UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1091 & 1092

September Term, 2016

GOKULA KRISHNA PARANDHAMAIA

v.

GARRETT COUNTY DEPARTMENT OF SOCIAL SERVICES, BOSE, et al.

Meredith,
Beachley,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: July 3, 2017

Gokula Krishna Parandhamaia ("Father") appeals from a judgment of the Circuit Court for Garrett County affirming the recommendations of the family law magistrate concerning his obligation to pay child support to Debra Ignat ("Mother").[1] We have consolidated and rephrased Father's questions presented on appeal as follows:

1. Did the trial court err when it affirmed the magistrate's recommendation that Father should pay child support despite a consent order terminating his obligation to pay?

2. Did the trial court err when it affirmed the magistrate's recommendation concerning child support because: a) the magistrate improperly imputed income to Father in the absence of a finding of voluntary impoverishment, and b) the magistrate improperly calculated child support contrary to the evidence presented?

3. Did the trial court err when it affirmed the magistrate's finding that Father was in arrears and owed child support retroactive to February 1, 2015?

4. Did the trial court err when it affirmed the magistrate's recommendation that an earnings withholding order be entered?

For the reasons that follow, we affirm in part and reverse in part the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Mother are parents to four children: A.P. (born in March 1995), E.P. (born in April 1998), C.P. (born in April 1998), and F.P. (born in November 1999).[2]

[1] Because the trial court affirmed the magistrate's recommendations, we refer to the findings and determinations of both the magistrate and the trial court interchangeably throughout this opinion.

[2] At the time of the hearing before the magistrate in February 2016, A.P. was the only child emancipated by age. E.P. and C.P. reached the age of majority in April 2016.

Pursuant to a consent order issued in December 2002, the parties were awarded joint legal custody of their children with Mother having primary physical and residential custody. In that order, Father was granted a specific child access schedule. The parties subsequently engaged in multiple legal skirmishes involving their children, the majority of which were contempt actions Father filed regarding his visitation with the children. In 2013, confronted with yet another contempt action over visitation where Mother apparently faced incarceration, the parties reached an agreement whereby Father would be relieved of his obligation to pay child support and, in turn, Father agreed not only to dismiss his motion for contempt but also to revise his visitation to "such times and upon such conditions the children desire." The parties memorialized their agreement in two separate consent orders, both dated April 10, 2013. Based on the consent orders, Father stopped paying child support and made no further attempts to enforce visitation.

Nearly two years later, on January 30, 2015, Mother and appellee, Garrett County Department of Social Services, Bureau of Support Enforcement ("BOSE"), filed a complaint in the circuit court to require Father to pay child support for the minor children. In his answer filed on July 2, 2015, Father asserted that the April 10, 2013 consent order terminated his obligation to pay child support. On July 14, 2015, Father filed a petition to modify custody and visitation, and also requested "a change in the current child support order."[3]

[3] Father also requested a modification of child support and modification of custody/visitation in his "counterclaim" appended to his July 2, 2015 answer.

A hearing was held before the family law magistrate on February 18, 2016. At the outset of the hearing, Father withdrew his motion to modify custody and visitation. The magistrate proceeded to receive evidence on the issue of child support. At the conclusion of the hearing, the magistrate made findings on the record, which she later memorialized in a written report. The magistrate recommended that Father pay child support for the three minor children in the amount of $2,643.00 per month, effective February 1, 2015.[4] The magistrate further recommended that Father's support arrearages be set at $31,716.00 as of January 31, 2016, and that Father pay $500.00 per month toward those arrearages. Finally, as relevant to this appeal, the magistrate recommended the entry of an earnings withholding order against Father's wages.

Father filed exceptions to the magistrate's findings and recommendations, which the circuit court heard on June 10, 2016. On July 7, 2016, the circuit court issued a written opinion affirming the magistrate's recommendations. Father timely noted this appeal. We will include additional facts as necessary.

STANDARD OF REVIEW

We cannot improve upon the standard of review articulated in *Guidash v. Tome*, 211 Md. App. 725, 735-36 (2013):

> The trial court's decision as to the appropriate amount of child support involves the exercise of the court's discretion. A court can

[4] Although not included in the formal recommendations, the magistrate advised Father at the conclusion of the February 18, 2016 hearing that the amount of child support would be reduced to $1,519.00 per month as of June 1, 2016, in contemplation of E.P. and C.P. graduating from high school after attaining the age of majority.

abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous. We review the contentions that the circuit court erred as to matter of law on a *de novo* basis. *In re Adoption/Guardianship of Ta'Niya C.*, 417 Md. 90, 100, 8 A.3d 745 (2010). Our role in reviewing factual findings made by a master and then adopted by the circuit court is more limited. Generally in exceptions proceedings, findings of fact by a master are set aside only if they are clearly erroneous. *See Domingues v. Johnson*, 323 Md. 486, 496, 593 A.2d 1133 (1991); *see also Kierein v. Kierein*, 115 Md. App. 448, 453-56, 693 A.2d 1157 (1997); *Krikstan v. Krikstan*, 90 Md. App. 462, 469, 601 A.2d 1127 (1992) (both applying the *Domingues* standard in reviewing child support orders based on masters' findings). This review takes place primarily at the circuit court level. The trial court, in ruling on a party's exceptions:

> must carefully consider . . . allegations that certain findings of fact are clearly erroneous, and decide each such question. The chancellor should, in an oral or written opinion, state how he resolved those challenges. Having determined which facts are properly before him, and utilizing accepted principles of law, the chancellor must then exercise independent judgment to determine the proper result.

Domingues, 323 Md. at 496, 593 A.2d 1133.

Our role in reviewing a circuit court's conclusions in this context is as follows:

> Appellate discipline mandates that, absent a clear abuse of discretion, a chancellor's decision that is grounded in law and based upon facts that are not clearly erroneous will not be disturbed. Where the findings are supported by evidence and therefore not clearly erroneous, the trial judge is left with discretion to determine the proper disposition of the case.

Bagley v. Bagley, 98 Md. App. 18, 31-32, 632 A.2d 229 (1993).

Finally, in very rare circumstances, a court can abuse its discretion by reaching an unreasonable or unjust result even though it has correctly identified the applicable legal principles and applied those principles to factual findings that are not clearly erroneous.

DISCUSSION

I.

Father first argues that "the trial court erred when it affirmed the magistrate's finding that [Father] should pay child support despite a consent order terminating his obligation to pay." The basis for Father's argument is the circuit court's order dated April 10, 2013, which provided that Father's "obligation to pay child support is hereby terminated." In Father's view, the April 10, 2013 order is binding and, consequently, it may only be modified upon the showing of a change of circumstances, which he asserts was never established.

We conclude that Father waived any argument related to the binding effect of the April 10, 2013 consent order. In arguing his case to the magistrate, Father stated, "And, secondly, this thing was agreed in 2013, that -- I'll withdraw my statement. I don't want to go back in that direction." Not only did Father not make any further argument that the April 10, 2013 consent order precluded the establishment of child support, he expressly agreed that the magistrate could determine the appropriate amount of support. We note that it would be difficult for Father to successfully argue that the termination of child support in 2013 was legally binding in light of his recitation to the magistrate of his understanding of the two April 10, 2013 consent orders. In that regard, Father told the magistrate "if [Mother] decides to take me back to court [after April 10, 2013], we're going to go back to square one." "The doctrine of acquiescence—or waiver—is that a *voluntary* act of a party which is inconsistent with the assignment of errors on appeal normally

precludes that party from obtaining appellate review." *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 463 (2013) (internal citations and quotations omitted). We conclude that Father waived any challenge to the validity of the April 10, 2013 order which purported to terminate his support obligation.

Even if the issue were not waived, Father could not prevail. In *Stambaugh v. Child Support Enforcement Admin.*, 323 Md. 106 (1991), the Court of Appeals addressed the legal efficacy of an agreement in which the mother agreed to waive any claim for child support from the father in consideration of the father's consent to an adoption of the children by Mr. Stambaugh, the mother's new husband. The Court held that the agreement "violated the public policy of this State and is invalid." *Id*. at 111 (citation omitted). Moreover, "the duty to support one's minor children may not be bargained away or waived." *Id.; accord, Guidash*, 211 Md. App. at 739-40. With this settled precedent, we reject Father's argument that the April 10, 2013 consent orders which purported to terminate his child support obligation in exchange for reduced child visitation are binding.

II.

Father next argues that, because his employment had been terminated as of September 2015, the magistrate erred in calculating child support based on imputed income of $140,000 per year without a finding of voluntary impoverishment. At least as to calendar year 2015, Father apparently misunderstands the basis for the magistrate's determination of his income–that determination actually worked to Father's benefit. After Father testified that he earned $151,077 in 2013 and $143,745 in 2014, he acknowledged

that he expected to earn approximately $140,000 in 2015. In calculating child support, the magistrate used the $140,000 annual income estimate provided by Father and divided by twelve months to ascertain an average of his gross monthly income. We fail to see how this methodology harms Father. Not only did the magistrate accept Father's testimony on this point, but the magistrate did not impute any 2015 income to Father after his employment was terminated in September 2015. After the magistrate explained that the child support worksheet presented by BOSE calculated Father's monthly actual income by dividing $140,000 by twelve, Father responded, "Fair enough." We have expressly sanctioned the *per annum* methodology used by the magistrate here. *See Lorincz v. Lorincz*, 183 Md. App. 312, 326-28 (2008). Accordingly, we see no error in the calculation of child support for calendar year 2015.

Though we affirm the calculation of child support for 2015, the magistrate erred in determining child support for the period commencing January 1, 2016. It was uncontradicted that Father had been continuously unemployed from September 2015 (when he lost his job) until February 18, 2016 (the date of the magistrate's hearing). In response to the magistrate's questions, Father testified that he had been applying for jobs and proffered documentation to support his job search. The magistrate failed to make any findings related to Father's employment or his ability to earn income as of February 2016. The *only* reference made by the magistrate concerning Father's employment status in February 2016 is found in paragraph 31 of her report: "[Father] argued against any support being set for 2016 and beyond as he is now unemployed." The magistrate proceeded to

use Father's 2015 income–$140,000–as the basis for calculating child support for 2016. We concur with Father that, in the absence of a finding of voluntary impoverishment, the magistrate erred in imputing $140,000 in annual income to Father as of January 1, 2016. *Durkee v. Durkee*, 144 Md. App. 161, 183 (2002) (citing *John O. v. Jane O.*, 90 Md. App. 406, 420 (1992)).

We note that during closing argument Father advised the magistrate that he had recently been offered a job that paid $68,000 per year.[5] The magistrate advised Father to "walk downstairs, file your motion to modify, have it dated February 18th, 19th whatever," and Father could then "come back in with that documentation of a different income, and [the court] could modify [the child support] as of February 2016."

While we recognize the magistrate's earnest attempt to assist Father as a self-represented litigant, her proposed solution does not comport with the requirements of the law. As noted previously, without a finding of voluntary impoverishment, it was error to impute $140,000 of annual income to Father as of January 1, 2016. Because Father's child support could only be modified retroactively to the date of the filing of a motion to modify, Father would not be entitled to challenge the amount of child support assessed by the magistrate for the period between January 1, 2016, and the date of the filing of a motion to modify. Accordingly, we vacate the child support determination for the period

[5] Contrary to the assertion in Father's brief, Father did not testify that he received this offer; Father only disclosed the $68,000 offer at the end of the hearing, after it became obvious that the magistrate intended to use $140,000 annual income for child support calculations.

commencing January 1, 2016, and shall remand for further proceedings consistent with this opinion.

III.

Father next challenges the assessment of child support arrearages from February 1, 2015 through January 31, 2016. Resolution of this issue is guided by our analysis in Section II of this opinion. Because the trial court did not err in calculating Father's child support obligation for calendar year 2015, it likewise did not err in making child support retroactive to February 1, 2015, the approximate date that Mother and BOSE filed the complaint for support. First, "[Family Law Article] Section 12-104(b) makes clear that it is within the trial court's discretion whether and how far retroactively to apply a modification of a party's child support obligation up to the date of the filing of the petition for said modification." *Tanis v. Crocker*, 110 Md. App. 559, 570 (1996). In its ruling on the exceptions, the trial court recognized that the statute provides "that retroactive child support may be calculated to the date of initial filing[.]" We see no abuse of discretion in the court's decision to make Father's child support retroactive to February 1, 2015. Moreover, Father waived his right to challenge the 2015 arrearages, at least through September 2015, when he advised the magistrate, "I mean, from January to September [2015], if that's the numbers that the guidelines suggest, I'm okay with that, Your Honor." Father therefore waived any right to complain about the arrearages assessed for the period between February and September 2015. Additionally, because the magistrate properly calculated Father's child support obligation based on a total of $140,000 in income for

2015, the assessment of arrearages for October through December 2015 was likewise not erroneous.

However, for the same reason the magistrate erred in imputing $140,000 annual income to Father as of January 2016, the magistrate also erred in assessing child support arrearages for the month of January 2016. Accordingly, the arrearages of $31,716.00 assessed against Father shall be reduced to $29,073.00 (i.e. $31,716.00 minus $2,643.00 representing the child support assessed for January 2016).

IV.

Finally, Father argues that the "[m]agistrate erred in recommending an earnings withholding order be entered when there was no evidence presented that one is necessary[.]" Father's written exception filed in the circuit court mirrors that argument. At the lengthy exceptions hearing on June 10, 2016, however, Father failed to raise any issue concerning the proposed earnings withholding order. Father's omission in this regard is significant because, at the conclusion of the exceptions hearing, the trial court requested Father's counsel to specifically identify the relief being sought. In response, Father's counsel made no mention of the earnings withholding order. The circuit court therefore did not address that issue in its written opinion. "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Rule 8-131(a); *see In the Matter of Tyrek S.*, 118 Md. App. 270, 277 (1997), *aff'd*, 351 Md. 698 (1998). Under these circumstances, Father failed to preserve for review any challenge to the earnings withholding order.

Even if the issue were preserved, Father would not prevail. Md. Code (1984, 2012 Repl. Vol.), § 10-121(a) of the Family Law Article ("FL") provides that child support orders "passed on or after July 1, 1985 shall constitute an immediate and continuing withholding order on all earnings of the obligor that are due on or after the date of the support order." Moreover, FL § 10-123(a) provides that:

> (a) *Authorized*. – Except as otherwise provided for in this section and notwithstanding any other provision of this Part III, a court shall immediately authorize service of an earnings withholding order when:
> (1) (i) a support order or modification of support order is passed on or after April 9, 1991;
> (ii) a case is being enforced by a support enforcement agency; and
> (iii) the recipient or support enforcement agency requests service of an earnings withholding order; or
> (2) the Department of Health and Mental Hygiene requests service of an earnings withholding order for court ordered medical support.

Although Father fails to cite any statutory or decisional authority for his argument on this point, we presume that Father relies on FL § 10-123(d)(1) to support his contention that the court erred in entering an earnings withholding order. FL § 10-123(d)(1) provides:

> (d) *Not Authorized*. – A court may not authorize the immediate service of an earnings withholding order if:
> (1) any party demonstrates, and the court finds, that there is good cause to not require immediate earnings withholding[.]

In a variety of contexts, the Court of Appeals has previously described good cause to be a "substantial reason, one that affords a legal excuse." *G. Heileman Brewing Co., Inc. v. Stroh Brewery Co*., 308 Md. 746, 759 (1987); *Erwin & Shafer, Inc. v. Pabst Brewing Co*., 304 Md. 302, 313 n. 14 (1985); *In re Robert G.*, 296 Md. 175, 179 (1983). We

conclude that Father failed to demonstrate good cause as required by FL § 10-123(d)(1) and, accordingly, the court did not err in issuing an earnings withholding order in this case.

JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY AFFIRMED IN PART AND REVERSED IN PART. CHILD SUPPORT ARREARAGES REDUCED FROM $31,716.00 TO $29,073.00. CASE REMANDED TO CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS ARE ASSESSED 75% TO APPELLANT AND 25% TO APPELLEE.