Circuit Court for Baltimore County
Case No.: 03-C-05-012321

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1582

September Term, 2021

TINA GIOIOSO KOHAN

v.

JEFFREY WILLIAM KOHAN

Zic,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: September 13, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from an order issued by the Circuit Court for Baltimore County denying exceptions to a magistrate's recommendations. Because the court did not make either an oral or written record showing that it exercised independent judgment in resolving the exceptions, as required by *Domingues v. Johnson*, 323 Md. 486 (1991) and *Kirchner v. Caughey*, 326 Md. 567 (1992), we remand the case for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant, Tina Gioioso Kohan ("Mother"), and appellee, Jeffrey William Kohan ("Father"), have two children in common. Pursuant to an order entered October 21, 2019 ("October 2019 Order"), Father was required to pay $1,504 per month in child support, retroactive to June 4, 2018, subject to withholding by the Baltimore County Office of Child Support Enforcement ("BCOCSE").[1]

According to Father, when BCOCSE received the October 2019 Order, BCOCSE did not recognize that Father had been making child support payments directly to Mother since June 4, 2018, and it established arrearages against him. Father filed a motion to eliminate child support arrearages established by BCOCSE and obtain credit for his overpayment of child support collected and held by the agency.

[1] The entry of the October 2019 Order arose from Father's request to reduce his child support obligation. On June 4, 2018, Father filed a motion to modify his child support obligation because the parties' eldest daughter became emancipated in May 2018 when she graduated from high school. On appeal, Mother challenges the October 2019 Order. As we explain in n.2, *infra*, the issues pertaining to this order are not properly before us.

On July 9, 2021, a magistrate held a hearing on the motion. On July 15, 2021, the magistrate recommended, in relevant part, that (1) funds held by BCOCSE be released to each party in specific sums, (2) BCOCSE records shall reflect that Father does not owe any arrears for support, and (3) BCOCSE close its file and cease all collection activities against Father. Mother filed exceptions and amended exceptions to the magistrate's recommendations challenging the way the magistrate determined child support arrearages and overpayment of child support by Father. Father filed cross-exceptions contesting the magistrate's recommendation against an award of his attorney's fees.

On October 22, 2021, the circuit court held a hearing on the exceptions and took the matter under advisement. On November 8, 2021, the court entered an order denying the exceptions. That order stated in full:

> This matter came before the [c]ourt on October 22, 2021 on Exceptions filed by both parties to the Magistrate's Written Report and Recommendation (including Findings of Fact), dated July 15, 2021. Both parties were represented by counsel. Upon review and consideration of said Magistrate's Report, the Transcript of Proceedings, dated July 9, 2021, the Cross Exceptions and exhibits thereto, and oral argument of counsel, the Court overrules the Exceptions of both parties, and affirms the Written Report and Recommendation of [the magistrate].

Thereafter, on November 29, 2021, the court entered an order effectively granting Father's motion and directing BCOCSE to release funds held in its account to the parties, waive any arrearages, and close the child support account (the November 8 and 29, 2021 orders are collectively referred to as the "November 2021 Orders"). Mother timely noted her appeal of the November 2021 Orders.

STANDARD OF REVIEW

We have stated 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." *Bagley v. Bagley*, 98 Md. App. 18, 31-32 (1993). "As a general rule, a master's findings of fact are given deference under the clearly erroneous rule." *Id*. at 30. Questions of law, however, are reviewed under a "de novo" standard. *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). On appeal, our goal is "to determine if the trial court abused its discretion." *Kierein v. Kierein*, 115 Md. App. 448, 456 (1997).

DISCUSSION

Mother presents several questions for our review, which we have rephrased and consolidated into one:[2] Did the circuit court err when it denied Mother's exceptions to the magistrate's recommendations in November 2021?

[2] Mother, *pro se*, filed an informal brief, outlining six issues challenging the November 2021 Orders and the October 2019 Order, which, in substance, assert:

1. "Inconsistent treatment of the parties in calculating child support overpayments and underpayments during the same period of time and deriving from the same Order. This created an inequitable result";

2. The court's orders denying Mother's exceptions do not comply with precedent set forth in *Kirchner v. Caughey*, 326 Md. 567 (1992) and *Domingues v. Johnson*, 323 Md. 486 (1991);

3. The court failed to consider the best interest of the minor child in giving Father a child support credit;

(continued)

Mother contends that the court erred in failing to make either an oral or written record showing that it exercised independent judgment in resolving Mother's exceptions, as required by *Domingues v. Johnson*, 323 Md. 486 (1991) and *Kirchner v. Caughey*, 326 Md. 567 (1992). We agree.

Maryland Rule 9-208 provides that in certain domestic relation matters, if a circuit court has a "standing magistrate for domestic relations matters and a hearing has been requested or is required by law," the matter shall be referred to a magistrate. Md. Rule 9-

4. "The Court failed to consider the financial circumstances of the Mother and minor child, compared to those of the Father when rendering its decisions";

5. "Father's income should have been calculated at $11,329" in the October 2019 Order; and

6. "Both at the hearing on June 24, 2019. . . before [the magistrate] and at the October 21, 2019[] hearing before [the judge], the Court failed to maintain a tone of civility in the Courtroom."

Mother's fifth and sixth issues challenge matters at or prior to the entry of the October 2019 Order modifying child support. Mother also attacks the October 2019 Order variously among the other enumerated issues. Issues pertaining to the October 2019 Order, however, were not timely appealed and thus are not properly before this Court. Mother contends that the October 2019 Order is appealable under the collateral order doctrine because the order did not conclusively settle all claims. In particular, she cites to language in the order that states, "to the extent the parties are unable to resolve any alleged overpayment of child support to Mother, all proposed credits are subject to further Order of the Court[.]" Mother claims she could not have appealed the order in 2019 because the "issue of the credit for overpayment remained open[.]" A judgment, however, can be final for appeal purposes, even though it leaves open the possibility of a future event. *See e.g. Cir. City Stores, Inc. v. Rockville Pike Joint Venture Ltd. P'ship*, 376 Md. 331, 350 (2003). The collateral order doctrine, on the other hand, is an exception to the final judgment rule and permits interlocutory appeals without regard to the posture of the case, subject to satisfying four requirements. *Montgomery Cnty. v. Stevens*, 337 Md. 471, 477 (1995). The collateral order doctrine does not apply here.

208(a)(1). Magistrates have "the power to regulate all proceedings in the hearing" and "shall prepare written recommendations, which shall include a brief statement of the magistrate's findings and shall be accompanied by a proposed order." Md. Rule 9-208(b), (e)(1). Nonetheless, "[a] [magistrate's] findings of fact are merely tentative and do not bind the parties until approved by the court." *Doser v. Doser*, 106 Md. App. 329, 343 (1995). If a party wishes to contest the magistrate's findings, he or she may file written exceptions to the magistrate's recommendations within ten days. Md. Rule 9-208(f).

It is the court's role, "not the [magistrate's], to determine the ultimate rights of the parties." *Lemley v. Lemley*, 102 Md. App. 266, 277 (1994). Accordingly, once exceptions are filed, the court must exercise its own "independent judgment concerning the proper conclusion to be reached upon those facts." *Domingues*, 323 Md. at 490. The court's "oral or written" opinion must thus "reflect consideration of the relevant issues and the reasoning supporting the [court's] independent decisions on those issues[.]" *Kirchner*, 326 Md. at 572-73; Md. Rule 2-522(a) ("In a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of determining any damages.").

Our appellate courts have consistently remanded a case where the trial court failed to set forth some indication that it exercised its own independent judgment in resolving a party's exceptions. In *Domingues*, the Court of Appeals remanded the case for further consideration, because "the opinion of the [trial judge] . . . suggest[ed] that he accepted the [magistrate'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[.]" *Domingues*, 323 Md. at 493.

In *Kirchner*, the trial court entered an order stating, without further discussion:

> It is the [c]ourt's opinion, after reviewing the transcript of the hearing before the [magistrate] and considering the arguments of counsel, that the [magistrate's] findings are correct. Accordingly, it is the ruling of the Court that Plaintiff's and Defendant's exceptions are DENIED.

Kirchner, 326 Md. at 571. The Court of Appeals vacated and remanded the case for further consideration, because there was "no discussion of the issues by the [trial judge], and no indication that he applied his independent judgment in reaching the conclusion he did. *Id.* at 572. The Court explained, "the [court's] opinion should reflect consideration of the relevant issues and the reasoning supporting the [court's] independent decisions on those issues, and we observe that Rule 2-522(a) requires no less." *Id*. at 573.

In *Bagley*, the trial court issued a memorandum and order adopting the magistrate's findings and recommendations, stating in relevant part:

> Based on the transcript of the proceedings before the [magistrate], the Plaintiff's Exceptions, the Defendant's Answer to the Exceptions and the parties['] Agreement of August 23, 1989, this [c]ourt finds that the [magistrate] was not shown to be clearly erroneous in her findings or misapplied the law to her findings. In an exercise of its independent judgment, this Court hereby adopts the Findings and Recommendations of the [magistrate] as its own.

Bagley, 98 Md. App. at 28. We remanded certain exceptions because the trial judge "did not make any record of how he resolved" the party's challenge to the magistrate's determination. *Id*. at 32.

In *Lemley*, the trial court did not address each challenge to the magistrate's findings and recommendations separately, nor did it state for the record how it resolved each challenge. 102 Md. App. at 279. The party's "specific exceptions to the [magistrate's] fact-finding [were] swept aside with a broad statement that the facts found by the [magistrate] '[were] well founded from the evidence presented.' That statement does not comport with the requirements of *Domingues, Kirchner,* and *Bagley*." *Id.* at 278-79; *see also Doser*, 106 Md. App. at 345 (remanding where "[t]he Order merely states that the 'Plaintiff's Exceptions to the Report and Recommendations of the Domestic Relations [magistrate] are overruled and denied.'"); *Kierein*, 115 Md. App. at 455 (remanding where the court's order did not reflect "consideration of the relevant issues and reasoning supporting [its] independent decisions on those issues," other than stating that it "reviewed the transcript of the proceedings before [the magistrate] . . . and based upon the aforementioned review of all of the evidence, adopts the findings and recommendations of [the magistrate]."") (Citation omitted).

In the case before us, the November 2021 Orders suggest that the court did not examine Mother's exceptions to determine which facts were properly before it.[3] *See*

[3] An important caveat to the *Domingues-Kirchner* standard "is that it only applies to exceptions that allege that a [magistrate's] fact-finding is unsupported by the record." *Bagley*, 98 Md. App. at 31. The court must determine "which facts are properly before [it]" before exercising independent judgment to determine the proper result. *Domingues,* 323 Md. at 496; *cf. Cousin v. Cousin*, 97 Md. App. 506, 517 (1993) (explaining that there is no need to address each finding of fact where the excepting party does not allege specific fact-finding error) (citing *Noffsinger v. Noffsinger*, 95 Md. App. 265, 274 n.1 (1993)).

Domingues, 323 Md. at 496. And the court failed to demonstrate how it resolved any factual challenges and exercised independent judgment as required by *Domingues*, *Kirchner*, and their progeny. The court's written order was not substantively different than those that our appellate courts have held legally insufficient, *supra*. Nor does the hearing transcript provide any indication of the court's exercise of independent judgment.

Because the court failed to comply with the well-established precedent requiring independent judgment in resolving the exceptions, we shall vacate the court's November 2021 Orders and remand for further proceedings consistent with this opinion and the principles discussed in *Domingues*, *Kirchner*, and their progeny.[4] We express no opinion as to the merits of Mother's exceptions.

APPEAL OF ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY DATED OCTOBER 21, 2019 DISMISSED. ORDERS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY ENTERED NOVEMBER 8, 2021 AND NOVEMBER 29, 2021 VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[4] The court's responsibility to exercise its own independent judgment when considering exceptions is not intended to be an overly burdensome one. As this Court has stated, "we do not mean to imply that a trial court must give a litany of its reasons for accepting and adopting the fact finding, conclusions, and recommendations of a master." *Kierein*, 115 Md. App. at 455-56. Instead, "[a]t a minimum," the court must "summarize briefly the evidence in the record that supports each challenged fact." *Lemley*, 102 Md. App. at 279 (footnote omitted).