Circuit Court for Baltimore County
Case No. 03-C-17-003189

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1420

September Term, 2021

JESSE FRANCIS

v.

STEPHANIE FRANCIS

Berger,
Leahy,
Tang,
JJ.

Opinion by Tang, J.

Filed: August 10, 2022

Child support and alimony obligations may be modified from time to time depending on a change of circumstances. A spouse, receiving financial support from the payor spouse, may seek an upward modification of the monthly support retroactive to a certain date, to the extent permitted by law. The matter before us presents the opposite scenario. This case involves a request, by the payor spouse, to make a downward modification of his monthly support obligation retroactive to a particular date.

Appellant, Jesse Francis ("Husband"), agreed to pay appellee, Stephanie Francis ("Wife"), *pendente lite* alimony and child support in a combined, unallocated sum of $1,400 per month.[1] The parties memorialized the agreement in a consent order, which was entered by the Circuit Court for Baltimore County in March 2018. Husband made some, but not all, of the payments under the consent order.

On July 1, 2019, Husband filed a counter-complaint, requesting that the court vacate the consent order and "modify" his child support obligation according to the Child Support Guidelines. At the merits hearing in November 2020, Husband essentially obtained his requested outcome: the parties agreed to waive alimony moving forward, and Husband

[1] Although an unallocated support amount is proper, "it is the better practice to separately designate the alimony and child support portions[.]" *Quarles v. Quarles*, 62 Md. App. 394, 405 (1985). Preliminarily, we observe that the parties' departure from "the better practice" has resulted in confusion about the character of the combined sum. On appeal, for instance, Husband bases his argument, in part, on the assumption that $958 of the bundled sum was classified as *pendente lite* child support (calculated using the Child Support Guidelines worksheet) and $442 was classified as *pendente lite* alimony. The confusion is compounded by the court's own characterization, in its opinion, of the bundled sum as "child support," even though the sum had both child support and alimony components. *See* note 6, *infra*.

agreed to pay Wife monthly child support in the amount of $957, commencing on December 1, 2020.

Husband asked the court to retroactively apply the final child support amount ($957 per month) to the date he filed his request to vacate the consent order (July 1, 2019).[2] Husband's objectives were two-fold: (1) to reduce his combined *pendente lite* support obligation of $1,400 per month to $957 per month, representing child support only, for the period between July 2019 through November 2020; and (2) to minimize the amount of arrears accrued under the consent order. The court denied Husband's request, and it granted Wife's request for attorneys' fees.

On appeal, Husband presents two questions, which we have rephrased slightly:[3]

[2] We detect a potential source of confusion here. There was no delineation of the child support and alimony components of the bundled *pendente lite* sum, so it is not clear from the record exactly what was modified. If we accept, *arguendo*, Husband's delineations of the *pendente lite* sum (*see* note 1, *supra*), then the retroactive application of the final child support amount would have yielded a negligible reduction of the *pendente lite* child support obligation for the requested period; a downward modification from the (assumed) *pendente lite* amount of $958 to the final amount of $957 would have resulted in a decrease of $1 per month. That premise might suggest that Husband, instead, intended to seek retroactive application of Wife's waiver of alimony for the requested period (not the final child support amount); a downward modification from the (assumed) *pendente lite* amount of $442 to nil would have resulted in a decrease of $442 per month. This is a hypothesis at best, as the record is not entirely clear in this regard.

[3] The questions as phrased in Husband's brief are:

I. Did the trial court abuse its discretion when it failed to retroactively modify Appellant's support obligation to the date Appellant filed his Supplemental Complaint for Absolute Divorce?

II. Did the trial court abuse its discretion and commit legal error when it awarded counsel fees to Appellee?

1. Did the trial court abuse its discretion by declining to make the agreed-upon, final child support obligation ($957 per month) retroactive to July 1, 2019?

2. Did the trial court abuse its discretion by awarding Wife attorneys' fees?

For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2016, Husband and Wife separated after approximately four years of marriage. They have one minor child in common. In March 2017, Wife filed a complaint for a limited divorce followed by a complaint for an absolute divorce in November 2017.

On March 26, 2018, pursuant to the parties' agreement, the circuit court entered a *Pendente Lite* Consent Order ("PL Order"), which provided that "on a *pendente lite* basis, [Husband] shall pay to [Wife] support totaling One Thousand Four Hundred Dollars ($1,400) per month, which constitutes both *pendente lite* child support and *pendente lite* alimony."[4]

On July 1, 2019, over a year after the entry of the PL Order, Husband filed a counter-complaint for absolute divorce ("Supplemental Complaint"). Husband requested, in pertinent part, that the court (1) "vacate" the PL Order "given the change in circumstances," and (2) "modify" the child support obligation consistent with the Child Support Guidelines. The parties each requested an award of attorneys' fees.

[4] The Child Support Guidelines worksheet, which was attached to the PL Order, recommended that Husband pay $958 per month in child support to Wife.

I.

The November 25, 2020 Hearing

The court scheduled the merits hearing on November 25, 2020 ("November hearing"). At the November hearing, the parties utilized a substantial portion of the day to resolve most contested issues. With respect to child support, the parties agreed, on the record, that Husband would pay Wife $957 per month "effective December 1, 2020." With respect to alimony, the parties agreed that "both parties will waive their right to receive alimony moving forward," but the waiver "is not to be construed as a waiver of any amounts to be due under the [PL Order]." The parties, however, were unable to resolve disputes pertaining to (1) the calculation of arrears accrued under the PL Order, and (2) the parties' requests for attorneys' fees. Those issues were deferred to December 18, 2020 for a contested hearing ("December hearing").

The court proceeded to receive testimony supporting the parties' divorce. Upon finding that the parties established grounds for a divorce, the court granted the divorce and asked counsel to submit a proposed order for a judgment of absolute divorce ("JAD").

II.

Judgment of Absolute Divorce

Before the December hearing, the parties, through counsel, approved and filed the proposed JAD, which memorialized the parties' resolution of various issues and outlined the disputed issues that would be heard at the December hearing.

The JAD provided, in relevant part, the following:[5]

> ORDERED, that each party shall be denied alimony due to their express waivers thereof; and be it further
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> * * *
>
> ORDERED, that [Husband] shall provide child support to [Wife] in the amount of $957.00 per month, with such amount being in accordance with the Maryland Child Support Guidelines (attached hereto); and be it further
>
> ORDERED, that [Husband's] monthly child support obligation shall commence on December 1, 2020 and be due and payable on the first day of each month; and be it further
>
> ORDERED, that the issues of support arrears pursuant to the prior Order of this Court, the repayment of support arrears, child support payment method and timing, income tax dependency and counsel fees are reserved for a hearing scheduled for December 18, 2020.

III.

The December 18, 2020 Hearing

At the December hearing, the parties agreed to proceed by way of proffer and argument on the outstanding contested issues, offering testimony and documents for admission as necessary. With respect to arrears accrued under the PL Order, the court admitted, *inter alia*, the parties' respective bank and credit card statements. To minimize the amount of arrears owed to Wife under the PL Order, Husband requested that the court make the agreed-upon, final child support obligation ($957 per month) retroactive to the date he filed the Supplemental Complaint (July 1, 2019), nearly a year and a half earlier.

[5] Although the parties approved the JAD between the November and December hearings, the JAD was not entered by the court until July 2021. The timing is immaterial to the issues raised on appeal.

The court inquired of Husband's counsel, "And can you give me the authority – I have to make the modification retroactive[?]" Husband, through counsel, argued:

> The [c]ourt certainly has the ability and it is in the statute to apply it retroactively since this isn't a – well, that's a (inaudible) anyway. It's not established. It is a modification. Because there was a change. And certainly we are dealing with – you know, that award was dealing with alimony. There were two components to that [PL] Order. It was alimony and child support. Now, we are just talking about child support as alimony was not requested. And actually it was (inaudible). So to hold him to that amount, I think would be certainly an unjust result, which is why I backdated it to July of 2019.
>
> . . . I do agree that [the order for JAD] say[s] effective December 1. But, again, that was for, what are we doing moving forward? Because there was a lag in the completion of the hearing given the outstanding support issues. And it certainly doesn't take away the [c]ourt's ability to render it retroactively because his pleadings do say and request to vacate that award. And, again, because of the fact that [the PL Order] includes both child support and alimony, I think, you are dealing with two different animals and it's clearly not fair to have [Husband] be on the hook for that amount.

Wife argued that retroactive application was inappropriate because the parties agreed the final child support obligation ($957 per month) was effective December 1, 2020. The court commented, "The question really becomes – and (inaudible) negotiations between the parties as to whether it was contemplated that ability to make any changes retroactive was negotiated away in exchange for waivers, for example, alimony and property at issue . . . [T]he question is whether [the JAD] tells me enough about what the intent of the parties was at the time they entered into this."

With respect to attorneys' fees, Wife offered, and the court admitted, fee invoices comprising $3,991.35 for services performed by one attorney and $8,800 for services performed by another. The court inquired whether it had "enough evidence as to the

economic needs and resources of the parties, which is an element [it has] to consider" in making a fee award determination. (Emphasis added). Neither party offered any testimony in this regard and instead referred the court to the parties' long form financial statements, which were admitted into evidence. Wife's financial statement reflected no income. Husband's financial statement reflected gross monthly wages of $6,002.21 (approximately $72,000 per year) and monthly expenses exceeding his gross monthly wages. Husband argued that his "financial statement has really very little fluff on it. You can see that even with [Husband's] income, and what he's paying in terms of debt and paying to [Wife], he does not have the ability to pay any attorney's fees." Husband, through counsel, added that he had been paying an additional expense with respect to the child's health insurance, not included in his financial statement, which, he explained, "does come into consideration with what the [c]ourt is going to decide[.]" The court indicated that the expense "should be considered by the [c]ourt in evaluating the *overall financial picture* that has been presented and in light of the request made by both sides." (Emphasis added).

IV.

The Opinion and Order of October 20, 2021

On October 20, 2021, the court issued an opinion and order, resolving the contested issues that were heard at the December hearing. The court declined to make the agreed-upon, final child support obligation ($957 per month) retroactive to July 2019. In its opinion, the court explained,

D. Child Support Modification as Retroactive to July 1, 2019

> On July 1, 2019 [Husband] sought to modify the $1,400 monthly child[6] support obligation. He asks the court to exercise its discretion and make the subsequent reduction in child support to $957 per month retroactive to the date of filing. The difficulty with this argument is that the express terms of the Judgment of Absolute Divorce, to which both parties agreed, provides that this obligation "shall commence on December 1, 2020." Based on the parties' express agreement, the court declines to make the child support modification retroactive.

Separately, the court awarded Wife $5,000 in attorneys' fees, explaining:

> In considering a request for attorney[s]' fees, the court must determine whether there was substantial justification for the work performed. If so, the court then evaluates the parties' relative economic conditions in order to determine whether an award is merited. The court has reviewed the exhibits submitted in support of the request for attorney[s]' fees. The court finds that the work performed by [Wife's] counsel was substantially justified and reasonable in amount. [Wife] has no reportable income. [Husband] has an annual income of approximately $72,000. (See [Husband's] financial statement). This imbalance weighs the issue in favor of an award of attorneys' fees to [Wife]. The court will award [Wife] an amount of $5000.00 in attorneys' fees . . . .

Husband noted a timely appeal of the court's order.

DISCUSSION

I. Retroactivity

In his brief, Husband argues that the circuit court abused its discretion when it declined to make the final, agreed-upon child support obligation ($957 per month) retroactive to July 1, 2019, the date he filed the Supplemental Complaint. Husband advances two points. First, Husband concedes that he agreed to pay $957 in monthly child

[6] Here, as mentioned in note 1, *supra*, the court characterized the bundled *pendente lite* sum as "child support," even though the sum had both child support and alimony components.

support effective December 1, 2020, but he "dispute[s]" "the meaning of that verbiage" in the JAD and "the reasons behind it[.]" According to Husband, the agreement "was not intended to restrict retroactivity of child support in any way. Nor did it restrict the court's ability to revisit or modify the portion of the [PL] Order with respect to alimony payments." Second, Husband contends that the court's decision "creates a harsh and unjust result" because (1) the delay in scheduling a hearing on the Supplemental Complaint prolonged Husband's obligation of paying $1,400 per month under the PL Order, and (2) Wife benefits from an "unjustified windfall" of excessive alimony[7] while Husband is unable to meet his monthly expenses. That is the extent of the argument presented by Husband in his brief.

Husband acknowledges that the retroactive application of support is within the discretion of the trial court. With respect to child support, § 12-104(b) of the Family Law Article "makes clear . . . that it is within the discretion of the trial court to determine whether and how far retroactively to apply a modification of a party's child support obligation up to the date of the filing of the petition for said modification." *Ley v. Forman*, 144 Md. App. 658, 677 (2002). With respect to alimony, § 11-107(b) of the Family Law Article permits a trial court, in the exercise of its discretion, to order modified alimony payments retroactively "as circumstances and justice require." *Langston v. Langston*, 366

[7] Husband claims that he was "required to pay $14,586 in alimony over the course of nearly three years[.]" Husband's calculation is premised on his assumption, as explained in note 1, *supra*, that the PL Order classified $442 as *pendente lite* alimony. At oral argument, however, Husband conceded that no such allocation was made by the court.

Md. 490, 516 (2001), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516 (2005).

Aside from citing to *Ley* and *Langston* for the standard of review on appeal, Husband does not cite to any legal authority to support his abuse-of-discretion claim with respect to his two points, above. Md. Rule 8-504(a)(6) (requiring that an appellate brief contain "[a]rgument in support of the party's position on each issue."); *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004) ("An appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief."). "[I]t is not incumbent upon this Court, merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested" and then search for law to support his position. *State Roads Comm'n v. Halle*, 228 Md. 24, 32 (1962); *Van Meter v. State*, 30 Md. App. 406, 408 (1976). Accordingly, we decline to address Husband's retroactivity argument because it was not sufficiently developed and supported by any legal authority. *Boston Sci. Corp. v. Mirowski Fam. Ventures, LLC*, 227 Md. App. 177, 209 (2016) (we are not "required to address an argument on appeal when the appellant has failed to adequately brief his argument."); *Mathis v. Hargrove*, 166 Md. App. 286, 318 (2005) (declining to address the assignment of error because appellant did not cite to legal authority to provide a framework for the Court's consideration). Without the presentation of developed arguments supported by legal authority, we cannot say that

the court abused its discretion in denying Husband's request to make the $957 monthly child support obligation retroactive to July 1, 2019.[8]

II. Award of Attorneys' Fees

"The award or denial of counsel fees is governed by the abuse of discretion standard." *Doser v. Doser,* 106 Md. App. 329, 359 (1995). "An award of attorney's fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Horsley v. Radisi*, 132 Md. App. 1, 31 (2000) (citing *Broseus v. Broseus*, 82 Md. App. 183, 200 (1990)). Before awarding attorneys' fees, the court must consider "(1) the financial resources and financial needs of both parties; and (2) whether there was substantial justification for prosecuting or defending the suit." Md. Code Ann., Fam. Law § 11–110(c) (governing the award of fees and expenses in alimony proceedings); *see also* Fam. Law § 12–103(b) (governing the award of fees and expenses in proceedings involving custody, support, or visitation of a child). Husband focuses on the first criterion.

Relying on *Davis v. Petito*, 425 Md. 191 (2012), Husband maintains that the court improperly relied on a comparison of the parties' income and did not analyze – in its

[8] At oral argument, Husband raised new points that he did not include in his brief. According to Husband, the court, in its opinion, mischaracterized the unallocated *pendente lite* sum of $1,400 as "child support," notwithstanding the PL Order's reference to both child support and alimony. As a result, Husband contends, the court incorrectly limited its retroactivity analysis to child support and failed to analyze retroactivity in the context of alimony. Our Court has advised that we should "no longer indulge litigants by considering questions tangentially raised or mentioned in passing by brief *or* oral argument." *Pride Mark Realty, Inc. v. Mullins,* 30 Md. App. 497, 510 (1976) (emphasis added). Accordingly, we decline to consider the points raised by Husband for the first time at oral argument. *See Uninsured Employers' Fund v. Danner,* 388 Md. 649, 664 n.15 (2005) (declining to consider arguments raised for the first time at oral argument).

opinion – the financial needs of both parties and Husband's ability to pay.[9] The excerpts from the record, above, however, make clear that the court did not solely rely on a comparison of the parties' incomes. *See Reuter v. Reuter*, 102 Md. App. 212, 244 (1994) ("Where the reasons underlying an award are not expressly articulated, we look to the record as a whole to garner support for the court's decision."). The record indicates that (1) the court acknowledged it had to consider the "economic needs and resources of the parties," and (2) it considered the parties' "overall financial picture," including their respective financial statements, which reflect their incomes, assets, monthly expenses, and liabilities. The record further demonstrates that the court was well-aware of the parties' financial circumstances, because (1) it admitted the parties' bank and credit card statements (in connection with determining arrears and credit against the arrears), and (2) Husband, through counsel, conveyed, throughout the December hearing, his inability to pay arrears and attorneys' fees due to his various financial obligations. As further indication that the court considered the financial resources and needs of both parties, as required by the fee award statutes, the court reduced Wife's fee request to a $5,000 award. In awarding Wife attorneys' fees, the court considered the statutory criteria, even though it did not use the words, "financial need" and "ability to pay." *See Beck v. Beck*, 112 Md. App. 197, 212

[9] In *Davis v. Petito*, the father, who was represented by paid counsel, obtained an award of attorney's fees against the mother, who was represented pro bono. 425 Md. at 195-96. In awarding father attorney's fees, the trial court apparently limited its consideration to a comparison of the parties' income. *Id*. at 205. The Court of Appeals reversed and explained, "What we derive from the [fee award] statute is that financial status and needs of each of the parties must be balanced in order to determine ability to pay the award of the other; a comparison of incomes is not enough." *Id*.

(1996) (the "trial court does not have to recite any 'magical' words so long as its opinion, however phrased, does that which the statute requires."). The court did not abuse its discretion in awarding Wife attorneys' fees.

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