Circuit Court for Montgomery County
Case No. 79460FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1958

September Term, 2021

ALAN CORNFIELD

v.

ELIZABETH FERIA

Nazarian,
Zic,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: September 15, 2022

The parties to this proceeding, Alan Cornfield ("Father") and Elizabeth Feria ("Mother") are the parents of one child, C.C., born August 2002. Beginning in June 2009 and continuing throughout the remainder of C.C.'s adolescence, Mother and Father have been engaged in ongoing litigation related to custody of C.C., wherein Father was granted primary physical custody. Following a dispute between Father and C.C. in 2019, Mother requested modification of custody, child support, and attorneys' fees.

A multi-day trial was held in the Circuit Court for Montgomery County on various days in January and February of 2020. The court postponed the final day of trial due to the Coronavirus pandemic, and, because it was held after C.C.'s 18th birthday, the only issues remaining before the court were Mother's requests for retroactive child support and attorneys' fees. The court granted both requests and issued an order requiring Father to pay (1) Mother $210,000 in retroactive child support, and (2) Mother's attorney's fees in the amount of $50,586.45 for services and $3,825.35 for costs as well as (3) 90% of the child advocate attorney's fees in the amount of $11,524.95.

ISSUES PRESENTED FOR REVIEW

Cornfield presents two questions for review, which we have slightly rephrased:[1]

I. Whether the court abused its discretion in making its child support award.

II. Whether the court abused its discretion in making its awards of attorneys' fees.

For the reasons discussed below, we vacate the court's award of child support and remand to the circuit court for reconsideration of child support as it considered evidence

[1] Cornfield presented his questions as follows:

I. Did the Circuit Court err in making its child support award?

II. Did the Circuit Court err in making its awards of attorneys' fees?

not in the record. We further vacate the award of attorneys' fees.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father are the parents of C.C., born August 13, 2002. Custody proceedings began in July 2009, and in November 2009, C.C. was appointed a best interest attorney. In March 2010, Mother and Father entered into a custody agreement granting Mother physical custody of C.C.

In November 2013, Father filed a motion seeking a modification of the custody order. A five-day merits trial ensued. On September 24, 2014, the Circuit Court for Montgomery County granted Father's request and awarded primary physical custody of C.C. to Father and joint legal custody to Mother and Father with tie-breaking authority to Father. The court reasoned that Father's "parenting style is more conducive to help [C.C.] establish structure, stability, and discipline in his life, while at the same time dealing with the various treatment needs that [C.C.] has[.]" The court also noted that C.C.'s need to satisfy Mother manifested into behavior that was emotionally and psychologically damaging, "specifically from instances where she had encouraged [C.C.] to lie about [Father's] abusive conduct."

In May of 2019[2], C.C. ran away from Father's house because of an altercation that occurred between him and Father concerning academic performance. Thereafter, C.C.

[2] In the interim, there were several custody issues addressed by the court. For example, in October 2014, C.C.'s best interest attorney filed an emergency motion to modify Mother's access to C.C. based on a concern that Mother directed C.C. to steal money from Father. That motion was denied. In February 2015, an incident occurred where C.C. was admitted to a hospital for an evaluation following comments that he had seen a body covered in blood and wished it was Father. C.C.'s therapist "found no evidence that

moved in with Mother. On May 7, 2019, Father filed two motions jointly titled "Emergency Motion to Enforce the Court's Custody Order and Motion for [Mother] to be Found in Contempt," wherein he alleged that Mother was "orchestrating and manufacturing a crisis in [C.C.'s] mind to preclude him from having a normal transition back to his father's house after a weekend visitation with his mother." Father requested that "the Court order the mother to drive the minor child back to [Father's] house immediately or be found in contempt of the [September 2014] custody order[.]"[3]

Mother filed an opposition to Father's motions wherein she denied influencing C.C.'s decision to leave and requested the court allow C.C. to remain in her custody. Father subsequently filed an emergency motion for contact with the minor child, alleging that Mother had refused to allow Father to have any "telephone contact, visitation contact[,] or any other action with [C.C.]" since May 5, 2019. Mother then filed a motion to modify the September 24, 2014 custody order, alleging "the lack of awareness of the impact of [Father's] behavior including the level of [Father's] anger directed at [C.C.] is

---

[C.C.] was actually afraid of his father," despite prior reports of Father's abusive conduct. Then, in February 2016, Mother sought a protective order from Father based on an altercation where Father confiscated C.C.'s phone and apparently "yelled at" C.C. when C.C. took the phone back without permission. The parties thereafter entered into a consent agreement which in part ordered C.C. and Father to participate in therapy together. In June 2016, Father sent C.C. to a residential treatment center in Utah at the recommendation of an educational consultant. In response, Mother filed an emergency temporary restraining order, but the order was denied. In July 2016, Mother filed a motion to change custody. After a six-day merits trial, that motion was denied.

[3] The visitation schedule outlined in the September 2014 custody order required Mother to return C.C. to Father's residence by 7:00 p.m. on May 5, 2019, and C.C. did not return to Father's house by that deadline.

out of control and reflects a material change in circumstances." She requested both physical and legal custody of C.C. Father filed an opposition to Mother's motion for child custody modification contending that Mother failed to state a material change in circumstances.

On May 31, 2019, the court granted Father's emergency motions and ordered that C.C. be returned to Father's custody and all communication with Father be reopened. The court further ordered that the matter be set for an emergency hearing to determine pending child custody and visitation issues. On June 28, 2019, the parties placed a consent agreement on the record.[4] That agreement provided in part that C.C. reside with Mother pending the hearing on the merits scheduled to take place in January 2020. The court entered an order incorporating that agreement on July 15, 2019.

On September 17, 2019, Mother filed an emergency motion requesting child support dating back to July 2019. She stated that Father had not paid her any child support since C.C. had been in her physical custody pursuant to the parties' consent agreement. Attached to her motion, Mother included her September 16, 2019 financial statement. That statement represented that she incurred monthly expenses of $11,869 and had a monthly income of $4,855, resulting in a deficit of $7,014 per month.

[4] The June 28 hearing was precipitated by a June 12 incident that resulted in C.C. and Mother filing a police report alleging that, during an altercation, Father physically abused and assaulted C.C. Based on the allegations, Father was placed under arrest and a protective order was placed in the District Court for Montgomery County. On June 18, the District Court granted Mother temporary physical custody of C.C., continued the order, and transferred the case to the Circuit Court for Montgomery County. At the June 28 hearing, the parties agreed that the protective order and the criminal charges against Father would be dismissed.

On November 5, 2019, upon a motion from C.C.'s best interest attorney, the court appointed a child advocate attorney for C.C.[5] Mother filed an "amended/supplemental" motion on December 4, 2019, in which she incorporated her first motion to modify and again requested retroactive child support dating back to June 2019. She argued that those costs included college applications and preparation courses, tutoring, replacement athletic equipment, and security personnel hired to protect C.C. from Father. She also requested attorneys' fees for responding to the various motions filed by Father.

On January 8, 2020, Father filed his financial statement with the circuit court. Father's financial statement showed his adjusted actual monthly income was $45,280 and his monthly expenses were $12,276, leaving an excess of $33,004 per month. Mother filed an updated financial statement on January 15, 2020. Therein, she stated that her monthly income was $5,108, her monthly expenses were $15,772.00, and her deficit was $10,664.00.

Beginning January 13, 2020, the circuit court held a multi-day trial on the merits of the parties' claims concerning child custody, child support, and attorneys' fees. During the January 31, 2020 hearing, Father testified to the contents of his financial statement and that the figures he represented were accurate. His financial statement was admitted into evidence. Father indicated that he had not paid Mother child support since C.C. had been in the full physical care of Mother beginning June 2019.

[5] In October 2019, Mother also filed an emergency motion for return of C.C.'s clothes and equipment she alleged Father was withholding following a trip Father took with C.C. The court granted Mother's motion and ordered Father to return the clothes and belongings left in the hotel room from that trip.

Additionally during the January 31 hearing, the child advocate attorney advised the court that, since learning that C.C. sought out a mental health therapist, Brad Starring ("Mr. Starring"), she intended to call Mr. Starring as a witness. The court ordered that prior to Mr. Starring's testimony, Father be permitted to question Mr. Starring in a deposition. Subsequently, the child advocate attorney learned that Father was in possession of privileged mental health records of C.C. The court, following a lengthy discussion concerning privilege, determined that, if Mr. Starring was called to testify, C.C.'s mental health would be put at issue and Father would be permitted to introduce C.C.'s privileged mental health records. The child advocate attorney ultimately determined not to call Mr. Starring to testify.

The parties discussed Mother's finances at the February 24, 2020 hearing. Prior to Mother's testimony, Father objected to Mother's use of the January 15, 2020 updated financial statement. Father argued that the January 15 statement was in violation of Maryland Rule 9-203(c), which requires that an amended financial statement be filed at least ten days before the scheduled trial date.[6] The court sustained Father's objection to Mother's January 15, 2020 financial statement, finding that the statement was untimely and therefore inadmissible. Instead, the court admitted Mother's financial statement from September 2019.

[6] Maryland Rule 9-203(c) states: "If there has been a material change in the information furnished by a party in a financial statement filed pursuant to Rule 9-202, the party shall file an amended statement and serve a copy on the other party at least ten days before the scheduled trial date or by any earlier date fixed by the court."

During Mother's testimony, she testified to increased expenses in medical and dental costs, recreation, and entertainment since the September 2019 financial statement was filed, and estimated the amount of some of those increases. She did not explain or provide any specific dollar amounts for any other increased expenses.[7] Mother testified that Father had not paid her any child support since June 2019. She also stated that she owed attorneys' fees in the amount of $42,587.45 as of February 24, 2020.

The final date of the merits hearing was postponed due to court closures resulting from the COVID-19 pandemic. The matter was re-set for September 2020. Because C.C. had turned 18 in August 2020, the parties agreed that the issue of child custody was moot, leaving the issues of retroactive child support from June 2019 to August 2020 and attorneys' fees. The trial resumed for a final day on September 8, 2020. At the end of the hearing, the court took the issues under advisement.

Mother's attorney, at the request of the court, filed amended affidavits of services and fees to reflect her updated billing due to the continuation of the merits hearing. After the final trial date, Mother's attorney filed a fourth amended attorney affidavit of services representing sum totals "of $50,586.45 for services and $3,825.35 for costs[.]" In October 2020, C.C.'s child advocate attorney filed a petition for attorney's fees and costs for representation of C.C. and included supporting invoices asserting her total costs incurred amounted to $12,805.50 from November 4, 2019 to October 20, 2020. The child advocate attorney requested the court order Mother to pay 10% of the total amount and Father to

[7] Father cross-examined Mother on a $50,000 debt that Mother testified she owed to a family member, not included in her financial statement.

pay 90% of the total amount. Father opposed the child advocate attorney's petition, and Mother filed a response in favor of the court granting the child advocate attorney's petition for fees.

On January 12, 2022, the court entered an order. In its factual findings, the court noted:

> Plaintiff's financial statement, at Docket Entry #822, reflects her monthly net income as $5,108.00, with her expenses at much higher amount of $15,772.00 In contrast, Defendant's financial statement, at Docket Entry #802, reflects that his monthly net income is $45,280.00, and his total expenses amount to $12,276.00. It is evident that Defendant is more than capable of paying the just amount for child support and attorney's fees.

The court stated that it reviewed "the financial statement, the facts and evidence presented at trial relating to retroactive child support and attorney's fees." The court awarded Mother retroactive child support from July 15, 2019 "in the amount of $15,000.00 per month for period of fourteen (14) months, for a total of $210,000.00[.]" The court awarded Mother attorney's fees in the amount of $50,586.45 for services and $3,825.35 for costs. The court further granted the child advocate attorney's petition and awarded attorney's fees and court costs in the amount of $12,805.50, wherein Mother was responsible for $1,280.55 (10%) and Father was responsible for $11,524.95 (90%). Father's timely appeal followed.

DISCUSSION

When the parties' combined monthly income exceeds the maximum bound of the child support guidelines, known as an "above the guidelines case," *Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2017), the trial court is afforded "significant discretion" in

determining the child support obligation. *Id.* Accordingly, we review a trial court's determination of a child support obligation in an above the guidelines case for an abuse of discretion. *Kaplan v. Kaplan*, 248 Md. App. 358, 385 (2020). "As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we may have reached a different result." *Id.* (quoting *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003)). We similarly review a trial court's award of attorneys' fees in connection with child support actions for an abuse of discretion. *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 756 (2017). We will not disturb an award of attorneys' fees unless the "court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Id.* (quoting *Petrini v. Petrini*, 336 Md. 453, 468 (1994)).

I. THE CHILD SUPPORT AWARD MUST BE VACATED BECAUSE THE COURT RELIED ON EVIDENCE NOT IN THE RECORD.

Father first contends that the court violated Maryland Rule 2-522(a) in its child support award because the court's opinion did not state the reasons for its decision, including determining whether discretionary child support expenses were justified, nor did it address factual disputes presented at trial. Second, Father argues that the child support award must be reversed because the court, in rendering its award, relied on a false factual premise and evidence that was not admitted into the record, specifically Mother's January 2020 financial statement. Mother responds that the court did not err in its award. She reiterates the difference in the parties' incomes and argues that some of the expenses she bore during the timeframe were a direct result of Father's actions.

The Maryland Family Law Article sets forth guidelines a trial court must use in calculating child support considering, among other things, the parties' combined monthly adjusted actual income. Md. Code, Family Law Article ("FL") §§ 12-202, 12-204(e) (2019 Repl. Vol.). Where the parties' combined adjusted annual income exceeds the highest level specified in the guidelines however, the court has "significant discretion" in setting the amount of child support. FL § 12-204(d); *Ruiz*, 239 Md. App. at 395.

In an above the guidelines case, the trial court "may employ any rational method that promotes the general objectives of the child support [g]uidelines and considers the particular facts of the case before it." *Malin*, 153 Md. App. at 358 (internal citations omitted). The court "must balance the best interests and needs of the child with the parents' financial ability to meet those needs[.]" *Smith v. Freeman*, 149 Md. App. 1, 20 (2002) (quoting *Unkle v. Unkle*, 305 Md. 587, 597 (1986)). In doing so, the court considers the reasonable expenses of the child, the parties' financial circumstances, station in life, age, physical condition, and expenses in educating their children. *Id.*; *Voishan v. Palma*, 327 Md. 318, 329–32 (1992). The court recognizes "the premise 'that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, [that] he or she would have experienced had the child's parents remained together.'" *Smith*, 149 Md. App. at 19 (quoting *Voishan*, 327 Md. at 322).

We initially reject Father's argument that the court did not comply with Maryland Rule 2-522(a). That rule states that "[i]n a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages." Md. Rule 2-

522(a). There is no violation of the rule where the court clearly articulated the rationale behind its decision. *See Viamonte v. Viamonte*, 131 Md. App. 151, 162 (2000) ("[Rule 2-522(a)] simply requires the [court] to explain, at or before the time judgment is entered, her reasons for making her decision."). In the present case, the court clearly articulated the rationale for its decision in its ten-page written order and opinion, wherein the court thoroughly detailed the background information, including the case history, prior reasons for orders issued, and the relevant facts underlying the current litigation. That background information provided the factual predicate for its decision—that Father is "more than capable of paying the just amount" for child support and attorneys' fees. We hold the court complied with Rule 2-522(a) and we decline to vacate the child support award on those grounds.

However, a trial court's determination of child support may be vacated if the award was based on a false factual premise. *Lee v. Andochick*, 182 Md. App. 268, 293 (2008). Nor can an award be based on evidence not in the record. *See Floyd v. Baltimore City Council*, 241 Md. App. 199, 216 (2019) ("In a bench trial, the court may not rely on facts that are not in the record.") (internal quotations and citations omitted).

Although the court was vested with significant discretion in rendering an award, given the parties' combined monthly income was above the guidelines, the child support award cannot be sustained on the grounds given by the trial court. In its written opinion, the court referenced Docket Entry #822 and stated that the financial statement reflected a monthly net income of $5,108.00 and expenses of $15,772.00. That financial statement consists of the amended financial statement Mother filed on January 15, 2020, to which

the court sustained Father's objection at trial finding the statement was not timely filed. The January 15, 2020 financial statement was not in the record, but the court appears to have considered it in rendering its child support award.

Mother argues that the award can stand because Father did not object to her testimony that her expenses increased since the September filing, and therefore the court properly considered the financial statement in the record "as amended by [Mother's] testimony." However, the evidence in the record consisted of Mother's September 16, 2019 financial statement, which reflected that her monthly expenses were $11,869.00. Although she testified that her expenses have increased since the September 2019 statement, her testimony as to those increases does not amount to the figures represented in the January financial statement. Mother stated that she paid for: approximately $2,000 in hockey gear, dental expenses that increased to "a little higher" than the $200 represented in the September statement, and security for C.C. totaling approximately $3,200. She indicated that she would like to get C.C. a rental car for approximately $250 per month, which is $10 more than the automobile expenses listed in her September statement. As to the clothing, Mother stated that she had to purchase a $200 suit as well as other items for C.C. "to dress appropriately for any occasion that he goes." She also testified that she has paid "somewhere around [$]6,500" for college preparatory courses. Mother's testimony was insufficient to replace the January financial statement, and it does not circumvent the court's consideration of evidence not in the record in granting an

award.[8]

We hold the court's use of Mother's amended financial statement to determine child support was erroneous. Accordingly, we remand for reconsideration of the child support award for the court to consider Mother's September 16, 2019 financial statement and any other testimony and evidence which the court finds to be credible regarding Mother's expenses. We will leave it to the trial court to determine if any additional information is needed.

II. THE AWARD OF ATTORNEYS' FEES MUST ALSO BE VACATED AND REMANDED.

Father next argues that the court erred because it failed to consider the statutory factors in FL § 12-103 in making an award of attorney's fees in a child support case. He contends that the court only considered each of the party's bare incomes and expenses in addressing their financial status. He further argues that the award was based on facts not in the record such as Mother's January financial statement and certain fees indicated in Mother's attorney's affidavit, which were not received in evidence during trial, but after the conclusion of trial. Father finally contends that the award for the child advocate attorney's fees was erroneous. He argues that there was no substantial justification for those fees given that a majority were incurred in relation to a witness who ultimately was not called to testify, and a portion were incurred for proceedings after C.C. had turned 18.

Mother responds that a multitude of the claims for attorneys' fees were related to

[8] Mother also appears to argue that Father did not timely file his own financial statement. However, as Mother concedes, Mother did not object to his financial statement coming into evidence.

motions that were either filed by Father or were filed based on Father's failure to comply with court orders. She contends that the court properly considered each factor of FL § 12-103.

The child advocate attorney also asserts that the court's award of attorneys' fees should be upheld. She disputes Father's contention that there was no substantial justification for her portion of fees pertaining to Mr. Starring. According to the child advocate attorney, her decision not to call Mr. Starring as a witness was made after she had learned that Father was in possession of privileged mental health documents pertaining to C.C., and that Father would be permitted to admit those if Mr. Starring were to be called as a witness. Finally, the child advocate attorney argues that her presence at the September 8, 2020 hearing was necessary because she had an ethical duty to advocate on behalf of C.C. until the attorney-client relationship is terminated. She claims that because Father filed a motion concerning C.C. prior to the final day of trial, that relationship had not yet ended.

A circuit court's determinations as to monetary awards, including child support and counsel fees, "involve overlapping evaluations of the parties' financial circumstances." *St. Cyr. v. St. Cyr.*, 228 Md. App. 163, 198 (2016). "The factors underlying such awards 'are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other.'" *Id.* (quoting *Turner v. Turner*, 147 Md. App. 350, 400 (2002)). As a result, "when this Court vacates one such award, we often vacate the remaining awards for reevaluation." *Id.* Because of our disposition of the child support award, so too we vacate and remand the award of attorneys' fees.

Nevertheless, we address the specific issues raised by Father to guide the court and parties on remand.

Pursuant to FL § 12-103, in an action to establish or modify child support, the court "may award to either party the costs and counsel fees that are just and proper under all the circumstances[.]" FL § 12-103(a). In making such an award of attorneys' fees, the trial court is required to consider three statutory factors: "(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." FL § 12-103(b). The court's award of attorneys' fees, "must be reasonable, taking into account such factors as labor, skill, time, and benefit afforded to the client, as well as the financial resources and needs of each party." *Petrini*, 336 Md. at 467. The court must balance the parties' financial status and needs "in order to determine [each party's] ability to pay the award to the other; a [mere] comparison of incomes is not enough." *Davis v. Petito*, 425 Md. 191, 205 (2012). A court's failure to consider the required statutory factors constitutes legal error. *Ruiz*, 239 Md. App. at 438.

We find Father's contention that the court failed to consider each factor to be without merit. The rule requires that the court *consider* each factor; it does not require the court to catalog each factor and all evidence related thereto. *See Andochick*, 182 Md. App. at 287 ("The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal." (quoting *John O. v. Jane O.*, 90 Md. App. 406, 429 (1992))). The evidence in the record reflects that the court in fact considered the factors. To be sure, the court gave a thorough recitation of the lengthy

factual and procedural background underlying the case, and the court's opinion and order explicitly stated that it reviewed "the financial statement, the facts and evidence presented at trial relating to retroactive child support and attorney's fees, and . . . the relevant factors in making such awards of counsel fees and costs[.]"[9]

We are similarly unpersuaded that there was not substantial justification for the fees. As to Father's contention that the affidavit for Mother's attorney's fees was not entered into evidence during trial, we are unaware of any rule where an updated affidavit for attorney's fees, reflecting costs associated with the final trial day, may not be entered into the record. *See, e.g.*, *Zamaludin v. Ishoof*, 44 Md. App. 538, 546 (1980) (finding no abuse of discretion in an award of attorneys' fees that was submitted to the court after trial was completed). Nor are we persuaded by Father's argument as to Mr. Starring. An attorney's decisions, such as the calling or not calling of witnesses and preventing the disclosure of privileged mental health records, cannot underlie a lack of substantial justification claim. Finally, we perceive no basis of court error in awarding fees incurred after C.C. had turned 18. As the child advocate attorney states, she had an ethical obligation to act in the best interest of her client, which was at issue in the September proceeding resulting from Father's motion concerning C.C.

In sum, although we see no error in the judge's award of attorneys' fees, based on

[9] Although the court may have considered the January financial statement in the consideration of the parties' financial status, it also listened to several days of trial concerning the parties' financial needs and had adequate information to arrive at its financial consideration independent of the financial statement. *See Unger v. State*, 427 Md. 383, 406 (2012) (acknowledging an appellate court may affirm a trial court's judgment on any ground adequately supported in the record). Father does not argue that the court erred in finding him financially capable of paying the costs.

our disposition of the first issue, we also vacate the entirety of the award and remand all issues to the circuit court for reconsideration. *See Flanagan v. Flanagan*, 181 Md. App. 492, 544 (2008) (holding that where a monetary award is vacated, "the award of attorney's fees must necessarily be vacated and reconsidered on remand as well"). In so doing, we note that the record admitted could well support this outcome. We leave to the trial judge to determine if additional proceedings are necessary and adjust any awards as needed.

JUDGMENTS VACATED AND REMANDED TO THE CIRCUIT COURT OF MONTGOMERY COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT BY APPELLANT AND APPELLEE.