

Circuit Court for Prince George's County  
Case No.: CAP11-07825

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 1922

September Term, 2021

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MYESHA BYNUM

v.

STEVEN GREEN

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Friedman,  
Tang,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Tang, J.

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Filed: December 29, 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.

\*\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

The parties to this appeal, appellant, Myesha Bynum (“Mother”), and appellee, Steven Green (“Father”), appeared before a magistrate in the Circuit Court for Prince George’s County on a motion to establish child support against Mother. After a hearing, the magistrate recommended that Mother pay child support. Mother filed exceptions, which the court denied. Mother filed a notice of appeal. An order granting the motion and adopting the magistrate’s recommendation, however, was never entered in the underlying case. Accordingly, the appeal is premature and must be dismissed.

### **BACKGROUND**

The parties have one minor child in common. Their disputes regarding the child are embodied in a trilogy of cases which have spanned several years: (1) the Child Support Case,<sup>1</sup> (2) Mother’s Custody Case,<sup>2</sup> and (3) Father’s Custody Case.<sup>3</sup> This appeal involves the Child Support Case.

In 2011 and upon petition by the Prince George’s County Office of Child Support (“PGCOCS”), the court ordered Father to pay \$400 per month in child support. Later, at Father’s request, the court reduced Father’s child support obligation to \$300 per month.

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<sup>1</sup> In 2011, the Prince George’s County Office of Child Support, on behalf of Mother, filed a petition to establish paternity and child support against Father in Case No. CAP11-07825.

<sup>2</sup> In June 2017, Mother filed a complaint for custody of the child in Case No. CAD17-14260.

<sup>3</sup> In July 2017, Father filed a complaint for custody of the child in Case No. CAD17-15948.

In 2017, Mother and Father filed, in their respective custody cases, a complaint for custody of the child.<sup>4</sup> In November 2018, the court awarded Father primary residential custody of the child. As a result, Father moved to modify child support seeking a further reduction in his child support obligation.

In February 2019, the court granted Father’s motion to modify child support such that his obligation to pay ongoing child support terminated in February 2019 with arrearages assessed at \$8,284.91. Father was ordered to pay \$275 per month towards the arrearages until paid in full.

In May 2021, PGCOCs filed a “Motion to Establish and/or Modify Child Support” (“PGCOCs’s Motion”), this time against Mother. It alleged a “material change in circumstances since the entry of the last order which warrants a modification of the child support obligation.” It requested, *inter alia*, that Mother pay child support for the child in accordance with the child support guidelines.<sup>5</sup>

On August 24, 2021, the parties appeared before a magistrate.<sup>6</sup> The magistrate took testimony regarding both parties’ incomes, where Father asserted that he made \$64,500 per year, and Mother, as a small business owner, asserted that she had no income due to the

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<sup>4</sup> See n. 2 and 3, *supra*. The court consolidated the custody cases, but there is no indication that the court consolidated these cases with the Child Support Case.

<sup>5</sup> PGCOCs filed its motion in the underlying Child Support Case and in both custody cases.

<sup>6</sup> The hearing before the magistrate is reflected in the docket entries in all three cases.

COVID-19 pandemic. The magistrate imputed minimum wage income to Mother and determined that her child support obligation would be \$247 per month.

On September 3, 2021, Mother, *pro se*, filed exceptions to the magistrate’s recommendation in the underlying Child Support Case.<sup>7</sup> Therein, Mother challenged the magistrate’s recommendation that she pay child support under the parties’ visitation schedule, asserted that transportation expenses were not considered in the magistrate’s calculation, and challenged the income attributed to the parties.

Thereafter, the filings in the Child Support Case reflect that:

On September 7, 2021, the clerk filed the “Daily Disposition Sheet” regarding the August 24, 2021 hearing (docket entry 88).

On September 14, 2021, “Request for Transcripts Filed” (docket entry 92).<sup>8</sup>

On September 24, 2021, the clerk filed a “Memorandum” “dated 9-20-21 to [Mother] from Paralegal Unit on Transcripts for Exceptions” (docket entry 91).<sup>9</sup>

On December 27, 2021, the court entered an order denying Mother’s exceptions:

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<sup>7</sup> Mother’s exceptions were not filed in either of the custody cases.

<sup>8</sup> A transcript of the August 24, 2021 hearing is indexed under this docket entry.

<sup>9</sup> The memorandum notified Mother that:

A complete transcript of the proceedings before the Magistrate *must be filed within thirty (30) days of the date on which Exceptions were filed*. A party filing Exceptions must file the transcript with the court and send a copy to opposing party or attorney of record for the opposing party at the same time. If you need additional time in which to file the transcript, you must request an extension of time in writing, BEFORE the expiration of the required time, for consideration by the [c]ourt. **THE COURT MAY DISMISS THE EXCEPTIONS IF THE TRANSCRIPT IS NOT FILED TIMELY OR PROVIDED TO THE OPPOSING PARTY/COUNSEL.** *Maryland Rule 9-208(g)[.]*

Upon consideration of Plaintiff’s Exception to Child Support Order (DE #90), filed September 3, 2021, and no oppositions having been filed, it is this 22<sup>nd</sup> of December 2021, by the Circuit Court for Prince George’s County, Maryland, hereby

ORDERED, that the Plaintiff’s Motion is DENIED as this motion is improperly filed.<sup>[10]</sup>

The court did not enter an order, in the Child Support Case, granting PGCOCS’s Motion and adopting the magistrate’s recommendation that Mother pay child support.

On January 25, 2022, Mother filed a notice of appeal in the Child Support Case.

### **ISSUES PRESENTED**

In her informal brief, Mother raises three issues challenging the magistrate’s determinations, which we quote:<sup>11</sup>

Issue 1: Each parent’s “Actual Income” and financial statements were omitted Pursuant to Child Support Guidelines 12-203[.]

Issue 2: The custody order dated November 28, 2018, stating joint physical & legal custody and the number of days for qualification were omitted Pursuant to the Child Support Guidelines[.]

Issue 3: Transportation Expenses [were] Omitted Pursuant to Child Support Guidelines 12-204.

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<sup>10</sup> Although it is unclear from the record why Mother’s exceptions were denied as “improperly filed[.]” this issue was not raised on appeal and, in any event, is not before us in light of the prematurity of Mother’s appeal. *See infra*.

<sup>11</sup> Father did not file a brief in this Court.

Mother requests that we “grant[] the recalculation of child support of the above referenced child support case and the current order be rescinded and computed using the verified actual income and all other Maryland Child Support Guidelines listed within this informal brief.”

At this time, we cannot address the merits of any of these issues because the court has not yet entered an appealable order in the Child Support Case.

### DISCUSSION

Generally, a party “may appeal only from a final judgment rendered by the trial court.” *Pattison v. Pattison*, 254 Md. App. 294, 307 (2022) (citation omitted); Maryland Code (1973, 2020 Repl. Vol.) § 12-301 of the Courts and Judicial Proceedings Article. To secure appellate review in this Court, a party must file a notice of appeal within thirty days after entry of the judgment or other appealable order. Md. Rules 8-201(a) and 8-202(a). A judgment or other appealable order takes effect after it is set forth on a separate document signed by the judge or clerk and after the clerk makes a proper docket entry. *See* Md. Rule 2-601. If the notice of appeal is filed before entry of the order, it “has no force and effect” because a premature appeal is a “jurisdictional defect.” *See Jenkins v. Jenkins*, 112 Md. App. 390, 408 (1996) *superseded by rule as stated in Bussell v. Bussell*, 194 Md. App. 137, 152-54 (2010). Here, the court’s order, entered in the Child Support Case, merely denying Mother’s exceptions to the magistrate’s recommendations is not a final appealable judgment. We explain.

A magistrate “is not a judicial officer, and is not vested with judicial powers.” *O’Brien v. O’Brien*, 367 Md. 547, 554 (2002) (citation omitted). The recommendation and report of the magistrate is advisory only. *Id.* The magistrate’s “ultimate conclusions are

merely recommendatory and must be reviewed by the court with an independent exercise of judgment[.]” *Id.* at 554-55 (internal quotations and citations omitted). If the court, upon consideration of timely-filed exceptions, concludes it should act in conformance with the magistrate’s recommendation, it must rule upon the exceptions “*and it must then enter an appropriate order consistent with that ruling.*” *Id.* at 555 (emphasis in original). The Supreme Court of Maryland<sup>12</sup> in *O’Brien* explained:

Merely sustaining, or overruling, exceptions does not end the case in the Circuit Court, and it therefore does not constitute a judgment, even if the parties and the court believe that, for practical purposes, the case is over. It is not over until a judgment, entered in conformance with Rule 2-601, is signed and entered on the docket.

*Id.* at 555-56. In the instant case, where the court denied Mother’s exceptions, the next required and final step to terminate the case would have been an order granting PGCOCS’s Motion. *See id.* at 555. Because Mother appealed from the court’s denial of exceptions before it entered a judgment in the Child Support Case, Mother’s appeal is premature and must be dismissed. *See id.* at 556.

Incidentally, we observe that the magistrate did file, on September 16, 2021, a “Report and Recommendation” that appears to correspond to the August 24, 2021 hearing,

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<sup>12</sup> At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See, also*, Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland....”).

but it was filed in Mother’s Custody Case and not in the underlying Child Support Case.<sup>13</sup> The docket entries in Mother’s Custody Case further reflect that, on September 17, 2021, the court entered an order directing Mother to pay Father “the sum of \$247.00 per month as child support[.]”<sup>14</sup> This order appears to adopt the magistrate’s recommendation made at the August 24, 2021 hearing and resolve PGCOC’s Motion, but the order was not filed in the underlying Child Support Case, from which Mother took her appeal. These incongruent entries, however, do not impact our holding in this case, because the docket entries in the underlying Child Support Case determine whether a final judgment has been entered.

*Waller v. Md. Nat. Bank*, 332 Md. 375 (1993) is instructive. There, the trial court intended a judgment to be final, but the clerk erroneously indicated on the docket that a written order would follow. *Id.* at 377. The Supreme Court held that the docket entry did not establish a final judgment, and the appellate court was without authority to entertain an appeal taken therefrom. *Id.* at 380. Because “Rule 2-601 makes it clear that whether a

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<sup>13</sup> Although the filings in the custody cases are not part of the record, we can take judicial notice of the docket entries in those cases as they are available on the Maryland Judiciary website. *See Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016) (taking judicial notice of docket entries available on the Maryland Judiciary’s website pursuant to Maryland Rule 5-201), *aff’d*, 452 Md. 663 (2017). But we decline to view those filings and confirm whether the magistrate’s Report and Recommendation filed in Mother’s Custody Case relate to the August 24, 2021 hearing on PGCOC’s Motion. *See Colao v. Cnty. Council of Prince George’s Cnty.*, 109 Md. App. 431, 469 (1996), *aff’d*, 346 Md. 342 (1997) (holding that, regarding documents that were not part of the record, this Court “shall, as we must, disregard and not consider such extraneous materials.”).

<sup>14</sup> Neither party appealed from the entry of this order entered in Mother’s Custody Case.



final judgment has been entered must be determined by reference to the docket entry,” “the date and form of a docket entry purporting to enter final judgment take on special significance.” *Id.* at 378. The Court explained that where “the rules rely upon the form and date of the docket entry to establish the finality and date of finality of an order, the docket entry will control[,]” reasoning that “the integrity of the written docket entry [ought to] be observed, until it is corrected or modified[,]” “for the protection of the parties and third persons.” *Id.* at 379. It concluded that “[w]hen the correcting order is entered, a final judgment will result, and a new appeal may be taken.” *Id.* at 380; *see also id.* at 379 n.1 (citing to Maryland Rule 2-535(d) which authorizes the court to correct clerical errors at any time).

Here, the docket entries in the underlying Child Support Case do not establish a final judgment because the court has not yet entered an order granting PGCOCS’s Motion, adopting the magistrate’s recommendations, and establishing Mother’s child support obligation. Accordingly, we are without authority to entertain an appeal taken therefrom. *See id.* at 380. Although we must dismiss this appeal, the dilemma in this case is not without a remedy. The case shall be returned to the circuit court for entry of a final judgment in the underlying Child Support Case.<sup>15</sup> Once a final judgment is entered in the Child Support Case, either party “is free, of course, to take an appeal” in compliance with the Rules. *O’Brien*, 367 Md. at 556; *see* Md. Rule 8-202(a) (“Except as otherwise provided

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<sup>15</sup> The circuit court may correct, as necessary, any clerical mistakes that resulted in any inconsistent entries made in the trilogy of cases. *See* Md. Rule 2-535(d).

in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.”).<sup>16</sup>

**APPEAL DISMISSED. COSTS WAIVED.**

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<sup>16</sup> We recognize that our holding effectively extends the parties’ time to appeal from the order requiring Mother to pay child support, entered on September 17, 2021 in Mother’s Custody Case from which neither party took an appeal. While “[t]he additional delay and inconvenience is regrettable, [it is] essential if we are to preserve the integrity of the docket entry as the means for determining when a final judgment has been entered.” *Waller*, 332 Md. at 380.