Circuit Court for Montgomery County
Case No. 120878-FL

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1751

September Term, 2021

SAREM MOKRI

v.

FAHIMEH SALIMI

Wells, C.J.,
Shaw,
Ripken,
JJ.

Opinion by Wells, C.J.

Filed: January 3, 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.

Fahimeh Salimi (Wife) petitioned the Circuit Court for Montgomery County to order her former husband, Sarem Mokri (Husband), to explain why he should not be held in contempt for failing to pay Wife alimony consistent with the parties' separation agreement. Later, Husband filed a petition to modify or terminate alimony. After a hearing on both issues, in which both parties testified, the court found Husband in constructive civil contempt for having willfully failed to pay alimony. The court then announced a sanction and a purge provision. In so doing, the court established the alimony arrearage. The court denied Husband's petition to modify or terminate alimony.

Husband filed a timely appeal. He presents five issues which we have condensed, rephrased, and reordered:[1]

[1] The verbatim questions from Husband's brief read as follows:

1. DID THE TRIAL COURT ERR BY DENYING APPELLANT'S MOTION FOR TERMINATION AND/OR MODIFICATION OF ALIMONY.

2. DID THE TRIAL COURT ERR IN FINDING APPELLANT IN CONSTRUCTIVE CIVIL CONTEMPT AND ENTERING JUDGMENT AS A SANCTION AGAINST APPELLANT

3. DID THE TRIAL COURT EXCEED ITS AUTHORITY BY DETERMING APPELLANT'S ALIMONY ARREARS FROM JANUARY 1, 2017 TO THE DATE OF TRIAL

4. DID THE TRIAL COURT ERR BY SUA SPONTE DETERMINING THE MEANING OF TERMS OF THE PARTIES' SEPARATION AND PROPERTY SETTLEMENT AGREEMENT

5. DID THE TRIAL COURT ERR IN CALCULATING APPELLANT'S ALIMONY ARREARS BY SELECTING THE INCORRECT FILING DATE.

1. Did the circuit court abuse its discretion in finding Husband in constructive civil contempt for failure to pay alimony?

2. Did the circuit court properly calculate alimony arrears?

3. Did the circuit court abuse its discretion in denying Husband's motion to terminate or modify alimony?

For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

After a thirty-year marriage, the parties divorced. The parties signed a "Settlement and Property Settlement Agreement" ("Settlement Agreement") which was later incorporated but not merged into a judgment of absolute divorce dated October 5, 2015. Relevant to this appeal, Provision 4 of the Separation Agreement, states:

> Commencing and accounting from July 1, 2015, until the first day of the month after written notice by the Wife to the Husband of her election to vacate Falls Bridge Lane [the marital home] pursuant to Paragraph 3.A.[2], the Husband shall pay to the Wife, as alimony, the sum of $1,500 per month, payable in advance of the first day of the month. Commencing and accounting from the first day of the month after written notice by the Wife to the Husband of her election to vacate Falls Bridge Lane pursuant to Paragraph 3.A., the Husband shall pay to the Wife, as alimony, the sum of $3,250 per month, payable in advance on the first day of each month. Any and all alimony payments provided in this Agreement shall continue until the first to occur of the following events: (a) death of either party or (b) remarriage of the payee. The parties acknowledge that the provisions of this Agreement with respect to alimony and spousal support are subject to court modification, both as to amount and duration.

[2] Paragraph 3.A. of the Separation Agreement gave use and possession of the marital home located at 9408 Falls Bridge Lane, Rockville, to Wife "until the first to occur of the following events: (1) death of the Husband; (2) death of the Wife, or (3) the Wife elects in writing to vacate Falls Bridge Lane."

According to Wife's testimony, at some point in 2019, Husband approached her about selling the marital home which she was occupying at the time. Paragraph 3.A. of the Separation Agreement permitted Wife to have the use and possession of the marital home until such time as either of the following events occurred: 1) Wife died; 2) Husband died, or 3) "the Wife elects in writing to vacate [the marital home]." Ultimately, the parties put the marital home on the market. Wife vacated the residence on September 6, 2019. The marital home was sold, and the parties divided the proceeds pursuant to the Separation Agreement.

Approximately three months later, December 2, 2019, Wife, then representing herself, filed a fill-in-the-blanks form with the Clerk of the Circuit Court for Montgomery County requesting that Husband show cause why he had not paid her $3,250 per month in alimony from September 2019, totaling $13,000.[3] Wife specifically asked for "[a] judgment for monies owed, jail time." As will become relevant later in the discussion section of this opinion, Wife attempted to serve Husband with the show cause petition for a year before the docket entries indicate that she was able to finally achieve service on December 8, 2020.

The court then set a scheduling conference before a magistrate for January 13, 2021. On that date, only Wife, representing herself, appeared. According to the docket entries,

[3] We surmise Wife meant $3,250 for the months of September, October, November, and December, or $13,000.

the magistrate advised Wife to file for a default judgment against Husband,[4] and the Administrative Judge ordered Husband to appear before a judge on April 6, 2021, to explain why he had not appeared for the scheduling conference. Husband was served with this show cause order on March 8, 2021. And as instructed, Wife moved for a default judgment on March 16, 2021.

At the April 6 hearing, both parties appeared remotely and represented themselves. At that time, a judge informed Husband that he had ten days to move to vacate the order of default. Significantly, the docket entries indicate that Husband agreed to accept service of Wife's show cause petition. Husband then asked to postpone the proceedings. The court granted his request and reset the contempt hearing to June 14, 2021.

Soon thereafter Wife obtained counsel. Wife's attorney filed an amended contempt petition, asking for the same relief as in the original petition. In the amended petition, Wife cited the relevant provisions of the Separation Agreement, cited seemingly relevant appellate authority, and specifically asked that Husband be incarcerated until he met an appropriate purge provision. Wife also demanded attorneys' fees and costs, as well as "any other relief [the court] deem[ed] proper." Husband filed a motion to modify or terminate alimony and, later, after he obtained an attorney, filed a more detailed motion requesting the same relief.

[4] If the docket entries are accurate, and we have no reason to suspect that they are not, we decline to express an opinion about the propriety of the magistrate seemingly providing Wife with legal advice.

On June 14, 2021, the parties appeared before a judge for a hearing ostensibly on Wife's amended petition for contempt. While the docket entries are not clear about what happened, testimony at the hearing revealed that the parties agreed to postpone the hearing so that Wife could respond to Husband's motion to modify or terminate alimony. Further, Husband's counsel accepted service of the amended petition for contempt. Both matters—Wife's motion for contempt and Husband's motion to modify or terminate alimony—were rescheduled for a single hearing to be held before a judge on October 19, 2021.

At the October 19 hearing, both parties testified. Even though the court stated that it was going to take up the contempt issue first, it became immediately clear that the parties' testimony was going to weave back and forth between the issues of contempt and termination of alimony. So, the court allowed each party to offer testimony on each issue, rather than calling each to testify twice.

Wife was the first witness. Her testimony initially centered on her income, or lack of it. According to Wife, she had been employed at a local department store from November 2015 until December of 2020, but the department in which she worked closed due to the COVID-19 pandemic. At the time that she stopped working in 2020, Wife's salary was approximately $22,139.02, based on her W-2. In 2021, Wife testified that her income was "[z]ero."

Moving on to the issue of contempt, Wife testified that Husband never paid her the first iteration of alimony, $1,500 per month from the date of the judgment of divorce, July 2015, until the marital home was sold. As for the second iteration of alimony, $3,250 per month, Wife testified that she had never received those payments either. She explained that

Husband was supposed to pay her the increased amount of alimony after the marital home was sold. Wife testified that Husband told her that he wanted to sell the house "because he…didn't want to pay the mortgage anymore." The marital home was sold in September of 2019. Wife insisted that she had requested the alimony payments "many times," but, according to her, Husband told her "no over and over." Wife explained that she did not give Husband written notice that she was going to vacate the residence as required under the Separation Agreement because he was the one who demanded the house be sold. Further, she was trying to stay on "friendly" terms with him. "It was a very normal relationship, so I trusted him. I didn't think that, you know, I [would] end up here; that I would have to document every single thing with him."

Husband testified that he did not agree "to anything" in the Separation Agreement, even though he had legal representation when he signed the document. He claimed that he did not understand that he was to pay his wife any amount of alimony, neither $1,500 nor $3,250 per month. Husband testified that the first time that he learned he was obligated to pay alimony was "when we settled the house - - we sold the house." Like Wife, Husband testified that he tried to remain on friendly terms with Wife after the divorce, doing maintenance around the marital home and paying the mortgage.

Much of the balance of Husband's direct and cross-examination focused on his financial circumstances. He presented evidence that suggested that his business, a commercial cleaning service, was in debt to the Internal Revenue Service and the State of Maryland for several years of unpaid taxes. He testified that the business suffered a downturn due to the pandemic, with a resulting loss of business-generated income, from

$114,000 pre-pandemic, to around $50,000 at the time of the hearing. Despite this, on cross-examination, Husband admitted that he obtained a $150,000 small business loan during the pandemic but used the money to buy a house in Frederick and that he was "trying to fix it and sell it." Additional testimony suggested that Husband's current girlfriend and their infant child were living in the house rent-free.

The court took the matter under advisement after the hearing and delivered an oral opinion from the bench several months later. As for Wife's contempt petition, the court had no difficulty finding Husband in contempt. The court credited Wife's testimony and found Husband's testimony simply unbelievable. Reading the relevant portion of the Separation Agreement, the court determined that Husband had not paid Wife $1,500 per month from the date of the judgment of absolute divorce (2015) until the marital home was sold (2019). But the court reasoned by operation of the three-year Statute of Limitations found in Maryland Code Annotated Family Law (FL) Article § 10-102 and Courts and Judicial Proceedings (CJ) Article § 5-111, Wife was barred from claiming alimony from July 1, 2015, through December 1, 2016, because she did not assert her right until she filed the contempt petition in December 2019. Consequently, according to the court's reasoning, Wife could claim $1,500 per month in alimony from January 1, 2017, until the marital home was sold in September 2019 and, by operation of the terms of the Separation Agreement, $3,250 per month from October 1, 2019, until the date of the hearing.

The court rejected Husband's attorney's argument that Wife was obligated to give Husband written notice of her intent to leave the marital home as a precondition to obtain the increased alimony. As the court saw it, the uncontested testimony was that it was

Husband who demanded that the marital home be sold, who did repairs to the house to make it marketable, who put it up for sale, and who appeared in-person with Wife at the settlement. In the court's view, Wife having to provide written notice under these circumstances "would have been a purposeless act."

In determining the alimony arrears Husband owed, the court performed the following calculations:

> With respect to payments due for the period January 1st 2017 through September of 2019 when the house was sold, a period of 33 months, the amount owing for that period not barred by limitations is $49,500, which is the product obtained by multiplying 33 months times 1,500.
>
> * * *
>
> [Husband] failed to make the 3,250 payments from October 2019 until May 5th of 2021 when the first motion to terminate or modify was filed. That period was 20 months, so 20 times 3,250 is $65,000.
>
> * * *
>
> As a result, and in addition to the $49,500 and the $65,000, I will add June through October as additional months for which defendant owes his alimony obligation of 3,250. That equals 16,250. Thus, by my calculation, the total alimony arrearage is $130,750. That is the amount which I find due and unpaid and the amount for which I will find him in constructive civil contempt for failure to pay. That is also the amount that is not barred by limitations. I also find that he has the ability to pay that amount through the sale of assets or otherwise.

As for the civil contempt sanction, the court said the following:

> Having found him in contempt, the sanction will be the entry of judgment if the amount is not paid within 60 days. The contempt may be purged by paying the amount found to be owed.

The court also assessed costs and fees against Husband.

Turning to Husband's request to modify or terminate alimony, the court found that Husband did not meet his burden of showing that a modification was warranted. The court stated that it simply did not believe Husband's testimony. The court also determined that the evidence revealed that Husband was paying his personal expenses through his business. Further, that Husband received a federal COVID assistance payment of $150,000 which he used to buy an investment property. The court was unequivocal in its finding that Husband's testimony did not support either a modification or termination of alimony. Additional facts will be discussed later in the opinion.

STANDARD OF REVIEW

Generally, this Court will not disturb a constructive civil contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed. *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016). Likewise, a decision concerning whether alimony should be modified is left to the sound discretion of the trial judge and will not be disturbed unless that discretion was arbitrarily used, or the judgment was clearly wrong. *Ridgeway v. Ridgeway*, 171 Md. App. 373, 384 (2006); *Cole v. Cole*, 44 Md. App. 435, 439 (1979). In both instances, for an abuse of discretion to exist, the trial judge's ruling must be "clearly against the logic and effect of facts and inferences before the court[.]" *North v. North*, 102 Md. App. 1, 13 (1994) (quotation marks and citation omitted).

DISCUSSION

I. The Circuit Court Did Not Err in Finding Husband in Constructive Civil Contempt for Failure to Pay Wife Alimony

Husband presents two arguments for why the circuit court erred in finding him in constructive civil contempt for not paying alimony as ordered, neither of which is availing. We shall address both arguments in turn.

First, Husband argues that Wife did not provide him with a Show Cause Order under Rule 15-206(c), which states:

> (1) An order filed by the court pursuant to subsection (b)(1) of this Rule and a petition filed pursuant to subsection (b)(2) shall comply with Rule 2-303 and shall expressly state whether or not incarceration is sought.
>
> (2) Unless the court finds that a petition for contempt is frivolous on its face, the court shall enter an order providing for (i) a prehearing conference, or (ii) a hearing, or (iii) both. The scheduled hearing date shall allow a reasonable time for the preparation of a defense and may not be less than 20 days after the prehearing conference. An order issued on a petition or on the court's own initiative shall state:[5]

[5](A) the time within which any answer by the alleged contemnor shall be filed, which, absent good cause, may not be less than ten days after service of the order;

(B) the time and place at which the alleged contemnor shall appear in person for (i) a prehearing conference, or (ii) a hearing, or (iii) both and, if a hearing is scheduled, whether it is before a magistrate pursuant to Rule 9-208(a)(1)(G) or before a judge; and

(C) if incarceration to compel compliance with the court's order is sought, a notice to the alleged contemnor in the following form:

TO THE PERSON ALLEGED TO BE IN CONTEMPT OF COURT:

1. It is alleged that you have disobeyed a court order, are in contempt of court, and should go to jail until you obey the court’s order.

2. You have the right to have a lawyer. If you already have a lawyer, you should consult the lawyer at once. If you do not now have a lawyer, please note:

(a) A lawyer can be helpful to you by:

(1) explaining the allegations against you;

(2) helping you determine and present any defense to those allegations;

(3) explaining to you the possible outcomes; and

(4) helping you at the hearing.

In his brief and at oral argument, Husband claims that, as a precondition to being held in contempt, he did not receive a show cause order for the amended contempt petition. While perhaps technically correct, the record reflects a more complicated set of facts, none of which benefit Husband.

Preliminarily, our review of the docket entries show that Husband was served with the original show cause on December 8, 2020, about a year after Wife filed her original contempt petition, as reflected in the docket entry for that date. While we do not have the document in the record, it is reasonable to assume that the circuit court was satisfied that the show cause order was properly served because the court set the case for a scheduling conference before a magistrate. Indeed, when Husband failed to appear for the scheduling conference, the court issued a separate show cause order for Husband to appear before a

(b) Even if you do not plan to contest that you are in contempt of court, a lawyer can be helpful.

(c) If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you.

• To find out if the Public Defender will provide a lawyer for you, you must contact the Public Defender after any prehearing conference or magistrate's hearing and at least 10 business days before the date of a hearing before a judge.

• If no prehearing conference or magistrate's hearing is scheduled, you should contact the Public Defender as soon as possible, at least 10 business days before the date of the hearing before the judge.

• The court clerk will tell you how to contact the Public Defender.

(d) If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

(e) DO NOT WAIT UNTIL THE DATE OF YOUR COURT HEARING TO GET A LAWYER. If you do not have a lawyer before the court hearing date, the judge may find that you have waived your right to a lawyer, and the hearing may be held with you unrepresented by a lawyer.

3. IF YOU DO NOT APPEAR FOR A SCHEDULED PREHEARING CONFERENCE, MAGISTRATE'S HEARING, OR COURT HEARING BEFORE THE JUDGE, YOU WILL BE SUBJECT TO ARREST.

judge on March 8, 2021, to explain why he did not appear at the scheduling conference. When Husband appeared for the March 8 hearing, the docket entries show that he admitted that the show cause was properly served on him.

Additionally, the transcript of the June 14, 2021 merits hearing plainly shows that Husband waived any defects in service of the contempt petition. At that hearing, Husband's trial counsel asserted that the show cause order for the amended petition had not been served. Wife's counsel, apparently conceding the point, said that Wife would proceed on the original contempt petition. Although Wife's attorney and Husband's attorney jousted over alleged deficiencies in the original petition, during that hearing, Husband's attorney offered to set Wife's contempt petition and Husband's modification petition on the same date and would waive any defects in the service of the contempt petition:

> [HUSBAND'S COUNSEL]: There is a scheduling conference coming up on June 25th, as [Husband] has filed a motion to terminate [alimony]. It's the same exact issue, so for purposes of judicial economy, I think it makes sense for both of these things that are involving the same parties, the same issues, to be heard at exactly the same time.
>
> * * *
>
> THE COURT: …**What I'm hearing – and you're going to correct me if I'm wrong about this – is that essentially [Husband] will waive the service requirement, acknowledge the service of the complaint for contempt and enforcement, and we will set a hearing date that can accommodate both that motion and your motion. Is that something you would agree to?**
>
> [HUSBAND'S COUNSEL]: **Your Honor, I believe that's in the best interests of the parties and the Court so that two different hearings are not taken on the exact same issues and the exact same facts.**

(Emphasis supplied).

Although Wife initially balked at this proposal and demanded to go forward with the contempt proceeding immediately, she relented and agreed to Husband's counsel's offer. The following then occurred, making it abundantly clear that Husband waived any objection he had to service of the contempt petition:

> [WIFE'S COUNSEL]: Your Honor, while you're looking, may I ask -- am I understanding correctly that as part of this, [Husband's counsel] is accepting service of the show cause order or not? Or do we have to serve him?
>
> THE COURT: Well, my understanding was that he was essentially waiving any claims for lack of service. So -- or accepting service. Is that correct, counsel?
>
> [HUSBAND'S COUNSEL]: Yes, Your Honor. **We're waiving the argument of lack of service regarding the four show cause orders dated** –
>
> THE COURT: **For any defects with the show cause order?**
>
> [HUSBAND'S COUNSEL]: **Yes, for the show cause order.**

(Emphasis supplied). Because the record reflects that Husband agreed to waive any defects in service of the show cause order,[6] he cannot complain of an error on appeal where he

[6] The judge's memorandum to the court file, dated June 16, 2021, summarizes what occurred at the hearing:

> To Whom It May Concern.:
>
> This case came before Judge Salant on June 14, 2021 for Contempt & Enforcement Hearing. The matter was postponed until October 19, 2021; both parties consented. Defendant agreed to waive all defects in Plaintiff's Motion for Contempt and Request for Show Cause (Docket No. 106) and its service.
>
> The October 19, 2021 hearing will consider (1) Plaintiff s Motion for Contempt and Request for Show Cause (Docket No. 1.06) -- including the

consented to the judgment below. "The right to an appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal." *Rocks v. Brosius*, 241 Md. 612, 630 (1966).

Husband's *second* argument for why the court erred in finding him in civil contempt rests on the assertion that he did not receive written notice of Wife's decision to vacate the marital home, which would have triggered the increase in alimony from $1,500 to 3,250 per month. This argument is wholly unavailing for two reasons. First, Husband's defense at trial was that he knew nothing about an obligation to pay alimony in any amount, not that a precondition was not met before he would pay it.

Second, counsel's question to Husband about whether Wife had sent him "anything in writing" hardly qualifies as Husband's statement that Wife did not give him notice of her intent to leave the marital home. In the context of direct examination, counsel was asking Husband if Wife had ever demanded alimony.

> [HUSBAND'S ATTORNEY]: Okay. Now, did you have any understanding that you had to pay your ex-wife any monthly payments?
>
> [HUSBAND] No, not at all. Not at all.
>
> [HUSBAND'S ATTORNEY]: Now, did, at any time, after September 21st, 2015, until you were served with this lawsuit, did your wife ever ask you, hey, when are you sending me the monthly payments?
>
> [HUSBAND]: Not, not at all, no.

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issue of attorneys' fees -- and (2) Defendant's Motion to Terminate / Modify (Docket No. 122). Both parties agreed to file long-form financial statements by June 24, 2021.

[HUSBAND'S ATTORNEY]: Did she ever write to you by e-mail –

[HUSBAND]: No.

* * *

[HUSBAND'S ATTORNEY]: Okay. So the first time you learned that you had an obligation to your ex-wife was in 2020, and how did that come about?

[HUSBAND]: I don't know. Just she, she told me. She called me and she told me.

[HUSBAND'S ATTORNEY]: What did she say?

[HUSBAND]: She said, you have to pay me the alimony every month. I said, I, I don't have any idea. We never, we never sign anything. We never, we never did anything to, to be like that.

[HUSBAND'S ATTORNEY]: And as –

[HUSBAND]: And I, I, I'm telling you the truth. I never knew there's going to be, I have to pay anything.

[HUSBAND'S ATTORNEY]: Now**, did she send you anything in writing after** –

[HUSBAND]: No.

[HUSBAND'S ATTORNEY]:-- **that point?**

[HUSBAND]: No.

(Emphasis supplied). In this context, Husband's answer about not receiving "anything in writing" from Wife could reasonably be interpreted as meaning that Wife did not give him notice of her desire to obtain alimony, not written notice that she was moving out of the marital home. We stress that from our review of the entire transcript, Husband repeatedly asserted that he knew nothing about an obligation to pay Wife alimony.

Finally, additional evidence presented at the merits hearing leads us to conclude that requiring Wife to provide Husband with written notice of her desire to vacate the marital home would have been pointless because it was Husband who initiated the sale of the marital home. The undisputed testimony was that Husband demanded that the marital home be sold. Wife agreed, either overtly or tacitly, to maintain amity with Husband. As a result, the house was put on the market, sold, and the proceeds of the sale divided between Husband and Wife consistent with the terms of their Separation Agreement. To penalize Wife for not providing Husband with written notice that she was going to vacate the marital home under these circumstances is absurd. Husband was well-aware that the marital home was going to be sold. Wife would no longer have use and possession and would require an increase in spousal support as the Separation Agreement contemplated. As we owe it the highest degree of deference, we will not disturb the circuit court's finding that Husband's blanket denial that he did not know that he had to pay alimony was simply not credible. Having determined that neither of Husband's bases of error on this issue are tenable, we hold that the circuit court did not err in finding Husband in constructive contempt for willfully not paying Wife alimony.

II. The Court Properly Calculated Alimony Arrears

Husband's claim of error rests on two arguments: *First*, that the court should have calculated alimony arrears accruing from September 1, 2019, rather than January 1, 2017. *Second*, he argues the court should have used the date of the amended petition, May 10, 2021, rather than the date of the original petition, December 2, 2019, as the operative date

for calculating the limitations period under FL § 10-102 and CJ § 5-111. Neither argument is persuasive.

Husband's *first* argument, about the date on which the arrears started to accrue, is his attempt to avoid paying Wife the arrears on the initial alimony payments of $1,500 per month. He frames his argument in terms of notice pleading. In her original and amended petitions, Wife demanded alimony arrears for the months that Husband failed to pay her $3,250 per month in alimony accruing from the date the house was sold.

Significantly, before the circuit court, Husband did not deny that he was obliged to pay $1,500 per month in alimony from the date of the parties' divorce in July 2015. In fact, Husband's trial counsel admitted that the obligation existed, but that Husband simply did not pay it:

> THE COURT: Well, it looks to me it's pretty clear that he's paid $1,500 a month until that happened, right? And then he's supposed to go up to 3,250 –
>
> [HUSBAND'S ATTORNEY]: Correct.
>
> THE COURT: -- right?
>
> [HUSBAND'S ATTORNEY]: Their position is that he hasn't paid the 3,250, Your Honor.
>
> THE COURT: **Well, has he paid the 1,500?**
>
> [HUSBAND'S ATTORNEY]: **No, he has not.**
>
> THE COURT: Okay.

(Emphasis supplied). And later, during the same conversation with counsel:

> [HUSBAND'S ATTORNEY]: I think the first question is, what was the payment that's due. If we're talking about the $1,500 a month, I can tell you that's correct. **My client has not made $1,500 a month**.
>
> * * *
>
> [HUSBAND'S ATTORNEY]: **Your Honor, I just spoke to my client. He does acknowledge that as of July -- well, he never paid $1,500 a month after July 1st, 2015. That, we can agree to. 3,250? We cannot agree to**.
>
> THE COURT: All right. Well, so it sounds like after July 1st of 2015, nothing was paid?
>
> [HUSBAND'S ATTORNEY]: Correct.
>
> THE COURT: All right?
>
> [HUSBAND'S ATTORNEY]: Yes.

(Emphasis supplied). At no time did Husband protest or object during the hearing about this testimony. Nor did he put before the circuit court the issue that he raises now on appeal, namely, that Wife's pleadings only put him on notice that she was claiming the second iteration of alimony payments, $3,250 per month accruing from the date Wife gave him written notice of her intention to vacate the marital home. At the hearing, Husband claimed that he did not know that an alimony obligation existed. Significantly, Husband, after consulting with counsel, admitted that he had not paid **any** amount of alimony prior to the sale of the marital home.

Husband's admission means that he may not now contest his admission on appeal. The Supreme Court of Maryland (previously called the Court of Appeals of Maryland)[7] has defined waiver as the intentional relinquishment of a known right. *Taylor v. Mandel*, 402 Md. 109, 136 (2007). Waiver rests upon the intention of the party and therefore, acts relied upon as constituting waiver must unequivocally demonstrate that waiver is intended. The right or advantage waived must be known; "[t]he general rule is that there can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights, and of facts which will enable him to take effectual action for the enforcement of such rights." *Id*. (internal citations omitted). Here, Husband could have contested being required to pay $1,500 per month in alimony but did not. Any objection Husband had in this regard has been waived and is not properly before this Court. *See* Rule 8-131(a) (objection to evidence not raised and decided by the trial court will not be reviewed on appeal).

Second, as regards the date from which the Statute of Limitations period should run, it was Husband's counsel who suggested that December 2, 2019, the date Wife filed her initial complaint, be the starting point.

> [HUSBAND'S ATTORNEY]: [W]hat I suggest for the Court to do is to limit her rights to asking or alimony three years from the date that [Wife]

[7] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See, also*, Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

> filed in this particular case. I think her filing date is **December 2, 2019**…she has three years, she can go back three years from that."

(Emphasis added). Both attorneys and the court were working off the same operative fact, namely, that the Limitations period would run from the day of Wife's original petition: December 2, 2019.

The court correctly determined that FL § 10-112[8] and CJ § 5-111[9] applied in this case. Additionally, we note that Rule 15-207(e)(2) states:

> Subject to subsection (3) of this section, the court may make a finding of contempt if the petitioner proves by clear and convincing evidence that the alleged contemnor has not paid the amount owed, **accounting from the effective date of the support order through the date of the contempt hearing.**

(Emphasis supplied). Accordingly, based on this record, we cannot conclude that the court erred in considering the arrears owed based on the parameters that counsel provided and to which he did not object. *Miles v. State*, 365 Md. 488, 554 (2001) ("[A party] will ordinarily not be permitted to 'sandbag' trial judges by expressly, or even tacitly, agreeing to a proposed procedure and then seeking reversal when the judge employs that procedure...nor will they freely be allowed to assert one position at trial and another, inconsistent position on appeal.") (citation omitted).

[8] FL § 10-112 states: A contempt proceeding for failure to make a payment of child or spousal support under a court order shall be brought within 3 years of the date that the payment of support became due.

[9] CJ § 5-111 states: A proceeding to hold a person in contempt of court for the person's default in payment of periodic child or spousal support under the terms of a court order shall be commenced within 3 years of the date each installment of support became due and remained unpaid.

Finally, in his brief, Husband suggests that the date of the amended contempt petition, May 5, 2021, should be the operative one since the amendment does not "relate back" to the original petition filed in December 2019. This argument is without merit. In the first place, as we discussed in the first section of this opinion, Wife agreed to go forward on the originally filed contempt petition and Husband agreed. Consequently, the court cannot be faulted for using the date of the original petition as the operative date for calculating alimony arrears.

Further, even if the second contempt petition was operative, Rule 2-341(a) allows a party to file an amended pleading without leave of court and states:

> If an amendment introduces new facts or varies the case in a material respect, an adverse party who wishes to contest new facts or allegations shall file a new or additional answer to the amendment within the time remaining to answer the original pleading or within 15 days after service of the amendment, whichever is later. If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment.

Here, the amendment restated what Wife pled in the original petition with the addition of citations to the Separation Agreement and relevant case law. It asked for incarceration, as did the original petition, with the addition of asking, appropriately, that the court establish a purge provision. The amendment also asked for any additional relief the court deemed proper, including costs and fees. In other words, the amended petition did not materially change the allegations or introduce additional facts or parties; it merely set forth a slightly better statement of facts.

Accordingly, on the record before us, the court did not err in using the original complaint as the operative point from which to calculate the Limitations period. At the

June 14, 2021 hearing, Wife's counsel stated that Wife would proceed on the original contempt petition to avoid any perceived problems with service of the amended petition. Husband's attorney, as we have seen, agreed to go forward on the original contempt petition, waiving any problems with service, so long as the court heard Husband's request to modify alimony at the same time. That dual-issue hearing went forward as planned. At that hearing, Husband's counsel urged the court to use the date of the original complaint as the point from which to calculate arrears and to impose the three-year limitations period, restricting the amount Wife could collect as alimony arrears. The court did exactly that. We perceive no error.

III. The Court Did Not Abuse Its Discretion in Denying Husband's Motion to Modify or Terminate Alimony

In his final assignment of error, Husband asserts that the circuit court erred in denying his motion to modify or terminate alimony because the court did not adequately consider Husband's financial circumstances when considering his request. Husband's motion rested on his testimony that his income decreased, that documents he presented showed he owed back taxes totaling $24,179.25 to the IRS and the Maryland Comptroller, and his testimony that business opportunities for his commercial cleaning company had declined since the pandemic. Although Husband's motion requested either modification or termination of alimony, his testimony and the argument of his counsel was for termination of the alimony obligation only.

A court "may modify the amount of alimony awarded as circumstances and justice require." Md. Code, Family Law Article ("FL"), § 11-107(b). But it is established that a

court may modify an alimony order upon a showing of a material change in circumstances justifying that action. *Tidler v. Tidler*, 50 Md. App. 1, 9 (1981) (citations omitted). "What amounts to a substantial change in the husband's financial circumstances is a matter to be determined in the sound discretion of the chancellor for which there are no fixed formulas or statutory mandate." *Lott v. Lott*, 17 Md. App. 440, 447 (1973) (citation omitted).

Additionally, FL § 11-108(3) states that a court may terminate alimony, even if one party disagrees, "if the court finds that termination is necessary to avoid a harsh and inequitable result." Significant to our discussion is that we have previously held that "termination of alimony to avoid a harsh and inequitable result does not operate as a matter of law and requires a court to examine facts and circumstances to determine whether harsh and inequitable results exist. Whether a result is harsh and inequitable is a subjective determination." *Bradley v. Bradley*, 214 Md. App. 229, 237 (2013).

In this case, the Separation Agreement contemplated that Husband would pay Wife modifiable, indefinite alimony so long as both parties remained alive, and Wife remained unmarried. It seems clear from Husband's testimony and his trial attorney's argument that Husband wanted the court to find that his circumstances established that continuing alimony payments of $3,250 per month in alimony would result in "a harsh and inequitable result." Husband argued that the loss of income from his business meant that he could not pay alimony or any alleged arrears.

Husband bore the burden of proving that a modification was warranted by first demonstrating that a material change in circumstances existed. We conclude that he did not meet that burden based on the evidence adduced at the hearing. Husband's testimony

was that in 2015, when he signed the Separation Agreement, his income tax returns showed that he had a "K-1" income[10] of $114,871. In 2019, when Husband was supposed to start paying Wife $3,250 per month in alimony, his Schedule K-1 income was $71,656 and he took a salary of $22,908. The record also showed that he took several deductions, through the business, for travel, meals, and other personal expenses totaling $19,041, as well as a mortgage expense of $28,815. In short, we agree with the circuit court's finding: Husband was using the business to pay his expenses, pay him a salary, and provide him direct income. Husband had not filed his tax returns for 2020, but the uncontradicted testimony was that he received a $150,000 federal COVID assistance check, ostensibly for his business, but which Husband used to purchase an investment property, which he still owned at the time of the hearing. This was the only financial documentation that the court had before it. Significantly, the court declined to credit Husband's testimony about a decline in his income since 2020.

We conclude that the court's determination—that Husband had not met his threshold burden of demonstrating a change in circumstances for an alimony modification—was not an abuse of discretion. *Ridgeway*, 171 Md. App. at 384. The record amply demonstrated that Husband's income had not significantly changed to warrant a modification of alimony. Consequently, we hold that the circuit court's reasoning was not

[10] Investopedia.com defines a Schedule K-1 as "a federal tax document used to report the income, losses, and dividends for a business' or financial entity's partners or an S corporation's shareholders. The K-1 form is also used to report income distributions from trusts and estates to beneficiaries." Schedule K-1 Federal Tax Form: What Is It and Who Is It For? *https://www.investopedia.com/ters/s/schedule-k-1*.

"against the logic and effect of facts and inferences before the court," *North*, 102 Md. App. at 13, and affirm.

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