

Circuit Court for Prince George's County
Case Nos. CAD14-36040 & CAP14-22705

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 746

September Term, 2021

DEAN LAKE

v.

GABRIEL McCONNELL

Berger,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 14, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Dean Lake, appellant, and Gabriel McConnell, appellee,¹ are the parents of an eight-year-old daughter, S. In September 2019, Mr. Lake filed a motion in the Circuit Court for Prince George’s County for a downward modification of his child support. Following a hearing held in September 2020, the court granted Mr. Lake’s motion, modified his child support, and ordered him to begin paying the reduced amount effective October 1, 2020.² Nine months later, the circuit court held a contempt hearing during which Mr. Lake made oral motions to modify his child support and to revise the October 2020 Order, which were denied. He appeals presenting two questions, which we have rephrased:

- I. Whether the trial court erred or abused its discretion by not revising the October 2020 Order modifying his child support, so as to make it retroactive to September 2019, or to alter the method of calculating his child support obligation.
- II. Whether the trial court erroneously ruled on Mr. Lake’s motion for modification of child support without a hearing, in violation of Rule 2-311(f).

For the following reasons, we answer both questions, “No,” and affirm the orders of the circuit court.

¹ Ms. McConnell did not file a brief with this Court.

² The orders were entered in two cases: CAD14-36040 and CAP14-22705. The former case established custody and visitation and the latter case established paternity and child support.

FACTS AND PROCEEDINGS

On September 27, 2019, Mr. Lake, who has represented himself at all relevant times, filed a motion to modify child support. He alleged three changes in circumstances: 1) that S no longer attended before-care and after-care at her school; 2) that Ms. McConnell's income had increased; and 3) that his income had decreased because he was no longer serving on active duty in the United States Air Force.

On March 6, 2020, the circuit court held a hearing on the motion to modify child support and a petition for contempt filed by Mr. Lake. The court reserved ruling on the motion for modification, apparently because Mr. Lake had not provided necessary financial information, and denied the petition for contempt. The motion for modification was reset for a 4-hour hearing on April 24, 2020. That hearing did not go forward as scheduled due to COVID-19 emergency measures.

On July 13, 2020, the court held a remote status hearing, noted that Mr. Lake had filed his financial information, directed Ms. McConnell to file her financial information by July 15, 2020, and reset the hearing for September 22, 2020. On that date, Mr. Lake and Ms. McConnell both appeared and testified. The transcript from this hearing does not appear in the record.

On October 2, 2020, the circuit court entered an Order granting Mr. Lake's motion for modification, reducing his monthly child support obligation from \$897 per month to \$451 per month, and ordered him to begin paying that reduced amount effective October 1, 2020. The Order specified that when S resumed "'in school' learning," Mr.

Lake’s child support obligation would increase to \$517 per month. The court directed the Office of Child Support Enforcement to perform an audit to determine what, if any, child support arrears were owed.³ Mr. Lake was ordered to pay any arrears following the audit at a rate of \$100 per month.

Mr. Lake did not note an appeal or move for reconsideration of the October 2, 2020 Order. More than nine months later, on July 20, 2021, the court held a virtual hearing at which Mr. Lake and Ms. McConnell each represented themselves. Most of the hearing was devoted to testimony concerning cross-petitions for contempt relating to custody and visitation with S. Near the end of the hearing, Mr. Lake moved to revise the October 2020 Order and to modify his child support. He explained that there was an “issue with one of the last orders that was written, when the order was supposed to start.” He specified that he had filed his prior motion to modify child support on September 27, 2019, but when the court granted his motion over a year later, it did not make the modification retroactive to the date of filing. He proffered that someone from the Office of Child Support Enforcement had advised him to ask the court to amend the Order to make it retroactive to the date of filing. The court advised Mr. Lake that it would review

³ This audit did not occur in a timely fashion. The Office of Child Support Enforcement filed its “Fiscal Reconciliation report” with the circuit court on July 9, 2021. On July 28, 2021, the court signed an Order directing Mr. Lake to continue paying \$451 per month in child support until S returned to in-person school, when it would increase to \$517 per month. Beginning September 1, 2021, Mr. Lake was ordered to begin paying \$100 per month on his arrears, which were calculated to be \$14,139.42.

the prior child support Order and determine if there was a typographical error in the Order.⁴

Mr. Lake also argued that his current child support obligation should be modified because he was not receiving credit for the cost to him to provide health insurance for S. Ms. McConnell countered that she paid to insure S, as was reflected in the October 2, 2020 child support Order. The court denied Mr. Lake's motion to modify child support. It advised Mr. Lake that he could file a written motion to modify child support if there were additional facts he wanted to put before the court.

The court signed an Order to that effect that same day, which was entered on August 4, 2021. In the Order, the court explained that Mr. Lake made two requests relative to child support at the hearing: 1) a modification of his current child support obligation to reflect his payment of health insurance premiums; and 2) an amendment of the October 2, 2020 child support Order to make it retroactive to September 27, 2019. The court denied the first request because Ms. McConnell, not Mr. Lake, was ordered to pay to insure S. The court denied the second request because the October 2, 2020 child support Order reflected the court's determination that retroactive application of the

⁴ Mr. Lake also vaguely argued that his child support obligation should have been calculated using Worksheet B, which applies when the parents share physical custody of the child, rather than Worksheet A, which applies when one parent has primary physical custody of the child. *See* <https://www.courts.state.md.us/sites/default/files/court-forms/family/forms/ccdr034.pdf/ccdr034.pdf> (Worksheet A) (last visited Mar. 11, 2022); <https://mdcourts.gov/sites/default/files/court-forms/family/forms/ccdr035.pdf/ccdr035.pdf> (Worksheet B) (last visited Mar. 11, 2022).

modification was not warranted because Mr. Lake had refused to provide financial documents to permit the court to accurately assess his current income and had “repeatedly misled th[e] [c]ourt” during the earlier hearings, delaying resolution of his modification request.

On July 23, 2021, Mr. Lake noted this appeal.⁵

DISCUSSION

I.

Mr. Lake contends that the trial court erred by not revising the October 2, 2020 Order to make the downward modification of child support retroactive to September 27, 2019, when he filed his motion to modify and because the wrong formula was used to calculate his child support obligation. Because he did not note an appeal within thirty days after the entry of the October 2, 2020 Order, the propriety of that Order is not before this Court.⁶ *See* Md. Rule 8-202(a) (subject to certain exceptions not applicable here, a

⁵ Mr. Lake noted his appeal after the court orally denied his motion for modification and signed an Order to that effect, but before that Order was entered. Consistent with Md. Rule 8-602(f), we treat his appeal “as filed on the same day as, but after, the entry on the docket.”

⁶ Even if Mr. Lake had timely appealed from the October 2, 2020 Order, we would perceive no error in the circuit court’s decision not to make the modification retroactive to the date of filing. The court has discretion, under Md. Code, Fam. Law § 12-104, to modify child support retroactive to the filing of a motion for modification, but it is not obligated to do so. *See, e.g., Petitto v. Petitto*, 147 Md. App. 280, 309-310 (2002) (emphasizing that “the court is not required to make a modification retroactive to the date of filing of the relevant complaint”). Here, the court exercised its discretion not to make the modification retroactive.

notice of appeal must be filed “within 30 days after entry of the judgment or order from which the appeal is taken”).

Mr. Lake did note a timely appeal from the August 4, 2021 Order denying his oral motion to revise the October 2, 2020 Order, made at the July 20, 2021 hearing. Because the Order he sought to revise had been entered more than 30 days prior to that hearing, the court was empowered to revise it only upon a showing of “fraud, mistake, or irregularity” or if it determined that the October 2, 2020 Order contained a clerical error. Md. Rule 2-535(b), (d).

Mr. Lake did not make any showing at the hearing to establish fraud, mistake, or irregularity within the meaning of Rule 2-535(b). The court considered and rejected his argument that the Order contained a clerical mistake relative to the commencement date of the modification, concluding to the contrary that the court had exercised its discretion not to make the modification of child support retroactive to the date Mr. Lake filed his motion. To the extent that Mr. Lake sufficiently raised the argument before the circuit court that the wrong worksheet was used to calculate his child support obligation, the circuit court did not err or abuse its discretion by denying Mr. Lake’s motion to revise on that basis.

II.

Mr. Lake contends that reversal also is warranted because he was denied his right to a hearing under Rule 2-311. The pertinent subsection of the rule provides:

(f) A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall

request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

Md. Rule 2-311(f).

The short answer to Mr. Lake’s contention is that he received a hearing, both on his original motion to modify child support (on September 22, 2020) and on his oral motions to revise the Order that resulted in modifying his child support (on July 20, 2021). Given that the record does not reflect that Mr. Lake requested a hearing consistent with Rule 2-311(f), however, the court was not obligated to hold a hearing before ruling.

For all these reasons, we affirm.

**ORDERS OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**