

**UNREPORTED**  
**IN THE COURT OF SPECIAL APPEALS**  
**OF MARYLAND**

No. 1109

September Term, 2016

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JOHNNY HANEY

v.

JAMIE K. ROYER

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Meredith,  
Arthur,  
Leahy,

JJ.

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Opinion by Meredith, J.

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Filed: June 12, 2017

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.

In this appeal, Johnny Royer (“Husband”), appellant, complains of various errors and abuses of discretion by the Circuit Court for Montgomery County, in the context of appellant’s divorce and custody case against Jamie Royer (“Wife”), appellee. Appellant makes five contentions on appeal:

- I. The court erred when it denied appellant’s motions for modification of alimony and child support;
- II. The court erred and abused its discretion when awarding indefinite alimony;
- III. The court erred as a matter of law and abused its discretion when it found appellant in contempt;
- IV. The court erred in granting the appellee sole legal custody; and
- V. The court erred and abused its discretion in determining and granting a monetary award.

Because the notice of appeal was not filed within 30 days after the entry of final judgment on those issues, we will affirm the judgments of the Circuit Court for Montgomery County.

### **FACTS AND PROCEDURAL HISTORY**

The parties to this case were married on September 6, 1986, and separated on March 27, 2014. Six children were born to the marriage, two of whom were still minors at the time of the divorce and custody proceedings.

The divorce trial was held before a judge of the Circuit Court for Montgomery County on October 13-14 and November 4, 2015. The court took the matter under advisement. At a session of court held on December 22, 2015, the court orally delivered

its opinion. To briefly summarize, the court: granted Wife a divorce from Husband based on a one-year separation; granted Wife's petition to modify custody, and awarded her sole legal custody of the minor children; made a monetary award to Wife in the amount of \$89,697.00, and entered a judgment against Husband in that amount; denied Husband's motion to modify as to alimony, and ordered Husband to pay Wife \$500 a month in indefinite alimony; and granted Husband's motion to modify as to child support, and ordered Husband to pay \$733 per month in child support as of May 1, 2015, and \$1,237 per month in child support as of January 1, 2016.

In a separate order, the court: (a) found Husband in contempt for his failure to pay Wife the agreed-upon alimony amount of \$2,000 per month from May 1, 2015, through December 22, 2015; (b) found that the Husband was in arrears in the amount of \$15,419.35; and (c) ordered that Husband could purge the contempt by providing an irrevocable instruction directing the trustee who was conducting the sale of the marital home to pay directly to Wife the first \$15,419.35 of Husband's share of the proceeds from the sale. The two written orders documenting these judgments --- the Judgment of Absolute Divorce and the Order Adjudicating [Appellant] in Contempt --- were entered on the docket on January 14, 2016.

In the meantime, however, on January 4, 2016, Husband, through new counsel, filed a Rule 2-534 motion to alter or amend the as-yet-undocketed (but announced) rulings described above. In that motion, Husband contended that the court either erred or abused its discretion, or both, in various rulings it had announced, including its denial of his motion

to modify alimony and child support, its award of child support and alimony in an amount that allegedly “exceeded [Husband’s] actual income,” its award of indefinite alimony, its failure to impute a higher amount of income to Wife, its award of sole legal custody of the minor children to Wife, and its finding of contempt. In this motion to alter or amend, Husband noted his intention to file a supplement once the trial transcript became available. He also requested a hearing.

As noted, the court’s written orders were entered on January 14, 2016. On January 22, 2016, Wife filed an opposition to Husband’s motion to alter or amend. On January 28, 2016, Husband filed a “supplemental motion to alter or amend,” and again requested a hearing. Wife filed an opposition, and requested that a hearing not be held if the court was inclined to deny the motion, because she could not afford it.

On February 29, 2016, the court docketed an order denying Husband’s motion to alter or amend. It had not held a hearing. We will refer to the January 4 motion to alter or amend, together with the January 28 supplement, as Husband’s first post-judgment motion (“the first motion”).

On March 10, 2016, Husband filed a “motion for reconsideration of the court’s denial of the first motion,” without citing any specific rule. This motion argued exclusively that the court had committed error when it denied the first motion to alter or amend without a hearing. Wife filed an opposition, pointing out that, under Rule 2-311(e), the court had not been required to hold a hearing on a Rule 2-534 motion that was denied. But on April

26, 2016, the court did conduct a hearing on Husband's motion for reconsideration.

Although no order appears in the record, Docket Entry #218 reflects:

HEARING (ALBRIGHT, J.) ON DEFENDANT'S MOTION FOR RECONSIDERATION --- GRANTED INsofar AS THE COURT HAS AMENDED ITS ORDER AT DOCKET ENTRY #203 [the February 29, 2016 order denying the appellant's first motion to alter or amend] TO REFLECT THE BASIS FOR THE COURT'S DECISION TO DENY THE MOTION FOR RECONSIDERATION WITHOUT A HEARING AS EXPLAINED ON THE RECORD.

The motion for reconsideration was Husband's second post-judgment motion ("the second motion").

On May 6, 2016, Husband filed his third post-judgment motion, which he captioned "Defendant's Motion to Alter or Amend Court's Order D.E. No. 218" ("the third motion"). This motion cited Rule 2-534, and, like the March 10 motion for reconsideration, was focused not on the underlying merits of the divorce and custody trial, but on whether or not the court should have granted a hearing on the first motion before denying it on February 29, 2016. Although Docket Entry No. 218 indicated that, on April 26, 2016, the court had explained its reasoning for not holding a hearing on the first motion, Husband again requested a hearing on the May 6 motion. Wife filed a timely opposition. On July 7, 2016, in an order on which the court noted that it had determined that Husband "is not entitled to a hearing on his [original] Motion to Alter or Amend and his Supplemental Motion to Alter or Amend," the court denied the motion to alter or amend "Court's Order D. E. No. 218," without a hearing.

On August 1, 2016, Husband filed his first (and only) notice of appeal. In his brief and reply brief to this Court, Husband argues that the trial court erred and abused its discretion in various ways in the underlying divorce trial and the contempt action, but he does not make any argument about the denials of any of the post-judgment motions. Under the circumstances outlined above, the notice of appeal was not timely to preserve the issues Husband argues in his brief and reply brief. We explain.

### **APPEALABILITY**

Rule 8-202(c) addresses the time limit for filing an appeal in a civil action, and provides, in pertinent part:

In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal [to this Court] shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534.

Ordinarily, a notice of appeal must be filed “within 30 days after the entry of the judgment or order from which the appeal is taken.” Rule 8-202(a). But, if a party files a Rule 2-534 motion to alter or amend within ten days after the entry of judgment, that motion stays the time for filing an appeal to this Court until thirty days after the disposition of the Rule 2-534 motion. We explained in *Sieck v. Sieck*, 66 Md. App. 37, 44-45 (1986):

[A] motion to revise the judgment, however labeled, filed within ten days after the entry of judgment will be treated as a Rule 2-534 motion in applying Rule 1012d.<sup>[1]</sup> It will, therefore, stay the time for filing an appeal until the court rules on the motion, . . . .

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<sup>1</sup> The Source Note to Rule 8-202 indicates: “This Rule is derived from former Rule 1012.”

*Accord, Pickett v. Noba, Inc.*, 114 Md. App. 552, 556 (1997) (“When parties file timely motions under [Rule 2-534], the time the parties have to note an appeal is suspended until after the motion is decided. . . . If parties file a . . . motion to alter or amend more than ten days after judgment, the time for filing an appeal will not be stayed.”)

As we discussed in *Leese v. Department of Labor, Licensing and Regulation*, 115 Md. App. 442 (1997), a party cannot obtain additional extensions of the deadline to appeal by filing a series of successive motions to alter or amend within ten days of the previous motion’s denial. In *Leese*, the appellant filed a timely Rule 2-534 motion within ten days of an order denying her workers’ compensation benefits. That motion was denied in an order docketed on April 13, 1995. Appellant then filed a second Rule 2-534 motion on April 24, *i.e.*, within ten days of that denial. Appellant then filed a notice of appeal to this Court on May 11.

We observed that a second motion to alter or amend does not extend the time for noting an appeal from the original judgment:

**We first point out that appellant’s second motion did not extend the appeal time pursuant to Rule 8-202(c). To interpret the rule in that manner would permit a party to extend the time for appeal *ad infinitum* based on the filing of successive motions within ten days after denial of the immediately preceding motion.**

*Id.* at 445 (emphasis added).

In this case, appellant filed his first post-judgment motion pursuant to Rule 2-534 on January 4, 2016, and its supplement on January 28, 2016, attacking judgments that were entered on January 14, 2016.<sup>2</sup> Rule 2-534 provides:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

The first motion was denied in an order docketed February 29, 2016. Appellant did not note an appeal to this Court at that time. Rather, he filed a motion for reconsideration complaining about the court's failure to conduct a hearing on the first motion.

According to Docket Entry #218, the court gave appellant a hearing on the second motion on April 26, 2016, to explain why it had denied the first motion without a hearing. Appellant then filed a third post-judgment motion pursuant to Rule 2-534 on May 6, 2016, again complaining about the court's failure to conduct a hearing on the first motion; this third post-judgment motion was almost identical to the second, and reiterated appellant's contention that the first motion should have been the subject of a hearing.

On July 7, 2016, the trial court denied the third motion. On August 1, 2016, appellant noted an appeal to this Court. He has presented us with five questions bearing

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<sup>2</sup> These were timely due to the operation of the last sentence of Rule 2-534. We consider the January 4, 2016, motion to alter or amend to have been filed on January 14, 2016, after the court's orders regarding the divorce and the contempt were filed.



on the divorce trial, the contempt finding, and the orders that resulted therefrom that were filed on January 14, 2016. But, because a party cannot indefinitely extend the time prescribed by Rule 8-202(c) for filing an appeal to this Court by filing more than one motion to alter or amend, a timely notice of appeal to this Court of the underlying divorce and contempt issues had to be filed by March 29, 2016, thirty days after the docketing of the order denying the first motion to alter or amend. The August 1 notice of appeal was timely only as to the denial of the third motion. But the only point argued in the third motion was the court's failure to hold a hearing before denying the first motion. It is clear that, under Rule 2-311(e), no hearing was required. *In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 357 (2005). As to that ruling, appellant made no argument in his brief.

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