Circuit Court for Howard County
Case No. 13-C-16-106920

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2255

September Term, 2016

ANDRE L. LIVINGSTON

v.

SIMONA M. JONES

Nazarian,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 21, 2017

Andre Livingston ("Father") and Simona Jones ("Mother") married, had one child, and divorced, all while they lived in Connecticut. In 2007, Mother and child moved to Maryland and Father stopped paying child support. Several years later, Mother filed a Petition for Contempt and Motion [to] Enforce Judgment and a Complaint for Modification of Child Support in the Circuit Court for Howard County, and Father responded with a Petition for Contempt for Failure to Compl[]y with the Parties Judgment of Absolute Divorce and a Counter-Complaint to Modify Child Support. After a hearing, a magistrate judge issued a Report and Recommendation (the "Report") that recalculated Father's child support obligation, calculated arrears due since 2007, ordered Father to pay a portion of Mother's attorney's fees, and denied Father's counter-complaint and both parties' contempt petitions. Father filed Exceptions to the Report (the "Exceptions"), but the circuit court dismissed them for two procedural reasons—untimeliness and failure to order a transcript—and adopted the Report. Father filed a Motion to Reconsider, Alter or Amend Judgment (the "Motion"), which the court denied. Father appeals the denial of the Motion, and we affirm.

I. BACKGROUND

Mother and Father married on September 16, 2000 and divorced about four years later. During the marriage, they had one child. A 2004 Connecticut order, which incorporated the parties' Separation Agreement, required Father to pay Mother $172 per week for child support and provided that the parents would share equally the costs of child's daycare and extracurricular activities. Father paid this amount until August 2007—

the same time that Mother and the child moved to Maryland[1]—and Father alleges that the parties later agreed that he would pay Mother $31 or $41 per week for child support depending on whether he or Mother claimed the child dependency tax credit for that year. But this alleged agreement was never reduced to an order, nor is there any evidence that the 2004 Connecticut order was ever modified to reflect it. Regardless, Father did not pay Mother any child support after 2007,[2] except in January 2016, when he made two payments of $250.

As a result of Father's nonpayment of child support, Mother filed a Petition for Contempt and Motion [to] Enforce Judgment and a Complaint for Modification of Child Support in the circuit court on March 21, 2016.[3] After Mother filed suit, Father promptly resumed paying Mother $172 per week (the amount in the 2004 Connecticut order, not the reduced amount in the alleged oral agreement). Father responded to Mother's petition and answered her complaint, then filed his own contempt petition, in which he alleged that Mother had failed to pay childcare and extracurricular expenses while deducting for the child on her tax returns in violation of the Connecticut order. Father also filed a Counter-

[1] Father relocated to Maryland in 2011.

[2] Mother testified at the August 30, 2016 hearing that Father had stopped paying child support because he lost his job.

[3] For enforcement and modification purposes, Mother registered the 2004 Connecticut order in Maryland on March 18, 2016.

Complaint to Modify Child Support because his "income ha[d] substantially decreased and the minor child's needs ha[d] increased."[4]

The magistrate held a hearing on the parties' contempt petitions, Mother's complaint, and Father's counter-complaint.[5] On September 21, 2016, the magistrate issued the Report, which recalibrated Father's ongoing child support obligation, calculated Father's child support arrears, and ordered Father to pay $5,000 toward Mother's attorney's fees. The Report also determined that the 2004 Connecticut order had never been modified, and denied Father's counter-complaint, as well as both parties' petitions for contempt.

Father filed his Exceptions to the Report on October 4, 2016. On November 2, 2016, through two separate orders, the circuit court dismissed Father's Exceptions as untimely, vacated the hearing, and adopted the Report. In the Motion, which he filed on November 10, 2016, Father contended that he had filed his Exceptions on time and asked the court to consider them on the merits (in one paragraph, he incorporated his merits arguments by reference). Mother responded to the Motion on November 22, 2016, and on December 29, 2016, Father filed a supplement. The court entered an order denying the Motion on December 2, 2016, and Father filed a timely appeal. We will discuss additional facts below, as necessary.

[4] On June 6, 2016, Father supplemented his counter-complaint to include a claim for shared custody.

[5] Aside from agreed modifications to grant Mother primary residential custody and Father reasonable and liberal access to the child when Mother and had moved to Maryland, neither party had ever sought to modify the 2004 Connecticut order.

II. DISCUSSION

The circuit court dismissed Father's Exceptions as untimely, then stated that "[e]ven if [it] were to consider [Father]'s Exceptions as timely filed, they are still deficient" because Father failed to comply with Maryland Rule 9-208(g). Father asks us on appeal to review both the court's decision to dismiss his Exceptions and his challenges to the Report itself.[6] But because he appealed only from the circuit court's order denying his Motion, which upheld the decision to dismiss the Exceptions on procedural grounds, we review only the circuit court's procedural conclusion and will not consider, for the first time, Father's substantive challenges to the Report. *See Green v. Green*, 188 Md. App. 661, 674 (2009). We review the court's decision not to revisit the Report's recommendations for abuse of discretion, *see Lebac v. Lebac*, 109 Md. App. 396, 401–02 (1996), a highly deferential standard:

> "Abuse of discretion" is one of those very general, amorphous terms that appellate courts use and apply with great frequency

[6] In his brief, Father phrases the Questions Presented as follows:

> I. Whether the Circuit Court abused its discretion when it dismissed Appellant's Exceptions and denied his Motion to Reconsider, Alter or Amend Judgment which set forth facts that show a clear mistake in the judgment.
> II. Whether the Circuit Court clearly erred in its finding of Appellant's actual income for purposes of calculating his monthly child support obligation, or alternatively, abused its discretion in applying the income figure reflected in Appellant's 2015 tax return alone.
> III. Whether the Circuit Court erred in awarding Appellee attorney's fees without performing the analysis required by Section 12-103 of the Family Law Article, Annotated Code of Maryland.

> but which they have defined in many different ways. It has been said to occur where no reasonable person would take the view adopted by the circuit court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

North v. North, 102 Md. App. 1, 13–14 (1994) (internal quotations and citations omitted).

Father argues *first* that the court erred in concluding that he filed his Exceptions late because it failed to account for the time allotted for mailing, *see* Maryland Rule 1-203(c), when it found that exceptions were due by October 3, 2016. In this one regard, he's right. Maryland Rule 9-208(f) requires that "[w]ithin ten days after recommendations are placed on the record or served pursuant to section (e) of this Rule, a party may file exceptions with the clerk." The magistrate filed its Report on September 21, 2016, and ten days after that day was October 1.[7] Adding three days for mailing extended the due date to October 4, 2016. *See Bush v. Pub. Serv. Comm'n of Md.*, 212 Md. App. 127, 133 (2013) (stating that Rule 1–203(c), which affords parties an extra three days beyond the applicable period, is triggered when a party receives service of process by mail and has a right or obligation to act within a specific time after being served by mail). Accordingly, Father's Exceptions

[7] Because the Exceptions were timely, the fact that Father filed a change of address notice on September 19, 2016 is irrelevant.

were not due October 3, as the circuit court determined, but on the following day, when Father filed them.

We disagree with Father's *next* contention, though. He argues that the court erred in dismissing his Exceptions for non-compliance with Maryland Rule 9-208(g), which requires a party filing exceptions to do one of the following at the time that the party files exceptions:

> (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 transcript shall be filed within 30 days after compliance with subsection (g) (1) or within such longer time, not exceeding 60 days after the exceptions are filed, as the magistrate may allow. For good cause shown, the court may shorten or extend the time for the filing of the transcript. . . . The court may dismiss the exceptions of a party who has not complied with this section.

Father concedes that he failed to comply with this Rule. He argues, however, that the court abused its discretion by dismissing his Exceptions where he "virtually" adhered to its requirements. Father claims that when he originally filed the Exceptions on October 4, 2016, he went online and made a request for the transcript with the Howard County Court Reporters Office (the "Reporters Office") and that a clerk from the Reporters Office called him with a quote for the transcript and suggested that he wait to pay until after the court made a decision about whether to hold a hearing on the Exceptions. Then, according

to Father, after he received notice on October 26 that an exceptions hearing was scheduled for November 30, he filed a Certificate of Compliance, which stated that he had requested transcripts for the hearing, and a Motion for Postponement to allow the transcript to be prepared. The Court received the transcript on November 9, 2016.

We assume that Father has recounted accurately his conversations with the Reporters Office's clerk, but that doesn't save him. As he admits, Father failed to comply with Rule 9-208(g) because his Exceptions did not include any of the listed requirements. He requested a transcript *after* filing his Exceptions, and he did not request an extension for filing the transcript. He acknowledged that he understood that the Reporters Office could not give legal advice, yet he relied on guidance, *i.e.*, to wait to pay for the transcripts, that violated the terms of the Rule. Even as a *pro se* party, Father was on notice that he needed to provide a transcript in accordance with Rule 9-208(g) because the Report told him so:

> **TAKE NOTICE:** An exception to this recommendation must be filed pursuant to Maryland Rule 9-208(f) in writing with the Clerk of the Court within 10 days of receipt of this report. This is your only notice of proposed recommendations. The party taking exceptions is required to cause a transcript to be prepared in accordance with Maryland Rule 9-208(g). Failure to comply with exception procedures may result in case dismissal.

And Father's late Certificate of Compliance and Motion for Postponement,[8] which asked for more time to produce the transcript, did not bring him into compliance with Rule 9-

[8] Although Father was self-represented at the time, this is not a case where the flexibility we accord *pro se* parties cures his untimely filing of the transcript. Ordering the transcript

208. The circuit court could not properly consider Father's Exceptions without a transcript, and we see no abuse of discretion in the court's decision to deny his motion to reconsider its dismissal of his Exceptions for procedural noncompliance. *See* Md. Rule 9-208(g).

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

fell within Father's sole control, and he alone failed to provide a timely transcript. Deadlines, like the time requirements in the Report and in Rule 9-208, ensure expedience and predictability in court proceedings. As the Court of Appeals has said, if a trial court "had the general discretion to accept and consider a late-filed objection, no one could safely rely on the absence of a timely objection." *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 495 (1997). Furthermore, like in *Lebac v. Lebac*, 109 Md. App. 396, 401 (1996), Father did not inform the circuit court why he had failed to file a transcript until after he filed his Motion, which was denied. Thus, Father failed to show good cause or "excusable neglect" for the circuit court to allow him an extension of time to file the transcript. *See* Md. Rule 1-204(a).