Circuit Court for Anne Arundel County
Case No.: C-02-FM-16-002125

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1655

September Term, 2023

WILLIE RUSH

v.

ALEXANDRA SOLANO-UMANA

Arthur,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: June 20, 2025

Willie Rush ("Father"), appellant, and Alexandra Solano-Umana ("Mother"), appellee, are the parents of a minor child ("Child"). On September 21, 2023, the Circuit Court for Anne Arundel County entered an order granting in part and denying in part Mother's amended petition for modification of custody, child support, and other relief. Father noted this appeal, but he subsequently reached an agreement with Mother to modify certain terms of the September 21st order. Among other terms of the agreement, placed on the record in open court on February 26, 2024, Father agreed to dismiss this appeal (but has not done so). On April 11, 2024, the circuit court entered an order reflecting the parties' agreement. Father did not file another notice of appeal after the entry of the April 11th order. For the reasons discussed herein, we shall dismiss this appeal.

BACKGROUND

Mother and Father married in 2007 and divorced in 2016. Child was born in 2015. Upon the parents' divorce, the court awarded Mother and Father joint legal custody of Child, with shared physical custody. The court charged each parent generally with support of Child.

In 2018, the court entered a consent order which continued the parties' shared physical custody of Child, but established a 2-2-5-5 schedule for Child to be in Father's care every Monday and Tuesday overnight, in Mother's care every Wednesday and Thursday overnight, and then with one of the parents on an alternating basis from Friday night through Monday morning for weekends.

In November 2022, Mother filed a motion to modify custody, which she later amended in July 2023. In her amended motion, Mother sought, among other relief, sole

legal custody or, in the alternative, joint legal custody with tie-breaking authority, as well as primary physical custody, child support, and reasonable attorney fees.

On September 7, 2023, the court conducted a merits hearing. On September 21, 2023, the court entered an order (hereafter "the September 21st order") that, among other things, altered the parents' joint legal custody by giving Mother tie-breaking authority regarding Child's participation in extra-curricular gymnastics. The September 21st order also provided that, during the school year, Child would be with the parties on the same 2-2-5-5 access schedule. But the order modified access during Child's summer break, giving the parties alternating weeks with Child from Sunday night through Saturday night. The order also addressed phone calls with Child; the division of Child's gymnastic fees; costs of medical insurance, and certain expenses for Child. With respect to child support, the order directed Father to pay Mother $519 monthly, and also to pay $100 monthly toward the child support arrearage totaling $5,190, to be paid through the Maryland Child Support Account. In addition, the order directed Father to pay Mother $7,000 toward her attorney fees within 60 days or risk that full amount being reduced to a judgment in Mother's favor.

On October 1, 2023, Father filed a motion to alter or amend the September 21st order, which the court denied on October 18, 2023. Three days later, Father filed the notice of this appeal.

On December 4, 2023, Mother filed a petition for contempt and sanctions, alleging, among other things, that Father had failed to abide by the September 21st order that he pay her $519 monthly in child support, plus $100 monthly toward arrears, and further alleging

that Father had failed to abide by the order that he pay half of Child's monthly gymnastics fees.

Father, who represented himself during most of the litigation, did not file a direct response to Mother's contempt motion. Instead, on December 13, 2023, he filed a motion to stay the September 21st order, which the court denied on January 3, 2024. Father did not appeal the denial of that motion.

On February 26, 2024, a hearing on Mother's motion for contempt was convened before a magistrate of the circuit court. Mother was represented by counsel; Father represented himself. At the beginning of the hearing, Mother's counsel informed the court that the parties had "reached a consent with regard to the contempt." Counsel related that, after the motion for contempt was filed, Father had established a child support account as previously ordered. Counsel further related that the parties had "worked something out" regarding the payment of Child's gymnastics fees. On that point, counsel said that the parties requested that the September 21st order be amended to require that Mother would provide Father a statement or invoice from the gymnastics facility each month and Father would pay Mother directly his share of the monthly expense.

The magistrate then inquired as to what other issues were remaining in dispute. Mother's counsel responded that Father's establishment of the child support account and the parties' agreement on gymnastics fees "takes care of the contempt." Counsel, however, informed the magistrate of Mother's pending motion that the order for payment of attorney fees be reduced to judgment in light of Father's failure to abide by the September 21st order directing Father to pay the sum within 60 days. Father responded that he had "made

attempts to negotiate the amounts" and had inquired about "making a [payment] schedule[.]" The magistrate then suggested a short recess so that the parties could discuss the issue further.

After a 52-minute recess, the hearing resumed with Mother's counsel informing the magistrate that the parties had "reached an agreement on the judgment" relative to attorney fees, and had also "reached an agreement to modify slightly and further [revise] the order from September [21st]." Counsel then stated the terms of the parties' agreement for the record with the understanding that counsel would reduce the agreement to writing and submit it to the court. The magistrate advised Father that, after Mother's counsel prepared the written consent order, it would be sent to him for review, but that would not be an opportunity to renegotiate the agreed-upon terms and the court could issue the order if it complied with the terms announced on the record.

As placed on the record, the parties agreed to modify the terms of the September 21st order related to phone calls to Child when Child was in the care of the other parent. The September 21st order had provided that "the non-custodial parent may have one (1) phone/video call per day with the minor child, to occur between 5:00pm and 6:00pm and not to exceed a reasonable amount of time[.]" With respect to phone usage, the agreed modification expanded the "call window between 5:00 p.m. and 7:00 p.m."; provided that either parent could contact Child at other times during the day, but not to an excessive amount; committed Father to provide Child with a cell phone and incur the costs associated therewith; provided that the cell phone would be equipped with appropriate parental

controls; and agreed that Father would provide Mother with a log of Child's cell phone activity upon Mother's reasonable request.

The parties also agreed to modify the provision in the September 21st order relating to "non summer vacation" by "adding that the parties agree to discuss non summer vacation requests and make up calendar days [and] to discuss the requests within a reasonable amount of time" and to also "discuss future holiday and school break calendaring." Counsel then stated for the record that "all other terms of the [September 21st] order would remain in force in [sic] effect."

Mother's counsel informed the magistrate that the parties had also reached an agreement on the attorney fees matter as follows. Father consented to the entry of a money judgment of $7,000 in favor of Mother. Mother would assign that judgment to the Collaborative Law Group (Mother's counsel's firm), and Father would pay the $7,000 directly to the Collaborative Law Group by paying installments of $100 per month on the 15th day of each month for the first six months, $200 per month for the next twelve months, and then $400 per month for ten months. The Collaborative Law Group would not move to enforce the money judgment unless Father failed to make two consecutive installment payments.

With respect to this appeal (that Father had filed challenging the entry of the September 21st order), Mother's counsel related that "Mr. Rush agrees to dismiss the appeal currently pending at the Appellate Court of Maryland." That is, Father agreed to dismiss this appeal.

The magistrate then engaged in this colloquy with Father:

THE COURT: Sir, do you agree with those terms?

MR. RUSH: Yes.

THE COURT: Do you have any questions about those terms?

MR. RUSH: No.

* * *

THE COURT: . . . [B]ut you understand, apparently that's going to resolve everything that's not only pending now, but also the appeal. You understand that, sir?

MR. RUSH: Yes.

THE COURT: Do you understand, sir, you've agreed to some things you didn't have to agree to today. Like, dismissing your appeal. But by putting it on the record, you understand you're bound by those terms of that –

MR. RUSH: I do understand that.

THE COURT: -- agreement as of right now?

MR. RUSH: Yes.

THE COURT: Okay. Okay. And you understand, [that] Mr. Fox he's not your attorney. And I take it no one's coerced you or harassed you to enter –

MR. RUSH: No.

THE COURT: -- into this agreement; is that correct, sir?

MR. RUSH: Correct.

* * *

THE COURT: Are there any questions for me?

MR. RUSH: No.

On April 11, 2024, the court entered an order documenting the agreement placed on the record by the parties at the February 26th hearing. On April 19, 2024, Father moved to vacate the judgment, which the court denied on May 16, 2024. Father did not file any notice of appeal after the entry of either the April 11 order or the May 16 denial of Father's motion to vacate.

In her brief, Mother asked this Court to dismiss Father's appeal.

DISCUSSION

Father, who continues to represent himself on appeal, filed two briefs with this Court: an informal brief filed on February 27, 2024, and a second brief filed on May 28, 2024. As best we can discern, Father raises the following issues claiming error:

(1) The court erred in issuing the September 21st order because there was "no material change (damage)[.]"

(2) The court erred in denying his motion to alter or amend the September 21st order without first convening a hearing.

(3) The court erred in denying without a hearing his motion, filed on December 13, 2023, to stay the September 21st order.

(4) The court erred in denying (by order dated June 14, 2023) his motion, filed on May 10, 2023, to vacate an April 24, 2023 order of the court directing him to pay a court appointed mediator $400 for two scheduled mediation sessions because the court ruled without first convening a hearing on the motion.

(5) The court erred in denying (by order dated July 3, 2023) his motion, filed on June 20, 2023, to alter or amend its June 14, 2023 ruling denying his motion to vacate the April 24, 2023 order because the court ruled without first convening a hearing on the motion.

In Father's requests for relief, he asks that this Court "reverse the current order, and adjust the following: a. Attorneys fee awarded to the plaintiff; b. Remove the limited

communications with the minor child[;] c. Extra-curricular activity cost[;] d. Summer time schedule change[;] e. Remove child support order and refund all funds paid to date in full within 30 days."

But we do not reach the merits of any of the questions raised by Father because we are compelled to dismiss the appeal in accordance with Father's agreement that was placed on the record on February 26, 2024, and documented in an order filed on April 11, 2024.

The April 11th order, which memorialized the agreement the parties had placed on the record in open court on February 26, constituted a consent order. In *Barnes v. Barnes*, 181 Md. App. 390 (2008), this Court held that—with limited exceptions not applicable to the present appeal—an appeal from a consent order will be dismissed.

As in this case, the dispute in *Barnes* had its origin in a domestic relations case in which a circuit court had entered an order that "incorporated the terms of a settlement agreement that the parties entered on the record at a hearing[.]" *Id*. at 394. Writing for this Court, Judge Ellen L. Hollander noted that the circuit court's order was entirely consistent with the parties' oral agreement, and she explained that the appeal would be dismissed pursuant to Maryland case law:

> In *Suter v. Stuckey*, 402 Md. 211 (2007), the Court of Appeals recently addressed the appealability of a consent order . . . . After surveying Maryland case law dating from 1848 to the present, and English jurisprudence dating back far further, *id*. at 222–24, the Court observed: "It is a well-settled principle of the common law that no appeal lies from a consent decree." *Id*. at 222.

181 Md. App. at 409-10.

But this Court also noted in *Barnes* that an exception to the general rule of non-appealability applies if the appellant has offered evidence in the circuit court that "'there was no actual consent'" to the terms of the agreement. *Id*. at 411 (quoting *Suter*, 402 Md. at 224 n.10). Judge Hollander explained the limited nature of the exception:

> [A]n appeal will lie "from a court's decision to grant or refuse to vacate a 'consent judgment' where it was contended below that the 'consent judgment' was not in fact a consent judgment because . . . the judgment exceeded the scope of consent, or for other reasons there was never any valid consent." *Chernick* [*v. Chernick*], 327 Md. [470,] 477 n. 1 [(1992)]. **In attacking an alleged consent decree under this narrow exception, "[t]he only question that can be raised . . . is whether in fact the decree was entered by consent**."

181 Md. App. at 411 (emphasis added) (quoting *Dorsey v. Wroten*, 35 Md. App. 359, 361 (1977)).

In this case, the colloquy between Father and the magistrate, quoted above, establishes that Father consented to the agreement and specifically agreed to dismiss this appeal.[1]

As this Court observed in *Barnes*, 181 Md. App. at 418, Maryland courts have "adhere[d] to the 'English practice' of dismissing an appeal where the order at issue on appeal is found to be a properly entered consent order." We quoted language from *Casson v. Joyce*, 28 Md. App. 634, 638 (1975), confirming that: "'[I]t is clear that Maryland

[1] The transcript from the February 26, 2024 proceeding also confirms that Father agreed to modification of other provisions of the September 21st order, namely, the $7,000 attorney fees award, the parties' telephone contact with Child, and the extra-curricular gymnastics fees. The April 11th order also provided that the parties had agreed "to discuss the calendaring of access for future holidays and school breaks[.]" And the April 11th order provided that the parties had agreed that all other terms of the September 21st order are to remain in full force and effect.

follows the English practice' of dismissing, rather than affirming, an appeal from a decree that appears by the record to have been entered by consent[.]" 181 Md. App. at 419.

We reject any suggestion that the circuit court lost jurisdiction to enter any binding orders in this case once Father had noted a timely appeal to the September 21st order on October 21, 2023. The fact that this appeal was pending when the court entered the April 11th order does not change our opinion as to the mootness of the issues raised on appeal. As the Supreme Court of Maryland held in *Kent Island, LLC v. DiNapoli*, 430 Md. 348 (2013): "[I]n the absence of a stay, trial courts retain fundamental jurisdiction over a matter despite the pendency of an appeal." *Id*. at 360-61 (citations omitted). "Thus, a trial court may continue ordinarily to entertain proceedings during the pendency of an appeal, so long as the court does not exercise its jurisdiction in a manner affecting the subject matter . . . of the appeal." *Id*. at 361 (citation omitted).

We have been directed to no authority that precludes parties to a pending appeal from agreeing to settle their disputes and validly agree to dismiss the then-pending appeal. To the contrary, the Maryland Supreme Court held in the *DiNapoli* case:

> **The parties to a pending appeal are free, before the appeal is decided, to enter into a court-sanctioned agreement resolving the litigation and dismissing the pending appeal, no matter that the appeal remained pending at the time the agreement is memorialized in a consent judgment**. Thus, because the Circuit Court for Anne Arundel County had jurisdiction to enter the Consent Order at the time the appeal in *Kent Island I* was pending, the Consent Order is a valid final and enrolled judgment.

430 Md. at 361 (emphasis added).

Consequently, we shall dismiss this appeal because all issues arising from the September 21st order were settled by the agreement placed on the record on February 26.

The terms of the parties' consent agreement expressly included Father's dismissal of this appeal. When the agreed-upon terms were placed on the record at the February 26th hearing, the magistrate asked Father whether he understood that the order memorializing the parties' agreement would "resolve everything that's not only pending now, but also the appeal." Father replied "Yes." The magistrate again confirmed that Father understood what he was agreeing to, advising him that "you've agreed to some things you didn't have to agree to today. Like dismissing your appeal." Father replied, "I do understand that."

Accordingly, there is no issue raised in Father's brief that remains properly before us. We shall dismiss the appeal.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.