UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1208

September Term, 2016

TERRI GOLDING

v.

STEPHEN GOLDING

Eyler, Deborah S.,
Meredith,
Beachley,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: October 10, 2017

Terri Golding ("Terri"), the appellant, challenges an order of the Circuit Court for Baltimore County denying her request for an award of attorneys' fees incurred in defending a complaint to terminate alimony filed by her ex-husband, Stephen Golding ("Stephen"), the appellee. She presents two questions, which we have condensed and rephrased as one: Did the circuit court err or abuse its discretion by denying her request for attorneys' fees? We answer that question in the negative and shall affirm the order of the circuit court.

FACTS AND PROCEEDINGS

Terri and Stephen were married in 1984. They had no children together. They separated in 2008 and were divorced on January 6, 2010. At that time, Terri was 63 years old and Stephen was 59 years old.

Terri, who has been diagnosed with fibromyalgia,[1] has not worked outside the home since she was 48 years old. Stephen worked throughout the parties' marriage and after their divorce until he retired in 2016. Most recently, he worked for the University of Pennsylvania as its vice president of finance, earning $489,000 annually.

The parties entered into a Marital Settlement Agreement ("MSA"), which was incorporated, but not merged, into the judgment of absolute divorce. Its pertinent terms were as follows. Stephen would pay Terri $8,500 per month in indefinite, but modifiable,

[1] Fibromyalgia is a chronic disorder characterized by widespread musculoskeletal pain, fatigue, and tenderness in localized areas. *See* Mayo Clinic, Diseases and Conditions Overview, Fibromyalgia, https://perma.cc/H35U-LKPN (last visited Sept. 6, 2017).

alimony. The alimony payments would terminate only upon Terri's death or remarriage, or Stephen's death. Terri received title to the marital home, a 2,900 square foot house located on seven acres in Parkton, Baltimore County. She was required to refinance the mortgage in her name. She also received one half of the value of Stephen's individual retirement account, totaling approximately $312,000, and one half of the value of his pension plan with the University of Pennsylvania, totaling approximately $33,000. The parties further agreed that Terri would continue to be the beneficiary of two term life insurance policies on Stephen's life, with face values of $1 million and $500,000, respectively.

When the parties divorced, the marital home was valued at $662,000. Terri has continued to live there ever since, along with three Labrador retrievers and one cat. The monthly cost to maintain the home is more than $6,500, including the mortgage, taxes, insurance, utilities, maintenance, and lawn care. Since the divorce, the value of the house has declined to $540,000. The house is encumbered by a mortgage with an outstanding balance of $361,000 and a home equity line of credit with a balance of $120,000.

Just over five years after their divorce, in April 2015, Stephen notified Terri that he was planning to retire at the end of that year, when he would be 65 years old.

On July 15, 2015, Stephen filed a complaint to terminate alimony. He alleged that he would be retiring on January 2, 2016. He asked the court to terminate alimony to avoid "a harsh and inequitable result," or, in the alternative, to grant a downward modification due to the sharp reduction in his income.

Terri answered and moved to dismiss the complaint on the ground that Stephen was voluntarily impoverishing himself by retiring in order to avoid paying alimony. She asked the court to dismiss the complaint and to award her "such other and further relief as the nature of her cause may require."

Stephen subsequently amended his complaint to allege that he would retire effective February 29, 2016.[2]

On April 11, 2016, the parties appeared for a hearing before a magistrate. Stephen, then 65 years old, testified that during the marriage, he was employed by The Johns Hopkins School of Medicine as the executive director of finance. In 2008, shortly before the parties separated, he accepted his job at the University of Pennsylvania. He worked there until his retirement at the end of February 2016.

Stephen had remarried in June of 2010. Prior to his retirement, he and his wife had lived in a row house in Philadelphia for several years and then had sold their home and moved into a one-bedroom apartment in anticipation of buying a new home upon their retirements.[3] They shared one car and Stephen took public transportation to his job. Upon Stephen's retirement, the couple relocated to a 1,600 square foot modular home they had constructed on a trailer park along the Indian River Bay in Delaware, near

[2] Stephen testified that he delayed his retirement to accommodate his employer.

[3] Stephen's wife had worked as a physician's assistant, earning approximately $100,000 per year. She retired at the end of December 2015.

Bethany Beach. The home was valued at $181,193, and was encumbered by a mortgage in the amount of $107,633. They continue to share one car and live frugally.

Stephen was receiving a $562 monthly pension from Amtrak, where he previously had worked. He would be eligible for social security upon turning 66, in October 2016, and would receive $2,943 in monthly benefits thereafter. He also had received a $48,600 payout of a retirement account from the University of Pennsylvania. He was using those funds to supplement his pension. As a result, he had not needed to draw on any other retirement assets.

Stephen's financial statement reflected that his total monthly expenses, less the alimony payment, were $6,523. Some of those expenses were split with his wife. He had over $7,000 in savings accounts; over $17,000 in United States Treasury bonds; and over $1 million in stocks and investment accounts. He testified that he would begin drawing on his investment accounts to cover monthly expenses when that became necessary. He expected to be able to support himself with those funds throughout his lifetime.

Terri, then 69 years old, testified that she suffers from fibromyalgia and that the disease has worsened as she has grown older. It causes her muscle pain in her upper body and limits her function. She is unable to lift anything over 20 pounds. She also has severe allergies and suffers from "multiple chemical sensitivities," meaning that she is very sensitive to fragrances and odors. As a result, she does not leave her house very often.

Terri's financial statement reflected monthly expenses of $15,951. She testified that she had neglected to include the cost of her long-term care premiums on her financial statement, amounting to $2,047 per year ($170 per month).[4] She spent $6,655 per month on her mortgage, the HELOC, taxes, insurance, utilities, lawn care, snow removal,[5] and a handyman to assist her with household tasks. Her mortgage payments would increase in 2017 because she had a 7-year adjustable rate mortgage and the introductory rate was due to expire. Her other major monthly expenses were credit card payments ($1,400); food ($700); pet food and supplies ($851); life insurance ($333); veterinary costs ($261); and taxes on her alimony ($2,333). Terri's monthly income totaled $9,159, comprising the alimony and an additional $659 in social security benefits. She had just over $9,000 in savings and $119,859 in a retirement account.[6] She had been depleting her retirement assets in order to meet her monthly expenses.

Terri explained that she wanted to sell her house and purchase a smaller one to lower her monthly expenses, but because she had very little equity in the house, she was

[4] We note that the magistrate, in her report and recommendation, erroneously added the *annual* cost of Terri's long-term care premiums to her monthly expenses. This error is not challenged in the instant appeal and is not relevant to the court's decision to deny the request for attorneys' fees.

[5] Terri estimated that snow removal and lawn care cost her $20,400 per year. She explained that the driveway for the home was extremely long and, in light of the blizzards that had affected the area over the prior winters, the cost to have it plowed had been very high.

[6] This was the account that had been valued at $350,000 at the time of the parties' divorce.

unsure if she could afford to make a down-payment on a new house. She had not looked into renting an apartment because she believed she could not take her dogs to an apartment and she was unwilling to give them up.

On redirect examination, Terri's counsel inquired about the attorneys' fees she had expended defending the motion to terminate alimony. Counsel moved to admit their fee agreement into evidence and Stephen's attorney objected, noting that Terri had not made a claim for attorneys' fees in her answer or her motion to dismiss. Terri's counsel responded that attorneys' fees were encompassed within his request for "such other and further relief." The magistrate admitted the fee agreement "for what it's worth at this time" and stated that she would go back and review the pleadings. Terri's counsel subsequently moved into evidence, over objection, bills for fees totaling $15,015. Terri testified that she was unable to afford those fees, which she believed were reasonable.

On April 15, 2016, the magistrate issued her report. She recommended that alimony be modified to $2,225 per month and that Terri's request for a contribution toward her attorneys' fees be denied. As pertinent, the magistrate found that Terri had not worked for "decades" and was not employable "at this juncture." At the time of the divorce, Terri had received $581,000 in net assets, which was nearly two-thirds of the parties' marital assets. The marital home had declined in value since the divorce, because Terri could not afford to maintain it and because of the downturn in the housing market. Her monthly expenses, particularly those tied to the marital home, were "unsustainable," in the magistrate's view. Terri's retirement assets had been depleted because those

expenses exceeded her income. In sum, Terri had decided "to turn a blind eye to the disastrous consequences of staying in [the marital home]." Her net worth totaled $187,269, comprising her retirement account ($119,859); savings ($9,760); and the equity in the marital home ($57,650).

In contrast, Stephen's net worth was over $1.3 million. The magistrate found that the disparity in the parties' net worth resulted from Stephen's high income post-divorce *and* from his frugal lifestyle. The magistrate noted that Stephen had used public transportation and that his housing expenses had been very low. His financial statement did not include any extravagant or illegitimate expenses.

Turning specifically to Terri's request for attorneys' fees, the magistrate found that both parties were "justified in bringing and defending their respective actions"; that while there had been an income "disparity" between the parties when Stephen moved to terminate alimony, he had been paying Terri $8,500 per month in alimony throughout the proceedings; that he had since ceased earning any income aside from his pension; and that an "award of counsel fees would be inequitable in light of the overall circumstances."

Within ten days, Terri filed exceptions. She argued that the magistrate had erred in declining to find that Stephen had voluntarily impoverished himself by retiring, that the magistrate had erred in reducing the alimony payments and in dating the reduction from April 1, 2016, and that the magistrate had erred in denying her request for attorneys' fees. With regard to the latter, she maintained that the evidence showed a "gross

disparity in the parties [sic] net worth," that "the defense of [the] action was clearly necessary," and that her "testimony . . . that she [could not] afford to compensate counsel" was "undisputed." She asserted that the denial of her request for fees was "unfair and unjust."

The court held an exceptions hearing on June 20, 2016. Terri's attorney argued that the magistrate did not err by finding that both parties had been justified in bringing and defending the action, but that she had erred by determining that an award of attorneys' fees was not warranted by the gross disparity in assets.

By order entered August 25, 2016, the court overruled the exceptions and adopted the magistrate's recommendations. The court explained that its review of the magistrate's findings and recommendations was governed by the "*Domingue[s]-Kirchner*[7] standard," requiring the court to conduct an "independent review of the record and of the facts found . . . and apply its independent judgment in reaching its conclusions." The court noted that Terri did not challenge the magistrate's central findings for clear error, including the findings that she had received more than half of the parties' marital assets in the divorce; that she had made a "conscious choice" to remain in

[7] *See Domingues v. Johnson*, 323 Md. 486, 493 (1991) (reversing an order of the circuit court affirming a recommendation of a family law master to modify custody and visitation on the basis that the court failed to "exercis[e its] . . . independent judgment on those issues"); *Kirchner v. Caughey*, 326 Md. 567, 571 (1992) (reversing an order of the circuit court overruling exceptions to the recommendation of a family law master to place restrictions on a father's visitation and to increase his child support obligation because the court failed to "apply . . . independent judgment to the facts properly found by the master").

the marital home; that she was spending in excess of $10,000 per year in pet expenses; that she was spending more than $80,000 per year to maintain the home; that Stephen always had planned to retire in his 60s; that Stephen had lived "frugally" and "modestly" since the divorce; and that Terri's present circumstances are "largely, if not exclusively a result of [her] 'misguided decision to stay in a home that was arguably not affordable when the parties were living together,' much less presently." In light of these findings, it concluded that the downward modification of alimony recommended by the magistrate was appropriate and that "the decision to decline to award attorney's fees was supported by the evidence and [would] not be disturbed."

This timely appeal followed.

DISCUSSION

Pursuant to Md. Code (1984, 2012 Repl. Vol.), section 11-110 of the Family Law Article, the circuit court may award to either party in an action to modify alimony "reasonable and necessary expense[s]" incurred in bringing or defending the action after considering the "financial resources and financial needs of both parties" and determining whether either party lacked "substantial justification for prosecuting or defending the proceeding." "'When the case permits attorney's fees to be awarded, they must be reasonable, taking into account such factors as labor, skill, time, and benefit afforded to the client, as well as the financial resources and needs of each party.'" *Collins v. Collins*, 144 Md. App. 395, 447 (2002) (quoting *Petrini v. Petrini*, 336 Md. 453, 467 (1994)).

"When reviewing a [magistrate]'s report, both a trial court and an appellate court defer to the [magistrate]'s first-level findings (regarding credibility and the like) unless they are clearly erroneous." *McAllister v. McAllister*, 218 Md. App. 386, 407 (2014). "[R]eviewing courts give less deference to 'conclusory or dispositional' findings." *Id*. (quoting *In re Priscilla B.*, 214 Md. App. 600, 624 (2013)). "[A]s to the ultimate disposition," "while the circuit court may be 'guided' by the [magistrate's] recommendation, the court must make its own independent decision . . . which the appellate court reviews for abuse of discretion." *Id*. (citing *Domingues v. Johnson*, 323 Md. 486, 492 (1991); *In re Priscilla B.*, 214 Md. App. at 623; and *Wenger v. Wenger*, 42 Md. App. 596, 604-05 (1979)).

In the case at bar, Terri contends the circuit court erred by not exercising its independent judgment in regard to the issue of attorneys' fees. She maintains that the court's order is "devoid of any examination of the financial abilities and resources of the parties at the time fees were requested." She asserts that the court's statement that the magistrate's decision to deny fees was "supported by the evidence and [would] not be disturbed" is of the same type of statement the Court of Appeals concluded was reversible error in *Domingues*, 323 Md. at 493.

Stephen responds that in deciding the exceptions, the court plainly considered the financial resources and needs of the parties, finding that Terri had chosen to live beyond her means since the parties' divorce while he had lived frugally and that Terri's current circumstances had resulted from those choices. He maintains that in light of those

findings and the court's explicit discussion of the *Domingues* decision, requiring the court to exercise independent judgment as to the ultimate disposition, the court's statement that the decision to deny attorneys' fees was "supported by the evidence" must be read to reflect the exercise of its independent judgment. We agree.

In *Domingues*, a five-day hearing was held before a family law magistrate (then known as a master) on cross-motions to modify custody and visitation occasioned by the mother's relocation from Maryland to Texas. The magistrate filed an 84-page report, finding that there had been a material change of circumstances since the prior custody order and recommending that primary custody be awarded to the father. The mother filed exceptions, which were heard by a circuit court judge. The judge thereafter issued an opinion and order overruling the exceptions and upholding the magistrate's recommended disposition. The case reached the Court of Appeals, which reversed. The Court explained that the court's opinion merely recited the magistrate's findings concerning the changes of circumstances to justify a modification of custody and visitation and relative to the best interest factors; and then, determining those findings to be non-clearly erroneous, accepted them. This was improper. The Court opined that

> [b]ecause the opinion of the [circuit court judge] in this case suggests that he accepted the master's recommendations for final disposition upon a finding that they were not clearly erroneous but were "well supported by the evidence," rather than exercising his independent judgment on those issues, the case must be remanded for further consideration.

Id. at 493.

In the case at bar, the circuit court heard argument on the exceptions that, with respect to the denial of the request for attorney's fees, focused expressly upon the resources and needs of the parties. In its decision, the court cited *Domingues* for the proposition that it must not simply accept the magistrate's findings if not clearly erroneous, but must apply its own independent judgment. The court went on to discuss and amplify the magistrate's findings that Terri's lifestyle post-divorce—particularly her decision to remain in the marital home—had been the cause of the depletion of her share of the marital assets. While the court did not remark upon Terri's current assets, it was undisputed, as the magistrate had found, that Terri had liquid assets in her retirement account sufficient to satisfy her attorneys' fees. "It is presumed that judges know and apply the law." *Heard v. Foxshire Assoc., LLC*, 145 Md. App. 695, 706 (2002). For this reason, "not every step in their thought process needs to be explicitly spelled out." *Zorich v. Zorich*, 63 Md. App. 710, 717 (1985).

Given that the court plainly was aware of the law governing its review of the magistrate's decision and its findings relative to the parties' financial status post-divorce, we think it clear that the court's statement that the denial of attorneys' fees "was supported by the evidence" reflected the court's exercise of its independent judgment on that issue. Moreover, on the undisputed evidence before it, which showed that there was a great disparity in the parties' assets; that the disparity resulted from post-divorce conduct; that Terri had assets with which to pay her own attorneys' fees; and that the parties were justified in bringing and defending the modification proceeding, we cannot

say that the court's decision to deny Terri's request for fees was an abuse of its broad discretion.

ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.