UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 252

September Term, 2016

TIMOTHY E. WALSH

v.

HEIDI L. DELAUTER
F/K/A HEIDI L. WALSH

Eyler, Deborah S.,
Graeff,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: April 25, 2017

This appeal addresses post-judgment enforcement proceedings following the May 14, 2010, Judgment of Absolute Divorce of Timothy Walsh, appellant, and Heidi Delauter (formerly Walsh), appellee, in the Circuit Court for Howard County. The judgment of divorce incorporated a Consent Order, pursuant to which the parties agreed to equally divide all reasonable expenses for their two children, R. and N.

Ms. Delauter subsequently filed a Petition for Contempt, alleging non-compliance by Mr. Walsh. Following a hearing, a Magistrate issued a written Report and Recommendations, and both parties filed exceptions. The circuit court held a hearing, and by order dated June 18, 2015, remanded the case to the Magistrate on issues of childcare expenses and an award of attorney's fees to Ms. Delauter. After remand, the Magistrate issued another written Report and Recommendations and no party filed exceptions. On February 25, 2016, after the time for filing exceptions had expired, and based on the Magistrate's recommendations, the circuit court ordered that Mr. Walsh pay $161,090.76 to Ms. Delauter for his share of childcare expenses and $30,000.50 for attorney's fees. It further ordered that those amounts be reduced to judgment.

On appeal, Mr. Walsh presents five questions for our review:

> 1. Did the circuit court err by finding Mr. Walsh owed money beyond the statute of limitations and estoppel by judgment periods?
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> 2. Did the circuit court err by ordering that the money owed by Mr. Walsh be reduced to money judgment when Ms. Delauter failed to pray for that remedy in her Petition for Contempt and Other Relief?
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> 3. Did the circuit court err and abuse its discretion when it approved the second level findings of the Magistrate that Mr. Walsh knew that the children's expenses were accruing and that Ms. Delauter did not have to give

> timely notice of the children's expenses as required by the plain meaning of the Consent Order?
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> 4. Did the circuit court err by setting the amount of judgment interest prior to the date of entry of the money judgment by the Clerk of the Court?
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> 5. Did the circuit court err and abuse its discretion in awarding attorney fees?

Ms. Delauter, by contrast, suggests that there is only a single question that is appropriate for our review:

> Did the circuit court err in its Order . . . , dated February 25, 2016 and entered February 26, 2016, as recommended by the Magistrate, when no exceptions to the Magistrate's written Report and Recommendations were filed?

For the reasons that follow, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

As indicated, the May 2010 Judgement of Absolute Divorce incorporated, but did not merge, a Consent Order dated March 23, 2009. Pursuant to the parties' Agreement, the court ordered, among other things, the following regarding the children's expenses:

> **ORDERED**, that neither the Plaintiff nor the Defendant shall be ordered to make direct child support payments to the other; rather, as set forth more particularly herein, each party shall be charged generally with the support of the Children, with each to provide for their support during the time in which the Children are with him or her, as the case may be, and with the parties to share certain expenses associated with the Children as set forth more particularly herein.[1]
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> A. GENERAL CHILD RELATED EXPENSES. The Plaintiff and the Defendant shall equally divide all reasonable expenses for the Children including, but not limited to the Children's: (i) uniforms for school; (ii) extra curricular activities and fees associated with these activities; (iii) school tuition; (iv) dues and expenses; (v) school supplies; school related books; (vi) health insurance/medical out-of-pocket and co-pay expenses; (vii)

[1] A handwritten notation in the Consent Order, initialed by the parties, states: "This arrangement meets or exceeds the MD Child Support Guidelines."

summer/sports camps; (viii) tutoring; and (ix) children gifts for others (birthday parties, teachers' gifts). Both the Plaintiff and the Defendant acknowledge that the spreadsheet attached as EXHIBIT B incorporated herein provides a fair estimate of annual related expenses of the Children and agree that these expenses are reasonable and necessary.[2] Every three (3) months, commencing July 1, 2009, each party shall present to the other documentation regarding expenses he or she has incurred during the prior three (3) months (e.g., July 1, 2009 for the period April 1, 2009 through June 30, 2009), which are reimbursable in accordance with this Consent Order. The parties shall reconcile their respective expenses and the party owing money shall tender payment within fifteen (15) days. Both parties agree to keep these expenses reasonable and necessary when asking for payment from the other party and that neither shall seek additional child support payments from Husband or Wife . . . .

B. CHILDREN'S SCHOOL/EDUCATIONAL NEEDS. The Children are currently enrolled in the McDonogh School and the Plaintiff and the Defendant desire to have them continue at McDonogh through high school, subject to the further provisions of this paragraph. The Children shall continue to attend McDonogh School as long as the children are academically eligible, and otherwise eligible and as long as the parties are financially able to afford the expenses of McDonogh. In the event that one or the other party believes that there has been a substantial and material change in the financial or other circumstances affecting the Children and that those circumstances prevent the Children from continuing at McDonogh, then the parties agree to discuss the issue of McDonogh, and private or public school, as a major issue, as that term is used in the General Provisions Regarding Decision-Making section set forth hereinabove, with the intent being to try to reach an agreement as to the continuing education of the minor Children.[3] In furtherance of the provisions of the referenced section, the parties may agree to work with a third party professional to try to reach agreement. Further, and although this may be obvious, the parties agree th[at] should they collectively believe, at any time, that one or the other or both of the Children should not continue at McDonogh, or private school,

[2] Exhibit B provided that the "Estimated Annual Total" of the Children's expenses to be shared equally by the parties was $57,092.

[3] The "General Provisions Regarding Decision-Making" provided that, if the parties were unable to reach a decision regarding a major issue, "they shall submit to a minimum of four (4) hours of mediation with a professional mediator of their mutual selection prior to seeking the assistance of court intervention." In the event the parties were unable to mutually select a mediator, "they shall submit the issue to Robert Heller, Retired Judge."

> then they will discuss the school or schools that they believe are appropriate for their Children, again in accordance with the provisions of the General Provisions Regarding Decision-Making section of this Agreement. During all times when the Children are enrolled at the McDonogh School or in private school, the parties agree to divide equally the expenses of private school so that each pays, on a timely basis, one half of the expenses, which shall include deposits, tuition, student fees, books and [field] trip charges.

In addition to the Consent Order, the transcript of an Agreement also was incorporated, but not merged, into the Judgment of Absolute Divorce. The Agreement provided, in relevant part, that "if one or the other is required to go to court to enforce the agreements that they have entered into, then the prevailing party in any such proceeding would be entitled to their reasonable attorney's fees and expenses."

On September 10, 2014, Ms. Delauter filed a Petition for Contempt, alleging that Mr. Walsh was non-compliant with several obligations incorporated into the judgment. As relevant to this appeal, she alleged that Mr. Walsh had failed to make payments on a $82,500 promissory note and had failed to pay the children's expenses. She alleged that the aggregate of the children's reasonable expenses between 2008 and the date of the proceeding, September 10, 2014, was $320,261.66, but the aggregate of Mr. Walsh's financial contributions during that time was $1,622.60. Ms. Delauter alleged that, since 2008, she had "consistently demanded from the Defendant financial contribution for child related expenses," but he had "*willfully and intentionally failed to pay his one-half required share for the minor children*, in direct violation of the Consent Order." Ms. Delauter requested that the court find Mr. Walsh in contempt, determine the amount of child support arrears and order immediate payment thereof, determine the amount due on the $82,500

loan and order immediate payment, order that Ms. Delauter be awarded reasonable attorney's fees, and award "such further relief as the nature of her cause may require."

Mr. Walsh opposed the Petition for Contempt. He alleged that, since the entry of the judgment of divorce, he had been requesting to meet with Ms. Delauter and engage in mediation to discuss the children's enrollment in McDonogh and the possibility of enrolling them in Howard County Public Schools, requests that had been ignored.

On February 27, 2015, a hearing was held before a Magistrate. Ms. Delauter testified that Mr. Walsh owed $94,738 in principal and interest on the $82,500 note. Regarding expenses, she testified that she kept a spreadsheet tracking all of the children's expenses, as well as documentation, including receipts, of the payments she made. The documentation was admitted into evidence. Ms. Delauter stated that, from 2008 to 2014, she asked Mr. Walsh to pay his 50% of the bills, and both she and the school forwarded invoices of the school tuition bills, but he paid only twice, in the amounts of $927.60 and $320.

Mr. Walsh's counsel objected to the admission of any evidence of the children's expenses prior to 2010, after the entry of the judgment of divorce, as "clearly barred by the doctrine of res judicata collateral estoppel issue preclusion." Counsel asserted that the court should have decided those issues when resolving the divorce case. The Magistrate, however, allowed the evidence.

Ms. Delauter agreed that, pursuant to the Consent Order, she and Mr. Walsh were supposed to mediate any disagreements, but she stated that he declined her request, stating that he "was not going to participate in mediation." She had tried to deliver copies of the

children's expenses, but he would either claim he did not get the email or he would fail to pick up certified letters. Mr. Walsh, however, was aware that "the expenses . . . existed." Ms. Delauter did not believe that Mr. Walsh would voluntarily pay any of the children's expenses.

Mr. Walsh testified that he did not pay educational expenses because Ms. Delauter "violated the divorce agreement," which "specifically states that if either party is going to incur costs for the children, that, on quarterly basis, if they want reimbursement, they will . . . send a request . . . to the other party for consideration, discussion, maybe negotiation, any payment," and he "never got one of those from her, even one time." Mr. Walsh testified that he lost his job in 2010, and his "income dropped precipitously." He wanted to mediate with Ms. Delauter regarding the children attending public schools, because he could not afford to pay for McDonogh, and he had "reached out to her, at least a thousand times," but she "ignored every request and [he] didn't have the money to pay" for tuition.

On March 30, 2015, the Magistrate issued a written Report and Recommendations. After setting forth the terms of the Consent Order, the Magistrate made findings of fact. With respect to the promissory note, the Magistrate found:

> 5. Per the parties' Agreement, the Defendant was to execute a promissory note in favor of the Plaintiff in the amount of $82,500.00 with interest at 5% payable over 4 years with a minimum payment of $1K per month due to Plaintiff beginning 4/1/10. With the 5% interest the payment monthly was $1,344.73 and this is the amount that the Defendant paid when he paid on the loan. The Plaintiff kept records of all payments to her from Defendant on this loan.
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> 7. The Plaintiff kept track of payments made to her on this note. The Defendant has an outstanding balance due to the Plaintiff including principal and interest of $78,307.00 on the $82,500 loan.

With respect to the children's expenses, the Magistrate made the following findings:

> 20. The Consent Order envisioned that every three months, each party would present to the other, documentation regarding expenses he or she has incurred during the three months just passed that are reimbursable. One party would then submit payment to the other within 15 days. There is not evidence that shows that the Plaintiff submitted regular tri-monthly statements seeking reimbursement. There is evidence that the Plaintiff made periodic requests for payment for expenses as they arose. In addition, there is ample evidence that the Defendant knew of the cost of ongoing agreed upon expenses including the health insurance costs and the costs associated with McDonogh School, sports, tutoring, and other medical costs.
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> 21. Although it is clear that school uniforms were contemplated as a shared cost[, t]he items listed in the school uniforms section and supporting documents provided by Plaintiff are not easily identifiable as uniform expenses. The uniform of the school was not identified.
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> 22. Plaintiff has kept accurate and complete records regarding expenses on behalf of the children. Plaintiff's testimony on the majority of items was clear and credible.
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> 23. The parties stipulated that from 2012 until the date of the hearing, Defendant made no payments toward the school expenses. Defendant did make some payments in 2011 and 2010.
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> 24. After review of the requirements of the Consent Order incorporated into the Judgment, expenses for the children generally excluded from Plaintiff's exhibits for purposes of this report and recommendation are the uniform expenses, expenses identified as 'other' and 'general, gift items, expenses prior to the entry of the Judgment, and some of the supplies items such as a computer and snacks as examples. Also excluded was the cost of a $1700 evaluation in 2010. All other items are well within the parties Consent Order and agreement and in large part represent costs to third party businesses that are clear and well documented, well proven and within the contemplation of shared expenses between the parties.
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> 25. Plaintiff has proven that the expenses existed for the children, that the sharing of the expenses are required per the Judgment, and that the Defendant has not paid the expenses. The standard of proof is preponderance

of the evidence. Plaintiff has met this standard and in fact has presented clear and convincing proof on these issues.

26. The expenses that would be due between the parties was anticipated and estimated, but precise figures were not available to the parties until after the expenses were accrued. Defendant cannot be found in contempt for non-payment of an uncertain amount.

27. Expenses due from Defendant to Plaintiff for 2010 are $13,729.69.

28. Expenses due from Defendant to Plaintiff for 2011 are $31,378.12.

29. Expenses due from Defendant to Plaintiff for 2012 are $28,504.59.

30. Expenses due from Defendant to Plaintiff for 2013 are $28,208.45.

31. Expenses due from Defendant to Plaintiff for 2014 are $18,063.10.

32. Plaintiff seeks finding of contempt and general relief specifically as regards judgment of divorce entered 5/10/10.

With respect to attorney's fees, the Magistrate found as follows:

33. Plaintiff requested attorney's fees. Plaintiff hired counsel and paid necessary and reasonable fees for proper pursuit of relief. Plaintiff's attorneys' fees total at least $17,000.00. Plaintiff was required to file a motion to compel discovery from Defendant after Defendant did not comply with requests. Plaintiff was required to procure documents from third parties. However, it is not recommended that the Defendant be required to pay attorneys' fees at this time.

The Magistrate also observed that "Plaintiff provided documents and testimony that tended to show that Defendant has and has had the means to pay toward his obligations over the years but has failed to pay." Furthermore, despite claiming that "many of his assets [were] encumbered," Mr. Walsh "brought no proof of this," and his "testimony on his assets and ability to pay were not credible."

The Magistrate recommended, in relevant part, as follows:

> A. That the Defendant be found to owe to the Plaintiff the amount of $78,307.00 for non-payment of balance of $82,500.00 debt to the Plaintiff per the parties' Agreement incorporated into Judgment of Divorce.
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> B. That the amount of $78,307.00 be reduced to judgment against the Defendant and in favor of the Plaintiff along with the rate of legal interest permitted and accruing as of the entry of the judgment.
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> ***
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> E. That the amount of children's expenses due from the Defendant to the Plaintiff since the entry of the Judgment of Divorce be established in the amount of $119,883.95. That amount should be paid to the Plaintiff within 30 days of the entry of the Order of Court and if not so paid, should be then reduced to judgment in favor of the Plaintiff and against the Defendant along with the rate of legal interest permitted accruing from the date of entry of the judgment.
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> F. That the Plaintiff's request for attorneys' fees be denied.

The Magistrate certified that "a copy of this Report and Recommendation was mailed to the parties by first class mail on" March 30, 2015.

Both parties filed exceptions. With respect to the failure to pay the loan, Mr. Walsh did not dispute that he owed the balance due, but he asserted that he should not be held in contempt of court because he did not have the ability to pay. With respect to the expenses, Mr. Walsh asserted that Ms. Delauter "failed to present sufficient evidence that she gave notice of [the Children's] expenses as required," and he "provided sufficient evidence that he did not have the ability to pay these expenses." He also asserted that there was "a statute of limitations issue[]," as contempt matters involving child support "must be brought within three years," and, therefore, the Magistrate "could only consider evidence of three years prior to September 10, 2014 when the Petition for Contempt was docketed."

Ms. Delauter asserted that the Magistrate erred in finding that the children's expenses for 2009 and 2015 should not be included in the amount owed to her by Mr. Walsh, and erred in denying her request for attorney's fees. She asserted that, in recommending that Mr. Walsh owed her $119,883.95, the Magistrate erred in finding that the amount owed should exclude uniform expenses, other expenses, general expenses, gift item expenses, expenses prior to the entry of judgment, computer expenses, snack expenses, and a $1,700 evaluation expense from 2010, noting that Mr. Walsh never objected to those as child-related expenses. She also argued that the Magistrate erred in denying her request for attorney's fees, stating that she "was forced [to] seek legal representation to assist her with filing a Petition for Contempt and the associated proceeding due to Defendant's intentional and willful non-compliance in this matter."

On June 18, 2015, the circuit court held a hearing on the exceptions. Counsel for Mr. Walsh argued that Ms. Delauter's receipts for the children's expenses were "missing a lot in detail," giving as an example receipts for school uniforms, which indicated only that the item was purchased from Dick's Sporting Goods, but did not provide information regarding whether the uniform was for school or for an extra-curricular activity. Counsel further argued, that Mr. Walsh was only bound to pay McDonogh tuition if he had the financial ability to do so, and Mr. Walsh's financial statement showed a negative income. Finally, counsel asserted that, under the statute of limitations, the Magistrate improperly included expenses prior to September 10, 2011.

Counsel for Ms. Delauter argued that the Magistrate reviewed all of the exhibits relating to the children's expenses, and that Mr. Walsh had failed to respond to discovery

requests, specifically with regard to his financial information. Nevertheless, the financial information counsel did have indicated that Mr. Walsh had the ability to pay. With respect to the statute of limitations, counsel asserted that a court has revisionary power as to child support, and that, in any event, the statute of limitations does not begin to accrue until there is a finding of child support, which there was not here, as there was no certain amount.

At the conclusion of the hearing, the court stated that it was clear that the loan had not been paid, and it affirmed the Magistrate's finding in that regard. With respect to expenses, the court noted that the Magistrate's findings were "extremely detailed," with a "myriad amount of exhibits." The court went on to state, however, as follows:

> [T]he testimony, for example, although it was detailed, to me didn't close the loop with regard to, and I think I gave you the example of, uniforms. There were receipts for clothing, I have no clue from reading the transcript whether "the clothing" was in part of in whole "the uniform". I don't have any clue what the McDonogh uniform is, it wasn't stated, I don't know.
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> Now, I have to tell you, you're talking about [$]20; $50.00 items, whether you wanna pay your respective attorneys hundreds of dollars in hourly fees, which they're justly earning, for $100.00 in clothing that's up to you. You may think the principle is worth more than the monetary figure, that's up to you.
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> But the [c]ourt does remand the issue [regarding] the child expenses back to the master.
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> And at this juncture I'm gonna remand the issue of attorneys fees, as well.

On June 18, 2015, the court issued an order finding, among other things, that Mr. Walsh owed $78,307 to Ms. Delauter, and that amount "shall be reduced to judgment." The court remanded the case to the Magistrate "on the issues of childcare expenses and any award of attorney's fees to" Ms. Delauter.

On December 18, 2015, the Magistrate held the remand hearing. Ms. Delauter again testified that she kept receipts and created spreadsheets of the children's expenses. In the spreadsheets, which were admitted into evidence, Ms. Delauter tracked the categories of expenses that were listed in the Consent Order and indicated the actual expense for each category. She communicated the expenses that she paid to Mr. Walsh, noting that she sent him certified mail, which he would not pick up, and she would email him documents. Although she may not have complied literally with the notification requirements, she did communicate significant childcare expenses to Mr. Walsh.

In addition to spreadsheets and receipts, Ms. Delauter produced copies of emails and letters that she sent to Mr. Walsh regarding expenses, a letter from McDonogh school to both parents regarding testing for one of the children, an invoice for psycho-educational testing for one of the children, a letter to parents regarding expenses for renting band instruments, a copy of an instrument rental agreement, and letters from McDonogh school regarding school materials, school uniforms, and school trips. She also produced itemized copies of her counsel's bills.

On cross-examination, Ms. Delauter agreed that she did not provide expenses to Mr. Walsh quarterly, but she also never received any requests for reimbursement from Mr. Walsh. She reiterated that she attempted to mail and email him, but that he did not respond and would deny that he had received correspondence. Providing Mr. Walsh with each individual expense "became an enormous amount of paperwork, and he wouldn't accept anything." The parties attempted to mediate using Mr. Walsh's ex-girlfriend as a mediator

in 2012, but it was "pointless." According to Ms. Delauter, Mr. Walsh knew the expenses were incurred, but he "would just choose to let [her] do all the expenses."

Mr. Walsh testified that Ms. Delauter never, "not even once," provided him with the necessary documentation regarding expenses. He kept receipts, but "on a quarterly basis, when I got nothing from her . . . I threw them away." He stated that the parties had never mediated with a professional mediator because Ms. Delauter refused. He thought, pursuant to the divorce agreement, that mediation was required before they could seek court intervention, but there had "been no attempt" on Ms. Delauter's part to do that.

On February 3, 2016, the Magistrate issued a second Report and Recommendations, finding, among other things, that Mr. Walsh was aware of the children's expenses, despite that Ms. Delauter did not provide him with quarterly billing statements, and that he owed her $161,090.76, which represented his share of the expenses from the date of the Consent Order until February 28, 2015. In particular, the Magistrate made the following factual findings.

> 6. . . . . There is not evidence that shows that the Plaintiff submitted regular tri-monthly statements seeking reimbursement. There is evidence that the Plaintiff made ongoing requests for payment for expenses as they arose. . . . In addition, the Plaintiff would, from time to time, ask that Defendant pay his portion of tuition to McDonogh, noting that she had become aware that he had not paid.
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> 7. Defendant suggests that because the Plaintiff did not provide quarterly billing statements that Defendant is somehow relived of his obligation to pay for half of the expenses of the children. To the contrary, there is no such provision in the consent order that alleviates either party from their obligation to financially support the children for lack of a billing statement. Defendant's argument is not valid. The largest part of the annual expenses for the children [is] related to McDonogh School, both academics and extracurricular activities. It was not anticipated that one party would be

responsible for paying the full tuition and fees to McDonogh and the other would be responsible for reimbursement. The parties enjoy joint legal custody of their children and each has equal access to McDonogh School information. Plaintiff was not required to quarterly bill Defendant for her payment of his portion of the tuition and fees incurred for the children to attend McDonogh. The fact that Plaintiff did pay the tuition in full permitted the children to continue at the school. The fact that she did pay the tuition and fees does not alleviate the requirement that Defendant pay his portion.

8. Evidence presented at first hearing and at remand identified that the Defendant knew well that the Plaintiff was incurring thousands and thousands of dollars of children's expenses. Most significantly was the tuition bill for McDonough [sic]. Defendant knew that the tuition expense was being incurred, he knew that the Plaintiff was paying the tuition and that he was not. Defendant knew that he was responsible for half of the tuition. Plaintiff's testimony was credible on the issue of notice to the Defendant and is supported by other evidence presented.

9. In addition, there is credible testimony from the Plaintiff that she did send notices to the Defendant to receive reimbursement for expenses for the children. Throughout the years her requests have largely been met with silence and non-payment.

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15. Plaintiff has kept accurate and complete records regarding expenses on behalf of the children. Plaintiff's testimony on the items was clear and credible.

16. The parties stipulated at prior hearing that from 2012 until the date of the first hearing, Defendant made no payments toward the school expenses. Defendant did make some payments in 2009, 2010 and 2011.

17. All items listed on the spreadsheets at remand hearing and submitted in evidence are well within the parties Consent Order and agreement and in large part represent costs to third party businesses that are clear and well documented, well proven and are within the contemplation of the shared expenses between the parties. These expenses have been supported with receipts, copies of checks, bills and other supporting evidence. Some of the listed expenses have been modified to some degree from the first hearing. In some instances, lowering the cost, such as an original July 2010 tuition/fee expense of $11,485.50 reduced at remand hearing to $10,635.00.

18. Plaintiff has proven that the expenses existed for the children, that the sharing of the expenses are required per the Judgment, Consent Order and Agreement, and that the Defendant has not paid the expenses. The standard of proof is preponderance of the evidence. Plaintiff has met this standard and in fact has presented clear and convincing proof on these issues.

19. The expenses that would be due between the parties were anticipated and estimated, but precise figures were not available to the parties until after the expenses were incurred. Defendant cannot be found in contempt for non-payment of an uncertain amount, although his nonpayment of many of the expenses, such as tuition costs, are clearly contrary to the Consent Order and the Judgment. The children's expenses submitted at the remand hearing are accepted by the court as expenses of the parties' children and are expenses to be shared equally per the parties Consent Order, Agreement and Judgment. The spreadsheets submitted by plaintiff account for payments, however small, made by the Defendant in support of these expenses.

20. Defendant's portion of child expenses due to Plaintiff for 2009 are $15,682.21.

21. Defendant's portion of child expenses due to Plaintiff for 2010 are $16,811.10.

22. Defendant's portion of child expenses due to Plaintiff for 2011 are $31,584.25.

23. Defendant's portion of child expenses due to Plaintiff for 2012 are $29,464.15.

24. Defendant's portion of child expenses due to Plaintiff for 2013 are $30,071.97.

25. Defendant's portion of child expenses due to Plaintiff for 2014 are $27,192.13.

26. Defendant's portion of child expenses due to Plaintiff for the first two months of 2015 (prior to first hearing on issue now subject to remand) is $7721.45.

27. The total due from Defendant to Plaintiff is $158,527.26.

The Magistrate also recommended that Mr. Walsh be required to pay $30,000.50 of Ms. Delauter's attorney's fees incurred in the contempt action. In that regard, the Magistrate made the following findings.

> 29. Plaintiff requests attorney's fees. Plaintiff hired counsel and paid necessary and reasonable fees for proper pursuit of relief. Plaintiff's attorneys' fees total well over $30,000.00. Plaintiff has been previously required to file motion to compel discovery from Defendant after Defendant did not comply with requests. Plaintiff was required to procure documents from third parties.
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> 30. The parties agreed that, as evidenced by the transcript of their Agreement placed on the record on 3/8/10, if one of them is required to go to court to enforce the agreements that they have entered into, the prevailing party in any such proceeding would be entitled to their reasonable attorney's fees and expenses.
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> 31. Plaintiff was represented by [first counsel] on both the prosecution of this contempt action and on motion to modify. Plaintiff testified that . . . 90% of [her first counsel's] efforts were in regard to contempt/enforcement matters. That firm filed contempt action on Plaintiff's behalf, stewarded the matter through preparation, postponements of the contempt hearing, and exceptions preparation and hearing. A review of the billing statements from that firm confirm that the majority of the billings were related to the contempt/collections matter. It is more likely than not that the [first counsel] spent 80% of their time in the contempt/enforcement matter. It is recommended that the Defendant be required to pay 75% of the Plaintiff's attorney fees of the [first counsel]. The total fees for that firm were $29,903.00. $22,427.25 is 75% of those fees.
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> 32. The [second counsel] entered the case after the court's order to remand on the issue of child expenses and attorney fees. These lawyers prepared both for the remand of the contempt matter regarding a modification hearing. The contempt remand has been prepared for and the matter has been heard. The matter of modification has not been heard. A review of the invoices from current law firm reveal that many of the entries that identify a subject matter, identify the contempt/enforcement matter. The Plaintiff testified that her current attorney's spent approximately half of their time on the collection/contempt matter. The Plaintiff incurred $15,146.50 in fees and costs with her current firm. The fees are fair and reasonable. This figure includes 2 hours of time at the contempt hearing remand not included in

> exhibit 31. One half of these fees is $7,573.25 for attorney fees incurred by the Plaintiff with current firm in pursuing the contempt action and remand.
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> 33. The fees from both firms are fair and reasonable under the circumstances and these portion of the fees identified above were necessary as the Plaintiff has been required to pursue court action to enforce the parties agreement, Consent Order and Judgment.

The Magistrate certified that, on February 3, 2016, she sent a copy of the Report and Recommendations, by first class mail, to "Plaintiff [and] Defendant."

No party filed exceptions. On February 25, 2016, the court issued an order that Mr. Walsh pay Ms. Delauter $161,090.76, his share of the Children's expenses from March 23, 2009, the date of the Consent Order, until February 28, 2015. The Court also ordered Mr. Walsh to pay Ms. Delauter $30,000.50 for attorney's fees. It ordered that, if either payment was not made within 30 days of entry of the Order, the amount would be reduced to judgment against Mr. Walsh, "with lawful interest from the date of [the] Order."

On March 7, 2016, counsel for Mr. Walsh filed a motion to alter or amend, asserting that neither he, nor Mr. Walsh, had received a copy of the Magistrate's Report and Recommendations, and therefore, Mr. Walsh should be permitted to file exceptions or, in the alternative, have his motion to alter or amend treated as exceptions. Although the motion contained an affirmation of Mr. Walsh that he never received the Magistrate's Report and Recommendation, no affidavit of counsel was included.[4]

[4] In the motion to alter or amend, Mr. Walsh argued, among other things, that Ms. Delauter admitted that she did not provide him with quarterly billing statements, as required, that any non-payment prior to the entry of the judgment of divorce was barred by res judicata and collateral estoppel, that the Magistrate made no findings that Mr. Walsh could pay the children's tuition expenses, and the Magistrate failed to make proper findings regarding attorney's fees.

On March 18, 2016, Ms. Delauter filed a response. Her attorney asserted, accompanied by an affidavit, that he "received [his] copy of the Magistrate's Report and Recommendations two (2) days" after it was filed, "on February 5, 2016." Counsel asserted that it was "obvious that, on February 3, 2015, [the] Magistrate . . . mailed a copy of her Report and Recommendations to the counsel of record for the parties . . . , and not directly to the parties." Counsel noted that Mr. Walsh's counsel did not include an affidavit in his motion attesting to the fact that he did not receive a copy of the Magistrate's Report and Recommendations, and he argued that the absence of an affidavit suggested that counsel had received the report and "simply did not act within the time frame allowed to file exceptions."

On March 29, 2016, the court denied Mr. Walsh's motion without comment. This appeal followed.

DISCUSSION

Ms. Delauter contends that the only issue on appeal is whether the circuit court erred in entering the February 26, 2016, order "as recommended by the Magistrate, when no exceptions . . . were filed." She argues that, because Mr. Walsh did not file timely exceptions to the Magistrate's findings or recommendations, he waived any claim of error, and therefore, the circuit court did not err in issuing its order.

Mr. Walsh contends that, in April 2015, he filed exceptions to the Magistrate's first Report and Recommendations, "which this Appeal primarily arises from." He notes that, with respect to the issue regarding the entry of a money judgment in the amount of $78,307 for the Bank of America loan, that issue was not remanded for further proceedings. With

respect to the Magistrate's second report, he asserts that, because the Magistrate's certificate of service stated that it was mailed to "Plaintiff Defendant," not "Attorney for Plaintiff and Attorney for Defendant," it did not comply with the requirement that it be sent to the attorneys, and therefore, the circuit court should have granted his Motion to Alter or Amend, and this Court should treat that motion "as Exceptions that were considered . . . and then denied."

Maryland Rule 9-208 addresses proceedings before Magistrates in family law actions. Subsection (e) provides, in relevant part, that:

> [T]he magistrate shall prepare written recommendations, which shall include a brief statement of the magistrate's findings and shall be accompanied by a proposed order. The magistrate shall notify each party of the recommendations, either on the record at the conclusion of the hearing or by written notice served pursuant to Rule 1-321.[5]

A party who takes issue with the Magistrate's report or recommendations may file exceptions pursuant to section (f) of the Rule, which provides:

> **Exceptions.** Within ten days after recommendations are placed on the record or served pursuant to section (e) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

[5] Maryland Rule 1-321(a) provides, in relevant part, as follows:

> Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court.

And Rule 9-208(h)(1)(B) provides: "[I]f exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate."

Here, the Magistrate certified that she sent, by first class mail, a copy of her Report and Recommendations to "Plaintiff" and "Defendant." No party filed exceptions within 10 days of the Magistrate's Report and Recommendations, and the court therefore entered an order as recommended on the two issues that were remanded to the Magistrate, the children's expenses and attorney's fees.

As indicated, Mr. Walsh contends that, because the Magistrate wrote that the Report and Recommendations was sent to "Plaintiff Defendant," as opposed to the attorney for the party, as provided by Md. Rule 1-321, we should treat counsel's motion to alter or amend as exceptions that were denied. We decline to do so. We note that the Magistrate, in sending the notice, is presumed to know the law and apply it properly. *See Bellard v. State*, 229 Md. App. 312, 346 ("Judges are presumed to know and apply the law correctly."), *aff'd*, ___ Md. ___, No. 72, Sept. Term, 2016, (filed Mar. 31, 2017). *Accord Wood v. State*, 436 Md. 276, 291 (2013) (same). Indeed, that counsel for Ms. Delauter acknowledged receipt of the document, and that counsel for Mr. Walsh received a copy of the Magistrate's first Report and Recommendations, indicates that the Magistrate sent the second report to both counsel. And in the absence of evidence to the contrary, the circuit court could presume the report was received by counsel. *See Attorney Grievance Comm'n of Maryland v. Harmon*, 433 Md. 612, 622-23 (2013) (court properly inferred that letters mailed to

appellee by Bar Counsel, and not returned, were in fact received, as a letter correctly stamped, addressed, and mailed is presumed to have been delivered).[6]

Thus, we must address the impact of the failure to file exceptions from the February 2016 Report and Recommendations. This Court ordinarily will not consider an issue on appeal "unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a). And in the context here, we have held that the failure to file exceptions precludes a party from challenging a magistrate's factual findings, adopted by the circuit court. *Green v. Green*, 188 Md. App. 661, 674 (2009). In this circumstance, however, a "party is not precluded from appealing the trial court's adoption of the [magistrate's] recommendation if the issues appealed concern the court's adoption of the [magistrate's] application of law to the facts." *Id. Accord Miller v. Bosley*, 113 Md. App. 381, 393 (1997) ("[I]n all cases lacking timely exceptions, any claim that the master's findings of fact were clearly erroneous is waived," but appeal may proceed regarding allegation of error by the court "in the exercise of [its] independent judgment as to the propriety of his disposition of the case").

With that background in mind, we will proceed to address Mr. Walsh's individual arguments.

[6] Although counsel stated in his pleading, and in court during oral argument, that he did not receive the Magistrate's second Report and Recommendations, he presented no evidence to the circuit court, such as an affidavit stating that he did not receive it, to rebut the presumption of delivery.

I.

Statute of Limitations, Res Judicata, Estoppel by Judgment

Mr. Walsh contends that the circuit court erred in finding that he owed money for unpaid children's expenses accruing more than three years prior to the filing of Ms. Delauter's Petition for Contempt on September 10, 2011. He asserts that these expenses, which he lists as $15,682.21 for 2009, $16,811.10 for 2010, and $18,573.15 for 2011 are barred by the statute of limitations. He further argues that the expenses for 2009 and the first quarter of 2010 should be excluded because they should have been addressed at the divorce hearing, and therefore, they are bound by the doctrines of estoppel by judgment or res judicata.[7]

Mr. Walsh correctly notes that, pursuant to Maryland Code (2012 Repl. Vol.) § 12-102 of the Family Law Article ("FL"), a contempt action for failure to make a payment of child support "under a court order shall be brought within 3 years of the date that the payment of support became due." *Accord* Md. Code (2010 Supp.) § 5-111 of the Courts and Judicial Proceedings Article ("CJP") ("proceeding to hold person in contempt for . . . child . . . support . . . shall be commenced within 3 years of the date . . . support became due and remained unpaid"). Ms. Delauter, however, contends that the 12-year statute of limitations set forth in CJP § 5-102 applies here. CJP § 5-102(a) provides:

> An action on one of the following specialties shall be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner:

[7] The statute of limitations argument was raised in the exceptions to the Magistrate's first report, but not the second report. Nevertheless, it raises a legal issue, so we will address it.

***

(3) Judgment.

In *O'Hearn v. O'Hearn*, 337 Md. 292, 295 (1995), the Court of Appeals addressed the applicable statute of limitations where the wife sought to recover judgment for expenses owed by the husband pursuant to a settlement agreement that was incorporated into a divorce decree. The Court held that, although there was a three-year statute of limitations for a contempt action, a complaint seeking to reduce the divorce decree to a monetary judgment was subject to the twelve-year statute of limitations for specialties. *Id.* at 301. The Court explained:

> "Once the court decides to incorporate an agreement between the parties as part of its decretal relief, something which it does not necessarily have to do, particularly as to provisions relating to children, the agreement is included within the order and is enforceable as a valid provision of the decree."

Id. (quoting *Kemp v. Kemp*, 287 Md. 165, 175 (1980)). The Court concluded:

> In this case, incorporation made the obligations assumed by [appellant] under the separation agreement part of the decree of divorce, which was a judgment. [Appellee] sought reduction of that original judgment to an aggregate award, not a finding of contempt. As [appellee] sued on a judgment, the twelve-year limitation period of CJ § 5-102(a) was properly applied to the action on that specialty.

Id.

Here, Ms. Delauter filed a Petition for Contempt and Other Relief. To be sure, as Mr. Walsh notes, there was not, as in *O'Hearn*, a specific request to enforce the judgment. There was, however, a request for immediate payment of child support arrears and other relief "as the nature of her causes may require." Under these circumstances, and because the issue on appeal does not involve a contempt finding, but rather, an order to pay child

support pursuant to a Consent Order that was incorporated into the judgment of divorce, we conclude that the twelve-year statute of limitations applied. Accordingly, the circuit court did not err in awarding unpaid expenses that accrued more than three years, but less than 12 years, prior to the filing of the petition.

With respect to res judicata and estoppel by judgment, Mr. Walsh argues that Ms. Delauter's claim for recovery of unpaid children's expenses that accrued prior to the judgment of divorce "should also be excluded because those expenses should have been addressed at the Judgment of Absolute Divorce hearing." He asserts that Ms. Delauter is precluded from seeking reimbursement of those expenses because neither the agreement nor the judgment of divorce reserved on any issues.

Contrary to Mr. Walsh's argument, however, Ms. Delauter's Petition for Contempt sought to enforce the provisions of the parties' March 23, 2009, Consent Order, as incorporated into the judgment of divorce. The children's expenses that Mr. Walsh claims are excluded were included in that order, and there had been no judicial determination that Mr. Walsh owed these expenses prior to the proceedings at issue here. Mr. Walsh's attempt to rely on res judicata and estoppel by judgment is devoid of merit.

II.

Money Judgment

Mr. Walsh next contends that the circuit court erred "by ordering that the money owed by Mr. Walsh be reduced to money judgment when [Ms.] Delauter failed to pray for that remedy in her Petition for Contempt and Other Relief." This contention relates to: (1) the June 18, 2015, order that the amount of $78,307 he owed to Ms. Delauter be reduced

to judgment; and, (2) the February 25, 2016, order that the $161,090.76 he owed for expenses be reduced to judgment if not paid within 30 days from entry of the order.[8]

Mr. Walsh contends that the court's orders were erroneous because Ms. Delauter "failed to plead and request a money judgment in her Petition for Contempt," and instead, she "only requested amount due and owing and an immediate payment." He asserts that, because the pleadings failed to provide him with notice of what relief Ms. Delauter was requesting, the court exceeded its authority in entering the orders, and this Court must remand to the circuit court for it to "strike and vacate" those provisions. We are not persuaded.

In her Petition for Contempt, Ms. Delauter sought the following relief: "C. Determine the amount of child support arrears and order the immediate payment thereof"; "E. Determine the amount owed and presently due on the $82,500.00 loan and order the immediate payment thereof"; and "H. That the Plaintiff be awarded such and other further relief as the nature of her causes may require." Although Ms. Delauter did not specifically request a money judgment, this Court has held that, when "a petition includes a prayer for general relief, as long as the allegations suffice to give notice to the respondent, any relief consistent therewith is proper." *Boucher v. Shomber*, 65 Md. App. 470, 478 (1985).

[8] On December 18, 2015, and May 3, 2016, judgments were entered against Mr. Walsh pursuant to these orders.

Here, Ms. Delauter's petition was sufficient to provide notice that she was seeking to enforce the divorce decree and obtain payment of the monies owed. There was no error by the circuit court.[9]

III.

Ms. Delauter's Failure to Provide Notice of Expenses

Mr. Walsh next contends that the court erred and abused its discretion in approving the Magistrate's findings that Mr. Walsh knew the children's expenses were accruing and that Ms. Delauter did not have to give timely notice of those expenses as required by the Consent Order. He asserts that this Court should remand for the circuit court to reconsider the expenses, other than tuition, and "whether it was reasonable and fair to order Mr. Walsh to pay one-half without reasonable notice as well as consider the defense of laches."

Initially, this Court ordinarily will not consider an issue not raised below. *See* Md. Rule 8-131(a) (Ordinarily, this Court will not consider an issue on appeal "unless it plainly appears by the record to have been raised in or decided by the trial court."). Mr. Walsh has not cited to any place in the record where he argued, prior to the order that is the subject of this appeal, that the claim for expenses was barred by the doctrine of laches. *See Donati v. State*, 215 Md. App. 686, 744 (appellate court cannot "be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his

[9] We also note that a court retains the power to enforce its judgments. Here, the court already had entered a judgment of divorce, which required Mr. Walsh to pay for his portion of support for the children. Pursuant to Md. Rule 2-648, where "a person fails to comply with a judgment mandating the payment of money, the court may also enter a money judgment to the extent of any amount due."

position") (quoting *Van Meter v. State*, 30 Md. App. 406, 408 (1976)), *cert. denied*, 438 Md. 143 (2014); *Wagner v. State*, 213 Md. App. 419, 471 (2013) ("We decline to comb through the . . . record extract to ascertain information that . . . should have [been] provided.") (quoting *Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 760-61 (2007)). Accordingly, this argument is not preserved for this Court's review.

With respect to the reasonableness of the expenses, the case initially was remanded for another hearing. On remand, the Magistrate found that, although Ms. Delauter did not provide quarterly billing statements as provided in the Consent Order, she did make "ongoing requests for payments of expenses as they arose," that Mr. Walsh had access to the biggest category of expenses, tuition and fees at the McDonogh School, and that Mr. Walsh ignored Ms. Delauter's requests for payments. The Magistrate found that Ms. Delauter's list of expenses owed was supported by the evidence, and Mr. Walsh owed his share of the expenses pursuant to the divorce decree. Because Mr. Walsh did not file exceptions to these factual findings, which the court accepted, Mr. Walsh has waived his right to challenge these findings on appeal.

IV.

Judgment Interest

Mr. Walsh contends that, even if the court was permitted to enter a money judgment, the court erred in awarding judgment interest as of the date of the court order, as opposed to the date the clerk entered the judgment. A review of the record shows no error.

Pursuant to Md. Rule 2-604(b), "[a] money judgment shall bear interest at the rate prescribed by law from the date of entry." Although the method of entry of a judgment changed after July 1, 2015, interest still accrues from the date of entry of the judgment.[10]

Here, the first order, dated June 18, 2015, and entered on the docket that same day, provided for judgment in the amount of $78,307 "with lawful interest from the date of entry of this Order." This order fully complied with Rule 2-604(b).

The second order, issued on February 25, 2016, and entered on February 26, 2016, stated that Mr. Walsh owed expenses in the amount of $161,090.76, which "shall be, thirty (30) days after entry of this Order, reduced to judgment against the Defendant and in favor of Plaintiff, with lawful interest from the date of entry of this Order." This order complied with the provisions of the rule.

Another provision in the second order, dated February 25, 2016, and entered February 26, 2016, ordered

> that the said Defendant shall pay to the said Plaintiff the sum of Thirty Thousand Dollars and Fifty Cents ($30,000.50) as and for attorney's fees within thirty (30) days of entry of this Order; further provided, that said amount shall be, thirty (30) days after entry of this Order, reduced to judgment in that amount against Defendant and in favor of Plaintiff, with lawful interest *from the date of this Order*. (emphasis added).

Although this Order improperly stated that interest would accrue from the date of the Order, as opposed to the date of entry of the Order, which occurred one day later, the clerk

[10] Prior to July 1, 2015, Maryland Rule 2-601(b)(2) stated that the date of judgment was the date on which the clerk of the court makes a written record of the judgment. After July 1, 2015, the clerk is required to "enter a judgment by making an entry of it on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate."

subsequently recorded that judgment, with "lawful interest thereon accounting from February 26, 2016." Because the judgment is recorded as providing interest from the date of entry of the order, Mr. Walsh has failed to show any prejudice, and therefore, he is not entitled to relief. To warrant reversal in a civil case, an appellant must show both error and prejudice. *See Barksdale v. Wilkowsky*, 419 Md. 649, 660 (2011).

V.

Attorney's Fees

Finally, Mr. Walsh argues that the court erred and abused its discretion in awarding attorney's fees. He asserts, first, that the Magistrate and the court failed to consider the required factors in FL § 12-103, which provides that, before awarding attorney's fees, the court must consider the financial status of the parties, the needs of each party, and whether there was substantial justification for bringing, maintaining, or defending the proceeding. As the Magistrate pointed out, however, the parties agreed that, if one party was required to go to court to enforce their agreements, the prevailing party in such a proceeding would be entitled to reasonable attorney's fees. Accordingly, the Magistrate correctly recommended an award of legal expenses as a matter of contract, not as a matter of statutory application.

Mr. Walsh also takes issue with the court's approval of the Magistrate's factual findings concerning billing entries on the attorney's bills, Ms. Delauter's testimony, and Ms. Delauter's lack of evidence regarding the statutory factors. This contention, relating

to the Magistrate's factual findings, as approved by the court, are waived. The circuit court did not err or abuse its discretion in its award of attorney's fees.

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