UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1010

September Term, 2014

RAMEZ GHAZZAOUI

v.

CAROLINA CHELLE

Eyler, Deborah S.,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 24, 2015

This appeal arises from a protracted and contentious custody dispute between two parties who are currently self-represented. The appellant, Ramez Ghazzaoui, has attempted to challenge at least four rulings by the Circuit Court for Anne Arundel County. We have appellate jurisdiction to consider only one – a ruling denying his latest motion to modify the status of custody. On the merits, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Ghazzaoui and his former wife, appellee Carolina Chelle, were married on December 22, 2001. Their daughter, M., was born on December 6, 2003. They separated on July 1, 2008, and were divorced on March 10, 2011.

In a detailed, careful, and thorough opinion dated October 8, 2010, the circuit court awarded the parties joint legal and physical custody. The court did so even though "the contentious nature of the parties' past interactions" made the court "wary of a joint legal custody arrangement." In awarding joint custody, the court expressed the hope that once the "tensions of separation and litigation" had subsided, the parties would be able to learn to work together.

Despite the court's hope, the parties do not appear to have reached the point where they can work together in the best interests of their child. This appeal is the latest of at least five, which have already resulted in three unpublished opinions from this Court. Both parents have challenged the propriety of awarding any custody to the other, challenged economic awards for being excessive or insufficient, and challenged the

court's rulings and the other party's actions. The court has held Ms. Chelle in contempt several times, and held Mr. Ghazzaoui in contempt once.[1]

This brings us to the events leading to this appeal. On February 11, 2014, the circuit court held Ms. Chelle in contempt for failing to comply with its earlier orders. The docket entry states that Ms. Chelle could purge herself of her contempt "if she participates in open and effective communications with Plaintiff re their minor child for the next 3 months." The order set a review hearing for May 12, 2014, three months later.

On the following day, February 12, 2014, Mr. Ghazzaoui emailed Ms. Chelle a four-page list of questions and requests. Claiming that she had not responded, Mr. Ghazzaoui filed a motion to compel Ms. Chelle's compliance with what he called "the court's previous custody orders" on February 28, 2014. Among other things, his motion asked the court to require Ms. Chelle to respond to his questions and requests. He requested a hearing. He also propounded "discovery" requests to Ms. Chelle, requesting information about their daughter.

On March 26, 2014, Ms. Chelle responded with a motion for a protective order to avoid the discovery requests. On the same day, the court filed a written order reflecting its earlier decision to hold Ms. Chelle in contempt, but to allow her to purge the contempt by "fully complying with all outstanding Orders . . . for the next three (3) months." In a footnote, the court explained that Ms. Chelle was not required to respond immediately to

[1] In addition, Mr. Ghazzaoui has brought three unsuccessful lawsuits against his daughter's Best Interest Attorney. *See Ramaz Ghazzaoui v. Barbara G. Taylor*, No. 2710, Sept. Term 2013 (Ct. of Spec. Apps., May 28, 2015).

every email from Mr. Ghazzaoui, but did have to acknowledge or respond to "appropriate questions that are required of joint legal custodians." The court added that Mr. Ghazzaoui "should limit his emails and be more concise" and that "[b]oth parents need to develop a mutual respect for each other." The court set a compliance and contempt review hearing for May 19, 2014.[2]

In an order dated April 7, 2014, but docketed on April 10, 2014, the court denied Mr. Ghazzaoui's motion to compel compliance. In addition, the court granted Ms. Chelle's request for a protective order.

At about the same time, on April 7, 2014, Ms. Chelle moved for a protective order to prevent Mr. Ghazzaoui from obtaining discovery from a credit union. Although the briefs are not particularly clear on this subject, it appears that Mr. Ghazzaoui may have been attempting to obtain information from the credit union in an effort to satisfy one of several money judgments that he has acquired against Ms. Chelle, including one that was entered at the time of the judgment of absolute divorce.

On April 22, 2014, Mr. Ghazzaoui filed a motion to vacate the protective order regarding his questions and "discovery" requests. He argued that the court ruled on Ms. Chelle's motion for a protective order before the response period had run and that the court erred in not granting him the hearing he requested. He requested a hearing on the motion to vacate.

[2] The docket reflects that the review hearing occurred on May 19, 2014, but it appears that the court took no action at the time.

On July 1, 2014, the court denied Mr. Ghazzaoui's motion. The court reasoned that it could treat Ms. Chelle's motion for a protective order as a response to Mr. Ghazzaoui's motion to compel, and so Mr. Ghazzaoui was not entitled to respond. The court also reasoned that, even if it had erred in ruling too soon on Ms. Chelle's motion for a protective order, it would not reopen the record, as Mr. Ghazzaoui had never submitted any substantive response, and so the court would reach the same conclusion on the merits as it had before. At the same time, the court granted Ms. Chelle's separate motion for a protective order concerning Mr. Ghazzaoui's discovery requests to the credit union.

Meanwhile, on or about June 10, 2014, Mr. Ghazzaoui had filed what he called an "omnibus" motion[3] requesting various forms of relief, including a modification of custody, another contempt citation against Ms. Chelle, injunctive relief, "other appropriate relief," and a hearing. The court denied the omnibus motion in its entirety on July 7, 2014, and (briefly) closed the case.

On July 16, 2014, Mr. Ghazzaoui filed this appeal, in which he challenges the April 10, July 1, and July 7, 2014, orders.

QUESTIONS PRESENTED

Mr. Ghazzaoui presented eight questions, which we have consolidated and rephrased as follows:

1. Did the court err or abuse its discretion in denying Mr. Ghazzaoui's motion to compel and in not holding a hearing?

[3] We shall refer to this motion as the "omnibus motion," as its title is thirty-eight words long.

2. Did the trial court err or abuse its discretion in granting Ms. Chelle's motion for a protective order?

3. Did the court err in denying Mr. Ghazzaoui's motion to vacate the grant of the protective order?

4. Did the court err or abuse its discretion in granting Ms. Chelle's motion for protective order concerning the credit union?

5. Did the court err or abuse its discretion in denying Mr. Ghazzaoui's omnibus motion?

We have appellate jurisdiction to consider only one of these questions – the last question. We have jurisdiction to consider that question only insofar as it concerns the issue of custody. On that issue, we affirm the circuit court's judgment.

DISCUSSION

A. What Issues are Before the Court?

The first question is exactly which orders are reviewable on appeal. "Because the court retains continuing jurisdiction over the custody of minor children, no award of custody or visitation, even when incorporated into a judgment, is entirely beyond modification, and such an award therefore never achieves quite the degree of finality that accompanies other kinds of judgments." *Frase v. Barnhart*, 379 Md. 100, 112 (2003). Consequently, this case does not fit within the general rule that an appeal "must await the entry of a final judgment that disposes of all claims against all parties." *Silbersack v. ACandS, Inc.*, 402 Md. 673, 678 (2008) (citing *Smith v. Lead Indus. Ass'n, Inc.*, 386 Md. 12, 21 (2005); *Shoemaker v. Smith*, 353 Md. 143, 165 (1999); *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)); *see also* Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article ("CJP").

Still, the right to appeal is purely statutory (*see Quillens v. Moore*, 399 Md. 97, 115 (2007)), and we may not hear any appeal that does not comply with the statutory requirements. *See Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 262 (2009). The question, then, becomes, whether Mr. Ghazzaoui has any statutory right to appeal.

CJP § 12-303(3)(x) permits an appeal from an interlocutory order "[d]epriving a parent . . . of the care and custody of his child, or changing the terms of such an order[.]" Although the order denying the omnibus motion concerns custody, it does not, strictly speaking, deprive Mr. Ghazzaoui of the care and custody of his child or change the terms of such an order, as it merely maintains the regime of joint custody. Nonetheless, in *Frase v. Barnhart*, 379 Md. at 118-19, the Court of Appeals held that a mother could use section 12-303(3)(x) to appeal an interlocutory custody ruling that declined to eliminate ongoing conditions on her access to her children. Similarly, in *Seidlitz v. Seidlitz*, 23 Md. App. 327, 330-32 (1974), this Court held that, under the predecessor of section 12-303(3)(x), it had appellate jurisdiction to decide an appeal from an interlocutory ruling in which the trial court had concluded that it lacked jurisdiction to make any changes in custody. In view of those decisions, we hold that under section 12-303(3)(x) Mr. Ghazzaoui has the right to appeal the denial of his omnibus motion insofar as it pertains to the question of custody.[4]

[4] *But cf. In re Billy W.*, 387 Md. 675, 692 (2005) (in a CINA case, mother did not have the right to an immediate appeal, under section 12-303(3)(x), of a decision in which the circuit court declined to make changes to the permanency plan).

The appeal, however, does not encompass the other interlocutory rulings that Mr. Ghazzaoui has challenged. Had the court entered a final judgment on the merits, those interlocutory orders would be "open to review by the Court" under Md. Rule 8-131(d). But that rule does not apply to "permissible appeals from interlocutory orders," *Snowden v. Baltimore Gas & Elec. Co*., 300 Md. 555, 560 n.2 (1984), including appeals permitted under section 12-303. *See id*.; *see also Maryland Bd. of Physicians v. Geier*, ___ Md. App. ___, 2015 WL 5735234, at *12-13 (Oct. 1, 2015); *Banashak v. Wittstadt*, 167 Md. App. 627, 671 (2006) (rejecting "the tactic of attempting to smuggle a non-appealable issue aboard by coupling it with an appealable traveling companion"); *Forward v. McNeily*, 148 Md. App. 290, 296 n.2 (2002) ("a non-appealable order may not be combined with an appealable interlocutory order so as to confer jurisdiction upon this Court"). Accordingly, we hold that Mr. Ghazzaoui has no right to appeal any interlocutory ruling aside from the denial of the portion of the omnibus motion that pertains to the question of custody.[5]

[5] Even if Mr. Ghazzaoui had the right to appeal the other rulings, we would find no error or abuse of discretion. Because the court had already ordered Ms. Chelle to "participate[] in open and effective communications" with Mr. Ghazzaoui, his interrogatories and motion to compel were both unnecessary and unhelpful. While the court arguably acted a bit precipitously in granting Ms. Chelle's motion for a protective order before the time for Mr. Ghazzaoui's response had expired, the court correctly observed that in moving to set aside the order Mr. Ghazzaoui presented no persuasive argument on the merits. Mr. Ghazzaoui has offered no cogent explanation of why the court abused its discretion in discovery matters in granting a protective order with respect to Ms. Chelle's credit union. Nor has Mr. Ghazzaoui offered any cogent explanation of why the court abused its almost "boundless discretion" in declining to reconsider its various rulings. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). Finally, Mr.

B. The Decision Not to Reconsider the Custody Order

"Courts must engage in a two-step process when presented with a request to change custody." *Gillespie v. Gillespie*, 206 Md. App. 146, 170 (2012). "'First, the circuit court must assess whether there has been a "material" change in circumstance,'" *id.* (quoting *McMahon v. Piazze*, 162 Md. App. 588, 594 (2005)), *i.e.*, "a change in the circumstances that affects the welfare of the child." *Id.* at 171 (citing *McMahon*, 162 Md. App. at 594); *accord Wagner v. Wagner*, 109 Md. App. 1, 28 (1996). If the court finds a material change in circumstance, it "'proceeds to consider the best interests of the child as if the proceeding were one for original custody.'" *Gillespie*, 206 Md. App. at 170 (quoting *McMahon*, 162 Md. App. at 594).

Several purposes are served by the requirement of a material change that affects the child's welfare. First, "[t]he desirability of maintaining stability in the life of a child is well recognized, and a change in custody may disturb that stability." *McCready v. McCready*, 323 Md. 476, 481 (1991). Second, "[a] litigious or disappointed parent must not be permitted to relitigate questions of custody endlessly upon the same facts, hoping to find a chancellor sympathetic to his or her claim." *Id.* In a related vein, "[a]n order determining custody must be afforded some finality." *Id.*; *see McMahon*, 162 Md. App. at 594 ("the requirement of a showing of 'material change' has its roots in principles of claim and issue preclusion").

Ghazzaoui had no right to a hearing, because none of the rulings were dispositive of a claim or defense. Md. Rule 2-311(f).

The burden is on the moving party – here, Mr. Ghazzaoui – "'to show that there has been a material change in circumstances since the entry of the final custody order and that it is now in the best interest of the child for custody to be changed.'" *Gillespie*, 206 Md. App. at 171-72 (quoting *Sigurdsson v. Nodeen*, 180 Md. App. 326, 344 (2008)).

In this case, the circuit court concluded that "the circumstances as alleged do not amount to a material change in circumstances to warrant a change in legal or physical custody." The Court of Appeals has pointed out three distinct aspects of appellate review of that ruling:

> "When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] [i]f it appears that the chancellor erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the chancellor founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the chancellor's decision should be disturbed only if there has been a clear abuse of discretion."

In re Yve S., 373 Md. 551, 586 (2003) (quoting *Davis v. Davis*, 280 Md. 119, 125-26 (1977)).

Applying the requisite standards, we agree that Mr. Ghazzaoui's omnibus motion failed to establish a material change in circumstances.

Mr. Ghazzaoui alleges that, between the date of the prior order (July 30, 2013) and the filing of his omnibus motion on June 10, 2014, Ms. Chelle continued to behave in the same intransigent way as she had allegedly behaved in the past. The only new behavior alleged in Mr. Ghazzaoui's motion is that Ms. Chelle obstructed the return of the child's passport to the court. If *continuing* intransigence plus the passport incident are the only

grounds set forth by Mr. Ghazzaoui, we cannot conclude that the court committed clear error and abused its discretion in finding no *change* in circumstances materially affecting the child's best interests. *Wagner*, 109 Md. App. at 28 (a "change in circumstances" is a variation between the current circumstances and "the circumstances known to the trial court when it rendered the prior order").[6]

It is dismaying that M.'s parents, who are clearly intelligent, talented, and caring people, have been unwilling or unable to work cooperatively in their child's interest, as the circuit court hoped that they would do. It is, however, completely understandable that the circuit court would be reluctant to change custody to the detriment of one parent and the benefit of another if both have contributed in various ways to the impasse. We have neither the right nor the inclination to second-guess the circuit court judge, who has overseen all aspects of this difficult case for more than five years.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[6] Although the hearing transcripts might conceivably have altered this conclusion, they are not part of the record.