

Circuit Court for Montgomery County
Case No.: 177389FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1048

September Term, 2024

HANH NGO

v.

DUC NGUYEN

Beachley,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: September 24, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Hanh Ngo (“Mother”) appeals from an order of the Circuit Court for Montgomery County denying her motion to modify custody and visitation, but granting her motion to modify support. On appeal, Mother has filed an informal brief¹ on the issues of custody and support. Duc Nguyen (“Father”) did not file a brief or participate in this appeal.

For the reasons set forth below, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married in 2003. They share two minor children together, “JM,” born in 2008 and “JS” born in 2009. On 30 July 2021, Father filed a complaint for absolute divorce. Mother filed an answer and a counter-complaint for custody and child support.

After a hearing on the merits, the circuit court entered a Custody, Access and Child Support order on 27 February 2023, granting joint legal custody and primary physical custody of the minor children to Father. The court ordered also Mother to pay child support in the amount of \$1,498 per month, beginning on 1 February 2023. On 7 August 2023, the court entered a Judgment of Absolute Divorce.

On 12 January 2024, Father filed a petition for contempt for Mother’s nonpayment of support. He amended the petition later to seek also an order authorizing him to claim the children as dependents on his income tax returns. According to the amended petition, Mother, who did not have primary physical custody of the children, claimed the child tax

¹ Mother filed an informal brief pursuant to this Court’s 9 March 2021 Administrative Order permitting informal briefing in family law cases in which the appellant is a self-represented litigant. *See* Md. Rule 8-502(a)(9).

exemption for the children on her 2023 income tax returns. Thus, Father was unable to claim that exemption on his returns.

On 12 April 2024, Mother filed a motion to modify custody and visitation, seeking primary physical custody of the children. Accompanying her motion was a “Child Support Financial Statement,” reporting that her monthly gross income was \$1,583. On 18 April 2024, Mother filed a “Financial Statement,” reporting that her monthly gross income was \$1600.

Father’s financial statement reported that his monthly income was \$6,000.

Contempt and Modification Hearing

On 24 June 2024, the circuit court held a hearing on all pending motions. Both parties were self-represented. They testified through interpreters. Father highlighted that the court had ordered Mother to pay child support, beginning on 1 February 2023, and that she failed to make any support payments, resulting in seventeen months of unpaid support.

Mother testified that she had not paid child support because she could not afford the payments. She stated that she made one payment to Father of \$20 a few days prior to the hearing because she was afraid of going to jail. According to Mother’s April 12 financial statement, she earns \$1,583 in gross income per month. Mother stated that her income decreased since 2023 by approximately \$2,000 per month “[b]ecause of the economy.”

Mother stated that the children often go hungry and “are starving” while in Father’s care. She believes that, even had she paid child support as ordered, Father would not buy the children the things they need. She introduced bank statements showing that she opened a bank account specifically to use to give the children money for food.

Mother expressed concern about the children’s school attendance and grades. She introduced high school attendance records for both children showing unexcused tardiness, often for first period, due to late arrivals to school.

Mother stated that JS is doing poorly in school. She introduced a copy of his report card showing that he had a “D” average in both honors English and French; a “C” average in honors biology, honors geometry and honors history, a “B” in computer science, and an “A” in fitness.

Mother testified that she wanted to raise the children. She stated that since the last custody hearing in February of 2023, the children have become depressed and unhappy with “the situation,” especially JM.

Father stated that he brings the children to school on time and that he was not responsible for the children’s tardiness. With respect to JS’s grades, Father stated that they are “getting better” and that he planned to work more closely with him.

The circuit court reviewed Mother’s nail salon business records from the previous custody hearing, which showed that her business had received \$84,000 in credit card payments in 2020. The court compared the records to evidence from the previous custody hearing showing that the deposits into her business bank account in 2020 averaged \$18,000 per month. According to Mother, her monthly business deposits have increased by three percent since 2020 and credit cards payments to her business have also increased. Between 2023 and 2024, Mother’s revenue decreased from \$18,000 per month to \$16,000 per month due to the economy. Mother submitted her tax returns for 2023, which showed that her gross annual income was \$19,078, and the gross income for her nail salon was \$209,786.

Mother claimed both children as dependents and received the child tax credit for the children.

Circuit Court’s Ruling

The circuit court noted that “[Mother] presented evidence that she was terribly unhappy with the result [of the custody trial] in February of 2023[,]” which she thinks was “the wrong decision.” The court stated that, despite its frequent prompting, Mother failed to produce any evidence of a change in circumstances since 2023. It was clear to the court that “[Mother] is extremely disappointed with the prior ruling from February of 2023, and this disappointment colors her testimony and damages her credibility.”

The court noted that Mother testified that the children were depressed and sad, but she failed to present any medical testimony showing that this condition is a change from February of 2023. Although Mother testified also that the children are often hungry and that Father does not feed them properly, she did not introduce any evidence showing that the children were underweight or malnourished. Out of an abundance of caution for the children, the court ordered that Child Protective Services investigate Mother’s allegations that Father is not feeding properly the children.

The court found that there had been “a small decrease” in Mother’s income of ten percent, and the court accepted her reported monthly income of \$1,589. The court noted that there was a “fairly significant” increase in Father’s monthly income from \$4,902 in 2023 to \$6,000. Due to the changes in the parties’ financial circumstances, and based on the Child Support Guidelines, the court reduced Mother’s child support obligation to \$395 per month, effective 1 July 2024.

The circuit court found Mother in arrears in the amount of \$25,446. The court added ten percent, or \$40 per month, to Mother’s child support obligation as payment toward arrears, for a total monthly child support payment of \$435.

The court ordered further that, for the tax year 2024 and future years, Father (not Mother) was entitled to claim all exemptions related to the children on state and Federal income tax returns. The court noted that the order of 27 February 2023 did not address specifically the issue of the child tax exemption. Nonetheless, the court found that it was “sneaky and deceitful for [Mother] to secretly take [the exemption,]” and “[t]his action severely damage[d] her credibility.”

The court entered a written Memorandum Opinion and Order on 26 June 2024.

Mother noted this appeal timely.

STANDARD OF REVIEW

In a case tried before the court, “an appellate court will review the case on both the law and the evidence[,]” and the court “will not set aside the judgment of the trial court on the evidence unless clearly erroneous,” giving “due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). Indeed, “[t]he trial judge who sees the witnesses and the parties, and hears the testimony is in a far better position than the appellate court, which has only a transcript before it, to weigh the evidence and determine what disposition will best promote the welfare of the child.” *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020) (cleaned up).

Specifically, the decision of “whether to grant a modification rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily

used or the judgment was clearly wrong.” *Leineweber v. Leineweber*, 220 Md. App. 50, 61 (2014) (cleaned up). A court abuses its discretion “when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court.” *Gizzo*, 245 Md. App. at 201.

DISCUSSION

In her informal brief, Mother states that she appeals here the circuit court orders of 27 February 2023, 7 August 2023, and 24 June 2024. Of those orders, the later, entered on 26 June 2024,² is the only one properly before us in this appeal.

Mother’s appeal of the 27 February 2023 order was dismissed by this Court on 23 October 2023, due to Mother’s failure to file the necessary transcripts. The 7 August 2023 order was a final order as to the issues of divorce, marital property, and attorneys’ fees. Mother did not file a timely appeal from that judgment. Pursuant to Md. Rule 8-202(a), a notice of appeal must be filed “within 30 days after entry of the judgment or order from which the appeal is taken.” Failure to file a notice of appeal within thirty days terminates the right of appeal. *Lovero v. DaSilva*, 200 Md. App. 433, 441 (2011). Because Mother did not file a notice of appeal within thirty days of the entry of the 7 August 2023 order, we shall not review now that judgment. *See Rosales v. State*, 463 Md. 552, 557 (2019).

² The order of 26 June 2024 memorializes the oral ruling announced on the record at the hearing on 24 June 2024.

I.

Denial of Mother’s Motion for Modification of Custody

A trial court uses a two-step process in deciding a motion for modification of custody. It must consider: “(1) whether there has been a material change in circumstances, and (2) what custody arrangement is in the best interests of the children.” *Santo v. Santo*, 448 Md. 620, 639 (2016). A material change in circumstances is a change that “affects the welfare of the child.” *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012). If the court finds that there has been a material change, it next considers the best interests of the child. *Id.* at 170. The moving party has the burden of showing “that there has been a material change in circumstances since the entry of the final custody order and that it is now in the best interest of the child for custody to be changed.” *Id.* at 171-72 (quoting *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008)).

In this case, the court’s determination that there had been no material change in circumstances such as to warrant a change in custody is supported by the record. The court noted that Mother made several “troubling” points during the hearing. First, she alleged that Father does not feed the children properly, though she did not present any witnesses or evidence to show that the children were malnourished or otherwise unhealthy. The court found that, “[g]iven her credibility challenges[,]” Mother’s testimony alone was not sufficient to convince the court that the children are in danger of being malnourished or that there has been a change in circumstances. Due to the potential seriousness of the dietary allegations, however, the court referred that matter to Child Protective Services for further investigation.

Second, the court addressed Mother’s claims that the children are late for school and that JS’s grades show that he is “seriously struggling in school.” Father could not explain why the children were late to class because he brings them to school on time. The court noted that there could be “several explanations” for the children’s tardiness. It declined to speculate as to the cause. The court recognized that the children experienced “massive disruption in connection with the separation and divorce of their parents” and, thus, it was not surprising that they might be struggling in school. The court urged the parents that, if they were able to stop fighting, their “children’s lives would improve and their school performance would likely follow.”

II.

Order Granting Mother’s Motion for Modification of Support

Section § 12-104(a) of the Family Law Article (“FL”) of the Maryland Code, (1984, 2019 Repl. Vol.) authorizes a court to “modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.” *See Wills v. Jones*, 340 Md. 480, 488 (1995). An order for child support may be modified “only if there is an affirmative showing of a material change in circumstances in the needs of the children or the parents’ ability to provide support.” *Payne v. Payne*, 132 Md. App. 432, 442 (2000). A change is material when it is both “relevant to the level of support a child is actually receiving or entitled to receive” and “of sufficient magnitude to justify judicial modification of the support order.” *Wheeler v. State*, 160 Md. App. 363, 372 (2004) (cleaned up).

If a court finds a material change in circumstance occurred, it must then apply the Child Support Guidelines to determine the level of support to which the child is entitled. *Wills*, 340 Md. at 491. The Guidelines chart the amount of the monthly support obligation based on the parents’ combined income. FL § 12-204(e). In cases where the parties’ combined adjusted actual income is less than \$30,000 per month, the court applies the Guidelines to calculate support. FL § 12-204(e) (amended 2022, 2024); *see Kaplan v. Kaplan*, 248 Md. App. 358, 386 (2020); *Sims v. Sims*, 266 Md. App. 337, 384 (2025).

In her brief, Mother asks this Court to “reverse the judgment to be fair for [her] on [her] income calculation[.]” She does not specify further why she thinks the circuit court’s modified child support order was not “fair.” The circuit court noted that “[s]he is asking for a reduction in child support, but she refuses to pay child support anyway.” Although she testified that she could not afford even the modified monthly payments, she acknowledged that she opened a bank account for the purpose of giving the children directly money to pay for food and other items. In addressing this issue, the circuit court explained to Mother that she is required to pay “the full [\$]435 every month[.]” regardless of how much over that she chose to spend on the children, but that she could not “cut child support to help them.”

In this case, the circuit court determined that there had been a material change in circumstances due to a significant increase in Father’s income, based upon his financial statement, and a decrease in Mother’s income, based upon her 2023 tax return. Using the Child Support Guidelines Worksheet, the court reduced Mother’s support obligation to \$395 per month, and included an additional payment of \$40 per month toward the arrearage

of \$25,446. Use of the Child Support Guidelines is mandatory, and the amount of support set forth in the Guidelines is presumptively correct. *See* FL § 12-202(a) (“[I]n any proceeding to establish or modify child support, . . . the court *shall* use the child support guidelines set forth in this subtitle.” (emphasis added)).

We perceive no error or abuse of discretion in the circuit court’s finding of a material change in circumstances and its calculation of Mother’s monthly child support obligation of \$395, based on the Child Support Guidelines, and an additional amount to reduce the arrearages.

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