Circuit Court for Baltimore County
Case No. 03-C-15-012190

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 611

September Term, 2020

JAMES DONALE NICKENS, JR.

v.

PARRIS L. MUSE

Shaw Geter,
Gould,
Zic,
JJ.

Opinion by Gould, J.

Filed: April 14, 2021

Appellant, James Nickens, Jr. ("Father"), appeals from an order of the Circuit Court for Baltimore County denying in part his motion to modify custody and granting in part the counter-motion for modification of custody filed by Parris Muse ("Mother"), appellee. Father presents nine questions for our review, which we have consolidated and rephrased as follows:[1]

[1] Father's exact questions were:

1. Did Court err by not allowing Appellant's questions to be answered relating to (a) what jurisdiction do they have?, (b) what mode of Court is this proceeding?, and (c) not dismissing the case as required by due process of the Civil Rules of Procedure by not providing evidence of jurisdiction, which is a violation of the Fifth, Seventh and Fourteenth Amendments of U.S. Constitution, thus rendering the case as Coram Non-Judice? [footnote: "**What is CORAM NON-JUDICE**? In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be Coram non-judice, and the judgment is void. *Manufacturing Co. v. Holt, 51 W. Va. 352, 41 S.E. 351*."] *Virginia v. Rives, 100 US 313- Supreme Court 1880* trial?

2. Did the Court err in allowing a person "not a judge" authority to hear, issue, render a judgment, and sign an Order of Absolute Divorce?

3. Does the Court have the authority to breach a "contractual agreement" without the consent of both parties? *See, Alexander v. Bothsworth, 1915*. "Party cannot be bound by contract he has not made or authorized. Free is an indispensable element in making valid contracts." *See* also, *Montgomery v. State, 55 Fla. 97-45S0.879 a*. Inasmuch as every government is an artificial person, an abstraction, and a creature of the mind only, can interface only with other artificial persons. The imaginary, having neither actuality nor substance, is foreclosed from creating and attaining parity with the tangible. The legal manifestation of this is that no government, as well as any law, agency, aspect, court, etc. can concern itself with anything other than corporate, artificial persons and the contracts between them."

4. Did the Clerk break the law by **not** entering documents in the docket by returning stamped documents without processing them? *See, 18 USC § 2076*.

1. Did the circuit court have jurisdiction over this case and the authority to issue the August 4, 2020 interim order and the August 14, 2020 modification to the custody order? (Father's questions 1, 3, 5, 6, 7, and 9)

2. Did Judge Bollinger have authority to issue an order? (Father's questions 2 and 8)

3. Was the clerk justified in refusing to docket documents that Father sent to the court? (Father's question 4)

For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND FACTS AND LEGAL PROCEEDINGS

On December 15, 2016, the court (Bollinger, J.) entered a Judgment of Absolute Divorce. The court incorporated into the judgment the terms of the parties' custody agreement, which provided for shared physical custody of the parties' child, U.N., on a 50/50 basis, with no award of child support.

5. Did the Court err by allowing Judge Jakubowski authority to issue a "death threat" in an Interim Order on August 4, 2020, when there was **no** imminent danger or harm? **Exhibit 8**

6. Did the Judge and Attorney err in not providing their Oath of Office when requested?

7. Did the Court err in breaching a personal "contractual agreement" amongst the two individuals?

8. Did the Court err in allowing personnel to hear, make recommendations, and sign Orders, without producing evidence of injury, not an official appointed judicial judge, and not heard by a jury of peers, which is *Coram Non-Judice*?

9. Is it true that the Court was acting under the Color Of Law, is it lawful? [footnote: Definition of **COLOR OF LAW**: The appearance or semblance, without the substance, of legal right. *McCain v. Des Moines, 174 U.S. 108, 19 Sup. Ct. (H4, 43L)*].

On June 26, 2017, Mother moved to modify custody and child support. Following a hearing, the circuit court granted her motion. Father failed to appear at the hearing. The court's order, dated January 22, 2018, granted primary physical custody of U.N. to Mother and joint legal custody to Mother and Father, with Mother having tie-breaking authority. Father was granted visitation with U.N. on alternating weekends, with an option for Wednesday visits, and was ordered to pay child support in the amount of $528.00 per month.

On May 7, 2019, Father moved to modify custody. Mother filed a counter-motion on September 17, 2019. The court (Jakubowski, J.) held a hearing on the parties' motions on August 4, 2020 and August 13, 2020.

At the hearing on August 4, 2020, Father acknowledged that, since March 13, 2020, he had been "hiding" U.N. at an undisclosed location. At the conclusion of the first day of the hearing, the court issued an Interim Access Order, ordering Father to return U.N. to Mother's custody on August 5, 2020. The court continued the hearing to August 13, 2020.

At the conclusion of the hearing on August 13, 2020, the court delivered an oral ruling from the bench, setting forth in detail the court's findings and decision. The court issued a written decision on August 14, 2020. The court awarded Mother sole legal custody and primary physical custody of U.N. The court granted Father access to U.N. every other weekend and a 50/50 summer schedule, and further granted Father independent access to U.N.'s medical and school records. The court denied Father's request for a modification of child support, finding that he had not proven by a preponderance of the evidence that there had been a material change in circumstances to warrant a modification of support.

Father filed a timely notice of appeal.

DISCUSSION[2]

I.

STANDARD OF REVIEW

An appellate court reviews "a trial court's custody determination for abuse of discretion." *Santo v. Santo*, 448 Md. 620, 625 (2016). A court can abuse its discretion "when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court." *Gizzo v. Gesterman*, 245 Md. App. 168, 201 (2020). Appellate courts rarely find reversible error in a trial court's determination of custody. *Id*.

In child custody disputes, "[t]he light that guides the trial court in its determination, and in our review, is 'the best interest of the child standard,' which 'is always determinative[.]'" *Santo*, 448 Md. at 626. "[A]n appellate court does not make its own determination as to a child's best interest; the trial court's decision governs, unless the factual findings made by the lower court are clearly erroneous or there is a clear showing of an abuse of discretion." *Gordon v. Gordon*, 174 Md. App. 583, 637-38 (2007). "If there is any competent evidence to support the factual findings below, those findings cannot be

[2] We are aware that Father has filed a *pro se* appeal and that it can be difficult for a *pro se* litigant to comply with the relevant provisions of the Maryland Rules at all stages of the case, including in an appeal. Father's brief, however, fails to focus clearly on appealable errors or provide cogent legal arguments to support his contentions. Under the circumstances, we have construed his arguments as broadly as the papers permit.

held to be clearly erroneous." *Fuge v. Fuge*, 146 Md. App. 142, 180 (2002).

II.

FATHER'S QUESTIONS 1, 3, 5, 6, 7 AND 9: CIRCUIT COURT JURISDICTION AND THE COURT'S ORDERS

In his first, third, fifth, sixth, seventh, and ninth questions, Father appears to challenge the jurisdiction of the circuit court and its authority to issue both its August 4, 2020 Interim Access Order and its August 14, 2020 modification of custody order. These arguments are without merit and have no basis in law.

A.

JURISDICTION OF THE CIRCUIT COURT

"It is undisputed that the Circuit Court has jurisdiction to determine the custody and support of children and establish the visitation rights of the non-custodial parent." *Ricketts v. Ricketts*, 393 Md. 479, 493 (2006) (citing Md. Code Ann. (1984, 2004 Repl. Vol.), § 1-201 of the Family Law Article). The Court of Appeals has recognized "the broad and inherent power of an equity court to deal fully and completely with matters of child custody." *Santo*, 448 Md. at 638. Accordingly, the circuit court had subject matter jurisdiction to preside over the custody modification proceeding.

B.

THE INTERIM ACCESS ORDER

Father also challenges the circuit court's Interim Access Order, which he characterizes as including a "death threat" against him. The Interim Access Order provided that: "any law enforcement officers shall enforce this Order and pick up the minor child

from Father and [] use all reasonable and necessary force to return the minor child to Mother if Father does not[.]" When considered in its proper context, the Interim Access Order was entirely appropriate and within the circuit court's discretion.

In order to safeguard the State's interest in ensuring that children receive proper parental care and support, the circuit courts may regulate the custodial relationship of parents and children "whenever necessary and virtually without limitation when children's welfare is at stake." *Kennedy v. Kennedy*, 55 Md. App. 299, 309-10 (1983) (internal citations omitted). A court may impose such conditions as deemed necessary in promoting and safeguarding the welfare of a child. *Id*. at 310 (citing *Kruse v. Kruse*, 179 Md. 657, 664 (1941)). "We will affirm the imposition of such a condition so long as the record contains adequate proof that the condition or requirement is reasonably related to the advancement of a child's best interests." *Id.* (citing *Deckman v. Deckman*, 15 Md. App. 553, 568 (1972)). In the exercise of its discretion, the circuit court may order a parent to "accommodate the visitation or custody rights of the other parent." *Id*. (citing *Raible v. Raible*, 242 Md. 586 (1966); *Stancill v. Stancill*, 286 Md. 530, 539 (1979)).

Here, on the first day of the hearing to modify custody, Father testified that he had refused to return U.N. to Mother's custody because he was "getting his time back." Father further stated that he had stopped complying with the parties' custody order and "stopped following things that [were] already wrong" because he felt that Mother was limiting his access to U.N. After the court ruled that U.N. be returned to Mother's custody, pending the next hearing date, and stated that an interim order would be entered to that effect, Father informed the court that he would not follow the court's order to return U.N. to Mother's

custody. Father stated that "[a]ccording to the constitution," he was "not obligated to follow such order given by the government," without an "injured party," due process, and a jury trial, and therefore, he was "not gonna abide by such orders that you put in." The court explained that, should Father fail to comply with the court's order to bring U.N. to the police station by noon on the following day, it would "authorize the appropriate law enforcement to pick the child up and return the child[.] "

The Interim Access Order was not a "death threat" to Father. Given Father's unequivocal statement that he would not comply with the circuit court's interim order, we perceive no abuse of discretion in the court authorizing law enforcement "to use all reasonable and necessary force to return the minor child to Mother" if Father failed or refused to comply with the order.

C.

THE AUGUST 14, 2020 ORDER MODIFYING CUSTODY

Father further argues that, in awarding Mother sole legal and primary physical custody of U.N., "[t]he circuit court abused its discretion in denying Appellant the right to full custody of minor child, even when evidence was introduced to show that Appellee withheld minor child consistently without cause." Father offers no legal argument and cites to no evidence supporting his argument or his contention that Mother consistently withheld U.N. from him. "[W]e cannot be expected to delve through the record to unearth factual support favorable to [the] appellant." *Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 201 (2008). In any event, we shall address the August 14, 2020 custody modification order.

A trial court uses a two-step process in deciding a motion for modification of custody; it asks: "(1) whether there has been a material change in circumstances, and (2) what custody arrangement is in the best interests of the children." *Santo*, 448 Md. at 639. While a trial court must "look at each custody case on an individual basis to determine what will serve the welfare of the child," *Wagner v. Wagner*, 109 Md. App. 1, 39 (1996), the court may use a nonexclusive list of factors to determine the best interest of the child:

> 1) fitness of the parents; 2) character and reputation of the parties; 3) desire of the natural parents and agreements between the parties; 4) potentiality of maintaining natural family relations; 5) preference of the child; 6) material opportunities affecting the future life of the child; 7) age, health and sex of the child; 8) residences of parents and opportunity for visitation; 9) length of separation from the natural parents; and 10) prior voluntary abandonment or surrender.

Montgomery Cnty. Dep't. of Soc. Servs. v. Sanders, 38 Md. App. 406, 420 (1978) (internal citations omitted). "The best interest of the child is . . . not considered as one of many factors, but as the objective to which virtually all other factors speak." *Taylor v. Taylor*, 306 Md. 290, 303 (1986).

At the hearing, Father testified that he would agree only to a schedule of shared custody on a 50/50 basis, and that pursuant to his religious philosophy, any disagreements concerning U.N.'s welfare were to be decided by him. Father also had denied Mother access to U.N. for a period of five months and would not tell the court where he resided. Mother testified that she was afraid of Father and she did not disclose her home address to the court due to her concerns for her safety. Mother further stated that she would agree to custody on a reduced basis and requested that Father's visits be supervised because she was afraid that Father would not return U.N. to her custody.

The court determined that there had been a material change in circumstances based on the evidence presented by both parties, which "show[ed] difficulty with the access schedule, [] a deterioration in the parties' communication with each other, continued hostilities and lack of trust, which ha[d] escalated . . . over the past year, if not longer[.]" The court described the parties' relationship as "toxic," noting multiple contacts with the police and the court system since 2015, including one protective order against Father, entered by consent of the parties, in 2017.

The court also found that the evidence was uncontradicted that the parties had "no capacity" to communicate and reach a shared decision about U.N.'s welfare, including which school U.N. should attend and U.N.'s religion and upbringing.

Although the court found that both parents were fit and that both had established relationships with U.N., the court found that Father's refusal to return U.N. to Mother showed a lack of insight as to how his behavior affected U.N. The court also expressed concern about not only Father's view that he did not have to follow the law or court orders, but the prospect of Father imparting his philosophy relating to the authority of government, U.N.'s school, and the police to U.N.

In the present case, the circuit court's factual findings that both parents were unable to effectively communicate and co-parent were not clearly erroneous. The trial court found a change in circumstances due to the parties' inability to jointly make decisions and Father's uncompromising view that he should share custody on a 50/50 basis and be the final arbiter of decisions regarding U.N.'s welfare. The court's ultimate determination that awarding Mother sole legal custody and primary physical custody of U.N. was in U.N.'s

best interests was supported by the record. We perceive no abuse of discretion in the circuit court's custody decisions and its determination that Father failed to demonstrate a material change sufficient to warrant a change in child support.

III.

FATHER'S QUESTIONS 2 AND 8: CHALLENGES TO AUTHORITY OF JUDGE BOLLINGER

Father contends that the Judgment of Absolute Divorce is void because Judge Bollinger was not authorized to enter the order.

Maryland Rule 8-202 provides that a party must file a notice of appeal "within 30 days after entry of the judgment or order from which the appeal is taken." Thus, to the extent that an appeal from the Judgment of Absolute Divorce was allowed by law,[3] the appeal must be filed no later than thirty days from the date of the judgment. There is no evidence in the record that Father timely filed a notice of appeal of the Judgment of Absolute Divorce. Accordingly, Father's challenges to the judgment are not before us in this appeal.

IV.

FATHER'S QUESTION 4: CHALLENGE TO CLERK'S ACTIONS

Father argues that the clerk for the circuit court acted illegally in failing to docket documents he sent to the court, which were returned to him unprocessed. A letter in the record from the clerk's office indicates that certain documents were returned to Father

[3] The Judgment indicates that the parties reached a settlement agreement "on all matters attendant to the termination of their marriage."

because the documents contained multiple docket numbers and Father provided no instruction as to which case they related.

Father's contention is unreviewable by this Court on appeal as he fails to allege any error committed by the trial court. *See Cason v. State*, 140 Md. App. 379, 400 (2001) (stating that the "function [of] an appellate court is to review the decisions, rulings, and actions of the circuit court"); *DeLuca v. State*, 78 Md. App. 395, 397-98 (1989) (explaining that "[o]nly the judge [in the trial court] can commit error, either by failing to rule or by ruling erroneously when called upon . . . to make a ruling"). Had Father presented his concern about the undocketed documents in a motion to the trial court, the court's ruling on that motion would be reviewable. Here, however, he presents no ruling for us to consider.

V.

FATHER'S MARCH 11, 2021 MOTION

On March 11, 2021, Father filed a motion requesting (1) that this Court issue an order directing the circuit court to follow the rules of civil procedure; and (2) that this Court change the venue to Howard County; and (3) "that any orders issued today for detainment or retrieval of our son be dismissed or made null and void immediately." As these matters are not properly before us, Father's motion is denied. *See* Md. Rule 8-201(a).

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