

Circuit Court for Prince George's County
Case No. CAD20-10116

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0931

September Term, 2021

ARIS COMPRES

v.

LUZ MARIA CAMPUSANO CHARLES

Graeff,
Nazarian,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 28, 2022

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

When this child support dispute was last before us, we affirmed the Circuit Court for Prince George’s County’s order for custody and child support. From the time of that order, Aris Compres (“Father”) made his core child support payments but failed to pay any amount towards child support arrearages. In response, Luz Maria Campusano Charles (“Mother”) filed a Motion for Contempt. The circuit court held a hearing, held Father in constructive civil contempt, and ordered him to pay the \$4,000 in arrearages past due or otherwise to submit himself to the Prince George’s County Sheriff’s Department. Father appeals and we affirm.

I. BACKGROUND

We recounted the factual allegations in the Complaint and procedural history in detail in the earlier appeal, *Compres v. Campusano Charles*, No. 248, Sept. Term 2021, slip. op., 2021 WL 5905979 (Md. App. Dec. 14, 2021) at *1–*2. But a brief sketch of the background affords some context for the narrow question before us—whether the finding of constructive civil contempt was an abuse of discretion.

The parties separated in January 2020 and began a back-and-forth battle over the care and control of the children. Father filed a Complaint for Absolute Divorce, Child Custody, and Other Relief on June 24, 2020. Mother answered and filed a Counter-Complaint on July 24, 2020 and requested an absolute divorce, custody, child support, alimony, and other relief. The court held a five-day merits trial in March 2021 and, in a

memorandum opinion and order filed on April 16, 2021,¹ granted the parties an absolute divorce based on twelve months of continuous separation, awarded joint physical custody and legal custody, and ordered Father to pay child support. The court ordered Father to pay \$2,866 per month in child support and total arrearages in the amount of \$25,794, to be paid as a lump sum or an additional \$1,000 per month.

On June 21, 2021, Mother filed an Amended Motion for Contempt and Order to Show Cause² alleging that since the time of the April 2021 Order, Father had made one child support payment in the amount of \$2,866 and failed to pay any amount toward arrearages. Mother's motion also requested attorney's fees. On July 22, 2021, Father filed an opposition to the motion for contempt, his own motion for attorney's fees, and a motion to modify the current child support obligation. The circuit court issued an Amended Show Cause Order on August 2, 2021 and held a hearing on Mother's contempt petition on August 10, 2021.

At the contempt hearing, Mother's counsel argued that although Father had recently made additional payments and was current on child support (he had paid for May, June, July and soon would pay August), he had yet to pay any amount towards his arrearages,

¹ The court reserved ruling on the issues of alimony, property, and attorney's fees, as well as possible modification of child support, pending the resolution of all issues. An Order modifying and increasing the monthly child support amount and arrearages was entered on August 27, 2021. Father has noted a separate appeal of that Order.

² Father asserts that "[t]he docket does not reflect that an original Petition for Contempt was ever filed," but the docket entry sheet reveals that the motion was filed on June 30, 2021.

which over four months totaled \$4,000. Father responded that he couldn't afford \$1,000 per month in arrearages, especially because the childrens' health insurance was estimated to cost approximately \$1,300 per month. Father's counsel stipulated that he had filed a motion to modify child support based on the health insurance cost (The court imputed \$786.60 to Father for anticipated health insurance costs in the original child support order, based on Father's representations that he would obtain private health insurance for the children). Father presented evidence from CareFirst that his monthly payment, beginning in August 2021, would be \$1,295.91 per month, although to that point he had not yet paid anything toward health insurance.

Both parties testified briefly. Mother testified that Father "just said he was not going to pay them. And he told me that through messages, that he wasn't going to pay one dollar." Counsel for Mother asked Mother to clarify what she meant by this and Mother stated, "He just said he wasn't going to pay, that he would be crazy to pay the \$1,000. That's what he said." Father disputed Mother's statement that he told her he would refuse to ever pay child support arrearages. Father also testified that he was not able to afford the \$1,000 per month in arrearages because it "was just too much in too short of an amount of time to be able to get the child support current."

Father testified that the health insurance cost was considerably higher than the court's estimate at the time of the merits trial, and he had not paid any amount in arrearages because he needed to save money in order to afford health insurance, although he acknowledged that he had not yet paid the first health insurance payment, which he

expected would be due sometime in August. Father also testified generally about his income and supplied the court with his tax information from 2020, as well as earnings statements from Los Hermanos, his restaurant, for two pay periods in July and August 2021. With this information, the circuit court concluded that Father could have paid the child support arrearages he owed from the date of the April Order to the date of the August 10 hearing. Ultimately, the court was not convinced by Father's testimony or evidence, and issued an Opinion and Order on August 11, 2021, that held Father in constructive civil contempt:

By order of this Court entered on April 16, 2021, [Father] is obligated to pay \$2,866.00 per month in child support, plus \$1,000.00 per month in arrearages (toward a total arrearage of \$28,794.00), due on the first of each month. . . . At the August 10 hearing, [Mother] presented clear and convincing evidence that [Father] has failed to pay the \$1,000.00 per month in child support arrearages since May 2021, putting him four months behind (a total of \$4,000.00). Rather than rebutting this evidence, [Father] argued this Court had no legal authority to order him to pay \$1,000.00 monthly towards the arrearages. [Father] contended that the total amount of arrearage this Court calculated (\$28,794.00) was excessive because [Father] had custody of the minor children for a portion of the time to which the arrearages applied. In addition, [Father] alleged that the health insurance plan that he purchased for the children costs approximately \$1,300.00 per month, and that he cannot afford to pay both arrearages and health insurance premiums.

This Court finds [Father's] testimony that he is unable to pay the ordered amount is not credible. [Father] is the self-employed owner of multiple successful businesses and the amount of child support and arrearages were calculated based on the disclosure of his financial assets during trial in the parties' divorce. Moreover, [Father] has appealed this Court's order to the Maryland Court of Special Appeals. [Father's]

willingness to extend this litigation into coming months or even years is further evidence of his not insignificant financial resources. Finally, [Father’s] own evidence regarding the health insurance for the children clearly showed that coverage began on August 1, 2021, and [Father] admitted at the August 10 hearing that he had not actually paid any premiums yet at that time. This Court’s memorandum opinion . . . addressed the three options for health insurance [Father] submitted to the Court for consideration of the child support obligation. [Father’s] argument that the health insurance premiums made it impossible for him to pay child support arrearages is thus unavailing.

The court addressed Father’s challenge to the legal basis for the child support order, stating that it is not a valid defense to contempt and has “no bearing . . . into past failure to pay as ordered.”

Next, the court awarded Mother attorney’s fees in connection with the contempt proceeding, although the August 11 Order doesn’t state any amount³:

The disparity in income between [Father] and [Mother] is considerable. [Mother] has thus far been unable to pay her attorney for the majority of the costs of this litigation, and [Father’s] failure to follow this Court’s order with regard to payments due to [Mother] exacerbates [Mother’s] financial problems. Furthermore, [Mother] clearly had substantial justification for bringing her motion for contempt as [Father] does not contest his failure to pay the arrearages as ordered.

Accordingly, the court found that awarding Mother attorney’s fees associated with the

³ The circuit court record reveals that after the August 11 Order, the circuit court asked both attorneys to submit documentation supporting their individual claims for attorney’s fees. Mother’s counsel submitted legal bills documenting that preparation for and appearance at the contempt proceeding cost Mother a total of \$935. On August 30, 2021, the circuit court issued another order modifying the monthly child support and arrearages amount, as well as clarifying that Father owed Mother \$935 in attorney’s fees with respect to the contempt proceeding.

contempt action was appropriate. The court ordered Father to pay the \$4,000 (four months of arrearages) due before August 20, 2021 as a purge, and if he failed to do so, to surrender himself to the Sheriff of Prince George’s County on that day.

Father filed a timely notice of appeal of the Contempt Order.⁴ We discuss additional facts as appropriate below.

II. DISCUSSION

On appeal, Father identifies three issues that, in his view, warrant a reversal of the court’s order.⁵ *First*, he contends that the circuit court abused its discretion in holding him in constructive civil contempt. *Second*, he argues that the circuit court abused its discretion in finding that he had the ability to purge the contempt provision. *Third*, he contends that the circuit court abused its discretion in awarding attorney’s fees to Mother.

⁴ While this appeal was pending, Father filed a certification of compliance on August 20, 2021 representing that he paid the \$4,000 toward child support arrears.

⁵ Father phrased the Questions Presented in his brief as follows:

I. DID THE TRIAL COURT ERR OR ABUSE ITS DISCRETION IN ORDERING THAT FATHER WAS IN CONSTRUCTIVE CIVIL CONTEMPT?

II. DID THE TRIAL COURT ERR OR ABUSE ITS DISCRETION IN FINDING THAT FATHER HAD ABILITY TO PURGE CONTEMPT AND IN ORDERING INCARCERATION?

III. DID THE TRIAL COURT ERR OR ABUSE ITS DISCRETION IN ORDERING FATHER TO PAY MOTHER’S ATTORNEYS’ FEES ASSOCIATED WITH THE CONTEMPT PROCEEDING?

Mother did not file a brief and has not participated in this appeal.

“[T]his Court will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed.” *Breona C. v. Rodney D.*, 253 Md. App. 67, 73 (2021) (quoting *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016)). “A trial court abuses its discretion when its decision encompasses an error of law,” *id.* (citing *Schlotzhauer v. Morton*, 224 Md. App. 72, 84–85 (2015)), “which this Court reviews without deference[.]” *Id.* (citing *Walter v. Gunter*, 367 Md. 386, 392 (2002)). Additionally, we review an award of attorney’s fees in domestic cases for abuse of discretion. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002); see *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (citation omitted) (“An award of attorney’s fees will not be reversed unless a court’s discretion was exercised arbitrarily or the judgment was clearly wrong.”).

A. The Circuit Court Did Not Err In Finding Mr. Compres In Constructive Civil Contempt.

The contempt order challenged here is an order of constructive civil contempt. Constructive contempt, as opposed to direct contempt, is contempt that occurs outside of “the presence of the judge presiding in court or so near to the judge as to interrupt the court’s proceedings.” Md. Rule 15-202(a)-(b); see also *County Comm’rs for Carroll Cnty. v. Forty W. Builders, Inc.*, 178 Md. App. 328, 393 (2008) (quoting *In re Lee*, 170 Md. 43, 47 (1936) (“[C]onstructive contempts are those which do not occur in the presence of the court, or near it, . . . but at some other place out of the presence of the court and beyond a place where the contempt would directly interfere with the proper functioning of the court.”)). “Civil, as opposed to criminal, contempt proceedings are those that are intended

to preserve and enforce the right of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties.” *Breona C.*, 253 Md. App. at 73 (cleaned up). “[T]he purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt.” *Id.* (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)). “The coercive mechanism of an order of constructive civil contempt is the imposition of a sanction that the contemnor is able to avoid by taking some definite, specified action of which the contemnor is reasonably capable.” *Id.* at 74; see *Bryant v. Howard Cnty. Dep’t of Soc. Servs. ex rel. Costley*, 387 Md. 30, 46 (2005) (“[A] penalty for civil contempt, if it is to be coercive rather than punitive, must provide for purging; it must permit the defendant to avoid the penalty by some specific conduct that is within the defendant’s ability to perform.”). An order making a finding of civil contempt must, therefore, “specif[y] the sanction imposed for the contempt,” and “specify how the contempt may be purged.” Md. Rule 15-207(d)(2).

An order holding an individual in constructive civil contempt is not valid unless it:

- (1) imposes a sanction;
- (2) includes a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and
- (3) is designed to coerce the contemnor’s future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct.

Breona C., 253 Md. App. at 74. “[T]o serve the coercive purpose of civil contempt, the sanction must be distinct from the purge provision and the valid legal requirement the court

seeks to enforce.” *Id.* Moreover, “if the sanction imposed is to act in accord with the same legal requirement with which the court seeks to coerce compliance, there is no coercive mechanism at all,” but rather, “there is just a second order directing compliance with an existing order.” *Id.* at 74–75.

In the context of child support (non)payments, there are a number of circumstances in which it is not appropriate to hold a party in contempt:

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, or (B) enforcement by contempt is barred by limitations as to each unpaid spousal or child support payment for which the alleged contemnor does not make the proof set forth in subsection (3)(A) of this section.

Md. Rule 15-207(e)(3).

The first step is conceded: in his brief, “Father does not dispute that he failed to pay the . . . arrearages in the amount of \$1,000 per month for the months of May 2021, June 2021, July 2021, and August 2021.” As such, the burden shifted to Father, under Rule 15-207(e)(3), to prove by a preponderance of the evidence that from the date of the support order through the date of the contempt hearing, he “never had the ability to pay more than the amount [he] actually paid,” and that he “made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment” of arrearages to Mother. Md. Rule 15-207(e)(5)(A)(i)–(ii); *see Arrington v. Dep’t of Hum. Res.*, 402 Md.

79, 97 (2007) (“If the petitioner proves that the defendant failed to pay the amount owed and the defendant fails to prove [] that he or she could not have paid more than was paid[,] . . . the court may find the defendant in contempt.”).

Father states that “the record of the contempt hearing proves that from the date of the support order through the date of the contempt hearing Father never had the ability to pay more than the amount actually paid” and that he “presented a clear picture as to his income and expenses at the contempt proceeding” that “clearly establish that Father never had the ability to pay more than the amount actually paid” But the court found in the April Order that Father *could* pay the ordered support and arrearages, and Father’s core income evidence confirmed that his income hadn’t changed substantially since then. On the record before it, the court was not convinced that anything had changed since it entered the original child support award. And save for the anticipated increase in estimated health insurance costs for the children, which Father acknowledged that he had not yet paid, Father’s testimony confirmed as much. What Father really wanted was for the court to modify the arrearage obligation, but that wasn’t yet before the court (he had a separate motion to that effect on file that would be decided shortly thereafter). And after acknowledging that he hadn’t paid the arrearages ordered, it was on him to prove that he *couldn’t*, not to challenge the arrearage award itself.

Ultimately, the court was not convinced that Father was unable to pay towards the arrearages:

THE COURT: So has he paid any payment towards health insurance since my order?

[COUNSEL FOR FATHER]: Well, he had to establish. So it wasn't established yet.

THE COURT: Okay. So in other words, the answer is no. He hasn't made any payments towards health insurance since my order.

[COUNSEL FOR FATHER]: Well he has established the health insurance. He hasn't received the invoice yet, but he has had to save the money to pay for it. It is 1295.91 a month.

THE COURT: Okay. But he hasn't paid anything. You just said he was having difficulty paying the arrearages because he . . . is paying a lot more in health insurance [than] what he anticipated he was going to pay in health insurance, because we have gone through all this.

Now it is a little higher than what we considered, but he hasn't made any payments. So you can't use that as an excuse as to why he is not paying if he hasn't paid it yet.

Father's disapproval of the original child support order amount and the arrearages amount did not excuse his refusal to pay the arrearages amount from May to August. The circuit court based its finding on Father's 2020 tax information and his July and August 2021 earnings statements. The evidence of Father's employment income from Los Hermanos and the impending health insurance payments was sufficient to support the court's finding that Father had failed to prove his inability to pay more support than he had actually paid. In light of this record and the court's ongoing negative assessment of Father's credibility as a witness, the court readily could have found that Father failed to carry his burden, and we discern no error in its decision to hold him in constructive civil contempt.

B. The Circuit Court Did Not Err In Finding That Father Had The Present Ability To Purge The Contempt.

“If the petitioner proves that the defendant failed to pay the amount owed and the

defendant fails to prove [] that he or she could not have paid more than was paid . . . the court may find the defendant in contempt.” *Arrington*, 402 Md. at 97. The burden is on the contemnor to show his or her inability to meet the purge. *Id.* at 102. This “approach is consistent with the ‘rule grounded in common sense that the burden of proving a fact is on the party who presumably has peculiar means of knowledge’ enabling him or her to establish the fact.” *Id.* (quoting *Lake v. Callis*, 202 Md. 581, 587 (1953)). The defendant is in the best position to establish his or her immediate financial situation and must be given the opportunity to show that they are unable, rather than unwilling, to make the payments. *Id.* But the “court is not required to believe everything (or anything) [a] witness says, especially when it is unsupported by other evidence, but the court may not ignore credible and uncontroverted evidence of a defendant’s impecunious circumstances in order to circumvent the limitation on incarceration.” *Id.* “A defendant claiming poverty may be questioned regarding that claim, and other evidence, together with reasonable inferences from other evidence, may be considered, both for its own value and as affecting the defendant’s credibility.” *Id.*

Father argues that he “did not have the current ability to pay \$4,000 by the deadline date of August 20, 2021” In setting the purge amount at \$4,000, the court relied on evidence about Father’s unchanged financial resources. Father’s testimony and evidence at the hearing revealed that his income hadn’t changed substantially since the April Order, and the court was not convinced that Father couldn’t pay. So although it was his burden to persuade the court that he had no ability to pay the purge amount of \$4,000, Father failed

to establish that he lacked the means to pay. We see no abuse of discretion in the court’s decision to set the purge in the amount of \$4,000 and to require Father to surrender to the Sheriff unless the purge amount was paid within ten days.⁶

C. The Trial Court Did Not Abuse Its Discretion In Awarding Attorney’s Fees To Mother.

Father argues *next* that the circuit court abused its discretion by ordering that Father pay the attorney’s fees Mother incurred in connection with the contempt proceeding because, in his view, the court failed to consider properly the factors in Maryland Code (1984, 2019 Repl. Vol.) § 12-103(a)(1) of the Family Law (“FL”) Article. Father states that “the trial court did not properly assess [his] financial status and needs”

As an initial matter, FL § 12-103 permits courts to award attorney’s fees in contempt actions because they are actions to recover child support arrearages and to enforce a decree of child support. *Pool v. Bureau of Support Enf’t*, 238 Md. App. 281, 295 (2018). FL § 12-103(a)(1)–(2) provides that:

The court may award to either party the costs and counsel fees that are just and proper under all the circumstances in any case in which a person:

- (1) applies for a decree or modification of a decree concerning the custody, support, or visitation of a child of the parties; or
- (2) files any form of proceeding:
 - (i) to recover arrearages of child support;
 - (ii) to enforce a decree of child support; or
 - (iii) to enforce a decree of custody or visitation.

⁶ Father does not challenge the structure of the order, which, unlike *Breona C.*, compels compliance by directing him to report to the Sheriff unless he complies by paying the full purge amount. *Cf. Breona C.*, 253 Md. App. at 75–76.

Father is right that the statute requires the court to consider his financial circumstances before awarding costs and counsel fees under this section, although that's not the only factor—courts must consider (1) the financial status of each party, (2) the needs of each party, and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding. FL § 12-103(b). Substantial justification “is measured by the issues presented and the merits of the case[.]” *Davis v. Petito*, 425 Md. 191, 202 (2012). And although prevailing at trial is sufficient for a finding of substantial justification, it is not necessary. *Id.* at 203. To survive appellate review, an award of attorney's fees under FL § 12-103 must be supported by adequate testimony or records, the work should have been reasonably necessary, the fee should have been reasonable for the work that was done, and the trial court should have assessed what could reasonably be afforded by each party. *Lieberman v. Lieberman*, 81 Md. App. 575, 601–02 (1990).

Father grounds his argument in the contention that “the testimony and evidence established that Father lacked the ability to pay \$1,000 per month toward the arrearages,” and, through that logic, the conclusion “he certainly could not afford to pay Mother's attorneys' fees.” But the circuit court in this case was not convinced that Father could not afford the arrearage payments, and, again, it is not appropriate for us to second-guess that finding of fact. The court addressed the statutory factors in its August 11, 2021 Order:

The disparity in income between [Father] and [Mother] is considerable. [Mother] has thus far been unable to pay her attorney for the majority of the costs of this litigation, and [Father's] failure to follow this Court's order with regard to payments due to [Mother] exacerbates [Mother's] financial problems. Furthermore, [Mother] clearly had substantial

justification for bringing her motion for contempt as [Father] does not contest his failure to pay the arrearages as ordered. Accordingly, this Court finds that an award of attorney’s fees to [Mother] for the contempt action is appropriate here.

Father contends that the circuit court failed to consider his financial status and the needs of each party. The record reveals that it did. And though we note that the court’s order did not recite the statutory factors in its award of attorney’s fees, “the court’s earlier statements show that it had considered these factors with respect to its other rulings.” *Meyr v. Meyr*, 195 Md. App. 524, 553 (2010). In *Meyr*, the husband contested an award of attorney’s fees in which the circuit court did not specifically recite the statutory factors and therefore, in his view, did not consider the financial status or needs of the party in awarding attorney’s fees. *Id.* This Court found that “the trial court’s findings in its Memorandum Opinion and Judgment of Limited Divorce, which was issued approximately two-and-a-half months before the order awarding attorney’s fees, demonstrated that the court had engaged in the requisite analysis.” *Id.* at 553–54.

So too here. The circuit court rendered a detailed ruling regarding substantial justification and the financial needs and statuses of the parties when it issued its initial memorandum opinion and order on April 16, 2021. The court found that Father made significantly more income than Mother. The court also found that Mother had recently obtained a job working at Cheesecake Factory, and that she was working towards obtaining her driver’s license and a vehicle. Father, on the other hand, owned a successful restaurant, Los Hermanos, and the court was not convinced by his claim that he had no interest in Mecho’s Dominican Kitchen, a restaurant owned by his brother. The court also found that

Father was receiving multiple checks in various amounts related to Los Hermanos, in addition to a direct deposit paycheck every two weeks. When the circuit court noted in its August 11 Order that “[t]he disparity in income between Plaintiff and Defendant is considerable[,]” the court was referring visibly to the extensive findings it made in its earlier April 16 Order.

The court detailed its findings about the parties’ financial situation and needs in the initial memorandum opinion, and it was not required to reiterate all of them in full in the August 11 Order regarding attorney’s fees. We find the court’s findings sufficient to support the court’s decision to award Mother the attorney’s fees she incurred in connection with the contempt proceeding.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**