

Circuit Court for Anne Arundel County
Case No.: C-02-FM-20-003181

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 546

September Term, 2023

AMAKA NDUBUEZE

v.

JOHNBOSCO IKECHUKWU ALAENYI

Berger,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: February 20, 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).

The circuit court for Anne Arundel County entered a judgment granting Amaka Ndubueze (“Mother”) and Johnbosco Alaenyi (“Father”) an absolute divorce. The court further granted Mother primary physical custody of the parties’ minor child, with the parties to have joint legal custody of the child with tie-breaking authority to Mother and set forth the terms of Father’s visitation with child. Mother presents the following three issues on appeal, which we have rephrased for clarity:¹

- I. Whether the circuit court erred when it denied Mother’s motion to alter/amend the judgment because it was untimely filed.
- II. Whether the circuit court erred in granting Father visitation with child without allowing Mother to know the location of the visits.
- III. Whether the circuit court erred in denying Mother’s request for attorney fees because of discovery violations by Father.

For the reasons that follow, we shall reverse and remand for further proceedings consistent with this opinion.

¹ In her informal brief, Mother phrased her issues on appeal as:

Issue 1. Denial of motion to amend or alter judgment and new trial request based on new evidences and other reliefs stated in the motion filed 5/28/2023. Or denials of motions with impactful evidence.

Issue 2. Courts denial of the parental rights and requests.

Issue 3. The denial of attorney fees for discovery and other related causes.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father married in 2018, and a daughter was born to them the following year. On November 12, 2020, Mother filed a complaint seeking primary physical and sole legal custody of their daughter and child support. Father responded by filing an answer and a counterclaim for joint, physical and legal custody.

On August 9, 2021, the circuit court entered a custody order, incorporating the parties “Parental Agreement” (the “Agreement”). The Agreement provided that Mother would have primary physical and sole legal custody. Father was to have visitation in Mother’s home every Saturday from 8:30 a.m. to 2:00 p.m., and every other Friday and Sunday from 8:30 a.m. to 2:00 p.m., plus certain seasonal holidays. The Agreement further provided for overnight stays after six months, if Father acquired his own apartment and he provided Mother the opportunity to view the apartment, and the names of and the opportunity to meet his roommates. The Agreement also required Father to pay \$1,000 a month in child support and an additional \$200 a month toward arrearages until \$3,000 has been paid.

Mother subsequently filed a petition for contempt, alleging Father failed to comply with the visitation order as he is “[a]lways late or no show,” and he failed to disclose his military service and military income before and during trial. Father filed a petition for contempt, alleging Mother denied him visitation. The court denied both contempt petitions.²

² Mother later filed a motion for contempt, which the court declined to hear, and an amended petition for contempt, which she voluntarily dismissed.

Father filed a complaint for absolute divorce and sought modification of the Agreement. Mother subsequently filed a motion to modify visitation and child support. During litigation, the parties entered into a consent order to waive the division of marital property and alimony. Both parties filed motions to compel discovery.

A hearing was held on May 2, 2023, at which both parties, who were represented by counsel, testified. On May 17, 2023, the circuit court entered a written judgment of absolute divorce. The court awarded Mother primary physical custody and joint legal custody, with tie-breaking authority to Mother. Father was granted visitation every other weekend from Friday afternoon to Monday morning, and during stated seasonal breaks and holidays. Father was to pay Mother \$1,188 in child support. The court denied Mother's request for attorney fees.

On the same day the court entered its judgment, Mother filed a notice of appeal. Mother subsequently filed a motion to alter/amend the judgment, which the trial court denied as untimely filed, which is the subject of this appeal.

DISCUSSION

I.

Mother argues that the circuit court erred in denying her motion to alter/amend the judgment because, contrary to the circuit court's ruling, it was timely. Father responds that the circuit court properly denied Mother's motion to alter/amend the judgment because she filed her notice of appeal before she filed her motion to alter/amend, and therefore, the circuit court no longer had jurisdiction to hear her motion. We agree with Mother. We,

therefore, reverse the court’s ruling and remand for consideration of her motion to alter/amend. We explain.

The circuit court entered a final divorce judgment on May 17, 2023. Mother filed a motion to alter/amend on May 28, 2023. Pursuant to Md. Rule 2-534, “on motion of any party filed within ten days after entry of judgment,” the court may amend its findings and judgment. Here, the tenth calendar day -- May 27 -- was a Saturday and the next weekday was Monday, May 29, which was Memorial Day, a Court holiday. Therefore, the ten-day deadline fell on the next business day, which was May 30, 2023. Accordingly, the motion to alter/amend was timely filed. *See* Md. Rule 1-203(a)(1) (if the period of time prescribed is more than seven days, weekends and holidays are counted, except where the last day falls on a weekend or holiday, and then the last day is the next business day). The circuit court, however, denied her motion as untimely, stating that it was “docketed 26 days after judgment was entered[.]” The court erred in finding that the motion was untimely.

Father’s argument is without merit. The fact that Mother filed her notice of appeal before her motion to alter/amend judgment does not affect the jurisdiction of the circuit court. Indeed, this is because of the “savings clause” contained in Md. Rule 8-202(c), which provides that: “If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule . . . 2-534 . . . , the notice of appeal shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing

of it.” As a result, the circuit court had jurisdiction to decide Mother’s motion to alter/amend the judgment.³

Accordingly, we shall reverse the circuit court’s order denying Mother’s motion to alter/amend judgment and remand for the circuit court to consider her motion. Following its decision on Mother’s motion to alter/amend, the circuit court shall transmit its decision to this Court. We shall retain jurisdiction to decide the remainder of the issues presented in this appeal following the circuit court’s decision on remand. Accordingly, we stay this appeal pending the circuit court’s decision. We hold the assessment of costs in abeyance until after our opinion following the circuit court’s decision on remand.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY DENYING MOTION TO ALTER/AMEND JUDGMENT REVERSED. CASE REMANDED TO THE CIRCUIT COURT TO CONSIDER APPELLANT’S MOTION TO ALTER/AMEND JUDGMENT. APPEAL STAYED. ASSESSMENT OF COSTS HELD IN ABEYANCE.

³ Although it does not affect our decision, for clarity we shall point out that Father incorrectly states in his appellate brief that Mother also filed a motion to alter/amend on July 28, 2023. On that date, Mother filed a motion asking the court to respond to her earlier motion to alter/amend. She did not file a motion to alter/amend.