Circuit Court for Washington County
Case No. C-21-FM-19-000748

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0251

September Term, 2020

VERNON J. LEFTRIDGE, JR.,

v.

NIAMBI KAFI HEYWARD

Friedman,
Wells,
Zic,

JJ.

Opinion by Zic, J.

Filed: January 20, 2021

Vernon Leftridge, Jr., appellant, filed a complaint for custody against Niambi Kafi Heyward in the Circuit Court for Washington County, seeking custody of the parties' minor child ("Child"). After Ms. Heyward failed to file a response, the court entered a default order against her and scheduled a hearing before a magistrate. Following that hearing, at which Ms. Heyward was present and gave testimony contesting Mr. Leftridge's request for custody, the magistrate recommended that the default order be vacated and the case be assigned to a judge as a contested case. Mr. Leftridge then filed exceptions, which the court denied. Around the same time, Ms. Heyward filed a motion to transfer the case to the Circuit Court for Montgomery County. The court granted Ms. Heyward's motion, ordering the case transferred to Montgomery County, and vacated the default order against Ms. Heyward. Mr. Leftridge timely noted an appeal.[1]

Mr. Leftridge presents 137 questions for our review, the vast majority of which are, for reasons discussed in greater detail below, not properly before this Court. As to the remaining questions, we rephrased and consolidated them into a single question:

> Did the circuit court err in transferring Mr. Leftridge's case to Montgomery County?

For reasons to follow, we answer the question in the negative and affirm the judgment of the circuit court.

[1] Ms. Heyward did not file a brief in the instant case.

BACKGROUND

The Child was born in 2015 to Mr. Leftridge and Ms. Heyward, who were not married. In 2016, Ms. Heyward and the Child moved from Connecticut to Montgomery County, Maryland where they remained. Around that same time, Mr. Leftridge also moved from Connecticut to Massachusetts, where he remained until 2019, at which point he moved to Washington County, Maryland.

On May 5, 2019, Mr. Leftridge filed a custody complaint against Ms. Heyward in in the Circuit Court for Washington County, requesting sole physical and legal custody of the Child. After Ms. Heyward failed to file a timely response, Mr. Leftridge asked the court to enter an order of default. On July 26, 2019, the court granted his request and entered a default order against Ms. Heyward. The court also ordered that a hearing be held before a magistrate for Mr. Leftridge to present testimony in support of his custody complaint.

At that hearing, which was held on February 18, 2020, Ms. Heyward appeared and presented testimony. She claimed that she did not receive Mr. Leftridge's complaint for custody and that she only became aware of the matter through a different child support case. As to the substance of the complaint, Ms. Heyward indicated that she would be contesting Mr. Leftridge's request for custody, explaining that the Child had lived with her in Montgomery County for the past four years and that, in that time, Mr. Leftridge had visited the Child only once. Mr. Leftridge responded by stating that Ms. Heyward denied him access to the Child.

The magistrate found that, because Ms. Heyward appeared and contested Mr. Leftridge's complaint for custody, the proper remedy was to vacate the order of default and schedule a contested custody hearing. The magistrate also directed Ms. Heyward to file an answer and counter complaint for custody, which she did on February 20, 2020. Subsequently**,** the magistrate issued a written report detailing these findings.

Mr. Leftridge filed timely exceptions to the magistrate's findings, which the circuit court denied on April 21, 2020.[2] Around that time, Mr. Leftridge requested a *pendente lite* hearing and filed a notice for in banc review. On April 29, 2020, the court entered an order designating three judges to sit in banc.

Meanwhile, on April 16, 2020, Ms. Heyward filed a motion to transfer venue from Washington County to Montgomery County pursuant to Maryland Rule 2-327(c). In that motion, Ms. Heyward alleged that Montgomery County was the more appropriate venue because she and the Child were residents of Montgomery County and had been for the previous four years. She further alleged that the Child never resided in or visited Washington County; that the Child was diagnosed with nonverbal autism and was enrolled in several special-education programs located in Montgomery County; that all of the Child's school records, medical records, and significant contacts were located in Montgomery County; and that key witnesses, including the Child's teachers and

[2] The court later amended its order without substantive change, citing a clerical error.

therapists, were all located in Montgomery County. Ms. Heyward maintained, therefore, that a transfer to Montgomery County would serve the interests of justice.

Mr. Leftridge filed a written opposition to the motion to transfer venue. In that response, he argued that Ms. Heyward's transfer request was untimely under Maryland Rule 2-322(a) and therefore waived. Mr. Leftridge further argued that a transfer to Montgomery County would permit Ms. Heyward to continue her ongoing custodial interference, cause him undue burden and expense, violate his due process rights, result in unnecessary delay, and interrupt the proceedings in Washington County.

Mr. Leftridge also filed a Motion to Dismiss Defendant's Motion to Transfer/Change Venue, Cross Complaint, Counter Complaint, Certificate of Service, Pleadings, Answer to Complaint. In that motion, he asked the circuit court to "dismiss" all of Ms. Heyward's filings and pleadings based on various grounds including her failure to file a timely answer and to serve Mr. Leftridge with a copy of her filings.

On April 30, 2020, the circuit court entered an order granting Ms. Heyward's motion to transfer venue and striking both the default order and the order of designation. Additionally, following that order, the court cancelled the *pendente lite* hearing, citing the transfer order as the reason. Mr. Leftridge filed a timely appeal.

DISCUSSION

In his brief before this Court, which at times is difficult to discern, Mr. Leftridge raises myriad arguments.[3] From what we can gather, he set forth three main contentions: (1) that the circuit court erred in vacating the default order; (2) that the court erred in transferring his case to Montgomery County; and (3) that the court erred in either cancelling or failing to hold certain hearings, including an expedited *pendente lite* hearing, a hearing on Mr. Leftridge's exceptions, a hearing on his request for in banc review, and a hearing on his response to Ms. Heyward's motion to transfer.[4]

Of those arguments, only one—the court's decision to transfer Mr. Leftridge's case—concerns an appealable judgment. *See Brewster v. Woodhaven Bldg. & Dev., Inc.*, 360 Md. 602, 615-16 (2000) ("[A]n order transferring a case from one circuit court to another, for proper venue or for a more convenient forum, and thereby terminating the

[3] Mr. Leftridge raises additional arguments in his Appendix. Those arguments will not be considered as they do not comply with the Maryland Rules. *See* Md. Rules 8-501, 8-504; *see also Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.").

[4] The other contentions included in Mr. Leftridge's brief, which either appear only in the questions presented or are also mentioned elsewhere in the brief but not adequately argued, are not in compliance with Maryland Rule 8-504. Specifically, this Rule requires a brief to supply an "[a]rgument in support of the party's position on each issue" and, in the event of noncompliance, allows an appellate court to dismiss the appeal or "make any other appropriate order with respect to the case." Md. Rule 8-504(a)(6), (c); *see also DiPino v. Davis*, 354 Md. 18, 56 (1999) ("[I]f a point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it."); *Abbott v. State*, 190 Md. App. 595, 631 n.14 (2010) (declining to address an issue listed among the questions presented but not otherwise argued in the appellant's brief).

litigation in the transferring court, is a final judgment and thus immediately appealable."). The court's decision to vacate its order of default is not appealable as it is neither a final judgment nor an interlocutory order from which an appeal may be taken. *See Franklin Credit Mgmt. Corp. v. Nefflen*, 436 Md. 300, 321 (2013) ("An 'order of default' is not 'final in its nature,' as it is not an 'unqualified, final disposition of the matter' . . . ."); Md. Code Ann., Cts. & Jud. Proc. § 12-303. Similarly, none of the court's decisions regarding the above-mentioned hearings, all of which concerned procedural matters related to Mr. Leftridge's ongoing petition for custody, are a final judgment or appealable interlocutory order. *See Johnson v. Francis*, 239 Md. App. 530, 540 (2018) ("[T]o 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."'" (quoting *Quillens v. Moore*, 399 Md. 97, 115 (2007))). Consequently, we will only consider Mr. Leftridge's arguments related to the court's transfer order. *See Maryland Bd. of Physicians v. Geier*, 241 Md. App. 429, 478 (2019) ("Subject to a few narrow exceptions, 'appellate jurisdiction in Maryland is ordinarily limited to review of final judgments.'" (quoting *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 475 (2014))).

I. STANDARD OF REVIEW

When reviewing a transfer order pursuant to Rule 2-327(c), an appellate court applies an abuse of discretion standard. *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 401 (2017). In doing so, it recognizes the wide latitude afforded to circuit

courts when ruling on these motions. *See id.* at 401-02 ("Although appellate courts do not rubberstamp the rulings of trial court judges, appellate courts 'should . . . be reticent' to substitute their own judgment for that of the trial court unless they can identify [a] 'clear abuse' [of discretion.]" (quoting *Urquhart v. Simmons*, 339 Md. 1, 17, 19 (1995))); *see also Lapides v. Lapides*, 50 Md. App. 248, 252 (1981) (citations omitted) ("The exercise of a judge's discretion is presumed to be correct, he [or she] is presumed to know the law, and is presumed to have performed his [or her] duties properly."). Reversal of such a ruling is appropriate when no reasonable person would have adopted the circuit court's view or "when the court act[ed] without reference to any guiding rules or principles." *Stidham v. Morris*, 161 Md. App. 562, 566 (2005) (quoting *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 437 (2003)). In other words, a circuit court abuses its discretion when it "act[s] unreasonably based on the facts before it." *Univ. of Maryland Med. Sys. Corp.*, 456 Md. at 414.

II. GOVERNING LEGAL PRINCIPLES

Under Rule 2-327(c), a "court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice." Md. Rule. 2-327(c). Thus, a transfer motion requires the trial court to undertake a two-part analysis. First, it must determine whether venue is proper in both the transferor and transferee court. *See Univ. of Maryland Med. Sys. Corp.*, 456 Md. at 405 n.4 ("That venue is appropriate in more than one Maryland trial court is a prerequisite to pleading for transfer under Rule 2-

327(c).”). Second, the court must consider whether the balance of the convenience and interests of justice factors weighs strongly in favor of transfer while also ensuring that appropriate deference is afforded to the plaintiff’s chosen forum. *See id.* at 416-17. The burden falls on the moving party to demonstrate that the balance warrants transfer. *See Leung v. Nunes*, 354 Md. 217, 223-24 (1999).

The relevant venue statutes in Maryland are Courts and Judicial Proceedings §§ 6-201(a), the general venue statute, and 6-202(5), the statute governing venue for child custody actions among other matters. The general venue statute provides that “a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation.” Md. Code Ann., Cts. & Jud. Proc. § 6-201(a). Alternatively, in an action relating to custody, a party may bring the action in the county “[w]here the father, alleged father, or mother of the child resides, or where the child resides.” Cts. & Jud. Proc. § 6-202(5). Notably, these two sections offer alternative venue options “in that neither one has a priority over the other.” *Sigurdsson v. Nodeen*, 180 Md. App. 326, 334 (2008).

Turning to the second step of the transfer analysis, the Court of Appeals provided a non-exhaustive list of factors for courts to consider when determining the convenience of the parties and witnesses. *See Univ. of Maryland Med. Sys. Corp.*, 456 Md. at 414-15. These factors include the parties’ place of residence, where the cause of action arose, the relative convenience of each party traveling to the other’s chosen forum based on where they reside or work, the location of the witnesses, and the ease of access to sources of

proof. *See id.* at 415. In addition to these convenience factors, the court must give appropriate deference to the plaintiff's choice of venue. *See Leung*, 354 Md. at 224. The degree of deference owed to the plaintiff varies depending on the circumstances. *See Univ. of Maryland Med. Sys. Corp.*, 456 Md. at 408-10 (explaining that the deference may be diminished if the plaintiff does not reside in the chosen forum or if the forum lacks meaningful ties to the controversy).

The purpose of the interests of justice inquiry is to further "systemic integrity and fairness" by evaluating public and private interests. *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40 (1990) (quoting *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 30 (1988)). Public interest considerations focus on court congestion, the burden of jury duty, and local interest in deciding a dispute where it arose. *See Univ. of Maryland Med. Sys. Corp.*, 456 Md. at 418 (noting that "these factors are not intended to be an exhaustive list"). Private interest factors include "[t]he relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Stidham*, 161 Md. App. at 568 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)).

III. ANALYSIS

As explained further below, the circuit court did not abuse its discretion in transferring this action from Washington County to Montgomery County. First, we turn to the issue of venue. There is no dispute that Ms. Heyward and the Child resided in

Montgomery County and that Mr. Leftridge resided in Washington County. Pursuant to Courts and Judicial Proceedings §§ 6-201(a) and 6-202(5), Mr. Leftridge could have brought his custody action in either county. Thus, the circuit court had the authority to transfer the case from Washington County to Montgomery County as long as the second part of the transfer analysis supports this decision.

Moving to the convenience and interests of justice considerations, we conclude that the facts before the circuit court demonstrate that the balance of these factors strongly favored transfer. As a threshold issue, we address Mr. Leftridge's primary contention in opposition to transfer—because Ms. Heyward did not file a timely motion to dismiss pursuant to Rule 2-322(a), she waived her right to challenge venue and, consequently, the circuit court lacked the power to transfer this case. Mr. Leftridge is correct that Rule 2-322(a) requires that a defense of improper venue be made by motion to dismiss filed before the answer and that this defense is waived if not timely raised in a preliminary motion. *See* Md. Rule 2-322(a); *Burnside v. Wong*, 412 Md. 180, 196 (2010). Ms. Heyward, however, did not claim a defense of improper venue under Rule 2-322(a), nor did she seek to dismiss Mr. Leftridge's action on that ground. Rather, she filed a motion to transfer the case to a more convenient forum pursuant to Rule 2-327(c). That is, Ms. Heyward was not asking the court to transfer the case because Washington County was an improper venue; she was asking the court to exercise its discretion to transfer the case from one proper forum to another. *See Univ. of Maryland Med. Sys. Corp.*, 456 Md. at 405 ("Rule 2-327(c) does not deal with a transfer for want of venue; it

confers on a circuit court the discretionary power to transfer even if the transferring court is a proper venue." (quoting *Leung v. Nunes*, 354 Md. 217, 222 (1999))). Moreover, Rule 2-327(c) motions, unlike those pursuant to Rule 2-322(a), have no time requirement for filing and are not subject to the same waiver implications. Thus, Ms. Heyward did not waive her right to have the case transferred, and the court, upon the filing of the transfer motion, was well within its discretion to act on that motion pursuant to Rule 2-327(c). *See Urquhart*, 339 Md. at 10 ("Maryland Rule 2-327(c) permits a trial court to transfer an action on the grounds of *forum non conveniens* upon motion of any party . . . .").

That said, we cannot say that the circuit court erred in granting Ms. Heyward's motion to transfer as the facts before the court strongly favored transfer from Washington County to Montgomery County. At all relevant times, Ms. Heyward and the Child were residents of Montgomery County and had little to no connection to Washington County. The Child, who was diagnosed with nonverbal autism, was enrolled in several special-education programs in Montgomery County. Montgomery County was also the location of all of the Child's school records, medical records, and significant contacts. Those contacts included the Child's teachers and therapists as well as Ms. Heyward's brother, all of whom Ms. Heyward identified as potential witnesses. Mr. Leftridge, however, did not provide the names of any potential witnesses or other sources of proof that favored venue in Washington County.

Mr. Leftridge was a resident of Washington County and had a right to bring his custody action in that forum. He has, however, presented no reasonable explanation as to

how a transfer to Montgomery County would inconvenience him and prevent him from acquiring the relief he seeks. Considering those facts as well as the convenience and interests of justice factors, the circuit court did not abuse its discretion in granting Ms. Heyward's motion to transfer.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.