Circuit Court for Montgomery County
Case No. 64446FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1137

September Term, 2018

PAMELA BARNES

v.

BENJAMIN BRADSHAW

Fader, C.J.,
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: October 15, 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.

When the appellant, Pamela Barnes, and the appellee, Benjamin Bradshaw, ended their marriage in 2008, they entered into a separation agreement that was incorporated into, but did not merge with, the divorce decree. Without court intervention or approval, and largely without controversy, the parties agreed to deviate from many of the terms of the separation agreement over the following nine years. In 2017, Ms. Barnes filed three motions and a petition seeking to modify certain provisions of the separation agreement and enforce others. The Circuit Court for Montgomery County granted some of the relief Ms. Barnes sought and denied other relief. Ms. Barnes contends that the court erred in declining to order Mr. Bradshaw to pay: (1) allegedly past due child support; (2) a share of certain health insurance and unreimbursed medical expenses; and (3) her attorney's fees.[1] Finding no error or abuse of discretion, we will affirm.

BACKGROUND

A. The Separation Agreement

Ms. Barnes and Mr. Bradshaw married and had two children, B. and I., before they divorced in 2008. They entered into a "Voluntary Separation, Support and Property Settlement Agreement" (the "Agreement"), which the circuit court incorporated, but did not merge, into the judgment of absolute divorce. As specifically relevant here, the Agreement provides that: (1) Ms. Barnes would have primary physical custody of B.; (2) the parties would split custody of I. on a "flexible five/five/two/two schedule";

[1] Mr. Bradshaw did not file a brief and has not participated in this appeal.

(3) Mr. Bradshaw would pay $500 per month in child support;[2] (4) each parent would claim one of the two children for tax purposes; (5) the parties would split health insurance costs and un-reimbursed medical expenses for the children "in proportion to their respective incomes"; (6) if either party breached any provision of the Agreement, that party would "be responsible for any reasonable legal fees incurred by the other party in seeking to enforce this Agreement"; and (7) the Agreement could be modified only in a writing executed by both parties.

B. The Parties' Post-Divorce Conduct

As relevant to this appeal, we deem it helpful to consider the parties' course of dealings with respect to the Agreement separately in terms of three different periods: (1) the time between 2008, when the parties entered the Agreement, and November 2014, when Ms. Barnes moved to Tennessee; (2) the time between November 2014 and July 2016, when Ms. Barnes moved back to Maryland; and (3) the time following Ms. Barnes's return to Maryland. The facts related to the course of dealings during the first two periods are generally undisputed.

1. 2008 – November 2014

Mr. Bradshaw consistently made his $500 child support payments to Ms. Barnes from 2008 through November 2014. He did so even when Ms. Barnes found employment,

[2] The Agreement expressly identified this as a below-guidelines amount in consideration of Mr. Bradshaw's agreement "to pay for all child care expenses" that would be incurred if neither of the parties nor Mr. Bradshaw's mother were able to care for the children.

in spite of a provision in the Agreement that the parties would "re-evaluate the amount of child support . . . at such time as [Ms. Barnes] obtains full-time employment." Mr. Bradshaw also alone provided the children's health insurance, which he obtained through his employer, even though the Agreement provided that the parties would split that expense "in proportion to their respective incomes." And the parties periodically agreed to change the custody and visitation schedule for the children. The parties never returned to court to seek approval for these or any other changes from the terms of the Agreement during this period.

2. November 2014 – July 2016

In November 2014, Ms. Barnes moved to Tennessee. At that time, the parties agreed that both children—as well as an older daughter of Ms. Barnes from a prior relationship—would live full-time with Mr. Bradshaw. I. and Ms. Barnes's older daughter continued to live with Mr. Bradshaw in Maryland through July 2016, when Ms. Barnes returned to Maryland. B. lived with Mr. Bradshaw until the end of the 2014-2015 school year, when she went to live with Ms. Barnes in Tennessee. Ms. Barnes then abruptly returned her to Mr. Bradshaw in March 2016, and B. stayed with him until July of that year.

By agreement, neither party paid child support to the other while Ms. Barnes was in Tennessee. At the outset of this period, the children continued to be covered by Mr. Bradshaw's employer-sponsored health insurance. At some point, however, he changed jobs to be more available to the children after school, and his new employer did not provide health insurance. At the time, he looked into obtaining health insurance through the

Maryland Health Exchange, but determined that he could not afford it. He did not seek or obtain reimbursement from Ms. Barnes for the health insurance expenses (while he provided health insurance) or for any unreimbursed medical expenses for the children during this period. Neither party sought court approval for these or any other deviations from the terms of the Agreement during this period.

3. July 2016 – August 2017

None of the parties' agreements or conduct before July 2016 are subject to much dispute. Their disagreement begins with what happened in July 2016, when Ms. Barnes moved back to Maryland and B. and I. (along with Ms. Barnes's older daughter) moved back in with her. According to Ms. Barnes, she demanded that Mr. Bradshaw resume paying the $500 per month in child support called for in the Agreement. She admits that she eventually agreed to accept $300 a month, but claims that she did so only on a temporary basis and only because Mr. Bradshaw told her that he was earning less income while he trained for a new job, and that he would make up the difference later. She also contends that the payment was supposed to be deposited monthly into a bank account for her use.

Mr. Bradshaw testified that when she returned, Ms. Barnes—who now earns at least double his income—asked him to allow her to deduct both of their daughters on her taxes, even though the Agreement allowed her to deduct only one. He contends that he agreed, in exchange for her concession that his child support obligation would be no more than $300 per month and that he would satisfy it by making payments to third-party vendors for

the children's extracurricular activities. He produced text message exchanges in which the parties discussed both the reduced amount of his support payment and that he would make payments directly to vendors.[3]

Ms. Barnes acknowledged that, at her request and contrary to the Agreement, Mr. Bradshaw allowed her to claim the tax deduction for both children after she returned to Maryland, and that she did so. She denied, however, that this arrangement was part of a tradeoff for a reduced child support payment.

C. Ms. Barnes's Motions and Petition

In late August 2017, Ms. Barnes filed a petition for contempt, in which she sought an order holding Mr. Bradshaw in contempt for failing to pay a full $500 per month in child support from the time she returned to Maryland in July 2016. She also filed motions to modify child support and visitation in which she sought orders: (1) increasing the amount of Mr. Bradshaw's child support payments; (2) giving her the right to deduct both children on her taxes; (3) requiring Mr. Bradshaw to provide health insurance for the children; and (4) altering visitation. In a supplemental motion filed in March 2018, she added requests for an order: (5) determining child support arrears for the period from July 2016 through August 31, 2017; (6) requiring Mr. Bradshaw to pay his proportionate share of $1,526.32

[3] In one exchange, Mr. Bradshaw states that they "agreed on 300 because you got to claim both the kids on your taxes." Ms. Barnes's response does not deny this, but states that she agreed to the reduced amount for a different reason: "more to help you since you helped me in Tennessee."

in health insurance and medical expenses she had incurred since her return to Maryland;[4] (7) requiring Mr. Bradshaw to pay one-half of B.'s orthodontia expenses; and (8) awarding her attorney's fees.

In June 2018, after a hearing, the circuit court issued an order: (1) denying Ms. Barnes's petition for contempt; (2) granting her request to order Mr. Bradshaw to pay half of B.'s $3,120 in orthodontia expenses, but denying her request to order him to pay a share of other health insurance and medical expenses she claimed; and (3) granting in part and denying in part her motions to modify child support and visitation. As to child support, the court ordered Mr. Bradshaw to pay the guidelines amount of $745 per month, retroactive to September 2017. The court denied Ms. Barnes's remaining monetary requests.[5]

In a memorandum opinion explaining its decision, the court found that "between 2008 and 2014, the parties routinely deviated from their Settlement Agreement, regularly modifying its terms orally, without putting their changes in writing, and without material issue." The court identified numerous examples of such agreements, including changes to the custody and visitation schedule, the parties' disregard of the requirement that Ms. Barnes reimburse a share of health insurance and unreimbursed medical costs paid by Mr. Bradshaw, and changes to child support. For the first nine years after the parties entered the Agreement, the court concluded, they "routinely and without written confirmation

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[4] Ms. Barnes subsequently increased her claim for health insurance and medical expenses to $1,706.85.

[5] The court also adopted a new visitation schedule to which the parties had agreed. Visitation is not at issue on appeal.

deviated from [its] terms," ignoring the requirement that modifications be in writing, and "made changes which they believed to be in their children's best interests."

The court's memorandum then discussed the parties' different characterizations of the agreement reached upon Ms. Barnes's return to Maryland, and found Mr. Bradshaw's version "more credible." The court concluded that the parties had compromised: Ms. Barnes would be permitted to claim deductions for both children on her taxes and Mr. Bradshaw "would pay up to $300 per month in extra-curricular payments, which together would approximate the $500 amount." The court rejected Ms. Barnes's contention that the parties lacked the authority to enter that agreement, noting the frequency with which they had "modified their Settlement Agreement orally and/or by their conduct," and observing that, even when a written agreement prohibits oral amendments, "[i]t is well recognized that 'the conduct of the parties to a contract may be evidence of a subsequent modification [thereof].'" (Quoting *Univ. Nat'l Bank v. Wolfe*, 279 Md. 512, 522 (1977)). Finding that Mr. Bradshaw had complied with the terms as modified by the parties, the court denied both Ms. Barnes's petition for contempt and her request to order Mr. Bradshaw to pay arrearages of child support for the period before August 31, 2017 (the date on which Ms. Barnes filed her motion for modification).

With regard to child support going forward from September 1, 2017, the court observed that both parties agreed that, based on a material change in circumstances, it was appropriate to issue a new award of child support, but they contested the proper amount. The parties agreed that Ms. Barnes's income for purposes of the child support guidelines

was $9,360 per month. As for Mr. Bradshaw's income, Ms. Barnes argued that it was $4,503 per month, based on his 2017 W-2, while Mr. Bradshaw argued that it had subsequently decreased due to a loss of overtime, and was then approximately $3,333 per month. The court found neither number to be entirely accurate and decided to average the two numbers, resulting in a monthly income for Mr. Bradshaw of $3,918, a monthly child support obligation of $745, and an arrearage of $7,450 for the period September 1, 2017 through July 1, 2018.

With respect to Ms. Barnes's claim for unreimbursed health insurance and medical expenses, the court concluded that Ms. Barnes had "failed to satisfy her evidentiary burden" as to all but B.'s orthodontia expenses. The court again relied on Mr. Bradshaw's testimony, finding that Ms. Barnes "never requested him to make any such payments prior to claiming them in this litigation, that she did not advise him that the children were not covered under any insurance, that she did not provide him with insurance cards, and that she failed to reimburse him for any such costs during the time that he paid them."

In rejecting Ms. Barnes's claim for attorney's fees, the court considered both her contractual claim for such fees and § 12-103(b) of the Family Law Article. The court concluded that she was not entitled to such fees under the Agreement because Mr. Bradshaw had not breached the Agreement. Considering the § 12-103(b) factors, the court concluded: (1) Ms. Barnes was "in a superior [financial] position" to Mr. Bradshaw, who earns less than half of what she earns; (2) there was no evidence that either party has a

greater need than the other; and (3) substantial justification does not favor either party. Ms. Barnes filed this timely appeal.

DISCUSSION

When an action is tried without a jury, we "review the case both on the law and the evidence" and "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of witnesses." Md. Rule 8-131(c). "Child support orders are generally within the sound discretion of the trial court." *Knott v. Knott*, 146 Md. App. 232, 246 (2002). If "the order involves an interpretation and application of Maryland statutory and case law," however, then we "must determine whether the [circuit] court's conclusions are 'legally correct' under a *de novo* standard of review." *Walter v. Gunter*, 367 Md. 386, 392 (2002).

I. THE CIRCUIT COURT DID NOT MODIFY RETROACTIVELY MR. BRADSHAW'S CHILD SUPPORT OBLIGATION.

Ms. Barnes first contends that the circuit court committed legal error by modifying retroactively Mr. Bradshaw's child support obligation for the period from July 2016 (when she returned to Maryland) through August 31, 2017 (when she filed her motion for modification). The trial court, however, did not purport to modify retroactively Mr. Bradshaw's child support obligation and, in fact, expressly denied that it was doing so. Instead, the court stated, it was merely acknowledging that Mr. Bradshaw and Ms. Barnes had themselves come to, and acted in accord with, a different agreement:

> The court is not retroactively modifying the support obligation; rather, the court is finding that the parties modified their agreement as incorporated into the [Judgment of Absolute Divorce] related to support—or at least how the

support or its equivalent (i.e., extra-curricular payment plus the benefit of the tax break) was being paid.

Ms. Barnes argues that regardless of what the court thought it was doing, the effect of its order was to modify retroactively Mr. Bradshaw's child support obligation. Her reasoning appears to proceed as follows:

- The Agreement provides that Mr. Bradshaw must pay her $500 per month in child support;
- The circuit court never modified that obligation before August 31, 2017, and no party moved to modify it until that date, so the obligation remained in place through August 31, 2017;
- From July 2016 through August 2017,[6] instead of paying Ms. Barnes $500 per month, Mr. Bradshaw made payments in lesser amounts directly to third-party vendors for the children's extra-curricular activities;
- Mr. Bradshaw therefore underpaid his child support obligation by the difference between the $7,000 he should have paid (14 months at $500 per month) and the $2,131 she calculates he paid to third parties during that timeframe; and
- By declining to order Mr. Bradshaw to pay that amount of child support, the court effectively modified the amount of child support he owed during that timeframe from what is stated in the Agreement.

Based on this reasoning, Ms. Barnes asserts that the circuit court's order violates § 12-104(b) of the Family Law Article, which provides that a "court may not retroactively modify a child support award prior to the date of the filing of the motion for modification."

The question we must confront in resolving the disconnect between what the court believed it was doing and Ms. Barnes's claim is whether the court was permitted to

[6] Ms. Barnes does not contend that Mr. Bradshaw owes child support for the time before July 2016, when she was in Tennessee.

recognize the parties' modification of the Agreement concerning payment of child support—up to the date when Ms. Barnes moved to modify child support—or whether the court was required to enforce the obligation as stated in the Agreement irrespective of the parties' separate agreements and conduct.

Notably, neither Ms. Barnes nor Mr. Bradshaw disputes that the parties did, in fact, agree to modify the child support obligation in the Agreement on at least two occasions. First, they agreed to modify that obligation to zero when Ms. Barnes moved to Tennessee. Second, they agreed to modify it again when Ms. Barnes returned to Maryland, although they disagree as to the terms of that second modification. Those modifications were, of course, only two of many deviations from the Agreement to which the parties agreed over the years, generally without any controversy at all. Indeed, it appears that the parties deviated from the ongoing monetary and custody/visitation terms of the Agreement more than they complied with them—all, the court concluded, to further what they believed to be in the best interests of the children.

In contesting the circuit court's reliance on the parties' agreement, Ms. Barnes makes two basic claims. First, she contends that the agreement the parties reached upon her return differs from the court's findings. On that point, we decline to disturb the circuit court's factual determination, which was based on the court's assessment of the credibility and substance of both parties' testimony, along with the court's consideration of the various modifications to which the parties agreed over the years; the parties' conduct; text message exchanges that can reasonably be read to support Mr. Bradshaw's version of events; and

the fact that Ms. Barnes claimed the tax deduction for both children in 2016 and 2017. We discern no clear error in the circuit court's factual findings regarding the existence and terms of the parties' modified agreement. *See Globe Home Improvement Co. v. McCarty*, 204 Md. 513, 517 (1954) ("[T]he existence and terms of an oral contract, when disputed, are for the trier of facts to determine.").[7]

Second, Ms. Barnes argues that even if the circuit court is correct as to the terms of the agreement the parties reached after her return to Maryland, (1) the parties lacked the authority to agree to a modification without advance court approval, and (2) the court lacked the authority to recognize any such modification. We disagree. As this Court has previously noted, one possible "way[] to modify or change the terms of an agreement affecting the care, custody, education or support of a minor child" is for the parties to "mutually agree to change the terms." *Knott*, 146 Md. App. at 257; *see also Fantle v. Fantle*, 140 Md. App. 678, 685 (2001) (in context of alimony dispute, concluding that circuit court erred by failing to "consider whether the parties by words or deeds, impliedly or expressly, had modified the [separation] [a]greement" incorporated into divorce decree). Separation agreements that are incorporated but not merged into a divorce decree are contracts, and they generally can be altered and enforced like other contracts. *Fantle*, 140 Md. App. at 685 ("It is well settled that parties to a written contract that is not governed by

[7] Ms. Barnes also asserts that Mr. Bradshaw failed even to abide by the terms of the agreement as he defines it, because his payments to third-party vendors did not always amount to $300 per month. The circuit court found, however, that the agreement was that Mr. Bradshaw "would pay *up to* $300 per month" for the extra-curricular activities, and that he satisfied that obligation. We identify no clear error in those findings.

the Statute of Frauds may orally modify the terms of that contract even if the 'written contract provides that it shall not be varied except by an agreement in writing . . . .'" (quoting *Hoffman v. Glock*, 20 Md. App. 284, 288 (1974))). Ms. Barnes has not pointed us to any law suggesting that those principles do not apply in this circumstance, and we have found none.

Moreover, by recognizing such agreements—at least as governing the relationship of the parties before either of them returns to court to seek a change or a return to adherence to the terms of a prior agreement—a court may avoid inequitable and even absurd results. Prohibiting courts from recognizing modifications agreed to (and acted and relied upon) by parties acting in good faith and with the best interests of their children in mind would impose significant burdens on parties and often lead to inequitable results. Requiring such parties to return to court every time they agreed to what they perceived as a mutually-beneficial adjustment to their post-divorce relationship would impose a significant burden and cost on the parties, causing them to expend funds that they may agree are better saved for the benefit of the children. And when parties inevitably decline to seek court approval for a modification to which they have agreed cooperatively,[8] one side may eventually find

[8] We would not, of course, dissuade parties who wish to come to court to obtain a formal modification of a post-marital relationship from doing so. There are many reasons why one or both parties might prefer that course. In light of the expense and hassle involved in obtaining judicial approval, as well as the realities of life for families with limited means, however, we would be naïve to think that parties will not be inclined to come to informal modifications regardless of what we decide here. Punishing them for doing so seems particularly unwise.

him or herself taken advantage of if the other later decides the original arrangements proved more advantageous and seeks retroactive enforcement of them.

Ms. Barnes concedes that parties might be able to alter some terms of a separation agreement without court approval, but she insists that child support is not among them. She makes two main arguments in support of that position. First, she points to § 12-104(b) of the Family Law Article, which prohibits a court from "retroactively modify[ing] a child support award prior to the date of the filing of the motion for modification." That argument, however, conflates a court's *action* to modify a child support order with its *recognition* that the parties have done so. The latter does not violate § 12-104(b) because it is the parties, not the court, who have modified the agreement. The statute does not require a court to ignore the conduct of the parties and retroactively undo agreements the parties made and on which they acted in reliance. *See Saggese v. Saggese*, 15 Md. App. 378, 388-89 (1972) ("[W]e have no difficulty in concluding, as did the Chancellor, that Mrs. Saggese could not obtain the 'fruits' of the separation agreement for the period of time that the benefits under that agreement flowed to her, and later be heard to complain because the 'fruits' were no longer being harvested.").

Second, Ms. Barnes contends that parties lack the authority to modify child support on their own because child support is for the benefit of the children, and so parents lack the authority to negotiate the amount of that support. Ms. Barnes is correct that child support is for the benefit of the children. *See Guidash v. Tome*, 211 Md. App. 725, 739 (2013). As a result, "parents may not waive or bargain away a child's right to receive support," and

any agreement parents reach "is always subject to court modification." *Id.* at 739-40. That, however, does not mean that courts lack the authority to recognize agreements concerning child support that parties, before returning to court, have made and relied upon. Here, for example, the court concluded that the parties had made adjustments to the Agreement for years in ways "they believed to be in their children's best interests." The court found that the parties agreed to a number of changes once Ms. Barnes returned to Maryland, including that the children would go back to living with Ms. Barnes, that Ms. Barnes would be able to deduct both children on her taxes, and that Mr. Bradshaw would resume paying child support, albeit in a lesser amount than what he had paid before Ms. Barnes moved to Tennessee.

Notably, if Ms. Barnes's contentions here were correct, then she would have been permitted upon her return to Maryland in July 2016 to demand immediately from Mr. Bradshaw payment in full of the child support obligation owed to her under the Agreement for the entire period of time she spent in Tennessee, even though for much of that time she did not have custody of either child. According to Ms. Barnes's legal theory, had she made such a claim, the court would have been powerless to do anything other than (1) ignore her undisputed agreement that Mr. Bradshaw would not owe child support while she was in Tennessee and (2) enforce the obligation as stated in the Agreement in full. Although Ms. Barnes has not made such a claim in this litigation, that is of no moment in considering the implications of her legal argument, which would mandate that absurd and inequitable result.

To be sure, a court should decline to recognize an agreement to modify child support that it concludes is *not* in the best interests of the children, or that it finds was the product of unfair conduct or unequal bargaining power. But that is not the situation here, where the court found expressly to the contrary based on evidence in the record. While Ms. Barnes spent nearly two years out of state, Mr. Bradshaw cared not only for one or both of the parties' two children but also for Ms. Barnes's other daughter, all without seeking to recover from Ms. Barnes expenses the Agreement required her to share. And there is nothing inherently contrary to the children's interest in the arrangement the court found the parties reached. That is especially so because, based on her much greater income, shifting the tax deduction to Ms. Barnes would likely have led to more money being available to the parties overall. *See Reichert v. Hornbeck*, 210 Md. App. 282, 343 (2013) (observing that there is a presumption that it is in the child's best interest for the allocation of a tax exemption to be to the parent with whom it would result in "an increase in after-tax spendable income of the family as a whole"). In any event, we see no error in the circuit court's decision to recognize the parties' agreements regarding child support as governing their relationship up to the date on which Ms. Barnes filed her motion for modification of child support.[9]

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[9] Ms. Barnes also argues that the court should not have recognized the agreement of the parties as to child support because Mr. Bradshaw had lied about his income when she agreed to accept less than $500 in monthly child support payments. In finding that the parties made a valid, enforceable agreement regarding child support when Ms. Barnes returned to Maryland, and that Ms. Barnes entered that agreement primarily because of her desire to claim both children as a tax deduction, the circuit court impliedly rejected this contention. We see no clear error in that finding.

II. The Circuit Court Did Not Err in Declining to Order Mr. Bradshaw to Pay a Proportionate Share of Health Insurance and Medical Expenses that Ms. Barnes Had Never Sought from Him.

Ms. Barnes contends that the court erred in declining to order Mr. Bradshaw to pay his proportionate share of certain health insurance and medical expenses she incurred. The Agreement requires the parties to "communicate to ensure that the children have uninterrupted health insurance coverage. . . . Regardless of which party maintains health insurance for the children, the parties shall split the cost of health insurance for the children in proportion to their respective incomes, along with any un-reimbursed medical expenses." Ms. Barnes contends that this provision required Mr. Bradshaw to pay a proportionate share of $1,312.70 in health insurance expenses and $394.15 in unreimbursed medical expenses. Calculating Mr. Bradshaw's proportionate share, based on their respective incomes, as approximately one-third, Ms. Barnes contends that Mr. Bradshaw owed her $568.95.[10]

Separate and apart from these expenses, Ms. Barnes also sought an order requiring Mr. Bradshaw to pay a share of B.'s $3,120 orthodontia bill. At the hearing, Mr. Bradshaw acknowledged that he had separately agreed to pay one-half of those expenses, more than his proportionate share under the Agreement, but that he had not yet paid that amount.

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[10] Under Ms. Barnes's contention that she earns $9,360 per month and Mr. Bradshaw earns $4,503 per month, his proportionate share would be 32.5%. Based on the circuit court's finding that he earned $3,918 per month, his share is 29.5%.

In total, the health care and unreimbursed medical expenses at issue totaled $4,826.85. Using the actual salary amounts found by the circuit court, Mr. Bradshaw's proportionate share (29.5%) of such expenses would be $1,423.92. Although the Agreement only calls for Mr. Bradshaw to pay that proportionate share, the court ordered him to pay his "agreed-to-one-half share" of B.'s orthodontia expenses, for a total of $1,560. Thus, although the court awarded only a share of the orthodontia costs, it actually ordered Mr. Bradshaw to pay *more* than would have been required if the court had applied the terms of the Agreement to *all* of the expenses claimed by Ms. Barnes:

	Applying proportionate share (29.5%), as per Agreement, to all claimed expenses	Court order, based on side agreement to pay 50% of orthodontia expenses
Orthodontia- $3,120	$920.40	$1,560.00
Remaining health insurance expenses claimed- $1312.7	$387.25	$0
Remaining medical expenses claimed- $394.15	$116.27	$0
Totals	$1,423.92	$1,560.00

In light of her arguments regarding child support, there is some irony in the fact that Ms. Barnes obtained this benefit—above and beyond any entitlement under the Agreement—from the court's enforcement of a side agreement between the parties.

As for the remaining expenses claimed by Ms. Barnes, the court concluded that she had "failed to satisfy her evidentiary burden." The court based that determination on Mr. Bradshaw's testimony that Ms. Barnes "never requested him to make any such payments prior to claiming them in this litigation, that she did not advise him that the children were not covered [by] any insurance, that she did not provide him with insurance cards, and that

she failed to reimburse him for any such costs during the time he paid them." Simply put, without notice of the expenses and a request for reimbursement, Mr. Bradshaw could not have breached the Agreement's requirement that he reimburse a proportionate share of the expenses. *See Alois v. Waldman*, 219 Md. 369, 375 (1959) ("Where cooperation is necessary to the performance of a condition, a duty to cooperate will be implied, and that a party owing such a duty cannot prevail if such failure operates to hinder or prevent performance of the condition."); *see also Kunda v. Morse*, 229 Md. App. 295, 303 (2016) (explaining that determining whether a party breached a contract "is a question of fact that our standard of review . . . compels us to consider with deference to the trial court's factual findings").

Ms. Barnes concedes that she did not request payment from Mr. Bradshaw before filing her motions or present him with any evidence of her expenses until discovery. Nonetheless, she contends that the court erred in declining to order Mr. Bradshaw to pay the expenses in its final order. We disagree. To support a finding that Mr. Bradshaw breached his obligation to pay a proportionate share of health insurance and medical expenses, Ms. Barnes needed to show, at a minimum, that she had presented Mr. Bradshaw with sufficient evidence of her payments and that he had refused to pay his proportionate share. Based on the record, we see no error in the circuit court's conclusion that she failed to present evidence that this had happened.

Ms. Barnes also takes issue with certain evidentiary rulings the court made, in particular, its rulings sustaining objections to certain documents by which she attempted to

establish the payments for which she sought reimbursement. As an initial matter, this complaint is moot in light of our conclusion that the circuit court did not err in rejecting Ms. Barnes's claim for a different reason. Beyond that, however, we find no abuse of discretion in the circuit court's evidentiary rulings. As to each of the documents Ms. Barnes claims was improperly excluded, she either failed to properly authenticate the document or failed to demonstrate that the document satisfied the prerequisites for an applicable hearsay exception. Although, as a general proposition, Ms. Barnes is correct that documents can be admissible in some circumstances under the business records exception to the hearsay rule without testimony from the author or custodian of records, *see Champion Billiards Cafe, Inc. v. Hall*, 112 Md. App. 560, 566 (1996), she failed to demonstrate that the documents at issue met the prerequisites for admission under that exception.

III. THE CIRCUIT COURT DID NOT ERR IN DECLINING TO AWARD ATTORNEY'S FEES.

Ms. Barnes contends that the circuit court erred in declining to award her attorney's fees under the Agreement. Specifically, she argues that she is entitled to an award of fees under § 14.5 of the Agreement, which provides that "if either party breaches any provision of this Agreement, or is in default thereof, said party shall be responsible for any reasonable legal fees incurred by the other party in seeking to enforce this Agreement which are awarded by a court of competent jurisdiction." Because we will affirm the circuit court's

judgment holding that Mr. Bradshaw did not breach the Agreement, we will also affirm its judgment denying attorney's fees.

ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.