

Circuit Court for Montgomery County
Case No. 128819FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1438

September Term, 2021

PANAGIOTA STAGIA

v.

DIMITRIOS MOSHOVITIS

Graeff,
Arthur,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: September 21, 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.

Panagiota Stagia (“Wife”) and Dimitrios Moshovitis (“Husband”) were married and subsequently divorced by way of a judgment entered in the Circuit Court for Montgomery County in 2017. As part of that judgment, Husband was ordered to pay Wife a marital award, indefinite alimony, and child support.

In 2020, Husband filed a motion to modify alimony and child support. Wife thereafter filed a petition for contempt, claiming that Husband was in arrears on his alimony and child support. Wife also filed a motion to increase alimony and child support. In both filings, Wife requested attorneys’ fees and costs. Following a hearing, the trial court granted, in part, Husband’s motion to modify alimony and child support. The court denied Wife’s petition for contempt and her motion to increase alimony and child support, but the court granted, in part, Wife’s request for attorneys’ fees and costs. Wife thereafter filed this timely appeal, presenting four questions, which we have rephrased and consolidated into three questions for clarity.¹ They are:

¹ Wife phrased the questions as:

1. Did the trial court abuse its discretion when it found Appellee’s gross income to be \$13,000 per month, and net income to be \$11,000 per month?
2. Did the trial court abuse its discretion when it failed to find Appellee in contempt of court for failing to pay alimony and child support?
3. Did the trial court abuse its discretion in finding that Appellee’s financial circumstances had changed to a material degree since the time of the divorce?
4. Did the trial court abuse its discretion when it failed to award Appellant costs for her forensic accountant, and only awarded \$40,000 in attorney’s fees?

1. Did the trial court err in failing to deny, in full, Husband’s motion to modify alimony and child support?
2. Did the trial court err in denying Wife’s petition for contempt?
3. Did the trial court err in failing to grant, in full, Wife’s request for attorneys’ fees and costs?

As to question 1, we hold that that the trial court did not err in granting, in part, Husband’s motion to modify alimony and child support. As to question 2, we hold that the court’s denial of Wife’s contempt petition is not properly before this Court because Wife has no right to appeal that decision. Finally, as to question 3, we hold that the court did not err in failing to grant, in full, Wife’s request for attorneys’ fees and costs. Accordingly, we affirm the court’s judgment.

BACKGROUND

Husband and Wife were married in 2005. Two children were born during the marriage: a son, born in 2007, and a daughter, born in 2009.

In 2006, Husband, a trained chef, opened a full-service restaurant, Cava Mezze, in Rockville with several friends. The restaurant was an instant success, and the group eventually opened several additional full-service restaurants in Maryland, Virginia, and the District of Columbia. In 2008, the group began marketing a line of dips and spreads (“Cava Foods”) that were later sold in over 200 stores. In 2011, the group opened a chain of “fast casual” restaurants known as Cava Grill. By 2017, Cava Grill had 14 locations in the Washington, D.C. area, and additional locations were planned to be opened nationwide.

In 2015, Cava Group, Inc., was created as part of a general restructuring of Husband's various business interests, and Cava Group subsequently acquired Cava Grill and Cava Foods. As part of that restructuring, Husband was awarded various stock and stock options in Cava Group.

Divorce

In 2015, Wife initiated divorce proceedings in the circuit court. In 2017, following a six-day trial, the court entered a judgment of absolute divorce and issued a memorandum opinion that resolved all issues related to marital property, alimony, child custody, and child support. In so doing, the court valued Husband's various business interests at approximately \$4.2 million, with the bulk of those interests, approximately \$3 million worth, coming from Husband's 24% interest in a limited liability company, DTIBJ, LLC, that owned over one million shares of preferred stock of Cava Group, which was valued at approximately \$12 per share. Based on the value of those various business interests, all of which were determined to be marital property, the court ordered Husband to pay Wife a monetary award of approximately \$2.2 million.

The circuit court also ordered Husband to pay Wife \$4,500.00 per month in indefinite alimony. In making that award, the court found that Wife, who had not worked a full-time job over the previous ten years, was unable to be self-supporting and would likely earn approximately \$28,000.00 per year. The court found that Husband, on the other hand, earned approximately \$284,000.00 per year. The court based that figure on Husband's reported yearly earnings of \$400,284.00 in 2012, \$429,832.00 in 2013, \$283,558.00 in 2014, and \$284,912.00 in 2015. The court also found that, in 2015,

Husband had redeemed over \$1 million in Cava stock, but the court declined to include that redemption as part of Husband's 2015 salary.

Regarding the minor children, the circuit court granted Wife primary physical custody, with Husband being granted reasonable access. The parties shared legal custody. Husband was ordered to pay Wife \$3,506.00 per month in child support.

Around the time of the divorce, Husband began living with a woman, Donna Rismiller. In 2018, the two married.

Husband's Motion to Modify Alimony and Child Support

In 2020, Husband filed a motion to modify his alimony and child support obligations. He argued that his income had decreased significantly since the divorce and that he had been forced to go into debt to pay support.

Wife's Motion to Increase Alimony and Child Support and Petition for Contempt

Shortly thereafter, Wife filed a motion to increase alimony and child support. Wife argued that Husband's income and total wealth had increased exponentially since the divorce and that his spending habits had become more lavish. Wife also filed a separate petition for contempt, claiming that Husband owed approximately \$16,000.00 in unpaid alimony and child support. In both filings, Wife requested attorneys' fees and costs.

Merits Hearing

In April 2021, the parties appeared in court for a three-day hearing on Husband's motion to modify and Wife's motion to modify and petition for contempt. At that hearing, Lambros Grigoropoulos, one of Husband's business partners, testified regarding Husband's business interests and current employment. Mr. Grigoropoulos stated that he

and Husband were employed as consultants to the various Cava enterprises and that they each received a salary for that work. Mr. Grigoropoulos stated that he and Husband also received “K1” distributions from the full-service restaurants and catering business when those entities were profitable. Mr. Grigoropoulos testified that approximately 40% of Husband’s total salary came from his consulting income and approximately 60% came from K1 distributions.

Mr. Grigoropoulos testified that, in March 2020, Cava’s full-service restaurants and catering business were severely impacted by the onset of the COVID-19 pandemic. He stated that the catering business had not generated any profits since February 2020 and that one of the full-service restaurants had to close. Mr. Grigoropoulos testified that he and Husband had not received any K1 distributions since March 2020. Mr. Grigoropoulos testified that he did not expect Husband to earn any K1 distributions in the near future. Mr. Grigoropoulos explained that the COVID-19 pandemic had caused heavy losses that had to be recouped before distributions could be paid. Mr. Grigoropoulos testified that Husband had earned a total yearly salary of \$105,000.00 in 2020 and that he was earning approximately \$13,000.00 per month in 2021. According to Mr. Grigoropoulos, all of Husband’s current earnings came from his employment as a consultant.

Donna Rismiller, Husband’s current wife, testified that she and Husband had been living together at her home in Gaithersburg since around the time of Husband and Wife’s divorce. She stated that, when she and Husband got married in 2018, the two had agreed that Husband would pay one half of the household expenses, which totaled \$10,000 per month. Ms. Rismiller testified that Husband regularly paid his share of the expenses

through the first couple months of 2020, at which point Husband began falling behind. Ms. Rismiller testified that, as of the date of trial, Husband owed her \$60,000.00 for his share of the expenses and an additional sum for other expenses she paid on Husband’s behalf. Ms. Rismiller stated that this money was “not a gift” but rather was an “overdue obligation” that she “intend[ed] to collect[.]”

Ms. Rismiller testified that, over the previous few years, she had loaned Husband an additional \$100,000.00 to help him pay for various expenses. Ms. Rismiller testified that she and Husband had executed several promissory notes for those loans. Those promissory notes were admitted into evidence. Ms. Rismiller testified that, in all, Husband owed her \$171,000.00. She testified that she and Husband had always considered that money to be a loan.

Ms. Rismiller testified that, in May 2020, Husband’s son started spending more time at her home. She testified that, by trial, Husband’s son was living with her and Husband “full-time.” Husband later provided similar testimony.

Husband testified that he was employed as a consultant for Cava and that he received a salary. Husband stated that he did not have any control over his salary. Husband testified that he began noticing a decline in his various business interests in 2019 and that the COVID-19 pandemic “pretty much flipped everything upside down.” Husband testified that he had been receiving distributions as part of his salary but that those distributions stopped in 2020. Husband testified that he did not expect to receive any distributions in 2021. Husband testified that, in 2020, he earned \$8,400.00 per month and that, in 2021, he

earned \$13,000.00 per month. Husband presented documentary evidence supporting those figures.

Husband testified that, because of his reduced salary, he had to borrow money from Ms. Rismiller. Husband stated that Ms. Rismiller never offered to give him the money and that he always intended to pay it back.

Husband testified that, in 2017, he sold some of his Cava stock to meet his financial obligations, which included paying private school tuition for the minor children. The value of that sale, before taxes, was approximately \$1 million. Husband testified that, in 2018, he tried to sell more of his Cava stock to pay Wife the monetary award, but he was unable to do so. Husband stated that he instead secured an interest-bearing loan for \$2.8 million, pledging a large portion of his Cava stock as collateral. Husband testified that he used \$2.2 million of that loan to pay the monetary award and that the remainder he used as a “cushion” for his expenses. Husband testified that, as of trial, the loan balance was approximately \$3.5 million. At the time, Husband owned approximately 260,000 shares of Cava stock, which was valued at \$34 per share. Of those shares, 173,200 were pledged as collateral on Husband’s loan.

Wife testified that Husband had stopped paying regular alimony and child support in March 2020 and that, as of the date of trial, Husband owed approximately \$80,000.00 in back support. Wife testified that, over the years, she had to borrow money to pay her living expenses and legal fees, the latter of which totaled more than \$100,000.00. Wife testified that she had been working as a teaching assistant earning approximately \$200 to \$250 a month but that her position was eliminated during the COVID-19 pandemic.

Following the three-day evidentiary hearing, the trial court issued its findings and rulings from the bench. First, the court determined that Husband had presented sufficient evidence of a material change in circumstances to warrant review of his current alimony and child support obligations. Second, the court reviewed the parties' existing financial circumstances and other relevant factors and determined that Husband's obligations should be adjusted accordingly. Third, the court determined that, while the evidence clearly showed that Husband was behind on his court-ordered alimony and child support obligations, a finding of contempt was not warranted. Lastly, the court determined that Husband should be responsible for paying a portion of Wife's attorneys' fees.

Trial Court's Ruling – Material Change in Circumstances

Regarding the evidence supporting a change in circumstances, the trial court found that Husband's financial circumstances had changed "significantly" since the divorce. The court explained that the COVID-19 pandemic had a "detrimental impact" on Husband's business interests and income, the latter of which had "declined significantly from what it was determined to be at the time of divorce." The court noted that Husband had also remarried and assumed "additional responsibilities[.]" The court noted that Husband's son had been staying with Husband and his current wife more frequently as of late and that the minor children were attending a different, more expensive private school, for which Husband was paying.

The trial court found that Wife's financial circumstances had changed as well. The court remarked that Wife had lost her job and presently had no income. The court also remarked that Wife had "incurred significant debt both in pursuing the collection of the

amounts awarded to her in the judgment of divorce, and in connection with this litigation.” The court concluded that the parties’ changed circumstances justified revisiting the prior alimony and child support award.

Trial Court’s Ruling – Modification of Alimony and Child Support

After finding a material change in circumstances, the trial court considered various factors in determining whether there should be any modification of Husband’s alimony and child support obligations. The court noted that there was no great disparity between the parties’ ages and that the parties could both be gainfully employed. The court found that, although Wife was not working, she was not voluntarily impoverished. The court found that the COVID-19 pandemic had “taken its toll on the income of both parties[.]”

As to the specifics of Wife’s financial circumstances, the trial court noted that Wife had assets of “over \$1.5 million and no debt.” The court found that, based on Wife’s financial statement, her reasonable monthly expenses were around \$10,000.00 per month. The court determined that Wife had a need for alimony and child support.

Regarding Husband’s financial circumstances, the trial court noted that, following the divorce and prior to the onset of the COVID-19 pandemic, Husband had spent money lavishly, and yet he had failed to make any payments toward the monetary award he owed Wife. The court noted that Husband ultimately had to borrow a large sum of money to make that payment, which he would not have had to do if he had “opted to pay sums to his wife prior to that time, and when he clearly had the ability to do so[.]” The court found that, to “a significant degree,” Husband’s current financial situation was “of his own making” and “the product of improvident financial decisions[.]”

The trial court concluded, however, that it could not “ignore the current state of [Husband’s] finances” or “determine child support and alimony as if his current circumstances didn’t exist[.]” The court observed that Husband had decreased his spending significantly since the start of the pandemic and had even borrowed money from his current wife to pay his living expenses. The court highlighted the series of promissory notes Husband had executed with Ms. Rismiller.

The trial court then discussed Husband’s current salary. At the outset of that discussion, the court decided against utilizing the average of Husband’s prior years’ salaries to calculate his current salary, an approach championed by Wife, because doing so would not give due regard to the detrimental impact of the COVID-19 pandemic on Husband’s finances. The court also declined to include Husband’s 2017 stock redemption as part of his yearly income, finding that the redemption was “a one off” and “not a regular yearly event or occurrence.” The court rejected Wife’s argument that the \$2.8 million loan obtained by Husband in 2018 should be considered income, as that money was, according to the court, “a legitimate loan” that Husband was “obliged to repay[.]” Lastly, the court declined to consider as income the \$171,000.00 Husband received from his current wife, noting that both Husband and Ms. Rismiller testified that the money was a loan and not a gift.

The trial court ultimately credited Husband’s testimony that his current income was \$13,000.00 per month. The court found that the decline in Husband’s income was “because of the downturn in the business due to the effects of the COVID pandemic[.]” The court explained that, while there was “reason to believe that the business will recover” and that

Husband’s income would increase in the future, assigning a specific dollar amount to Husband’s current income based on his future earnings would be “speculative.” The court concluded that Husband was “not in the same situation he was at the time of divorce” and that, consequently, he did not have the present ability to pay his current alimony and child support obligations. The court made clear that Wife was not foreclosed from obtaining an increase in Husband’s obligations if his income improves.

Regarding Husband’s other assets, the trial court highlighted the fact that Husband owned “millions of dollars of stock” related to his various business interests, and the court commented that it was “not unlikely” that those stockholdings could be used to satisfy Husband’s obligations. The court cautioned, however, that doing so would “likely incur significant capital gains taxes.” In addition, the court explained, a large portion of those stockholdings had been pledged as collateral on the \$2.8 million loan Husband had obtained in 2018, which was still outstanding.

Based on the foregoing factors and findings, the trial court reduced Husband’s ongoing child support obligation to \$800.00 per month. The court also reduced Husband’s ongoing alimony obligation to \$3,000.00 per month. On top of that, the court ordered Husband to pay an additional \$1,000.00 per month toward any arrearages that had accrued.

Trial Court’s Ruling – Contempt

The trial court then discussed Wife’s petition for contempt. The court found that Husband did have outstanding alimony and child support obligations. The court also found that, at one time, Husband “had the ability to pay more than he did[.]” The court concluded that there was a basis for finding Husband in contempt.

Despite those findings, the trial court denied Wife’s petition for contempt. The court noted that Husband had paid “significant sums” for the minor children’s education and other financial needs. The court also noted that it had already addressed Husband’s outstanding obligations and ordered that he pay an additional monthly sum until those obligations have been satisfied. The court determined that a finding of contempt was unnecessary.

Trial Court’s Ruling – Attorneys’ Fees and Costs

Finally, the trial court addressed Wife’s request for attorneys’ fees and costs. The court found that Husband had a substantial basis for filing his motion for modification and that he was ultimately successful in obtaining said modification. The court found that Wife likewise had a substantial basis for defending against the litigation and for seeking the amounts owed by Husband. The court found that Wife was in an inferior position in terms of income and that she had to deplete some of her assets to pay her reasonable attorneys’ fees. The court found that Husband’s financial situation had declined since the divorce and that, while Husband had millions of dollars in stock, those assets were “not very liquid” and partly encumbered by his 2018 loan obligation.

Based on those findings, the trial court concluded that Husband should make a partial contribution to Wife’s attorneys’ fees and costs. The court assessed that contribution at \$40,000.00.

Following its oral rulings, the trial court entered an order reflecting its decision. Wife filed this timely appeal.

STANDARD OF REVIEW

“When reviewing an action tried without a jury, we review the judgment of the trial court ‘on both the law and evidence.’” *Baltimore Police Dep’t v. Brooks*, 247 Md. App. 193, 205 (2020) (quoting *Banks v. Pusey*, 393 Md. 688, 697 (2006)). We “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). Issues of law are reviewed *de novo*. *Brooks*, 247 Md. App. at 205.

DISCUSSION

I.

Wife first argues that the trial court erred in reducing Husband’s alimony and child support obligations. She contends that the court erroneously concluded that Husband earned only \$13,000.00 per month. She further contends that the court erred in not including, as part of Husband’s income, the funds he received from his current wife in the months leading up to trial, the money Husband received in 2017 upon redeeming a portion of his Cava stock, and the money Husband received in 2018 upon pledging his Cava stock as collateral on a loan. Wife argues that the court also erred in finding that Husband’s financial circumstances had changed to a material degree since the time of the divorce.

Husband insists that the trial court properly concluded that his current income was \$13,000.00 per month, an amount substantially lower than his income at the time of the divorce. Husband asserts that the court also properly concluded that the decrease in his income constituted a material change in circumstances. Husband contends that the court’s

decision to modify his obligations was supported by the evidence and not an abuse of discretion.

Modifications of alimony are governed by § 11-107(b) of the Family Law Article (“FL”) of the Maryland Code, which states, in relevant part, that, “on the petition of either party, the court may modify the amount of alimony awarded as circumstances and justice require.” When a party seeks modification of an alimony award, that party bears the burden of showing that modification is appropriate. *Walter v. Walter*, 181 Md. App. 273, 296 (2008). In other words, “[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 (2001), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516 (2005). “A substantial change in one party’s financial circumstances can, under appropriate circumstances, be legally sufficient to justify a change in spousal support.” *Campitelli v. Johnston*, 134 Md. App. 689, 699 (2000). Whether a particular change in a party’s financial circumstances is sufficient to justify a change in spousal support “is a matter to be determined in the sound discretion of [the court] for which there are not fixed formulas or statutory mandate.” *Id.* (citation and quotations omitted). “In reviewing an award of alimony we defer to the findings and judgments of the trial court.” *Ridgeway v. Ridgeway*, 171 Md. App. 373, 383 (2006) (cleaned up). “We will not disturb an alimony determination unless the trial court’s judgment is clearly wrong or an arbitrary use of discretion.” *Id.* at 383-84 (citations and quotations omitted).

Modifications of child support are governed by FL § 12-104(a), which states that a “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 circumstance.” Under that statute, “a court has discretion to modify a child support award, provided that there has been a material change in circumstances, needs, and pecuniary condition of the parties from the time the court last had the opportunity to consider the issue.” *Petitto v. Petitto*, 147 Md. App. 280, 306 (2002) (citations and quotations omitted). “The burden of proving a material change in circumstance is on the person seeking the modification.” *Id.* at 307. A change is material when it is “relevant to the level of support a child is actually receiving or entitled to receive” and “of sufficient magnitude to justify judicial modification of the support order.” *Wills v. Jones*, 340 Md. 480, 488-89 (1995). “[T]he question of whether to modify an award of child support is left to the sound discretion of the trial court, so long as the discretion was not arbitrarily used or based on incorrect legal principles.” *Walker v. Grow*, 170 Md. App. 255, 266 (2006) (citations and quotations omitted).

A necessary factor in any child support determination is the party’s “actual income.” *See* FL § 12-201, *et seq.* Actual income is defined as “income from any source[,]” and it includes, but is not limited to, salaries, commission, investment income, certain benefits, and alimony or maintenance received. FL § 12-201(b). Based on the circumstances of a case, a court may also consider, as actual income, money received from severance pay, capital gains, gifts, or prizes. *Id.* Whether to include such sources as actual income is within the court’s discretion. *Petrini v. Petrini*, 336 Md. 453, 461-62 (1994). Some additional factors a court should assess in determining a child support award are: “1) a

parent’s actual ability to pay the specified child support award, 2) any lack of liquidity or marketability of a party’s assets, 3) the fact that a parent’s take-home income may not accurately reflect his or her actual standard of living, and 4) whether a party is voluntarily impoverished.” *Sczudlo v. Berry*, 129 Md. App. 529, 539 (1999).

Against that backdrop, we hold that the trial court did not err in assessing Husband’s current income at \$13,000.00 per month or in adjusting Husband’s alimony and support obligations based upon a finding of a material change in circumstances. Husband testified that his sole source of income came from his employment as a consultant, for which he was paid \$8,400.00 per month in 2020 and \$13,000.00 per month in 2021. The court later found that testimony credible. *See Gizzo v. Gerstman*, 245 Md. App. 168, 200 (2020) (“When scrutinizing factual findings, this Court must give due regard to the opportunity of the trial court to judge the credibility of the witnesses.”) (citation and quotations omitted). Husband’s business partner, Lambros Grigoropoulos, provided similar testimony, and Husband presented documentary evidence reflecting the same income. Aside from the other funds that Wife argued should have been counted as income, which the court considered and rejected, no other sources of income were shown by the evidence. Thus, the court’s finding as to Husband’s income was not clearly erroneous. *Fitzzaland v. Zahn*, 218 Md. App. 312, 322 (2014) (“Under the clearly erroneous standard, we look at the record in the light most favorable to the prevailing party, and if there is any competent, material evidence to support the [trial] court’s findings of fact, we cannot hold that those findings are clearly erroneous.”).

Indeed, the evidence showed that Husband earned significantly more money in the years leading up to trial and that he had spent those earnings on himself rather than on his outstanding alimony and child support obligations. But the evidence also established that Husband’s prior earnings did not reflect his current salary, which had been severely affected by the COVID-19 pandemic, and that Husband had taken on significant debt and had recently curbed his lavish spending. The court expressly recognized those factors in reaching its decision, noting that Husband had earned a much larger salary prior to the COVID-19 pandemic and that his current salary was likely to increase once the pandemic had abated. The court also noted that Husband’s current financial situation was “of his own making” and “the product of improvident financial decisions[.]” The court concluded, however, that relying on Husband’s past or potential salaries as an indication of his current salary was inappropriate because such an approach did not give due regard to the detrimental impact of the COVID-19 pandemic and would ultimately be “speculative.” The court also concluded that, despite Husband’s prior behavior, it could not “ignore the current state of [Husband’s] finances” or “determine child support and alimony as if his current circumstances didn’t exist[.]” Those findings and conclusions do not evince an abuse of discretion, and we are persuaded that the court did not err in reaching them.

We are likewise persuaded that the trial court did not abuse its discretion in finding a material change in circumstances. The court’s decision was based in large part on its findings that the COVID-19 pandemic had a “detrimental impact” on Husband’s business interests and that Husband’s income had “declined significantly from what it was determined to be at the time of divorce.” Those findings were not clearly erroneous. When

Husband's alimony and child support obligations were initially determined following the parties' divorce in 2017, Husband was earning approximately \$284,000.00 per year, or over \$23,000.00 per month. Those earnings were considerably larger than the \$13,000.00 per month Husband was earning at the time of modification. The significant drop in Husband's income justified the court's decision to revisit the prior alimony and child support award and to adjust Husband's obligations accordingly. As such, we cannot say that the court's decision was arbitrary or based on incorrect legal principles.

Wife argues that the trial court erred in assessing Husband's income at \$13,000.00 per month because that figure represented Husband's "W2" income, which was only 40% of Husband's total income, per the testimony of Husband's business partner, Lambros Grigoropoulos. Wife also argues that the court erred in relying on Husband's reported 2021 salary, rather than using the average of his salaries since the divorce.

We are unpersuaded by Wife's arguments. To be sure, Mr. Grigoropoulos testified that, ordinarily, Husband's salary consisted of W2 income, which represented 40% of his total salary, and "K1" profit distributions from the various restaurants, which represented the other 60%. But Mr. Grigoropoulos and Husband both testified that Husband did not receive any K1 distributions in 2020 or 2021 because of the COVID-19 pandemic, and Mr. Grigoropoulos testified that Husband should not expect any K1 distributions in the foreseeable future. Thus, the \$13,000.00 per month Husband was receiving in W2 income in 2021 represented the entirety of his salary, as determined by the trial court. Moreover, the court expressly rejected utilizing the average of Husband's prior years' salaries to calculate his current salary because doing so would not give due regard to the detrimental

impact of the COVID-19 pandemic. Given that Husband's larger salary in the years leading up to the onset of the pandemic was likely due to his receiving K1 distributions, we see no abuse of discretion in the court's decision to disregard those distributions in calculating Husband's current salary.

Wife also argues that the trial court erred in refusing to include Husband's 2017 stock redemption and the \$171,000.00 he received from his current wife, Donna Rismiller, when calculating Husband's income. We disagree. The court refused to include Husband's 2017 stock redemption as part of his yearly income because that redemption was "a one off" and "not a regular yearly event or occurrence." That conclusion was not clearly erroneous, as the evidence established that the redemption in 2017 was the only time Husband had redeemed stock since the divorce. In fact, Husband testified that he tried to redeem more stock in 2018 but was unable to, which led him to pledge a large portion of the stock as collateral in exchange for a \$2.8 million loan. As to the money Husband received from Ms. Rismiller, both individuals testified unequivocally that the payments were loans that Husband needed to repay. That testimony was supported by various promissory notes executed by Husband and Ms. Rismiller, which were admitted into evidence. Thus, we cannot say that the court abused its discretion in refusing to include the disputed funds as income.

Finally, Wife argues that the trial court should not have granted the modification given the fact that the price of Husband's Cava stock "had gone from \$12.39 per share to \$34.00 per share" and that, as a result, Husband's "net worth had tripled since the time of his divorce." We remain unpersuaded. In reaching its decision, the court recognized the

fact that Husband owned “millions of dollars of stock” related to his various business interests. The court noted, however, that redeeming the stock would “likely incur significant capital gains taxes.” The court further noted that a large portion of those holdings had been pledged as collateral on the \$2.8 million loan Husband obtained in 2018. At the time of trial, Husband had not paid back that loan, and the total amount owed was approximately \$3.5 million. Moreover, Husband had exhausted the proceeds of the loan in paying Wife’s monetary award and various other expenses. In short, Wife’s claim that Husband’s net worth had “tripled” since the divorce is not supported by the evidence. As such, the court did not abuse its discretion in granting Husband’s motion for modification despite the increase in the price of the Cava stock.²

II.

Wife next argues that the trial court erred in denying her petition for contempt against Husband for failing to pay his court-ordered alimony and child support obligations, which at the time of trial totaled \$86,000.00. Wife contends that Husband had willfully failed to pay his obligations, that Husband had spent “millions of dollars” on himself rather than paying his obligations, and that Husband had significant assets to satisfy those obligations at the time of trial. Husband counters that the court properly denied the petition because he proved that he did not have the present ability to pay the amount owed.

² Wife, relying on *Barton v. Hirshberg*, 137 Md. App. 1 (2001), notes that the definition of “actual income” in FL § 12-201(c) does not include “unrealized gains or appreciation in asset value.” *Id.* at 20. Wife’s reliance on that case is somewhat misplaced because alimony was not at issue there. As we recognized in that case, a determination as to alimony requires consideration of “all income and assets, including property that does not produce income[.]” *Id.* (emphasis omitted) (quoting FL § 11-106(b)(11)(i)).

We hold that the trial court’s denial of Wife’s contempt petition is not properly before this Court. A party who seeks to have another person held in contempt has no right to appeal the denial of the party’s contempt petition. *Kadish v. Kadish*, 254 Md. App. 467, 507-09 (2022).

III.

Wife next claims that the trial court erred in only awarding her \$40,000.00 in attorneys’ fees and costs rather than granting the full amount incurred, which, according to Wife, totaled over \$100,000.00. Husband argues that the court properly considered all the requisite factors and did not abuse its discretion in reaching its decision.

FL § 12-103(a) permits a court in a custody action to award costs and attorneys’ fees to either party. Before such an award can be made, “the court shall consider: (1) the financial status of each party; (2) the needs of each party; and (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.” FL § 12-103(b). “[T]he trial court is vested with wide discretion in deciding whether to award counsel fees and, if so, in what amount.” *Walker*, 170 Md. App. at 291 (citations and quotations omitted).

In ruling on Wife’s request for attorneys’ fees and costs, the trial court noted that Wife was in an inferior position in terms of income and that she had to deplete some of her assets to pay her attorneys’ fees, which she claimed totaled over \$100,000.00. The court also noted that Wife had a substantial basis for defending against the litigation and for seeking the amounts owed by Husband. As to Husband, the court found that Husband’s financial situation had declined since the divorce and that, while Husband had millions of

dollars in stock, those assets were “not very liquid” and were partly encumbered by his 2018 loan obligation. The court found that Husband also had a substantial basis for bringing the underlying action to modify and that he was ultimately successful in obtaining a modification. Based on those considerations, the court ordered Husband to pay \$40,000.00 in attorneys’ fees and costs to Wife.

We hold that the trial court did not abuse its discretion in issuing that award. Although the court found that Wife was substantially justified in defending the action and seeking payment of Husband’s arrearages, the court found that Husband was equally justified in seeking a reduction in his alimony and child support obligations and that Husband was ultimately successful in obtaining a modification. The court also found that Husband’s financial health had been negatively impacted by the COVID-19 pandemic and that Husband’s ability to pay was constrained by the nature of his assets. Those findings were reasonable, as was the court’s decision to award Wife \$40,000.00 in attorneys’ fees and costs. That the court did not award the full amount requested was not, under the circumstances, an abuse of discretion.

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