

Circuit Court for Montgomery County
Case No. 65478FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2539

September Term, 2016

JENNIFER H. MURPHY

v.

RICHARD AVILA JR.

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 8, 2017

*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.

On January 9, 2017, the Circuit Court for Montgomery County entered an order which, *inter alia*, denied Jennifer Murphy’s (“Mother” or appellant) request to hold Richard Avila Jr. (“Father” or appellee) in contempt, and granted, in part, her request to modify child custody concerning the couple’s minor daughter. Mother noted an appeal, raising ten questions, which we have distilled to three: 1) did the court err in modifying the order proposed by the magistrate?; 2) was the circuit court biased against Mother?; and 3) did the court err in denying Mother’s petition to hold Father in contempt?

We can answer these questions briefly, but we begin with two critical observations about appellate procedure. First, appellate courts may only review errors that were identified and specifically objected to at the court below. *See* Rule 8-131(a) (“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[.]”). Mother, a self-represented litigant, made few objections at the circuit court and, thus, did not preserve the errors that she claims occurred for our review. Second, appellate courts require litigants, in their briefs, to provide specific examples of the errors they believe occurred at the circuit court and to provide citation(s) to relevant case precedents in which courts have identified similar conduct as error. Rule 8-504(a). Mother’s brief provides none of these things that we usually see in briefs presented to us. For these two reasons alone, we would be compelled to dismiss Mother’s appeal. *See* Rule 8-504(c). Nonetheless, in an abundance of caution, we have scoured the record to assure ourselves that there is no merit to Mother’s complaints.

On April 20, 2011, the court awarded sole legal and physical custody of the daughter to Father, with a specific, supervised visitation schedule for Mother. Additionally, the order required Father to notify Mother of major issues concerning the child and to permit access to Mother as to the child's school and medical records. On December 4, 2014, the court modified the order, granting unsupervised visitation to Mother, but no overnight visits.

In January 2016, Mother filed a petition to hold Father in contempt and a separate petition to modify custody. A hearing was held before a magistrate on August 29th and October 28, 2016. On November 1, 2016, the magistrate placed his recommended findings on the record and issued a proposed order denying Mother's contempt petition, but granting in part the modification petition to include overnight visits every other weekend and for two weeks in the summer. Father noted exceptions to the magistrate's proposed order. Accordingly, on January 4, 2017, the circuit court held a hearing as to Father's exceptions. At this hearing, Father made it clear that he was excepting to the overnight visits. On January 9th, the court entered an order that modified the magistrate's proposed order in that it removed Mother's overnight visits, save for Mother's access during the Christmas holiday.¹ Mother noted this appeal.

First, Mother complains that the circuit court erred by modifying the order proposed by the magistrate. This complaint misunderstands the way the system is intended to function. Magistrates hear testimony and make recommendations. Rule 9-208. Parties that

¹ Father filed a motion to amend this order, but the circuit court has yet to rule on this motion.

disagree with those recommendations may file exceptions. *Id.* The circuit court then considers the magistrate’s recommendations, the parties’ exceptions, oppositions, and the argument of counsel. *Id.* And then the circuit court makes the decision. The circuit court is free in so doing to accept, reject, or modify the magistrate’s recommendations. *Domingues v. Johnson*, 323 Md. 486, 491-92 (1991). That is how the system works. Moreover, in the absence of Mother identifying any errors in the modifications made by the circuit court – and us seeing none – we see no problems in the modifications made.

Second, Mother complains that the circuit court was biased against her. She has pointed us to no specific examples in the transcript, and, after reviewing it, we see none. To be sure, the circuit court was not shy about pointing out defects in the testimony that Mother elicited before the magistrate, but that is not a manifestation of bias.

Third, Mother complains that the circuit court erred in denying her petition for contempt. We review such allegations on the abuse of discretion standard, *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016), and it is hard to imagine that a circuit court could ever abuse its discretion by declining to hold a party in contempt. Moreover, our independent review of the record in this case convinces us that no such error occurred here.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**