UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0111

September Term, 2015

TRACI ANNE HOLMES

v.

CHRISTOPHER YANCEY HOLMES

Krauser, C.J.,
Hotten,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: October 29, 2015

Traci Holmes,[1] appellant, appeals from a contempt order issued by the Circuit Court for Kent County in the context of an ongoing custody and visitation dispute between her and her ex-husband, appellee Christopher Holmes, regarding their three children. Appellant presents the following questions for our review:

I. Did the court err when it found that it had jurisdiction over the issues of change of visitation and change of custody?

II. Did the court err in finding her in contempt?

For the reasons that follow, we shall affirm the lower court.

FACTUAL AND LEGAL PROCEEDINGS

In June 2001, appellant and appellee were married in Maryland. On May 15, 2012, the Circuit Court for Kent County, Maryland granted the parties a judgment of absolute divorce, which incorporated but did not merge their voluntary separation and property settlement agreement. At the time of the divorce, their children were ten, eight, and four years of age, and had lived most, if not all of their lives, in Chestertown, Maryland. Pursuant to their separation agreement, the court granted the parties joint legal custody of their children with physical custody to appellant. Appellee was granted liberal visitation rights.

Appellant moved with the parties' children to Tennessee about four months after the divorce was finalized. In December 2012, the parties agreed to a consent order that was

[1]Traci Holmes re-married after her divorce. Her name is now Traci Holmes Lyons. But, because in their briefs the parties referred to appellant as Mrs. Holmes, we shall also do so.

signed by a judge and filed in the Circuit Court for Kent County. The consent order modified the visitation provisions in the separation agreement by reducing the number of appellee's visits with his children. As revised, appellee was allowed visits on Labor Day weekend, a week during both Fall and Spring Breaks, Martin Luther King Day weekend, and four weeks during summer vacation. The parties agreed to split visitation during the remaining holidays and breaks.

Almost two years later, on June 17, 2014, appellant notified appellee that she would be moving to Oregon "next week." Six days later, on June 23, 2014, appellant filed a motion to modify visitation in the Circuit Court for Kent County. In the motion she sought to further reduce appellee's visitation because of her move to Oregon.

Six weeks later, appellee filed an answer asking the court to deny appellant's motion to modify visitation. Additionally, on October 29, 2014, appellee filed a motion for change of custody, alleging, among other things, that appellant had denied him access to his children, one of whom he had not seen since spring break of 2014.

During a scheduling conference on November 19, 2014, counsel for the parties and the Master discussed the court's jurisdiction to consider the outstanding visitation and custody issues. Counsel for both parties argued that Maryland should retain jurisdiction. In her report, the Master recommended that a motions hearing be scheduled for December 10, 2014 to determine jurisdiction.

At the December10th motions hearing, appellant's attorney, appellee, and his attorney were present. Counsel once again expressed their agreement that Maryland should continue its jurisdiction over the custody and visitation matters. The Master ultimately recommended that the Circuit Court for Kent County maintain jurisdiction.

On December 30, 2014, appellee filed a petition for contempt, in which he alleged that appellant had failed to comply with the visitation provisions set forth in the consent order. The circuit court issued, on January 7, 2015, a show cause order that was mailed to appellant's counsel on January 7, 2015 and received by him on January 10, 2015. The show cause order stated, *inter alia*, that a hearing on appellee's contempt petition would be held on February 9, 2015.

On February 6, 2015, appellant filed a motion to strike the petition for contempt along with a request for hearing. Movant argued, among other things, that the petition for contempt and show cause order were procedurally defective because appellee had failed to comply with the Md. Rules governing service of process.

At the February 9, 2015 contempt hearing, appellant's attorney was present but appellant was not. The court found appellant in contempt because she failed to appear at the hearing, failed to comply with the visitation provisions in the consent order, and had moved to Oregon after giving "ridiculously short notice" to appellee.

On March 11, 2015, the court issued a written order finding appellant in contempt and setting forth several purging conditions. The conditions required, among other things,

for appellant to grant appellee visitation with his children during the 2015 spring break and the first five weeks of the childrens' summer vacation from school. On March 25, 2015, appellant filed a timely notice of appeal from the order issued on March 11, 2015.

In June of 2015, the circuit court held a hearing regarding child custody. The court granted appellee physical custody of the children. Appellant subsequently filed a separate appeal challenging that order. Briefs in that appeal have not yet been filed.

DISCUSSION

A. First Issue Presented

Appellant argues that the court committed reversible error when it found that it had "jurisdiction over the issues of changing visitation and over [the] issues of changing custody[.]" That argument will not detain us long. At oral argument before this Court, counsel for appellant withdrew his client's contention that the circuit court did not have jurisdiction to decide the issue concerning child visitation. That issue, therefore, is no longer before us. *See West American Insurance Company v. Popa*, 352 Md. 455, 477 (1998).

As for the contention that the circuit court committed reversible error when it found that it had jurisdiction over the issue of child custody, two points are relevant. First, at no point prior to March 25, 2015, which was the date the appellant filed the appeal that is now before us, did the circuit court find that it had jurisdiction over child custody issues. Second, even if the court had made such a finding, appellant would have had no right to an

immediate appeal from an order that embodied such a finding because no final order regarding custody was filed prior to March 25, 2015. With exceptions not here applicable, this Court has no jurisdiction to entertain an appeal that is not from a "final order" as that term is defined in Maryland Rule 2-602(a).[2]

B. Second Issue Presented

Appellant also argues that the petition for contempt filed by appellee and the show cause order issued by the court: 1) contained procedural deficiencies; and 2) were not served properly upon her.

As already noted, on February 6, 2015, appellant filed a motion to strike the petition for contempt. In that motion, appellant argued that the show cause order failed to meet the procedural requirements set forth in Md. Rules 2-121, requiring *in personam* service; 2-321(b)(1), giving an out-of-state plaintiff 60 days to file an answer; and 15-206(c)(A), requiring a show cause order to state the time within which an answer is due. On appeal, she argues that different rules were violated, specifically Md. Rules 2-111, insofar as that rule requires that an information report is filed prior to the issuance of a summons, and 2-114, setting forth the required content of a summons. Because she did not raise below the argument she raises on appeal, she has waived those arguments. *See* Md. Rule 8-131(a) (Ordinarily, except for issues of subject matter jurisdiction, "the appellate court will not

[2]Based on what appellant's counsel said at oral argument, it appears that a final order as to custody was filed in late June 2015.

decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]")

Even if she had preserved her argument for appeal, appellant would not benefit. The relevant rule to be here applied is Md. Rule 15-206, which governs constructive civil contempt actions. That rule states that "[a]ny party to an action in which an alleged contempt occurred . . . may initiate a proceeding for constructive civil contempt by filing a petition with the court against which the contempt was allegedly committed." Md. Rule 15-205(b)(2). The rule further sets forth what must be contained in the order and petition. *See* Md. Rule 15-206(c). The rule also governs how service of process should be made:

> (d) **Service of order.** The order, together with a copy of any petition and other document filed in support of the allegation of contempt, shall be served on the alleged contemnor pursuant to Rule 2-121 or 3-121 or, if the alleged contemnor has appeared as a party in the action in which the contempt is charged, in the manner prescribed by the court.

(Emphasis added).

The requirements set out in Rule 2-111 and Rule 2-114 are inapplicable here because, at the time the petition was filed, the "contemnor" (*i.e.*, appellant) had appeared in the action where the contempt was charged. Under such circumstances, the court had the right to order that appellant's counsel, who was representing her in regard to her motion to modify custody, be served with the contempt petition and the order to show cause. After all, service upon counsel ensured that appellant would receive actual notice of the petition and order.

Lastly, appellant argues that the trial judge's "inquiry and fact finding at the February 9, 2015 [h]earing failed to comply with Maryland Law." Appellant phrases her argument as follows:

> The Court's inquiry and fact finding at the February 9, 2015 Hearing failed to comply with Maryland Law; *Goldmeier* [*v. Lepselter*, 89 Md. App. 301 (1991)] *supra*.
>
> When a divorced spouse seeks to relocate children, in her custody, the real question is, under all the circumstances, what is in the best interests of the children?
>
> The Court, in *Goldmeier* (supra), 89 Md. App. 301 (1991) answered this question at page 302, stating:
>
> > Our answer, in short is: the burden is on the trial judge to weigh the relocation and all its ramifications, together with all the other information he or she can garner, to decide this very difficult question.
>
> In this Case, *Goldmeier* (supra) the parties had agreed that in the event that either party anticipates a move, then that party shall notify the other at the earliest practical time. The Parties thereto had no such agreement. Even so, the Plaintiff [Mrs. Holmes] filed her Petition to Modify on June 23, 2014.
>
> The Court in *Goldmeier* (supra) found that the trial judge took a sensitive, careful approach to all the issues to ameliorate the changes and pain that was bound to flow to all concerned (page 310). This was not done by the Court in this present Case.
>
> The Court failed to weigh the relocation and all its ramifications to determine what is in the best interests of the children, even if some prognostication would have been required.

(References to record extract omitted).

It would be difficult to find any family law case in Maryland that is less on point than *Goldmeier v. Lepselter*, 89 Md. App. 301 (1991). That case dealt with a father's appeal from a denial of his motion to modify custody. In *Goldmeier*, the mother, who had previously been granted physical custody, intended to move with her children from Maryland to Texas. *Id*. at 304-06. In the context of that child custody case, we said:

> The legal question presented to us by the parties in this appeal is whether the divorced spouse, who seeks to relocate the children, has the burden of proof to demonstrate that the move is in the best interests of the children. That is not, however, the question we need to address. The real question is, under all the circumstances, what is in the best interests of the children? Our answer, in short is: the burden is on the trial judge to weigh the relocation and all its ramifications, together with all the other information he or she can garner, to decide this very difficult question.

Id. at 302.

The February 9, 2015 hearing did not deal with child custody; it dealt with the issue of whether appellant should be held in contempt for failure to abide by the provisions of the consent order signed in December 2012. In a contempt hearing, the trial court is not required to make a decision as to the best interest of the children. As the trial judge in this case recognized, the pertinent issues were: 1) whether appellant wilfully violated the court order; and, if so, 2) what should appellant be required to do in order to purge herself of the contempt.

Appellant does not argue that the circuit court erred in finding her in contempt nor does she argue that the purge provisions were, in any way, unreasonable or inappropriate.

We therefore reject appellant's argument that the court erred by failing to engage in the weighing process discussed in *Goldmeier*, *supra*.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.