Circuit Court for Prince George's County
Case No. CAD22-11305

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1918

September Term, 2022

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JAYNIECE BROWN

v.

MICHAEL PRESENTADO

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Ripken,
Tang,
Meredith, Timothy, E.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Meredith, J.

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Filed: January 2, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Jayniece Brown, appellant, and Michael Presentado, appellee, are respectively the mother and putative father of R.B., a minor child. In this appeal, Ms. Brown, representing herself, filed an "informal brief" pursuant to Maryland Rule 8-502(a)(9) contesting a custody order entered by the Circuit Court for Prince George's County on December 7, 2022, which awarded Mr. Presentado sole legal and primary physical custody of R.B. In her informal brief, which we have liberally construed, Ms. Brown's principal contention is that she did not receive adequate notice from the court, and was not able to attend the *pendente lite* hearing which resulted in the court granting Mr. Presentado sole legal custody. In the informal brief filed by appellee's counsel on behalf of Mr. Presentado, counsel asserts that the court's custody order was supported by the testimony offered at the *pendente lite* hearing Ms. Brown did not attend, and he urges this Court to dismiss the appeal.

Although appellant's arguments are very thinly presented, we have noted several irregularities in the record, and we are guided by precedent in which the appellate courts of Maryland have shown great concern to ensure that parents are not deprived of parental rights without notice. Ms. Brown's informal brief asserts that she did not receive notice of the hearing at which the magistrate made the custody determination, and we observe that the address listed for her on the clerk's notice of that hearing did not include her apartment number, whereas she consistently used it in papers she filed in this case. Moreover, the November 10 hearing was supposed to have been a *pendente lite* hearing on temporary access, but the order proposed by the magistrate and adopted by the court was a final

custody order. Because we are not satisfied that Ms. Brown received adequate notice of the *pendente lite* hearing, and because that hearing was described in the court's own scheduling order as a one hour hearing "on the issues of access" (and not a merits hearing on custody), we will vacate the order entered as a result of that hearing, and remand the case for further proceedings.[1]

## BACKGROUND

On April 1, 2022, Mr. Presentado, through counsel, filed a complaint seeking joint legal custody and physical custody of R.B., with an access schedule for Ms. Brown. In his complaint, Mr. Presentado alleged that, although they never married, Ms. Brown and he were engaged in a relationship that resulted in R.B.'s birth in March 2020. Mr. Presentado further alleged that, after living together for an unspecified period of time, the parties separated in January 2022, whereupon he attempted without success to negotiate a "stable access schedule and custody arrangement[.]" The verified complaint alleged that both "parties are fit and proper individuals to be granted joint legal custody" and "[b]oth parties are able to financially support the child."

[1] Ms. Brown's brief identifies two additional issues. She asserts that Mr. Presentado's paternity of R.B. has not been established. We see no ruling in the record regarding that issue. She also asserts that she did not receive notice from the circuit court regarding a hearing that was conducted on August 11, 2022, relative to a motion made by a non-parent seeking to intervene in the case. We note that she acknowledges that she was told of the August 11 hearing by the party who petitioned to intervene, and Ms. Brown did participate in that hearing that was conducted via Zoom. We perceive no further request for relief regarding that issue.

Ms. Brown was personally served with the summons and complaint at her Hyattsville apartment on April 12, 2022.

On April 18, 2022, Ebone Wilson—R.B.'s purported godmother who was sometimes described by Ms. Brown as her "aunt"—filed a *pro se* motion to intervene, requesting "full physical and legal custody" of R.B. In that motion, Ms. Wilson claimed that she had served as R.B.'s "full-time guardian" since Ms. Brown had placed R.B. in her care on May 1, 2021. Ms. Wilson also alleged that Ms. Brown was unable to provide R.B. with either "consistent care" or a "safe, stable environment[.]" With respect to Mr. Presentado, Ms. Wilson asserted that he had neither "established . . . a healthy relationship with [R.B.] [n]or exhibited a prior interest or willingness to care for the child."

On May 11, 2022, Ms. Brown, representing herself, filed an "[a]nswer"—which was, in substance, an answer and counter-complaint—to Mr. Presentado's custody complaint. In that pleading, Ms. Brown attributed Mr. Presentado's alleged lack of visitation with R.B. to Mr. Presentado's having arranged his work schedule to conflict with "family time[.]" She also claimed that Mr. Presentado's paternity of R.B. had not been confirmed. As relief, Ms. Brown requested that the court (1) "establish paternity" between R.B. and Mr. Presentado, (2) grant the parties "joint custody," and (3) establish an access schedule among Mr. Presentado, Ms. Wilson, and herself.

Although the court initially granted Ms. Wilson's motion to intervene, Mr. Presentado filed a "Motion to Revise and Answer to Motion to Intervene." In that motion, Mr. Presentado denied Ms. Wilson's allegations against him and argued that Ms. Wilson

"d[id] not meet any of the requirements to be an intervener in th[e] case" because she was not "a blood . . . relative" or a de facto parent and she had not otherwise demonstrated a sufficient interest in the subject matter of the proceeding.

The court scheduled a remote hearing on Mr. Presentado's motion for August 11. All three parties attended the hearing via Zoom. Mr. Presentado was represented by counsel, but Ms. Brown and Ms. Wilson appeared without counsel. After hearing from the parties, the court granted Mr. Presentado's motion for reconsideration, vacated its prior order, and denied Ms. Wilson's motion to intervene. At the conclusion of the hearing, the motion judge told the parties that the docket entry would reflect that "this [case] be set in for a scheduling conference and at that time you can request a PL hearing for any type of temporary relief . . . ."

On October 7, 2022, the court set a remote scheduling conference for October 19, 2022. Notably, the written notice of the scheduling conference did not include Ms. Brown's apartment unit number in her address. Following that conference, the court issued a scheduling order, which appears to have contained two clerical errors. First, it, too, omitted the apartment unit number from Ms. Brown's mailing address. Second, it recited that "the Defendant" (Ms. Brown) had attended the scheduling conference on October 19 *with counsel*—despite no attorney having ever entered an appearance on her behalf—while stating that "the Plaintiff" (Mr. Presentado) had appeared without counsel.

The scheduling order set a *pendente lite* hearing on child access for November 10, 2022, and a merits trial on the issues of custody, access, and child support for February 27,

2023. Although the scheduling order was dated October 19 and signed by the administrative judge on October 27, the docket entries reflect that the scheduling order was entered on November 14—four days after the date on which the *pendente lite* hearing which is the subject of this appeal was held.

On November 10, 2022, a magistrate convened a remote hearing, ostensibly to address the issue of *pendente lite* access to R.B. The record before us does not include a transcript of the remote hearing conducted by the magistrate. Although Mr. Presentado and his attorney attended the hearing, Ms. Brown did not.

She explains in her informal brief that she "did not receive[] anything" from the court pertaining to the November 10 hearing. She states in her brief:

> The only reason on how I knew about the hearing on 11/10, was because I logged onto Maryland Case Search. I also saw that there was a Courtroom #, which led me to believe that the hearing was in a courtroom. I even called Magistre [sic] 2x to confirm. I was told two different times, 8:30 am & 1:00 pm. On 11/10, I went to the courthouse about 8:45am. I stood by the courtroom that was supposed to house the hearing, but the baliff [sic] that stood guard by that courtroom told me that the judge does only Zoom hearings. So, the baliff pointed me to magistre[,] & magistre pointed me somewhere else.
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> I ended up walking around the courthouse for about a good hour until I was redirected to a room where this guy gave me a Zoom link and I went in and Family Magistre told me that they already did my case.

From the record, it appears that the presiding magistrate issued a proposed order (dated "11/10/2022") on November 18 that did not provide for *pendente lite* access to the child. Instead, the order stated that there had been a hearing conducted on November 10, 2022, on "Plaintiff's Complaint for Custody[.]" The order further provided that "Plaintiff's

Complaint for Custody . . . is granted." And it was further ordered that "Plaintiff be and is hereby awarded sole legal and primary physical custody of the minor child . . . ." Additionally, the order provided that "this case be and hereby is closed for statistical purposes only."

On December 1, a circuit court judge signed the order as proposed by the magistrate, without any alterations, and the judgment granting Mr. Presentado sole legal custody was entered by the clerk on December 7, 2022.

This timely appeal was filed by Ms. Brown on January 6, 2023.[2]

**DISCUSSION**

This Court has addressed due process challenges to child custody orders in at least two prior reported opinions. During a divorce proceeding in *Van Schaik v. Van Schaik*, 90 Md. App. 725 (1992), the parties reached a separation agreement that provided for joint legal custody of their minor child, with primary physical custody to the mother and reasonable visitation to the father. After that agreement was filed, the trial court appointed

[2] Mr. Presentado's counsel filed a preliminary motion for this Court to dismiss the appeal because Ms. Brown had not filed exceptions to the magistrate's proposed disposition, and appellee contended Ms. Brown had thereby waived any objections. Appellee asserted in the motion: "Since no exceptions were taken, [the appellant] has no right to take an appeal to the Court of Special Appeals." This Court denied that motion, explaining:

> A party who fails to file timely exceptions to a magistrate's recommendations waives any claim that the magistrate's findings are clearly erroneous, but the party may still challenge the circuit court's "'adoption of the [magistrate's] application of the law to the facts.'" *Barrett v. Barrett*, 240 Md. App. 581, 587 (2019) (quoting *Green v. Green*, 188 Md. App. 661, 674 (2009).

a child's attorney, who subsequently "requested a hearing 'with regard to visitation and other issues.'" *Id.* at 730. The court scheduled a hearing and, in a notice to the parties, advised them: "HEARING ON VISITATION AND CHILD'S POSSESSIONS has been scheduled for March 18, 1991[,] from 9:00 a.m. to 11 a.m." *Id.* Because the father "did not seriously contest the visitation and property issues," he attended the hearing *pro se*. *Id.* At the conclusion of that hearing, the court terminated the father's parental rights to the child on its own initiative.

On appeal, we vacated the circuit court's order, holding that the father "was not given proper notice that matters relating to custody were to be the subject of the hearing at issue." *Id.* at 738. We reasoned that it was clear from the language of then FL § 9-205 that, "if a court is contemplating holding a hearing at which it will, or may, determine custody issues, a parent with custodial rights . . . must be notified that such an issue may be the subject of the hearing."[3] *Id.* In that case, however, the notice did not indicate that "the court was contemplating making a custody decision[,]" nor did either party request that the court do so. *Id.* at 739. Absent prior notice to the father that the court would consider custody, we concluded that the father had been deprived of "an opportunity for effective argument on the issue[.]" *Id. See also Blue Cross of Md., Inc. v. Franklin Square Hosp.*, 277 Md. 93, 101 (1976) ("[U]nless . . . a party otherwise receives adequate notice of an issue during the

[3] Chapter 502 § 2 of the Acts of 2004 repealed and recodified former FL § 9-205, without substantive change, as FL § 9.5-205.

course of a proceeding, due process is denied."), *quoted with approval in Van Schaik*, 90 Md. App. at 739.

In *Burdick v. Brooks*, 160 Md. App. 519 (2004), we were again presented with a due process challenge to an adverse custody order. In that case, the circuit court granted the parties an absolute divorce and granted Burdick *pendente lite* custody of their minor children on May 6, 2003. The court subsequently "ordered the parties to cooperate in psychological evaluations[.]" *Id*. at 523. During the ensuing months, the parties filed competing motions, each seeking "to limit the other's access to the . . . children." *Id*. The court scheduled a status conference, of which it notified the parties in a letter which read: "Please be advised that this conference is approximately fifteen (15) minutes long. It is a chance for you to inform the Judge of the issues and he will decide how to proceed. This is not a hearing or trial[;] there will not be time for witnesses to speak." *Id.* (bold emphasis of last sentence omitted). At that proceeding—despite the fact that the notice said the conference would not be "a hearing or trial"—the court "awarded temporary custody of the three youngest children to Brooks, with visitation rights to Burdick[,]" citing the latter's failure to comply with its psychological evaluation order. *Id.* at 523-24. We vacated the circuit court's temporary custody order. Relying on *Van Schaik*, we held: "Because the court did not provide notice of a possible custody determination, Burdick had no opportunity for an **effective argument** on the issue of custody." *Id.* at 527 (quotation marks and citation omitted; emphasis retained).

In our view, the manner in which the circuit court decided the custody issue in Ms. Brown's case is marred by similar procedural defects. The circuit court's scheduling order expressly limited the scope of the November 10 hearing to the issue of *pendente lite* access to R.B. As in *Van Schaik* and *Burdick*, the scheduling order did not notify either party that the issues of legal and physical custody would or might be addressed at that hearing.[4] Rather, the scheduling order explicitly stated that "the issue[] of custody" would be considered at a "trial on [the] merits" scheduled for 9:00 a.m. on February 27, 2023—after a January 9 discovery and motions deadline, a January 30 parenting plan deadline, and a February 9 settlement conference. Consequently, even if we were to assume that Ms. Brown was or should have been aware of the scheduling order—which did not bear her complete address and was entered on the docket on November 14—it would not have provided her notice that the November 10 hearing could culminate in a custody determination. Further, as in *Van Schaik*, the circuit court granted Mr. Presentado relief that he did not seek in his complaint, namely *sole* legal custody of R.B. *See also Huntley v. Huntley*, 229 Md. App. 484, 493-94 (2016) ("[T]he trial court's authority to grant relief to a party is circumscribed by the relief requested in that party's pleadings.").

[4] We take judicial notice of the fact that Case Search, on which Mother claims to have relied, likewise characterized the proceeding as a *pendente lite* hearing. *See Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016) ("We take judicial notice of the docket entries . . . found on the Maryland Judiciary CaseSearch website, pursuant to Maryland Rule 5-201."), *aff'd*, 452 Md. 663 (2017).

Based upon the limited materials and information before us, it appears that Ms. Brown was not given notice that the court could terminate her legal custody of R.B. during the November 10 hearing. Further, because she did not attend the hearing due to the ambiguous location listed in Case Search, Ms. Brown did not "otherwise receive[] adequate notice of [the] issue during the course of [the] proceeding[.]" *Van Schaik*, 90 Md. App. at 739 (quotation marks and citation omitted). Under the circumstances, the court's order entered on December 7, 2022, cannot be allowed to stand as an initial determination of R.B.'s custody.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.**