

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0376

September Term, 2016

NATHANIEL MAURICE COSTLEY, SR.

v.

CHRISTINA M. STEINER

Krauser, C.J.,
Wright,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: November 29, 2016

*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.

Nathaniel M. Costley, Jr., (“Nathaniel”), the now 14-year-old minor whose custody is the subject of this appeal, was born on March 16, 2002, in Carroll County. The pro-se appellant, Nathaniel M. Costley, Sr., (“Father”), is the biological father. The appellee, Christina M. Steiner, (“Mother”), is the biological mother. The mother and the father never married; nor did they ever reside together.

For fourteen years, however, litigation between the biological parents has been continuous and acrimonious. Litigation was initiated by the Father within days of Nathaniel’s birth. As early as October 4, 2002, the Circuit Court for Carroll County granted sole legal custody and primary physical custody to the Mother with visitation rights granted to the Father.

That custody arrangement has continued unchanged to the present day, but with modifications to the visitation privileges having been ordered on three occasions. Over the years, there have been numerous contempt proceedings, against the Father, brought by the Bureau of Support Enforcement for non-payment of child support and brought by the Mother for the Father’s chronic non-compliance with visitation orders. There have also been multiple attempts by the Father to modify custody, including two unsuccessful appeals to this Court.

The current case began with the filing on October 6, 2014, of the Father’s Emergency Petition for Contempt and Emergency Motion to Modify Custody. The Mother responded by filing a Counterclaim to Modify Visitation and Child Support. The motions came on for a hearing before Magistrate James F. Brewer on August 24, 2015. On the date of the filing, Magistrate Brewer had denied the “Emergency” aspect of the Father’s motion

and ordered the case “to proceed in normal course.” Magistrate Brewer issued his Report and Recommendations on February 26, 2016. The Father took Exceptions to the Report and Recommendations.

On April 1, 2016, Judge Thomas F. Stansfield dismissed the Father’s Exceptions and incorporated the Master’s Recommendations into an Order modifying the Father’s visitation, increasing the child support, and awarding counsel fees as requested by the Mother. This appeal followed on April 29, 2016. On the appeal, the Father contends

1. that Judge Stansfield erroneously dismissed his Exceptions to the Master’s Recommendations without a hearing;
2. that Judge Stansfield erroneously accepted the Report and Recommendations of the Master notwithstanding the fact that they had not been timely filed; and
3. that in increasing the child support payments, Judge Stansfield had erroneously gone outside the Child Support Guidelines.

Failure to Comply with Rule 9-208(g)

On April 1, 2016, Judge Stansfield dismissed the Father’s Exceptions because of the Father’s failure to comply with the mandatory provision of Maryland Rule 9-208(g).

That rule provides:

“(g) Requirements for excepting party. At the time the exceptions are filed, the excepting party shall do one of the following: (1) order a transcript of so much of the testimony as is necessary to rule on the exceptions, make an agreement for payment to ensure preparation of the transcript, and file a certificate of compliance stating that the transcript has been ordered and the agreement has been made; (2) file a certification that no transcript is necessary to rule on the exceptions; (3) file an agreed statement of facts in lieu of the transcript; or (4) file an affidavit of indigency and motion requesting that the court accept an electronic recording of the proceedings as the transcript. ... The court may dismiss the exceptions of a party who has not complied with this section.”

(Emphasis supplied).

The Father’s failure to comply with Rule 9-208(g) was loud and clear. He, indeed, did file a Transcript Order Form on March 4, 2016. The Court Reporters’ Office accordingly provided the Father with a cost estimate for preparation of the transcript that very day and mailed it to the Father. The Father acknowledged having received the estimate. He made no effort, however to “make an agreement for payment” with the Reporters’ Office in order to “ensure preparation of the transcript” as required by the Rule. The Father’s certificate of compliance, submitted along with his Exceptions, is deficient in that it fails to confirm that “the agreement has been made.” As a result, no transcript was ever prepared.

In the 14-year history of the litigation in this case, moreover, the Father had on five prior occasions failed to provide for payment for the preparation of a transcript when filing Exceptions to a Master’s Report. On all five occasions, the Exceptions were denied. We see no abuse of discretion in Judge Stansfield’s dismissal of the Exceptions in this case. See Lebac v. Lebac, 109 Md. App. 396, 401 (1996).

The Timeliness of the Master’s Report

The short answer to the appellant’s second contention is that it has not been preserved for appellate review. The hearing before Magistrate Brewer took place on August 24, 2015. Magistrate Brewer issued his Report and Recommendations on February 26, 2016. The appellant now contends that Maryland Rule 9-208(e)(1) directs that the Master’s Report should be filed with the circuit court within 30 days of the hearing.

The appellant filed his Exceptions to the Magistrate’s Report and Recommendations on March 4, 2016. In those Exceptions, the appellant raised a number of challenges to Magistrate Brewer and to his Report. The appellant accused Magistrate Brewer of racial bias and called for him to be sanctioned and disbarred. Opposing counsel was attacked for presenting “false and misleading evidence” before the magistrate and encouraging the commission of perjury. In no respect, however, was there the remotest mention of any untimeliness in the filing of the Magistrate’s Report. Judge Stansfield was never asked to make any inquiry in that regard and was certainly never asked to make any sort of a ruling. The issue is simply not preserved for appellate review.

In the appellant’s appellate brief, moreover, he baldly asserts that the Report was not timely filed but he then abandons the issue. He argues no law and he cites no law. His only argument is the completely unrelated challenge that Magistrate Brewer had an undisclosed conflict of interest. There is nothing properly before us.

Accepting the Magistrate’s Recommendations

The appellant’s final contention is a re-argument of the merits of the case. The flaws in the appellant’s attack on the findings and recommendations of Magistrate Brewer can be found in such charges, in the appellant’s brief, as that “anyone who was present ... can infer that the reasons he [i.e., Magistrate Brewer] took [visitation] time from the Appellant was because he did not like appellant.” The appellant’s challenge to the sufficiency of the evidence consists of such appellate accusations as, “Magistrate Brewer allowed Alan Silverberg, Attorney for the Defendant during trial, to lie and introduce evidence that was not true.” We are not persuaded by such argument.

**JUDGMENT AFFIRMED; COSTS
TO BE PAID BY APPELLANT.**