Circuit Court for Harford County
Case No. 12-P-12-000095

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 523

September Term, 2022

CRYSTAL D. PARKS

v.

WILLIAM HENRY PURVIS

Nazarian,
Friedman,
Wright, Alexander Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: January 19, 2023

*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.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In this appeal, we affirm a decision by the Circuit Court for Harford County under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), that the appropriate forum to litigate this custody and visitation dispute is in Tennessee, rather than Maryland.

The parties are parents of 14-year-old D.G.P (the "Child"). Appellant Crystal D. Parks ("Mother") petitioned the Circuit Court for Harford County to enforce and modify prior consent orders governing custody and visitation. She claims that although appellee William Henry Purvis ("Father") has sole physical and legal custody of their son, he "abduct[ed]" the Child to Tennessee in August 2017, then cut off all contact after January 2019. Father moved to transfer the case to Tennessee, where he and the Child live. Over Mother's objection, the Circuit Court for Harford County granted that motion; transferred the case to the Circuit Court for Blount County, Tennessee; and denied Mother's motion to reconsider that decision.

Representing herself, Mother noted this appeal. In her informal briefing, Mother challenges three orders: (1) postponing the scheduled hearing on Mother's petition, in response to Father's transfer request (the "Postponement Order"); (2) transferring further proceedings to the Circuit Court for Blount County, Tennessee, on the ground that Tennessee is the more convenient and appropriate forum (the "Transfer Order"); and (3) denying Mother's motion to reconsider the Transfer Order (the "Reconsideration Order"). For the reasons that follow, we hold that the Circuit Court for Harford County did not abuse its discretion in postponing the hearing on Mother's petition, transferring the case, and denying reconsideration.

BACKGROUND

We set forth the facts and legal proceedings relevant to our resolution of this appeal in the following timeline:

> **May 17, 2018:** Mother filed a Petition for Contempt in the Circuit Court for Harford County, alleging that after Father was granted sole legal and physical custody, he moved to Tennessee with the Child and denied her visitation.
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> **December 14, 2018:** The circuit court entered a Consent Order "that Father shall continue to have sole legal and physical custody of the minor child" and that Mother shall have at least two weeks supervised visitation at the Harford County Visitation Center and "weekly telephone calls." Trial on Mother's petition for contempt and to modify custody was "postponed to a later date to be scheduled," subject to cancellation by the parties.
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> **June 16, 2021:** Mother filed a Request for Hearing or Proceeding, seeking emergency relief on the ground that a hearing on her pending petition had not been scheduled due to COVID restrictions and that Father had "blocked all contact" since January 2019. The next day, the circuit court, ruling there was no emergency, ordered the "case to be set for trial."
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> **November 17, 2021:** Mother filed a Request for Default, alleging Father failed to respond to her discovery requests.
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> **December 3, 2021**: Father filed a Petition to Transfer to Blount County, Tennessee; a Request for Remote Participation; and a Request for Postponement of the hearing scheduled for December 20. Father averred that the Child had been living with him and attending school "in Blount County, Tennessee since 2017" and that on September 22, 2021, Father "filed Notice of Registration of Foreign Child Custody Determination in the Circuit Court for Blount County, Tennessee, Docket Number CE-30405." Father argued that "Blount County, Tennessee is the best venue to try this case … because virtually all of the information regarding [the Child], including the information regarding [the Child's] current living situation, progress in school, healthcare and similar issues will undoubtedly be located" there. In addition, Father asserted that he had "not received any of the pleadings filed by" Mother.
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> **December 7, 2021:** The Circuit Court for Harford County granted the postponement and ordered Father to "provide … information as to the Tennessee court so that a conference pursuant to the UCCJEA may be held."

December 13, 2021: Mother filed her Answer to Father's transfer petition, opposing transfer while admitting that the Child had been living with Father and going to school in Blount County, Tennessee, but only "since 2020." According to Mother, Father "left Maryland without the consent of this Court, has moved several times, and refuses to adhere to the court orders."

December 13, 2021: Mother filed a Request to Participate "in any conference regarding this issue" and alleged that Father's postponement and transfer motions were not properly served because they were "mailed to an address no longer in use" after Father was "notified numerous times of the address change."

December 15, 2021: Father filed a line submitting information about the Tennessee proceeding.

March 9, 2022: The Circuit Court for Harford County, "[u]pon consideration on March 8, 2022, of [Father's] Petition to Transfer to Circuit Court for Blount County, Tennessee, and [Mother's] Answer in opposition," and after "consult[ing] with the Circuit Court for Blount County, Tennessee, in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act," made factual findings that the Child "has resided in the State of Tennessee since 2017," that Mother's petition was "partially resolved by the Consent Order of December 11, 2018," and that

> in accordance with FL § 9.5-207, the State of Maryland is an inconvenient forum in which to resolve this matter, and the State of Tennessee is a more appropriate state in which to exercise jurisdiction for the reasons noted below:
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> a. The [C]hild has not resided in Maryland since 2017 and has resided in Tennessee since that time;
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> b. The nature and location of the evidence required to resolve the pending litigation (custody modification and/or contempt issues) is in Tennessee; and
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> c. Tennessee can decide the issues regarding modification [and] contempt more expeditiously than Maryland.

Granting Father's transfer petition, the Circuit Court for Harford County ordered the matter transferred to the Circuit Court for Blount County, Tennessee and closed the Maryland case.

April 7, 2022: Mother filed a "Request to Reconsider and Schedule Hearing Based on Fraud, Mistake, and Irregularity," asking the Circuit Court for Harford County to "transfer the [case] back to" Maryland based on alleged "Court procedural errors, further exacerbated by the irregularities of the Covid 19 Pandemic." The clerk reopened the case.

April 25, 2022: The Circuit Court for Harford County denied Mother's motion to reconsider the Transfer Order, ruling that the "case has been transferred and Harford County no longer has jurisdiction."

April 26, 2022: The clerk of the Circuit Court for Harford County again entered "case closed" on the electronic docket.

May 25, 2022: Mother filed a notice of appeal.[1]

DISCUSSION

Mother contends that the Circuit Court for Harford County abused its discretion, first by postponing the hearing on her petition claiming that Father is not complying with court orders governing custody and visitation, and then by transferring those proceedings to the Circuit Court for Blount County, Tennessee.[2] We disagree, concluding that the

[1] In this Court, Mother requested and received three extensions to file her brief. First, we moved the deadline from August 15, 2022, until September 12, which required delaying the case submission date and pushing back the accompanying deadline for deciding this child access appeal. *See* MD. R. 8-207(b). On the date her brief was due, Mother requested another extension, until October 7. We granted that second extension, delayed the case submission date until November 22, and stated that "[t]he Court will not grant any further extension of time." Yet on October 7, Mother sought a third extension, until November 1. We initially denied that request and dismissed her appeal. But when Mother moved to reconsider, submitted her belated brief, and proffered documentation that she suffers from PTSD, we granted her motion, accepted her brief, and reinstated the case on our January 2023 calendar.

Circuit Court for Harford County, implementing UCCJEA policy, procedure, and standards, did not abuse its discretion in postponing and transferring this custody case.

In 2004, Maryland adopted the UCCJEA, published by the National Conference of Commissioners of Uniform State Laws, to deter "parents from removing their children from a jurisdiction without consent," *Pilkington v. Pilkington*, 230 Md. App. 561, 577 (2016), by establishing "systematic and harmonized approaches to urgent family issues in a world in which parents and guardians, who choose to live apart, increasingly live in different states and nations." *Cabrera v. Mercado*, 230 Md. App. 37, 73 (2016) (cleaned up). Codified in Title 9.5 of the Family Law Article, the UCCJEA creates "guidelines for determining which state has jurisdiction, continuing jurisdiction, and modification jurisdiction over a child custody determination." *Id.* (cleaned up).

[2] Mother's notice of appeal was not filed "within 30 days after entry of the judgment or order from which the appeal is taken" which occurred "on the day when the clerk of the lower court enter[ed] a record on the docket of the electronic case management system used by" the Circuit Court for Harford County. *See* MD. R. 8-202(a), (f). Her motion to reconsider the Transfer Order did not toll that 30-day appeal period because it was not filed "within 10 days after entry" of that order. *See* MD. R. 2-534, 2-535; *Est. of Vess*, 234 Md. App. 173, 194-95 (2017). Mother noted her appeal on May 25, 2022, more than 30 days after entry of the Transfer Order on March 9. MD. R. 1-203(a) (establishing rules for "computing any period of time prescribed by these rules"). Because failing to note an appeal within the 30-day appeal period is not a jurisdictional defect, but rather a violation of this "mandatory claim-processing" deadline, we "must examine whether waiver or forfeiture applies." *Rosales v. State*, 463 Md. 552, 568 (2019). Father, who did not oppose Mother's motion for reconsideration or appear in this Court, might fairly be understood to have waived or forfeited any timeliness complaints. *See id.* We do not predicate our decision on Mother's timeliness or Father's possible waiver, however, because we conclude that the Circuit Court for Harford County did not abuse its discretion in postponing, then transferring this case.

When, as in this case, a Maryland court determines there is another custody-related proceeding concerning the same child pending in a different jurisdiction, the court must decide whether to continue exercising jurisdiction. Specifically, FL § 9.5-206(c) states:

> (1) In a proceeding to modify a child custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state.
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> (2) If a proceeding to enforce a child custody determination has been commenced in another state, the court may:
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> (i) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
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> (ii) enjoin the parties from continuing with the proceeding for enforcement; or
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> (iii) proceed with the modification under conditions it considers appropriate.

When deciding among these alternatives, the Maryland court must evaluate which jurisdiction is the "more appropriate forum" by considering specific factors:

> (a) (1) A court of this State that has jurisdiction under this title to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.
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> (2) The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.
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> (b) (1) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction.
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> (2) For the purpose under paragraph (1) of this subsection, the court shall allow the parties to submit information and shall consider all relevant factors, including:
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> (i) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

> (ii) the length of time the child has resided outside this State;
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> (iii) the distance between the court in this State and the court in the state that would assume jurisdiction;
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> (iv) the relative financial circumstances of the parties;
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> (v) any agreement of the parties as to which state should assume jurisdiction;
>
> (vi) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
>
> (vii) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
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> (viii) the familiarity of the court of each state with the facts and issues in the pending litigation.

FL § 9.5-207.

When forum convenience is in question, the Maryland court "may communicate with a court in another state" about which of the two jurisdictions should proceed with the custody matter. FL § 9.5-109(b). "The court may," but is not required to, "allow the parties to participate in the communication." FL § 9.5-109(c)(1). "If the parties are not able to participate in the communication, they shall be given an opportunity to present facts and legal arguments before a decision on jurisdiction is made." FL § 9.5-109(c)(2).

The ultimate "decision whether to relinquish the court's jurisdiction in favor of a more convenient one is one addressed to the sound discretion of the court." *Miller*, 428 Md. at 454. In this context, a court abuses its discretion when its decision is "manifestly unreasonable" because it rests "on untenable grounds" that are "clearly against the logic and effect of facts and inferences before the court," or alternatively, was rendered "without

reference to any guiding rules or principles," "in an arbitrary or capricious manner" or "beyond the letter or reason of the law." *Id.* at 454-55 (cleaned up) (*quoting Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006)).

This Court has recognized that evidence that a child now resides in another state with a custodial parent—and that witnesses to that child's educational, medical, family, religious, and social life are in that state—may support a circuit court's determination that Maryland is an inconvenient forum for adjudicating a request to modify custody and visitation. *E.g., Solomon v. Solomon*, 118 Md. App. 96, 108 (1997) (New York was more convenient forum because the child lived there with mother, and the child's "rabbi, guidance counselor, doctors, teachers, dentist, and maternal relatives are located in New York[,]" and that the child "interacts with classmates and friends, attends camp, and sees his maternal grandmother three to four times a week"); *Cronin v. Camilleri*, 101 Md. App. 699, 708 (1994) (finding "significant evidence concerning the child's care, protection, training, and personal relationships is readily available in both states."); *Paltrow v. Paltrow*, 37 Md. App. 191, 201 (1977) (finding it important that "two of the children reside [in Oregon] with the father, in his custody").

Here, Father moved to transfer the case to Blount County, Tennessee, where he and the Child reside and where he registered the prior court orders governing custody and visitation. Based on Father's request and supporting information, the Circuit Court for Harford County was required to decide whether transfer was warranted, by consulting with the Circuit Court for Blount County, Tennessee and considering the parties' arguments in light of the statutory factors. FL § 9.5-109(b); § 9.5-206(c); § 9.5-207(b). In these

circumstances, the Circuit Court for Harford County did not abuse its discretion by postponing its scheduled hearing on Mother's petition so that it could address the newly raised issue of whether Tennessee would be a more appropriate forum. MD. R. 2-508(a) ("On motion of any party or on the court's own initiative, the court may continue or postpone a trial or other proceeding as justice may require."); *Touzeau*, 394 Md. at 669 (in a child custody proceeding, "the decision to grant a continuance lies within the sound discretion of the trial judge").

Nor did the Circuit Court for Harford County abuse its discretion in transferring this custody proceeding. Before deciding whether to exercise jurisdiction, the circuit court considered Father's pleadings and Mother's answer in light of the full record, then consulted with the Circuit Court for Blount County, Tennessee, in an effort to evaluate its "familiarity … with the facts and issues in the pending litigation." FL § 9.5-207(b)(2)(viii). This satisfied the procedural requirements of the UCCJEA. FL § 9.5-109(b); § 9.5-206(c)(1); § 9.5-207(b).

The circuit court then made findings in support of its decision that Maryland is an inconvenient forum to adjudicate Mother's petition. Citing FL § 9.5-207, the court identified several statutory factors weighing in favor of Tennessee being "a more appropriate state in which to exercise jurisdiction." Specifically, the court found that "[t]he [C]hild has not resided in Maryland since 2017 and has resided in Tennessee since that time" (corresponding to "the length of time the child has resided outside this State," § 9.5-207(b)(2)(ii)), that "[t]he nature and location of the evidence required to resolve the pending litigation (custody modification [and] contempt issues) is in Tennessee"

(corresponding to "the nature and location of the evidence required to resolve the pending litigation, including testimony of the child," § 9.5-207(b)(2)(vi)), and that "Tennessee can decide the issues regarding modification [and] contempt more expeditiously than Maryland" (corresponding to "[t]he ability of the court of each state to decide the issue expeditiously," § 9.5-207(b)(2)(vii)). Although the circuit court did not mention the other statutory factors, the judge was not required to "state a finding as to each factor onto the record." *Cabrera*, 230 Md. App. at 95. Nor did the parties focus on those factors either at the circuit court or in this Court.

Maryland's policy and practice governing transfer of custody proceedings reflects that, as in this case, parents often "live in different states." *Cabrera*, 230 Md. App. at 73. Based on the findings and rationale stated in the Transfer Order, including that the Child has been living in Tennessee with Father for the past five years, we are satisfied that the Circuit Court for Harford County did not abuse its discretion in concluding that Maryland is no longer a convenient and appropriate forum for these custody proceedings. *Miller*, 428 Md. at 456-57. Consequently, we affirm the order transferring this case to the Circuit Court for Blount County, Tennessee for resolution of Mother's custody and visitation petition, and closing the case in the Circuit Court for Harford County.

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