Circuit Court for Baltimore County
Case No. C-03-FM-19-2733

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0703

September Term, 2020

MASON INKO-TARIAH

v.

PATIENCE OKEREKE

Berger,
Leahy,
Eyler, James R.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Eyler, James R., J.

Filed: March 5, 2021

This appeal arises out of a divorce proceeding filed in the Circuit Court for Baltimore County by Mason Inko-Tariah[1], appellant, against Patience Okereke, appellee. On June 21, 2019, appellant filed a complaint for limited divorce.[2] Appellee filed an answer and counter-complaint for limited divorce. A pendente lite hearing was held on January 2, 2020. The matter did not conclude, and the hearing was continued. At a hearing on July 30, 2020, the parties negotiated a settlement with regard to pendente lite access to and visitation with their minor children. The agreement was reduced to a writing entitled "Proposed Pendente Lite Consent Order," which was signed by the parties and their counsel and submitted to a magistrate. Counsel for appellee prepared a pendente lite consent order but appellant did not permit his attorney to sign it on his behalf. Nevertheless, on August 13, 2020, the circuit court signed the order prepared by appellee's counsel. On August 22, 2020, appellant filed a motion to reconsider the pendente lite consent order, which was denied. This appeal followed.

QUESTIONS PRESENTED

Appellant presents 10 questions for our consideration all of which relate to whether the trial court abused its discretion in denying his motion for reconsideration on the ground

[1] Appellant was represented by counsel in the underlying proceedings but, on appeal, he is proceeding in proper person.

[2] In violation of Md. Rule 8-501(c), appellant failed to include in the record extract a copy of the circuit court docket entries and the portion of the hearing transcript in which the parties' agreement was placed on the record.

that the parties' agreement was procured by duress, undue influence, or fraudulent misrepresentation.[3] For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

The basic facts of this case are not disputed. The parties, who acknowledge that they were married, but do not provide any information about the date or place of their marriage, have three minor children, twins Mason and Michelle, born on April 29, 2012,

[3] The 10 questions presented by appellant are as follows:

> 1. Did Magistrate T. Beck unduly influence Plaintiff-Appellant to accept the Child-Custody Agreement that Plaintiff-Appellant objected to, and rejected, in the open court?
> 2. Whether Magistrate Beck's comments constituted impropriety or the appearance of impropriety and prejudiced Plaintiff-Appellant.
> 3. Whether Plaintiff-Appellant's assent to the Child-custody Agreement was procured by way of fraud, misrepresentation, and/or undue influence.
> 4. Whether Magistrate Beck committed reversible error when she reportedly prejudged Plaintiff-Appellant based on her foreknowledge of Plaintiff-Appellant.
> 5. Should the Court treat the device of Voir Dire with absoluteness or on a case-by-case basis?
> 6. Did the Circuit Court Judge abuse his discretion when he denied Appellant's Motion for Reconsideration of the Pendente Lite order in spite of Appellant's undisputed assertions that his consent to the agreement was procured by improper bargaining tactics?
> 7. Whether the Court can enforce an "agreement" entered into by only one party.
> 8. Alternatively, can the Court enforce a contract between two people where only one party furnished consideration?
> 9. Whether it is equitable for the Circuit Court to order Plaintiff-Appellant to provide care for the minor children directly and personally but did not order the same to Defendant-Appellant.
> 10. Whether the Circuit Court can issue an order that is inconsistent with the Agreement reached by the parties in a Child-Custody Pendente Lite hearing.

and Nancy, born on April 17, 2018. On June 21, 2019, appellant filed a complaint for limited divorce. After appellee filed an answer and counter-complaint, the case was scheduled for a pendente lite hearing on January 2, 2020, before Magistrate C. Theresa Beck. Neither party has provided a transcript of the proceedings that took place that day. The case was continued. In April 2020, appellant filed an "Emergency Motion for Minor Children to Continue Receiving Education and Special Education Services" and later, an amended version of that motion. It appears from the docket entries that the motion was denied.

A hearing before Magistrate Beck was set for July 30, 2020. Neither party has provided a complete transcript of that hearing. Appellant suggests that at some point during the proceedings, counsel met in chambers with Magistrate Beck, but there is no indication that that meeting was transcribed. What is clear from the record is that the parties reached an agreement regarding pendente lite access to and visitation with their children and that the agreement was reduced to writing in a document entitled "Proposed Pendente Lite Consent Order." The parties agreed, among other things, that the twins would attend school in Howard County. They also adopted a schedule of access and visitation with respect to the twins for the remainder of the summer and for the school year, established access to the children for certain holidays, and established a visitation schedule for appellant and Nancy. The "Proposed Pendente Lite Consent Order" was signed by both parties and their counsel.

The parties included in the record extract an excerpt from the transcript of the proceedings on July 30, 2020, during which Magistrate Beck questioned both parties about

their assent to the proposed pendente lite consent order. Magistrate Beck questioned appellant as follows:

> MAGISTRATE BECK: And counsel, I've received into evidence a signed agreement and to that end, I would like to qualify the parties. But before we do that, I would like to have the parties please stand and raise your right hands and get sworn in.
>
> CLERK: You do hereby solemnly swear or affirm under the penalties of perjury, that the responses given and statements made will be the whole truth and nothing but the truth?
>
> MR. INKO-TARIAH: I do.
>
> MS. OKEREKE: I do.
>
> CLERK: Thank you.
>
> MAGISTRATE: All right. And so, I think I can hear the parties well from where they're seated and given our circumstances, I think it's probably a better way to go about this. And so, each of you now has a copy of what the parties have agreed upon. Sir, I'm going to ask you, if you would give me your name?
>
> MR. INKO-TARIAH: Mason Inko-Tariah.
>
> MAGISTRATE: Yeah, you can sit. I think I can hear you. You just keep your voice up. And sir, did you have an opportunity to read and review the document which you're now holding a copy, which has been added to our Court file, did you have an opportunity to read and review that before you signed it?
>
> MR. INKO-TARIAH: Yes.
>
> MAGISTRATE: And did you have an opportunity to have any and all of your questions answered about the agreement?
>
> MR. INKO-TARIAH: Yes.
>
> MAGISTRATE: And was there any pressure, any duress, anything imposed upon you in order to force you to enter into this agreement other than the terms themselves and your circumstances?

MR. INKO-TARIAH: No.

MAGISTRATE: So, you're entering this of your own free and voluntary will?

MR. INKO-TARIAH: Yes.

MAGISTRATE: And are you satisfied with the advice your counsel has given you with regard to reaching this agreement?

MR. INKO-TARIAH: Yes.

Magistrate Beck's questioning of appellee revealed that she also consented to the agreement. Thereafter, Magistrate Beck addressed counsel as follows:

MAGISTRATE: Now, counsel, I'm trusting that in about two to three weeks we'll see a Consent Order with all the ruffles and flourishes that we normally have as well as that bullet language –

[APPELLANT'S COUNSEL]: Um hm.

MAGISTRATE: -- that goes into the child support side of things.

[APPELLEE'S COUNSEL]: Yes, yep.

[APPELLANT'S COUNSEL]: Yep.

Counsel for appellee prepared the pendente lite consent order and sent a copy to appellant's counsel. Appellant's counsel advised counsel for appellee that she did not have appellant's permission to sign the order.

On August 3, 2020, appellant sent an ex-parte letter to Magistrate Beck in which he objected to the consent agreement. A week later, he sent another ex-parte letter to Magistrate Beck. Magistrate Beck wrote a letter to counsel for both parties in which she stated that she had received correspondence from appellant, that she had not read the

correspondence, that she was precluded from responding to ex-parte communications, and that there was "nothing before the Court at this time." Magistrate Beck also wrote that "[s]ince the Pendente Lite matter has concluded, the only proceedings in this matter will be by a Circuit Court Judge for the merits hearing. Once the proposed Consent Order, that is in accord with the signed Agreement of the Parties, is submitted through MDEC, it will be forwarded for signature by a Judge."

On August 7, 2020, counsel for appellee filed in the circuit court the pendente lite consent order and a Line explaining that counsel for appellant did not have appellant's permission to sign it. The order prepared by appellee's counsel mirrored the proposed order previously prepared by the parties with three exceptions: (1) in paragraph 4, subparagraph C, the phrase "Father's access schedule shall continue until superseded by further Order of this Court" was added; (2) in paragraph 6, words were added to the end of the phrase "The parties shall be generally charged with child support" so that it provided "The parties shall be generally charged with child support, pursuant to the attached Child Support Worksheets;" and, (3) in paragraph 10, the sentence "[t]his order is subject to further order of this Court" was added. Magistrate Beck signed the pendente lite consent order and, on August 13, 2020, it was signed by a judge.

On August 22, 2020, appellant filed a motion for reconsideration of the pendente lite consent order. He requested that the circuit court "reverse the Pendente Lite Order" or, in the alternative, expunge the following portions of paragraph 4, subparagraph C:

> During the period of time that school is remote/virtual, the parties shall exchange the children at Royal Farms 6416 Windsor Mill Road, Woodlawn,

> Maryland at 6 p.m. on Thursdays and at the CVS at Port Capital on Monday mornings.
>
> If school resumes in person learning this school year, then, on his weekends, Father shall pick the children up from school on Thursdays, take them to and from school on Fridays, and return them to school on Mondays.
>
> * * *
>
> Father must be working remotely at home or off of work on Fridays when he has the children during school. If he is not working from home, then his weekends shall commence on Friday evening. When Father has the children, he will be the one caring for the children.

In support of his motion for reconsideration, appellant provided an affidavit in which he made a variety of assertions including that his assent to the consent order was "obtained by misrepresentation," "by the undue influence of the court," and "by the threat of not seeing his children." He maintained that he was "not commensurately represented in the negotiations leading to the agreement, especially because the agreement is overly one-sided." He did not believe the court had a favorable opinion of him and that a trial "may not turn out well for him." Appellant claimed that he was denied the right to file exceptions because the court erroneously deemed his letters to be ex-parte communications and declined to review or consider them. In addition, appellant made the following assertions:

> 4. While in the courthouse on 07/30/2020, Plaintiff's attorney advised Plaintiff that the parties would negotiate a settlement.
>
> 5. Plaintiff's attorney told Plaintiff that the magistrate said she does not believe Plaintiff is the primary caregiver of the children because of the multiple college degrees Plaintiff has, and that with all those college degrees, Plaintiff would not have had time to take care of the children.

6. Apart from Plaintiff's college degree that was obtained in 1998, all other college degrees of his, including his certificate in Paralegal, his Paralegal degree (MPS) and Law degrees (LL.B. PGD Law) were acquired through online learning. Plaintiff thus studied for these degrees from home.

7. Plaintiff's attorney told Plaintiff that the magistrate said that he (Plaintiff) always wants things his ways but would not get things his ways.

8. Plaintiff's attorney told Plaintiff that the magistrate said though she has not heard Ms. Okereke's testimony, she believes Plaintiff exaggerates things.

9. Plaintiff's attorney told Plaintiff at about 11:05 a.m., that the magistrate said she had another case at 2 P.M., and that the parties must conclude their case before 2 P.M., which does not leave her (Plaintiff's attorney) ample time to present her case. Plaintiff's attorney told Plaintiff that if they went to trial, she would have to rush the case. This turned out to be untrue. Plaintiff's case went way beyond 2 p.m. on that day. In fact, the court went on Record at 02:40:30 PM.

10. Plaintiff's attorney told Plaintiff that the magistrate sounded unwilling to allow Michelle Inko-Tariah and Mason Inko-Tariah continue [sic] in their current school, Lutherville Laboratory Elementary school, which is zoned to Plaintiff's residence. This influenced Plaintiff's concession to agree to a change of the children's school to a school zoned to Defendant's residence.

11. When Plaintiff objected to the agreement, his attorney told him that if he does not sign the agreement, Defendant would not allow him [sic] see his children, and that even if the matter went to trial, with the COVID-19 situation, it may not be until December 2020, or even early 2021 before a judge would sign off on the magistrate's recommendation. At that time, Defendant had denied Plaintiff access to his children for upwards of four months. This turned out to be untrue; it took the court less than 14 days for the magistrate's recommendation to be signed off by a judge.

12. Plaintiff's attorney told him that his chances at trial are not as bright as the draft agreement. Plaintiff believed this in light of the alleged uncomplimentary comments of the court about him. Plaintiff was coerced by this fact.

13. But for the alleged unsavory comments about Plaintiff made by the magistrate to whom Plaintiff would be tried, Plaintiff would never have signed the overly one-sided agreement.

14. Plaintiff was also coerced into signing the agreement by the threat of not seeing his children for about another five months, after having not seen them for more than four months already.

15. Plaintiff objected to the agreement in the open court, right before the voir dire, citing his disagreement with Paragraph 4(C). The court advised him not to disregard the entire agreement because of that paragraph, and that the paragraph may not be relevant in the near future. Plaintiff's assent to the agreement was greatly influenced, rather unduly, by the incursion of the court on the negotiation, as he believed the court would rule against him if he does not heed its advice. Upon receipt of the Transcript of Proceedings from the Circuit court [sic], Plaintiff realized the court did not include this incursion on the record.

16. Plaintiff contends that the court, after influencing his assent to the agreement, administered the voir dire on him.

With respect to appellant's contentions about paragraph 4, subparagraph C of the consent order, appellant stated:

29. Paragraph 4 (C) of the Consent Order states:

Father must be working remotely at home or off of work on Fridays when he has the children during school. If he is not working from home, then his weekends shall commence on Friday evening. When Father has the children, he will be the one caring for the children.

Plaintiff contends that this clause is not merely one-sided, it is, indeed, onerous and unconscionable, as it prohibits Plaintiff from having someone else, including his family members, care the [sic] children when he has to go to work on the days the children are with him. The implication of this clause is that Plaintiff cannot respond to emergencies at work when the children are with him since no one else but Plaintiff can care for the children when they are with Plaintiff. This clause does not apply to Defendant who has testified previously that her mother helps her with caring for the children. Thus, Defendant's mother and her siblings can help Defendant care for the children when they are with Defendant but Plaintiff cannot get help from his siblings

to care for the children in the event of a work emergency when the children are with Plaintiff. Plaintiff is a law enforcement employee.

30. Paragraph 4(C) of the Consent Order also states:

If school resumes in person learning this school year, then, on his weekends, Father shall pick the children up from school on Thursdays, take them to and from 3 [sic] school on Fridays, and return them to school on Mondays.

During the period of time that school is remote/virtual, the parties shall exchange the children at Royal Farms 6416 Windsor Mill Road, Woodlawn, Maryland at 6 p.m. on Thursdays and at the CVS at Port Capital on Monday mornings.

Plaintiff contends that it is only fair that the parties always exchange the children at an equidistant location rather than have Plaintiff travel about an hour drive during normal traffic to the school zoned to Defendant's residence to drop off and pick up the children, especially because Plaintiff made an uneasy concession by agreeing that the children should change their school from Lutherville Laboratory Elementary school, which is zoned to Plaintiff's residence, to Hanover Hill Elementary school, which is zoned to Defendant's residence. Plaintiff was pressured to make his concession because his attorney told him the magistrate seemed unwilling to allow the children to continue in their current school. At the time Plaintiff's attorney was telling Plaintiff this, the court had not even heard Defendant's testimony.

By order dated September 11, 2020, the circuit court denied appellant's motion for reconsideration. Three days later, on September 14, 2020, appellant filed a notice of appeal.

DISCUSSION

Appellant contends that the consent order is unenforceable because his "assent was acquired through undue influence, and even coercion[.]" He maintains that his assent was acquired as a result of the undue influence of both the magistrate and his attorney. Specifically, he argues that "he did not have free agency over the matter" because of the magistrate's comments, his own counsel's "impatient and frustrated remarks," the "demands of the opposing party," his fear that the court might rule against him, and his

fear of not seeing his children. Appellant complains that after his attorney advised Magistrate Beck that he would not sign the consent agreement unless "Paragraph 3(B)" was changed, the magistrate told him, "I do not think you should refuse to sign the Agreement because of that. I wouldn't." The magistrate's statements were not transcribed. Appellant also asserts that Magistrate Beck acquired prejudicial opinions about him based on another unidentified matter pending in the circuit court.

Appellant argues that because of certain comments made by his attorney, he believed that he would not get a fair trial from the magistrate. Those statements included counsel's concern about not having enough time to conduct the hearing properly, counsel's statement that the magistrate did not believe appellant was the primary caregiver for the children because of his educational level and believed that he exaggerated things, and counsel's belief that if he went to trial "his chances would not be as bright as the Agreement in light of Magistrate Beck's comments."

Appellant maintains that "he could not have stated" his concerns about the agreement at the time of the voir dire because Magistrate Beck had "unduly acquired his assent to the Agreement" and he could not "have told Magistrate Beck that she coerced him into signing the Agreement out of fear of disrespecting the Court." He also maintains that his counsel's "advice that he would not have access to his children for a significant amount of time unless he signed the Agreement" amounted to coercion. Appellant argues that if

> he had stated during Voir Dire that he signed the Agreement because of the threat that Appellee would not let him see his minor children if he did not sign it, the court, perhaps, would have voided the agreement but would not

> have been able to shield him from the threatened consequence of access denial to his children because the court would not have had time to hear the case on that day since the Voir Dire was administered at 2:40 p.m., and Defendant-Appellee would have continued to deny [him] access to his minor children.

Appellant also raises issues pertaining to the terms of the agreement. He argues that the consent agreement is not a legally binding contract because appellee did not provide any consideration in exchange for his agreement to dismiss a civil case he had filed against appellee in the District Court for Baltimore County. He complains that the consent order is unfair and overly burdensome because it requires him personally to provide care for the children when they are with him but does not impose the same condition on appellee, and this condition was the "result of ineffective representation" by his counsel, who "made far too many one-sided concessions." Lastly, appellant contends that the circuit court's order does not mirror the agreement signed by the parties because the court's order provides that the "weekend schedule will continue until further Order of the Court." We are not persuaded by appellant's arguments.

A. Standard of Review

Ordinarily, under Maryland Rule 8-131(c), we review a case tried without a jury "on both the law and the evidence." We "'will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.'" *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 388 (2019)(quoting Md. Rule 8-131(c)). To the extent that the trial court's decision "involves an interpretation and application of Maryland statutory and case law," we must determine whether the trial court's conclusions "are 'legally correct' under

a *de novo* standard of review." *L.W. Wolfe Enters., Inc. v. Maryland Nat'l Golf, L.P.*, 165 Md. App. 339, 344 (2005)(quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)).

In the case at hand, however, appellant challenged the entry of a consent judgment by filing a motion to reconsider in which he asked the court to reverse or revise the judgment on the ground that his assent to the agreement was obtained by undue influence and misrepresentation. We have stated that when a party "appeal[s] from the denial of a motion asking the court to exercise its revisory power, . . . [t]he scope of review is limited to whether the trial judge abused his or her discretion in declining to reconsider the judgment." *Estate of Vess*, 234 Md. App. 173, 204-05 (2017)(internal citations and quotations omitted). *Accord Wilson-X v. Dep't of Human Resources*, 403 Md. 667, 674-75 (2008)(we review the denial of a motion for reconsideration for abuse of discretion). "It is hard to imagine a more deferential standard than this one." *Estate of Vess*, 234 Md. App. at 205. Although abuse of discretion is ordinarily a highly deferential standard of review, the required degree of deference is even greater when the appeal challenges a discretionary decision not to revise a judgment. In that context, "even a poor call is not necessarily a clear abuse of discretion." *Stuples v. Baltimore City Police Dep't*, 119 Md. App. 221, 232 (1998).

B. Appealability and Consent Orders

Ordinarily, an appeal may be taken only from a final judgment. *See* § 12-301 of the Courts & Judicial Proceedings Article ("CJ"). In the family law context, a custody order may qualify as an appealable interlocutory order under CJ § 12-303(3)(x) when it operates to deprive "a parent, grandparent, or natural guardian of the care and custody of his child,

or chang[es] the terms of such an order." In the instant case, the order at issue was a *pendente lite* consent judgment that set forth the parties' agreement with respect to access to and visitation with their minor children pending a hearing on the merits. *See generally* Md. Rule 2-612 ("The court may enter a judgment at any time by consent of the parties.").

In *Barnes v. Barnes*, 181 Md. App. 390 (2008), we discussed consent judgments, stating:

> Consent judgments are agreements entered into by the parties which must be endorsed by the court. They reflect the agreement of the parties pursuant to which they have relinquished the right to litigate the controversy. A consent order has also been defined as an agreement of the parties with respect to the resolution of the issues in the case or in settlement of the case, that has been embodied in a court order and entered by the court, thus evidencing its acceptance by the court.

Barnes, 181 Md. App. at 407-08 (internal quotations and citations omitted).

We went on to note the distinction between a settlement agreement, which is subject to the general rules of contract, such as the adequacy of consideration, and a consent judgment, which is "'entered under the eye and with the sanction of the court and should be considered a judicial act not open to question or controversy in a collateral proceeding.'" *Barnes*, 181 Md. App. at 408 (quoting *Dorsey v. Wroten*, 35 Md. App. 359, 361 (1977)). When parties enter into an agreement in open court, which under Maryland law is binding upon the parties, intending that the court will subsequently reduce the agreement to a written order, the legal principles regarding consent agreements are equally applicable to the resulting order. *Id.* at 409 (citing *Smith v. Luber*, 165 Md. App. 458, 470-71 (2005)). In *Suter v. Stuckey*, 402 Md. 211, 225 (2007), the Court of Appeals addressed the nature of consent judgments, stating:

> Consent judgments "are essentially agreements entered into by the parties which must be endorsed by the court. They have attributes of both contracts and judicial decrees." *Chernick v. Chernick*, 327 Md. at 478, 610 A.2d at 774 (1992)(citing *Local Number 93 v. City of Cleveland*, 478 U.S. 501, 519, 106 S.Ct. 3063, 3073, 92 L.Ed.2d 405 (1986)). Like contracts, the parties bargain and provide consideration. Consideration is not always tangible. In the case of a consent judgment, the fact that "the parties give up any meritorious claims or defenses they may have had in order to avoid further litigation" may serve as consideration. *Long v. State*, 371 Md. 72, 86, 807 A.2d 1, 9 (2002).

As a matter both of law and common sense, someone who has agreed to a consent order or consent judgment cannot be aggrieved by it. *Id.* at 222-24. A party "is not entitled to appeal from a judgment or order if that party consented to or acquiesced in that judgment or order." *In re Nicole B.*, 410 Md. 33, 64 (2009). *Accord Suter*, 402 Md. at 222 ("It is a well-settled principle of the common law that no appeal lies from a consent decree."). In *Suter*, the Court of Appeals explained:

> The rule that there is no right to appeal from a consent decree is a subset of the broader principles underlying the right to appeal. The availability of appeal is limited to parties who are aggrieved by the final judgment. A party cannot be aggrieved by a judgment to which he or she acquiesced.

Suter, 402 Md. at 224 (internal citations omitted).

C. Duress, Undue Influence, Misrepresentation, and Unconscionability

The only question that can be raised concerning a consent decree "is whether in fact the decree was entered by consent." *Dorsey*, 35 Md. App. at 361 (citing *Prince George's County v. Barron*, 19 Md. App. 348, 349 (1973)). *See also Chernick*, 327 Md. at 477 n.1 (an appeal will lie from court's decision to grant or refuse to vacate a consent judgment where it was contended below that consent was coerced, the judgment exceeded the scope

of consent, or for other reasons there was never any valid consent). In the case at hand, appellant argued below, as he does on appeal, that his assent to the *pendente lite* agreement was procured by duress, undue influence, and misrepresentation, and that certain provisions were unconscionable.

"In order to establish duress, there must be a wrongful act which deprives an individual of the exercise of his free will." *Eckstein v. Eckstein*, 38 Md. App. 506, 512 (1978). Relying on 13 Williston on Contracts, we noted in *Eckstein* that "three elements are common to all situations where duress has been found to exist: '1) that one side involuntarily accepted the terms of another; 2) that circumstances permitted no other alternative; and 3) that the circumstances were the result of the coercive acts of the other party.'" *Id.* at 514.

The concept of undue influence is closely related to duress. Although Maryland courts have not created a bright-line test to detect the existence of undue influence, *Anderson v. Meadowcroft*, 339 Md. 218, 229 (1995), Williston describes undue influence as follows:

> If a party in whom another reposes confidence misuses that confidence to gain an advantage while the other has been made to feel that the party in question will not act against its welfare, the transaction is the result of undue influence. The influence must be such that the victim acts in a way contrary to its own best interest and thus in a fashion in which it would not have operated but for the undue influence. Undue influence is equivalent to that which constrains the will or destroys the free agency of the person and substitutes in its place the will of another. The characteristics which play a role in establishing undue influence include pressure "of whatever sort which overpowers the will[.]" The pressure is applied "by a dominant subject to a servient object." The will of the servient person is actually the will of the dominant party.

28 *Williston on Contracts*, § 71:51 (4th ed. 2020)(footnotes omitted). *Accord Longanecker v. Sowers*, 148 Md. 584, 587 (1925)("Undue influence is that degree of importunity which deprives a [party] of his free agency, which is such as he is too weak or too feeble to resist, and will render the instrument executed under its influence not his free and unconstrained act.").

With regard to appellant's contention that the consent agreement should have been invalidated for fraudulent misrepresentation, the Restatement (Second) of Contracts provides that:

> (1) A misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent and the maker
> (a) knows or believes that the assertion is not in accord with the facts, or
> (b) does not have the confidence that he states or implies in the truth of the assertion, or
> (c) knows that he does not have the basis that he states or implies for the assertion.
> (2) A misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.

Restatement (Second) of Contracts, § 162 (1981; October 2020 Update).

The Court of Appeals has stated that, "[t]o permit the recission of a contract for misrepresentation, the plaintiff must show that a false representation of material fact was made and was actually relied upon by the plaintiff." *In re Adoption/Guardianship Nos. T00130003, T00130004*, 370 Md. 250, 263 (2002).

An unconscionable contract has been defined "as one characterized by 'extreme unfairness,' which is made evident by '(1) one party's lack of meaningful choice, and (2) contractual terms that unreasonably favor the other party.'" *Walther v. Sovereign Bank*,

386 Md. 412, 426 (2005)(quoting Black's Law Dictionary 1560 (8th ed. 2004)). A party must prove both procedural and substantive unconscionability in order to set aside an agreement. *Rankin v. Brinton Woods of Frankford, LLC*, 241 Md. App. 604, 621-22 (2019). Procedural unconscionability "'concerns the process of making a contract and includes such devices as the use of fine print and convoluted or unclear language, as well as deficiencies in the contract formation process, such as deception or refusal to bargain over contract terms.'" *Rankin*, 241 Md. App. at 622 (quoting *Stewart v. Stewart*, 214 Md. App. 458, 477 (2013)). Substantive unconscionability "'refers to contractual terms that are unreasonably or grossly favorable to the more powerful party and includes terms that attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law[.]'" *Id.* "They are 'provisions that seek to negate the reasonable expectations of the nondrafting party, and terms unreasonably and unexpectedly harsh . . . having nothing to do with . . . central aspects of the transaction.'" *Id.* In other words, substantive unconscionability involves terms that "are so one-sided as to 'shock the conscience of the court." *Li v. Lee*, 210 Md. App. 73, 112 (2013)(citing *Walther*, 386 Md. at 426), *aff'd* 437 Md. 47 (2014).

D. Denial of Appellant's Motion to Revise or Rescind the Consent Agreement

In the instant case, the trial court's denial of appellant's motion to reconsider did not constitute an abuse of discretion. *See Stuples*, 119 Md. App. at 232 (1998)(the denial of a motion to revise a judgment should be reversed only if the decision was so egregiously wrong as to constitute a clear abuse of discretion.")

Appellant contends that both his attorney and Magistrate Belk exerted undue influence over him to obtain his assent to the consent agreement. Appellant's descriptions of conversations he had with his attorney are completely unsupported by the evidence. He contends that his attorney told him it was in his best interest to settle the matter "in light of the magistrate's negative comments" about him, that the magistrate did not believe appellant was the children's primary caregiver because of his "educational level and multiple college degrees," and that the magistrate said appellant "exaggerates things" and "always wants things his way but would not get things his way." Appellant's attorney promised to change paragraph 3(B) of the agreement, and when appellant objected to the change that was ultimately made, his attorney "became impatient and frustrated" with him. In addition, his lawyer told him that the magistrate had another trial at 2 p.m. and, therefore, any hearing would be rushed, and his best option was to accept appellee's settlement offer. Even assuming the truth of these assertions, it is clear that they do not rise to the level of duress, undue influence, or fraud. There is absolutely nothing in the record before us to suggest that appellant was deprived of his free will or that his free agency was destroyed and substituted with the will of his attorney or any other person.

Appellant's contentions with respect to Magistrate Beck are also unsupported by the evidence. He complains that "[a]s a party" appearing before the magistrate, he "was under [the magistrate's] domination, and that relationship created an opportunity for [the magistrate] to exert undue influence on" him. While in the courtroom he told his attorney he would not sign the agreement, but Magistrate Beck "intervened" and "urged" him to accept the settlement offer. Magistrate Beck "trivialized" his objections to the agreement

and told him she did not think he should refuse to sign the agreement and that she would not do so. Appellant was afraid that the magistrate would conclude he "was only trying to get things his way, and would not consider the fairness of his objection." He "felt pressured to accept the Agreement because he feared the Court might rule against him if he refused to do so" and he "felt that he may lose any chance of seeing his children if he refused to do so as his legal counsel advised that he may not see them if he refused to sign the Agreement." Appellant claims he felt "inescapable pressure to sign" the agreement because the fate of his case was in the magistrate's hands and she urged him to do so.

There was an absolute failure of proof as to these alleged statements. Appellant failed to provide any transcript of the hearings, below, with the exception of the magistrate's voir dire to assess his consent to the agreement. During the voir dire, appellant testified, under oath, that he had read and reviewed the proposed pendente lite agreement, that he had an opportunity to ask questions about it, that he did not experience any pressure or duress and that nothing was imposed upon him in order to force him to enter the agreement, that he entered the agreement of his own free and voluntary will, and that he was satisfied with the advice of his counsel. Even if the statements allegedly made by the magistrate occurred, they were insufficient to establish duress, undue influence, or fraud. There is absolutely nothing in the record before us to suggest that appellant was deprived of his free will or that his free agency was destroyed and substituted with the will of the magistrate.

Appellant's argument that appellee failed to provide consideration in exchange for his agreement to withdraw a tort case against her is completely meritless. Both parties

made concessions in order to reach a resolution with regard to the issue of pendente lite access to and visitation with their children. As we have already noted, consideration is not always tangible and, in the case of a consent judgment, the fact that the parties give up any meritorious claims or defenses they may have in order to avoid further litigation may serve as consideration. *Suter*, 402 Md. at 225. Here, the parties provided valid consideration for their agreement by bargaining for the reciprocal promises made to one another.

Likewise, there is no merit to appellant's argument that the consent agreement was inequitable because it required him to care for the children when they were in his care, but did not contain a similar provision for appellee. Appellant asserts that that specific provision was the result of ineffective representation by his counsel. There is no evidence whatsoever to show that the provision was the result of duress, undue influence, or fraud. Moreover, the fact that a provision applies to one party and not the other does not render an agreement unconscionable.

Lastly, the addition of phrases in the consent agreement referencing the child support worksheet, that appellant's access schedule would continue until superseded by further order of the court, and that the pendente lite order was subject to further order of the court were completely harmless. The parties agreed they would be generally charged with child support and pendente lite agreements, by their nature, are always subject to further order of the court. Contrary to appellant's assertions, the phrases added to the final consent judgment did not in any way constitute material changes to the parties' consent agreement.

The record before us makes clear that the parties reached an agreement to resolve the issue of pendente lite access to and visitation with their minor children. That agreement was reduced to writing in the Proposed Pendente Lite Consent Order that was signed by both parties and their counsel and was binding on the parties. Appellant confirmed his assent to the agreement when he testified, under oath, in response to the magistrate's voir dire. Notwithstanding appellant's complaints about the negotiations and terms of the agreement, and his allegations about the performance of his attorney and statements made by the magistrate, there is no evidence that his consent was the result of duress, undue influence, or fraud, or that the agreement was unconscionable. As a result, the circuit court did not abuse its discretion in denying appellant's motion to reconsider or revise the consent judgment.

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