

Circuit Court for Howard County  
Case No.: C-13-FM-20-001700

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1554

September Term, 2021

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KEVIN DIAZ

v.

RACHELLE WADE

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Kehoe,  
Reed,  
Alpert, Paul E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kehoe, J.

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Filed: June 22, 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.

Kevin Diaz (“Father”), appeals the Circuit Court for Howard County’s order requiring him to pay child support to Rachelle Wade (“Mother”). On appeal, Father presents three issues which, in substance, amount to one: whether the court erred when it determined the amount of Father’s child support obligation.<sup>1</sup> We will affirm the judgment of the circuit court.

### BACKGROUND

The parties share one minor child, J., born in July of 2019. In November of 2020, Mother filed a complaint for child support and custody. In January of 2021, Father filed a counter-complaint for custody.

In April of 2021, the court issued a scheduling order, which set a hearing for June 18, 2021. On June 17, 2021, Governor Hogan announced that State offices and agencies would be closed on June 18th in observance of Juneteenth National Independence Day. The hearing was continued to September 3, 2021. Notice of the new hearing date was sent electronically to Mother and mailed to Father. The record reflects that the notice mailed to Father was not returned to the court.

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<sup>1</sup> In his brief, Father phrased his three issues presented as: (1) “The administered amount for my child support currently of \$1,809.00 per month is taking away from my ability to fully provide for my 9 month old son and 14 year old daughter[;]” (2) “This child support ordered is affecting my ability to support my cost of living expenses[;]” and (3) “Unable to contribute financially to assist my sister in taking care of our mother because of this child support payment which has limited me to do as much for her and my mother as I was doing before this court order.”

On September 3, 2021, the rescheduled hearing took place before a magistrate. Father did not appear at the hearing. On September 8, 2021, the magistrate’s report and recommendations were entered into the record. On September 16, 2021, Father filed a “motion/ request for a new court date[,]” but that filing was rejected under Md. Rule 20-201(g) for failing to include a certificate of service. On September 23, 2021, the court adopted the magistrate’s recommendations and issued an order for child custody and support. On October 12, 2021, Father filed a motion to vacate that order, asserting that he did not receive notice of the rescheduled hearing, which Mother opposed. On November 3, 2021, Father’s motion was denied. Father timely appealed.

#### THE STANDARD OF REVIEW

This Court has stated that “[c]hild support orders are generally within the sound discretion of the trial court.” *Knott v. Knott*, 146 Md. App. 232, 246 (2002). Thus, we “will not disturb the trial court’s determination as to child support, absent legal error or abuse of discretion.” *Jackson v. Proctor*, 145 Md. App. 76, 90 (2002). Therefore, “[a]s long as the trial court’s findings of fact are not clearly erroneous and the ultimate decision is not arbitrary, we will affirm it, even if we might have reached a different result.” *Malin v. Mininberg*, 153 Md. App. 358, 415 (2003).

The evidentiary portion of this case was held before a family law magistrate. In such cases, once the magistrate’s findings of fact and recommendations are served on the parties or placed on the record, a party may file exceptions with the clerk within ten days. Md. Rule 9-208(f). However, “in all cases lacking timely exceptions, any claim that the

[magistrate]’s findings of fact were clearly erroneous is waived.” *Miller v. Bosley*, 113 Md. App. 381, 393 (1997). The excepting party “may still, however, challenge the court’s adoption of the [magistrate’s] application of the law to the facts” as found by the magistrate. *Barrett v. Barrett*, 240 Md. App. 581, 587 (2019) (cleaned up).

#### ANALYSIS

Father asserts that the child support award did not take into consideration challenges that he faces finding stable employment and caring for other family members. Mother responds that Father’s assertions are waived because Father failed to properly file exceptions to the magistrate’s findings in the circuit court. We agree.

Magistrates assist trial courts in reaching decisions in certain types of domestic relations cases, including child custody and support disputes, pursuant to Md. Rule 9-208. If the circuit court has one or more “standing magistrate[s] for domestic relations matters and a hearing has been requested or is required by law,” the court shall refer cases like the present one to the magistrate. Md. Rule 9-208(a)(1).

The Circuit Court for Howard County has domestic relations magistrates. The magistrate holds an evidentiary hearing and, based on the evidence presented, the magistrate “shall prepare written recommendations, which shall include a brief statement of the magistrate’s findings and shall be accompanied by a proposed order.” Md. Rule 9-208(e)(1). If a party wishes to contest the magistrate’s findings or recommendations, he or she can do so by filing written exceptions to the magistrate’s recommendations. *Barrett*,

240 Md. App. at 587. Exceptions must be filed within ten days after the magistrate’s recommendations are served on the parties or filed in the court record. Md. Rule 9-208(f).

“[I]f exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.” Md. Rule 9-208(h)(1)(B). *See also O’Brien v. O’Brien*, 367 Md. 547, 555 (2002) (noting that where “no exceptions [had] been filed, the court could have entered a judgment against [father] for the amount of arrearage found by the [magistrate].”); *Miller*, 113 Md. App. at 393 (holding that where no exceptions are filed, “the parties must accept those facts as established” by the magistrate). Critically, the rules provide that, “[a]ny matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.” Md. Rule 9-208(f).

Returning to the case before us, Father does not dispute timely receiving a copy of the magistrate’s report and recommendations. However, Father didn’t file any exceptions. The record reflects that Father did file a “motion/request for a new court date[,]” but his motion did not include a certificate of service. Even had that motion satisfied the requirements for filing exceptions under the rule,<sup>2</sup> omission of the certificate of service prevented it from properly becoming part of the record before us. *Lovero v. Da Silva*, 200 Md. App. 433, 446 (2011) (holding “that a pleading or paper required to be served by [Md. Rule 1-321] that does not contain an admission or waiver of service or a signed certificate showing the date and manner of making service cannot become a part of any court

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<sup>2</sup> Because the motion was rejected for failing to include the certificate of service, it is not within the record before this Court.

proceeding[.]”) Accordingly, because “[a]ny matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise[.]” and the record reflects no determination that the court found otherwise, Father’s arguments as to why the magistrate erred were not properly before the circuit court. *See* Md. Rule 9-208(f).

Father was not “precluded from appealing the trial court’s adoption of the [magistrate]’s recommendation if the issues appealed concern the court’s adoption of the [magistrate’s] application of law to the facts[.]” *Green*, 188 Md. App. at 674. But Father does not argue that either the circuit court or the magistrate made legal errors. Instead, he asserts that the magistrate (and by extension, the circuit court) erred because it failed to take into consideration certain facts, specifically, Father’s uncertain employment status, his obligation to support other minor children, and his support for his sister, who has stopped work in order to care for their ailing mother. He argues that, in light of these obligations, the amount of child support order by the court is excessive.

Although this Court is sympathetic to Father’s contentions, the law is clear: the proper times to raise those assertions were at the magistrate’s hearing or to the circuit court by means of exceptions properly filed within ten days of the magistrate’s recommendations. Moreover, self-represented parties, like Father, “must adhere to procedural rules in the same manner as those represented by [lawyers].” *Department of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999). Accordingly, because Father’s assertions have not been preserved for our review, we have no choice but to affirm the judgment.

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR HOWARD COUNTY IS  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**