Circuit Court for Baltimore County
Case No. C-03-FM-20-00898

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1414

September Term, 2020

TERRY GAMBLE

v.

HOLLY GAMBLE

Beachley,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: September 22, 2021

The parties involved in this domestic relations case are Terry Gamble ("Mr. Gamble") and Holly Gamble ("Mother"). The two were married on March 7, 2013. A son, C., was born of the marriage. Mother left Mr. Gamble on February 15, 2020. C. was five years old at the time that his parents separated.

Three days after the separation, Mother, *pro se*, filed in the Circuit Court for Baltimore County, a petition for limited divorce on the grounds of constructive desertion. Mr. Gamble, on May 8, 2020, filed, *pro se*, a counter-claim asking the court for a limited divorce on the grounds of abandonment and to grant him use and possession of the marital home for a period "not to exceed three years after a ruling of an absolute divorce has been entered." Mr. Gamble also asked the court to declare that he is the de facto parent (within the meaning of that term as set forth in *Conover v. Conover*, 450 Md. 51 (2016)) of two of Mother's children from another relationship. We shall refer to those children as "E." (born December 2008) and "J." (born April 2014). Mr. Gamble also asked that he be given primary physical custody of all three of the children and that the court grant joint legal custody to each parent with tie-breaking authority to him. Lastly, Mr. Gamble asked that the court award him "appropriate child support."

The complaint for a limited divorce and the counter-complaint were heard in the Circuit Court for Baltimore County on December 2, 2020. After a trial that lasted a full day, the trial judge delivered an oral opinion in which she denied Mother a limited divorce on the grounds of constructive desertion; granted Mr. Gamble a limited divorce on the grounds of desertion; denied Mr. Gamble's request for a finding that he was the de facto parent of E. and J.; granted Mother sole legal and primary physical custody of C.; and

awarded Mr. Gamble access to C. every Wednesday evening from 4:00 p.m. to 7:00 p.m. and every other weekend from Friday at 4:00 p.m. until Sunday at 6:00 p.m. The judge also ruled that Mr. Gamble must pay Mother $591 per month for C.'s support. In addition, the judge made various oral determinations in regard to the disposition of personal and marital property belonging to the parties.

Although Mr. Gamble had not asked for a marital award, the judge said that he was entitled to such an award in the amount of $1,500. Lastly, the court denied Mr. Gamble's request for use and possession of the marital home. At the conclusion of the court's oral opinion, the judge said:

> All right. That's my ruling. I'm going to prepare an order itemizing all of that. It should be available to you on MDEC as soon as I file it. So just keep checking MDEC so that you can download a copy of it as soon as it's available for you.
>
> All right. That concludes this matter.

On December 7, 2020, the trial court signed a written order, docketed on December 9, 2020, that was basically in conformity with the court's oral opinion[1] but with one major

[1] The trial court's written order did spell out, in more detail than in our summary, Mr. Gamble's rights to access and also set forth specified rules of conduct that both parents were required to follow in regard to C. The parties' rights to marital and other property were covered by the following provisions in the written order:

> ORDERED, that ownership of the marital home at 7716 Trappe Road, Baltimore, MD 21222, which is titled in Mother's name, shall be awarded to Mother; and it is further
>
> ORDERED, that Father is granted a marital award of $1,500.00 (one thousand five hundred dollars) which Mother shall pay to him in increments of $500 per month for three months starting January 1, 2021; and it is further

(continued…)

exception. The written order made no mention of Mr. Gamble's request that he be declared the de facto parent of E. and J.

On December 18, 2020, Mr. Gamble filed a motion for reconsideration and later an amended motion for reconsideration. The motions were denied on January 25, 2021. Mr. Gamble filed a notice of appeal to this Court on February 16, 2021.

For reasons explained in part II, we are required to dismiss this appeal because, thus far, no final appealable judgment has been entered. Normally, when an appeal is dismissed for that reason, the trial court will simply prepare and sign a final order in accordance with the findings set forth in the court's oral or written opinion and have the order docketed. We would then have jurisdiction to decide the appeal, assuming, of course, that a timely notice of appeal is filed. But here, as we point out in part III of this opinion, there are some parts of the court's order that the trial judge might want to re-evaluate before signing an appealable final order.

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

Prior to marrying Mother, Mr. Gamble and Angelina Wilcox were in a relationship that produced a daughter, H., born in September 2012. After H.'s birth, Ms. Wilcox had custody of the child. In the first seven years of H.'s life, her parents engaged in almost

> ORDERED, that all vehicles be awarded to the party in whose name the vehicle is. . . .

[2] The trial transcript in this case covers 289 pages and numerous exhibits were introduced at trial. No attempt has been made in part I to summarize all the evidence introduced at trial. Instead, we have re-capped only the parts of the evidence that put in context, or directly concerns, matters discussed in part III of this opinion.

constant legal battles. Nevertheless, Mr. Gamble did have regular visitations with H. and paid Ms. Wilcox child support.

During most of their marriage, Mother and Mr. Gamble lived in a four bedroom home located on Trappe Road in Dundalk, Maryland. That house was titled in Mother's name.

Mother and the late Matthew Houff were the biological parents of a daughter, E., and a son, J. But from the time E. was approximately two and one-half years old, until February 15, 2020, when she was eleven, E. lived with Mother and Mr. Gamble continuously except for a short interlude in 2013 when Mother and Mr. Gamble separated. J. lived continuously with Mother and Mr. Gamble from the time of his birth in April of 2014 until Mother and Mr. Gamble separated. J. uses "Gamble" as his last name. E.'s surname is "Houff". Both children called Mr. Gamble "daddy" and, according to Mother's trial testimony, Mr. Gamble was a "great" step-dad to his two step-children.

J. and E.'s biological father, Matthew Houff, paid child support to Mother until he died in October of 2019 due to a pulmonary embolism.

During Mother's testimony, the trial judge questioned her regarding Mr. Gamble's claim that he was the de facto parent of E. and J.:

> Q. Well, during the course of your marriage to Mr. Gamble, did you encourage him to establish a parental relationship with [J.] and [E.]?
>
> A. I think by nature it happened.
>
> Q. You have or have not?
>
> A. It happened by nature.

Q. So, did you - - the question is, did you encourage it or foster it in some way?

A. Of course.

Q. Either way.

A. Of course. He was there with me in the home every day with them.

Q. And they lived with the two of you?

A. Primarily with us, yes.

Q. And for, what was the access arrangement between you and their biological dad?

A. We worked it out as time went. He worked for Home Depot so he didn't have a set work schedule or anything like that that we could work around, you know, where some people - -

Q. It was a flexible schedule?

A. It was flexible. It was what it was.

Q. Was it 50/50?

A. Oh, no, no, no. No. Not nearly that, you know.

Q. So they were primarily in your home?

A. In our home, yes.

Q. With you and Mr. Gamble?

A. Yes.

* * *

Q. And did Mr. Gamble take on some of the obligations of fatherhood with regard to them? Things like taking care of them, educational needs, their support, supporting them financially, that sort of thing?

A. I mean, he helped with like, you know, he would help me take them back and forth to school especially like when they went to school with [C.]. Like [C.] and [J.] went to the same day care and all of that.

* * *

Q. Right. But throughout the period of your marriage to Mr. Gamble, did they have a close relationship with their biological dad?

A. Yes.

Q. And how long did the four of you live together before the separation?

A. The four of us who?

Q. You and Mr. Gamble and your two children, [E.] and [J.]?

A. I think we moved in together around 2011-ish.

Q. So then that would have been eight years, nine years?

At another part of her testimony, Mother said that Mr. Gamble and she had the "primary parenting role" over E. and J.

Mr. Gamble's testimony basically corroborated that of Mother's concerning his being an active step-father to E. and J. He testified that he alone was frequently required to supervise E. and J. because Mother often worked at night and put in long hours at her three jobs. His testimony in this regard was as follows:

[W]hen I told her I was going to look at de facto parenting because, again, these have been my children since [J.'s] first breath and since [E.] was 2.

I have taken many, many, many days off of work to take care of them when they were sick, when it was a snow day, day care was closed. It didn't really matter what it was, I would take time off to, you know, be there for my children.

> You know, [Mother], as I stated earlier in cross[-]examination with her, her schedule literally began at Bayada, she worked a schedule from about 8:00 until about 2:00 in the afternoon.
>
> She would go and pick up the children from school at 3:00. I would get home at 4:00 from work and she would go to Gilchrist for her 4:00 to midnight or she would prep for her Seasons from 5:00 p[.m.] to 8:00 a.m. and she was working 24 hours a day Monday through Friday for two and three years previous.
>
> And then a time in between then she would just work, you know, one job here or there and then she would pick up visits because the per visit pay was some dollar amount. I forget what it was.
>
> But, you know, again, she was rarely there.

After the parties separated, J., E., and Mother went to live in a six bedroom house where Matt Houff's parents lived. That trio lived with the children's paternal grandparents from February 15, 2020 to December 2, 2020, the date of trial.

Between February 15, 2020 and the date of trial, C. lived with Mr. Gamble. According to Mother's testimony, the custody arrangement was a matter that Mr. Gamble forced on her. Mr. Gamble did allow Mother regular visitation with C. – but from February to December 2020, there was never any court approved custody and/or visitation schedule.

Although Mother didn't ask for child support because, in her words, she "didn't need it," she introduced into evidence a financial statement showing that she currently made $3,800 per month ($45,600 per year) working as a hospice nurse. Before the COVID-19 pandemic, she worked one full-time job and two part-time jobs and earned $125,000 annually. At the time of trial, she was working only 32 hours per week. According to Mother, she cut back on her hours because previously she was working "24/7," which was

exhausting. She also indicated that another reason she reduced her income was because of the COVID-19 pandemic, which caused J. and E. to be out of school.

Mr. Gamble is employed by M&M Vending as an "IT" specialist. Because of the COVID-19 pandemic, he was furloughed from his job for about two months but he was back at work, full time, on the date of trial. According to the judge's calculations, based on pay stubs the judge reviewed, he earns $4,769 per month ($57,228 per year).[3]

In this appeal, Mr. Gamble raised five questions which we slightly rephrased as follows:

(1) Was the circuit court's reasoning for denying de facto parent status to the appellant clearly erroneous, and contrary to the law?

(2) Did the circuit court abuse its discretion in awarding primary physical custody of C. to appellee by not preserving the status quo?

(3) Were the circuit court's findings concerning custody clearly erroneous and unsupported by the evidence?

(4) Was the circuit court erroneous in its calculation of child support?

(5) Was the judgment entered by the circuit court concerning the distribution of marital property and a marital award clearly erroneous, an abuse of discretion, and contrary to the law?

II. FINAL JUDGMENT RULE

Md. Rule 1-202(o) defines "judgment" as meaning "any order of court final in its nature entered pursuant to these rules."

Maryland Rule 2-602 reads:

[3] On the date of trial, Mr. Gamble filled out a financial statement, and swore under oath, that he earned $6,100 per month. However, he explained at trial that the $6,100 figure represented the amount that he anticipated he would earn in the near future when his boss retired.

Judgments not disposing of entire action.

> (a) Generally. Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, 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:
>
> (1) is not a final judgment;
> (2) does not terminate the action as to any of the claims or any of the parties; and
> (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.
>
> (b) When Allowed. If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:
>
> (1) as to one or more but fewer than all of the claims or parties; or
> (2) pursuant to Rule 2-501(f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

The order filed in this case, that was docketed on December 9, 2020, was not a final judgment because it did not adjudicate Mr. Gamble's claim that he was the de facto parent of E. and J. The trial court did, as we have mentioned, orally reject that claim, but her oral pronouncement, in that regard, did not constitute a final judgment insofar as that claim was concerned.

In *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41-42 (1989), the Court of Appeals said:

> To be final and conclusive in that sense, the ruling must necessarily be unqualified and complete, except as to something that would be regarded as collateral to the proceeding. It must leave nothing more to be done in order to effectuate the court's disposition of the matter. In the first instance, that becomes a question of the court's intention: did the court intend its ruling to be the final, conclusive, ultimate disposition of the matter?

> On several occasions recently, this Court, in considering whether a particular order or ruling constituted an appealable judgment, looked to whether the order or ruling was "unqualified," whether there was "any contemplation that a further order [was to] be issued or that anything more [was to] be done." *Walbert v. Walbert*, 310 Md. 657, 661 (1987); *Doehring v. Wagner*, 311 Md. 272, 275 (1987); *cf. Makovi v. Sherwin-Williams Co*., 311 Md. 278, 281 (1987). In a footnote in *Doehring*, 311 Md. at 277 n.2, we noted that if the judge "did not intend that his ruling . . . finally terminate the litigation . . .," it would not constitute a final judgment. Cited for that proposition was *Dawson's Charter Serv. v. Chin*, 68 Md. App. 433 (1986), where the Court of Special Appeals, speaking through Judge Adkins, held expressly that a direction by the court that an order is to be submitted constituted "a direction to the clerk not to enter judgment until the order had been signed and filed." *Id*. at 438.
>
> Lest there be any lingering question about the matter, we now make clear that, whenever the court, whether in a written opinion or in remarks from the bench, indicates that a written order embodying the decision is to follow, a final judgment does not arise prior to the signing and filing of the anticipated order unless (1) the court subsequently decides not to require the order and directs the entry of judgment in some other appropriate manner or (2) the order is intended to be collateral to the judgment.

(Emphasis added.)

Based on what the trial judge said at the conclusion of the trial, she clearly did not intend that her oral ruling would constitute a final termination of the litigation insofar as the de facto parent claim (or any other claim) was concerned. Instead, the judge's words conveyed her intent that a judgment would be entered by a separate order signed by her. Because no separate order was ever filed that disposed of Mr. Gamble's de facto parent claim, no final judgment has been entered. *Id*. at 42.

This Court does not have jurisdiction over an appeal that is not from a final judgment unless it is otherwise permitted by law. *Doe v. Sovereign Grace Ministries, Inc*., 217 Md. App. 650, 661 (2014). There are some narrow exceptions to the rule that an appeal may

only be taken after the entry of a final judgment, but none of those exceptions is here applicable. We therefore have no choice but to dismiss this appeal.

III. COMMENTS

Ordinarily, when we dismiss an appeal for lack of a final judgment, we do so without comment as to the substantive issue presented in the case. But because child custody and support issues are involved in the subject case, time may be of the essence and it would make no sense to simply return the case to the trial court without comment.[4] We explain.

The trial judge orally denied Mr. Gamble's request that he be declared the de facto parent of E. and J. on a legally incorrect basis. If another appeal is filed, we could not possibly affirm the denial of Mr. Gamble's request that he be declared the de facto father of E. and J. on the basis given by the trial judge. The grounds for the trial judge's denial were expressed as follows:

> First let me deal with the claim of de facto parenthood. I'm going to deny that claim for the following reasons. Mr. Gamble was a step[-]parent. That is a parental role. And particularly when the children live in the home of the step[-]parent they will form bonds and there will be a parental role and they will live together.
>
> And the biological parent of the children typically fosters that relationship because it's in the children's best interest for him or her to do so.
>
> So there is a parental role that a step[-]parent has that does not amount to what the law recognizes as a de facto parent. De facto parents are typically

[4] Technically, everything said in part III of this opinion is *dicta* and the trial judge is not obliged to even consider that *dicta*. Most likely, however, the trial judge will elect to carefully consider what we have said in part III. We note, however, that in picking out three issues that the trial court should reconsider, we do not imply that we either accept or reject any other argument raised by Mr. Gamble in this appeal.

> other relatives that, with whom the children will live, frequently their grandparents. Parents may have trouble with drugs or other issues and the grandparents end up being essentially the de facto parents. Those are the typical de facto parent cases.
>
> Here there was already a parental role that Mr. Gamble occupied with regard to the children. And I find that the law that relates to a legal de facto parent does not apply in this situation.
>
> So he is not the de facto parent of [E.] and [J.] and therefore is not entitled to custody or visitation with those two children.
>
> However, just because there's not a legal relationship there does not mean that he should not or could not continue to have a relationship with them. And it may be in their best interest to do so.
>
> But the Court is not going to award any custody or visitation of those two children to Mr. Gamble.

It is clear from what the trial judge said that she did not believe that a step-parent could ever be a de facto parent. But, contrary to the court's ruling, a relationship of step-parent to a child can result in the establishment of a de facto parental relationship. This is demonstrated in *Conover v. Conover*, 450 Md. 51 (2016), which was the first case in which the Maryland Court of Appeals recognized the right of a litigant to establish de facto parenthood.

Michelle and Brittany Conover, a lesbian couple, married in the District of Columbia in September 2010. *Id*. at 55. About five months before their marriage, Brittany Conover gave birth to a son, Jaxon, who was conceived by artificial insemination that was provided by an anonymous donor. After Jaxon's birth and at least up until the parties separated in September 2011, Michelle, as Jaxon's step-mother, helped raise the child and the child referred to her as "dada" or "daddy." *Id*. at 56. The circuit court, relying on

Janice M. v. Margaret K., 404 Md. 661 (2008) ruled that de facto parent status was not recognized in Maryland. *Id*. at 58. The Court of Appeals overruled the *Janice M.* case and held that "*de facto* parenthood is a viable means to establish standing to contest custody or visitation[.]" *Id*. at 59.

Under *Conover*, a party that seeks to establish de facto parenthood bears the burden of proving four factors. First, it must be proven that the "biological or adoptive parent consented to, and fostered, the [third party's] formation and establishment of a parent-like relationship with the child[.]" *Id*. at 74. Second, the party seeking to establish a de facto parenthood relationship must establish that he or she "and the child lived together in the same household[.]" *Id*. Third, the third party must prove that he or she "assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing toward the child's support, without expectation of financial compensation[.]" *Id*. The third party must also demonstrate "that [he or she] has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature." *Id*. The Court, in *Conover*, remanded the case to the trial court for it to apply the four factors to determine whether the step-mother had established de facto parenthood. Recently, in the case of *E.N. v. T.R.*, 474 Md. 346 (2021), the Court of Appeals clarified the first factor. The Court said, "where there are two existing legal parents, both parents must be shown to have consented to a third

party's formation of a parent-like relationship with a child[.]"[5] (*Slip op.* at 53) (emphasis added).

In *Kpetigo v. Kpetigo*, 238 Md. App. 561 (2018), we upheld a trial judge's decision that a step-mother, who was married to the biological father of a child, had established the necessary elements to prove a de facto parental relationship pursuant to *Conover*. *Id*. at 568. In *Kpetigo*, the biological father asked this Court to read *Conover* narrowly and to hold that de facto parent status "can apply only to the non-biological parents in a same sex couple." *Id.* at 574. We rejected that contention and pointed out that in the 23 years that de facto parenting had been recognized in the United States "all sorts of people have qualified as *de facto* parents: grandparents, opposite-sex step-parents, boyfriends and girlfriends, aunts and uncles, and even, in at least one instance, a neighbor." *Id*. at 575 (footnotes omitted).

Under the circumstances, in this case, the circuit court should carefully examine the *Conover* factors and determine in a written order whether Mr. Gamble has met his burden of proving each of the four factors.

There is another item that the trial judge might want to re-examine prior to signing a final order in this case. Mr. Gamble introduced a child support worksheet [defendant's exhibit 7] indicating the amount of payment he was required to make to Ms. Wilcox to support his daughter, H. In addition, he testified he had a court-imposed obligation to

[5] The Court, in *E.N. v. T.R.*, went on to say, "in the alternative, [the third party may show] that one or both parents are unfit or exceptional circumstances exist." *Slip op*. at 53. Here, there is no debate about the fact that both Mr. Gamble and Mother have always been fit parents.

support H. That testimony was not controverted by appellee. The child support worksheet concerning C. was filled out by the trial judge's law clerk and was attached to the written order docketed on December 9, 2020. The child support awarded was the same as that shown on the worksheet. But, probably due to inadvertence, the law clerk, in calculating the guideline amount Mr. Gamble was required to pay to Mother for C.'s support, did not take into account the court ordered child support that Mr. Gamble was required to make to H.'s mother. Therefore, the court, prior to signing a final order in this case, should either grant Mr. Gamble credit for the pre-existing child support obligation or explain why no credit was given.[6]

Lastly, the trial court on remand should reconsider whether to grant a marital award or to resolve any dispute concerning real property in a case, such as this, where only a

[6] There is a strong likelihood that another appeal will be filed in this case by Mr. Gamble. If so, Mr. Gamble should not simply re-file his brief because the brief he filed in this Court did not comply with Md. Rule 8-504(a)(4), which requires that a party's brief shall contain:

> (4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions.

(Emphasis added.)

In Mr. Gamble's brief, there are many instances where factual assertions are made without any reference to the record extract. An appellate court is not required to read the entire record to search for error or to find out whether factual support for a party's assertions exist. *ACandS v. Asner*, 344 Md. 155, 192 (1996). Intentional violation of Rule 8-504(a)(4) may lead to dismissal of an appeal. *Mitchell v. State*, 51 Md. App. 347, 357-58 (1982).

limited divorce was granted. See Md. Code (2019 Repl. Vol.), Family Law article sections 8-202(a)(2) and 8-203(a).

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1414s20cn.pdf