

Circuit Court for Howard County
Case No. 13-C-14-98923

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1872

September Term, 2016

SIL MUDDI

v.

ELIZABETH MUNA

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 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.

In this appeal from a child support, custody, and visitation action in the Circuit Court for Howard County, Sil Mudsi, appellant, challenges the court’s dismissal of his amended motion to modify child support, custody, and visitation. For the reasons that follow, we shall affirm the dismissal of the amended motion as it pertains to Mudsi’s request for modification of child support, but vacate the dismissal as it pertains to his requests for modification of custody and visitation, and remand the case to the circuit court for further proceedings.

In December 2008, Mudsi and appellee, Elizabeth Muna, were married. Their first child was born in May 2009, and their second in March 2014. In May 2014, Mudsi filed a complaint for absolute divorce. Muna filed a counter-complaint for custody and child support. The court subsequently held a *pendente lite* hearing. At the hearing, Muna submitted a child support guidelines worksheet, in which she assigned monthly adjusted actual incomes of \$7200 to Mudsi and \$15,000 to herself. Muna also claimed \$1935 per month in work-related child care expenses. Following the hearing, the court awarded Muna sole legal and physical custody of the children. The court awarded Mudsi visitation with the children on Thursday evenings and alternate weekends. Finally, the court ordered Mudsi to pay to Muna child support in the amount of \$1200 per month, and “maintain the existing or comparable health insurance for” Muna and the children.

In April 2015, the court held a hearing on the merits of Mudsi’s complaint and Muna’s counter-complaint. Mudsi failed to appear at the hearing. The court subsequently dismissed Mudsi’s complaint, granted Muna’s counter-complaint, and continued the obligations set by the court in its *pendente lite* order.

In October 2015, Mudsi filed a “Motion to Modify Child Support and Other Appropriate Relief.” In February 2016, Mudsi filed an “Amended Motion to Modify Child Support, Visitation and Other Appropriate Relief.” In the motion, Mudsi requested a modification of child support, on the ground that his “income ha[d] significantly decreased,” making his child support obligation “burdensome.” Mudsi also requested that he be awarded joint legal custody of the children, on the ground that such custody “will best promote the children’s interests,” specifically “in matters of education and development.” Finally, Mudsi requested that he be awarded “extended visitation . . . in the summer months and[/]or on school breaks,” so that the children could have “meaningful access and experiences with their cousins and other family members,” who live “across the United States and abroad.”

In July 2016, Muna filed a motion for sanctions for failure to provide discovery. Muna contended that she “served a Request for Production of Documents and Interrogatories on” Mudsi, but he “failed to respond to the discovery requests.”¹ Muna requested, among other relief, dismissal of Mudsi’s amended motion. The court subsequently denied Muna’s motion.

In August 2016, Muna filed a motion for reconsideration of the denial of the motion for sanctions. Muna contended that Mudsi had responded to the discovery requests, but the “responses [were] woefully deficient,” and Mudsi “produced documents that were in no way responsive to [Muna’s] very limited and reasonable requests.” Specifically, Mudsi

¹The requests are not in the record.

“did not produce his complete tax returns,” “did not produce his 2015 W-2 or federal income tax return,” and “did not produce a single paystub or documentation of his income for any time other than one two-week period in August, 2015 and one two-week period in July, 2016.”

The following month, Mudsi filed a “motion in opposition” to the motion for reconsideration. Mudsi contended that Muna was “trying to artificially create a discovery issue” by making “spurious claims about [his] discovery responses[,] which are voluminous already.”² Mudsi stated that he was “due to supplement his responses for the third time and has filed his fourth short form financial statement noting that he is unemployed yet again.” Mudsi did not specifically address Muna’s contention that he failed to produce complete tax returns, a 2015 W-2 or federal income tax return, or paystubs and other documentation of his income for any time other than August 2015 and July 2016.

The court subsequently granted Muna’s motions for reconsideration and for sanctions for failure to provide discovery, and dismissed Mudsi’s amended motion. The court did not make any findings of fact or elaborate as to its reasons for the ruling.

On appeal, Mudsi contends that the court abused its discretion in dismissing his amended motion. We agree in part and explain.

Rule 2-433(a) states that if a court “finds a failure of discovery, [it] may enter such orders in regard to the failure as are just,” including “[a]n order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing

²The responses are not in the record.

the action or any part thereof.” We have stated that “[t]he remedies contemplated by this rule are left to the discretion of the court and cannot be overturned absent an abuse of that discretion.” *Rolley v. Sanford*, 126 Md. App. 124, 131 (1999) (citation omitted). “A decision constitutes an abuse of discretion if it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Id.* (internal citation and quotations omitted).

Here, in response to Muna’s motion for sanctions, Mudsi stated only that his previous discovery responses were “voluminous,” he was “due to supplement his responses for the third time,” and he had filed a “fourth short form financial statement.” He did not dispute that he failed to produce complete tax returns and other documentation of his income that would certainly be relevant to a request for modification of child support, and did not explain why he failed to do so. Moreover, the dismissal of Mudsi’s amended motion as it pertains to his request for modification of child support did not subject the parties’ children to any detrimental consequences. Under these circumstances, we conclude that the court did not abuse its discretion in dismissing the amended motion as it pertains to Mudsi’s request for modification of child support.

Nevertheless, we conclude that the court abused its discretion in dismissing the amended motion as it pertains to Mudsi’s requests for modification of custody and visitation. In *Flynn v. May*, 157 Md. App. 389 (2004), we reversed “the award of a change of custody by default, without a hearing on the merits,” on the ground that Flynn “fail[ed] to file a responsive pleading[.]” *Id.* at 391. In *dicta*, we stated:

Whereas in the ordinary civil suit, two litigants are fighting about money, in a child custody contest the very object of the suit is a real, albeit unnamed, party whose best interest transcends that of either formal litigant. Should the custody of a young child, *arguendo*, ever be taken away from a more fit custodian and awarded to a less fit custodian simply because the more fit custodian had been guilty of a procedural default? Should the failure to file a responsive pleading, a matter of great moment perhaps to administrative judges, ever be permitted, *ipso facto*, to render a mother an unfit custodial parent of her child? In such a case, does the law’s legitimate interest in unclogging the arteries of litigation “trump” the best interest of the child?

Id.

Here, the best interest of the parties’ children transcends that of either party. Mudsi’s failure to file sufficient responses to Muna’s discovery requests does not necessarily render him unfit to share legal custody of, or increase his visitation with, the children. The law’s legitimate interest in unclogging the arteries of the parties’ litigation does not trump the best interest of their children, and hence, the dismissal of Mudsi’s amended motion as it pertains to his requests for modification of custody and visitation was an abuse of discretion. Accordingly, we affirm the dismissal of the amended motion as it pertains to Mudsi’s request for modification of child support, vacate the dismissal as it pertains to his requests for modification of custody and visitation, and remand the case to the circuit court for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED AS IT PERTAINS TO APPELLANT'S REQUEST FOR MODIFICATION OF CHILD SUPPORT. JUDGMENT VACATED AS IT PERTAINS TO APPELLANT'S REQUESTS FOR MODIFICATION OF CUSTODY AND VISITATION. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID ONE-THIRD (1/3) BY APPELLANT AND TWO-THIRDS (2/3) BY APPELLEE.