Circuit Court for Montgomery County
Case No. FL123949

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 957

September Term, 2017

RUFUS K. LEETH JR.

v.

ANTRINA LEETH

Fader, C.J.,
Leahy,
Shaw Geter,

JJ.

Opinion by Leahy, J.

Filed: March 4, 2019

*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.

On March 3, 2015, appellant Rufus K. Leeth, Jr. and appellee Antrina Leeth obtained an absolute divorce in the Circuit Court for Montgomery County. The court's order incorporated, but did not merge, their separation agreement and their assets division agreement. The separation agreement assigned the custody arrangements, divided the children's expenses equally, and stated that neither party claimed entitlement to spousal maintenance. Eighteen months later, Antrina[1] petitioned the court for child support and a change in custody, asserting that Rufus was not making child support payments and had failed to deliver the children per the custody agreement.

The court held a one-day hearing on January 30, 2017 and two weeks later announced its findings, ordering Rufus to pay child support, a child support arrearage, and 56% of the tuition for Forcey Christian School only for the 2016-2017 school year. The Court issued a written order on April 4, 2017, which added a detailed summer and holiday schedule. Rufus moved to alter the judgment, which the court denied summarily on June 8, 2017. He timely appealed to this Court on July 10, 2017, and presents one question, which we have rephrased:[2]

[1] For the sake of clarity and meaning no disrespect, we will refer to the parties by their first names. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 401 (2018).

[2] Appellant's brief states the question presented as follows:

> 1. "Did the circuit court err in its child support calculations by failing to verify income of the parties and abuse its discretion by awarding costs for child care related expenses and the private school Washington International to the Appellee, while failing to award accurate costs for health care, child care, and college savings to the Appellant; and abuse its discretion in determining the expenses for the private school Forcey Christian are to be shared and issuing judgements [sic] against the Appellant for arrears related to incorrect child support calculations and

Did the circuit court abuse its discretion in its assignment of child support and educational costs?

We discern no abuse of discretion in the trial court's order of child support, which was supported by verifying documentation, and we determine that the trial court, having fully considered the *Witt* factors, properly attributed the children's private school tuition to both parents.

BACKGROUND

Rufus and Antrina were married in West Palm Beach, Florida, in February 2005.[3] The parties have three children: R.L., born in December 2003, J.L., born in May 2005, and V.L., born in February 2007. The family lived together in Florida prior to relocating to Maryland on July 11, 2010. In January 2013, the parties separated. Both parties work outside the home.

A. Divorce and Agreements

On November 17, 2014, Antrina filed a complaint for absolute divorce, indicating that the parties had separated more than 12 months prior and had no potential for reconciliation. She did not request alimony or child support. In the complaint, Antrina indicated that the children lived equally with each parent and that joint physical and legal custody would be in the children's best interests. Rufus filed an answer on the same day.

private school related expenses?"

[3] The separation agreement states that the parties were married on February 11, 2004; however, the underlying complaint for divorce states the parties were married on February 8, 2005, and the judge stated in the underlying ruling that the parties were married in February of 2005.

In it, he admitted all of the statements asserted in the complaint.

Five weeks later, on December 23, 2014, the parties executed two different agreements: an assets division agreement and a separation agreement, both filed under seal, and both incorporated, but not merged, into the Judgement of Absolute Divorce. The assets division agreement assigned ownership of the items and furniture contained in the family home, and the parties' vehicles.

The separation agreement conferred joint legal and physical custody on both parties and outlined the custody schedule, though many details regarding custody during summertime were omitted. Importantly, the parents further agreed that they would individually pay their respective childcare expenses, that each would "equally share in the children's uninsured health care costs and other ordinary expenses for the children," and that Rufus would maintain health insurance for the children. The parties also waived alimony or spousal support.

Regarding "annual expenses for the [c]hildren[,]" which included school events and supplies, extracurricular activities, and college costs, the parents agreed to share them equally, though they noted that the "agreement pertains only to the items noted herein[and] any additional items or obligations arising in part to the [c]hildren and their care from year to year will be discussed and agreed upon prior to imposing any financial obligation on the other party." The agreement also contained an economic penalty for either party if he or she were to leave Maryland, which they described as "the common residing state." The parent who left the state would be responsible for paying $400 in monthly support, up to $1000 per school year for childcare, the entire amount of a student loan each month, and

the travel expenses of the non-primary custodial parent.

Health coverage for Antrina was to cease at the end of 2014, after which she would become responsible for her own health care coverage, but Rufus would "maintain health insurance, including medical, dental, and vision coverage" for the children.

B. Change in Circumstances: Custody Pleadings

On August 15, 2016, Antrina filed three pleadings in the circuit court: a petition to modify custody, an "Emergency Complaint for Custody" (hereafter "Emergency Complaint"), and a complaint for child support. The petition to modify custody asserted that Rufus was "refusing to return the children," and that the agreement should be modified because the "language in the agreement [did] not specify start and end times or dates for [] custodial time[.]" She further alleged that the reason Rufus withheld the children was to "use custody of the children as a way to negotiate financial support for the children."

In the Emergency Complaint, Antrina alleged that the day before, Rufus failed to return the children, and that the children needed to be returned in order to register for school. Antrina stated that she had sought the assistance of the police, who could not help, given the "vague language in the parties' Separation Agreement." She alleged that Rufus would not return the children unless she signed an "addendum agreement" stating that Rufus would no longer be financially responsible for the children.

The complaint for child support requested that Rufus pay child support in accordance with the Maryland child support guidelines, provide health insurance for the children, and pay "any other appropriate relief, including arrearages, if appropriate."

Two days later, on August 17, Rufus filed pro se responses, denying Antrina's

allegations and requesting that the court dismiss all three filings. He specifically denied the allegations in Antrina's "Emergency Complaint that he had refused to return the children as previously agreed, that the children must be returned for school registration, and that he had withheld the children unless Antrina signed an 'addendum agreement.'"

That same day, Rufus filed a pro se "Counter-Petition to Modify Custody" (hereinafter "Counter-Petition"), in which he claimed that "[t]he time-sharing schedule for the children is working well[,]" but that Antrina had "moved at least five times" since 2013, and that she planned to move to Washington, D.C., whereas he had not moved at all and had no plans to move. Thus, the "only way out of th[e] impasse" of determining where the children would go to school "is to award Father sole legal custody for educational purposes." He requested that he be granted "sole legal custody with respect to making educational decisions, especially regarding where the children shall attend school." On November 3, 2016, Antrina responded to Rufus's Counter-Petition, denying Rufus's allegations and requesting that his filing be dismissed.

A month later, on December 20, 2016, Antrina filed a pro se "Amended Motion for Child Custody, Child Access, Child Support, and Other Appropriate Relief," in which she claimed that there had been a material change in circumstances and that the separation agreement no longer was in the best interest of the children. Regarding the children's school district, the children no longer attend the schools they attended when the parties entered into the separation agreement. While she acknowledged that she had moved, she asserted that Rufus moved to Prince George's County after their separation, and that she maintained a residence in Montgomery County so that the children would remain in the

same school. Since finishing elementary school, the oldest child attended the private Washington International School, receiving an 80% scholarship. Rufus refused to transport the oldest child to school. Additionally**,** he had enrolled the children in Prince George's County schools without consulting her, and he had filed a protective order against her which "was denied at the interim stage." Regarding the Emergency Complaint, Antrina added that Rufus withheld the children for a total of five days, and had emailed her a document amending the separation agreement stating that unless she "signed and filed. . . . the children would not be released." Regarding the complaint for child support, Antrina asserted that Rufus was duly employed and had the means to "pay equally . . . the minor children's school fees, school costs, school activities and other extracurricular activities."

The amended motion requested additional relief; namely, that Rufus have regular access to the children; that Rufus pay equally the children's school and extracurricular fees and costs; that the court establish a summer and holiday schedule; and that Antrina be granted "make up days" for the five days that Rufus had kept the children. Antrina concluded that joint physical and legal custody was no longer in the best interest of the children, and the court should award primary physical custody and sole legal custody to her.

Rufus responded to Antrina's amended motion on January 20, 2017, denying most of her allegations and requesting that the motion be dismissed. Regarding the oldest child's transportation to school, he explained that it was a burden to him and the other children because it required a two-hour commute, twice per day, and therefore, he had requested help with the child's transportation. He admitted that he had withheld the children, but

denied emailing Antrina a document amending the separation agreement.

He filed another responsive pleading on February 14, 2017, entitled "Defendant's Closing Argument," in which he averred that Antrina had acted unilaterally in placing their children in private school and again requested "legal custody for educational decision making purposes only as it pertains to where [the] children will attend school[,]" with the understanding that the children would be placed in the Montgomery County public school system—the same school system that the children were in prior to and following the divorce. He also stated that Antrina was financially unstable, had an unstable living situation, failed to maintain a vehicle, and had neglected to pay debt as required by the separation agreement. He supplemented his pleading with a document entitled "Modified Separation Addendum #1," which absolved Rufus of responsibility for the children's private school tuition and fees; detailed how the parties should transport the children to and from school; and established a detailed school, holiday, and summer physical custody schedule.

C. Hearing and Oral Ruling

On January 30, 2017, the parties met before Judge Cynthia Callahan of the Circuit Court for Montgomery County. Both proceeded pro se and both testified. Antrina testified that she had moved four times since the separation, but remained in Montgomery County so that the children could attend the same schools. In the Spring of 2016, when she spoke with Rufus about her plan to move to Washington, D.C., the oldest child attended Washington International School in Washington, D.C., and the middle and youngest children attended Fairland Elementary School in Montgomery County (which Antrina

explained, goes until the fifth grade). The parties discussed where to place the middle child, who was about to age out of elementary school, given Antrina's potential move to D.C. Antrina testified that Rufus was amenable to the move if the middle child would be in a good school district, or enrolled in a private or charter school. The parties also discussed looking for a school in Montgomery County. At the time of the hearing, the oldest child attended Washington International School in Washington, D.C.; the middle child attended Forcey Christian School in Montgomery County; and the youngest child still attended Fairland Elementary School. When the court delivered its oral ruling, the two youngest children were attending Forcey Christian School.

Judge Callahan delivered her oral ruling on February 16, 2017. On the party's financial statuses, she noted that neither party provided a full financial statement, but she nevertheless found, based on the agreements provided by the parties, that Antrina's monthly income was $6,260 a month and Rufus's was $8,107 per month, for a total combined income of $14,367 per month.[4]

Regarding the separation agreement, the court noted its deficiencies and described the events leading to the parties' conflict. The agreement provided for joint legal and shared physical custody, using a "2/2/5 schedule," as well as summer and holiday schedules that were not specific enough. The agreement further contained a detailed schedule of expenses, but the schedule had "no provision regarding private school" or child support.

[4] Because the parties' combined monthly income is less than $15,000, the court's calculation of child support was subject to the Maryland Child Support Guidelines. Maryland Code (1984, 2012 Repl. Vol.) Family Law, § 12-204(e).

In August of 2016, the parties had come to "loggerheads over three interrelated issues: school, public or private for the children; the cost of private school; and holiday access[.]" Rufus had the children the latter part of August, and refused to return them to Antrina because he did not want the children moved to D.C. Antrina called the police, who could not return the children to her because the children's schedule had been worked out verbally and was not in the separation agreement. Rufus then attempted to get a domestic violence protective order against Antrina so that he could get custody of the children and enroll them in Prince George's County Schools. Antrina was alerted to Rufus's actions when one of the children called her from the district courthouse. The order was ultimately denied and the children were returned to Antrina.

The court analyzed the *Taylor* and *Sanders* factors relevant to the parties. The court noted that the parties' character and reputation was one of devotion to the children, and the parents' respective schooling requests—that Antrina preferred private school and Rufus preferred public. The court found that the agreements between the parties regarding the summer and holiday schedule was ineffective, and found that the parents exhibited a willingness to share custody "for most things, but clearly not for school determination." The court determined that the parents' ability to maintain the children's relationships with siblings, relatives, and the other parent was satisfactory, but acknowledged that the court had no evidence of the children's preference. The capacity of the parents to effectively communicate, the court found, was strained because Antrina believed she "does all of the communication work" and that Rufus "doesn't follow through" with his commitments, while Rufus believed Antrina was financially irresponsible. The geographic proximity of

the parents relative to each other and the children's school was not "a major obstacle" in the court's view. The court found that each parent had maintained a stable and appropriate home for the children—Rufus's allegation that Antrina had moved often was not supplemented with any allegation of instability, such as evictions or living in shelters. Finally, the court noted that the potential disruption of the children's school and social life was important to Rufus and the children.

"[T]he primary issue," the court concluded, "is the children's education," and "secondarily, the summer and holiday schedules need[ed] to be set." Judge Callahan began by addressing costs. Rufus's take that he acquiesced to the oldest child's private school education because of a significant scholarship, while refusing to contribute to tuition, the court found to be "an unreasonable position for [Rufus] to take, [] especially since [the child] flourished at the school and [was] settled there." The court found that Rufus had disagreed with the middle and youngest child's placement at Forcey, and attempted to prevent it by filing the domestic violence protective order against Antrina.

"Given those facts," the court held that "for the 2016-17 school year only, [Rufus] w[ould] pay 56 percent of the cost of Forcey, not including before and aftercare[.]" The court calculated the arrears from September 2016 through August 2017 to be $5,723, which Judge Callahan ordered Rufus to pay Antrina in monthly installments of $954 until that debt was satisfied. She amortized the payments over 12 months, rather than the 10-month length of the school year, finding to do so "more appropriate under the circumstances." The court ordered Rufus to cover the children's health insurance and to pay $650 per month in child support accounting from August 2016, rendering him $4,550 in arrears. The child

support would continue indefinitely. Further, "[g]oing forward, if the parents are unable to agree about school placement," Antrina would have tie-breaking authority. Any economic contribution on the part of Rufus would have to be worked out between the parties, or in court, if they couldn't reach an agreement.

Regarding the holiday and summer schedules, the court admitted that she "was on the bench yesterday to close to 6 o'clock" and didn't have time to read the proposed schedules thoroughly, as she "just couldn't responsibly get to it and have it make sense." Given those circumstances, and the fact that there wasn't "an enormous difference" between the proposed schedules, the court instructed the parties to come to a written agreement by February 24, 2017. If the parties could not agree, the court would decide.

As the court concluded, Rufus requested that the court verify Antrina's monthly income with supporting documentation like a paystub or W-2. The court replied that she used the information that she had, and that Antrina had signed her filing under oath. At that point, the hearing concluded.

D. Written Order and Post-Judgment Motions

The court entered her written order on April 4, 2017. The order reiterated the child support obligation and arrearage as described in her oral ruling. The order also set forth a very detailed holiday and summer schedule.

On April 14, 2017, Rufus moved to amend the judgment, claiming that the court's calculation of child support was incorrect. He again averred that Antrina had not accurately portrayed her income, which he claimed was higher than she had claimed. Her childcare expenses, additionally, were lower than she had claimed. Rufus also requested the revision

of his health insurance obligations on Worksheet A. He reiterated his arguments that he should not be responsible for the costs associated with Washington International School, but if he must be responsible, that the court calculate his obligation as it did for his obligation for the Forcey Christian School.

Additionally, he claimed that the child support calculation did not include the expenses of the children's whole life insurance policies, which were taken out as "a mechanism to provide funding for [the] children's college expenses[.]" Because the total cost of the policies is $146.42 per month, he maintained that it "factored into the Worksheet A calculation as . . . school related cost[.]" Rufus also noted that the literal text of the written order read, regarding the Forcey tuition, that "Father shall pay Fifty-Four percent (56%) of the cost of Forcey Christian School[.]"[5] "Regardless," he requested the percent be reduced to "52% of the actual cost[,]" as the school provides a 10% sibling discount. Altogether, his requested adjustments would reduce the Forcey arrearage to $4,480. The court denied Rufus's motion without a hearing on June 8, 2017.

On April 28, 2017, Antrina filed two motions for contempt, stating that Rufus had failed to pay the $954 per month that the court had ordered for the 2016-17 Forcey school year and that he had also failed to pay the $650 per month in child support. The court issued a show cause order to Rufus on July 10, 2017, the same day that Rufus filed his interlocutory appeal. The parties were ordered to appear before the court on August 24,

[5] We do note that Judge Callahan's statement in her oral ruling that Rufus must "pay 56 percent of the cost of Forcey" confirms the Arabic numerals reflected in the written order.

2017, for a contempt hearing.[6]

DISCUSSION

Rufus argues on appeal that the trial court erred in its calculation of child support by "failing to follow the Maryland Child Support Guidelines." He reiterates his argument that Antrina's financial statement was incorrect, and included a 2014 W-2 for Antrina showing her income as $84,942, as well as a wage table for District of Columbia Schools, where Antrina works. Relying on *Ley v. Forman*, 144 Md. App. 658 (2002), he argues that the court failed to "rely on the verifiable incomes of the parties, and failure to do so result[ed] in an inaccurate financial picture." He also reiterates that the court failed to take into account his college savings expenses.[7] Regarding the children's private school expenses, he relies on *Witt v. Ristaino*, 118 Md. App. 115 (1997), to aver that the court "failed to accurately address the 'non-exhaustive' list of factors to be considered when determining the particular educational needs of the children." Antrina filed no brief.

A. Child Support

Generally, child support orders are left to the sound discretion of the circuit court.

[6] The outcome of this hearing was not included in the record before this Court.

[7] Rufus contends that the court did not take into account his expenses for the children's health and whole life insurance policies, which he describes as a college savings mechanism. The court had before it Rufus's employer's open enrollment packet, which documented the health insurance expenses for each child. The whole life policies were never testified to at trial, nor were they submitted into evidence as part of the parties' financial statements or otherwise. The only reference to the whole life polices is a table within Rufus's motion to amend the judgment. The table does not suffice as verifying documentation, *see* FL § 12-203(b), and we shall not, absent legal error or an abuse of discretion, disturb the trial court's discretionary determination of child support. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018).

Knott v. Knott, 146 Md. App. 232, 246 (2002). We will not disturb a "trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion." *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018) (quoting *Ware v. Ware*, 131 Md. App. 207, 240 (2000)). The trial court's factual findings are not clearly erroneous if those findings are supported by any competent evidence. *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002). We review *de novo* those portions of the court's order that "involve[] an interpretation and application of Maryland statutory and case law[.]" *Knott*, 146 Md. App. at 246 (citation omitted).

Section 12-204 of the Family Law Article provides child support guidelines assigning child support obligations proportionate to the parents' income. Maryland Code (1984, 2012 Repl. Vol.) Family Law ("FL"), § 12-204. If the parents' monthly combined adjusted income is less than $15,000, the use of the guidelines is mandatory. FL § 12-204(a), (e); *Kpetigo v. Kpetigo*, 238 Md. App. 561, 583 (2018). The circuit court must consider the actual income and expenses based on documentation of both current and past actual income. *See* FL §§ 12-201; 12-203(b). Further, the court "must rely on the verifiable incomes of the parties," as "failure to do so results in an inaccurate financial picture." *Ley*, 144 Md. App. at 670.

This Court in *Ley* explained what constitutes verifiable income for purposes of calculating child support. *Id.* The circuit court in that case failed to make specific findings of fact and instead relied on "approximations and estimations" of the parties' incomes. *Id.* at 665. After issuing an oral opinion in which the court found the father's income increasing, "[a]t the very least" by $40,000, "if not" by $70,000—a range not supported by

documentation—and after eliminating several of the mother's expenses from the calculations, the court sent a letter to counsel in an attempt to clarify his opinion. *Id.* at 667. In the letter, the trial judge again "demonstrate[d] his reliance on "approximations and estimations," by describing the parties' combined income as "*approximately* $15,000 a month gross income," necessitating "support in the amount of *approximately* $1600 per month," and calculated the child's college tuition by "*rounding it off*[.]" *Id.* at 668 (emphasis added). We held that the subsections of the Family Law Article governing child support unambiguously required that the court verify the actual income of the parents with documentation of both current and past actual income. *Id.* at 668-69.

We explained how little leeway a trial court has in determining the proper amount of child support in *Gates v. Gates*, 83 Md. App. 661, 666-67 (1990). In *Gates*, the father challenged the trial court's increase of his support obligation. *Id.* at 662. At trial, the mother had argued that the child's expenses were greater than anticipated, but the court heard no evidence and rendered no findings on the exact costs. *Id.* at 663. Nevertheless, the trial court doubled the father's obligation based merely on an unarticulated "number of factors," and the fact of the legislature's recent passage of the child support guidelines. *Id.* at 664. Because, at the time of trial, the guidelines were not yet mandatory, we explained the permissible factual considerations under Maryland caselaw: "the financial circumstances of the parties, their station in life, their age and physical condition, their ability to work, and the expense of educating the children." *Id.* But because the trial court purported to render his findings based on the guidelines, he should have used the standardized worksheets, which render "the child support determination [to] be purely

numerical with little, if any, room for the former factual considerations." *Id.*

Returning to the case before us, Rufus has not demonstrated that the circuit court relied on non-verifiable income information. The court had before it Antrina's 1040 tax return from 2015, three recent paystubs, her 2016 W2, and the oldest child's financial aid letter. It also had before it Rufus's 2013 and 2016 W2s. While the court acknowledged that "neither [party] provided a full financial statement," Section 12-203(b)'s requirement that income statements be supported by "suitable documentation of actual income," which includes "pay stubs, employer statements[,] . . . and copies of each parent's 3 most recent federal tax returns" was thus satisfied. FL § 12-203(b). *See Tanis v. Crocker*, 110 Md. App. 559, 572 (1996) ("In order to establish his or her actual income, a party to a child support case could produce any one, two, or all three of the items listed in [FL] § 12-203(b)(2)(i)."). Accordingly, Rufus's reliance on *Ley* is misplaced, because in *Ley*, the trial court, rather than relying on documentation as the court has in the instant case, "relie[d] on approximations and estimations" in determining the parent's support obligation. 144 Md. App. at 667.

Regarding Rufus's alleged college expenses for the children, Rufus did not supply the court with any competent evidence to support those expenses. *Fuge*, 146 Md. App. at 180. The judge received no documentation of the children's whole life insurance policies and heard no testimony regarding their purpose. *Id.* Accordingly, given the documents before the court, as well as the court's articulation of its findings, we are satisfied that the circuit court had an accurate "financial picture" of the parties' financial statuses for purposes of the parties' child support and tuition obligations. *Cf. Ley*, 144 Md. App. at

670.

B. Education Expenses

We review the trial court's first-level findings as to the *Witt* factors for clear error. *Fuge*, 146 Md. App. at 180. The Family Law Article provides that the court may include certain educational expenses in its calculus of child support. Section 12-204 states that

> (i) *School and transportation expenses.* — By agreement of the parties or by order of court, the following expenses incurred on behalf of a child *may* be divided between the parents in proportion to their adjusted actual incomes:
>
> (1) any expenses for *attending a special or private elementary or secondary school to meet the particular educational needs of the child*; or
>
> (2) any expenses for transportation of the child between the homes of the parents.

FL § 12-204(i) (emphasis added).

In *Witt*, we held, *inter alia*, that the circuit court did not abuse its discretion in assigning a portion of the children's private school tuition to the father. 118 Md. App. at 178-79. The circuit court ordered the father to pay 65% of the children's tuition, explaining that its order was "taking all into consideration because of the fact that his income was twenty-five thousand dollars[.]" *Id.* at 160-61. On appeal, the father in *Witt* argued that his private school obligation should be less because, although the awarding of private school expenses is discretionary, each parent's proportionate share is not, and he could not afford to pay 65% of the tuition. *Id.* at 173-74.

We ruled that trial courts should consider the following "non-exhaustive" list of factors, in which affordability is one, when determining whether a child has a "'particular educational need' to attend a special or private elementary or secondary school." *Id.* at 169-70. The courts should consider (1) the child's educational history and how many years

the child has attended the particular school; (2) the child's performance while at the private school; (3) whether the family has a tradition of attending a particular school; (4) whether the parents had chosen to send the child to a particular school prior to their divorce; (5) any particular factor that which might impact the child's best interest; and (6) whether the parents can afford the tuition. *Id.* at 170-72. Because it was "clear the trial judge considered all the information he had before him in making his determinations . . . it was reasonable for the judge to conclude that, by dividing the costs of the children's private school tuition in the manner he did, the costs were affordable" for the father. *Id.* at 179.

In *Fuge*, we addressed whether a father was not obligated to contribute at all to his children's private school tuition. 146 Md. App. at 177-78. At trial, the father testified that the children's maternal grandfather would pay for the children's private school, but the mother testified that the father had paid the children's tuition at several private schools when they were younger. *Id.* at 178-79. The circuit court found that the children "had a history of private education," "were doing good in school," the family traditionally attended private school, and the parents' selected private school prior to their divorce. *Id.* at 180. After "explicitly finding that it was in the children's best interests to continue their private education," that the children had a particular educational need for the schooling, and that the father "ma[d]e about a quarter of a million dollars a year," the court nevertheless absolved the father of any obligation, determining that he "c[ould]n't afford to pay for or contribute to the private education of the children." *Id.*

On appeal, the mother argued that the court erred in finding that the father was unable to pay any portion of the children's tuition. *Id.* at 177. We held the trial court's

finding that the father lacked the ability to contribute was clear error, as $2,463 of his income remained after expenses. *Id.* at 182. We distinguished between the "obligation" to pay and the "ability" to pay. *Id.* The father may not have had an obligation to pay, had the children's grandfather indeed agreed to pay for tuition. *Id.* However, because the court cabined its finding around the father's "ability" to pay, and he clearly was able to contribute based on his financial statement, we remanded to the trial court to reconsider the *Witt* factors, and to reexamine whether the father was *obliged* to pay in light of his *ability* to pay. *Id.*

In *Ruiz v. Kinoshita*, we addressed a challenge to an above-guidelines child support order that included payments for the children's private school tuition. 239 Md. App. at 401. At trial, the circuit court declined to consider the *Witt* factors because it determined that the parties decided in their custody agreement that the children would continue to attend private school. *Id.* at 428, 430. On appeal, the father argued that the trial court erred by requiring him to pay for the children's tuition without first applying every *Witt* factor. *Id.* at 428. We held that the record belied his argument; the trial court *had* considered the relevant *Witt* factors, even if it did not voice them by name. *Id.* at 430-31. We noted that the circuit court heard evidence regarding several of the "non-exhaustive" *Witt* list of factors, including the children's prior attendance at the same private school, the parties' agreement to keep the children in private school, and the parties' ability to pay. *Id.* The trial court, we explained, could satisfy *Witt* without explicitly referring to each factor. *Id.* Accordingly, we found no error in the trial court's inclusion of private school tuition in the father's child support obligation. *Id.* at 431-32.

Returning to the case at bar, we do not agree with Rufus's contention that the circuit court "failed to accurately address the 'non-exhaustive' list of factors" under *Witt* when rendering its findings regarding private school tuition. Our review of the record suggests otherwise; although the judge did not cite *Witt* by name or issue explicit, numbered findings, she heard testimony, reviewed evidence, and issued findings addressing every *Witt* factor. We note that "a trial court does not have to follow a script." *Ruiz*, 239 Md. App. at 430 (quoting *Durkee v. Durkee*, 144 Md. App. 161, 185 (2002)). "Indeed, the judge is presumed to know the law, and is presumed to have performed [her] duties properly." *Id.* (quotation marks and citation omitted).

Specifically, the court was aware of (1) the children's educational history as it heard testimony on where the children had attended school since the separation, and why the children had been placed in the schools in which they currently attend. The court noted that (2) the oldest child "flourished" at Washington International, and heard Rufus's testimony that all the children "are smart individuals" who have "always made good grades" and are "doing great." While no testimony used the explicit word "tradition," the court (3) did hear testimony concerning the reasons why the younger children attend Forcey Christian school after they age-out of elementary school. Additionally, Antrina testified that the middle child applied to Washington International to be with the older child, but that she did not get in.

The record was silent as to whether (4) the parties agreed prior to divorce to send the children to private school. Rufus testified that he and Antrina had been "talking about where the kids would go to middle school since [they] separated . . . [a]nd . . . [he was] not

in agreement with private school since day one." However, he had agreed shortly after their separation that their oldest child could go to Washington International, and that Antrina would cover the entire cost of tuition. The court considered many (5) particular factors that might impact the children's best interest, including the *Taylor* and *Sanders* factors. The court also considered (6) whether the parties could afford the tuition, explicitly finding that "[e]ach of the parents has the economic ability to pay education-related costs for the children's private school."

The court additionally took into account an additional factor, not included in the non-exhaustive list—the events of August of 2016. The court recounted:

> The girls are attending Forcey Christian Academy. Father did not acquiesce in this placement, but complicated and delayed the [younger children's] school placement by his actions in refusing to return the children to [Antrina] as agreed at the end of the summer, and attempting to obtain the domestic violence order so he could enroll them in Prince George's County schools.
>
> Given those facts, the children . . . landed at Forcey, at least, in part, as a result of that turmoil at the end of the summer.

Accordingly, the trial court found that Rufus had an *obligation* to pay the 2016-17 Forcey tuition. *See Fuge*, 146 Md. App. at 177. The court also found that Rufus was obliged to contribute to his oldest child's Washington International tuition because his refusal to contribute was "unreasonable . . . especially since [the child] flourished at the school and [was] settled there." *See id.* Finally, the court determined that Rufus had the *ability* to pay after reviewing the parties' financial documents, hearing their testimony, and issuing the explicit finding that "[e]ach of the parents has the economic ability to pay education-related costs for the children's private school." *See Ruiz*, 239 Md. App. at 431; *Fuge*, 146 Md. App. at 177; *Witt*, 118 Md. App. at 169-70. We discern no error in the

court's findings.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.