UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2395

September Term, 2013

ZACHARIAH GARNER

v.

EMILY GARNER

Nazarian,
Leahy,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: May 4, 2015

Appellant, Zachariah Garner, appeals the denial of his second motion to modify *pendente lite* alimony, child support, and other financial assistance (hereinafter "second motion to modify") without a hearing in the Circuit Court for Howard County. He presents one question for our review, which we quote:

> Did the circuit court err when it denied appellant's "Second Motion to Modify Pendente Lite Alimony, Child Support, and Other Financial Assistance to Wife and/or Children and for Other Relief and Request for Hearing" without an opportunity for a hearing on those issues?

As no such hearing was required, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant, and Emily Garner, appellee, were married on January 19, 2001. Three children were born of the marriage, and the parties separated on July 11, 2012. Appellant filed a complaint for limited divorce on or about January 4, 2013 and the case came before Master Mary M. Kramer for a *pendente lite* hearing. Master Kramer issued a *pendente lite* order directing appellant to pay: $2,325 mortgage payment, $547 car payment, $130 car and homeowner's insurance, and $2,000 alimony monthly. Appellant's second motion to modify requested a hearing and alleged that he had recently lost his job, presently had no income, and was unable to comply with the *pendente lite* order. Appellee filed a response opposing the second motion to modify. The circuit court was scheduled to hear the divorce case on December 18, 2013, and denied the second motion to modify without a hearing on December 17th. In denying the motion, the court explained: "Since trial is tomorrow – no meaningful

relief can be granted – therefore, denied." Because of a lack of judicial resources, the case did not come to trial until May 28, 2014.

DISCUSSION

Appellant's sole contention on appeal is that the circuit court improperly denied his second motion to modify without granting a hearing. In making this assertion, he relies upon Maryland Rule 2-311(f) and *Bond v. Slavin*, 157 Md. App. 340 (2004).

Maryland Rule 2-311 provides in pertinent part:

> **(e) Hearing – Motions for Judgment Notwithstanding the Verdict, for New Trial, or to Amend the Judgment.** When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.
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> **(f) Hearing – Other Motions.** A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." The title of the motion or response shall state that a hearing is requested. **Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.**

(Emphasis added).

Appellant asserts that the court violated subsection (f) above because the motion was "dispositive of a claim or defense," and therefore, he claims that the court was required to hold a hearing, because a hearing was requested. We disagree.

We have defined a "dispositive decision" for the purposes of Rule 2-311(f) as "one that conclusively settles a matter." *Pelletier v. Burson*, 213 Md. App. 284, 292-93 (2013) (citation and quotation omitted). We have previously held that a motion to modify child support amounts to a motion to alter or amend a judgment pursuant to Maryland Rule 2-534, and therefore, a hearing on such a motion is not required unless the court grants the motion. *See Hill v. Hill*, 118 Md. App. 36, 44 (1997), *cert. denied* 349 Md. 103 (1998). We are persuaded that the court's denial of appellant's second motion to modify was not a "dispositive decision" and, accordingly, the court was not required to hear argument on the motion, unless it intended to grant it.

Appellant's reliance on *Bond v. Slavin*, 157 Md. App. 340 (2004) is misplaced. There, Bond filed motions for a protective order and a restraining order ordering Slavin's counsel to put certain of Bond's bank records in the court's custody, and that the bank be ordered to cease any further production of Bond's financial records. *Id.* at 348. The circuit court denied these motions, and we reversed, noting that the court's denial of these motions was dispositive of Bond's claim. *Id.* at 355. The denial of these motions was dispositive because appellant had no other recourse to obtain the relief sought.

In the present case, appellant could have sought relief during trial to retroactively modify the terms of the *pendente lite* support awarded by Master Kramer. The court's denial

of his second motion to modify was, therefore, not dispositive. Accordingly, we hold that the court did not err in denying appellant's second motion to modify without a hearing.

Appellant also asserts that his second motion to modify could have been granted retroactively to the date he filed the second motion to modify, thus implying that the court's reasoning in denying the motion was flawed. This issue, however, is not presented for our review as appellant confined his question to simply whether a hearing should have been granted, and not the propriety of the court's denial of his motion.

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