

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1523

September Term, 2016

NATHANIEL MAURICE COSTLEY

v.

CHRISTINA MARIE STEINER

Meredith,
Reed,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: June 16, 2017

*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.

This case involves a finding of constructive civil contempt and the initiation of constructive criminal contempt proceedings against Nathaniel M. Costley, Sr., the *pro se* appellant, for his failure to comply with the terms of an Order modifying visitation and child support. It is simply the latest iteration of an ongoing custody battle that has seen several lower court orders modifying the appellant's visitation privileges and three unsuccessful appeals to this Court by the appellant since 2002.

In this latest appeal, the appellant presents four questions for our review, which we have rephrased:¹

1. Did the trial court err in dismissing the appellant's Exceptions to the Magistrate's Recommendations without a hearing?
2. Did the trial court err in holding the contempt hearing before Magistrate James F. Brewer?

¹ The appellant phrased his questions exactly as follows:

1. Did the Court error in Dismissing Appellant Exception without a hearing?
2. The Court Erred in NOT Granting Appellant request that Magistrate James Brewer Recusal himself and Holding the Hearing the Contempt Hearing before a Judge as Required by Maryland Law?
3. The Court Erred in its finding of Contempt because the alleged Contempt Violation was NOT proven by a preponderance of the evidence and the Court violated SEVERAL Maryland Rules of Law in unlawfully finding Appellant in Contempt and using the proceeding to unlawfully convict and incarcerate Appellant Unconstitutionally?
4. Did this Court Error Denying Appellant a Fair and Impartial Hearing?

3. Did the trial court err in finding the appellant in constructive civil contempt or initiating a proceeding for constructive criminal contempt?
4. Did the trial court deny the appellant a “fair and impartial hearing?”

Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The appellant and Christina M. Steiner, the appellee, are the biological parents of Nathaniel M. Costley, Jr. (“Nathaniel”), who was born on March 16, 2002. Nathaniel, now fifteen years old, has been the subject of custody proceedings almost since the date of his birth. The initial Order granting sole custody of Nathaniel to the appellee, with visitation to the appellant, was entered on October 4, 2002. Since then, there have been four court Orders—issued on January 4, 2007, June 1, 2009, January 6, 2011, and March 31, 2016, respectively—modifying the appellant’s visitation. There have also been numerous contempt proceedings against the appellant for his non-payment of child support and chronic non-compliance with visitation Orders and, as previously indicated, three unsuccessful appeals by the appellant to this Court. The appellant and appellee never married; nor have they ever resided with one another.

Although the procedural history of this custody dispute dates back over fourteen years, the facts relevant to the current appeal begin with the appellant’s October 6, 2014, filing of an Emergency Petition for Contempt and Emergency Motion to Modify Custody. That filing prompted the appellee to file a Counterclaim to Modify Visitation and Child Support. The case having proceeded “in normal course” because the Emergency portion of

the appellant’s motion was immediately denied, the parties came before Magistrate James F. Brewer for a hearing on August 24, 2015. Magistrate Brewer issued his Report and Recommendations on February 26, 2016, and, on March 4, 2016, the appellant filed Exceptions. By Order dated March 31, 2016, and entered April 1, 2016, Judge Thomas F. Stansfield of the Circuit Court for Carroll County dismissed the appellant’s Exceptions and adopted Magistrate Brewer’s Recommendations to modify the appellant’s visitation, increase his child support obligation, and award attorney fees to the appellee, as she requested.

On April 29, 2016, the appellant filed an appeal to this Court from Judge Stansfield’s March 31, 2016, Order (“2016 Appeal”). That was the third appeal filed by the appellant in this matter, and it resulted in this Court, in an unreported opinion, affirming all the actions taken by the trial court. *See Nathaniel Maurice Costley, Sr. v. Christina M. Steiner* (hereinafter “*Costley III*”), No. 0376, Sept. Term 2016 (Md. Ct. Spec. App., filed November 29, 2016). After the appellant filed the 2016 Appeal, but before it was resolved, the appellee filed a Petition for Contempt against the appellant for his failure to abide by the terms of Judge Stansfield’s March 31, 2016, Order. The Petition for Contempt was the subject of a hearing before Magistrate Brewer on July 7, 2016, and, the next day, Magistrate Brewer issued a Report and Recommendation that the appellant be found in contempt. On July 19, 2016, the appellee filed a Motion for Immediate Court Hearing and Order for Contempt, alleging that the appellant picked Nathaniel up before his allotted time on July 8, 2016, and proceeded to return him several days late. In her Motion, the appellee also

requested that the lower court initiate a proceeding for constructive criminal contempt against the appellant pursuant to Maryland Rule 15-205(b)(1). The circuit court granted the appellee's request for immediate hearing on the very day the request was made. The hearing was initially scheduled for August 5, 2016, but was subsequently postponed until September 2, 2016.

On July 20, 2016, the day after the circuit court granted the appellee's request for immediate hearing, the appellant filed Exceptions to the Magistrate's July 8, 2016, Recommendation that he be found in contempt. As alluded to above, on September 2, 2016, the Circuit Court for Carroll County, Judge Stansfield presiding, held a hearing on the appellee's Motion for Immediate Court Hearing and Order for Contempt. Later that day, Judge Stansfield issued an Order finding the appellant in constructive civil contempt, stating purging provisions, and initiating a proceeding for constructive criminal contempt.

On September 30, 2016, the appellant noted this, his fourth, appeal.

PARTIES' CONTENTIONS

The appellant advances several arguments as to why the judgments contained in the circuit court's September 2, 2016, Order should be reversed. First, the appellant argues that the circuit court erred in dismissing his Exceptions to the Magistrate's February 26, 2016, Report and Recommendations without a hearing. Second, the appellant asserts that his contempt hearing should not have been held before a Magistrate, much less one who should have recused himself. Third, the appellant contends that the evidence was not sufficient to support a finding of constructive civil contempt or the initiation of constructive criminal

contempt proceedings. Finally, the appellant argues, quite tenuously and disjointedly, that he has not been treated in a “fair and impartial” manner by the Circuit Court for Carroll County.

The appellee responds that, as already addressed by this Court in *Costley III*, the circuit court did not err in dismissing the appellant’s Exceptions without a hearing. Furthermore, the appellee argues: (1) that the appellant has not preserved his argument pertaining to whether Magistrate Brewer should have recused himself; (2) that the contempt hearing was properly held before a Magistrate; (3) that the evidence was sufficient for the trial court to find the appellant in constructive civil contempt and initiate constructive criminal contempt proceedings against him; and (4) that appellant has never been denied a “fair and impartial hearing.”

DISCUSSION

1. Dismissal of Exceptions without a Hearing

As previously mentioned, this appeal primarily centers on the circuit court’s September 2, 2016, Order finding the appellant in contemptuous violation of its previous Order (the one dated March 31, 2016, and entered April 1, 2016) adopting the Magistrate’s recommendations to modify the appellant’s visitation and increase his child support obligation. The appellant had filed Exceptions to the Magistrate’s recommendations regarding a modification of visitation and an increase in child support. Via the March 31, 2016, Order, the circuit court dismissed these exceptions without a hearing. The appellant contends that the circuit court erred in this regard. We disagree.

As the appellee points out in footnote 2 on page 5 of her brief, we have already addressed the issue of whether the circuit court erred in dismissing the appellant's Exceptions without a hearing. When the appellant advanced this very argument in his last appeal, we held as follows:

On April 1, 2016, Judge Stansfield dismissed the Father's Exceptions because of the Father's failure to comply with the mandatory provision of Maryland Rule 9-208(g). That rule provides:

“(g) Requirements for Excepting Party. At the time the exceptions are filed, the excepting party shall do one of the following: (1) order a transcript of so much of the testimony as is necessary to rule on the exceptions, make an agreement for payment to ensure preparation of the transcript, and file a certificate of compliance stating that the transcript has been ordered and the agreement has been made; (2) file a certification that no transcript is necessary to rule on the exceptions; (3) file an agreed statement of facts in lieu of the transcript; or (4) file an affidavit of indigency and motion requesting that the court accept an electronic recording of the proceedings as the transcript. . . . The court may dismiss the exceptions of a party who has not complied with this section.”

(Emphasis supplied).

The Father's failure to comply with Rule 9-208(g) was loud and clear. He, indeed, did file a Transcript Order Form on March 4, 2016. The Court Reporters' Office accordingly provided the Father with a cost estimate for preparation of the transcript that very day and mailed it to the Father. The Father acknowledged having received the estimate. He made no effort, however, to “make an agreement for payment” with the Reporters' Office in order to ensure preparation of the transcript” as required by the Rule. The Father's certificate of compliance, submitted along with his Exceptions, is deficient

in that it fails to confirm that “the agreement has been made.” As a result, no transcript was ever prepared.

In the 14-year history of the litigation in this case, moreover, the Father had on five prior occasions failed to provide for payment for the preparation of a transcript when filing Exceptions to a Master’s Report. On all five occasions, the Exceptions were denied. We see no abuse of discretion in Judge Stansfield’s dismissal of the Exceptions in this case. *See Lebac v. Lebac*, 109 Md. App. 396, 401 (1996).

Costley III, slip op. at 2–3.

Simply put, we see no reason to disturb our previous holding.

2. Holding the Contempt Hearing before Magistrate Brewer

a. Recusal

The appellant argues that the circuit court erred, not only in holding his contempt hearing before a Magistrate, but also in holding his contempt hearing before Magistrate Brewer, who should have recused himself. The appellant’s basis on appeal for asserting that Magistrate Brewer should have recused himself is that, “[o]n February 6, 2013, Magistrate James Brewer was appointed to represent a minor child who [sic] Appellant had filed to be the Guardian of in case no. 06-C13-063053.” Appellant’s Br. at 35.

Maryland Rule 8-131(a) provides:

Generally. The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. *Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.*

(Emphasis added).

The appellant admits in his brief that, “[o]n July 28, 2016, Appellant found an Order Appointing Attorney dates February 6, 2013, ORDERING James F. Brewer, Esq. (Magistrate Brewer) to represent Jackie Lawson in a Custody/Guardianship case where Nathaniel M. Costley, Sr. was the Plaintiff.” Yet, there is no indication that the appellant raised this issue before the trial court at the September 2, 2016, hearing on the appellee’s Motion for Immediate Court Hearing and Order for Contempt. The only references in the record as to the appellant requesting the recusal of Magistrate Brewer are in the form of general complaints that Magistrate Brewer had not been ruling in his favor and that every judicial officer in Carroll County was conspiring to deprive the appellant of his parental rights because he is a black male. As such, per Maryland Rule 8-131(a), *supra*, the issue of Magistrate Brewer’s recusal on the basis of his formerly being appointed to represent Jackie Lawson in 2013 has not been properly preserved for our consideration. *See Traverso v. State*, 83 Md. App. 389, *cert. denied*, 320 Md. 801 (1990).

b. Forum

The appellant further argues that “[t]he court erred in not . . . holding the . . . contempt hearing before a judge as required by Maryland law.” Again, we disagree.

Maryland Rule 9-208(a)(1)(G) provides:

(a) Referral.

(1) *As of Course*. If a court has a full-time or part-time standing magistrate for domestic relations matters and a hearing has been requested or is required by law, the following matters

arising under this Chapter shall be referred to the magistrate as of course unless the court directs otherwise in a specific case:

* * *

(G) subject to Rule 9-205 as to child access disputes, constructive civil contempt by reason of noncompliance with an order or judgment relating to custody of or visitation with a minor child, the payment of alimony or support, or the possession or use of the family home or family-use personal property, following service of a show cause order upon the person alleged to be in contempt[.]

(Underlining and second italics added).

Clearly, Maryland law does not, as the appellant contends, require contempt hearings to be held before a judge. The only law cited by the appellant is Maryland Rule 9-208(d), which provides, in relevant part, that

[i]f, at any time during a hearing on a party's alleged constructive civil contempt, the magistrate concludes that there are reasonable grounds to believe that the party is in contempt and that incarceration may be an appropriate sanction, the magistrate shall (1) set a de novo hearing before a judge of the circuit court, (2) cause the alleged contemnor to be served with a summons to that hearing, and (3) terminate the magistrate's hearing without making a recommendation.

The magistrate did not come to a Rule 9-208(d) conclusion that incarceration may be an appropriate sanction in the present case. Therefore, in accordance with Rule 9-208(a)(1)(G), the appellant's contempt hearing was properly held before a Magistrate.

3. The Trial Court's Findings

a. Constructive Civil Contempt

Per Maryland Rule 15-206(b)(2), “[a]ny party to an action in which an alleged contempt occurred . . . may initiate a proceeding for constructive civil contempt by filing a petition with the court against which the contempt was allegedly committed.” As the Court of Appeals noted in *Dodson v. Dodson*, 380 Md. 438 (2004),

[a] civil contempt proceeding is intended to preserve and enforce the rights of private parties to a suit and to compel obedience or [sic] orders and decrees primarily made to benefit such parties. These proceedings are generally remedial in nature and are intended to coerce future compliance. Thus, a penalty in a civil contempt must provide for purging.

Id. at 448 (citation and quotation omitted). “[T]he purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt.” *Id.*

In this case, the appellee filed her Petition for Contempt on May 5, 2016, and, following a hearing held on July 7, 2016, the Magistrate found that the appellant had committed, and was still committing, serial violations of the circuit court’s March 31, 2016, Order. Based on these findings, on July 8, 2016, the Magistrate issued a Report and Recommendation that the appellant be found in constructive civil contempt. The Report and Recommendation contained a purging provision as required by Maryland law.

Maryland Rule 9-208(h)(3)(A) provides that, “[o]n the recommendation by the magistrate that an individual be found in contempt, the court may hold a hearing and direct the entry of an order at any time.” The court eventually did hold a hearing on September 2, 2016, entering Orders that: (1) found the appellant in constructive civil contempt; and (2) initiated a proceeding for constructive criminal contempt pursuant to Maryland Rule

15-205(b)(1). With respect to the constructive civil contempt, we see no reason to disturb the circuit court’s finding. The Magistrate’s July 8, 2016, Report and Recommendation contained findings of fact that the appellant had been, and still was, violating the court’s March 31, 2016, Order “on an ongoing basis.” The Report detailed how, after a number of weekends, namely, those beginning April 29, May 13, May 27, June 10, June 17, and June 24, 2016, the appellant did not return Nathaniel to the appellee on time. The Magistrate found that the appellant’s excuse for his ongoing violations of the March 31, 2016, Order, namely, that he was unaware of all of the Order’s provisions, lacked credibility. Based on these findings, which are not clearly erroneous, we hold that there is ample basis to support the circuit court’s finding that the appellant is in constructive civil contempt.

b. Constructive Criminal Contempt

Maryland Rule 15-205(b)(1) provides that “[t]he court may initiate a proceeding for constructive criminal contempt by filing an order directing the issuance of a summons or warrant pursuant to Rule 4-212.” In her July 19, 2016, Motion for Immediate Court Hearing and Order for Contempt, the appellee requested that the court exercise its authority under Rule 15-205(b)(1) and initiate a proceeding against the appellant for constructive criminal contempt for his ongoing violations of the March 31, 2016, Order. As we previously explained, the purpose of criminal contempt is to “impos[e] a sanction for past misconduct.” *Dodson*, 380 Md. at 448. The circuit court did not find the appellant in constructive criminal contempt, but, rather, simply initiated a constructive criminal contempt proceeding against him. Maryland Rule 15-205(b)(1) grants the court the

discretion to initiate such proceedings, and, based on the appellant’s chronic non-compliance with visitation orders, we cannot say that this action constituted an abuse of the court’s authority.

4. Was Appellant Denied a “Fair and Impartial Hearing?”

Finally, the appellant argues that he was denied a fair and impartial hearing. In doing so, he recycles his contention that Magistrate Brewer should have recused himself. For the reasons stated above, we hold that Magistrate Brewer’s presiding over the contempt hearing is not grounds for reversal.

Perhaps also related to his “fair and impartial hearing” argument is the appellant’s contention that the court violated his Sixth Amendment right to counsel by allowing the contempt hearing to proceed without his attorney present. The appellant appeared at the July 7, 2016, contempt hearing, for which he was served with notice on June 8, 2016, and, at that time, requested a postponement on the grounds that his attorney went on vacation to Paris, France for 30 days prior to the hearing. While the appellant’s attorney returned to the country prior to the hearing date, he did so, allegedly, unbeknownst to the appellant. Under these circumstances, which include a civil contempt hearing that did not result in confinement, the fact that the appellant was unrepresented by counsel does not constitute a violation of the Sixth Amendment. *See Fields v. Fields*, 74 Md. App. 628, 632–34 (1988).

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