

Circuit Court for Prince George's County
Case No. C-16-FM-23-004748

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1141

September Term, 2023

ANDREW UCHEOMUMU

v.

ISABELL PROSPER

Beachley,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 14, 2024

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

Andrew Ucheomumu (“Father”), appellant, filed a complaint in the Circuit Court for Prince George’s County seeking custody of a minor child (the “Child”) he fathered with the Child’s mother, Isabell Prosper (“Mother”), appellee. Mother filed a motion to dismiss. The court granted Mother’s motion without a hearing and dismissed Father’s complaint with prejudice. Father noted this appeal, raising a single question; Mother has filed no brief despite being given an extension of time to do so.

For clarity, we have rephrased Father’s question as:

Did the circuit court err in dismissing Father’s complaint that sought custody of his biological child?

For reasons to follow, based on the scant record that is before us, we conclude that the circuit court erred in dismissing Father’s complaint. We will therefore vacate the judgment of the Circuit Court for Prince George’s County and remand the case for further proceedings.

BACKGROUND

On June 28, 2023, Father filed, in the Circuit Court for Prince George’s County, a complaint seeking custody of the Child, who was born in 2019. When the complaint was filed, Father was living in Prince George’s County, and Mother was living in Washington, D.C. Father’s complaint alleged that the Child lived with him in Maryland and had been living with him for at least six months. Father further alleged that Mother was “very violent,” and that she had other (older) children who had been removed from her care “for abuse, neglect and for their safety.” Father asserted that, “[u]nder Md. Rule 9-101 physical

custody must be denied to the Defendant.” Father requested primary physical custody and sole legal custody of the Child.¹

On June 30, 2023, Mother filed a motion to dismiss Father’s complaint for custody.

Mother provided the following assertions in support, which we quote in full verbatim:

Minor lives in Washington DC since 2019 – until current. Defendant committed parental (unintelligible) kidnapping by refusing to return minor after a 3 day visit, defendant committed domestic violence against me, lied and said I did to him. Made false statements to the court, officers in Maryland.

Attached to Mother’s motion were three documents. The first document appeared to be an order from the Superior Court of the District of Columbia, which stated that Mother

¹ Given that Father’s citation to “Rule 9-101” follows immediately after his reference to the removal of other children from Mother’s home “for abuse, neglect and for their safety[,]” it is likely that Father intended to refer to § 9-101 of the Family Law Article of Maryland Code, which states:

(a) *Determination by court.* – In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) *Specific finding required.* – Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

See, e.g., In re Yve S., 373 Md. 551, 587 (2003) (“This section directs the court to deny custody to the parent unless the court makes a specific finding that there is no likelihood of further abuse or neglect. Md. Code (1974, 1999 Repl. Vol.), Family Law Art., § 9-101(b); *see also In re Mark M.*, 365 Md. [687,] 706[(2001)]. The burden is on the parent previously having been found to have abused or neglected his or her child to adduce evidence and persuade the court to make the requisite finding under § 9–101(b). *See In [re] Adoption No. 12612*, 353 Md. 209, 232-39 (1999).” (footnote omitted)).

had filed for custody of the Child in that court on June 28, 2023, the same day that Father had filed for custody in Maryland. According to that document, the Superior Court had scheduled a hearing for June 29, 2023. The second document appeared to be a temporary protective order that had been entered in the Superior Court of the District of Columbia on June 28, 2023, on behalf of Mother against Father. The third document appeared to be an email exchange between the Superior Court of the District of Columbia and Mother regarding the hearing that was to be held in D.C. on June 29, 2023.

On August 7, 2023, the Circuit Court for Prince George’s County entered an order granting Mother’s motion to dismiss. Other than stating in the order that the decision was made “[u]pon consideration of Defendant’s Motion to Dismiss Plaintiff’s Complaint for Custody, and any opposition thereto,” the court did not provide any explanation for its ruling. The court ordered that Father’s complaint seeking custody be “**DISMISSED WITH PREJUDICE.**”

This timely appeal followed. Additional facts will be supplied as needed below.

STANDARD OF REVIEW

When reviewing the grant of a motion to dismiss, we apply a *de novo* standard of review to determine whether the court was legally correct. *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019). In making that determination, we “assume the truth of factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of the plaintiff.” *Ceccone v. Carroll Home Servs., LLC*, 454 Md. 680, 691 (2017). “[G]enerally, dismissal is proper if the alleged facts and permissible inferences, viewed in a light most favorable to the non-moving party . . . would, if proven,

nonetheless fail to afford relief to the plaintiff.” *Sanders v. Bd. of Educ. of Harford Cnty.*, 477 Md. 1, 15 (2021) (quotation marks and citation omitted).

DISCUSSION

Father contends that the circuit court erred in dismissing his complaint for custody. He argues that dismissal was inappropriate because his complaint set forth facts that, if proven, would have permitted the court to grant him relief. Mother did not file a brief in opposition.²

We hold that the circuit court erred in dismissing Father’s complaint. Viewing the allegations set forth in the complaint in a light most favorable to Father, we conclude that Father’s allegations were sufficient to state a *prima facie* claim for custody of his biological child. Moreover, we could find nothing in the record that would support the court’s decision to dismiss Father’s complaint with prejudice. *See Holly Hall Publ’ns, Inc. v. Cnty. Banking and Tr. Co.*, 147 Md. App. 251, 267 (2002) (“[T]he Maryland Rules and caselaw contain a preference for a determination of claims on their merits; they do not favor imposition of the ultimate sanction [of dismissal] *absent clear support.*” (emphasis

² On December 15, 2023, Mother filed a “Request for Review and Sanction.” In that filing, Mother stated that she had not received a copy of Father’s brief, which was filed on November 20, 2023. Mother asked that she be given additional time to file an appellee’s brief. On January 25, 2024, this Court granted Mother’s request and ordered her to file a brief on or before February 2, 2024. As of March 6, 2024, Mother had not filed an appellee’s brief.

added)). Accordingly, we will vacate the judgment of the circuit court and remand the case for further proceedings.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
VACATED; CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE.**