

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1369

September Term, 2016

ERIC C. BALL

v.

DEADRA JACKSON

Meredith,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 5, 2017

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.

Eric Ball, appellant, shares custody of two minor children, both girls, with Deadra Jackson, appellee. In this appeal, he complains about an order entered on September 7, 2016, modifying certain terms of the custody and visitation arrangements.¹

On January 24, 2011, appellant filed a complaint for custody in the Circuit Court for Prince George's County, seeking joint legal and shared physical custody of the parties' daughters, with visitation to include summer break and Christmas break. Appellee filed an answer and counter-complaint for custody. The competing custody petitions were the subject of a hearing on September 2, 2011, before a Master of the Family Division. Following the hearing, the Master issued a proposed order, which was signed by a judge of the Circuit Court and filed on September 19, 2011 ("the September 19 order"). As relevant to the issues presented on appeal, that order provided: 1) that the parties would share joint legal and physical custody; 2) that appellant would have visitation with the children every week, from 5:00 p.m. Thursday until 5:00 p.m. Saturday, and would pick the children up from day care to exercise that weekly visitation; and 3) that the parties would alternate all major holidays and split the Christmas and summer school breaks.

Subsequently, there were two slight modifications to the September 19 order. The first was documented in an order filed April 19, 2012, switching the girls' pick-up location to a Burger King in Marlow Heights. On March 5, 2014, appellant filed a motion for modification "with contempt." On September 10, 2014, the court issued an order granting, in part, the motion for modification. In that order, the court specified that appellee was not

¹ No brief was filed by Ms. Jackson.

in contempt of court, but was also not in compliance with the September 19 order, and accordingly, the court modified the September 19 order to provide that, instead of the parties splitting summer vacation, appellant would have the children for the first five weeks of summer vacation, and appellee would have them for the last five weeks.

On April 11, 2016, appellee notified appellant, and the court, that she intended to relocate with the children to Fredericksburg, Virginia, in the summer. On April 14, 2016, appellant filed a motion for modification and/or contempt, asking the court to find appellee in contempt if she moved out of state. Using a preprinted form, appellant requested that the September 19 order be modified; he wrote: “Change visitation or possible change custodial parenting.” Appellee filed an answer, writing that she had “notified Mr. Ball and the court of my intent to relocate to Va. in the summer of 2016. The current order would not be feasible once the move takes place.” She indicated that she had attempted to discuss options for continuing visitation with appellant, but that he wanted the court to resolve the issue. Appellee also wrote that she did “not agree with change in custodial parenting. In order to continue visitation the [September 19] order would need to be modified.”

On August 11, 2016, a hearing before a magistrate of the Family Division took place. Thereafter, the magistrate’s proposed order was signed by a judge of the circuit court on August 29, 2016, and that order was docketed on September 7, 2016. D.E. #61; *See* Rule 2-601(c). Because this is the order that is the subject of this appeal, we will reproduce the relevant portions below. The order provided:

ORDERED, that the [appellant's] Motion for Modification and/or Contempt filed April 14, 2016 be and is hereby granted in part; and it is further

ORDERED, that the Order of Court [] dated September 19, 2011, will remain in full force and effect **until such time** as [appellee] relocates to Fredericksburg[,] Virgin[i]a. **If and when** the [appellee] relocates to Fredericksburg[,] Virgin[i]a, th[e]n **by agreement of the parties**, the [appellant's] access with his children . . . will be on alternating weekends from Friday to Sunday with the [appellee] to transport the children to and from the [appellant's] residence for the visitation; and it is further

ORDERED, that when a visitation weekend is followed by a Federal holiday on Monday and the children are not attending school, visitation shall be extended until Monday at 6:00 p.m.; and it is further,

ORDERED, that all prior Orders not inconsistent with this Order will remain in full force and effect[.]

(Emphasis added.)

On August 29, 2016, which was prior to the date the judgment was docketed, appellant noted an appeal to this Court, and also filed a document captioned "Notice of Appeal" in the Circuit Court for Prince George's County, which was docketed as a motion for reconsideration. D.E. #59. From reviewing the docket entries, it does not appear any action has been taken on that motion. Rule 8-202(c) provides:

In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. If a notice of appeal is filed and thereafter a party filed a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

But Rule 8-602(d) contains a savings provision, applicable in some circumstances:

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.

We shall assume that appellant's notice of appeal was timely based upon Rule 8-602(d).

But we nevertheless affirm the judgment entered by the circuit court on September 7, 2016. As noted above, the order was entered after a hearing was conducted by a magistrate of the Family Division. At the conclusion of the hearing before the magistrate, the following colloquy occurred:

ERIC BALL: Well, if we're going to do every weekend like that, and then I'm just like, I'm not having a date night. So we'll do that –

MAGISTRATE EASON: It's not about –

ERIC BALL: No, but I'm just saying –

MAGISTRATE EASON: Sir, at this point in your life, it shouldn't be about your dating life, it should be about your children.

ERIC BALL: But . . . I understand that.

MAGISTRATE EASON: I'm going to give you the same amount of time. If you don't want it, you have to call her up and say, "Hey, I've got date night Friday, keep the kids." Okay?

ERIC BALL: We –

MAGISTRATE EASON: I can also give you some more time during the summer, alright, so that you can make up some difference. Do you want that?

ERIC BALL: We could do it every other weekend. If she moves, then I'd go every other weekend.

MAGISTRATE EASON: That's all you want?

ERIC BALL: Uh-hum.

MAGISTRATE EASON: Okay.

ERIC BALL: Every other weekend, Friday to Sunday.

MAGISTRATE EASON: Alright, so grant the motion. By agreement of the parties, the current visitation schedule will remain in full force in effect. If and when the defendant relocates, the parties will alternate visitation from Friday until Sunday, Defendant to transport the children to and from the visitation.

Okay? Alright, and then I'll give Dad, in the summer, six weeks instead of four.

DEADRA JACKSON: We get five and five.

ERIC BALL: No, it's always five and five. That's already good.

MAGISTRATE EASON: Do you want more?

ERIC BALL: No, five and five . . . it can stay the same.

MAGISTRATE EASON: Okay, that's fine. So you all step back, go outside, and we'll bring you the order.

We infer that the proposed order prepared by the magistrate was given to appellant on August 11, 2016. It was signed by Judge Serrette on August 29, 2016. Although it appears that appellant filed a motion to reconsider on that same date, outlining several points of contention with the order signed by the court, he has failed to persuade us that the court abused its discretion by adopting the order recommended by the magistrate. As the Court of Appeals emphasized in *In re Yves S.*, 373 Md. 551, 586 (2003): “[W]hen the

appellate court views the ultimate conclusion of the [judge's ruling on a child custody issue] . . . , the [judge]'s decision should be disturbed only if there has been a clear abuse of discretion.’” (Quoting *Davis v. Davis*, 280 Md. 119, 126 (1977).) Because we perceive no abuse of discretion on the part of the court, the judgment is affirmed.

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