Circuit Court for Prince George's County
Case No. CAD 17-21677

UNREPORTED

IN THE APPELLATE COURT OF

OF MARYLAND*

No. 1177

September Term, 2021

JOSHUA CHAMBERS

v.

PHOEBE LARNED

Kehoe,
Beachley,
Shaw,
JJ.

Opinion by Kehoe, J.

Filed: February 7, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

This is an appeal from a judgment of the Circuit Court of Prince George's County that granted Joshua Chambers' motion to reduce his child support obligation. Mr. Chambers believes that he deserves more of a reduction and has appealed the court's judgment. He presents one issue:

> Did the trial court make a legal error when it found that the actual income of a self-employed party could not be determined based solely on business bank account statements when that party had not filed federal income taxes in several years and comingled his business expenses and personal income?

We will affirm the judgment of the circuit court.

BACKGROUND

Mr. Chambers and Phoebe Larned[1] are the parents of a four-year old child. On March 8, 2019, the parties reached an agreement regarding pendente lite child support which required Mr. Chambers to pay $800 a month to Ms. Larned. After a merits hearing, on August 27, 2019, the court ordered that the parties had shared legal custody, awarded Ms. Larned sole physical custody, and granted Mr. Chambers visitation. Pertinent to the issues raised in the current appeal, the trial court found that Mr. Chambers' annual income for child support purposes was $67,236, of which $24,000 was rental income. Mr. Chambers was ordered to pay $983 a month in child support to Ms. Larned. The court also found that Mr. Chambers' child support obligations were in arrears in the amount of

[1] We will refer to the parties as "Mr. Chambers" and "Ms. Larned." For the convenience of the reader, we will substitute the parties' names, without brackets, for all inconsistent references when quoting from the parties' briefs or materials in the record.

$17,009. The court also ordered him to pay an additional $100 a month to Ms. Larned until the unpaid balance was paid.

On July 6, 2020, Mr. Chambers filed a motion to modify his child support obligation.[2] The court held an evidentiary hearing on June 29, 2021. According to Ms. Larned, he received both rental income and income from his painting and contracting business, and that both had declined since the 2019 child support award. The evidence was as follows:

Mr. Chambers testified that he is self-employed, doing business as "Day By Day Painting And Carpentry." He maintained a bank account (the "Sandy Springs Bank account") in which he deposited checks from customers for home improvement projects. He testified that he uses the proceeds to purchase materials for the projects and to pay other business expenses. His income from his contracting business was what was left in the account after all business expenses had been paid. Mr. Chambers entered into evidence copies of his Sandy Springs Bank monthly bank statements from January 2020 until May 2020 (that is, for the five months prior to the time that he filed his motion to modify child support) and from July 2020 through October 2020, as well as a chart showing the gross deposits into his bank account for 4 months each in 2018, 2019 and

[2] Mr. Chambers also requested the court to hold Ms. Larned in contempt of court. The basis for this motion is not clear from the information contained in the parties' briefs and the extract. The court denied this request. Mr. Chambers does not challenge that ruling in this appeal.

2020. When asked by counsel if he used the Sandy Springs Bank account to pay personal expenses, he responded "It is my only bank account."

On cross-examination, Mr. Chambers admitted that he had not filed income tax returns for 2020 and that he had not filed tax returns for several years prior to 2020. Additionally, he conceded that he had no invoices or other records to support his claims that disbursements from his bank account were for business expenses. Moreover, when viewed in the light most favorable to Ms. Larned as the prevailing party, some of his responses during cross-examination indicated that some of the disbursements from his bank account were used at least in part to pay personal expenses. On redirect, Mr. Chambers provided more specific testimony regarding the disbursements from the Sandy Springs Bank account by going through several monthly statements on a line-by-line basis.

Mr. Chambers also testified that his rental income had declined. At the 2019 merits hearing, he testified that he rented out portions of his home to two tenants, the "upstairs tenant," and the "downstairs tenant." In the 2020 modification hearing, he testified that he evicted the "downstairs tenant" in order to provide a bedroom for the parties' child when she had overnight visitation with Mr. Chambers.[3]

[3] At the time of the hearing, Mr. Chambers did not have overnight visitation with the parties' child, nor had he requested it. However, the trial court indicated it was aware that he needed to make changes to his home in order to have adequate space for the child.

According to Mr. Chambers, this evidence demonstrated that his annual income for child support purposes had declined from $67,236 in 2019 to $35,640 in 2020. The evidence further showed that his 2021 income through April was $6,182 (which would extrapolate to an annual income of $18,547).

After hearing the testimony and reviewing the various exhibits that were admitted into evidence, the trial court adjusted Mr. Chambers' child support to reflect the reduction of his rental income only. The court explained:

> Plaintiff's motion to modify [child support] is granted. There was a change of circumstances, at least, the Plaintiff was able to show a loss of rental income. A loss of rental income to the amount of $1,150 and that was to provide space as directed and talked to by the agency to allow room for his daughter.
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> And, additionally, the Court believes that there may be a loss of income due to the pandemic. But the Court is unclear on how much that loss may be. The plaintiff did not file his taxes and the Plaintiff's money is co-mingled with his personal affairs. And it's not the Court's fault that the Plaintiff did not receive his stimulus check. The Plaintiff decided not to file his taxes.

The court reduced Mr. Chambers' child support obligation to $798 per month. This appeal followed.

THE STANDARD OF REVIEW

A trial court's decision to modify a parent's child support obligation involves the exercise of the court's discretion. *See, e.g., Leineweber v. Leineweber*, 220 Md. App. 50, 61 (2014); *Guidash v. Tome*, 211 Md. App. 725, 735 (2013).

A court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous. *Guidash*, 211 Md. App. at 735. We review a trial court's legal reasoning *de novo*. *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100 (2010). We review factual findings for clear error, and in that process, we must defer to the trial court's ability to weigh the credibility of witnesses. Md. Rule 8-131(c). A trial court's findings will be upheld "if there is competent or material evidence in the record to support the court's conclusion." *Azizova v. Suleymanov*, 243 Md. App. 340, 372 (2019) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)), *cert. denied*, 467 Md. 693 (2020).

Finally, in very rare circumstances, a court can abuse its discretion by reaching an unreasonable or unjust result even though it has correctly identified the applicable legal principles and applied those principles to factual findings that are not clearly erroneous. Writing for this Court in *North v. North*, 102 Md. App. 1, 14 (1994), Chief Judge Wilner surveyed a number of cases defining the concept of "abuse of discretion" and concluded that, in order for an appellate court to set aside a trial court's discretionary ruling:

> The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

ANALYSIS

Mr. Chambers argues he presented the court with ample evidence to show that his income dropped drastically because of the Covid-19 Pandemic. He contends that his evidence was unrebutted. Therefore, he reasons, the trial court erred when it failed to lower his child support obligation based on his income. He points out that Maryland law differentiates between employment and self-employment. Actual income for self-employment means "gross receipts minus ordinary and necessary expenses required to produce income." He states:

> His uncontroverted testimony established the company's business expenses. As a result, [his] income for calendar year 2020 was $35,640.38, down from 2019's income of $67,236. The decrease was a 48% decrease from the year before. Actual income was established by [him]. There was no evidence admitted or even proffered disputing [his] 2020 income. There were no objections to the authenticity of the bank statements produced in order to dispute the business expenses. Ms. Larned did not explain or argue in closing that the expenses should be discredited. The argument raised by Ms. Larned in closing was that the income was not verified as required by the rule. However, there was no credible argument or evidence presented disputing the expenses.
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> . . . . At no point in the oral ruling did the Court find that Mr. Chambers' testimony was not credible, or that there was material evidence disputing the validity of the business expenses testified to by [him]. As a result, the Court should have . . . accepted [his] 2020 income after accounting for his expenses, as actual income.
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> Assuming *arguendo* the Court was unpersuaded by Mr. Chambers' testimony regarding the business expenses and chose not to exclude the expenses from income deposited into the accounts, the Court was left with the 15 months of deposits into Mr. Chambers' bank that was unrebutted and should have been used as income.

Because no material evidence was submitted during the modification hearing that contested the validity of Mr. Chambers' business expenses and because the court did not indicate that the court viewed him as not credible, Mr. Chambers believes the court should have accepted his bank statements as evidence of his actual income. These contentions are not a basis for appellate relief.

Md. Code, Fam. Law § 12-104(a) provides that "the court may modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstances." *See also Ley v. Forman*, 144 Md. App. at 665 (2002) ("When presented with a motion to modify child support, a trial court may modify a party's child support obligation if a material change in circumstances has occurred which justifies a modification.") "The burden of proving a material change in circumstance is on the person seeking the modification." *Corby v. McCarthy*, 154 Md. App. 446, 477 (2003); *Petitto v. Petitto*, 147 Md. App. 280, 307 (2002) (same).

"The phrase 'burden of proof' encompasses two distinct burdens: the burden of production and the burden of persuasion. *Bd. of Trustees, Community College of Baltimore County. v. Patient First Corp.*, 444 Md. 452, 469–73 (2015). "It is well established that the broad concept of 'burden of proof' consists of at least two component parts: the burden of production (also referred to as the duty of going forward with the evidence) and the burden of persuasion." *Kassap v. Seitz*, 315 Md. 155, 161–63, (1989); *see also Mills v. Godlove*, 200 Md. App. 213, 223 n.4 (2011) ("To satisfy the burden of

production is not remotely to satisfy the burden of persuasion.") (citing *Angelini v. Harford County*, 144 Md. App. 369, 376 (2002)).

In the present case, Mr. Chambers satisfied his *burden of production* in that he presented evidence to the trial court that, if fully credited by that tribunal, would have provided an adequate factual basis for the court to exercise its discretion and reduce his child support obligation even further than the court did. For us to hold that Mr. Chambers satisfied his *burden of persuasion* in the present case would require us to conclude that the evidence presented to the court was so compelling that its refusal to further reduce his child support obligation was "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re C.A. & D.A.*, 234 Md. App. at 45. In our view, the evidence in the present case did not satisfy this extremely demanding standard.

As Judge Moylan has explained for this Court (emphasis added):

> Actually to be persuaded of something requires a requisite degree of certainty on the part of the fact finder (the use of a particular burden of persuasion) based on legally adequate evidentiary support (the satisfaction of a particular burden of production by the proponent). . . . *Mere non-persuasion, on the other hand, requires nothing but a state of honest doubt*. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard.

Yonga v. State, 221 Md. App. 45, 96 (2015), *aff'd*, 446 Md. 183 (2016) (quoting *Starke v. Starke*, 134 Md. App. 663, 680–81 (2000)).

Mr. Chambers points out that the trial court did not make a specific finding as to his credibility or to the probative value of the evidence that he presented. But this contention is unavailing. "There is a strong presumption that judges properly perform their duties, and that trial judges are not obliged to spell out in words every thought and step of logic." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (cleaned up). For this reason, when the decision at issue is a discretionary one, "a trial judge's failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion." *Cobrand v. Adventist Healthcare, Inc*., 149 Md. App. 431, 445 (2003) (cleaned up).

Returning to the case before us, the accuracy of some of Mr. Chambers' factual assertions were undermined on cross-examination. Mr. Chambers' counsel tried to repair the damage on redirect, but the court was not required to accept his version of events.

Additionally, the trial court was clearly troubled by the fact that Mr. Chambers had not filed tax returns for 2020 and previous years. The court's focus on his failure to do so was reasonable and in accord with Maryland law. Md. Code, Fam. Law § 12-203(b)(2)(ii) provides that, if a parent is self-employed (like Mr. Chambers) and contends that his income declined by 20% or more in a one-year period (as Mr. Chambers did), then "the court may require that parent to provide copies of federal tax returns for the 5 most recent years." We conclude that the evidence before the trial court, when viewed in

the light most favorable to Ms. Larned as the prevailing party, was not so conclusive as to preclude the possibility of an "honest doubt" on the trial court's part.

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