

Circuit Court for Montgomery County
Case No.: FL-152843

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1484

September Term, 2021

ISHMAEL HYDE

v.

LIDIA LAUREANO

Wells, C.J.,
Arthur,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: December 15, 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.

Ishmael Hyde, Appellant, and Lidia Laureano, Appellee, are the parents of a child born in September 2016. Mr. Hyde and Ms. Laureano were not a married couple. It appears that their relationship soured soon after their son’s birth. By order entered on 26 March 2019, the Circuit Court for Montgomery County awarded Ms. Laureano sole legal and primary physical custody of the child, granted Mr. Hyde unsupervised visitation on alternate weekends, set forth a child access holiday and special occasion schedule, ordered Mr. Hyde to pay \$471 a month in child support, and determined that Mr. Hyde owed Ms. Laureano \$5,181 in child support arrearages. Mr. Hyde noted an appeal of that order, which this Court dismissed when Mr. Hyde failed to file a brief. Unfortunately, litigation between the parties, who have largely been self-represented, did not end there.¹

On 5 April 2021, a magistrate convened a hearing on Ms. Laureano’s motion for enforcement of the child support provisions established by the 26 March 2019 order and on her motion to modify Mr. Hyde’s access to the child. The docket entries reflect that the self-represented Ms. Laureano appeared for the hearing “via video” and that the self-represented Mr. Hyde failed to appear personally or by video. The magistrate made oral recommendations at the conclusion of the hearing.² Prior to announcing her recommendations, the magistrate made findings, which included finding that Mr. Hyde “has not made any payments towards his ongoing monthly support obligation, nor has he

¹ We shall not include a more fulsome history of the litigation between the parties than is necessary to this opinion.

² The record before us includes the transcript of the magistrate’s oral findings and recommendations only. It does not appear that the evidentiary portion of the hearing has been transcribed.

made any payments towards the previously assessed support arrears.” The magistrate found also that his ongoing monthly child support obligation from 1 May 2019 through 31 March 2021 was a total of \$11,304. The magistrate recommended that the prior arrears of \$5,181 set forth in the March 2019 order be reduced to judgment and recommended likewise that the arrears of \$11,304 be reduced to judgment.

The magistrate addressed also Ms. Laureano’s request to modify Mr. Hyde’s access to the child, summarizing the evidence as follows:

[Ms. Laureano] testified to a history, over an extended period of time, of [Mr. Hyde] failing to show up on time for his access, failing to show up at all, lack of communication between the parties, particularly from [Mr. Hyde] to [Ms. Laureano] to confirm whether or not he was going to exercise any period of access. [Mr. Hyde] often does not retrieve the child himself, but sends third parties to retrieve [him], many of which [Ms. Laureano] is not familiar with. [Ms. Laureano] has made efforts over time to get [Mr. Hyde] to confirm in advance that he will be exercising his access. She has asked him not to send unknown third parties to pick up the child. She’s advised him that she would be willing to turn the child over to a known family member, but [Mr. Hyde] has routinely failed to cooperate.

[Mr. Hyde] has not seen [the child] approximately in the last four months. He did apparently make a request at the last minute this past Friday just prior to the Easter weekend, and unfortunately, because his request was done at the last minute, [Ms. Laureano] had already made plans, and therefore did not, was not able to make [him] available to his father for Easter holiday. She did offer to arrange for access at a different time instead, but [Mr. Hyde] has failed to communicate with her any alternative dates.

[Ms. Laureano] is concerned about the conduct of [Mr. Hyde] while [the child] is in his care. Apparently[,] [the child] has, on a number of occasions, resisted going to his father’s. He has made comments such as daddy is mad, daddy is mean, although [he] is, does well speaking to his father speaking on the phone.

[Mr. Hyde] has requested permission to, or agreement to travel with [his son]. However, on prior occasions, [Mr. Hyde] secreted the child from

[Ms. Laureano] which resulted in [Mr. Hyde] being forced to return the child to his mother.

Consistently, the only thing that is consistent with [Mr. Hyde’s] access is his inconsistent exercise of that access, last minute requests, failure to give her advance notice that he’s unable to appear on any particular scheduled date and time.

The magistrate mentioned also Ms. Laureano’s testimony “that she is unaware of who resides at [Mr. Hyde’s] residence, or if he even resides there, and [her] ongoing concerns about [the child’s] safety.” Based on her findings, the magistrate concluded “that there has been a material change in circumstances which has occurred since the entry of the custody order in March of 2019[,]” and “that it is in the best interests at the present time that” Mr. Hyde “not have access with [the child] at the present time.” The magistrate recommended that Ms. Laureano’s motion to modify be granted and that Mr. Hyde’s access to the child be suspended until further order of the court or by consent and agreement of Ms. Laureano.

On 16 April 2021, Mr. Hyde filed exceptions to the magistrate’s report and recommendations, claiming, among other things, that notice of the April 5 hearing was not sent to him and “ZOOM information to attend hearing was withheld from [him] and as a result a failure to appear was entered.” Based on our review of the docket entries, it appears that Mr. Hyde’s exceptions were not ruled on.

On 18 October 2021, the circuit court, having considered Ms. Laureano’s motions and the testimony taken and other evidence received at the April 5th hearing before the magistrate, adopted the magistrate’s proposed order and granted Ms. Laureano’s request for enforcement of the child support provisions in the March 2019 order; reduced to

judgment in favor of Ms. Laureano the previously determined child support arrearage of \$5,181; reduced to judgment child support arrears for the period 1 May 2019 through 31 March 2021 in the amount of \$11,304; and granted Ms. Laureano’s motion to modify access by “suspend[ing]” Mr. Hyde’s “right of access with the minor child . . . pending further order of the Court or upon the consent of” Ms. Laureano.

Mr. Hyde filed, on 28 October 2021, a motion to vacate the October 18th judgment, stating as grounds: “improper service/denied access to hearings.” On 18 November 2021, Mr. Hyde filed a notice of appeal. The court denied, on 16 December 2021, Mr. Hyde’s motion to vacate the judgment.

DISCUSSION

As best as we can discern, Mr. Hyde makes four appellate arguments: (1) he was denied access to the hearing³ when “the court failed to release invitation/access to the hearing to Hyde even after several requests including the day of the hearing” and a “default order was granted in error because service was never made”; (2) the child support award was “inaccurate” because the “calculation” in the 26 March 2019 order setting child support at \$471 a month was error because “income was imputed for Hyde even though [he was] terminated from job” and “minor child not in daycare and days/overnights were not accounted for in this cliff hanging order [and] shared custody not accounted for at all”; (3) the 18 October 2021 order “deprives Hyde of the care/custody/access of child changing

³ Mr. Hyde does not state the date of the hearing, but we assume that he is referring to the hearing before the magistrate held on 5 April 2021.

the terms of [the] original order without deeming Hyde unfit for parenting”; and (4) “exceptions and other filing unanswered.”

Child Support Award

We begin with Mr. Hyde’s second argument challenging the court’s 2019 child support award. In short, that issue is not before us properly. Any challenge Mr. Hyde had to the amount of his child support obligation should have been raised in a timely appeal of the 26 March 2019 order awarding child support or thereafter in a motion for modification due to a material change in circumstance. Mr. Hyde does not allege that he filed a motion to modify child support. *See* Md. Code, Family Law, § 12-104(a) (authorizing a court to “modify a child support award subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance”). Rather, Ms. Laureano filed a motion to enforce the court’s 2019 child support award because of Mr. Hyde’s failure to abide by the order. Even if Mr. Hyde had filed a motion to modify his support obligation, “[t]he court may not retroactively modify a child support award prior to the date of the filing of the motion for modification.” Family Law, § 12-104(b); *Petitto v. Petitto*, 147 Md. App. 280, 309 (2002) (Family Law, § 12-104(b) “specifically limits retroactive modification of a child support award to the date of filing for a modification.”). Accordingly, we are not persuaded that the court erred in reducing to judgment the child support arrearages.

Suspension of Child Access

We turn next to Mr. Hyde’s third argument, which we shall consider under the assumption that Mr. Hyde was not denied improperly access to the 5 April 2021 hearing

before the magistrate and that his exceptions to the magistrate’s recommendations were untimely. (We will discuss the hearing access issue and the court’s failure to rule on Mr. Hyde’s exceptions to the magistrate’s recommendations later in this opinion.)

As noted, the court’s 18 October 2021 order, among other things, “ORDERED, that [Mr. Hyde’s] right of access with the minor child is hereby SUSPENDED pending further order of the Court or upon the consent of [Ms. Laureano].” On appeal, Mr. Hyde asserts that the ruling deprives him of access to his child “without deeming [him] unfit for parenting.” Whether he is fit for parenting, however, is not the sole criterion for a change in custody or visitation.

“On a motion for modification of custody, a trial court employs a two-step process: (1) whether there has been a material change in circumstances, and (2) what custody arrangement is in the best interests of the children.” *Santo v. Santo*, 448 Md. 620, 639 (2016). “A material change of circumstances is a change in circumstances that affects the welfare of the child.” *Gillespie v. Gillespie*, 206 Md. App. 146, 171 (2012). “Deciding whether those changes are sufficient to require a change in custody necessarily requires a consideration of the best interest of the child.” *McCready v. McCready*, 323 Md. 476, 482 (1991). “The burden is then on the moving party to show that there has been a material change in circumstances since the entry of the final custody order and that it is now in the best interest of the child for custody to be changed.” *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008).

The magistrate in this case heard from Ms. Laureano, the moving party, that Mr. Hyde exercised his visitation rights irregularly; that he had not seen the child in

approximately four months; that Mr. Hyde often sent third parties unknown to Ms. Laureano to pick up the child; that Mr. Hyde had “secreted” the child from his mother on occasion; and that Ms. Laureano was “unaware of who resides at [Mr. Hyde’s] residence, or if he even resides there[.]” Based on the evidence before her, the magistrate concluded “that there has been a material change in circumstances which has occurred since the entry of the custody order in March of 2019.” We cannot say that the magistrate, and the court which adopted the magistrate’s findings, erred in reaching that conclusion. Mr. Hyde’s inconsistent exercise of his visitation rights is a material change in circumstances that affects the welfare of the child. Rather than visit with his father every other weekend as set forth in the March 2019 order, it appears that the visits were sporadic and on “prior occasions” Mr. Hyde had “secreted the child” from Ms. Laureano, “which resulted in [Mr. Hyde] being forced to return the child to his mother.” Based on this record, which apparently consists solely of the testimony of Ms. Laureano, we are not persuaded that “suspend[ing]” Mr. Hyde’s access to the child was contrary to the child’s best interests.

Failure to Rule on Exceptions

We turn now to Mr. Hyde’s fourth allegation, that “exceptions and other filing unanswered.” Mr. Hyde provides no supporting facts or argument in regard to this issue. *See* Md. Rule 8-504(a)(4) (A brief shall contain a “clear concise statement of the facts material to a determination of the questions presented[.]”) and Rule 8-504(a)(6) (A brief

shall include “[a]rgument in support of the party’s position on each issue.”⁴ We can only assume that Mr. Hyde is complaining about the court’s failure to rule on his exceptions to the magistrate’s report and recommendations.⁵

Rule 9-208(f) provides that, “[w]ithin ten days after recommendations are placed on the record or served pursuant to section (e) of this Rule, a party may file exceptions with the clerk.” Section (e)(1) provides that the magistrate “shall notify each party of the recommendations, either on the record at the conclusion of the hearing or by written notice served pursuant to Rule 1-321.” Rule 9-208(h)(1)(A) provides that 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[.]” If exceptions are not filed timely, the Rule provides that “the court may direct the entry of the order or judgment as recommended by the magistrate.” Rule 9-208(h)(1)(B).

Here, the magistrate placed her recommendations on the record at the conclusion of the April 5th hearing. Mr. Hyde’s exceptions were filed on April 16th – eleven days later. Based on the record before us, we cannot determine whether Mr. Hyde’s exceptions were timely or not because it is not clear when the time began running, in this instance given

⁴ We are aware that Mr. Hyde filed an informal brief. Our Guidelines for Informal Briefs (authorized by Administrative Order of the Chief Judge of this Court dated 9 March 2021), however, also provide that the issues presented for appeal “should be stated concisely *with a description of the facts surrounding the issue and an argument supporting the resolution of the issue.*” (Emphasis added.)

⁵ We do not know what Mr. Hyde is referring to by “other filing.”

Mr. Hyde’s absence from the April 5th hearing. If the clock began running on April 5th, his exceptions were untimely and the court, therefore, was authorized to adopt the recommendations of the magistrate and enter the order as recommended by the magistrate. Rule 9-208(h)(1)(B). If the magistrate’s findings and recommendations were served on Mr. Hyde, it is not clear from the record before us when service was made and, therefore, it is possible his exceptions may have been filed timely. Mr. Hyde’s failure to provide any supporting facts on the issue or any argument whatsoever impedes our consideration of this issue.

Denial of Access to the April 5th Hearing

We turn now to Mr. Hyde’s first issue on appeal, which is entwined with his last. Mr. Hyde claims that “the court failed to release invitation/access” to the 5 April 2021 hearing before the magistrate, a hearing conducted remotely, “even after several requests including the day of the hearing.” In his exceptions to the magistrate’s report, Mr. Hyde alleged that “ZOOM information to attend hearing was withheld from [him] and as a result a failure to appear was entered.” He asserted, among other things, that Ms. Laureano “committed perjury in testimony” and that she had “denied child access” to him for “over 3 months consecutively.”

As noted, it appears that the court adopted the magistrate’s recommendations and proposed order without ruling on the exceptions. In his motion to vacate the court’s October 18th order, Mr. Hyde claimed again that he had been “denied access to hearings.” The court denied his motion to vacate, without explanation and apparently without convening a hearing on the motion. Hence, nothing in the record before us sheds light on the validity of

Mr. Hyde’s claim that, in essence, he attempted to attend remotely the April 5th hearing, as Ms. Laureano did, but was denied improperly access.⁶ Given the nature of the proceeding and the fundamental rights of individuals to parent their children, Mr. Hyde’s allegation is a serious and troubling one.

Accordingly, we shall remand this case to the circuit court with instructions to hold promptly a hearing to address Mr. Hyde’s claim that he was denied improperly access to the 5 April 2021 hearing. If the court determines that Mr. Hyde sought to attend the hearing, but was denied access, the court shall vacate that portion of its 18 October 2021 order suspending Mr. Hyde’s access to the child and schedule promptly a new hearing to consider anew Ms. Laureano’s motion to modify custody.

If the court determines that Mr. Hyde was not barred improperly from attending the April 5th hearing, but simply failed to appear, the court shall determine whether Mr. Hyde’s exceptions to the magistrate’s recommendations were filed timely. If they were timely, the court shall rule on the exceptions and, if need be, reconsider its order suspending Mr. Hyde’s access to the child. *See* Rule 9-208(h)(1)(A) (If exceptions are timely filed, “the

⁶ Ms. Laureano filed correspondence with this Court, but she did not file a brief and she did respond to this issue.

court shall not direct the entry of an order or judgment based upon the magistrate’s recommendations . . . until the court rules on the exceptions[.]”).

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REDUCING TO JUDGMENT CHILD SUPPORT ARREARAGES AFFIRMED.

CASE REMANDED TO THE CIRCUIT COURT, WITHOUT AFFIRMANCE OR REVERSAL AS TO THE CHILD ACCESS DECISION, FOR FURTHER PROCEEDINGS CONSISTENT WITH THE OPINION.

COSTS TO BE PAID BY APPELLANT.