

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1683

September Term, 2014

MICHAEL TINELLI

v.

VOLHA (née BUTKOUSKAYA) TITOVETS
et. al.

Kehoe,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 23, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Michael Tinelli appeals from a September 9, 2014 order of the Worcester County Circuit Court dismissing his earlier notice of appeal filed on May 23, 2014 in his ongoing divorce action for failure to pay the filing fee. Mr. Tinelli raises several issues, including that he was denied due process by the circuit court.¹

We grant the Motion to Strike Appellant's Brief and Dismiss Appeal filed by Appellee, Bureau of Support Enforcement of Worcester County ("Bureau") on October 9, 2014. Following a Show Cause Order issued by this Court, Appellant has failed to demonstrate that he properly served the Bureau or Appellee Volha Butkouskaya Titovets with his notice of appeal, briefs and record extracts as required by Rules 8-602(a)(7), 8-502 (c) and 1-321. We note that Mr. Tinelli's appeal would also fail on the merits because Mr. Tinelli failed to satisfy his duty to notify the circuit court of his change in address.

I.

Background

On May 23, 2014, Mr. Tinelli filed a notice of appeal in the Circuit Court for Worcester County from an order entered in his divorce action, *Butkouskaya v. Tinelli*, N.

¹ Appellant presents the following issues on appeal:

- I. Was the Appellant given proper notice by the Worcester County Circuit Court, regarding a denial of a fee waiver request, filed by the Appellant with a Notice of Appeal before the lower Court?
- II. Was the Appellant denied due process to address and rectify the fee waiver request denial by the Worcester County Maryland Circuit Court in a timely manner?
- III. Does the Court of Special Appeals, Case no. 521, September Term 2014 have merit in order to be reinstated?

23-C-06-000685.² Along with his notice of appeal, Mr. Tinelli submitted a request for a waiver of the filing fee. Then Mr. Tinelli moved from his home at 3 Sloop Lane, in Berlin, Maryland (“Old Address”), to 38198 Keenwik Road in Selbyville, Delaware (“New Address”). Mr. Tinelli maintains that he immediately notified the United States Postal Service, the Worcester County Department of Social Services, and the Circuit Court for Worcester County. He also maintains that he notified Appellees, the Bureau and Ms. Volha Butkouskaya Titovets of his change in address. Nothing in the record demonstrates that Mr. Tinelli contacted the court about his address change prior to October 9, 2014—the same date on which he filed the instant notice of appeal.^{3,4}

² On April 23, 2014, the circuit court held a hearing on Appellee’s Motion to Resume Support and ordered that Mr. Tinelli’s child support payments shall resume effective March 1, 2014. Appellee’s motion was filed following this Court’s decision affirming the circuit courts’ denial of Mr. Tinelli’s motion for enforcement and modification of the terms of the June 21, 2012, consent order between himself and Ms. Volha Butkouskaya Titovets. This Court agreed with the circuit court that Mr. Tinelli’s motion did not allege a material change in circumstances to necessitate a change in the consent order, nor were the alleged violations of the consent order by Ms. Volha Butkouskaya Titovets “so egregious” that the court needed to intervene to protect the children. Shortly after Mr. Tinelli noticed the instant appeal, this Court issued its decision in another appeal taken in the same divorce, in which we affirmed the circuit court’s denial of Mr. Tinelli’s motion to modify the child support award. This Court concluded that Mr. Tinelli did not fall into any exception for the potential income calculation and that he had failed to demonstrate that there was a material change in circumstances to justify a recalculation of his child support obligation.

³ Docket entries in the case history show that on October 9, 2014, Mr. Tinelli’s address was changed to 38198 Keenwik Road, Selbyville, Delaware.

⁴ Mr. Tinelli offers a document in the record extract that resembles (the document is cut off from the sides) a copy of an envelope from the Circuit Court for Worcester County. The envelope has a U.S. Postage stamp in the upper right hand corner, with the date “SEP 10 2014.” Below the stamp, there is text, located above a barcode, stating:

Meanwhile, on June 3, 2014, the circuit court denied Mr. Tinelli's fee waiver request and sent notice to Mr. Tinelli's Old Address. On August 7, 2014, a Notice of Order to Strike the May 23 notice of appeal was sent to Mr. Tinelli, at his Old Address, for failure to pay the filing fee pursuant to Maryland Rule 8-203. Rule 8-203(b) requires that, prior to striking a notice of appeal, the circuit court must notify all of the parties and allow 15 days for the parties to show good cause why the appeal should not be stricken. When Mr. Tinelli failed to respond, on September 9, 2014, the circuit court issued an order striking his May 23, 2014, notice of appeal.

Mr. Tinelli noted this appeal on October 9, 2014, appealing the circuit court's order striking his May 23, 2014, appeal. Mr. Tinelli argues that he properly notified the circuit court of his change of address and that he was denied due process because he did not receive the Notice of Order to Strike, which was sent to his Old Address, before the court issued its order striking his appeal.⁵

Notify Sender of New Address
Tinelli
38198 Keenwik Rd.
Selbyville DE 19975-4361

By its appearance, this text is the familiar yellow notification sticker that the United States Postal Service adheres to mail that has been sent to the wrong address per a change of address the Postal Service has on file. This sticker instructs the recipient to notify the sender of the mail that the recipient's address has changed. This document is not helpful to Mr. Tinelli's argument that he filed a change of address with the court prior to the August 7, 2014 Notice of Order to Strike the May 23, 2014 notice of appeal. It only evidences that sometime prior to September 10, 2014, he filed a change of address with the United States Postal Service.

⁵ Mr. Tinelli filed a request for a fee waiver for *this* appeal, which was granted on October 9, 2014.

On October 21, 2015, the Bureau filed a motion in this Court to strike Mr. Tinelli’s brief and dismiss the appeal, or in the alternative, postpone the argument. The Bureau asserts in its motion that neither it, nor its undersigned counsel, were served with Mr. Tinelli’s original brief, corrected brief, or any of the motions to extend time or file fewer briefs that Mr. Tinelli filed in this Court. The Bureau notes that on May 28, 2015, this Court issued an order instructing Mr. Tinelli to file his brief and record extract and to certify to the Court that the brief and record extract were served on Appellee Butkouskaya and on “Joseph B. Spillman, Jr., Assistant Attorney General [“AAG Spillman”], 311 W. Saratoga Street, Suite 1015, Baltimore, MD 21201.” The Bureau represents, however, that AAG Spillman never received service of the briefs or record extract.^{6,7}

In response to the Bureau’s motion, on November 5, 2015, this Court issued an order to Mr. Tinelli to show cause within 15 days why his brief should not be stricken and his

⁶ The Bureau indicates that it does not have knowledge whether Appellee Butkouskaya was served, but it notes that the address for Ms. Butkouskaya on Mr. Tinelli’s certificate of service in his corrected brief is not the address this Court provided for Ms. Butkouskaya in its May 28, 2015, order. The record on appeal contains no filings by Appellee Butkouskaya.

⁷ On July 23, 2015, this Court issued an order instructing Mr. Tinelli to file corrected briefs and record extracts in accordance with the Maryland Rules. The Bureau states that it only discovered that Mr. Tinelli filed corrected briefs and record extracts in this Court when Counsel for the Bureau visited the Office of the Clerk after receiving notice that this case had received an argument date. At that time, the clerk provided the Bureau with copies of Mr. Tinelli’s brief and record extract. The Bureau points out that the certificate of service contained in the corrected brief states that the documents were mailed to Appellee Butkouskaya, and “B.O.S.E. of Worcester County Maryland, 424 W. Market Street, Ste. B, Snow Hill, Md. 21863,” but not to the Bureau’s trial attorney. The Bureau maintains that it did not receive these documents, “notwithstanding [Mr. Tinelli’s] certifications indicating that he was mailing court papers to the agency.”

appeal dismissed for failure to serve the Appellees with his brief and other papers, as required by Maryland Rule 1-321 and 8-502 (c). In his response, Mr. Tinelli alleges the Bureau “knowingly submitted false allegations before the Honorable C.O.S.A, about the Respondent,” but he does not provide an affidavit of service or return receipt, or point this Court to any evidence that supports his claim that he served the Appellees in this case.

II.

Discussion

Per Maryland Rule 8-502 (c), on appeal to this Court, “two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.” Maryland Rule 1-321 states, in pertinent part:

(a) Generally. Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. **If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court.** Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

Mr. Tinelli’s corrected brief, filed with this Court on August 24, 2015, contains a certificate of service stating that the brief was mailed to “B.O.S.E.,” but does not state that the brief was also mailed to AAG Spillman, who entered his appearance in this case on April, 21, 2015, and to whom this Court instructed Mr. Tinelli to send his brief in its order

issued May 28, 2015. Although Mr. Tinelli claims that he sent the corrected briefs and record extracts to the Bureau, the Bureau maintains that it did not receive the documents. Given the chance to show cause why his appeal should not be dismissed, Mr. Tinelli failed to provide any evidence—such as a return receipt or an affidavit of service—that would allow this Court to determine that he did properly serve the parties with his brief and record extract.⁸

Therefore, this Court grants the Bureau’s Motion to Strike Appellant’s Brief and Dismiss Appeal, filed on October 9, 2014, for failure to properly serve the Appellees with his notice of appeal, briefs and record extracts as required by Rules 8-602(a)(7), 8-502 (c) and 1-321. *See Rollins v. Capital Plaza Associates, L.P.*, 181 Md. App. 188, 202-03 (2008) (holding that violations of rules of appellate procedure, with respect to record extract and contents of appellate brief, warranted dismissal of appeal); *Wallick v. Wallick*, 25 Md. App. 706, 707 (1975) (“the rules which govern the procedures which must be observed in appealing to this Court are to be read and followed.” (citations omitted)).

Even if we were to reach the merits of this case,⁹ Mr. Tinelli’s claim that the circuit court violated his right to due process by sending the Notice of Order to Strike his appeal

⁸ It is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel. This Court has stated that “the principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident.” *Tretick v. Layman*, 95 Md. App. 62, 68 (1993).

⁹ We recognize that appealing from an order of the circuit court striking a notice of appeal is proper under *Sullivan v. Ins. Comm’r.*, 291 Md. 277, 284 (1981), where the Court of Appeals stated, “[i]t is also clear that the order striking the entry of appeal was a

to his Old Address would still fail, again, because of his failure to satisfy his “duty to keep himself informed as to the progress of a pending case.” *Das v. Das*, 133 Md. App. 1, 19-20 (2000) (stating also that “a litigant has ‘a continuing obligation to furnish the court with [his] most recent address.’” (citing *Penn Cent. Co. v. Buffalo Spring & Equip. Co.*, 260 Md. 576, 581 (1971) and *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998))).

Here, the circuit court was required, pursuant to Maryland Rules 8-203(b) and 1-321, to serve notice on all parties that an order striking an appeal would be filed unless a response was filed within 15 days showing good cause why the notice should not be stricken. Rule 1-321 states that service on a party “shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address.”

On August 8, 2014, when the Notice of Order Striking Appeal was sent, Mr. Tinelli’s address, according to the docket entries in the case history, was 3 Sloop Lane—his Old Address. The docket entries in the case history show that Mr. Tinelli’s address was not updated with the court until he filed his second appeal on October 9, 2014. There is no evidence in the record on appeal that the circuit court was notified beforehand.

In *Estime v. King*, 196 Md. App. 296, 303-05 (2010), this Court stated that “both this Court and the Court of Appeals have consistently held that docket entries are presumptively correct, and will be considered dispositive evidence of when a paper was

judgment. It is an appealable order.” *See also* Md. Code (1973, 2013 Repl. Vol.) Courts & Judicial Proceedings Article (“CJP”) § 12-301.

filed in court, *unless* there is a conflict between the docket entries and the transcript of proceedings in a particular action.” We held that where the docket entry did not conflict with any other transcript, it was dispositive of the date that the appellant filed his change of address line. *Id.* at 305. Here, the docket entries in the case history show that Mr. Tinelli’s address did not change until October 9, 2015, and nothing in the record contradicts the docket entries. Therefore, this Court will presume that the docket entry showing Mr. Tinelli first notified the court of his change of address on October 9, 2015, is correct and is dispositive of the matter. *See id.* at 305.

By sending the notice of order to strike an appeal to Mr. Tinelli’s Old Address, the court properly complied with Rule 1-321 and Mr. Tinelli received due process notice that his appeal was going to be stricken.¹⁰ Therefore, we would affirm the circuit court’s September 9, 2014, order striking Mr. Tinelli’s May 23, 2014, notice of appeal.

**APPELLEE’S MOTION TO STRIKE
BRIEF AND DISMISS APPEAL IS
GRANTED.
COSTS WAIVED.**

¹⁰ Pursuant to Rule 1-321, *supra*, the circuit court properly mailed the August 7, 2014, notice of order to strike the appeal to the address the court had on file at that time. In *Attorney Grievance Com’n of Maryland v. Middleton*, 360 Md. 34, 46-47 (2000), the Court of Appeals discounted the appellant’s argument that the entry of default in that case was improper because appellant did not receive the notice of entry of default, which was sent to his old address. *Id.* There, appellant was evicted from his old residence and failed to notify the circuit court of his change of address. *Id.* at 47. The Court determined that the notice was sent in accordance with Rule 2-613, which equally to Rule 1-321, requires notice to be sent to the “last known address of the defendant.” *Id.* at 46. Because the appellant’s last known address was his old address, the Court of Appeals held that notice was properly sent to that address, and “[appellant] has no one to blame but himself if the notice of order of default was not received.” *Id.*