Circuit Court for Prince George's County
Cases CAD15-33094 & CAS15-35246

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2631

September Term, 2016

MARSHA DIXON

v.

TERRANCE EALEY

Berger,
Nazarian,
Arthur,
JJ.

Opinion by Arthur, J.

Filed: November 9, 2017

The Circuit Court for Prince George's County ordered a father to pay child support to the mother. The order did not explicitly state whether the parties would have shared physical custody, nor did it include a child-support guidelines worksheet. Citing these deficiencies, the mother appealed. We affirm, because the basis for the order is evident from the record.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Marsha Dixon ("Mother") and appellee Terrance Ealey Sr. ("Father") are the biological parents of a child ("Son"), who was born on March 15, 2015. Father and Mother are not and have never been married to one another.

It appears that Mother and Father lived together for almost six months after Son's birth, but that they separated in the midst of a flurry of domestic-violence protective orders on September 7, 2015.

On October 26, 2015, Father filed a complaint in which he requested sole legal and physical custody. Mother filed a counterclaim in which she too requested sole legal and physical custody. Mother also filed a separate complaint in which she sought the same relief. The court consolidated the two cases.

On May 20, 2016, the circuit court entered a pendente lite order. Among other things, that order gave Father reasonable access to Son and required him to pay child support in the amount of $1,340.00 dollars per month. A magistrate had calculated that amount of child support by using a child-support guidelines worksheet that presumed that Mother would have sole physical custody of Son.

On September 27 and 28, 2016, the circuit court held a hearing on the issues of physical custody, legal custody, and child support. At the conclusion of the hearing, the judge informed the parties that it would award joint legal custody; that Mother would have primary physical custody; and that Father would have reasonable access to Son, including visitation on alternate weekends and from Wednesday through Friday in the intervening weeks. The judge urged the parties to reach mutual agreement about additional rights of visitation.

For purposes of computing the amount of child support, the court needed to know whether Father would have Son "overnight for more than 35% of the year" or approximately 128 overnights, which would make this a case of shared physical custody rather than sole physical custody. Md. Code (1984, 2012 Repl. Vol.), § 12-201(m)(1) of the Family Law Article ("FL").[1] Hence, the court gave the parties a proposed order and asked them to calculate the number of overnights that Father would have.

The parties disagree about what happened next. It appears that they (or at least their attorneys) went into the judge's chambers, but we have no transcript of what they discussed and only a fragmentary record of what resulted from their efforts. We do know that, using the child-support guidelines worksheet for shared custody, a member of the judge's staff computed that Father's child support obligation would equal $544.00 per

[1] Because of an amendment that was enacted in 2017, FL § 12-201(m)(1) became FL § 12-201(n)(1) on October 1, 2017.

month, $796.00 less than the amount in the pendente lite order.[2] We also know that in computing that figure the staff member proceeded on the basis that Father would have 137 overnights, which satisfies the requirements for shared physical custody. In addition, we know, from a subsequent letter from Mother's counsel to the court, that the court asked counsel whether they had calculated the number of overnights, that Father's counsel said that the number was 137, and that Mother's counsel stated that this "appeared" to be a shared custody case. We also know that after the hearing the court emailed its proposed order to counsel, but that the child support figure was copied from the pendente lite order rather than from computations that had been done in chambers. The court did not sign an order at that time, apparently because it wanted the parties to have more time to reach agreement about additional rights of visitation or other improvements to the order.

Over the next several weeks, counsel for the parties exchanged a number of emails about potential changes to the draft order, including changes about how they would communicate with one another and about how to manage custody over three-day weekends or federal holidays. During these exchanges, Mother's counsel claimed to have purchased a software program that, she said, established that Father would have fewer than 128 overnights (and hence that this would not be a shared physical custody

[2] In her opening brief, Mother claimed that the computations were done by an employee of the firm that represents Father. In her reply brief, she tacitly admits (at page 4) that her original claim was incorrect.

case). Mother's counsel raised that issue and a number of other issues in a lengthy letter to the court on November 3, 2016.

On November 4, 2016, the court conducted a hearing to determine (in its words) "what the language should be." At the hearing, counsel for both sides provided the court with calendars to support their arguments about whether Father was or was not meeting the 128-overnights requirement for shared custody. Expressing its dismay at lack of an agreement, the court stated that if the parties, once again, failed to come to an agreement on the number of overnights, it would use its judicial discretion to settle the matter. Because the combined, adjusted income of the parents exceeded $15,000.00 per month, the court was allowed to use its discretion in setting the amount of child support. FL § 12-204(d)-(e).

On November 9, 2016, Mother's counsel sent the court another lengthy letter in which she challenged the computation of child support. On that same day, the court signed a final order, which largely tracked the proposed order that it had distributed to counsel on September 28, 2016. Among other things, the order required Father to pay $544.00 per month in child support – the amount stated in the calculations that had been done in chambers on September 28, 2016. The judge did not attach a child-support guidelines worksheet to his final order. Nor did he provide an express explanation of how he calculated the amount of child support.

The clerk docketed the order on November 30, 2016. Within 10 days thereafter, on December 7, 2016, Mother filed a timely motion to alter or amend the judgment. The court denied that motion on December 15, 2016. This appeal followed.

QUESTIONS PRESENTED

Mother raises only one question for review: Did the trial court err by awarding child support without an explanation as to how it was calculated?

For the reasons that follow, we affirm the circuit court's order. But first, we must take a brief detour into the law of final judgments and of mootness.

DISCUSSION

I. BELATED NOTICE OF APPEAL

Although neither party has questioned this Court's jurisdiction, we have an independent obligation to ensure that the orders we review are properly appealable. *See, e.g.*, *Milburn v. Milburn*, 142 Md. App. 518, 522-23 (2002).

The sequence of relevant events is as follows: On November 30, 2016, the clerk docketed the judgment. On December 7, 2016, within 10 days after the entry of the judgment, Mother filed a motion to alter or amend, which stayed the time for noting an appeal. Md. Rule 2-534. The court denied Mother's motion in an order that was dated December 15, 2016, and docketed on December 22, 2016. The order denying the motion, when entered on the docket, became the final judgment. Hence, both parties had 30 days from December 22, 2016, to note an appeal. *See* Md. Rule 8-202(c).

On January 13, 2017, Mother filed a notice of appeal, but she did not pay the full filing fee[3] and did not put her driver's license number on the check that she submitted in

[3] Mother evidently did not realize that the court charged an additional fee because she had filed a separate case that had been consolidated with the one that Father brought.

payment. After date-stamping the notice of appeal, the clerk sent Mother a letter returning it to her because of those deficiencies.

On February 8, 2017, two weeks after the 30-day appeal period had run, Mother filed what she called a "Motion to File an Amended Notice of Appeal," which corrected the deficiencies that the clerk had identified. Finally on February 16, 2017, 56 days after the judgment had become final, the circuit court granted her "Motion to File an Amended Notice of Appeal" and ordered that it be deemed to have been filed within 30 days of the final judgment.

"Md. Rule 8-202(a) requires that, to perfect an appeal to this Court, a notice of appeal must be filed within 30 days after the entry of the judgment or order from which the appeal is taken." *Maxwell v. Ingerman*, 107 Md. App. 677, 678 (1996). "There is no reservation in the Maryland Rules, or elsewhere, authorizing a trial court to extend the time within which notice of an appeal to the Court of Special Appeals shall be filed." *Ruby v. State*, 121 Md. App. 168, 174 (1998) (citing *Blackstone v. State*, 6 Md. App. 404, 406 (1969); *Cornwell v. State*, 1 Md. App. 576, 577-78 (1967)), *vacated on other grounds*, 353 Md. 100 (1999). Furthermore, "[a]bsent applicable authority, be it statute, rule, or otherwise, a trial court cannot confer appellate jurisdiction via a belated appeal to compensate for clerical or lawyer error." *Id.* at 180.

In short, the circuit court had no authority to extend the time in which Mother could note her appeal. Therefore it was improper to allow the appeal to proceed on the basis of the "Belated Notice of Appeal."

Normally, this would resolve the case. However, because Mother filed her initial notice of appeal within 30 days of the final judgment, her appeal is considered timely even though the clerk returned the notice to her.

A notice is considered to have been *filed* upon its receipt by the clerk's office unless the notice fails to comply with the certificate of service requirement of Md. Rule 1-323. *Bond v. Slavin*, 157 Md. App. 340, 351 (2004). Mother's initial notice of appeal complied with that requirement.

Although the clerk can refuse to docket a notice of appeal until the required fees are paid, the clerk still must file the notice upon receipt. *Id.* Once the notice of appeal has been filed, the *court* can strike the notice, either *sua sponte* or on motion, because of the failure to pay the required fees. Md. Rule 8-203(a)(3). But because the court did not strike the Mother's initial notice of appeal in this case, the notice retained its filing date of January 13, 2017. Hence, the notice was filed in a timely fashion, and the clerk had no just reason to return it.

II. MOOTNESS

In reviewing the record on appeal, this Court ascertained that the circuit court modified the order pertaining to custody and child support while the appeal was pending. In an order that was formally docketed on October 30, 2017, but rendered several months earlier, on August 2, 2017, the court granted primary physical custody to Father and ordered Mother to pay $422.00 per month in child support to him. The ruling represents a marked departure from the earlier ruling, under which *Mother* had primary physical custody, and Father was required to pay $544.00 per month in child support to *her*.

Because the circuit court's recent rulings supersede the material provisions of the older order that is the subject of this appeal, we asked the parties to explain why the appeal is not moot. *See* Md. Rule 8-602(a)(10) ("on its own initiative, the Court may dismiss an appeal [when] . . . the case has become moot"). Having reviewed Mother's submission, we are satisfied that there is still a live controversy before us, at least insofar as Mother claims that she should have received more than $544.00 in child support during the period from November 9, 2016, until August 1, 2017.

III. CHILD SUPPORT

On the merits, Mother makes two principal arguments. First, she complains that the court did not make an explicit finding of fact regarding whether the parents would have shared physical custody. Second, she complains that the court did not provide a sufficient basis for its calculation of the child support obligation. On the record of this case, we conclude that Mother's complaints have no merit.

It is beyond any serious dispute that the court premised its order on the worksheet that its staff member prepared, with counsel, in chambers, on September 28, 2016. The worksheet envisions that the Father would pay $544.00 per month in child support – the exact amount that the court ordered Father to pay in its formal order of November 9, 2016. In addition, the worksheet bases the award of child support on a conclusion that Father would have 137 overnights – a number that coincides with shared physical

custody.[4] Indeed, the worksheet itself is on the form that is to be used in cases of shared physical custody.

Mother argues that a court *typically* makes a finding about shared physical custody versus sole custody when it conducts its calculation under the child-support guidelines. Similarly, Mother argues that it is *typical* for a court to include a guidelines worksheet with its order or to explain the basis for its award. But while it certainly might have been preferable for the court to make an express finding of shared custody or to incorporate its worksheet into its formal order, it was not necessary for the court to do so:

> The trial judge need not articulate each item or piece of evidence she or he has considered in reaching a decision. Unless it is clear that he or she did not, *we presume the trial judge knows and follows the law*. The fact that the court did not catalog each factor and all the evidence which related to each factor does not require reversal. Furthermore, [i]n reviewing a judgment of a trial court, the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court.

Davidson v. Seneca Crossing Section II Homeowner's Ass'n, 187 Md. App. 601, 628 n.4 (2009) (alteration in original) (quotation marks and citations omitted).

Here, it is quite obvious from the record that the court based its decision on the worksheet that Mother's counsel herself put into the record in an unsuccessful attempt to

[4] In her opening brief, Mother did not argue that the court was clearly erroneous in employing the figure of 137 overnights, but in her reply brief, she argues that Father's calendar showed, at most, 128 overnights. "[A]ppellate courts," however, "ordinarily do not consider issues that are raised for the first time in a party's reply brief." *Gazunis v. Foster*, 400 Md. 541, 554 (2007).

persuade the court to alter the preliminary conclusions that the worksheet reflects. In the circumstances of this case, nothing more was required.

Mother complains that the court said that it would use the child-support guidelines in computing child support, but that it did not do so. Of course, the court was not even required to extrapolate a figure from the guidelines, because the parents' combined, adjusted income exceeded $15,000.00 per month. *See* FL § 12-204(d)-(e); *Voishan v. Palma*, 327 Md. 318, 326-27 (1992). Nonetheless, from our review of the record in this case, we are satisfied that the court employed the guidelines as it said it would.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY ALL COSTS.