UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0229

September Term, 2015

CAREN K. EVANS

v.

TIMOTHY F. EVANS

Wright,
Arthur,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: August 4, 2016

This appeal arises from the dismissal with prejudice by the Circuit Court for Montgomery County of appellant, Caren Evans's, motion to enforce the parties' Consent Order against appellee, Timothy Evans, for nonsupport of the parties' children as a result of Ms. Evans's alleged failure to provide discovery. Ms. Evans filed a motion to enforce the consent order on July 21, 2014, to claim reimbursement from Mr. Evans for one-half of various child related expenses that were to be shared by the parties, as stated in the Consent Order, which was originally signed on April 1, 1998.

On August 15, 2014, a hearing was held on the motion, where both parties appeared *pro se*. At the hearing, the circuit court granted in part and denied in part Ms. Evans's claims, as well as instructed the parties to communicate with each other regarding discovery. The court reduced its order from the hearing to writing on September 25, 2014.

A supplemental hearing was held on November 20, 2014, at which time Mr. Evans, who was represented by counsel, moved for dismissal. He claimed that Ms. Evans failed to provide requisite documents and "disregarded the court's Order of August 15, 2014." The circuit court granted Mr. Evans's motion to dismiss on December 9, 2014, and dismissed the entirety of Ms. Evans's claims, including those portions of the judgment that had previously been granted at the August 15, 2014 hearing.

On December 19, 2014, Ms. Evans filed a motion to modify the judgment, and Mr. Evans filed an opposition on January 7, 2015. The circuit court then entered an Order of Final Disposition on January 28, 2015, denying Ms. Evans's motion to modify.

Ms. Evans filed a Motion to Reconsider on February 9, 2015, which was denied. This timely appeal was then filed. On appeal, we consider the following question:

> Did the circuit court err in denying Ms. Evans's February 9, 2015 motion to reconsider?

FACTS

The parties were married and were parents of two children: a son born June 11, 1993, and a daughter born September 2, 1997. Shortly after the birth of their daughter, the parties separated. On April 1, 1998, they entered into a Consent Order, by which they agreed to share equally various child-related expenses. The parties were divorced on November 15, 1999. The Consent Order contains the following language:

> **Paragraph J** "Each party shall pay one-half (1/2) of all of the following expenses: extra-curricular activities, such as sports teams, music lessons, dance lessons, etc.; school activities and events such field trips, yearbooks, class rings, proms and graduation parties; day and overnight camp fees and all related expenses; synagogue dues required to enable the children to attend Hebrew school commencing with first grade and/or the cost of agreed upon private school commencing with Kindergarten; Joshua's Bar Mitzvah and Rachel's Bat Mitzvah; cars and car insurance at such time as the children obtain their drivers licenses and each child's wedding. Each party shall pay one-half (1/2) of the children's undergraduate and graduate school expenses including registration fees, tuition, books, clothing, room board and a living allowance."

Between 1998 and 2011, Mr. Evans had been found in contempt of court or ordered to make payments consistent with the Consent Order eleven times, all resulting from Ms. Evans's motions to enforce.

The instant appeal stems from one such motion by Ms. Evans, filed on July 21, 2014, to enforce the Consent Order and recover from Mr. Evans one-half of various expenses she claimed to have incurred on behalf of the children. A mediation between

the parties was held on July 25, 2014, but it proved unsuccessful. The matter was then set for hearing on August 15, 2014. During the hearing, a discussion between the parties and the circuit court ensued regarding the question of which underlying receipts had or had not been provided to Mr. Evans by Ms. Evans. Ms. Evans explained to the court that she had provided every document that formed the basis of her claims to Mr. Evans during the mediation session on July 25, 2014. The following colloquy then occurred:

> MR. EVANS: Understood and what was the date that you requested that she provide those by?
>
> THE COURT: I didn't request it, I ordered it. She's going to have to, I think we said September the –
>
> MS. EVANS: 15th.
>
> THE COURT: 15th.
>
> MS. EVANS: I'll just duplicate. Tim if you don't have everything I gave you [during the mediation] I can make another copy. But if you –
>
> THE COURT: You guys need to communicate by email. You both have each other's email?
>
> MS. EVANS: He blocked my email.
>
> THE COURT: Pardon?
>
> MS. EVANS: He blocked my email.
>
> THE COURT: Can you unblock it so you guys can communicate that way? That way you'll have a record of things.
>
> MR. EVANS: I can unblock it.
>
> THE COURT: Just until this is over. Then you can go back to operation block. But for now why don't you unblock it so you get to receive only information concerning these issues now, how is that?

> MR. EVANS: For that purpose I'll do it.
>
> THE COURT: Okay, thank you.
>
> MS. EVANS: Tim, could you just tell the Court whether or not you still have everything I gave you when we . . . were [at mediation]?
>
> THE COURT: Why don't you email her anything that you still had that she doesn't need to duplicate. I'm still going to need you to have it compartmentalized when you come into court in November. You've got plenty of time. You've got time to come and visit these files and make copies of whatever you need in this.

The circuit court then issued a written order on September 25, 2014, containing most of the court's decisions as announced from the bench, providing that certain requested expenses were to be paid by Mr. Evans while other requested expenses were denied. The written order stated that Ms. Evans must "provide [Mr. Evans] with the information concerning bills by November 15, 2014." However, the written order was silent as to the court's verbal instruction to Mr. Evans to email Ms. Evans "anything that [he] still had that she doesn't need to duplicate."

On November 20, 2014, a hearing was held on the unresolved claims from the August 15, 2014, hearing. Mr. Evans appeared at the hearing with counsel, while Ms. Evans remained unrepresented. At the start of the hearing, Mr. Evans's counsel made a preliminary oral motion to dismiss all of the charges due to Ms. Evans's alleged failure to provide certain discovery. A written order was issued by the circuit court on December 9, 2014, dismissing Ms. Evans's claims with prejudice.

On December 19, 2014, Ms. Evans timely filed a Motion to Modify the Judgment. Mr. Evans filed an Opposition on January 7, 2015. The circuit court gave an Order of

Final Disposition on January 28, 2015, denying Ms. Evans's Motion to Modify the Judgment. On February 9, 2015, Ms. Evans filed a Motion for Reconsideration. Mr. Evans filed an Opposition on February 26, 2016. On March 6, 2015, the circuit court denied Ms. Evans's Motion for Reconsideration, and this decision is what we are tasked to review. After review, we discern no error and affirm the judgment of the circuit court.

Additional facts will be discussed below as they become relevant.

DISCUSSION

I. Ms. Evans may not appeal the circuit court's grant of Mr. Evans's Motion to Dismiss because after filing a Motion for Reconsideration, she can only appeal the Motion for Reconsideration.

Ms. Evans contends that that this Court should "reverse the dismissal of [her] claims by the Circuit Court for Montgomery County and remand this matter with instructions that a hearing be held by the [Circuit] Court to inquire as to the Defendant's compliance with the [Circuit] Court's instructions issued at the August 15, 2014, hearing before determining what, if any sanction is warranted." First, we must address the standard of review applicable to the question submitted and then determine if the circuit court erred in denying Ms. Evans's Motion for Reconsideration.

Ms. Evans filed two different motions pursuant to Md. Rule 2-534:[1] a Motion to Modify the Judgment on December 19, 2014, and a Motion for Reconsideration on

[1] Md. Rule 2-534 states:

> In 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 (contd.)

February 9, 2015. In order to timely file a motion pursuant to Md. Rule 2-534, a party must file the motion within ten days of entry of the judgment. Here, the Motion to Reconsider was filed within ten days of the judgment and may be considered properly under Md. Rule 2-534. The second motion, however, was not timely filed, but should have instead been filed under Md. Rule 2-535.[2] "A motion may be treated as a motion to revise under Md. Rule 2-535 even if not labeled as such." *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997) (citing *Gluckstern v. Sutton*, 319 Md. App. 634, 650 (1990) (upholding the trial court's decision to rely on the substance of the memorandum rather than the label of the motion)). We will treat the second motion made pursuant to Md. Rule 2-534, the Motion for Reconsideration, as a motion made pursuant to Md. Rule 5-535 because it was filed past the ten-day deadline.

A motion made pursuant to Md. Rule 2-535 "acts as a substitute for an appeal." *Pickett*, 114 Md. App. 557. "The filing of a motion to revise a judgment is, as a practical

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> enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. 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.

[2] Md. Rule 2-535 states, in pertinent part:

> (a) *Generally*. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict 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.

matter, a substitute for appeal. The moving party's last attempt to win is directed to the trial court, instead of to the Court of Special Appeals." *Id.* (citation omitted). When a Rule 2-535 motion to revise a judgment in fact does revise the judgment, "the prior judgment loses its finality and the revised judgment becomes the effective final judgment in the case."[3] *Yarema v. Exxon Corp.*, 305 Md. 219, 241 (1986) (citations omitted).

Despite Ms. Evans's effort to appeal the Motion to Dismiss, due to the order and timing of her motions, what she is appealing is the Motion for Reconsideration. If Ms. Evans had immediately appealed to this Court the circuit court's grant of Mr. Evans's Motion to Dismiss, we would be in a different posture. However, Ms. Evans chose to file two post-trial motions, one of which acts as a "substitute for appeal." *See Pickett*, 114 Md. at 557. Therefore, what remains for us to consider is the propriety of the circuit court's denial of the Motion to Reconsider.

[3] Appeals must be made from a final judgment. Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article § 12-30.

> Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action: (1) is not a final judgment.

Md. Rule 2-602(a). For a court to completely adjudicate a claim, it must resolve "each legal theory and non-collateral prayer for relief within that claim." *Waterkeeper Alliance, Inc. v. Maryland Dept. of Agric.*, 439 Md. 262, 279-80 (2014) (citation omitted).

II. It was not an abuse of discretion for the circuit court to deny Ms. Evans's Motion to Reconsider.

We employ the abuse of discretion standard when reviewing a trial judge's denial of a motion for reconsideration. *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723-24 (2002). A motion for reconsideration is discretionary in nature. *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008). "Questions within the discretion of the trial court are 'much better decided by the trial judges than by appellate courts . . . .'" *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (citations omitted). There is an abuse of discretion when "the court acts without reference to any guiding rules or principles," or "the ruling under consideration is clearly against the logic and facts and inferences before the court." *Sindler v. Litman*, 166 Md. App. 90, 123 (2005) (citation omitted). For a reversal, the judgment of the trial court must be "beyond the fringe of what the court deems minimally acceptable." *Id.*

"[A] [p]ost-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight . . . . Losers do not enjoy *carte blanche*, through post-trial motions, to replay the game as a matter of right." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). The burden upon the party moving for reconsideration is a heavy one, as the judge need not revisit the merits after he has already made a decision. *Id.* "Above and beyond arguing the intrinsic merits of an issue, [the moving party] must also make a strong case for why a judge, having once decided the merits, should in his broad discretion deign to revisit them." *Id.* at 484-85.

In *Valentine-Bowers v. Retina Group of Washington, P.C.*, 217 Md. App. 366, 378 (2014), we discuss the circuit court's broad authority in imposing discovery sanctions:

> Md. Rule 2-433(a)(3) gives trial courts broad discretion to impose sanctions for discovery violations. The available sanctions range from striking out pleadings to dismissal, [ ] and the decision whether or invoke the "ultimate sanction" is left to the discretion of the trial court. *See Mason v. Wolfing*, 265 Md. 234, 236 (1972) ("Even when the ultimate penalty of dismissing the case or entering a default judgment is invoked, it cannot be disturbed on appeal without a clear showing that [the trial judge's discretion was abused."). There need not be "willful or contumacious behavior" by a party to justify imposing sanctions. *Warehime v. Dell*, 124 Md. App. 31, 44 (1998) (*quoting Beck v. Beck*, 112 Md. App. 197, 210 (1996)).
>
> As we explained in *Smdler v. Litman*, 166 Md. App. 90 (2005), "[o]ur review of the trial court's resolution of a discovery dispute is *quite narrow*; appellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery." *Id.* at 123 (emphasis added). Differently put, in order to reverse a trial court's decision, it must be "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable."' *Wilson v. John Crane, Inc.*, 385 Md. 185, 198-99 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1997) (internal citations omitted)).

"[T]the Maryland Rules and caselaw contain a preference for a determination of claims on their merits; they do not favor imposition of the ultimate sanction absent clear support." *Holly Hall Publ., Inc v. County Banking & Trust Co.*, 147 Md. App. 251, 267 (2002). The ultimate sanction of dismissal, therefore, is "warranted only in cases of egregious misconduct such as willful or contemptuous behavior, a deliberate attempt to hinder or prevent effective presentation of defenses or counterclaims, or stalling in revealing one's own weak claim or defense." *Manzano v. S. Maryland Hosp.*, 347 Md. 17, 29 (1997) (citations omitted).

Based on our review of the record, it was not an abuse of discretion for the circuit court to deny Ms. Evans's Motion for Reconsideration. The instructions on when and in what manner to complete discovery was made clear to the parties. During the mediation session on July 25, 2014, Ms. Evans was instructed to send receipts for the expenses that she wished to be reimbursed so that Mr. Evans could complete the discovery process. On September 5, 2014, Ms. Evans sent a letter addressed to the court that had attached Exhibits A through G, which comprised the sought after receipts. Immediately prior to the list of attachments, Ms. Evans wrote "cc: Timothy Evans without attachments since he has all of them."

This notation in the letter is evidence that Ms. Evans consciously ignored the order from July 25, 2014, where she was instructed to turn over to Mr. Evans these very documents. This action could without difficulty be construed by the circuit court judge to be "willful or contemptuous behavior, a deliberate attempt to hinder or prevent effective presentation of defenses or counterclaims, or stalling in revealing one's own weak claim or defense," sufficient to invoke the ultimate discovery sanction, dismissal with prejudice. The circuit court's decision to deny the Motion for Reconsideration was not clearly against logic and facts and the inferences before the court. There was no abuse of discretion.

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