Circuit Court for Baltimore County
Case No. 03-C-13-004939

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0767

September Term, 2020

EDWARD J. NORRIS

v.

KATHLEEN K. NORRIS

Leahy,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: May 25, 2022

This case stems from a settlement which was reached pursuant to a mediation between Edward Norris ("Appellant") and his former spouse, Kathleen Norris ("Appellee"). Appellant participated in the remote mediation *pro se*. During the mediation, the parties agreed to a final settlement on the record. Although Appellant stated at the time that he was voluntarily agreeing to the settlement, Appellant subsequently claimed that he believed the mediation was court ordered and that his attendance was compelled. When Appellant discovered that the mediation was not compelled and that he had the option to forgo mediation, he timely filed a notice of appeal along with a motion to vacate the settlement agreement. The circuit court denied Appellant's motion to vacate, as well as two subsequent motions for reconsideration.

In bringing his appeal, Appellant presents two (2) question's[1] for appellate review which we have rephrased for clarity:

I. Is dismissal of the appeal required where the appeal stems from a consent judgment, and where both the notice of appeal and Rule 2-535 motion to vacate the judgment were both filed 30 days after entry of the consent judgment?

II. Did Appellant voluntarily and knowingly assent to the settlement during the mediation conference where he was incorrectly made to believe that the mediation was court ordered?

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[1] Appellant presented the following questions for review:

I. Is the result of mediation a voluntary and binding agreement, where a party is told he is compelled by court order to mediate, but after mediation learns that no such order ever existed?

II. Did the trial court err in not granting a hearing, where the validity of the settlement was contested?

III. Did the Circuit Court err in denying Appellant's request for a hearing, which Appellant requested to contest the validity of the settlement?

Finding that Appellant's contentions are not properly before us for review, we dismiss the appeal.

FACTUAL & PROCEDURAL BACKGROUND

This appeal follows two prior remands. Following the second remand, Judge Justin King scheduled and conducted a status conference call on June l6, 2020.[2] After the conference call concluded, counsel for Appellee contacted a senior judge ("Senior Judge")[3] to see if they were "available to mediate an alimony dispute" between the parties in the present case. On August 18, 2020, Appellant received an Assignment of Remote Hearing Date for a "settlement conference" to be held on August 28, 2020. After receiving notice of the settlement conference, Appellant asked Senior Judge whether the mediation was court ordered or private. On August 26, 2020, Senior Judge informed Appellant via email that the mediation was court ordered.

[2] When setting up the conference call, Judge King contacted Appellee's trial counsel and Appellant's former trial and appellate counsel. However, Appellant's former trial counsel and former appellate counsel each responded that they were no longer retained to represent Appellant. Subsequently, Appellant informed Judge King that he would retain counsel only if further litigation ensued. Appellant also informed the court that he could not attend the scheduled conference call. Regardless, the conference call proceeded as scheduled without Appellant present. Instead, the call included Judge King, Appellee's counsel, and Appellant's former trial counsel.

[3] A "retired judge who is approved for recall for temporary service under Code, Courts Article, §1-302 may conduct alternative dispute resolution (ADR) proceedings in a private capacity" subject to certain requirements. Maryland Rule 18-103.9.

Appellant participated in the mediation *pro se*, while Appellee participated with counsel. Appellant attended the remote mediation from "a hospital bed the day after undergoing a procedure conducted under local anesthesia." Appellant asserts that he did not realize the meeting would be dispositive of his case and he believed he would have an opportunity to confer with counsel at the conclusion of the mediation session.

As a result of the mediation, the parties reached an agreement, and the Circuit Court entered an order dismissing the case on August 31, 2020. Under the terms of the mediation settlement, Appellant agreed to pay Appellee "a lump sum [alimony] payment" of $290,000 to settle "past, present and future" alimony claims.

During the mediation, Senior Judge asked Appellant a series of questions to ensure that Appellant was knowingly and voluntarily agreeing to the terms of the settlement:

> THE COURT: Okay. All right. [Appellant], you heard this settlement as it was placed on the record, is that correct?
>
> [APPELLANT]: Yes, I heard the settlement, but I think since we've got on the recording, we didn't specifically indicate that the lump sum payment of $290,000 is a final alimony payment.
>
> THE COURT: Absolutely. It is payment for alimony, both past, present and future. That's the –
>
> [APPELLANT]: I agree.
>
> . . . .
>
> THE COURT: Okay. It's a free and voluntary settlement on your part, is that correct?
>
> [APPELLANT]: That's correct.
>
> THE COURT: That means that no one has forced you or coerced you into entering into the settlement today. Is that also true?

[APPELLANT]: That's correct.

TIE COURT: All right. You understand that if you have any attorney's fees that you still owe to any prior counsel and any open court costs, that you have to pay those?

[APPELLANT]: I understand that.

THE COURT: Okay. [Appellee counsel], do you have any questions to ask [Appellant]?

[APPELLEE'S COUNSEL]: I would just like to clarify that although this is being characterized as being a payment of the final piece of alimony, it is a global settlement that will result in the dismissal of this case with prejudice.

THE COURT: That is correct. You understand that too, [Appellant], is that correct?

[APPELLANT]: (No audible response)

THE COURT: This is the end.

[APPELLANT]: No, I'm not –

THE COURT: It's the end.

[APPELLANT]: Yeah, I'm not sure I under – Okay, but just saying I don't – I'm not certain I understand, what, "with prejudice," means.

THE COURT: "With prejudice," means you can't come back and try to reopen this case and initiate any future legal proceedings. It's over. That's what that means.

[APPELLANT]: All right. Thank you. Thanks for the clarification.

THE COURT: This is –

[APPELLANT]: I agree.

THE COURT: That's your agreement, okay. Any other questions —

. . . .

[APPELLEE'S COUNSEL]: The other point I would just like to make clear for the record is that [Appellant], you fully and freely waive your right to consult with an attorney, that you're representing yourself, correct?

THE COURT: Okay. Is that correct, [Appellant]? You are not represented by an attorney today, that you're representing yourself. You've had an opportunity to get an attorney to represent you through these latest negotiations, and you have decided to represent yourself with a knowing and voluntary participation. Is all that true?

[APPELLANT]: That's correct. That's true. Thank you.

. . . .

THE COURT: You have told me earlier today, however, that -- and you certainly know this because you're an anesthesiologist yourself — that there is nothing that is impairing your ability today to understand where you are and what you're doing. Is that true?

[APPELLANT]: That's true for today and last week.

THE COURT: Okay, that's correct. So this is a voluntary settlement on your part. You are not impaired in any way whatsoever, is that correct?

[APPELLANT]: That is correct.

THE COURT: Okay. Are you ingesting any medication that would impair your ability to know where you are and what you are doing today?

[APPELLANT]: No, I'm not.

THE COURT: All right. Then this case is settled on the record. It will be dismissed with prejudice. Each party to pay their own attorney's fees, if any, and their open court costs. That will end our settlement conversation today and for all time. I thank the parties for being able to reach an amicable settlement in this case. Everybody helps a little, everybody hurts a little, but it's done. Get on with your life as best you can.

The order of dismissal entered on August 31, 2020, read: "case dismissed by agreement of the parties."

On September 2, 2020, Appellant learned that the mediation was not "court ordered." On that date, Appellant emailed Senior Judge to express his frustration, writing the following:

> You responded to my question about mediation by answering – "This is a court ordered mediation." When asking that question[,] I wanted to understand if my participation was required or ordered by Judge King. As it turns out, it was not ordered or directed by Judge King at all. According to his office, it was just a suggestion he made during a conference call that I was not part of or represented.
>
> Finally, I never formally agreed to mediation through the court or otherwise. My decision to participate last Friday was because it was my understanding that it was a required by court order.

That same day, Senior Judge responded "[i]t makes no difference. You settled your case voluntarily under oath and the case has been dismissed." Approximately 20 minutes later, Appellant replied:

> With all due respect, it makes a difference to me as I did not initiate my participation Friday morning voluntarily. I attended because I was under the impression it was by court order.
>
> My doctors (and now myself) were very disturbed that I participated in a court activity while hospitalized and immediately after two procedures. Although I requested no anesthesia during the procedures, medications were administered by the surgeons that I was not aware.
>
> The question I am struggling with is – Should a Judge proceed with a final settlement agreement knowing that one of the participants is hospitalized, underwent a procedure, and self[-]representing. I am asking myself if it is appropriate.
>
> Please let me know how I can get a copy of the recorded statements and any documentation related to the settlement. I honestly can not recall exactly what was decided.

On September 30, 2020, Appellant filed a notice of appeal. Just 24 minutes later, Appellant filed a Motion to Vacate Family Law Settlement Court Order (Hearing Requested). In his motion to vacate the settlement, Appellant argued that the settlement should be vacated "on the ground that it was procured by procedural irregularity." Appellant's motion to vacate the settlement order, including his request for a hearing, was denied on November 4, 2020. Upon denial of his motion to vacate the settlement order, Appellant filed a motion for reconsideration. On December 8, 2020, the circuit court denied Appellant's motion for reconsideration without a hearing. Appellant then filed a second motion for reconsideration on December 15, 2020, which the circuit court again denied without a hearing. No new notice of appeal was filed.

I. Motion to Dismiss

As an initial matter, Appellee argues that Appellant's appeal should be dismissed because his notice of appeal was filed before the circuit court denied his motion to vacate. Appellee argues that, because Appellant's appeal was filed only after the final settlement order, but before the motion to vacate was decided, the appeal concerns only that settlement order, not the subsequent denials of his motions for reconsideration. Further, in regard to the August 31, 2020 order of dismissal, Appellee notes that a party "cannot appeal from a decree wherein the relief he prays for has been granted." *Mugford v. Mayor & City Council of Balt.*, 185 Md. 266, 269 (1945); Md. Rule 8-602(a)(1). Finally, Appellee argues that Appellant's cannot appeal the Circuit Court's Nov. 4th denial of his motion to vacate because it falls outside the scope permitted by Maryland Rule 8-202. Rule 8-202 provides as follows:

MD Rules, Rule 8-202
RULE 8-202. NOTICE OF APPEAL--TIMES FOR FILING

> **(a) Generally.** Except as otherwise provided in this Rule or by law, **the notice of appeal shall be filed within 30 days after entry of the judgment *or order from which the appeal is taken***. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.
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> * * *
>
> **(c) Civil Action – Post-Judgment Motions.** In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, 2-534, or 11-218, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532, 2-534, or 11-218. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. *If a notice of appeal is filed and thereafter a party files a timely motion pursuant to **Rule 2-532**, **2-533**, **2-534**, or **11-218**, 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.*

(Emphasis added). Thus, Rule 8-202 provides that the denial of certain post-judgment motions may be incorporated into a previously timely filed notice of appeal. Notably absent from the motions covered under this exception is a Rule 2-535 motion – the motion filed by Appellant in this case. However, Rule 2-535 motions are addressed in a committee note which accompanies Rule 8-202(c):

> **Committee note:** A motion filed pursuant to Rule 2-535, ***if filed within ten days after entry of judgment***, will have the same effect as a motion filed pursuant to Rule 2-534, for purposes of this Rule. *Unnamed Att'y v. Attorney Grievance Comm'n*, 303 Md. 473 (1985); *Sieck v. Sieck*, 66 Md. App. 37 (1986).

(Emphasis added). Under Rules 2-532, 2-533 and 2-534, a "timely" motion means one filed within ten days of entry of judgment. Accordingly, any Rule 2-535 motion filed within ten

days after entry of judgment will relate back to a prior timely filed notice of appeal relating to the same judgment. If, however, a Rule 2-535 motion is not filed within ten days after the entry of judgment but is filed within 30 days of entry of judgment, Rule 8-202's general rule for notice of appeal applies. Thus, where a notice of appeal is filed prior to a 2-535 motion, the appeal concerns only the final judgment. *See Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 68 (2013) ("It is clear that a notice of appeal must be filed within 30 days after the entry of the trial court's ruling on a motion filed more than 10 days after entry of a judgment for this Court to have jurisdiction to review such ruling."); *Cf. White v. Prince George's County*, 163 Md. App. 129, 140 (2005) ("Because appellant filed his revisory motion *within ten days* of the Order granting the motion to dismiss, appellant is entitled to a review of both the motion to dismiss *and* the motion to alter or amend.") (emphasis added).

Here, Appellant did not file his Rule 2-535 motion within ten days, placing the motion outside of the purview of Rule 8-202(c). Moreover, because the general rule provides that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken," and Appellant filed his notice of appeal only after entry of the judgment, the present appeal concerns only the settlement order, not any subsequent motion to vacate or motion for reconsideration. As a result, Appellant's second issue raised on appeal – that the circuit court erred in refusing to hold a hearing on his motion to vacate – is not properly before this court and will not be considered.

Appellee further argues that because Appellant voluntarily consented to the settlement order, Appellant is precluded from appealing the settlement order. In response,

Appellant contends that a second notice of appeal, following the resolution of a Rule 2-535 motion, is only necessary when the judgment of the court has been revised. We disagree.

Prior cases have established that a party "cannot appeal from a decree wherein the relief he prays for has been granted." *Mugford v. Mayor and City Council of Baltimore*, 185 Md. 266, 269 (1954); *see also Long v. Runyeon*, 285 Md. 425, 429–30 (1979) ("The law in this State is that no appeal will lie from a consent judgment."); *Chernick v. Chernick*, 327 Md. 470, 477 (1992) ("Our prior cases have made clear that generally no appeal will lie from a consent judgment."). Moreover, in *Chernick*, the Court of Appeals noted that

> An appeal will lie from a court's decision to ***grant*** **or** ***refuse*** **to vacate a "consent judgment"** where it was contended below that the "consent judgment" was not, in fact, a consent judgment because the consent was coerced, the judgment exceeded the scope of consent, or for other reasons there was never any valid consent. *See Long v. Runyeon*, 285 Md. 425, 429–30, 403 A.2d 785, 788 (1979); *Mercantile Trust Co. v. Schloss*, 165 Md. 18, 24–25, 166 A. 599, 601–02 (1933).

327 Md. at 477. Thus, *Chernick* makes clear that the proper avenue for challenging a duly entered consent judgment is to file a motion to vacate the judgment due to lack of consent; and if the motion is denied, only then may the consent judgment be properly appealed. This is consistent with the foundational appellate function of reviewing only issues raised in or decided by the trial court.

As previously discussed, Appellant's motion to vacate is not properly before this court. *See supra* at 8. Moreover, because Appellant consented to the terms of the settlement order, Appellant may not appeal from that order. In sum, neither of Appellant's contentions on appeal are properly before this court.

CONCLUSION

Accordingly, because neither of Appellant's contentions are properly before this court, we dismiss Appellant's appeal pursuant to Rule 8-206(b)(1).

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