

Circuit Court for Prince George's County
Case No. CAD13-03053

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2184

September Term, 2018

D. W.

v.

A. W.

Fader, C.J.,
Gould,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: May 15, 2019

* 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.

D.W., the appellant, asks us to reverse a *pendente lite* order of the Circuit Court for Prince George’s County that (1) limited her to supervised access with her two minor children (currently ages 14 and 10) “pending further Order of Court,” and (2) rescinded her summer access with the children. Because the *pendente lite* order has been superseded by a final order from which Ms. W. did not appeal, we will dismiss this appeal as moot pursuant to Rule 8-602(c)(8).¹

BACKGROUND

In May 2016, the Circuit Court for Prince George’s County awarded the appellee, A.W., sole legal custody and primary physical custody of the minor children, with reasonable visitation rights to Ms. W. In an unreported opinion, this Court affirmed. *D.W. v. A.W.*, No. 445, Sept. Term 2016 (Dec. 13, 2016) (per curiam).

On November 3, 2017, Ms. W. filed a motion to modify custody in which she asserted there had been a substantial change in circumstances resulting from: (1) the older child sustaining injuries from corporal punishment and improper administration of medication by Mr. W.; (2) Mr. W. allowing the children to miss school without a proper excuse; (3) Mr. W. maintaining an unsuitable living situation for the children; (4) the children becoming “disruptive, argumentative and defiant”; (5) Mr. W. not being attentive to the oldest child’s medical needs; and (6) Mr. W. improperly limiting Ms. W.’s access to the children and information about the children. During an initial day of the hearing, at which the children were not present and the parties’ counsel primarily addressed a

¹ A. W., the children’s father, did not file an appellate brief and has not participated in this appeal.

discovery dispute, the circuit court continued the hearing to June 28, 2018 and asked that the children be present then so that the court could speak directly with them.

When the hearing resumed on June 28, the court heard testimony from other witnesses and then spoke with the children outside of the courtroom. The court returned to the courtroom and summarized its conversation with the children:

What I can say about [A.] and [J.], that they are so sweet. They are 12 and nine, they told me.

And they're really – you can tell – very close. [J.] is much more quiet than [A.] I had to ask him sometimes to speak up a little bit when I spoke to him.

You know, I really, really walked away from them feeling quite sad. I'm going to tell you that's the truth, because, you know, when I did ask them – I said, "Okay. Just tell me how everything is going." That's how you start with anything. And I have to say it was heart wrenching because [A.] said to me that he just wished his mother would stop beating him, period. And what he said – I said, "What do you mean by that?" He said when he comes to you – I guess during the summer he goes to the YMCA, and every day – these are the words – he says, "Every day" – he said later, "Well, maybe not every day but most days when I get out the shower, she comes and she spanks me with a belt, and I'm naked." And he said, "I just wish she wouldn't do that." He said, "Sometimes I run around the house to hide from her." He said, "And then she'll get sticks, and she'll hit me with sticks, too." That kind of got tears in his eyes. He said, "I just wish she wouldn't do that." I said, "Well, do you think we could talk to her and find out why?" He said, "I don't know if she would know why, but she doesn't do it on the weekend." I said, "She doesn't?" He said, "No, because grandma comes over," and he said a coworker comes over.

The court also described that the younger child said that he gets spankings from Ms. W. "sometimes," but not as much as the older child. At the end of the conversation with the children, the court asked the boys if there was anything else they wanted the court to know. The older child responded that he "just wish[ed] she wouldn't hit me so much."

He also said that he did not feel safe at his mother's house, "[n]ot when she's hitting me and I have to run."

After additional discussion of summer activities for the children, the court announced that they were not going to be able to complete the hearing on Ms. W.'s motion for modification of custody that day, and would need to resume the hearing at a later date. Because the children were scheduled to go with Ms. W. for summer visitation in the near future, however, the court concluded that it could not permit that to happen:

But I don't see how I can do it. I don't see how this Court, after hearing from these children – most notably [A.] – that his mother has beat him repeatedly, and I find it to be true because he was so sad. He was so trying to explain where he was in this life with tears in his eyes. And I said, you know, "What's wrong?" He just said, "I just wish she would stop hitting me," and he said "I really wish she wouldn't hit me when I come out of the shower and I don't have any clothes on and she's hitting me with the belt." And he said, you know – he said, "I try to hide, but I can't." And he said when she does the sticks that hurts, too.

. . . I did ask, "How do you get" – I said, "You told me what happens with your mom. Do those things happen with your dad?" And he went on to say they have gotten spankings before with their father. [J.] says the most recent time was he thought not this Monday, but last Monday. He didn't listen to his father, disobeyed him and he got a spanking on the butt one time with a belt.

I am going to say – because now you're here in front of me, and now as a result of the Court having governing over this case, both parents are prohibited from any corporal punishment, so find another way. No more corporal punishment. He did say sometimes the dad has them read a book or sit down, but knowing the fragile state that I think these children are in right now, no corporal punishment as long as this motion is pending before me.

So now I find it exigent circumstances. This Court is so concerned about these children, most notably [A.'s] physical and mental well-being, I would be derelict in my duties to allow him to go back with his mom for the summer with the belief that she will hit him repeatedly about the body naked with a belt and sticks. I cannot do that. It pains me to not have him go to his mom

this summer, but I cannot. I cannot do that without putting some safeguards in place.

The court proceeded to discuss the need for parenting classes and supervision of visitation, and to again review some of the children’s complaints, before announcing that it would put in place

a *pendente lite*, temporary order, that prohibits . . . these children from going with their mother this summer, not until we get some safeguards in place, not until she gets some parenting classes. You’re coming back to finish this motion for modification that you are seeking, but remember when you seek to modify, it can be modified in any way . . . consistent with the best interest, and at this juncture I’m putting a temporary order in place that prohibits these children from having unsupervised contact with their mother until she does parenting classes and anger management.

The court’s written order, which it signed July 13, 2018, but which the clerk did not enter on the docket until September 20, 2018, (1) limited Ms. W. to supervised access with her two minor children (currently ages 14 and 10) “pending further Order of Court,” and (2) rescinded her summer access to the children. On August 10, 2018, Ms. W. filed this appeal from that *pendente lite* order.²

On September 17, 2018, the hearing on Ms. W.’s motion for modification of custody resumed and concluded. On October 5, the court entered a written order—which had been signed on October 3—that (1) denied Ms. W.’s motion for modification of custody, (2) ordered Ms. W. to complete anger management and parenting classes, (3) limited Ms. W.’s access to the children going forward to two hours of supervised visitation weekly,

² Ms. W.’s notice of appeal was premature because it was filed before the *pendente lite* order was entered on the court’s docket. However, because her appeal was also filed after the court had announced its decision, the notice is treated as having been “filed on the same day as, but after, the entry on the docket.” Md. Rule 8-602(f).

and (4) ordered that this limitation to supervised visitation would continue until the completion of anger management and parenting classes and that any change must be approved by the court. Ms. W. did not appeal from the October 5 order.

In light of the circuit court’s entry of the October 5 order, this Court issued an order directing Ms. W. to show cause why her appeal should not be limited to the issue of summer visitation. Ms. W.’s response asked that she be permitted to expand the scope of the appeal to all of the issues that were before the circuit court, but failed to identify any basis on which any issues other than summer visitation were raised properly. As a result, on February 26, 2019, this Court issued an order that, among other things, limited the scope of the appeal “to whether the circuit court abused its discretion when it ordered *pendente lite* on June 29 [sic], 2018 that the appellant’s summer visitation with the minor children is rescinded.”

DISCUSSION

THE APPEAL IS DISMISSED AS MOOT.

This Court may dismiss an appeal if the case has become moot. Md. Rule 8-602(c)(8). A *pendente lite* order that is subsequently superseded by a final order is moot because “vacating [it] will provide no relief whatever to appellants.” *In re O.P.*, ___ Md. App. ___, 2019 WL 1417368 at *12, No. 2877, Sept. Term 2018 (Mar. 29, 2019) (quoting *In re Joseph N.*, 407 Md. 278, 303 (2009)); *see also Wagner v. Wagner*, 109 Md. App. 1, 22 (1996) (“While interlocutory orders in domestic cases may, in most instances be

appealed after a final order, in some circumstances, the final order moots the issues that might have existed earlier in the proceedings.”).

The circuit court’s *pendente lite* order was put in place to guide the conduct of the parties pending an order finally resolving Ms. W.’s motion for modification of custody. The court issued that final order on October 5, 2018. The October 5 order contains comprehensive provisions addressing Ms. W.’s access to the children going forward, limiting her to supervised visitation for two hours per week and prohibiting any expansion of that visitation absent a further court order. As a result, Ms. W.’s challenge to the provisions of the *pendente lite* order, which is no longer in effect, is moot.³ We will therefore dismiss the appeal pursuant to Rule 8-602(c)(8).

If Ms. W.’s appeal were not moot, we would have no difficulty in affirming the circuit court’s order. In light of the statements of the children as conveyed by the court during the hearing, the court did not abuse its discretion in rescinding Ms. W.’s summer access to the children.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

³ This Court’s order of February 26 limiting the scope of this appeal to the provision of the *pendente lite* order addressing summer visitation was premised on the possibility that at least that aspect of the *pendente lite* order may possibly have ongoing relevance. Based on a further review of the record transmitted on appeal, that is not the case.