Circuit Court for Prince George's County
Case No. CAD16-38895

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2259

September Term, 2017

JEAN MEUS SR.

v.

LATASHA MEUS

Reed,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: January 9, 2019

On July 28, 2017, the Circuit Court for Prince George's County held a hearing for a complaint for Absolute Divorce filed by Latasha Meus (hereinafter "Appellee") against Jean Meus, Sr. (hereinafter "Appellant"). The issues that were before the court were alimony, property division, monetary award, child custody, child support, and child access. The parties previously agreed to the amount of child support Appellant would pay Appellee and to joint custody of their minor child. This agreement was placed on the record and on September 21, 2017, the circuit court signed the agreement.

Appellant later contested the agreement and filed a motion to set the agreement aside, which was denied. Appellant subsequently, filed a motion to reconsider and on January 12, 2018, the circuit court denied Appellant's motion. It is from this denial that Appellant files this timely appeal. In doing so, Appellant brings the following questions for our review, which we have rephrased for clarity:[1]

[1] Appellant presents the following questions:

1. Was the Circuit Court's decision to sign into a judgement, the unilaterally-crafted and clandestinely-filed DRAFTED PROPOSAL of one party, without the signature, knowledge nor consent of the opposite party (E.60 par 6) legally correct, when doing so is contrary to the court's clearly expressed recommendations and expectations (E.32 lines 4&5; E.39 lines 13-16) and in violation of Maryland Rule 18-102.9 prohibiting a judge to consider ex-parte communication on substantive matters?

2. Was the Circuit Court's decision to approve a "Deviation Upward" of 565 percent of the worksheet-calculated Child Support Obligation, legally correct, when the COURT failed to verify whether or not the said deviation originated from the "parties", failed to ensure proper disclosure of such deviation which is material, and when the task of the worksheet preparation was relinquished to only one party of the case (E.39 lines, 10,11) at the expense of the other, in violation of Maryland Rule 18-102.9 prohibiting ex parte communication, and Maryland rule 18-102.2(a) requiring a judge to

I. Did the circuit court err in signing the Order for Absolute Divorce in violation of Maryland Rule 18-102.9?

II. Was the circuit court's decision to approve a Deviation Upward of Child Support legally correct and in violation of Maryland Rule 18-102.2(a) and Maryland 18-102.9?

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and Appellee had a daughter in November 2010 and were married while Appellant was serving in the military. On October 17, 2016, Appellee filed an action for Absolute Divorce and a Complaint for Custody. On March 6, 2017, the circuit court issued a Pendente Lite Order of Court where the Honorable Cathy Serrette ordered: (1) that Appellant and Appellee will share joint legal and physical custody of their daughter, with Appellant having access every weekend; (2) that "when a visitation weekend is followed by a federal holiday on Monday and the child is not attending school, visitation shall be extended until Tuesday morning; (3) that both parties agree to "be charged generally with the support of [their daughter]." On April 24, 2017, Appellant filed a Motion for Modification and Contempt. Appellant alleged that Appellee violated the circuit court's order by not allowing Appellant to have access to their daughter during the weekend of April 21, 2017, through April 24, 2017. Appellant requested that the circuit court hold Appellee in contempt for "willfully, maliciously, and deliberately refusing access to [their] minor child."

uphold and apply the law and to perform all duties of judicial office impartially and fairly?

On July 28, 2017, a hearing was held on Appellee's complaint for Absolute Divorce before a magistrate judge. The issues before the circuit court were child support, child access, and property division. At the hearing, the parties agreed to: (1) waive alimony; (2) waive all property issues; and (3) have joint legal custody of their minor child. The parties agreed that Appellant will have access to the parties' minor child every weekend except on the fourth weekend of every month, that "the parties will equally divide the summer months; one week on, one week off, and they will alternate the federal holidays", and that Appellant will pay $175 each month for child support. During the hearing the Magistrate Judge stated:

> This is CAD16-38895, in the matter of Meus vs. Meus. Both parties are present, along with counsel. I heard the testimony of the parties and I'm satisfied the allegations in the complaint have been proven. Therefore, I will recommend the Lady be granted the judgment of absolute divorce.
>
> The parties placed an agreement on the record regarding their child and regarding potential claims for alimony, property division and things like. And essentially, the parties' agreement will be part of the judgment of divorce. The parties have agreed on a child support amount. I've got a guidelines calculation in the file that Counsel helped me prepare. [Appellee's counsel] has agreed to prepare the order. And once that's ready--- [both counsel for Appellant and Appellee], if you want your clients to sign the proposed judgment, that's your call. I'll accept it with just counsel signature, so it's up to you.

The Magistrate Judge also recommended that the Judgment for Absolute Divorce be granted, that the agreement be incorporated but not merged into the Judgment of Absolute Divorce, and that a disposition date be set for August 25, 2018 to see "if an appropriate Judgment/Order has been submitted in accordance with the Magistrate's recommendations and/or the parties' agreement on the record. If an Judgment/Order has been submitted, neither party need appear."

On August 22, 2017, Appellee's counsel sent Appellant's counsel an email with the draft for the Judgment for Absolute Divorce attached. On August 24, 2017, Appellant's counsel emailed Appellee's counsel stating that "there were several portions of the order that [he] believe[d] need[ed] attention." Specifically, Appellant's counsel stated that the parties change the language referring to Appellant having access to the parties' minor child every weekend except for the last weekend of the month. Appellant's counsel also mentioned that the parties specify in the agreement what party will have access to the minor child during which specific federal holiday.[2] Lastly, Appellant's counsel stated in his email that he was unable to get in contact with Appellant and requested that Appellee's counsel return his phone call. Subsequently, Appellant's counsel sent a follow-up email stating that he was finally able to get in contact with Appellant and that he needed additional time because Appellant wanted to make additional changes to the Judgment for Absolute Divorce. Specifically, Appellant's counsel stated that he sent the draft for the Judgment for

[2] Appellant's counsel submitted a chart referring to which party will have access to the minor child during federal holidays. Appellant's counsel submitted the following chart:

	Mother	Father
Spring Break	Odd# Years	Even # Years
4th July	Even	Odd
Thanksgiving	Odd	Even
1st half Christmas from end of school thru Dec 25	Even	Odd
2nd half Christmas from Dec 26 through remainder of Christmas/ New Years break	Odd	Even

Absolute Divorce to Appellant and Appellant "came back with so many changes that [he could not] possibly sign anything without sitting down with [Appellant] and going over the order in detail." Appellee's counsel responded that he was unable to call Appellant's counsel because he was in court all day, that he agreed with Appellant's counsel's proposed holiday visitation schedule, and that he had no problem with Appellant's counsel needing more time to go over the Judgment for Absolute Divorce in detail with Appellant.

On September 21, 2017, the circuit court signed the Judgment for Absolute Divorce ordering: (1) that Appellee be granted a Judgment for Absolute Divorce; (2) that the parties be granted legal and shared physical custody of their minor child; (3) that Appellee be granted primary residential custody with Appellant having visitation with the child "first (1st), second (2nd), and third (3rd) weekend of every month during the school year from Friday after school until Monday morning"; and (4) that Appellant shall pay to the Appellee the amount of $175 per month in child support. On October 2, 2017, Appellant's counsel emailed Appellee's counsel a draft with substantial changes to the Judgment for Absolute Divorce.[3] Appellant's counsel also stated in his email that his initial email, with Appellant's draft to the Judgment for Absolute Divorce, was not delivered because he misspelled

[3] Appellant's draft for the Judgment for Absolute Divorce included clauses that referred to retroactive punitive consequences, disciplinary action against Appellee's counsel for aiding and abetting in fraud and arbitrarily changing clauses about claiming the minor child on tax returns, and a review of the amount of child support on a yearly basis.

Appellant's counsel's email address.[4] [5]

On October 19, 2017, Appellant filed a Motion to Set Aside the Judgment for Absolute Divorce. On December 8, 2017, a hearing was held on Appellant's motion, which was ultimately denied. On December 18, 2017, Appellant filed a Motion to Reconsider his Motion to Set Aside. On January 12, 2018, Appellant's Motion to Reconsider was denied.

STANDARD OF REVIEW

The appellate court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial judge to judge the credibility of the witnesses." Maryland Rule 8-131 (c). "A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion. " *Id*. Moreover, "[u]nder the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *Goss v. C.A.N. Wildlife Trust, Inc*., 157 Md. App. 447, 455-56 (2004). This Court is "limited to deciding whether the circuit court's factual findings were supported by 'substantial evidence' in the record." *Id*.

[4] Appellant's initial draft to the Judgment for Absolute Divorce was sent on October 2, 2017, almost two weeks after the circuit court signed the Judgment for Absolute Divorce.

[5] Appellant uses *judgement* in his brief. For the purpose of our opinion, we use *judgment* instead of *judgement*.

DISCUSSION

A. Parties' Contentions

Appellant argues that the circuit court signing the Order for Absolute Divorce violated Maryland Rule 18-102.9 which "prohibits a judge to consider ex-parte communication on substantive matters." Specifically, Appellant argues that the Order for Absolute Divorce was not "legally correct" because the order was not signed by Appellant and Appellee nor signed by their respective counsels. As such, Appellant asserts "with the non-existence of any Marital Settlement Agreement between the parties" the circuit court erred when it denied Appellant's Motion to Set Aside the Judgment. In addition, Appellant argues that the circuit court erred when it stated in its denial of Appellant's Motion to Set Aside the Judgment that it "finds that the Absolute Divorce Order is entirely consistent with the official transcript … in which the agreement between the parties was read on the record." Appellant maintains that the circuit court "is clouded by the false idea of the existence of an agreement between the parties." Appellant maintains that during the hearing for Appellee's complaint for Absolute Divorce, he did not object to the terms of the Order for Absolute Divorce because "Appellant's counsel, for some reasons yet to be determined failed to object at that time believing [sic] that there are always differences that can be worked out when preparing the document of proposed judgment [sic]."

Lastly, Appellant contends that the "circuit court's decision to approve a 'Deviation Upward' of the Child Support obligation was not legally correct." Appellant maintains that the circuit court failed to disclose "the material fact that the child support amount resulted

from a substantial deviation upward of 565 percent, and failed to verify whether or not the said deviation was indeed from the 'parties' and not the manipulation of the individual who prepared the worksheet." Appellant argues that the Child Support Worksheet, which determined each parties' child support obligation, was "prepared in secret, and according to the transcript by the Appellee's counsel alone, has been nefariously manipulated to the detriment of [] Appellant on behalf of and in favor of [] Appellee." Appellant maintains that the "Deviation Upward is shown [on the record] to have been agreed [upon] by the 'parties' and 'approved' by the court, whereas [] Appellant, or [sic] [] Appellant's counsel was never aware of such a deviation." Appellant also argues that this Court "order a criminal investigation on the obscure and deceitful path which had led to such a miscarriage of justice, along with rightfully imposing future and retroactive compensatory and punitive damages against [] Appellee's counsel as a deterrent to committing further similar egregious acts of aggression."

Appellee responds that Appellant "fails to state in what way either the Magistrate Judge or Circuit Court Judge was not fair and impartial." Appellee contends that Appellant fails to state why the Order for Absolute Divorce "differs from the agreement placed on the record at the hearing before the Magistrate." In addition, Appellee argues that Appellant "was vior dired [sic] by his attorney on the agreement and he agrees with it. He fails to state why his consent under oath was really not his consent." Moreover, Appellee asserts that Appellant fails to give a reason as to why he did not respond to the proposed Order for Absolute Divorce "until October 2, 2017, knowing that the disposition date was August 25, 2017." Appellee maintains that Appellant's counsel sent him an email stating that he

needed more time. However, Appellee's counsel did not hear from Appellant's counsel until after the Order for Absolute Divorce was already entered by the circuit court.

Lastly, Appellee argues that the circuit court did not violate Maryland Rule 102.02(a) nor Maryland Rule 18-102.9. Specifically, Appellee asserts that there was no ex parte communications involving the circuit court because the Judgment for Absolute Divorce is consistent with what the parties agreed to under oath during the July 28, 2017 proceedings. Additionally, Appellee maintains that "Appellant has 'tampered' with the Child Support worksheet in his brief." Appellee contends that Appellant agreed to the amount of child support that he was responsible for and there was no objection to this amount by either party. We agree.

B. Analysis

1. Maryland Rule 18-102.9

i. Ex Parte Communications

Appellant argues that the circuit court signing the Order for Absolute Divorce violated Maryland Rule 18-102.9 which "prohibits a judge to consider ex-parte communication on substantive matters." Appellant contends that the Order for Absolute Divorce was not "legally correct" because the order was not signed by Appellant and Appellee nor signed by their respective counsels.

Maryland Rule 18-102.9 provides, as relevant:

> (a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge out of the presence of the parties or their attorneys, concerning a pending or impending matter, except as follows:
> (1) A judge may initiate, permit, or consider any ex parte communication

> when expressly authorized by law to do so.
> (2) When circumstances require, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:
> (A) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and
> (B) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

Maryland Rule 18-102.9.

In the instant case, Appellant argues that the terms in the Order for Absolute Divorce entered by the circuit court were terms that he did not agree to. However, Appellant's argument has no merit. Specifically, the terms in the Order for Absolute Divorce were exactly what Appellant agreed to under oath. At the hearing for Appellee's complaint for Absolute Divorce, Appellant testified stating that he agreed to the following:

(Witnesses sworn)

> [APPELLEE'S COUNSEL]: The parties will be waiving all property issues and –so there are no properties. Short marriage, four years. Alimony is being waived, any right to monetary award, property is being waived. The parties have one minor child,[], six years old. The parties will have joint legal custody and joint shared physical custody of the child.
> THE COURT: Right
> [APPELLEE'S COUNSEL]: It's close to what the PL order is. What it is, is that Mr. Meus will have the child every weekend except the fourth weekend of the month. And he will have the child from Monday, or, excuse me, Friday after school until Monday morning, where he has promised to have the child at school or at the daycare on time.
>
> The parties will equally divide the summer months; one week on, one week off, and they will alternate the Federal holidays. Child support will be $175 a month, commencing August 1st, and each month thereafter.
>
> And we will go ahead with the one year uncontested divorce.
>
> ****

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was called as a witness and, having been previously duly sworn, was examined and testified as follows:

Q: You heard the agreement that was placed on the record did you not?
A: Yes.
Q: Okay. And you agree with those terms?
A: Yes.
Q: All right. You're satisfied with the terms of the agreement?
A: Yes.

The record shows that Appellant agreed to the exact terms that were stated in the Judgment for Absolute Divorce. During the hearing, Appellant did not object to any of the terms and when questioned by his own counsel Appellant stated that he was satisfied with the terms of the agreement. This Court finds that the Order for Absolute Divorce is entirely consistent with the official transcript of the July 28, 2017, proceeding. Moreover the emails between Appellant's and Appellee's counsels on August 24, 2017, do not constitute as an ex parte communication. Specifically, the record shows that the circuit court was unaware of Appellant's proposed changes to the Judgment for Absolute Divorce when it entered the Judgment for Absolute Divorce. However, Appellant was aware that the disposition date was set for August 25, 2017, and did not propose his changes to the Judgment for Absolute Divorce until October 2, 2017, more than a month after the disposition date. Appellant also stated in his Motion to Set Aside the Judgment that Appellee agreed to the changes to visitation concerning the parties' minor child. This Court concedes that Appellee agreed to Appellant's counsel's proposed changes to the parties' access to their minor child. However, Appellant's counsel later stated that Appellant needed additional time because

Appellant wanted to make additional changes. As indicated above, the record shows that Appellant did not propose those additional changes until October 2, 2017, more than a month after the deposition date. Moreover, Appellant's counsel did not inform the circuit court of those additional changes until he filed his Motion to Set Aside the Judgment on October 19, 2017. Lastly, the additional changes Appellant wanted to make were substantially different to what the parties agreed to during the July 28, 2017 proceeding. For instance, Appellant wanted to include clauses that referred to retroactive punitive consequences, disciplinary action against Appellee's counsel for aiding and abetting in fraud and arbitrarily changing clauses about claiming the minor child on tax returns, and a review of the amount of child support on a yearly basis

Accordingly, based on Appellant's own testimony, agreeing to the terms in the Judgment for Absolute Divorce, the parties' counsel's emails, and Appellant's changes to the Judgment for Absolute Divorce, that he sent to Appellee's counsel, this Court concludes that those communications to do not constitute as ex parte communications between Appellee and the circuit court. Moreover, the circuit court did not err when it denied Appellant's Motion to Set Aside the Judgment for Absolute Divorce and Motion to Reconsider.

2. Maryland Rule 18-102.2

ii. Impartiality and Fairness

Appellant argues that the "circuit court's decision to approve a 'Deviation Upward' of the Child Support obligation was not legally correct." Appellant asserts that the circuit court failed to disclose "the material fact that the child support amount resulted from a

substantial deviation upward of 565 percent, and failed to verify whether or not the said deviation was indeed from the 'parties' and not the manipulation of the individual who prepared the worksheet." Appellant argues that the circuit court did not act impartially and fairly when it approved Appellant's child support obligation. Appellant relies on Maryland Rule 18-102.9 and Maryland Rule 18-102.2 respectively.

Maryland Rule 18-102.2 prescribes that a judge should remain impartial and fair. It provides as relevant:

> **(a)** A judge shall uphold and apply the law and shall perform all duties of judicial office impartially and fairly.
>
> **(b)** A judge may make reasonable efforts, consistent with the Maryland Rules and other law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.
> [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
> [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
> [3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law.

Maryland Rule 18-102.2.

The record shows that on July 28, 2017, the parties submitted a Child Support Worksheet and the circuit court approved the parties' Deviation Upward for Child Support. The deviation was approved the same day as the hearing for Appellee's compliant for Absolute Divorce. Appellant agreed under oath to the terms of his child support obligation and did not object to any of those terms. As noted above, the communications between the parties and the circuit court, that are on the record, do not constitute as ex parte communications. In fact, the record shows that the circuit court heard testimony from

Appellant where he specifically agreed to his child support obligation. Appellant also had ample time to contact Appellee's counsel before the disposition date but he failed to do so. Accordingly, the only matter left before the circuit court was to enter the Judgment for Absolute Divorce that the parties had already agreed to on July 28, 2017. As we stated previously, this Court finds that the Order for Absolute Divorce is entirely consistent with the official transcript of the July 28, 2017 proceeding.

Based on Appellant's own testimony, the parties' agreeing to a Deviation Upward for Child Support, and the circuit court approving the Deviation Upward for Child Support this Court concludes that those actions do not constitute to the Magistrate Judge failing to act "impartially and fairly." Maryland Rule 102.2(a). As we also noted above, we find the communications in this case do not constitute as ex parte communications between the circuit court and Appellee. Accordingly, the circuit court did not err when it approved a Deviation Upward of Child Support and was not in violation of Maryland Rule 18-102.2(a) and Maryland Rule 18-102.9.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.