UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1678

September Term, 2024

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VICTORIA ELVIR-GOMEZ

v.

JOSE LUIS MONTOYA SANDRES

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Arthur,
Tang,
Harrell, Glenn T., Jr.
 (Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: May 7, 2025

In December 2023, appellant Victoria Elvir Gomez ("Mother") filed a complaint, in the Circuit Court for Prince George's County, for the sole legal and primary physical custody of her minor son, Luis Alejandro Montoya Elvir ("Luis"). As the defendant, Mother named the child's father, appellee Jose Luis Montoya Sandres ("Father"), a citizen and resident of Honduras. Mother simultaneously filed a request for findings of fact concerning Luis's eligibility for Special Immigrant Juvenile ("SIJ") status.[1]

Father did not file a response to Mother's complaint. The circuit court, on its own motion, extended the time for Father to respond and instructed Mother to request an order of default and file a non-military affidavit within only five days after Father failed to meet the extended deadline. When Mother failed to file those documents within the five-day period, the court dismissed her complaint, without prejudice, ostensibly for "lack of prosecution."

Mother filed a motion for reconsideration, which the court denied. Mother noted a timely appeal, asking us to consider whether the dismissal of her action and the denial of her motion for reconsideration of that dismissal were legally correct.[2] For the reasons that follow, we shall reverse the circuit court's orders.

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[1] For information about SIJ status, see *Romero v. Perez*, 463 Md. 182 (2019); *In re Dany G.*, 223 Md. App. 707 (2015); and *Simbaina v. Bunay*, 221 Md. App. 440 (2015).

[2] Mother's questions, as presented in her brief, read:

> 1. Was the Circuit Court Order of October 19, 2024, that denied Plaintiff-Appellant's Motion for Reconsideration of the August 13, 2024 Circuit Court Order that dismissed the case without prejudice for lack of prosecution, legally correct, when that dismissal of the case is based on

(Continued)

FACTS AND LEGAL PROCEEDINGS

Luis was born in Honduras in November 2020. For the first several months of his life, Luis lived with Mother and Father in Honduras, where they are citizens.

According to Mother, Father did not work or provide financial support for Luis, and he drank and was abusive toward her. Mother claimed that Father had neglected and abandoned Luis and was not fit to maintain custody of the child.

In April 2021, Mother left Honduras with Luis, to live with her mother in Louisiana. Mother obtained a job and provided for Luis's needs in the United States. At some point, Mother and Luis moved to Maryland.

Luis was in the United States without valid immigration status, but Mother asserted that he met the requirements to apply for SIJ status, as he was neglected and

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Plaintiff-Appellant's assumed non-compliance with a July 10, 2024 Circuit [Court] Order that added 15 days [to] the 90 days accorded by Md. Rule 2-321(b)(5) to an overseas resident Defendant, and limited to 5 days, following the 15 days, for Plaintiff-Appellant to file a motion for order of default, a 5 day period not authorized by Md. Rule 2-613(b), processing of [an] order of default?

    2. And even assuming arguendo that a Md. Rule may authorize the Court to limit to 5 days the time for Plaintiff-Appellant to file a Motion for an Order of Default, following a Defendant [sic] failure to respond to a complaint, was the August 13, 2024 Circuit Court Order of dismissal of the case for lack of prosecution, based on Plaintiff-Appellant's assumed failure to comply with the July 10, 2024 Circuit [Court] Order, legally correct, when the dismissal of the case for lack of prosecution requires expiration of one year from the last docket entry and a subsequent notification of contemplated dismissal by the clerk, after the expiration of 30 days without the party's filing of a motion for deferral of dismissal, pursuant to Md. Rule 2-507(c), (d), and (e), which were not observed in the instant case?

abandoned by one of his parents. In her complaint for custody and request for SIJ factual findings, Mother alleged that it was in Luis's best interest that she be granted custody and that the circuit court make certain factual findings regarding his eligibility for SIJ status.

The circuit court issued a writ of summons upon Father on December 20, 2023. That summons became dormant because it was not served upon Father within 60 days after the date when it was issued. *See* Md. Rule 2-113.

Mother requested the issuance of a new summons on March 7, 2024. The court issued a second summons on March 8, 2024.

On April 29, 2024, the circuit court issued a notice of contemplated dismissal on the ground that Father had not been served or that the court had not otherwise obtained jurisdiction over him within 120 days from the issuance of original process. The notice of contemplated dismissal was authorized by Maryland Rule 2-507(b), which states that "[a]n action against any defendant who has not been served or over whom the court has not otherwise acquired jurisdiction is subject to dismissal as to that defendant at the expiration of 120 days from the issuance of original process directed to that defendant." In accordance with Maryland Rule 2-507(d), the notice stated that the clerk of the court would enter a dismissal without prejudice on the docket "30 days after service of this notice, unless before that time a written motion showing good cause to defer the entry of the order of dismissal is filed."

On May 20, 2024, fewer than 30 days after service of the notice of contemplated dismissal, Mother filed proof that Father had been served with the summons on April 10, 2024, because the process server left a copy with "a resident of suitable age and

discretion" at his address in Honduras. The notification was accompanied by an affidavit

of service by a private process server, attesting that he had handed the summons and

accompanying paperwork to Father's mother, who said that she would give the

documents to her son.[3]

On July 10, 2024, the day after Father's responsive pleading was due, the circuit

court issued an order finding that Father had been served, but that he had not filed a

response to Mother's complaint for custody. On its own motion, the court ordered Father

to file a response within 15 days. If he failed to do so, the court, on its own motion,

ordered Mother to file a request for an order of default and a non-military affidavit within

20 days of entry of the order (i.e., five days after Father's renewed default). The court

warned that if Mother failed to meet that deadline, it might dismiss her case.

In an order dated August 15, 2024, the court found that Father had not responded

to the complaint and that Mother had not filed a request for an order of default or a non-

military affidavit within five days after the passage of Father's extended deadline.

Consequently, the court, on its own motion, dismissed the matter without prejudice for

"lack of prosecution."

On August 19, 2024, Mother moved for reconsideration. She argued that pursuant

to Maryland Rule 2-321(a)(5) Father had 90 days from the date of service—i.e., until July

9, 2024—to file an answer. She complained that the court's order, which was entered on

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[3] Because Father had been served on April 10, 2024, the court had, in fact,
acquired jurisdiction over him by April 29, 2024, when it issued the notice of
contemplated dismissal for lack of jurisdiction.

the ninety-first day after service of process, extended Father's time to answer by an additional 15 days, but required Mother to file a request for order of default and a non-military affidavit within only five days thereafter. Mother requested that the court reconsider its dismissal of her complaint and allow for the resolution of her motion for order of default and non-military affidavit, which she attached to her motion for reconsideration.

On October 15, 2024, Mother amended her motion for reconsideration to cite Maryland Rule 2-613(b), which, she argued, does not mandate or authorize a shortened period of time within which a plaintiff must file a written request for order of default.[4] Again, she requested that the court allow her to continue seeking redress in the pending proceeding.

By an order entered October 21, 2024, the circuit court denied Mother's motion for the entry of an order of default on the ground that she had failed to file a non-military affidavit.[5] The court also denied Mother's motions for reconsideration. Mother filed a timely notice of appeal.

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[4] Rule 2-613(b) reads: "If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default. The request shall state the last known address of the defendant."

[5] In fact, Mother's filing contained a paragraph captioned "Non Military Affidavit." The paragraph read:

> Plaintiff under oath declares that Defendant, the opposing party, Jose Luis Montoya-Sandres: Is NOT in the military service of the United States; is not in the military service of any nation allied with the United States; has

Mother filed a brief. Father did not.

DISCUSSION

In this case, Mother initiated the SIJ status process for Luis with the filing of a complaint for custody against Father in the circuit court. Her claim of error relates to the alleged procedural failings by the court before reaching the merits of the SIJ submission. Specifically, Mother claims that the court erred in dismissing her case and in denying her motions to reconsider its order of dismissal because, she says, the court's orders "were entered in violation of the Maryland Rules of Court relative to the filing of a Motion for Order of Default and relative to the entering of an order of dismissal of the case for lack of prosecution."

Once Mother established that she had served Father with process in Honduras on April 10, 2024, Md. Rule 2-321(b)(5) required him to file a responsive pleading within 90 days, that is, by July 9, 2024. When Father did not do so, the circuit court, by order

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not been ordered to report for induction under the Military Selective Service Act; and is not a member of a reserve unit of any branch of the United States Armed Forces who has been ordered to report for active duty. The following facts support the above non-military status of the opposing party:
- Defendant Jose Luis Montoya-Sandres is a male Honduran national who lives in that country; he is not a legal permanent resident of the United States and so not qualified to enter into the United States Armed Forces, and her country is not an allied country of the United States in an international conflict. Reflecting the fact that Defendant resides in Honduras, please, see the Affidavit of Service on April 10, 2024, with attached certification of delivery of copy of the complaint and others, with English translation, filed with this Court on May 20, 2024.

Both Mother and her attorney signed the document.

entered on July 10, 2024, gave Father an additional 15 days within which to respond to Mother's complaint. In case he did not respond in 15 days, the court's order instructed Mother to file a request for an order of default and a non-military affidavit "within twenty (20) days of entry of this Order[.]" Failure to do so, the court warned, "may result in dismissal without prejudice."

We know of no authority by which a circuit court, on its motion, can require a plaintiff to request an order of default within a specific period of time after a default— much less within a mere five days after a default—upon pain of dismissal for lack of prosecution. Rule 2-613(b), which concerns orders of default, certainly contains no such deadline. It simply states that "[i]f the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default." Md. Rule 2-613(b). As far as Rule 2-613(b) is concerned, the plaintiff can request an order of default five days, five weeks, or even five months after the default has occurred. Rule 1-204(a) allows a court to shorten or extend time requirements "on motion of any party and for cause shown," but does not state that a court may shorten or extend a deadline on its own motion, as the court did here.

Furthermore, the Maryland Rules authorize dismissal for lack of prosecution only when one year has passed since the last docket entry—i.e., only when the case has remained dormant for a full year. Md. Rule 2-507(c). Even then, the clerk may notify the parties that an order of dismissal for lack of prosecution will be entered after the expiration of 30 days unless a party files a motion showing good cause to defer the entry of the order of dismissal. Md. Rule 2-507(d). Upon the filing of such a motion, "the

court for good cause shown may defer entry of the order of dismissal for the period and on the terms it deems proper." Md. Rule 2-507(e).

Here, the court erred in at least two respects. First, it unilaterally limited the amount of time for Mother to request an order of default. Second, when Mother missed the tight deadline that the court had unilaterally imposed, the court dismissed her complaint for lack of prosecution even though the case had not been dormant for anywhere close to a year. The errors require that judgment be vacated and the case be reinstated.

THE ORDERS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY DATED JULY 10, 2024, AUGUST 13, 2024, AND OCTOBER 21, 2024, ARE VACATED; THE CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. EACH PARTY IS RESPONSIBLE FOR THEIR OWN COSTS.