Circuit Court for Montgomery County
Case No. 130873-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2556

September Term, 2019

MOUSSA MOAADEL

v.

DARIA MOAADEL

Fader, C.J.
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: April 6, 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.

Moussa Moaadel ("Father"), appeals from an order of the Circuit Court for Montgomery County denying his motion to alter or amend an order that granted, in part, a motion to modify child custody filed by Daria Moaadel ("Mother"). Father presents ten questions for our review, which we have distilled into one: Did the circuit court abuse its discretion in denying Father's motion to alter or amend? For the following reasons, we shall affirm.

FACTS AND PROCEDURAL HISTORY

The parties were married in December 2007. Two children were born during the marriage, the first in 2010 and the second in 2013.

In 2015, Father filed for divorce on grounds of constructive desertion, cruelty, and excessively vicious conduct. Mother filed a counterclaim for divorce on the same grounds.

In May 2016, a consent custody order was entered, granting legal custody of the children to Father and Mother jointly, and primary "residential" custody to Mother. Father was granted tie-breaking authority in the event the parties could not agree on a "major decision-making issue, primarily those of education, medical and health related matters, religious participation and general welfare[.]" A judgment of absolute divorce was entered on November 17, 2016.[1]

In December 2017, Mother filed a motion requesting modification of custody, visitation, and child support. As grounds for the motion to modify custody, Mother claimed that Father refused to sign applications for the replacement of the children's passports and

[1] The May 2016 custody consent order was not incorporated or merged into the judgment of divorce.

would not cooperate with efforts to obtain counselling for one of the children. Mother requested that she be granted sole legal custody or, in the alternative, that she be granted tie-breaking authority. Mother further requested the court to order that she be entitled to retain the children's passports and apply for tourist visas for the children.

A hearing on the motion to modify was held before a magistrate. Mother testified that she wanted the children, who were then eight and five years old, to have passports so that they could "explore different places for educational experiences[.]" She stated that, during the marriage, she and Father took two trips to Mexico with the children. The children's passports, as well as hers, were kept in a safe in Father's office. At some point, Father claimed that he had lost the passports. When Mother attempted to get new passports for the children, Father refused to sign the passport applications.

Mother stated that she would like to take the children to France and to Russia, where she was born and had lived until she was 20 years old. Father testified that he did not want Mother to take the children to Russia because he was afraid that they would be kidnapped. He approved of a trip to France but stated that he did not trust Mother to return the children to the United States. Father's counsel argued that, because of the "clear animosity" between the parties, there was a valid concern that Mother would take the children out of the country and not return. Counsel added that there was no need for children so young to have passports as the educational value of international travel would be lost on them.

The magistrate found that Father had "abused" his tie-breaking authority "in so many ways," citing Mother's testimony that Father had refused to sign a termination of lease agreement to allow Mother and the children to move to a more desirable apartment

in the same complex, and that Father withheld approval for the children to receive therapy. Nonetheless, the magistrate recommended that Mother's motion to modify custody be denied. The magistrate found that, if Mother was granted tie-breaking authority she would take the children to Russia, which would not be in the best interests of the children, because, if Mother decided not to return, the children would be unable to ask for help because "they are too young and not fluent in Russian." The circuit court accepted the magistrate's findings and recommendations and, on January 11, 2019, entered an order denying Mother's motion to modify custody.

Seven months later, on August 29, 2019, Mother, no longer represented by counsel, filed another motion to modify custody ("second motion to modify custody"), using a circuit court form. On the part of the form requiring the party to explain what circumstances had changed and why the existing custody order was no longer in the best interests of the children, Mother wrote "Father refuses to provide itineraries on any travel with the minor children. Father refuses to sign off on passport applications for the children. Father does not provide vacation notice [by June 15] as required in the Consent Order." Mother requested the following change in custody: "Change vacation notice to April 15. Provide travel itineraries[.] Sign off passport application and allow mother [to] travel with children."

Father filed a motion to dismiss the second motion to modify custody, asserting that the motion failed to allege a material change in circumstances that warranted modification of the existing custody order, and that the only issues raised pertained to travel, which "do not affect the physical custody arrangement between the parties[.]"

A hearing was held on December 13, 2009. The court stated at the outset that there were two motions before it: Mother's second motion to modify custody and Father's motion to dismiss. Father's counsel argued that the motion to modify custody should be dismissed because the court had denied the same relief less than a year earlier, and there had been no material change in circumstances.

Mother asserted that there had been "some changes this year." She explained that she was in the process of renouncing her Russian citizenship because her job in cybersecurity required her to do so. She explained further that she was getting married in 2020 in Ecuador, where her fiancé is from, and wanted her children to be able to attend the wedding.

The court disagreed with Father's assertion that Mother was barred from relitigating the passport issue, stating that the denial of the prior motion to modify did not mean that the children could never travel out of the country. To illustrate its point, the court expressed that it might not be inappropriate for the children to attend the wedding of their mother and future stepfather in Ecuador the following year.

The court found no reason why passports should not be obtained, to be held by the court, and stated that it would issue an order requiring Father to sign the passport applications. The court based its ruling on a finding of a material change in circumstances, specifically, Mother's wedding plans and the fact that the children were a year older. The court pointed out that it was not authorizing any use of the passports at that time, but that, if either party wanted to use the passports to take the children out of the country and the other party did not agree, the court would hold a hearing and make that decision.

On January 10, 2020, after the court signed the order but before it was entered on the docket, Father filed a motion requesting that the court reconsider its ruling. Father asserted that the court's finding that there had been a material change of circumstances was incorrect. Alternatively, Father maintained that he was denied due process because he was not aware that the December 13, 2019 hearing would be an evidentiary hearing or otherwise have the potential to provide any of the substantive relief sought in Mother's second motion to modify custody.

On January 13, 2020, the court's order was entered on the docket, granting, in part, Mother's second motion to modify custody. The order provided that Father shall sign passport applications for the children, and that the passports shall be placed in the registry of the court, not to be released to either parent except upon mutual written consent or, alternatively, after a hearing and further order of the court. In addition, although Mother's request for a change in the vacation notification date was not discussed at the hearing, the court ordered that the parties must notify each other of planned vacation days by either April 1 or 15, depending on whether it is an odd- or even-numbered year.

On January 23, 2020, Father, no longer represented by counsel, filed a "Second Motion to Alter, Amend, Revise and Reconsider," challenging the court's modification of vacation notification dates.

On February 11, 2020, the court issued an order denying the first motion to alter or amend. Father noted this timely appeal from that order.

On February 24, 2020, the court issued an order denying Father's second motion to alter or amend. Father did not file an appeal from that order. Consequently, that ruling is not before us for review. Md. Rule 8-201(a).

DISCUSSION

Maryland Rule 2-534 provides that:

> [i]n an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

Because Father's "Motion to Alter, Amend, Revise, and Reconsider" was filed within ten days of the court's entry of judgment, it was, in substance, a motion to alter or amend the judgment to Maryland Rule 2-534.[2] *See White v. Prince George's County*, 163 Md. App. 129, 139 (2005) ("a motion to revise a court's judgment, however labeled, filed within ten days after the entry of judgment will be treated as a Rule 2-534 motion[.]" (citation omitted)).

"Appellate review of a court's ruling on a 2-534 motion is typically limited in scope." *Rose v. Rose*, 236 Md. App. 117, 129 (2018) (citations omitted). "In general, the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion. The relevance of an asserted legal error, of substantive law, procedural

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[2] Father's motion, which was filed prior to the entry of the order on the docket, is considered to have been filed on the same day as the order was entered. *See* Md. Rule 2-534 ("A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.")

requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse." *Id.* (quoting *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015)).

An abuse of discretion occurs when "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." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (citation and internal quotation marks omitted). "Such an abuse may also occur when the court's ruling is 'clearly against the logic and effect of facts and inferences before the court' or when the ruling is 'violative of fact and logic.'" *Id.* (citation omitted). "Put simply, we will not reverse the trial court unless its decision is 'well removed from any center mark imagined by the reviewing court.'" *Id.* (citation omitted).

The subject of the Rule 2-534 motion at issue in this appeal was limited to the order requiring Father to sign passport applications for the children. Father asserted that the court's finding that there was a material change in circumstances was incorrect. Alternatively, Father maintained that he was denied due process because he was not provided notice or an opportunity to be heard regarding the merits of Mother's motion to modify custody. We conclude that the court did not abuse its discretion in denying Father's motion to alter or amend.

As an initial matter, we note that the effect of the court's order was to modify the consent custody order to grant Mother tie-breaking authority for the very limited purpose of replacing the children's passports. Father otherwise retains tie-breaking authority. The order does not allow Mother (or Father) to use the passports to take the children out of the

country. The passports are to be held by the court, to be released only upon mutual written consent of the parties, or upon further order of the court, following a hearing.

In support of his claim that the court erred in finding a material change in circumstances, Father relied on *McMahon v. Piazze*, 162 Md. App. 588, 595-96 (2005), where we noted that the Texas Court of Civil Appeals held that the fact that a child has grown older was not sufficient evidence of a material change in circumstances to justify a modification of a parent's visitation rights "because aging is an inexorable progression prevalent in all custodial contests." *Id.* at 596 (quoting *Campbell v. Campbell*, 477 S.W.2d 376, 378 (1972)). Here, however, the materiality of the age of the children was not viewed by the court in the context of a motion to modify visitation, but in the context of modifying tie-breaking authority for the sole purpose of replacing the children's passports. Furthermore, the court did not base its ruling solely on the children's age, but also on the fact that Mother had become engaged and would be getting married in Ecuador the following year, and she wanted the children to be there.

Nor do we find any abuse of discretion in rejecting Father's claim that he was denied due process. Although Father asserted that he had no notice that evidence would be received or that substantive relief might be granted to Mother, and, therefore, was not prepared to call witnesses or present evidence, Father did not provide the court with a proffer of any evidence that he could have introduced or explain how such evidence might have impacted the court's decision. Moreover, although Father claimed that he was "never provided an opportunity to testify or otherwise be heard regarding the merits" of Mother's motion, we note that Father was represented by counsel at the hearing. Father's counsel

presented argument that there had been no material change in circumstances to justify modification of the custody order and apparently saw no reason to elicit testimony from Father on the subject.

Although Father's sole challenge is to the order entered on February 11, 2020 denying his motion to alter or amend the order docketed January 13, 2020, because his motion was deemed filed within ten days after the court's January 13, 2020 order, that order is subject to appellate review. See Md. Rule 8-202(c). The above analysis applies to that order as well as the February 11, 2020 order.

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