

Circuit Court for Prince George's County
Case No. CAD13-12909

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 946

September Term, 2021

M.Y.

v.

L.G.

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

JJ.

Opinion by Berger, J.

Filed: May 10, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from an order entered by the Circuit Court for Prince George’s County, finding that the passport of the minor child of M.Y. (“Mother”), appellant, and L.G. (“Father”), appellee, had been lost, stolen, or misplaced -- so Father could request the issuance of a new passport from the U.S. Department of State -- after Mother refused to produce the passport to Father upon his repeated requests. We discern from Mother’s informal brief that she claims procedural error in the circuit court’s entry of the order, on the ground that the court improperly addressed the issue of the child’s passport, when Mother understood the pertinent hearing would address Father’s motion to hold her in contempt of court for attempting unscheduled and unsupervised visits with the child.¹

¹Mother filed an “Informal Brief” pursuant to this Court’s March 9, 2021, Administrative Order permitting informal briefing in family law cases in which the appellant is a self-represented litigant. *See* Maryland Rule 8-502(a)(9) (permitting this Court to authorize informal briefing for self-represented litigants). Father also filed an Informal Brief.

The issues, as set forth *verbatim* in Mother’s brief, are:

1. Was the trial Court following SHOW CAUSE ORDER rules, when addressed a topic outside the scope of the trial? Was the trial Court following WRIT OF SUMMONS rules when the Court did not allow the Appellant the procedural time to respond? Was the Sheriff following the serving procedures by delivering the Summon to the landlord instead of the Appellant?
2. Is it legally for a trial Judge to make assumptions about the case? Is the trial court following the standard procedures when the Judge wrongly states the purpose of the hearing? Is the trial Court being impartial when disregards a parenting agreement and a parent’s concern about her daughter’s safety?

Although our review of the record reveals that the circuit court may have been mistaken as to what motion was scheduled to be argued during the pertinent hearing, we conclude that the issue of Mother’s turning the child’s passport over to Father was pending before the court as the result of a previous motion that had been held in abeyance by the court, and the court was entitled to rule on it. In light of that conclusion, we dismiss Mother’s appeal because it is not taken from a final judgment or an appealable interlocutory order.

BACKGROUND

Mother and Father married in a civil ceremony in Virginia in 1999 and in a religious ceremony in Venezuela in 2000. They are the parents of two children, “L.” (born 1/01) and “S.” (born 9/08).

In October 2013, the circuit court issued a judgment of limited divorce, incorporating the parties’ separation agreement and awarding Mother and Father joint legal custody and shared physical custody of L. and S. The court entered a judgment of absolute divorce in April 2015.

In July 2015, the circuit court granted Father’s motion to incorporate an addendum to the separation agreement, thereby modifying the parents’ custody access schedule but continuing their shared physical custody of the children. The addendum also outlined that one parent’s travel outside the Washington, D.C., area with the then-minor children would require written permission from the other parent. Regarding the children’s passports, the addendum specified that Mother would retain the U. S. passport for S. and Father would retain the U.S. passport for L. “until requested by the other parent for travel or other

necessary purposes,” so that neither parent could take the children out of the country without the permission of the other parent.²

In May 2019, Mother filed a motion for modification of the custody order, requesting primary physical custody and sole legal custody of S.³ Father filed an opposition to Mother’s motion, along with his own motion for modification, claiming that Mother had violated the terms of the addendum to the separation agreement on multiple occasions.

On December 2, 2019, the circuit court heard argument on the competing motions for modification. Thereafter, the circuit court issued an order denying Mother’s motion and granting Father’s motion. The trial court specified that Mother and Father would continue to share legal custody but that Father would have sole physical custody of S., with Mother having one-hour supervised visitation every other Monday. Mother timely appealed that order.⁴

In January 2020, Father filed another motion for modification, contending that shared custody had become too difficult since Mother had chosen to relocate to Texas. He also requested that the circuit court order Mother to give him S.’s passport for a planned

² The children apparently also have Venezuelan passports, but the circuit court found the wording of the addendum to the separation agreement clear and unambiguous that it referred solely to the U.S. passports because the children had only one passport each when Mother and Father signed the separation agreement.

³ By that point, L. had turned 18 and was no longer implicated in custody matters.

⁴ For an unknown reason, Mother’s notice of appeal was not received by this Court until December 16, 2020.

July 2020 trip to Taiwan, after she had refused his requests to do so on numerous occasions. Mother responded to Father’s motion, and in June 2020, filed her own motions, one for modification of the court’s December 2, 2019, order, asking for a return to shared physical custody of S., and one for contempt, alleging that she had moved back to Maryland but Father was not permitting her to visit with S. On September 30, 2020, Father filed a motion to terminate Mother’s visitation rights and to obtain S.’s passport from Mother, after Mother continued to refuse to provide it to him.

The circuit court held a hearing on January 7, 2021, regarding both parties’ pending motions. On January 20, 2021, the court issued an order denying Mother’s motion for modification, Mother’s motion for contempt, and Father’s motion for modification. The trial court further ordered that, despite its belief that Mother would not likely voluntarily give Father the passport, it would hold Father’s motion to obtain S.’s passport in abeyance “until international travel is no longer impacted by travel restrictions due to COVID-19” because it would not be in the child’s best interest to “even entertain international travel at this point.”

Mother appealed the court’s order. Mother’s two appeals were consolidated in this Court and considered in our unreported opinion in *M.Y. v. L.G.*, no. 1201, September Term 2020 (filed October 7, 2021), *cert. denied sub nom. Yilo v. Gan*, 477 Md. 397 (2022). Therein, we affirmed the circuit court’s orders.

On January 12, 2021, Father filed a motion for contempt against Mother, alleging that Mother had come to his house and tried to gain unsupervised access of S. outside her court-ordered supervised visitation times. Also on January 12, 2021, Father filed a motion

to modify the addendum to the separation agreement, arguing that the travel restrictions the agreement imposed on S. should be removed because S. was in his sole custody. He, therefore, requested that he be permitted to retain both S.’s U.S. and Venezuelan passports and that the court order Mother to turn over S.’s passports within seven days.

On June 9, 2021, the circuit court scheduled a hearing for August 23, 2021, and issued a show cause order requiring Mother to respond as to why the court should not grant Father’s requested relief in his motion for contempt. Mother responded to the show cause order on August 17, 2021, stating there was no evidence she had violated the court order relating to visitation because “DSS is not involved anymore,” so L. or Father could supervise her visits with S.

Mother was not served with Father’s motion to modify until August 20, 2021. The writ of summons required her to file a written response to the motion within 30 days. In her response to Father’s motion, Mother explained that “the time was not appropriate for [S.] to travel due to COVID-19.” She also argued that the circuit court should not make any changes to the addendum to the separation agreement while the court’s December 2, 2019, and January 7, 2021, orders were the subject of an appeal then pending in this Court.

At the start of the August 23, 2021, hearing, the circuit court noted that both *pro se* parties “are here remotely on this Motion for Contempt” and requested the status of the “old issue . . . surrounding the passport.” Father told the court that the status had not changed, in that Mother had not given him S.’s passport and would not permit the child to travel internationally.

When the court asked Mother if she had anything to add, the following colloquy occurred:

[MOTHER]: This hearing, yes. *I would like to identify that this hearing is regarding a contempt. That's the correspondence that I got in the Show Cause order. It is not related to the passport. I think we should stick to the hearing that was scheduled for today.*

THE COURT: All right. *Today's hearing was for contempt, and the contempt is failure to turn over the passport. So—*

[MOTHER]: No, the contempt is not at stake. I apologize. *It doesn't state anything about the passport, unless I received different paperwork from the Court.*

THE COURT: All right. *It's contempt of the Court's order from previous.*

[MOTHER]: Yes, from December 2nd, 2019, yes.

THE COURT: Yes. *We've had many hearings on this, so this isn't an issue that has not been explored, or discussed, or addressed on numerous occasions, so there isn't any secret as to the purpose of today's hearing and the issue regarding contempt.*

* * *

THE CLERK: Okay. [Mother], can you please tell the Court the status of the passport?

[MOTHER]: I apologize, *but this hearing is not related to the passport. I was served last Friday, and I will address the issue in a timely manner. Right now, it is the contempt what I'm here for this, in this hearing.*

THE COURT: All right. From the last order dated January 20th 2021, the Court ordered that the mother's motion for contempt shall be denied; that the mother's motion to modify the court order shall be denied; that father's motion to obtain passport and terminate visitation rights shall be held—shall be denied;

father’s request to terminate mother’s access to the minor child is denied; and *his request to obtain the minor child’s passport from mother is held in abeyance. And the reason was because you, ma’am, had concerns regarding international travel. So it was rather clear back on January 20th, 2021, what the issue was going to be regarding this hearing today.*

As such, what is the status of the minor child’s passport?

[MOTHER]: I will not address that answer in this hearing because *the paperwork I got from this hearing is about a contempt that [Father] filed against me*, and that’s why I’m here for this hearing right now.

THE COURT: Anything else, ma’am?

[MOTHER]: I got—yeah, nothing else.

THE COURT: All right. Okay. *So the Court’s order was clear back in January, and there has been no further testimony regarding the minor child’s passport.*

The Court will find that the passport was lost, stolen, or misplaced, will issue an order as to that, and, therefore, [Father] would be able to have a new passport, would be able to go to get a new passport for the minor child.

(Emphasis added). Thereafter, Mother continued to assert that the court was without authority to issue such an order because “[t]here are no papers for today’s hearing regarding the passport” and there was “no legal basis for [the court] to tell [Father] to get a passport for my daughter” because the hearing was “about a contempt. It’s not about a passport.”

In its written order, the circuit court noted that “[d]espite the continuous conflict regarding this single issue, Mother continually refuses to provide Father the minor child’s passport,” even as Father has repeatedly requested it. The court, having “taken significant efforts to avoid holding Mother in contempt and allow[ing] opportunity for Mother to

provide passport to Father,” was still faced with Mother’s refusal to comply. Therefore, having never viewed the passport, and uncertain whether it was even in Mother’s possession, the court deemed the passport lost or stolen and ordered Father to report its loss to the U.S. Department of State so he might then apply for a new passport for S. The trial court’s “Daily Sheet” notes that Father’s motion to hold Mother in contempt was denied. Mother filed a timely notice of appeal of the court’s order.⁵

DISCUSSION

Mother argues that, despite written notice that the August 23, 2021, hearing would relate to Father’s motion for contempt for her alleged attempt to gain unsupervised access to S., the circuit court “arbitrarily decided to address” the passport issue Father raised in his motion to modify, which was not served upon Mother until three days before the hearing and for which her time to respond had not yet passed. The court’s failure to follow proper procedures, Mother concludes, requires a reversal of the court’s order concluding that the passport was lost, stolen, or misplaced so as to permit Father to obtain a new passport for S., especially as she had a valid reason not to provide the passport to Father, *i.e.*, a desire that S. not travel internationally during the COVID-19 pandemic.

⁵ In January 2022, Mother noted a fourth appeal related to an unrelated order of the circuit court dated December 14, 2021. During the hearing on that matter, the court noted: “The passport issue has been a point of contention for many, many, many years. . . Well, we believe 2019, maybe even further than that, [Mother] has not elected to turn over the passport and, therefore, the Court had to issue an order so that [Father] could actually obtain a passport for the minor child.” It is unclear from the record whether Father has already obtained a new passport for S.

Our review of the record leads us to conclude that Mother is correct in asserting that the August 23, 2021, hearing was intended to relate to Father’s motion for contempt about Mother’s alleged attempt at gaining unsupervised visitation access to S. The show cause order and notice of hearing clearly relate to the motion for contempt Father filed on January 12, 2021. It was Father’s second motion -- his motion for modification of the addendum to the separation agreement filed the same day -- that contained his request that the court order Mother to provide him with S.’s passport. That motion, however, was not served upon Mother until August 20, 2021, and the writ of summons permitted her 30 days to respond.

Nonetheless, three days later, at the start of the hearing, the circuit court stated that “it was rather clear back on January 20th, 2021, what the issue was going to be regarding this hearing today” and that “[t]oday’s hearing was for contempt, and the contempt is failure to turn over the passport.” When Mother argued that “contempt is not at stake,” the court disagreed and asked Mother the status of the passport. Mother refused to respond to questions about anything other than the contempt related to visitation, stating she would “address the [passport] issue in a timely manner.” In light of Mother’s refusal to provide testimony regarding the status of the passport, the court found it was lost, stolen, or misplaced and issued an order that would permit Father to apply for a new passport. The court heard no testimony, and made no specific finding, about Father’s motion for contempt based on Mother’s attempt at unsupervised visitation.

It appears that the circuit court was indeed mistaken as to the subject motion that was scheduled to be decided during the August 2021 hearing (per the writ of summons),

conflating the issue of Father’s January 12, 2021, contempt motion relating to Mother’s attempt at unsupervised visitation with the ongoing and open issue of Father’s complaint about Mother’s failure to turn over S.’s passport, as raised again in the motion to modify the separation agreement Father also filed on January 12, 2021. Nonetheless, the court entered a valid order.⁶

Mother’s best recourse following the hearing would have been to file a timely motion to reconsider, in which she could have set forth the factual timeline of events and asked the court to consider revising its order based on its misunderstanding of the specific issue before it during the hearing. Having elected, in the absence of legal representation, to file an appeal instead, Mother is faced with dismissal because the order from which she appeals is not a final judgment or an appealable interlocutory order that would permit her appeal to go forward at this time.

⁶ As the circuit court pointed out, the issue of the passport had been before the court since at least January 2020, when Father first moved for a court order to obtain the passport from Mother, after his repeated requests to Mother directly were denied. Following the January 7, 2021, hearing, the court held the matter in abeyance “until international travel is no longer impacted by travel restrictions due to COVID-19.” There can be no doubt that Mother was on notice that the court would address the outstanding issue of the passport at that time, and the court, having implicitly determined that international travel was sufficiently unrestricted by the time of the August 2021 hearing, was permitted to request of Mother the status of the passport. Whether or not Mother had, as she claimed, a valid reason not to provide the passport to Father, she did not have a valid reason to refuse to answer the court’s single direct question about its status, and when she declined to answer, the court was permitted to fashion a remedy to Mother’s ongoing intransigence. Therefore, Mother has no sound basis on which to claim lack of notice or prejudice in the court’s decision to rule on the outstanding issue of the status of S.’s passport. *See Flores v. Bell*, 398 Md. 27, 33 (2007) (“an error that does not affect the outcome of the case is harmless error”).

The exercise of appellate jurisdiction in Maryland is normally dependent upon a final judgment rendered by the circuit court. *Washington Suburban Sanitary Comm’n v. Bowen*, 410 Md. 287, 294 (2009). A final judgment is one that settles all the claims against all the parties, *Salvagno v. Frew*, 388 Md. 605, 615 (2005), and “leave[s] nothing more to be done in order to effectuate the court’s disposition of the matter.” *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989).

There are three exceptions to this finality rule that allow immediate appeals from interlocutory orders. An interlocutory appeal may be taken: (1) if it is permitted by statute, (2) if the circuit court directs the entry of a final judgment under Md. Rule 2-602(b), or (3) under the common law collateral order doctrine. *Shoemaker v. Smith*, 353 Md. 143, 165 (1999). Unless an appeal is from a final judgment or qualifies for one of these exceptions, an appellate court lacks jurisdiction to hear the appeal. *Gruber v. Gruber*, 369 Md. 540, 546 (2002).

The circuit court’s order does not constitute a final judgment. The Court of Appeals has explained that “[i]n order to be an unqualified, final disposition, an order of a circuit court must be so final as either to determine *and conclude* the rights involved **or** to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.” *Monarch Acad. Balt. Campus, Inc. v. Baltimore City Bd. of Sch. Comm’rs*, 457 Md. 1, 43 (2017) (quoting *Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 299 (2015)) (alterations in original; internal quotation marks omitted).

The order at issue -- permitting Father to report S.'s passport as lost, stolen, or misplaced so as to be able to obtain a replacement -- does not resolve or conclude the outstanding issues of the modification of the addendum to the separation agreement to remove travel restrictions on S. or the contempt against Mother for violating the visitation order, the motion scheduled to be decided during the hearing. The lack of finality of the order is further confirmed by the fact that Mother and Father continued to file motions to modify the addendum to the separation agreement after the court issued its ruling in this matter, resulting in yet another appeal by Mother. Because the court's August 23, 2021, order did not resolve and conclude all pending matters before it, it is not a final judgment.

Nor do any of the recognized exceptions to the final judgment rule permit an interlocutory appeal. First, the court did not direct entry of a final judgment pursuant to Md. Rule 2-602(b).

Second, while Md. Code, § 12-303(3)(x) of the Courts & Judicial Proceedings Article ("CJP"), allows for an appeal of an interlocutory order in a civil case from an order "[d]epriving a parent . . . of the care and custody of his [or her] child, or changing the terms of such an order[,]" the circuit court's ruling deeming S.'s passport lost so Father could apply for a new one did not deprive Mother of the care or custody of S. or make any changes to her rights with regard to S.'s care or custody. In fact, it did not change any portion of the agreement at all, as the court's order only permitted Father to obtain a new passport; it did not grant him authority to travel with S. out of the country without Mother's permission, or specifically state that Mother would no longer maintain possession of S.'s U.S. passport, as provided in the addendum to the separation agreement.

Finally, the collateral order doctrine does not apply. To be appealable under the collateral order doctrine, the order must: (1) must conclusively determine the disputed question; (2) resolve an important issue; (3) resolve an issue that is completely separate from the merits of the action; and (4) involve an issue that would be effectively unreviewable on appeal from a final judgment. *O’Sullivan v. Kimmett*, 252 Md. App. 653, 670 (2021) (quoting *Pittsburgh Corning v. James*, 353 Md. 657, 660-61 (1999)). These four requirements “are very strictly applied,” *Id.* at 671, and the doctrine applies only under “extraordinary circumstances.” *Bowen*, 410 Md. at 296. The court’s order does not conclusively determine the disputed question of whether Father may travel internationally with S. without Mother’s permission, and the issue of Mother’s refusal to turn the passport over to Father, as contemplated by the addendum to the separation agreement, is not completely separate from the merits of the several motions to modify the addendum to the separation agreement or Father’s motions to obtain S.’s passport.

Because the court’s order was not a final judgment, an appealable collateral order, certified for immediate appeal under Rule 2-602(b), or immediately appealable under CJP § 12-303(3)(x), we must dismiss Mother’s appeal. *See Stevens v. Tokuda*, 216 Md. App. 155, 165 (2014) (“Even if no party challenges the appealability of an order, appealability is a jurisdictional issue that we must resolve *sua sponte*.”).⁷

⁷ Additionally, in the likely event that Father has already applied for or received a new passport for S. from the Department of State in reliance on the circuit court’s order, the issue would be moot, as we would no longer be able to provide Mother an effective remedy. *See O’Brien & Gere Eng’rs v. City of Salisbury*, 447 Md. 394, 405 (2016) (quoting *Clark v. O’Malley*, 434 Md. 171, 192 n. 11 (2013)).

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**