

Circuit Court for Anne Arundel County
Case No. C-02-FM-20-003504

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 331

September Term, 2022

PAUL REED

v.

SUSAN REED

Kehoe,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 9, 2022

*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.

The Circuit Court for Anne Arundel County granted Appellee Susan Reed (“Wife”) an absolute divorce by default after appellant Paul Reed (“Husband”) failed to: file a responsive pleading to her complaint; move to vacate the default order entered as a result of his failure to file a responsive pleading; and appear at the default hearing that took place over Zoom, as necessitated by the COVID-19 pandemic. Husband moved to vacate the judgment of absolute divorce, on the ground that the circuit court had not provided him with the Zoom login credentials required to attend the remote default hearing, so he was unable to defend himself in the divorce action.

The circuit court denied the motion to vacate, after which Husband filed a timely notice of appeal. In his informal brief,¹ Husband asserts that the circuit court committed reversible error in holding the default hearing by Zoom when he was unable to access the hearing and abused its discretion in denying his motion to vacate the judgment of absolute divorce in the absence of “possession of the full facts” of the matter.

For the reasons that follow, we find no error or abuse of discretion on the part of the circuit court, and we will affirm the court’s order.

Background

Husband and Wife married in the United Kingdom in 1994. During the marriage, they had five children together and purchased a home in Annapolis which became their

¹ Husband filed an “Informal Brief” pursuant to this Court’s March 9, 2021, Administrative Order permitting informal briefing in family law cases in which the appellant is a self-represented litigant. *See* Maryland Rule 8-502(a)(9). Wife is represented by counsel.

principal residence. Husband and Wife separated without hope of reconciliation on or about July 23, 2020.

On December 15, 2020, Wife filed a complaint for limited divorce, seeking legal and physical custody of the couple’s two youngest children (the parties’ three older children had been emancipated by age), child support, and use and possession of the family home. A private process server personally served Husband with the complaint for limited divorce on December 24, 2020, at his residence in California.

Husband did not file a responsive pleading to Wife’s complaint, so on February 25, 2021, Wife filed a request for order of default. The circuit court entered an order of default on March 2, 2021, and scheduled a default hearing on April 13, 2021. The court sent a notice of the default order to Husband, explaining that he could move to vacate the default order within 30 days by providing “the reasons for the failure to plead, as well as the legal and factual basis for the defense to the claim.”

Husband did not move to vacate the order of default, nor did he appear at the April 13, 2021, hearing before a family magistrate. After receiving testimony from Wife, the magistrate recommended that Wife be granted a limited divorce, with an award of primary physical and sole legal custody of the minor children, use and possession of the family home, and child support in an amount to be calculated.

The magistrate’s written report and recommendation incorporated those findings and suggested that Husband pay child support in the amount of \$2352 per month to Wife. Husband did not file exceptions to the magistrate’s report and recommendation in

compliance with Md. Rule 9-208(f),² thereby forfeiting “any claim that the [magistrate]’s findings of fact were clearly erroneous.” *Barrett v. Barrett*, 240 Md. App. 581, 587 (2019) (quoting *Miller v. Bosley*, 113 Md. App. 381, 393 (1997)). The circuit court ratified and affirmed the magistrate’s findings and granted Wife a limited divorce.

On August 6, 2021, Wife filed a complaint for absolute divorce based on a one-year separation. Wife requested that the court grant her use and possession of the family home for three years following the entry of judgment of absolute divorce and enter an order requiring Husband to transfer his interest in the home to her, on the condition that she refinance the mortgage solely in her name. Husband was served with the complaint by private process server on August 31, 2021.

Husband did not file a responsive pleading, so on November 4, 2021, Wife requested an order of default. The court entered an order of default and scheduled a default hearing on January 31, 2022. Husband was again advised in writing that he could move to vacate the order of default within 30 days by providing “the reasons for the failure to plead, as well as the legal and factual basis for the defense to the claim.”

² Rule 9-208(f) states:

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.

Husband did not file a motion to vacate the order of default, and the matter proceeded to hearing before the family magistrate via Zoom, as a result of restrictions on in-person hearings during the COVID-19 pandemic. Husband did not appear.

Acknowledging that custody, visitation, and child support would remain the same as set forth in the limited divorce order, Wife asked for use and possession of the family home and the ability to purchase Husband’s interest therein; she stated that she had been qualified for a refinance loan. Wife also explained that she was waiving alimony.

Based on the testimony, the magistrate recommended that Wife be granted an absolute divorce. The magistrate’s report and recommendation incorporated the judgment of limited divorce that had granted Wife primary physical and sole legal custody of the minor children and child support in the amount of \$2352 per month and awarded her use and possession of the family home under the outlined terms.³ Husband did not file exceptions to the magistrate’s report and recommendation in compliance with Rule 9-208(f).

Instead, Husband moved to vacate the magistrate’s report and recommendation, on the ground that the court had not provided him with the Zoom meeting ID and pass code the afternoon before the hearing, as detailed in its January 20, 2022, notice of remote

³ Default judgments are not favored in child custody cases, but in his informal brief, Husband makes, at best, a passing argument about custody of the two minor children. In his requested relief, he asks only that the court direct Wife “to discuss and resolve the outstanding financial, property issues and agree to joint parenting, if not joint custody, to ensure the future well-being of the minor children as well as agreeing to visitation rights both to see the children in Maryland as well as travel to California for visits from time to time.” Because custody is not contested, default judgment on that issue, under the facts of this matter, was appropriate.

hearing. Pursuant to Md. Rule 20-203(d), the court struck Husband’s motion for failure to comply with Md. Rule 20-201, which requires that electronically submitted documents be signed and contain a certificate of service.⁴

The circuit court entered judgment of absolute divorce in favor of Wife on March 8, 2022. On March 10, 2022, Husband moved to vacate the judgment of absolute divorce, again on the ground that the court had not provided him with the Zoom meeting ID and pass code, so he was unable to attend the divorce hearing and defend his interests. The motion to vacate did not set forth any alleged error with respect to the magistrate’s recommendations relating to divorce, custody, child support, or use and possession of the family home.

Wife opposed the motion to vacate, stating that the court was unable to provide Husband with the Zoom information in anticipation of the hearing because he was in

⁴ Rule 20-203(d) provides:

(1) *Issuance of Notice.* If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the parties that have entered an appearance or have been served a deficiency notice describing the nature of the violation unless the deficiency is cured prior to the sending of the notice.

(2) *Judicial Review; Striking of Submission.* The filer may file a request that the administrative judge, or a judge designated by the administrative judge, direct the clerk to withdraw the deficiency notice. Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.

default, had not filed any papers or participated in any circuit court proceedings prior to that point, and had not provided the court with sufficient information—including his email address—to permit it to forward the Zoom login credentials in a timely manner. Furthermore, Wife continued, the default judgment was not subject to the court’s revisory power in any event, especially as Husband’s only argument in his motion to vacate related to his alleged failure to receive adequate notice of the hearing, while raising no substantive objection to the terms of the absolute divorce judgment.

The circuit court denied Husband’s motion to vacate judgment without comment on March 18, 2022. Husband filed a timely notice of appeal on March 23, 2022.

On March 25, 2022, Wife moved to amend the judgment of absolute divorce because she no longer wished to purchase Husband’s interest in the family home. Instead, she explained that it was her desire to sell the house as soon as possible and divide the net proceeds with Husband. Husband did not respond to Wife’s motion.

Wife also moved to strike Husband’s notice of appeal, arguing that Husband’s motion to vacate the judgment of absolute divorce had been denied, and he had filed no other post-judgment motions or a request for *in banc* review of the judgment. Moreover, he had not paid the necessary filing fees, which had precluded timely transmission of the record to this Court.

The circuit court heard argument on Wife’s motion to amend the judgment of absolute divorce on June 17, 2022. Husband did not appear, after having moved unsuccessfully to continue the hearing. Wife explained her desire to sell the family home immediately and retain use and possession until it was sold. The court amended the

judgment of absolute divorce to comport with Wife’s desire for the sale of the family home.⁵

Wife withdrew her motion to strike Husband’s notice of appeal, as the matter was “already before the Court of Special Appeals.” This Court ordered the matter to proceed.

Discussion

Husband contends that the circuit court erred in denying his motion to vacate the judgment of absolute divorce. He argues that he “made every good faith attempt to appear at the [default] hearing,” but was precluded from defending himself in the divorce action by the court’s failure to provide him with the necessary Zoom login credentials.

He further asserts that the circuit court should have vacated the judgment and should now accept additional evidence of his and Wife’s financial assets and liabilities. Husband characterizes the information that Wife provided the court on these issues as “incomplete and . . . in some cases misleading.”

⁵ Husband raises no issue with the circuit court’s ruling on Wife’s motion to amend the judgment of absolute divorce, which was filed after his notice of appeal. We have explained that although the circuit court ordinarily retains the “fundamental jurisdiction” to decide a Rule 2-535(a) revisory motion filed more than ten days, but less than 30 days, after the entry of the judgment, when a timely notice of appeal is filed either before or after the motion, as a general rule, the circuit court should not decide the motion. *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 66-67 (2013). If, as here, the circuit court does rule on the Rule 2-535(a) motion, the revised order is “valid, yet subject to reversal on appeal if it affected ‘the subject matter or justiciability of the appeal.’” *Id.* at 67 (quoting *Kent Island, LLC v. DiNapoli*, 430 Md. 348, 361 (2013)). Given the nature of Husband’s appellate issues, we cannot say that the circuit court’s ruling affected the subject matter or justiciability of the appeal. In addition, Husband did not appeal from the amended order, so this Court has no jurisdiction to review the amended divorce order permitting Wife immediately to list the family home for sale. *Id.* at 68.

As we recently explained in *Pomroy v. Indian Acres Club of Chesapeake Bay, Inc.*, 254 Md. App. 109, 113 (2022):

Under Maryland law, a number of events must occur before a court may enter a default judgment. First, the plaintiff must serve the defendant with the complaint and a summons. If the defendant fails to file a timely response, the plaintiff must request an order of default. Md. Rule 2-613(b). The clerk must send notice of the order of default to the defendant (Md. Rule 2-613(c)), who has 30 days from the entry of the order to move to vacate the order of default by explaining the reasons for the failure to plead and the legal and factual bases for any defenses. Md. Rule 2-613(d). The court must grant a motion to vacate an order of default if it finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead. Md. Rule 2-613(e). If, however, the court is unpersuaded that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, it may deny the motion to vacate. If the court denies the motion to vacate, or if the defendant fails to move to vacate the order of default, the court may, upon request, enter a default judgment. Md. Rule 2-613(f).

(Internal quotation marks omitted).

Here, there is no dispute that: Wife served Husband with the summons and complaint for absolute divorce; Husband did not file a timely response; Wife requested an order of default; the court sent notice of the order of default to Husband; Husband did not move to vacate the order of default; Wife was granted a default judgment following a hearing Husband did not attend; and Husband timely moved to vacate the order of default judgment of absolute divorce. The circuit court denied the motion, which Husband claims is an abuse of its discretion.

When deciding whether a circuit court abused its discretion in refusing to vacate a judgment by default, we consider the following factors: whether there was a showing by the moving party of a substantial and sufficient basis for an actual controversy as to the

merits; whether there was an equitable excuse for the failure to plead; and whether the exercise of discretion was in favor of ensuring that justice is done. *Wells v. Wells*, 168 Md. App. 382, 397 (2006). In his motion to vacate, Husband did not address the substantive merits of the divorce judgment, nor provide any excuse for his failure to plead. He claimed only that the judgment should not have been entered because he was unable to join the remote divorce hearing when the court did not provide him with the login credentials to do so. We disagree and conclude that justice was done in the court’s grant of judgment of absolute divorce to Wife and the denial of Husband’s motion to vacate that judgment.

Although there is no question that a party has the absolute right to participate in his own divorce hearing, Husband’s purported inability to attend the remote hearing was a problem of his own making. Husband does not dispute that he received notice that the divorce hearing would occur remotely. He claims only that he did not receive the Zoom pass code and login ID from the court, as promised in the notice of remote hearing. He says he was unable to connect to the Zoom platform, offering that his text messages to Wife and phone records showed “numerous attempts to join the test Zoom meeting connectivity three days prior to joining the hearing.”

First, as Wife points out, Husband had not, until the filing of his motion to vacate the default judgment of absolute divorce, filed a responsive pleading or other paper in the divorce case, nor registered on the MDEC electronic submission platform. Therefore, the circuit court presumably had only his mailing address on record, while the Zoom login information was to be forwarded via email shortly before the hearing.

Implicitly acknowledging that he had not provided the circuit court with his email address, Husband claims that “it must have been apparent to the court that such an email could not be sent to the Defendant,” and he chides the court for failing to show “at least a mild ‘curiosity’ as to the potential for real impediments for joining the [h]earing.” It is not, however, the responsibility of the court to ensure it has accurate contact information for litigants; instead, it is the responsibility of the parties to update this information with the court. *See Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 506 (2013) (“It is the duty of a party, not the court, to ensure that the court has the parties’ current and correct mailing address.”). Knowing that the Zoom credentials were to be provided by email, and knowing that the court did not have his email address, it was incumbent upon Husband to supply that information to the court.

Second, Husband knew that he was having trouble accessing the Zoom platform at least three days before the hearing. He apparently tried to contact Wife about the issue, but Wife, who was represented by counsel, declined to respond. When Husband realized his ability to attend the hearing may have been affected, he could, and should, have contacted Wife’s attorney, the court clerk’s office, or the magistrate’s chambers to seek assistance in a timely manner. Instead, after getting no answer from calls directed prematurely to the Zoom meeting number, he made no further effort to enlist help and simply did not attend the hearing. We find no error on the part of the circuit court in denying Husband’s motion to vacate the judgment of absolute divorce on the ground that he was unable to join the remote hearing.

We are also not persuaded by Husband’s argument that the circuit court should not have denied his motion to vacate the judgment of absolute divorce in the absence of “the full facts” of the parties’ financial information. In his motion to vacate, Husband did not set forth any substantive argument about the relief the court had granted Wife.⁶ Nor did he raise the issue of a financial settlement at any other time during the pendency of the divorce matter.

Then, only after the court had granted Wife an absolute divorce did Husband claim he had discovered “new financial information” that he believed should affect a financial settlement. Having declined to participate in the divorce proceedings, however, his untimely claims were not properly before the circuit court. And, Husband’s complaints to this Court about financial issues that were not presented to the circuit court in the divorce action are entirely misplaced. *See* Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue [than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court[.]”).

Finally, we point out that even in light of the terms of the judgment of absolute divorce in favor of Wife, Husband is not entirely without recourse if he later wishes to contest custody, visitation, or child support of the minor children. Provisions relating to the welfare of minor children are subject to court modification. *See, e.g.*, Md. Code. § 12-104(a) of the Family Law Article (“The court may modify a child support award

⁶ In fact, the relief in the form of custody, child support, and use and possession of the family home had been decided during the hearing on Wife’s complaint for limited divorce, a judgment Husband did not appeal.

subsequent to the filing of a motion for modification and upon a showing of a material change of circumstance.”); *Kadish v. Kadish*, 254 Md. App. 467, 503 (2022) (“custody orders are never final”).

For all these reasons, we conclude that the circuit court properly entered default judgment of absolute divorce in favor of Wife and denied Husband’s motion to vacate that judgment.⁷

**THE JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY IS AFFIRMED.**

APPELLANT TO PAY COSTS.

⁷ The circuit court denied Husband’s motion to vacate without a hearing and without an explanation of its grounds. In such circumstances, “we must assume that the circuit court carefully considered all of the asserted grounds and determined that all or at least enough of them” merited the ultimate decision. *Piscatelli v. Smith*, 197 Md. App. 23, 37 (2011), *aff’d*, 424 Md. 294 (2012) (citation omitted).