UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1624

September Term, 2015

KAREN RENEE LOWMAN

v.

RICHARD LOWMAN

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

JJ.

Opinion by Zarnoch, J.

Filed: January 11, 2017

Karen Lowman ("Mother"), appellant, and Richard Lowman ("Father"), appellee, are currently divorced with two children. At the time of the divorce, Father was ordered to pay child support to Mother. In August 2014, Father filed a motion to modify child support, alleging that one child was no longer a minor and that the other child was now living with Father. Several hearings were held on this motion in the Circuit Court for Anne Arundel County. At the conclusion of the final hearing, the court found that Mother was voluntarily impoverished and ordered her to pay child support to Father. Mother filed a motion for reconsideration, which was subsequently denied.

Mother appealed, and now presents two questions for our review:

1. Did the court make a reversible error in determining that Mother was "voluntarily impoverished" in the absence of evidence and without considering the factors required?

2. Did the court make a reversible error by imputing income to Mother without considering any factor except her job history?

For the following reasons, we answer no to Mother's questions and affirm the judgment of the circuit court.

BACKGROUND

During the course of their marriage, Mother and Father had two children together. The parties divorced on July 15, 2008. Since the divorce in 2008, the parties have returned to court several times for issues involving their minor children. The instant appeal concerns the most recent ruling in that case.

On August 26, 2014, Father filed a Motion to Modify Child Support. The motion stated that Father had been paying $600 a month in child support, in accordance with an April 27, 2012 court order. Father requested a decrease in child support for several reasons: (1) he was unemployed, (2) one child had graduated high school, and (3) the remaining minor child was now residing with Father.

Several hearings were conducted in the circuit court on this motion. The first hearing on the motion to modify took place on January 8, 2015.[1] During the hearing, Mother disclosed that she had recently lost her job. At the conclusion of the hearing, the court released Father from his obligation to pay child support, and set the case in for another review hearing to determine child support obligations.

On April 10, 2015, the parties appeared before a family magistrate. At the conclusion of the hearing, the magistrate issued a report finding that Mother now owed child support. The case was set in for yet another review hearing before a judge to take place on July 10, 2015. In order to obtain a better financial picture of the parties, the magistrate instructed Mother to present evidence at the next hearing that she was seeking employment. The magistrate also noted that Mother was a part owner of her fiancé's new business in South Carolina, and ordered Mother to produce banking records for this business at the next hearing.

On April 17, 2015, Father filed Exceptions to the Master's Report and Recommendations. In his exceptions, Father argued that the court had failed to inquire

[1] Transcript of this hearing and the magistrate's report are not in the record.

whether Mother had become voluntarily impoverished. Father asserted that by setting the case in for another hearing, the court was unfairly giving Mother more time to avoid paying child support. On June 8, 2015, the circuit court held a hearing on Father's exceptions. At the hearing, the court informed Father that the filing of exceptions was not the proper procedure at that time, because no final decision had been made in the case. The court then dismissed the exceptions because there was no decision to review.

On July 10, 2015, a final hearing was held on Father's motion. Father informed the court that he had just obtained employment three days before the hearing. Father testified that his income from August 2014 through July 2015 was approximately $2,000, but that his new position would pay him $44,000 a year. Mother explained that she used to make $3,750 a month (or $45,000 a year) when she worked for 3G Wireless, but was fired on December 8, 2014. Mother told the court that she currently worked for a liquor store in South Carolina that her fiancé had recently bought. Mother was in charge of the books for the business, and paid herself a minimum wage of $7.25 per hour. Father argued to the court that Mother was voluntarily impoverished because she chose to pay herself minimum wage in her new job, despite the fact that she was capable of getting a job where she made $45,000 a year. Mother asserted that she was involuntarily

terminated from her previous job with 3G Wireless. When the court asked for documentation to prove this, Mother had none.[2]

As the conclusion of the hearing, the court made its findings. The court found that Mother was earning $3,750 per month when Father's motion was filed in August 2014, and that she had provided no proof that she was involuntarily terminated from that position. Accordingly, the court found that Mother was voluntarily impoverished and computed her income as $3,750 per month in the child support guidelines. Taking into account that Father had provided proof that he was laid off from his job, the court computed his income as minimum wage up until the point he obtained a job. The court determined that Mother owed Father child support in the amount of $6,994 for the period from September 2014 through July 1, 2015. The court also imposed a child support obligation on Mother of $564 per month effective July 1, 2015. On August 3, 2015, court also issued an order reiterating these findings.

On August 17, 2015, Mother filed a motion for reconsideration, asking the court to lower her child support obligation.[3] Mother attached her termination letter as proof that she was involuntarily terminated from her previous job. The letter of termination states

[2] Mother told the court that she had a letter of termination from 3G Wireless. When the court asked to see the letter, Mother responded, "I don't have that today. I didn't know I was supposed to bring that."

[3] Mother titled her filing as a "Motion for Reconsideration." Under the Maryland Rules, this type of motion is considered a "Motion to Alter or Amend a Judgment," Md. Rule 2-534, or a Motion to Revise, Md. Rule 2-535. For the purposes of this opinion, we will refer to it as a motion for reconsideration.

that Mother was fired for "gross misconduct and fraud." Mother had been caught using a company credit card for personal expenses that she attempted to disguise as company expenses. On September 15, 2015, Mother's motion was denied. On October 2, 2015, Mother filed her notice of appeal.

DISCUSSION

I. Which ruling are we being asked to consider?

The court issued its child support order on August 3, 2015. Mother filed her motion for reconsideration on August 17, 2015.[4] To stay the underlying judgment a motion must be filed within ten days of the entry of judgment. *See* Md. Rule 2-534. Mother's motion for reconsideration was filed fourteen days after the entry of judgment; therefore, it was untimely. However, "[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534." Md. Rule 2-535. Mother's motion was filed within thirty days of the judgment in this case. Therefore, for purposes of this appeal, Mother's motion will be considered a motion to revise pursuant to Rule 2-535. Mother filed her notice of appeal on October 2, 2015; therefore, it was not timely to appeal the underlying judgment from August 3, 2015. *See Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997) (holding that motions to revise must be filed within ten days of judgment to stay the time for filing an

[4] The motion was signed and dated August 11, 2015. However, it was stamped with a filing date of August 17, 2015.

appeal). Nevertheless, the appeal of the court's September 15, 2015 denial of Mother's motion to revise was timely filed. Accordingly, we are tasked with reviewing the court's denial of Mother's motion to revise. We review the circuit court's decision to deny a motion to revise under the abuse of discretion standard. *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013).

II. Voluntary Impoverishment

Mother's motion for reconsideration challenged the validity of the court's determination that she was voluntarily impoverished. Under Maryland case law, "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 v. Goldberger*, 96 Md. App. 313, 327 (1993). "[T]he question is whether a parent's *impoverishment* is voluntary," and "a parent who has become impoverished by choice is 'voluntarily impoverished' regardless of the parent's intent regarding his or her child support obligations." *Wills v. Jones*, 340 Md. 480, 494 (1995).

Maryland courts have recognized several factors that the trial court should look to in determining whether parents have voluntarily impoverished themselves:

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.

Goldberger, 96 Md. App. at 327 (Citation omitted).

Mother contends that the court erred by hastily conducting a hearing in which it did not consider these factors in making its voluntary impoverishment determination. Mother argues that "no evidence of any sort was brought forward to suggest that [Mother] had quit her job, had failed to seek employment, or was otherwise voluntarily impoverished." Mother claims that the court improperly shifted the burden of proof to her to prove that she was not voluntarily impoverished. Accordingly, Mother asserts that the court should have calculated Mother's child support based on the minimum wage she was earning in her current job.

Father counters that the court did not act hastily and only reached this conclusion after several hearings on the issue. Father asserts that the court gave Mother opportunities to demonstrate that she had not voluntarily impoverished herself, but she repeatedly failed to do so. Father argues that evidence concerning Mother's firing was

readily available the entire time, but that Mother failed to produce it until the motion for reconsideration and clearly evaded the court's questions during the hearing about why she got fired. Finally, Father contends that Mother has chosen to pay herself a minimum wage in her new job, thus voluntarily impoverishing herself.

Father is correct in his assertion that this ruling was not a hasty decision as Mother has characterized it. Instead, it came at the end of several hearings in which Mother was given the chance to offer evidence about her employment, but never did prior to judgment. Father initially filed his motion to modify child support in August 2014. At that time, Father was unemployed and Mother had a job making approximately $45,000 a year. Over the course of the next year, the parties came to court four times on the motion. At the first hearing in January 2015, it was revealed that Mother was now unemployed as well.[5] The parties reconvened in April 2015, where the court determined that Mother now owed child support, but set the case in for another hearing to give the court a better understanding of the parties' financials. At this hearing, the court also attempted to ask why Mother was not receiving unemployment insurance benefits. Mother responded by telling the court that she was "not really sure," and that it was "something to do with the handbook I didn't follow correctly." In retrospect, Mother's answer was clearly misleading, because she later revealed that she was fired for fraud, which led to the denial of unemployment benefits. A third hearing was held after Father improperly filed exceptions. The fourth and final hearing on the motion was held in July

[5] No transcript of this hearing is included in the record.

2015. At that hearing, Mother testified to the court about her employment status, but again provided no documentation to support her assertions despite the fact that the court had instructed her to produce evidence at the previous hearing. Furthermore, Mother still provided no explanation for why she had been terminated from her job. When Mother informed the court that she had a letter of termination but did not bring it to the hearing, the court told her: "You were to bring it today. Today was the trial. You didn't prove it to me." Mother also failed to adequately explain why she chose to pay herself only minimum wage in her new position. It was at the conclusion of this fourth hearing that the court determined that Mother was voluntarily impoverished.

Mother contends that the court improperly shifted the burden to her to prove that she was not voluntarily impoverished. We are not persuaded. The financial circumstances of the parties were integral to the issue of child support. Over the course of the proceedings, it became clear to the court that there was something amiss about Mother's financial status. The court did not shift the burden to Mother, but rather the evidence that was presented to the court pointed to a conclusion of voluntary impoverishment, and Mother did nothing to rebut this conclusion.

Furthermore, although the court did not specifically discuss each factor on the record before reaching this conclusion, there is no requirement for the court to do so. We have stated before that

> [a]lthough the factors must be considered by the trial court, the statute does not require the court to articulate on the record its consideration of each and every factor . . . ." *Dunlap v. Fiorenza,* 128 Md. App. 357, 364 (1999) (citing *Lapides v. Lapides,* 50 Md.

> App. 248, 252 (1981)). Contrary to appellant's assertion, therefore, mere lack of an explicit discussion of each of the factors on the record by the trial court does not necessarily mean that the trial court erred in concluding that appellant was voluntarily impoverished.

Long v. Long, 141 Md. App. 341, 351 (2001). Therefore, the court did not err when it did not discuss each factor on the record.

The evidence before the court at the time of the final hearing on Father's motion supported its conclusion that Mother was voluntarily impoverished. One important factor that the court considered was "the timing of any change in employment or financial circumstances." *Goldberger*, 96 Md. App. at 327. Mother had a job making approximately $45,000 per year at the time Father filed his motion. Mother lost her job soon after the motion was filed, but prior to the first hearing. Mother never provided an explanation to the court for her firing, despite possessing a letter of termination that explained she was fired for fraud. Another considered factor was "her efforts to find and retain employment." *Id.* Initially, Mother failed to provide evidence to the court that she was seeking new employment in the wake of her firing. Eventually, Mother told the court that she was working for her fiancé's business in South Carolina, where she was making minimum wage by choice. Taken all together, the evidence available to the court showed that Mother lost her job without explanation, and responded by taking a job working for her fiancé where she had control of the books and decided to pay herself minimum wage. This was sufficient to show a "free and conscious choice" to render herself "without adequate resources." *Id.*

We note that "misconduct on the part of an employee is not sufficient to deem a subsequent termination of employment 'voluntary' even if the employee's termination was a foreseeable result of the misconduct." *Wills*, 340 Md. at 496. Nevertheless, Mother failed to articulate to the court the circumstances behind her termination, despite appearing before the court numerous times. Mother was given several opportunities, and yet she failed to timely present any evidence to the court that she was involuntarily impoverished. Mother did not produce her letter of termination to the court until she attached it to her motion for reconsideration. Under Rule 2-535(c), "[o]n motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533." The new evidence included with Mother's motion for reconsideration was available to her throughout the entirety of the proceedings before the court. Mother had chances to provide evidence, but never did. Nor did Mother provide an explanation for her failure to do so. Therefore, the court did not abuse its discretion in denying Mother's motion for reconsideration.

III. Imputing Income

Mother contends that even if she was voluntarily impoverished, the court erred in imputing her prior income to her. Mother asserts that the court failed to consider any of the necessary factors before making its decision. Mother argues that there is "simply no logical or legitimate basis for imputing income to [Mother] based on the evidence presented."

"[A] parent's support obligation can only be based on potential income when the parent's impoverishment is intentional." *Wills*, 340 Md. at 494. As explained *supra*, the court found that Mother was voluntary impoverished; therefore, it was proper for the court to impute potential income. The court in this case found that Mother's potential income was the amount Mother was making in her job before she was fired. Accordingly, the court imputed that potential income to Mother when determining her child support obligation.

On this issue we have stated:

> Once a court determines that a parent is voluntarily impoverished, the court must then determine the amount of potential income to attribute to that parent in order to calculate the support dictated by the guidelines. Some of the factors the court should consider in determining the amount of potential income include:
>
> 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.

Although not explicitly articulated on the record, the court in the instant case clearly considered several of these factors in its determination. The evidence available to the court showed that Mother had prior earnings of $3,750 per month. Mother testified that she had been fired, but declined to provide any such proof to the court despite being told to bring such documentation to court. On appeal, Mother has claimed that there was uncontroverted evidence that she was laid off from her job. This assertion is patently false as her own termination letter states that she was fired for "gross misconduct and fraud." Mother provided no reason why she could not obtain employment making a similar income, nor why she chose to pay herself a minimum wage in her current position. Given the evidence that was available to the court and Mother's failure to rebut it, the court did not abuse its discretion in imputing her income.

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