Circuit Court for Montgomery County
Case No. 128060-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3482

September Term, 2018

SHAILA E. SETTLES LEWIS

v.

DAVID L. LEWIS

Nazarian,
Leahy,
Beachley,

JJ.

Opinion by Leahy, J.

Filed: August 20, 2020

Shaila E. Settles Lewis ("Mother"), appellant, and David L. Lewis ("Father"), appellee, are parents who divorced and obtained a child support and custody order in 2016 concerning their two minor children. Mother appeals from a February 26, 2019 order of the Circuit Court for Montgomery County denying her "Amended Motion for Reimbursement of Extraordinary Medical Expenses" and her "Amended Motion for Modification of the June 23, 2016 Custody and Support Order."[1] She presents two issues for our review which boil down to one:[2]

> Did the trial court abuse its discretion in denying Mother's motion to modify the court's June, 2016 Custody and Support Order to provide for the reimbursement of extraordinary medical expenses?

[1] Although the court's order treats the motion for reimbursement and motion to modify as separate motions, we note that both motions were contained in one filing entitled "Amended Motion For Reimbursement Of Extraordinary Medical Expenses And For Modification Of The June 23, 2016 Custody And Support Order." On appeal, the briefing appears to assume that we have independent jurisdiction over the disposition of each motion. To clarify, there is no independent right to appeal from the denial of Mother's motion for reimbursement; therefore, any discussion of Mother's request for reimbursement is subsumed under our review of the court's ultimate decision not to modify the support order.

[2] Mother states the questions presented as follows in her opining brief:

1. "Whether the circuit court erred or abused its discretion by not providing written findings regarding the calculation of child support amount set forth in the order including the calculation of extraordinary medical expenses."
2. "Whether the circuit court erred or abused its discretion in holding that extraordinary medical expenses are included within the Defendant's $1,000 child support award, and as a result, denying the Amended Motion for Reimbursement of Extraordinary Medical Expenses and Amended Motion for Modification of the June 23, 2016, Custody and Support Order."

Although Mother's substantive violations of Maryland Rule 8-504(a) governing the content of appellate briefs warrant dismissal of this appeal, we shall exercise our discretion to affirm the challenged order for reasons that follow. We affirm the motions court's determination that Mother failed to establish a material change in circumstances necessary to trigger a modification of the 2016 order.

BACKGROUND

This appeal arises from the denial of Mother's requests for relief under the terms of an order and accompanying 26-page opinion, entered June 27, 2016, governing custody and child support (the "Support Order"). Mother and Father separated in July 2014. Mother and Father are the parents of two minor children: N., born in 2008, and S., born in 2011. The Support Order gives each parent joint legal and physical custody of both children, and grants Father tiebreaking authority.

N. has attended a series of French-language immersion schools because both parents want him to be multilingual, even though neither of them speaks French. His academic needs have included tutors and an educational advocate who counseled the family on strategies that ultimately resulted in N. continuing to attend and to advance in a challenging language immersion program offered by the Montgomery County Public School System.

S. has had bilateral hearing loss since infancy. She had cochlear implant surgery in October 2015, at age four. Her language skills are affected by her hearing limitations, and she uses cued speech and sign language. She has specialized medical and educational needs stemming from her hearing and communication challenges.

Mother and Father are both employed by the United States Patent and Trademark Office. Their collective earnings in 2016 put them above the Guidelines, with Father's share equaling 56% and Mother's equaling 44% of their combined earnings. After paying the costs of health and dental insurance for both children, Father is required under the Support Order to pay Mother $1,000 monthly for child support.[3] Mother did not appeal the Support Order at the time that it was entered.

Disagreement over Father's obligation under the Support Order triggered the dispute giving rise to this appeal. It began with a toothache. On January 30, 2018, after consulting with Father, Mother took S. for an emergency dental appointment. Mother paid $363 for the dental services with her credit card, then sought pro rata reimbursement from Father. After an insurance claim was made and paid, and after Mother filed her motion for reimbursement, Father reimbursed Mother $72, the same amount covered by that insurance, leaving Mother responsible for the difference.

Mother objected that Father was misinterpreting the Support Order to mean that his obligation for this medical expense was satisfied by his payment of health and dental insurance plus his monthly support of $1,000. In her view, however, Father's responsibility is not covered by those payments, so that he must pay his pro rata share of this and every other "extraordinary medical expense." As Mother interpreted the Support Order, as well

[3] Until January 2017, Father was required to pay only $500 per month because he was also paying the full cost for an educational advocate who was assisting with N.'s school placement.

as Section 12-204(h) of the Family Law Article, Father's monthly support payment did not cover this extraordinary medical expense.

Father maintained that under the Support Order, his responsibility for extraordinary medical expenses was encompassed by his $1,000 payments. In his view, Mother's responsibility for extraordinary medical expenses, as listed on her financial worksheet, was factored into the Support Order.

Mother filed an "Amended Motion For Reimbursement Of Extraordinary Medical Expenses And For Modification Of The June 23, 2016 Custody And Support Order" in the circuit court. Although initially represented by counsel, both Mother and Father appeared *pro se* before Judge Jill Reid Cummins on February 12, 2019. At the end of the hearing, Judge Cummins offered findings of fact and a ruling. That ruling was reflected in the court's subsequent written order stating that the motion was denied because "there ha[d] not been a material change in circumstances."

In her oral ruling from the bench, Judge Cummins noted that the judge who preceded her in the custody case issued a 26-page opinion explaining the Support Order. She then reviewed the relevant standard for obtaining a child support modification in Maryland, and explained that Mother needed to show a material change of circumstances in order to obtain the relief sought in her motion. The judge found that mother had not met this preliminary burden, but also expounded that even had Mother shown a material change, without any competent evidence of the parties' actual incomes, she could not recalculate support.

Judge Cummins noted that she had reviewed the history of the case to determine what the previous judge had intended to include in the $1000 per month in child support

that Mr. Lewis was ordered to pay. With regard to extraordinary medical expenses the court found that

> [a]ccording to the guidelines worksheets which were included and used as a reference point, extraordinary medical expenses were included at that time. The guidelines that were run, the worksheets, neither reflects the amount of $1000 which was ultimately awarded and both worksheets reflect an amount less than that. So, Judge McCally when considering everything, awarded an amount in addition to the guideline's calculation.
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> The guideline worksheets that were used as a reference included an amount or proportionate share for extraordinary medical expenses. And, it's my conclusion that payment for, the extraordinary medical expenses were taken . . . into account in the awarding of the $1,000 child support [sic] with Mr. Lewis was ordered to pay back in June of 2016.

Furthermore, the judge noted that the prior judge was tasked with fashioning a support order in a case in which the parties' combined income was significantly above the amount contemplated by the guidelines, yet the judge ordered an amount above what the worksheets suggested in terms of support. Consequently, Judge Cummins found that Mother was not entitled to reimbursement, beyond what father had already paid, under the existing support order.

DISCUSSION

Before we consider Mother's assignments of error, we must briefly address the inadequate briefing before us. Mother, an attorney representing herself in this Court, filed a brief and reply brief that do not fully comply with the essential requirements of the Maryland Rules of Appellate Procedure. Legal authority is similarly scarce in Mother's reply. Mother's statement of the case, as well as the statement of facts, contain sparse citations to the record extract, docket, or record. In her reply brief, some citations to the record extract do not support the propositions for which they are cited.

Given these deficiencies, dismissal of this appeal is appropriate under both Maryland Rule 8-504(c), providing that "[f]or noncompliance with" these substantive requirements for appellate briefs, this Court "may dismiss the appeal[,]" and Rule 8-602(a)(6), providing that this Court "may dismiss an appeal . . . on the court's own initiative" when the contents of a brief do not comply with Rule 8-504. Essential to effective appellate review are the requirements in Maryland Rule 8-504(a) that a brief must include "[a] clear concise statement of the facts material to a determination of the questions presented" with "[r]eference . . . to the pages of the record extract supporting the assertions" and "[a] concise statement of the applicable standard of review for each issue" with "[a]rgument in support of the party's position on each issue." Md. Rule 8-504(a)(4)-(6). *See Reynolds v. Reynolds*, 216 Md. App. 205, 225-26 (2014) (applying Rule 8–504(a)(4), we refused to "comb through the 2,904 pages of extract . . . in order to find factual support for appellant's alleged point of error.")

In this case, Mother's deficient briefing creates a challenge for this Court in addressing her arguments. Nevertheless, we recognize that Father is also representing himself in this matter that has been submitted on the briefs and has not moved to dismiss the appeal. And most importantly, "because this case involves child support, it is the children who would suffer, rather than the parties, if this appeal were dismissed."

Tannehill v. Tannehill, 88 Md. App. 4, 10–11 (1991). Accordingly, we turn to address Mother's appeal. [4]

The Parties' Contentions

Mother argues that "the trial court abused its discretion by not amending the June [27], 2016 order to expressly state that extraordinary medical expenses are to be divided between the parties in proportion to their adjusted actual incomes." In her view, the "child support section" of that order contains "no reference whatsoever to extraordinary medical expenses . . . because the trial court did not intend for these expenses to be included in the child support award." She maintains that the Support Order should be modified to expressly state that it does not cover extraordinary medical expenses, pointing out that "[t]he dental bill that is the subject of this litigation is just one of several bills that [Father] has refused to pay." She urges that "[i]t is unlikely that the trial court intended to depart so significantly from the $6,306 adjusted basic child support obligation on each worksheet."

Father, in addition to disputing Mother's interpretation of the Support Order, contends that Mother has failed to establish a material change in circumstances necessary to trigger a modification of that order. Additionally, he points out that the Support Order

[4] Mother's brief is replete with challenges to the original Support Order. For example, she contends that "there were no calculations in either the . . . opinion or order that specify the expenses intended to be covered by the $500 and later $1,000 child support award." She characterizes the worksheets as "merely . . . a reference[,]" given that "the child support amount does not match any of the four worksheets relied upon by the trial court." We cannot consider these contentions as the time for challenging the Support Order on direct appeal lapsed over four years ago. *See* Md. Rule 8-202.

was accompanied by "a robust discussion regarding the expenses of the children[.]" Moreover, he asserts that Mother has not "demonstrate[d] the court was 'clearly erroneous' or in any way abused its discretion given a reasonable decision was made based on substantial evidence in the record."

Motion to Modify Support Order

An award of child support generally lies within the sound discretion of the circuit court. *See Karanikas v. Cartwright*, 209 Md. App. 571, 596 (2013). When, as in this case, the parents' combined adjusted income exceeds the statutory child support guidelines limit of $15,000 per month, the circuit court has greater discretion in determining the award. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 425 (2018); Maryland Code, Family Law Article ("FL"), (1984, 2012 Repl. Vol.), § 12-204(d).[5] In exercising discretion for an above-guidelines case, "[s]everal factors are relevant including the parties' 'financial circumstances, the reasonable expenses of the child[ren], and the parties' station in life, their age and physical condition, and expenses in educating the child." *Smith v. Freeman*, 149 Md. App. 1, 20 (2002) (internal quotation marks and citations omitted).

Once a support order is finalized, it can only be altered if certain criteria are met. A "court may modify a child support award . . . upon a showing of a material change of circumstance." FL § 12-104(a). This doctrine "has its roots in principles of claim preclusion and issue preclusion[]" and is intended to prevent re-litigation of the same issues. *Green v. Green*, 188 Md. App. 661, 688-89 (2009). In the child support context, a

[5] The General Assembly amended the guidelines statute in 2019. Unless otherwise indicated, we refer to the previous version of FL § 12-204.

material change in circumstances may be predicated on either "a change in 'the needs of the children or in the parents' ability to provide support.'" *Smith*, 149 Md. App. at 20-21 (citation omitted). The term "material" has been interpreted to limit the court's authority to modify an award only when there has been a change of such significance as to warrant judicial alteration. *See id.* at 21. Even then, the decision to modify an award is left to the sound discretion of the trial court, exercised in accordance with correct legal standards. *Id*.

The question before this Court is limited to whether the circuit court abused its discretion in denying Mother's motion to modify the Support Order. *See Leineweber v. Leineweber*, 220 Md. App. 50, 62 (2014). The motions court set out the correct legal standard in its oral ruling and explained that, based on the evidence presented, Mother did not establish a material change in circumstances, which is a prerequisite for such relief. *See* FL § 12-104(a). To be entitled to that relief, she would have had to *prove* a material change in circumstances, not merely her dissatisfaction with the current support order. *See id.*

There is no master list that a trial court can consult to assess whether a given event constitutes a material change of circumstances. The determination is, rather, a finding of fact that we will not set aside unless it is clearly erroneous. *Lieberman v. Lieberman*, 81 Md. App. 575, 596 (1990). The Court of Appeals explained in *Drummond v. State to Use of Drummond*, that two common scenarios that represent a relevant change in circumstances are "the passage of some event causing the level of support a child actually receives to diminish or increase" and "a change in the income pool used to calculate support." 350 Md. 502 (1998). In *Guidash v. Tome*, this Court affirmed a trial court's

finding that a mother's loss of use and possession of the marital home, and subsequent incurrence of new housing expenses constituted a material change of circumstances. 211 Md. App. 725, 743 (2013).

We observe, based on the record, that Mother failed to present evidence that there had been a material change of circumstances regarding either the parents' ability to pay or the needs of the children. *See Smith*, 149 Md. App. at 20-21. Although Mother alleged that Mr. Lewis's income had increased since the initial support award, she did not offer any documentation to bolster this assertion. Mother's testimony highlights that the children have significant medical and extracurricular expenses, and certainly, no one is disputing that point. Yet, her testimony and exhibits do not show that this is a changed circumstance since the time that the court entered the Support Order.[6] Accordingly, we cannot say, on the record before us, that motions court clearly erred in failing to find a material change of circumstances.

To the extent that the judge's findings on Mother's request for reimbursement supported her decision not to modify the Support Order, we can find no abuse of discretion. In interpreting the Support Order, Judge Cummins determined that, based on the child

[6] Mother maintains that "[i]t is important to note that the worksheets placed in evidence do not accurately reflect the children's expenses, which is another reason the trial court could not have intended to rely on the worksheets in setting the child support amount." In support, Mother points to an entry on the worksheet, for $200 in dance/music lessons, which she contends was misattributed as an expense for the children, instead of for her. She also complains that fees attributed to extracurricular activities and summer child care are inaccurate. But the time for challenging the basis for the Support Order passed long ago. Like the motions court, this Court will not revisit factual findings underlying a child support order made over three years ago.

support worksheets, the circuit court judge adequately considered the children's "extraordinary medical expenses"[7] and incorporated them into the $1,000/month award.[8] She reasoned that, although the circuit court did not discuss the amount of extraordinary medical expenses in its 26-page-opinion, their inclusion on the child support worksheets shows that the court included them in its calculation.

[7] At the time Mother filed her motion, FL § 12-201(g) defined "extraordinary medical expenses" as follows:

> (1) "Extraordinary medical expenses" means uninsured expenses over $100 for a single illness or condition.
>
> (2) "Extraordinary medical expenses" includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed mental disorders.

In 2019, the General Assembly amended FL 12-201(g)(1) to provide that "extraordinary medical expenses" means uninsured expenses in excess of $250.

[8] And indeed, the support court was required to do just that. In *Ruiz v. Kinoshita*, we explained that

> [i]n addition to those expenses that, under FL § 12-204(i), the trial court has discretion to award, "[c]ertain child care expenses and extraordinary medical expenses incurred on behalf of a child *must* be added to a basic child support obligation." *Drummond*, 350 Md. at 512 (citing FL § 12-202(g)-(h)). This Court has interpreted the mandatory language in these statutory provisions to "le[ave] no room for discretion" in the trial court's calculation, "*even in an above-guidelines case[.]*" *Chimes v. Michael*, 131 Md. App. 271, 292-94 (2000) ("Child care expenses *shall* be ... determined by actual family experience.") (quoting a prior iteration of FL § 12-204(g)).

239 Md. App. at 432 (emphasis added). Accordingly, despite the fact that this is an above-guidelines case, the circuit court judge was required to add the cost of the children's extraordinary medical expenses to the basic support obligation. *See id*.

The record from the hearing on the Support Order shows that the court accepted Mother's representation that she paid $450/month toward the children's extraordinary medical expenses for the purpose of calculating support. For Father, the amount of extraordinary medical expenses listed on the worksheet was $372, for a total of $822 in monthly extraordinary medical expenses. Based on this extensive analysis of the personal and financial factors bearing on child support, the circuit court concluded that after paying for health and dental insurance, Father's monthly child support payment of $1,000 would provide Mother with sufficient funds to meet the children's needs. The court determined that both parents, but particularly Mother, should avoid "excessive" and unilateral expenditures, use "planning and budgeting tools[,]" and scale back to meet their children's needs "in a reasoned manner." Consistent with that strategy, it ordered a lump sum monthly support payment, from which Mother may fund extraordinary medical expenses not covered by the insurance provided by Father.

Returning to the issue before us we note that, in her reply brief, Mother, apparently recognizing that she failed to demonstrate a material change in circumstances, contends that "the purpose of the motion[s] was not to modify the child support award[,]" but "to clarify that the $1,000 child support award does not include extraordinary medical expenses." This contention does nothing to save her claim on appeal. To the extent that Mother requested a "clarification" of the meaning of the Support Order, the motions court honored her request through her oral ruling and written order. Accordingly, we affirm the motions court's denial of Mother's motion to modify.

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