Circuit Court for Frederick County
Case No. C-10-FM-18-001500

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1132

September Term, 2024

ERIC BEASLEY

v.

ELYSE BEASLEY

Friedman,
Shaw,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: April 28, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from an order entered by the Circuit Court for Frederick County in a contentious divorce case between appellant Eric Beasley ("Husband") and appellee Elyse Beasley, n/k/a Spry ("Wife").[1] Wife petitioned for an order of contempt against Husband after he failed to grant her two days of visitation with their minor children during the children's spring break from school, allegedly as provided to her by the parties' prevailing consent custody order. The circuit court denied Wife's contempt motion but, with what it characterized as Husband's agreement, ordered that Mother be permitted two "makeup" visitation days with the children. Husband moved for reconsideration of the court's grant of makeup days, which motion was denied by the circuit court.

In his appeal, which by written order of this Court is limited to review of the denial of his motion to reconsider, Husband continues to argue that the circuit court erred in imposing the makeup visitation days based on its erroneous understanding that Husband had agreed to that course of action. For the reasons that follow, we dismiss Husband's appeal as moot.

BACKGROUND

Wife and Husband married in 2011 and had two children during the marriage. In 2018, Wife filed for divorce.

The circuit court entered a judgment of absolute divorce in favor of Wife on August 6, 2021. The court granted Wife sole legal and primary physical custody of the children, subject to Husband's visitation every other weekend, Tuesday evenings on the weeks prior

[1] The court's judgment of absolute divorce restored Wife's name to Elyse Diane Spry.

to his weekend access, and delineated holidays and school breaks. The court also ordered Father to pay Mother child support.

Husband noted an appeal of the court's judgment, asserting that the trial judge erred in declining to recuse herself from the proceedings after she had exhibited bias against Husband and partiality toward Wife. In an unreported opinion, this Court found no error in the trial judge's decision not to recuse herself and affirmed the judgment of absolute divorce. *See Beasley v. Beasley*, No. 998, Sept. Term, 2021 (filed Feb. 15, 2022).

Following a flurry of petitions for contempt relating to visitation filed by both parties, petitions for contempt relating to payment of child support filed by Wife, and motions to modify child support filed by Husband, the parties entered into a consent custody order on April 17, 2023. Pursuant to the consent order, Husband and Wife would share joint legal and physical custody of the children, with Husband maintaining his previous visitation schedule of every other weekend and Tuesday evenings and delineated holidays and school breaks. The parties further consented to a reduction in Husband's child support obligation, and the court entered a separate order to that effect.

On April 9, 2024, Wife filed the petition for contempt against Husband that forms the basis of this appeal. Therein, she asserted that Husband had denied or interfered with her time with the children during the second half of their 2024 school spring break. She asked that her lost visitation be rescheduled or that the prevailing custody order be amended to require additional conditions to ensure Husband's compliance in the future.

At the June 14, 2024, hearing on the petition for contempt, Wife appeared with counsel, while Husband represented himself. Wife's attorney made clear that what Wife

sought was "a couple of makeup days" with the children. The circuit court noted that "[y]ou get makeup days if I decide that [Husband]'s in violation . . . [and] if I decide he didn't violate the terms, then there wouldn't be any makeup."

The court then questioned whether it could find Husband in contempt because, although Mother asserted that she should have had visitation during the second half of the children's spring break, the consent custody order did not explicitly state that arrangement, even if that was what the parties had contemplated when drafting it.[2] It was Husband's claim that the first half of the children's spring break would have been from March 29 through April 4, 2024, and then his regular weekend visitation would have begun on the evening of April 5, 2024, ending when the children returned to school on April 8, 2024. Nonetheless, he said, he had returned the children to Wife on April 3, 2024, and she had them for two nights before his regular weekend visitation began on April 5, 2024.

Wife testified that she believed the consent custody order provided her with visitation for the second half of the children's spring break. She therefore asked the court for makeup time with the children on July 28 and 29, 2024, for the two additional visitation days she believed she should have had over spring break.

After confirming with Husband that he did not have any plans for the children during those two specific days, the court continued:

> THE COURT: You're okay with her having those two days? I mean if you say no, I'm not going to hold it against you. I'm just trying to take the path of least resistance here. I'm not trying to get you to give up your principles

[2] The pertinent provision of the parties' visitation agreement states that: "In even years, Father will have parenting time . . . the first half of spring break[.]" It does not specify that Mother will have parenting time the second half of the break.

> or compromise your position. So don't feel like you have to vouch it in some sort of equivocal language.
>
> [HUSBAND]: Okay.
>
> THE COURT: I'm just plain and simple.
>
> [HUSBAND]: I was getting ready to lawyer it, Your Honor.
>
> THE COURT: Don't lawyer it.
>
> [HUSBAND]: If those days are what the Court decides, I am at best—
>
> THE COURT: I'm not going to decide, but I just want to know. I'm just asking if you agree.
>
> [HUSBAND]: I have no plans, Your Honor.
>
> THE COURT: All right. Are you okay with her having those days?
>
> [HUSBAND]: Non-lawyer answer, yes.
>
> The court then addressed Wife's attorney:
>
> So, let me just jump to something here. So, she gave two days she would like. He said he'd be okay with those two days without compromising his position. You're asking me to hold him in contempt, and I'm assuming you want makeup visitation and purge if he gives us makeup visitation, right? . . . Is that part of your relief at least?

Wife's counsel advised the court that Wife did not so much want Husband held in contempt as she wanted simply "to make up the overnights and clarify that the order reads that she should have the times during the holidays when [Husband] does not have the children."

As a possible alternative to a contempt finding, the court asked Wife's attorney, "Are you okay with just agreeing on the record she's going to get those two days? She said she wanted them. He said, okay. Can't we just consider that an agreement?" Counsel agreed

that Wife was willing to accept that remedy. The court again stated, "if she's agreeable to that, I'll consider an agreement on the record that she is to get July 28th and 29th."

Husband then testified, stating only that he had followed the consent custody order exactly as it was written and as he believed it was intended. He therefore denied that he was in contempt of an order, but he made no comment about Wife's request for makeup days or the court's consideration of an agreement between the parties.

The circuit court ruled orally that the parties' consent custody order did not unambiguously give Wife visitation with the children for the second half of spring break in 2024. In its view, then, Wife's remedy was likely not contempt or a finding of unreasonable denial of visitation, but rather a motion to modify the consent order to avoid ambiguity or disagreement between the parties in the future. For those reasons, the court did not find Husband in contempt.

By written order entered June 17, 2024, the circuit court denied Wife's petition for contempt but ordered that, "per the agreement of the parties, on the record at the June 14, 2024 hearing, Mom shall have the children for 'make-up' visitation on July 28 and 29, 2024[.]"

Husband did not appeal the court's order, but on July 11, 2024, he moved for reconsideration, asserting that the order did not accurately reflect the statements the parties made at the hearing. Specifically, he claimed that he had not "agreed" to makeup days on July 28 and 29, 2024; instead, he had only responded to the court's questioning that he did not have plans for the children on those days. In his view, because the court had found no contempt on his part, no exchange of custody days was warranted.

By order entered July 23, 2024, the circuit court, "having reviewed what was said in the proceeding," denied Husband's motion to reconsider. Husband noted his appeal on August 7, 2024.

Wife, in the circuit court, moved to dismiss the appeal as untimely, on the ground that it was filed more than thirty days after the entry of the order denying the petition for contempt. She filed a similar motion to dismiss Husband's appeal as untimely in this Court. We denied her motion to dismiss, but expressly limited the scope of Husband's appeal to consideration of whether the circuit court erred in denying his motion for reconsideration.[3]

[3] The scope of our review is limited by the timing of Husband's appeal. In *Pickett v. Noba, Inc.*, 122 Md. App. 566, 570-71 (1998), this Court recognized that a revisory motion filed within ten days of the entry of judgment stays the deadline to file an appeal, whereas one filed more than ten days after entry of judgment does not. (We will assume, for the sake of argument, that the circuit court's order granting Wife makeup visitation days is an appealable interlocutory order pursuant to Md. Code, § 12-303(3)(x) of the Courts & Judicial Proceedings Article, because it arguably deprived Husband of the care and custody of the children.)

Here, the circuit court entered the order denying Wife's petition for contempt but granting her two makeup visitation days on June 17, 2024. At that point, the deadline for filing an appeal of that order was July 17, 2024. Husband did not challenge the circuit court's judgment until July 11, 2024, when he filed, not a notice of appeal, but a motion to reconsider the imposition of makeup visitation days. Because the motion was filed more than ten days after entry of judgment, the time for an appeal was not stayed.

Husband filed his notice of appeal on August 7, 2024, several weeks after the July 17, 2024, deadline. The propriety of the underlying judgment, therefore, is not before us. We only consider the denial of his motion for reconsideration, for which the applicable standard of review is whether the court abused its discretion. *See Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723-24 (2002).

DISCUSSION

Husband continues to claim that the circuit court erred when it granted Wife two makeup visitation days in July 2024, based on what the court characterized as Husband's agreement. Instead of an "agreement" to makeup days, Husband says, his response to the court's questioning comprised nothing more than an acknowledgment that he had no pre-existing plans for the children on those specific dates in July, which "no reasonable person could have concluded" was an agreement.

Because the court ordered Wife's makeup days to occur on specific dates in 2024, however, the issue raised by Husband is moot.

As the Supreme Court of Maryland has explained, "[o]rdinarily, in order for a case to be heard and an appellate court to provide a remedy, there must be an existing controversy." *Off. of Pub. Def. v. State*, 413 Md. 411, 422 (2010). When "'there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant[,]'" the matter is moot. *In re R.S.*, 242 Md. App. 338, 353 (2019) (quoting *Suter v. Stuckey*, 402 Md. 211, 219 (2007)), *aff'd*, 470 Md. 380 (2020). Subject to limited exceptions, if a controversy no longer exists when the case comes before us, we "usually dismiss the appeal without addressing the merits of the issue." *Powell v. Maryland Dep't of Health*, 455 Md. 520, 540 (2017); *see also* Md. Rule 8-602(c)(8) ("Th[is] Court may dismiss an appeal if . . . the case has become moot.").[4]

[4] "[O]n rare occasions, we reach issues that are otherwise moot." *Beeman v. Dep't of Health & Mental Hygiene*, 105 Md. App. 147, 158 (1995). One exception to the mootness doctrine occurs when "a case, while technically moot, presents a recurring matter (continued…)

The circuit court granted Wife two makeup visitation days, specifically for July 28 and 29, 2024. There was no provision in the court's order for additional or substitute makeup visitation days. Therefore, by the time Husband noted his appeal on August 7, 2024, arguing that the court should not have ordered the makeup days, the issue was already moot because, even had we agreed with Husband's argument, there was no longer an existing controversy, nor a remedy the circuit court, or this Court, could have provided to Husband to compensate for makeup visitation days that had already occurred.[5]

Even had we considered Husband's argument on its merits, he would not have prevailed. As we explained in *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484-85 (2002):

> Appellate consideration of a denial of a motion to reconsider, or some similar post-trial revisiting of already decided issues, does not subsume the merits of a timely motion made during the trial.
>
> That a party, *arguendo*, should have prevailed on the merits at trial by no means implies that he should similarly prevail on a post-trial motion to reconsider the merits. A decision on the merits, for instance, might be clearly right or wrong. A decision not to revisit the merits is broadly discretionary. The appellant's burden in the latter case is overlaid with an additional layer of persuasion. Above and beyond arguing the intrinsic merits of an issue, he

of public concern which, unless decided, will continue to evade review[.]" *Off. of Pub. Def.*, 413 Md. at 423. Another exception is the prevention of harm to the public interest. *Hamot v. Telos Corp*., 185 Md. App. 352, 366 (2009). There is no matter of public concern or harm raised here.

[5] Moreover, the circuit court actually denied Wife's petition for contempt. Maryland Code, § 12-304 of the Courts and Judicial Proceedings Article "clearly and unambiguously limits the right to appeal in contempt cases to *persons adjudged in contempt*." *Pack Shack, Inc. v. Howard Cnty*., 371 Md. 243, 254 (2002) (emphasis added). In the absence of statutory authority, we cannot review an appeal brought by someone who has not been held in contempt of court. *Id*. Accordingly, because Husband was not held in contempt of court, his challenge to the circuit court's order would not have been reviewable on appeal in any event.

> must also make a strong case for why a judge, having once decided the merits, should in his broad discretion deign to revisit them.

Husband asserts that the circuit court was wrong in attributing to him an agreement that Wife be granted the two makeup visitation days in July 2024. A fair reading of the colloquy between the court and Husband, however, supports a finding that Husband did agree. When he was specifically asked by the court if he was "okay with [Wife] having those days?" Husband answered, "Non-lawyer answer, yes." Later, when the court summarized the position of the parties as, "So, she gave two days she would like. He said he'd be okay with those two days without compromising his position[,]" Husband did not disagree with that characterization. Nor did he raise any lack of agreement to providing Wife the two makeup days during his own testimony before the court or during closing argument before the court ruled. Therefore, the court's ruling was based on Husband's own failure to disabuse the court of its reasonable understanding of his position.[6]

In ruling on Husband's motion for reconsideration, the circuit court specifically pointed out that it had "reviewed what was said in the proceeding" before denying the motion. Based on the court's statement, and our own reasonable interpretation of Husband's statements during the contempt hearing, we cannot say that Husband made "a strong case" for why the court should have deigned to revisit the merits of its initial ruling

[6] Husband acknowledges in his brief that "[t]here is likely to be a question of why [Husband] did not interrupt the proceedings and dispute the existence of an agreement[,]" stating that he lacked "the fortitude and strength of character" to interrupt a judge during a court proceeding intended to determine whether he had acted in contempt.

upon reconsideration. Therefore, had we considered the issue, we would have found no abuse of discretion in the circuit court's denial of Husband's motion for reconsideration.

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT.