UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0874

September Term, 2015

IGOR BELYAKOV

v.

IRINA BELYAKOVA

Graeff,
Friedman,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 1, 2016

In 2013, the Circuit Court for Montgomery County found that Igor Belyakov had voluntarily impoverished himself, imputed to him an annual income $95,000, and based on that, declined to modify his previously agreed-upon monthly child support obligation of $1,611.00. A year later, Belyakov filed a second motion for modification of his child support obligation in which he argued that the finding that he had voluntarily impoverished himself should be rescinded and that his child support obligation should be recalculated based on his actual income. The circuit court denied that motion. Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the parties' previous visit to this Court, we described the factual background:

> Father [Igor Belyakov,] and Mother [Irina Belyakova] were married in Russia on July 12, 1998. After immigrating to the United States, the couple had twin daughters, ... born June 28, 2002. Mother filed for absolute divorce on March 2, 2012, in the circuit court, citing a 12-month separation. She requested alimony, child support, and sole physical and legal custody of the children with visitation for Father.
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> On July 31, 2012, the parties entered into a consent agreement. Under the terms of the agreement, Mother was awarded sole physical custody, but the parties would have joint legal custody of the children. Father was awarded "reasonable rights of visitation." Additionally, Father was ordered to pay child support of $1,611.00 per month, commencing August 1, 2012, and the parties agreed to waive all claims for alimony against each other. In granting Mother absolute divorce on March 11, 2013, the circuit court incorporated the agreement into its judgment.

Father filed a motion to modify child support on February 28, 2013, requesting that child support be decreased. He averred that after the consent agreement, he had become unemployed.

* * *

At the hearing, Father testified that he had been unemployed since the "end of 2012," when he lost his position as a research assistant professor at the University of Michigan. Father testified that he had received unemployment in the amount of $362.23 each week, but that this benefit had expired after 20 weeks. He had not reapplied for unemployment benefits.

Father testified that he had not been able to find employment since losing his job at the University of Michigan. He submitted a worksheet he created showing that he had applied for 100 jobs since losing his job. He stated that he had not hired a professional (*i.e.*, a "headhunter") to assist him in obtaining work.

Since losing his job, Father testified that he has "some help from [his] relatives. They give me some loans until I found a job." As to expenses, Father testified that he owns a home, on which he does not have a mortgage. He pays taxes of $2,000.00 a year on the home. As to monthly expenses, he has an electric bill, gas bill, cell phone bill, and condominium fees. On his financial statement, filed as a part of the divorce proceedings, Father listed his food expenses as $500.00 per month and gas for his car as $200.00 per month. Father testified that the expenses he had, though, had significantly decreased since he had become unemployed.

Leann Friedman,[1] an expert in the field of vocational rehabilitation, testified on behalf of Mother as to Father's employment prospects. After Ms. Friedman was admitted as an expert, she testified that Father was well-qualified in the field of immunology and had the potential to earn between "$90,000.00 and $200,000.00" per year. As to Father's employment prospects, Ms. Friedman said that "he's definitely

[1] Not related to the author.

employable in jobs that he's held before. He could be an assistant professor. He could be a research scientist. He could be a laboratory director. All the jobs that he's held before he's certainly still qualified to do."

Ms. Friedman testified that someone in Father's field should find a job within "approximately six months" "if someone's doing a good faith job search effort." As to Father's search effort:

> [MS. FRIEDMAN]: [Father] knew in the end of December that he might be losing his job so he should've started immediately in January looking for jobs. When I looked at the job application list that he did, he didn't have any that listed January that he was looking for jobs, but he did look for approximately 26 jobs in February, which is good, but in March there were only 11. And then he stepped up his job search again in April with approximately 35 jobs, but then in May, June, July, and August, and I don't have anything for September or October[,] he applied for less than 10 jobs.
>
> And when you do a good faith job search you have to treat it like it's itself a full-time job. And applying for 10 jobs a month is not a full-time job. It just isn't. Even if you're having other activities of daily life, especially if you're doing it over the internet, you don't have to do it between nine[-]to[-]five. You can do it on weekends. You can do it in the evenings. So I just — I'm not sure what other activities he was doing, especially in March, May, June, July, and August where he was doing so little amount of applications.
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> * * *

Later, during cross examination, Ms. Friedman made the following statement as to Father's employment search:

> The only thing that I can say is that he's had 10 months to look for a job in his field, and there's a disconnect somewhere as to why after all this time, if he's been doing a good faith job search, why he hasn't found a job by now. I don't know. I can't tell you why he hasn't. The only thing I can see is the numbers, and what he's testified to, and what he's submitted into discovery, and it's not a good job search effort. He needs to be doing more of what he did, especially in February and April.

Belyakov v. Belyakova, No. 2282, Sept. Term, 2013, slip op. at *2-9 (Unreported Opinion, filed Nov. 10, 2014). The circuit court found that Belyakov had voluntarily impoverished himself, imputed to him an income of $95,000, and declined to modify the child support from the previously agreed-upon $1,611.00 per month. Belyakov appealed and, in the Opinion from which we have quoted, this Court affirmed. *Id.* at *24.[2]

About a year after the original finding of voluntary impoverishment, Belyakov filed a second motion for modification. In that motion, Belyakov argued that he had been diligent in his job search, but that he still had failed to find work. Based on this, Belyakov argued that the finding that he had voluntarily impoverished himself should be lifted and that a new (and lower) child support obligation should be calculated based on his actual income. Following a hearing, the circuit court denied the motion, finding that Belyakov

[2] Belyakov erroneously states that this Court dismissed his appeal. Belyakov's appeal was not dismissed, rather, this Court affirmed the circuit court's decision denying the motion for reconsideration. *Belyakov*, No. 2282, slip op. at *24.

had failed to prove that there had been a material change in circumstances. Belyakov timely appealed to this Court. Belyakova has declined to participate in the appeal.

ANALYSIS

Belyakov, a self-represented litigant here and below,[3] is imprecise in framing his issues. We have, therefore, rephrased them into a single question: Did the circuit court err in failing to find a change of circumstances to justify modifying the previous finding that he had voluntarily impoverished himself?

Belyakov argues that the circuit court erred by refusing to modify its prior finding of voluntary impoverishment. As support, Belyakov cites a number of facts that he claims have changed in the intervening year: his submission of substantially more job applications in 2014 (400 applications in 2014 as opposed to 100 the year before); his interactions with

[3] As an additional point on appeal, Belyakov argues that, because he was self-represented, the circuit court should have provided him assistance in conducting the hearing. Specifically, Belyakov believes the judge erred by not giving Belyakov specific instructions "about the scope of the hearing" and the standard of proof as well as by not asking Belyakov specific questions about voluntary impoverishment to fill in information that Belyakov had failed to address in his own presentation.

Belyakov misunderstands the judge's role. While it is true that "it is not error for a trial judge to apprise a [self-represented] litigant of the nature of civil adversarial proceedings and of the difficulties inherent in trial practice and procedure," the judge is not required to give legal advice to those who choose to represent themselves. *Tretick v. Layman*, 95 Md. App. 62, 70 (1993). And, "[i]t is a well-established principle of Maryland law that [self-represented] parties must adhere to procedural rules in the same manner as those represented by counsel." *Dep't of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999). We conclude, therefore, that there was no error in the court's treatment of Belyakov.

six recruiters (as opposed to none the year before); the tightening of the job market nationwide in his field; his difficulties in obtaining a job due to gaps in his scientific publication record; and his claims that the National Institutes of Health (NIH) was blocking him from getting jobs in retaliation for his whistleblower activities.

On a motion to modify child support, the circuit court must engage in a two-step analysis to determine: (1) whether there has been a material change in circumstances; and, if yes, (2) what level of support is the child entitled to under the guidelines. *Wills v. Jones*, 340 Md. 480, 488 (1995). The circuit court must first find that the changes in the parent's circumstances are "material" before moving to the second step, determining the level of support to which the child is entitled under the guidelines.[4]

A material change of circumstances is a change that affects how much support a child could receive and is of a "sufficient magnitude":

> The "material change of circumstance" requirement limits the circumstances under which a court may modify a child support award in two ways. First, the "change in circumstance" must be relevant to the level of support a child is actually receiving or entitled to receive. Second the requirement that the change be "material" limits a court's authority to situations where a change is of sufficient magnitude to justify judicial modification of the support order. In making this threshold

[4] Belyakov argues that the circuit court erred by failing to consider all of the factors for voluntary impoverishment found in *John O. v. Jane O.*, 90 Md. App. 406 (1992). The question of whether a parent is voluntary impoverished is distinct from the issue of material change in circumstance. *Wills*, 340 Md. at 488. The question of voluntary impoverishment is part of the second step in the analysis—the level of support that the child requires. *John O.*, 90 Md. App. at 419-20. Thus, contrary to Belyakov's argument, the trial court never reached the question of voluntary impoverishment.

> determination that a material change of circumstance has occurred, therefore, a court must specifically focus on the alleged changes in income or support that have occurred since the previous child support award. It should generally be unnecessary to inquire into a parent's motivations, intentions, or income-earning capacity, because the court can focus on the specific alleged changes to the income sustained by each parent.

Wills, 340 Md. at 488-89. Thus, a party seeking a modification must establish that an alleged material change of circumstance is relevant to the level of support a child is receiving or should receive, and that the change is of a sufficient magnitude to justify modification. *Wills*, 340 Md. at 488.

Our review of a trial court's decision whether to grant a modification is deferential to the trial court. "Whether to grant a modification rests with the sound discretion of the trial court and will not be disturbed unless that discretion was arbitrarily used or the judgment was clearly wrong." *Ley v. Forman*, 144 Md. App. 658, 665 (2002). To be outside of the circuit court's "sound discretion," *i.e.*, an abuse of discretion, means that the decision must be "well removed from any center mark" or be "beyond the fringe of what [is deemed] minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994).[5]

[5] Belyakov does not understand how an appellate court reviews the decision of the circuit court. Belyakov argues, for example, that we should reverse the circuit court because "[t]he Judge … erred when he stated that only one factor of voluntary impoverishment [had] been changed. The Judge erred, because the Judge's statement is simply incorrect." Appellate courts are constrained by the applicable standard of review. Our review is not a question of whether we would have decided a case differently but rather, only whether the circuit court has abused the discretion with which it is entrusted.

Here, the circuit court determined that Belyakov failed to establish that there had been a material change in circumstance and we conclude that the circuit court's decision was within its discretion.[6] Voluntary impoverishment is a question of whether a parent is purposefully making less money, or no money, than he or she is capable of making. *See Durkee v. Durkee*, 144 Md. App. 161, 182 (2002). Submitting a certain quantity of job applications or working with a certain number of recruiters does not negate the circuit court's finding that there was been a purposeful decision to eschew employment. Despite Belyakov's protestations, the circuit court's decision that Belyakov's increased job hunting efforts did not establish a material change in circumstances, is not a decision we consider well removed from the center mark or beyond the fringe of minimally acceptable. The circuit court is tasked with judging the credibility of witnesses[7] and even with better numbers, the circuit court could still be left with the overall impression that Belyakov's

[6] Belyakov argues that the circuit court impermissibly relied upon the expert testimony of Ms. Friedman admitted at the 2013 modification hearing regarding Belyakov's prospects for re-employment. This misunderstands what happened. The circuit court's reference to Ms. Friedman's prior testimony was a reiteration of what the circuit court had already determined to be the proper analysis for whether Belyakov's job search constituted a good faith effort. We understand the circuit court's reference to Ms. Friedman's testimony as a completely appropriate means of emphasizing that the element of good faith effort had not changed between 2013 and the current hearing.

[7] Belyakov argues that simply because he testified about a matter, and there was no other testimony on the subject, that the circuit court is required to take as true his testimony. Belyakov is incorrect. A trial judge is afforded wide latitude in judging the credibility of witnesses. Md. Rule 8-131. A trial judge can believe all, some, or none of a witness's testimony even if it is unrebutted.

efforts did not evidence an intent to gain employment. The circuit court, therefore, was within its discretion to determine that the changes argued by Belyakov did not constitute a material change of circumstances. We see no abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.