UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1483

September Term, 2015

VERNITA J. ALI

V.

DAMIEN L. DAVIS

Kehoe,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: September 7, 2016

Appellant, Vernita J. Ali, appeals orders of the Circuit Court for Baltimore City increasing her child support payments to appellee, Damien L. Davis, and denying her motion to modify custody, visitation, and child support for her minor son M.D.

She presents three questions for our review, which we have expanded into four, reordered, and reworded based on our understanding of her questions:[1]

1. Did the circuit court err by holding a hearing on Mr. Davis's motion to modify child support before ruling on Mrs. Ali's motion to compel discovery responses?
2. Did the circuit court err by holding a hearing on Mr. Davis's motion to modify child support based on Mrs. Ali's assertion that she did not receive notice of the hearing from the court?

[1] Mrs. Ali presents the following questions in her brief:

1. Was the Circuit Court of Maryland, Baltimore City hearing regarding the Motion for Modification of Child Custody and Child Support which does not appear on the docket legally correct when Maryland Rule 2-432(a)(b)(A)(B)(D)(E)(F)(G)(e) and/or Maryland Rule 2-311(a)(b)…which requires the court to act upon the multiple pending motions (Appellant's First Set of Interrogatories Request for Admissions and Request for Production of Documents and Motion to Compel First Set of Interrogatories, Motion to Conduct Hearing Telephonically or by Video) which was filed during the Discovery process during this case and currently before the court?
2. Did the Circuit Court err by ruling on the case **before** ruling on the answer to the "*Defendant's Motion to File an Exception to the Master's Recommendations and In the Alternative, Motion to Vacate Ruling"* **which was res judicata in this matter?**
3. Did the Circuit Court err by ruling on the case without considering the best interest of Maison when per the ***MD Fam L Code § 9-105 (2013) (2) Unjustifiable denial or interference with visitation granted by order where it states that… "In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interest of the child, take any or all of the following actions: (2) Modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order;"?***

3. Did the circuit court err by ordering a modification of child support without ruling on Mrs. Ali's exceptions?
4. Did the circuit court err or abuse its discretion in continuing physical custody with Mr. Davis even though he was found in contempt of court for violating the visitation order?

FACTUAL AND PROCEDURAL BACKGROUND

On May 25, 2007, Mrs. Ali,[2] gave birth to M.D. in Baltimore. She filed a "Paternity Petition" in the Circuit Court for Baltimore City on July 1, 2008, that requested the court to declare Mr. Davis the father of M.D., determine a custody arrangement, and award support and other appropriate relief. On July 18, 2008, Mrs. Ali and Mr. Davis consented to a paternity judgment that "Adjudged, Ordered, and Decreed, THAT [Mr. Davis] is the father of the child known as [M.D.] born to [Mrs. Ali] on 5/25/2007," and that he pay child support. The court entered the consent judgment and issued corresponding health insurance and earnings withholding orders on July 31, 2008.

On August 18, 2008, Mr. Davis filed a Complaint for Custody in the circuit court seeking visitation and joint legal custody of M.D. The parties, at a March 26, 2009, scheduling conference, agreed to certain custody, visitation, and child support arrangements, and, on April 1, 2009, an order was entered stating:

> Upon consideration of the papers, proceedings, and the agreement of the parties placed upon the record this 1 day of April, 2009, by the Circuit Court for Baltimore City, hereby
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> **ORDERED** that the parties are awarded joint legal custody of [M.D.] born May, 25, 2007, hereinafter "the Minor Child;" and it is further
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> **ORDERED** that the parties are awarded shared physical custody of the Minor Child according to the following schedule:
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> A) [Mr. Davis] shall have physical custody of the Minor Child during the week;

[2] At that time, Mrs. Ali's surname was Barnes.

B) [Mrs. Ali] shall have physical custody of the Minor Child every weekend, from 5:00 p.m. on Friday through Monday morning between 8:00 a.m. and 9:00 a.m., at which time she will drop the Minor Child off at daycare;
C) [Mrs. Ali] shall be permitted to visit the minor child at the daycare at other times when her schedule permits and the daycare allows;
D) One day per week, [Mrs. Ali] shall be permitted to take the Minor Child out of daycare, so long as he is returned to the daycare by 5:00 p.m.
E) While [Mrs. Ali] is on active duty in the military, [Mr. Davis] shall have primary physical custody of the Minor Child.[3]

ORDERED that, effective March 26, 2009, [Mr. Davis's] current child support obligation, to pay [Mrs. Ali] by Earnings Withholding Order, as set forth in an Order dated July 21, 2008, is terminated by virtue of the minor child residing primarily with [Mr. Davis], and any outstanding monies held by the Office of Child Support Enforcement shall be returned to [Mr. Davis] promptly; and it is further

ORDERED that the Earning Withholdings Order dated July 21, 2008, is terminated; and it is further

ORDERED that the Baltimore City Office of Child Support Enforcement shall revise its records and the Earnings Withholding Order currently in effect to reflect the terms of this order; and it is further

ORDERED that the parties shall be charged generally for the support and maintenance of the Minor Child; and it is further

ORDERED that this court retains continuing jurisdiction of the Minor Child and that all the foregoing relating to him is subject to the further Order of this Court.

On April 20, 2009, Mrs. Ali filed a motion to modify custody and visitation alleging that Mr. Davis was "not in compliance with all that was stated to be followed" in the April 1, 2009, order. She requested that the court modify the order to provide that M.D. be dropped off to her on Fridays and that Mr. Davis be required "to keep all lines of

[3] Mrs. Ali maintains that she only agreed to grant Mr. Davis physical custody of M.D. while she was at basic training but not for the entirety of her active duty service, as provided in the order.

communication open so, that contacting him is never a problem as well as allot[t]ing ample time for changes if needed to be in timely fashion due to the circumstances." On January 21, 2010, Mrs. Ali filed an amended motion to modify custody indicating that she "would like [her] son to be with [her] during the week." She pointed out that she was "not in training anymore for the military;" that she was "awaiting a new duty station" and she wanted M.D. with her. She proposed to "split living arrangements" so M.D. could still see his father. She requested the court to "change visitation to week by week until [she is] deployed or change[s] duty stations." Mr. Davis responded on February 24, 2010.

On March 23, 2010, Mr. Davis filed a Complaint for Child Support and Medical Insurance in the circuit court. Mr. Davis and Mrs. Ali reached an agreement on those issues, and the court, on October 25, 2010, ordered Mrs. Ali to pay child support in the amount of $291 per month with an additional $15 towards arrears and to provide M.D. medical insurance. On May 2, 2011, Mr. Davis filed a Motion to Modify Child Support due to a change in circumstances as a result of Mrs. Ali being on "active duty in the military."[4]

On May 3, 2011, Mrs. Ali filed a Petition/Motion to Modify Custody alleging that Mr. Davis was "to provide childcare arrangements only during the time in which [she] was in basic training" and that Mr. Davis's physical custody of M.D. "was supposed to be a temporary living situation." Because she had been in Maryland "for a few months," she

[4] This motion is not otherwise expressly addressed in the record, but the issue of child support is considered at a hearing on September 19, 2012.

wished to have physical custody of M.D. Mr. Davis, in his answer on July 29, 2011, stated that he "was granted custody [of M.D.] April 1, 2009" and, as the father of M.D., he was providing more than just "child care arrangements."

While that petition was pending, Mrs. Ali filed a second Petition/Motion to Modify Custody on May 21, 2012 averring, again, that Mr. Davis was to maintain physical custody of M.D. only while she was in basic training, and that it "was only to be a temporary arrangement." She requested "physical custody and [to] split the time on holidays, birthdays, summers and important events in our lives," or in the alternative, to "split the year equally to allow us both time with our son." The petition was in response to a recent finding of contempt against Mr. Davis, when she missed "a year of [her] son[']s life] due to Mr. Davis not complying with the order."

A hearing was set for September 19, 2012, to address child support, custody, and visitation. The court issued a scheduling order on August 8, setting a discovery deadline of September 7, 2012, and ordering the parties to attend a Shared Parenting and Education Seminar, prepare a "Child Support Guidelines Worksheet," and to provide other financial information. Mrs. Ali propounded discovery on August 13, 2012, which included interrogatories, requests for documents, and requests for admissions, and having received no response, she filed a motion to compel on August 31, 2012.

After the September 19, 2012 hearing on Modification of Custody, Visitation, and Support, at which both parties appeared unrepresented, the magistrate, on September 21, 2012, issued a report and recommendations finding that there had "been a significant

change in circumstances since the date of the [April 1, 2009,] Order;" "that neither party has demonstrated that he or she fosters the relationship between the Minor Child and the other party;" and that "[e]ach has violated the court order and kept the Minor Child longer than allowed." The subsequent court order, dated October 24, 2012, stated:

> **ORDERED** that [Mrs. Ali] (hereinafter "Mother"), and [Mr. Davis] (hereinafter "Father") shall continue to have joint legal custody of [M.D.], born May 25, 2007 (hereinafter "the Minor Child"), but if Mother moves out the State of Maryland, [and], after good faith attempts to resolve an issue with respect to the health, education and welfare of the Minor Child the parties are unable to agree, then and only then Father shall have tie breaking authority; and it is further
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> **ORDERED** that Father shall continue to have primary physical custody of the Minor Child; and it is further
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> **ORDERED** that as long as Mother is in Maryland, Mother shall have the Minor Child with her every weekend from Friday, when she shall pick up the child from Father's mother's residence at between 6:00 and 6:30 p.m. until Sunday at 6:30 p.m., when Father shall pick up the Minor Child from Mother's residence; and it is further
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> **ORDERED** that when a party (or the party's designee) comes to the other party's residence to pick up the Minor Child, the driver will call the residence to notify the occupant of the driver's arrival. The occupant will wait in the doorway while the Minor Child goes to the automobile, and the driver will only exit the automobile to help the Minor Child into the automobile and car seat; and it is further
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> **ORDERED** that if Mother moves from the State of Maryland and is unable to exercise weekend visitation, Father shall continue to have primary physical custody but Mother shall have the right to have the Minor Child with her as follows:
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> - From the second Sunday following the last day of classes in the summer until the second to last Sunday prior to the start of classes at the end of the summer break.
> - Mother shall also have the right to have the Minor Child with her from Saturday following the last day of classes before the Winter and Spring breaks until the Saturday before classes resume.
> - Mother shall be responsible for the costs of round-trip transportation for the Minor Child to and from her new location, including transportation for her designated adult companion if the airline requires a companion.

> • Thirty (30) days prior to the travel, Mother shall send Father the itinerary, as well as confirmation of a return ticket, via email; and it is further
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> **ORDERED** that while both parties live in Maryland or within close enough proximity for Mother to exercise weekend visitation, whenever the Minor Child is with a party, that party shall facilitate a telephone call between the Minor Child and the other party, to take place at 7:30 p.m. unless the parties agree, via email, on a different time; and it is further
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> **ORDERED** that if Mother moves out of the State of Maryland and is unable to exercise weekend visitation, the parties shall immediately arrange for Skype service (or a similar service if the parties are able to agree on a different service, which agreement shall be via email); and it is further
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> **ORDERED** that each party shall ensure that when the Minor Child is in that party's physical custody that the Minor Child has a Skype session of at least thirty (30) minutes in duration with the other party twice a week; unless the parties otherwise agree, via email, on different days and times, the Skype sessions shall take place on Tuesdays and Sundays at 7:00 p.m. Baltimore time; and it is further
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> **ORDERED** that except in emergencies (or except for minor notifications of timing of pick ups) the parties shall communicate via email, with Father's current email address . . . and Mother's current email address . . . ; and it is further
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> **ORDERED** that each party shall maintain internet service and telephone service at all times, and shall notify the other if there is any change in telephone number, address, and email address; and it is further
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> **ORDERED** that this Court retains continuing jurisdiction over the Minor Child and that all the foregoing relating to him is subject to further Order of this Court.

This Court dismissed Mrs. Ali's appeal of that order on December 19, 2012, for failure to comply with the information report requirements of Maryland Rule 8-205.[5]

[5] Maryland Rule 8-205 provides, in relevant part:

> Upon the filing of a notice of appeal, the clerk of the lower court shall provide to the appellant an information report form prescribed by the Court of Special Appeals. Unless an expedited appeal is elected pursuant to Rule 8-207, the appellant shall file with the Clerk of the Court of Special Appeals a copy of the notice of appeal and a complete and accurate information report.

On or about February 28, 2014, Mr. Davis was charged with child abuse of M.D. A Child in Need of Assistance ("CINA") emergency shelter care hearing was held on March 4, 2014, in which it was "determined that continued residence in [Mr. Davis's] home is contrary to the welfare of [M.D.]," and he was placed in the home of his paternal grandmother pending an adjudicatory hearing on April 1, 2014. Mr. Davis did not notify Mrs. Ali of the abuse charge or of M.D.'s placement with the paternal grandmother, but she was notified by the Baltimore Department of Social Services ("DSS"). The CINA court, on May 9, 2014, sustained the allegations in the petition stating that "the facts were sustained at a prior adjudicatory hearing." The court continued M.D.'s residence with Mr. Davis, subject to an Order of Protective Supervision with DSS, with conditions prohibiting the use of corporal punishment and granting DSS twenty-four hour access to M.D.

On June 18, 2014, Mrs. Ali filed a Petition/Motion to Modify Custody, Visitation, Child Support and Other Relief. Mr. Davis filed an answer and counter-complaint on August 11, 2014, requesting sole physical custody and joint legal custody. On August 21, the case was stayed for sixty days because "the minor child at issue in this case [was] currently subject to the Jurisdiction of the Circuit Court for Baltimore City's Juvenile Division."

On November 6, 2014, Mr. Davis filed a Motion to Modify Child Support averring that the circumstances had changed since the previous order because expenses for M.D. had substantially increased due to daycare, tutoring, and extracurricular activity costs and

Mrs. Ali's income had substantially increased. Mr. Davis filed an amended motion on December 3, 2014, due in part to an error he made in filling out the original form-motion. Mrs. Ali answered on February 13, 2015, pointing out that Mr. Davis did not provide "any documentation, progress reports, or any other detailed information to prove or verify the existence that [M.D.] is enrolled in any activities, daycare, or extracurricular activities to date," and requested that the court deny the motion. In addition, Mrs. Ali filed what was entitled "Answer to Writ of Summons Service (Improper Service)" on March 30, 2015, stating that she "believes that [Mr. Davis], in this most recent action has performed an improper service by sending only a single page of the Writ of Summons thus having [her] sign for a 'Restricted Delivery' . . . item from the United States Postal Service in order to prove service was rendered to [her] in this case."

On May 20, 2015, the court mailed to Mrs. Ali's Wahiawa, Hawaii address a "Notice of Hearing/Trial" for an August 5, 2015, hearing regarding modification of the child support order. In early July, Mr. Davis subpoenaed certain documents from Mrs. Ali including "leave and earnings statements for the months of May, June, and July," and in late July, he mailed, and served upon Mrs. Ali a "Line to Court" that included receipts for daycare costs and the financial information he subpoenaed from Mrs. Ali. The financial information included, among other things, tax returns for 2014 and a financial statement listing Mrs. Ali's total monthly income before taxes and her childcare expenses.

The hearing on Mr. Davis's November 6, 2014, motion to modify child support, at which Mr. Davis appeared unrepresented and Mrs. Ali failed to appear, was held before a magistrate on August 5, 2015, as indicated in the May 20, 2015 notice. Among the evidence considered was an Army "Basic Pay Scale," a "BAH sheet,"[6] the June 2014 Financial Statement of Mrs. Ali, and a "Day Care Receipt." The magistrate issued a report and recommendations on August 7, concluding that there had been "a substantial change in circumstance in that Mother's income has increased . . . warranting a modification of the child support obligation." The report stated:

> **Findings of Fact:**
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> Pursuant to the Order of Court dated October 25, 2010, [Mrs. Ali], (hereinafter "Mother"), was ordered to pay $291 per month in child support and $15 per month toward arrears.
>
> Mother failed to appear.
>
> [Mr. Davis], (hereinafter "Father"), testified that he earns $1,800 per month and pays $537 per month in child support from a previous case. Father testified that Mother is in the Army living in Hawaii and that she is an E-4 pay grade, earning $2,351.40 per month . . . . Father further testified that Mother lives in Honolulu County, HI with two dependents (her husband and their child), which means that at an E-4 pay grade, Mother also receives $2,922 per month for her BAH (housing allowance). Additionally, Father testified that Mother receives a monthly Overseas Cost of Living Allowance at a rate of $402.67 for the first 15 days of each month and $429.51 for the second 15 days of each month . . . . Mother's own

[6] "The Basic Allowance for Housing (BAH) is a military based allowance prescribed by geographic duty location, pay grade, and dependency status. It provides uniformed Service members equitable housing compensation based on housing costs in local civilian housing markets within the United States when government quarters are not provided." Dep't of Def., *Basic Allowance for Housing*, (Aug. 24, 2016, 3:00 PM) http://www.defensetravel.dod.mil/site/bah.cfm. The exhibit list incorrectly titles the document a BHA sheet.

Financial Statement - Short Form filed in June 2014 corroborates that she is earning more than she was when the previous court order was established in 2010 . . . . Combined, Father testified that Mother earns $6,105.58 per month.

On that same Financial Statement, Mother indicated that she pays $35 per month for health insurance for the minor child. As that entire document was offered and accepted into evidence, this Court will find that Mother does pay $35 per month for the minor child's health insurance. Father also indicated that Mother does have work related child care expenses for the 48 days during the summer that the minor child resides with Mother. For those 48 days, Mother pays $380. Father testified that he has work related child care expenses for the remaining months that the child is with him at a rate of $321 per month.

The Court finds the custody arrangement, [Mrs. Ali's] and [Mr. Davis's] income, child's date of birth, and expenses related to pre-existing child support, alimony, health care, extraordinary medical expenses, work-related child-care, cash medical support and other such expenses to be as indicated on the attached child support guidelines.

There is a substantial change in circumstance in that Mother's income has increased.

Conclusions:

Since the last Court Order, there has been a substantial change in circumstance warranting a modification of the support obligation.

Recommendation and Proposed Order:

That effective January 1, 2015, the Order of Court dated October 25, 2010, shall be modified such that [Mrs. Ali's] obligation to pay current child support for the child, [M.D.], born 05/25/07, in the amount of $291 shall now be $1,156 per month.

That effective September 1, 2015, [Mrs. Ali] shall pay $100 per month toward arrears until paid in full.

That all payments shall be by a Revised Earnings Withholding Order through the Maryland Child Support Account, P.O. Box 17396, Baltimore, Maryland 21297-1396.

The report also stated that any exceptions "must be filed with the Clerk of the Court, in person, and a copy sent to the [magistrate] within ten (10) days after recommendations are placed on the record or served" and include a transcript of the proceedings. It also stated that "[t]he Court may dismiss the Exceptions of a party who has not complied with this section."

On August 25, Mrs. Ali filed a "Motion to File an Exception to the [Magistrate's] Recommendations and in the Alternative, Motion to Vacate," (the "Exceptions Motion"), and asserted that she had not been notified of the August 5, 2015, hearing. On August 26, 2015, the court issued its Order for Modification of Child Support, which stated:

> **ORDERED,** that effective **January 1, 2015,** the Order of Court dated October 25, 2010, shall be modified such that [Mrs. Ali's] obligation to pay current child support for the child, [M.D.], born *05/25/07,* in the amount of $291 shall now be $1,156 per month; and it is further
>
> **ORDERED,** that effective September 1, 2015, [Mrs. Ali] shall pay $100 per month toward arrears until paid in full; and it is further
>
> **ORDERED,** that all payments shall be by a Revised Earnings Withholding Order through the Maryland Child Support Account, P.O. Box 17396, Baltimore, Maryland 21297-1396; and it is further
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> **ORDERED**, that current support for the minor child shall continue until the child's 18th birthday, or the first to occur of the following events: the child is no longer enrolled in secondary school, attains the age of 19 or is otherwise emancipated under Maryland law; and it is further
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> **ORDERED,** that upon emancipation of the minor child, any remaining arrears shall be paid at the same rate as the current support until they are paid in full; and it is further
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> **ORDERED,** that each party is required to notify the court and any support enforcement agency ordered to receive payments, within 10 days of any change of address or employment and failure to comply with this provision may result in a party not receiving notice of the initiation of a proceedings to modify or enforce a support order; and it is further
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> **ORDERED, THAT THE BALTIMORE CITY OFFICE OF CHILD SUPPORT ENFORCEMENT SHALL REVISE ITS**

RECORDS AND THE EARNINGS WITHHOLDING ORDER CURRENTLY IN EFFECT TO REFLECT THE TERMS OF THIS ORDER.

ALL SUBJECT TO FURTHER ORDER OF THIS COURT.

While the proceedings related to Mr. Davis's motion to modify child support were coming to an end, the proceedings regarding Mrs. Ali's June 18, 2014, motion to modify custody, visitation and child support were ongoing. At a June 23, 2015, scheduling conference related to that motion, the following colloquy took place:

> MRS. ALI: So to my understanding, this is a combined case now and they're combining custody with child support and any other modifications all into one case number?
>
> THE COURT: Well, you filed a counter-complaint to his petition for custody.
>
> MRS. ALI: Correct.
>
> THE COURT: If you have another case – that's why I'm saying I don't see a child support case in this file.
>
> MRS. ALI: They cancelled that particular hearing and another one was cancelled for August as well.
>
> MR. DAVIS: No, it wasn't. It was rescheduled for –
>
> THE COURT: That isn't the –
>
> MR. DAVIS: August the 5th.
>
> THE COURT: All I'm trying to figure out is you guys filed in the right case because if you didn't file in the right case, then they're not going to be able to do anything when you come back for trial anyway. . .
>
> * * * *
>
> THE CLERK: Your settling conference has been scheduled for July 29th at 9:30 a.m. and your two-hour hearing is scheduled on September 1st, 2015 at 9:30 a.m. in front of [the] Magistrate . . . in Courtroom 317.
>
> MRS. ALI: Okay.
>
> THE COURT: Okay?
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> MR. DAVIS: Okay.
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> THE COURT: All right. Notice will go out to you in the mail. Good luck to you guys.
>
> MR. DAVIS: Thank you.
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> * * * *
>
> MRS. ALI: And then so it'll just be the hearing in September?
>
> THE COURT: It'll just be the trial in September.

MRS. ALI: Okay.
THE COURT: Okay?
MR. DAVIS: Okay. Thank you.
THE COURT: All right.

On July 8, the court issued a scheduling order stating that discovery was to be concluded by August 3, 2015, and that the issues of child support and custody would be heard before a magistrate on September 1, 2015. That same day, the court mailed a "Notice of Hearing/Trial" for the September 1, 2015, magistrate's hearing; a second notice was mailed on July 7, 2015.

On August 4, Mrs. Ali filed a Motion to Request a Telephonic and/or Video Hearing, but did not specify the date of the hearing at which she wanted to appear at electronically. That same day, she also filed discovery requests including interrogatories, requests for production, and requests for admission, which did not contain a certificate of service. On August 26, 2015, the court denied Mrs. Ali's motion to appear electronically. Mrs. Ali filed a motion to compel on August 31, 2015, with a certificate of service to Mr. Davis dated August 22, 2015. When Mrs. Ali failed to appear for the September 1 hearing regarding her June 18, 2014, Motion to Modify Custody, Visitation, and Child Support, and Other Relief, it was dismissed "without prejudice," and an order to that effect was entered on September 17, 2015.

On September 22, 2015, the court hearing the modification of child support motion denied Mrs. Ali's August 25, Exceptions Motion for her failure to timely file the exceptions and her failure to

> order a transcript of the proceedings, make arrangements for payment to ensure preparation of the transcript and file a certificate of compliance stating that the transcript has been ordered; or, . . .
> [F]ile a certification that no transcript is necessary; or, . . .
> [F]ile an agreed statement of facts in lieu of the transcript; or . . .
> [F]ile an affidavit of indecency and motion requesting that the court accept an electronic recording of the proceedings as the transcript.

The order was entered on September 28. On September 23, 2015, Mrs. Ali filed a "Notice of Appeal and Request for Transcript to be Sent to the Court of Special Appeals"[7]

DISCUSSION

The questions on appeal are directed to both the August 26, 2015 order modifying child support and the September 17, 2015 order dismissing, without prejudice, a motion to modify custody, visitation, and child support. Because the proceedings generating those orders moved like ships in separate sea lanes with different magistrates and judges at the respective helms of each, the procedural status of this case is somewhat muddled. To sort out our jurisdiction over the issues presented in this appeal, we look first at a brief timeline of events in regard to each order.

Child Support Proceedings

On November 6, 2014, Mr. Davis filed a Motion to Modify Child Support. He filed an amended motion on December 3, 2014. Mrs. Ali answered on February 13, 2015, and on May 20, 2015, the court mailed to Mrs. Ali's Wahiawa, Hawaii address a "Notice of Hearing/Trial" for an August 5, 2015, hearing, which was held before a magistrate on

[7] No transcripts of the circuit court proceedings, other than several pages included in Mrs. Ali's brief, were received in response to this Court's order to show cause.

August 5, 2015. Mr. Davis appeared unrepresented and Mrs. Ali failed to appear. The magistrate issued a report and recommendations on August 7, finding "a substantial change in circumstance in that Mother's income has increased . . . warranting a modification of the child support obligation." On August 25, Mrs. Ali filed her Exceptions Motion after the deadline set forth in the magistrate's report and Maryland Rule 9-208(f). On August 26, 2015, the court entered its Order for Modification of Child Support. On September 22, 2015, the court denied Mrs. Ali's August 25 Exceptions Motion for her failure to timely file the exceptions and to meet other filing requirements, and entered an order to that effect on September 28.

Custody Modification Proceedings

On June 18, 2014, Mrs. Ali filed a Petition/Motion to Modify Custody, Visitation, Child Support and Other Relief. Mr. Davis answered and filed a counter-complaint on August 11, 2014. On August 21, the case was stayed for sixty days based on the Circuit Court for Baltimore City's Juvenile Division's involvement in the case. There was a scheduling conference on June 23, 2015, and on July 7, the court issued a scheduling order stating that discovery was to be concluded by August 3, 2015, and setting a hearing before a magistrate for September 1, 2015. Mrs. Ali failed to appear for the September 1 hearing, so her claim was dismissed "without prejudice." An order to that effect was entered on September 17.

The Appeal

On September 23, 2015, Mrs. Ali filed her "Notice of Appeal and Request for Transcript to be Sent to the Court of Special Appeals," in which she appears to appeal both the denial of her Exceptions Motion and the court order modifying child support.[8]

STANDARD OF REVIEW

"[T]he question of whether to modify an award of child support 'is left to the sound discretion of the trial court, so long as the discretion was not arbitrarily used or based on incorrect legal principles.'" *Walker v. Grow*, 170 Md. App. 255, 266 (2006) (quoting *Tucker v. Tucker,* 156 Md. App. 484, 492 (2004) (internal quotation marks and citations omitted)). We also review the dismissal of an action for failure to appear under the abuse of discretion standard. *See Zdravkovich v. Siegert*, 151 Md. App. 295, 307 (2003).

Were the Appealed Orders Final Judgments and Were the Issues Preserved

Final Judgments

"[A] party may [only] appeal from a final judgment entered in a civil or criminal case by a circuit court." Md. Code (1973, 2013 Repl. Vol.), § 12-301 of the Courts and

[8] It is not abundantly clear what Mrs. Ali intended to appeal in her September 23, notice of appeal. In the notice of appeal, she states that the court "erred" by "failing to notify [her] of ANY . . . hearings . . . scheduled prior to the September 1, 2015 hearing" and that she "filed a Notice to Appeal regarding the hearing held on August 5, 2015 without her knowledge." We will give her the benefit of any doubt and assume that she intended to appeal both the denial of the Exceptions Motion and, based on lack of notice, the dismissal of the custody proceeding.

Judicial Proceedings Article (CJP § 12-301").[9] As a threshold matter, we consider whether the orders appealed from in this case represent appealable final judgments over which this Court has jurisdiction. *See* CJP §§ 12-301, 12-308. To be appealable, a "decision must be 'so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.'" *Quillens v. Moore*, 399 Md. 97, 115 (2007) (quoting *Cant v. Bartlett,* 292 Md. 611, 614 (1982)). Generally, a judgment that "adjudicates fewer than all of the claims in an action . . . , or that adjudicates less than an entire claim," is not final. Md. Rule 2-602.

It is well settled that an action by the magistrate does not constitute a final judgment, "even if the parties and the court believe that, for practical purposes, the case is over." *O'Brien v. O'Brien*, 367 Md. 547, 555-56, (2002). Rather, it is not until an order, dealing with viable exceptions and the issue before the court, has been signed and entered that a matter becomes appealable. *Id.* An order denying Mrs. Ali's August 25 Exceptions Motion, which was untimely filed, was signed by a circuit court judge on September 22, 2015, and entered on September 28, 2015. The combination of the order modifying child

[9] Mrs. Ali's appeal of the denial of the August 25 Exceptions Motion was filed on September 23, one day after the court signed its order denying the Exceptions Motion and five days before judgment was entered on September 28. In certain circumstances, an appeal will lie even before judgment has been entered. *See* Md. Rule 8-602(d) ("A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.").

support on August 26 and the order denying the exceptions would make the matter an appealable final judgment if child support were the only issue. *Id.*

Due to the bifurcated nature of the proceedings, the custody modification proceeding related to Mrs. Ali's June 18, 2014, petition was still unresolved when the child support order was signed on August 25, 2015, and entered one day later. But, even if the custody proceeding prevented the child support order from being considered a final appealable order, we may consider appeals of non-final orders for the payment of money, CJP § 12-303(3)(v), such as the August 26, 2015, child support order. *Lieberman v. Lieberman*, 81 Md. App. 575, 582 (1990).[10]

Regarding the dismissal of the custody proceeding, after Mrs. Ali failed to appear for a September 1, 2015, hearing on her motion to modify custody, the court issued an order dismissing the case "without prejudice" that was entered September 17, 2015. The court's order dismissing all the claims "without prejudice" fully terminated that action.

[10] When Mrs. Ali filed the July 1, 2008, Paternity Petition, the case was assigned number "24-P-08-002116." On March 23, 2010, Mr. Davis filed a Complaint for Child Support and Medical Insurance, which was assigned number "24-P-10-00637." At that time, the "002116" case was designated the "lead case" and the "00637" case was designated the "sub case." On October 26, 2012, the court entered an Order for Consolidation "having determined that consolidation of the ["002116" and "00637"] cases is appropriate pursuant to Rule 2-503(a)." The proceedings related to Mrs. Ali's June 18, 2014, petition to modify custody and Mr. Davis's November 6, 2014, Motion to Modify Child Support continued to progress through the circuit court separately, resulting in their final dispositions on two separate dates. It is well settled in consolidation cases that "when the circuit court enters a judgment disposing of one case, that judgment is appealable despite the pendency of unresolved claims in another case consolidated with it." *Yarema v. Exxon Corp.*, 305 Md. 219, 236 (1986) (citing *Coppage v. Resolute Ins. Co.*, 264 Md. 261 (1972)).

See Williams v. Snyder, 221 Md. 262, 266–67 (1959); *and see Moore v. Pomory*, 329 Md. 428, 432 (1993) ("[The] dismissal of [an] entire action, without prejudice, is a final appealable judgment."). At that point, both proceedings had reached harbor. Mrs. Ali's notice of appeal on September 23, 2015, was timely to challenge both the modification of child support and the dismissal of her motion to modify custody.

The Issues for Appeal

Counsel for Mr. Davis argues that Mrs. Ali "does not appeal from the Order denying the exceptions, rather she appeals only from the Order confirming the recommendations of the magistrate," and therefore, "there are no appealable decisions of the trial court." Counsel cites *Green v. Green*, 188 Md. App. 661 (2009) for the proposition that "unless a party files timely exceptions to the Magistrate[']s recommendations there are no appealable decisions of the trial Court." Mrs. Ali responds that "all matters submitted to the COSA were properly raised and within COSA guidelines on appeal"

Ordinarily, we will not consider an issue on appeal "unless it plainly appears by the record to have been raised in or decided by the trial court."[11] Md. Rule 8-131. Moreover, we will not consider a magistrate's factual findings, later adopted by the circuit court, when no timely exceptions are filed. *Green*, 188 Md. App. at 674; *and see Miller v. Bosley*, 113 Md. App. 381, 393 (1997) ("[I]f appellant's sole basis for appeal

[11] "[T]he Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131.

was that the [magistrate's] factual findings, such as they are, were clearly erroneous, her failure to file exceptions would have proven fatal to such an argument."). But, even when no timely exceptions are filed, a party "is not precluded from appealing the trial court's adoption of the [magistrate's] recommendation if the issues appealed concern the court's adoption of the [magistrate's] application of law to the facts." *Green*, 188 Md. App. at 674.

Exceptions in response to a magistrate's report or recommendations are governed by Maryland Rule 9-208(e), which provides in relevant part that:

> the magistrate shall prepare written recommendations, which shall include a brief statement of the magistrate's findings and shall be accompanied by a proposed order. The magistrate shall notify each party of the recommendations, either on the record at the conclusion of the hearing or by written notice served pursuant to Rule 1-321.[12] In a matter referred pursuant to subsection (a)(1) of this Rule,[13] the written notice shall be given within ten days after the conclusion of the hearing.

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[12] The relevant portion of Md. Rule 9-208, referral of matters to magistrates, provides:

(a) Referral.

(1) *As of Course.* If a court has a full-time or part-time standing magistrate for domestic relations matters and a hearing has been requested or is required by law, the following matters arising under this Chapter shall be referred to the magistrate as of course unless the court directs otherwise in a specific case:

(A) uncontested divorce, annulment, or alimony;

(B) alimony pendente lite;

(C) child support pendente lite;

(D) support of dependents; . . . .

[13] Md. Rule 1-321 provides:

> **(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. . . . 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

A party taking issue with the report or recommendations may file exceptions in accordance with section (f) of the Rule:

> **(f) Exceptions.** Within ten days after recommendations are placed on the record or served pursuant to section (e) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

On August 7,[14] the magistrate issued a report and recommendations on Mr. Davis's November 6, 2014, motion to modify child support that stated any exceptions "must be filed with the Clerk of the Court, in person, and a copy sent to the [magistrate] within ten (10) days after recommendations are placed on the record or served" and include a transcript of the proceedings. The record reflects that on that date both Mr. Davis and Mrs. Ali were mailed the report and recommendations at their addresses of record.

Pursuant to Rule 9-208(f), the date exceptions were due to be filed was extended to August 21 under Md. Rule 1-203.[15] *See Bush v. Pub. Serv. Comm'n of Md.*, 212 Md.

> 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.

[14] The report and recommendations was entered on August 25, 2015.

[15] Md. Rule 1-203 provides:

> **(a) Computation of Time After an Act, Event, or Default.** In computing any period of time prescribed by these rules, by rule or order of court, or by

App. 127, 133 (2013) (stating that Md. Rule 1–203(c), which affords parties an extra three days beyond the applicable period, is triggered when a party receives service of process by mail and has a right or obligation to act within a specific time after being served by mail is a party exercising such right). Mrs. Ali's exceptions were not filed until August 25, 2015, four days after the deadline set by the Maryland Rules. In addition, Mrs. Ali did not include a copy of the transcripts of the proceedings related to the magistrate's report. Thus, to the extent that Mrs. Ali's arguments relate to the circuit court's adoption of the magistrate's factual findings, they will not be considered.[16] To the extent that arguments not related to the magistrate's factual findings can be distilled from her arguments, we are not precluded from considering them. *See Green*, 188 Md. App. at 674.[17]

> any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are not counted.

[16] Mrs. Ali challenges "erroneous income data," and questions Mr. Davis's child care expenses.

[17] Mrs. Ali raises several arguments for the first time in her reply brief, although she was required "to present and argue all points of appeal in [her] initial brief." *Fed. Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 457 (1979). Ordinarily, we will not consider arguments raised for the first time in the reply brief, unless a review of those arguments is necessary to ensure fairness for all parties or promote the orderly administration of law. *Jones v. State*, 379 Md. 704, 735 (2004). In this case, Mrs. Ali did not address several issues in her motion for exceptions or her appellant's brief, and thus, Mr. Davis was not given the opportunity to properly respond to her newly raised arguments, and our consideration of them would not promote the orderly administration of justice. As we understand them, those arguments are:

- Mr. Davis submitted fraudulent documentation and misled the court. Specifically, she states:

Modification of Child Support Prior to Rulings on Discovery

Contentions

Mrs. Ali contends that the circuit decided the child support modification motion "without first ruling on the outstanding motions before the court." She asserts that the circuit court "issued an 'ORDER DENYING EXCEPTIONS' . . . for a host of reasons after having closed this case on August 5, 2015[, but] before [she] received a ruling on the other pending Motions regarding Discovery previously submitted." In her view, because the court did not "act on pending motions," several issues remain unresolved, including issues "regarding change of custody, visitation, willful disobedience and

> [Mr. Davis] originally submitted his Motion to Modify Child Support without any supporting financial proof, taxes, and/or receipts regarding his claim and actually requested a 'decrease' initially on November 6, 2014. He subsequently filed an amended Motion to Modify Child Support on December 3, 2014 with his correction both without a certificate of service respectively; [Mr. Davis] then submitted an Affidavit of Service attesting service by Donte Carter on January 20, 2015 to the Circuit Court, supposedly signed on December 23, 2014 along with a fraudulent "green card" with a forged signature of the [Mrs. Ali] without the United States Postal Service tracking numbers or stamp of processing which demonstrates that NO PROOF of SERVICE occurred; with careful examination of [Mr. Davis]'s handwriting, it is clearly evident when compared to the 'Request to Reissue Summons' that his same handwriting was used to submit to the court fraudulent documentation along with a sworn affidavit of service.
>
> - Mr. Davis's filings should not have been accepted by the circuit court for improper service and "forged signature on the 'green card.'"
> - Mr. Davis "did not follow Maryland Rule 2-121(a)(1)(3) for Process—Service…and according to Maryland Rule 12-104(b) 'the court may not retroactively modify a child support award prior to the date of filing of the motion for modification' and accordingly the 'modification was improper and [Mr. Davis's] filing should have been rejected by the court.'"

mockery on behalf of [Mr. Davis]'s noncompliance to the court's order, financial distress." And, she further contends that the magistrate failed to sanction Mr. Davis.

Mr. Davis responds that there is "no record of when [Mrs. Ali's] discovery requests were propounded" and that Mrs. Ali "never filed a Motion to Compel discovery." But, even if Mrs. Ali's claim was supported by the record, "failure to complete discovery is not grounds for continuance, except for good cause shown."

Mrs. Ali replies that there were "several motions" still pending "which went unanswered and [were] not given consideration," and the court's failure to rule "interfered with preparation for the Sept. 1, 2015 hearing." She asserts that "Discovery occurred twice during the span of this case (Aug 2012 and July 2015), and in both instances, the Circuit Court of Maryland, Baltimore City failed to rule on the motions before the court prior to closing the case issues respectively regarding the evidence entered."

Analysis

The Maryland Rules provide for discovery in litigation to facilitate the timely disposition of claims and to prevent any unfair surprise. To that end, "[a]ny party may serve written interrogatories directed to any other party;" "serve one or more requests to any other party . . . [to] permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test, or sample designated documents . . . ;" or "serve one or more written requests to any other party for the admission of . . . the genuineness of

any relevant documents or . . . the truth of any relevant matters of fact set forth in the request." Md. Rules 2-421, 2-422, 2-424.

Discovery requests "shall be served upon each of the parties," *see* Md. Rule 1-321, and the party to whom such a request is directed has 30 days from the time of service of the discovery request or "15 days after the date on which that party's initial pleading or motion is required, whichever is later." Md. Rules 2-421, 2-422, 2-424. But, "the court, on motion of any party and for cause shown, may (1) shorten the period remaining, (2) extend the period if the motion is filed before the expiration of the period originally prescribed or extended by a previous order, or (3) on motion filed after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect." Md. Rule 1-204

The discovery process is controlled by scheduling orders designed to move cases efficiently through the court by setting specific dates or time limits for anticipated litigation events. *Dorsey v. Nold*, 362 Md. 241, 255 (2001). Generally, the court enters a scheduling order in a civil action that includes "a date by which all discovery must be completed." Md. Rule 2-504. "Scheduling orders must be given respect as orders of the circuit court, and the court may, under appropriate circumstances, impose sanctions upon parties who fail to comply with the deadlines in scheduling orders." *Maddox v. Stone*, 174 Md. App. 489, 507 (2007); *see also Station Maint. Sols., Inc. v. Two Farms, Inc.*, 209 Md. App. 464, 476 (2013) ("[T]he case law of Maryland makes the imposition of sanctions for the violation of a scheduling order appropriate.") (citation omitted). It is

prejudicial and fundamentally unfair to opposing parties, "when a trial court permits a party to deviate from a scheduling order without a showing of good cause." *Faith v. Keefer*, 127 Md. App. 706, 733 (1999)

The scheduling order in this case set the close of discovery for August 3, 2015; Mrs. Ali did not file her discovery request with the court until August 4, 2015. Nor did she advance a showing of good cause for her non-compliance, offer any justification for the late filing, or appear at the September 1 hearing to explain her actions. Moreover, the discovery requests were filed without a certificate of service indicating that they had been "served upon" Mr. Davis pursuant to Maryland Rule 1-321. As such, it is not clear that Mr. Davis had received the discovery requests when Mrs. Ali filed her motion to compel on August 31, 2015 (which did include a certificate of service to Mr. Davis dated August 22, 2015). And, even if Mr. Davis had received the discovery requests, Mrs. Ali's motion to compel was not ripe for filing because Mr. Davis had at least thirty days to respond to the discovery requests in the absence of a motion to shorten time to respond. We perceive neither error nor abuse of discretion in denying Mrs. Ali's Exceptions Motion and moving ahead with the modification of child support.

The record does not indicate that, based on the magistrate's factual findings, the circuit court's August 26, 2015, modification of the prior child support order was arbitrary or based on incorrect legal principles. *See Walker*, 170 Md. App. at 266. At the August 5, 2015 hearing, the court determined that "based on [the] Exhibits" Mrs. Ali's income had increased to $6,105.58 and that her payments should be increased "[b]ased

on the new child support Guidelines." Apart from assertions that Mr. Davis "misrepresented [her] income during his testimony," Mrs. Ali does not challenge the court's application of the Guidelines to the factual findings.

Did Mrs. Ali Receive Proper Notice of the August 5, 2015 Hearing?

Contentions

Mrs. Ali contends that the August 26 child support order "should have been vacated since all parties were not properly notified and per the court docket Doc No / Seq. No 113/0, 114/0, 116/0, and 118/0 [the only hearing on child support] was scheduled for September 1, 2015," and that she was misled about the date of the August 5 hearing at the June 23, 2015, scheduling conference. She also asserts that the circuit court "made the [child support] order effective as of January 1, 2015 which according to the previous filings were moot and/or null due to improper service as noted in this case." In Mrs. Ali's view, this resulted in the denial of her due process rights under the United States Constitution.

Mr. Davis, responds that notice of the August 5, hearing was mailed to Mrs. Ali "at her address of record . . . on May 20, 2015," and that she "regularly received" mail at this address, as evidenced by her filing of her August 25 Exceptions Motion to the magistrate's report and recommendations, which was mailed to the same address. Regarding Mrs. Ali's argument that she was misled at the July 23, 2015, scheduling conference, Mr. Davis argues that it is clear from the context of the conversation that Mrs. Ali misunderstood the magistrate's response to her question regarding the hearing.

In Mr. Davis's view, Mrs. Ali's due process argument also fails under the balancing test elucidated in the *Kiesling v. Kiesling*, 92 S.W.3d 374 (Tenn. 2002) case cited by Mrs. Ali.

Analysis

Maryland Rule 1-324, Notification of Orders, Rulings, and Court Proceedings, provides:

> Upon entry on the docket of (1) any order or ruling of the court not made in the course of a hearing or trial or (2) the scheduling of a hearing, trial, or other court proceeding not announced on the record in the course of a hearing or trial, the clerk shall send a copy of the order, ruling, or notice of the scheduled proceeding to all parties entitled to service under Rule 1-321, unless the record discloses that such service has already been made.

"The notification is effected by mailing to the parties a copy of the order, unless otherwise delivered to them." *Dypski v. Bethlehem Steel Corp.*, 74 Md. App. 692, 698-99 (1988). Typically, the court's transmission of notices is reflected in the docket entries, which "both this Court and the Court of Appeals have consistently held . . . are presumptively correct, . . . *unless* there is a conflict between the docket entries and the transcript of proceedings in a particular action." *Estime v. King*, 196 Md. App. 296, 304-05 (2010) (emphasis in original). In addition, when no evidence exists as to how a properly addressed and stamped letter is delivered, "the presumption is that the postal officials and employees did what the law required of them." *Fid. & Cas. Co. of New York v. Riley*, 168 Md. 430, 433 (1935).

Despite Mrs. Ali's assertions to the contrary, both the hearing notice itself and the docket reflect that the clerk mailed notice to Mrs. Ali at her Hawaii address on May 20, 2015. In addition, we are not persuaded that Mrs. Ali was misled at the July 23, 2015,

hearing when the magistrate responded to Mrs. Ali's questions regarding the support modification proceeding: "If you have another case – that's why I'm saying I don't see a child support case in this file." It was Mrs. Ali who told the court that "[t]hey cancelled that particular [child support] hearing and another one was cancelled for August as well," even though Mr. Davis indicated that he understood that the hearing had been rescheduled for August 5. Because the record demonstrates that Mrs. Ali received proper notice of the hearing, we do not address her additional due process arguments.

Was Order Modifying Child Support Proper Given the Exceptions Filed by Mrs. Ali

Contentions

Mrs. Ali asserts that on August 17, 2015, she "filed the 'Defendant's Motion to File an Exception to the [Magistrate's] Recommendations and in the Alternative, Motion to Vacate' after receiving the [Magistrate's] Recommendation from the hearing held on August 5, 2015" and that "[t]he Court erred by ruling on the case before ruling on the answer to the then 'Defendant's Motion to File an Exception to the [Magistrate's] Recommendations and In the Alternative, Motion to Vacate Ruling' which was res judicata in this matter."[18] She contends that the circuit court "did not properly investigate the court's scheduling docket or its previous notes which did not verify itself to clear up the clerical errors made by the court; that with possession of its current evidence would

[18] In the same argument section, Mrs. Ali also asserts that "use of Maryland Rule 2-602(a)(1)(2)(3)(b)(1) was not properly administered by the Circuit Court." Specifically, she appears to argue that because M.D.'s custody arrangements continued to be adjudicated after the magistrate's report on August 7, 2015, the child support order was not final.

have verified [her] assertions and could have prevented the subsequent financial duress [she] is currently facing." In Mrs. Ali's view, the circuit court "failed to exercise authority of Maryland Rule 2-532(a)(b)(c) or (d) Revisory Power" after she did not receive timely notice.

Mr. Davis responds that Mrs. Ali filed her exceptions to the magistrate's child support report and recommendations "well outside of the required time period and did not comply with the transcript requirements," and therefore, the court correctly declined to consider them. Mr. Davis further contends that Mrs. Ali's arguments under Maryland Rules 2-533 and 2-534 are misguided because the rules "require the motion to be filed after the entry of . . . judgment," and the motion in this case was filed "one day before the judgment was entered."

Analysis

Maryland Rule 2-532, which relates to motions for judgment notwithstanding the verdict, applies to jury trials and is not relevant in this case. Maryland Rule 2-534, which relates to motions to alter or amend, requires that the party requesting relief file a motion "within ten days after entry of judgment." Because the motion in this case was filed on August 25, 2016, one day before the court entered judgment on the motion for modification of child support and over one month prior to when the court entered judgment on the exceptions on September 28, Rule 2-534 is also not relevant to this appeal.

Mrs. Ali's exceptions were not timely filed and otherwise failed to comply with the magistrate's report and the Maryland Rules. Pursuant to the magistrate's report and recommendation and Maryland Rule 9-208, Mrs. Ali's exceptions were due within ten days of the filing of the report, which at the latest, was August 21. Rule 9-208 also required that when Mrs. Ali filed her exceptions, she 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.

Md. Rule 9-208(g).

As previously discussed, "the court, on motion of any party and for cause shown, may . . . on motion filed after the expiration of the specified period, permit the act to be done [outside the time allowed] if the failure to act was the result of excusable neglect." Md. Rule 1-204. Although excusable neglect has not been specifically defined by the Court of Appeals or this Court, we have held that the inexperience of an attorney, and his resulting inability to properly understand a filing deadline, did not constitute "excusable neglect." *HI Caliber Auto & Towing, Inc. v. Rockwood Cas. Ins. Co.*, 149 Md. App. 504, 508 (2003). We recognize that Mrs. Ali is self-represented, but we are not persuaded that this excuses her untimely filing of the Exceptions Motion. Deadlines, like the time requirements in the magistrate's report and recommendations and in Maryland Rule 9-208, are there to ensure expedience and predictability in court proceedings. As the

Court of Appeals has said, if a trial court "had the general discretion to accept and consider a late-filed objection, no one could safely rely on the absence of a timely objection." *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 495 (1997).

In sum, we perceive no abuse of discretion in the circuit court's rejection of Mrs. Ali's late filed exceptions. The Maryland Rules expressly required that Mrs. Ali file her exceptions by August 21, and that she include a transcript of the proceedings or an excuse for failing to do so. Mrs. Ali did not comply with these requirements.

Mr. Davis's Continued Physical Custody Despite Violations of Visitation Order

Contentions

Mrs. Ali asserts that Mr. Davis "has demonstrated continued violations of multiple rules and/or court Annotated Codes of the Maryland Family court without sanction or reprimand" by the circuit court, which, in her view, did not "properly administer[]" the law. She argues that she "notified the courts of [Mr. Davis's] noncompliance [with] the visitation order on multiple occasions throughout the past several years and submitted evidence to support her claim, . . . [she also] pleaded to the court to verify or subpoena his phone/email/Skype records to show [his] willful disobedience and abuse regarding [M.D.] and the court's order." And, she asserts that Mr. Davis's actions in keeping M.D. and her apart are, and "should be considered 'Constructive Child Abuse.'" In her brief she "asks this court to either review the submitted documentation in the case file [regarding non-compliance with the order] or subpoena the phone, email, and text logs of Skype and cell carrier to verify and validate [her] assertions against [Mr. Davis, his live

in girlfriend, and his mother]."[19] She contends that Mr. Davis "has acted in bad faith to ensure [M.D.] has limited exposure" with her. In her brief, she cites several statutes that she believes Mr. Davis has violated, including Md. Code (1984, 2012 Repl. Vol.), §§ 9-101, 9-104, 9-106, 9-108, and 5-705.2 of the Family Law Article.

Mr. Davis responds that the time for appealing the October 24, 2012, custody order has "long since past [sic]." And, to the extent that those issues may be considered, Mrs. Ali "did not request a transcript of the [custody modification] hearing" so there is not sufficient information in the record "to determine whether the court gave adequate consideration to the best interest of the child." Mrs. Ali responds that "the best interests of [her] children has always been paramount in this case."

Analysis

Here, there is no indication that anything regarding M.D.'s best interests was raised at the August 5, 2015, child support hearing, which from the record before us, appears to be a rather straightforward application of the child support guidelines. In addition, the record indicates that no arguments regarding the best interest of M.D. were made at the September 1, 2015, hearing, which was dismissed "without prejudice" when Mrs. Ali failed to appear. For those reasons, any issues concerning M.D.'s best interests

[19] The relief requested by Mrs. Ali is beyond the scope of our authority. *See Maddox v. Maddox*, 174 Md. 470, 477 (1938) ("[An] appellate Court must confine its review within the limits of the record."); *see also Colao v. Cty. Council of Prince George's Cty.*, 109 Md. App. 431, 469 (1996), *aff'd*, 346 Md. 342 (1997) ("[A] party may not supplement the record with documents that are not part of the record."). The court's dismissal of her modification of custody motion was without prejudice to a refiling, and should she do so, these are issues that could be considered by the trial court.

were not sufficiently "raised in" or "decided by the trial court" in the matter now under review. *See* Md. Rule 8-131 (stating that this Court will not ordinarily decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court").

Nor are we persuaded that the court abused its discretion when it dismissed Mrs. Ali's custody petition without prejudice. *See Zdravkovich*, 151 Md. App. at 307-08 (stating that, in recognition of the circuit court's real-life obligation to manage its docket, we will only disturb the court's ruling for a clear abuse of discretion). "While the Maryland Rules contain no rule dealing specifically with the court's inherent power to dismiss a case *sua sponte* when the plaintiff fails to appear on the day of trial, the Court of Appeals has acknowledged that a trial court may, without abusing its discretion, grant judgment in favor of a defendant when the plaintiff fails to appear for trial." *Id.* at 306.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.