Circuit Court for Prince George's County
Case No. CAD17-12955

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 347

September Term, 2023

LINDA A. BANKS

v.

JULIAN I. BROWN, JR.

Arthur,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: October 3, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A child's best interest attorney is "a lawyer appointed by a court for the purpose of protecting a child's best interest[.]" *Maryland Guidelines for Practice for Court–Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access* ("Guidelines"), § 1.1.[1] Linda A. Banks, appellant, appeals from an order of the Circuit Court for Prince George's County denying her motion to appoint a best interest attorney for the parties' minor child. She argues that the court erred in denying the motion pursuant to Maryland Rule 9-205.1. For the reasons explained below, we shall affirm the circuit court's judgment.

BACKGROUND

In 2018, Ms. Banks ("Mother") and Julian I. Brown, Jr. ("Father") reached an agreement as to custody of their child and other related issues. That agreement was memorialized and adopted by the circuit court in a Consent Custody, Access, and Child Support Order ("Order") entered in July 2018.

Between 2018 and 2020, the parties filed motions seeking to modify custody, visitation, and/or child support, among other requests, all of which were disposed of by various court orders. The last of those, an order denying a motion to modify child support filed by Father, was entered by the court in December 2020. No other filing was made by either party until March 2023.

In March 2023, Mother filed a *pro se* Motion for Appointment of Best Interest Attorney ("Motion to Appoint BIA") pursuant to Maryland Rule 9-205.1. In the motion,

[1] The guidelines are contained in an appendix to the Rules in Title 9, Chapter 200.

Mother claimed, *inter alia*, that the parties' child-related expenses had changed, the child's educational needs had increased, and Father failed to adequately comply with the Order as it related to the child's summer camp. Mother also claimed that Father had been engaging in behavior that was inconsistent with the child's best interest to include conduct that hindered the child's academic and social development. She noted the "extremely high level of conflict" between the parties and the parties' inability to communicate effectively. Mother requested that a best interest attorney be appointed to "ensure" that the child's academic, social, and other needs were being met. She also wanted a best interest attorney to "take a close and neutral view of our situation and make appropriate recommendations to the court."

On April 21, 2023, the court entered an order denying the motion. This timely appeal followed.[2]

[2] Ordinarily, a party seeking the appointment of a best interest attorney files a motion "in an action in which custody, visitation rights, or the amount of support for a minor child is contested," *see* Md. Code Ann., Fam. Law ("FL") § 1-202, and the denial of such a motion would be considered an unappealable interlocutory order. *See Nnoli v. Nnoli*, 389 Md. 315, 324 (2005) ("An order that is not a final judgment is an interlocutory order and ordinarily is not appealable unless it falls within one of the statutory exceptions set forth in [Md. Code, Cts. & Jud. Proc.] § 12-303."). In that situation, an aggrieved party would await a final judgment in the underlying contested action before challenging the denial of the motion. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 421 (2018) ("An appeal from the final judgment at the end of the case allows review of all interlocutory orders previously entered in the case that have not been decided on the merits in a prior interlocutory appeal.") (citation omitted).

Here, there was no underlying contested action pending when Mother filed the Motion to Appoint BIA. The subject matter of the proceeding was Mother's request for the court to appoint a best interest attorney. When the court denied the motion, the court effectively terminated Mother's ability to pursue that action. That decision was a final judgment and was therefore appealable. *See Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)

DISCUSSION

In her informal brief, Mother argues that the circuit court erred in denying her Motion to Appoint BIA. Her primary argument is that her motion adequately alleged "several factors, allegations, and concerns that should be considered under Maryland Rule 9-205.1. They are: 1) a party requested a Best Interest Attorney, 2) there is a high level of conflict between the parties, 3) inappropriate adult influence or manipulation, and 4) past and current educational and social neglect."

In addition, Mother offers a myriad of factual allegations, arguments, and requests for relief that were not included in the Motion to Appoint BIA. Because those issues were not presented to the circuit court, they will not be considered here. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

Turning to the merits of Mother's primary argument, we hold that the court did not err in denying the Motion to Appoint BIA. The court's authority to appoint a best interest attorney is governed by FL § 1-202(a)(1)(ii), which states, in pertinent part: "*In an action* in which custody, visitation rights, or the amount of support of a minor child *is contested*, the court *may* . . . appoint a lawyer who shall serve as a best interest attorney to represent the minor child and who may not represent any party to the action[.]" (Emphasis added);

(to constitute a final judgment, a "ruling must be so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding") (emphasis in original and citations omitted).

see Md. Rule 1-202(a) ("Action" means "collectively all the steps by which a party seeks to enforce any right in a court[.]").

Maryland Rule 9-205.1 outlines the factors that a court may consider in determining whether to appoint an attorney for a child "in actions involving child custody or child access." Md. Rule 9-205.1(a), (b); *see also* Md. Rule 9-201 ("The Rules in this Chapter are applicable to a circuit court action in which divorce, annulment, alimony, child support, custody, or visitation is sought."). Maryland Rule 9-205.1(b) provides:

> In determining whether to appoint an attorney for a child, the court should consider the *nature of the potential evidence to be presented*, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment.

(Emphasis added). The Rule proceeds to explain that "[a]ppointment *may* be most appropriate in cases involving" various factors, allegations, or concerns. Md. Rule 9-205.1(b) (emphasis added).

The decision to appoint a best interest attorney "is a discretionary one, reviewable under the rather constricted standard of whether that discretion was abused." *Garg v. Garg*, 393 Md. 225, 238 (2006) ("Unquestionably, the statute merely *authorizes* a court to appoint counsel in [these] kinds of cases; it does not *mandate* such an appointment.") (Emphasis in original). An abuse of discretion occurs:

> where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding principles. An abuse of discretion may also be found where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic.

Alexander v. Alexander, 252 Md. App. 1, 17 (2021) (cleaned up and citation omitted).

Although Mother cites to certain factors in the Rule, at the time she filed the Motion to Appoint BIA, there was no "action in which custody, visitation rights, or the amount of support of a minor child [was] contested[.]" FL § 1-202(a)(1)(ii); *see* Md. Rules 9-201 and 9-205.1(a). The motion for appointment appears to be premised on a misunderstanding of the best interest attorney's role.[3] The best interest attorney "advances a position that the attorney believes is in the child's best interest." *Guidelines*, § 2.2. "[I]n exercising the attorney's obligation to the client [the child] and the court," the attorney may perform various duties to include interviewing the child and collateral witnesses, reviewing the child's educational and medical records, filing and responding to pleadings and motions, participating in discovery, and presenting evidence and argument at trial. *Id*. The best interest attorney, however, "shall not testify at trial or file a report with the court." *Id*. These duties, as well as the court's consideration of the "nature of the potential evidence to be presented," contemplate an action in which custody, visitation, or child support is contested. Because no such action was pending when the Motion to Appoint BIA was filed, we cannot say that the court abused its discretion in denying the motion.

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

[3] Indeed, in her informal brief, Mother expresses dissatisfaction with the circuit court's past rulings. She does not feel that her "concerns and evidence were seriously considered" by the court, and she felt "summarily ignored and dismissed." She seeks the appointment of a best interest attorney "so that a neutral person, who is focused on [her] son's interest, can fairly listen to both parties AND [the child]."

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0347s23cn.pdf