Circuit Court for Frederick County
Case No. 10-C-98-001080

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 762

September Term, 2018

DEMETRIUS GOVOTSOS

v.

JUDITH GOVOTSOS

Leahy,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 2, 2019

When their marriage of 35 years ended in 1998, Appellant Demetrius Govotsos and Appellee Judith Govotsos entered an agreement as to alimony, which the Circuit Court for Frederick County then incorporated into its judgment of absolute divorce. The parties agreed that Demetrius[1] would pay Judith $1,000 per month indefinitely, "modifiable only if Demetrius [] retires or if his income is dramatically reduced involuntarily" and terminable upon the remarriage of Judith or death of either party. Eighteen years later, when both parties were septuagenarians, Demetrius retired and unilaterally stopped paying alimony. Judith asked the circuit court to find Demetrius in contempt, and Demetrius asked the court to modify or terminate the alimony award.

Following an evidentiary hearing during which both parties testified and presented evidence of their financial circumstances, the court issued a memorandum opinion and order denying Demetrius's petition to modify or terminate alimony and finding Demetrius in contempt, ordering him to pay arrears. Specifically, the court found that circumstances and justice did not require a modification in alimony. The court listed several factors as the basis for its order, including the long duration of the parties' marriage, their standard of living during the marriage, the large disparity between their net worth, and the relative lack of change in their financial situations since they agreed that Demetrius would pay $1,000 per month in alimony.

[1] Meaning no disrespect, we refer to the parties by their first names for the sake of clarity.

Demetrius's appeal challenges the circuit court's decision not to modify or terminate alimony. We affirm, perceiving no abuse by the trial court in its application of the relevant factors.

BACKGROUND

On May 28, 1998, after 35 years of marriage, Judith filed for divorce in the Circuit Court for Frederick County. Following protracted litigation, the court entered a judgment of absolute divorce on May 7, 2001. The court incorporated (but did not merge) into its judgment an agreement the parties reached regarding alimony and the distribution of marital property. Pursuant to that agreement, the court's judgment included the following alimony order:

> Demetrius Govotsos shall pay directly to Judith Govotsos as alimony and for her support and maintenance, the sum of One Thousand Dollars ($1000.00) per month through wage withholding. This sum is modifiable only if Demetrius Govotsos retires or if his income is dramatically reduced involuntarily and shall terminate (except as to accrued arrears, if any) upon the first to occur of any of the following events: (1) remarriage of Wife; (2) death of Wife; (3) death of Husband.

Nearly 16 years later, on March 9, 2017, the court reopened the case when Judith filed a petition to find Demetrius in contempt for failing to pay alimony. Judith asserted that Demetrius paid only $462.54 of the $1,000 he owed in alimony for the month of January 2017, and that he failed to pay any alimony since. She asked the court to find Demetrius in contempt, set a purge amount, enter a judgment in her favor, and award her attorney's fees. Attached to Judith's contempt petition she included an affidavit swearing that she had not received alimony from Demetrius since January 13, 2017, when she received only a partial payment.

In a show-cause order entered April 10, 2017, the court ordered Demetrius to appear in court on June 26, 2017, "to show cause, if any, why [Judith] should not be granted the relief requested[.]" Demetrius responded by filing a motion to terminate or decrease alimony in which he contended that his retirement on January 3, 2017, was a material change of circumstances justifying termination of the alimony award.

The parties then each filed financial statements. Judith's statement, filed April 3, showed she had a total net worth of $403,170.76 ($451,115.34 in assets less $47,944.58 in mortgage liability). She stated her total monthly income as $2,622.25 and listed total monthly expenses of $3,630.04, making for a monthly deficit of $1,007.49.

Demetrius filed his financial statement on April 12, indicating a net worth of $814,900 ($1,362,900 in assets less $584,000 mortgage liability). He claimed $8,265.11 in net monthly income, comprised of $6,000 in monthly retirement income and $6,114.30 in income from other sources including his rental properties, minus $3,849.19 in various deductions and withholdings. Monthly expenses of $10,198.60 left Demetrius with a monthly deficit of $1,933.49.

Hearing

The parties appeared in circuit court for a modification hearing on April 18, 2018. Judith was 71 at the time of the hearing, and Demetrius was 77.

Judith testified that her monthly income consisted of payments from Social Security, IRA distributions, and payments from Demetrius's and her own pensions. Judith receives a monthly pension of $51.03 from her job at Frederick Memorial Hospital and a Social Security benefit of $914 per month. She also began to receive a monthly payment from

Demetrius's pension following his retirement. As of 2018, Judith received a net payment of $1,713.02 monthly from Demetrius's pension.

According to Judith, when Demetrius stopped paying alimony she "had to drastically decrease everything" and "watch every penny [she] was spending because [she] didn't have that additional income coming in to protect and to pay for the bills and cover any expenses that [she had]." She "had to cut back everything . . . particularly the heating in the house." Judith testified that she "kept only the heating in the kitchen to keep the pipes from freezing." She didn't turn on the heat elsewhere in her house "because [she] was afraid of the bills." Judith testified that her health was "not good" and she was concerned that she would have to go into a nursing home and "wouldn't have money to cover [her] care."

Demetrius's counsel established on cross-examination that Judith's checking account balance increased after Demetrius stopped paying alimony—ranging from $15,954.03 in December 2016 to $18,014.78 in February 2017, before decreasing again to $16,305.14 by May 2017. As the judge put it, her checking account balance "mostly stayed the same" over the time that Demetrius stopped paying alimony. On re-direct, Judith explained that her balance did not decrease without alimony because she "cut everything back," "[b]ecause [she] didn't want to have to go into any funds that [she] had saved for an emergency like medical or the house[,] the car or whatever[,] and [she] just did without." She reiterated that "[w]ith [her] increasing health situation, [she's] concerned about not being able to meet the bills that will be coming forth[,]" including the cost of prescription

drugs.[2]

After Judith testified, Demetrius took the stand. He explained his sources of income, including several rental properties in Maryland and Florida, share certificates, an IRA, and his pension. Demetrius stated that he receives $6,000 per month in retirement income plus $600.30 in Social Security, about $1,060 in a mandatory monthly deduction from his IRA, and $4,475 in rental income (of which he pays 10% to a property management company). He has one mortgage payment, which is $1,479.13 per month.

Demetrius also testified that, after he retired (and stopped paying alimony), he invested several thousands of dollars in the stock market. As for his failure to continue paying alimony after retirement, Demetrius claimed that he interpreted the court's order to allow him to stop paying alimony once Judith began receiving payments from his pension after he retired; although, he admitted that he did not resume paying alimony after Judith moved to find him in contempt. Instead of paying alimony, Demetrius gave Judith a check for $4,000 on January 16, 2018, on which he wrote "upon cashing check all alimony due paid in full Jan/May 2017."

Following Demetrius's testimony, Judith's counsel argued in closing that Judith relied on alimony and that Demetrius's significant savings and assets would permit him to pay $1,000 in alimony as well as his $10,000 in monthly expenses for another 21 years without having to spend any of his monthly income. When the court questioned Judith's

[2] Judith also testified that she pays $143 per month toward a life insurance policy on Demetrius because she will "need the money to survive [] if he passes away [because] then [she] won't be getting any alimony."

continued dependence on alimony despite the $1,713 she now receives from Demetrius's pension, her counsel responded that Judith's expenses have increased and her health has decreased as she's gotten older, and "[i]t was always contemplated that his alimony would be indefinite. We bargained for that." She continued: "[W]e only said [] if Mr. Govotsos wasn't in a position to pay [alimony] because of retirement or if he was fired then it could be modified. . . . Not terminated, modified. Because the idea was to have Ms. Govotsos at least somewhat in a fair position as opposed to the way Mr. Govotsos was living."

Counsel for Demetrius argued that a disparity in the parties' standard of living "is not grounds for indefinite alimony" – that there must be "unconscionable disparity and we don't believe that in this case there is an unconscionable disparity." Admitting there was inequity, particularly between the parties' real estate holdings, counsel for Demetrius concluded that the disparity was not so "grossly unconscionable" and "offensive that it would warrant indefinite alimony[.]" His counsel also noted that both parties "have done a lot of savings."

The court then interjected as follows:

> They have [both done a lot of savings] and that's why I think both of them are going to be fine [] either way but what I'm struggling with is that they agreed to indefinite alimony. Whether I think that was a good idea [or] a bad idea, it doesn't matter [because] that was a long time ago but they agreed to it. The only change that could happen in that is if he retired and made less money or got fired or something of that nature. *I'm not convinced that th[e] amount of money less that he is making is so significant that I should change this.*

(Emphasis added). Demetrius's counsel then concluded, "[Demetrius] believes that to award additional alimony on top of the $1,700 a month payment that she is receiving would

be harsh and inequitable because she was doing fine with just $1,000."

Following closing arguments, the court announced that it would take the matter under advisement and issue a written opinion, noting that the court "ha[d] a lot of documents and information to go through[.]"

Circuit Court's Findings and Order

On May 16, 2018, the court issued a memorandum opinion and order denying Demetrius's motion to modify or terminate alimony. The court's opinion began by finding that the parties' agreement at the time of divorce controls the termination of alimony, and that termination was not appropriate because none of the three stated occurrences had happened (the death of either party or remarriage of Judith). Moving on to Demetrius's request to modify alimony, the court compared the parties' finances at the time of divorce to their finances at the time of the hearing:

> The present case dates back to 1998. According to Magistrate Ambrose's Report and Recommendations, [Judith] had approximately $27,702.59 available to her through bank accounts, but was living off rental income of $144 per month. [Demetrius] was earning approximately $53,000.00 per year from his government job, and apparently also operated a private business on the side. It is unclear how much he earned as a result of his private business, but the Magistrate did find that the parties had substantial financial assets and a joint account with a balance in excess of $143,000.
>
> The Financial Statements were considered in determining the parties' current financial circumstances. The Court finds that [Judith]'s monthly income is currently $2,622.25; current total liabilities are $47,944.58; current net worth is $403,170.76. The Court finds that [Demetrius]'s monthly income is $8,265.11; total liabilities are $548,000.00; and total net worth is $814,900.00.

Referencing the Court of Appeals' decision in *Blaine v. Blaine,* 336 Md. 49, 72 (1994) (instructing courts to look to the factors under section 11-106(b) of the Family Law Article before modifying alimony), the court set out the following considerations:

> [T]he Court has also considered **the long duration of the marriage** between the parties (30 years)[3] and that **the standard of living the parties established during their marriage** was likely comfortable, though not lavish. The Court heard no testimony regarding **the circumstances that led to the breakup of the marriage**, nor testimony regarding **the contributions of either party to the marriage relationship**.
>
> **Because of the long duration of the parties' marriage, the large disparity in the net worth of the parties, and the relative lack of change in the parties' financial situations since the *agreed upon* Judgement of Absolute Divorce in 1999, the Court finds that circumstances and justice in this case do not require a modification in the amount of alimony.**

(Bold emphasis added).

Denying Demetrius's request to modify or terminate alimony, the court "emphasize[d] that the party requesting modification has the burden of demonstrating the facts and circumstances that justify the court granting the modification." The court observed that, despite requesting modification, Demetrius offered "no testimony regarding the circumstances that justify modification, nor was there ever an amount mentioned."

The court also found Demetrius in contempt for his failure to pay alimony and ordered him to pay Judith $16,538.46 in arrears (reflecting the outstanding $538.46 from January 2017 plus the 16 interim months alimony he failed to pay). Finally, the court denied Judith's motion for attorney's fees.

[3] We note that the parties were married for 35 years.

Demetrius's timely appeal followed. He presents one issue for our review: "Did the trial court err and/or abuse its discretion when it declined to reduce or terminate Appellant's alimony payments?"

DISCUSSION

Demetrius argues on appeal that the circuit court erred by failing to consider the statutory factors applicable to a party's request to modify alimony and abused its discretion in how it applied those factors it did consider. Although Demetrius admits that the circuit court was not *required* to consider every factor set out in Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 11-106(b), he persists in arguing that the court *should have*, yet failed to, consider what he says are "the most important factors in determining whether a modification under [FL §] 11-107(b)[.]" According to Demetrius, the "most important factors" were the ability of Demetrius to meet his own needs while meeting the needs of Judith; the nature and amount of the parties' financial obligations; and each party's right to receive retirement benefits—all of which, he contends, "are critical to the present case." Demetrius suggests that if the court had considered those factors, it would have reached a different decision. "While the trial court was free to discredit any [] evidence," Demetrius concludes, the court did not do so; instead, "it simply ignored th[e] statutory requirement and the relevant evidence."

Judith responds that the trial court concluded correctly that the parties agreed to terminate alimony only upon the happening of one of three events, none of which occurred. The trial court also did not err, Judith continues, because the trial judge "actively participated" at the modification hearing and based its decision on the court's review of

"all testimony, exhibits, pleadings, statute and case law." In Judith's view, Demetrius is simply trying to substitute his own opinion for that of the trial court. She says that Demetrius failed to articulate a change in circumstances and bore the burden of proving that one occurred. Finally, Judith contends that there was substantial evidence for the court to find that Judith's expenses have increased drastically, Demetrius's retirement income "increased exponentially since the parties entered into an agreement for indefinite alimony," and that Demetrius "can afford to continue paying alimony in the amount of $1,000.00 per month."

In reply, Demetrius reiterates his position that the trial court had authority to terminate alimony completely and failed to apply the relevant alimony statutes in reaching its decision. He also complains that the trial court "fail[ed] to mention the stipulation as to his [monthly] expenses of $10,198.60, which significantly exceed[ed] his income, found by the court, to be $8,265.11." And, "[g]iven that Judith is now receiving $1,700 per month in replacement of the $1,000 per month she was receiving in alimony," Demetrius contends that the trial court erred in its application of the law.

When spouses divorce, they "may enter into agreements as to alimony payments." *Bradley v. Bradley*, 214 Md. App. 229, 234 (2013) (citing FL § 8-101(a)). Once a trial court has ordered an alimony award, the court may, pursuant to the petition of a party, modify that award pursuant to Section 11-107(b) of the Family Law Article. *Lieberman v. Lieberman*, 81 Md. App. 575, 595 (1990). Section 11-107(b) provides: "Subject to § 8-

103[4] of this article and on the petition of either party, the court may modify the amount of alimony awarded as circumstances and justice require." The party seeking modification bears the burden of "demonstrat[ing] 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, 538-45 (2005).

Although the Court of Appeals has "reject[ed] a mechanical application of the statute that would limit the discretion of the court to fashion an appropriate alimony award[,]" *Blaine v. Blaine*, 336 Md. 49, 68 (1994), the trial court must still assess certain factors relevant to the modification of alimony. Because the provisions governing an award of indefinite alimony (FL § 11-106(c)) and the modification of an award of alimony (FL § 11-107(b)) do not "provide[] specific guidance" for determining an appropriate award, trial courts look to the factors set out in FL § 11-106(b), *Blaine*, 336 Md. at 72. Section § 11-106(b) lists considerations for determining the amount and period for an alimony award:

> *Required considerations.* — In making the determination, the court shall consider all the factors necessary for a fair and equitable award, including:

[4] FL § 8-103, governing "Modification of deed, agreement, or settlement," provides in relevant part:

> (c) *Certain exceptions for provision concerning alimony or support of spouse.* — The court may modify any provision of a deed, agreement, or settlement with respect to alimony or spousal support executed on or after April 13, 1976, regardless of how the provision is stated, unless there is:
>
> (1) an express waiver or alimony of spousal support; or
>
> (2) a provision that specifically states that the provisions with respect to alimony or spousal support are not subject to any court modification.

> (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
> (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
> (3) the standard of living that the parties established during their marriage;
> (4) the duration of the marriage;
> (5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
> (6) the circumstances that contributed to the estrangement of the parties;
> (7) the age of each party;
> (8) the physical and mental condition of each party;
> (9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
> (10) any agreement between the parties;
> (11) the financial needs and financial resources of each party, including:
> (i) all income and asserts, including property that does not produce income;
> (ii) any award made under §§ 8-205 and 8-208 of this article;
> (iii) the nature and amount of the financial obligations of each party; and
> (iv) the right of each party to receive retirement benefits; and
> (12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health – General Article and for whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

See also Blaine, 336 Md. at 72.

Awards of alimony and the modification thereof are inherently fact-based determinations. *See Bradley*, 214 Md. App. at 236-37; *see also Boemio v. Boemio*, 414 Md. 118, 140 (2010) ("Alimony itself is fundamentally equitable" and based on the specifics of each case rather than an application of "'bright-line tests.'") (quoting *Tracey v. Tracey*, 328 Md. 380, 393 (1992)). Given this, we leave the allocation of alimony to the trial court's broad discretion, and "we 'defer to the findings and judgments of the trial court'" and "will not disturb an alimony determination 'unless the trial court's judgment is

clearly wrong or an arbitrary use of discretion.'" *Ridgeway v. Ridgeway*, 171 Md. App. 373, 383-84 (2006) (citations and brackets omitted). Further, as this Court has made clear, "[t]he doctrine of res judicata applies in the modification of alimony," meaning that a motion to modify alimony and a resulting appeal are not opportunities to "re-litigate matters that were or should have been considered at the time of the initial award[.]" *Blaine v. Blaine*, 97 Md. App. 689, 702 (1993) (citation omitted), *aff'd*, 336 Md. 49 (1994).

This Court has considered appeals from several cases in which a former spouse sought to modify or terminate an alimony award based on the changed circumstances of the payor spouse's retirement. *See, e.g.*, *Ridgeway*, 171 Md. App. at 377; *Bauer v. Votta*, 104 Md. App. 565 (1995); *Riley v. Riley*, 82 Md. App. 400 (1990). The facts in *Riley* were substantially similar to those in this case, so we will begin there.

The Rileys had been married for 32 years before divorcing in 1983. *Riley*, 82 Md. App. at 402. Dr. Riley was 56 at the time of the divorce and employed by the federal government with an annual salary of $52,000 plus $14,5000 in yearly benefits from the Veterans Administration. *Id.* at 402-03. Ms. Riley was 55 at the time of the divorce and had not worked "outside the home since early in the marriage." *Id.* at 403. The trial court awarded Ms. Riley alimony of $800 per month until the next year when child support payments would cease, at which point alimony would increase to $1,200 per month. *Id.* On an appeal to this Court, we ruled that the $1,200 per month should last indefinitely. *Id.* at 404. Four years after the divorce, Dr. Riley retired and "unilaterally reduced Ms. Riley's alimony from $1,200 to $210 and filed a motion to reduce or terminate the alimony," which the trial court denied. *Id.*

One of Dr. Riley's challenges on appeal of that judgment was a "factual challenge [] based on the assertion that, being a retiree, he [wa]s in substantially reduced circumstances" as compared to Ms. Riley, whose income had increased from $250 per month to $1,157 per month. *Id.* at 405. This Court "quickly dispose[d] of that challenge." *Id.* In doing so, this Court reasoned that the record contained substantial evidence to support the circuit court's finding that the need for alimony was still present because, (1) although Ms. Riley's income had increased, so too did her expenses; and (2) Dr. Riley's post-retirement income had increased by $1,000 per month, meaning "that he could well afford the $1,200/month alimony." *Id.*

This Court also upheld the trial court's exercise of discretion in *Bauer*, 104 Md. App. at 567. The husband in that case agreed in 1987 to pay $700 per month in alimony following the dissolution of the parties' 32-year marriage. *Id.* at 567-68. Seven years after the divorce, the husband retired and sought to reduce or terminate the alimony award. *Id.* at 568. He was 62 at the time and in good health. *Id.* The wife's living expenses increased by $215 in the years following the divorce, but her annual income had increased from $9,000 to $22,000 over that time. *Id.* at 572-73. By contrast, the husband's living expenses had increased by $217 per month and his annual income had decreased from $44,908 to $34,638. *Id.* at 573. Based on this, the trial court reduced alimony from $700 to $500 per month, despite a special master recommending the alimony reduce to $300 per month. *Id.* at 569-70. This Court affirmed on appeal. *Id.* at 573-74. This Court found that the trial court's judgment was within its discretion because "[t]he court clearly took into account all the facts necessary for a fair and equitable award, as delineated in [FL § 11-106(b)]."

Id. at 574. Among those factors, this Court observed that the wife was "of advanced age and ha[d] a health condition that preclude[d] her from working at times[,]" and that she would be retiring in three years, leaving her with "meager, limited benefits." *Id.* On the other hand, the husband's "income (including pension) was higher than [the wife's] and was expected to increase over the next two years, whereas [the wife's] was likely to remain the same." *Id.* Additionally, the husband had significantly more money in savings. *Id.* Considering these facts, this Court concluded that it was "fair and equitable" for the trial court to fashion an award as it did that left the parties with fairly equal yearly income. *Id.*

In *Ridgeway*, this Court swiftly rejected an ex-husband's contention that the trial court erred or abused its discretion in denying his motion to terminate alimony upon his retirement. 171 Md. App. at 383-85. The Ridgeways divorced in 2003, at which point the court ordered the husband to pay $1,750 per month in alimony indefinitely. *Id.* at 378. The husband then retired voluntarily and moved to reduce or terminate his alimony obligation. *Id.* at 379. He testified at the modification hearing that the parties agreed during their marriage that he would retire at 55 because males in his family typically die by the time they're 70. *Id.* At the time of retirement, he received $25,000, consisting of a retirement incentive from his employer and compensation for his accumulated annual leave, but his income reduced from $84,000 to about $20,000 annually plus what he earned working part-time in a seasonal position at a local golf course for $9.00 an hour. *Id.* at 379-80, 385. The husband contributed $200 monthly to his girlfriend's mortgage and paid $662 monthly for his car payment. *Id.* at 385. The wife testified that she earns $17,000, has about $30,000 in savings, and a monthly mortgage payment of $1,285 plus a car payment of $403. *Id.* at

380. She also received $1,239 per month from the husband's retirement fund. *Id.* The trial court reduced alimony from $1,750 to $500, and the husband appealed. *Id.* at 381-82.

Writing for this Court, Judge Barbera began by observing that "[t]here [wa]s no dispute in the instant case that [the husband's] retirement constituted a material change in circumstance warranting the court's consideration of the petition for modification." *Id.* at 384. After recounting the parties' financial circumstances, this Court determined that the husband "ha[d] not persuaded us that the court's decision to reduce but not terminate alimony was an arbitrary exercise of discretion," and affirmed its decision. *Id.* at 385.

Returning to the case before us, we are similarly unpersuaded that the trial court abused its discretion by failing to modify or terminate the alimony award. As the trial court recognized in its memorandum opinion, the factors enumerated in FL § 11-106(b) were the guide for its exercise of discretion. The court then referenced explicitly most of those factors, including the duration of the marriage (FL § 11-106(b)(4)); the standard of living during the marriage (FL § 11-106(b)(3)); the lack of evidence regarding the reasons for ending the marriage (FL § 11-106(b)(6)) and the parties contributions to the marriage (FL § 11-106(b)(5)); as well as the fact that the parties agreed to the amount of alimony (FL § 11-106(b)(10)). Additionally, the court's opinion referenced the disparity in the parties' net worth and relative lack of change in financial circumstances since the divorce, which implicate FL § 11-106(b)(9) and (11). *See Blaine*, 336 Md. at 73 ("[T]he current financial situations of the parties are appropriately considered, pursuant to § 11-106(b)(9) and (11)."). Further, the trial court was active during the evidentiary hearing, often interjecting and making known facts the court found compelling. These facts included that Demetrius

was 77 at the time of the hearing (FL § 11-106(b)(7)) and that both parties had substantial savings accounts and would "be fine" regardless of whether or not the court reduced or terminated alimony (FL § 11-106(b)(1), (9), and (11)).[5] The court made known that it was "not convinced" that any decrease in Demetrius's income was "so significant" as to justify a reduction in alimony.

Based on the foregoing, the trial court "f[ound] that circumstances and justice in this case do not require a modification in the amount of alimony." The trial court in this case considered the factors set out in FL § 11-106(b) and gave the weight it felt was appropriate to each given the circumstances of the case. It would be beyond the standard of our appellate review to re-weigh those factors and substitute our own subjective judgment for that of the trial court. Neither the petition to modify or terminate alimony nor the resulting appeal were opportunities for Demetrius to "re-litigate matters that were or should have been considered at the time of the initial award." *Blaine*, 97 Md. App. at 702 (citation omitted). The parties in this case bargained for indefinite alimony at the time of divorce, at which point they would have considered Demetrius's eventual pension (and Judith's entitlement to a share thereof). Demetrius bore the burden of demonstrating that circumstances and justice no longer support the alimony award that he agreed to previously. *See Langston*, 366 Md. at 516. That agreement set three events that could

[5] The only relevant factor that the court did not mention was the parties' health. On this point, the court heard evidence and extensive argument regarding the parties' current health and their expected costs of healthcare. For example, Judith testified that her health is "not good;" she "ha[s] heart problems," "blood pressure," "severe asthma," has "been very sick," and had "recently fallen so now [she] ha[s] to use [her] cane again."

trigger the termination of alimony—none of which have occurred. And Demetrius did not adduce sufficient evidence at the modification hearing to lead us to conclude that the trial court's decision not to modify alimony in this case was "clearly wrong or an arbitrary use of discretion." *See Ridgeway*, 171 Md. App. at 383-84 (citation omitted). Accordingly, we must affirm the trial court's discretionary judgment.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. APPELLANT TO PAY COSTS.