

Circuit Court for Montgomery County
Case No. 135925FL

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1747

September Term, 2022

MONISHA E. BILLINGS

v.

SETH D. BILLINGS

Wells, C.J.,
Beachley, D.,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: August 2, 2023

*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 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 Maryland Rule 1-104(a)(2)(B).

Monisha Billings (“Mother”), appellant, appeals the Circuit Court for Montgomery County’s awards of child support and attorneys’ fees to Seth Billings (“Father”), appellee. Under their original child custody and support orders entered in 2016, the parties had joint physical custody of their minor child (“child”) and Father paid Mother upwards of \$2,000 per month in child support. In November 2018, Father moved to modify legal and physical custody and support (“Father’s Motion to Modify”), and Mother filed a counter-motion to modify legal and physical custody. On August 7, 2019, the parties reached a pendente lite agreement on certain terms (“Consent PL Order”), including that the parties would suspend the payment of any child support and instead each would be charged with supporting the child when in that party’s physical custody. On May 19, 2021, Father filed a Motion for Appropriate Relief, asking the court for interim child support (“Emergency Motion for Interim Child Support”).

The parties appeared for a hearing on their modification motions in October 2022. Ultimately, the court awarded Father primary physical custody and ordered Mother to pay child support in the amount of \$1,101 per month, retroactive to the date of the Consent PL Order (August 7, 2019). The trial court also awarded Father \$20,000 in attorneys’ fees, which Mother was to pay in two \$10,000 installments: one each six months. Mother timely appealed and submits the following issues for our review, which we have slightly rephrased¹:

¹ Mother’s questions presented, verbatim, read:

1. Did the trial court err in determining the amount of retroactive child support?

1. Did the trial court abuse its discretion in determining the amount of retroactive child support?
2. Did the trial court abuse its discretion in its determination as to Mother’s ability to pay Father’s attorneys’ fees in the time intervals ordered?

For the reasons we will discuss, we conclude that Mother did not preserve her objection to the way in which the trial court calculated retroactive child support. And even if we were to consider Mother’s claim, the child support calculation was well within the court’s discretion, including not crediting Mother with having health insurance for the minor child. As for attorneys’ fees, we conclude that the court did not abuse its discretion in determining Mother’s ability to pay Father’s attorneys’ fees. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are the parents of one minor child (“child”), born on January 30, 2015. The parties were divorced by way of a judgment entered in the Circuit Court for Montgomery County on November 30, 2017. The judgment incorporated both a child support and a custody order that had been entered the previous year. Under those orders, the parties had 50/50 physical custody of the child and Father paid Mother child support of \$2,490 per month from October 1, 2016 to June 30, 2017, and then \$2,099 per month commencing July 1, 2017.

On November 14, 2018, Father moved to modify physical and legal custody, visitation, access and support. Mother filed a counter-motion to modify legal and physical

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2. Did the trial court err in its determination as to Mother’s ability to pay Father’s attorneys’ fees in the time intervals ordered?

custody and moved for other relief. While a hearing on those motions was pending, the parties reached a pendente lite agreement which was memorialized in a consent order (“Consent PL Order”) entered on August 7, 2019. Under those terms, Father had sole legal custody and primary physical custody, with Mother having physical custody alternating weekends and every Wednesday afternoon until Thursday morning.² Additionally, the parties agreed to “suspend the payment of current child support and child support arrearages” and, instead, each would pay their pro-rata shares of childcare and school expenses (Father at 53% and Mother at 47%), and to otherwise provide support for the child when in his or her custody.

On February 5, 2020, Father filed an Emergency Motion for Custody, which the court granted, ordering Mother only have supervised visitation with the child. In November, the court changed custody back to what the parties agreed in the August 7, 2019 Consent PL Order. Again, no child support was to be paid between the parties; they were to split the daycare or school expenses and otherwise financially provide for the child when the child was in the parents’ custody.

On May 19, 2021, however, Father filed his Motion for Appropriate Relief asking the court for interim child support. He alleged that no one could have foreseen the case would have been pending for three years with no interim child support and he had primary physical custody of the child. Further, he claimed Mother was delinquent on her portion of

² Because the custody award is not at issue in this appeal, our recounting of the facts will focus only on those related to the child support and attorneys’ fees awards.

school payments and reimbursements to Father for medical expenses. Additionally, because Mother now was making over \$120,000 a year, while Father was making just over \$138,200, Father asserted Mother was able to pay him \$1,108 a month in child support.

The court held a hearing on the parties' motions on October 24-27, 2022. At the hearing, the court reviewed and accepted into evidence Father's and Mother's filed financial statements. There was also testimony on when and how much each party paid toward childcare, schooling, and medical expenses for the child. The evidence demonstrated that the parties' incomes, as well as contributions toward the child's expenses, had not been static over the years. For instance, Mother's income had gone from \$110,000 in 2019 to \$148,484 in 2022, and Father's income had gone from \$125,505 in 2019 to \$149,652 in 2022. Additionally, Mother testified that she had paid for half of the child's medical expenses until August 2019, and Father testified that beginning in December 2020, Mother stopped paying for childcare, whereas each party had paid a share previously. There was also testimony regarding each party's attorney's fees, as Father was asking for attorney's fees from Mother.

On October 28, 2022, the court delivered its oral ruling. With respect to child support, the court ordered Mother to pay Father \$2,111 per month, retroactive to the date of the Consent PL Order (August 7, 2019) and established an arrearage amount of \$41,838. The court ordered Mother to pay an additional \$200 per month toward arrears. Finally, the court ordered Mother to contribute \$20,000 toward Father's attorney's fees. The court

found that Mother did not have the ability to pay the entire amount of attorney’s fees at once, but found she had the ability to make two \$10,000 payments in six-month increments.

On October 31, however, the court realized it had made an error in its child support calculations by basing those calculations on the assumption that Father had sole physical custody of the child rather than shared custody as the court had ordered. The court revised the order so that Mother was to pay Father \$1,101 per month instead.

Mother timely appealed the child support order and the award of attorney’s fees. We will supply additional details where they are relevant to our analysis.

DISCUSSION

I. Retroactive Child Support

A. Standard of Review

When Father filed his Emergency Motion for Interim Child Support on May 19, 2021, the parties’ combined adjusted actual income was over \$15,000 per month, thus exceeding the highest level specified in the child support guidelines. Md. Code Ann., Family Law (“FL”) § 12-204(e).³ In an above-guidelines case such as this, “the court may use its discretion in setting the amount of child support.” FL § 12-204(d). *See Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018) (“In an ‘above guidelines case,’ . . . the trial court enjoys significant discretion in determining the amount of the basic child support award.”).

³ As Mother’s brief points out, FL § 12-204(e) was subsequently changed to increase the application of the child support guidelines to cases in which the parties’ combined income is \$30,000 per month or less. However, that change is only applicable to cases filed on or after July 1, 2022.

“[W]e will not disturb a ‘trial court’s discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion.’” *Ruiz*, 239 Md. App. at 425 (quoting *Ware v. Ware*, 131 Md. App. 207, 240 (2000)). “In exercising its discretion, however, the trial court ‘must balance the best interests and needs of the child with the parents’ financial ability to meet those needs.’” *Id.* (quoting *Unkle v. Unkle*, 205 Md. 587, 597 (1986)).

B. Parties’ Contentions

In her Reply Brief, Mother explains that “she is not appealing the trial court’s discretionary ability to order child support to be paid retroactively, nor is she appealing the trial court’s establishment of the Retroactive Time Period.” Instead, she argues that the court erred by arbitrarily applying the prospective child support amount to the retroactive time period that the court found—August 7, 2019 to October 31, 2022—because that amount does not reflect the parties’ actual incomes or work-related childcare expenses during that time. Mother also contends that in determining the amount of retroactive child support, the court improperly credited Father for the cost of health insurance premiums.

Father points out that Mother raised no objection at trial when the court stated that it would use the prospective child support award to calculate retroactive child support; thus, Father claims, she is precluded from challenging the court’s ruling now. But, even if Mother preserved this claim, Father argues that the court did not abuse its discretion in calculating retroactive child support based on the parties’ current income and expenses. To support this argument, Father presents that if one calculated the child support guidelines

based on the parties’ actual circumstances retroactive to his Motion to Modify, filed on November 14, 2018, the total arrearage would be \$52,305. Whereas, if one calculated the guidelines based on the parties’ actual circumstances retroactive to the Consent PL Order, filed on August 7, 2019, the total arrearage would be \$37,586. Father posits that in light of the “extraordinary circumstances surrounding the child and the parties during the pendency of litigation,” the court had “ample justification to exercise judicial discretion” and award Father \$41,838 in child support arrearage. Finally, Father counters that the court correctly credited him for the cost of health insurance premiums.

C. Analysis

Mother’s Claim that the Court Erred in Calculating Retroactive Child Support, Including Not Crediting Her for Carrying Health Insurance, is not Preserved

We agree with Father that Mother did not preserve her claim that the court erred in determining the amount of retroactive child support based on the parties’ incomes and child related expenses as of 2022 rather than the parties’ income and expenses throughout the four preceding years. Ordinarily, we will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court.” Md. Rule 8-131(a). During Father’s counsel’s closing argument, Mother’s counsel did not raise any objection when the court indicated that it would calculate retroactive child support based upon Mother’s gross income for 2022.

[THE COURT]: [. . .] But your request is that we do an adjustment based upon the tuition that he did pay.

[FATHER’S COUNSEL]: And also, **that the child support guidelines are modified retroactively**, like, the monthly child support amount to November of 2018 based on the parties’ respective earnings for each year because Judge [McCally], in her discretion, actually ordered an above-the-guidelines amount. So Mr. Billings was, actually, even paying more than what the child support guidelines would have otherwise rendered.

And since that time, as we sit here today, both parties make an equal amount of money.

[. . .]⁴

[FATHER’S COUNSEL]: And in that exhibit, Your Honor should find historical information from 2018, ’19, I think all the way up until today.

[THE COURT]: Okay.

[FATHER’S COUNSEL]: And so, if Your Honor does review that, what I anticipate you’ll find is that since 2018, when the defendant made \$89,000 a year, she’s increased every year. 2019, she made 110; 2020, 115; 2021, 124,000; and then, finally, in 2022, her most recent pay stub shows her at a salary of 148,484.

[. . .]⁵

[FATHER’S COUNSEL]: **Your Honor, if I may approach, we did run child support guidelines for your consideration.**

[THE COURT]: Okay.

[FATHER’S COUNSEL]: **And I’m giving copies of what we ran to counsel here. Because it’s going to depend on the timeframe, the earnings, and the physical schedule that is in place at the time. And so --**

[THE COURT]: **No, we don’t break this open to nine different sessions. It’s what’s child support now. And so, right now --**

[FATHER’S COUNSEL]: Thank you.

⁴ Together, the trial judge and Father’s counsel discuss and try to agree on Mother’s gross income for 2022.

⁵ Mother’s counsel ultimately finds and gives the trial judge Mother’s 2022 pay stub.

[THE COURT]: -- **her salary, you're saying, is at --**

[FATHER'S COUNSEL]: **One-forty-eight.**

[THE COURT]: -- 148.

[FATHER'S COUNSEL]: Yes, Your Honor.

(Emphasis added). When Father's counsel indicated that she had run the child support guidelines going back to 2018 based on the parties' respective earnings for each year, the court stated that it would not calculate retroactive support based on the parties' income for each preceding year, but rather, parties' salaries at the time.

Because Mother did not raise any objection to the court's manner of calculating retroactive child support at trial, we conclude that Mother is barred from raising this claim on appeal. *See Chimes v. Michael*, 131 Md. App. 271, 288 (2000) (holding that former husband could not argue on appeal that child support guidelines applied in above-guidelines case when his attorney acknowledged and argued at trial for inapplicability of the guidelines). Further, even if we determined that the court did not sufficiently communicate its method of calculating retroactive child support on the record, it was still well within the court's discretion to use the parties' current income in its retroactive calculation. *Stevens v. Tokuda*, 216 Md. App. 155, 177-78 (2014) ("The decision to make a child support award retroactive to the filing of the [relevant motion] is a matter reserved

to the discretion of the trial court.”) (citing *Petitto v. Petitto*, 147 Md. App. 280, 310 (2002)).⁶

Further, the court was within its discretion in not crediting Mother for the cost of health insurance premiums. Although the 2017 custody order required Mother to provide health insurance for the child, the 2019 Consent PL Order prohibited Mother from taking the child to or communicating with the child’s medical providers. Consequently, Father assumed the responsibility for taking the child to the doctor. Moreover, upon receiving sole legal custody under the Consent PL Order, Father told Mother that the child was covered under his health insurance and that he would be carrying those costs going forward, which he did. At trial, the court was surprised that Mother thought the 2017 order nonetheless justified her continuing “to pay for double insurance[.]” Considering the language of the Consent PL Order and that Father told Mother that the child would be covered under his health insurance policy, it was reasonable for the court to credit Father, rather than Mother, for the cost of health insurance premiums. We perceive no error.

II. Attorneys’ Fees

A. Standard of Review

“A court's decision to award attorney’s fees generally is reviewed under an abuse of discretion standard.” *Henriquez v. Henriquez*, 185 Md. App. 465, 475 (2009), *aff'd*, 413 Md. 287 (2010). “The trial court is vested with wide discretion in deciding whether to

⁶ Neither party has preserved a challenge to the trial court’s determination of the retroactivity period in this case.

award counsel fees and, if so, in what amount.” *Malin v. Mininberg*, 153 Md. App. 358, 435–36 (2003) (internal quotations and citation omitted). “Although that discretion is subject to appellate review, we will not disturb an award unless the exercise of discretion was arbitrary, or the judgment was clearly wrong.” *Id.* at 436.

B. Parties’ Contentions

Mother explains that she “is not appealing the total award of attorneys’ fees in this matter.” Rather, she is challenging the trial court’s determination that, based on the evidence presented at trial, she is able to pay the \$20,000 in fees to Father in two six-month increments.

Father counters that the trial court fulfilled its obligation to assess the parties’ financial statuses and needs. Father asserts that even a “basic review” of Mother’s financial statement, in light of the evidence presented, demonstrates it is “highly inaccurate including numerous inflated and non-existent costs.” Father proceeds to cite facts from the record to refute many of Mother’s listed expenses and notes that the trial court found Mother not credible.

C. Analysis

Section 12-103 of the Family Law Article (“FL”), under which the trial court stated it was awarding fees, provides that

(b) Before a court may award costs and counsel fees under this section, the court shall consider:

- (1) the financial status of each party;
- (2) the needs of each party; and
- (3) whether there was substantial justification for bringing, maintaining, or defending the proceeding.

Md. Code Ann., FL § 12-103. The trial court recounted these requirements and then explained “So, first, the [c]ourt has to consider the needs of each, the financial status of each party.” The court proceeded to give an in-depth review of the parties’ financial statements, stating the amount of expenses she found reasonable in each category (Categories A through H). In Mother’s case, the court found her total expenses to be around \$6,000 per month. Next, the court reviewed Mother’s gross monthly wages, insurance costs, and retirement contributions, to conclude her net monthly income “to be approximately \$8,000, or \$7,949.” The court then explained:

And so, given mom’s approximate expenses with her custody order, other than the retirement that she has been pulling out of her salary, [she] doesn’t have the ability to pay immediately the attorneys’ fees. I don’t see any, any great asset here.

After reviewing the total amount of Father’s attorney’s fees and their reasonableness, and Mother’s role in bringing the litigation, the court continued:

So, the Court cannot find that mom has the current ability to pay; but I do find that mom has the ability to pay in six-month increments. I’m going to have mom pay \$10,000 in six months; another \$10,000 in attorneys’ fees by one year. So, I’m awarding a total of \$20,000 in attorneys’ fees in this case in favor of father against mother; and as I indicated, in the six-month increments.

The court did not abuse its discretion in reaching this determination. Although the court did not spell out its calculus for this portion of the decision, it is plain from the court’s findings regarding Mother’s reasonable monthly expenses and net income, that the court found Mother has approximately \$1,950 to \$2,000 in unspent funds each month (net income of \$7,949 to \$8,000 minus expenses of \$6,000). Over six months, these unspent

funds would amount to \$11,700 to \$12,000. It was not clear error or arbitrary for the court to conclude that Mother could afford to pay \$10,000 in fees to Father for two consecutive six-month periods.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY IS AFFIRMED.
APPELLANT TO PAY THE COSTS.**