UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1560

September Term, 2014

LYDIA FAYE CRAVEN

v.

DYLAN MICHAEL CRAVEN

Zarnoch,
Hotten,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: August 5, 2015

Appellant Lydia Craven seeks our review of an order by the Circuit Court for Charles County holding her in constructive civil contempt for her failure to abide by a custody order. The custody order in question gave equal custodial time to her and her former husband, Appellee Dylan Craven, with their daughter S.[1] The court found that Lydia willfully violated the custody order by denying visitation to Dylan. In her timely appeal, Lydia presents two questions for our review, which we have rephrased as follows:

1) Does a bona fide reconciliation by a husband and wife nullify a prior custody order?

2) Did the circuit court appropriately consider Appellant's defenses to the allegations of contempt for failure to provide visitation?

Finding no precedent in the law to suggest otherwise, we hold that a custody order may only be revised upon petition to the court, and that reconciliation between parents does not, by itself, void a custody order. Further, we hold that the court did not clearly err or abuse its discretion by finding Lydia in contempt.

Dylan filed a cross-appeal asserting that the circuit court erred, *inter alia*, in modifying the parties' custodial schedule to his detriment and in holding the parties to the terms of a *pendente lite* order. The controlling statute provides, however, that only the party found in contempt has the right to appellate review. Because we do not have jurisdiction to

[1] We refer to the children by their initials. And, for the sake of clarity, and meaning no disrespect, we refer to all other persons involved in this case by their first names. *Karsenty v. Schoukroun*, 406 Md. 469, 477 n.2 (2008).

hear a cross-appeal from Dylan, the petitioner for contempt, we do not address his contentions.

BACKGROUND

The parties married in the spring of 2011,[2] and, on May 28, 2011, S. was born to the couple.[3] As a result of marital difficulties, the parties separated, and on July 13, 2012, Dylan filed a complaint for custody of S. in the Circuit Court for Charles County. In the complaint, he requested sole legal and physical custody of S. and child support from Lydia. On September 4, 2012, the court signed an interim consent order, giving Dylan custody of S. on weekends and for one additional overnight per week.

Following a scheduled settlement conference held on September 11, 2012, the court signed a consent order (the "2012 custody order") resolving custody of S. on September 17 (entered September 18, 2012). The consent order stated that the parties "reached a final agreement resolving all pending issues," and awarded joint legal and shared physical custody to Lydia and Dylan. Each party was granted equal time with S. including overnights. Soon after the parties reconciled.

[2] The record contains conflicting information as to the date on which the parties were married. Lydia, in her brief, states that the parties married on May 16, 2011. In his pre-trial statement (filed June 11, 2014), Dylan says the parties married on March 26, 2011. However, while under oath at the contempt hearing, Dylan stated that the parties were married on March 11, 2011.

[3] A second child, A., was born to the couple on December 19, 2013. Her custody is not at issue here.

The following account of the facts is taken from testimony at the contempt hearing on September 8, 2014. Dylan testified that after the 2012 custody proceedings, the parties reconciled and moved to Ohio in the fall or winter of 2012 to start anew and "be away from people from both families that . . . judge our relationship." Dylan, Lydia, and S. lived together in Mayfield Heights, Ohio, until the relationship soured again in July, 2013. Lydia and S. moved out of the apartment and into Lydia's father's home for a brief period of time before they moved back to Maryland. In a note that she left for Dylan, Lydia wrote that she left because she was concerned about Dylan's ability to take care of S. while he and S. were home together.[4] Dylan separately moved back to Maryland shortly thereafter.

In the months that followed, Lydia restricted S.'s contact with her father. At one point, Dylan was unable to get in touch with Lydia for over a month. According to Dylan, Lydia intermittently blocked contact with Dylan on Facebook and through telephone, their primary forms of communication, during the months of August and September, 2013.

Dylan testified that Lydia unilaterally decided when he could have visitation with S. Despite the September 2012 custody order requiring custody of S. to be split equally between

[4] In the letter, Lydia made reference to a child endangerment charge that was filed against Dylan. Although the record does not reveal who filed the charge, it does reveal the parties' dispute concerning the circumstances that resulted in the charge. According to Dylan, the parties worked opposite schedules so that Dylan was typically sleeping in the afternoon when Lydia left for work. Lydia was supposed to wake Dylan up before she left, so Dylan could watch S. On the day of the incident, Dylan claims that Lydia did not wake him and that that was why S. was found wandering the halls of their apartment complex. Despite Dylan's characterization of the circumstances, he later admitted that he was unemployed on the day of the incident.

her parents, Dylan saw S. for only 35 days between August 2013 and April 2014. Frustrated with the limitations placed on his contact with his daughter, Dylan filed a petition for contempt against Lydia on November 20, 2013, alleging that Lydia was in contempt for failing to abide by the equal time requirements of the 2012 custody order.

On April 22, 2014, the parties appeared in court for a hearing on the custody of S. On May 2, 2014, the court entered a *pendente lite* order, modifying the custody arrangement so that Dylan had visitation with S. on alternating Thursday afternoons through Sunday evenings.[5] The parties held a scheduling conference with the Master for Domestic Relations on June 18, 2014. The master determined that there were contested issues and ordered a merits hearing before a circuit court judge on August 25.

On July 7, 2014, Lydia filed a motion for summary judgment, in which she asserted that the parties' former reconciliation was uncontested and argued that the reconciliation voided the September 18, 2012, custody order. Dylan filed an opposition on July 14, contending that Lydia was not entitled to judgment as a matter of law because she could cite to no controlling authority supporting her position that a reconciliation voids a custody order. After considering Lydia's arguments and Dylan's response, the court denied Lydia's summary judgment motion on July 17, 2014 (entered July 21, 2014).

[5] A *pendente lite* custody order is a temporary order "designed to provide some immediate stability [for the child] pending a full evidentiary hearing and an ultimate resolution of the dispute." *Frase v. Barnhart*, 379 Md. 100, 111 (2003). It "is not intended to have long-term effect and therefore focuses on the immediate, rather than on any long-range, interests of the child." *Id.*

The parties presented their arguments to the court on Dylan's petition for contempt at the hearing on August 25, 2014. They testified to the circumstances of their marriage, separation, reconciliation, and subsequent separation, and they presented their version of the issues regarding custody and visitation with S. Lydia stated that she had no concerns with the custody schedule under the *pendente lite* order, whereby Dylan had custody of S. on alternating Thursdays through Sundays; however, she took issue with the equal time provisions of the 2012 custody order because she felt that that schedule left S. confused and irritable. Lydia conceded that there were times when Dylan would ask for visitation with S. and she said no.

Lydia's counsel argued that the 2012 custody order had been nullified by the parties' reconciliation, and thus, she could not be held in contempt of an order that was not in effect at the time of the alleged violations. Dylan countered that parties must follow a court order until that order is modified by a court. Accordingly, he argued that reconciliation cannot void a custody order. Dylan further contended that if the court found Lydia to be in contempt, then the *pendente lite* order would expire and the 2012 custody order would be imposed again, plus any additional purge provisions imposed by the court.

After considering the parties' arguments, the court ruled that the 2012 custody order remained in effect until the *pendente lite* order was entered on May 2, 2014. The court found merit in Dylan's argument that the parties' reconciliation did not nullify the custody order, and thus prior to the entry of the *pendente lite* order, the September 2012 order remained valid. The court found Lydia in contempt for several occasions on which she violated the

order by denying visitation to Dylan, but the court did not enumerate which instances were contemptuous. The court explained that it did not consider each alleged denial of visitation to be a violation of the order because, overall, the parties' conduct showed some negotiation and compromise. The court expressed concern, however, over the strain that a shared custody arrangement would put on S. and recognized that the parties had less than three months before they would return to court to litigate their divorce and the custody arrangements for their two children.[6] After considering the best interests of S., the court determined that moving forward, the parties must abide by the May 2, 2014, *pendente lite* order that established the interim custody and visitation schedule. The court also added a provision to give Dylan extra custodial days.

On September 8, 2014, the court entered an order finding Lydia in contempt for willfully violating the September 2012 consent order as to custody. The order provided that Lydia could purge her contempt by giving Dylan nine extra custodial days while adhering to the *pendente lite* custodial schedule. Lydia filed her notice of appeal on September 22, 2014. Dylan filed his cross-appeal on October 1, 2014.

DISCUSSION

In a case tried without a jury, an "appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless

[6] The court acknowledged that a future judgment of absolute divorce would likely modify the custody arrangement because of the material change in circumstances that the birth of their second child, A., entailed.

clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). Under the clearly erroneous standard, "'we must consider the evidence in the light most favorable to the prevailing party and decide not whether the trial judge's conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence.'" *City of Bowie v. Mie Properties, Inc.*, 398 Md. 657, 676-77 (2007) (quoting *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 394 (2000)). With respect to legal conclusions, however, an appellate court "'must determine whether the lower court's conclusions are legally correct.'" *White v. Pines Cmty. Improvement Ass'n, Inc.*, 403 Md. 13, 31 (2008) (quoting *YIVO Institute for Jewish Research v. Zaleski*, 386 Md. 654, 662 (2005)).

Child custody and visitation orders are generally within the sound discretion of the trial court. *See Walter v. Gunter*, 367 Md. 386, 391-92 (2002) (support); *Giffin v. Crane*, 351 Md. 133, 144 (1998) (custody); *Beckman v. Boggs*, 337 Md. 688, 703 (1995) (visitation). Contempt proceedings are reviewed for clear error or abuse of discretion. *See, e.g.*, *Droney v. Droney*, 102 Md. App. 672, 683-84 (1995) ("This Court will only reverse such a decision upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous." (citing *Baltimore v. Baltimore*, 89 Md. App. 250, 253-54 (1991))).

I. Appeal

A. Validity of the Custody Order

Lydia argues that the court erred in holding her in contempt because, under Maryland law, a reconciliation by a husband and wife nullifies a prior custody order. Dylan retorts that no case or statute in Maryland supports Lydia's assertion that reconciliation invalidates an otherwise valid custody order.

A consent judgment or order is considered to be an agreement of the parties in resolution of their issues or in settlement of their case, that has been "embodied in a court order and entered by the court, thus evidencing its acceptance by the court." *Long v. State*, 371 Md. 72, 82 (2002) (citing *Jones v. Hubbard*, 356 Md. 513, 529 (1999); *see also Chernick v. Chernick*, 327 Md. 470, 478 (1992)). "Although consent judgments are, at the same time, contractual and judicial in nature, 'consent judgments should normally be given the same force and effect as any other judgment, including judgments rendered after litigation.'" *Kent Island, LLC v. DiNapoli*, 430 Md. 348, 360 (2013) (quoting *Jones*, 356 Md. at 532). A consent order's "only distinction is that it is a judgment that a court enters at the request of the parties." *Jones*, 356 Md. at 528. "Thus, a consent order entered properly carries the same weight and is treated as any other final judgment." *Kent Island*, 430 Md. at 360.

Ordinarily, the "authority of a circuit court to revise or modify a final judgment is limited[:]"

> [O]nce parties have had the opportunity to present before a court a matter for investigation and determination, and once the decision has been rendered and

> the litigants, if they so choose, have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation.

Id. at 366 (quoting *Schwartz v. Merchants Mortg. Co.*, 272 Md. 305, 308 (1974)).

Custody and visitation orders, however, have unique status because courts may revise these orders even after they have been enrolled, provided the revision is in the best interests of the child. Maryland has by statute conferred equity jurisdiction upon the trial court to determine the custody or guardianship of a child. Maryland Code (1984, 2012 Repl. Vol., 2014 Supp.), Family Law Article ("FL") § 1-201(b). "In exercising its jurisdiction over the custody, guardianship, visitation, or support of a child, an equity court may . . . from time to time, set aside or modify its decree or order concerning the child." FL § 1-201(c)(4); *see also* FL § 8-103(a) ("The court may modify any provision of a deed, agreement, or settlement with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child."); *Skeens v. Paterno*, 60 Md. App. 48, 69 (1984) (stating that "[d]uring the minority of a child, issues of modification of custody and visitation are never strictly foreclosed").

Although a court is able to modify a custody order, an existing custody order remains in effect until a request for a modification is filed and a proper hearing is held to determine if there has been a material change in circumstance and whether modification is in the best interest of the child. *See Wagner v. Wagner*, 109 Md. App. 1, 28 (1996) (discussing, as prerequisites to modification, the twin considerations of change in circumstances and the incorporation of the best interests of the child). Indeed, sections 1-201(c)(4) and 8-103(a)

provide that a *court* has jurisdiction to alter the custody arrangement; the statute makes no mention of the *parties*' abilities to alter an order. As we have already recognized, "[t]here is no authority for the delegation of any portion of such jurisdiction to someone outside the court." *Shapiro v. Shapiro*, 54 Md. App. 477, 484 (1983) (citing Md. Code (1974, 1980 Repl. Vol., 1983 Supp.), Courts & Judicial Proc. Art. ("CJP") § 3-602(a), recodified as FL § 1-201) (holding that the trial court erred in vesting authority in a psychiatrist to determine when father could recommence visitation); *see also In re Mark M.*, 365 Md. 687, 708 (2001) (holding, in a CINA proceeding, that where a court is statutorily mandated to make a specific finding, "the court cannot delegate this determination to a non-judicial agency or an independent party"). It follows that the parties cannot modify or void a custody order, such as the 2012 consent order in this case, without petitioning the court.

Lydia asserts that a reconciliation between parents can void a custody order. She analogizes custody orders to alimony awards—looking for support in cases that hold that reconciliation vitiates alimony orders. She relies on *Thomas v. Thomas*, in which the Court of Appeals traced the convention, first recorded in 1823, whereby alimony ceases upon reconciliation of the parties. 294 Md. 605, 615 (1982) (citing *Wallingsford v. Wallingsford*, 6 H. & J. 485, 488 (1823)). There, the Court recounted the history of alimony awards and held that even in a limited divorce, if the parties reconcile and then later separate, alimony ceases. *Id.* at 620-21.

No such convention exists for custody awards, and we do not accept Lydia's supposition that alimony orders are analogous to custody orders. There are myriad and

important considerations taken into account by a court in accordance with applicable statutes and case law in making a custody decision. These considerations, rooted in society's overriding interest in the welfare of the child, cannot be amended or modified simply by a decision to "reconcile" made between the parties, without involvement of the court and the minor child. *See Taylor v. Taylor*, 306 Md. 290, 302-11 (1986) (describing thirteen distinct considerations when awarding joint custody, with the best interests of the child "as the objective to which virtually all other factors speak"); *see also id.* at 300 (noting that "the paramount purpose" of custody determinations is "'securing the welfare and promoting the best interest of the children'" (quoting *Barnard v. Barnard*, 157 Md. 264, 267 (1929))).

Lydia also cites to *Torboli v. Torboli*, 365 Md. 52 (2001). In *Torboli*, the parties reconciled soon after the circuit court entered a six-month protective order that contained a provision giving emergency family maintenance to the petitioner in the amount of $750 per month. *Id.* at 55-57. Ten months after the order had expired, petitioner alleged that the full amount of the support award had not been paid. *Id.* at 56. The Court of Appeals addressed the narrow issue of whether, before discontinuing payment of the emergency family maintenance during a period of reconciliation, respondent was required to ask the court to modify the order after the parties reconciled. *Id.* at 54. The Court held that because reconciliation would have been a basis for modification of the protective order, it could also be a defense to the enforcement of the order once it expires. *Id.* at 63-64. Therefore, the respondent could raise cohabitation as a defense that rendered the family maintenance payments null for the duration that the parties were together. In sharp contrast to *Torboli*,

where the Court's holding addressed the effect of reconciliation *while* the parties were cohabitating, Dylan is asserting that Lydia violated the custody order *after* the parties stopped cohabitating. In *Torboli*, because the parties were cohabitating, *the court* could find there was no need to make the maintenance payments, whereas here, because the parties were no longer cohabitating, Dylan was deprived of his time with S. as guaranteed under the custody order. Thus, the *Torboli* case provides no support for Lydia's assertion that reconciliation affects the validity of a custody order after the parties separate again.

We considered the purpose of the child support enforcement law in *Child Support Enforcement Administration v. Shehan*, 148 Md. App. 550 (2002)─another case on which Lydia relies. There, we reversed the circuit court's decision voiding a child support order because the appellee cohabitated with the child's mother, the appellant, after the child support order was issued. We noted the purpose of the law was "to secure support for children born out of wedlock and to impose on the parents of such children the responsibilities of parenthood." *Id.* at 562. We observed that "it is difficult to understand how declaring the outstanding orders of support void could be just and proper and in the child's best interest" and held "that a period of cohabitation by the father with the child's mother and child *does not void* support orders issued pursuant to FL §§ 5-1032(a)(2)." *Id.* (emphasis added). We then remanded to the circuit court for a determination of the period of time that the couple and the child lived together in order to establish the quantity of child support credits to which the appellant may have been entitled. *Id.* In *Shehan*, we held that the order remained in effect before, during, and after the parties cohabitated, but that father was entitled to credit

for the support he gave to mother and child while he was living with them. *Id.* If anything, *Shehan* proves Lydia's argument to be erroneous because we held that a reconciliation *did not* void an order relating to child support.[7]

Contrary to Lydia's assertions, reconciliation does not void the sundry orders entered in domestic matters, with the singular exception of alimony. Lydia provides no persuasive argument as to why reconciliation of the parties would result in the nullification of a custody order. Indeed, looking to the primary consideration of the court in entering custody orders—the best interests of the child—we can think of numerous reasons why custody orders should not be void immediately upon the reconciliation of the parties. Moreover, to hold that a reconciliation could void such an order would require family courts to consider whether there was a "bone fide" reconciliation in custody proceedings—a factor not contemplated by the controlling statutes and case law of this state, which place the interests of the child as paramount. For the above reasons, we hold that a reconciliation between the parties does not void a custody order.

[7] Lydia also directs our attention to *Kaouris v. Kaouris*, 91 Md. App. 223 (1992), where we considered the validity of a separation agreement after the parties reconciled. That case has no bearing on the issue at hand because the parties there did not intend to abrogate their agreement. In *Kaoruis*, we noted that a separation agreement usually remains valid, despite the continued cohabitation or reconciliation of the parties. *Id.* at 232-36 (citing *Grossman v. Grossman*, 234 Md. 139 (1964); *Kenny v. Peregoy*, 196 Md. 630 (1951); *Mach v. Baranowski*, 152 Md. 53 (1927); *Frana v. Frana*, 12 Md. App. 273 (1971)). Accordingly, we held that the agreement was valid. We did not discuss custody.

B. Finding of Contempt

Lydia argues that the court abused its discretion in finding her in contempt because the circumstances and relationship between the parties had changed so much that there could be "no contempt for failure to abide by a court order which was never followed by the parties." Dylan rejoins that the record contains a sufficient factual basis for the court's finding of contempt and that the court did not abuse its discretion.

The instant appeal is from a finding of constructive civil contempt.[8] In *Royal Inv. Grp., LLC v. Wang*, we set out the applicable standard of review[9]:

> "Before a party may be held in contempt of a court order, the order must be sufficiently definite, certain, and specific in its terms so that the party may understand precisely what conduct the order requires." *Droney v. Droney*, 102 Md. App. 672, 684, 651 A.2d 415 (1995). Moreover, "one may not be held in contempt of a court order unless the failure to comply with the court order was or is willful." *Dodson* [*v. Dodson*, 380 Md. 438, 452 (2004)]. Civil contempt must be proven by a preponderance of the evidence. *Bahena v. Foster*, 164 Md. App. 275, 286, 883 A.2d 218 (2005). "'This Court will only reverse such a decision upon a showing that a finding of fact upon which the contempt was

[8] Constructive contempt, as distinguished from direct civil contempt, is contempt committed outside of the presence of the judge presiding in court. *See* Md. Rule 15-202. Civil contempt "is intended to preserve and enforce the rights of private parties to an action and to compel obedience to orders entered primarily for their benefit." *Bryant v. Howard Cnty. Dep't of Soc. Servs. ex rel. Costley*, 387 Md. 30, 46 (2005) (citing *State v. Roll & Scholl*, 267 Md. 714, 728 (1973)) (stating that civil contempt proceedings are remedial and coercive in nature). To further its coercive nature, a court-imposed penalty must provide a way for the contemnor to purge his or her contempt, that is, "it must permit the defendant to avoid the penalty by some specific conduct that is within the defendant's ability to perform." *Id.*

[9] Lydia asserts that a plaintiff must prove that the alleged contemnor willfully violated a court order by clear and convincing evidence. This assertion is incorrect. Civil contempt need only be proven by a preponderance of the evidence. *Winter v. Crowley*, 245 Md. 313, 317 (1967).

> imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous." *County Com'rs for Carroll County v. Forty West Builders, Inc.*, 178 Md. App. 328, 394, 941 A.2d 1181 (quoting *Droney*, 102 Md. App. at 683-84, 651 A.2d 415), *cert. denied*, 405 Md. 63, 949 A.2d 652 (2008).

183 Md. App. 406, 447-48 (2008). Thus, when reviewing a contempt order, "[i]t is not our task to re-weigh the credibility of witnesses, resolve conflicts in the evidence, or second-guess reasonable inferences drawn by the court, sitting as fact-finder." *Gertz v. Maryland Dep't of Env't*, 199 Md. App. 413, 430 (2011). Instead, "the evidence and all inferences drawn therefrom must be viewed in the light most favorable to . . . the prevailing party, and the sole issue is whether the evidence, so viewed, is sufficient to support the court's finding of willfulness." *Id.* (citing *Royal Inv. Group*, 183 Md. App. at 430; *Espinosa v. State*, 198 Md. App. 354, 399 (2011)).

The essence of contempt is a willful refusal to comply with court order. *See Dodson*, 380 Md. at 452-53 (citations omitted). "Willful conduct is action that is '[v]oluntary and intentional, but not necessarily malicious.'" *Royal Inv. Group*, 183 Md. App. at 451 (quoting *Black's Law Dictionary* 1630 (8th ed. 2004)). It is not necessary for the court to use the word "willful" to make a finding of contempt, as long as there is evidence of the respondent's willful disobedience of the court order. *Woodson v. Saldana*, 165 Md. App. 480, 500 (2005).

Dylan testified without contradiction that Lydia controlled his access to his daughter between August of 2013 and April of 2014 and that there were numerous occasions when he requested visitation and Lydia denied it. Dylan stated that he had custody of S. for only 35

days between August 1, 2013 and April 22, 2014. Because there are 265 days between August 1, 2013 and April 4, 2014, Dylan reasoned that should have had custody for 133 days during that time and was therefore denied 98 days of custodial time.

Lydia testified she was well aware of the existence of the 2012 custody order. She stated that she had reviewed the terms of the order with counsel and understood that she and Dylan had joint custody of S. She also acknowledged that when Dylan asked to abide by the equal time schedule, she said "no" several times. Lydia testified that her reason for denying Dylan visitation with his daughter was because "it interferes with things we do, doctor's appointment[s] and such. S. is confused and irritated and not happy when she comes home. And she does not want to go and I hate making her have to go when she doesn't want to."

Although the court did not find Lydia in contempt for each instance in which Dylan alleged she denied visitation, the court found Lydia had willfully violated the order several times. The court looked at evidence of the parties' interactions through Facebook and found that in certain circumstances, they did not demonstrate contempt on the part of Lydia; rather, they showed "negotiation," "discussion," or "attempt[s] at problem solving." But, after considering the parties' testimony and "all the circumstances," the court found that Lydia had violated the September 2012 order. As directed by the Maryland Rule, the court crafted a provision that allowed Lydia to purge her contempt by giving Dylan nine extra custodial days while adhering to the *pendente lite* custodial schedule. Having already determined that the September 2012 consent order was not voided by the parties' temporary reconciliation, we

hold that the evidence, when viewed in the light most favorable to Dylan, supported the court's finding of contempt.

II. Cross-Appeal

Dylan's cross-appeal presents the following questions for our review:

1) "Did the trial Court correctly find that the parties' September 2012 custody order remained valid following the attempted reconciliation of the parties?"

2) "Did the Court commit clear error or abuse its discretion in finding Appellant in contempt?"

3) "Did the trial Court err in modifying the parties' custodial schedule to Appellee's detriment at the conclusion of a proceeding for contempt in which he prevailed?"

4) "Did the trial Court err in holding that the terms of a *pendente lite* order are binding on the parties after the conclusion of the proceeding in which the order is entered?"

5) "Did the trial Court err in its calculation of the custodial make up time owed to Appellee after finding Appellant in contempt for denial of custody?"

Dylan asserts that the court erred (1) in modifying the parties' custodial schedule to his detriment; (2) in holding that the terms of a *pendente lite* order are binding on the parties after the conclusion of the proceeding in which the order is entered; and (3) in its calculation of the custodial make up time owed to him in the contempt order's purge provision. We do not address these issues because Dylan, as the petitioner for contempt, has no right to appeal the judgment of the circuit court.

The right to an appeal is a jurisdictional issue that must be addressed *sua sponte* by this court, even if no party challenges the appealability of an order. *Johnson v. Johnson*, 423 Md. 602, 605-06 (2011) (citing *Stachowski v. State*, 416 Md. 276, 285 (2010)). The right to appeal is wholly statutory. *Prince George's Cnty. v. Beretta U.S.A. Corp.*, 358 Md. 166, 173

(2000) (citations omitted). "[A]ppellate jurisdiction, except as constitutionally authorized, is determined entirely by statute, and that, therefore, a right of appeal must be legislatively granted." *Gisriel v. Ocean City Bd. of Sup'rs of Elections*, 345 Md. 477, 485 (1997) (citations omitted).

Ordinarily, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court." Maryland Code (1974, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP") § 12-301. However, section 12-301 does not apply to contempt proceedings, which instead are governed by sections 12-304 and 12-402 for appeals from the circuit courts and district court respectively. CJP § 12-302(b). Section 12-304(a) provides that "[a]ny person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action."[10] In other words, only the party found to be in contempt may appeal from a contempt proceeding. *Pack Shack, Inc. v. Howard Cnty.*, 371 Md. 243, 254 (2002) (holding that section 12-304 "clearly and unambiguously limits the right to appeal in contempt cases to persons adjudged in contempt").

Thus, a party who files a petition for contempt and who does not prevail on his or her petition cannot appeal the court's order against him. *Id.*; *see also Becker v. Becker*, 29 Md.

[10] Section 12-304(b) provides, "[t]his section does not apply to an adjudication of contempt for violation of an interlocutory order for the payment of alimony." The instant case does not involve contempt for failure to pay alimony.

App. 339, 345 (1975) (citation omitted) ("[I]n this State only those adjudged in contempt have the right to appellate review. The right of appeal in contempt cases is not available to the party who unsuccessfully sought to have another's conduct adjudged to be contemptuous."). We hold that the same reasoning obtains for a party who prevails on his or her petition for contempt but believes that the purge provision provided in the order does not make him or her whole. It would be illogical for the statute to deny appeal to a petitioner who loses before the circuit court, but grant the ability to appeal to a petitioner who wins, though not exactly on his or her terms.

In certain cases, a contempt petitioner may appeal from a contempt proceeding when the trial court decided issues outside of the pleadings and disputes in the contempt case. *See State Comm'n on Human Relations v. Baltimore City Dep't of Recreation & Parks*, 166 Md. App. 33, 40 (2005) (allowing appeal from the denial of a petition for contempt where the circuit court's order also provided for relief that went outside of the contempt proceeding, but not reviewing the denial of the petition for contempt); *Gatuso v. Gatuso*, 16 Md. App. 632, 634 (1973) (hearing appeal from the denial of a petition for contempt because the trial court entered an order that went beyond the relief prayed for or the issues framed in the pleadings). Here, the relief fashioned by the court was clearly contemplated by the petition for contempt. The court considered the best interests of S. and recognized that, given the short time until the divorce proceeding where the court would modify the custody arrangement, compliance would best result if it enforced the provisions of the *pendente lite* order with the addition of a

purge provision providing extra custodial time for Dylan. This Court, therefore, cannot hear Dylan's cross-appeal.

Citing Family Law Article, § 9-105, Dylan asserts that the court actually went beyond the petition for contempt in modifying the custody and visitation schedule, which in 2012 had provided for shared legal and physical custody, to incorporate the terms of the *pendente lite* schedule—providing Lydia with primary custody and reduced visitation for Dylan.

FL § 9-105 provides, in part:

> In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:
> (1) order that the visitation be rescheduled; [or]
> (2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order[.]

Dylan's contentions are belied by the text of section 9-105, which in no uncertain terms allows a court to modify the custody order to ensure future compliance. Section 9-105 was enacted specifically in response to circuit courts' reluctance to grant relief in situations where custody or visitation has been denied. *See* Floor Report of H.B. 886 (1994), Senate Judicial Proceedings Committee (reference contempt proceedings and noting that the law was intended to make judges aware that the above powers were available to them).

In the instant case, the court determined that the operative order moving forward was the *pendente lite* order, thus, the court did not, in fact, modify the 2012 consent order. However, even if we agree with Dylan that the court's determination was a modification,

considering the language of section 9-105, the court was well within its discretion to fashion relief in this way. Accordingly, the court's relief did not go beyond the contempt proceeding in such a way as to allow us to consider Dylan's cross-appeal on this claim. *Cf. State Comm'n on Human Relations*, 166 Md. App. at 40.

Dylan's other claim—that the court erred in its calculation of the custodial make-up time owed to him in the contempt order's purge provision—also squarely rests in the contempt case, and thus, cannot be appealed by the petitioner. For the above reasons, we hold that this Court lacks jurisdiction to consider Dylan's cross-appeal because section 12-304 allows only persons adjudged in contempt, in this case Lydia, to appeal.[11]

JUDGMENT AFFIRMED.

COSTS TO BE SPLIT BETWEEN THE PARTIES.

[11] Lydia argues that Dylan's appeal is moot because a final custody arrangement for S. was determined by the circuit court when it entered the judgment of absolute divorce on November 25, 2014. Having already determined that Dylan lacks the ability to appeal as the petitioner for contempt, we need not consider whether his appeal, if allowed, would be moot.