UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2610

September Term, 2014

MICHAEL HOLTON

v.

MELISSA HOLTON

Meredith,
Kehoe,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: August 4, 2016

In this appeal, Michael Holton, appellant, asserts that the Circuit Court for Howard County both erred and abused its discretion in granting the motion for modification of custody and child support filed by his ex-wife, Melissa Holton, appellee. Because we conclude otherwise, we will affirm the rulings of the circuit court.

QUESTIONS PRESENTED

Although numerous issues were decided by the circuit court, appellant states in his brief: "The appeal is limited to the child support issue." The questions presented for this Court's review are:

1. Did the trial court clearly err in failing to make a finding regarding Ms. Holton's income and abuse its discretion in adopting the income figure she proposed?

2. Did the trial court abuse its discretion in setting the amount of child support, where the extrapolation upon which it was based was erroneous and the amount exceeded the children's reasonable expenses, was not apportioned between the parties in accord with their incomes, and was grossly disproportionate to the increase in income?

For the reasons that follow, we answer "no" to both questions, and affirm the Circuit Court for Howard County.

BACKGROUND

The parties to this case were married on June 24, 1995. During their marriage, they became the parents of two daughters, the first born in 2000 and the second born in 2003. In December 2003, when the older daughter was three years old and the younger daughter was ten months old, the parties agreed to separate. In anticipation of separation, the parties negotiated a Separation and Property Settlement Agreement and Stipulation, which they executed on December 19, 2003 ("the 2003 Agreement"). The 2003 Agreement provided,

among other things, that the parties would share joint legal custody of the children, who would remain in the marital home with appellee. Appellant was to have "reasonable and liberal visitation," which included one evening a week, weekends from Friday evening through Sunday morning "and/or such other times as may be agreed between the parties and as is in the best interest of the children," and two weeks in the summer. The 2003 Agreement provided that appellant was to pay appellee $9,000 per month, of which $5,000 per month was child support, and $4,000 per month was spousal support. Further, appellant agreed "that child support shall be increased each year by the percentage in which [appellant's] income from his employer increases or six percent (6%) each year, whichever is greater." Pursuant to the 2003 Agreement, appellant was to "pay for all expenses for any camps, special classes, private schools, programs, music or sports instruction, and other extra-curricular activities for the children," as well as all college and post-graduate educational expenses.

The 2003 Agreement was eventually superceded by a Separation and Property Settlement Agreement the parties entered into on December 10, 2008 ("the Agreement"). Although this agreement was incorporated into the parties' 2008 divorce decree, appellant's repeated violations of the terms of the Agreement led to the enforcement and modification proceedings that are the subject of this appeal.

The Agreement of 2008 provided, in pertinent part, as follows:

1. In ¶ 9 of the Agreement, appellant agreed to convey, "by such documents as may be necessary, including the Deed," all his interest in the marital home to appellee.

2. ¶ 14 of the Agreement provided that the parties would continue to have joint legal custody of their children, and that appellee would have primary physical custody, while appellant would "continue his current visitation schedule of alternate weekends and at least two vacation weeks with the children each year."

3. In ¶ 15 of the Agreement, it was agreed that, beginning in December 2009, appellant's child support obligation was reduced from $5,000 per month to $3,000 per month.

4. In ¶ 16 of the Agreement, the parties agreed that appellant was to continue to provide health insurance for the children, and was to be responsible for 65% of any "out of pocket health care expenses for the children, both extraordinary and non-extraordinary." Further, the Agreement provided that, if appellant owed reimbursement to appellee for health care expenses for the children, he was to make payment within 30 days of written notification. If he failed to do so, "then thereafter he will be responsible for 100% of the children's out of pocket health care expenses."

5. In ¶ 19 of the Agreement, appellant agreed to obtain a $1,000,000 life insurance policy, which named the parties' daughters as irrevocable beneficiaries and appellee as Trustee. Further, the Agreement required appellant to furnish appellee proof by March 1, 2009, and each March 1 thereafter, of his compliance with ¶ 19.

6. In ¶ 20 of the Agreement, appellant agreed to pay appellee a monetary award of $3,000,000, to be paid as follows:
   a. $2,400,000 concurrent with the execution of the Agreement;
   b. The remaining $600,000 to be paid over time, and paid in full no later than February 19, 2024;
   c. By March 1 of each year, appellant was to pay appellee an amount "equal to the amount that the [appellant's] Gross Earned Income from Employment for each prior tax year, commencing 2009, exceeds $350,000";
   d. If appellant had failed, by December 31, 2010, to pay appellee the full $600,000 she was owed, plus any accrued interest, then appellant was required to pay appellee simple interest on the outstanding balance of the monetary award at the rate of 3% per annum, to accrue prospectively from January 1, 2011 until satisfied. [Appellant] is to pay [appellee] the accrued interest for each year by March 1 of the subsequent year. If [appellant]

> misses an interest payment, then subsequent thereto, the rate of interest he is required to pay shall thereafter be increased to 6% per annum. Each year, commencing 2010, by March 1, [appellant] is to provide [appellee] with documentation showing his Gross Income from all sources for the prior tax year. If at any time [appellant] fails to timely make a principal payment as required under the terms of this paragraph 20, then the entire balance of what is due and owing on the monetary award shall accelerate and a Judgment shall be rendered against [appellant] for the entire outstanding principal balance of the monetary award together with previously accrued interest, which Judgment shall then be at the legal rate of interest then in effect in the State of Maryland, retroactive to the date of default.

The Agreement was incorporated, but not merged, into the judgment of absolute divorce entered in the Circuit Court for Howard County on December 18, 2008. Because appellant failed to perform all of his obligations under the Agreement and decree, on May 24, 2012, appellee filed a Motion to Modify Custodial Designation, Visitation, Child Support, to Enforce Judgment of Absolute Divorce and Separation and Property Agreement and for Other Relief (the "motion to modify"). In the motion to modify, appellee asserted that, since the entry of the judgment of absolute divorce, "there have been material and substantial changes such as to warrant a modification of the legal custodial designation as well as [appellant's] rights of visitation and his obligation to pay child support." Appellee contended that appellant refused to communicate with her in a productive manner and was refusing to support the children's activities, such that the present joint-custody arrangement was unworkable, and sole legal custody should be awarded to appellee. She also contended that appellant had failed to pay long-overdue medical reimbursements for the children, and that he had failed to pay the balance of the monetary award as required under the Agreement.

Appellee further pointed to a number of provisions of the Agreement with which appellant was not in compliance. Although ¶ 15 of the Agreement required him to pay $3,000 per month in child support, he failed to pay in a timely manner, and was, at times, as much as five months in arrears. Appellee asserted that this was not due to any financial hardship on appellant's part, but rather, was "based solely on his desire to control and harass [appellee]." Appellee also asserted that the child support amount had not been increased since 2008, and that the children's needs had "dramatically increased" since that time.

Appellee contended that appellant had completely failed to comply with: ¶ 9 of the Agreement, which required him to execute a deed conveying the marital home to appellee; ¶ 16 of the Agreement, which required him to pay a portion of the children's out-of-pocket health care expenses; ¶ 19 of the Agreement, which required him to obtain a $1,000,000 life-insurance policy naming the children as beneficiaries and appellee as Trustee; ¶ 20 of the Agreement, requiring payment of installments of the $600,000 balance of the monetary award; and ¶ 21 of the Agreement, regarding the filing of joint income tax returns for tax years 2003 through 2007. Appellee requested counsel fees in connection with this enforcement action. She also requested that she be awarded sole legal custody; that appellant's child-support obligation be recalculated to reflect his current income and the children's current needs; and that he be compelled to comply with the Agreement in other respects.

Trial was held on December 2, 2013; February 2, 2014; April 23, 2014; and September 30, 2014. During the December 2, 2013, hearing, appellant took the stand and

conceded that there were "numerous months" that he was in arrears on his child-support payments, despite the admission into evidence of his 2009 tax return reflecting his income as $797,387; his 2010 return reflecting his income as $629,635; his 2011 return reflecting his income as $785,050; and his 2012 return reflecting his income as $947,600. He agreed that his federal taxable income through July 31, 2013, for the 2013 tax year was $816,125. But appellant's financial statement that he provided the court disclosed only his annual salary of $265,000. Even though appellant, in the five previous years, had never received a bonus of less than $575,000, it was his position that only his base salary should be taken into account as income.[1]

Appellant admitted that he had not paid appellee any reimbursement for out-of-pocket medical expenses of the children, although he was obligated to do so by ¶ 12 of the Agreement. Appellee introduced evidence that reflected: such expenses dated back to 2003;

[1]In *Johnson v. Johnson*, 152 Md. App. 609, 615 (2003), we noted that Maryland Code, Family Law Article § 12-201(3)(iv) includes "bonuses" in the statutory definition of "actual income":

> Maryland law is clear that, "[w]hen a court calculates a parent's financial obligations under the child support guidelines, the central factual issue is the 'actual adjusted income' of each party, and the court must consider the 'actual income of a parent, if the parent is employed to full capacity,'. . . . " *Reuter v. Reuter*, 102 Md.App. 212, 221, 649 A.2d 24 (1994) (quoting FL § 12–201(b)(1)). The term "actual income" includes "bonuses." See FL § 12–201(3)(iv).

We held in *Johnson*: "[B]onuses already paid to a parent should be used to calculate child support even though it is unknown whether such a bonus will be paid in the future." *Id*. at 622.

appellant had been notified on a number of occasions about them; and they totaled $32,739.17 as of December 2, 2013.

Appellant admitted that he had not complied with ¶ 19 of the Agreement, which required him to obtain a $1,000,000 life insurance policy naming the parties' children as beneficiaries and appellee as trustee.

Appellant admitted that he had not complied with ¶ 20 of the Agreement, which required him to pay $600,000 in satisfaction of the balance of the monetary award. He agreed that he had not paid "one dime" of that sum.

He admitted that, pursuant to ¶ 30 of the Agreement, the breaching party was responsible for payment of the reasonable counsel fees of the non-breaching party in an enforcement action.

The trial court announced some rulings from the bench on the last day of trial, September 30, 2014, and followed up with a confirmatory and supplemental memorandum and order filed on January 8, 2015. As pertinent to this appeal, the court found that appellant's compliance with the Agreement and his discovery obligations had been "woefully lacking." The court noted appellant's "total and abject refusal to abide by the terms of [the Agreement], particularly financial ones."[2]

[2] Among the court's findings in its exhaustive opinion were the following:

> . . . [T]his Court rules that [appellant] failed to do the following: (a) execute the Deed transferring the parties' former marital home to [appellee's] sole name, as required by Paragraph 9 of the Agreement. Though, ultimately, after [appellee] initiated this instant action, [appellant] finally complied. He

(continued...)

In this appeal, appellant challenges only the child support determination, and argues (1) that the court erred in making findings as to appellee's income, and abused its discretion in imputing to her income of only $10,000 per month ($120,000 annually); and (2) that the court abused its discretion in setting appellant's child support obligation at $12,000 per month.

STANDARD OF REVIEW

In *Walker v. Grow*, 170 Md. App. 255, 266 (2006), we said:

> "Child support orders ordinarily are within the sound discretion of the trial court." *Shenk v. Shenk*, 159 Md. App. 548, 554, 860 A.2d 408 (2004). Likewise, "the question of whether to modify an award of child support 'is left to the sound discretion of the trial court, so long as the discretion was not

[2](...continued)
has still failed to (a) endorse escrow refund checks which is also required pursuant to paragraph 9 of the Agreement and (b) pay the medical arrearages that have been incurred, totaling $32, 937.12 as required by Paragraph 16 of the Agreement. That latter obligation has been outstanding for literally a decade and [appellant] actually received reimbursement for a portion of the expenditures, which he has simply pocketed; (c) [appellant] has refused to adhere to the requirement that he obtain a life insurance policy, fund it and designate [appellee] as Trustee and the children as beneficiaries: all pursuant to Paragraph 19 of the Agreement. In open Court on September 30, 2014, [appellant] acknowledged he has no intention of complying with this provision as he simply does not want [appellee] designated as Trustee. He has also failed and refused to provide any documentation regarding these obligation[s]; (d) pursuant to paragraph 20 of the Agreement, [appellant] owes [appellee] a monetary award of $600,000.00, which he acknowledges, but for which he has made no payment. [Appellant] has also conceded that he is in default of this provision since March 1, 2010. Accordingly, the accrued interest on this obligation, pursuant to paragraph 20, is $5,000.00 per month, and through September 30, 2014, [appellant] owes interest of $275,000.00 in addition to the principal of $600,000.00; (e) pursuant to paragraph 21 of the Agreement, [appellant] was required to reimburse [appellee] $1,201.09 on a tax lien and garnishment. He refused to do so.

> arbitrarily used or based on incorrect legal principles.'" *Tucker v. Tucker*, 156 Md. App. 484, 492, 847 A.2d 486 (2004) (quoting *Smith v. Freeman*, 149 Md. App. 1, 21, 814 A.2d 65 (2002)).

DISCUSSION

I. Imputed Income

Appellee testified that, in 2002, she and appellant jointly decided that appellee would stay home to raise the parties' children. To that end, she left her employment as an attorney at the Department of Justice, and has not returned to work as an attorney. Upon the execution of the Agreement in 2008, appellant paid appellee $2.4 million as part of a $3,000,000 monetary award (of which $600,000, plus interest, was still due and owing at the time of the trial on the motion to modify). Appellee testified that she invested the $2.4 million with a wealth manager, and that her dividends and capital gains are reinvested, although she does have the ability to draw on another investment account to meet her family's needs. She does not access the bulk of the monetary award, as that is in a managed account and appellee testified that it is her "safety net." Appellee testified that, when she received the $2.4 million monetary award, she consulted a financial planner for advice regarding how she and the children might

> . . . be able to maintain the lifestyle that we had. And the money I got I put some into a managed account so that it would grow and get good rate of return.
>
> I would have liked to put the whole amount in there, but with [appellant] only paying $3,000 [in child support] when we had 12 to $15,000 of expenses for the kids and then my expenses as well, there was a shortfall every month. And I was afraid to put that money into a fund that that money could disappear. That was a safety net.

> So I took a chunk of the money and I put it in safe accounts. I looked for the highest interest rate I could find. CDs were as good as it got. Interest rates are very low, but until — my thought was I would eventually move these into my managed account.
>
> [Appellant] hasn't complied with any of the terms monetarily of the [A]greement, so I have had to use those funds every month. I have an automatic transfer from my Charles Schwab, the non-managed account of $7,000 that is used to pay our expenses.

Appellee testified that, because appellant did not comply with his financial obligations under the Agreement, she draws $7,000 per month from a brokerage account at Charles Schwab to pay the household expenses. Appellee filed financial statements reflecting her assets. She testified that she had gone to culinary school and worked briefly as a sous chef because it allowed her to be home in the morning to get her children off to school and in the afternoons when they returned home, but that her hours were reduced in December 2011, although she would like to go back to work as a chef.

In the course of its lengthy written analysis of the child support issue, the court observed: "For Guidelines purposes, Mrs. Holton proffers that her income was $120,000." The court credited this number, finding: "Based on its analysis of all the financial information submitted by the parties, the Court finds the income figures . . . of $10,000 a month for the Mother and $72,083.33 for the Father to be appropriate."

At no time during the circuit court proceedings did appellant contend that appellee was voluntarily impoverished. In this appeal, however, he contends that the court erred in accepting appellee's income figure of $120,000. He asserts in his brief that, "[w]ith respect

to her income, at trial, [appellee] acknowledged interest, dividend and capital gains income of $70,925 for 2012 and $93,137 for 2013."

But appellee also testified at trial that these taxable gains did not equate with spendable income. She explained, in response to questions of counsel:

> [BY COUNSEL]: . . . [D]id you actually receive in hand any of those funds?
>
> [BY APPELLEE]: No.
>
> Q. What happened to those funds?
>
> A. That's part of the portfolio. It's the managed account in an investment portfolio. Each year the portfolio trades and generates these gains and interest in dividends, but that money is not paid out to me. It's reinvested automatically right back into the portfolio.

Appellant offered no evidence to refute this testimony. Additionally, appellee's testimony in this regard was supported by the testimony of Jeffrey Troll, her wealth manager. It was therefore not clear error for the court to have accepted it.

Appellant argues that, in addition to the income-producing assets in the managed account, "she had an additional $947,860 in various accounts earning little to no income, and . . . she intended to return to near full-time work as a chef earning approximately $21,840 per year."[3] Appellant asserts: "Given this evidence, the trial court should have at least considered imputing investment and/or employment income to Ms. Holton."

[3]Appellant also asserted, in this same passage of his brief, that the appellee "was awarded another $975,755 from Mr. Holton in connection with the enforcement aspects of her motion [to modify]." Given the track record of appellant's lack of compliance with previous agreements to pay monies to appellee, we do not fault the trial judge for failing to include these projected payments in its determination of appellee's actual income.

Appellant cites Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), § 12-204(b) in support of his contention that the circuit court erred by not imputing to appellee additional income that appellee theoretically could have earned if she had invested more of her assets more aggressively. Section 12-204(b) permits a court, in its discretion, to impute income to a voluntarily impoverished parent. But appellant failed to make a voluntary-impoverishment argument to the trial court, and presented no expert testimony to support his theory that it would have been prudent and reasonable for appellee to pursue a higher return on her investments.

Furthermore, although appellant cites *Barton v. Hirschberg*, 137 Md. App. 1 (2001), in support of this argument, *Barton* does not, in our view, support appellant's claim of error. In the first instance, in *Barton*, a voluntary impoverishment argument was made at trial, which is not the case here. Moreover, in *Barton*, we rejected an argument similar to the contention appellant makes in this appeal, stating:

> Our holding in this case should not be interpreted to mean that the assets of a party will never come into play when making a determination regarding child support. For example, if a parent voluntarily decreases his or her income in order to avoid support payments, a court may find that a parent has become voluntarily impoverished, and impute income based on assets readily adaptable to income production. Alternatively, in instances where the income of a parent is not adequate to provide support to a child sufficient to meet the standard of living established during the marriage, and the parent has assets that could be converted into income-producing assets, a court might look to the parent's assets to determine above-the-guidelines support. **We do not agree, however, that the mere ownership of non-income-producing assets alone constitutes a basis for reliance upon those assets in determining child support. Moreover, the decision to devote assets to capital growth, rather than income production, should be within the discretion of a parent, as long as the children are provided reasonable support, consistent with that provided during the marriage or other relationship.** It would be an unwise

> proposition, indeed, for a court to direct that a parent expend or convert his or her investments to provide support for children at a level above the guidelines, when the parent had consistently, during the marriage or other relationship, sought to utilize those assets for capital growth or other legitimate purposes which were not income-producing.

Id. at 20 (emphasis added).

In sum, it was neither clear error nor an abuse of discretion for the court to accept appellee's estimate of her income and decline to impute to appellee income greater than $120,000 appellee based on appellee's ownership of non-income-producing assets.

II. Child support

The court ordered appellant to pay $12,000 per month in child support. This is an above-the-Guidelines case. In such cases, the court "may use its discretion in setting the amount of child support." FL § 12-104(d). In *Walker v. Grow*, *supra*, 170 Md. App. at 267, we explained:

> "When the chancellor exercises discretion with respect to child support in an above Guidelines case, he or she '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] at 20 [(2002)] (quoting *Unkle v. Unkle*, 305 Md. 587, 597, 505 A.2d 849 (1986)).

In the present case, the trial judge explained at length the analysis he employed in determining that $12,000 per month was an appropriate amount of child support for appellant to pay in this above-Guidelines case:

> This Court notes all parties concede this is an "above the guidelines" child support case, thus, giving the Court discretion to set an amount for child support that is reflective of the financial situation of the parties. To that end, as noted the [appellant] argues that the Court should not merely "extrapolate" the award amount based on present needs of the children, but instead should look at what [appellee] received in 2008 and will get pursuant to the

Enforcement and other rulings herein and leave the child support at $3000.00 monthly.

* * *

. . . [T]his Court must and has evaluated the relevant factors, such as the parties' financial circumstances, the reasonable expenses of the children, the parties' stations in life, their ages and respective physical conditions, and the parties' expenses in educating the children herein. The case law indicates a trial court need not use a strict extrapolation method to determine support in an above Guidelines case. Rather, the court may employ any "rational method that promotes the general objectives of the child support Guidelines and considers the particular facts of the case before it." *Malin v. Mininberg*, 153 Md. App. 358, 410 (2003) (citing *Anderson v. Anderson*, 117 Md. App. 474, 478 n.1 (1997), vacated on other grounds, 349 Md. 294 (1998). In *Chimes v. Michael*, the Court of [Special] Appeals noted that "the legislative history and case law do not obscure the fact that **the Legislature left the task of awards above the guidelines to the Chancellor precisely because such awards defied any simple mathematical solution**." *Chimes*, 131 Md. App. 271, 289 [(2000)] (quoting *Bagley v. Bagley*, 98 Md. App. 18, 39 (1993).

* * *

Thus, this Court will use its discretion, after analyzing all the pertinent factors, particularly financial ones, and not simply extrapolate, in making the child support award. The Court notes, first, looking at a 5-year accrual average of [appellant's] base salary and bonuses, which has fluctuated from year to year recently, income for child support purposes being his annual income is $804,000, with his monthly average being $67,000.00. However, the Court notes based on most recent 2013 income figures that he made $265,000 [i]n base salary and his bonus was approximately $590,000, for a total of $855,000. Thus, it finds the latter, more recent annual figure to be most objectively timely and accurate. **Based on its analysis of all the financial information submitted by the parties, the Court finds the income figures prepared on the Guidelines Worksheet dated 1/29/2014 in this case of $10,000 a month for the [appellee] and $72,083.33 for the [appellant] to be appropriate. Quite frankly, given [appellant's] lack of compliance with discovery, Court Orders, and his financial obligations pursuant to the Agreement to furnish disclosure of all sources of income, *the Court finds the $72,083.33 monthly figure to be on the conservative side.* Nevertheless, it will use the same, understanding that his income fluctuates from year to year. On a pure numerical extrapolation basis, for starters, the Court**

finds the rest of the calculations to be facially correct and could award $17,052 per month as an increase to that figure.

However, consideration [sic] that pursuant to its rulings on the Enforcement Issues of the Agreement, the Court has ordered [appellant] to pay 75% of [the older daughter's private school] tuition and [appellee] to pay 25% separately. That would take $18,000 annually or $1500 monthly out of the numerical equation for the children's expenses for child support, thus reducing any potential award by that monthly figure to $15,552.00; noting [appellant] would be paying 75% of the $18,000 annual tuition figure or $1,125.00 per month for [the older daughter's] tuition, pursuant to a separate provision of the Order.

The Court takes that into consideration in making its modification of child support herein, that the children are now 14 and 11 years old respectively, and in 2008 were 8 and 5. **It has considered the life styles to which they have long become accustomed and their stations in life**, e.g., they are heavily involved in dance activities which have proven to be a very positive influence in their development. After eliminating the private school expenses from its child support award calculation, the financial figures submitted by [appellee] are found to be objectively accurate and this Court finds the expenses in raising these pre-teen and teenage girls in this day and age have proven herein to be accurate and reasonable. So, given their ages, life styles and their stations in life and proof of their expenses and their projections to be reasonable, and taking into consideration their respective parents' financial situation, particularly the substantial amounts [appellee] received in the 2008 Agreement and the other amounts she will receive pursuant to the attached Court Order on the Enforcement issues rulings, the Court will use its discretion, extrapolate down from the monthly figure of $15,552.00 and find that Twelve Thousand Dollars ($12,000) a month is a fair and reasonable figure for child support in this case.

It does so based on its review of the record herein, recognizing [appellant's] non-compliance with his past financial obligations, his inadequate disclosure of his present finances, but having a good fix on his present income and likelihood of similar projected future income, finding that the children's expenses are fair, reasonable and proportionate to their station in life and that his annual income is approximately 4 to 5 times greater than [appellee's] income. In addition, the **$12,000 per month equates to approximately 16% of his gross annual 2013 income, i.e., approximately $855,000 per year. The 16% is found to be an overall fair percentage for support of these girls** [taking into] consideration his overall financial

> situation, need to support his second family, himself and [his present] income and wealth producing capacity now and in the future.

(Emphasis added.)

Despite the acknowledgment by the court in its order that it "could award $17,052 per month" just based on the Guidelines ("[o]n a pure numerical extrapolation basis"), appellant argues on appeal that the $12,000 a month child-support figure was excessive, and therefore, an abuse of discretion. We disagree.

When the General Assembly enacted the FL § 12-204 guidelines in 1989, it was based on the Income Shares Model. "The conceptual underpinning of this model is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had the child's parents remained together." *Voishan v. Palma,* 327 Md. 318, 322 (1992). In above-Guidelines cases, however, "[t]he legislative history . . . indicates that the General Assembly did not intend to impose a maximum percentage of income or any similar restraint on the judge's discretion in setting awards where the parents' combined adjusted actual income exceeds $10,000 per month." *Id*. at 327. The *Voishan* Court agreed with the position of the Attorney General, which articulated in its amicus brief in that case that "[t]he legislative judgment was that at such high income levels judicial discretion is better suited than a fixed formula to implement the guidelines' underlying principle that a child's standard of living should be altered as little as possible by the dissolution of the family." *Id.* at 328. *See also Smith v. Freeman*, 149 Md. App. 1, 33 (2002) ("child care that is not work related, private school, summer camp, lessons, luxury vacations, designer clothes and shoes, toys, travel, cultural and recreational activities,

and other material privileges are among the extravagances enjoyed by families of substantial wealth"); *Jackson v. Proctor*, 145 Md. App. 76, 95 (2002) ("Understandably, a custodial parent of a child whose non-custodial parent is extremely wealthy will inevitably reap some benefits. But, this is not a case in which the mother was greedy, excessive, or unreasonable. Nice housing with quality furnishings, child care, private school tuition, tutoring, summer camp, lessons, recreational and cultural activities, toys, vacations, and other luxuries are among the privileges generally afforded to children in families with earnings comparable to the earnings in this case.").

Similarly, in *Bagley v. Bagley*, 98 Md. App. 18 (1993), an above-the-Guidelines case, we observed: "The Bagley children are entitled to every expense reasonable for a child of someone with Dr. Bagley's affluence." *Id*. at 38. Further, we commented that "the Legislature left the task of awards above the guidelines to the chancellor precisely because such awards defied any simple mathematical solution." *Id*. at 39.

In exercising its discretion to set a child-support award in an above-Guidelines case, a trial court

> "must balance the best interest and needs of the child with the parents' financial ability to meet those needs." *Smith* [*v. Freeman*], 149 Md. App. [1] at 20, 814 A.2d 65 (quoting *Unkle v. Unkle*, 305 Md. 587, 597, 505 A.2d 849 (1986)). "'Factors which should be considered when setting child support include the financial circumstances of the parties, their station in life, their age and physical condition, and expenses in educating their children.'" *Voishan*, 327 Md. at 329, 609 A.2d 319 (quoting *Unkle*, 305 Md. at 597, 505 A.2d 849).

Frankel v. Frankel, 165 Md. App. 553, 587 (2005). A child-support award in such a case "will only be disturbed if there is a clear abuse of discretion." *Id*.

In its thorough, lengthy opinion accompanying the child support order in this case, the trial court engaged in the required analysis. It found that appellant had income of $72,083.33 per month — a finding the court characterized as "on the conservative side." The court also carefully considered the children's well-being, particularly their participation in competitive (and not inexpensive) dance teams, finding that "to be a very positive influence in their development." Moreover, the court had before it uncontested evidence of appellant's long history of unexcused failure to comply with the parties' Agreement, despite appellant's ample income.

Here, the trial court balanced the needs and well-being of the parties' children against the parties' ability to pay. We find no abuse of discretion.

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