

# IN THE COURT OF APPEALS OF VIRGINIA

Monday the 20th day of April, 2026.

Benjamin I. Enav,

Appellant,

against

Orna L. Enav,

Appellee.

## Record No. 0129-25-4

From the Circuit Court of Fairfax County  
Circuit Court No. CL-2018-7693

Before Judges Friedman, Chaney and Duffan

Benjamin I. Enav (husband) appeals the circuit court's order denying his motion to modify spousal support and awarding attorney fees to Orna L. Enav (wife). Husband argues that the circuit court abused its discretion in failing to reduce his spousal support obligation and that wife was not entitled to an attorney fee award. Finding no error in the circuit court's judgment, we affirm.<sup>1</sup>

## BACKGROUND<sup>2</sup>

The parties married in April 2001; three children were born to the marriage. The parties separated in December 2016, and husband filed for divorce in May 2018. The parties reached a partial marital settlement agreement through which husband retained the marital home, and the parties equally divided their retirement accounts. Wife also received \$60,000 for her interest in husband's pediatric gastroenterology practice. The circuit court calculated husband's income at \$247,000 and wife's at \$70,720, and awarded wife \$3,000 in monthly spousal support, which was modifiable based on a material change of circumstances.

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<sup>1</sup> Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument." *See* Code § 17.1-403(ii)(c); Rule 5A:27(c).

<sup>2</sup> "When reviewing a [circuit] court's decision on appeal, we view the evidence in the light most favorable to the prevailing party, granting it the benefit of any reasonable inferences." *Nielsen v. Nielsen*, 73 Va. App. 370, 377 (2021) (quoting *Congdon v. Congdon*, 40 Va. App. 255, 258 (2003)).

In June 2024, husband moved to decrease his child and spousal support obligations. Husband asserted that the parties' oldest child had reached the age of majority and that wife's income had increased, which he alleged constituted a material change in circumstances.

At the modification hearing, wife testified that when she and husband divorced, she earned \$70,720 per year from her employment with Sibley Memorial Hospital. She began working at the Institute for Defense Analysis as a Program Administrator in June 2019. She was promoted to Administrative Manager in April 2020 and received an annual income of \$73,635. Wife's income had increased each year since; by 2024, her salary was \$120,473.60. Wife also enrolled in an MBA program at Virginia Tech. Her employer paid her tuition on the condition she maintained adequate grades and committed to remaining in their employ for two years following graduation. But wife was not guaranteed any automatic job promotions, salary increases, or other additional compensation upon her completion of the program.

At the time of the divorce, wife did not have sufficient retirement savings, and she tried to save as much as she could every month. In the divorce, wife received \$150,000 in retirement assets rolled into her retirement savings accounts. Through her employment, she contributed 5% to her 403(b) account, and her employer matched 11%. On the advice of her financial advisor, wife regularly contributed \$489 per month to her retirement accounts but occasionally invested more. As of August 2024, wife's retirement accounts had a value of \$335,221.

Wife purchased a home after the parties divorced and paid \$2,075.56 in monthly mortgage payments. In August 2024, she owed \$337,687 on the mortgage. She also paid all of the home expenses. Wife used all her income from her salary, alimony, and child support for her day-to-day living. Inflation caused her cost of living to rise significantly, so her spending power had not changed significantly since the divorce. In fact, wife's standard of living had decreased slightly since the divorce. Unlike during the marriage, she had to work full-time. She lived in a smaller house and drove an older car. She no longer had household help and traveled less frequently than she had during the marriage. Wife budgeted every expense to ensure her financial stability. She had no revolving credit card debt.

According to her income and expense report, wife had a monthly net income of \$9,482, which included after-tax spousal support and child support payments from husband. Her total monthly expenses were \$9,637, which included \$489 in retirement account payments. Wife also contributed \$1,100 per month toward the parties' son's college tuition. Wife paid an average of \$200 in monthly legal expenses. Her savings account listed assets of \$22,392, but since submitting her income and expense report, she had spent that amount on attorney fees. As of August 2024, wife's checking account contained \$4,531.54.

Husband worked as a pediatric gastroenterologist and owned his own practice. Husband also did some consulting work and speaking engagements, but those opportunities decreased after COVID-19. In 2018, husband's annual income totaled approximately \$247,000. In 2021 it was \$310,653, but it decreased in the following years. In 2022, his income was \$300,816, and in 2023, his income was \$263,696.

Husband claimed liquid assets of \$3,000 on his income and expense report. But he had \$20,955.06 in his personal bank accounts, and \$17,813.60 in his business bank accounts as of August 2024. In 2023, husband invested \$50,000 in Amerimmune Investment; he had not yet received a dividend as of the circuit court hearing. Husband also had \$186,817 in a retirement account he retained in the divorce. But he had not regularly contributed to the retirement account after the divorce because "money [was] tight," and he had to pay legal fees.

In terms of debt, husband obtained a \$150,000 COVID-19 relief business loan that had entered repayment status. He also had a separate business loan he used to invest in a surgery center and to buy wife's interest in the practice when they divorced. Husband paid both loans through his business accounts.

On his income and expense report, husband claimed a monthly net income of \$14,945, and monthly expenses of \$16,801. Husband listed \$780 for an automobile payment for a new car he purchased after the parties divorced. But at the hearing, he testified that he made the car payments as a business expense, as was reflected on his business tax return. Husband also testified that he paid his son \$1,057 as an IT consultant to the business. Although he included this amount in the school tuition on the income and expense report, he acknowledged that he paid for it through his business.

Since the parties' divorce, husband traveled regularly on vacations. He attended a Formula One race in Barcelona, took several international vacations, and spent around \$3,000 on tickets to a baseball playoff game in 2024. Husband paid for some of his travel through his business. Husband claimed that he took no business travel in 2023, but he had deducted \$11,172 for travel expenses in his business tax return for that year.

Although the parties agreed that wife's increase in income constituted a material change in circumstances, they disagreed over whether that change justified a modification to her spousal support. The circuit court evaluated the evidence under the Code § 20-107.1 factors, including the parties' obligations, needs, and financial resources, and income from all pension, profit sharing, or retirement plans. The circuit court found that the parties were married for 15 years, had a high standard of living during their marriage, and both were in good physical and mental health. During the marriage, husband was the primary breadwinner, while wife was the primary caregiver to the parties' children. The circuit court found that both parties owned a home, were gainfully employed, and had retirement accounts. Husband had debt through his business; wife had no debt. Under the final divorce decree, wife received a payout relating to husband's medical practice, husband remained in the parties' marital home, and the parties shared custody of their children.

The circuit court found that during the marriage, wife had stepped back from her career to help husband pursue his career. Although wife's income had increased since, it was still limited when compared to the parties' combined income during the marriage. The circuit court acknowledged that wife had built her retirement account and pursued additional educational opportunities that were not anticipated when the parties divorced. She increased her income, and her employer was supporting her pursuit of an MBA. Still, wife's income remained "significantly less" than husband's, and she "tightly controlled the assets" to live within her means.

In contrast, husband maintained the lifestyle he had enjoyed during the marriage: he earned "substantial income," and had many financial opportunities. Husband paid many of his expenses through his businesses, including funding his travel, vehicle, and debts. The circuit court concluded that husband had the

ability to pay, substantial earning capacity, and a successful medical practice, and that wife depended on spousal support.

The circuit court explicitly considered the parties' asset and property interests under Code § 20-109(G). It did not find this "particular issue to be the deciding one for purposes of spousal support." The court concluded that wife had carefully budgeted her expenses to increase her retirement savings, which did not alter her basic financial circumstances. In comparison, husband had several financial assets, including the marital home and his medical practice. Accordingly, the circuit court found that \$3,000 remained a reasonable spousal support award "given the length of the parties' marriage, the financial circumstances existing during the marriage and since the marriage, and [wife's] own currently existing needs."

The parties later convened for a hearing on attorney fees. Husband's attorney fees were \$34,160.40. Wife's legal fees were \$29,391.35, which husband conceded were reasonable. The circuit court reiterated that husband had "significantly more" resources available to him and declined to hold against wife her success in managing a substantially smaller amount of assets and income. The circuit court awarded wife \$20,000 in attorney fees.<sup>3</sup> Husband appeals.

## ANALYSIS

### I. Modification of Spousal Support

Setting and modifying spousal support involves "fact-specific decisions" that we review for an abuse of discretion. *Nielsen v. Nielsen*, 73 Va. App. 370, 390 (2021) (quoting *Brandau v. Brandau*, 52 Va. App. 632, 641 (2008)). "The moving party in a petition for modification of support is required to prove both a material change in circumstances and that this change warrants a modification of support." *Id.* at 379 (quoting *Dailey v. Dailey*, 59 Va. App. 734, 742-43 (2012)). "A material change in circumstances, by itself, does not require the alteration of a spousal support award." *Driscoll v. Hunter*, 59 Va. App. 22, 33 (2011). "Instead, the party seeking modification must show, in addition to a material change in circumstances, that the change 'warrants a

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<sup>3</sup> The circuit court also reduced father's monthly child support obligation to \$394. This award is not challenged on appeal.

modification of support.” *Id.* (quoting *Moreno v. Moreno*, 24 Va. App. 190, 195 (1997)). “The circuit court then has broad discretion in deciding whether the spousal support award should be modified and, if so, by how much.” *Nielsen*, 73 Va. App. at 379. The circuit court’s award “will not be disturbed except for a clear abuse of discretion.” *Id.* at 390 (quoting *Robinson v. Robinson*, 50 Va. App. 189, 194 (2007)).

Wife stipulated that there had been a material change of circumstances since the circuit court entered the final decree of divorce. Accordingly, “the [circuit] court was required to evaluate whether [the change] in circumstances justified a modification in spousal support ‘as the circumstances may make proper.’” *Id.* at 389 (quoting *Hollowell v. Hollowell*, 6 Va. App. 417, 419 (1988)). A clear statutory framework, which the circuit court correctly identified, guided its analysis.

In any action for the increase, decrease, or termination of spousal support, if the court finds that there has been a material change in circumstances, the court may consider the factors set forth in subsection E of [Code] § 20-107.1 and subsection F of this section in making its determination as to whether any modification or termination of such support should be granted.

Code § 20-109(G). The factors enumerated in Code § 20-107.1(E) include the “needs and financial resources of the parties,” “[t]he standard of living established during the marriage,” and “[s]uch other factors . . . as are necessary to consider the equities between the parties.” In addition, the “court shall further consider the assets or property interest of each of the parties from the date of the support order and up to the time of the hearing on modification or termination, and any income generated from the asset or property interest.” Code § 20-109(G). And the relevant factors set forth in Code § 20-109(F) include the “age and health of the parties” and the “duration and amount of spousal support already paid.”

The circuit court expressly evaluated the statutory factors based upon the evidence presented at the hearing and considered the parties’ financial needs and resources. Yet husband argues that the circuit court’s conclusion that wife still had a need for support was not supported by the evidence. Husband asserts that wife’s ability to save, due to her increased earnings, evidenced that she no longer needed spousal support. Husband also contends that wife’s savings plan was not a consistent practice during the marriage.

We hold that the record supports the circuit court's findings. Although wife contributed to her retirement accounts, including making catch-up payments, the circuit court found persuasive wife's testimony that she used her income from her salary, spousal support, and child support for her day-to-day living expenses. Even with these sources of income, as well as wife's efforts to maintain a strict budget and lower standard of living, her income and expense statement demonstrated she had a monthly deficit. Although her income had increased since the parties' divorce, so too had her cost of living. Given this evidence, the circuit court did not abuse its discretion by finding that the acknowledged changes in circumstances did not warrant a reduction in spousal support.

Husband also contends that the circuit court failed to give proper weight to the parties' comparative assets and liabilities, as required by Code § 20-109(G). He argues that the evidence demonstrated that wife had a higher net worth than he did. The circuit court expressly considered the parties' assets and property interests, and any income generated but found that that factor was not determinative. The court also noted that husband had two significant financial assets: the marital home and his medical practice.

Further, husband's evidence of his assets and liabilities was inconsistent. Husband did not include the value of his business or his \$50,000 Amerimmune investment among his assets. On the other hand, he included two business loans payments, a car loan payment, and his son's tuition as debt, yet he made those payments on those debts out of his business accounts. Based on the evidence before it, we find that the circuit court did not abuse its discretion in assigning this factor little weight. Accordingly, the circuit court did not clearly abuse its discretion in holding that wife still needed spousal support to meet her needs, so a modification of the support award was unwarranted.

## II. Attorney Fees

"Circuit courts have broad statutory authority to award attorney fees in a domestic relations matter." *Yazdani v. Sazegar*, 76 Va. App. 261, 272 (2022); *see also* Code § 20-99 ("Costs may be awarded to either party as equity and justice may require."). "[A]n award of attorney[] fees is a matter submitted to the [circuit] court's sound discretion and is reviewable on appeal only for an abuse of discretion." *Allen v. Allen*, 66 Va. App. 586,

601 (2016) (first alteration in original) (quoting *Richardson v. Richardson*, 30 Va. App. 341, 351 (1999)). “[T]he key to a proper award of counsel fees [is] reasonableness under all of the circumstances revealed by the record.” *Conley v. Bonasera*, 72 Va. App. 337, 350 (2020) (alterations in original) (quoting *McGinnis v. McGinnis*, 1 Va. App. 272, 277 (1985)).

The record supports the circuit court’s award of attorney fees. In the circuit court, husband’s counsel conceded that wife’s attorney fees of \$29,391.35 were reasonable. The circuit court based the attorney fee award on the continuing financial inequities between the parties. Wife had used all the liquid assets in her savings account, \$22,492, to pay for attorney fees, leaving approximately \$4,500 in her checking account. In comparison, husband had approximately \$38,700 between his business and personal bank accounts. Likewise, husband’s income was more than double that of wife. Wife’s salary had increased to \$120,473.60 seven months before the hearing, while husband’s annual income was \$293,260. Finally, wife incurred the attorney fees responding to husband’s unsuccessful petition. Considering the totality of the circumstances, we hold that the circuit court did not abuse its discretion in awarding attorney fees to wife.

### III. Appellate Attorney Fees

Both parties ask the Court to award them appellate attorney fees and costs. “This Court may award attorney fees incurred on appeal ‘based on its consideration of factors including whether the requesting party prevailed, whether the appeal was frivolous, whether either party generated unnecessary expense or delay . . . as well as “all the equities of the case.”’” *Yazdani v. Sazegar*, 76 Va. App. 261, 277 (2022) (quoting *Friedman v. Smith*, 68 Va. App. 529, 546 (2018)). “[I]n exercising our discretion to determine whether to award appellate attorney[] fees, we do not believe that the equities of this case justify such an award to either party.” *Stark v. Dinarany*, 73 Va. App. 733, 757 (2021).

### CONCLUSION

For the foregoing reasons, the circuit court’s judgment is affirmed. The appellant must pay to the appellee damages according to law.

This order shall be certified to the trial court.

Teste: A. John Vollino, Clerk

Entered: *Kristen McKenzie*  
Deputy Clerk

