Circuit Court for Prince George's County
Case No. CAD09-24622

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1820

September Term, 2016

JULIO ROCHA

v.

DINA MOREIRA

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 29, 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.

On November 16, 2010, the Circuit Court for Prince George's County entered an order awarding sole legal and physical custody of the minor child of Julio Rocha ("Father" or appellant) and Dina Moreira ("Mother" or appellee) to Mother. Additionally, the court ordered Father to pay child support in the amount of $400 per month.

On August 19, 2015, Father filed a *pro se* petition to modify child support, noting that he was homeless, and had an income of only $185 per month. The circuit court granted Father's request for a waiver of prepayment of the filing fee. Mother responded and agreed with Father's request. On December 23, 2015, the parties appeared before a magistrate for a hearing, where Father was represented by *pro bono* counsel.[1] Father requested a suspension of his child support obligation, and Mother agreed. On January 4, 2016, the magistrate issued his proposed findings and recommendations, decreasing Father's child support obligation to $203 per month, effective September 1, 2015. Father, again *pro se*, noted timely exceptions to the magistrate's recommendations and requested a hearing. He also filed a motion pursuant to Rule 9-208(g)(4), which included an affidavit of indigency, asking the court to accept an electronic recording of the proceedings before the magistrate in lieu of a transcript.[2]

[1] Father's attorney entered a limited appearance at this hearing pursuant to Rule 2-131(b), which provides, in part, that an attorney may enter a limited appearance "limited to participation in a discrete matter or judicial proceeding."

[2] Rule 9-208(g) provides that at the time the exceptions are filed, "the excepting party shall do one of the following:" 1) order a transcript; 2) file a certification that a transcript is not necessary; 3) file an agreed statement of facts; or 4) "file an affidavit of indigency and motion requesting that the court accept an electronic recording of the proceedings as the transcript."

On April 19, 2016, the court granted Father's motion, stating that the "Court hereby accepts the electronic recording of the Magistrate's hearing on December 23, 2015 in lieu of a [t]ranscript thereof."[3] Then, on July 8, 2016, the circuit court entered two orders. The first order dismissed Father's exceptions, noting that "more than thirty (30) days have passed since" the court granted Father's 9-208(g)(4) motion, "and the CD has not been filed nor has the Court extended the time to do so." (Emphasis omitted). The second order modified Father's child support obligation to $203 per month, effective September 1, 2015.[4]

On July 15, 2016, Father, now fully represented by counsel, filed a timely motion to reconsider pursuant to Rule 2-534.[5] Mother did not oppose the motion. The court denied this motion on September 29, 2016, ruling that Father had not provided the electronic recording of the magistrate's hearing. On October 7, 2016, Father's counsel sent a letter to the court advising that he had requested the recording to be sent to the court and had used his personal funds to pay for it. On October 19th, Father filed a

[3] In his brief, Father's counsel states that counsel thereafter communicated with the circuit court "several times" to inquire as to the status of the exceptions hearing, and the judge's law clerk said the case was being "worked on."

[4] Curiously, in the order dismissing Father's exceptions, the court noted that only Mother appeared for the magistrate's hearing, but in the order modifying child support, the court stated that Mother, Father, and Father's counsel were present for the December 23, 2015 hearing.

[5] This rule provides, in 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."

second motion for reconsideration, asking the court to vacate its dismissal order, and he included the electronic recording. Mother did not oppose this motion. Prior to any ruling on Father's second motion for reconsideration, he timely noted this appeal.[6]

Father maintains that it was error for the court to dismiss his exceptions without a hearing as one was requested, considering that the court's order granting his Rule 9-208(g)(4) motion did not specify a time for the recording to be produced, much less order Father to produce it. Furthermore, Father contends that the court abused its discretion in refusing to vacate the dismissal order once he had provided the recording. Mother has not filed a brief in this Court, and, as noted, she has not opposed any of Father's motions in this litigation.

In our view, the circuit court abused its discretion in refusing to vacate the dismissal order – and the order modifying child support – once Father had provided the electronic recording. *See Miller v. Mathias*, 428 Md. 419, 438 (2012) ("'In general, the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion.'" (quoting *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 673 (2010))). Father's provision of the recording addressed the court's sole reason for dismissing Father's exceptions.[7]

[6] On January 19, 2017, the court denied Father's second motion for reconsideration.

[7] Additionally, if we affirmed the judgment, then Father could file another petition for a modification of custody, attend another hearing, potentially file more exceptions, and attend another hearing, all for a modification that Mother does not oppose. We think it a far better use of judicial resources to simply address Father's exceptions on remand.

(continued)

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. THE CASE IS REMANDED FOR A HEARING ON FATHER'S EXCEPTIONS.
COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.

(continued)

That is not to say that the court should grant Father's request to modify child support simply because Mother does not oppose it. As we stated in *Guidash v. Tome*, 211 Md. App. 725, 737 (2013), courts should determine the amount of child support pursuant to the Maryland Child Support Guidelines, Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("F.L."), §§ 12-201-204. "Use of the guidelines to determine child support is mandatory and has been so since 1990." *Id.* "Parents may agree that child support is to be provided in non-monetary forms. However, before a court approves such an arrangement, the record must reflect that the court has engaged in the analysis required by F.L. § 12-202(a)(2)(v)[.]" *Id.* That subsection provides that a court may deviate from the guidelines "[i]f the court determines that the application of the guidelines would be unjust or inappropriate in a particular case," and states in writing or makes a specific finding on the record that states: "[(1)] the amount of child support that would have been required under the guidelines; [(2)] how the order varies from the guidelines; [(3)] how the finding serves the best interests of the child; and" [(4)] where items of value are conveyed, "the estimated value of the items conveyed." F.L. § 12-202(a)(2)(v).

Furthermore, "[w]e also point out for the bench and bar that, while parties are encouraged to settle domestic disputes, when doing so, they must be mindful of the needs of their children. When a judge approves and incorporates an agreement of the parents into an order of support, the judge must do more than merely rubber stamp anything to which the parents agree." *Walsh v. Walsh*, 333 Md. 492, 503-04 (1994). The Court of Appeals noted that in reviewing support agreements, "judges should refer to the child support guidelines, and when approving and incorporating into a court order an agreement containing a downward deviation from the guidelines, the record should reflect the reasons why the judge adopted such an agreement." *Id.* at 504. *See also Knott v. Knott*, 146 Md. App. 232, 253 (2002) ("Initially, [in entering a consent order as to child support], the court committed reversible error by failing to consider the guidelines and the impact of the agreement upon the financial resources of the parents or the financial needs of [the minor child].").