Circuit Court for Baltimore County
Case No. 03-C-05-012321

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1456

September Term, 2022

TINA MICHELLE GIOIOSO

v.

JEFFREY WILLIAM KOHAN

Leahy,
Tang,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: December 28, 2023

In this case, the issue is whether the Circuit Court for Baltimore County erred in adopting the magistrate's recommendations to distribute to appellant Tina Michelle Gioioso ("Mother") and appellee Jeffrey William Kohan ("Father") funds held by the child support enforcement agency, after applying credit for child support payments made by Father against an arrearage reflected in the agency's record. For the reasons we shall discuss, we affirm the circuit court's judgment.

BACKGROUND

Mother and Father are divorced and have two children in common. The divorce judgment, entered in 2007, initially set Father's child support obligation at $3,200 per month for the parties' then-minor children to be paid by direct deposits ("2007 Order"). It also ordered the parties to share child-related expenses in proportion to their then-current incomes. In 2013, the court modified Father's child support obligation to $2,300 per month and required the parties to share child-related expenses ("2013 Order").

2019 Order

On June 4, 2018, after the oldest child became emancipated due to age, Father moved to reduce his child support obligation. In October 2019, the court entered an order modifying child support to require that Father pay $1,504 per month for the youngest child, commencing on June 4, 2018, by wage lien through the Baltimore County Office of Child Support Enforcement" ("BCOCSE") ("2019 Order"). The court continued to require the

parties to share child-related expenses. The support obligations were expected to terminate on October 8, 2021, the youngest child's nineteenth birthday.[1]

Father's Motion to Eliminate Arrearages Reflected in BCOCSE's Records

Father had been making direct deposit child support payments to Mother since June 4, 2018. It was not until January 2020 that BCOCSE set up an account and began collecting child support payments through Father's employer. As a result, BCOCSE calculated an arrearage dating back to June 4, 2018, notwithstanding Father's direct payments to Mother before the account was established.

In November 2020, BCOCSE notified Father that the arrearage would be referred to the State Comptroller for collection. The notice advised that "[BCOCSE's] records show that your child support arrears are $29,385.72. Your case will be referred to the State Comptroller for collection of past due child support by: State Tax Refund Intercept[,] and Interception of State Vendor Payments or Abandoned Property[.]"

This prompted Father to file a Motion to Eliminate Child Support Arrearages and Credit Overpayment of Child Support ("Motion to Eliminate Arrearages"). He asked the court to recognize his child support payments and eliminate the arrearages fixed by BCOCSE to avoid being subject to enforcement remedies. Mother filed an answer, followed by an amended answer, in which she did not dispute that Father had made direct

[1] The 2019 Order provides that Father's child support obligation would terminate when the youngest child "reaches the age of 18; however, if she has not yet graduated from high school, until graduation or age 19, whichever is the first to occur." The youngest child was expected to graduate after she turned nineteen.

payments to her. Instead, she disputed the amount of the credit and "payment of reimbursable expenses."

Beginning on March 16, 2021, BCOCSE suspended the child support account pending the court's resolution of Father's motion.

July 9, 2021 Hearing

A hearing on Father's motion was scheduled for July 9, 2021. Mother filed two motions before the scheduled hearing. On June 4, she filed a Motion for Modification of child support ("Motion to Modify"), claiming that a material change in circumstances developed since the entry of the 2019 Order; there was, among other things, an increase in the child's expenses and an increase in Father's income. On June 7, Mother filed a Motion to Restore (Reinstate) Child Support ("Motion to Reinstate"), seeking to lift BCOCSE's suspension of child support payments to her.

At the start of the hearing, the magistrate sought clarification on the scope of the hearing and the disputed issues given the prehearing filings. As for the Motion to Modify, Mother's counsel confirmed that the motion was not ripe for ruling. Although Father expressed a willingness to resolve it, Mother's counsel explained that doing so that day would not be feasible because Father's income, including any bonuses received, was disputed. As for the Motion to Reinstate, the magistrate indicated that a ruling on Father's motion would likely affect the ruling on the Motion to Reinstate.[2]

[2] On August 19, 2021, the circuit court dismissed Mother's Motion to Reinstate with prejudice.

Turning to the merits of Father's motion, Mother's counsel confirmed that there was no arrearage in what the BCOCSE's records should have reflected; she did not dispute that Father had overpaid. Instead, the dispute involved the amount of overpayment, which Mother's counsel confirmed in the following exchange with the magistrate:

> [MOTHER'S COUNSEL]: Okay. That's correct because there, our calculation is that there's an $1,800 overpayment, [Father is] claiming a $4,300 overpayment. [BCOCSE] now says it's a $3,900 overpayment so—
>
> MAGISTRATE: So everybody agrees there's an overpayment?
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> [MOTHER'S COUNSEL]: Yes, that's correct.
>
> MAGISTRATE: We just can't agree to the number?
>
> [MOTHER'S COUNSEL]: That's correct.

To facilitate the resolution of Father's motion and Mother's Motion to Modify, the magistrate invited the parties to recess and compare documents with help from Susan Parks, the supervising attorney for BCOCSE, who had been subpoenaed to appear at the hearing. During the hour-long recess, the parties could not resolve Mother's Motion to Modify nor agree on the overpayment figure. The magistrate went on to hear testimony in support of Father's motion. Ms. Parks testified, and Mother's bank statements and other financial documents were admitted into evidence.

Ms. Parks's Testimony

Ms. Parks testified about child support that Father paid and owed between June 4, 2018, and October 8, 2021, the operative period under the 2019 Order. For the period of June 2018 through July 2021, Ms. Parks counted 38 monthly "charges" for child support totaling **$57,152.00** (38 x $1,504).

Since June 2018, Mother received direct deposits from Father totaling **$33,483.50** ("Direct Deposits"). Mother also received disbursements managed by BCOCSE totaling **$21,171.88** ("Agency Disbursements").[3] Altogether, Mother received **$54,655.38** in child support (Direct Deposits of $33,483.50 plus Agency Disbursements of $21,171.88).

During the suspension of the child support account, BCOCSE held two funds that had not been distributed to Mother. The IRS had issued Father a tax refund of **$6,376.00** ("Tax Intercept"). Because BCOCSE's records reflected an arrearage in the account, the IRS intercepted the tax refund, and BCOCSE placed a hold on it. BCOCSE also held earnings withholdings collected from Father's paychecks in the amount of **$5,553.28** ("Withholdings").[4] Altogether, the total funds held by BCOCSE was **$11,929.28** (Tax Intercept of $6,376.00 plus Withholdings of $5,553.28).

Ms. Parks then applied these amounts against the amount Father owed for the period of June 2018 through July 2021. Subtracted from the $57,152.00 owed for that period were the Agency Disbursements ($21,171.88) received by Mother. Also subtracted from the amount owed were the two funds held by BCOCSE (Tax Intercept of $6,376.00 and Withholdings of $5,553.28). Finally, BCOCSE subtracted the Direct Deposits of $33,483.50 received by Mother. This resulted in an overpayment of **$9,432.66** ("Overpayment"). Assuming the court ordered BCOCSE to disburse the Tax Intercept to

[3] This amount was based on 61 payments at a rate of $347.08 per week.

[4] This amount was based on 16 payments at $347.08 per week.

Father, then the overpayment was **$3,056.66** (Overpayment of $9,432.66 minus Tax Intercept of $6,376.00).

This left Father owing child support for August through October 8, 2021 (2.25 months), totaling $3,396.00. Applying the overpayment of $3,056.66 to the $3,396.00 owed for the remaining 2.25 months left a balance due of **$339.34** ("Balance Due").

In the end, Ms. Parks proposed the following distribution based on the above reconciliation: (1) direct BCOCSE to disburse to Father the Tax Intercept less the Balance Due: **$6,036.66** ($6,376.00 – $339.34); (2) direct BCOCSE to disburse to Mother the Withholdings plus the Balance Due: **$5,892.62** ($5,553.28 + $339.34); and (3) direct BCOCSE to close its accounts.

Mother's counsel did not challenge Ms. Parks's figures and calculations. Rather, her counsel limited Ms. Parks's cross-examination to whether BCOCSE accounted for unpaid, child-related expenses when calculating the arrearage of child support. Ms. Parks responded in the negative because it would not be up to the agency to collect child-related expenses that a court orders.

Presentation of Mother's Case

In her opening statement, Mother, through counsel, said that "for whatever reason," BCOCSE calculated an arrearage. When BCOCSE had asked Mother about the "status" of support payments, she explained that "there's $60,000 of expenses that [Father had] never paid, there's payment that he made that were incorrect amounts dating back many years." The magistrate asked about the extent of the disputed amount owed, given Mother's acknowledgment, in her written answer, that there was no child support arrearage:

> MAGISTRATE: [Y]our answer number nine says that during the conversation [with BCOCSE], Mother stated there was no child support arrearage, but any amount of [overpayment] would be in dispute. And then in paragraph fourteen, she [says] she doesn't dispute that there were direct payments of child support being made.
>
> [MOTHER'S COUNSEL]: That's correct.

But, as Mother's counsel explained, Father had "opened the floodgates" by filing his motion, and Mother wanted to account for "$60,000 of contribution of expenses over the last fifteen years[.]" The magistrate responded that the issue of child-care expenses was not before him. Counsel agreed: "[W]e can handle those two issues separately. This one is going to be a short one and then the one on expenses is probably going to be a more drawn-out endeavor[.]"

After Father rested his case, Mother took the stand and wanted to testify about "expenses" "with regards to what's been going on in this case the last fifteen years." The magistrate reminded Mother that "[a]nything prior to [the 2019 Order] is completely irrelevant for this hearing[.]" Mother expressed her understanding, and the magistrate signaled for her to begin testimony about the issue at hand. But before she began, Mother said, "I'm sorry," to which the magistrate responded, "That's all right. [W]e'll take five minutes. You guys go outside and chit chat, all right?"

After the brief recess, the magistrate called counsel to the bench for another attempt to resolve Mother's Motion to Modify without success. When the magistrate turned to Mother for the resumption of her testimony, counsel said that she would not testify and instead would proceed to closing argument. Counsel explained that the "whole reason"

Mother wanted to testify was her concern about her "personal reputation" "in this courtroom and, and I advised her."

In closing, Mother's counsel stated that Mother was "at wit's end" because Father had not "fulfill[ed]" his obligations under "prior Orders." "[T]here are legitimate bona fide issues . . . that are not fully resolved yet[.] And we're going to put a bow on it at some point. Today is a small step to getting to that final resolution[.]" In Mother's view, past reductions of child support in "prior Orders" amounted to a downward "deviation" of over $30,000 "because of the level of expenses that were anticipated" due to the child's "health concerns over the years." For that reason, Mother "fe[lt] she's entitled" to "any child support that [Father] has paid," and Father had no right to any "credit, offset or remuneration."

At the end of the hearing, the magistrate remarked that the resolution of Father's motion "is mathematics in a way" and that "we don't go back to the beginning of time"; instead, "we go back" to the last operative order.

Magistrate's Findings and Recommendations

On July 16, 2021, the magistrate issued findings of fact and recommendations ("Report"). In pertinent part, the Report stated as follows:

FINDINGS OF FACTS

* * *

4. Ms. Parks brought her records of payments made by [Father] as well as records of a tax intercept [BCOCSE] received from the IRS.

5. Ms. Parks after a complete review of [Father's] support obligation to date. Payments received by [BCOCSE] through [Father's] earnings

withholding, direct payments made from [Father] to [Mother] and the previously referred to IRS intercept determined that [BCOCSE] was holding total support from all sources of $11,929.28.

6. That based on Ms. Parks'[s] calculation[s] which were not refuted or challenged by either party, Ms. Parks['s] testimony was that [Mother] should receive the sum of $5,892.62, and [Father] shall receive the sum of $6,036.66.

7. Ms. Parks testified that upon her review of the records that there are no arrears and that [BCOCSE] case should be closed.

* * *

RECOMMENDATIONS

1. That based upon the evidence presented which was uncontroverted the court recommends that [BCOCSE] shall cause to be released to [Mother] the sum of $5,892.62.

2. That [BCOCSE] shall cause to be released the sum of $6,036.66 to [Father].

3. That [BCOCSE] records shall reflect that [Father] does not owe any arrears for support in this matter.

4. That [BCOCSE] shall close its file in the above captioned matter and cease all collection activitie[s].

5. That any present earnings withholding orders in place shall be terminated.

Mother's Exceptions and Circuit Court Rulings

In August 2021, Mother filed exceptions to the magistrate's Report, followed by amended exceptions. The exceptions fell into three main categories. First, Mother claimed that Father sought and received credit for overpayments made before the 2019 Order took effect, which amounted to an impermissible recoupment of support payments. Second, Mother disputed the distributed amounts largely because Father failed to reimburse Mother for child-related expenses exceeding $50,000 due under the 2007, 2013, and 2019 Orders.

Third, the magistrate should have considered the child's best interests when he purportedly left the child without support for months before her 19th birthday.

At the exceptions hearing on October 22, 2021, Mother's counsel distilled the "essence" of the exceptions to the magistrate's failure to address the child's best interest when he effectively recommended a "recoup[ment]" of Father's child support payments. No hearing had been scheduled on Mother's pending Motion to Modify, which resulted in "a catch twenty-two" of "piecemeal[ing] this up to [the circuit court]." In the end, Mother sought "a resolution of all of the outstanding issues" to include an assessment of the child's best interest in resolving the purported recoupment, the resolution of Mother's Motion to Modify, and a determination of child-related expenses that Father allegedly owed.

Father's counsel responded that he had not sought to recoup paid child support; he sought recognition of his child support payments made under the 2019 Order. He underscored that the parties agreed there was no arrearage. Thus, the limited issue was whether there had been an overpayment and, if so, what to do with it.

On November 8, 2021, the circuit court denied the exceptions and affirmed the magistrate's Report. On November 29, 2021, the court separately ordered the release of funds held by BCOCSE in amounts recommended by the magistrate, the elimination of Father's arrearages reflected in the BCOCSE records, and the closure of the child support account.

Mother noted her first appeal. Without addressing the merits, this Court vacated both orders because the court did not demonstrate that it had exercised its independent judgment in overruling the exceptions as required under *Domingues v. Johnson*, 323 Md.

486 (1991) and *Kirchner v. Caughey*, 326 Md. 567 (1992). *See Kohan v. Kohan*, No. 1582, Sept. Term, 2021 (filed Sept. 13, 2022).

On remand, the court issued a supplemental ruling, adopting the magistrate's Report and reinstating its November 29 order ("Supplemental Ruling"). The court explained, in pertinent part:

> This [c]ourt finds that the only issue that was before [the] Magistrate [] concerned the overpayment of child support as an accounting issue. The Magistrate had the opportunity to hear testimony from [Ms. Parks of BCOCSE] to come to his finding that it held $11,929.28 in an account for this case. No monies had been distributed to either party. The Magistrate further found and recommended that from these held funds, that Mother would receive $5,892.62, and Defendant Father would receive $6,036.66. This [c]ourt was not persuaded by Mother's position that there were additional expenses to be determined approximating $30,000. Father argued that Mother provided no documentation to support such alleged expenses even after requests to do so by Father. [] Further, this [c]ourt was not persuaded that there needed to be a best interest of the child review before [the] Magistrate [] in that a modification of child support had already been determined [by a judge in connection with the 2019 Order], who most likely would have made such a best interest determination. As stated, the matter before the Magistrate [] was an auditing and accounting one. The [c]ourt further rejects [Mother's] argument that this case should have been combined with the other motion for modification of child support filed by Mother on June 4, 2021.
>
> Mother timely noted this appeal.

ISSUES PRESENTED

The "questions presented" section of Mother's pro se informal brief does not present actual questions. Instead, Mother lists nine numbered headings with accompanying facts and arguments that contain overlapping points:

> Issue 1. Due Process
> Issue 2. Scope of July 9, 2021 Magistrate Hearing
> Issue 3: Recoupment of Overpayment

Issue 4: Best Interests of the Child Standard
Issue 5: The Court failed to consider the financial circumstances of the parties.
Issue 6: Termination of Child Support
Issue 7: Calculation of Child Support
Issue 8: Procedural and Technical Issues
Issue 9: Role of the Baltimore County Office of Child Support Enforcement

According to Mother's reply brief, the "central issue" is "whether the trial court abused its discretion/or [committed] an error of law by accepting the recommendation of [BCOCSE]."

STANDARD OF REVIEW

"When reviewing a [magistrate]'s report, both a trial court and an appellate court defer to the [magistrates]'s first-level findings (regarding credibility and the like) unless they are clearly erroneous." *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014). "On the other hand, the reviewing courts give less deference to 'conclusory or dispositional' findings[.]" *Id*. (citation omitted). "Finally, while the circuit court may be 'guided' by the [magistrate]'s recommendation, the court must make its own independent decision as to the ultimate disposition, which the appellate court reviews for abuse of discretion." *Id*. (citations omitted).

PRINCIPLES OF APPELLATE REVIEW

Before addressing each issue, we note that various points in Mother's briefing are not adequately argued or preserved for our review. We begin by summarizing the principles relating to briefing and preservation that impact our resolution of specific points raised on appeal.

Briefing

Mother filed an "Informal Brief" under this Court's December 19, 2022, Administrative Order permitting informal briefing in family law cases where the appellant is a self-represented litigant. *See* Md. Rule 8-502(a)(9); Appellate Court Administrative Order (Dec. 19, 2022). Although Rule 8-502(a)(9) dispenses with the technical requirements of a formal brief under Rule 8-504, the informal brief still "must identify issues that explain *why the trial court erred or made a mistake* in deciding the case and why the decision should be reversed or modified. The issues presented in the informal brief should be stated concisely with a description of the facts surrounding the issue *and an argument supporting the resolution of the issue.*" Guidelines for Informal Briefs (b)(2) (emphasis added).[5]

As this Court has consistently held, "[w]e cannot be expected to delve through the record to unearth factual support favorable to [an] appellant." *Van Meter v. State*, 30 Md. App. 406, 408 (1976). Nor is it our "responsibility to attempt to fashion coherent legal theories to support [an] appellant's sweeping claims." *Elecs. Store v. Cellco P'ship*, 127 Md. App. 385, 405 (1999). "[W]here a party initially raised an issue but then failed to provide supporting argument, this Court has declined to consider the merits of the question[.]" *See Fed. Land Bank of Baltimore, Inc. v. Esham*, 43 Md. App. 446, 457–58 (1979).

[5] The Administrative Order and the Guidelines for Informal Briefs can be found on the Appellate Court's website.

Preservation

Under Maryland Rule 8-131(a), we will ordinarily not decide an issue unless it plainly appears by the record to have been raised in or decided by the trial court. The purpose of this rule is to "require counsel to bring the position of his client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings." *Chimes v. Michael*, 131 Md. App. 271, 288 (2000). "The rule is effectively a form of estoppel—it curbs appeals that are inconsistent with the parties' positions at trial." *Id*.; *accord Halloran v. Montgomery Cnty. Dep't of Pub. Works*, 185 Md. App. 171, 202 (2009) ("[U]nless a [party] makes timely objections in the lower court or makes his feelings known to that court, he will be considered to have waived them and he can not now raise such objections on appeal."); *see, e.g*., *Chimes*, 131 Md. App. at 288 (appellant "cannot argue now that the child support guidelines apply, because he did not preserve that issue."); *In the Matter of Tyrek S.*, 118 Md. App. 270, 277 (1997) (issue of appellant's inability to pay restitution was not preserved for review because it was not raised in appellant's exceptions to magistrate's recommendation). If the argument is not preserved, we need not address it. *See, e.g*., *In re K.L*., 252 Md. App. 148, 188 n.36 (2021) (where party failed to argue the application of specific standard before magistrate and juvenile court, such argument was not preserved and would ordinarily not be addressed).

With these principles in mind, we address each issue to the extent it is adequately briefed and preserved.

DISCUSSION

Issue 1: "Due Process"

Due process "requires that a party to a proceeding is entitled to both notice and an opportunity to be heard on the issues to be decided in a case." *Blue Cross of Md., Inc. v. Franklin Square Hosp.*, 277 Md. 93, 101 (1976). Mother contends that the magistrate and the circuit court "discarded and discouraged [her] testimony and arguments during the course of the hearings, ignored relevant case law by determining the matter was simply a mathematical calculation." She claims that the magistrate took recesses during the hearing and made "attempts at resolution" that interrupted her counsel's opening statement and presentation of testimony. In her reply brief, Mother adds that she should have been permitted to present evidence and argue about the "miscalculated child support and unpaid expenses." She would have shown that "unreimbursed expenses are child support," and Father had miscalculated his support payments.

Mother's contention that the magistrate and the circuit court violated her due process rights is not preserved for our review. Mother never objected to the way the magistrate and the court conducted their hearings. *See Baltimore Cotton Duck, LLC v. Ins. Comm'r of the State of Md.*, No. 951, Sept. Term 2022, slip op. at 24–25 (filed Oct. 25, 2023) ("[p]reserving review of 'the conduct and actions of a trial judge during the course of a proceeding in which it is alleged that such conduct is detrimental to a party's case' requires that 'the party raises the issue during the trial[.]'") (quoting *Braxton v. Faber*, 91 Md. App. 391, 409 (1992)). Nor did she raise a due process challenge in her exceptions to the magistrate's Report. Accordingly, we decline to address the contention. Even if

preserved, we do not detect a violation of due process. The court did not prevent Mother from presenting evidence pertinent to Father's motion; instead, she elected not to testify, apparently upon the advice of counsel. Nor did the magistrate and court discourage her from making arguments. As to her assertion that she could not present evidence of unpaid child-care expenses, Mother, through counsel, acknowledged below that her claim for reimbursement of these expenses was not before the magistrate.

Separately, Mother complains that the court, in the Supplemental Ruling, disregarded her concerns about "a lack of notice and [s]ua [s]ponte suspension of child support; what ultimately became a termination of child support as of July 9, 2021, and [Father's] recoupment of child support paid prior to the [2019 Order] without proper analysis." We cannot discern how this relates to a due process challenge; the point is not adequately briefed. The subpoints appear to overlap with other issues that we will address later.

Issue 2: "Scope of July 9, 2021 Magistrate Hearing"

Mother recounts the underlying proceedings as follows. Three motions were pending at the time of the "magistrate hearing": Father's Motion to Eliminate Arrearages, Mother's Motion to Modify, and her Motion to Reinstate. She believed that the hearing was limited to the "return of the intercepted tax refund" and "the abatement of the arrearage amount," neither of which she disputed. She excepted to "the [s]ua [s]ponte suspension of child support by BCOCSE at [Father's] urging and without notice, as well as [his] attempt to obtain a recoupment of child support." She claims that the circuit court concluded "without much explanation, that the only issues before it were arrearage and overpayment.

The court failed to consider well established case law on what [was] effectively a recoupment and termination of child support. [Her] arguments regarding recoupment and a proper best interests' analysis [were] ignored."

Mother does not tie the "scope" of either hearing to any error, nor does she explain why the court erred or made a mistake; the point is not adequately briefed. Instead, she appears to take issue with the court's failure to treat Father's motion as a request for recoupment and to consider the child's best interests. These points overlap with other issues that we address next.

Issue 3: "Recoupment of Overpayment"

Mother contends that Father sought recoupment, in the form of a credit, of payments he made between June 4, 2018, and the entry of the 2019 Order. She argues that "[a]ny potential credit [Father] may allege as an overpayment of child support was created by the [the 2019 Order] and simply backdating the child support to June 4, 2018, does not guarantee [Father] a credit of payments made that were used for the benefit of the [child.]" "Under well-established case law, [Father] is not entitled to [credit] as a matter of right, for child support he voluntarily paid prior to the [entry of the 2019 Order.]" She explains that recoupment was not in the child's best interests, payments had already been used for the child's benefit, and Mother could not repay the overpaid sum.

For support, Mother cites *Rand v. Rand*, 40 Md. App. 550 (1978) and its progeny cases. In *Rand,* we held that when a child support award is reversed or modified downward on appeal, the paying party has no absolute entitlement to recoup the overpayments. *Id*. at 555; *see Petitto v. Petitto*, 147 Md. App. 280, 311 (2002); *Krikstan v. Krikstan*, 90 Md.

App. 462, 473 (1992); *Barr v. Barr*, 58 Md. App. 569, 588 (1984). "Only if the paying party shows that the overpayments have not been used to support the child, and the recipient parent has the overpaid sum available to repay, so that, during the recoupment period, the child will not be receiving less support than has been ordered, may the court exercise its discretion to grant a recoupment award." *Corapcioglu v. Roosevelt*, 170 Md. App. 572, 612–13 (2006). The rationale is that recoupment could deprive the child of benefits already received. *Petitto*, 147 Md. App. at 311; *see Krikstan*, 90 Md. App. at 473 ("a parent who 'overpays' [child support] possess no right to recoupment because that would presumably deprive the child of benefits already received.").

The principles enunciated in *Rand* and other cases do not apply to the situation at hand. Father neither sought nor received reimbursement for child support payments that Mother had already received. *See, e.g.*, *Cole v. Cole*, 44 Md. App. 435, 450 n.8 (1979) (noting that principles articulated in *Rand* did not apply because there was no claim for recoupment or restitution of money already paid, among other reasons). Instead, Father wanted BCOCSE to recognize payments he had made under the 2019 Order and apply them against the arrearages reflected in its records. That is what the magistrate recommended, and the court did; there was no recoupment.[6]

[6] In any event, we do not see how the policy concerns that disallow recoupment would prevent the court from applying credit for Father's payments against the arrearages fixed by BCOCSE under the circumstances. In *Rand*, this Court adopted the view expressed by New York courts that a party making child support payments under a court order has no right to restitution following a reversal or modification of the award on appeal. 40 Md. App. at 553. Notably, New York courts also have expressed that entitlement to credits for overpayment of child support may be permissible under limited circumstances. *See, e.g.*,

Issue 4: "Best Interests of the Child Standard"

Mother contends that the circuit court disregarded the child's best interest in resolving Father's motion where the child has been struggling with "health and educational pursuits" resulting in extraordinary expenses. Specifically, she argues that it would not be in the child's best interest to allow Father to "recoup child support or terminate child support earlier than her 19th birthday."

Mother's legal argument does not persuade us because it assumes incorrectly that Father sought and received recoupment of child support payments and an early termination of his support obligation. *See* discussion of Issues 3 and 6. We agree with the court that the issue before the magistrate was an "auditing and accounting one." The court did not err in concluding that the best-interest analysis was unnecessary to resolve Father's motion.

Issue 5: "The [c]ourt failed to consider the financial circumstances of the parties."
Issue 6: "Termination of Child Support"

Mother claims the circuit court erred when it terminated child support as of July 9, 2021. In terminating child support prematurely, she contends that the court should have considered the parties' financial circumstances and the effect of such termination. She cites *Frankel v. Frankel*, 165 Md. App. 553, 587 (2005) and Maryland Code, Family Law Article ("FL") § 12-204(d) for the proposition that when a court determines a child support award, it must balance the best interest of the child against the financial ability of the parents.

In re Taddonio v Wasserman-Taddonio, 858 N.Y.S.2d 721, 722–23 (App. Div. 2008) (father was entitled to a credit for overpayments of child support made directly to mother against "arrears" fixed by support collection agency).

We disagree with Mother's assertion that the court terminated child support as of July 9, 2021. In her calculation, Ms. Parks accounted for the month of July; she also accounted for August, September, and part of October 2021 and determined that Father owed child support in the amount of $3,396 for those 2.25 months. The overpayment of $3,056.66 was applied to the $3,396 owed for those 2.25 months, resulting in the Balance Due of $339.34. The Balance Due was to be disbursed to Mother together with the Withholdings of $5,553.28. Thus, at the closure of the BCOCSE account, child support for the period between July through the child's 19th birthday was accounted for.

As for consideration of the parties' financial circumstances, the point was not raised below and is not preserved. In any event, the argument assumes incorrectly that the court terminated child support prematurely. And the legal authorities Mother cites examine the court's considerations in *establishing* child support, which did not occur here. *See Frankel*, 165 Md. App. at 587 ("Factors which should be considered when *setting* child support include the financial circumstances of the parties[.]") (citations omitted and emphasis added); FL § 12-204(d) ("the court may use its discretion in *setting* the amount of child support.") (emphasis added).

Issue 7: "Calculation of Child Support"

Mother claims the "credit" given to Father exceeds Ms. Parks's calculated amount. She explains:

> A total of 34 payments were made between March 16, 2021 [when the BCOCSE account was suspended] and the final payment collected once the child reached 19. Each payment was $347.08 for a total of $11,800.72. This is [sic] excludes the amount collected by way of tax intercept. [Mother] received $5892.62 [of] the $11,800.72 leaving a balance of $5908.10

> returned to [Father] for support collected between the July hearing and her emancipation. This amount exceeds the overpayment testified to by Ms. [P]arks from the BCOCSE by at least $2008.10.

Mother did not raise this challenge below. Because the point is not preserved, we decline to address it. Even if preserved, the court did not err in affirming the magistrate's findings on the amounts to be distributed to the parties. Ms. Parks detailed her calculation of Father's overpayment, accounting for all child support payments made, disbursed, held, and owed between June 2018 and October 2021. In contrast, Mother appears to base her calculations on segmented periods and certain assumptions or assertions not supported by the record. Because the magistrate's fact-finding was supported by credible evidence, the court's deference to those findings was not clearly erroneous. *See Marquis v. Marquis*, 175 Md. App. 734, 754 (2007) (explaining that the trial court should defer to the magistrate's fact-finding where it is supported by credible evidence and is thus not clearly erroneous).

Mother also points out that the court did not explain the mathematical calculations used to determine the amounts to be distributed to each party. This overlaps with Issue 8, which we will address next.

Issue 8: "Procedural and Technical Issues"

Mother asserts that the Supplemental Ruling does not comply with the standard in *Domingues* or *Kirchner* because the circuit court failed to explain how it arrived at the amounts credited to each party and how its determination was in the child's best interests.

The standard in *Domingues* and *Kirchner* does not require the court to "give a litany of its reasons for accepting and adopting the fact finding, conclusions, and recommendations of a [magistrate]." *Kierein v. Kierein*, 115 Md. App. 448, 455–56 (1997).

Instead, it provides that the court must exercise "independent judgment concerning the proper conclusion to be reached upon th[e] facts." *Domingues*, 323 Md. at 490; *see also Kierein*, 115 Md. App. at 455–56 (the court's opinion must "reflect consideration of the relevant issues and the reasoning supporting the chancellor's independent decisions on those issues").

In the Supplemental Ruling, the court stated that it resolved the factual challenges presented. It found that the only issue before the magistrate was "an accounting issue" and implicitly rejected Mother's recoupment argument. It affirmed the magistrate's finding that BCOCSE had held $11,929.28 based on Ms. Parks's testimony. It also affirmed the magistrate's finding and recommendation that "Mother would receive $5,892.62," and "Father would receive $6,036.66" based on Ms. Parks's calculations recounted above. The court rejected Mother's contention that "there needed to be a best interest of the child review" because the issue "was an auditing and accounting one." We are satisfied that the Supplemental Ruling "reflect[s] consideration of the relevant issues and the reasoning supporting the [court's] independent decisions on those issues." *Kirchner*, 326 Md. at 573.

Issue 9: "Role of the [BCOCSE]"

Finally, Mother claims that Ms. Parks "offered what she fe[lt] [wa]s a good resolution without concern for case law and assum[ed] the credit of child support is a routine function not subject to any analysis." Mother argues that the magistrate and the court deferred to Ms. Parks's testimony and "ignore[d] the legal effect of their rulings." "While this may be a mathematical calculation at BCOCSE, the purpose of coming before the [c]ourt is so that the law can be applied in a fair and reasonable way that does not

infringe upon the right of the child." Because child support is for the child, the court "must exercise [its] independent judgment and not defer to a government agency unfamiliar with the intricacies of the law."

The issue of deference to Ms. Parks's testimony was not raised in Mother's exceptions and is not preserved. Even if preserved, the argument lacks merit. Ms. Parks was a fact witness whose role was to testify about the child support that was collected, disbursed, held, and owed. She recommended the distribution of funds held with the BCOCSE based on objective calculations. Once her testimony was admitted, the magistrate could give it the weight it deserved and make findings accordingly. *See Starke v. Starke*, 134 Md. App. 663, 676 (2000) (explaining that assessing how much weight to give evidence is within the exclusive control of the fact-finder). The court exercised its independent judgment in accepting and adopting the magistrate's fact-finding, conclusions, and recommendations. For the reasons stated, the court did not err in affirming the magistrate's recommendations.

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