Circuit Court for Frederick County
Case No. 10-C-14-003440

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1763

September Term, 2017

ANGELO MAMONE

v.

ANGELA PLOWS BURCH

Graeff,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: September 3, 2019

Appellant, Angelo Mamone, a self-represented litigant, seeks review of the October 30, 2017, ruling of the Circuit Court for Frederick County regarding his Motion to Modify Child Support. In that motion, Mr. Mamone requested a reduction in the amount of child support he was ordered in 2015 to pay Angela Plows-Burch, appellee.[1] Although the court granted Mr. Mamone's Motion to Modify Child Support, reducing his monthly child support from $805 per month to $756 per month, beginning on November 1, 2017, and to $686 per month, beginning on May 1, 2018, Mr. Mamone is not satisfied with the court's ruling.

On appeal, Mr. Mamone presents eight issues for this Court's review,[2] all but one of which question whether the court erred or abused its discretion in computing the amount of child support awarded.

[1] In her pleadings and motions, Ms. Plows variously refers to herself as "Angela Plows-Burch" and "Angela Plows." For consistency, we will refer to her as Ms. Plows throughout this opinion.

[2] Mr. Mamone's eight questions presented are as follows:

> 1. Did the Circuit Court in 2017 correctly set Mr. Mamone's monthly income at $4637 for the purpose of computing child support under the Child Support Guidelines?
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> 2. Did the Circuit Court recognize child support actually paid by Mr. Mamone?
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> 3. Has the Circuit Court erred in computing the actual income of Ms. Plows based on its own findings, and carry this error into the 2017 hearing; and fail to include income from a tenant in her home?
>
> 4. Did the Circuit Court err in failing to impute income from mortgage payments on Ms. Plows' home?

As explained below, we shall affirm the judgment of the circuit court.[3]

FACTUAL AND PROCEDURAL BACKGROUND

G.M, a minor child, was born in March 2013. Her parents, Mr. Mamone and Ms. Plows, never married or resided together.

On November 21, 2014, Mr. Mamone filed a Petition for Custody, seeking joint physical custody and sole legal custody of G.M. Ms. Plows filed a Countercomplaint for Sole Custody and Child Support, requesting sole legal and physical custody of G.M, as well as child support from Mr. Mamone.

> 5. Has the Circuit Court properly applied the testimony of witness Kathy Stone and the orders of Judge Dwyer, regarding the voluntary impoverishment of Ms. Plows and the effective date of her recommendation?
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> 6. Did the Circuit Court fail to require Ms. Plows to provide a Financial Statement and address and the rule on the parents' financial circumstances and in setting monthly child support and arrearages?
>
> 7. Did the Circuit Court address the parents' financial circumstances in setting child support?
>
> 8. Has the Circuit Court erred in denying Mr. Mamone his parental rights in the rearing of his child without a finding of unfitness or clear and convincing evidence to support such a finding?

[3] In addition to the challenge to the 2017 child support order, Mr. Mamone challenges the circuit court's 2015 ruling granting Ms. Plows sole custody of G.M. That issue is not properly before this Court because there was no timely appeal of the 2015 ruling. *See Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 673–74, 676 (where no timely appeal from a child support order that was entered on June 13, 2006, issues raised regarding that ruling not before court on appeal from subsequent ruling), *cert. denied*, 555 U.S. 849 (2008). Accordingly, we will not consider that contention.

On October 21-22, 2015, the circuit court held a hearing. The court ultimately awarded Ms. Plows sole legal and physical custody of G.M., with visitation to Mr. Mamone.

In calculating child support, the court found that Mr. Mamone had gross income of $56,000 based on his 2014 IRS Form 1099. It subtracted 45% of that amount as "business expenses," which resulted in an income of $30,800, or $2,567 per month. The court attributed to Mr. Mamone an additional $30,840 in income, based on monthly payments of $2,570 that Mr. Mamone's parents made toward the mortgage on his residence. This resulted in a combined gross income of $61,640 per year, or $5,137 per month.

The court then calculated Ms. Plows' income. It found that she received social security benefits in the amount of $568, and it imputed to her a salary based on a minimal wage of $8.25 per hour. It calculated her gross income to be $17,160, or $1,430 per month, which was the product of $8.25 (per hour), 40 (hours) and 52 (weeks). With a combined monthly income of $6,567, the court calculated child support, pursuant to the guidelines, to be $1,033 per month, and it ordered Mr. Mamone to pay 78% of that amount, or $805 per month. On November 19, 2015, the circuit court issued a written order, incorporating these findings. Mr. Mamone did not appeal the order.

On August 8, 2016, Mr. Mamone filed a Petition to Modify Child Support. In the petition, he alleged that there had been "a substantial change of circumstances in [his] income." He asserts that his income had decreased from $47,580 in 2015 to a projected income of $24,684 in 2016. He also claimed that Ms. Plows had "voluntarily

impoverish[ed] herself and should be imputed" a higher income. He asked the court to reduce his child support amount from $805 to $327 per month.[4]

On March 15, 2017, Ms. Plows filed a Petition for Contempt, claiming that Mr. Mamone's "Motion to Modify Child Support [was] wholly without merit." She asserted that Mr. Mamone had "unilaterally reduced the amount he p[aid] to [her] for support to less than $400 per month," and that, as of January 31, 2017, Mr. Mamone was "in arrears . . . in the amount of $1,945.00."[5]

On October 18, 2017, the court held a hearing on the Petition to Modify Child Support and the Petition for Contempt. Mr. Mamone argued that his income had "dramatically decreased" since the court ordered him to pay child support, and that Ms. Plows had "voluntarily impoverished herself." Ms. Plows contended that there had been no "material change in circumstances" since the 2015 court order. She explained that she was a "stay at home mom," and the circuit court already had calculated her imputed income at minimum wage.

Mr. Mamone called Kathy Stone, an expert in "vocational assessment," to testify regarding Ms. Plows' earning potential. Ms. Stone performed a skills analysis based on

[4] Mr. Mamone filed an Amended Motion to Modify Child Support on April 11, 2017, which restated the claims in the original motion but added that Ms. Plows: (1) "is not medically prevented from working but chooses not to work"; (2) "has job skills and education that would allow her to secure a well-paying job"; (3) "should be imputed a higher amount of income which should impact the Child Support Guidelines"; and (4) "should be required to pay whatever the new imputed income results in."

[5] Ms. Plows filed an amended contempt petition on June 28, 2017, which modified the date that the court awarded her sole legal and physical custody of G.M. from November 19, 2016, to November 19, 2015.

Ms. Plows' deposition testimony to determine what jobs Ms. Plows could "perform . . . within 30 miles of Monrovia where [Ms. Plows] resides." In a report admitted into evidence during the hearing, Ms. Stone concluded that Ms. Plows had the

> capacity to earn a present median annual estimated wage of $32,616 and with 5+ years of work experience could make up to[ ] $40,733 annually. However, given present labor market conditions, and per the US Bureau of Labor Statistics, it could take up to 24.7 weeks to find work, as of May 2017.

In arriving at this conclusion, Ms. Stone considered Ms. Plows': (1) age of 45; (2) her U.S. Citizenship; (3) her residence in Monrovia, MD; (3) her possession of a driver's license; (4) her high school diploma; (5) her "basic computer skills with experience in operating office machinery with keyboarding abilities, supervising, scheduling and conducting inventories"; (6) her lack of a criminal record or military service; and (7) her prior employment history, including jobs as an "office manager, receptionist, typist, customer service representative and data entry worker."

When asked about Ms. Plows' recent employment history, Ms. Stone acknowledged that Ms. Plows had not worked in approximately 10 years. Ms. Stone stated, however, that she had considered the gap in Ms. Plows' employment history in concluding that it would take Ms. Plows approximately six months to find a job. She also noted that, while some of Ms. Plows' skills had become outdated, Ms. Plows had access to the Maryland Workforce Development Office, which could provide her "updated computer skills free of charge."

Mr. Mamone, who states in his brief that he is 58 years old, testified at the hearing that he had operated an internet business selling "motorcycle riding apparel" for

approximately seven to eight years. Prior to operating his internet business, Mr. Mamone ran a towing business, as well as a restoration shop in the 1990s.

His internet business had declined since the circuit court's custody and child support order in November 2015, which had forced him to borrow money to pay his monthly expenses.[6] He testified that he made approximately $53,000 in 2015, and his earnings in 2016 were half that amount.[7] He borrowed close to $3,000 both in May and June 2017. His debt to his parents at the time was $109,017.

Mr. Mamone lived at a residence owned by his parents in Monrovia. His parents initially required him to pay rent in the amount of $2,567 per month, but they reduced the monthly rent to $1,000 shortly after the circuit court's November 2015 order. When Mr. Mamone is unable to pay the full rent, he makes a promissory note to his parents for the remaining obligation.

In addition to paying the mortgage on his residence, Mr. Mamone's parents also paid his credit card bills. When asked about the last time he made payments towards his debt to his parents, Mr. Mamone stated that he sold a van for $11,500 on June 30, 2016, and he paid the proceeds to his parents. Mr. Mamone stated that he intended to pay back the loan in full.

[6] Although his income had increased in some months, since June 2017, Mr. Mamone stated that his income tended to go "up and down every month."

[7] Mr. Mamone attributed the decline of his business to the "loss of the blue-collar industry" and the cancellation of a television series, i.e., Sons of Anarchy, in 2014. *See United States v. Ermoian*, 752 F.3d 1165, 1166 n.1 (9th Cir. 2013) ("Sons of Anarchy is a television drama series that . . . documents the legal and illegal activities of a fictional outlaw motorcycle club operating in a town in California's Central Valley.").

Mr. Mamone's parents constructed a $20,000 pole building behind his residence in Monrovia.[8] They stored their belongings at the location, and he had not received any income from the addition.

Angela Plows testified that she lived in a single-family residence, which was subject to foreclosure proceedings. She owed $80,000 on the mortgage, but she was not making mortgage payments at the time. Her father had paid the mortgage for the months of January, February, and March of 2017.[9] Besides her home, the only other significant asset that Ms. Plows owned was a 2004 Nissan Xterra, which her friend gave her as a gift.[10]

Ms. Plows had last worked outside the home in approximately 2006. She had worked at Boisseau Insurance, where she worked as a data entry receptionist and performed "clerical work," and she made approximately $13-14 per hour. Her only source of income at the time of the hearing was social security death benefits relating to her late husband, as well as rent payments of $200 per month from a tenant staying at her residence.[11]

[8] A pole building is a '"a quickly constructed building in which vertical poles are secured in the ground to serve as both the foundation and framework."' *Kistler v. Com., State Ethics Comm'n*, 22 A.3d 223, 225 n.4 (Pa. 2011) (quoting Oxford Dictionaries, oxforddictionaries.com). Mr. Mamone explained that the pole building also contains a lift that was moved from the parents' house in Chevy Chase, MD.

[9] Ms. Plows also indicated that her father was helping her pay the attorney's fees in this case.

[10] Ms. Plows stated that she had no equity in the house.

[11] She stated that, since her April 2017 deposition, the tenant has not paid the $200 per month rent consistently. She did not enter into a written agreement with the tenant.

Prior to her employment at Boisseau, Ms. Plows worked at an engineering company, initially in a clerical capacity, and then as an office manager. Before that, she worked at NASDAQ Stock Market, where she answered calls from an "800 line" that allowed potential investors to conduct criminal background checks on stockbrokers. She worked in that capacity for seven years and made between $10-14 per hour.

Ms. Plows expressed concern about the gap in her employment and opined that her credentials probably would allow her only a job that paid minimum wage. She acknowledged that she did not apply for any jobs in the past year or in 2015.

When asked why she was not working, Ms. Plows stated that she was "taking care of [G.M.]." G.M. recently had started attending pre-Kindergarten classes from 9:00 a.m-11:25 a.m. on weekdays, and Ms. Plows dropped her off and picked her up each day.[12] Since G.M. began attending classes, Ms. Plows had to make multiple expenditures for gas, school pictures, field trips, school supplies, clothes, shoes, and snacks for her daughter's classmates. Ms. Plows had contemplated resuming employment once her daughter was a full-time student.

Ms. Plows testified that she had been receiving welfare benefits, i.e., food stamps, in October 2015. When the court issued its child support order later that month, she lost the benefits, which were then reinstated in 2017, when Mr. Mamone failed to make support

[12] Ms. Plows explained that G.M. did not attend full-day school hours because it would have cost her $900 per month, which she could not afford.

payments. She explained that, as of the date of the hearing, Mr. Mamone had not paid her the child support he owed and was $7,000 in arrears.[13]

Following Ms. Plows' testimony, the court made oral findings on the Motion to Modify Child Support. It found that, because G.M. would be attending school soon, there had been a material change in circumstances since the November 2015 order. Ms. Plows' failure to make any effort to find employment amounted to voluntary impoverishment, and the court imputed income of $2,687 a month to her.[14]

With respect to Mr. Mamone, the court attributed to him a base income of $30,800, and an additional $24,840 based on his parents' financial assistance, for a total income of $55,640, or $4,637 a month. It explained its calculation, as follows:

> Now, that being said, [Mr. Mamone's] testimony as to his income indicating that he was—and I want to get the exact term—quote/unquote 50 percent of what I earned in 2015 which was about $53,000. Money is tight and half of $53,000 would be [$]26,000. Now, I think the most important testimony from [Mr. Mamone] was with respect to his financial statement. When it was queried, and this was for June of 2017 according to his

[13] Mr. Mamone paid child support to Ms. Plows in the amounts of: $805 in July of 2016; $805 in August of 2016; $805 in September 2016; $405 in October of 2016; $260 in November of 2016; $280 in December of 2016; $330 in January of 2017; $200 in February of 2017; $320 in March of 2017; $320 in April of 2017; $320 in May of 2017; $280 in June of 2017; $220 in July of 2017; $220 in August of 2017; $180 in September of 2017; and $80 for October of 2017.

[14] The court arrived at that figure by using the median figure that Ms. Stone testified that Ms. Plows could earn, $15.50 per hour. That hourly wage, multiplied by 40 hours per week, amounted to $620 per week, which multiplied by 52 amounted to $32,240 per year, or $2,687 per month.

testimony where he indicates to the Court that he earned net $313 he testified that he borrowed $2900 to make up the difference in income and expenses.[15]

Now, there is further testimony later on in the day that it may not necessarily have been somebody giving him $1,000 and then him paying those expenses but rather forgiveness. And I'll get into that. Hypothetically with respect to the $1,000 rent if it wasn't the borrowing was not necessarily $2900 in cash or check and then he wrote the [c]heck back. But what is important is he told me under oath [that] he borrowed $2900 to pay for June.

But if you look at the financial statement part of that $2900 was [$]805. But for June of 2017 when he got $2900 and borrowed monies he paid $280 of the [$]805 and I don't know what he did with the rest of the money. . . .

But notwithstanding receiving $2900 and I'm taking his word that he received it. He then pocketed the remaining difference of [$]805 and [$]280. He put [$]525 someplace. Now, I have gone over John O. v. Jane O. once again and Goldberger v. Goldberger. Those factors I've already stated. There was some information that I didn't have.

That is, I don't know the father's age. And I don't know his respective level of education. However, I do know he has been self-employed for the last seven to eight years. I do know that he not only is selling leather apparel through the internet. I do know that he worked in a towing capacity. I do know that he did repossessions. I do know that he and his partner did repairs. He used the term we did repairs.

And years and years ago there was a restoration shop. There was some testimony about restoration of a motorcycle. In any event, I'm taking all of that in with respect to skills that he may have. His efforts to find and retain employment none. I thought it was interesting that [Ms. Plows] asked him in cross-examination whether he utilized a vocational rehabilitationist. And indicated to [t]his Court that his income is diminished to the extent that it has. Whether he or she has ever withheld support. And I didn't read that factor under John O. for [Ms. Plows] because she hasn't been the payor.

But in this case there has been $7,050 in unpaid child support pursuant to Judge Dwyer's order at 805. Now, there was no testimony as to the job

[15] Mr. Mamone testified that he had to borrow $2,900 from his parents in June 2017. The $313 that the court referenced in its findings came from the financial statement that Mr. Mamone submitted to the court on August 21, 2017.

market per se in the area except for testimony that a show Sons of Anarchy which this court has never seen is no longer on and therefore the business is not there. Based on all of that and taking also into consideration specific findings that the father's father paid Ms. Stone $2,500 retainer. I believe there is more money owed.

I do note that he is driving a 2014 Ram and not paying any money for that vehicle. I have noted and accepted into evidence the fact that there is a 204. Now that's a Chrysler van but it indicates but I believe he sold a van back in 2016 also and I believe there [are] two motorcycles. He estimates $1,500, $2,500. He has not been paying the $1,000 rent. I at this point must note that it was interesting that [Mr. Mamone] submitted to the Court a lease agreement dated December 1st, 2015 within two months of the last ruling which indicated that the rent went down to $1,000 a month.

At the same time, approximately 15 days [la]ter there is a check to his father in the amount of $500 and attached thereto is a promissory note in the amount of $2,070 which I believe there is testimony was the original amount of the mortgage payment if we look at Judge Dwyer's opinion on page 9 $2,570 is the mortgage payment that his parent is paying which is vexing to the Court that he had to give a $2,070 promissory note after paying [if] the lease was $1,000.

Now, in addition, his testimony was that the $1,000 rent is either going into this debt that he ow[e]s, the 198 is not paid by him and the 457 is not paid by him. That—I'm sorry. 457.85 for health insurance, 198 for cell phone and $1,000 for rent. He did indicate that sometimes he pays 200. I believe he said he had some documents. About 500. I don't remember seeing those documents.

The court then stated that it did not credit Mr. Mamone's testimony that his gross income was $26,000. The court continued:

And if that be true I find that he is voluntarily impoverishing himself. I find that and I attribute income to him base of $30,800 and I am adding an additional $2,070 [per month] which I think is truly justified in this case based on the fact of $1,000 for rent, $200, $458.

The fact that he received $11,500 approximately three months, two months before he in fact filed this motion to modify and then less than six months started unilaterally changing the amount. I further find the fact that he has a Ram 2014 at his disposal and . . . I think it is worthy of noting that

> both parties in my estimation from their testimony have spent over $22,000 on attorneys and experts in this regard and in this regard only.
>
> I find thus [Mr. Mamone's] income to be $4,637 per month. I did not find that the $2,570 is being paid for the mortgage as Judge Dwyer.

After calculating the incomes of the parties, the court reduced Mr. Mamone's child support obligation to $756 per month, commencing November 1, 2017, and $686 per month, commencing May 1, 2018.[16] It explained that it arrived at these figures using the child support monthly guidelines, the incomes of mother, $1,450, and father, $4,637, and that it would be six months for Ms. Plows to get a job and have imputed income of $2,687 a month. [17]

On October 30, 2017, the circuit court issued a written order granting Mr. Mamone's petition to modify the child support. It ordered Mr. Mamone to pay Ms. Plows child support in the amount of $756 a month starting November 1, 2017, and beginning in May 1, 2018, in the amount of $686. [18]

[16] The court stated that it was permitted to modify the child support from the date of the filing of the motion, but it was not going to do that.

[17] The court also found Mr. Mamone in contempt based on his failure to pay child support, and it ordered him to pay $7,050 in child support arrears, within 30 days of the hearing. It provided that Mr. Mamone could purge the contempt by the full arrearage within 30 days of the court's order. The court stated that, if the amount was not paid, it would enter a judgment against Mr. Mamone for that amount. Mr. Mamone does not challenge the civil contempt finding in this appeal.

[18] Mr. Mamone submitted a Motion to Stay on November 11, 2017, which the circuit court denied on January 19, 2018.

On November 3, 2017, Mr. Mamone filed a motion for reconsideration, asserting that the court erred in calculating child support because it failed to consider: (1) the actual child support Mr. Mamone had paid from "October 2015 through September 2017"; (2) the income Ms. Plows "received from a tenant in her home and Social Security death benefits"; (3) the "monthly mortgage payments" Ms. Plows received from her father; (4) Mr. Mamone's actual payments of $1,000 per month in rent on his residence; and (5) the "potential earnings" Ms. Plows could have made based on a finding of voluntary impoverishment. He also claimed that the court incorrectly calculated his child support arrearage. The circuit court denied the motion for reconsideration on November 30, 2017.

On November 15, 2017, Mr. Mamone filed this appeal.

STANDARD OF REVIEW

"'When presented with a motion to modify child support, a [circuit] court may modify a party's child support obligation if a material change in circumstances has occurred which justifies a modification.'" *Leineweber v. Leineweber*, 220 Md. App. 50, 60 (2014) (quoting *Ley v. Forman*, 144 Md. App. 658, 665 (2002)), *cert. denied*, 441 Md. 668 (2015). We review the court's factual findings in this regard for clear error. *Tanis v. Crocker*, 110 Md. App. 559, 579 (1996). The ultimate decision whether to grant a modification, however, "'rests with[in] 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*, 220 Md. App. at 60 (quoting *Ley*, 144 Md. App. at 665).

DISCUSSION

I.

Mr. Mamone's first contention is that the circuit court "incorrectly set [his] monthly income at $4,637" when calculating his child support obligation under the guidelines. Initially, he asserts that "[n]o breakdown or explanation was given to support the finding, other than [the court's] statement that Mr. Mamone self-impoverished himself." Moreover, he contends that "the actual evidence" showed that his monthly income for 2016 had declined to $1,292 per month.

Ms. Plows contends that the court did not clearly err in "determining [Mr. Mamone's] monthly income to be $4,637. She claims that the amount was accurate based on gifts Mr. Mamone received from his parents, including money for rent, cellphone usage, health insurance, and the use of a car. Furthermore, she asserts that there was an "ample evidentiary basis upon which the trial court could rely to ascribe a substantial income to [Mr. Mamone] based on voluntary impoverishment."

In calculating a parent's financial obligations under the child support guidelines, a court must consider the "actual income of a parent, if the parent is employed to full capacity," or, in the alternative, the "potential income of a parent, if the parent is voluntarily impoverished." Md. Code (2018 Supp.) § 12-201(i) of the Family Law Article ("FL"). Actual income is "income from any source," including, but not limited to, salaries, wages, commissions, and bonuses. FL § 12-201(b). Potential income, on the other hand, is "income attributed to a parent determined by the parent's employment potential and probable earnings level based on, but not limited to, recent work history, occupational

qualifications, prevailing job opportunities, and earnings levels in the community." FL § 12-201(m).

Here, the circuit court stated that it did not believe that Mr. Mamone's income had declined as he testified, but if it was true, the court found that Mr. Mamone had voluntarily impoverished himself.[19] The court then attributed to Mr. Mamone the same income that the circuit court had in 2015, i.e., an income of $30,800, or $2,567 a month. The court then included income in the amount of $2,070 per month based on monthly expenditures Mr. Mamone's parents made on his behalf.

Mr. Mamone contends that the court erred in finding voluntary impoverishment. The test for voluntary impoverishment is whether the parent "'has made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources.'" *Dillon v. Miller*, 234 Md. App. 309, 319 (2017) (quoting *Durkee v. Durkee*, 144 Md. App. 161, 182 (2002)).

In determining whether a parent is voluntarily impoverished, courts consider the following factors:

> 1. his or her current physical condition;
>
> 2. his or her respective level of education;
>
> 3. the timing of any change in employment or financial circumstances relative to the divorce proceedings;
>
> 4. the relationship of the parties prior to the divorce proceedings;

[19] The court issuing the 2015 order similarly stated that it had "a lot of trouble with the credibility of Mr. Mamone."

5. his or her efforts to find and retain employment;

6. his or her efforts to secure retraining if that is needed;

7. whether he or she has ever withheld [child] support;

8. his or her past work history;

9. the area in which the parties live and the status of the job market there; and

10. any other considerations presented by either party.

Goldberger, 96 Md. App. 313, 327, *cert. denied*, 332 Md. 453 (1993). Although a trial court must consider each factor before finding voluntary impoverishment, it is not required to "articulate on the record" its analysis of each factor. *Dunlap v. Fiorenza*, 128 Md. App. 357, 364, *cert. denied*, 357 Md. 191 (1999). We review a trial court's "factual findings on the issue of voluntary impoverishment . . . under a clearly erroneous standard, and the court's ultimate rulings [for] . . . abuse of discretion." *Sieglein v. Schmidt*, 224 Md. App. 222, 249 (2015), *aff'd*, 447 Md. 647 (2016).

Here, the circuit court's statements reflect that, to the extent that there was evidence in the record, it considered the requisite factors for a determination of voluntary inpoverishment. The court noted that Mr. Mamone had been self-employed for seven or eight years, doing a variety of work, and he had made no effort to get additional work after his current business declined, despite the skills that he had.

We are not persuaded that the court erred or abused its discretion in attributing to Mr. Mamone the same amount of income that the court had in 2015, i.e., $30,800, or $2,567 per month.[20]

II.

Appellant contends that the circuit court erred when it failed to subtract the amount of child support he actually paid from his actual income. Specifically, he claims that the circuit court erroneously computed his "pre-existing child support actually paid" as zero, when, in fact, he had actually paid Ms. Plows $13,095 in child support.

FL § 12-204(a)(1) provides that "[t]he basic child support obligation shall be divided between the parents in proportion to their adjusted actual incomes." Under FL § 12-201(c), a parent's "adjusted actual income" is defined as actual income minus: (1) "**preexisting reasonable child support obligations actually paid**" (emphasis added); and (2) "except as provided in FL § 12-204(a)(2) of this subtitle, alimony or maintenance obligations actually paid."

Mr. Mamone misunderstands the import of FL § 12-201(c). In *Lacy v. Arvin*, 140 Md. App. 412, 424 (2001), this Court stated that "preexisting reasonable child support obligations" are those that "predate[e] the point in time at which child support is being calculated for another child." Here, the evidence was that Mr. Mamone was obligated to pay child support only for G.M., and therefore, he did not have any "preexisting reasonable

[20] Mr. Mamone does not specifically challenge on appeal the additional income of $2,070 per month that the court attributed to him based on payments that his parents made on his behalf, for things such as rent, cellphone, health insurance, and use of a vehicle.

child support obligations." FL § 12-201(c). The circuit court did not err in finding that the amount of such obligation was zero.

III.

Mr. Mamone next challenges the court's calculation of Ms. Plows' income, raising several grounds. First, he contends that the circuit court failed to consider Ms. Plows' receipt of $200 a month in rental income and $568 a month in social security benefits. Second, he asserts that the circuit court failed to "impute income from mortgage payments" that Ms. Plows' parents made on her residence. Finally, he argues that the circuit court abused its discretion in setting the effective date of the modified child support award months "after the date of filing."

Ms. Plows contends that appellant failed to argue below that the circuit court should impute other sources of income, including the rental income, in calculating her potential income, and therefore, the contention is waived. With regard to mortgage payments paid by her parents, she asserts that there were "absolutely no mortgage payments of any significance made that *could* be attributed as income to [her]," noting that her house was in foreclosure and she was $80,000 in arrears on her mortgage at the time of the hearing. Finally, Ms. Plows asserts that there was a "substantial justification for the trial court in the exercise of its independent judgment" to refuse to retroactively apply the modified award. Specifically, she argues that the trial court, by delaying the modification, sought to "sen[d] a signal to [Ms. Plows] that she is now on notice that she is well able to earn an income in between $15 to $16/hr, and if she so chooses not to, it should not negatively impact [Mr. Mamone]."

A.

Exclusion of Social Security and Rental Income

We begin with appellant's contention that the circuit court erred in failing to consider Ms. Plows' rental and social security income in calculating her income. To be sure, there was testimony about this income. Ms. Plows testified that, beginning in April 2017, she received a monthly rent of $200 from a girl who lived at her residence. She explained, however, that the girl had not paid her consistent amounts and that, in the past two months, she had not received any rental payments. Ms. Plows also stated that she received social security death benefits from her late husband. She testified that the benefits totaled $1,140 per month, of which she and her son each received monthly payments of $570.

Mr. Mamone, however, did not ask the court to consider either the social security benefits or the rent Ms. Plows received in calculating her income. 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." Maryland Rule 8-131(a). Issues that are not raised below are deemed to be waived. *DiCicco v. Baltimore Cnty.*, 232 Md. App. 218, 227 (2017).

During closing argument, counsel argued that Ms. Plows' income should be calculated by including: (1) income she could earn by obtaining employment; and (2) her father's contributions. In particular, he stated:

> As far as the imputation of income, Ms. Stone testified and submitted a report . . . that Ms. Plows['] income is estimated, according to her research at $32,616. Now, with five years' work experience, it would be $40,000. $40,733. Now, she did give her some time to be able to find a job like that I

> believe. So there was—Ms. Stone did factor in the time she has been out of work. So I believe that, you know, it is credible testimony, Your Honor.
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> * * *
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> Your Honor, also she testified her father basically gives her all the money she wants or needs for different things. Give her money. Always helping her on the mortgage. No promissory notes. You know. She said something like he's my father. So that indicates she doesn't have to—you know she doesn't have to pay him back. No promissory notes on that. No promissory notes on the $15,000 in legal fees to Mr. Kennedy. So we would ask for those monies to be imputed to her as well.
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> I believe her mortgage at the time prior to the foreclosure was $1,550. So we would ask for that money to be imputed to her because of the father. . . . He is giving her the money. She had testified that she knows that Mr. Mamone pays the mortgage. . . .
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> * * *
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> Well, just to recap, Your Honor, I think then [Mr. Mamone] has shown there is a substantial change in circumstances. There should be an imputation of income to Ms. Plows based on our expert testimony. There was voluntary impoverishment admitted to and there is a credibility problem. And also the imputation of income should include the father's contributions to Ms. Plows without any evidence of any kind of debt being paid back or any kind of obligation for the debt.

Immediately, after the court made findings regarding Ms. Plows potential income, counsel for Mr. Mamone did not object to the court's failure to consider the social security and rental payments. Under these circumstances, we conclude that Mr. Mamone's contention is waived, and we decline to review the contention.[21]

[21] Although Mr. Mamone did raise, for the first time, the issue of the court's failure to consider the rental and social security payments in his motion for reconsideration, this was not sufficient to preserve the issue for this Court's review. *Cave v. Elliott*, 190 Md. App. 65, 83 (2010) (declining to review issue that was raised for the first time on motion for reconsideration).

B.

Exclusion of Mortgage Payments

Mr. Mamone contends that the circuit court erred in calculating Ms. Plows' potential income when it failed to consider the mortgage payments that Ms. Plows' father made on her residence as gift income. We disagree.

Although the court may consider gifts as income, *see Petrini v. Petrini*, 336 Md. 453, 467 (1994), the evidence here was that Ms. Plows' father was not making her mortgage payments. Ms. Plows testified that, although her father at one point had helped her pay the mortgage, it had been some time since she paid her mortgage. She was approximately "$80,000 in the hole with [her] mortgage," and the house was in foreclosure. Under these circumstances, the circuit court did not abuse its discretion in declining to impute mortgage payments as income to Ms. Plows. *Reynolds v. Reynolds*, 216 Md. App. 205 (2014) (no abuse of discretion in declining to impute gifts as actual income when gifts not made on a regular basis).

C.

Retroactivity

Mr. Mamone argues that the circuit court abused its discretion when it did not make the modified award retroactive to the date of filing. We disagree.

FL § 12-104(b) states that "[t]he court may not retroactively modify a child support award prior to the date of filing of the motion for modification." But "Maryland law does not *require* that modifications of child support be retroactive." *Holbrook v. Cummings*, 132 Md. App. 60, 70 (2000) (emphasis added). Rather, the "decision to make a child

support award retroactive to the time of filing is one reserved for the trial court and will only be reversed upon a showing that the court abused its discretion." *Id.* at 69–70.

The circuit court, in declining to make the modified child support award retroactive, stated, as follows:

> I find thus [Mr. Mamone's] income to be $4,637 per month. I did not find that the $2,570 is being paid for the mortgage as Judge Dwyer. Now, based on those findings, I am going [to] grant [Mr. Mamone's] petition to modify child support commencing November 1[,2017]. And counsel the reason I'm commencing November 1st I'm not going retroactive. That is permissive under the law and I believe it is under the modification statute that the Court may not go beyond the date of filing and may not go further behind. Permissive as to going further, I'm not going.
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> It will start November 1st and I'll further explain that. The testimony from [Ms. Plows] was that [Mr. Mamone] paid $80 in October. Thus, I have calculated the $7,050 based on that 80 commencing November 1st, child support shall be reduced to $756. Now, those guidelines are [Ms. Plows] at [$]1,430 and [Mr. Mamone] at [$]4637 because [Mr. Mamone']s expert said it would take six months. So for November, December, January, February, March, and April he will pay $756. . . .
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> Commencing May 1st, [2018] child support is reduced to $686 per month. Once again, that is with [Ms. Plows'] monthly income at [$]2687 and [Mr. Mamone's] at [$]4637.

We perceive no abuse of discretion in the court's decision not to modify Mr. Mamone's child support obligation retroactively. The court reduced the amount of child support starting right after the hearing; but accepting Ms. Stone's testimony that it would take approximately six months for Ms. Plows to find employment, it elected to postpone the reduction in Mr. Mamone's child support obligations based on the imputation of Ms. Plows' income until May 2018. The court's reasoning in this regard was not '"manifestly unreasonable"' or '"exercised on untenable grounds"' as to constitute an abuse of

discretion. *Harris v. State*, 458 Md. 370, 385 (2018) (quoting *Atkins v. State*, 421 Md. 434, 446 (2011)).

IV.

Mr. Mamone contends that the court "failed to require Ms. Plows to provide a Financial Statement." In support of this contention, he directs us to the circuit court's September 16, 2016, order, which stated, in part, that "all parties shall appear with financial statements completed pursuant to Md. Rule 9-202." Mr. Mamone asserts that, if Ms. Plows had provided a financial statement, he would have known about Ms. Plows' other sources of income, i.e., social security distributions, rent, and contributions of Ms. Plows' father to her mortgage.

Ms. Plows does not contest the claim that she failed to provide a financial statement. Rather, she argues that "[a]t no time during the proceedings did [Mr. Mamone] raise the issue of the lack of filing of a financial statement by [her]."

We agree with Ms. Plows that Mr. Mamone did not object below to Ms. Plows' failure to produce a financial statement.[22] Accordingly, we conclude that the issue is not preserved for this Court's review, and we decline to review it. *See* Rule 8-131(a).

V.

[22] In his reply brief, Mr. Mamone states that Ms. Plows "wrongly contend[ed] that 'at no time did [he] raise the issue of lack of filing of a financial statement by Ms. Plows.'" In support of this contention, however, he argues that he raised the issue in his opening brief. Since the issue was never raised in the circuit court, when the circuit court could have addressed the issue, however, it is not preserved for this Court's review. *See* Maryland Rule 8-131(a) ("Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been **raised in or decided by the trial court**[.]") (emphasis added).

Mr. Mamone contends that the circuit court's child support order "failed to address the parties' financial circumstances." Specifically, he claims that the circuit court's order should be vacated because, based on his net income, the child support order "would require child support of more than 50 percent of his actual income." The circuit court, however, did address the parties' financial circumstances. It merely rejected Mr. Mamone's argument regarding his income, a finding that we have stated was neither error nor an abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTYAFFIRMED. COSTS TO BE PAID BY APPELLANT.