’s] financial situation that exists that would amount to a material change that would necessitate a reduction in alimony under these circumstances.” Accordingly, Husband’s claim that the court failed to consider Wife’s financial circumstances is without merit.

II.

Husband next claims that the trial court erred in denying his motion for modification of alimony. He argues that the evidence clearly demonstrated that he had suffered a significant drop in income since the divorce. He contends that the court erred in finding that his drop in income was only temporary. He also contends that the court erred in failing to consider “unanticipated expenses related to the marital home.”

Wife maintains that the trial court properly denied Husband’s motion for modification. Wife asserts that the court’s decision was based on the evidence and was not an abuse of discretion.

“[I]n reviewing an award of alimony we defer to the findings and judgments of the trial court.” *Ridgeway v. Ridgeway*, 171 Md. App. 173, 383 (2006) (citations and quotations omitted). “We will not disturb an alimony determination unless the trial court’s judgment is clearly wrong or an arbitrary use of discretion.” *Id.* at 383-84 (citations and quotations omitted).

Modifications of alimony are governed by § 11-107(b) of the Family Law Article of the Maryland Code, which states that, “[s]ubject to § 8-103 of this article and on the petition of either party, the court may modify the amount of alimony awarded as circumstances and justice require.”³ When a party seeks modification of an alimony award,

³ Section 8-103 prohibits a court from modifying a settlement agreement with respect to alimony if the agreement includes “a provision that specifically states that the provisions with respect to alimony or spousal support are not subject to court modification.” Md. Code, Family Law § 8-103(c)(2). No such provision was included here.

that party bears the burden of showing that modification is appropriate. *Walter v. Walter*, 181 Md. App. 273, 296 (2008). In other words, “[a] party requesting modification of an alimony award must demonstrate through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification.” *Langston v. Langston*, 366 Md. 490, 516 (2001), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516 (2005).

“A substantial change in one party’s financial circumstances can, under appropriate circumstances, be legally sufficient to justify a change in spousal support.” *Campitelli v. Johnston*, 134 Md. App. 689, 699 (2000). Whether a particular change in a party’s financial circumstances is sufficient to justify a change in spousal support “is a matter to be determined in the sound discretion of [the court] for which there are not fixed formulas or statutory mandate.” *Id.* (citations and quotations omitted).

We hold that the trial court did not err in denying Husband’s motion for modification. In making that decision, the court found that Husband had failed to establish that he had suffered a significant drop in income since the divorce. That finding was supported by Husband’s tax returns, which showed that he had earned a steady income of \$325,000.00 in 2017, \$370,897.00 in 2018, \$317,139.00 in 2019, and \$311,612.00 in 2020.⁴ Although Husband claimed that he had earned only \$35,000.00 through the first

⁴ Husband claims that the trial court misread his 2020 tax return and that he only earned \$297,000.00 that year. We disagree, as Husband’s 2020 tax return states that his gross income that year was \$311,612.00. Nevertheless, we are not persuaded that the slight difference between the court’s finding (\$311,612.00) and Husband’s claim (\$297,000.00) is in any way consequential.

quarter of 2021 and was therefore projected to make only \$140,000.00 that year, the court found that any drop in income in 2021 was likely temporary. That finding was supported by Husband’s own testimony, in which he stated that his salary “almost always fluctuated month to month, year to year” and that he “might make a very small amount” one month and then he “might make a very large amount” the next month. That finding was further supported by the fact that, despite the alleged “fluctuations” in his salary, Husband had earned approximately \$300,000.00 or more in each of the previous four years. It was reasonable, therefore, for the court to assume that Husband’s 2021 salary would skew upward as the year went on.

The trial court, in denying Husband’s motion, also found that Husband’s claims regarding the expenses he incurred from the sale of the marital home and his tax obligations were insufficient to justify a change in his alimony. The court correctly noted that both obligations were expressly included in the Term Sheet and thus were not a material change in circumstances. And, despite Husband’s claims to the contrary, the court did consider Husband’s allegation that the sale the marital home had resulted in “unanticipated expenses.” The court rejected that argument and found that Husband had “an issue managing his money and overspending rather than him not having enough money to pay his alimony obligation.” That finding was supported by the fact that, since the divorce, Husband took eight trips to Hawaii, eventually relocated to Hawaii, made substantial cash withdrawals, and incurred substantial expenses from dining out, entertainment, and gifts for his fiancée.

Given those circumstances, we hold that the trial court did not abuse its discretion in denying Husband’s motion for modification of alimony. The record makes plain that Husband failed to demonstrate that the facts and circumstances of the case justified the requested modification. Nothing about the court’s decision could be considered clearly wrong or an arbitrary use of discretion.

III.

Husband next claims that the trial court incorrectly calculated the amount he owed to Wife in alimony arrearages and attorney’s fees. Husband contends that he presented evidence showing that he made significantly more contributions than he was given credit for by the court. Wife counters that, based on the evidence she presented at trial, the court’s calculations were proper.

As noted, we review the trial court’s factual findings under the clearly erroneous standard. Md. Rule 8-131(c). “The clearly-erroneous standard is a deferential one, giving great weight to the trial court’s findings.” *Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (citations and quotations omitted). “Under the clearly erroneous standard, we look at the record in the light most favorable to the prevailing party, and if there is any competent, material evidence to support the [trial] court’s findings of fact, we cannot hold that those findings are clearly erroneous.” *Fitzzaland v. Zahn*, 218 Md. App. 312, 322 (2014). Moreover, “[w]hen scrutinizing factual findings, this Court must give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Gizzo*, 245 Md. App. at 200 (citations and quotations omitted).

We hold that the trial court’s findings as to the amounts owed by Husband were not clearly erroneous. According to the parties’ Term Sheet, which was admitted into evidence, Husband should have paid Wife a total of \$236,000.00 in alimony from July 2018 through April 2021, the date of the trial. Husband also was required to pay Wife \$15,000.00 in attorney’s fees and an undisclosed sum in outstanding tax obligations, which Wife testified amounted to \$2,614.00. Wife presented evidence in the form of her testimony and supporting documents showing that, up through the date of trial, Husband had paid a total of \$165,024.20. After crediting Wife’s evidence, the court found that Husband had an outstanding alimony obligation of \$70,975.80. The court found that Husband also still owed Wife \$15,000.00 for the attorney’s fees and \$2,614.00 for the 2018 tax obligation. Those findings were clearly supported by the evidence.

To be sure, Husband presented evidence showing that he paid a larger amount to Wife. But the court expressly rejected that claim and found that Husband had not provided “credible documentation to support his claims.” Thus, it is evident that the court accepted Wife’s evidence and rejected Husband’s. The court did not err in making that credibility determination.

IV.

Husband next claims that the trial court erred in finding him in contempt and in subsequently granting Wife’s motion to reduce the \$15,000.00 in attorney’s fees and the \$2,614.00 in tax obligations to a judgment. Those claims are based entirely on the allegations of error raised by Husband in Parts I, II, and III. Husband asserts that, had the

court not made the aforementioned errors, it would have had no basis to find him in contempt or to grant Wife’s motion to reduce the attorney’s fees and tax obligation to a judgment.

For reasons previously discussed, Husband’s claims of error in Parts I, II, and III are without merit. We hold, therefore, that the trial court did not err in finding Husband in contempt or in granting Wife’s motion for judgment.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; APPELLANT TO PAY THE
COSTS.**