

Circuit Court for Montgomery County
Case No. 132208 FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1243

September Term, 2020

CHRISTOPHER STANTON

v.

REENA EAPEN

Berger,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: September 24, 2021

*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 case is before us on appeal from an order of the Circuit Court for Montgomery County granting a petition for contempt filed by appellee, Reena Eapen (“Eapen”), against her ex-husband, Christopher S. Stanton (“Stanton”), appellant, for failure to pay alimony. Stanton also appeals the circuit court’s order addressing his motion to modify alimony, which ordered that Stanton pay Eapen \$1,032 per month in indefinite alimony. As we shall explain, we shall affirm the circuit court’s contempt order but shall vacate and remand the indefinite alimony order for clarification.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married on September 7, 2002, in Northampton, Massachusetts. They are the parents of one child, a daughter, who is approximately seventeen years old. During the marriage, Stanton worked full time for the United States Secret Service and Eapen worked as a homemaker. Eapen previously worked in the hospitality business, but she left her last job in that industry in December of 2001. In 2014, Stanton injured his back during a Secret Service training exercise. The injury required surgery and caused long-term effects, including migraines, difficulty sitting for long periods of time, and difficulty driving. Stanton’s injury accelerated the deterioration of the parties’ marriage and the parties ultimately separated in 2015 after Stanton began a relationship with another woman.

After the parties separated, the relationship between Eapen and the parties’ child deteriorated. An altercation occurred in August of 2015 when Eapen became upset after the child informed her that she had met Stanton’s girlfriend and the child told Eapen that she would run away if she was not permitted to live with Stanton. Eapen grabbed the child to prevent her from running and locked her in a bathroom so she could calm down.

Subsequently, the maternal grandmother came and transported Eapen and the child to her home. Stanton characterized this altercation as “false imprisonment” of the child and claimed that Eapen had “damaged [the child] for life.” The parties agreed that Stanton would take the child for a few days after the altercation. At this point, Stanton “began the process of removing [Eapen] from [the child’s] life” and Eapen’s “unsupervised time with [the child] ceased.” Stanton “unilaterally changed [the child’s] school so she could live with him full-time” which “required [the child] to move away from her friends, and left [her] with a narrative that almost exclusively suited [Stanton].”

By the time of the parties’ divorce trial in October 2017, Eapen and the child had attended reunification therapy, but the relationship remained strained. The relationship had deteriorated to the point that the licensed clinical social worker believed that a regular access schedule for Eapen and [the child] was not possible, and Stanton saw “no reason to apologize for the role he played in creating [the child] and [Eapen’s] estrangement.” The circuit court awarded primary physical custody of the child to Stanton but expressly noted that Stanton had engaged in actions to harm Eapen’s relationship with the child. For example, the court found that “the estrangement of [Eapen] and [the child] is the result of [Stanton’s] overt efforts to discourage [the child’s] relationship with [Eapen].” The court further found that Stanton “ha[d] demonstrated the opposite of ability to maintain [the child’s] relationships with [Eapen] and maternal grandparents” and that the child had “been overwhelmed by her [f]ather’s self-centered full-court press, luring [the child] to his side and shutting [Eapen] out, the undercurrent of half-truths on [Stanton’s] side of the conversation, [Eapen’s] poor reaction to [Stanton’s] actions, [the child’s] own disrespectful

and at times manipulative behavior toward her mother, and [the child's] mental health needs.”

With respect to financial matters, the circuit court addressed the parties' post-separation lives, observing that Stanton lived with his girlfriend in “a large, 3,641 square feet home, with four bedrooms and 3.5 bathrooms.” Stanton's income had diminished because of his injury “from \$100,000 to \$59,148 per year which, after deductions, nets \$4,521.62 monthly.” At the time of the divorce, Stanton was not working and instead was receiving worker's compensation benefits in connection with his injury.

The court found that Eapen resided with her parents and had recently resumed employment for the first time since 2001. She was working part-time at a hotel “earning \$13 per hour.” Eapen was also taking undergraduate courses at Montgomery College.

After setting forth its reasoning as to each of the factors set forth in Maryland Code (1984, 2012 Repl. Vol.), Family Law Article (“FL”), § 11-106(b), the trial court awarded Eapen indefinite alimony in the amount of \$1,500 per month. The circuit court found that Stanton's income was “far less than it once was,” but that “he has the ability to pay alimony.” The circuit court found “the respective living standards of the parties are unconscionably disparate” and emphasized that Eapen's income was “roughly \$12,000 per year” and that “[s]he lives with her parents, and at age 44, is trying to acquire skills so she can someday be self-supporting.” On the other hand, Stanton's income was \$59,148 and he had “economic support from [his girlfriend] (who testified she earns \$100,000 per year).” The court found that Stanton “can take trips, eat at restaurants, and attend events” and was able to “pay alimony indefinitely.” The circuit court further ordered that Stanton's

thrift savings plan (“TSP”), which was valued at \$38,899.01 as of June 13, 2017, be divided equally between the parties. The circuit court awarded Eapen forty-six percent of Stanton’s “Federal Employees Retirement System (FERS) life benefit, if and when he receives it, along with the full FERS survivor benefit.” The court subsequently issued a Qualified Domestic Relations Order (“QDRO”).

In August 2019, Stanton began receiving retirement disability pay instead of worker’s compensation benefits. Stanton’s retirement disability annuity payments were calculated at the rate of sixty percent of the average of his three highest annual salaries while employed. As of November 2020, the annuity would be reduced to forty percent of the average of his three highest annual salaries while employed. Stanton’s annual annuity was calculated at \$56,290 per year, or \$4,690 per month. Because Stanton was receiving retirement benefits, Eapen began receiving her portion of Stanton’s retirement benefits as well. After being converted to retirement disability pay, Stanton stopped making alimony payments. The last payment he made was in August 2019.

On or about September 24, 2019, Stanton filed a Motion to Terminate or Modify Alimony. Stanton argued that he was no longer able to afford alimony as a result of his retirement disability designation. Eapen moved to dismiss Stanton’s Motion to Terminate or Modify Alimony. The motion to dismiss was denied without prejudice pending a hearing. On December 17, 2019, Eapen filed a Petition for Contempt and Request for Issuance of Show Cause for Defendant’s Failure to Pay Support. Eapen subsequently filed an opposition to Stanton’s Motion to Terminate or Modify Alimony. Stanton filed a Motion to Revise Order on October 7, 2020, in which he asked the circuit court to amend

its previous ruling that awarded retirement benefits to Eapen to “clarify” that Eapen not receive her portion of Stanton’s retirement benefits until “the time of [Stanton’s] retirement, or his age of 62.” On October 20, 2020, Stanton filed an Amended Motion to Terminate or Modify Alimony, again asking that the circuit court reconsider the alimony award in light of Stanton’s changed income. A hearing was held before the circuit court on November 2, 2020.

At the November 2, 2020 hearing, both parties presented testimony and introduced documentary evidence as to their respective living standards, income, and expenses. Stanton did not dispute that he had not paid alimony to Eapen since August of 2019, but he emphasized the reduction in his income. Stanton’s gross monthly annuity payment was \$4,690, but he emphasized that his net annuity payment was \$1,972.17 after deductions for life insurance, health insurance, dental insurance, taxes, and the amount apportioned to Eapen by court order. The apportionment to Eapen included a retroactive payment of \$27,478.65 for the period of April 1, 2019 through June 30, 2020, which the United States Office of Personnel Management explained would be withheld over a period of 36 monthly installments. Stanton asserted that he should no longer be expected to pay \$1,500.00 in alimony to Eapen when his income had been reduced and Eapen herself had begun receiving benefits.

When asked about his expenses by Eapen’s attorney, Stanton acknowledged that his spouse covered many of his expenses that he did not pay himself.¹ Specifically, Stanton testified that his wife paid for all of his rent, utilities, insurance, and car payments. Stanton’s debit card statements reflected discretionary expenses for dining out at restaurants, spas, jewelry, and other forms of entertainment. His financial records further reflected deposits in excess of the disability retirement annuity including deposits of \$82,309.62 between August 15, 2019 and September 15, 2020. Stanton’s bank accounts often showed monthly balances exceeding the amount of alimony he had been ordered to pay Eapen.²

As of November 2020, Eapen was residing with her parents and was unable to pay the \$800 of rent charged to her by her parents. Although Eapen had been working part-time earning fifteen dollars per hour at a nursing home, she had stopped working in May 2020 due to health concerns relating to the Covid-19 pandemic and underlying health

¹ By the time of the November 2020 hearing, Stanton had married the girlfriend with whom he had been residing at the time of the parties’ divorce trial.

² Stanton’s bank statements showed the following monthly balances:

Statement Month	Balance
December 2019	\$14,525.59
January 2020	\$10,545.94
February 2020	\$9,651.87
March 2020	\$6,129.51
April 2020	\$3,380.72
May 2020	\$6,976.04
June 2020	\$4,591.07
July 2020	\$1,835.09

issues.³ Eapen was on Medicaid and had outstanding taxes, outstanding counsel fees, and was repaying a benefits overpayment. Eapen's parents were assisting her with expenses including paying for grocery expenses. Eapen was enrolled in classes at Montgomery College, for which she was paying tuition. At the conclusion of the hearing, the circuit court held the matter under advisement.

The circuit court issued its orders on the contempt and alimony modification matters on December 11, 2020. The circuit court denied Stanton's motion to revise the divorce order in which he requested that the court order that Eapen not receive retirement benefits until Stanton reached the age of sixty-two. This ruling is not challenged on appeal. With respect to Eapen's petition for contempt, the circuit court observed that Stanton had testified that he did not pay alimony since August of 2019. The court further observed that although Stanton testified that he did not receive income in September or October of 2019, he collected \$8,000 of retirement backpay in November of 2019 as well as approximately \$8,600 in December of 2019. The circuit court emphasized that Stanton "testified that his current wife pays for his rent, utilities, car insurance, and car payment." The circuit court found that "[w]hile [Stanton] may not have received income in September or October, 2019, he certainly could have used his \$8,000 December income to pay his past obligations. Instead, when [Eapen] started receiving her portion of the retirement benefits, [Stanton] completely stopped paying alimony." The circuit court granted Eapen's contempt petition and ordered "that no later than December 31, 2010, Mr. Stanton shall pay Twenty-Two

³ Eapen explained that she "had to leave because of [her] own illnesses" and her "bad immune system."

Thousand Five Hundred dollars (\$22,500) to Ms. Eapen for fifteen months of unpaid alimony.”

The circuit court further addressed Stanton’s motion to terminate or modify alimony as follows:

There is a significant disparity in the economic resources of the parties. As stated above, Husband’s current wife pays for a significant portion of his living expenses. Wife, on the other hand, lives with her parents because she cannot afford to do otherwise. Husband argues that his retirement income is decreasing; but that decrease will not substantially affect his quality of life. Wife relies on the alimony payments she was awarded to pay her basic living expenses.

Currently, Husband is receiving \$3,127 dollars per month in retirement benefits. Wife was awarded 33% of Husband’s income as alimony at the time of the divorce. Thus, Wife is entitled to \$1,032.00 dollars per month in indefinite alimony.

The court ordered that Stanton commence paying \$1,032.00 per month to Eapen on December 1, 2020. Stanton noted a timely appeal.

On January 7, 2021, Stanton filed a Motion to Amend Contempt and Alimony Orders. Eapen filed an opposition on January 21, 2021 and subsequently filed a Motion for Fees for Appellate Litigation on February 11, 2021. On March 15, 2021, the circuit court issued an order denying Stanton’s motion to amend. The order further provided that Stanton shall pay Eapen \$22,500 by March 31, 2021 and that his “failure to pay the total lump sum payment . . . not later than March 31, 2021, shall result in a judgment and possible further sanctions.” The court reiterated that Stanton “shall continue to pay alimony in the amount of One Thousand and Thirty-Two Dollars (\$1,032) per month.”

The circuit court further ordered that Stanton pay Eapen's fees for appellate litigation in the amount of \$5,000.00 by May 1, 2021.

DISCUSSION

On appeal before this Court, Stanton asserts that the trial court erred by finding him in contempt of court for non-payment of alimony. Stanton asserts that the trial court further erred by ordering him to pay indefinite alimony to Eapen in the amount of \$1,032.00 per month. As we shall explain, we are not persuaded by Stanton's allegations of error.

I.

Stanton concedes -- as he must -- that he did not make any alimony payments to Eapen between September 2019 through the date of the hearing on Eapen's contempt petition on November 2, 2019. Stanton expressly acknowledges that there was no factual dispute regarding his failure to make alimony payments as required. Stanton argues, however, that the circuit court erred by determining that he had the ability to pay the alimony award.

Maryland Rule 15-207(e), which governs contempt proceedings for non-payment of court-ordered alimony, provides in pertinent part:

(2) *Petitioner's Burden of Proof.* Subject to subsection (3) of this section, the court may make a finding of contempt if the petitioner proves by clear and convincing evidence that the alleged contemnor has not paid the amount owed, accounting from the effective date of the support order through the date of the contempt hearing.

(3) *When a Finding of Contempt May Not Be Made.* The court may not make a finding of contempt if the alleged contemnor proves by a preponderance of the evidence that (A) from the date of the support order through the date of the contempt

hearing the alleged contemnor (i) never had the ability to pay more than the amount actually paid and (ii) made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment, or (B) enforcement by contempt is barred by limitations as to each unpaid spousal or child support payment for which the alleged contemnor does not make the proof set forth in subsection (3)(A) of this section.

(4) *Order*. Upon a finding of constructive civil contempt for failure to pay spousal or child support, the court shall issue a written order that specifies (A) the amount of the arrearage for which enforcement by contempt is not barred by limitations, (B) any sanction imposed for the contempt, and (C) how the contempt may be purged. If the contemnor does not have the present ability to purge the contempt, the order may include directions that the contemnor make specified payments on the arrearage at future times and perform specified acts to enable the contemnor to comply with the direction to make payments.

“If the court finds a contempt, the court must issue a written contempt order that specifies, in clear language, the amount of arrearage due, the sanction for the contempt, and what the contemnor must do to purge him or herself of the contempt.” *Jones v. State*, 351 Md. 264, 273 (1998) (citing Md. Rule 15-207(e)).

In his challenge to the circuit court’s contempt determination, Stanton emphasizes the language found in of Rule 15-207(e) which provides that a “court may not make a finding of contempt if the alleged contemnor proves by a preponderance of the evidence that (A) from the date of the support order through the date of the contempt hearing the alleged contemnor (i) never had the ability to pay more than the amount actually paid and (ii) made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment” Stanton offered no evidence before the trial court as to any efforts he made to obtain funds necessary to make payments. Instead,

Stanton emphasizes the reduction in his income after he began receiving disability retirement payments instead of the worker's compensation benefits he had been receiving previously.

Indeed, Stanton's bank accounts showed a balance far exceeding his alimony obligation during several of the months he failed to make alimony payments. Moreover, Stanton's bank statements showed a wide range of discretionary expenses during the months that he failed to make alimony payments, and Stanton testified that his spouse paid for many of the expenses listed on his financial statement. Accordingly, we are entirely unpersuaded by Stanton's assertion that he "never had the ability to pay more than the amount actually paid." Rule 15-207(e). Based upon the evidence presented, the trial court reasonably determined that Stanton did not pay the amount owed while he had the ability to do so. Accordingly, the circuit court did not err when it found Stanton in contempt for non-payment of alimony.

Stanton further asserts that the circuit court erred by ordering that he pay \$22,500 in unpaid alimony in order to purge the contempt.⁴ He asserts that there is no evidence that supports the circuit court's finding that he had the ability to purge himself of the contempt. As we discussed *supra*, Stanton testified that his spouse covers the overwhelming majority of his expenses, including rent, utilities, insurance, and car payments, and Stanton's financial records reflected discretionary expenses for dining out at restaurants, spas,

⁴ Stanton observes that the circuit court did not specifically use the term "purge provision" in its orders, but he acknowledges that it is clear that this is the method by which he was to purge himself of contempt.

jewelry, and other forms of entertainment. Furthermore, Stanton’s bank statements reflected deposits of \$82,309.62 between August 15, 2019 and September 15, 2020. In our view, this evidence provides sufficient support for the circuit court’s determination that Stanton had the ability to purge the contempt. Accordingly, we shall not disturb the circuit court’s contempt determination on appeal.

II.

Stanton further contends that the circuit court erred by awarding indefinite alimony to Eapen in the amount of \$1,032.00 per month. This Court has explained the standard for reviewing a circuit court's determination on the modification of alimony as follows:

“[I]n reviewing an award of alimony we ‘defer[] to the findings and judgments of the trial court[.]’” *Simonds v. Simonds*, 165 Md. App. 591, 606 n. 4, 886 A.2d 158 (2005) (quoting *Brewer v. Brewer*, 156 Md. App. 77, 98, 846 A.2d 1 (2004)). We will not disturb an alimony determination “unless the trial court’s judgment is clearly wrong or an arbitrary use of discretion.” *Blaine v. Blaine*, 97 Md. App. 689, 698, 632 A.2d 191 (1993), *aff’d*, 336 Md. 49, 646 A.2d 413 (1994). Furthermore, “[t]he doctrine of res judicata applies in the modification of alimony . . . and the [appellate] court may not re-litigate matters that were or should have been considered at the time of the initial award.” *Id.* at 702, 632 A.2d 191 (citations and internal quotation marks omitted).

[Md. Code (1984, 2019 Repl. Vol.), Family Law Article (“FL”)] §§ 11–101 to 11-112 govern the award of alimony in Maryland. FL § 11-107(b) addresses the modification of alimony awards and provides that, “[s]ubject to § 8-103 of this article and on the petition of either party, the court may modify the amount of alimony awarded as circumstances and justice require.” “A party requesting modification of an alimony award must demonstrate through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification.” *Langston v. Langston*, 366 Md. 490, 516, 784

A.2d 1086 (2001). Upon a proper petition, the court may modify a decree for alimony “at any time if there has been shown a material change in circumstances that justify the action.” *Lieberman v. Lieberman*, 81 Md. App. 575, 595, 568 A.2d 1157 (1990) (citation and internal quotation marks omitted).

Ridgeway v. Ridgeway, 171 Md. App. 373, 383-84 (2006) (footnote omitted).

Stanton asserted before the trial court and before us on appeal that a material change in circumstances occurred when he began receiving disability retirement instead of worker’s compensation benefits. In the judgment of divorce issued by the trial court on March 19, 2018, the trial court, after setting forth its reasoning as to each of the FL § 11-106(b) factors, ordered Stanton to pay Eapen indefinite alimony in the amount of \$1,500 per month. When ruling on Stanton’s motion to terminate or modify alimony, the circuit court did not again address each of the FL §11-106(b) factors. Nonetheless, the court referred to its prior ruling when explaining its alimony determination as follows:

There is a significant disparity in the economic resources of the parties. As stated above, [Stanton’s] current wife pays for a significant portion of his living expenses. [Eapen], on the other hand, lives with her parents because she cannot afford to do otherwise. [Stanton] argues that his retirement income is decreasing; but that decrease will not substantially affect his quality of life. [Eapen] relies on the alimony payments she was awarded to pay her basic living expenses.

Currently, [Stanton] is receiving \$3,127 dollars per month in retirement benefits. [Eapen] was awarded 33% of [Stanton’s] income as alimony at the time of divorce. Thus, [Eapen] is entitled to \$1,032.00 dollars per month in indefinite alimony.

Although the circuit court did not expressly address whether a material change of circumstances had occurred, it nevertheless reduced Stanton's alimony obligation from \$1,500.00 per month to \$1,032.00 per month. As such, it is clear from the record that the court found that a material change of circumstances had been demonstrated.

Stanton asserts that the circuit court erred by ordering indefinite alimony in the amount of \$1,032.00 per month, which the court explained was approximately 33% of Stanton's \$3,127.00 per month disability retirement annuity. Stanton asserts that this determination failed to take into consideration the actual amount of the annuity he was receiving and the amount of the annuity that Eapen was receiving via her apportionment. Pursuant to the court's prior QDRO, Eapen was awarded 39.06% of Stanton's gross monthly annuity payment. Accordingly, although Stanton's gross monthly annuity is \$3,127.00 per month, Stanton does not himself receive \$3,127.00 per month in retirement benefits. Eapen receives 39.06% of the annuity, or \$1,221.41 per month, while Stanton receives the remainder of \$1,905.59 per month (less deductions for insurance, taxes, and temporary back payments).

As a result of the circuit court's alimony order, in addition to the \$1,221.41 per month annuity payment, Eapen receives an additional \$1,032.00 per month, leaving Stanton with the remaining \$873.59 after Eapen's apportionment and Stanton's alimony obligation. We have reviewed and considered the record, and are not persuaded that the evidence supports the circuit court's finding that "[c]urrently, [Stanton] is receiving \$3,127 dollars per month in retirement benefits." In our view, Stanton is not receiving \$3,127.00

per month in retirement benefits. Eapen receives \$1,221.41 per month of those retirement benefits directly as her apportionment.

Furthermore, although the circuit court “is not required to use a formal checklist” when determining the amount of alimony to award, the court must consider certain factors. *Simonds v. Simonds*, 165 Md. App. 591, 605 (2005). Although the trial court had previously presided over the parties’ divorce and, at that time, the court considered the FL § 11-106(b) factors in detail, the court did not address certain factors that may have changed by the time of the court’s modification order. We do not suggest that the trial court was required to repeat all its previous findings. From the record, however, we are unable to determine whether the court considered the ways in which the parties’ financial resources and financial needs had changed as a result of the receipt of the disability retirement annuity. Accordingly, we shall remand this matter to the Circuit Court for Montgomery County for the narrow purpose of clarifying the basis for the revised alimony award. Otherwise, we affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED IN PART AND VACATED IN
PART. CIRCUIT COURT’S ORDER AS TO
CONTEMPT AFFIRMED. CIRCUIT
COURT’S ORDER AWARDING
ALIMONY IN THE AMOUNT OF \$1,032.00
PER MONTH VACATED. CASE
REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE DIVIDED
EQUALLY BETWEEN THE PARTIES.**