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COURT OF APPEALS

Attorney Grievance Commission of Maryland v. Paul Winston Gardner, II, AG No. 74, September Term 2011, filed February 11, 2013.Opinion by Cathell. J.

http://mdcourts.gov/opinions/coa/2013/74a11ag.pdf

ATTORNEY DISCIPLINE – DISBARMENT

Facts:

In October of 2009, Bar Counsel received notice from a financial institution that Respondent's trust account was overdrawn by almost a thousand dollars. Upon investigation, Bar Counsel discovered that Respondent had made cash withdrawals on several occasions. On one occasion, he had withdrawn $12,500 in cash from his trust account and traveled to New York where he handed the $12,500 to his friend "Blue" Williams, allegedly for services Williams was to arrange for one of Respondent's clients. The services were never performed, and the $12,500 has never been returned to the client.

In another matter involving the same client, and without that client's knowledge or approval, he disbursed another $1,000 of the client's money to "Blue" Williams after Respondent's representation had been terminated. Additionally, he billed this client for expenses which he never incurred, and on one instance, billed her for an airline ticket she had purchased.

On another occasion, he inappropriately paid one of his employees four checks from specific trust funds for her services in unrelated tort and other matters. He made seven other cash withdrawals from his trust account totaling $3,650.00, and on one occasion paid from his trust account a Verizon bill for general services supplied to his office. He improperly billed clients, and, in some instances, over-billed them.

In several other instances involving the money of clients to be held in Respondent's trust account, he allowed his trust account to be out of balance or to have a negative balance. Over significant periods of time, the records relating to his trust account were not in compliance with Chapter 600 of Title 16 of the Maryland Rules.

Respondent failed to properly file a visa application for a client, and delayed informing his client of the fact that it had been denied and that additional information was needed. He informed Ms. Li, who was his client on the immigration matter, that Mr. Kang, another of his clients, needed a large sum of money to establish that Ms. Li and her husband had sufficient funds to establish the business for which they were seeking visas. Pursuant to Respondent's direction, Ms. Li sent $135,000.00 to a Mr. Kang. The visas were never obtained, and the money was never returned.

Ms. Li sued Mr. Kang, and Respondent, after being told of a potential conflict because of his prior involvement in the matter, continued to represent Mr. Kang in the litigation only striking his appearance on the first day of the trial.

On other occasions, he failed to enter into retainer agreements as required with Mr. Kang. Additionally, he did not properly bill Mr. Kang for the various services he performed, and was, and remains, unable to produce appropriate bills for his services.

Held:

Based upon the above facts, and others too extensive to recite herein, the Court held Respondent violated Rules 16-701, 16-606.1 and 16-609 of the Maryland Rules and Rules 1.1, 1.3, 1.4, 1.5, 1.7, 1.15, 1.16, 5.4, and 8.4 of the Maryland Lawyer's Rules of Professional Conduct. The Court held that as to some of these Rules, there were multiple violations.

Respondent, Paul Winston Gardner, II was disbarred.

Attorney Grievance Commission of Maryland v. Robert Weston Mance, III, AG No. 27, September Term 2012, filed February 25, 2013. Opinion by Harrell, J.

http://mdcourts.gov/opinions/coa/2013/27a12ag.pdf

ATTORNEY DISCIPLINE – RECIPROCAL ACTION – CORRESPONDING SANCTION

IN THIS RECIPROCAL DISCIPLINARY SANCTION INVOLVING PROFESSIONAL MISCONDUCT OCCURRING IN THE DISTRICT OF COLUMBIA, WHERE RESPONDENT NEGOTIATED A DISPOSITIONARY SANCTION OF A SIX-MONTH SUSPENSION WITH REINSTATEMENT CONDITIONED ON PROOF OF FITNESS AND RESTITUTION, THE CORRESPONDING SANCTION IN MARYLAND IS AN INDEFINITE SUSPENSION, WITH THE RIGHT TO APPLY FOR REINSTATEMENT IN MARYLAND UPON RESPONDENT'S UNCONDITIONAL REINSTATEMENT IN THE DISTRICT OF COLUMBIA.

Facts:

On or about 29 August 2011, the Office of Bar Counsel for the District of Columbia and Robert Weston Mance, III ("Mance") executed and filed jointly with the D.C. Court of Appeals's Board on Professional Responsibility a Petition and Affidavit of Negotiated Discipline. The filing embraced four docketed cases brought by D.C. Bar Counsel against Mance and reflected that Mance (1) failed to provide adequate and diligent representation in three separate cases; (2) received money from a client without issuing a receipt; (3) failed to advise properly two clients to seek independent counsel after a potential conflict arose between Mance's interests and the clients' interests; (4) failed to supply information repeatedly requested by new counsel, after being discharged by a client; and (5) failed to respond to Bar Counsel's request for information.

In the Petition of Negotiated Discipline, Bar Counsel and Mance agreed that the proper sanction should be a six-month suspension, with readmission conditioned on proof of Mance's fitness to practice law in D.C. and Mance's restitution to his clients or the D.C. client security trust fund. The Petition noted that Mance had a prior disciplinary record in D.C. The D.C. Court of Appeals, in a 26 January 2012 per curiam opinion and order, adopted the recommendations of D.C. Bar Counsel's and Mance's joint Petition for Negotiated Discipline, as endorsed by the Board on Professional Responsibility.

The Attorney Grievance Commission of Maryland, through its Bar Counsel, initiated a reciprocal disciplinary proceeding by filing on 22 June 2012 a Petition for Disciplinary or Remedial Action, based on the D.C. proceedings. A show cause order was issued by the Court of Appeals. Mance, representing himself, filed on 17 August 2012 a response to the show cause order stating, in pertinent part, that "I have no reason . . . why corresponding discipline to that imposed in the District of Columbia should not be imposed by this Court." Bar Counsel's response, filed on 20 August 2012, sought indefinite suspension, with the right to apply for

reinstatement in Maryland only upon readmission in the District of Columbia, as corresponding discipline.

Held:

The Court of Appeals, by per curiam order of 3 December 2012, determined that the corresponding discipline in Maryland should be for Mance to be suspended indefinitely in Maryland (effective upon the date of the order), with the right to apply for reinstatement no sooner than when he is readmitted unconditionally in the District of Columbia. The Court began by noting that, in reciprocal discipline cases, it had the discretion to impose a discipline consistent with the sister jurisdiction's factual findings and conclusions, or to order a different or more serious alternative if Bar Counsel or Mance presented clear and convincing evidence that "the imposition of corresponding Maryland discipline would result in grave injustice," or that the attorney's misconduct "warrants substantially different discipline in this State," pursuant to Maryland Rule 16-773(e).

The Court of Appeals, in reciprocal discipline cases, imposes discipline that is consistent with its attorney disciplinary jurisprudence by assessing, independently, the propriety of the sanction imposed by a sister jurisdiction, as well as the sanction recommended by Maryland Bar Counsel. As a result, the sanction imposed will depend not only on the decision of the sister jurisdiction, but also on the specific facts of each case, balanced against Maryland precedent. The central question in reciprocal discipline cases is what sanction would a lawyer in Maryland expect in response to similar conduct, were it to have occurred in Maryland.

To determine what discipline was corresponding here, the Court examined the sanctions imposed in factually-similar Maryland cases. The Court determined that Mance's numerous ethical violations concerning his representation of multiple clients warranted an indefinite suspension. The Court reached this decision after considering several factors. First, Mance has been suspended by the District of Columbia for six months with readmission conditioned on proof of Mance's fitness to practice law and Mance's restitution to his clients or the D.C. client security trust fund. The Court determined that an indefinite suspension as described in Maryland Rule 16-271, would be the functional equivalent to the discipline imposed by the District of Columbia. Second, Mance's misconduct resulted in prejudice to multiple clients. Third, Mance failed to cooperate fully with D.C. Bar Counsel. Lastly, Mance had a prior history of ethical misconduct. Consistent with action in D.C., the Court went further and conditioned Mance's readmission to the Maryland Bar on his unconditioned reinstatement to the District of Columbia Bar.

Kent Island, LLC v. Michael A. DiNapoli, et al., No. 33, September Term 2012, filed February 22, 2013. Opinion by Harrell, J.

http://mdcourts.gov/opinions/coa/2013/33a12.pdf

CIVIL PROCEDURE – SUBJECT MATTER JURISDICTION – COLLATERAL ATTACK IN A CIRCUIT COURT OF A FINAL, ENROLLED CONSENT JUDGMENT FROM ANOTHER CIRCUIT COURT

CIVIL PROCEDURE – JUDGMENTS – REVISORY POWER

Facts:

Kent Island, LLC ("Kent Island") entered into a Consent Order with the Queen Anne's County Sanitary Commission, the Queen Anne's County Commissioners, and the Queen Anne's County Planning Commission regarding resolution of their disputes over Kent Island's proposed construction of a project known as the Cloisters on Kent Island Subdivision in Stevensville, Queen Anne's County. The Consent Order, when entered, terminated litigation initiated by Kent Island in the Circuit Court for Anne Arundel County ("*Kent Island I*"). The Honorable William C. Mulford signed and entered the Consent Order on 10 March 2009.

Six residents of Queen Anne's County and the Queen Anne's County Conservation Association (collectively referred to as "Respondents"), who were not parties to *Kent Island I*, filed suit on 23 December 2009 in the present case ("*Kent Island II*") in the Circuit Court for Queen Anne's County, seeking invalidation of the Consent Order entered in *Kent Island I*. Specifically, Respondents alleged that the Consent Order is invalid because it establishes illegal contract zoning, unlawfully attempts to create a Development Rights and Responsibilities Agreement, denies Respondents equal protection under the law, and is an invalid special law. Upon Kent Island's motion, the case was transferred to the Circuit Court for Anne Arundel County and assigned to Judge Mulford. Judge Mulford held hearings to consider Respondents' request for recusal and the parties' cross-motions for summary judgment, denying ultimately the request for recusal and granting summary judgment in favor of Kent Island.

Respondents noted an appeal, arguing for reversal of the initial transfer decision of the Circuit Court for Queen Anne's County, as well as Judge Mulford's Order granting summary judgment to Kent Island. The Court of Special Appeals vacated the judgment of the Circuit Court for Anne Arundel County and remanded with instructions to transfer the case to the Circuit Court for Queen Anne's County, finding that the Circuit Court for Queen Anne's County abused its discretion in transferring the case to the Circuit Court for Anne Arundel County in the first instance because Queen Anne's County had properly both venue and subject matter jurisdiction to consider and decide *Kent Island II*. The intermediate appellate court stated that circuit courts regularly review, modify, and enforce orders and settlement agreements entered by other circuit courts, and thus the litigation of *Kent Island I* in Anne Arundel County did not deprive Queen

Anne's County of jurisdiction to consider Respondents' attack on the validity of the Consent Order. The Court of Appeals granted Kent Island's petition for *certiorari* to consider (1) whether the Consent Order was a settlement agreement reviewable by the Circuit Court for Queen Anne's County; and (2) whether the Court of Special Appeals erred in determining that the Circuit Court for Queen Anne's County had subject matter jurisdiction to review a judgment entered by the Circuit Court for Anne Arundel County.

Held: Reversed and remanded.

The Court of Appeals concluded that, because the Consent Order entered in *Kent Island I* was a final disposition of the matter in controversy, adjudicated the claims against all parties (including Kent Island's outstanding claim for attorneys' fees and the pending appeal), and was properly entered on the docket by the clerk, the Consent Order became the final judgment in *Kent Island I* on 10 March 2009 and became enrolled thirty days later. Thus, the Consent Order in *Kent Island I* was subject to modification only in the same manner as any other final judgment.

The Court determined that the Court of Special Appeals erred in directing transfer of *Kent Island II* to the Circuit Court for Queen Anne's County on grounds of venue. Specifically, the Court noted that circuit courts are not empowered generally to revise or modify final judgments entered by other circuit courts, in the absence of statutory authority to the contrary. Rather, as implied by Maryland Rule 2-535 and § 6-408 of the Courts and Judicial Proceedings Article of the Maryland Code, circuit courts may modify only those judgments entered by that circuit court. Thus, because the Consent Order was a final judgment entered by the Circuit Court for Anne Arundel County, it was not open to collateral attack in the Circuit Court for Queen Anne's County, in the absence of contrary statutory authority.

Moreover, the Court noted that the Circuit Court for Anne Arundel County was also not empowered to revise or modify the judgment entered in *Kent Island I* in the manner sought by Respondents. Respondents demonstrated no basis satisfying the criteria set forth in either Maryland Rule 2-535 or § 6-408 of the Courts and Judicial Proceedings Article. Specifically, Respondents were not a party to *Kent Island I* (nor did they seek to intervene in that litigation), nor did they ask (even if they could) the Circuit Court for Anne Arundel County to exercise its revisory power over the judgment in *Kent Island I*. Thus, the Court determined that the Court of Special Appeals erred in engaging in a venue analysis, rather than dismissing the underlying action.

Felix L. Johnson, Jr., Deceased v. Mayor and City Council of Baltimore, No. 45, September Term 2012, filed February 25, 2013. Opinion by Barbera, J.

Bell, C.J., Harrell and Cathell, JJ., dissent

http://mdcourts.gov/opinions/coa/2013/45a12.pdf

STATUTORY INTERPRETATION — WORKERS' COMPENSATION BENEFITS — PAYMENT OF DUAL PENSION AND WORKERS' COMPENSATION BENEFITS TO DEPENDENTS OF DECEASED CLAIMANT

Facts:

Felix L. Johnson, Jr. worked as a firefighter in Baltimore City for 26 years until he retired in 1990. He died of a heart attack in 2005. His widow, Janice Johnson, began receiving survivorship benefits from her husband's pension shortly after his death. She also filed a dependent's claim for benefits under the Maryland Workers' Compensation Act, claiming that her husband's exposure to heat, smoke, and fumes caused his heart disease. The Workers' Compensation Commission ruled in her favor, deciding that she should be able to receive pension and workers' compensation benefits up to the amount of her deceased husband's weekly salary. The Commission ruled that amendments to the Maryland Code, § 9-503(e) of the Labor and Employment Article, which allowed for this dual recovery, applied to Johnson's claim because the claim was pending at the time the General Assembly enacted the amendments in 2007.

The City of Baltimore appealed the decision to the Circuit Court for Baltimore City, arguing that § 9-610 of the Labor and Employment Article, which reduces the amount of a claimant's workers' compensation benefits by the amount of their pension benefits, instead governed the claim. The City contended that the amendments to § 9-503(e) should only apply prospectively to cases filed after the amendments took effect in 2007, not to claims that were pending at the time. The Circuit Court ruled in favor of the City, and the Court of Special Appeals affirmed the decision of the Circuit Court.

Held: Affirmed.

The Court of Appeals noted that the 2007 amendments to § 9-503(e) were implemented in response to a prior decision of the Court, *Johnson v. Mayor and City Council of Baltimore*, 387 Md. 1 (2005). In that case, the Court held that § 9-503(e) allowed only specified public safety employees, but not their dependents, to collect dual benefits because dependents were not mentioned specifically in the statute. The 2007 amendments changed this to allow for dependents to collect dual benefits, but the Court noted that the statute did not specify whether the amendments should apply retroactively to pending claims or only to new claims. The Court

consulted the legislative history for the 2007 amendments and found nothing indicating an explicit intent on the part of the General Assembly to apply the changes retroactively. The Court next considered whether the amendments were procedural or remedial, which would mean they should be applied to pending cases, or if the amendments were substantive and should be applied only prospectively. The Court acknowledged that some lawmakers viewed the changes as remedial, but concluded that the legislative history as a whole did not support viewing the amendments as remedial or procedural. The Court held that the amendments were substantive because they enlarged the potential class of beneficiaries to include dependents, a group that previously was not entitled to collect dual pension and workers' compensation benefits. As a result, the Court held that § 9-610, not § 9-503(e), applied to Johnson's claim.

COURT OF SPECIAL APPEALS

Smith-Myers Corporation d/b/a Smith-Myers Mortgage Group v. Ada Sherill, et al., No. 2034, September Term, 2011, filed January 24, 2013. Opinion by Kehoe, J.

http://mdcourts.gov/opinions/cosa/2013/2034s11.pdf

DEFAULT JUDGMENTS – MD. RULE 2-613(f) – NOTICE OF ORDER OF DEFAULT – LAST KNOWN ADDRESS OF DEFAULTING PARTY

OBLIGATION OF PARTY TO FURNISH THE COURT WITH MOST RECENT ADDRESS

DEFAULT JUDGMENTS – ACTUAL KNOWLEDGE

DEFAULT JUDGMENTS – MD. RULE 2-613(e).

DEFAULT JUDGMENTS – MOTION TO VACATE

Facts:

Plaintiffs filed suit against defendants alleging that the defendants had engaged in an elaborate fraudulent scheme to deprive them of the equity value of their home. Defendant Smith-Myers, a Maryland corporation, filed an answer to the complaint and participated in the litigation for several months. During this time, two attorneys entered and withdrew appearances on behalf of Smith-Myers. After the withdrawal of the second attorney, Smith-Myers failed to obtain new representation and failed to attend three status conferences. Thereafter, an order of default was entered against Smith-Myers. Smith-Myers did not move to vacate the order. After holding a hearing on damages, which Smith-Myers did not attend, the court entered judgment by default against Smith-Myers.

After the entry of judgment, Smith-Myers moved to vacate the default judgment, asserting 1) that the notices of the status conferences and the order of default had been sent to the wrong address, and 2) that, even though it had actual knowledge that an order of default had been entered against it and that a hearing on damages had been scheduled, it had relied on the representations of a suspended or disbarred Maryland attorney that the attorney would represent them in the matter.

The record established that the plaintiffs had listed in their motion for order of default one of two addresses on record for Smith-Myers, that the circuit court had mailed the order of default to this address, and that Smith-Myers did not assert that this address was incorrect, or furnish the court

with a corrected address, until its motion to vacate default judgment, filed more than two years after the start of the litigation. Further, the record indicated that no attorney had entered an appearance on behalf of Smith-Myers for ten months, and that Smith-Myers ignored a court order and other indications that it was not, in fact, represented by the suspended or disbarred attorney.

Held: Affirmed.

Prior to the entry of a default judgment, Rule 2-613(f) requires that the circuit court satisfy itself that notice of the order of default was mailed to the defaulting party's last known address as indicated on the motion for an order of default. The rule does not require the court to independently verify that the last known address is correct.

A party's actual knowledge of the order of default and that a hearing was pending on the issue of damages satisfies the underlying purposes of the notice requirements of Rule 2-613—to inform the defendant that the notice of default had been entered and provide the defendant an opportunity to defend itself in the proceeding.

A party has a continuing obligation to furnish the court with its most recent address. *See Estime v. King*, 196 Md.App. 296, 306 (2010). This obligation may be satisfied by filing a "pleading" or a "paper" with the court listing the correct address. *See Estime,* 196 Md.App. at 305-07. Because the Rules distinguish between "papers", on one hand, and certificates of service and exhibits attached to pleadings and motions, on the other, neither a certificate of service nor an exhibit attached to a motion satisfies a party's obligation to furnish the court with its most recent address. *See Duckett v. Riley*, 428 Md. 471, 479-80 (2012).

Until the entry of an order adjudicating the claims against all of the parties to the action, the circuit court's revisory discretion as to a default judgment entered against one party is not confined by either Rule 2-535 or 2-613(g). Instead, Rule 2-613(e) governs the determination of whether the defaulting party's motion to vacate should be granted. *See Quartertime Video & Vending Corp. v. Hanna*, 321 Md. 59, 64 (1990).

Ultimately, the appellate court concluded that the circuit court did not abuse its discretion in denying the defaulting party's motion to vacate default judgment where the judgment was a direct result of the party's sustained, systematic and inexcusable neglect of the case, resulting in delay and prejudice to appellees and disruption to the orderly administration of justice in the circuit court.

Shannon D. Causion v. State of Maryland, No. 1766, September Term 2010, filed January 23, 2013. Opinion by Kehoe, J.

http://mdcourts.gov/opinions/cosa/2013/1766s10.pdf

CRIMINAL PROCEDURE: ACCESS TO GRAND JURY RECORDS

Facts:

Years after his conviction, at a time when there was no pending action to which the records of the grand jury proceedings that resulted in the defendant's indictment might have some relevance, the defendant filed a motion for the disclosure of grand jury records pursuant to Md. Rule 4-642(d). The circuit court denied the request without holding a hearing. The defendant appealed, raising two issues: whether the order denying the motion to disclose was a final, appealable judgment, and whether the circuit court erred in denying it.

Held: Affirmed.

The appellate court held that Maryland Rule 4-642(e), which permits a circuit court to authorize disclosure of confidential grand jury records after a hearing and after service of a copy of the request on the State's Attorney, is the exclusive mechanism for access to grand jury records. *See State Prosecutor v. Judicial Watch,* 356 Md. 118, 132 (1999).

An order of the circuit court denying access to grand jury records is a final judgment when the motion for disclosure is not made as part of pending litigation.

Although Maryland Rule 4-642(e) normally requires a hearing, the circuit court did not err in denying a motion for disclosure without a hearing when the motion on its face indicated that a copy of the motion was not served on the State's Attorney, as required by the rule.

Chad Eason Frobouck v. State of Maryland, No. 2061, September Term 2011, filed January 24, 2013. Opinion by Kenney, J.

http://mdcourts.gov/opinions/cosa/2013/2061s11.pdf

CRIMINAL LAW – SEARCH & SEIZURE – WARRANT REQUIREMENT – CONSENT TO SEARCH – ORAL CONSENT.

CRIMINAL LAW – SEARCH & SEIZURE – WARRANT REQUIREMENT – CONSENT TO SEARCH – APPARENT AUTHORITY.

CRIMINAL LAW – SEARCH & SEIZURE – WARRANT REQUIREMENT – CONSENT TO SEARCH – APPARENT AUTHORITY.

EVIDENCE – HEARSAY.

Facts:

Appellant had entered into a commercial lease to rent a property from Scott Mapes ("the property"). On August 1, 2010, Mapes had not received the rent payment – which was due on the first of each month – and was unable to successfully contact appellant. On August 13, Mapes, believing the lease had "expired" and that he was in possession of the property – but acknowledging that he had not notified appellant of any default on the lease – "drilled the lock" and entered the property. Once inside, he observed "lots of pot," and called the police. Sheriff's Deputy Matthew Bragunier and Agent Bryan Glines responded.

Mapes, who "identified himself as the landlord" to the officers, "immediately" consented to the officers entering the property, "allowed" them "access to [the] premises," and later signed a consent form. Mapes explained to the officers that he had "taken possession" of the property because the tenant had left and the lease had "expired." Inside the property, the officers observed marijuana plants.

Appellant was charged with manufacturing marijuana. At the suppression hearing, the prosecutor argued that, because Mapes had actual authority to enter the property, he could consent to police search, while appellant's counsel argued that, without providing appellant written notice of any default on the lease, Mapes did not have actual authority to enter the property, and thus could not consent to the police search. The motions court denied the motion to suppress because Mapes had "apparent authority to invite the police in based on his reasonable belief that he had a right to enter" the property. According to the motions court, the officers were not "on a fishing expedition," but rather were invited into a commercial premises "by the landlord who had a reasonable reason to enter the premises and had a reasonable reason to ask the police to accompany him."

At trial, Deputy Bragunier, when asked why he responded to the property, testified that he "was dispatched there for a suspected marijuana grow." Agent Glines testified similarly. Both times, appellant's counsel objected on hearsay grounds, but the court overruled the objections because the testimony was not "offered for the truth of the matter asserted."

Held: Affirmed.

Citing Mapes's representations to the officers that the lease had "expired" and that he had rightfully "taken possession" of the property, the court held that the police were not unreasonable in relying upon Mapes's apparent authority to consent to their entry, and thus the court did not err in denying the motion to suppress. Because it was not raised until oral argument, the court declined to consider appellant's argument that the motions court could not properly base its finding on *apparent authority* where the parties had argued *actual authority* to the court.

The court also held that the objected-to statements of Deputy Bragunier and Agent Glines were not offered to prove the truth of the matter asserted – that there was a "marijuana grow" – but, rather, to explain *briefly* what brought the officers to the scene in the first place. In addition, these objected-to statements were cumulative to other statements which were not objected to. Moreover, even if it was error to overrule the objections of appellant's counsel, there was substantial evidence supporting appellant's conviction, and thus any error was harmless.

Konstantinos Karanikas v. Rachel Karanikas Cartwright, No. 1314, September Term 2012, filed February 26, 2013. Opinion by Berger, J.

http://mdcourts.gov/opinions/cosa/2013/1314s12.pdf

FAMILY LAW – CHILD CUSTODY

Facts:

Appellant, Konstantinos Karanikas ("Father"), and appellee, Rachel Karanikas Cartwright ("Mother"), are the divorced parents of a nine-year-old child ("the child"). The parties were awarded joint legal custody of the child pursuant to their consent order and judgment of divorce. Mother was awarded primary physical custody of the child, and Father received a specific visitation schedule.

The child had resided in Maryland her entire life. On March 1, 2012, Mother informed Father that she intended to relocate to Pennsylvania with the child after the end of the school year. Father did not consent to the relocation.

Both parties filed pleadings with the circuit court requesting a modification of the custody order. At trial, Father's counsel requested that the child be permitted to testify either in court or in chambers. Mother's counsel objected, and the trial judge provisionally denied the request. Upon the conclusion of testimony by other witnesses, Father renewed his request for the child to testify. The trial judge met with the child in chambers.

On the second day of trial, Father made a motion to disqualify the trial judge, alleging bias and unreasonable conduct in the handling of the child's interview. The trial judge referred the motion to another judge for a ruling. The second judge denied the motion for disqualification, and the second day of trial proceeded before the original judge.

The trial judge modified the existing custody order. The modified order awarded Mother sole legal and sole physical custody of the child, with a specific visitation schedule for Father. The order also required Father to pay child support to Mother.

On appeal, Father argued that the circuit court abused its discretion (1) by denying Father's motion to disqualify the trial judge; (2) due to the manner in which he conducted the chambers interview with the child; and (3) in granting the award of child support.

Held: Affirmed.

First, the Court of Special Appeals held that, based upon the context surrounding the comments and conduct at issue, it was not an abuse of discretion to deny Father's motion for disqualification of the trial judge.

Second, the Court of Special Appeals held that the trial judge did not abuse his discretion in the handling of the child interview. There was no basis on the record for the contention that the trial judge only "grudgingly" agreed to interview the child, or that the trial judge only "agreed to do so in an extremely limited way." Additionally, the Court of Special Appeals rejected Father's argument that the trial court "outright refused to inquire as to the child's preference, as required by *Montgomery County v. Sanders*."

In so holding, the Court of Special appeals observed that the trial judge has discretion to decide whether to interview a child. Moreover, *Montgomery County v. Sanders* does not require that a court expressly ask a child his or her custody preference. Rather, the trial court has discretion in deciding whether to ask about custody preferences. In exercising this discretion, the court should consider the age and capacity of the child to form a rational judgment. Here, the trial judge exercised his discretion by deciding to hear other testimony first in order to determine whether the child's testimony would be useful. The trial judge ultimately decided to interview the child in chambers. He asked a variety of questions related to the child's interests, pets, and relationship with her parents, as well as specific questions about her custody preference. The record was devoid of any showing of an abuse of discretion.

Finally, the Court of Special Appeals held that the circuit court did not abuse its discretion in awarding child support. The parties stipulated that the Maryland child support guidelines did not apply because the parties' combined gross monthly income exceeded the guidelines. Consequently, the amount of child support rested in the sound discretion of the trial court. The court exercised its discretion in ordering Father to pay monthly child support of $2,883. The trial judge considered the requisite factors, and specifically recited his findings with respect to the parties' incomes, the child's best interests, the financial needs of the child, the parents' financial ability to meet the child's needs, the station in life of each parent, their respective ages and physical conditions, and the expenses associated with educating the child. Accordingly, the trial court did not abuse its discretion.

ATTORNEY DISCIPLINE

By an Order of the Court of Appeals dated January 4, 2013, the following attorney has been disbarred by consent, effective February 4, 2013:

GREGORY J. MILTON

*

This is to certify that

REX BAYARD WINGERTER

has been replaced on the register of attorneys in this state as of February 7, 2013.

*

By an Opinion and Order of the Court of Appeals dated February 11, 2013, the following attorney has been disbarred:

PAUL WINSTON GARDNER, II

*

By an Order of the Court of Appeals dated February 15, 2013, the following attorney has been suspended:

ERIN MARIE WEBER, a/k/a ERIN WEBER ANDERSON

*

By an Order of the Court of Appeals dated February 21, 2013, the following attorney has been disbarred by consent:

DONALD BENSON THOMPSON, III

*

By an Order of the Court of Appeals dated February 27, 2013, the following attorney has been disbarred by consent:

WILLIAM F. HICKEY, III

JUDICIAL APPOINTMENTS

On December 28, 2012, the Governor announced the elevation of the **BRIAN DAVID GREEN** to the District Court–Carroll County. Judge Green was sworn in on February 8, 2013 and fills the vacancy created by the retirement of the Honorable Marc G. Rasinsky..

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