Circuit Court for Anne Arundel County
Case No. 02-C-01-075515

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 674

September Term, 2019

TARIQ LIYUEN BELT

v.

LANITRA CHAMBERS, ET AL.

Wells, C.J.
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 23, 2022

Appellant Tariq Liyuen Belt ("Father") and appellee Lanitra Chambers ("Mother") are the parents of one child ("Daughter"), who was born in 1996. Father appeals from an order of the Circuit Court for Anne Arundel County denying his motion to modify his child support to eliminate arrearages that accrued during his incarceration.

In June 2005, shortly before he was convicted, Father ceased making child support payments. Unpaid child support obligations accrued from that time until December 2014, when Daughter reached her 18th birthday and the order for child support terminated by operation of law.[1] Father was released from prison in September 2017. At the time of his release, Father owed $70,148.61 in child support arrears.

In 2018, Father filed a pro se motion to modify child support in which he requested that the court either reduce or void the child support arrearages that had accrued while he was incarcerated and had no source of income. The court denied the motion. Father noted this timely appeal.

While Father's appeal was pending, this Court issued its decision in *Damon v. Robles*, holding that section 12-104.1 of the Family Law Article ("FL"), Maryland Code (2012 Repl. Vol),[2] effective October 1, 2012, operated to automatically prevent arrearages

[1] The statutory provision in effect in 2014 provided that an order for child support terminates upon the "first to occur of the following events: (i) the child becomes an adult; (ii) the child dies; (iii) the child marries; or (iv) the child becomes self-supporting." Maryland Code (2012 Repl. Vol.), Family Law Article, § 5-1032(b). *See also* Maryland Code (2014 Repl. Vol.), General Provisions Article, § 1-103(a) ("'Adult' means an individual at least 18 years old.")

[2] Because the events pertinent to the issue on appeal occurred prior to the publication of the 2019 Replacement Volume of the Family Law Article, all statutory references in this opinion are to the 2012 Replacement Volume.

from accruing during incarceration, and did not require a motion for modification of child support due to a lack of income. 245 Md. App. 233, 247 (2020). We also clarified that there is "a vested right" in child support payments between the time of the support order and the effective date of the statute of October 1, 2012 and that "the right to [those] payments could not be taken away." *Id.* Accordingly, appellee, Anne Arundel County Office of Child Support (the "Office"), sent a letter to Father advising him that, in accordance with this Court's opinion in *Damon*, child support arrears that had accrued in this case after October 1, 2012 were administratively suspended, and Father's arrears were correspondingly reduced.

For the reasons explained below, we reverse the circuit court's judgment denying Father's motion for modification because, as both parties agree, he was entitled to the modification of his child support arrears under FL § 12-104.1. We agree with the court's determination, however, that he is not entitled to a retroactive reduction in the amount of child support that accrued prior to October 1, 2012. Accordingly, although we reverse the judgment of the circuit court, the reduction of the child support arrears to which Father is entitled was rendered moot when the Office reduced the amount of child support accrued after October 1, 2012. We remand to the circuit court for entry of an order reflecting the modification to which Father was entitled.

FACTUAL AND PROCEDURAL BACKGROUND

Mother filed a complaint for custody and child support against Father in 2001. On April 5, 2002, the court ordered, among other things, that Mother have custody of Daughter and that Father pay *pendente lite* child support to Mother in the amount of $130.00 per

week, effective March 1, 2002. A few weeks later, the court held a hearing to set child support at which Mother appeared, but Father failed to appear. On May 29, 2002, the court entered an order directing Father to "continue to pay to [Mother] the sum of $130 per week as child support" through the Office,[3] and Mother to "promptly apply" to the Office "with regard to further establishment and collection of support for the minor child." The case then was administratively closed.

In August 2003, Father was arrested on federal charges. He was convicted in December 2005 and sentenced to 18 years and six months in prison. In June 2005, shortly before he was convicted, Father ceased making child support payments. As previously noted, Father's unpaid child support obligations accrued from that time until December 2014, when Daughter reached her 18th birthday, and the order for child support terminated by operation of law.

Motion to Modify

On June 4, 2018, after Father was released from prison, he filed a motion to modify child support to either reduce or eliminate the child support arrearages that accrued during his incarceration based, in part, on his inability to work. Father also requested credit for payments made directly to Mother and Daughter. Father filed an amended motion to modify support, which, while largely identical to Father's initial motion, also attached a

[3] The order states that payments shall be made through the "Domestic Relations Division of the Circuit Court for Anne Arundel County" but, as noted in the brief filed by the Office, the order contains the address and telephone number of the Office.

letter to his bank requesting a refund for certain fees that he incurred when his account was garnished.[4]

Modification Hearing

A hearing on Father's motion to modify child support was held before a magistrate on March 14, 2019. Father and Mother appeared as self-represented litigants. Counsel for the Office was present and participated in the hearing.

Father testified that he was arrested in August 2003. While awaiting trial, Father was first "sent to a halfway house" and was later placed on house arrest. During that time, he was not permitted to work. He was convicted, and, in December 2005, he was sentenced to a term of 18 years and six months.

Father claimed that, at some point in either 2006 or 2008, he filed a motion or written request with the court asking that child support be modified due to his incarceration. Father did not have a copy of the document that he claimed to have filed, and the magistrate found no such request in the court file.

Father testified that, while he was incarcerated, he sent money directly to Mother and Daughter. Father submitted documentation showing that, from October 2015 to January 2017, he electronically transferred a total of $3,675 to Mother and Daughter. Father stated that his family had also sent money to Mother, but he produced no evidence regarding such payments.

[4] On October 23, 2018, the court entered an order of default due to Mother's purported failure to answer either Father's motion or amended motion to modify. On October 30, 2019, Mother moved to vacate the order of default on the ground that she was never served. The court subsequently vacated the order of default on November 15, 2018.

Mother and Daughter testified that all but $1,200 of the money that Father sent while he was in prison was either used to purchase clothing and other items for Father, at Father's request, or was transferred to a third party, at Father's direction, "in connection" with Father's "business" as a "jailhouse lawyer." Mother denied receiving any money from Father's family.

Sharon Roussillon, a child support case specialist, testified that the Office was notified in January 2006 that Father was incarcerated. At that time, the Office "entered an administrative close code" which "stops any notifications to the non-custodial parent regarding child support," but does not stop child support from accruing. She explained that Father's child support obligations continued to accrue monthly until Daughter's 18th birthday.

Ms. Roussillon testified that Father notified the Office of his release on September 27, 2017, and the case was returned to active status. She explained that Father was under an order to pay $32.50 per week toward arrearages and had been making payments on the arrears "steadily" since August 2018. She calculated that, at the time of the modification hearing, Father owed $68,749.42 in child support arrearages.

After Ms. Roussillon's testimony, the magistrate heard closing argument. Father argued that his child support obligation should not have continued to accrue after the Office became aware of his incarceration. Counsel for the Office argued that Father was not entitled to relief because he did not file a motion for modification until July 2018, by which time the child support order had terminated, and the law did not permit retroactive modification prior to the filing of the motion. In addition, counsel argued that FL § 12-

104.1 was not applicable to Father's case because the order for child support was issued prior to the effective date of the statute. The magistrate held the matter under advisement.

Magistrate's Findings and Recommendations

On March 25, 2019, the magistrate issued a written report and recommendation. The magistrate concluded that FL § 12-104.1 was applicable to an order for child support entered prior to the effective date of the statute, and, therefore, as of October 1, 2012, no child support was due in Father's case, and arrearages did not continue to accrue. The magistrate further concluded that the statute of limitations barred recovery of any outstanding payments that became due more than 12 years prior to the date of the modification hearing. Finally, the magistrate found that Father was entitled to a credit of $1,200 for payments made directly to Mother and Daughter while he was incarcerated.

The magistrate summarized his findings and recommendation, stating:

> [Father's] child support arrearage owed to [Mother] is only for the period from . . . March 14, 2007 through September 30, 2012. During this period and at the rate of $130 per week, [Father] should have paid the sum of $37,848.57 in child support. With [Father] having made payments during this time through [the Office] in the amount of $1,399.29 plus additional payments that total $1,200 directly made to [Mother and Daughter], [Father's] currently outstanding arrearage is $35,249.28 as of the date of the hearing.

The Office and Mother filed exceptions to the magistrate's findings. They averred, among other things, that the magistrate's findings were "clearly erroneous" in that (1) the magistrate "retroactively modified the support order"; (2) FL § 12-104.1 did not apply

retroactively to the 2002 child support order; and (3) the statute of limitations was not a proper basis upon which to modify child support arrearages.[5]

Father excepted to the finding that he did not file a motion to modify prior to July 2018. He claimed that, in correspondence filed with the court on December 23, 2009 but dated December 1, 2009, he "communicated to the court an Application for Modification or cancellation of arrears and accrual of arrears."[6] Father asserted that, therefore, any child support obligation that accrued after December 23, 2009 was subject to modification. Father also excepted to the magistrate's recommendation that he be credited for only $1,200 of the monies he sent directly to Mother and Daughter, on grounds that there was "no evidentiary support to demonstrate" that the rest of the money was spent at Father's direction or on his behalf.

[5] The parties do not address Father's argument before the magistrate that child support arrearages could be reduced by an amount that may be subject to the applicable statute of limitations or, more appropriately, the related doctrine of laches. Accordingly, that issue is not before us. We note, however, that we have recently instructed that "the propriety of applying laches to child support arrearage claims is narrow." *Fludd v. Kirkwood*, 253 Md. App. 329, 265 A.3d 1169, 1180 (2021). In *Fludd*, we explained that "[w]hen determining the appropriateness of applying laches to a child support action, courts must consider the best interest of the child and the parents' continuing duty to 'support' and 'care' for the child." *Id.*, 265 A.3d at 1181. We concluded that "[i]n light of these precepts, and keeping in mind that laches is a defense premised on 'laxness' or 'negligence,' we strain to envision a case, considering the unreasonableness of any delay and accrued prejudice to the parent, in which laches would bar a child support claim." *Id.* (citation omitted).

[6] The correspondence referenced by Father does not include a discernable request for modification of the order for child support. We note that the document contains a handwritten note from the court, dated December 15, 2009, stating "Noted – Ct does not understand what [Father] is talking about."

Court's Ruling

On May 20, 2019, the court held a hearing on the parties' exceptions. Father failed to appear. The record before us does not include a transcript of what took place at the hearing. The hearing sheet reflects that the court dismissed Father's exceptions and rejected the magistrate's report and recommendation. The court signed the hearing sheet "as Order of Court as to [Father's] Exceptions." On June 1, 2019, the court entered an order granting Mother's exceptions, and denying Father's motion to modify child support.[7] Father filed this timely appeal.[8]

Post Appeal History

On April 2, 2020, while this appeal was pending, this Court issued its decision in *Damon v. Robles*, 245 Md. App. 233 (2020). *Damon* addressed, as a matter of first impression, whether FL § 12-104.1 applied retroactively to the child support obligation of an individual who was already incarcerated when the statute took effect. We held that the statute was both procedural and remedial and, therefore, "may be applied retroactively unless it impairs vested or substantive rights." *Id.* at 246-47. More specifically, we concluded that, because the statute "automatically prevents arrears from accruing if a child

[7] The June 1, 2019 order states that Father's exceptions were "denied[,]" rather than "dismissed," as indicated in the hearing sheet that was signed as an order regarding Father's exceptions.

[8] Father's appeal was submitted on brief on April 13, 2022, following a series of delays, including the dismissal of his appeal due to Father's failure to file a civil information report and its reinstatement after it was filed and Father's request for an extension of time. Ultimately, this Court issued a briefing notice on September 22, 2021 and ordered that Father file his brief on or before December 20, 2021. The Office filed its brief on January 13, 2022.

support obligor otherwise meets the statutory eligibility criteria[,]" any payment obligations subsequent to October 1, 2012 automatically ceased and, therefore, application of the statute to child support obligations that became due after that date did not interfere with vested rights. *Id.* at 247.

On July 28, 2021, the Office sent a letter to Father advising that, in accordance with *Damon*, all child support arrears that had accrued after October 1, 2012 were administratively suspended, reducing his arrearage by $15,210, and bringing his new balance to $48,602.33.

STANDARD OF REVIEW

Because this action was tried without a jury, our review is conducted pursuant to Maryland Rule 8-131(c). The Rule provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Md. Rule 8-131(c).

Ordinarily, a decision regarding modification of a child support order is left to the sound discretion of the trial court and will not be disturbed, "unless that discretion was arbitrarily used or the judgment was clearly wrong." *Leineweber v. Leineweber*, 220 Md. App. 50, 61 (2014) (quoting *Ley v. Forman*, 144 Md. App. 658, 665 (2002)). However, where, as in this case, "'the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions

are 'legally correct' under a *de novo* standard of review.'" *Reichert v. Hornbeck*, 210 Md. App. 282, 316 (2013) (quoting *Walker v. Grow*, 170 Md. App. 255, 266 (2006)).

DISCUSSION

Father claims that the court erred in denying his motion for retroactive modification of the child support order to eliminate all arrearages that accrued after the Office was notified of his incarceration.[9] Father avers that it is "patently unjust and unfair for [Father's] support to continue to accrue at a legal set [sic] based on absence from any hearing or presumption of employment that he cannot possibly have any longer while

[9] To the extent that Father also contends that the court erred and/or abused its discretion in not reducing his child support arrearages to credit additional funds that he sent directly to Mother and Daughter during his incarceration, that claim is not properly before us. While Father raised an exception to the magistrate's finding on this issue, he failed to appear at the hearing, and his exceptions were either dismissed or denied. Accordingly, Father's assertion of error concerning the magistrate's findings relating to crediting Father were waived. *In re Levon A.*, 124 Md. App. 103, 125 (1998) (noting that, "even when an exception is noted in writing, waiver may result if that exception is abandoned at the exceptions hearing" (citing *In the Matter of Tyrek S.*, 351 Md. 698, 703, 708 (1998)), *rev'd on other grounds*, 361 Md. 626 (2000)).

In addition to failing to appear at the hearing, Father has not provided the transcript from the exceptions hearing necessary to support any contention that the circuit court erred or abused its discretion. *See* Md. Rule 8-411(a)(2) (requiring appellant to provide this Court with "a transcription of any proceeding relevant to the appeal"). The Maryland Rules delineate an appellant's responsibilities to ensure that the record on appeal contains the "docket entries," "transcript," and "original papers" necessary for this Court to render a decision. Md. Rule 8-413(a) (listing the required contents of the record on appeal); Md. Rule 8-602(c)(4) (granting this Court and the Court of Appeals the discretion to dismiss an appeal when the record does not comply with Rule 8-413). As the appellant, Father bore the burden "to put before this Court every part of the proceedings below which were material to a decision in [their] favor." *Lynch v. R. E. Tull & Sons, Inc.*, 251 Md. 260, 262 (1968). For this additional reason, we must reject any contention that can be gleaned from Father's brief that the court failed to credit additional funds that he sent directly to Mother and Daughter during his incarceration. *See Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993) ("failure to provide the court with a transcript warrants summary rejection of the claim of error").

imprisoned." According to Father, the "case speaks once and for all for the proposition that once the [Office, the circuit court, and Mother] become aware that a party is unable to pay the child support amount due to incarceration that the amount must be reduced and/or that the order must be terminated as inoperable during the period of incarceration."

In response, the Office contends that Father's appeal is partially moot in light of *Damon v. Robles*, 245 Md. App. 233 (2020), and the subsequent recalculation of his child support arrearages consistent with that opinion. Concerning arrearages before October 1, 2012, the effective date of FL § 12-104.1, the Office asserts that the "circuit court properly denied [Father]'s 2018 request to eliminate his child support arrearages retroactively because retroactive modifications are prohibited as a matter of law." According to the Office, Father did not file a request until 2018, four years after his daughter was emancipated. Accordingly, Father's "2018 request to eliminate the arrearage that accrued after his 2003 arrest falls squarely within the prohibition on retroactive child support modification" and the court "properly denied [Father]'s request." Mother did not file a brief.

An order for child support may be modified by the court "only 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." *Payne v. Payne*, 132 Md. App. 432, 442 (2000) (citations omitted); *see also* 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 material change in circumstance."). The court may not, however, "retroactively modify a child support award prior to the date of the filing of the motion for modification." FL § 12-

104(b); *see also Damon*, 245 Md. App. at 240.[10] "The term 'modify' includes a reduction, alteration, or elimination of child support arrearages." *Id*. (citing *Harvey v. Marshall*, 389 Md. 243, 268 (2005)).

In 2012, the General Assembly enacted FL § 12-104.1, which operates to automatically cease accrual of child support obligations of certain incarcerated individuals without the need for a motion. 2012 Md. Laws, ch. 670 (H.B. 651). In pertinent part, the statute provides:

> (b) A child support payment is not past due and arrearages may not accrue during any period when the obligor is incarcerated, and continuing for 60 days after the obligor's release from confinement, if:
>
> (1) the obligor was sentenced to a term of imprisonment of 180 consecutive calendar days or more; consecutive months or more;[11]
>
> (2) the obligor is not on work release and has insufficient resources with which to make payment; and
>
> (3) the obligor did not commit the crime with the intent of being incarcerated or otherwise becoming impoverished.

The intent of the legislation was "to help ex-offenders 'attain[ ] financial stability as soon as possible after release from incarceration' by preventing incarcerated obligors from accruing 'substantial child support arrearages[.]'") *Damon*, 245 Md. App. at 246

[10] FL § 12-104 was enacted in 1988 to comply with requirements to maintain eligibility for federal funding relative to paternity and child support. *See Damon*, 245 Md. App. at 239-40.

[11] At the time it was enacted, FL § 12-104.1 applied to individuals incarcerated for a period of 18 consecutive months or more. In 2020, the statute was amended to decrease the length of the necessary period of incarceration to 180 consecutive calendar days or more. 2020 Md. Laws, ch. 121 (H.B. 234); 2020 Md. Laws, ch. 122 (S.B. 1006).

(quoting Dep't of Legislative Services, *Fiscal and Policy Note*, H.B. 651 at 2). "By changing the law to automatically prevent arrearages from accruing during incarceration, as opposed to requiring a motion for modification of child support due to a lack of income, the legislation provided a remedy to incarcerated obligators who often were unaware of the right/need to file a motion to modify child support while in prison." *Id*. at 247.

The Office concedes, in light of this Court's opinion in *Damon*, that any child support payments that had accrued after October 1, 2012, when FL § 12-104.1 went into effect, were extinguished as a matter of law. The Office has adjusted Father's total arrears accordingly. Consequently, we agree that Father's appeal is partially moot.[12] The issue before us, therefore, is limited to whether the court erred in denying Father's motion to modify the child support order to eliminate arrearages that accrued prior to October 1, 2012.

As the Court of Appeals has explained, FL § 12-104(b) prohibits a court from eliminating child support arrearages that accrued prior to the filing of a motion to modify. *Harvey*, 389 Md. at 272. *Accord Prince George's Cnty. Office of Child Support Enf't ex rel. Polly v. Brown*, 236 Md. App. 626, 636 (2018) (holding that, "[u]nder FL § 12-104(b) and the holding of *Harvey*, the circuit court erred as a matter of law in eliminating [the defendant's] arrearages that he had accumulated prior to [filing] his motion to modify"); s*ee also Damon*, 245 Md. App. at 247 (holding that there is a "vested right in payments

[12] *See Cabrera v. Mercado*, 230 Md. App. 37, 85 (2016) ("An issue is moot 'when there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy.'") (quoting *O'Brien & Gere Eng'rs v. City of Salisbury*, 447 Md. 394, 405 (2016)) (additional citation omitted)).

between the time of the support order and the enactment of [FL § 12-104.1], and in arrears that had accrued before October 1, 2012, when FL § 12-104.1 was enacted, and the right to these payments [can] not be taken away").

Father claims in his brief to have notified the court by 2007-2009 "that he was imprisoned and as such requested that the Child Support amount . . . be lowered to the lowest amount possible permanently for the duration or that the . . . support payments be 'terminated.'" Father has not provided this Court with any document or other evidence that he filed a motion for modification prior to 2018. The record also reflects that Father could not direct either the magistrate or the circuit court to a motion seeking modification of child support prior to 2018. Initially, at the modification hearing, Father asserted that he filed a motion for modification of child support at some time between 2006 and 2008. However, the magistrate noted that he reviewed the record and could not find a request. Father then claimed that he received a letter from the Office notifying him that "the case was closed." The magistrate again could not locate anything supporting Father's claim, and Father conceded that any such notice was "not reflected on the docket." Second, in his exceptions to the magistrate's recommendations, Father referenced correspondence filed on December 23, 2009. This correspondence does not include a discernable request for modification of the order for child support. We also have carefully reviewed the record but find nothing that could be construed as a motion for modification prior to that which Father filed on July 30, 2018.

In sum, we reverse the trial court's denial of Father's motion for modification, but we agree with the court's determination that he is not entitled to a retroactive reduction in

the amount of child support that accrued prior to October 1, 2012. Although we reverse the judgment of the circuit court, the reduction of the child support arrears to which Father is entitled was rendered moot when the Office reduced the amount of child support accrued after October 1, 2012. Accordingly, we remand the case for the court to enter an order reflecting that all child support arrears that had accrued after October 1, 2012 were administratively suspended and have been extinguished as a matter of law under FL § 12-104.1, and reflecting that Father remains liable for all unpaid child support accrued prior to October 1, 2012.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED AND CASE REMANDED FOR ENTRY OF AN ORDER IN ACCORDANCE WITH THIS OPINION; COSTS TO BE PAID BY APPELLEES.