Circuit Court for Anne Arundel County
Case No. 02-C-13-179554

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1687

September Term, 2022

Andrew F. Ball

v.

Lisa Lorraine Tate

Graeff,
Reed
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 3, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

*At the November 8, 2022 general election the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case comes as an appeal from a custody and child support case concerning K.B., the minor biological daughter of Appellant Andrew F. Ball ("Father") and Appellee Lisa Lorraine Tate ("Mother").

Over the last decade, the parties have been involved in multiple contentious disputes over K.B. resulting in the filing of countless motions to modify custody and child support, as well as contempt motions by both parties. The latest case and current appeal stem from Mother and K.B., who is now sixteen years old, moving out of Maryland to Virginia. As a result, Father petitioned for full custody—arguing that the move to Virginia was done in secret and without his input. He further argues that it has substantially affected his ability to exercise his custodial visitation with K.B. and therefore has resulted in a material change in circumstances that necessitates a modification in custody. Additionally, due to various job losses since 2020, Father also sought to have his weekly child support reduced to reflect his change of income.

The Circuit Court for Anne Arundel County denied both of Father's motions and now Father presents the following questions for our review:

1. Did the trial court abuse its discretion in finding that there was no material change of circumstances that justified modifying custody after Mother and child relocated to another state?

2. Did the trial court abuse its discretion in finding that Father's reduction in income did not constitute a material change of circumstance that allowed the court to modify child support?

For the reasons discussed below we conclude that trial court did not err and thus shall affirm.

FACTS AND PROCEDURAL BACKGROUND

The parties were married in Massachusetts in 2001 and resided there until their divorce in 2010. While here, Appellant Husband attended Harvard Business School. They share one child together who was born in September of 2006. After their divorce in 2012, Father moved to Connecticut. In 2013, Mother, who has been K.B.'s primary custodian, moved to Maryland where they both resided until the summer of 2022 when they moved to Virginia. Father has since remarried and has another child with his current wife.

After Mother and K.B. relocated to Maryland, Father registered the Massachusetts orders in Maryland and then filed a complaint to modify custody, requesting an expedited *pendente lite* hearing, and other relief. In this complaint, Father sought full custody or, in the alternative, shared custody with substantially more visitation with K.B..

In April 2014, the Circuit Court for Anne Arundel County modified the physical and legal custody order [hereinafter "2014 Order"] to account for the fact that the prior custodial arrangement necessarily needed to factor in how K.B. would visit Father in Connecticut. Notably, the 2014 Order established a detailed visitation schedule on how Father would see K.B. The order also stated, "that if there comes a time the parties reside in the *same state* it may constitute a change in circumstances which would warrant a review of the access schedule in this Order[.]" (emphasis added). Additionally, the order stated that Father would be responsible for all travel costs related to visitation and gave Mother tie-breaking authority over K.B.'s schooling with the condition that if she elected private school for K.B., she would be responsible for all costs. Due to Father's income increasing

substantially since the original 2010 order, the 2014 Order also increased Father's child support obligation from $531 weekly to $731 weekly.[1]

The following year, the parties went back to court to resolve their disagreement over the interpretation and implementation of the 2014 Order. The "2015 Order" (Supplemental Child Support and Custody Order) specified how Father would execute his two custodial visits each month—one weekend would be in Connecticut and the other (optional) weekend would be in Maryland. For K.B.'s visits to Connecticut each month, the Order required Mother to drive K.B. to BWI airport and Father to pay for the flights. For Father's visits to Maryland, Father would drive four and a half hours down and book a hotel for the weekend. Additionally, Father was entitled to have K.B. for six weeks broken down into two-week blocks each summer. The 2015 Order further required Father to submit his preferred summer weeks to Mother each year by April 15th.

During the COVID-19 pandemic, the parties deviated from the agreed upon plan and suspended Maryland visits. For the Connecticut visits, each party agreed to drive two hours and meet halfway once a month so Father could exercise visitation with K.B. in Connecticut. From March 2020 through May 2021, Father traveled to visit K.B. in Maryland two or three times.[2]

In September of 2020, Father was laid off from his job of eight years at an assets management company where he was making around $400,000 a year. Over the next couple

[1] Rather than requiring Father to "pay twenty percent of his bonuses as additional child support," this new child support amount was based on his total income of about $200,000 which included bonuses.

[2] K.B. moved to Virginia in June 2021.

of years, Father worked different jobs—from earning $16,000 from his own company[3] to working for a company called Enfusion where he made over $85,000 in a three-month span[4] to his current job at Catylex where he reported making a significantly lower salary of $100,000 annually.[5] He was given a ten-month severance package that allowed him to continue paying his usual child support until February 2022.[6] On November 3rd, 2021, Father motioned for a reduction in child support due to a decrease in income and also asked that Mother be ordered to contribute towards the transportation costs required for him to exercise his custodial rights.[7]

At the time Father lost his job, both parents were talking about K.B. attending either Chatham Hall or The Gunston School—a private school off the eastern shore.[8] Once Mother learned of Father's job loss, she stated she was not sure she could afford the tuition at either Gunston or Chatham Hall so she exercised her tie-breaking authority to enroll K.B. in a Christian preparatory school in Roanoke, Virginia. After learning of Mother's plans to move to Roanoke, Virginia with K.B., Father filed a complaint on February 11th, 2021 for child custody and modification to child support and to enjoin Mother from moving K.B. out of Maryland until the merits hearing where Father was seeking primary custody.

[3] From January to March of 2021.
[4] From April to June 2021.
[5] Father first worked in a temporary advising role at Catylex without a salary in hopes that it would lead to the opportunity to earn equity in the business. However, Father reports that in November 2021, Catylex began paying him $60,000 annually until the start of 2022 where he is now earning at a rate of $100,000 a year.
[6] Father's severance pay ended in June 2021. The severance pay included $262,615.20 which, according to the agreement was equal to 40 weeks of Father's base salary at that time, as well as a discretionary bonus of $44,500.
[7] In the motion, Father asks the court "[t]hat Defendant should be required to contribute to the cost of transportation and other expenses to facilitate Plaintiff's access to the minor child now ordered to be paid by Plaintiff."
[8] The parties also discussed K.B. potentially going to Chatham Hall which is forty minutes closer to Maryland than Roanoke.

In this complaint, Father alleged that Ms. Tate "refused to discuss her plan, in advance, with the Plaintiff, and, in fact, lied to Plaintiff as to her intentions, and took other actions. . . to move the minor child without Plaintiff's knowledge or consent." He pointed out that Mother knew he was considering moving his family to Maryland at that time and that he told Mother as much before she listed her home on the market or purchased her Virginia home.[9] Finally, the complaint also alleged that K.B. had excessive absences from school that were not related to illness and that the pending move to Virginia would negatively impact his access to her.

Both parties attended a show-cause hearing on April 21, 2021 and the presiding magistrate denied Father's petition and found that Mother was not in violation or contempt of any legal custody order. The magistrate stated Mother has the constitutional right to relocate and to pick K.B.'s schools. The magistrate also found that Mother's communications with Father were sufficient and that Father was provided with enough opportunities to provide input.

On April 16th and 20th, Mother also filed motions for contempt against Father and for a *Pendente Lite* Modification of Visitation. The contempt petition was based on Father

[9] At trial in 2022, Father stated he communicated to Mother twice in December that he was considering moving to Maryland. According to Father, at that time, Mother was also considering moving to Virginia. In January of 2021, Father emailed Mother inquiring about the seriousness of the move to Virginia and to find out more information on which school K.B. would attend. Mother emailed backed on January 8th saying she was considering moving to the Roanoke area and enumerated several reasons why (e.g., more affordable, opportunity to own land, therapeutic horse riding programs, and good private schools). Father emailed back again on January 11th, 15th, 20th, and 25th regarding the status and seriousness of moving. On January 25th, Father noticed Mother's house was under contract and asked her what the plan was. Mother responded on January 26th but gave no specific info on schools. On March 30th, Father emailed again about the move and schools. Mother emailed back on April 1st. Father testified that from January 2021 to Summer 2021, Mother did not communicate with him on what school K.B. would be going to. He also testified that he didn't officially know where they moved to **until he saw the address change on a line filed with the courts.**

failing to follow the 2014 Order—which required that he submit which summer weeks he wanted by April 15th each year and as of the date of the motion (April 20th) those dates were not provided. She also listed that in previous years, the dates were also delinquent.

Mother's motion to modify visitation states it was to "avoid any ideas of 'contempt' due to the material change of circumstances as a result of relocation to attend High School." Mother also argued that a change in visitation was necessary due to Father not planning or requesting his visitation with K.B. in a timely manner. Mother further emphasized that, due to K.B.'s academic and social needs changing, the 2014 visitation schedule was no longer appropriate. At the show-cause hearing on June 11th, 2021, the magistrate found that Father violated the visitation order by not providing his visitation schedule, however, denied Mother's petition because the violation did not amount to contempt.

In the summer of 2021, K.B., resisted going to Connecticut for the summer because she wanted to participate in school activities and sports, as well as potentially get a job. [10] K.B. testified at trial, that while she wanted to spend time with her dad and little sister in the summer, she didn't want to spend the whole six weeks there and wanted more flexibility in when she would visit her dad throughout the year.[11] Due to issues regarding K.B. not going to Connecticut in accordance with the custody order and the parties having different interpretations of the court order, a consent order clarifying summer visitation was agreed

[10] Following the *pendente lite* hearing on June 28th, K.B. was supposed to go with Father that evening for summer visitation. She refused to go, and the incident ultimately escalated to the police being called. However, K.B. did willingly go with Father the following day. When asked if Mother did anything to encourage K.B. to go, Father testified at trial that Mother did "absolutely nothing" to encourage her. [E. 117] However, K.B. testified that she was punished by Mother for the incident and that Mother always said she needs to go with her Father.

[11] This was exacerbated by her summer break shortening in length from thirteen weeks to ten weeks since the prior order.

to on July 20th, 2021. This order states that Father will have custody of K.B. from "June 28th, 2021 to July 17th, 2021 and then again on July 25th, 2021 to August 15th, 2021." [12]

On June 28th, 2021, a *pendente lite* hearing was held regarding Father's request that K.B. be forced to stay in Maryland (arguing that if Mother cannot stay in Maryland, he is willing to move to Maryland to care for K.B.)[13]. The magistrate recommended that the circuit court deny Father's request that K.B. stay in Maryland until the merits hearing, stating:

> The undersigned finds that the Plaintiff's request that the child be ordered to stay in Maryland, when neither party resides in Maryland, is not appropriate nor in the child's best interest. Such relief seems more appropriate in a request for an injunction and/or as a sanction or a purge, but for the purposes of a pendente lite hearing in determining a custodial arrangement, such relief in [sic] not a justifiable option. The Plaintiff's request for such relief essentially would require a finding that a particular geographic location is more important than who the child actually resides with.
>
> . . . .
>
> Therefore, the undersigned finds that even if the Defendant has willfully violated the terms of the two Orders, the Defendant's conduct and actions do not support an Order that the child be ordered to remain in Maryland. Therefore, the undersigned recommends that the Plaintiff's request for pendente lite relief be denied.

On November 3, 2021, Father filed a motion to modify child support and reduce it to $1,000 monthly due to unemployment and decreased income.[14] In February 2022, Father informed Mother that he was going to reduce his child support contribution to being based

[12] The Order further stated: "ORDERED AND AGREED, that the minor child shall participate in the Queen Anne's County Fair while in the Plaintiff's care and custody from August 9, 2021 to August 14, 2021."
[13] At the P.L. hearing, Mother requested that there be no changes to the two orders.
[14] The motion was amended on December 7, 2021.

on a salary of $100,000 a year. This led to Mother filing for child support enforcement in Virginia resulting in Father having his paychecks garnished with arrearages due to his self-reduced February payment. Effective since March 2022, Father is garnished each bi-weekly paycheck, alternating from $1,742.89 and $1,555.39.

In 2022, K.B. again did not want to spend six weeks in the summer with Father because she had school activities and needed to complete Driver's Ed. This led to Father filing his second contempt petition against Mother and to requesting another *pendente lite* hearing, which the court denied. Mother claimed there was no court order for the 2022 summer schedule and therefore no court order was violated for which she could be found in contempt of. Mother claimed that the 2021 *pendente lite* order did not cover 2022 and that meant that the parties had to do what they were doing previously—look at their respective calendars and work it out.[15] Mother also stated that K.B. has never lived with her dad [full-time], that they [currently] do not have a great relationship and, therefore, awarding primary custody to Father would be inappropriate**.**

The merits trial began on October 6th, 2022 for Father's Amended Complaint for Modification of Child Custody and other Relief filed 12/14/2021; Plaintiff's Petition for Contempt filed on 8/22/2022; and Defendant's Opposition to Motion for Complaint filed on 8/26/2022.[16] Days two and three of the trial occurred on October 7th and November 4th.

[15] The circuit court took judicial notice of "The Consent Order for Plaintiff's Summer Access for 2021 that was entered by the Court on July 20, 2021"; that is specifically addressed summer 2021, not summer 2022 and that everyone assumed that but for COVID-19 shutdowns and delays, the 2022 schedule would have been worked out earlier.

[16] On April 16, 2021, Mother filed a modification of visitation to address the issues with the summer schedule due to it no longer being in K.B.'s best interest as her summer breaks decreased in length by three weeks. Also note: on 11/07/2022, the circuit court denied Mother's petition to modify the visitation schedule. Father's attorney said at

The final day of court occurred on November 14th and the court ruled that there was no material change in circumstances as it related to child custody. The Court also held that Mother was not in Contempt.[17]

At the close of the hearing on the 14th, the parties were asked to submit written closing arguments regarding Father's child support modification and August contempt petition. On November 15th, the trial court issued its oral opinion via Zoom, denying Father's motion to modify child support due to finding no material change in circumstances. Additionally, the court denied awarding Father attorney's fees. On November 29th, Father filed the appeal that is now before this Court.

On June 5th, 2023, this Court heard the parties' oral arguments, with Mother now representing herself *pro se*. Father argued that the circuit court denied the modification for custody and child support at the threshold stage of a material change in circumstances. He focused this Court's attention on *Domingues v. Johnson* which concentrated on the future best interest of a child. *Domingues v. Johnson*, 323 Md. 486, 499, 593 A.2d 1133, 1139 (1991). Father argued that the circuit court set too high of a bar and that *Domingues* calls for a more relaxed view of what constitutes a material change specifically stating:

trial "[a]nd I do think that is a change of circumstance. They filed to modify visitation because of -- the same thing. And I assuming they are not moving forward on that petition if they are saying there is no material change of circumstance."

[17] The court stated,

> With regard to the contempt, I understand what you are saying, Ms. Bayne. I think it is in, when I am considering the big picture, and what all has happened here, I do not find -- I think there has been some lack of good communication between both parties. I think there is room for improvement from both sides.
>
> I do not find that it was a willful disregard of the court order. I am not going to find her in contempt. My hope is that moving forward, you all do not come back. You have two more summers to go with her in the hope that you all both have -- continue to have a great relationship with her moving forward but I am not going to find her in contempt. I don't find her in contempt.

> The court didn't apply the typical standard-this relaxed and broad view of materiality that is articulated in companion case McCready and Dominguez. In Dominguez, its sufficient to find a change in custody be made to accommodate the future best interest of the children. Appellant's counsel argued the circuit court set too high of a bar for what the change needed to be. The court was looking for the perspective at what type of relief was being sought [which they infer was wrong]. Says the high standard of *Jordan* was rejected by Dominguez in 1991.

Father argues that if there is a provision of the old court order that is no longer in the best interest of the child, that is sufficient to meet the materiality test.[18]

In this case, Father alleges that the circuit erred when it stopped its analysis at no material change in circumstances instead of delving into whether the order was in fact outdated and still in the best interest of K.B. This Court asked Father if he was still doing his Maryland visitation with K.B. and Father's attorney said Father was going to Maryland monthly up until March 2020 and then paused "because of COVID." However, Father's attorney stated that Father's visits to Maryland resumed in the Fall though they were not as frequent. Father's attorney said that Father first learned that K.B. and Mother were

[18] Father's Appeal Brief further states:

> Importantly, a "material change" does not require a finding "that the changes have already caused identifiable harm to the children." The *Domingues* court rejected this "view of 'change'" as "unduly restrictive." *Domingues* 323 Md. at 498.1 5 Rather, "[i]t is sufficient if the chancellor finds that changes have occurred which, when considered with all other relevant circumstances, require that a change in custody be made to accommodate the future best interest of the children." (citations omitted).
>
> The transcript shows that Judge McCormick failed to apply this relaxed and broad view of "materiality" and instead adopted a restrictive standard of the type rejected by the *Domingues* Court. This is apparent from her erroneous belief that the standard for a material change is higher than the standard for a finding of constructive civil contempt[.]
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> . . . .
>
> As numerous cases have held, the relocation of a parent from one state to another is typically sufficient to meet the threshold of a material change—indeed, that very issue prompted the clarification of the permissive "materiality" standard in *McCready* and *Domingues*. (citing to *Domingues*, 323 Md.; *Braun v. Headley*, 131 Md. App. 588, 750 A.2d 624 (2000)).

potentially moving to Roanoke in December of 2020 and that the move itself has had a negative impact on his relationship with K.B..

Mother rejected Father's argument that the move to Virginia is a change in circumstances merely because she did not communicate with him enough about moving to Virginia. She further asserts that the only change is that K.B. used to live in Maryland and now she lives in Virginia and, while Father finds that inconvenient, he has never actually experienced that alleged inconvenience because he has not attempted to see K.B. in Virginia once in the one and a half years she has now lived there. Mother points out that Father chose to live in a different state even before the 2014 order, therefore there could be no material change when she later moved out of state. She says the previous custody order(s) already account for the parties living in different states.

This Court asked Mother if she would make the same argument if Father moved to California and Mother replied "[n]o, because the distance from airports and direct flights would have changed" (e.g., California could have been a material change in circumstances whereas 4.5 hours more in driving time to Virginia or less if flying is not a material change on its own). Mother further argued that Father presented no evidence that the move to Virginia was not in K.B.'s present or future best interest. Nor, Mother stated, did Father raise in his complaint any allegation of harm to K.B.s welfare except for school absences which she claims are due to (1) K.B.'s extended visits with Father, (2) the days K.B. visited or shadowed at potential private schools, and (3) the travel related to relocating to Virginia. Mother emphasized some of the positive effects the move to Virginia have brought to them such as increased financial ability due to the equity from selling their home, a lower cost

of living, the ability to afford private schooling, and K.B.s opportunity to nurture her love for horses by having the ability to own and care for one.

STANDARD OF REVIEW

When reviewing child custody cases, the Appellate Court of Maryland utilizes three interrelated standards when evaluating a court's holdings:

1) [W]hen the appellate court scrutinizes factual findings, the clearly erroneous standard applies;
2) [I]f it appears that the court erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless;
3) [W]hen the appellate court views the ultimate conclusion of the court founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the court's decision should be disturbed only if there has been a clear abuse of discretion.

Kadish v. Kadish, 254 Md. App. 467, 274 A.3d 482 (2022). *See also Davis v. Davis*, 280 Md. 119, 124–26, 372 A.2d 231, *cert. denied,* 434 U.S. 939, 98 S.Ct. 430, 54 L.Ed.2d 299 (1977). "In reviewing child custody determinations, The Appellate Court of Maryland gives due regard to the opportunity of the lower court to judge the credibility of the witnesses and recognizes the discretion of the trial court to award custody according to the exigencies of each case. *Id*. at 467. *See also Petrini v. Petrini*, 336 Md. 453, 470, 648 A.2d 1016 (1994)(stating "[a]dditionally, the trial court's opportunity to observe the demeanor and credibility of both the parties and the witnesses is of particular importance.").

Braun v. Headley, 131 Md. App. 588, 597, 750 A.2d 624, 629 (2000)

Regarding child support, "a trial court's decision to modify a child support award will not be disturbed on appeal unless the court acted arbitrarily or its judgment was clearly erroneous." Petitto v. Petitto, 147 Md. App. 280, 808 A.2d 809 (2002).

DISCUSSION

I. Child Custody

In *McCready v. McCready*, the Supreme Court of Maryland ("SCOM") held that "[t]he best interest of the child is therefore not considered as one of many factors, but as the objective to which virtually all other factors speak." *McCready v. McCready*, 323 Md. 476, 481, 593 A.2d 1128, 1130 (1991). Modifying child custody orders require proof of a material change in circumstances. *Id.* "A change in circumstances is 'material' only when it affects the welfare of the child." *McMahon v. Piazze*, 162 Md. App. 588, 594, 875 A.2d 807 (2005). A party seeking to modify custody that is offering nothing new—but instead just attempting to relitigate an earlier order—is barred by res judicata. *McCrady*, 323 Md. at 482. The SCOM has long held the view that:

> [t]he provisions of the chancellor's decree with respect to the custody and maintenance of [an] infant are ... *res judicata* with respect to these matters and conclusive upon both husband and wife so far as concerned their rights and obligations at the time of the passage of the decree. But the conditions which determine the custody and care of the infant and the amount necessary for its maintenance are not fixed, and may change from time to time, and, so, from considerations of policy and the welfare of the infant, a material alteration in the substantial circumstances will take the particular provisions of the decree with reference to the custody and maintenance of the infant out of the rule of *res judicata* and authorize a change, from time to time, of the decree in these respects.

McMahon v. Piazze, 162 Md. App. 588, 595, 875 A.2d 807, 811 (2005) (citing *Slacum v. Slacum*, 158 Md. 107, 110–11, 148 A. 226, 228 (1930)). Put differently, res judicata applies

to the best interest of the child as it relates to the circumstances *then existing*. *Campbell v. Campbell*, 477 S.W.2d 376, 378 (Tex.App.1972). To overcome res judicata, the circumstances regarding the child's welfare must have materially changed such that the child's best interest has been substantially affected. *Id.* (holding that a mother moving fifty miles away, remarrying three times, and the child being older did not constitute a material change as to "warrant a modification of previously adjudicated visitation rights."). As our Court has stated previously:

> [t]he "material change" standard ensures that principles of *res judicata* are not violated by requiring that such a showing must be made *any time* a party to a custody or visitation order wishes to make a contested change, even if it is to an arguably minor term. The requirement is intended to preserve stability for the child and to prevent relitigation of the same issues.

McMahon, 162 Md. App. at 596.

In limited scenarios, the absence of a change in circumstance is dispositive and a best interest of the child analysis ("BIC") will not occur.[19] *McCready* 323 Md. at 482. More often, a party will be able to demonstrate *some* evidence of a change in circumstance. *Id.* On such occasions, "[d]eciding whether those changes are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child."[20] *Id.*

In *Domingues v. Johnson*, the Supreme Court of Maryland held that harm does not necessarily need to occur prior to finding a change of circumstances exist sufficient to

[19] *See McCready* 323 Md. at 482 (stating "[t]he exception to this rule is the existence of prior facts that were "unknown and not reasonably discoverable at the time of entry of the original order" (e.g., a custodial parent was and continues to sexually abuse the involved minor.).

[20] *McCready* 323 Md. at 482. "Thus, the question of 'changed circumstances' may infrequently be a threshold question, but is more often involved in the 'best interest' determination, where the question of stability is but a factor, albeit an important factor, to be considered."

justify modifying child custody. *Domingues*, 323 Md. at 499. Specifically, the Court instructed that such justification is sufficient "if the chancellor finds that changes have occurred which, when considered with all other relevant circumstances, require that a change in custody be made to accommodate the future best interest of the children." *Id.* The *Domingues* court also clarified that relocation of one parent *may* be considered a change of circumstance that justifies modifying custody in some situations. *Id.* at 500. For instance, in *Domingues*, the Court found that mother's relocation to Texas from Maryland to follow her military husband who was transferred, combined with other factors such as the mother was not supporting the father-child relationship and moving the child out of the state would isolate the child from the rest of their family on both sides were changes in circumstance that justified switching which parent the child should primarily reside with. *Id.* at 502-03.

For there to be a modification in custody in the case before us, Father had the burden to demonstrate that a material change in circumstances occurred. *See A.A. v. Ab.D.*, 246 Md. App. 418, 228 A.3d 1210 (2020)("[w]hen the "visitor" parent seeks to transfer custody of a child from the "custodial" parent, the moving party bears the burden of establishing that the modification is necessary to safeguard the welfare of the child."). This Court finds it important to address Father's contention below stated in Appellant's Reply Brief to Appellee's Brief:

> The same language was recently cited in a footnote to A.A. v. Ab.D., 246 Md. App. 418, 433 n. 10 (2020), as an apparent reminder that the Jordan rule (again, only by way of Shunk) remains the law of the land:

> We note that when the "visitor" parent seeks to transfer custody of a child from the "custodial" parent, the moving party bears the burden of "establish[ing] that the modification is necessary to safeguard the welfare of the child." Shunk v. Walker, 87 Md. App. 389, 397-98, 589 A.2d 1303 (1991).

Father seems to be suggesting that courts are mistakenly relying on antiquated law from *Jordan v. Jordan, 50 Md. App. 437 (1982)* in child custody modification determinations. To be clear, the *Domingues* Court did not change the burden a parent has when seeking to modify custody—"[t]he 'material change' standard ensures that principles of *res judicata* are not violated by requiring that such a showing must be made *any time* a party to a custody or visitation order wishes to make a contested change, even if it is to an arguably minor term. The requirement is intended to preserve stability for the child and to prevent relitigation of the same issues." *McMahon v. Piazze*, 162 Md. App. 588, 596, 875 A.2d 807, 812 (2005) (citing *Domingues v. Johnson*, 323 Md. 486, 498, 593 A.2d 1133, 1139 (1991)). For the reasons set forth, this Court finds that Father did not meet that burden and that there was no error in the circuit court's finding that no material change in circumstances existed that justified a change in custody.

Father argues the change of circumstances in this case is that Mother and K.B. moved to Virginia, which added another four and a half hours to Father's drive down to K.B. and, as such, his access to and relationship with K.B. are detrimentally impacted. He specifically argues that his driving time doubled from four hours to eight or nine hours each way, which means he is unable to make a round trip on the same day. Father further states that flying to Virginia carries additional costs, such as flight tickets and renting a car

and hotel. Whereas before he just needed to drive down and get a hotel for the weekend. As demonstrated below, Father's argument to modify child custody appears to be premised more on his personal inconvenience than what is in the best interest of K.B.:

> MS. BAYNE [Counsel for Father]: That was what we were saying because of the fact that there is this talk about well, you know, they drove these four hours. How is this different?
>
> The difference is it is a nine-hour drive now versus a four. He could make a day trip out of it to come to Maryland [.]

However, little weight is given to Father's increase in travel time and alleged expense because he was already not exercising his option to visit K.B. in Maryland once a month—since March of 2020, he only visited K.B. a maximum of two to three times, excluding attending her eighth-grade graduation.[21] As the circuit pointed out, even after the COVID-19 restrictions were lifted, Father never resumed his routine monthly visits to Maryland:

> THE COURT: The testimony is also, leading up to that, that those day trips to Maryland weren't happening.
>
> MS. BAYNE: Well, they weren't happening as often trip, and then he has to fly, rent a car and a hotel. There are additional costs, so I don't know how that can't be a material change of circumstance because before he could just drive and all he had to do was rent a hotel to be involved in anything with his daughter. And now it is multiple things. And I do think that is a change of circumstance. They filed to modify visitation because of -- the same thing. And I assuming they are not moving forward on that petition if they are saying there is no material change of circumstance.
>
> But the fact of the matter is, they can't continue with the current court order because there is a material change of circumstance with the distance between the parties. He can't come down once a month to see her.

[21] The court questioned Father between direct and cross-examination on how many times he visited K.B. in Maryland in the 2020-2021 school year because he was not giving consistent numbers or specific dates.

> THE COURT: He can fly down once a month here and see her. Since when does nine hours, an additional couple hours impact the ability to travel?
>
> MS. BAYNE: You -- it double [*sic*] the time. Nine hours versus four hours. That is doubling. Then you have to rent a car. You have to have a hotel. And those are additional expenses –-
>
> THE COURT: He had to have a hotel in Maryland you just said.
>
> MS. BAYNE: Yes but he doesn't have a flight, and he doesn't have to rent a car. Those are two additional expenses because of COVID. (. . .)
>
> THE COURT: Even after the restrictions were lifted, they were not happening according to the testimony.

The refutation of Father's argument by Mother attorney's also illustrates that Father's complaint is less to do with K.B.'s welfare than it is his own, as demonstrated here:

> MS. WEINSTEIN: And Your Honor, I would ask the Court to also look at Defendant's Exhibit E where Mr. Ball, despite him standing before this Court and saying, oh, it is too far. I can't make the drive. Yada, yada, yada. That he says, I hope you understand a lot has changed since the order was written, and that the current situation really doesn't allow for that option, that option being coming to Maryland. *Without a job, I can't afford the cost of the Maryland weekends. In addition, we would basically be quarantined in the hotel.*
>
> Now that was in September of 2020. Again, after restrictions are lifted, and Mr. Ball's financial statement, which was filed in February of 2020, introduced into evidence, and he just testified when we were before the Court last has substantial costs for travel to Maryland despite the fact he is not traveling to Maryland.

(emphasis added).

We agree with Mother. We find the argument that the current court order prevents Father from traveling down to visit K.B. once a month to be not persuasive. K.B.s move to Virginia has not inhibited Father from visiting K.B. in accordance with the custody order. There is a distinction between an order providing for a right (such as K.B. flying to Connecticut once a month as part of her official visitation with her Father) to an order providing a flexible option (such as Father *may*, at his own expense, travel to Maryland

once a month to spend a weekend with K.B.) to Father choosing on his own to come down for a day event at K.B.'s school (such as her graduation). Father *chose* to visit K.B. in Maryland once a month prior to 2020; Father *chose* to come down for occasional day events; but Father was *never required* to do either and therefore does not have a cause of action now because he feels he cannot do either because of a "change in circumstances"—which itself is disproven by Father's own day trip down for K.B.'s 8th grade graduation.

Further, when the lower court interviewed K.B., she confirmed that not only was Father sparsely coming to Maryland prior to their move to Virginia, he has not visited K.B. once in Virginia, not even when he was driving through Virginia on his way to Florida. In a private conversation with the circuit court, K.B. said:

> It has been like two years since he really came down to see anything, especially since I was moving somewhere new. You know, to see my friends or to see my school. Like, the last time I think he came down, by Florida, rode by. He didn't stop. He didn't --
>
> And I was going, why don't you pick me up at my school so you can see my school or my house because it is pretty close, and you know, we could get to ride horses. And all that. And he was like, no ---- down the road.

While Father may be more inconvenienced than he was prior to Mother and K.B.s move to Virginia, it is not Father's welfare or convenience the court is concerned with when it comes to modifying a prior custody order.

In *Braun v. Headley*, this Court affirmed the trial court's decision and found that it did not abuse its discretion in finding "a material change in circumstances and that the best interests of child warranted changing custody from mother, who planned to relocate with

child to Arizona, to father; mother's relocation from Maryland was a modification that would particularly effect child's best interests [sic] because of mother's unwillingness to cooperate [among other factors] to foster a good relation between child and her father." In her complaint to modify custody, the mother stated that she needed to move to Arizona for a "dryer climate, which [would] enable her to better tolerate her various health problems." *Braun v. Headley*, 131 Md. App. 588, 593, 750 A.2d 624, 627 (2000).[22] The father's visitation with minor was every other weekend and rotating holidays. *Id.* at 627. In changing custody, the court found the following:

> (1) [A]ppellant moved to Arizona with the intent to "separate the child from the father" to place " distance between the child and the father" and "to avoid contact between father and child;" (2) there was "no evidence that there is a health issue on the part of either the child or [appellant] that justified the move.... [T]he child does not have asthma;" (3) appellant was an "unreliable" witness with " totally inappropriate" demeanor on the witness stand on "many" occasions, and " is not a reliable fact giver;" (4) appellant "left the state of Maryland without giving prior notice" to appellee; (5) appellant "does discourage the child from calling [appellee] 'Dad' and from addressing the grandparents in appropriate terms as 'grandmother' or 'granddad'. . . [T]he court considered highly significant its finding that appellant "gave no consideration to the impact of her conduct on either the child or herself.

Braun v. Headley, 131 Md. App. 588, 612, 750 A.2d 624, 637 (2000).

In the present case, both Mother and Father have overall made the custody schedule work for close to a decade, with just a few hiccups here and there. Per the 2014 Order, K.B. still visits Father in Connecticut every month. Up until 2020, Father was still visiting K.B. in Maryland most months. K.B. traveling to Connecticut from Virginia is not so different

[22] At some point, the mother claimed that the minor child had asthma, however, the court found no history or evidence of such in the psychological evaluations, health records, or testimony.

that it amounts to a change that is material—the flight time is not significantly longer and the commute time to the airport is equidistance for both parties. [23] K.B. continuing to see Father every month in Connecticut is evidence that her move to Virginia has not detrimentally affected her ability to see and form a relationship with her father.

The circuit court observed from K.B.'s testimony that she is overall happy in Virginia. While she wishes she could spend less time in Connecticut during the summer visitation, that is a matter of preference—not welfare. The circuit court accurately stated:

> And I don't find that is a material change in circumstance that affects the welfare of [K.B.]. I agree that it affects the ideal world for [K.B], but this is not where we are. And not -- the move didn't affect the welfare of her. The change in the summer weeks is not going to amount to the level that is going to affect the welfare. So your motion for modification, based on summer schedule, is denied.

In Father's complaint, he listed excessive absences not related to illness as one of the reasons to modify custody. He provided K.B.'s school attendance record as evidence to show that K.B. had a total of seventeen absences in the 2020-2021 school year. However, most of these absences were on dates that were coupled with weekends and/or holidays. No testimony was provided by Father that refuted Mother's assertion that the majority of K.B.'s absences were for extended visits to her father, visiting/shadowing potential private high schools, or related to the move to Virginia. Therefore, this Court does not find that K.B.'s absences from school have affected her welfare to constitute a change of circumstances needed to modify custody.

[23] It takes about an hour and fifteen minutes to commute from K.B.'s Virginia home to the airport and then the flight to Connecticut is about one and a half hours. From the Connecticut airport, it takes about one and a half hours to get to Father's home. Whereas the flight from BWI to Connecticut was forty-five to 60 minutes.

While the lower court did not explicitly go through a best interest analysis factor-by-factor, it is not required take a laundry-list approach.[24] It heard ample testimony from Father, Mother, K.B., and her stepmother, Ms. Bell, to conclude that K.B.'s welfare is not in jeopardy or at risk of being in jeopardy. Even if the circuit found that some changes were material, the record simply does not reflect that K.B.'s welfare was jeopardized to justify a modification. Nor does the record reflect, as it did in *Braun*, that either parent is trying to interfere with the other parent's relationship with K.B. In fact, the trial court judge found the opposite to be true:

> And we had some discussions. Just so it is clear, I don't feel like either one of you have coached her about anything. I think she is an independent young woman who is really trying to find her own way.
>
> And I want to make sure, Dad, you understand, I do not believe for a second that Mom is imposing any of her thoughts and positions with regard to visitation.
>
> Mom, I don't think Dad is doing any of the same things. I think there should be communication -- she is 16. We can't ignore that fact, right? She is not 6.
>
> So the idea that you all can't communicate with her and she can't have some say in things I think is where some of the struggles are.

[24]Citing *McCready*, the *Braun* court stated: "[i]n determining whether the change was material we look to whether the changes related to the welfare of the child. The factors to be considered in determining custody of a child include, but [are] not limited to: (1) fitness of the parents; (2) character and reputation of the parties; (3) desire of the natural parents and agreements between the parties; (4) potentiality of maintaining natural family relations; (5) preference of the child; (6) material opportunities affecting the future life of the child; (7) age, health and sex of the child; (8) residences of parents and opportunity for visitation; (9) length of separation from the natural parents; and (10) prior voluntary abandonment or surrender. *Braun v. Headley*, 131 Md. App. 588, 610–11, 750 A.2d 624, 636 (2000) (citation omitted).

On the contrary the record reflects that, K.B. seems to be thriving in Virginia—she has a passion for horseback riding that she's been able to foster more in Virginia due to having enough land to own and enjoy a horse, she has friends and is doing well at school, and she still visits her father in Connecticut every month.

We therefore hold that the circuit court did not abuse its discretion in not modifying the child custody order. After reviewing abundant evidence and considering the best interest of K.B., the court reasonably concluded that a material change in circumstance did not exist as a result of K.B.'s move to Virginia. In affirming the circuit court, we conclude that the circuit court's findings were not clearly erroneous, and the court's ruling was founded upon sound legal principles.

II. **Child Support**

This Court is being asked if the circuit court abused its discretion when it held that Father's reduction in income did not amount to a material change of circumstances that allowed the court to modify child support. "Ultimately, '[w]hether to grant a modification rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily used or the judgment was clearly wrong.'" Leineweber v. Leineweber, 220 Md. App. 50, 61 (2014) (quoting Ley v. Forman, 144 Md. App. 658, 665 (2002) (in turn, citing Dunlap v. Fiorenza, 128 Md. App. 357, 363 (1999))). *See also Lieberman v. Lieberman*, 81 Md. App. 575, 595, 568 A.2d 1157 (1990).

Pursuant to F.L. § 12–104(a), courts are vested with discretion to modify child support if there has been "a material change in circumstances, needs, and pecuniary

condition of the parties from the time the court last had the opportunity to consider the issue." *Petitto v. Petitto*, 147 Md. App. 280, 306, 808 A.2d 809, 824 (2002) (citing *Kierein*, 115 Md. App. at 456, 693 A.2d 1157) (citation omitted). A change is considered "material" if it is (1) "relevant to the level of support a child is actually receiving or entitled to receive, and (2) the change is "of a sufficient magnitude to justify judicial modification of the support order." *Wills v. Jones*, 340 Md. 480, 488-89, 667 A.2d 331 (1995) (citation omitted). In assessing whether a change is material are not, courts should focus on "the alleged changes in income or support" that have occurred since the original child support order was issued. *Id.* In *Pettito v. Petitto,* this Court stated, "*Wills* makes clear that 'the passage of some event causing the level of support a child *actually* receives to diminish or increase' is relevant and material." *Petitto v. Petitto*, 147 Md. App. 280, 307, 808 A.2d 809, 824 (2002) (citing *Wills*, 340 Md. at 488) (emphasis added).

In the present case, Father sought to modify the 2014 Child Support Order which required that Father pay Mother $731.00 per week beginning May 1, 2014. The 2014 Order also stated:

> [a]fter the court considered the extrapolation of the Maryland Child Support Guidelines and all other considerations relating to the best interests of the child. The Court specifically finds that it is in the child's best interest to base child support on Father's total income (including bonuses) and as such modifies and hereby vacates Article II, B.2, of the parties Separation Agreement which required Father to pay Twenty Percent (20%) of his bonuses as additional child support.

At the time the 2014 Order was issued, the court attributed a total income of about $200,000 to Father. This amount accounted for bonuses that were not included in the previous 2013 Order which required that Father pay $531 a week plus twenty percent of his bonuses as

additional support. After the 2014 Order, Father's income rose to eventually be above $300,000 annually.

In February 2022, Father unilaterally adjusted the child support amount to be approximately $2,000 less a month [25] based on running his lower Catylex salary through the Child Support Guidelines. In response, Mother filed a petition for contempt and sought garnishment of Father's wages through Virginia Child Support Enforcement which began garnishing his wages the following month.

Father claims that he is being garnished over 40% of his gross pay of $4,166.67. He claims that after his other deductions, he is left with a net pay of between $179.80-$1,000. According to pay stubs, Father is garnished between $1,438.66 (03/16/20222-07/16/2022) to $1,742.89 (09/16/2022) a paycheck. Notably, starting August 1, 2022, Father started having medical, vision, and dental deducted from his bi-weekly paycheck (totaling about $540). This brought his biweekly paycheck from Catylex down to $992.32 from $1,417.36. Then, beginning on August 16, 2022, Father also began contributing $1,000 towards his Health Savings Account (HSA) which was deducted once monthly, bringing his net pay on those paychecks down to about $180.

After four days of trial, Father failed to persuade the circuit court that a modification to child support was justified and in K.B.'s best interest. In fact, as reflected below, the most credible evidence the court found in determining whether a modification for child support was warranted was the fact that Virginia Child Support Enforcement has

[25] Or just over $1,000 per month.

consistently garnished the court-ordered child support amount from Father's wages. In its holding, the court said:

> I have read through all the closing arguments. I have gone through all the exhibits. I have gone through my notes again more than once, and where we are at with modification of child support is that in order for me to modify child support, the moving party -- in this case, that would be Mr. Ball -- has the burden of establishing that there is a material change of circumstance with regard to child support.
>
> I will tell you I have considered all the testimony in this case, and all the exhibits. I don't think I have had a case where the inconsistency in testimony has been more incredible than what I have had in this case. Neither party was able to tell me anything specific about their finances. Neither party was able to answer questions about their financial statements -- like is this what you pay per month for mortgage? And you say yes, then you say no, then you tell me it is a percentage, then you don't know what percentage it is.
>
> Ms. Tate has simply responded and said, I don't know. My accountant does all that. I honestly do not, at the end of that hearing and at the end of looking at the evidence, and at the end of my notes, still have any idea how much both of you make. It is just simply not credible testimony. I will say that what I do know that is credible to me and is certainly telling is that since the Virginia garnishment has been put in place, Mr. Ball has had the ability and has paid full child support. That there are certainly federal consumer/Credit Consumer Protection Act that only requires that a certain percentage of disposable income can be taken to pay that.
>
> So I just simply do not find any of the testimony credible to establish that there has been a material change in circumstance. I understand that there has been a change in income but based on all of the other factors, circumstance of this case, evidence, I don't find that to be a material change of circumstance. And for that reason, I am denying any modification of child support.

"Whether to grant a modification rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily used or the judgment was clearly wrong." *See Dunlap v. Fiorenza*, 128 Md. App. 357, 363, 738 A.2d 312, *cert.*

denied, 357 Md. 191, 742 A.2d 520 (1999). "When an action has been tried without a jury, we will review the case on both the law and the evidence. We will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and we give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *See* Md. Rule 8–131(c). *See also Ley v. Forman*, 144 Md. App. 658, 665, 800 A.2d 1, 5 (2002).

In this case, it was the trial court that spent four days hearing from the parties, and K.B., and reviewing the evidence. The trial court was in the best position to judge the credibility of both Mother and Father and found neither to be credible.

In reviewing the circuit court's holding, we do not find that they abused their discretion by acting arbitrarily and the court is not clearly wrong. We have found multiple bases in the record to support their holding.

For instance, the circuit court gave weight to the fact that the Virginia Child Enforcement Agency, which presumably acts in accordance with state and federal laws, garnished Father's wages. While Father claims that he cannot afford to pay the existing amount of child support, Virginia, like Maryland, follows the Federal Consumer Credit Protection Act regarding child support garnishment. This Act says that the maximum amount allowed to be garnished by a parent who supports another spouse or child, is 50% of disposable earnings. *See* 15 U.S.C. § 1673.[26] Father's disposable earnings are his gross earnings in the amount of $4,166 minus the required taxes (which vary by paycheck

[26] Disposable earnings are defined as "the amount of earnings left after legally required deductions are made" (e.g., federal, state, and local taxes, social security, Medicare, etc…). *See* Wage and Hour Division, U.S. Dept. of Labor (revised Oct. 2020), https://www.dol.gov/agencies/whd/fact-sheets/30-cppa.

between $650-$1,050). Disposable earnings do not include voluntary contributions or deductions, such as health insurances or HSAs. Therefore, if Father makes $4,166 each paycheck minus taxes, he is left with between $3,116-$3,486 a paycheck which is within the maximum 50% of his earnings allowed to be garnished pursuant to the Federal Consumer Credit Protection Act.

Another basis the court weighed was Father's lack of credibility and consistency about his personal finances.

> Mother's Counsel: Do you pay the full mortgage on your house?
> Father: No.
> Mother's Counsel: Okay. How much is your mortgage?
> Father: I don't know.
> Mother's Counsel: You don't know how much your mortgage is, sir?
> . . . .
> Mother's Counsel: Your testimony is you do not know what your monthly mortgage is?
> Father: Yes.
> Mother's Counsel: Did you provide the mortgage statement in discovery?
> Father: I don't know. I don't know from memory.
> Mother's Counsel: Okay. But you pay the entire mortgage?
> Father: I did not say that.
> Mother's Counsel: Okay. How much mortgage -- what percentage of the mortgage do you pay?
> Father: I pay 2,500.
> Mother's Counsel: Okay. What percentage of the mortgage is that?
> Father: I don't know what the mortgage is, so I can't tell you.

Father was evasive many times throughout his testimony and in the evidence he provided. For instance, according to the Financial Statement Long Form provided by Father in February 2022, he has a total of $17,901.64 in monthly expenses. When asked about one such expense, he failed to support with evidence or any certainty.

> Mother's Counsel: And did you bring in any receipts showing that you

paid $666 a month in repairs on the home?

Father: I -- I don't -- I don't recall one way or the other.

In other instances, Father testified:

BY MS. WEINSTEIN:
Q -- $250 for camp. Is that [K.B.'s] camp?
A Yes. That is in [K.B.'s] column.
Q Okay. And what camp do you pay for?
A Well, [K.B.] hasn't been with me so I haven't this past summer.
Q Okay. So this is not an accurate number; 250?
A No, it is what I expected when this was filed in February.

Q All right. And you also have a nanny* for [R.]*, $1,250 ----, correct?
A That is correct.
Q Why do you have a nanny if you weren't working?
A Well, I think except for a couple months I had some kind of employment and then even though I had that employment, I was also looking. And so my wife and I agreed that it was best to keep the nanny while I worked with what I had and then searched for new employment.
Q Okay. So you are, essentially, paying the nanny what percentage of your income?
THE COURT: Well, let me ask this. Are you paying the whole nanny or is that just a percentage of the cost of the nanny? ---- when the financial statement is not –
THE WITNESS: This -- it is a percentage of the nanny.
THE COURT: Well, how much percentage is it of the nanny that you are paying for?
THE WITNESS: I believe 75 percent.
THE COURT: Okay. Do we have any documentation to support the breakdowns that are bearing on each item as to whether it is a percent, full amount, anything?
MS. BAYNE: I did not assist with the preparation of it, so I don't know how they prepared the financial statement in February.

Additionally, as the circuit court pointed out—Father has not been forthcoming in providing his finances. "In making this threshold determination that a material change of circumstance has occurred, ... a court must specifically focus on the alleged changes in income or support that have occurred since the previous child support award." *Wills*, 340 Md. at 489. We know that Father makes $100,000 a year from Catylex but we are not convinced, like the trial court, that Catylex is Father's only source of income. For instance, Father alleges expenses far exceeding what he makes in a month… Like the trial court this leaves the Court wondering if Father has other sources of income. This colloquy illustrates our point:

> Q Okay. Did you look at your tax returns before you filed them?
> A Yes.
> Q And you didn't question this? $35,000 additional land income?
> A I talked to my accountant and he said that was --
> Q You can't tell me what he said.
> A I questioned it, yes.
> Q Okay. And you have -- did you attach the K-1 to your tax return, to what you provided to me?
> A Attach the K -- the K-1 is right there.
> MS. BAYNE: And objection. I believe he said he thought it was his wife so --
> THE COURT: This is not what he said. Personally said he had no idea -- he didn't even -- was that his? He didn't understand it. Now he is saying he questioned it, his accountant, so he got some answer and it is attached to the tax return.

According to Md. Code Ann., Fam. Law § 12-201 (b)(3), "actual income includes, among other things, salary, wages, commissions, bonuses, dividend incomes, etc…" Courts may also consider severance pay, capital gains, gifts, or prizes as actual income depending on the circumstances of the case. Md. Code Ann., Fam. Law § 12-201(b)(4).

Father apparently made $35, 659 in capital gains from [Ameritrade] which can be attributed as additional income.

The previous child support order was an above-guidelines-amount and used around $200,000 as Father's salary. The difference between what Father made then to what he makes now from Catalyst is $100,000 or more. While there is an apparent difference, we are not persuaded it is substantial under the circumstances because it does not reflect that Father was also given a considerable severance payment that accounted for 40 weeks base pay, which per Fam. Law § 12-201(b)(4) can be included as "actual income."

> Mother's Counsel: Okay. And your severance package, divided by 9 7 months, would be $34,123.88 per month?
> Father Yeah, I don't have the math, the numbers in front of me but --
> Mother's Counsel: That is not about right?
> Father So I think the severance was 240 divided by -- I am probably not going to be able to do math in my head.
> Mother's Counsel: Okay.
> Father I will have to trust you.
> Mother's Counsel: So you did have extra money during those nine months?
> Father Yes, I had savings from the prior income.
> Mother's Counsel: Well, I am talking about your -- oh, you had savings from a prior income?
> Father Well, from that income you are speaking of.

Other clear evidence the court may have relied on is that Father's last four tax years which had Father making well above $350,000 in 2018, 2019, and 2020. Even in 2021, Father made a total of $250,719.[27] Considering everything, the evidence currently offered (the

[27] "Mr. Ball's W2s from Bridgewater show that he earned $376,364.10 in 2018, (E. 490), and $382,618.22 in 2019, (E. 492), the last full working years before 2020. His 2020 W2 is significantly higher, with income of $430,278.61 in 2020 (E. 494), but this number is inflated by payments received as part of his separation including his severance.

past four years of taxes and his garnishment) by Father supports the courts finding that there was not a material change in circumstance nor a need for a modification in child support.

Section § 12-104(a) of the Family Law Article ("FL") of the Maryland Code, (1984, 2019 Repl. Vol.) authorizes a court to "modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance." Modification is appropriate "only if there is an affirmative showing of a material change in circumstances in the needs of the children or in the parents' ability to provide support." Payne v. Payne, 132 Md. App. 432, 442 (2000).

Addressing the latter part of that sentence, there doesn't seem to be a change in the Father's ability to provide support. Evidence of Father's paystubs show that Father's paychecks from Catylex have successfully been garnished since March 2022. Father claims he is only left with $192-$1,000 each month but that is not entirely true. Since being at Catylex and making $100,000 a year, Father's paychecks have gotten smaller due to factors outside of just Virginia Child Support Enforcement—such as Father now paying for health insurance, contributing towards a flex spending account ($1000), and contributing double what he was towards state (or federal) taxes. [28] Further, Father is

To wit, in 2021, he was paid an additional $156,256.17, reflecting the severance payments that ran through June 2021." *See Appellant's* Brief E. 497. In 2021, Father made $86,963.44 from Enfusion, $156,256.17 from Bridgewater (likely severance pay), and $7,500 from Just Works or Catalyst.

[28] Starting in 01/01/2022, the amount of taxes withheld nearly doubled to close to $1000 a month for both federal and state taxes. Whereas, prior to January 1st, under the payrate of $60,000 a year, the total taxes withheld each month was about $450.

allegedly paying over $17,000 a month in expenses that he has not curbed[29]—he continues to live at the same standard of living he was accustomed when he worked at Bridgewater—so why should K.B. not also be able to continue her standard of living as well?[30] "In making an award of child support, it is for the trial judge to set an amount reasonably calculated to maintain as nearly as possible the standard of living enjoyed by the child prior to the parents' divorce." *Petrini v. Petrini*, 336 Md. 453, 460, 648 A.2d 1016, 1019 (1994).

Based on the record that the Court relied upon and the evidence that this court has pointed to above we do not find that the trial court abused its discretion in denying the modification of the child support.

[29] Q Okay. So the 650 is not necessarily accurate because you, quite often, use your miles?
A I wouldn't say that. Like her flights are not free and what I end up doing is upgrading. So instead of her taking a coach I get her first class because she can check her bags, she can skip the line and, obviously, it is a much more comfortable ride.
Q Okay. So it is your choice to spend that additional money on her? It is not necessary?
A It is my choice to use the points the way that I do.

[30] Q: all right. Any of these expenses on your form you pay in their entirety?
A Yes.
Q And what are those?
A Lawn and yard care, the health insurance, tuition and books.
Q Okay. I don't -- and tuition and books, who is that for?
A [R. - Father's young child with current wife]
Q And [R.] is five years old?
A Indeed, yes.
Q Okay. And you pay all of her tuition?
A One hundred percent of her tuition.
Q Okay. And where does she go to school?
A Fraser Woods Montessori.
Q Okay. Is that a private school?
A It is.

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

The correction notice(s) for this opinion(s) can be found here:

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