Circuit Court for Prince George's County
Case Nos: CAD14-36040; CAP14-22705

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 328

September Term, 2019

DEAN E. LAKE

v.

GABRIEL R. MCCONNELL

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 17, 2020

*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.

Dean Lake, appellant, and Gabriel McConnell, appellee, are the parents of one minor child. The present appeal, noted by Mr. Lake, is taken from a March 2019 order entered in the Circuit Court for Prince George's County adjudicating several motions filed by the parties regarding, in pertinent part, the modification of child custody and support.[1] On appeal, Mr. Lake raises the following questions for our review, which we consolidate, reorder, and rephrase for clarity:

1. Did the circuit court abuse its discretion in denying Mr. Lake's motion to revise the June 5, 2018 order pursuant to Maryland Rule 2-535(d)?

2. Did the circuit court err in denying Mr. Lake's motion to dismiss the motion to modify child support filed by Ms. McConnell?

3. Did the circuit court err in modifying Mr. Lake's child support obligation?

4. Did the circuit court abuse its discretion in awarding Ms. McConnell attorney's fees?

5. Did the circuit court err in ruling on Mr. Lake's motion for contempt without a hearing?

For the following reasons, we shall affirm the judgment of the circuit court.

DISCUSSION

MOTION TO REVISE

Mr. Lake's first contention on appeal is that the circuit court erred in denying his motion to revise the court's June 5, 2018 order which, in pertinent part, clarified the provisions of a previous custody order and established Mr. Lake's visitation schedule with

[1] The March 2019 order was entered in two cases in the circuit court: CAD14-36040 and CAP14-22705. Paternity and child support were established in CAP14-22705. Custody and visitation were established in CAD14-36040. The court noted that the cases were "cross-referenced and . . . repeatedly co-mingled."

the minor child. We review the circuit court's decision not to exercise its revisory power for an abuse of discretion. *Mullaney v. Aude*, 126 Md. App. 639, 666 (1999).

During a May 2018 hearing attended by the parties, the court pronounced its oral ruling as to Mr. Lake's visitation schedule with the minor child and directed Ms. McConnell's counsel to submit a draft order reflecting its ruling for signature. The court's oral ruling specified that Mr. Lake would receive five weeks of summer visitation, occurring at varying weekly and biweekly intervals. At the conclusion of Mr. Lake's summer visitation, the court specified that the parties would "go back to the normal weekend schedule," in which Mr. Lake enjoyed alternating weekend access. However, the June 5, 2018 order prepared by Ms. McConnell's counsel and entered by the court provided Ms. McConnell with the "remaining time prior to the minor child returning to school," with no mention of Father's alternating weekend access. Mr. Lake argued that the language in the June 5th order denies him visitation he would have been entitled to under the court's oral ruling.

In October 2018, approximately four months following the entry of the June 5th order, Mr. Lake filed a motion to revise the order pursuant to Maryland Rule 2-535(d). In opposition, Ms. McConnell provided e-mail conversations between the parties' counsel reflecting that the transcript of the court's oral ruling had been obtained prior to the drafting of the order to ensure its accuracy and had been forwarded to Mr. Lake's counsel. The proposed order was submitted to Mr. Lake's counsel for review and signature. Ultimately, counsel for both parties signed the June 5th order, indicating that it was "REVIEWED AS

TO FORM AND CONTENT" prior to submission to the court for entry. On March 22, 2019, the court entered an order denying Mr. Lake's motion to revise.

On appeal, Mr. Lake asserts that Ms. McConnell's attorney "did not follow the [judge's] order and made changes and modification to the original custody agreement without the consent of the court" and that the court erred "when it allowed [her] to change the court order[]." However, these conclusory statements are unsupported by a "clear concise statement of the facts" necessary for the court to make a determination in this case as required by Maryland Rule 8-504(a)(4). Specifically, Mr. Lake's brief does not address the disputed language contained in the June 5th order or the arguments raised in the circuit court for or against revision of the June 5th order. Additionally, Mr. Lake has failed to advance sufficient argument and legal authority as to this issue on appeal as required by Maryland Rule 8-504(a)(6). We, therefore, decline to consider on appeal whether the court abused its discretion in denying Mr. Lake's motion to revise. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (wherein the court refused to "delve through the record to unearth factual support for [the appellant]" and refused to "seek out law to sustain [the appellant's] position."); *see also Klauenberg v. State*, 355 Md. 528, 552 (1999) (stating that "arguments not presented in a brief or not presented with particularity will not be considered on appeal").

Even were we to exercise review of this issue, the record does not reflect that there was an abuse of discretion in the court's denial of the motion to revise. Mr. Lake's motion to revise relied exclusively upon Maryland Rule 2-535(d), which permits the court to exercise revisory power to correct "clerical mistakes in judgments, orders, or other parts of

the record" at any time after entry of the judgment. In seeking revision of an enrolled judgment, Mr. Lake was also required to show that he acted "with ordinary diligence and in good faith upon a meritorious cause of action or defense." *Platt v. Platt*, 302 Md. 9, 13 (1984). Mr. Lake's motion to revise, however, failed to set forth any explanation regarding why the purported clerical mistake was not identified prior to counsel's signature approving the proposed order, nor does it explain why he waited four months before seeking revision of the order. It was not unreasonable, therefore, for the court to determine that Mr. Lake had failed to make the proper showing that he acted with "ordinary diligence" or in "good faith." Moreover, Mr. Lake failed to demonstrate that inclusion of the language constituted a clerical mistake under Maryland Rule 2-535(d), especially given that the disputed language in the June 5th order was compared against the transcript and approved by both parties.

MOTION TO DISMISS

In 2018, Ms. McConnell filed three separate motions to modify child support. Mr. Lake moved to dismiss Ms. McConnell's motions pursuant to Maryland Rule 2-322, asserting that Ms. McConnell had failed to provide her W-2's and paystubs and had, instead, provided a "false W-2." On March 22, 2019, the court entered an order denying Mr. Lake's motion to dismiss. Mr. Lake contends on appeal that the circuit court erred in doing so.

In reviewing the grant of a motion to dismiss, we "must determine whether the [petition], on its face, discloses a legally sufficient cause of action." *Scarbrough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019). However, Mr. Lake's

brief does not set forth argument that Ms. McConnell's petitions for modification failed to disclose a legally sufficient cause of action. He, instead, directs his attention to the authenticity of documents provided by Ms. McConnell during discovery. For these reasons, we decline to exercise review of this issue on appeal as Mr. Lake has failed to provide argument or legal authority in support of his claim of error. *See Klauenberg*, 355 Md. at 552 (stating that "arguments not presented in a brief or not presented with particularity will not be considered on appeal").

Even had Mr. Lake provided sufficient argument in his brief, we do not perceive any error on the part of the circuit court in denying his motion to dismiss. Mr. Lake's motion was filed pursuant to Maryland Rule 2-322 which permits preliminary motions to dismiss for lack of jurisdiction, improper venue, insufficiency of process, lack of jurisdiction over the subject matter, failure to state a claim upon which relief can be granted, failure to join a party, discharge in bankruptcy, and governmental immunity. Mr. Lake's motion to dismiss, however, did not raise any of the grounds recognized under Maryland Rule 2-322.

MODIFICATION OF CHILD SUPPORT

Mr. Lake next argues on appeal that the court erred in modifying his child support obligation. In support, he contends that Ms. McConnell "only provided fraudulent and misleading documents" regarding her income and that he was "denied his right to provide documents" regarding his income.

We will not disturb a "trial court's discretionary determination as to an appropriate award of child support absent legal error or abuse of discretion." *Ruiz v. Kinoshita*, 239

Md. App. 395, 425 (2018). In reviewing an order involving "an interpretation and application of Maryland statutory and case law" for legal error, we consider "whether the trial court's conclusions are 'legally correct' under a de novo standard of review." *Knott v. Knott*, 146 Md. App. 232, 246 (2002). In reviewing a court's ruling on the evidence, we "will not set aside the judgment of the trial court…unless clearly erroneous." Maryland Rule 8-131(c). "If there is any competent evidence to support the factual findings below," we will not hold that a trial court's findings are clearly erroneous. *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002).

We first note that the court was permitted to consider Ms. McConnell's 2018 W-2 as evidence of her income. Pursuant to Maryland Rule 2-517, "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. . . . [o]therwise, the objection is waived." Mr. Lake, however, raised "no objection to admitting [the W-2] as an exhibit" during the modification hearing. If Mr. Lake had wished to preclude the W-2 from evidence due to concerns overs its authenticity, he was required to raise an objection before the W-2 was admitted. Because he did not, the court was permitted to consider the W-2 as evidence. Moreover, Mr. Lake failed to preserve the issue of the W-2's admission for appeal as "the admissibility of evidence may only be reviewed when an objection is timely made." *Ware v. State*, 170 Md. App. 1, 19 (2006). We, therefore, do not review whether the W-2 provided by Ms. McConnell was "fraudulent" as contended by Mr. Lake on appeal.

Nonetheless, Mr. Lake was permitted to introduce evidence to rebut the information contained in Ms. McConnell's 2018 W-2. Doing so, he argued that Ms. McConnell's

income was in excess of the $94,000 reported as taxable income on her W-2. As a result, Ms. McConnell acknowledged that the reported taxable income on the W-2 did not include pension payments of $11,922. The court found, therefore, that Ms. McConnell's income was approximately $106,000 a year. Our review of the record reveals that there was sufficient and competence evidence on the record to support the court's findings.

As to Mr. Lake's contention that he was "denied his right to provide documents" regarding his income, the record reveals that Mr. Lake was provided an abundant amount of time to do so by the court. Between May 2018 and March 2019, the record reflects that there were three hearings in which the parties appeared for a hearing on the modification of child support.[2] These hearings were each postponed so that Mr. Lake could acquire and produce documentation regarding his income. At the third hearing on December 18, 2018, the court directed Mr. Lake to provide to Ms. McConnell his DD-214, all bank statements from all accounts for the past 3 years, medical records showing that he was not able to work, his Georgetown enrollment records and financial statements, and his pay stubs. When the matter was heard on March 20, 2019, Ms. McConnell contended that Mr. Lake

[2] On May 8, 2018, the parties appeared before the court for a hearing on Mr. Lake's "Motion for Modification and/or Contempt" and Ms. McConnell's "Petition for Contempt and Request for Clarification and/or Modification of the Court Order." The Court did not rule on the petitions at that time and the docket entry reflects that the parties were ordered to "submit 2 recent paystubs and tax filings for 2016-2017 within the next 10 days." On June 14, 2018, "moments before the case [was] called," Mr. Lake "suddenly produced a document suggesting he was, once again, not working and based upon this asked the [court] to continue this matter to give him time to produce these documents." The case was reset for consideration on December 18, 2018. However, at the December 18, 2018 hearing, the matter was postponed again and the court directed the parties to produce financial documentation by December 31, 2018.

had failed to comply with the court's instructions regarding discovery. Further, Mr. Lake fails to direct this Court to any document or evidence in the record that shows he complied with the Court's instruction.

When asked by the court whether he had his 2018 W-2, Mr. Lake responded: "I have it. One second." The court then took a 30-minute recess so that Mr. Lake could produce "the information that [the court] specifically told [him] to produce by December." The court warned, as it had in December 2018, that failure to do so would result in the court taking judicial notice of the court's 2017 findings in *Dean Lake v. Carolyn Tadiarca,* CAD09-22580, as to Mr. Lake's income. The court recessed at 9:58 a.m., reconvened at 10:36 a.m., and, at approximately "10 minutes to 11," stated for the record that Mr. Lake had "failed to reappear back in court." Because Mr. Lake failed to appear in court following the recess, he missed his opportunity to admit into evidence documentation establishing his income. We, therefore, disagree with Mr. Lake's contention that he was "denied his right to provide documents."

AWARD OF ATTORNEY'S FEES

On July 26, 2018, Ms. McConnell filed a motion in limine and for sanctions against Mr. Lake, citing his failure to produce documentation during discovery and seeking attorney's fees "for the necessity of filing additional pleadings and having to return to court when the court could have heard this case on June 14, 2018." The court granted Ms. McConnell's motion for sanctions and directed her to submit an affidavit for reasonable attorney's fees. Mr. Lake contends on appeal that the trial court erred in awarding Ms.

McConnell attorney's fees "without hearing the arguments that [were] before the court." We disagree.

We review "a trial court's decision to impose, or not impose, a sanction for a discovery violation" for an abuse of discretion. *Dackman v. Robinson*, 464 Md. 189, 231 (2019). "Maryland Rule 2-433(a)(3) gives the trial courts broad discretion to impose sanctions for discovery violations, ranging from striking pleadings to dismissals." *Rose v. Rose*, 236 Md. App. 117, 131, *cert. denied*, 459 Md. 417 (2018).

In his brief, Mr. Lake argues that attorney's fees were not appropriate pursuant to §12-103 of the Family Law Article. However, Ms. McConnell's motion was not based on this statutory provision, it was based on Mr. Lake's discovery deficiencies. Given Mr. Lake's ample opportunity to submit financial documentation establishing his income, the numerous hearing postponements, and the attorney's fees incurred by Ms. McConnell as a result, we do not perceive any abuse in the court's award of sanctions and attorney's fees in this matter. Moreover, as the court was set to hear Ms. McConnell's motion in limine at the March 2019 hearing, Mr. Lake would have had an opportunity to contest the award of attorney's fees had he not left the hearing prior to its conclusion. By leaving, he waived his opportunity to be heard.

RULING ON MOTION FOR CONTEMPT WITHOUT HEARING

Lastly, Mr. Lake contends that the court erred in denying him a "hearing on the Contempt, Modification and Revision" motion. It is unclear the specific motion which Mr. Lake is referring to in his brief as there were numerous such motions filed in the circuit court since the case's inception. To the extent that he is referring to his July 11, 2018

"Motion for Modification and/or Contempt," the record reflects that this motion was to be heard at the March 2019 hearing. Again, because Mr. Lake left the hearing prior to its conclusion, he waived his opportunity to be heard on this motion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.