UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1991

September Term, 2015

GEORGE BOUTROS

v.

MAUREEN STACK
f/k/a MAUREEN BOUTROS

Krauser, C.J.,
Nazarian,
Reed,

JJ.

Opinion by Reed, J.

Filed: May 16, 2017

This case originated in the Circuit Court for Baltimore County, wherein the appellee, Maureen Stack,[1] filed for absolute divorce against the appellant, George Boutros, after nearly sixteen years of marriage. The appellee was ultimately granted the absolute divorce she sought and awarded $2,000.00 a month in indefinite alimony. Approximately a half year after judgment was entered, the appellant petitioned the court to modify the alimony award, but the court refused to do so.

On appeal, the appellant presents a single question for our review, which we rephrase:

> Did the circuit court err where it denied the appellants' Petition to Modify Alimony?

For the following reasons, we shall vacate the judgment of the circuit court and remand this case for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

The parties to the instant appeal were married on April 25, 1998. Over fifteen years later, on November 20, 2013, the appellee filed a Complaint for Limited Divorce in the Circuit Court for Baltimore County. She alleged that the appellant had abandoned and deserted her "with the intention of ending the marriage," and that there was "no reasonable hope of reconciliation between the parties." The appellant had not yet filed an Answer on March 4, 2014, when the appellee filed a Petition for Emergency Hearing on Spousal

[1] The appellee was formerly known as Maureen Boutros.

Support. A hearing was conducted, and, on March 19, 2014, the appellee's Petition for Emergency Support was denied.

On March 24, 2014, the parties having now "lived separate and apart, uninterruptedly, for more than one year," appellee filed an Amended and Supplemental Complaint for Judgment of Absolute Divorce (hereinafter "Amended Complaint"). According to the Amended Complaint, the appellant had not returned to the marital home since February of 2013, which is when he began a seven-month-long employment contract in Korea. On March 21, 2014, the appellant filed an Answer to the Amended Complaint. After conducting a hearing on the merits of the Amended Complaint the previous day, the circuit court, on November 18, 2014, issued a Judgment of Absolute Divorce. As part of the Judgment, the appellant was ordered to pay $2,000 a month in indefinite alimony.

At the time of the parties' divorce, the appellant, who has a Ph.D. in electrical engineering, was in his early sixties. His last full-time job was in 2007. Thereafter, his employment consisted of at least two temporary contract jobs: one in 2009-10, and another in 2013. The appellee was retired at the time of the divorce from her position of more than twenty-five years as an Executive Secretary. No children were born of the marriage.

On May 4, 2015, the appellant filed a Petition to Modify Alimony. He alleged a material change in circumstances in that, "despite his best efforts and numerous applications, [the appellant] has not found employment and has no reasonable expectation of finding employment in the foreseeable future." According to the Petition, the appellant was now "liv[ing] off his rapidly-dwindling retirement savings." On June 19, 2015, the

appellee filed a Response to Petition to Modify Alimony. The court held a hearing on the Petition on November 12, 2015. At the conclusion of the hearing, the court issued the following oral ruling:

> . . . . The Court has considered the arguments of counsel. I have listened very carefully to what Mr. Boutros said as well as the exhibits presented. I've listened to what Ms. Stack has said and arguments of counsel. I also did go back and review my trial notes because I do remember this case. It was less than a year ago when I made my decision and divorced the parties and ordered alimony in the amount of $2,000.00 on November the 18th, 2014. The issue for this Court to decide is whether or not there was a material change in circumstances. It is Mr. Boutros' position that there is based on [his] wife's increased income from Social Security that she's now pulling. The fact that she has managed to keep her assets and not spend them. His depletion of assets and the fact that he's making a sincere job search. It's Ms. Stack's argument that there's no material change in circumstance. That he continues to remain unemployed, which was his position at the time of the divorce. That he didn't have a job then and doesn't have a job now. That his [sic] is not making a sincere effort to seek a job. This is Ms. Stack's position and that nothing has changed. That he, he has not pulled his Social Security in spite of the fact that he has no income coming in and has chosen, elected to not draw it and is in fact purchasing a home and further depleting his assets when he, he says under his own testimony he can't afford it. So, based on all the evidence presented, the credibility of witnesses this Court does not find a material change in circumstance. I will not modify my Order. I think that the Defendant has not met his burden of material change in circumstance and for those reasons that it will remain the same.

The court followed up its oral ruling with a written Order entered on November 16, 2015.

This timely appeal followed.

DISCUSSION

I. Denial of Petition to Modify Alimony

A. Parties' Contentions

The appellant argues, under *Blaine v. Blaine*, 336 Md. 49 (1994), that the circuit court's expectation that he would be able to obtain sufficient employment after the divorce, combined with his inability, despite having submitted over 160 job applications, to do so, constitutes a material change in circumstances to justify a modification of alimony. Another material change in circumstances, according to the appellant, exists in the fact that, after the divorce, the appellee's income increased when she decided to draw $1,354.00 a month from Social Security. These changes, the appellant asserts, are why the circuit court's decision not to modify alimony is clearly erroneous and requires reversal.

In the event we agree with the circuit court's finding that no material change in circumstances was proven, the appellant urges us to break from the controlling case law on this issue. Specifically, the appellant contends that "neither the word 'substantial' nor the word 'material' appears in [the statutory provisions governing alimony modifications or] the *Blaine* opinion in the context of a change in circumstances." Therefore, the appellant requests that we "revisit[] [the concept of a material change in circumstances] as the sole basis for modification of alimony" and, on that basis, reverse the judgment of the circuit court.

B. Standard of Review

We explained in *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003), that

> [w]hen reviewing a trial court's award as to alimony, an appellate court will not reverse the judgment unless it concludes that "the trial court abused its discretion or rendered a judgment that was clearly wrong." *Crabill v. Crabill,* 119 Md. App. 249, 260, 704 A.2d 532 (1998). Moreover, "appellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings." *Tracey* [*v. Tracey*]*,* 328 Md. [380,] 385, 614 A.2d 590 [(1992)]. *See also Durkee* [*v. Durkee*]*,* 144 Md. App. [161,] 173, 797 A.2d 94 [(2002)]; *Caccamise v. Caccamise,* 130 Md. App. 505, 513, 747 A.2d 221 ("The standard of review for alimony awards is the clearly erroneous standard ...."), *cert. denied,* 359 Md. 29, 753 A.2d 2 (2000); *Digges* [*v. Digges*]*,* 126 Md. App. [361,] 386, 730 A.2d 202 [(1999)]. As long as the trial court's findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we might have reached a different result. *Reese v. Huebschman,* 50 Md. App. 709, 712, 440 A.2d 1109 (1982).

Furthermore, with regards to petitions to modify alimony in particular,

> the moving party must demonstrate a change in circumstances justifying modification. *See Blaine v. Blaine,* 97 Md. App. 689, 710–11, 632 A.2d 191 (1993), *aff'd,* 336 Md. 49, 646 A.2d 413 (1994). In considering a petition for modification, a trial court has discretion to determine the extent and amount of alimony, *see Levin v. Levin,* 60 Md. App. 325, 336, 482 A.2d 935 (1984), and must consider specific factors in exercising its discretion. *See* Md. Code (1984, 1999 Repl. Vol.), § 11–106 of the Family Law Article ("FL").

Baer v. Baer, 128 Md. App. 469, 484 (1999).

C. Analysis

Prior to the passage of the current alimony statute, now codified as Md. Code Ann., Fam. Law ("FL") §§ 11-101 through 11-111, "the practice [in Maryland was] to award alimony for the joint lives of the parties, or until the financially dependent spouse remarried." *Blaine*, 336 Md. at 63. "Thus, by tradition, the primary purpose of alimony was to enable a financially dependent [spouse] to continue [to enjoy the same] standard of living after separation or divorce." *Karmand v. Karmand*, 145 Md. App. 317, 327 (2002) (citing *Quinn v. Quinn*, 11 Md. App. 638, 651 (1971)). The primary purpose of alimony changed, however, when the Legislature passed the Maryland Alimony Act (the "Act") in 1980. *Id*. "Where the principal function of alimony once had been maintenance of the recipient, dependent spouse's standard of living, upon passage of the Act, that function became *rehabilitation* of the economically dependent spouse." *Id.* (emphasis added).

In keeping with its rehabilitative purpose, "alimony no longer serves . . . [to] provid[e] a lifetime pension to an economically dependent spouse." *Id.* (citing *Turrisi v. Sanzaro*, 308 Md. 515, 524-25 (1987)). Instead, "the law [now] favors temporary alimony awarded for a definite time period to facilitate the transition from the married to single state and rehabilitation of the dependent spouse to self-sufficiency." *Id.* at 328 (citing *Turrisi*, 308 Md. at 524-25). There are, however, "two exceptions to the guiding principle that alimony be temporary and rehabilitative." *Id.* These exceptions are codified at FL § 11-106(c), which provides:

> §11-106. **Amount of award; duration.**
>
> (c) *Award for indefinite period.*–The court may award alimony for an indefinite period, if the court finds that:
>
> (1) due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or
>
> (2) even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

In the instant case, determining that one of the above "exceptions" applied, the circuit court awarded $2,000 a month in indefinite alimony to the appellee as part of the November 18, 2014, Judgment of Absolute Divorce. It is not that initial award, however, that is presently at issue. Rather, the subject of this appeal is the circuit court's refusal to *modify* the indefinite alimony award approximately a year after the parties' divorce. The court's power in that regard, *i.e.*, to modify alimony, is governed by FL § 11-107:

> § 11-107. **Extension of alimony period; modification of amount.**
>
> (a) *Extension of period.*– Subject to § 8-103[2] of this article, the court may extend the period for which alimony is awarded, if:
>
> (1) circumstances arise during the period that would lead to a harsh and inequitable result without an extension; and

[2] As we explained in *Brashier v. Brashier*, 80 Md. App. 93, 98 n.1 (1989), "Section 8-103 provides exceptions to the court's power under § 11-107 to extend or modify alimony payments where there is either an express waiver of alimony or a stipulation against extending or modifying alimony."

> (2) the recipient petitions for an extension during the period.
>
> (b) *Modification of amount.*– Subject to § 8-103 of this article and on the petition of either party, the court may modify the amount of alimony awarded as circumstances and justice require.

(Footnote added).

We begin by addressing the appellant's argument that the circuit court incorrectly applied the law by disposing of the Petition to Modify Alimony in terms of whether or not there had been a material change of circumstances. The appellant points out that nowhere in § 11-107, *supra*, does the word "material" appear. Therefore, he argues, by requiring a showing of materiality, the circuit court held him to an impermissibly high burden of proof. For the following reasons, we disagree.

Although the Family Law Article does not define the term "material," Black's Law Dictionary does. There, "material," in the context of a change or alteration, is provided the following meaning: "Of such a nature that knowledge of the item would affect a person's decision-making; significant; essential." Black's Law Dictionary ("Black's") 1124 (10th ed. 2014). In Maryland, as we previously indicated, the court's power to modify the amount of alimony is subject to FL § 11-107(b). That subsection provides, in relevant part: "[O]n the petition of either party, the court may modify the amount of alimony awarded *as circumstances and justice require*." (Emphasis added). It is a matter of common sense that "circumstances and justice" would not "require" a modification of alimony unless circumstances change materially—that is, unless they change in such a way that "would

affect [the judge's] decision-making" as to the amount. Black's, 1124 (10th ed. 2014) (defining "material"). Thus, to say that the circuit court erred where it used the phrase "material change in circumstances," especially when such phrase appears in case law regarding petitions to modify alimony, is purely a matter of semantics. *See Ridgeway v. Ridgeway*, 171 Md. App. 373, 384 (2006) ("Upon a proper petition, the court may modify a decree for alimony 'at any time if there has been shown a *material change in circumstances* that justify the action.'" (quoting *Lieberman v. Lieberman*, 81 Md. App. 575, 595 (1990)) (emphasis added)).

Petition to Modify Alimony Under Case Law

Appellant also argues that he is entitled to a modification of alimony by application of the Court of Appeals' holding in *Blaine v. Blaine*, 336 Md. 49 (1994), and this Court's holding in *Brashier v. Brashier*, 80 Md. App. 93 (1989). It is noteworthy, however, that the case at bar involves a Petition to Modify Alimony under FL § 11-107(b), both *Blaine* and *Brashier* involved petitions to extend alimony under § 11-107(a). In *Blaine*, the issue before the Court of Appeals was "whether a party who was awarded, at the time of divorce, 'rehabilitative' alimony for a fixed period may, upon its termination, be awarded alimony for an indefinite period based upon a judgment that circumstances now exist which would render a termination of alimony inequitable." 336 Md. at 55. The alleged change in circumstances was the "lack of jobs in the health promotion counseling field" that led to "Ms. Blaine's inability to obtain the anticipated income." *Id.* at 76. Ultimately, the Court

of Appeals affirmed this Court's holding that "the trial judge [did not] abuse[ ] his discretion in extending the alimony award for an indefinite period." *Id.*

Likewise, in *Brashier*, the issue was "[w]hether the trial court erred in modifying its judgment of absolute divorce and awarding Mrs. Brashier indefinite alimony." 80 Md. App. at 97. Although Mrs. Brashier suffered from a psychiatric disability at the time of the parties' divorce, *id.* at 100, the divorce court determined that she was "capable of being self-supporting" and, therefore, only awarded her temporary alimony in the amount of $300 a month for a period of three years. *Id.* at 95. Just as the temporary alimony was set to expire, Mrs. Brashier filed a petition to increase and extend the alimony payments. *Id.* at 96. Following a hearing, a master recommended that Mrs. Brashier's alimony be extended indefinitely with no increase in amount. *Id.* at 97. The circuit court ultimately adopted those recommendations. *Id.*

On appeal, Mr. Brashier focused on how the master herself acknowledged that "most of [Mrs. Brashier's] mental and physical problems existed at the time [of the divorce]." *Id.* at 100. Therefore, he argued that "there was no change justifying an extension of alimony payments to Mrs. Brashier." *Id.* We disagreed. We held that it was "critical . . . that the trial court's previous award of temporary alimony to Mrs. Brashier was made with the expectation that [her psychiatric disability] would improve." *Id.* Because that expectation had not been realized, we held that a sufficient change in circumstances had occurred to justify the trial court's grant of indefinite alimony. *Id.* at 101.

As we previously noted, while *Blaine* and *Brashier* involved extensions of the alimony period, the case at bar involves the question of whether Mr. Boutros is entitled to a reduction in the alimony amount. Despite this difference, the principles applied in those cases can be applied here because FL § 11-107(a) & (b) both require a change of circumstances. The appellant points to the appellee's drawing of social security benefits and his own failure to obtain employment as being sufficient changes of circumstances to entitle him to a reduction in alimony. We begin by addressing his failure to obtain employment. In doing so, we acknowledge that "[w]hen an action has been tried without a jury, . . . [we must] give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). Furthermore, "[w]e will not disturb an alimony determination 'unless the trial court's judgment is clearly wrong or an arbitrary use of discretion.'" *Ridgeway*, 171 Md. App. at 383–84 (quoting *Blaine*, 97 Md. App. at 698).

We hold that the trial court did not abuse its discretion where it found that the appellant's failure to obtain employment did not constitute a sufficient change in circumstances. The appellant filed the Petition to Modify Alimony merely six months after the Judgment of Absolute Divorce was entered. He has a Ph.D. in electrical engineering, and his retirement status was the same at the time of the divorce as it was when he filed the Petition. Moreover, the trial court was presented with evidence that, subsequent to the divorce, the appellant purchased a house for $105,000, all in cash, and that he had elected not to draw from Social Security when he became eligible at the age of 62. In light of all

of this evidence, we cannot say that the trial court abused its discretion in accepting the appellee's argument that Mr. Boutros is unwilling, rather than unable, to obtain employment and manage his finances in such a way that would allow him to satisfy his alimony obligation.

Social Security Benefits

The final issue is the other alleged change in circumstances, how the appellee began drawing $1,354.00 per month in Social Security benefits after the divorce. In its oral ruling, the court briefly mentioned this new source of income for the appellee, stating that "[i]t is Mr. Boutros' position that there is [a change in circumstances] based on [his] wife's increased income from Social Security that she's now pulling." However, the court did not comment further on the appellee's newly-drawn Social Security benefits before finding that the appellant did not meet his burden of proving a material change in circumstances. Therefore, we do not know the basis for the trial court's determination that no material change in circumstances had occurred as a result of the appellee's increased income from Social Security and, consequently, cannot yet say whether the trial court abused its discretion in this regard.

An increase or decrease in the recipient party's income is indeed relevant as to whether a reduction in alimony is warranted. *See Ridgeway*, 171 Md. App. at 383–85. "Income," though not defined in Title 11 of the Family Law Article, has been defined elsewhere in the Family Law Article to include Social Security benefits. § 12-201(c)(3)(x). *See Tucker v. Tucker*, 156 Md. App. 484, 492 (2004) ("'[A]ctual income' means income

from any source, including Social Security benefits." (quoting *Anderson v. Anderson*, 117 Md. App. 474, 483 (1997), *vacated*, 349 Md. 294 (1998)) (internal citations omitted)). Nevertheless, we have already explained that the expectations of the divorce court are also relevant as to whether a change in circumstances has occurred. Therefore, if the court awarded alimony to the appellee in the amount of $2,000 per month with the expectation that she would soon begin drawing from her Social Security benefits, then it would not necessarily be the case that a material change in circumstances has occurred. However, if the appellee's increased income through Social Security was not anticipated by the court at the time of the divorce, then the appellant may very well be entitled to a reduction in alimony. Because the record is insufficient for us to make that determination, we hereby vacate the judgement of the circuit court and remand the case for further proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.