Circuit Court for Montgomery County
Case No. 430681-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED

No. 2458

September Term, 2017

No. 2637

September Term, 2018

PAVEL ROYZMAN

v.

TETYANA ROYZMAN

Fader, C.J.
Reed,
Sharer, Frederick
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: March 29, 2021

This consolidated appeal arises after divorce proceedings where it was discovered funds had been removed from the parties' minor child's Maryland Uniform Transfers to Minors Act Account ("MDUTMA"). On March 6, 2017, Tetyana Royzman ("Appellee") filed a Petition for:

(1) An Accounting and an Injunction of a MDUTMA;

(2) The Removal of the Present Custodian, Pavel Royzman ("Appellant"); and

(3) Restitution of the Monies Removed from the Account.

On May 18, 2017, Appellant filed a Motion to Dismiss Appellee's petition and Appellee filed an Opposition to the Motion to Dismiss on May 30, 2017. After Appellant's Motion to Dismiss was denied, a hearing was held, and the Circuit Court for Montgomery County granted Appellee's petition. On December 15, 2017, Appellant filed a Motion to Alter or Amend. The circuit court denied the Motion to Alter or Amend, which led Appellant to file an appeal ("First Appeal").[1] While Appellant's First Appeal was pending

[1] Appellant presents the following questions in his First Appeal:

1. Is the Plaintiff's Complaint even properly pled, and does it state any claim upon which relief can be granted?

2. Did the Trial Court err in finding the Appellant at fault of breach of contract despite the fact that the Child has not suffered any adverse consequences of Appellant's action?

3. Did the Trial Court err in finding that the Appellant's use of the UTMA money was improper despite the fact that it was mainly to pay for attorney fees in his struggle to keep his daughter at the same school and same house and residential area?

before this Court, on June 7, 2018, Appellee filed a Motion for Contempt against Appellant for failure to comply with the Order that granted her November 2, 2017 petition. Following a hearing on the motion, Appellant was found in contempt and ordered to pay Appellee's counsel $750 in attorney's fees. Appellant filed a Motion to Alter or Amend on August 31, 2018. The circuit court denied his Motion to Alter or Amend on September 28, 2018. It is from this denial that Appellant filed another appeal ("Second Appeal").[2] After careful review of Appellant's briefs and the record, we have identified the following issues:

4. Did the Trial Court err in ordering Appellant to reimburse his daughter's money within 30 days rather than by the time his daughter attains the age of 18?

5. Is it reasonable for the Trial Court to order Appellant to pay within 30 days large sums of money that he [**does**] not have?

6. Did the Trial Court err in ordering Appellant to pay the fees of Guardian Ad-Litem David Bach?

7. Is it reasonable or legal for the trial court to order that the mother should be the only custodian of the child's money even though there is no precedent for such court action and even though most of this money came from the child's father?

[2] Appellant presents the following questions in his Second Appeal:

1. Did the circuit court err in finding Appellant in contempt for not delivering custodial property and records pertaining to the 3324 account to Plaintiff Tetyana Royzman within ten (10) days; and did the circuit court err in denying Defendant's 8/31/2018 motion to alter or amend?

2. Did the circuit court abuse its discretion in granting attorney's fees to the Appellee?

3. Did the circuit court err in entering a judgement against the Defendant in the amount of $3,051 in favor of the court-appointed *Guardian Ad Litem*?

I. Did the circuit court err in granting Appellee's Petition for An Accounting and an Injunction of the MDUTMA?

II. Did the circuit court err in granting Appellee's Petition for the Removal of Appellant as the Present Custodian of the MDUTMA?

III. Did the circuit court err in ordering that Appellant Reimburse the MDUTMA?

IV. Did the circuit court err in finding Appellant in contempt and awarding attorney's fees to counsel for Appellee?

V. Did the circuit court err in denying Appellant's Motion to Alter or Amend?

For the foregoing reasons, we affirm the decisions of the circuit court with the exception of the award of attorney's fees to sanction contempt, and reverse on that issue.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and Appellee were married on September 14, 2005 and have one minor child ("Minor Child"). Appellant was the custodian of a MDUTMA ("the 1915 Account") that was established in 2007 or 2008 for the benefit of the Minor Child. Over the years, the 1915 Account accumulated $72,061.19 in total. The couple separated from one another in 2015. During the couple's divorce proceedings, Appellee learned through discovery that Appellant withdrew all the funds from the 1915 Account. Appellant withdrew $36,058.19 on August 30, 2016, and on September 2, 2016, Appellant withdrew $36,003.00.

On March 6, 2017, Appellee filed a Petition for (1) An Accounting and an Injunction of the MDUTMA; (2) The Removal of Appellant, the Present Custodian; and (3) Restitution of the Monies Removed from the Accounts. On April 24, 2017, Appellant

placed $4,592.00 into a new MDUTMA ("the 3324 Account") and subsequently, placed $36,058.19 of the funds he withdrew from the 1915 Account into the 3324 Account. On May 18, 2017, Appellant filed a Motion to Dismiss Appellee's petition. On May 30, 2017, Appellee filed an Opposition to the Motion to Dismiss.

On August 22, 2017, the parties were granted a judgment of absolute divorce. On September 18, 2017, the Honorable Ronald Rubin denied Appellant's Motion to Dismiss. Ten days later, Appellant filed a Motion to Vacate/Set Aside the Order Denying Appellant's Motion to Dismiss, which was denied. On October 20, 2017, the circuit court appointed Guardian *ad litem*, David R. Bach. Bach was appointed to represent the Minor Child and conduct an accounting of the 1915 Account and the 3324 Account. Bach found that Appellant used $22,350.00 of the 1915 Account to pay for his legal fees in the divorce proceedings. Bach also found that $9,061.00 of funds from the 1915 Account were unaccounted for. On November 2, 2017, the circuit court held a hearing on Appellee's petition.

Testimony At The 11/2/2017 Hearing

The circuit court heard testimony from three witnesses. During the hearing, Appellee called the Guardian *ad litem,* Bach, to testify. He testified that he was appointed to conduct an accounting and found that Appellant withdrew all the funds from the 1915 Account and that Appellant produced cash receipts indicating that he paid $22,350.00 in attorney's fees. He also testified that Appellant opened a new account, the 3324 Account, depositing his $4,592.00 tax refund check into the account and that there was $9,061.00 of unaccounted for funds taken from the 1915 Account. On cross-examination, Bach testified

that the money Appellant paid to his attorney could not be traced to the original 1915 Account.

Next, Appellee called Appellant to testify. Appellant testified that he was the custodian of the 1915 Account and the removal of the $36,003.00 was a cash withdrawal. Appellant also testified that he paid $7,200.00 in attorney's fees and that he deposited his $4,592.00 tax return check into the 3324 Account to reimburse the funds he withdrew from the 1915 Account. Appellant was then asked about his various bank statements and retirement accounts, all of which indicated that he had funds to pay his legal fees without using funds from the 1915 Account.

On cross-examination Appellant testified that he took funds from the 1915 Account because it was in the Minor Child's best interest. Appellant alleged that Appellee intended to move the Minor Child to Ellicott City, which would have been against the Minor Child's interest because the child would have to change schools. Appellant further testified that he needed to maintain $12,000.00 to $13,000.00 in his personal account for non-emergencies, such as unexpected maintenance to the family home or vehicle. Appellant claimed that he opened the 3324 Account because of the case at bar and that he planned on reimbursing the 1915 Account.

The last witness to testify was Appellee. Appellee testified that the money in the 1915 Account came mainly from Appellant's father and was for the Minor Child's education. Appellee claimed that she did not believe that Appellant would reimburse the 1915 Account and that Appellant should be removed as the custodian of the 1915 Account. On cross-examination, Appellee was questioned about another MDUTMA that Appellee

held for the Minor Child. Appellee claimed that she had removed $20,000.00 from that account in 2015. On redirect, Appellee explained that she had removed the money and placed it into her own account to gain interest. After six or eight months, Appellee replaced the money back into the MDUTMA. Lastly, Appellee further testified that she had added some of her own money to the 1915 Account.

First Order on Appeal

On December 7, 2017, the circuit court entered Judge Bair's November 28, 2017 Order in favor of Appellee:

> **ORDERED**, that Defendant, Pavel Royzman shall deposit $31,400.99 into Alexandra Royzman's Maryland Uniform Transfers to Minors Act Account ending in 3324 (the 3324 Account) within thirty (30) days of the date of this Order; and it is further
>
> **ORDERED**, that if Defendant fails to timely deposit the funds, Plaintiff Tetyana Royzman shall be entitled to have a judgment entered against Defendant and for the benefit of Alexandra Royzman in the amount not deposited upon Plaintiff Tetyana Royzman's filing of a line requesting entry of such judgment; and it is further
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> **ORDERED**, the Defendant is removed as custodian of the 3324 Account; and it is further
>
> **ORDERED**, that Plaintiff Tetyana Royzman is designated as the successor custodian of the 3324 Account; and it is further
>
> **ORDERED**, that Defendant shall deliver all custodial property and records pertaining to the 3324 Account to Plaintiff Tetyana Royzman within ten (10) days of the date of this Order; and it is further
>
> **ORDERED**, that Defendant shall execute all required instruments necessary to transfer the custodial property in the 3324 Account to Plaintiff Tetyana Royzman; and it is further

> **ORDERED**, that Defendant shall pay the Guardian *ad litem*, David R. Bach, $3,051.00 in attorney's fees and costs within thirty (30) days of the date of this Order; and it is further
>
> **ORDERED**, that if Defendant shall fail to timely pay the Guardian *ad litem* $3,051.00 in attorney's fees and costs, the Guardian *ad litem* shall be entitled to have a judgment entered against Defendant for the unpaid amount upon the Guardian *ad litem's* filing of a line requesting entry of such judgement; and it is further
>
> **ORDERED**, that Plaintiff's request for attorney's fees be, and hereby is, DENIED; and it is further
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> **ORDERED**, that all other requested relief be, and hereby is, DENIED.

On December 15, 2017, Appellant filed a Motion to Alter or Amend asking the circuit court for more time to comply with the payment. Appellant also asked the circuit court to reconsider the removal of Appellant as custodian of the MDUTMA. The circuit court denied the Motion to Alter or Amend on February 2, 2018. Appellant filed his First Appeal challenging Judge Bair's Order and denial of his Motion to Alter or Amend on February 15, 2020. Counsel for Appellant filed a line to withdraw five days later, and Appellant proceeded *pro se*.

Proceedings After Judge Bair's Order

Pending review of Appellant's First Appeal, Appellee filed a line pursuant to Judge Bair's Order, seeking entry of judgment against Appellant on March 5, 2018. On March 19, 2018, a judgment in favor of Appellee for $31,400.99 was entered by the circuit court. In response, Appellant filed a Motion for Stay of Execution of Judgment on March 26, 2018. Subsequently, Appellee's Opposition to Appellant's Motion for Stay of Execution of Judgment was filed on April 12, 2018. Appellant filed a Supplemental Motion for Stay

of Execution of Judgment with Request for Hearing on April 16, 2018. That hearing was scheduled for June 5, 2018.

Contempt Proceedings

On May 24, 2018, Appellee filed a Motion to Enforce Order and for Contempt against Appellant for failing to comply with paragraphs five and six of Judge Bair's Order. Appellant's Motion for Stay of Execution of Judgment was denied on June 4, 2018. On July 13, 2018, the circuit court ordered that a show cause hearing be held to address Appellee's Motion to Enforce Order and for Contempt. Appellee's Motion to Enforce Order and for Contempt was heard before Judge Jeannie Eun-Kyung Cho on August 27, 2018.

When questioned on direct by counsel for Appellee, Appellant was asked whether he delivered all custodial property and records of the 3324 Account to Appellee by February 12, 2018, ten days after denial of his Motion to Alter or Amend Judge Bair's Order. Appellant testified that he had not provided the documents by that date but that sometime in March 2018 he provided Appellee with a bank statement of the MDUTMA and on July 6, 2018 he gave counsel for Appellee a copy of all bank statements for the MDUTMA account in his possession. Appellant also testified that a clerk at the bank explained he could withdraw the balance of the 3324 account and provide the new custodian with a check but due to the fear that he would be accused of more wrong doing for trying to withdraw the money, he did not. Moreover, Appellant testified that the bank clerk informed him that with a court order there is no procedure to follow, Appellee simply needed to show the court order and everything she required to be custodian of the account

would be transferred. Appellant testified that he relayed all this information to counsel for Appellee.

On direct examination, Appellee testified that Appellant never provided any documents related to the 3324 account in March 2018 and only bank statements were provided in July 2018. Appellee testified further that Appellant never relayed any instructions from a bank clerk, failed to provide all custodial records, and never executed any documents to make her custodian of the 3324 account. Appellee testified that on July 30th she went to the bank with her counsel and successfully had the account transferred to her as custodian after not receiving anything from Appellant. Finally, evidence was presented by Appellee as to her attorney's fees to enforce compliance with Judge Bair's Order.

Second Order on Appeal

At the conclusion of the hearing, Judge Cho found that Appellant was in contempt of paragraph five of Judge Bair's Order but not paragraph six:

Trial Court: I am satisfied based upon the evidence in this case that you did not comply with the paragraph requiring you to turn over any custodial property and records within ten days of the order. That would have been in 2017. Even by your own statement, the only thing that you could possibly have turned over was in March of 2018, which is well in excess of the ten-day requirement that Judge Bair gave you to turn that over. With respect to the second paragraph – oh, and I will further find that I am satisfied by clear and convincing evidence that you have, in fact, violated that particular paragraph. Because you clearly had the ability to do so. I did not hear any testimony that you were unable to find or locate any document. You just simply said it was sometime in March because you were busy negotiating.

Appellant: I was, I was –

Trial Court: No, no, I'm ruling sir. The next paragraph that you shall execute all required documents. I do not find you in contempt of that order because although I do not credit your testimony that you relayed the information that the bank gave you to the plaintiff or to plaintiff's counsel, by virtue of the fact that the account was transferred successfully without any additional documents, without any signature on your part. I don't find that you are in contempt of that particular paragraph.

With no knowledge of the parties' finances over the course of litigation or Appellant's ability to pay, Judge Cho limited Appellant's sanction to $750.00; the cost of Appellee's attorney's fees for bringing the Motion to Enforce Order and for Contempt. Appellant filed a Motion to Alter or Amend Judge Cho's Order on August 31, 2018, which was denied on September 28, 2018. Appellant filed a timely appeal ("Second Appeal") challenging Judge Cho's Order and denial of his Motion to Alter or Amend.

STANDARD OF REVIEW

There is an abuse of discretion "where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997). "An abuse of discretion may also be found where the ruling under consideration is 'clearly against the logic and effect of facts and inferences before the court,' or when the ruling is 'violative of fact and logic.'" *Id*.

Because a trial court does not have discretion to misapply the law, we review the circuit court's ruling of law nondeferentially, even when the rulings are made in the course of deciding a discretionary matter. *Wilson-X v. Dep't of Human Res*., 403 Md. 667, 675-76 (2008) ("trial judges do not have discretion to apply inappropriate legal standards, even

when making decisions that are regarded as discretionary in nature"); *Ehrlich v. Perez*, 394 Md. 691, 708 (2006) ("[E]ven with respect to a discretionary matter, trial court must exercise its discretion in accordance with correct legal standards. We review de novo a trial judge's decision involving a purely legal question.").

DISCUSSION

A. Parties' Contentions

Appeal No. 2458

Through his first appeal, Appellant argues that Appellee's Complaint failed to state a claim "upon which relief can be granted." Specifically, Appellant maintains that "although [Appellee's] initial Civil Non-Domestic Case Information Report specifies '*Breach of Contract'*, *'Equitable Relief', 'Injunctive Relief'* and '*Accounting*'" as the causes of action for the Complaint, "the Complaint itself fails to set forth these causes of action." Next, Appellant argues that the circuit court erred in finding Appellant in breach of contract because the Minor Child did not suffer any adverse consequences. Specifically, Appellant contends that the Minor Child did not suffer any harm because "the Minor Child was 9 years of age at the time the money was borrowed from her account" and she would never be able to access the account until the Minor Child turned 18 years-old. Appellant further argues that it is well established law that if a party to a contract is a minor, then breach of contract can occur without consequence. Moreover, Appellant asserts that he used the money to pay for attorney's fees in defending his daughter's own interest.

Next, Appellant claims that the circuit court's "final ruling in this case does not specify the cause of action to which it applies [sic]. [The circuit court's] ruling [is] based

on facts and on opinions and perceptions not based on a specific claim upon which relief" can be granted. Appellant further maintains that the circuit court erred in finding that Appellant's use of the accounts was improper. Appellant contends that he used the funds in the 1915 Account to pay for attorneys' fees to defend the Minor Child's best interest in remaining at the same school and the same house in which the Minor Child grew up. Appellant asserts that the circuit court erred in ordering Appellant to reimburse the Minor Child's account within 30 days rather than at the time the Minor Child turns 18 years old.

Lastly, Appellant claims that the circuit court erred in ordering him to pay the attorney's fees of David R. Bach, the Guardian *ad litem*. Specifically, Appellant argues that Appellee's lawsuit was frivolous and as a result, the court had no basis to appoint a Guardian *ad litem*.

Appellee responds that Appellant's contention that her complaint was not properly pled is not properly brought before this Court. Specifically, Appellee claims that Appellant waived his right to appeal because he did not file a Notice of Appeal when Appellant's Motion to Dismiss and Motion to Vacate/Set Aside the Order Denying Appellant's Motion to Dismiss was denied. Moreover, Appellee maintains that Appellant's alleged deficiencies with Appellee's Complaint are being raised for the first time.

Next, Appellee maintains that the circuit court did not err in finding that Appellant was at fault for breach of contract despite the Minor Child not suffering any adverse consequences. Specifically, Appellee maintains that the circuit court did not err in finding that Appellant's use of the funds in the MDUTMA was improper despite Appellant using the funds to pay for his attorney's fees. Appellee asserts that Appellant's use of the funds

was for his own benefit and not for the benefit of the Minor child. Appellee also contends that the circuit court did not err in ordering Appellant to reimburse the MDUTMA within 30 days rather than by the time the Minor Child turns 18 years old.

Next, Appellee argues that the circuit court did not err in ordering Appellant to pay the fees of the Guardian *ad litem*, David R. Bach. Appellee maintains that it was appropriate for the circuit to appoint Bach because "[Appellant was] … (a) misappropriating the Minor Child's money… (b) continuing to do so even after he was sued … and (c) failing to make full disclosure about the whereabouts of" the funds that were not paid to Appellant's lawyer. Finally, Appellee asserts that the circuit court did not err when it appointed Appellee as the only custodian of the MDUTMA. Appellee argues that she was entitled by law to all the relief granted to her pursuant to Md. Code, Trust and Estate §13-317 (f). We agree.

Appeal No. 2637

In his second appeal, Appellant contends the circuit court's finding of contempt was erroneous because Appellee received all information related to 3324 Account from the Guardian *ad litem*, David R. Bach, during trial and there was no physical property to be transferred or documents to be executed for Appellee to be named custodian over the 3324 Account. Moreover, Appellant argues he provided Appellee with bank statements for the 3324 Account sometime in March 2018 and again on July 6, 2018. Appellant asserts the most significant piece of evidence exhibiting his compliance was an email from his then-attorney to counsel for Appellee dated one day after Judge Bair's Order which stated "[t]he money is still in the account ending in 3324 and he gave his word in court that he would

not remove it." Appellant argues this email constituted full compliance with Judge Bair's Order and was within the ten-day deadline for compliance.

Next, Appellant contends the circuit court abused its discretion in granting attorney's fees to counsel for Appellee because the Motion to Enforce and for Contempt was frivolous given that Appellee had already been named custodian of the account at the time of the show cause hearing and she had already received all custodial property Appellant possessed. Appellant asserts that he is not responsible for "guessing" what custodial property and records were needed and Appellee should have been more specific in her request. Since Appellant has already satisfied the circuit court's Order to pay $750.00, he requests Appellee refund that amount plus 10% interest from the date he paid $750.00 to the date Appellee provides a refund. Finally, Appellant reiterates his argument from Appeal No. 2458 with respect to the *Guardian ad litem* and requests a judgment be entered against Appellee to pay Appellant $3,051.00 plus interest, as well as assign any further fees accrued by the Guardian *ad litem* to Appellee for her "frivolous and meritless lawsuit."

Appellee contends that this appeal should be dismissed in its entirety for several reasons. First, Appellee argues that by Appellant's own admission, he did not provide any type of documentation or custodial property related to the 3324 Account until March 2018, well past the ten-day deadline set by Judge Bair's November 2017 Order. Moreover, Appellee asserts the email from Appellant's then-attorney, one day after Judge Bair's Order, is insufficient to constitute compliance with the Order because it provides no custodial property, records, or documents and lacks any documents executed by Appellant

to transfer title of custodian to Appellee. For these reasons, Appellee contends Judge Cho was well within her discretion to find Appellant was in contempt of Judge Bair's Order and granting attorney's fees of $750.00 was more than appropriate. Finally, Appellee contends that the issue of the $3,051.00 judgment to Guardian *ad litem*, David R. Bach, was raised in Appeal No. 2458, rendering it barred from review in this second appeal. Appellee requests that Appellant's second appeal be dismissed in its entirety and an award of attorney's fees for responding to his "frivolous" appeal.

B. Analysis

i. Sufficiency of Appellee's Complaint

Appellant argues that Appellee's Complaint failed to state a claim "upon which relief can be granted." Specifically, Appellant maintains that "although [Appellee's] initial Civil Non-Domestic Case Information Report specifies '*Breach of Contract'*, *'Equitable Relief', 'Injunctive Relief'* and '*Accounting*'" as the causes of action for the Complaint, "the Complaint itself fails to set forth these causes of action."

Appellant's argument fails because Appellee's Complaint stated causes of actions on which relief can be granted. Specifically, the first paragraph of Appellee's Complaint states:

> [Appellee] herein files this lawsuit seeking (a) an accounting under Title 13, Subtitle 3, Section 13-319 as and for an Accounting from the Custodian of a Maryland Uniform Transfer to Minors Act Account; and (B) the removal of said Custodian of the Maryland Uniform Transfers to Monies Act pursuant to Title 13, Subtitle 3, Section 13-318 and (C) Restitution from the Custodian of the Monies Removed from said Maryland Transfers to Minor Act account by the Custodian as well as such other sanctions as are allowable under the law; and (D) Counsel Fees/Expert Fees and costs from the Custodian which are incurred by [Appellee] in pursuing this matter.

Appellee's Complaint properly stated causes of action in which relief can be granted. Appellee requested that the circuit court:

(1) conduct an accounting of the MDUTMA account;

(2) remove Appellant as custodian of the MDUTMA account;

(3) provide restitution from Appellant of the monies removed from the MDUTMA account; and

(4) provide attorney fees.

The circuit court in response granted the following relief for Appellee:

a) that Appellant reimburse the MDUTMA in the amount of $31,411.000 within 30 days;

b) that Appellant pay Guardian ad litem fees in the amount of $3,051,00; and

c) that Appellant be removed as custodian of the MDUTMA.

Accordingly, we hold that Appellee's Complaint stated a claim upon which relief could be granted.

ii. Appellant's Notice of Appeal

Appellee argues that Appellant waived his right to appeal because he did not file a Notice of Appeal when Appellant's Motion to Dismiss and Motion to Vacate/Set Aside the Order Denying Appellant's Motion to Dismiss was denied.

In *American Bank Holdings, Inc. v. Kavanagh*, 436 Md. 457 (2013) the Court of Appeals stated:

A "final judgment" is defined as "a judgment, decree, sentence, order,

> determination, decision, or other action by a court ... from which an appeal, application for leave to appeal, or petition for certiorari may be taken." Section 12–101(f) of the Courts and Judicial Proceedings Article. We have taken on the task to further refine just what constitutes a "final judgment." *See Brewster v. Woodhaven Bldg. & Dev., Inc.*,360 Md. 602, 609–10 n. 1, (2000); *Peat, Marwick, Mitchell & Co. v. Los Angeles Rams Football Co.*, 284 Md. 86, 91, (1978). In so doing, we have determined that a ruling of the circuit court, to constitute a final judgment, must be an "unqualified, final disposition of the matter in controversy," *Gruber v. Gruber*, 369 Md. 540, 546, (2002) (quotation omitted), which decides and concludes the rights of the parties involved or denies a party the means of further prosecuting or defending rights and interests in the subject matter of the proceeding. *Nnoli v. Nnoli*, 389 Md. 315, 324, (2005). *An order that has the effect of putting a party out of court is a final judgment, while an order that does not prevent a party from further prosecuting or defending rights is not a final judgment*. *Brewster*, 360 Md. at 611–13; *Town of Chesapeake Beach v. Pessoa Constr. Co., Inc.*, 330 Md. 744, 750–51(1993); *Horsey v. Horsey*, 329 Md. 392, 401–02(1993).

Kavanagh, 436 Md. at 463 (emphasis added). Here, when Appellant filed his Motion to Dismiss and Motion to Vacate/Set Aside the Order Denying Appellant's Motion to Dismiss the circuit court did not make a decision on Appellee's Petition for (1) An Accounting and an Injunction of a MDUTMA; (2) The Removal of the Present Custodian, Appellant; and (3) Restitution of the Monies Removed from the Account. As the Court of Appeals noted in *American Bank Holdings, Inc. v. Kavanagh*, "[a]n order that has the effect of putting a party out of court is a final judgment, while an order that does not prevent a party from further prosecuting or defending rights is not a final judgment." *Id*. When the circuit court denied Appellant's motions Appellant still had the opportunity to defend his rights during the hearing for Appellee's petition. Appellant had the opportunity to cross-examine the Guardian *ad litem* and Appellee. As such, the circuit court's order denying Appellant's Motion to Dismiss and Motion to Vacate/Set Aside the Order Denying Appellant's Motion

to Dismiss was not a final judgment because the denial of Appellant's motions did not prevent Appellant from defending himself at the hearing for Appellee's petition.

Accordingly, we hold that Appellant did not waive his right to appeal because the denial of Appellant's Motion to Dismiss and Motion to Vacate/Set Aside the Order Denying Appellant's Motion to Dismiss was not a final judgment.

iii. MDUTMA

Appellant maintains that the circuit court erred in finding Appellant in breach of contract for misappropriating the funds in his daughter's MDUTMA because the Minor Child did not suffer any adverse consequences. Appellant further contends that it is well established law that if a party to a contract is a minor, then breach of contract can occur without consequence. Moreover, Appellant argues that he used the money to pay for attorney's fees in defending his daughter's own interest. Lastly, Appellant asserts that the circuit court erred in ordering Appellant to reimburse the Minor Child's account within 30 days rather than the time the Minor Child turns 18 years-old.

Md. Code, Est. & Trust §13-312 (b) sets forth the standard of care a custodian of an MDUTMA must adhere to. The code states as relevant the following:

Care of custodial property

> (b)(1) Except as provided in paragraph (2) of this subsection, in dealing with custodial property:
>
> (i) A custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries;

> (ii) If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise; and
>
> (iii) A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.
>
> (2) A fiduciary subject to § 15-114 of this article shall comply with that section in dealing with custodial property.

Md. Code, Est. & Trust §13-312 (b).

In *Brodsky v. Brodsky*, 319 Md. 92 (1990), Irvin J. Brodsky ("Father") and Marcia Brodsky ("Mother") were married and had a daughter, Adrienne Brodsky ("Daughter"). Subsequently, Mother and Father were divorced. The divorce decree incorporated the terms of the parties' separation agreement; the agreement stated in pertinent part:

> If the child of the parties makes application to and is accepted by any college before reaching her 21st birthday, the husband agrees to provide the child with an undergraduate college education to include tuition, fees, room and board, and other costs associated therewith. However, if at any time after enrolling, the child ceases to be a regular full-time student in good standing, the husband's obligations under this section shall terminate.

Brodsky, 319 Md. at 94. Prior to Mother and Father's divorce, Father opened a Maryland Uniform Gifts to Minor Act ("MUGMA") for the benefit of Daughter. When Daughter enrolled in undergraduate school at the age of 18 she wrote Father requesting delivery of all the MUGMA accounts maintained on her behalf. Father did not comply with the request. Daughter filed a complaint against Father for an accounting, return of monies and other relief regarding the MUGMA accounts. On appeal, one of the issues before the Court of Appeals was "whether the trial court erred in concluding that [Father] could use the money in [Daughter's] MUGMA accounts to satisfy his independent obligation under the

separation agreement to pay for [Daughter's] college education." The Court of Appeals held the following:

> Under § 13–303 of the MUGMA, [Father's] gifts of the several accounts to [Daughter] were irrevocable. Indeed, [Father] treated the accounts as vested in [Daughter]; he provided … [Mother], with annual tax information on [Daughter's] accounts so that income tax returns could be filed on [Daughter's] behalf. Because compliance with the MUGMA indefeasibly vests legal title to the property in the minor, the minor is deemed to have "earned" any and all income on the accounts, whether such income is distributed to the minor. As the accounts in this case are the property of [Daughter], [Father] as custodian *cannot dispose of the property to satisfy a personal obligation voluntarily incurred by him under the separation agreement to pay [Daughter's] college expenses.* [Father] is bound by the terms of that agreement as long as [Daughter] is a full-time undergraduate student in good standing; these expenses need not be shared by [Daughter] or her mother. *See Monticello v. Monticello,* 271 Md. 168, 173, (1974) (the objective law of contracts shall govern the construction and interpretation of separation agreements); *Heinmuller v. Heinmuller,* 257 Md. 672, 676, (1970) (a separation agreement is subject to the same general rules governing other contracts).

Here, Appellant's argument that he used the funds of the MDUTMA for the benefit of the Minor Child has no merit. The MDUTMA was established for the purpose of funding the Minor Child's education. Appellant used the funds to pay for his attorney's fees; to satisfy his own contractual obligation. The standard of care Appellant, as the custodian of the MDUTMA, had to exercise was the "standard of care that would be observed by a prudent person dealing with property of another." Md. Code, Est. & Trust §13-312 (b)(1)(i). Appellant's use of the funds was inappropriate and not for the benefit of the Minor Child. As noted in *Brodsky v. Brodsky*, a custodian cannot use funds from an MDUTMA to satisfy an independent obligation. Appellant's use of the funds in the MDUTMA was improper. Moreover, the fact that Appellant intends to reimburse the MDUTMA before the

Minor Child's 18th birthday does not negate Appellant's improper use of the funds. Appellant failed to apply the appropriate standard of care when handling his daughter's MDUTMA. Appellant had the obligation to handle the Minor Child's MDUTMA as a prudent person but failed to do so. It follows that the circuit court committed no error when it held that Appellant must reimburse the MDUTMA within 30 days.

The circuit court also committed no error when it ordered that Appellant be removed as custodian of the MDUTMA. Pursuant to Md. Code, Est. & Trust §13-318 (f) states:

Petition for removal of custodian

> (f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under § 13-304 of this subtitle or to require the custodian to give appropriate bond.

A custodian of a MDUMTA can be removed only by a showing of cause. *See Goldberg v. Goldberg*, 96 Md. App. 771, 789 (1993) (we held that the circuit court erred in removing custodian because there was no evidence to show cause for the custodian's removal). Here, the circuit court found cause to remove Appellant as custodian of the MDUTMA account. As noted above, Appellant used the funds in the MDUTMA to satisfy his own contractual obligation.

Accordingly, we hold that the circuit court did not err when it ordered Appellant to reimburse the MDUTMA within 30 days and that Appellant be removed as custodian of the MDUTMA because Appellant failed to exercise the proper standard of care as custodian of the MDUTMA.

iv. Guardian Ad Litem

We address the issue of the Guardian *ad litem's* fees with respect to the first appeal only, despite Appellant's attempt to raise it again in his second appeal. Appellant claims that the circuit court erred in ordering him to pay the attorney's fees of David R. Bach, the Guardian *ad litem*. Specifically, Appellant argues that Appellee's lawsuit was frivolous and as a result, the court had no basis to appoint David R. Bach, as Guardian *ad litem*.

Appellant's contention that this suit was frivolous has no merit. As noted above, Appellant used monies from the 1915 Account to satisfy his own personal contractual obligation. Moreover, the record indicates that Appellant had the funds to pay for his attorney's fees without using the funds in the 1915 Account. As such, the circuit court committed no error when it appointed Bach, the Guardian *ad litem*, to do an accounting of the 1915 Account and the 3324 Account. Bach's investigation revealed that Appellant withdrew all the funds from the 1915 Account, that Appellant opened a new account, the 3324 Account, depositing his $4,592.00 tax refund check into the account, and that there was $9,061.00 in the 1915 Account of unaccounted for funds. It was also revealed that Appellant's bank and retirement accounts indicated that he had funds to pay his legal fees without using funds from the 1915 Account. Lastly, pursuant to the Order designating the Guardian *ad litem*, "the Guardian *ad litem's* fees are to be apportioned as the [circuit court] determines." Accordingly, under these circumstances, we hold that the circuit court committed no error in ordering that Appellant pay the attorney's fees of the Guardian *ad litem*.

v. Finding of Contempt and Award of Attorney's Fees

Contempt proceedings "are classified as civil or criminal and at least in theory either of these may be direct or constructive." *Dodson v. Dodson*, 380 Md. 438, 447 (2004) (internal quotations omitted). A party's "failure to obey a court order may precipitate the initiation of contempt proceedings." *Marquis v. Marquis*, 175 Md. App. 734, 746 (2007) (citation omitted). But before a party may be held in contempt of a court order, "[t]he order must be sufficiently definite, certain, and specific in its terms so that the party may understand precisely what conduct the order requires." *Id*. (internal quotations omitted). Moreover, an individual may not be held in contempt unless he is subject to a court order and his failure to comply with that order "was or is willful." *Dodson*, 380 Md. at 452. "[W]illful conduct is action that is voluntary and intentional, but not necessarily malicious." *Gertz v. Maryland Dept. of Environment*, 199 Md. App. 412, 430 (2011).

During the show cause for contempt hearing, Judge Cho heard testimony that Appellant had ten days from the date of Judge Bair's November 2017 Order to comply. Appellant himself testified that he had access to custodial property for the 3324 account, such as bank statements, and failed to provide any of them to Appellee until at least March 2018. Appellant provided no evidence or testimony to refute that his failure to comply with the Order was voluntary and intentional. The record shows Judge Cho had ample evidence to make her decision. We see no basis on which to disturb the factual findings or decision of the trial court to hold Appellant in contempt.

We now consider the trial court's award of attorney's fees to counsel for Appellee as a sanction:

> A civil contempt proceeding is intended to preserve and enforce the rights of private parties to a suit and to compel obedience [to] orders and decrees primarily made to benefit such parties. These proceedings are generally remedial in nature and are intended to coerce future compliance.

Dodson, 380 Md. 448. The purpose of civil contempt is to coerce future compliance, not punish past conduct, so the penalty "must provide for purging; [meaning] it must permit the defendant to avoid the penalty by some specific conduct that is within the defendant's ability to perform." *Bryant v. Howard County Dept. of Soc. Servs.*, 387 Md. 30, 46 (2005). See Md. Rule 15-207(d) (requiring that a constructive civil contempt order contain a sanction and purge provision). The civil contempt order clearly outlines the sanction, and grounds for sanctions, but fails to include a purge provision. Considering this was a Motion to Enforce Order and for Contempt, the Order should have specified the conduct within Appellant's ability to perform that could permit avoiding the penalty of attorney's fees. Without the purge provision, the sanction is not remedial or able to coerce future compliance. It is simply punishing Appellant for his past conduct. Thus we, reverse the award of attorney's fees.

vi. Denial of Appellant's Motion to Alter or Amend

We review a trial court's denial of motion to alter or amend for abuse of discretion. *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015). Appellant filed a Motion to Alter or Amend the circuit court's finding of contempt. In his Motion, Appellant reiterates every argument presented at the contempt hearing on August 27, 2018. Even if Appellant offered new arguments, the trial court has discretion to disregard them if such arguments should have been raised in the proceedings. "When a party requests that a court reconsider a ruling

solely because of new arguments that the party could have raised before the court ruled, the court has almost limitless discretion not to consider those arguments." *Schlotzhauer*, 224 Md. App. at 85. Because Appellant primarily advances arguments that were already made or should have been made during the hearing on August 27, 2018, we hold the trial court did not abuse its discretion in denying Appellant's Motion to Alter or Amend.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED AS TO THE AWARD OF ATTORNEY'S FEES AS A SANCTION FOR CONTEMPT AND OTHERWISE AFFIRMED; COSTS TO BE PAID BY APPELLANT.