UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1162

September Term, 2015

TIMOTHY REEVES

v.

MARIA MILLER

Meredith,
Nazarian,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: March 15, 2016

* 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.

Dissatisfied with an order the Circuit Court for Prince George's County entered regarding the custody, visitation, and child support for his minor child, Timothy Reeves, appellant ("Father"), filed two petitions attacking the order. The petitions, however, were filed ten months and thirteen months after entry of the order at issue, and were, therefore, untimely. The court dismissed Father's first petition, and denied the second. Father then noted this appeal. The child's mother, Maria Miller, appellee ("Mother"), has not filed a brief in this Court.

QUESTION PRESENTED

Appellant presented five numbered questions to this Court in his brief, but there is a single question that is dispositive of the appeal: Did the circuit court commit reversible error in denying and dismissing appellant's petitions?[1] We answer that question "no," and affirm the judgments of the Circuit Court for Prince George's County.

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[1]Appellant's questions presented were phrased as follows in his brief:

1. Was this entire hearing proceedings [sic] properly executed according to the Constitution?

2. Why was this Family Division Court matter decided by a Civil Judge who did not have Personal Matter nor Subject Matter Jurisdiction?

3. What Jurisdiction did the Court have to deprive the Appellant Visitation days with his child?

4. Why did the Judge and Attorney whom [sic] were friends violate their Constitutional oaths and commit fraud? Why didn't the Judge recuse himself from this Case before and after being asked to do so by the Appellant[']s Attorney[?]

5. Why did the Judge order Child Support that was peonage to the Appellant without Visitation being properly established?

FACTS AND PROCEDURAL HISTORY

From our review of the lengthy record in this case, we glean the following. On August 29, 2008, Mother filed, in the Circuit Court for Prince George's County, a complaint for custody of the parties' then two-year-old daughter. Mother requested sole legal and sole physical custody of their daughter, with visitation by appellant twice a week and every other weekend. On September 5, 2008, Father filed an answer to Mother's complaint, and also filed a counter-complaint for custody, asserting that it was in daughter's best interest that Father be awarded sole legal and sole physical custody, with visitation to Mother three out of the five weekdays, and one weekend day. Father checked the boxes on the preprinted form indicating that he was asking for "child support" and "custody." The parties appeared before a domestic relations master on November 13, 2008, and a *pendente lite* order addressing custody and visitation was signed by a judge on February 4, 2009. The *pendente lite* order provided that Father would have visitation overnight every Tuesday and Wednesday, and that the parties would alternate Saturdays and Sundays (meaning, if Father had visitation on Saturday one weekend, Father would have visitation on Sunday the next weekend.)

The merits hearing took place on February 17, 2009, and an order addressing the merits was docketed on March 12, 2009. As pertinent to the issues on appeal, the order provided that Mother would have primary physical custody, with the parties sharing joint legal custody. Mother was granted final tie-breaking authority if, "after discussing the

issue," the parties could not agree as to "major decisions involving the child[.]" Father was granted regular visitation, and ordered to pay $400.00 per month in child support.

On July 20, 2009, Mother filed a Motion to Modify Child Support, asking that the court rescind the order that Father pay child support because the parties were "working on a reconciliation and have come [to] a financial agreement beneficial to all persons involved." On October 15, 2009, after a hearing, the court granted Mother's request, and ordered the child support discontinued.

The parties' attempted reconciliation appears to have lasted just over three years. The next docket entry in the case reflects the filing, on December 6, 2012, of Father's motion to modify custody and visitation, asking that "the order be change[d] to joint Custody if not Custody," and for other specific visitation, *i.e.*, that he be consulted first if Mother was not able to pick the child up from school or needed someone to watch her when Mother went out of town. On February 19, 2013, Mother, through counsel, filed an answer to Father's motion, and a counter-complaint to modify visitation. In her answer, Mother noted that she was now seeking child support through the Prince George's County Office of Child Support Enforcement. On April 26, 2013, the Office of Child Support Enforcement filed a motion to reopen its interest in the case, and asked the court to set a support amount.

On April 11, 2013, Father, through counsel, filed an answer to Mother's counter-complaint to modify visitation. On June 27, 2013, the parties appeared before a master for

a *pendente lite* hearing on visitation, and agreed to the entry of a consent order, which the parties signed on July 9, 2013, altering visitation.[2]

On July 22, 2013, Father — without the assistance of counsel — filed a "Motion to Dismiss Reopen of Child Support Enforcement," with an accompanying memorandum. On August 1, 2013, Father's attorney filed a motion to withdraw as counsel.[3] A brief hearing on child support was held before a domestic relations master on August 9, 2013, and the parties agreed at that time to continue the matter until a September 19, 2013, hearing on the issue of permanent support. On August 23, 2013, Father filed an untitled 2 1/2-page document outlining what he wanted the court to order, which included "to share joint soil [sic] physical custody as well as legal custody" and to "rotate with decision making for [the parties' daughter] because [Mother] does not respect Men as well as [Father's] words or request."

The parties participated in court-ordered mediation sessions on July 26, 2013, and August 19, 2013. They reached a partial agreement on some issues (child support was not one of them), and signed a Parenting Agreement on August 19, 2013. (The Agreement of August 19 is not before us on appeal.)

On August 27, 2013, the parties appeared before Master Woodall for a merits hearing on their cross-motions to modify custody. A daily sheet from the master's hearing reflects

[2]The consent order was docketed on July 26, 2013, but it was signed by the parties on July 9, 2013, and by the court on July 12, 2013. By its terms, it was to take effect July 1, 2013.

[3]Counsel's motion to withdraw was granted on September 10, 2013.

that "relief [was] denied." On September 5, 2013, Father filed exceptions. On September 17, 2013, Mother filed a motion to dismiss Father's exceptions, citing Father's failure to comply with Maryland Rule 9-208(g), which sets forth numerous requirements the excepting party is required to meet. On September 30, 2013, Mother filed a response to the exceptions, disputing Father's recitation of several key facts, and asking that the court deny the exceptions. On October 16, 2013, Father filed an answer to Mother's motion to dismiss the exceptions.

On October 17, 2013, Father's exceptions were heard by a judge of the Circuit Court for Prince George's County. The court found that Mother's motion to dismiss the exceptions was moot, and took the exceptions under advisement. On October 25, 2013, it entered a memorandum and order denying the exceptions. It also denied Father's motion to dismiss the reopening of child support. As pertinent to the issues before this Court, it also ordered Father to pay $913.00 per month in child support, accounting from August 1, 2013.

On November 22, 2013, through new counsel, Father filed a motion to modify child support, child custody, and visitation. He asserted that he had "had a decrease in his salary since November 1, 2013," and could not pay $913.00 per month in child support. He also noted that he was requesting more time with the parties' daughter, and joint physical custody. Mother filed an opposition on December 9, 2013.

On June 9, 2014, a hearing was held on Father's November 22 motion to modify child support, child custody, and visitation. The court's conduct at this hearing and its rulings made on the issues argued at this hearing are the subject of Father's current grievances,

despite the fact that he filed no timely appeal. On June 12, 2014, the court filed a memorandum and order denying Father's motion. The court noted that it had also heard Father's exceptions on October 17, 2013, and was familiar with the case. The court explained how it had arrived at its $913.00 per month child-support figure for Father; it found, based on Father's September 7, 2013, pay stub, that Father had

> made $43,428.22 in income by September 7, 2013. This was the 35th week of the year, so the court found that the [Father] made $1,240.80 a week. The court then multiplies this number by 4.3 weeks in a month to arrive at $5,335.46 a month. The court added $100 from the Harlem Gospel and $300 from Mt. Calvary Church for [Father's] services as a musician, and attributed $300 from rental income for a Greenbelt rental unit, to come to a total monthly income for the [Father] of $6,035.00.[4]
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> Using the child support guidelines the court came up with a monthly child support obligation of $913.
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> During the June 9, 2014 hearing, the court heard from [Father]. He indicated that he does not make the same income as last year but provided only one pertinent exhibit, which does not include overtime and other pay, to support this claim. He indicated that his income from the Harlem Gospel has changed and that he is no longer receiving the supplemental income from Mt. Calvary Church. Interestingly, the court must note that the [Father] indicated he received a yearly salary of roughly $46,000 in his position as a security guard with the DC Department of Behavior in October 2013. Since October 2013, he has received a base raise of 3%; thus, his new base salary per year is $49,132. This does not bode well for [Father's] contentions that either (1) the child support was miscalculated, or (2) his income has materially changed, resulting in a downward shift in his child support obligations.
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> [Father] also cast serious doubt on his credibility. On April 22, 2014, the court granted a continuance because [Father] had not completed his 2013

[4]The court added a footnote to the discussion of the Greenbelt rental unit: "The court actually stated [at the October 17, 2013 exceptions hearing] that it believed the income was far greater than $300, but could not come to a clear amount due to the testimony of the [Father]."

> tax return and for other discovery issues. A review of Exhibit Five, [Father's] 2013 Tax Return, shows that the tax preparer signed the tax return on March 14, 2014 and that the [Father] signed it on March 15, 201[4]. The tax return, [on] which the court places little weight, shows [Father] had an adjusted gross income of $54,507. [Father] shows a negative rental income of $1,172 and failed to give the court any 1099 Tax Forms for income accrued with the Harlem Gospel and Mt. Calvary Church. From a review of the tax return, the court is unsure where this additional income is listed. It simply shows that his income from W-2's is $55,679.
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> The court also finds other problems with [Father's] assertions. A home study shows that [Father] owns and lives in a four-unit rental unit in the District of Columbia. [Father] tells the court that he has owned this unit for over 16 years. It was noted that his uncle lives in one of the units. No mention is made of what he pays for rent. [Father] tells us that, due to errors in the DC Real Estate Tax System, this property was sold at tax sale and was in foreclosure. In the fall into the winter of 2013, he received the property back. Because the court was focused on the Greenbelt rental property during the October 17, 2013 hearing, the court did not attribute any income to [Father] for the DC rental unit. This would actually increase his income. Again, not boding well for [Father's] cause.
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> The court finds that there is no material change in circumstances to [Father's] income. The weight of the evidence clearly shows that the income may have actually increased. However, due to the lack of accurate documentation, the court is unable to attribute an accurate assessment of [Father's] income. Not only has his salaried position received a pay raise, but his rental income has increased, there is no attribution to the amount his uncle should be paying him to live in one of his rental units, and there is no real documentary proof to show that his income as a musician with Harlem Gospel and Mt. Calvary Church has decreased.

(Footnotes omitted.)

Accordingly, by order docketed June 30, 2014, the court denied Father's motion to modify child support, custody, and visitation. It also found that the motion was "clearly without substantial justification," with "little-to-no evidence to support a change in visitation or custody." It granted Mother's request for attorney's fees and costs for having to defend

against the non-meritorious motion, and ordered Father to pay Mother $2,750.00 in fees. Any appeal from this order would have been required to be filed on or before July 30, 2014. Maryland Rule 8-202(a) ("the notice of appeal shall be filed within 30 days after the entry of the judgment or order from which the appeal is taken"). But Father did not file an appeal within 30 days after the entry of the June 30, 2014, order.

On October 7, 2014, however, Father filed with the clerk a document entitled "Formal Complaint on Case: CAD0822183," complaining that "the entire proceedings" in the case were "unfair, poorly executed, unprofessionally handled," and asserting that there was a "criminal act that was committed by [the trial judge] in this Case on October 17 2013." The general tenor of the document was Father's contention that the trial judge had "fraudulent fabricated evidence against [Father] in reference to the calculation of a reopen [sic] child support order that was terminated on September 29[,] 2009," and that the trial judge had "constantly violated my rights and 1st amendment denying me the right to speak over [sic] all through the entire hearing."

Also on October 7, 2014, Father filed with the clerk a document entitled "2nd Formal Complaint on Case: CAD0822183," again disagreeing with the manner in which the court had calculated Father's income and expenses in setting the monthly child support amount. Father concluded this complaint by asking the recipient of the document — which had been addressed to the Circuit Court for Prince George's County — to "please investigate this matter to help!"

There next appears in the court file a copy of a letter from Father to the Chief Judge of the Court of Appeals, with a carbon copy to the Administrative Judge for Prince George's County. The letter is stamped as having been filed in the circuit court on February 5, 2014. In it, Father complains about the conduct of his circuit court proceedings, and acknowledges, "I am totally aware there is no appeal pending in the Court of Appeals at this time[.]"

As we noted at the outset of this opinion, the instant appeal concerns the dismissal of two petitions filed by Father in this case. The first petition at issue was filed on April 6, 2015 ("the April 6 petition"). Titled "Petition for Dismissal with Prejudice and Repayment of Fabricated Child Support," the April 6 petition attacked the prior proceedings in the circuit court. In it, Father represented that he wanted the court "pursuant to Maryland Code of Civil Procedures Title 9 to strike and dismiss[ ] the judgment filed by the judge in the above-captioned cause," specifically referring to and attaching the court's June 12, 2014, order (which, as noted above, had been docketed on June 30, 2014). Mother, in her May 6, 2015, response to the April 6 petition, pointed out that Father had failed to note a timely appeal following entry of the June 12, 2014, order, and that there was no further relief the court could provide. She asked that the April 6 petition be dismissed, and that she be awarded attorney's fees and costs. On June 1, 2015, the court signed an order dismissing the April 6 petition. (The order was not docketed, however, until July 6, 2015.)

The second petition at issue in this appeal was filed by Father on July 6, 2015 ("the July 6 petition"). It was titled "Demand Motion to Dismiss for Lack of Jurisdiction, to Challenge Subject Matter Jurisdiction; and Rule 60 and 12. Relief from a Judgment or Order

Federal Rules of Civil Procedures Memorandum in Support of Demand; Declaration of Petitioner; Certificate of Service Attorney; [Mother's Trial Counsel]." The two introductory sentences of the July 6 petition stated:

> COMES NOW, the Defendant above name, a living man whom is establishing sovereignty, without benefits of Counsel; hereinafter known as the Petitioner, and by special appearance respectfully moves the Court to dismiss The present judgment against he [sic] on the grounds; the State of Maryland has no jurisdiction over him. The Petitioner request that proof of the Court's Subject Matter Jurisdiction be submitted and appears on the record.

The July 6 petition cited sundry sources of law that Father contended had been violated in the proceedings against him, including the Declaration of Independence and the Charter of the United Nations. The July 6 petition contended that the "judgment was entered without the Petitioner's consent, because (I) the Petitioner object to the jurisdiction." It cited, *inter alia*, Federal Rule of Civil Procedure 59(b), and asserted that, pursuant to "Title 28 USC 1608 I have Absolute Immunity as a Corporation." It also recited that the trial judge had been asked to recuse himself, and had refused, which Father contended was evidence of bias against him. According to the July 6 petition, "The Judge and [Mother's trial counsel] intentionally defaulted [sic] the Court in this Case matter with connection by affinity or consanguinity[.]"

On July 31, 2015, Father filed a notice of appeal as to the dismissal of his April 6 petition.

Mother filed a response to the July 6 petition on August 3, 2015, and disputed generally the assertions made by Father. With regard to the issue of the trial judge's recusal, Mother asserted:

> Petitioner states that the Judge was asked to recuse himself in this case and refused but what actually happened was the reverse. [The trial judge] asked the Petitioner if he wanted the Judge to recuse himself and the Petitioner said "no."[5]

Mother asked that the July 6 petition be denied. Mother, separately, filed a Motion for Sanctions on the same date, asking that she be awarded her costs and fees associated with having to defend against another non-meritorious effort to attack a judgment that had never been timely appealed.

On August 11, 2015, the court signed an order denying the July 6 petition. This order was not docketed until August 24, 2015. On September 15, 2015, Father filed a notice of appeal relative to the denial of the July 6 petition. On September 18, 2015, Father filed a supplemental notice entitled "An Amendment to Notice of Appeal."

This Court notified Father via letter dated September 30, 2015, that we would consider together the appeal noted on September 15, as amended on September 18, and the appeal of the April 6 petition, which had been noted in the circuit court on July 31, 2015.

STANDARD OF REVIEW

Maryland Rule 8-131(c) governs an appellate court's review of the judgment entered in a non-jury trial, and it provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

[5] We see nothing in the record that supports Father's assertion that he ever asked the trial judge to recuse himself.

Rule 8-131(c) applies to the review of custody cases. *Viamonte v. Viamonte*, 131 Md. App. 151, 157 (2000).

DISCUSSION

In these consolidated appeals, Father attacks the orders docketed July 6, 2015, and August 24, 2015, both of which denied relief requested in his petitions attacking the judgment that had been entered June 30, 2014. *See* Maryland Rule 2-601(b) (the date on which the clerk enters an order on the docket "shall be the date of the judgment"). In both petitions at issue, Father attacked the proceedings which culminated in the final judgment docketed June 30, 2014. Father did not appeal that judgment. Instead, he filed both the April 6 and July 6 petitions challenging the June 30, 2014, judgment. His challenge was not timely. It necessarily follows that there was no error by the circuit court, either in dismissing the April 6 petition, or in denying the July 6 petition. The court could not entertain belated challenges to an unappealed judgment.

Father's references in his petitions to a supposed lack of jurisdiction of either the Circuit Court for Prince George's County or the trial judge are groundless. In his brief in this Court, Father states, *inter alia*:

> [The trial judge] was not a Domestic Family Judge and did not have Personal Matter or Subject Matter Jurisdiction over the Appellant nor the case Matter. Jurisdiction was not stated on the record of the Court, before nor during the entire Court proceedings; because the Judge never had any statutory of [sic] Case Law authority to bind the Appellant to an order. The law requires proof of Jurisdiction to appear on the record of the administrative agency and all administrative proceedings.

* * *

> The Prince George's County Circuit Court of Maryland had no jurisdiction to reopen Child Support, because the Appellant is a full time parent and provider who filed a Modification to have 50/50 Joint Physical and Soil [sic] Custody of his child; the Appellant has not surrendered his Constitutional Parenting Rights to the Court.
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> * * *
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> [The trial judge] did not have Personal Matter or Subject Matter Jurisdiction to make a ruling and to deprive the Appellant from his child, and has violated the Appellant[']s 1, 5, 9 and 14 Amendment Constitutional Parent Rights (*Santosky v. United States Supreme Court* 1982) and has ordered the Appellant into contract without consent to pay Child Support that is peonage; which is slavery and unconstitutional.

To the extent that Father argues that the judgment against him was void for lack of either personal or subject-matter jurisdiction, he is simply wrong. Father submitted himself to the jurisdiction of the court when he filed his September 5, 2008, counter-complaint for custody, in which he also requested a determination of child support. Maryland Code (1984, 2012 Repl. Vol.), Family Law Article ("FL"), §1-201 provides that an equity court has jurisdiction over custody, visitation, and support of a child. FL § 1-201(a)(5), (6), (9); (b). In other words, FL § 1-201 confers subject-matter jurisdiction on the Circuit Court for Prince George's County to decide a case involving the custody, visitation, and child support of a child who lives in Prince George's County. Father noted in ¶ 4 of his answer that "[t]he child has lived at [an address in Prince George's County] with both parents during the last 5 years."

Father filed an answer to Mother's complaint for custody on September 5, 2008, the same day he filed his counter-complaint; he did not assert lack of personal jurisdiction in his answer, and, indeed, sought relief from the court himself. Pursuant to Maryland Rule 2-

322(a)(1), that defense is waived if not raised by motion to dismiss prior to the answer. There is no question that the trial court had both subject-matter jurisdiction and personal jurisdiction in this case.

Father also complains that the court erred and "denied Appellant Due Process and his day in Court as required by Maryland Rule 2-311(f)." Although Father contends he requested a hearing on the July 6 petition, he did not comply with the rule for doing so. Maryland Rule 2-311(f) provides:

> A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

Father's request for hearing in the July 6 petition was not "requested as provided" in Maryland Rule 2-311(f) because the hearing request was not included in the title of the motion, and there was no heading in the petition itself titled "Request for Hearing."

Father has not cited any Maryland Rule pursuant to which he filed his April 6 and July 6 petitions. We perceive no error by the circuit court in dismissing the April 6 petition and denying the July 6 petition.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.