

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 492

September Term, 2017

CHARLES BARNES

v.

KAITLIN SHAULIS

Kehoe,
Berger,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: January 10, 2018

This case involves a motion to modify custody filed by Charles Barnes (“Father”), appellant. The parties had reached an agreement as to custody of their minor child, but before the consent order was entered, Father filed an emergency motion to modify custody. Father further moved for a drug use evaluation of Kaitlin Shaulis (“Mother”).

The circuit court denied Father’s request for an emergency hearing. Thereafter, the circuit court docketed the consent order, consistent with the parties’ prior agreement, granting the parties joint legal and shared physical custody. The circuit court subsequently denied Father’s request for a hearing on his outstanding motions.

Father noted a timely appeal to this Court, presenting a single question for our review:

Did the lower court err as a matter of law, and violate [Father’s] constitutional rights to due process, by not holding a hearing on his motions to modify custody and for a drug use evaluation.

For the reasons explained herein, we shall reverse.

FACTS AND PROCEEDINGS

Father and Mother are the parents of R., born September 16, 2013. The parties reached an agreement concerning custody of R. on October 21, 2016 during a settlement conference. The consent order was not entered until January 20, 2017. During the time period after the parties had reached an agreement but before the consent order was filed, Father filed an emergency motion to modify custody of R. on December 13, 2016.

In his emergency motion, Father averred that Mother, who had a prior history of substance abuse, had relapsed in the weeks following the agreement. Father asserted that Mother was abusing heroin and that, as a result, Mother was abusing and neglecting R.

during her custodial access periods. Father asserted that Mother transported R. without a child safety seat, took R. with her to purchase drugs, left R. unsupervised while “pass[ed] out,” failed to provide adequate food and nourishment for R., confined R. to a high chair for more than two hours as punishment, and “otherwise abuse[d] and neglect[ed] the child.”

On December 14, 2016, the circuit court declined to consider Father’s motion on an emergency basis and instead ordered that a hearing be set “in the ordinary course.” On December 27, 2016, Father filed a motion for a drug use evaluation, asking that the court issue an order requiring Mother to submit to an assessment pursuant to Md. Rule 9-205.3.

Subsequently, on January 31, 2017, the circuit court docketed a consent order embodying the terms of the parties’ October 21, 2016 agreement. Notably, neither Father nor anyone on his behalf signed the consent order that was docketed by the court. The circuit court did not address Father’s outstanding motions. Father subsequently requested a hearing on his outstanding motions. The circuit court denied Father’s request on April 4, 2017. Father noted an appeal.

While this appeal was pending, Father sought and obtained a protective order denying Mother custodial access to R. Pursuant to the protective order, Mother has no custody or visitation with R. until July 10, 2018.

DISCUSSION

I. Mootness

We first address the threshold question of whether this appeal is moot. A case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant. *Suter v. Stuckey*, 402 Md. 211, 219 (2007). This Court may, “on its own initiative . . . dismiss an appeal [when]. . . the case has become moot.” Md. Rule 8-602(a)(10).

Father anticipated that an issue might be raised as to the mootness of this appeal due to the issuance of a protective order granting custody to Father. Father asserts that the appeal is not moot because, after the expiration of the protective order, the circuit court’s January 31, 2017 order providing for shared custody will be reinstated. Given the temporary nature of the protective order, we agree with Father that this case is not moot. Because there remains an existing controversy as to the custody of R. following the expiration of the protective order on July 10, 2018, we shall address the merits of this appeal.

II. Merits

Father asserts that he was deprived of his due process rights under Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment of the United States Constitution when the circuit court failed to hold any hearing on his motions to modify custody and for a drug use evaluation. Father contends that he was deprived of his liberty interest in the care and custody of his child because he never had the opportunity to be heard with respect to his motion to modify custody. Instead of addressing Father’s outstanding motions, the circuit court docketed the consent order which had been agreed

to by the parties on October 21, 2016,¹ despite the fact that Father raised serious allegations relating to Mother’s drug use and its impact upon R.

In this case, we need not reach the merits of Father’s due process argument. The Court of Appeals “has emphasized, time after time, that [its] strong and established policy is to decide constitutional issues only when necessary.” *VNA Hospice of Md. v. Dep’t of Health and Mental Hygiene*, 406 Md. 584, 604 (2008) (internal quotation marks omitted) (quoting *Burch v. United Cable*, 391 Md. 687, 695-96 (2006)). Although we do not reach the constitutional issue presented by Father, we shall reverse the judgment of the circuit court on other grounds, as we shall explain.

Maryland Rule 16-302 requires each circuit court to “develop and, upon approval by the Chief Judge of the Court of Appeals, implement a case management plan for the prompt and efficient scheduling of actions in the circuit court.” Md. Rule 16-302(b)(1)(A). Rule 16-302(b)(2)(A) further provides specific requirements for plans governing family law actions:

The plan shall include appropriate procedures for the granting of emergency relief and expedited case processing in family law actions when there is a credible prospect of imminent and substantial physical or emotional harm to a child or vulnerable adult.

A committee note articulates the specific intent of this subsection:

The intent of this subsection is that the case management plan contain procedures for assuring that the court can and will deal immediately with a credible prospect of imminent and substantial physical or emotional harm to a child

¹ Critically, neither Father nor his counsel had signed the consent order presented to the judge that was docketed by the court.

or vulnerable adult, at least to stabilize the situation pending further expedited proceedings. Circumstances requiring expedited processing include threats to imminently terminate services necessary to the physical or mental health or sustenance of the child or vulnerable adult or the imminent removal of the child or vulnerable adult from the jurisdiction of the court.

Baltimore County, in accordance with Md. Rule 16-302, established a Family Law Differentiated Case Management Plan (“DCMP”), which was approved by the Chief Judge of the Court of Appeals in October of 1994 and subsequently modified. With respect to emergency hearings, the DCMP provides in relevant part:

If there is some immediate substantial injury that will result to the party or the party’s child or children before a regularly scheduled hearing can be held, an emergency hearing may be considered in a domestic case. In order to request an emergency hearing, a motion must be filed (in motion format) and must be titled, MOTION FOR AN EMERGENCY HEARING. The motion should contain all of the relevant facts including the reason why the matter needs immediate court attention. It is helpful to include with the motion a statement regarding the time estimates to hear the motion and whether medical experts may or may not be called. Motions for emergency hearings should be sent to the opposing counsel/party.

DCMP § IV.

In the instant case, Father had no opportunity to appear, at any time, to address the issues raised in his motion to modify custody. Furthermore, Father identified specific allegations of a material change of circumstances in his motion, potentially warranting a modification of custody. A request for an emergency hearing must be specific and based upon credible evidence to warrant consideration on an expedited basis. In our view, Father’s serious and significant allegations relating to Mother’s abuse and neglect of R.

were based upon credible evidence, particularly given R.'s young age and vulnerable state. Accordingly, based upon the particular circumstances involving the potential for danger to the child's health, welfare and safety, we hold that the circuit court abused its discretion by failing to consider the substance of Father's motions.

We further observe that Father's motion was filed *before* the consent order was docketed. The consent order provides that, if a disagreement arises between the parties regarding the minor child, the parties are required to contact a mediator. The order further provides that the parties "will not take any action in regard to the dispute until the issue has been adjudicated either through at least two (2) mediation session[s], or through order of the [c]ourt." Because Father's motion was filed before the entry of the consent order, the provision of the consent order requiring mediation was not applicable to the issues raised in Father's motions.

For the foregoing reasons, we remand this matter to the circuit court for consideration of the merits of Father's motions to modify custody and for a drug evaluation.²

**JUDGMENTS OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY REVERSED. COSTS TO
BE PAID BY APPELLEE.**

² Nothing in this opinion should be construed as prohibiting the circuit court from considering additional facts relevant to the custody analysis that occurred beyond the date that Father's original motion was filed.