

Circuit Court for Howard County  
Case No.: C-13-JV-22-158

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 30

September Term, 2023

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In Re: M.R.

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Beachley  
Albright,  
Wilner, Alan M. (Senior Judge),  
Specially Assigned,

JJ.

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Opinion by Wilner, J.

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Filed: June 20, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

\*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.

What is before us now began as an appeal by the mother of a 16-year-old female child from an order of the Circuit Court for Howard County granting custody of the child to a person whom the court found to be the child's father. Regrettably, the case and in particular, the involvement of the Howard County Department of Social Services (DSS) with the child's mother has a tortuous history dating back more than a decade.

The immediate problem is that (1) given the status of the case at the time, the Order granting custody to the father was premature, and (2) by a subsequent (June 1, 2023) stipulation of DSS, the parents, and the child, the child, at the time of the stipulation, was actually living with the mother, had been doing so since April, and wished to continue doing so.

We could, and ordinarily would, recite the full history of this decade-long drama, but in light of what appears to be the current situation, there is no need for that. The facts most relevant are as follows. The child, who is medically fragile due to a trachea tube that requires medical management by a qualified person, had been living with the mother and five of the child's siblings pursuant to a custody Order entered in the summer of 2022. As a result of a dispute with the mother that occurred in November 2022 and arose from the trashing of the child's room by the mother in a search for marijuana, the child absconded and went to the father's home.

That led to a CINA/Shelter Care petition filed by DSS. Following an adjudicatory and disposition hearing on December 7, 2022, a magistrate, on January 3, 2023, entered a

proposed Order finding that the father was able to care for the child, that the child was therefore not a CINA, and awarded custody to the father. The mother claimed that she filed exceptions to that proposed Order at the hearing, although there is nothing in the record confirming that any such exceptions were filed at that time.

Rule 11-103(e) requires that exceptions to a magistrate's findings be filed within five days after **service** of the magistrate's report. The last sentence in the magistrate's proposed Order states that the father and the mother received notice of the findings on the record and, in capital letters, adds that "UPON COMPLETION A COPY OF THIS ORDER WAS SERVED VIA MDEC" and that "A COPY OF THIS ORDER WILL BE MAILED TO THOSE PARTIES."

The mother did file what she (through counsel) captioned "CORRECTED NOTICE OF EXCEPTIONS" on January 13, 2023. Two complaints were made in those exceptions "(1) that the magistrate failed to make inquiries and findings regarding parentage; and (2) that the magistrate improperly recommended closing the case with custody to the purported father without permitting examination of the appropriateness of that decision."

The father moved to dismiss those exceptions on the grounds that (1) the child's birth certificate includes the father as the child's father and that he is therefore presumed to be the child's natural father, and (2) the exceptions should be dismissed as a matter of judicial economy, as it would be "a waste of judicial resources to remand the case back to

the magistrate.” That motion was filed on February 27, 2023. The child (through counsel) and DSS joined in that response and added that the exceptions lacked the required specificity.

Md. Rule 11-104(b) requires that any response to a motion must be filed within 10 days after service of the motion. When, if ever, the father’s motion was actually served on the other parties is not clear. Even if served through MDEC the day it was filed (February 27), the mother would have had until March 9 to respond. The Court, however, which had scheduled a hearing on the exceptions for March 1, cancelled the hearing and signed the magistrate’s proposed Order on February 28, 2023. In light of that, DSS, which, as noted, had objected to the exception dealing with the father’s paternity, has urged that the case should be remanded to the Juvenile Court for an on-the-record hearing.

Although there is at least a question of whether the mother’s exceptions were timely, she still had at least until March 9 to respond to the father’s motion to dismiss, and the court foreclosed that by cancelling the March 1 hearing that would have allowed her to make that argument and perhaps clarify when the father’s motion was actually served on her.

Further complicating this case, as we observed above, on June 1, 2023, through counsel, DSS, the mother, the father, and the child filed a Joint Stipulation to Supplement Facts stating that on April 21, 2023, the child left the father’s home and returned to live

with the mother and that, as of June 1, she was still living with the mother and wished to continue doing so. A proposed Order that the record be supplemented by the stipulation was attached, but it is not clear whether it was signed. We shall assume that it was, but it really makes no difference.

The record in this case, as we have it, is certainly not a model of clarity, and the welfare of a fragile child is at stake. As we have indicated, the Order cancelling the hearing on the mother's exceptions and granting custody to the father was premature and constituted legal error. The mother still had nine days to respond to the father's motion. In light of what has occurred since then, the case will be remanded for the court to hold the hearing it should have held in March, take evidence, and consider and clarify, **based on the current situation**, what is in the overall best interest of the child.

**JUDGMENT VACATED; CASE  
REMANDED FOR FURTHER  
PROCEEDINGS IN CONFORMITY WITH  
THIS OPINION; COSTS TO BE DIVIDED  
EQUALLY BETWEEN APPELLANT  
MOTHER AND APPELLEE FATHER.**