

Circuit Court for Garrett County  
Case No. 11-C-17-015222

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND  
**CONSOLIDATED**

Nos. 1345 & 2194

September Term, 2019

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REGINA M. THOMAS

v.

MICHAEL J. THOMAS

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Berger,  
Arthur,  
Wilner, Alan M.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: October 22, 2020

\*This is an unreported opinion, and it may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The Circuit Court for Garrett County granted Regina Thomas (“Wife”) and Michael Thomas (“Husband”) an absolute divorce in June 2018. After hearing from both parties on the issue of alimony, the court ordered Husband to pay Wife \$1,800 per month for six years in rehabilitative alimony.

Three days after the order was entered, Husband was awarded a sizeable year-end bonus. Upon learning of the bonus, Wife petitioned the court to modify the alimony award based on a material change of circumstances.

The court denied Wife’s request. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Marriage and its Demise**

The parties to this case were married on July 4, 1997. At the start of the marriage, Wife worked in the professional cleaning field. She stopped working outside the home in 1999, shortly after the birth of the family’s first child. The family welcomed a second child in 2006.

Wife acted as the primary caregiver to the children and did not return to outside employment. During most of the marriage, Husband served as the family’s sole wage earner, working for a mine repair and replacement business as a general manager.

At Wife’s request, Husband left the marital home in late March 2017. In September 2017, Husband filed a complaint for absolute divorce in the Circuit Court for Garrett County. Wife counterclaimed for divorce, custody of the younger child, alimony, child support, equitable division of marital property, use and possession of the family home, and attorney’s fees.

The parties reached an agreement on the issues of divorce, custody, and marital property, and on June 8, 2018, the circuit court entered a final judgment for absolute divorce on the grounds of a 12-month separation. The court’s order reflected that the issues of Wife’s claims for alimony, attorney’s fees, and child support would be reserved for further proceedings before a family law magistrate.

**B. The Original Alimony Award**

*1. First Alimony Hearing and Magistrate’s Report*

On September 24, 2018, the parties appeared for a hearing to discuss the issue of alimony.<sup>1</sup> Therein, the magistrate heard testimony from both parties on their respective financial circumstances. We limit the presentation of facts regarding this and subsequent hearings to those necessary to resolve the issues on appeal.

At the time of the hearing, Wife was 45 years old and acted as a stay-at-home mother to her 12-year-old son. Wife testified that she earned \$1,800 per month (\$21,600 annually) working part-time managing storage rentals for the family’s storage business, which Wife had received in the marital property settlement. Wife acknowledged that she was capable of working full time, but stated that she had no desire to seek further education or training. Wife said that she “intended” to seek employment, but admitted that she was waiting to see how much the court would award her in alimony before finding a job.

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<sup>1</sup> It was determined at the outset of the hearing that the issue of child support would be reserved for later decision, as a temporary order was already in place and any change to it would depend upon the outcome of the alimony request.

Husband, meanwhile, at the age of 50, had an extensive work history. He testified that he had worked at the mine repair and maintenance business for almost 32 years and had held the title of general manager for the past 28 years. According to Husband, his annual income was \$170,000 a year, although he agreed that, in addition to his salary, he received an end of year bonus “at times.” When pressed for details about his bonus history, the following colloquy ensued between Wife’s counsel and Husband:

Q: Okay. So the financial statement that you—the bonus [in 2017] was how much?

A: Uh, I think it was around [\$]10,000.

Q: Okay. And do you recall what it was in 2016?

A: Uh, without going back and looking, I don’t know for sure. It’s different –

Q: Okay. It’s fair to say—I’m sorry?

A: It was a little more probably at that time. The coal market has failed drastically.

Q: Yeah. In fact, if we go back the last five or six years, your income went anywhere from this [\$]170 [thousand] to, I think is was [\$]235 [thousand]; is that correct?

A: That’s probably correct, including the storage buildings.

Q: . . . All right. But the financial statement you gave me today is, essentially, your base salary?

A: Yes.

Q: It doesn’t include this bonus?

A: Bonuses aren’t guaranteed.

Q. Okay. And you don't know what this year is going to be.

A. No, I don't set that.

Husband argued that Wife should receive no alimony, but that if she received any, it should be in the amount of \$250 per month for four years. Wife calculated a suggested alimony award of \$3,200 per month for an indefinite duration by setting Husband's gross annual income at \$170,000 and her own at \$21,600 (from the storage rental business).

Wife did not argue that the magistrate should consider Husband's bonus history in computing his income.

The magistrate issued a report with findings and recommendations on October 18, 2018. After considering each of the statutory factors pertaining to an alimony award,<sup>2</sup> the magistrate found that Wife's suggested computations were flawed. Concluding that Wife had "purposely chosen voluntary impoverishment," the magistrate imputed to her an additional \$21,012 in annual income, assuming that she could work full-time in a job paying the minimum wage of \$10.10 per hour. The magistrate used this updated figure and Husband's "admitted known income" of \$170,000 to calculate an alimony recommendation of \$2,200 per month for 11 years.

*2. Circuit Court Exceptions Hearing and Alimony Order*

Both parties filed exceptions to the magistrate's findings and recommendations. Among Wife's contentions was that the magistrate had erred in finding that Husband's

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<sup>2</sup> See Md. Code (1984, 2019 Repl. Vol.), § 11-106(b) of the Family Law Article.

income was \$170,000 per year. According to Wife, “it was undisputed” that Husband’s “income was a base salary of One Hundred Seventy Thousand Dollars *plus* a bonus to be paid at the end of each year.” (Emphasis in the original.) Wife’s counsel admitted, however, that he “may be responsible for this confusion,” as he had used \$170,000 as Husband’s annual income to calculate Wife’s alimony recommendation.

The circuit court heard arguments from Husband and Wife’s counsel at an exceptions hearing on December 21, 2018. Thereafter, the court concluded that the magistrate had erred both as to the amount and the duration of the alimony award. On the basis of that conclusion, the court entered an order requiring Husband to pay Wife \$1,800 per month for six years in rehabilitative alimony.<sup>3</sup>

Although the order did not specifically address the amount the court had used as Husband’s income in its calculations, it indicated that the court had used the “most accurate financial information available” to determine the alimony award.

The order was immediately appealable under section 12-303(3)(v) of the Courts and Judicial Proceedings Article as an order “for the payment of money” (*see, e.g., Frey v. Frey*, 298 Md. 552, 556 (1984); *Pappas v. Pappas*, 287 Md. 455, 462 (1980)), but Wife did not note an appeal.

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<sup>3</sup> The order also included an arrearage amount or “back alimony” Husband owed from the date of Wife’s initial request (in November 2017) through December 2018.

### **C. The Motion to Modify Alimony**

On March 22, 2019, Wife filed a “Complaint to Increase Alimony” based on a substantial change in circumstances. She alleged that, in preparation for the child support proceedings, she had discovered that Husband was awarded a bonus of \$73,195.78 on December 24, 2018, three days after the exceptions hearing in circuit court. In light of what she characterized as a significant increase in Husband’s 2018 earnings, Wife argued that alimony should be re-calculated to include his bonus income. Husband requested that the motion be denied.

#### *1. Modification Hearing and Magistrate’s Report*

Husband and Wife reappeared for a hearing before a magistrate on May 29, 2019. Husband confirmed his prior testimony that he was not aware of what his annual bonus would be at the time of the first alimony hearing. Husband’s boss corroborated his testimony that employees are not guaranteed annual bonuses, nor are they made aware in advance of what the bonus, if any, may be.

At the hearing, Wife’s counsel reviewed Husband’s earnings history (including bonuses) year-by-year for the past several years based on tax returns—\$235,772 in 2010; \$253,791 in 2011; \$192,016 in 2012; \$233,818 in 2013; \$261,742 in 2014; \$250,268 in 2015; \$158,299 in 2016, and approximately \$180,000 in 2017. On the basis of that history, Wife’s counsel elicited Husband’s agreement that, “historically,” he made “somewhere in the area of [\$]230 [thousand], \$250,000[.]” In closing arguments, Wife’s counsel explained that his reason for reviewing these figures was “to show that

[Husband’s] \$75,000 bonus, coming three days after the last hearing in this case, wasn’t an aberration. . . . [I]t’s not something that – that is at all of out of line.”

In response, Husband’s counsel contended that Wife’s “change of circumstances” argument was untenable, given that the information presented to the magistrate demonstrated a clear pattern of bonuses over the years similar to what Husband received in 2018. Furthermore, counsel argued that because Wife had information about Husband’s prior bonuses at the time of the original alimony hearing, but did not attempt to use Husband’s prior bonuses to calculate the alimony award, she “should be prevented from making that argument today[.]”

The magistrate sided with Wife. The magistrate issued a report in which she found that a material change in circumstances had occurred and recommended that Wife’s alimony award be increased. Husband noted exceptions, incorporating his arguments from the hearing.

## *2. Circuit Court Exceptions Hearing and Ruling on Modification*

The circuit court held a second exceptions hearing on August 12, 2019, where both parties maintained their previous positions. After taking the matter under advisement, the court issued an opinion and order on August 27, 2019, denying Wife’s motion to modify alimony and reinstating its original award of six years’ rehabilitative alimony.

The court found that “[t]he circumstances under which the original alimony award was made have not changed[.]” In the court’s view, it was clear from the transcript of the first hearing before the magistrate on September 24, 2018, that Wife had knowledge of

Husband’s bonuses from the past several years. “With this historical information,” the court concluded, “[Wife] had an expectation before the initial alimony proceeding that [Husband] would continue to receive these bonuses.” Wife’s error, therefore, was “fail[ing] to make any argument at the time of the original alimony determination that future bonuses should be considered in the calculation of alimony.”

Wife noted an appeal. Perhaps out of a concern that her appeal might be premature, she noted a second appeal after the court had disposed of all remaining issues in the case by entering an order regarding child support on December 4, 2019. On Wife’s motion, we consolidated the two appeals.

Wife presents a single question for review, which we have rephrased as follows: Did the circuit court abuse its discretion in concluding that Husband’s receipt of an annual bonus was not a material change in circumstances that would warrant an alimony modification?<sup>4</sup>

For the reasons stated below, we shall hold that the court did not abuse its discretion. Accordingly, we affirm the judgment of the circuit court.

#### **STANDARD OF REVIEW**

In reviewing a circuit court’s determination as to the modification of alimony, “we ‘defer[ ] to the findings and judgments of the trial court.’” *Ridgeway v. Ridgeway*, 171

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<sup>4</sup> In her brief, Wife presented her question as follows: “Does a forty percent (40%) increase in income constitute a material change in circumstances where the income earner testified that such increase was not guaranteed and unlikely to happen[?]” Husband formulates the question differently: “Can a material change in circumstances arise where no actual change in circumstances has taken place”?

Md. App. 373, 383 (2006) (quoting *Simonds v. Simonds*, 165 Md. App. 591, 606 n.4 (2005)). The “trial court has discretion to determine the extent and amount of alimony[] and must consider specific factors in exercising its discretion.” *Baer v. Baer*, 128 Md. App. 469, 484 (1999) (internal citation omitted); *see* Md. Code (1984, 2019 Repl. Vol.), § 11-106(b) of the Family Law Article (“FL”). Accordingly, “[w]e will not disturb an alimony determination ‘unless the trial court’s judgment is clearly wrong or an arbitrary use of discretion.’” *Ridgeway*, 171 Md. App. at 383-84 (quoting *Blaine v. Blaine*, 97 Md. App. 689, 698 (1993), *aff’d*, 336 Md. 49 (1994)). For the appellate court to find an abuse of discretion, “[t]he 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.” *North v. North*, 102 Md. App. 1, 14 (1994).

### DISCUSSION

After a court has entered an alimony order, the court “on the petition of either party, . . . may modify the amount of alimony awarded as circumstances and justice require.” FL § 11-107(b); *Lieberman v. Lieberman*, 81 Md. App. 575, 595 (1990). The party petitioning for modification bears the burden of establishing that the facts and circumstances of the case justify modification. *Ridgeway v. Ridgeway*, 171 Md. App. at 384. “[T]he doctrine of res judicata applies in the modification of alimony[,] . . . and the court may not re-litigate matters that were or should have been considered at the time of the initial award.” *Lieberman v. Lieberman*, 81 Md. App. at 597 (citing *Lott v. Lott*, 17 Md. App. 440, 444 (1973)); *accord Blaine v. Blaine*, 336 Md. 49, 71 (1994); *Ridgeway v. Ridgeway*, 171 Md. App. at 384.

Wife challenges the court’s conclusion that Husband’s year-end bonus did not establish a material change in circumstances meriting an increase in alimony. She contends that the circuit court’s original alimony award was based upon an expectation, shared by Wife and the court, that Husband was unlikely to receive an annual bonus in 2018. That this expectation was not borne out by actual events, i.e., that Husband received a sizeable bonus days after the original alimony order, Wife argues, constitutes a significant change of circumstances that warrants modification.

Husband rejects Wife’s “erroneous expectation” argument. He argues that Wife was aware of his history of receiving annual bonuses at the time of the original alimony award. He agrees with the court’s conclusion that the circumstances regarding his income did not change; rather, Wife simply failed to argue that the court should include Husband’s annual bonuses into the first alimony calculation.

In the context of child support calculations, this Court has held that “bonuses already paid to a parent” may be included in an income determination, “even though it is unknown whether such a bonus will be paid in the future.” *Johnson v. Johnson*, 152 Md. App. 609, 622 (2003). Wife argues that Husband claimed not to expect a 2018 bonus when he testified at the initial hearing. Thus, she argues that she would have been required to know that Husband “was testifying in error” if she were to incorporate any bonus into the original alimony calculation. We disagree.

Wife has not accurately characterized Husband’s testimony. Husband testified that he had received bonuses, including sizable bonuses, in the past; that his recent bonuses had been comparatively smaller, perhaps because of difficulties in the coal

industry; that he was not guaranteed to receive a bonus; and that he would not know the amount of his bonus until he received it. Husband did not testify that he would receive no bonus in 2018. He certainly did not testify that he would never again receive any bonus in any amount.<sup>5</sup>

Wife relies on *Blaine v. Blaine*, 336 Md. 49 (1993), to argue that the discrepancy between her “expectation” (that Husband would receive no bonuses, or perhaps no significant bonuses) and the “reality” (that Husband received a large bonus) demonstrates a change in circumstances. *Blaine* is inapposite.

In *Blaine*, 336 Md. at 58, the Court of Appeals considered Ms. Blaine’s motion for an indefinite extension of her alimony pursuant to FL § 11-107(a).<sup>6</sup> Ms. Blaine, who was pursuing a master’s degree at the time of her divorce, had expected to earn \$40,000 annually in her new position. *Id.* at 58. After receiving her degree, she applied to over 100 jobs, but because of an economic recession, was unable to find a position that would pay more than the several full-time and part-time jobs that she was already working. *Id.*

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<sup>5</sup> At times, Wife seems to suggest that Husband testified falsely when he discussed his bonus history at the first exceptions hearing. Yet, in responses to questions from the court during oral argument on motion to increase the amount of alimony because of the alleged change in circumstances, Wife conceded that Husband’s testimony was neither dishonest nor deceitful.

<sup>6</sup> FL § 11-107(a) provides, in pertinent part: “the court may extend the period for which alimony is awarded, if: (1) circumstances arise during the period that would lead to a harsh and inequitable result without an extension; and (2) the recipient petitions for an extension during the period.” Although the present case involves a petition to modify alimony under FL § 11-107(b), we acknowledge that the principles applied in *Blaine* can be applied here because FL § 11-107(a) and (b) both require a change of circumstances.

at 59. The circuit court extended her alimony indefinitely, finding that Ms. Blaine’s inability to earn the income that she and the court had expected constituted a change in circumstances that would result in a harsh and inequitable outcome. *Id.* at 59-60. Both this Court (*id.* at 60) and the Court of Appeals upheld that decision. *Id.* at 74-75.

In *Blaine*, the parties’ expectations were dramatically different from what actually happened. Here, by contrast, Wife’s claim that she did not expect Husband to receive a bonus is not supported by the record. In Wife’s own exceptions to the magistrate’s initial recommendation, she argued that “[Husband’s] income was a base salary of One Hundred Seventy Thousand Dollars *plus* a bonus to be paid at the end of each year.” (Emphasis in the original.)

In arguing that she and the court expected Husband not to earn a bonus, Wife’s reply brief quotes the circuit court’s observation that the parties “were in agreement” regarding Husband’s salary when the original alimony award was made. This agreement, however, did not result from Wife’s “erroneous expectation” that Husband would never receive a bonus. To the contrary, Wife took note of Husband’s bonus history in the testimony at the initial hearing and in her exceptions to the initial recommendation, but she failed to argue that the circuit court should consider the bonus history in computing alimony. Presumably, she had access to Husband’s bonus history, whether through joint tax returns, or through discovery, or through a subpoena to Husband’s employer. As the circuit court observed, however, Wife “chose not to pursue a course of action” that would have led the court to consider the bonuses in computing alimony.

Unlike in *Blaine*, what “actually happened” in this case was not significantly different from what could reasonably be expected based on Husband’s established history of receiving year-end bonuses from his employer. Wife’s counsel put it best at the modification hearing: Husband’s 2018 bonus “wasn’t an aberration. . . . [I]t’s not something that – that is at all of out of line.”

Wife argues that had she attempted to use Husband’s history of bonuses in the calculation of the original award, Husband would simply have argued that the amount of any bonus is pure speculation. Perhaps he might have. But Wife did not put his potential argument to the test by stressing that under *Johnson v. Johnson*, 152 Md. App. 609, 622 (2003), his bonus history supported the conclusion that he would probably continue receive bonuses in some amount in the future. If she had done so, and if the court had agreed that any future bonuses were speculative despite the considerable history of their payment in the past, Wife could have challenged the ruling on appeal.

In summary, the circuit court did not abuse its discretion in concluding that the circumstances under which the original alimony award was made did not change when Husband received a bonus. The “complaint” or motion to increase alimony was an effort to relitigate matters that had been or could have been litigated when the court initially awarded alimony.

**JUDGMENT OF THE CIRCUIT COURT  
FOR GARRETT COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**