Circuit Court for Prince George's County
Case No. CAD08-07441

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 620

September Term, 2019

STEPHEN HUTCHINSON

v.

GLORIA BARCLAY

Fader, C.J.,
Nazarian,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: January 30, 2020

Appellant Stephen Hutchinson asks us to review the denial of his motion for reconsideration of an order that granted a motion for modification of custody and contempt in favor of the appellee, Gloria Barclay. In his motion for reconsideration, Mr. Hutchinson argued that the Circuit Court for Prince George's County erred in entering the order because Ms. Barclay had not properly served him with her motion, among other documents. The circuit court denied his motion for reconsideration on two grounds: first, the motion was untimely, and second, he had, in fact, been properly served. Mr. Hutchinson argues on appeal that both of those conclusions were erroneous and, therefore, that the court abused its discretion in denying his motion. We agree with Mr. Hutchinson that his motion was timely, but we conclude that the circuit court did not abuse its discretion in denying his motion on the merits. We therefore will affirm.

BACKGROUND

Procedural History

Mr. Hutchinson and Ms. Barclay, who are divorced, have been involved in contentious legal proceedings regarding their minor child for over a decade. In August 2017, Ms. Barclay, initially self-represented, moved to modify an existing child access and parenting order. Ultimately, she did not pursue that motion.[1]

[1] Contemporaneously with her initial motion for visitation filed in August, Ms. Barclay also filed a motion to reopen the case, which prompted the court to issue a writ of summons. *See* Md. Rule 2-112(a). However, as noted, Ms. Barclay did not pursue the motion for visitation and, therefore, never served the summons, which eventually became dormant. *See* Md. Rule 2-113. Mr. Hutchinson contends that Ms. Barclay was nonetheless required to serve him with a valid summons. Mr. Hutchinson fails to apprehend the significance of the fact that Ms. Barclay did not pursue that initial motion. Instead, she proceeded on a subsequently filed motion through which she sought to hold Mr.

Two months later, in October 2017, Ms. Barclay filed an amended motion "for modification and or contempt" in which she alleged, among other things, that Mr. Hutchinson had failed to comply with the terms of a 2015 order regarding transportation of their child by sending the child repeatedly to the wrong airport and leaving him stranded there. Ms. Barclay asked the court to find Mr. Hutchinson in contempt for violating the order and to grant her requested changes to the visitation schedule.

The court issued a show cause order, which set a January 2018 hearing date. However, Ms. Barclay was unsuccessful in her attempts to serve Mr. Hutchinson with that order and her motion, and Mr. Hutchinson did not appear at the scheduled hearing. As a result, on January 12, 2018, Ms. Barclay filed a motion for alternate service in which she alleged that she had made several attempts to serve Mr. Hutchinson in person and by certified mail. In support of her motion, Ms. Barclay attached an affidavit of non-service by a private process server, a certificate of attempted service by a deputy sheriff, and photocopies of a returned certified mail receipt and a post office sales receipt showing that certified mail and a return receipt had been purchased for the envelope addressed to Mr.

Hutchinson in contempt. Under Rule 15-206(b)(2), "[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." Upon such a filing, the court must enter a show cause order "providing for . . . a hearing" and provide notice to the alleged contemnor of the contempt allegations. Md. Rule 15-206(c)(2). Rule 15-206(d) then requires that "[t]he 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, 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." In other words, no summons was required.

Hutchinson. While the motion for alternate service was pending, Ms. Barclay, now represented by counsel, filed an amended motion for modification and contempt that contained more detailed allegations.

The circuit court granted the motion for alternate service in May and ordered that Ms. Barclay "shall serv[e] Defendant pursuant to Md. Rule 2-121(b) by mailing a copy of the Complaint and supporting documents to Defendant at Defendant's last known address and delivering a copy of each to a person of suitable age and discretion at the place of business of Defendant."

In August, Ms. Barclay's counsel filed an affidavit of service in which she first attested "that service was completed" in March "via Certified mail to his home and work address" on Jefferson Avenue in Brooklyn, New York (hereafter, "the Jefferson Avenue Address"). She also attested that pursuant to the alternate service order, she twice served Mr. Hutchinson, in July and August, "via U.S. mail, first class" sent to the Jefferson Avenue Address, with: (1) the original and amended motions for modification and contempt; (2) a show cause order issued by the court in May 2018, which provided for a hearing date of September 11, 2018; and (3) the order granting alternate service.

On September 11, the court went forward with a hearing in Mr. Hutchinson's absence. Ms. Barclay testified in support of her allegations of contempt and her request for modification. In a written order issued following the hearing, the court found that Mr. Hutchinson "was served but was not present at the hearing." The court noted that "Father was served by alternate service pursuant to" the court's May order. The court then granted

Ms. Barclay's motion, modified Mr. Hutchinson's visitation with the minor child, held Mr. Hutchinson in contempt for failing to pay child support, and set forth purge provisions for the contempt. The Clerk of Court entered the order onto the court's electronic case management docket on October 24.

The Motion for Reconsideration

On November 26, 2018, Mr. Hutchinson filed with the circuit court a "Motion for Reconsideration or to Alter and Amend" the modification order. Mr. Hutchinson alleged that he had not received "[v]alid service" because, among other things, (1) Ms. Barclay did not include his unit number on the Jefferson Avenue Address and (2) the Jefferson Avenue Address (with the unit number added) was his home, but not his business, address.[2] In opposition, Ms. Barclay asserted that Mr. Hutchinson's improper service argument lacked merit and that the motion for modification was untimely. Ms. Barclay appended to her opposition, among other things, documentation of her service attempts, which included her counsel's affidavit, a certificate of non-service from a deputy sheriff, and copies of certified mail receipts. She also appended property documents and public records signed by Mr. Hutchinson that identified the Jefferson Avenue Address, without any unit number identified, as his home and business address.

[2] Mr. Hutchinson included the following statement at the end of his motion: "Oral Hearing Requested." That request did not comply with the requirements for requesting a hearing in Rule 2-311, which, subject to exceptions not relevant here, requires (1) that "[t]he title of the motion . . . state that a hearing is requested," and (2) that the request be made "under the heading 'Request for Hearing.'" Md. Rule 2-311(f).

On January 11, 2019, the court signed an order denying the motion on two grounds: (1) the motion was "untimely pursuant to Md. Rule 2-534"; and (2) Mr. Hutchinson "was properly served under Md. Rule 2-121(b)." However, the order was not actually entered on the court's docket until February 13, 2019. On February 12, 2019, apparently not yet having received notice of the order that had been signed (but not entered) a month earlier, Mr. Hutchinson filed a line requesting a hearing on his motion for reconsideration. Presumably because the request for a hearing was filed before the order resolving the motion for reconsideration was entered on the docket, the court then scheduled a hearing "to see if [it] would vacate the order" based on Mr. Hutchinson's improper service argument.

The court held a hearing on Mr. Hutchinson's motion in April. In an oral ruling at the conclusion of the hearing, the court denied Mr. Hutchinson's motion on the same two grounds on which it had ruled previously: timeliness and proper service. Regarding timeliness, the court observed that under Rule 2-535(a), a motion for reconsideration that is not based on fraud, mistake, or irregularity must be filed within 30 days from entry of the order at issue. The court concluded that Mr. Hutchinson's November 26 motion to reconsider the court's order entered on October 24 was untimely.

Notwithstanding its conclusion that the motion was untimely, the court proceeded to address the merits of Mr. Hutchinson's improper service claim. The court determined that Mr. Hutchinson had been "evading service in this case" and "was properly served" by alternate service. In so finding, the court credited Ms. Barclay's evidence documenting

several methods of attempted service and the signed documents that listed Mr. Hutchinson's address as the Jefferson Avenue Address. The court therefore again denied the motion for reconsideration.

Mr. Hutchinson timely appealed.

DISCUSSION

I. THE CIRCUIT COURT ERRED IN RULING THAT THE MOTION FOR RECONSIDERATION WAS UNTIMELY.

The parties dispute the date on which the modification order was entered on the docket for purposes of triggering the 30-day window within which Mr. Hutchinson was required to file his motion for reconsideration. Mr. Hutchinson contends the order was entered on October 25, 2018, while Ms. Barclay asserts that it was entered on October 24, 2018. The docket itself states unambiguously that the order, signed on October 5, 2018, was entered on the court's docket on October 24, 2018. Because neither party has given us any reason to question the integrity of the docket, we conclude, as did the circuit court, that the 30-day time period for noting an appeal began to run from October 24, 2018. *See* Md. Rule 2-601(d); *see also Lee v. Lee*, 240 Md. App. 47, 65 (2019) (entry of a judgment occurs when the clerk "enters a record on the docket of the electronic case management system" (internal citations omitted)).

Although we agree with Ms. Barclay that the clock started running on October 24, we nonetheless agree with Mr. Hutchinson that his motion, filed on November 26, 2018, was timely. Thirty days from October 24, 2018 was Friday, November 23, 2018. That date was Native American Heritage Day, a holiday on which the circuit court clerk's offices

were closed.[3] *See Hall v. Prince George's County Democratic Cent. Comm*., 431 Md. 108, 132 (2013) (recognizing that the Friday after Thanksgiving Day is "a State holiday: Native American Heritage Day"). As a result, by operation of Rule 1-203(a), Mr. Hutchinson's time for filing a motion for reconsideration did not expire until the following Monday, November 26, 2018. His motion, filed on that date, was therefore timely.

That does not end our analysis, however, because notwithstanding the circuit court's erroneous conclusion that the motion was untimely, the court proceeded to address the merits of the motion. As a result, we now turn to the merits as well.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION FOR RECONSIDERATION.

Mr. Hutchinson contends that the circuit court should have granted his motion for reconsideration because he demonstrated that Ms. Barclay's service attempts were insufficient and, therefore, he did not receive proper notice of the modification hearing. Ms. Barclay responds that the court properly denied the motion for reconsideration because she effectuated alternate service, which was appropriate in light of Mr. Hutchinson's efforts to evade service.

A motion for reconsideration "will not toll the time for filing an appeal unless the motion is filed within ten days of the judgment or order." *Furda v. State*, 193 Md. App.

[3] Ms. Barclay observes that Mr. Hutchinson "provided no evidence" at the motions hearing that the circuit court clerk's office was closed on November 23. We take judicial notice that that date was a court holiday. *See* Md. Rule 5-201(c), (e) ("A court may take judicial notice, whether requested or not," of an adjudicative fact, and may do so "at any stage of the proceeding").

371, 377 n.1 (2010). Accordingly, "[w]hen a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion." *Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016) (quoting *Furda*, 193 Md. App. at 377 n.1). Here, because Mr. Hutchinson filed his motion for reconsideration more than ten days after entry of the modification order, our review is limited to the propriety of the denial of the motion for reconsideration, *see Furda*, 193 Md. App. at 377 n.1, which we review under the highly deferential "abuse of discretion" standard, *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008). "A circuit court abuses its discretion when no reasonable person would take the view adopted by the court, 'or when the court acts without reference to any guiding rules or principles.'" *Sydnor*, 228 Md. App. at 708 (quoting *Kona Props., LLC v. W.D.B. Corp.*, 224 Md. App. 517, 547 (2015)).

A circuit court's decision regarding "[w]hether a person has been served with process is essentially a question of fact." *Peay v. Barnett*, 236 Md. App. 306, 316 (2018) (quoting *Wilson v. Md. Dep't of Env't*, 217 Md. App. 271, 286 (2014)). In determining whether a method of service provides sufficient notice, we note that "due process is flexible and calls only for [] procedural protections as the particular situation demands." *Dep't of Transp. v. Armacost*, 299 Md. 392, 416 (1984). Where a party has been evading service under the mechanisms authorized by Rule 2-121(a), a court is permitted to authorize alternate service under Rule 2-121(b) by ordering that service "be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the

defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business of the defendant." A court also may order service by "any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice." Md. Rule 2-121(c).

Here, Ms. Barclay presented evidence that Mr. Hutchinson had been deliberately evading service, that he had identified the Jefferson Avenue Address as his home and business address, that she had made alternate service on him at that address, and that his protestations to the contrary were disingenuous. Although Mr. Hutchinson presented a different story, the court found that alternate service was appropriate and that Mr. Hutchinson was served properly. Based on that finding, we discern no basis in the record on which we could conclude that the court abused its discretion in denying his motion for reconsideration.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.