

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1512

September Term, 2015

GAETANO BROOKS

v.

RENEE BROOKS

Eyler, Deborah S.
Wright,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: November 14, 2016

*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.

More than two years after the parties were granted an absolute divorce, appellee Renee Brooks (“Renee”) filed a Motion to Enter Domestic Relations Order (“DRO”). Renee’s counsel certified service of the motion to counsel for appellant, Gaetano Brooks (“Gaetano”), but the motion was not personally served on Gaetano. Neither Gaetano nor his counsel responded to Renee’s motion. The circuit court executed the Domestic Relations Order submitted by Renee. Gaetano’s motion for reconsideration was denied and this appeal ensued.

Gaetano presents three questions for our review which we combine and rephrase: Did the circuit court err in granting Renee’s Motion to Enter DRO where Gaetano was never personally served with the motion?

We hold that the circuit court erred and therefore reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND

The pertinent facts in this case are not disputed. On November 23, 2011, the Circuit Court for Charles County granted the parties a Judgment of Absolute Divorce. Paragraph 9 of that Judgment granted Renee fifty percent (50%) of the marital share of Gaetano’s Washington Metropolitan Area Transit Authority pension. Paragraph 9 further granted Renee a former spouse survivor annuity, provided that Renee “bear the full costs of the survivor annuity.” In Paragraph 21 of the Judgment, the circuit court retained jurisdiction to amend the judgment for the purpose of issuing a “Qualified Domestic Relations Order under the Retirement Equity Act of 1984, or any other subsequent legislation.”

The docket entries reflect that the case was reopened on June 25, 2012, on Renee's Motion for Appropriate Relief. Gaetano filed a counter complaint for contempt on July 10, 2012. All issues raised in those pleadings were resolved, and the case was closed, by a consent order entered on November 27, 2012.

The case was reopened again on December 6, 2012, on a petition for contempt, but was closed again on March 19, 2013, when the court issued an order removing the contempt hearing from the docket.

The case then lay dormant for over a year. On April 17, 2014, Renee filed her Motion to Enter DRO. That motion contained a certificate of service by first class mail to Gaetano's attorney; Gaetano was not personally served with the motion. Gaetano did not file an answer or reply to the motion and on June 13, 2014 the circuit court issued the DRO submitted by Renee's counsel.

On July 3, 2014, Gaetano, through counsel, filed a motion for reconsideration in which he alleged that he had not been provided the opportunity to be heard on the Motion to Enter DRO prior to its execution by the court. Gaetano further alleged that the executed DRO contained "terms and conditions that were not agreed upon by the parties and were not part of any Court Order." Accordingly, Gaetano sought reconsideration of the DRO and requested "a chamber's conference and a trial (if necessary)." Both parties subsequently filed memoranda in support of their positions. Thirteen months later, on August 17, 2015, the circuit court denied the motion for reconsideration without a hearing. Gaetano timely appealed.

STANDARD OF REVIEW

The standard of review for a trial court's ruling on a motion for reconsideration is abuse of discretion. *Wilson-X v. Department of Human Resources*, 403 Md. 667, 674-75 (2008). "Except to the extent that they are subsumed in [the question whether the trial court abused its discretion in denying the motion for reconsideration], the merits of the judgment itself are not open to direct attack." *Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016) (alteration in original) (quoting *Stuples v. Balt. City Police Dep't*, 119 Md. App. 221, 241 (1998)). The Court of Appeals has recognized that "trial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary by nature." *Wilson-X*, 403 Md. at 675. Thus, "[a] court that fails to rectify a judgment based on a misunderstanding of the law applicable to the case or the procedural posture of the case, especially when the error is brought to its attention in a timely manner, abuses its discretion." *Morton v. Schlotzhauer*, 449 Md. 217, 144 A.3d 592, 601 (2016) (footnote omitted). *See also, Triplin v. Jackson*, 326 Md. 462, 464 (1992) (holding that the circuit court abused its discretion when it denied a motion for reconsideration which was supported by uncontradicted affidavits that plaintiffs had not received notice of trial date).

DISCUSSION

Resolution of this appeal is dictated by the Maryland Rules. Maryland Rule 2-132(d) provides:

(d) Automatic termination of appearance. When no appeal has been taken from a final judgment, the appearance of an attorney is automatically terminated upon the expiration of the appeal period unless the court, on its own initiative or on motion filed prior to the automatic termination, orders otherwise.

Gaetano argues that, because no appeal was taken from the Judgment of Absolute Divorce issued on November 23, 2011, his counsel's appearance was automatically terminated after the expiration of thirty days. While Gaetano is correct in that assertion, we note that the case was reopened two times after the Judgment of Absolute Divorce was issued. The second reopening related to a petition for contempt that was resolved by an order entered on March 19, 2013. Because no appeal was taken from that order, Gaetano's counsel's appearance was automatically stricken after the expiration of thirty days – approximately April 18, 2013. At that point the case was closed by the entry of a final judgment.

When Renee filed her Motion to Enter DRO in April 2014, she was required to obtain personal service of Gaetano pursuant to Maryland Rule 2-121. The certificate of service verifying that Renee mailed a copy of the motion to Gaetano's counsel was legally insufficient for service on Gaetano because Gaetano did not have counsel of record as of the filing of the motion on April 17, 2014; his counsel's appearance was stricken in April, 2013, by operation of Rule 2-132(d).

We reached the same conclusion in *Pettee v. Pettee*, 77 Md. App. 362 (1988). There, a final judgment ordering the husband to pay permanent alimony was entered on January 22, 1987. On August 3, 1987, the wife filed a petition seeking to hold the husband in contempt for failing to pay the court-ordered alimony. The show cause order issued by

the circuit court provided that service could be effected by serving the attorney who represented husband in the alimony case.

On appeal, the husband argued that: 1) the January 22, 1987, order was a final judgment, 2) under Rule 2-132(d), his attorney's appearance was automatically terminated thirty days after entry of the judgment, and 3) service of the show cause order on his former attorney was therefore ineffective. *Id.* at 367. We agreed with the husband, holding that, because counsel's appearance automatically terminated thirty days after entry of the January 22, 1987 judgment, wife was required to serve the show cause order on husband pursuant to Rule 2-121. *Id.* at 370-71.

Our decision in *Pettee* is controlling. To hold otherwise would violate the fundamental requirement of due process that a litigant receive notice of a proceeding and be afforded the opportunity to be heard. *See, e.g., Madaio v. Madaio*, 256 Md. 80, 83 (1969); *Lohman v. Lohman*, 331 Md. 113, 130 (1993). Accordingly, we hold that the circuit court abused its discretion and remand this case to ensure that Gaetano is properly served with the Motion to Enter DRO and that both parties are afforded the opportunity to be heard.

**JUDGMENT OF THE CIRCUIT COURT FOR
CHARLES COUNTY REVERSED; CASE
REMANDED FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
APPELLEE TO PAY COSTS.**