Circuit Court for Carroll County
Case No. 06-C-14-067197

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2312

September Term, 2019

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MARK ROSENTHAL

v.

GINA ROSENTHAL

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Graeff,
Kehoe,
Zic,

JJ.

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Opinion by Zic, J.

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Filed: June 11, 2021

This case arises from a divorce between appellant Mark Rosenthal ("Husband") and appellee Gina Rosenthal ("Wife").[1] Husband appeals from orders entered by the Circuit Court for Carroll County on December 23, 2019 and January 8, 2020, which denied Husband's Amended Petition for Enforcement/Breach of the Marital Separation Agreement/Judgment of Absolute Divorce, and Fraud.

## BACKGROUND

The parties entered into a Marital Separation Agreement ("MSA") in January 2011 and were later granted a Judgment of Absolute Divorce on January 26, 2015 in the Circuit Court for Carroll County. Following the judgment of divorce, the parties filed several claims against each other in three separate lawsuits. A partial summary of those cases is helpful to provide context to the dispute on appeal: Case No. 10-01-0004666-2017 in the District Court for Howard County, Case No. C-06-CV-18-000094 ("Case No. 94") in the Circuit Court for Carroll County,[2] and Case No. 06-C-14-067197 ("Case No. 97")—the original divorce case—in the Circuit Court for Carroll County. We will briefly

[1] Gina Rosenthal is now known as Gina Robb.

[2] Although the case docket for Case No. 94 is not part of the record in this case, we take judicial notice of the docket and filings from Carroll County. *See Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 9 n.5 (2017) (noting that "although an appellate court does not normally 'travel' outside the record, judicial notice may be taken of filings in related cases in furtherance of a just result" (citing *Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 145 n.4 (2012))).

summarize the procedural history of the three cases, but only Case No. 97 is before us on appeal.[3]

***District Court for Howard County: Case No. 10-01-0004666-2017***

On October 13, 2017, Husband filed a pro se complaint in the District Court for Howard County, alleging fraud and conversion. Wife, represented by counsel, filed a counter-complaint on November 20, 2017, alleging breach of contract. Wife alleged that Husband breached the MSA and that she was entitled to proceeds from Husband's Individual Retirement Account ("IRA"). On March 26, 2018, Husband, then represented by counsel, voluntarily dismissed his claims.

Wife's breach of contract claim remained active and was set for trial on June 4, 2018. At trial, the court transferred Wife's breach of contract claim to the Circuit Court for Carroll County. Wife's claim was assigned a new case number upon transfer: Case No. 94.

***Circuit Court for Carroll County: Case No. C-06-CV-18-000094***

Having been transferred to the Circuit Court for Carroll County, Wife's breach of contract claim against Husband was set for trial on November 5, 2018. Following the trial, the circuit court issued a written opinion and judgment on December 19, 2018, awarding Wife $16,049.40 in damages plus $5,813.00 in attorney's fees. In its opinion, the court declined to address the issue of whether Wife was owed a portion of the

[3] For all orders and motions discussed in this opinion, all dates refer to the date on which it was entered on the docket.

proceeds from Husband's IRA. The court stated that it "was advised by the parties that payment of this sum is before the [c]ourt in another matter, but both parties, nonetheless, stipulated that it could be considered by the [c]ourt in this case." While the court "stated on the record, that it would approve presentation of evidence concerning the IRA and issues related to it . . . upon further reflection, [it would] not make an award of damages relating to the IRA." Instead, the court "believe[d] any payment due [to Wife] from the IRA would be better addressed in the other proceeding already pending"—Case No. 97.

On December 28, 2018, Husband filed a Motion to Alter or Amend Judgment – Court Decision, Pursuant to MD Rules, Rule 2-534. On January 14, 2019, Wife filed an opposition to Husband's December 28, 2018 motion and Motion for Sanctions Pursuant to MD Rule 1-341, or, in the Alternative, Attorney's Fees Pursuant to the Parties' Judgment of Absolute Divorce and Request for Hearing. On January 17, 2019, Wife also filed a Motion to Revise Judgment Pursuant to Maryland Rule 2-535(a) and Request for Hearing. Following several postponements, a hearing was set for November 5, 2019.

At the November 5, 2019 hearing, the court heard arguments for the motions in Case No. 94 and conducted a status conference in Case No. 97.[4] In Case No. 94, the court entered an order on December 23, 2019, which was subsequently amended on January 8, 2020. In its January 8, 2020 order, the court clarified to which case the

[4] The circuit court's order relating to claims in Case No. 97 is discussed in the next section.

portions of the order applied by specifying the case number for each portion of the order.[5] The court denied Husband's December 28, 2018 Motion to Alter or Amend the Judgment and denied Wife's January 17, 2019 Motion to Alter and Amend.[6] Wife filed a notice of appeal of the December 23, 2018 and January 8, 2020 orders, but she voluntarily dismissed the appeal on May 28, 2020.

***Circuit Court for Carroll County: Case No. 06-C-14-067197***

We now turn to the case that is before us on appeal. On March 29, 2018, three days after voluntarily dismissing his claims in the District Court for Howard County (Case No. 1001-0004666-2017), Husband filed a Petition for Contempt, Alternatively for Enforcement/Breach of the Marital Separation Agreement/Judgment of Absolute Divorce, and Fraud ("Original Petition") in the Circuit Court for Carroll County in Case No. 97. The Original Petition alleged three counts against Wife: Contempt (Count I), Enforcement/Breach of the MSA (Count II), and Fraud and/or Deceit (Count III). On April 5, 2018, the court entered a show cause order against Wife and scheduled a hearing.

On May 18, 2018, Wife filed a "Motion to Vacate Show Cause Order and to Dismiss [Husband's] Petition for Contempt, *Et Al.* [Pursuant to Md. Rule 2-322] and

[5] The December 23, 2019 and January 8, 2020 orders ruled on motions in Case No. 94 and Case No. 97 but listed the case numbers for all three cases in the caption.

[6] In its January 8, 2020 order, the court refers to Wife's January 17, 2019 motion as Wife's "Motion to Alter and Amend." We read this order as referring to Wife's January 17, 2019 Motion to Revise Judgment Pursuant to Maryland Rule 2-535(a) and Request for Hearing. The order neither ruled on Wife's January 14, 2019 opposition motion nor her Motion for Sanctions Pursuant to MD Rule 1-341, or in the Alternative, Attorney's Fees Pursuant to the Parties' Judgment of Absolute Divorce and Request for Hearing.

Request for Hearing."[7] The court entered an order on June 19, 2018, which granted Wife's motion and vacated the show cause order. In the same order, the court granted Wife's "Motion to Dismiss [Husband's] Petition for Contempt, *et. al*." On June 29, 2018, Husband filed a Motion to Reconsider and to Vacate Order, Alternatively, For Leave to File an Amended Petition for Contempt.

On July 24, 2018, the court entered an order: (1) striking Husband's Motion to Reconsider and to Vacate Order, Alternatively, for Leave to File an Amended Petition for Contempt; (2) denying Husband's Motion to Reconsider and to Vacate Order; and (3) denying Husband's Motion for Leave to File an Amended Petition for Contempt.

The next day, July 25, 2018, Husband filed a Request to Issue/Reissue Writ of Summons against Wife pertaining to his Petition for Enforcement/Breach of the Marital Separation Agreement/Judgment of Absolute Divorce and Fraud.[8] The following morning, on July 26, 2018, Wife filed a Motion to Strike Husband's Request to Issue/Reissue Writ of Summons. Later that same day, the court stamped a margin order on Husband's Request to Issue/Reissue Writ of Summons ("July 26, 2018 margin order"), which stated: "**DENIED**. New Contempt Petition is required." On July 30,

[7] Throughout this opinion, we have not placed quotations marks around the titles of motions. For this motion, however, we placed quotation marks around the title due to the alteration and significance of its title, which will be explained in more detail in our analysis below.

[8] In Husband's Request to Issue/Reissue Writ of Summons, he erroneously stated that "[t]he Contempt Petition is no longer pending but the Petition for Enforcement/Breach of the Marital Separation Agreement/Judgment of Absolute Divorce and Fraud is still pending before this Court."

2018, Wife filed a Line to Withdraw Motion to Strike [Husband]'s Request to Issue/Reissue Summons as Moot. On August 2, 2018—nine days after the court denied his motion for leave to file an amended petition—Husband filed an Amended Petition for Enforcement/Breach of the Marital Separation Agreement/Judgment of Absolute Divorce, and Fraud ("Amended Petition"). The Amended Petition deleted the Contempt claim but restated the claims for Enforcement/Breach of the MSA and Fraud and/or Deceit, which were renamed as Counts I and II, respectively. The factual background and the allegations were restated verbatim.

On August 8, 2018, the court stamped a margin order on Wife's Motion to Strike Request to Issue/Reissue Writ of Summons ("August 8, 2018 margin order"), which stated: "Moot by filing of Amended pleadding [sic]." Wife did not respond to Husband's Amended Petition.

A little over five months later, on January 23, 2019, the court ordered a status review hearing set for March 2019 regarding Husband's Amended Petition, which was subsequently postponed to November 5, 2019. As noted in the previous section, the court heard arguments for motions in Case No. 94 and conducted a status conference regarding Case No. 97. As pertinent to Case No. 97, the court entered an order on December 23, 2019, which "DENIED" Husband's Amended Petition. The court amended its order on January 8, 2020, clarifying that for Case No. 97 "the Petition for Enforcement *improperly*

*filed* by [Husband] . . . is . . . *DENIED*." (emphasis added).[9] Considering the circuit court's order in the context of the procedural history of Case No. 97, that is, the denial of Husband's Original Petition, the denial of Husband's motion for leave to file an amended petition, and the circuit court's description of the Amended Petition in the January 8, 2020 order as "improperly filed," we interpret the January 8, 2020 order as striking the Amended Petition as opposed to denying it on the merits.

Husband filed his notice of appeal on January 22, 2020, challenging the December 23, 2019 and January 8, 2020 orders. The parties presented separate questions for our review,[10] but the principal issue we must decide is whether the circuit court abused its discretion by denying Husband's Amended Petition. For the following reasons, we shall affirm the judgment of the circuit court.

[9] The January 8, 2020 order refers to the Amended Petition as the "Petition for Enforcement."

[10] Husband raised the following question:

> Did the trial court commit error by dismissing Appellant's Amended Pleading, following a status conference/review hearing in which no notice was provided by the trial court that dispositive action could be taken in the status conference, and also without a motion to dismiss or any motion challenging the Amended Pleading pending/before the trial court, and without providing any basis for the trial court's conclusion that Appellant/s [sic] Amended Pleading was improperly filed?

Wife phrased the issue as follows: "Appellant challenges the lower Court's decision to reject, without notice, his improperly filed *Amended Petition* over a year after his proceeding was dismissed and his appellate rights had lapsed."

## DISCUSSION

In his brief, Husband contends that the circuit court erred in denying his Amended Petition. Husband argues that it was error to dismiss his Amended Petition following the status review hearing because he was not provided notice that such a dismissal was a possible outcome of the hearing. Essentially, Husband argues that he was denied due process because he was not notified that the court intended to treat the hearing as a dispositive, substantive motions hearing.

Wife asserts that Husband's appellate rights have expired. She argues that Husband's Amended Petition was a nullity and never viable because Husband failed to file a timely appeal. Wife also maintains that Husband was afforded due process because the November 5, 2019 status hearing provided notice that the court was inquiring about the status of his Amended Petition.

### I. HUSBAND'S ENTIRE ORIGINAL PETITION WAS THE SUBJECT OF THE CIRCUIT COURT'S JUNE 19, 2018 AND JULY 24, 2018 ORDERS.

As a preliminary matter, we address Husband's contention that only the contempt portion of his Original Petition was dismissed, and the enforcement and fraud portions of the Original Petition remained. That assertion is not supported by the record.

Wife's use of "*et al*." in the title of her motion to dismiss Husband's Original Petition ("[Wife]'s Motion to Vacate Show Cause Order and to Dismiss [Husband]'s Petition for Contempt, *Et Al.* and Request for Hearing") is a commonly used shorthand, which she used instead of writing the entire title of Husband's Original Petition. In other words, instead of referring to Husband's Original Petition as "Petition for Contempt,

Alternatively for Enforcement/Breach of the Marital Separation Agreement/Judgment of Absolute Divorce, and Fraud," Wife referred to it as "Petition for Contempt, *Et Al.*" The same "*et al.*" shorthand was used twice by the circuit court in its June 19, 2018 order, which dismissed the Original Petition.[11]

There is no indication in Wife's motion that she moved to dismiss only Count I (Contempt) as opposed to Count II (Enforcement/Breach of the MSA) and Count III (Fraud and/or Deceit). Similarly, the court's June 19, 2018 order made no such distinction. Rather, the circuit court's June 19, 2018 order dismissed Husband's entire Original Petition—all three counts—not only the contempt count. Furthermore, the circuit court did not amend or alter its June 19, 2018 order. In its July 24, 2018 order, the court denied Husband's Motion to Reconsider and to Vacate Order dated June 19, 2018 and denied Husband leave to file an amended petition. By its June 19, 2018 and July 24, 2018 orders, the court fully disposed of Husband's Original Petition.

## II. THE DECEMBER 23, 2019 AND JANUARY 8, 2020 ORDERS STRIKING (OR DENYING) THE AMENDED PETITION WERE APPEALABLE FINAL JUDGMENTS.

As a threshold issue, we must determine whether the December 23, 2019 and January 8, 2020 orders are appealable. "Even if no party challenges the appealability of an order, appealability is a jurisdictional issue that we must resolve *sua sponte*." *Stevens v. Tokuda*, 216 Md. App. 155, 165 (2014). The appealability of a circuit court order is a

[11] The June 19, 2018 order appears to be a slightly modified version of a proposed order submitted by Wife.

question of law that we review de novo. *See Conaway v. State*, 464 Md. 505, 517 (2019). We asked the parties for supplemental briefs to address whether this appeal should be dismissed. Husband contends that the orders denying his Amended Petition were final and appealable judgments. Conversely, Wife argues that Husband missed his deadline to appeal by over one year and that this Court should dismiss this appeal because the Amended Petition is a nullity.

Generally, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court." Md. Code Ann., Cts. & Jud. Proc. § 12-301; *see Clark v. Elza*, 286 Md. 208, 212 (1979). If an order is not a final judgment, an appellate court lacks jurisdiction and must dismiss the appeal. *See Gruber v. Gruber*, 369 Md. 540, 546 (2002). A judgment is final when: (1) the order is intended to be "an unqualified, final disposition of the matter in controversy," (2) the order "must adjudicate or complete the adjudication of all claims against all parties" or comply with Rule 2-602(b), and (3) the judgment is entered by the clerk of the court.[12] Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issue*s 4 (3d ed. 2018) (quoting *Rohrbeck v. Rohrbreck*, 318 Md. 28, 41 (1989)). The Court of Appeals has held that "[i]n order to be an unqualified, final disposition, an order of a circuit court must be 'so final as either to determine *and*

[12] There are three limited exceptions to the final judgment rule that permit immediate appeals from interlocutory orders: (1) interlocutory orders made appealable by §§ 12-302, 12-303, 12-304 of the Courts and Judicial Proceedings Article, (2) claims that have been certified as final judgments under Rule 2-602(b), and (3) interlocutory orders that are immediately appealable under the collateral order doctrine. Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issue*s 2 (3d ed. 2018).

*conclude* the rights involved **or** to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.'" *Monarch Acad. Balt. Campus, Inc. v. Baltimore City Bd. of Sch. Comm'rs*, 457 Md. 1, 43 (2017) (alteration in original) (quoting *Metro Maint. Sys. S., Inc. v. Milburn*, 442 Md. 289, 299 (2015)).

"It is well settled that an order need not necessarily dispose of the merits of a case to be a final judgment." *Brewster v. Woodhaven Bldg. & Dev., Inc.*, 360 Md. 602, 610, 623 (2000) (explaining that "there exists one principle of appealability to which this Court has continuously adhered, one that is simple and understandable. An order which terminates the proceeding in a particular court is final and appealable"). "[A] trial court's order sometimes may constitute a final appealable judgment even though the order fails to settle the underlying dispute between the parties. Where a trial court's order has 'the effect of putting the parties out of court, [it] is a final appealable order.'" *Horsey v. Horsey*, 329 Md. 392, 401 (1993) (second alteration in original) (quoting *Houghton v. County Comm'rs of Kent County*, 305 Md. 407, 412 (1986), *superseded by Rule on other grounds as stated in Hiob v. Progressive American Ins. Co.*, 440 Md. 466 (2014)).

Husband cites to *Horsey v. Horsey*, 329 Md. 392 (1993), to support his contention that the December 8, 2019 and January 8, 2020 orders are final and appealable. In *Horsey*, the husband filed a petition for contempt against his wife, alleging she breached their marital separation agreement. 329 Md. at 397. The wife filed a complaint for enforcement of the separation agreement, seeking specific performance of the contract.

*Id.* at 398. The trial judge entered an order and accompanying opinion, which found that the wife did not breach the separation agreement, dismissed the husband's petition for contempt, and directed the parties to submit their claims to arbitration. *Id.* at 400. The Court of Appeals held that the order was final and appealable because the order compelling the parties to submit their dispute to arbitration denied all relief and terminated the action before the court. *Id.* at 403-06. Husband claims, similar to *Horsey*, that the December 23, 2019 and January 8, 2020 orders are final and appealable because they fully terminated Husband's "properly filed enforcement and breach of contract claims."

While *Horsey* concerned the appeal of an order compelling arbitration, the instant case, however, concerns an appeal of orders striking (or denying) an amended pleading. Although the procedural postures are not identical, the same key question is applicable: whether the order puts the parties out of court, or in other words, whether the parties will no longer be able to litigate their rights in that court. The Court of Appeals has "consistently recognized that *any* order that contemplates parties will no longer litigate their rights in that court is a final judgment." *Monarch*, 457 Md. at 45 (emphasis added); *see, e.g.*, *Deer Auto. Grp., LLC v. Brown*, 454 Md. 52, 65-69 (2017) (explaining that while an order *compelling* arbitration is appealable because the parties are put out of court, an order *denying* a petition to compel arbitration—whether filed within an existing pending action or separate independent action—is not a final appealable judgment because the party is mandated to stay in court to litigate the underlying claim); *Brewster*,

360 Md. at 615-16 (holding that an order transferring a case from one circuit court to another under venue or forum non conveniens grounds is an appealable final judgment because it terminates the proceedings in the original court); *Anthony v. Clark*, 335 Md. 579, 589 (1994) (explaining "that orders dismissing, or granting motions to dismiss a plaintiff's entire initial pleading are final and appealable" (citing *Houghton v. County Comm'rs of Kent County*, 307 Md. 216, 221-23 (1986))); *Moore v. Pomory*, 329 Md. 428, 432-33 (1993) (determining that an order dismissing a complaint without prejudice—although not an "adjudication on the merits"—was a final and appealable judgment because the case was completely terminated); *Town of Chesapeake Beach v. Pessoa Constr. Co.*, 330 Md. 744, 754 (1993) (holding that an order denying a petition to stay arbitration, thus compelling arbitration, was immediately appealable as a final judgment because it fully terminated the claim).

The December 23, 2019 and January 8, 2020 orders denied all of the relief sought by the Amended Petition and denied Husband the opportunity to further litigate his rights in the circuit court. Even though the Amended Petition was filed in an existing action—the original divorce case—the Amended Petition involves separate claims from the underlying divorce case. *See Chesapeake Beach*, 330 Md. at 752-54 (determining that a petition to stay arbitration in an existing action was a separate demand that did not relate to the merits of the existing action and holding that the order denying the petition was a final judgment because the order denied all relief sought by the petition and completely terminated the claim to stay arbitration). When the orders struck (or denied) the

Amended Petition, there was nothing left for the court to resolve. Thus, the December 23, 2019 and January 8, 2020 orders were final judgments with respect to the claims in the Amended Petition.

## III. THE ORDERS AND MEMORANDUM OPINION RELIED ON BY HUSBAND DID NOT GRANT HIM LEAVE TO FILE AN AMENDED PETITION.

### A. The Orders in Case No. 97

Husband argues that his Amended Petition was proper and that it was "approved, affirmed, and accepted" by the circuit court. Husband used variations of this catchphrase several times throughout his briefs and during oral argument. In his briefs, he claims that the circuit court "approved, affirmed, and accepted" his Amended Petition by the August 8, 2018 margin order ("Moot by filing of Amended pleadding [sic]") and by the January 23, 2019 order, which scheduled the status review hearing.

While not mentioned in Husband's brief, he asked at oral argument that we also interpret the July 26, 2018 margin order ("**DENIED**. New Contempt Petition is required") as granting Husband the authority to file an amended pleading.[13] Husband also asserts that "the trial court held and concluded that the Amended Petition could proceed" pursuant to the August 8, 2018 margin order. Neither the July 26, 2018 margin order nor the August 8, 2018 margin order granted Husband leave to file the Amended Petition. The margin orders mean no more than what they say.

[13] While not mentioned in Husband's brief, Wife does reference the July 26, 2018 margin order in her brief.

Shortly before the margin orders were entered, the circuit court explicitly denied Husband's motion for reconsideration and denied leave to file an amended petition in its July 24, 2018 order. If the circuit court intended to vacate its July 24, 2018 order and grant Husband leave to file an amended petition, it would have entered an order stating so. It did not.

Husband also contends that "the trial court again ordered and affirmed that" his Amended Petition was "valid" by the order dated January 23, 2019 because the trial court was "treating the Amended Petition as pending." In support of this contention, Husband claims that because the court specifically scheduled a status review hearing on his Amended Petition and Wife did not file an answer in response to the Amended Petition, his Amended Petition was therefore "valid." We disagree. That the court scheduled the Amended Petition for a status review hearing does not indicate that it validated the substance of or the filing of the Amended Petition. The court merely acknowledged that the Amended Petition had been filed and scheduled a status review hearing. That did not preclude the court from taking action on the Amended Petition once it considered the substance of the Amended Petition and reviewed the procedural history of the case. The January 23, 2019 order did not grant Husband leave to file his Amended Petition.

**B. The Opinion in Case No. 94**

Husband further contends that the December 19, 2018 opinion in Case No. 94 "specifically considered and ruled on [Husband]'s Amended Pleading . . . and reserved consideration of [Husband]'s Amended Pleading for a later [c]ourt [p]roceeding."

Husband cites to the circuit court's opinion in Case No. 94 to support his contention, claiming that the court held that "[t]he [c]ourt believes any payment due [to Wife] from the IRA would be better addressed in the other proceeding already pending." The "other proceeding already pending" is the case before us on appeal, Case No. 97.

Again, we are not persuaded. It does not follow that the circuit court's opinion in one case (Case No. 94) somehow ruled on the validity of the filing of the Amended Petition in a separate case (Case No. 97), especially because the court had already denied Husband's leave to file an amended petition in Case No. 97. In Case No. 94, the court did not mention the Amended Petition in its December 19, 2018 order; it merely entered judgment against Husband and awarded Wife damages and attorney's fees. The court did not discuss Husband's Amended Petition in its written opinion; instead, it simply declined to address the IRA matter. The court's belief that "any payment due [to Wife] from the IRA would be better addressed in the other proceeding already pending" does not support Husband's contention that the court "specifically considered and ruled on" his Amended Petition. The opinion in Case No. 94 did not grant Husband leave to file his Amended Petition in Case No. 97.

## IV. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN STRIKING (OR DENYING) THE AMENDED PETITION BECAUSE IT WAS A NULLITY WHEN IT WAS FILED.

Generally, "[w]ith respect to procedural issues, a [circuit] court's rulings are given great deference." *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443 (2002). "Only upon a clear abuse of discretion will a [circuit] court's rulings . . . be overturned."

*Id.* at 444. An abuse of discretion occurs when "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." *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020) (citing *Santo v. Santo*, 448 Md. 620, 625-26 (2016)). While Rule 2-341(c) provides that "[a]mendments shall be freely allowed when justice so permits," the decision to grant or deny leave to amend pleadings is within the circuit court judge's sound discretion. Md. Rule 2-341(c); *Schmerling*, 368 Md. at 443-44. Furthermore, Rule 2-322(e) provides that "*on the [circuit] court's own initiative at any time*, the court . . . may order any pleading that is late *or otherwise not in compliance with these rules stricken in its entirety*." Md. Rule 2-322(e) (emphasis added); *cf. Patapsco Assocs. Ltd. P'ship v. Gurany*, 80 Md. App. 200, 203-04, 204 n.3 (1989) (reviewing a grant of a motion to dismiss as a grant of a motion to strike because "the practical effect of the court's granting a motion to dismiss, without leave to amend, Md. Rule 2-322(b)(2), is no different than the granting of a motion to strike the entire initial complaint without giving leave to amend, Rule 2-322(e)").

If a court dismisses an action for failure to state a claim, "an amended complaint may be filed only if the court expressly grants leave to amend." Md. Rule 2-322(c). "[U]nless the case is being kept alive by some other means, such as other parties or other still unresolved claims, a dismissal without the magic words 'with leave to amend' closes the case finally and there is, therefore, nothing to amend." *Mohiuddin v. Drs. Billing & Mgmt. Sols., Inc.*, 196 Md. App. 439, 453 (2010). An order granting permission to refile

is not the same as granting leave to amend. *Id.* at 454 (explaining that a dismissal of a complaint "without prejudice," which grants an option to refile a suit, is not synonymous with a dismissal "with leave to amend"). If a party files "an amended complaint without obtaining such leave, it [is] a *nullity*, for [] Rule [2-322(c)] very clearly states that an amended complaint may be filed 'only if the court expressly grants leave to amend.'" *Walser v. Resthaven Mem'l Gardens, Inc.*, 98 Md. App. 371, 380 (1993) (emphasis added).

Notwithstanding the court's July 24, 2018 order denying Husband leave to amend, Husband filed an Amended Petition on August 2, 2018. As discussed in the previous section, none of the orders upon which Husband relies granted such leave. First, Husband appears to have conflated the July 26, 2018 margin order stating "New Contempt Petition is required" with the grant of leave to amend. *See Mohiuddin*, 196 Md. App. at 454-55 (articulating that permission to refile is not the same as leave to amend). Instead, the July 26, 2018 margin order reflected the need for a completely new petition to properly issue a writ of summons because Husband's Original Petition had been dismissed in its entirety by the court's June 19, 2018 order. Second, the August 8, 2018 margin order ("Moot by filing of Amended pleadding [sic]"), stamped on Wife's Motion to Strike [Husband's] Request to Issue/Reissue Writ of Summons, merely recognized that Wife's Motion to Strike was moot. Third, the January 23, 2019 order simply scheduled a status review hearing. None of these orders contains the words "with leave to amend."

The court at no time—in any case—issued an order expressly granting Husband leave to amend his Original Petition. When a court orders dismissal and fails to use "the magic words 'with leave to amend' . . . there is, therefore, nothing to amend." *Mohiuddin*, 196 Md. App. at 453. In contravention of Rule 2-322(c), Husband filed his Amended Petition without obtaining leave, making the Amended Petition a nullity. *See Mohiuddin*, 196 Md. App. at 453; *Walser*, 98 Md. App. at 380.

The circuit court did not abuse its discretion in striking (or denying) the Amended Petition because the Amended Petition did not comply with Rule 2-322(c). *See* Md. Rule 2-322(e). The December 23, 2019 and January 8, 2020 orders were "guided by established principles of Maryland law." *Santo*, 448 Md. at 646.

## CONCLUSION

The December 23, 2019 and January 8, 2020 orders were final judgments with regard to Husband's Amended Petition. We conclude that the circuit court did not abuse its discretion in striking (or denying) the Amended Petition because it was a nullity. Thus, we affirm the circuit court's December 23, 2019 and January 8, 2020 orders.

**JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**