Circuit Court for Anne Arundel County
Case No. 02-C-07-127466

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 270

September Term, 2017

STANLEY C. ABLER

v.

COURTNEY R. SEMMES

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

JJ.

PER CURIAM

Filed: January 19, 2018

On February 12, 2008, the Circuit Court for Anne Arundel County entered a judgment of absolute divorce between Stanley Abler ("Father" or appellant) and Courtney Semmes ("Mother" or appellee), which incorporated, but did not merge, the parties' separation agreement. Pursuant to the terms of the agreement, the parties shared legal and physical custody of the couple's minor daughter, and Father agreed to pay $250 per month as child support, among other things.

On August 17, 2015, Father filed a petition to modify custody, visitation, and child support. The case proceeded through discovery, and counsel for both parties entertained settlement negotiations. The court scheduled the case for a merits hearing from February 1-3, 2017. On January 24, 2017, Father filed a motion to postpone due to the illness of his grandmother who lived in Chicago, which the court denied.

The parties appeared in court for the merits hearing on February 1, 2017. At that time, counsel informed the court that the parties had agreed that Mother would have sole physical custody of the child, and the parties would share legal custody. Additionally, the court was advised that they had agreed to a specific visitation schedule and that Father would pay child support in the amount of $565 per month. After the court was informed of the terms of the agreement, Father's counsel stated that he had "[n]o additions, corrections or modifications[.]" The court then accepted the parties' agreement, and Mother's counsel stated that he would draft an order memorializing the terms.

The day after this proceeding, Father terminated his counsel's representation and sent letters to the court and Mother's counsel expressing a desire to withdraw from the

consent order, which the court treated as a motion to set aside the consent order. On March 10, 2017, the court denied Father's motion and entered the memorialized consent order on the docket. On March 16th, Father filed a "Motion to Vacate Consent Order and Set for New Trial," which the court denied on April 11th. Father then noted this timely appeal. Based on his brief, we discern four issues for our review: 1) whether the court erred in denying his motion to postpone; 2) whether the court erred in denying the motion to set aside the consent order; 3) whether the court erred in entering the consent order; and 4) whether the court should have *sua sponte* inquired into Father's mental state when he stated that he was taking a prescription psychiatric medication. For the reasons stated below, we affirm.

Preliminarily, Mother urges this Court to dismiss Father's appeal, mainly because he failed to include a full transcript of the February 1, 2017 hearing in his record extract. Mother, however, included the transcript in her appendix. Where "the appellee elects to supply in [the appendix] the material omitted by the appellant, . . . the appellate court would not ordinarily dismiss the appeal in the absence of prejudice to appellee or a deliberate violation of" the rules of appellate procedure. *Kemp-Pontiac-Cadillac, Inc. v. S & M Constr. Co., Inc.*, 33 Md. App. 516, 524 (1976). Accordingly, we decline to dismiss the appeal.

Turning to the merits, Father first contends that the court erred in denying his motion to postpone. He states that his grandmother was diagnosed with a terminal illness, placed in hospice care, and did not have long to live in the period leading up to the merits hearing. He maintains that he wanted to see her before she passed away, and

the court's denial of his motion to postpone prevented this from occurring, putting him into a "negative emotional and stressful position."

We review a court's denial of a motion to postpone for abuse of discretion. *See A & E N., LLC v. Mayor & City Council of Balt.*, 431 Md. 253, 271 n.10 (2013). The Court of Appeals has remarked that "an abuse of discretion occurs when a decision is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011) (quoting *King v. State*, 407 Md. 682, 711 (2009)). Stated another way, an "'abuse of discretion . . . . has been said to occur where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

Father maintains that there were available alternative dates, and "there was no good reason not to grant the motion." We are not persuaded, however, that the court abused its discretion in denying Father's motion to postpone.

As to Father's motion to set aside the consent order, Father maintains that the court failed to timely rule on it. He contends that he was entitled to "some sort of proceeding to resolve the issue." He also argues that his motion was "unethically squashed" by Mother's counsel.[1]

[1] Mother asserts that an appeal from a consent order ordinarily does not lie. She is correct. *See Barnes v. Barnes*, 181 Md. App. 390, 411 (2008). There is an exception, however, "'where it was contended below that the consent judgment was not in fact a (continued)

We perceive no error. At no point in his letter to the court did Father request any sort of hearing or proceeding. Rather, he alleged that the judge had influenced the settlement negotiations and that his counsel threatened him and coerced him to agree.[2] The transcript of the proceeding does not bear out these allegations, however. Rather, at the conclusion of the recitation of the terms of the agreement, counsel for both parties questioned their respective clients as to their understanding of and agreement to the terms. Following Mother's counsel's *voir dire*, the following occurred:

> [FATHER'S COUNSEL]: Thank you. Mr. Abler? Mr. Abler, please state your full name for the record.
>
> [APPELLANT]: Stanley C. Abler, Jr.
>
> [Q]: And your current address?
>
> [A]: 757 Powhaten Beach Road.
>
> [Q]: And how old are you, sir?
>
> [A]: 36.

(continued)
consent judgment because . . . the judgment exceeded the scope of consent, or for other reasons there was never any valid consent.'" *Id.* (quoting *Chernick v. Chernick*, 327 Md. 470, 477 n.1 (1992)). In this situation, "'[t]he only question that can be raised . . . is whether in fact the decree was entered by consent.'" *Id.* (quoting *Dorsey v. Wroten*, 35 Md. App. 359, 361 (1977)).

[2] Additionally, Father contends that the modification agreement is invalid because he did not receive any consideration for it. He maintains that he "would never have agreed to" the agreement because it "made no logical sense" for him to give up shared physical custody of the child and to pay more in child support. Father appears to conflate the legal definition of consideration with benefit. He fails to recognize that cessation of a lawsuit is considered sufficient consideration to support a consent agreement. *See Long v. State*, 371 Md. 72, 85 (2002).

[Q]: And how far did you go in school?

[A]: Associates.

[Q]: And are you currently under the influence of any alcohol or drugs that would influence your decision making today?

[A]: No.

[Q]: And have you ever been under the care of a psychiatrist or psychologist that would – has prescribed you any medication that you are currently taken [sic]?

[A]: Yes.

[Q]: And is it current? Currently now?

[A]: Yes.

[Q]: Does any of that medication affect your decision making?

[A]: No.

[Q]: And you understand the terms that have been placed on the record today by [Mother's counsel]?

[A]: Yes.

[Q]: And you and I have gone over those terms, is that correct?

[A]: Yes.

[Q]: And you understand all of those terms?

[A]: Yes
.
[Q]: Is there any of the terms that you don't understand?

[A]: No.

[Q]: And you understand that by accepting this agreement today, it is finalizing this case for today and there is a chance for modification

down the road if there is a change of circumstances and things of that nature, do you understand that?

[A]: Yes.

[Q]: And have all of the terms been explained to you fully by me?

[A]: Yes.

[Q]: Are you satisfied with my services?

[A]: Yes.

[Q]: Is there anything that I haven't done that you have asked me to do?

[A]: Yes.[3]

[Q]: And is there anything that you want me to do now?

[A]: No.

[Q]: And you understand that once we finalize this and the judge signs off and accepts this order today, you are bound by the terms of this agreement?

[A]: Yes.

Based on the above, we do not perceive any lack of consent from Father that would negate the entry of the consent order, and the court, therefore, did not err in denying the motion to set aside the consent order.[4]

[3] This appears to be a transcription error because the transcript does not reflect any reaction on the part of the court or Father's counsel.

[4] Father contends that the entered consent order does not match the consent order as read into the record at the February 1, 2017 proceeding. A review of the transcript and the record, however, indicates that they do, indeed, match.

Finally, Father contends that, once he stated that he took prescribed psychiatric medication, it was incumbent on the court to "get more information" to determine if he was capable of agreeing to the terms of the agreement. We disagree, primarily because at the hearing, Father stated that the medication did not impact his decision-making ability. Moreover, in his brief Father cites no legal authority or theory for the proposition that a court must *sua sponte* question a litigant as to his or her mental capacity when he or she reveals a prescription for psychiatric medication. *See Petty v. Mayor & City Council of Balt.*, 232 Md. App. 116, 121 (2017) (stating that appellate court will not review issue devoid of argument where appellant makes no effort to link facts to a legal theory).

APPELLEE'S MOTION TO DISMISS DENIED.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.