Circuit Court for Baltimore County
Case No. 03-C-16-001030

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 876

September Term, 2023

DOMINIC BURGESS

v.

MELISSA LEWIS-RANSOM

Zic,
Kehoe, S.
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: July 16, 2025

* Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of *stare decisis*. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

This appeal concerns an award of child support by the Circuit Court for Baltimore County in a family law case that began nearly a decade ago. Appellant Dominic Burgess ("Father") and Appellee Melissa Lewis-Ransom ("Mother") are the parents of three children – two boys, one who attained majority during the pendency of this case and one who is still a juvenile, and one girl. For ease of reference and to preserve the children's privacy, we shall refer to the older son as "M," the younger son as "J," the two collectively as "Sons," and the girl as "Daughter."

Father contests an April 2023 order of the Circuit Court holding him in civil contempt as well as several aspects of that court's May 2023 judgment modifying his obligation to provide financial support for M and J. He presents the following issues[1]:

[1] We have derived these issues from the legal arguments made in Father's brief. Neither that brief nor the informal response submitted by Mother explicitly identifies the issues on appeal.

Although Father is represented by counsel in this appeal, his brief omits a statement of the questions presented, contrary to Maryland Rule 8-504(a)(3). That brief also omits a table of contents, a table of citations, and cover page applicable to this case – contrary to Maryland Rule 8-503(c). Instead, it contains tables that apparently belong to a brief in a different case, and its cover page lists the wrong circuit court and presiding judge. The record extract that accompanies Father's brief omits the Circuit Court's docket entries and is mostly unpaginated, contrary to Maryland Rule 8-501.

Mother, appearing *pro se*, has filed a document opposing Father's appeal. Mother's response largely does not address Father's legal arguments, but rather critiques the adequacy of the record extract filed by Father and refers to certain factual disputes between the parties that do not appear to be related directly to Father's legal arguments.

This Court may dismiss an appeal when the brief or record extract does not comply with the rules. Maryland Rule 8-602(c)(6); *see also* Rule 8-504(c) (applicable to non-compliance with Rule 8-504). Here, addressing the merits best serves the paramount interest of the parties' children. *Tannehill v. Tannehill*, 88 Md. App. 4, 10-11 (1991) (admonishing counsel for non-compliance with appellate rules, but deciding not to dismiss

(continued)

1. Did the Circuit Court err when it concluded that the cost of treating J's medical condition was an "extraordinary medical expense" under the State Child Support Guidelines and when it held Father in contempt for violating the order that required him to pay a share of those costs?

2. Did the Circuit Court err when it calculated Father's child support obligation with respect to M and J and, in particular, in its determination of the starting point for the retroactive modification of that obligation and its determination of the "overnights" attributable to Father as part of that calculation?

For the reasons explained below, we affirm the Circuit Court's rulings on the first question concerning "extraordinary medical expenses" and contempt. We vacate the court's ruling on the second question concerning the basis of the child support award and remand to that court for clarification of its ruling under the applicable law.

As to the first question, we agree with the Circuit Court that the cost of treating J's medical condition was an "extraordinary medical expense" under the Child Support Guidelines. The Circuit Court did not abuse its discretion in holding Father in civil contempt for refusing to pay his share of the costs of that treatment that were not covered by insurance.

As to the second question, the Circuit Court was apparently mistaken as to the date on which Father first requested modification of his child support obligation with respect to M. The court also appears have applied a relatively recent amendment of the definition of "shared physical custody" rather than the definition that applies to this nine-year old case. Finally, it is unclear from the record available to us how the court determined the allocation

appeal for that reason "because this case involves child support, it is the children who would suffer, rather than the parties, if this appeal were dismissed").

of "overnights" credited to each parent for purposes of applying the Guidelines in a case of shared physical custody. We do not suggest that the Circuit Court's award of child support was itself inappropriate. Rather, we remand the case to that court to address these issues and exercise its discretion as to whether to modify the award of child support in light of the applicable law.

I

Background

Mother and Father are the parents of three children: M, who is no longer a minor; J, who is now a teenager; and Daughter, who is approaching middle-school age. Mother and Father apparently never lived together for an extended period of time and have never married.

The Circuit Court first became involved with deciding the parents' rights and obligations with respect to the children in February 2016, when Father filed a petition in which he sought joint legal custody of Sons, who had been living solely with Mother. Daughter was born later that year. A separate case concerning her support was docketed and consolidated with the case concerning Sons' support in 2017.

In 2018, the Circuit Court specially assigned a judge to the case. That judge presided over the proceedings for the next five years, at times remotely during the Covid pandemic. Throughout, the parties filed multiple petitions and protests about each other's conduct. Mediation largely failed. Their attorneys came and went; at times, one or both parties were unrepresented; and at times, the children were represented by a best interest attorney.

In 2023, after an evidentiary hearing on child support, custody, and a contempt petition filed against Father by Mother, the Circuit Court issued the judgment and the civil contempt order that are the subject of this appeal. Neither party has appealed either the arrangements that the court set for custody and visitation or the child support order as it pertains to Daughter. This appeal concerns only Father's child support obligation with respect to Sons and the contempt order related to Father's support obligation as to J.

Additional facts and the relevant Circuit Court proceedings are described in greater detail below in the discussion of the issue to which they pertain.

II

Discussion

A. Issues Relating to Expenses Incurred for Medical Treatment of J

In 2018, the Circuit Court issued a consent order that required, among other things, that Mother provide the children with health insurance through her employment and that Mother and Father share any "extraordinary medical bill" of more than $100.00. Under the order, Father's share of any such bill was to be 63%.

J has a skin condition for which he received a series of medical treatments that were only partially covered by Mother's insurance. Despite a request from Mother, Father did not pay a share of those costs. At the request of Mother and following a hearing, the Circuit Court held Father in civil contempt of the consent order in an order issued in April 2023.

On appeal, Father contends that the providers' charges for J's treatments were not "extraordinary medical bills" and that, even if they were, the Circuit Court should not have held him in contempt.

1. "Extraordinary Medical Expenses" under the Child Support Guidelines

By statutory mandate, a circuit court charged with calculating the total amount of money needed to support a child under the child's circumstances, and each parent's respective shares of that amount, must generally do so in accordance with the Child Support Guidelines contained in Maryland Code, Family Law Article ("FL"), §§12-201 *et seq*. Under those Guidelines, the court is to factor health care costs into that calculation as follows:

> (1) Any actual cost of providing health insurance coverage for a child for whom the parents are jointly and severally responsible shall be added to the basic child support obligation and shall be divided by the parents in proportion to their adjusted actual incomes.
>
> (2) Any extraordinary medical expenses incurred on behalf of a child shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted actual incomes.

FL §12-204(h).

At the time the consent order was issued by the Circuit Court in 2018, the Guidelines defined the phrase "extraordinary medical expenses" to "mean[] uninsured costs for medical treatment in excess of $100 in any calendar year." FL §12-201(g)(1).[2] Under FL §12-201(g)(2), the phrase "includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, vision care, asthma treatment, physical therapy, [and]

[2] In 2019, the definition of "extraordinary medical expenses" in FL §12-201(g)(1) was amended to increase the threshold amount to $250 with respect to expenses incurred on or after the effective date of the amendment – October 1, 2019. Chapter 436, §§2, 3, Laws of Maryland 2019. That increase does not affect the resolution of the issue raised by Father in this case.

treatment for any chronic health problem ….” This Court has held that the term “extraordinary medical expenses” in a child support order includes the cost of treatment that insurance only partially covers. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 435 (2018).

2. The Consent Order, the Expenses at Issue, and the Contempt Order

In December 2018, the Circuit Court issued a Consent Custody Order signed by Mother’s and Father’s respective attorneys and the Sons’ best interest attorney. Pertinent to this issue, that order required Mother to keep Sons covered under the health insurance policy provided through her employment. The order further provided that “the parties shall utilize all ‘in plan’ providers for the children, and they are to notify each other immediately upon incurring any medical bill which may exceed $100.00, and they are to share the extraordinary medical bill in excess of $100.00 according to their pro rata share, currently Father paying 63% Mother paying 37%[.]” The order also required the parties to “pay the extraordinary medical bills within 45 days of receipt of the bill.”[3]

Beginning in 2019, J underwent certain dermatological treatments for a skin condition. Insurance covered part of the cost, but bills for the remainder exceeded $100. Mother paid the amounts not covered by insurance and sought reimbursement from Father for Father’s share of those expenses. When Father did not pay her, Mother filed a petition asking the court to find Father in contempt of the consent order.

At the hearing on Mother’s petition, Father testified that he considered the condition to be “cosmetic” and the treatment to be ineffective and unnecessary. He paid some copays

[3] The Circuit Court had issued a similarly-worded order in 2016. At that time, it required Father to pay 64% of “uncovered medical bills … in excess of $100.00.”

for the treatments but refused to pay the bills not covered by insurance. Mother testified that the treatments were important because the condition could spread and turn into other conditions, and that her medical insurance would not have covered the treatments at all if they had been merely cosmetic.

The Circuit Court granted Mother's petition. Ruling from the bench, the court found that the consent order "was a valid court order," that its language was "clear, … unambiguous, … and concise," and that the parties were represented by counsel when they consented to it. The court further found that J's dermatology treatments were medically necessary, that an in-network provider had provided them, that Mother had paid the provider's bills, that Father had been asked to pay his share but had refused, and that Father had not established an inability to pay.

The Circuit Court then issued a contempt order. That order, dated April 21, 2023, required Father to reimburse Mother $2,199.48 within 90 days, imposed a $100.00 sanction, which the court suspended, and recited that the court had found Father in contempt by clear and convincing evidence.

3. Whether the Bills for J's Treatments were "Extraordinary Medical Expenses"

Father asserts various arguments in support of his contention that he did not violate the consent order by failing to reimburse Mother for the uncovered costs of J's treatments. Some of Father's arguments require interpretation of the consent order, while others relate to provisions in the Family Law Article. In both instances, the Circuit Court's interpretation presents a question of law subject to *de novo* review. *See Hearn v. Hearn*, 177 Md. App. 525, 534-35 (2007) (applying *de novo* review to a circuit court's

interpretation of a consent order); *Kowalczyck v. Bresler*, 231 Md. App. 203, 209 (2016) (interpretation of a statute subject to *de novo* review).

First, positing that the Circuit Court had found J's *condition* "to be extraordinary," Father argues that that the classification of J's condition as "extraordinary" was "open to interpretation" because neither the consent order nor the contempt order defined the word. That argument overlooks the context in which the consent order referred to "extraordinary medical bills." The consent order was based on the Child Support Guidelines, which require a court to address parents' respective shares of medical costs not paid through insurance, and, in so requiring, define "extraordinary medical expenses" to "mean[] uninsured costs for medical treatment in excess of" a specified amount "in any calendar year" and to "include" various categories of treatment, such as vision care, orthodontia, and chronic health problems. FL §12-201(g). That definition relates to "costs" and thus makes clear that the adjective "extraordinary" modifies "expenses." The definition does not focus on whether a child's condition or, for that matter, the treatment for it, is "extraordinary." Read in conjunction with FL §12-204(h) and §12-201(g), the Circuit Court's orders with respect to "extraordinary medical bills" comport with the Guidelines.

Next, Father argues that the definition of "extraordinary medical expenses" limits the scope of that phrase to the specific conditions or types of treatment set forth in FL §12-201(g)(2). His argument does not take into account the Legislature's choice of words in paragraphs (g)(1) and (g)(2) of that section. Paragraph (g)(1) provides that the phrase "*means* uninsured costs for medical treatment in excess of [a specified amount] in any calendar year" (emphasis added). By contrast, paragraph (g)(2) merely "*includes*

uninsured, reasonable, and necessary costs" for the specified items (emphasis added). The verbs used in those two paragraphs of the definition are significant. In using the verb "means" in (g)(1), the General Assembly indicated that the phrase in question relates specifically to "costs" for medical treatment[4]; in using the verb "includes" in (g)(2), the General Assembly provided a non-exhaustive list of what those costs might relate to. *See Tribbitt v. State*, 403 Md. 638, 647-48 (2008) (explaining that statutory drafters use the term "means" to denote an exhaustive definition and the term "includes" to indicate "illustration and not … limitation") (citation and quotation marks omitted); *see also* Maryland Code, General Provisions Article, §1–110 ("'Includes' or 'including' means includes or including by way of illustration and not by way of limitation.").

Finally, Father argues that treatments partially covered by insurance are not "uninsured costs" for purposes of FL §12-201g)(1). This Court has previously rejected that argument. In *Ruiz v. Kinoshita*, a parent asserted that FL §12-201(g) should be interpreted "to mean that any 'reasonable[ ] and necessary costs' for the enumerated conditions that health insurance partially covers cannot be considered an extraordinary medical expense." 239 Md. App. at 435. In concluding otherwise, this Court stated: "Such a rigid definition of 'uninsured' is inconsistent and would lead to untenable results – forcing one parent of an insured child to pay for all medical expenses that the insurance

[4] It is unclear whether Father is arguing in this Court that the expenses were not "medical." In that event, we would defer to the Circuit Court's finding of fact that the treatments were "medically necessary." The evidence before the court – providers' bills and Mother's testimony that they fell within her health insurance coverage – supported that finding.

does not cover, so long as the insurance covers at least a portion of the cost." *See also Frankel v. Frankel*, 165 Md. App. 553, 578–79 (2005) (referring to the unreimbursed portion of medical expenses as "extraordinary medical costs").

In sum, the Circuit Court correctly concluded that the unreimbursed portion of J's medical expenses was an "extraordinary medical expense" under the consent order and the Guidelines.

4. Whether the Circuit Court Properly Found Father in Contempt

Alternatively, Father argues that the Circuit Court should not have held him in civil contempt[5] for failing to pay his share of the unreimbursed medical costs to Mother. Father contends that even if the unreimbursed costs of J's medical treatment constituted "extraordinary medical expenses" under FL §12-201(g), Father had based his refusal to pay his share on his good faith belief that they did not fall within that definition. Father asserts that the definition of "extraordinary medical expenses" in FL §12-201(g) is "open to interpretation" and that his conduct lacked the element of willfulness needed for a contempt finding.

An appellate court "generally will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed."

[5] For a description of the various types of contempt, *see, e.g.*, *Bryant v. Howard Cnty. Dep't of Soc. Servs. ex rel. Costley*, 387 Md. 30, 46 (2005) ("[C]ontempt could be criminal or civil and it could be direct or constructive, leaving the prospect of a direct criminal contempt, a direct civil contempt, a constructive criminal contempt, and a constructive civil contempt."). The contempt found in this case falls into the category of a constructive civil contempt.

Kowalczyk v. Bresler, 231 Md. App. 203, 209 (2016). In assessing the sufficiency of the evidence to support a circuit court's finding of willfulness, an appellate court will view the evidence and inferences drawn from that evidence in the light most favorable to the prevailing party. *Gertz v. Md. Dept. of Env't*, 199 Md. App. 413, 430 (2011). In this case, Mother was the prevailing party. Willfulness may be inferred from an ability to comply with a court-ordered duty, but not from a negligent failure to comply. *Id*. at 430-31; *see also, e.g., Att'y Grievance Comm'n v. Boyd,* 333 Md. 298, 309 (1994) ("[W]illfulness may be established merely by proving a voluntary, intentional violation of a known legal duty.").

In addition, Maryland Rule 15-207(e) specifically applies to a court's exercise of the civil contempt power in proceedings in child support cases. Section (e)(2) of that rule authorizes a court's use of the contempt power and spells out the applicable burden of proof as follows: "[T]he court may make a finding of contempt if the petitioner proves by clear and convincing evidence that the alleged contemnor has not paid the amount owed, accounting from the effective date of the support order through the date of the contempt hearing."

Section (e)(3) provides two defenses. The first, which relates to willfulness, is the alleged contemnor's inability to comply with the order: "The court may not make a finding of contempt if the alleged contemnor proves by a preponderance of the evidence that (A) from the date of the support order through the date of the contempt hearing the alleged contemnor (i) never had the ability to pay more than the amount actually paid and (ii) made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds

necessary to make payment…." Father has not challenged the Circuit Court's finding that "there was no inability for the father to pay those bills[.]" The second defense is the expiration of the statute of limitations as to the particular unpaid obligation. Father did not assert that defense.

Section (e)(4) spells out what an order of constructive civil contempt for failure to pay spousal or child support must include: "(A) the amount of the arrearage for which enforcement by contempt is not barred by limitations, (B) any sanction imposed for the contempt, and (C) how the contempt may be purged."

Here, the Circuit Court noted in its oral ruling that Father had been represented by counsel when he entered into the consent order; that the language in the order was "clear," "unambiguous," and "concise"; that Father had been asked to pay his share; and that he had not shown an inability to do so. In its written order, the court found that Father's failure to pay his share of extraordinary medical expenses pursuant to order was proven by clear and convincing evidence, that the amount of the arrearage was $2,199.48, that Father could purge the contempt by paying it within 90 days, and that the court was setting and suspending a $100.00 penalty. The court's findings are sufficient to establish a willful failure to comply with the consent order, and to satisfy the requirements of Rule 15-207(e). The record of the contempt hearing supports those findings.

In sum, the Circuit Court did not abuse its discretion in holding Father in civil contempt for failure to pay his share of J's extraordinary medical expenses.

B. Whether the Circuit Court Erred in its Calculation of Child Support for Sons

Father contends generally that the Circuit Court erred in ruling on his request for modification of his child support obligation with respect to Sons, with specific reference to its worksheets applying the Guidelines and supporting its May 2023 order. He argues that the court erred in determining the extent to which the modification should be made retroactive. He also asserts that the court, in its worksheets, failed to credit him with the appropriate number of "overnights" with M and incorrectly credited Mother with certain sums actually paid by Father.

1. The Calculation of Child Support under the Child Support Guidelines

As noted above, a circuit court charged with calculating the total amount of money needed to support a child in the child's particular circumstances, and each parent's respective shares of that total amount, must generally do so in accordance with the Child Support Guidelines. *See* FL §12-201 *et seq*. The beginning point for such calculations is a schedule in FL §12-204(e), which sets forth the total monthly amount of child support – called the "basic child support obligation" – based on the parents' "combined adjusted actual income" and the number of their children.[6] As a general rule, the pertinent total amount derived from the statutory schedule is to be divided between the parents in proportion to each parent's adjusted actual income. FL §12-204(a)(1). Those calculations

[6] The schedule in the Guidelines does not apply when the parents' combined adjusted actual income exceeds the highest level listed there. FL §12-204(d). Mother's and Father's combined income fell within the amounts to which the schedule applies, so that provision is not relevant here.

are subject to adjustment for other items addressed by the statute, such as child care expenses, health insurance, and extraordinary medical expenses. *E.g.*, FL §12-204(g), (h).

There is a rebuttable presumption that application of the Guidelines in a particular case, whether in establishing or modifying a child support award, yields the correct amount of child support for that case. FL §12-202(a)(1), (2). The presumption that an award generated by application of the Guidelines is correct "may be rebutted by evidence that the application of the Guidelines would be unjust or inappropriate in a particular case." FL§12-202(a)(2)(ii). The statute lists various factors that the court "may consider" in assessing that evidence, including such matters as other court orders, other debts, the presence of other children that a parent is obligated to support, and the right to occupy the family home. FL §12-202(a)(2)(iii).

Thus, a circuit court may issue a child support order that departs from the Guidelines, if it determines that application of the Guidelines would be "unjust or inappropriate in a particular case" and makes a finding on the record stating the reasons for departing from the Guidelines. FL §12-202(a)(2)(v). Among other things, the court must specify the amount of child support that the Guidelines would have required, how the order varies from that amount, and how the deviation from the Guidelines serves the child's best interests. *Id*.

2. Adjustment When Parents Have "Shared Physical Custody"

a. Generally

Pertinent to this case, a somewhat complex adjustment formula applies under the Guidelines when there is "shared physical custody" of children by the parents. "Shared

physical custody" is defined in Guidelines to mean that "each parent keeps the child or children overnight for more than [a certain percentage] of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support." FL §12-201(o)(1). (As we shall see, in a 2020 statutory amendment, the General Assembly changed the threshold percentage in this definition during the pendency of this case). When there is shared physical custody, the court is to multiply the "basic child support obligation" in the Guidelines by one and one-half to obtain an "adjusted basic child support obligation" and then use that figure in a statutory formula that allocates the child support obligation between the parents based on (1) the parents' respective incomes and (2) the percentage of time that the children spend with each parent. FL §12-204(f), (m).

In short, the amount of time the child spends with each parent plays a role in the calculation of the parents' respective shares of the support obligation *only if* the parents had "shared physical custody," as then defined in the Guidelines, of the child.

b. Applicable Definition of "Shared Physical Custody" in this Case

When Father initiated this litigation concerning the support of Sons in 2016, the threshold percentage of overnights in the statutory definition of "shared physical custody" was 35%. FL §12-201(m)(1) (2012 Repl. Vol. & 2015 Supp.). In other words, the adjustment formula for shared physical custody applied only if each parent kept the child in question overnight for more than 35% of the year.

In 2020, four years after this case had been initiated, the General Assembly passed identical cross-filed bills that, among other things, amended the definition of "shared physical custody" in the Child Support Guidelines to lower the threshold from 35% to 25%

of overnights. Chapters 142, 143, Laws of Maryland 2020. The 2020 amendment specified that it would "apply only to cases filed on or after the effective date of this Act," which was October 1, 2020. *Id*., §§2, 3. Thus, that reduction in the threshold percentage for shared custody does not apply to this case. Rather, the 35% threshold for application of the portion of the Guidelines related to "shared physical custody" that existed at the time Father filed this action continues to apply in this case.

c. Determining Whether the Threshold Percentage is Met

At the time Father filed his complaint, the statute defined "shared physical custody" as follows:

> (1) "Shared physical custody" means that each parent keeps the child or children overnight for more than 35% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support.
>
> (2) Subject to paragraph (1) of this subsection, the court may base a child support award on shared physical custody:
>
> (i) solely on the amount of visitation awarded; and
>
> (ii) regardless of whether joint custody has been granted.

FL §12-201(m) (2012 Repl. Vol. & 2015 Supp.).[7]

In 2018, this Court had occasion to explain how a circuit court determines whether the threshold for "shared physical custody" in this definition is met. *Rose v. Rose*, 236 Md. App. 117 (2018), *reconsideration denied* (Mar. 28, 2018), *cert. denied*, 459 Md. 417, 187

[7] Since 2016, this definition has been recodified, first as FL §12-201(n) and more recently as FL §12-201(o), where it is located today. Apart from the 2020 amendment that reduced the threshold percentage of overnights to 25%, the wording and substance of the definition has remained the same.

(2018). The *Rose* Court observed that the statute contains both mandatory and discretionary provisions. The court stated: "[Paragraph (1)] *requires* the court to use the shared physical custody formula for child support where a parent has actually kept the child for more than 35% of the overnights, while [Paragraph (2)] *permits* the court, in its discretion, to use the shared physical custody formula where a parent is awarded more than 35% of the overnights, but has actually kept the child for 35% (or fewer) of the overnights." 236 Md. App. at 136 (emphasis in original).

A circuit court thus must make a preliminary finding whether each parent actually kept the child overnight for more than the 35% threshold. If so, the mandatory Paragraph 1 requires application of the shared physical custody formula. If not, the court has discretion under Paragraph 2 to use that formula – or not – if the governing custody order "on its face" allocates to each parent the threshold number of overnights. *Rose,* 236 Md. App. at 137. To meet the 35% threshold under Paragraph (1), a child had to "stay overnight with each parent for a minimum of 128 nights." *Id.* at 135 (quoting *Guidash v. Tome*, 211 Md. App. 725, 748-49 (2013)).

3. Modification of a Child Support Award

The Family Law Article authorizes a circuit court to modify a child support award, but sets certain conditions on that authority. A circuit court "may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance." FL §12-104(a). However, a circuit court "may not retroactively modify a child support award prior to the date of the filing of the motion for

modification." FL §12-104(b).[8] Within those constraints, the circuit court has the discretion to determine "whether and how far [to] retroactively ... apply a modification of a party's child support obligation[.]" *Ley v. Forman*, 144 Md. App. 658, 677 (2002); *see also Petitto v. Petitto*, 147 Md. App. 280, 310 (2002) ("The decision to make a child support award retroactive to the filing of the [relevant motion] is a matter reserved to the discretion of the trial court.").

The court is to apply the Guidelines schedule in modifying a child support award as well as in establishing one. FL §12-202(a)(1). However, a revision to the Guidelines is not itself a material change of circumstances for the purpose of a modification of a child support award. FL §12-202(c).

4. The Circuit Court's May 15, 2023 Child Support Order

On May 15, 2023, the Circuit Court issued the child support order at issue in this appeal. In it, the court found that Father had filed a motion for modification of support on August 26, 2019. The court then retroactively modified his child support obligation for M from that date forward to June 6, 2022, the date of M's high school graduation – when the parents' support obligation for M concluded.

Father had asked the court to modify child support for M as of early 2019 to account for the fact that M had lived with Father full-time for a period of time pursuant to a

[8] *See Harvey v. Marshall*, 389 Md. 243, 264-68 (2005) (explaining that some of the limitations on modification of child support awards were intended to conform Maryland law to a federal law that conditioned federal funding on a state's adoption of laws to limit some courts' practice of reducing or forgiving arrearages).

temporary custody order that the court had issued at that time. The court denied Father's request for the earlier effective date solely on the grounds that FL §12-104(b) prohibited it from retroactively granting that relief prior to the date of the filing of a motion for modification.

Attached to the May 15, 2023 Child Support Order are four sets of worksheets that contain calculations of support that pertain variously to the children as of various dates. All are on SASI-CALC forms[9] labeled "Post October 1, 2020 Guidelines." The pages of the worksheets relating to support of M and J bear a typewritten notation reading "Child Support Obligation: Shared"; the worksheet pages pertaining to Daughter do not include the term "shared."

Worksheet #1, dated August 26, 2019,[10] shows a bottom line calculation of $1,635 for Father's monthly support obligation for Sons. The court's May 15, 2023 order awarded monthly child support in that amount to Mother for the period from August 26, 2019 to September 28, 2021.

[9] SASI-CALC is a software application that generates a "Recommended Child Support Order" by applying the calculations required by the Guidelines to the numbers that the user enters on a worksheet. The form has lines for items such as each parent's income, the child's overnights with each parent, and expenses as listed in various provisions of the Guidelines.

[10] As best we can tell, the dates that appear on Worksheets #1, 2, and 3 for M and J correspond to the following events: August 26, 2019 is the date on which Father filed a motion to modify child support that the Circuit Court identified as his first request for modification; September 28, 2021 was a date of a hearing conducted by the court on the issue; and June 6, 2022 was the date of M's high school graduation, when the parents' support obligation with respect to him concluded.

Worksheet #2, dated September 28, 2021, shows a calculation of $1,473 for Father's monthly support obligation for Sons. The court's May 15, 2023 order awarded monthly child support in that amount to Mother for the period from September 28, 2021 to June 6, 2022.

Worksheet #3, dated June 6, 2022, shows a calculation of $1,050 for Father's monthly support obligation as to J alone. The court's May 15, 2023 order awarded monthly child support in that amount to Mother for the period from June 6, 2022 to April 24, 2023.

Worksheet #4, dated April 24, 2023, shows a calculation of $907 for Father's monthly support obligation as to J alone. The court's May 15, 2023 order awarded monthly child support in that amount to Mother for the period from April 24, 2023 forward.

All of the pages of the worksheets pertaining to Sons show 273 overnights with Mother and 92 overnights with Father, calculated on the forms to be 74.8% and 25.2% respectively of overnights for the year. Father contests the accuracy of both the number of overnights and certain other adjustments for payments entered on the worksheets.[11]

5. Whether the Circuit Court Erred or Abused its Discretion in its Child Support Order

Although child support orders "generally" fall within a circuit court's discretion, we apply a *de novo* standard of review to the extent that a child support order turns on an interpretation and application of Maryland statutory and case law. *Walter v. Gunter*, 367

[11] As indicated above, each worksheet also includes a separate page calculating Father's support obligation with respect to Daughter. Those calculations, which are not based on shared physical custody, are not at issue in this appeal.

Md. 386, 391-92 (2002); *see also In the Matter of the Marriage of Houser*, ___ Md. ___ (June 27, 2025), slip op. at 10.

a. Use of August 26, 2019 as the Date of the Filing of Father's Request for Modification of Child Support for M

Father asserts that the Circuit Court erred by not retroactively modifying the child support for M to account for the fact that, under the terms of two court orders, Father had sole physical custody of M from March 17, 2019 to August 7, 2019 and shared physical custody from August 7 to June 6, 2022.

As noted above, a circuit court "may not retroactively modify a child support award prior to the date of the filing of the motion for modification." FL §12-104(b). Here, the record shows, and the Circuit Court found, that Father filed a motion for modification on August 26, 2019. However, that was not the first request that Father had filed concerning modification of his child support obligation with respect to M.

On January 25, 2019, Father had filed *pro se* a request for a hearing as to M on a court-provided form labeled "Request for Hearing or Proceeding." That form provided check-off boxes for eleven types of "matters … at issue" for a petitioner to check off. Father checked the boxes for "custody" and "child support," and requested an emergency hearing. His handwritten explanation of the need for an emergency hearing focused on M's custody. On February 5, 2019, the court noted on Father's petition "Request for a hearing granted." The court heard the case on February 26, 2019. On March 27, 2019, the court ordered that M be placed in Father's custody pending further proceedings. In that

order, the court "reserve[d] on addressing the outstanding issues of child support" and stated that it would address them at the hearing scheduled for April 25, 2019.

The court clerk's Family Hearing Sheet for the April 25, 2019 hearing shows that testimony was taken and a hearing held that day and that the hearing was to resume on May 7, 2019. The hearing sheet form has a pre-printed box for "custody." The clerk checked that box, wrote in a box for "child support," and checked that box as well. The May 7, 2019 Family Hearing Sheet has the same entries on that section of the form, as does a hearing sheet for June 13, 2019. No transcripts of these hearings appear in the record available to this Court.

On August 7, 2019, the Circuit Court issued an order that awarded each parent 50% physical and legal custody of M until his high school graduation in June 2022 and set a schedule for his overnights and visits. The order states that the court had held hearings on April 25, May 7, and June 13, 2019, and that "due to the nature of the Request for an Emergency Hearing," it had held that the hearings "were to be limited solely to deal with the custody of [M].…" The order did not address the "outstanding issues of child support" to which the March 27, 2019 order had referred.

On August 26, 2019, Father filed a new motion to modify the December 13, 2018 Child Support Order as to M. In it, he requested that his obligation be re-calculated retroactively to reflect the period when M lived with Father full-time (listed as beginning on December 28, 2018), or to his January 25, 2019 request for an emergency hearing, or to the February 26, 2019 Interim Order, or to the August 12, 2019 custody order.

Under the circumstances, we conclude that Father's filing of the form hearing

request on January 25, 2019, coupled with the court's recognition that the request concerned child support as well as other issues, and undertaking to address it, met the filing requirement of FL §12-104(b) as to M.[12] The record does not reflect an earlier request to modify child support as to J.[13]

We therefore remand the case to the Circuit Court to exercise its discretion as to whether to make its child support award for M retroactive to an earlier date that is not before January 25, 2019, the date of Father's first filing.

b. Calculation of Child Support Based on Sons' Overnights with Each Parent

Father argues that the Circuit Court "incorrectly input the number of overnights [on the SASI-CALC worksheets], resulting in an improper calculation of support payments." Specifically, Father asserts that the applicable orders had neither accounted for the period during which M lived with him full-time nor reflected the court's orders that set the number of Father's overnights with both sons. Father's request that we review the Circuit Court's calculation on Sons' overnights with him involves as a threshold matter the trial court's interpretation and application of the Guidelines provisions on shared physical custody.

[12] At the same time, the Circuit Court's reliance on the August 26, 2019 filing date is understandable. The docket does not describe the petition for an emergency hearing as a request for modification of child support. We do not express an opinion on whether checking a box on a hearing form suffices by itself, without other circumstances such as those recounted above, to establish the date from which a child support modification may run.

[13] The Circuit Court's May 15, 2023 child support order refers generally to a request on August 26, 2019 as to Sons. Father's motion on that date requests relief regarding visitation for both Sons, and child support modification only as to M.

c. Application of the Appropriate Threshold for Shared Physical Custody

As noted earlier, the applicable threshold for determination whether there was shared physical custody is whether Mother and Father each had at least 35% of the overnights with a child. As also noted earlier, the Guidelines require a finding as to whether that threshold is met by the actual number of overnights; if it is not, the Guidelines give a circuit court some discretion to refer to the number of overnights awarded in its custody orders in determining whether to apply the shared physical custody formula. Under Paragraph 1 of the definition of "shared physical custody," if the court determined that Father and Mother each kept M for more than 35% of the overnights, it would be *required* to apply the shared physical custody formula. Alternatively, if the court determined that one of the parents did not have M for the requisite number of overnights but had been awarded that number of overnights, the court had discretion to use the shared custody formula.

As best we can tell, the record is silent as to what method the Circuit Court used to determine the overnights entered on the worksheets for Sons and on what facts it based its computation of 273 overnights with Mother and 92 with Father.[14]

More to the point, it appears from the worksheets that the Circuit Court found that 35% threshold was not met in this case. The worksheets attached to the court's May 15,

[14] Earlier, on December 13, 2018, the Circuit Court had issued in Sons' case a Child Support Order that referred to an attached SASI-CALC worksheet for them. The worksheet was calculated on a shared custody basis, but it showed that Sons spent 58.9% of their time, or 215 nights, with Mother and 41.1%, or 150 nights, with Father, percentages that met the then-applicable threshold for shared custody.

2023 order appear to indicate that the court found that Father had only slightly more than 25% of the overnights. However, the Guidelines applicable to cases filed before October 1, 2020, such as the case involving child support for M and J, did not give the court the discretion to lower the threshold to 25% without making the findings required by FL §12-202(a)(v) for departures from the Guidelines.

The Circuit Court did not explain in its oral ruling how it determined the allocation of overnights in the worksheets. Father's brief is of minimal assistance in this regard.[15] In his brief, Father asserts that the "actual number of overnights" that should be attributed to him is 150 – which would exceed a 35% threshold as well as the 25% threshold that the Circuit Court seemed to be applying in the worksheets. In referring to the "actual number" of overnights, Father appears to be invoking the mandatory Paragraph 1 of the definition of "shared physical custody." However, Father has not pointed to anything in the record or any material in the Record Extract supporting an assertion that the actual experience of the family was that M spent 150 overnights with him. Rather, he relies on the number of overnights allocated to him in the consent custody order – which would be the Paragraph 2 route to finding shared physical custody – an approach within the discretion of the Circuit Court. To the extent that Father is relying solely on the language of the custody order

[15] Mother's *pro se* response to Father's brief does not address this question.

without regard to actual experience, the Circuit Court has discretion to find that the threshold is met, but is not required to do so.[16]

d. Disposition

Our resolution of this issue necessitates a remand for the re-calculation of Father's and Mother's respective child support obligations for M and J, subject to the constraints placed by FL §12-104 and the case law relevant to the retroactive modification of a child support award. *See, e.g.*, *Corapcioglu v. Roosevelt*, 170 Md. App. 572, 612-13 (2006) (concerning the trial court's discretion to order recoupment for "overpayment" when a child support order is reversed on appeal).

III

Conclusion

For reasons explained above, we hold that:

(1) The Circuit Court neither erred legally nor abused its discretion when it found Father in contempt for failure to pay J's extraordinary medical expenses.

(2) It appears that the Circuit Court based its calculation of child support for Sons on the current definition of shared physical custody rather than the definition that applies to this nine-year old case. Also, the court may have believed that it lacked discretion to set an earlier date for its order modifying child support that would coincide

[16] As noted, Father also contends that the Circuit Court, on several lines of the worksheets that accompanied its May 2023 order, erroneously credited Mother with certain payments that had been made by Father. The alleged error is not apparent to us and Father has not pointed to any facts in the Record Extract nor, as best we can tell, in the record generally that support that argument.

with Father's initial request for modification. Finally, it is not clear how the court derived the number of overnights used in the calculations related to shared physical custody. Accordingly, we will vacate and remand the child support orders for Sons for the Circuit Court to exercise its discretion under the applicable Guidelines and in accordance with the statutory and case law on the retroactive modification of a child support award.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND VACATED IN PART. CONTEMPT ORDER AFFIRMED; CHILD SUPPORT ORDER VACATED AND REMANDED FOR THE CIRCUIT COURT TO EXERCISE ITS DISCRETION UNDER THE LAW AS DESCRIBED IN THIS OPINION. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.