Circuit Court for Baltimore County
Case No. 03-C-18-002091

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1286

September Term, 2020

HERBERT SOWE

v.

RONNIE TURNER, et al.

Berger,
Zic,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: August 25, 2021

The pro se appellant in this case is Herbert Sowe. The appellees are Ronnie Turner ("Ms. Turner") and the Baltimore County Office of Child Support Enforcement ("BCOCSE"). The appellees have filed a motion to dismiss this appeal. For the reasons set forth below, we shall grant that motion.

I.

PROCEDURAL BACKGROUND[1]

In November 2017, Ronnie Turner gave birth to a daughter. About three months afterwards, Ms. Turner sought the services of the BCOCSE to obtain child support for her infant daughter. The BCOCSE, on February 28, 2018, filed a complaint against Mr. Sowe to establish paternity and to require that he provide child support.

After a DNA test showed that Mr. Sowe was the father of Ms. Turner's daughter, Mr. Sowe admitted paternity and consented to the entry of an April 27, 2018 order, signed by a Baltimore County Circuit Court judge, declaring him to be the father of Ms. Turner's child. The court also entered an order, dated June 15, 2018, to which Mr. Sowe consented; that order established his monthly child support obligation at $904 per month plus an additional $50 per month toward an $832 arrearage.

Mr. Sowe failed to make child support payments in accordance with the June 15, 2018 order and, accordingly, the BCOCSE filed an application, on November 14, 2018, asking the circuit court to issue an order requiring Mr. Sowe to show cause why he should

[1] The facts set forth in part I of this opinion are undisputed and are concisely summarized in appellees' brief. In part I, we have, in several instances, quoted from appellees' brief, without direct attribution, when re-counting the relevant procedural background.

not be held in contempt. The show cause order was ultimately dismissed but on January 14, 2019, Mr. Sowe filed a motion for modification of the child support order that had been entered, by consent, about seven months earlier. A hearing on the motion for modification was held on March 9, 2020 before a magistrate judge. The magistrate judge, on the date of the hearing, made written findings and recommended that Mr. Sowe's request for modification of child support be denied. Mr. Sowe filed timely exceptions to the magistrate's findings and her recommendation. The Circuit Court for Baltimore County scheduled a hearing on the exceptions for July 28, 2020.

On July 20, 2020, Mr. Sowe filed a pleading titled, "Violation Warning Denial of Rights Under Color of Law," which was noted by the judge. Eight days later, the circuit court postponed the hearing on Mr. Sowe's exceptions to the magistrate's findings and recommendation.

Mr. Sowe, on August 4, 2020, filed a "Motion to Vacate Void Due to Lack of Locus Standi." In this last-mentioned motion, Mr. Sowe questioned the jurisdiction of the Circuit Court for Baltimore County and asked the court to vacate the pending child support case and all orders associated with that case. He also filed a "Notice of Withdrawal of Consent" in which he attempted to vacate the child support order to which he had previously consented. The motions were both denied by the court.

On August 31, 2020, Mr. Sowe filed a pleading that included two motions and a plea, which he titled: "Motion Requesting Resolution of Essential Pre-Trial Questions of Law; Motion Raising Objections; and Plea to the Jurisdiction" ("the August 31 filing"). In his August 31 filing, Mr. Sowe raised 34 objections, made 42 judicial notice requests and

asked the court to resolve eight questions of law that primarily related to child custody issues. In his 35-page August 31 filing, four pages discuss what Mr. Sowe apparently believes to be legal principles governing Maryland child support cases. The discussion is set forth under the heading "Child Support As Speech."

The circuit court denied the relief sought in the August 31 filing on November 17, 2020 and Mr. Sowe noted an appeal to this Court 30 days later. The notice of appeal reads:

> Pursuant to Maryland Rule 8-201 and Maryland Rule 8-202, please enter an appeal in the above case to the Court of Special Appeals of Maryland from the judgment entered on November 17, 2020 in favor of Plaintiff, Ms. Ronnie Ebony Turner, i.e., following Defendant's Motion Requesting Resolution of Essential Pre-Trial Questions of Law, Motion Raising Objections, and Plea to the Jurisdiction.

Ten days after filing the notice of appeal to this Court, Mr. Sowe filed a notice requesting in banc review (by the Circuit Court for Baltimore County) of the order of November 17, 2020 that denied the motion requesting resolution of essential pre-trial questions of law, motion raising objections, and plea to the jurisdiction. That in banc review notice has no force or effect on the subject appeal because no final judgment had been entered in the circuit court. In that regard, it is important to note that the standard of appealability to a court in banc is the same as the standard of appealability that we use to determine whether an order is appealable to this court. *Dean v. State*, 302 Md. 493, 497 (1985). No final order has been entered in this case. And, as will be discussed *infra*, with exceptions not here applicable, a party cannot appeal to this Court from an order that is not

final.[2] *See Estep v. Estep*, 285 Md. 416, 421-22 (1979) (an in banc panel has no jurisdiction to decide issues where there was no final judgment).

In any event, in the brief that Mr. Sowe filed with this Court, he phrases the issues presented as follows:

1. Whether the Court erred in disregarding tax returns for the year[s] 2017 and 2018 of the Appellant?

2. Whether the Court erred in determining that it cannot modify the Child Support arrearage?

3. Whether the obligator has a current ability to pay.

4. Whether the reduction of arrearages will encourage the obligor's economic stability.

5. Whether the agreement serves the best interests of the children whom the obligor is required to support.

6. Whether the Court erred in determining that it would not modify the future Child Support contributions when it verily knew the Appellant had no income?

Despite the fact that Mr. Sowe's notice of appeal states that the appeal is from the judgment entered on November 17, 2020 (denying the motions requesting resolution of essential pre-trial questions of law, motions raising objections, and plea to the jurisdiction), in his brief appellant never argues that the court erred in its denials. In fact, in the argument section of his brief, he fails to even mention the judgment entered on November 17, 2020.

[2] Even if the order from which Mr. Sowe filed his notice of in banc appeal could somehow be deemed appealable, he had no right to in banc review because appellant's notice of in banc appeal, contrary to Md. Rule 2-551(b), was not filed within ten days of November 17, 2020 (the date of the order from which he appealed).

II.

DISCUSSION

Although Mr. Sowe never says so explicitly, it is evident from reading his brief that he is requesting that this Court overrule the recommendation and findings by the magistrate judge that were made on March 9, 2020. This is evident by the issues he raises on appeal. The findings and recommendation about which he complains were made by the magistrate judge pursuant to Maryland Rule 9-208(e). Such recommendations and findings do not become a final order until approved by a circuit court judge. Mr. Sowe's exceptions to the recommendations have never been ruled upon by a circuit court judge and therefore there is no final appealable judgment. Maryland Rule 9-208(h)(1)(A)[3]; *Anthony Plumbing of Maryland, Inc. v. Attorney General*, 298 Md. 11, 16 (1983) ("[t]he master's findings do not finally dispose of the litigation in the trial court; they may be excepted to by the parties and are not binding until confirmed and implemented by the trial court.").

Maryland Rule 2-602(a)(1) provides that generally, except as provided in section (b) of this Rule:

> an order or other form of decision, however designated, that adjudicates fewer than all the claims in the action (whether raised by original claim, counter claim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action: is not a final judgment[.]

[3] With an exception not here relevant, Md. Rule 9-208(h)(1)(A) provides:

> (A) the court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions[.]

Rule 2-602(b) allows, in certain circumstances, a circuit court judge to expressly determine in a written order that there is no just cause to delay an appeal, and, after doing so, pass an order directing the entry of a final order that would otherwise have been non-final. No such order was filed in this case. With a few narrow exceptions, none of which are here applicable,[4] a party may appeal only "from a final judgment entered in a civil or criminal case by a circuit court." Maryland Code Ann. (1974, 2020 Repl. Vol.), Courts & Judicial Proceedings Article, § 12-301. In order to file an appeal to this Court, the order appealed "must be 'so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.'" *Quillens v. Moore*, 399 Md. 97, 115 (2007) (quoting *Cant v. Bartlett*, 292 Md. 611, 614 (1982)). Because the circuit court in the subject case has not ruled on appellant's exceptions, his rights have not been finally determined.

As mentioned earlier, Mr. Sowe's notice of appeal states that it is an appeal from the November 17, 2020 order of the court denying appellant's motion requesting resolution of essential pre-trial questions of law, motion raising objections, and plea to the jurisdiction. The November 17, 2020 order, quite obviously, did not constitute a final

[4] In civil cases, the exceptions to the final order requirement are set forth in Courts & Judicial Proceedings Article, §§ 12-303-04; there are also some exceptions to the final order doctrine established by common law, most notably the collateral order doctrine. To constitute an appealable collateral order, an order must: (1) conclusively determine the disputed question; (2) resolve an important issue; (3) be completely separate from the merits of the case; and (4) be effectively unreviewable on appeal from a final judgment. *McLaughlin v. Ward*, 240 Md. App. 76, 88 (2019). The magistrate's findings and recommendation meet none of the just-mentioned four criteria.

judgment as defined by Maryland Rule 2-602. Because no exception to the rule that an appeal may be filed only from a final judgment is here applicable, we have no jurisdiction to decide the issue of whether the court erred when it signed the November 17, 2020 or any other order. Moreover, even assuming, *arguendo*, that this Court somehow had jurisdiction to decide whether the circuit court erred in entering the November 17, 2020 order, Mr. Sowe could not possibly prevail on that issue in this appeal. We say this because Mr. Sowe, in his brief, does not make any argument that would support his (presumed) position that the court erred in entering the order. *See Abdullahi v. Zanini*, 241 Md. App. 372, 418 n.29 (2019) (We will not consider any argument that has "not been adequately briefed and argued."); *see also Mohammad v. Toyota Motor Sales, U.S.A., Inc., et al.*, 179 Md. App. 693, 697 n.1 (2008) (same). For the above reasons, we shall grant appellees' motion to dismiss this appeal.

MOTION TO DISMISS APPEAL GRANTED; COSTS TO BE PAID BY APPELLANT.