Circuit Court for Anne Arundel County
Case No. C-02-FM-15-004101

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1639

September Term, 2022

KIMBERLY FAWL

v.

TRAVIS WILLIAMS

Graeff,
Reed,
Taylor, Robert K. Jr.
(Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: November 7, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Appellant Kimberly Fawl ("Mother") filed a motion to modify a 2018 custody order, which granted appellee Travis Williams ("Father") sole legal and primary physical custody of the couple's minor child and provided that "a specific access schedule is not ordered at this time and shall be reserved for the future," with Mother to have "access with the minor child as dictated by [Father] and under circumstances he deems fit." Following a hearing, the Circuit Court for Anne Arundel County found no material change in circumstance that affected the welfare of the child and therefore did not modify custody. Upon consideration of Father's testimony that he believed that supervised visitation with Mother and D. was appropriate but that the parties had been unable to agree on the terms of such visitation, however, the circuit court supplemented the 2018 custody order with an order delineating specific terms for supervised weekly visitation.

Mother, *pro se*, noted an appeal of the circuit court's order, asking us to consider the following issues:

1. Whether the Circuit Court erred when it modified the existing custody order after its finding of no material change in circumstances, calling it a "supplement" rather than a modification.

2. Whether the Circuit Court erred or abused its discretion when it modified child access without considering the factors enumerated in *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1978).

3. Whether the Circuit Court abused its discretion when it found no material change in circumstances existed.

4. Whether the Circuit Court erred or abused its discretion when it ordered indefinite supervised visitation absent sufficient factual findings, without properly weighing the evidence and without any analysis of appellant's ability to pay for the supervision.

For the reasons that follow, we do not consider the issues Mother presents. Instead, we will dismiss her appeal.

FACTS AND LEGAL PROCEEDINGS

Mother and Father, who never married, had a son, D., in 2013. After their relationship ended in 2015, Father filed a complaint for immediate sole legal and primary physical custody of D., with supervised visitation to Mother. In his complaint, Father asserted that Mother refused to allow him to spend time with D. unless she was present and that she used the visits to initiate arguments with Father.

Mother filed a counter-complaint for sole legal and primary physical custody, with supervised visitation to Father. She stated that she had been D.'s primary caregiver since his birth and that Father had been absent for weeks at a time during the child's life.

Following a custody hearing in August 2016, the circuit court granted Mother sole legal and primary physical custody of D., with Father to have twice weekly visitation. In February 2017, Father moved to modify custody and visitation after Mother prevented him from having access to D., in defiance of the court's order. Following a September 2017 *pendente lite* hearing, the circuit court awarded Mother and Father joint legal custody of D., with Father to have primary physical custody and Mother to have visitation every other weekend.

Following a May 2018 merits hearing, at which Mother did not appear, the circuit court found a material change in circumstance and modified custody to provide sole legal and primary physical custody to Father. The court's written order, entered on May 14, 2018, stated that "a specific access schedule is not ordered at this time and shall be reserved

for the future." Until that occurred, Mother was to "have access with the minor child as dictated by [Father] and under the circumstances that he deems fit."

On July 31, 2020, Mother moved to modify custody, visitation, and child support. Following a *pendente lite* modification hearing on November 23, 2020, a family magistrate found that Mother had failed to prove a material change in circumstances to support her request for modification. According to the magistrate, the evidence presented at the hearing involved changes to Father's relationship status but did not indicate that D. was maladjusted to the custodial relationship. In fact, the magistrate continued, "the testimony was to the contrary," showing that Mother had exhibited "concerning" behavior, including refusing to return D. to Father after visitation and sending disturbing emails to Father. Therefore, the magistrate recommended that the custody arrangement not be changed. The circuit court ratified and affirmed the magistrate's findings and denied Mother's motion to modify custody *pendente lite*.[1]

[1] In June 2021, Father was granted a protective order after Mother let herself into Father's home and told D. that "protection is coming" from Child Protective Services. The Department of Social Services assessed D.'s safety and determined that, despite Mother's concern that D. was being physically abused, the child was safe in Father's home. The investigating worker found it "concerning" how much time and effort Mother invested in attempting to convince the Department that D. was a victim of abuse and neglect, especially as the documentation she supplied to the Department suggested that she had extensive knowledge of the alleged abuse for three years, yet never made a report to the Department. And, alternatively, if Mother did not truly believe D. was being abused while in Father's care, her efforts were to overturn a custody decision with which she was unhappy, which undermined the court's decision and misused the Department's limited resources to investigate valid allegations of abuse and neglect.

Following a June 10 and 13, 2022, hearing on the merits of Mother's July 31, 2020, motion to modify custody, visitation, and child support, the circuit court did not find a sufficient material change in circumstances to warrant a modification of custody.[2] In light of Mother's disturbing actions, the court did not find Father's requirement that visitation be supervised unreasonable, but it was concerned that Mother had not had visitation with D. for almost a year prior to the hearing. As a result, by written order entered on June 16, 2022, the circuit court ordered weekly supervised visits, at a minimum of three hours per visit, at dates and times agreed upon by a court-appointed supervised visitation administrator. The court specified that supervised visitation would continue until the parties agreed otherwise or until further order of the court.

On July 3, 2022, Mother filed a "motion for court order on defendant's motion to modify custody," claiming that the circuit court's June 16, 2022, order did not address her motion to modify custody. Mother also suggested that the order for supervised visitation was confusing and ambiguous and "directly contradict[ed]" the court's finding during the hearing that there had been no material change that affected the best interest of the child. In her view, without such a finding, the court was not authorized to make any change to the prevailing custody order.

Father responded that the May 2018 order reserved a visitation schedule and remained intact following the June 2022 order, except that the issue of visitation was no

[2] The almost two-year delay between the filing of Mother's motion and the hearing on that motion was due, in large part to the COVID-19 pandemic and the associated court closures.

longer reserved. Therefore, the 2018 order had not been changed, only made specific, and the 2022 order was neither contradictory nor confusing.

The circuit court responded to Mother's motion in an opinion and order entered on July 28, 2022. Therein, the court explained that Mother had failed to prove a material change in circumstances sufficient to warrant a modification of the existing custody arrangement. Nonetheless, given the May 2018 order's statement that a specific access schedule was reserved for the future, and given Father's determination that supervised visitation was appropriate but that the parties had been unable to agree on the times and terms of said visitation, the court found it "appropriate to delineate specific terms for [Mother's] existing supervised visitation and did so in its Order entered on June 16, 2022." It was therefore the court's opinion that the June 16, 2022, order "supplements rather than modifies the original visitation terms for the previously existing unspecified visitation" and that "the custody and child support terms of the court's May 14, 2018, Custody Order are unchanged. [Mother's] specific access schedule, *i.e.*, visitation, is now set forth in the court's June 16, 2022 Order. There are no other modifications or additional terms."

Mother filed a motion for reconsideration of the court's order on September 7, 2022, but the circuit court's clerk's office deemed the filing deficient, and it was not accepted. Mother filed a second "motion for reconsideration or in the alternative, a new hearing" on September 22, 2022. The circuit court denied Mother's motion for reconsideration by order entered on October 19, 2022. Mother filed a notice of appeal on November 20, 2022.

DISCUSSION

A review of the filing dates of the pertinent motions and the entry dates of the pertinent court orders makes clear that Mother missed all her opportunities for the timely filing of an appeal:

> **June 16, 2022**—the circuit court entered its written order denying Mother's motion to modify custody but delineating the specific terms of Mother's supervised visitation
>
> **July 3, 2022**—Mother filed a "motion for court order on defendant's motion to modify custody," which appears to ask for a clarification of the June 16, 2022, order
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> **July 28, 2022**—the circuit court issued an opinion and order explaining that its June 16, 2022, order supplemented rather than modified the 2018 custody order, denied Mother's motion, and closed the case
>
> **September 7, 2022**—Mother filed a motion to reconsider the court's July 28, 2022, order but the clerk's office deemed the motion deficient and did not accept it
>
> **September 22, 2022**—Mother filed another motion to reconsider the court's July 28, 2022, order, or for a new hearing
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> **October 7, 2022**—Father moved to dismiss Mother's motion to reconsider as untimely
>
> **October 19, 2022**—the circuit court denied Mother's motion to reconsider and denied Father's motion to dismiss as moot
>
> **November 20, 2022**—Mother filed her notice of appeal

After a trial in the circuit court, the Maryland Rules of Procedure allows a party to file four types of post-judgment motions, two of which are relevant here: (1) Motion to Alter or Amend Judgment – Court decision (Md. Rule 2-534); and (2) Motion to Revise Judgment (Md. Rule 2-535). Md. Rule 2-534 provides, in pertinent part:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive

> additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

Md. Rule 2-535 provides, in pertinent part:

> (a) **Generally.** On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534.
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> * * *
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> (b) **Fraud, Mistake, Irregularity**. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Md. Rule 8-202 requires that a notice of appeal be filed "within 30 days after entry of the judgment or order from which the appeal is taken." A timely post-judgment motion to alter or amend filed within ten days under Rule 2-534 will toll this deadline; one filed after ten but within 30 days under Rule 2-535(a) will not. *See Leese v. Dep't of Lab., Licensing and Regul.*, 115 Md. App. 442, 445 (1997); *Sieck v. Sieck*, 66 Md. App. 37, 43-44 (1986); Md. Rule 8-202(c).

Here, the circuit court entered its judgment on June 16, 2022. Mother did not file any motion within ten days, so the deadline for her to note an appeal from the June 16 order was July 18, 2022 (the 30th day was a Saturday, but, pursuant to Md. Rule 1-203(a)(1), the filing deadline would have been Monday, the next business day). She did not do so, and any appeal from the original judgment is therefore untimely.

Mother did, however, file a post-judgment "motion for court order" claiming that the June 16 order was confusing and ambiguous, which we deem to have been filed under

Rule 2-534 or 2-535, within 30 days of the circuit court's judgment. *See Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997) (In reviewing the grant or denial of a post-judgment motion, we look to the nature of the relief requested, and not to the way that a party labels his or her motion.). On July 28, 2022, the circuit court denied Mother's motion but clarified its June 16, 2022, order. Instead of noting an appeal from the court's July 28, 2022, order, however, Mother filed a second revisory motion on September 22, 2022.[3] Mother did not note her appeal until after the circuit court denied that second post-judgment motion on October 19, 2022.

A second post-judgment motion is still governed by the 30-day limit running from the original date of entry of final judgment. *Off. of People's Couns. v. Advance Mobilehome Corp.*, 75 Md. App. 39, 45-46 (1988). As we have explained, "[t]he denial of [a] second motion to revise is not appealable because it is not a final judgment." *Pickett*, 114 Md. App. at 560 (noting that a "second motion to revise filed more than [30] days after the entry of judgment, even though within [30] days after denial of the first motion, cannot be granted").

And, for the sake of argument, even had the denial of the second motion to revise, entered on October 19, 2022, been an appealable order, Mother's notice of appeal filed on

[3] Had Mother noted an appeal at that point, it would have been limited to a determination of whether the circuit court had abused its discretion in denying her revisory motion, as "the propriety of the underlying judgment" would no longer have been before us. *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723 (2002). *See also Furda v. State*, 193 Md. App. 371, 377 n.1 (2010); *Bennett v. State Dep't of Assessments & Taxation*, 171 Md. App. 197, 203 (2006) (quoting *Green v. Brooks*, 125 Md. App. 349, 362 (1999)).

November 20, 2022, still would not have been timely. Md. Rule 8-202(a) provides that a party must file his or her notice of appeal "within 30 days after entry of the judgment or order from which the appeal is taken." This requirement, while no longer jurisdictional, is a "binding rule on appellants," and appellate courts "will continue to enforce the Rule." *Rosales v. State*, 463 Md. 552, 568 (2019). Here, Mother filed her notice of appeal more than 30 days following the entry of the circuit court's denial of the second motion to revise, and it was therefore untimely in any event.

Finally, even had Mother timely noted her appeal from the circuit court's June 2022 order, she could not have prevailed upon appeal.

Appellate review generally is authorized only when a final judgment has been entered. Md. Code, § 12-301 of the Courts and Judicial Proceedings Article ("CJP"). *Accord URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 65 (2017) ("As a general rule, under Maryland law, litigants may appeal only from what is known as a 'final judgment.'"). If "'appellate jurisdiction is lacking, the appellate court will dismiss the appeal on its own motion.'" *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 565 (2010) (quoting *Gruber v. Gruber*, 369 Md. 540, 546 (2002)).

As an exception to the final judgment rule, CJP § 12-303(3)(x) provides that a party may appeal from an interlocutory order "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order." That provision has been interpreted, in custody cases, to focus on whether, and the extent to which, the "'order changes the antecedent custody order,'" *In re C.E.*, 456 Md. 209, 223 (2017) (quoting *In re Karl H.*, 394 Md. 402, 430 (2006)), or "significantly interfere[s] with

[the] parent's ability to carry out the obligations inherent in custody." *Frase v. Barnhart*, 379 Md. 100, 118 (2003).

Here, the circuit court's June 2022 order did not change the 2018 order granting Father sole legal and primary physical custody of D., nor did it change Mother's right to visitation. By its very terms, the June 2022 order, and the July 2022 clarification of that order, made clear that the terms of the 2018 custody order remained intact but that the supervised visitation envisioned by that order was not occurring because of disagreements between Mother and Father; therefore, the circuit court supplemented the 2018 order only to make the terms of the supervised visitation concrete. Accordingly, CJP § 12-303(3)(x) does not provide for an appeal of the interlocutory order.

For all these reasons, Mother's appeal is dismissed.[4]

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT.

[4] Although we hesitate to dismiss an appeal when the matter relates to custody, visitation, or child support of a minor child, and lest Mother believe she might prevail upon us to reconsider the dismissal of the appeal, we point out that had we considered the merits of the arguments raised by Mother in her brief, we would have found them lacking, generally for the reasons set forth by Father in his brief. The circuit court did not modify custody or visitation, such that it was required to make specific findings on the record; it merely supplemented the prevailing custody and visitation order so that the issue of visitation between the contentious parents was specific and less subject to argument between them.

We also point out that Mother is not without further recourse. Should there be a material change in circumstance related to custody or visitation, she can again seek a modification. *See 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").