Circuit Court for Howard County
Case No. 13-C-15-105207

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1450

September Term, 2016

JOHN CARBERRY

v.

DANA CARBERRY

Meredith,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: July 13, 2018

As is unfortunately all too common, this appeal concerns the interests and needs of a child resulting from the fallout of a marriage. In September 2015, Dana Carberry ("Mother") filed for divorce from John Carberry ("Father") in the Circuit Court for Howard County. Following a series of negotiations, hearings, and conferences spanning nearly a year, Mother and Father settled all aspects of their divorce apart from the child support for Q.C., their minor daughter. The circuit court awarded Mother $2,900 per month in child support, and Father appealed to contest the court's award. Father presents the following questions for our review, which we have reordered to reflect the logical steps of analysis:

I. "Did the trial court err in refusing to admit and consider Appellant's financial statement and financial status?"

II. "Was the trial court's finding that Appellant had voluntarily impoverished himself erroneous?"

III. "Did the trial court abuse its discretion in applying the sole custody Maryland Child Support Guidelines to the parties' shared custody schedule when establishing child support?"

We first hold that the circuit court did not abuse its discretion by refusing to admit Father's amended financial statement because Father did not file that statement within the parameters of the Maryland Rules or the circuit court's scheduling order and because the court considered other evidence of Father's financial status in its ruling that ultimately focused on Q.C.'s best interests. We also conclude that the circuit court did not commit clear error in finding that Father was voluntarily impoverished, nor did the court abuse its discretion by imputing income to Father because it adequately applied the requisite factors when reaching each decision. We likewise conclude that the circuit court acted within its discretion to calculate the support award because the parents' combined monthly income

is above the statutory maximum and the circuit court determined that Father did not contribute to Q.C.'s expenses as required for the use of the shared custody schedule.

BACKGROUND

The parents' minor child, Q.C., was born on July 14, 2007, and a few years later, on November 5, 2010,[1] Mother and Father were married in Ellicott City, Maryland. The Carberrys lived together in the marital home in Howard County along with Q.C. and Mother's two minor children from her previous marriage. On December 26, 2014, the Carberrys separated.

A. Circuit Court Proceedings

1. Pre-Hearing Litigation

Mother filed a complaint for absolute divorce on September 30, 2015, in which she alleged the following: (1) adultery; (2) cruel and vicious conduct; (3) constructive desertion; and (4) separation. Relevant for the purposes of this appeal, Mother also alleged that the income from her employment was inadequate to cover her and Q.C.'s needs in addition to attorney's fees. She asserted that Father's yearly income was roughly $170,000, and that, although able, he had "unreasonably failed and refused to provide" support. Mother requested, *inter alia*, sole custody *pendente lite* and permanently, child support *pendente lite* and permanently, and that Father include Mother and Q.C. on his insurance

[1] Mother's complaint states the date of their marriage as November 5, 2010; however, she testified at trial that their marriage was November 4, 2010. Since the exact date of the parents' marriage is not relevant for the purposes of this appeal, we use the date listed in the complaint.

policies. Father filed a Counter-Complaint for Immediate Custody on October 22, 2015, alleging, *inter alia*, that Mother was having an affair and that he should be awarded custody to provide Q.C. a stable and loving environment.

In his answer, filed November 20, 2015, Father stated that he earned less than $170,000 per year; however, he admitted that he was employed and could contribute to Q.C.'s support. He requested, *inter alia*, the continuation of joint legal and physical custody and that an award of child support be calculated pursuant to the Maryland Child Support Guidelines ("Guidelines") codified at Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 12–201 *et seq.* Meanwhile, Father paid $1,000 per month in child support from October 2015 through March 2016.

On March 2, 2016, the parents met before family magistrate Elizabeth Case for a *pendente lite* hearing. The following day, Father realized he had consulted with Magistrate Case about this case prior to her accession to the bench, and on March 4, 2016, he moved for her recusal. Magistrate Case recused herself on March 16, 2016, over Mother's objection.

The *pendente lite* hearing was rescheduled to March 23, 2016 before Magistrate Porter, who issued her report on April 6, 2016. Magistrate Porter found that Father provided "little support" until roughly 10 months after the parties' separation, when Mother filed for divorce and Father began providing $1,000 per month. The report further detailed the parents' then-current financial health: (1) the father of Mother's other children has a support obligation of $1,500 per month but is in significant arrears; (2) Father bought his

home in Catonsville in July 2016 after he received a $50,000 gift from his family; (3) Father earns $163,000 per year; (4) Father's car payment on his BMW is $560 per month; and (4) Father rents the marital home, which is refinanced in his name only, for a profit of $860 per month. Additionally, both parents stipulated that Father told third parties that "[h]e would rather pay $50,000 in attorneys' fees than pay her $5000."

Magistrate Porter concluded that both parties were fit to care for—and had appreciated time with—Q.C. and that they communicated well and maintained the physical custody schedule. She endorsed, *pendente lite*, joint legal and physical custody. Given Mother's need and Father's income, Magistrate Porter recommended that (1) Father pay alimony of $2,400 per month and pay alimony arrearages of $16,800 within 60 days; (2) Father pay child support arrearages of $1,470 within 30 days; and (3) Father pay $9,000 for Mother's attorney's fees within 120 days. Based on a shared child support calculation, Magistrate Porter determined that Q.C. spends 209 nights per year with Mother (57.3%) and 156 nights per year with Father (42.7%). As a result, she calculated $1,279 as Father's net basic child support obligation and recommended an order of $1,210.

The circuit court scheduled argument on Magistrate Porter's recommended order for April 12, 2016. At that hearing, Mother argued that based on the totality of the record, alimony and child support were necessary. Father contended that the proposed order was in error because it did not factor the alimony award in calculating child support. Mother responded that the parties' combined income exceeds the Guidelines' income threshold, and thus, the court has discretion in fashioning an award. The circuit court entered an

immediate *pendente lite* order, finding that "extraordinary circumstances [] exist given the totality of the record before it[.]" It awarded Mother $1,210 per month in child support and $2,400 per month in alimony, with both awards accruing from September 30, 2015.

Father filed exceptions to Magistrate Porter's report and recommendations on April 14, 2016, alleging several errors in her calculation of child support and alimony. The merits of these contentions, however, were never decided. Since Father failed to file a transcript or request an extension to file it, his exceptions were dismissed on May 24, 2016.

Meanwhile, on April 28, 2016, Father amended his counter-complaint to request joint legal and shared custody; that he pay no alimony; and that child support be calculated pursuant to the Guidelines. He alleged that Mother was "capable of supporting herself, as well as contributing to the needs of their child." Father admitted that he was Vice President of Partnerships with Learn It Systems but noted that Mother earned income from her catering business and working part-time in a pediatrician's office. Mother responded on May 12, 2016, requesting that the counter-complaint be dismissed and that she receive attorney's fees for the action.

Two weeks later, on May 24, 2016, the circuit court entered a second *pendente lite* order, which continued joint legal and physical custody and continued the child support, alimony, arrearages and attorney's fees payments requirements under the prior order.

Mother amended her complaint on June 20, 2016, alleging that her income is insufficient to support her and Q.C.'s needs in addition to covering attorney's fees. Mother

included a draft final consent custody order—signed by both parties—regarding the physical and legal custody of Q.C.; however, that draft order did not cover child support.

Father answered Mother's amended complaint on July 7, 2016 and stated that his employment was recently terminated with "his last day of employment [being] on or about July 11, 2016." He requested that the court deny Mother's amended complaint; grant him an absolute divorce; incorporate the mutually signed final consent order for custody into that judgment or alternatively grant joint legal and shared custody; deny alimony; and calculate child support pursuant to the Guidelines. The court entered the parents' proposed consent custody order on July 12, 2016.

The parties prepared for trial, and on July 14, 2016, Mother submitted her pre-trial statement, contending that the following issues remained: (1) absolute divorce; (2) child support; (3) alimony; (4) dependent for tax purposes; (5) health insurance for child; (6) valuation of marital property; and (7) attorney's fees and litigation costs. The following day, the parties reached a term sheet agreement, which resolved every issue save for child support and contribution to extraordinary medical expenses; the parties did, however, agree that resolution of those issues would retroactively date to August 1, 2016.

Nearly a week later, on July 21, 2016, Mother moved to set aside the agreement. After subpoenaing Father's employer and bank, Mother obtained records on July 20, 2016 that showed Father had exercised stock options on May 2, 2016 in an employee incentive plan and had not disclosed certain bank accounts. Father said that he did not conceal the documents; rather, Mother failed to wait for them before entering into the agreement. He

claimed that several documents were not in his possession while others were not yet created when he originally responded to her discovery requests. Accordingly, he asserted that Mother's voluntary decision did not warrant the negation of the term sheet agreement.

On August 3, 2016, according to Mother, she and Father entered into a new term sheet agreement; but then, Father denied its existence. Finally, on August 31, 2016—on the eve of trial—Mother and Father entered into a third term sheet agreement in which they agreed that Mother would receive a check on September 1, 2016 for $7,000 for attorney's fees, which could be reduced to judgment if Father failed to pay. Mother waived her claim of alimony in exchange for a payment of $59,000 and a retirement order, over which the court would reserve jurisdiction, that would "transfer the sum of [the] soon-to-be agreement[.]"

2. Focus on—and Calculation of—Child Support

On September 1, 2016, the circuit court, the Honorable William Tucker presiding, held the hearing in the underlying divorce, at which the parties represented that the only issue left to be resolved was the question of Q.C.'s support.

a. Mother's Case

Mother testified that she returned to the workforce in July 2015, working in a pediatrician's office for fifteen hours a week where she was receiving $15.42 per hour by the end of her employment on July 23, 2016. On August 17, 2016, two weeks before trial, she began working part-time as a pre-school teacher for 10 months each year. As a part-

time teacher, although her hourly rate is less, she receives health, vision, and dental insurance for her and Q.C. For Q.C. only, the total insurance cost per month is $121.21.

Mother also has a part-time home catering business. Evidence of her financial status indicated the net income from that business: (1) $23,386 in 2014; (2) $23,892.08 in 2015; and (3) $11,605.66 for the first half of 2016, plus a projected income of $1,934.28 per month for the second half of the year. Mother also introduced her financial statement from July 11, 2016, which indicated a total monthly income of $3,170.95 and costs of $8,672.55 for Mother and Q.C.; however, for items that cost a flat rate, like the family's pool membership, costs included Mother's two other minor children. Prior to the *pendente lite* award, Mother tried to alleviate the difference in her income and expenses by charging her credit cards, but after she started receiving support, she could pay for certain expenses without borrowing on credit. Mother pointed out that she did not include Q.C.'s monthly therapy, which costs $160 per session, and indicated the need to reduce her catering work because of her schedule at the pre-school. As of the date of the hearing, Mother owed $33,123.93 in attorney's fees.

Mother's case then turned to Father's financial status. To demonstrate voluntary impoverishment, Mother proffered an email that Father sent to her ex-husband on April 19, 2015, six months before he began providing $1,000 per month in support. In the email, Father exclaimed, "I told her if I have to spend $50 F**king [sic] thousand dollars to make sure she doesn't get $5,000 that I would do it." That email echoed another one that Father

had sent Mother earlier on that day with a similar statement that if he had to spend $50,000 to prevent Mother from receiving $5,000 "it will be worth it to me."

As to Father's income, evidence furnished by Learn It pursuant to a subpoena demonstrated that he earned $421,746.87 between January 9, 2015 and July 18, 2016. Of that sum, $151,543 was his stock option payout, $10,657.67 was holiday pay, and $12,538.49 was severance pay—meaning Father earned $247,007.71 in regular pay during that 18-month period. Additionally, the parties' joint tax return in 2013 demarcated Father's earnings as $259,618. Mother also noted that on April 1, 2015, several months after the parties' separation, Father began renting the family house for $3,860 per month, earning a profit of $860 after the mortgage payment. Mother stated that she received only $560 from the entire term of the lease.

Mother also testified as to Father's employment opportunities. Prior to—and at some point, contemporaneous with—his employment at Learn It, he worked at Community Education Partners, which changed its name to Accelerated Learning. Mother testified that Father "told me he could go back there at any time." Mother also discussed some of Father's recent expenditures, including trips to "Aruba, California, Arizona, North Carolina, Florida," and Las Vegas with a forthcoming trip to New York City, and stated that Father recently purchased a BMW. Father did not, however, contribute to Q.C.'s swimming in Howard County nor did he contribute to Q.C.'s other bills, including a medical bill, dentist bill, and therapy bill, despite Mother's requests. She expounded that, throughout their marriage, Father had a history of not paying bills.

Finally, Mother testified that Father is 49 years old, is in great health, and has told her "that since he's been away from [her], his doctor told him he's never been in better shape. He's lost weight, his blood pressure is down." He also has an MBA.

Mother's counsel then called Father to testify. Counsel elicited that although Father learned on June 27, 2016 that his employment with Learn It was terminated, he had not sought employment until August 15, 2016 since his severance did not end until August 11, 2016. Further, Father stated that, if he had a job as a teacher, he would be able to contribute to Q.C.'s lifestyle.

b. Father's Case

Father, representing himself, testified as part of his case. He first introduced evidence that he had applied for unemployment on August 11, 2016 and that he could not apply for it prior to the termination of his severance. Father focused on his education and employment history. In 2000, he began working with Community Education Partners, which worked with urban school systems to help at-risk youth. His work then transitioned to raising startup funds for charter schools. Father began working at Learn It in 2013, with the focus of developing a STEM charter school in Flint, Michigan. Father informed the court that Learn It decided to exit the industry of charter school management. Learn It was unsuccessful, however, in trying to sell the charter school in Flint, and the school board's termination of the contract as of June 30, 2016 eliminated Father's position.

Father turned to his current financial health. He acknowledged receipt of the option payout of roughly $151,000 and stated that the proceeds totaled $72,000. He testified that

he used $20,000 of the $72,000 to repay a 401(k) loan owed by him and Mother and used the remaining $52,000 to allegedly pay marital debts. Further, he introduced a promissory note representing a debt of $59,000 used to pay Mother's alimony and her share in the marital house; however, because the note was dated July 15, 2016 and Father had not previously shown it to Mother's counsel, the court did not admit it. Father indicated that he used credit card points to pay for his Aruba trip and that Q.C. traveled with him for free. Responding to Mother's contentions about his income-earning prospects, Father testified that he could not return to Community Education Partners and claimed that he did not have "a conversation with [Mother] about that in . . . three years, or almost ever." Father stated that "as of today, my bank account statement is at Eight Hundred Dollars."

Father also attempted to introduce an updated financial long form, which he completed the day before trial. The following colloquy occurred:

> [THE COURT]: All right. Rule 9-203(c), "if there has been a material change in information furnished by a party in a financial statement that has been filed, the party shall file an amended statement and serve a copy to the other party at least ten days before the scheduled trial date, or earlier by a date fixed by the Court." Why did you wait until yesterday to amend your financial statement? Because the Rules require you to do it ten days before trial.
>
> [FATHER]: Absolutely.
>
> [THE COURT]: And serve a copy on the opposing side.
>
> [FATHER]: Okay. We don't have to enter it. I wanted to up dated [sic] it to reflect my – I did not realize that was the rule. That's why I didn't do it.
>
> * * *

> [THE COURT]: But my question is, you can still have it marked and it stays with the evidence because any party who is not happy with what I do, has the right to appeal. And if that can be an issue on appeal, it will be with the file.
>
> * * *
>
> [FATHER]: I would like to have it marked please.
>
> [THE COURT]: Okay. It will be marked[;] however[,] it will not be admitted.

Mother's counsel objected and stated, "Yes, in addition to what Your Honor placed on the record, I also would like to raise the Scheduling Order provides for the exact same requirement." Later, the court did not admit "financial activities for the last ninety days that [Father] printed out" the night before trial and did not disclose prior to testifying. The court did, however, admit evidence that Father owed $63,000 in legal fees after Father proffered it "[t]o show the financial state that [he is] in and [his] ability to pay for child support currently." Father then briefly discussed his purchase of a BMW. He stated that his previous car was old and said that "the BMW's probably gone at this point because [] obviously I've got other debts."

On cross-examination, Father stated that he did not disclose the $151,000 option payout during discovery because he did not believe that was required. Further, regarding the payment of marital debt, Father admitted that he had not talked with Mother about these debts or paying for them.

After Father rested his case, Mother's counsel recalled her as a witness. Her testimony focused on Father's alleged settling of marital debts. Mother was unaware of

several of them, including those that Father purported to settle on June 9, 2016, when he sent checks to several individual, including (1) $2,500 to his mother for repayment of a loan from November 20, 2013; (2) $5,000 to his father to repay a loan from January 7, 2016; (3) $7,500 to P.N., who had previously loaned him money for gambling; (4) $7,500 to his mother for repayment of a loan from April 11, 2016; (5) $9,800 to his mother for repayment of a loan from June 6, 2014; (6) $9,000 to K.F. for repayment of a gambling debt from December 14, 2015. Mother was aware of only the $7,500 used to repay the loan from April 11, which she believed Father used to retain counsel. On cross-examination, Father tried to elicit that some of the loaned funds were deposited into their joint account and that the check to his father was dated with the wrong year and was used to repay credit card debt.

c. Circuit Court's Findings

Judge Tucker announced his conclusions at the end of the hearing. He awarded an absolute divorce to Mother, incorporating the consent custody order from July 12, 2016 and the term sheet agreement from August 31, 2015 into that judgment. Pursuant to the parties' agreement, the court also entered judgment for $7,000 in favor of Mother. The court further reserved jurisdiction over anything related to transferring property.

The court then turned to the issue of child support and whether Father was voluntarily impoverished. Judge Tucker considered the relevant factors, discussed in more detail *infra*, and stated that "voluntary impoverishment means that the action must be both

an exercise of free will and the act must be intentional." The court analyzed and applied those factors to the case at bar:

> That the factors that this Court must consider are his or her current physical condition. As I said earlier, [Father] is 49 years old and he is in great health. That the respective education level, the Defendant has an MBA. That the timing of any change in employment or other financial circumstances relative to divorce, well it does seem kind of, not strange but coincidental that [Father] lost his employment right at the time that this case was originally set for trial. But then when you look at the documentation, and knowing that a lot of times contracts end at the fiscal year, he did in fact lose his job on basically June 30th, which was just a few days before their prior hearing.
>
> Fourth, that the relationship between the parties prior to their initiation of the divorce proceedings, I really didn't have a whole lot there. There was some marital discord but I didn't receive a whole lot of testimony concerning their relationship just prior to the initiation. I know that there was some issues and allegations of adultery but that's basically it.
>
> Next, number five, his efforts to find and retain employment. There have been no efforts until a week ago since, which is basically two months after he was terminated.
>
> Next, the efforts to secure retraining if it is needed. There is no retraining needed at all. Whether or not there has been a withholding of support. Well the Court does find that there was initially a withholding of support. It wasn't until the parties pretty much came back into Court that support was starting to be paid. There was an arrearage that was subsequently paid off.
>
> Eight, the past work history. Well the Court recited the work history as it was presented to this Court by [Father]. The area in which the parties live and the status of their job market there. They live here in Howard County, Maryland which is in the metro Baltimore Washington area. The Court notes that [Father] has been to – the school that he had worked at was in Flint, Michigan which is how he acquired a lot of the frequent flier points. And lastly, any other consideration presented by either party.
>
> **So, in looking at all of those factors, it is – the Court does in fact find that [Father] pretty much is voluntarily impoverished.**

(Emphasis added).

Following the determination of voluntary impoverishment, the court considered the factors from *Goldberger v. Goldberger*, 96 Md. App. 313 (1993), to determine what income should be imputed to Father. Judge Tucker observed that Father's total income was approximately $250,000 in 2013 and nearly $256,000 in 2015. Moreover, he considered that Father's income in 2016 thus far—based on the evidence admitted, which included bank statements through the end of June 2016—was $258,746. He noted that although $151,000 of that sum was from a one-time option payout, Father had other deposits and financial resources. As a result, the court imputed to Father an income of $258,746 for 2016 because that amount was similar to his earnings from prior years. The court also found that Father's income was $21,562 per month. Next, the court determined that the Mother's income was $3,170 per month and credited her $121 per month payment for Q.C.'s insurance.

The court's focus shifted to child support in relation to custody considerations:

> The parties['] current schedule for visitation or access with [Q.C.] has [Q.C.] one hundred and sixty-one overnights per year with [Father]. And two hundred and four with [Mother]. That would be considered a shared custody for the purposes of child support calculation. **However, shared custody when you're talking about child support means that each parent keeps the child overnight for more than thirty five percent of the year, which is what we have and both parents contribute to the expenses of the child in addition to the payment of child support.**
>
> **In this case, we do not have both parents contributing to the expenses in addition to paying for child support. And [in] those cases, the Court does not have to use the shared custody calculations.** In addition, this is an above the guidelines case when the Court considers incomes. They are

> both over, well total income is over Fifteen Thousand Dollars a month and under the Family Law Article and the law, the Court can use its discretion when calculating the appropriate amount of child support.

(Emphasis added).

Considering that "it would be in [Q.C.]'s best interest to receive what she is entitled to receive and since there was no payment of expenses," the court decided to use the sole custody calculations. The court thereafter awarded Mother $2,900 per month in child support and per the parties' agreement, dated the award retroactive to August 1, 2016.

Father timely appealed on September 8, 2016.

DISCUSSION

I.

FINANCIAL STATEMENT & STATUS

Father first assigns error to the circuit court's exclusion of his updated financial statement because he failed to comport with the time requirements expressed in Maryland Rules or the scheduling order. He argues that procedural rules should not vitiate the court's need to consider his current financial circumstances. Father continues that the court's central inquiry remains the best interest of the child and that exclusion of records demonstrating his financial status frustrates that objective.

Mother responds that the circuit court excluded Father's updated financial statement correctly and adds that the court nevertheless considered Father's financial status through his testimony. She contends that Father was represented from the beginning of proceedings until August 17, 2016, and during that time, the parties proceeded through hearings,

meetings, and discovery, including an original trial date of July 21, 2016. Mother argues that Father had ample opportunity to provide documentation pursuant to the scheduling order and Maryland Rules but did not do so. Mother notes that Father fully participated in the trial by providing opening and closing statements, cross-examining witnesses, and testifying on his own behalf. Therefore, she insists that the circuit court's exclusion of documentation—but acceptance of testimony—regarding those issues was proper.

Trial courts enjoy wide discretion in deciding matters while presiding over the course of a trial to balance the parties' rights and interests and serve justice. *Sumpter v. Sumpter*, 436 Md. 74, 82-83 (2013) (citation omitted). Given this, we will not overturn a trial court's decision absent an abuse of discretion, which only occurs when the decision is "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).

Title 9 of the Maryland Rules governs family law actions. Rule 9–202(f) provides the requirements for a financial statement for the purposes of child support, stating, "If establishment or modification of child support is claimed by a party, each party shall file a current financial statement under affidavit. The statement shall be filed with a party's pleading making or responding to the claim." Md. Rule 9–203(c) discusses an amendment to a parent's financial statement:

> (c) *Amendment to financial statement.* If there has been a material change in the information furnished by a party in a financial statement filed pursuant to 9-202, **the party shall file an amended statement and serve a copy on the**

> **other party at least ten days before the scheduled trial date or by any earlier date fixed by the court.**

(Emphasis added).[2]

The language of Rule 9–203(c) *requires* that a party file its amendment within the prescribed time limits. *See* Md. Rule 9-203(c). This Court has held previously, however, that in a child support matter, the best interest of the child is vital such that one party's discovery violation should not taint a trial court's overall disposition of a case. *See Flynn v. May*, 157 Md. App. 389, 410-11 (2004) (summarizing, in part, *Rolley v. Sanford*, 126 Md. App. 124, 131 (1999)). It is clear that our focus remains the best interest of the child, and procedural defaults should not be applied so strictly as to adversely affect the court's determination to the detriment of Q.C.'s welfare. *See id.* Keeping this in mind, we turn to the merits of Father's claim.

This Court's decision in *McAllister v. McAllister*, 218 Md. App. 386 (2014), aids our analysis. In that case, the parents were before the circuit court in a bitter child custody row. *Id.* at 389. The father, represented by counsel, spent an entire day to present his case and after doing so, rested without reservation or time for rebuttal. *Id.* at 393. The day prior, a social worker had provided father a letter that detailed her findings regarding the father's relationship with his son. *Id.* The father's counsel had spoken previously with

[2] Maryland Rule 9-203 was adopted on March 5, 2001 and went into effect on July 1, 2001. *See* Md. Rule 9-203 (2002). Although Rule 9-203 has been amended slightly on several occasions, section (c) has remained the same since the original adoption of this Rule. We are unable to locate a reported opinion in Maryland discussing Rule 9-203(c).

that social worker and never informed the court of her, her letter, or that she could not testify the day of trial. *Id.* at 393-94. Afterward, the father filed a motion to reopen his case so that the social worker could testify; however, the court denied that motion. *Id.* at 394. In affirming that denial, this Court emphasized that the father knew of the social worker's existence prior to the case, had been represented throughout the proceedings, testified, called witnesses, presented multiple exhibits, and rested without reservation. *Id.* at 400-02. As a result, we stated, "Although the interests of the child are ever paramount, we fail to see how a court's refusal to reopen [the father's] case[] in any way ignores the child's interests." *Id.* at 402.

Returning to the action before us, we find that Father's case is sufficiently similar to *McAllister* so as to warrant the same result. Like the father who failed to inform the court that the social worker could provide potentially helpful evidence, Father here should have known the import of his financial statement in the child support case. Father had counsel from the beginning of litigation until August 16, 2016—nearly a month after the original trial date and merely four days prior to the deadline for Father to file an updated statement. *See* Md. Rule 9–203(c). Father was subject to a scheduling order since December 18, 2015 that—under the heading "Trial"—reiterated the ten-day filing requirement if a party wanted to submit an amended financial statement. Further, Father and his counsel completed multiple pre-trial proceedings, including hearings, conferences, and discovery, all of which should have reinforced the import of his financial statement and the time limits for amendment.

McAllister also aids in our disposition of Father's allegation that the court did not consider his financial status. There, we noted that the father had the opportunity to present his case for modification of child custody, including calling witnesses, testifying, and introducing exhibits into evidence to support his case. *Id.* at 400-01. The circuit court afforded him an entire day to complete his case, and he used that time before resting without reservation. *Id.* at 401. Here, although Father was not represented at trial, he had his opportunity to present evidence of his financial status. He provided testimony, answered questions, called witnesses, and introduced multiple exhibits regarding numerous items that affect his current financial state. For instance, the circuit court received evidence about Father's legal bills, trips, bank account balance, recent purchases and deposits, house rental, loans, and severance pay and option payout from his previous employer. Father further conducted cross-examination. The court acknowledged the expenses that Father testified about, including his attorneys' fees, his BMW, and his purchases and travels.

We discern no abuse of discretion here. The circuit court correctly refused to admit Father's amended financial statement, as it failed to comport with the requirements of the scheduling order or Maryland Rule 9–203(c). While the circuit court did not admit the actual financial statement form, the court did allow information that demonstrated the substance of what that form contains: Father's financial status. The court's findings establish that the court contemplated Father's financial health, while ensuring that Q.C.'s best interests remained at the forefront of the court's decision.

II.

VOLUNTARY IMPOVERISHMENT & IMPUTATION OF INCOME

Father contends that the circuit court erred when it determined that he was voluntarily impoverished. Although he concedes that the circuit court recited the correct factors from case law, he argues that the court incorrectly applied them. Stemming from that erroneous determination of voluntary impoverishment, Father maintains that the circuit court inaccurately estimated his potential income and then abused its discretion in imputing that income to him for the calculation of the child support award.

Mother disagrees, stating that the circuit court's finding of voluntary impoverishment, and the resulting imputation of income to Father, was not erroneous. The circuit court, Mother argues, properly considered the relevant factors from Maryland decisional law regarding voluntary impoverishment in light of the facts in this case. Based on that finding, Mother declares that the court satisfactorily calculated Father's potential income through applying the relevant factors and did not abuse its discretion in imputing that amount to Appellant.

We review a trial court's factual findings on a parent's voluntary impoverishment in child support awards for clear error and review its ultimate determination for an abuse of discretion. *Sieglein v. Schmidt*, 224 Md. App. 222, 249 (2015) (citations omitted), *aff'd*, 447 Md. 647 (2016). If evidence supports the factual findings, we will not hold that those determinations constitute clear error. *St. Cyr v. St. Cyr*, 228 Md. App. 163, 180 (2016) (citation omitted). "Generally, 'the amount of a child support award is governed by

the circumstances of the case and is entrusted to the sound discretion of the trial judge, whose determination should not be disturbed unless he has acted arbitrarily in administering his discretion or was clearly wrong.'" *Karanikas v. Cartwright*, 209 Md. App. 571, 596 (2013) (quoting *Gates v. Gates*, 83 Md. App. 661, 663 (1990)). *See also Durkee v. Durkee*, 144 Md. App. 161, 187 (2002) (stating that a parent's potential income cannot be verified, "[b]ut so long as the factual findings are not clearly erroneous, the amount calculated is realistic, and the figure is not so unreasonably high or low as to amount to an abuse of discretion, the court's ruling may not be disturbed.") (citations and internal quotation marks omitted).

a. Voluntary Impoverishment

A court's consideration of voluntary impoverishment is governed by FL § 12-204(b). The statute provides:

> (b) *Voluntarily impoverished parent.* –
> (1) Except as provided in paragraph (2) of this subsection, if a parent is voluntarily impoverished, child support may be calculated based on a determination of potential income.
> (2) A determination of potential income may not be made for a parent who:
> (i) is unable to work because of a physical or mental disability; or
> (ii) is caring for a child under the age of 2 years for whom the parents are jointly and severally responsible.

FL § 12–204(b).

"[F]or purposes of the child support guidelines, a parent shall be considered 'voluntarily impoverished' whenever the parent has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without

adequate resources." *Goldberger*, 96 Md. at 327. As the Court of Appeals stated in *Wills v. Jones*, to be "voluntary", "the action [must] be both an exercise of unconstrained free will and . . . intentional." 340 Md. 480, 495 (1995). In *Goldberger*, this Court reiterated the following factors to aid in the determination of whether a parent is voluntarily impoverished:

1. his or her current physical condition;
2. his or her respective level of education;
3. the timing of any change in employment or financial circumstances relative to the divorce proceedings;
4. the relationship of the parties prior to the divorce proceedings;
5. his or her efforts to find and retain employment;
6. his or her efforts to secure retraining if that is needed;
7. whether he or she has ever withheld support;
8. his or her past work history;
9. the area in which the parties live and the status of the job market there; and
10. any other considerations presented by either party.

96 Md. App. at 327 (citation omitted). *See also Sieglein v. Schmidt*, 447 Md. 647, 672-73 (2016) (citing *Goldberger* for the reiteration of these factors).

Here, the circuit court heard testimony from both parties relevant to these factors. Regarding Father's physical condition, Father was 49 years old and "in great health." Mother testified that Father told her "that since he's been away from [her], his doctor told him he's never been in better shape. He's lost weight, his blood pressure is down." As for Father's education level, he has an MBA degree. The court then considered the timing of Father's change in employment relative to the court proceedings, where it noted that it was "coincidental" but that "knowing that a lot times contracts end at the fiscal year, he did in

fact lose his job on basically June 30th, which was just a few days before their prior hearing."

The court disposed of the remaining six factors quickly. For the parties' relationship before the divorce proceedings, the court "really didn't have a whole lot there[]" other than some vague assertions of adultery. Considering Father's efforts to obtain employment and Father's testimony that he had not sought employment until August 15, 2016, the court iterated, "There have been no efforts until a week ago since, which is basically two months after he was terminated." It deduced that Father did not require any retraining and noted that Father had initially withheld child support. Next, the court looked at Father's previous work history, which included sixteen years of employment in improving and developing urban education systems. As to the job climate in Father's area, it recognized that Father still resides in the Baltimore-Washington metropolitan region—where he had when developing a STEM school in Flint, Michigan. Based on those considerations, the court stated, "[t]he Court does in fact find that [Father] pretty much is voluntarily impoverished."

Our review of the record reveals that the court recited each factor and considered the relevant evidence adduced throughout the proceedings. In doing so, the court recognized that some factors were out of Father's control, but the court balanced the factors when arriving at its conclusion. As a result, we cannot hold that the court was clearly erroneous when it declared that Father was voluntarily impoverished.

b. Imputation of Income

The Court of Appeals has explained that "a parent's support obligation can only be based on potential income when the parent's impoverishment is intentional." *Wills*, 340 Md. at 494. Therefore, the court will only impute a potential income to a parent after finding that the parent is voluntarily impoverished. *Goldberger*, 96 Md. App. at 327-28. FL § 12–201(*l*) defines "potential income" as "income attributed to a parent determined by the parent's employment potential and probable earnings level based on, but not limited to, recent work history, occupational qualifications, prevailing job opportunities, and earnings level in the community." Further, after a finding of voluntary impoverishment, "the court may consider any admissible evidence in determining potential income." *Reuter v. Reuter*, 102 Md. Ap. 212, 225 (1994). This Court has articulated several factors to consider for such a calculation:

1. age
2. mental and physical condition
3. assets
4. educational background, special training or skills
5. prior earnings
6. efforts to find and retain employment
7. the status of the job market in the area where the parent lives
8. actual income from any source
9. any other factor bearing on the parent's ability to obtain funds for child support.

Goldberger, 96 Md. App. at 327-28.

Several of these factors—age, mental and physical condition, education, employment efforts, and the job market—overlap with those considered in determining voluntarily impoverishment. *Compare* 96 Md. App. at 327 *with* 96 Md. App. at 327-28.

As a result, the court in this case turned to the remaining factors. It considered Father's income over several years, including 2013, 2015, and 2016, in what appears to be an amalgamation of several factors, including prior earnings and assets. The court stated that Father earned over $250,000 in 2013 and that his 2015 salary was $163,000 "but there were some other deposits made, et cetera. Where his total income is calculated" as nearly $256,000. The circuit court acknowledged that $151,000 of the $258,746 that Father earned as income in 2016 came from a one-time payout and also recognized that Father, through various deposits, had additional resources. Finally, the court seemingly considered that Father received additional income from renting the family house. Based on its entire discussion, the court stated it would impute an income of $258,746 to Father "because that's also in the same area or range of his prior years. When you look at all the financial resources and his deposits."

We discern no abuse of discretion here. It is clear that Father's potential income was imputed from the court's consideration of Father's income over several years, including his prior earnings, income from a house rental, and other assets. Because ample evidence supported the trial court's income determination, we do not conclude that the imputed figure was unreasonable, and thus, we will not disturb the court's decision. *See Reuter*, 102 Md. App. at 226-27 (requiring the trial court to explain, on remand, the basis for the amount of income it imputed, which included the results of one-time transactions, because this Court could not follow the trial court's determination, even after reviewing previous years' incomes).

III.

CUSTODY GUIDELINES

Father acknowledges that the circuit court complied with the procedural requirements of FL § 12-202 governing the calculation of child support but contends that the court failed to comply with the substance of statute. Father notes that the trial court indicated that the shared custody Guidelines are appropriate where expenses are being shared by each parent and then determined, incorrectly, that Father was not paying his share. Father avers that the circuit court erred in finding that he did not adequately share Q.C.'s expenses because it considered costs not governed by child support awards. Father maintains that this deviation from the Guidelines is an abuse of discretion. He contends that the court abused its discretion in finding that the parties' income placed them above the recommended child support Guidelines.

According to Mother, the circuit court did not abuse its discretion when it awarded child support because the Guidelines are inapplicable when the parties' combined monthly income is above the Guidelines' threshold. Furthermore, Mother asserts that the court had discretion to calculate support using sole custody Guidelines because it found that Father had not contributed to Q.C.'s expenses. She notes that the circuit court heard about Father's attorneys' fees, BMW, purchases, travels, and failure to disclose income and alleged debts. Mother opines that the circuit court correctly found that Father had not shared Q.C.'s expenses and that the award was based on Q.C.'s best interests.

FL § 12–204(e) provides the schedule for calculating child support based on the parents' combined adjusted actual income; however, subsection (d) states that "the court may use its discretion in setting the amount of child support[]" when that income exceeds the maximum established in subsection (e). FL § 12–204(d)-(e). "As with any determination left to the discretion of the trial court," we will alter its conclusion only if it has abused its discretion. *Ware v. Ware,* 131 Md. App. 207, 240 (2000). When a judicial decision is so "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable[,]" there is an abuse of discretion. *North v. North*, 102 Md. App. 1, 14 (1994).

In 1989, the General Assembly enacted the Guidelines to comply with federal law. *Horsley v. Radisi*, 132 Md. App. 1, 21 (2000) (citations omitted). The Guidelines attempt (1) to 'remedy a shortfall in the level of awards' that do not reflect the actual costs of raising children, (2) to 'improve the consistency, and therefore the equity, of child support awards,' and (3) to 'improve the efficiency of court processes for adjudicating child support[.]'" *Voishan v. Palma*, 327 Md. 318, 322 (1992) (citation omitted). They therefore are designed to ensure that a child "receive[s] the same proportion of parental income, and thereby enjoy the same standard of living, he or she would have experience had the child's parents remained together." *Id.*

The Guidelines distinguish parents' obligations under shared physical custody and other custody arrangements. *See* FL §§ 12–201(m), 204(*l*)-(m). "Shared physical custody" requires "that each parent keeps the child or children overnight for more than 35% of the

year *and* that both parents contribute to the expenses of the child or children in addition to the payment of child support." FL § 12–201(m)(1) (emphasis added). One expense indicated in the Guidelines is "extraordinary medical expenses" and are "uninsured expenses over $100 for a single illness or condition[,]" including dental treatment and professional counseling or psychiatric therapy. FL § 12–201(g)(1)-(2). In shared custody cases, the child support obligation is computed by multiplying each parent's income with the percentage of time spent with each parent. FL § 12–204(m). When not utilizing shared physical custody, "each parent's child support obligation shall be determined by adding each parent's respective share of the basic child support obligation, work-related child care expenses, health insurance expenses, extraordinary medical expenses, and additional expenses[.]" FL § 12–204(*l*).

When the parents' combined adjusted actual income is greater than $15,000 per month, however, the court has discretion to fashion the amount of the child support award. *See* FL § 12-204(d)-(e).[3] In such a case, there is a rebuttable presumption that the maximum award delineated in the Guidelines is the minimum amount that should be awarded. *Voishan*, 327 Md. at 331-32. But "'[t]he conceptual underpinning' of the Guidelines applies[]" in an action involving parties whose income is over the Guidelines amount. *Smith v. Freeman*, 149 Md. App. 1, 19 (2002) (quoting *Voishan*, 327 Md. at 322).

[3] Effective October 2010, the highest level of combined monthly income specified in the Guidelines increased from $10,000 to $15,000. 2010 Md. Laws, ch. 262 (S.B. 252); 2010 Md. Laws, ch. 263 (H.B. 500).

Thus, even in an 'above Guidelines' case, the court "'must balance the best interests and needs of the child with the parents' financial ability to meet those needs.'" *Id.* (quoting *Unkle v. Unkle*, 305 Md. 587, 597 (1986)). To balance those concepts, several factors can be considered: "the parties' financial circumstances, the reasonable expenses of the child, and the parties' station in life, their age and physical condition, and expenses in educating the child." *Id.* at 20 (citations and quotations omitted).

The action before us is an "above Guidelines" case because, including income the court imputed to Father after finding him voluntarily impoverished, the court determined that Father's income was $21,562 per month and that Mother earned $3,170 per month—well above the $15,000 threshold set by FL § 12–204(e). The Guidelines, therefore, are not mandatory and the amount of the child support award was within the discretion of the circuit court. The court exercised that discretion when it entered an award in favor of Mother—based on sole custody—for $2,900 per month, or $958 over the highest amount prescribed in the Guidelines for one child.[4]

Further, the court determined that it "d[id] not have to use the shared custody calculations[]" because, although Father had more than 35% of overnights per year, he was not "contributing to the expenses in addition to paying for child support." The court credited Mother's testimony that she went into debt to support Q.C. and that Father refused

[4] In its decision, the court explained that it would give effect to the parties' agreement that child support would be retroactive to August 1, 2016 "even though . . . [the court] could make [it] retroactive to the date of filing because under case law, child support is the right of the child and not the parents."

to pay for many expenses, such as medical, therapist, and dental bills. In departing from the shared custody calculations, the court rested its decision on Q.C.'s best interests and needs, the parents' income and financial abilities to satisfy those needs, and each parent's "station in life." Further, the court considered Q.C.'s best interests in applying the sole custody calculation because "in this case, [Father's] not paying his share."

In determining an award that is in the best interests of Q.C., the circuit court clearly articulated its considerations as it applied the statutory requirements to the calculation of Mother's and Father's potential income, the reasonable expenses for Q.C., and the parties' station in life in this 'above Guidelines' case. We discern no abuse of discretion in the trial court's calculation of the child support award.

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