

Circuit Court for Washington County
Case No. C-21-18001195

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2549

September Term, 2019

AIMEE PRICE

v.

DEBRA HAMBY

Nazarian,
Leahy,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: March 11, 2021

* 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.

Aimee Price and Debra Hamby were divorced, and their property, child support, and attorney’s fees disputes decided, by order of the Circuit Court for Washington County. After the circuit court entered its order, Ms. Price filed two things: a Notice of Appeal and a Post-Trial Motion to Reconsider, Request for Hearing and for Other Appropriate Relief. The circuit court then considered the post-trial motion and issued an Amended Order modifying its original order. Ms. Price now seeks to challenge the monetary award and child support awards. Ms. Hamby responds that a procedural barrier prevents us from reaching Ms. Price’s contentions. She’s right, and we agree.

I. BACKGROUND

On January 29, 2020, after a trial, the circuit court entered a Judgment of Absolute Divorce and Order for Custody and Child Support that awarded Ms. Price and Ms. Hamby joint legal custody and shared physical custody of their two minor children. Among its other provisions, the Judgment made a monetary award in favor of Ms. Hamby and ordered Ms. Price to pay child support to Ms. Hamby in the amount of \$393 per month.

On February 28, 2020—more than ten but fewer than thirty days after entry of the Judgment—Ms. Price filed two separate documents: *first*, a notice of appeal, and *second*, a Post-Trial Motion to Reconsider, Request for Hearing and for Other Appropriate Relief. Ms. Price asked the circuit court to reconsider (1) the monetary award, (2) the distribution of retirement assets, (3) the valuation of a timeshare property, (4) the designation of a life insurance policy as non-marital property, (5) the valuation of the marital home, (6) the child support calculation, (7) child support arrears, and (8) the award of attorney’s fees. On

March 25, 2020, Ms. Hamby answered. On April 9, 2020, without holding a hearing, the circuit court entered an Amended Order modifying its January 29 and January 30, 2020 orders, which separated each monetary award from Ms. Price to Ms. Hamby, made a monetary award from Ms. Hamby to Ms. Price, and awarded child support arrearages against Ms. Price; otherwise, the previous order remained unchanged. Ms. Price did not file a second notice of appeal.

We supply additional facts as necessary below.

II. DISCUSSION

Ms. Price’s brief seeks to raise five issues,¹ but the sequencing of Ms. Price’s filings after the first Opinion and Order and her failure to file a second notice of appeal after the circuit court issued its Amended Order prevent us from reaching any of the issues.

Maryland Rule 8-202(a) states that “[e]xcept as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or

¹ Ms. Price phrased the Questions Presented in her brief as follows:

1. Did the Trial Court err when it ordered a judgment and monetary award that combined pretax retirement assets with personal property?
2. Did the Trial Court err when it determined contribution for the marital home?
3. Did the Trial Court err when it determined the monetary award?
4. Did the Trial Court err in how it calculated child support, both pendente lite and finally at the conclusion of trial.
5. Did the Trial Court err in calculating and awarding retroactive child support?

order from which the appeal is taken.” “The ‘mandatory’ parts of Rule 8-202(a) are two-fold. First, the notice of appeal must be ‘filed’. Second, the filing must be within the specified 30-day time period.” *Lovero v. Da Silva*, 200 Md. App. 433, 442 (2011). Although the filing of a notice of appeal no longer is viewed as a jurisdictional prerequisite to maintaining an appeal, Rule 8-202 “remains [as] a binding rule on appellants,” and the Court remains within its right to dismiss a case based on an untimely appeal. *Rosales v. State*, 463 Md. 552, 568 (2019).

Ms. Price did file a timely notice of appeal after the circuit court’s initial Opinion and Order on February 28, 2020. Had she stopped there, we would have her challenges to the decisions embodied in that judgment before us. At the same time she filed that notice though, Ms. Price also filed her Post-Trial Motion to Reconsider, Request for Hearing and for Other Appropriate Relief. That motion was timely insofar as it fell within the thirty-day time limit to invoke the circuit court’s power to revise its judgment. Md. Rule 2-535. But because Ms. Price didn’t file her motion within ten days of the initial judgment, it didn’t qualify as a motion to alter or amend the judgment, Md. Rule 2-534, which would have tolled her time to appeal and, under Rule 8-202(c), caused her notice of appeal to be treated as filed the same day as, but after, the court’s decision on the motion. Her decision to proceed with the post-trial motion, and the court’s entry of an amended judgment, *see Gluckstern v. Sutton*, 319 Md. 634, 651 (1990), functioned as an election to proceed with the motion rather than the appeal. *See Arminger Volunteer Fire Co. v. Woomer*, 123 Md. App. 580, 594 (1998).

By going forward with her post-trial motion, Ms. Price needed to file a new notice of appeal within thirty days of the court’s decision. But because she didn’t, her challenges to the Amended Order are not before us. The Amended Order and Judgments became the new final judgment in this case, and “the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202.” *Scarborough v. Altstatt*, 228 Md. App. 560, 565 (2016) (*quoting* Md. Rule 8-201(a)). And as a result we cannot consider the circuit court’s decisions in either ruling. *See Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 67–68 (2013).

**APPEAL DISMISSED. APPELLANT TO
PAY COSTS.**