Circuit Court for Prince George's County
Case No. CAD13-33058

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1156

September Term, 2018

ALLWELL ONWUBUCHE

v.

EDWINA SHERIFF

Wright,
Friedman,
Beachley,
JJ.

Opinion by Beachley, J.

Filed: June 28, 2019

Allwell Onwubuche ("Father") appeals an order of the Circuit Court for Prince George's County denying his motion to modify custody based on a finding of lack of jurisdiction.[1]

For the reasons set forth below, we affirm the judgment of the circuit court.

BACKGROUND

Father and Edwina Sheriff ("Mother") were married on April 18, 2012, in Prince George's County. Father and Mother are the biological parents of one son, who was born in October 2012. Father, Mother, and Son lived together until October 25, 2013, when Father and Mother separated.[2]

By order dated December 17, 2014, the circuit court awarded Mother primary physical and sole legal custody of Son, and permitted Father supervised visitation every other Saturday at the Children's Rights Center in Hyattsville, Maryland.

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[1] On appeal, Father presents two questions for our review:

1. Whether the Circuit Court of Maryland has improperly released exclusive and continuing jurisdiction over a custody order based on misrepresentations of information and nondisclosures by a Defendant over a custody dispute as permitted under section 9-208.

2. Whether the Circuit Court of Maryland has improperly released exclusive and continuing jurisdiction over a child support order based on misrepresentations and nondisclosures by a Defendant over a support dispute as permitted under section 9-208.

Because Father is representing himself, we have construed his arguments liberally. *See Anderson v. O'Sullivan*, 224 Md. App. 501, 506, n.6 (2015).

[2] The parties were granted an absolute divorce on September 1, 2016.

Mother failed to bring Son to the Children's Rights Center for scheduled visits with Father on February 7, 2015, February 21, 2015, and March 7, 2015, and, as a result, visitation at the Children's Rights Center was terminated. On March 27, 2015, Father petitioned for contempt and modification of custody and visitation, arguing that since December, 2014, Mother had denied Father visitation with Son.

On August 7, 2015, the circuit court modified the parties' custody and visitation order, granting Father unsupervised visitation with Son every other Saturday, beginning on August 15, 2015, from 9:00 a.m. to 5:00 p.m., and ordered that visitation exchanges occur at the Prince George's County Police Department at 7600 Barlowe Road, Palmer Park. Mother retained primary physical and sole legal custody under the August 7, 2015 order.

On February 3, 2016, Father sought further modification of custody and visitation, arguing that, since August 7, 2015, Mother had failed to permit Father's visitation with Son. Following a hearing before a magistrate on April 27, 2016, at which only Father appeared, the circuit court granted Father's motion for modification, awarding him sole legal and physical custody of Son. On November 15, 2016, Mother filed a verified emergency motion to vacate the April 27, 2016 custody order. On November 17, 2016, following a hearing with both parents present, the circuit court vacated the April 27, 2016 custody order and restored Mother as the sole physical and legal custodian of Son. The court further ordered that the parties appear at a show cause hearing for Father to show cause why Mother should not retain sole physical and legal custody of Son.

On January 13, 2017, Mother moved to postpone the show cause hearing, arguing that she and Son had relocated to New York and she was unable to afford the cost of travel to the hearing because Father was not paying child support.

On January 30, 2017, Father filed a petition for contempt against Mother for refusing to permit him to visit with Son. Father asserted that he was concerned about the Son's well-being because Mother had refused to allow Father any communication with Son and had refused to provide an address for Son. On August 16, 2017, Mother filed a motion to modify child support.

On June 26, 2018, the court held an evidentiary hearing on Father's motion for contempt and Mother's motion for modification of child support. Father and Mother were present and represented by counsel. After the circuit court found Mother in contempt for denying Father visitation with Son,[3] Father made an oral motion for modification of custody.

Mother challenged the circuit court's continuing jurisdiction to modify child support or custody, arguing that New York was the appropriate forum to litigate the matter. In support of her argument, Mother introduced a document certifying that she had registered the circuit court's emergency order dated November 17, 2016, in New York, which, she argued, had conferred jurisdiction over the child in New York.

[3] Although the contempt finding is immaterial to this appeal, we have been unable to locate in the record any written contempt order as required by Maryland Rule 15-207(d)(2).

Mother testified that she and Son moved to New York in March 2016, following Father's alleged assault on her and Son. According to Mother, she had not had an address in Maryland since March 2016. She stated that her Maryland driver's license had expired, and she had not renewed it. Mother acknowledged that she no longer had a driver's license or other photo identification bearing her address.

Mother testified that Son was enrolled in kindergarten in New York, where he had an IEP[4] at school and a tutor whom he was seeing twice per week. Mother testified that Son also participated in activities at the YMCA as part of his IEP program. According to Mother, Son had a pediatrician in New York and he had not received any type of medical treatment in Maryland since March of 2016.

Mother requested an in-camera review of documents she sought to introduce pertaining to Son's activities in New York. She expressed reluctance to make the details of her address and Son's school known to Father due to her previous allegations of abuse. The court conducted an in-camera review of the documents submitted by Mother and described that evidence, which we have summarized as follows:

> 1) letter from a teacher at a school in Rockaway Park, New York, on school letterhead, undated, stating that Son was enrolled in a "self-contained bridge class in kindergarten";

[4] According to the U.S. Department of Education, the Individualized Education Program (IEP) "creates an opportunity for teachers, parents, school administrators, related services personnel, and students (when appropriate) to work together to improve educational results for children with disabilities." Off. of Special Educ. and Rehab. Servs., U.S. Dep't of Educ. *A Guide to the Individualized Education Program* 1 (July 2000), https://www2.ed.gov/parents/needs/speced/iepguide/iepguide.pdf.

2) letter from the YMCA in Rockaway, New York, containing a membership number for Son and confirming Son's registration for a karate class in 2017 and a summer swim session;

3) New York City Department of Education IEP placement recommendation;

4) medical report from St. John's Episcopal Hospital in New York regarding Mother's medical treatment on April 13 and 14, 2017;

5) letter from New York State, Official Health Plan Marketplace, addressed to Mother in Rockaway Beach, New York, confirming eligibility, as of May 30, 2017, for Medicaid benefits;

6) Mother's June and July, 2017 paystubs from Rite Aid of New York and addressed to her in Rockaway Beach, New York; and

7) notice from the Internal Revenue Service regarding unpaid 2015 taxes, addressed to Mother in Rockaway Beach, New York.

The circuit court also accepted a proffer from Mother, with no objection from Father, that Mother's partner would testify that he and Mother had lived together in New York since March 2016.

At the conclusion of the hearing, the court ruled that Mother and Son no longer had a significant connection with Maryland and that substantial evidence was no longer available in Maryland concerning Son's care, protection, training, and personal relationships. Consequently, the court determined that it no longer had continuing, exclusive jurisdiction, and relinquished custody jurisdiction to the State of New York.

DISCUSSION

The Maryland Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), set forth in Maryland Code (2012 Repl. Vol.), §§ 9.5-101 to 9.5-318 of the Family Law Article ("FL"), governs jurisdiction over child custody matters. FL § 9.5-

202(a) provides that a Maryland court that has made an initial child custody determination retains "exclusive, continuing jurisdiction" over the case until either:

> (1) a court of this State determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or
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> (2) a court of this State or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State.

Accordingly, a Maryland court retains continuing, exclusive jurisdiction so long as the child and one parent maintain a "substantial connection" with Maryland. *Kalman v. Fuste*, 207 Md. App. 389, 399 (2012) (citation omitted). If the child's connection with the parent remaining in Maryland becomes too attenuated that significant connections and substantial evidence of the child's well-being no longer exist in Maryland, the Maryland court no longer has continuing, exclusive jurisdiction over the custody matter. *Id*. (citation omitted). We review *de novo* whether a trial court interpreted a jurisdictional statute correctly. *Cabrera v. Mercado*, 230 Md. App. 37, 80 (2016) ("Whether the trial court correctly asserted jurisdiction is an issue of statutory interpretation that we review *de novo* to determine whether the court was legally correct." (citation omitted)).

In analyzing whether Mother and Son had a significant connection to Maryland under the provisions of FL § 9.5-202(a), the court explained:

> Okay. So I do find based on the evidence presented to me that [Son] and one parent, his mother, do not have a significant connection with this state and there is substantial evidence no longer in this state concerning [Son's] care, protection, training and personal relationships, because I find that he has been living, [Son and Mother], have been living in New York

for over two years.

The court further explained its analysis of whether substantial evidence was available in Maryland regarding Son's care, protection, training, and personal relationships, as required under FL § 9.5-202(a), as follows:

> I have, obviously, just been shown information regarding the child's healthcare, his education and this IEP document, just in quickly skimming through it, talks about in addition to just general education and classroom issues, there was an occupational therapist that did an evaluation.
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> That there was a goal that during the year -- this is to be implemented last October and during the year, [Son], using a variety of social instruction situations as well as sentence models and verbal cues he will expand his expressive language skills, et cetera, and it varies different ways as measured by a speech therapist which leads me to conclude that in addition to occupational therapy, he is getting speech therapy.
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> In fact, recommended special education programs, special class ELA, special class social studies and sciences, related services, occupational therapy two times a week. Speech language therapy two times a week.
>
> So I find that Maryland does not have any of that evidence regarding his care, protection, training and personal relationships. That New York has a wealth of it or should have a wealth of it. I am just seeing the tip of the iceberg. And so I find that based on that it would be appropriate for this [c]ourt to relinquish jurisdiction over custody and visitation pursuant to 9.5-202(a)(1).
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> And with regard to the child support, the parties have indicated their consent with this [S]tate that a tribunal of another state that has jurisdiction over at least one of the parties, that would be New York, that New York may modify the child support order and assume continuing exclusive jurisdiction. And that, again, is pursuant to Family Law [§ 10-308].
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> So I find that this [c]ourt no longer has jurisdiction. To the extent that we might, we are relinquishing that jurisdiction to the State of New York and so the motion, the oral motion to modify child support and custody is denied for lack of jurisdiction.

> The written motion to modify child support is denied for lack of jurisdiction and this case is closed.

In determining whether continuing, exclusive jurisdiction over Son's custody remained in Maryland, the circuit court applied both prongs of FL § 9.5-202(a) to the evidence presented. The court focused on Son's special education needs and the evidence showing that he was enrolled in special education classes and receiving occupational and speech therapy services in New York. At the time of the circuit court's jurisdictional decision, Mother and Son had lived in New York for more than two years. The circuit court's findings that Son had no significant connections with Maryland and that substantial evidence no longer existed in Maryland regarding his care, protection, training, and personal relationships were supported by the record. In light of the attenuation of the ties of Mother and Son to Maryland, we conclude that the circuit court did not err in relinquishing continuing, exclusive jurisdiction over this child custody matter.

Father challenges the circuit court's decision to relinquish jurisdiction as improper under FL § 9.5-208, arguing that the court erroneously relied on "misrepresentations and nondisclosures" by Mother and because Mother violated FL § 9-106 by failing to provide notice of her intent to relocate out-of-state. Father did not raise these issues before the circuit court, however, and he cannot raise them for the first time on appeal. "Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a); *see In the Matter of Tyrek S.*, 118 Md. App. 270, 277 (1997) (issue of appellant's inability to pay

restitution was not preserved for review because it was not raised in appellant's exceptions to magistrate's recommendation). Having failed to raise these issues in the circuit court, Father has waived them for appeal.

Even assuming that Father had preserved these issues, he would not prevail. FL § 9.5-208(a) requires that a Maryland court decline to exercise jurisdiction over a custody matter where a person who has engaged in "unjustifiable conduct" is seeking to invoke Maryland jurisdiction, except in certain circumstances, including the parents' consent to jurisdiction, an out-of-state court's determination that Maryland is the appropriate forum, or there is no other state that would have jurisdiction. FL § 9.5-208 does not apply in the present case because Mother was not seeking to invoke Maryland jurisdiction; she affirmatively requested that Maryland relinquish its jurisdiction.[5]

Father also argues for the first time on appeal that Mother failed to provide notice of her intent to relocate out-of-state in violation of FL § 9-106. FL § 9-106 provides that "in any custody or visitation proceeding the court *may* include . . . a requirement that either party provide advance written notice of at least 90 days to the court, the other party, or both, of the intent to relocate." (Emphasis added). FL § 9-106 does not, however, *require* that parties provide notice of an intent to relocate, and a 90-day notice provision was not included in any of the prior custody orders.

[5] Father also argues that the court "improperly released exclusive and continuing jurisdiction over a child support order … under section 9-208." At the jurisdictional hearing, however, the parties consented to the court's relinquishment of jurisdiction over the child support matter to New York if the court found that it did not have jurisdiction over the custody and visitation matter. *See* FL § 10-308(b)(1).

In sum, the circuit court did not err in relinquishing jurisdiction over this custody matter pursuant to FL § 9.5-202(a). The court therefore did not err in denying Father's oral motion to modify custody.

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