

Circuit Court for Baltimore County
Case No.: C-03-FM-20-002905

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 384

September Term, 2024

BRIAN SILBERBERG

v.

SARA SILBERBERG

Graeff,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: December 17, 2024

*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).

This is an appeal from the denial, by the Circuit Court for Baltimore County, of a motion for reconsideration filed by Brian Silberberg, the appellant, whose exceptions to a magistrate’s report and recommendations in a custody matter were stricken due to his failure to cure a deficiency in the MDEC submission.¹ Mr. Silberberg presents one issue for our review, which we quote:

Was the trial court’s denial of the Appellant’s Motion for Reconsideration and/or to Vacate based on his failure to cure a technical deficiency while he was unrepresented at the time legally correct?

For the following reasons, we affirm the order denying the motion for reconsideration.

BACKGROUND

Mr. Silberberg (“Father”) and Sara Silberberg, the appellee, (“Mother”) divorced in 2021, and they have two minor children together. Pursuant to the judgment of absolute divorce, the parties were awarded joint legal and shared physical custody of their children. In 2022, Father moved to modify custody.

A hearing on the merits of the modification request was held before a magistrate. The parties were each represented by counsel. On February 20, 2024, the magistrate issued a report and recommendations to deny Father’s motion to modify custody.

¹ Maryland Electronic Courts (“MDEC”) is “the electronic case management processing and record-keeping system used in the State of Maryland’s court system.” *Att’y Grievance Comm’n of Md. v. Weinberg*, 485 Md. 504, 540 n.22 (2023). Title 20 of the Maryland Rules governs electronic filing and the case management system. *See* Md. Rule 20-102.

Submission of Father’s Exceptions Via MDEC

On March 1, 2024, Father, in his *pro se* capacity, filed “Exceptions to the Magistrate’s Report and Recommendations” through MDEC.² *See* Md. Rule 9-208(f) (“Within ten days after recommendations are placed on the record or served . . . a party may file exceptions with the clerk.”). For this appeal, we do not need to detail the substance of the exceptions. What is relevant is that the submission lacked Father’s identifying information under his signature, as required by Maryland Rule 20-107(a)(2). This rule requires a filer who is required to sign a submission to include the filer’s signature³ and

provide the following information below the filer’s signature: the filer’s address, e-mail address, and telephone number and, if the filer is an attorney, the attorney’s identifying Attorney Number registered with the Attorney Information System. That information shall not be regarded as part of the signature. A signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

Md. Rule 20-107(a) (emphases added).⁴

² That day, Father also filed a *pro se* motion to withdraw the appearance of his counsel through MDEC, indicating that he intended to proceed representing himself. But the clerk struck the filing because it was missing a certificate of service. On March 5, Father’s counsel filed a motion to withdraw his appearance. On March 27, the court struck the attorney’s appearance.

³ There is no dispute that Father was required to sign the exceptions submitted via MDEC. *See* Md. Rule 20-201(d) (“If, under Rule 1-311, the signature of the filer is required, the submission shall be signed in accordance with Rule 20-107.”); Md. Rule 1-311(a) (requiring every pleading and paper of a party to be signed by the party if self-represented or by the attorney if represented by counsel).

⁴ Including identifying information is “important for purposes of identifying the filer and determining whether the filer is an attorney.” STANDING COMM. ON RULES OF PRAC. & PROC., SUP. CT. OF MD., ONE HUNDRED NINETY-SIXTH REPORT: NOTICE OF PROPOSED RULE CHANGES 15 (2018), <https://www.mdcourts.gov/sites/default/files/rules/reports/196threport.pdf> [<https://perma.cc/WY8C-MC7G>].

Father included his address and phone number in the case caption. He also listed his address, phone number, and e-mail address above his signature in the certificate of service. However, he did not include this identifying information below his signature on the exceptions.

Deficiency Notice

On March 4, 2024, the clerk issued Father a deficiency notice under Rule 20-203(d)(1). This rule requires the clerk to send a notice to the filer describing the nature of the violation under certain circumstances. The notice described the deficiency as follows:

The submission does not have the filer’s address, e-mail address, telephone number, or the attorney’s identifying Attorney Number registered with the Attorney Information System as required by Rule 20-107(a)(2).

(emphasis added).⁵

⁵ The State Court Administrator adopted MDEC Policies & Procedures (the “Policy”) consistent with Title 20 of the Rules. *See* Md. Rule 20-103(b)(1). These policies and procedures include a non-exhaustive list of “examples of deficiencies in submissions that the State Court Administrator has determined constitute a material violation of the Rules in Title 20 or an applicable policy or procedure and justify the issuance of a deficiency notice under Rule 20-203(d).” Md. Rule 20-103(b)(1)(A). The examples listed by the Administrator “are intended . . . to require the clerk to issue a deficiency notice when the submission is deficient in a manner listed by the State Court Administrator.” Md. Rule 20-103(b)(1)(A) Committee Note.

One such policy, in effect during the relevant time, required the clerk “[a]s soon as practicable after receiving the e-filing” to “review the submission to make sure that: It is signed in accordance with Rule 20-107” ADMIN. OFF. OF THE COURTS, MD. JUDICIARY, MDEC POLICIES & PROCEDURES 30 (rev. Nov. 14, 2023) <https://wayback.archive-it.org/20042/20240122001645/https://mdcourts.gov/sites/default/files/import/mdec/pdfs/manualh5.pdf> [<https://perma.cc/7ZFK-8ZVW>]. As for identifying information below the signature, the Policy states, consistent with Rule 20-107(a), that:

When a submission is required to be signed by the filer it must contain the following: the filer’s signature Rule 20-107(a)(1), the filer’s address, email address, and telephone number and, if the filer is an attorney, the attorney

(continued)

If the clerk issues a deficiency notice, the filer may file a request that the administrative judge (or that judge’s designee) direct the clerk to withdraw the deficiency notice. Md. Rule 20-203(d)(3). “Unless (A) the judge issues such an order, or (B) the deficiency is otherwise resolved within 14 days after the notice was sent, upon notification by the clerk, the court shall strike the submission.” *Id.* The deficiency notice informed Father of the consequences for failing to resolve the deficiency:

Pursuant to Maryland Rule 20-203(d)(3) the court will strike the submission unless the deficiency is corrected or the deficient submission is withdrawn within 14 days or the court orders otherwise. Please make the correction(s) indicated [the deficiency described above] and refile or withdraw the submission within 14 days, making no other amendments, modifications, or changes to the submission except to correct the deficiency. The time to file any responsive submission shall run from the date that the correct submission is filed. The deficient submission file name(s) and date of filing are: Exceptions, 3/1/24.

(emphasis in original). Father, however, neither requested the court to withdraw the deficiency notice nor corrected the deficiency.

Court Strikes Father’s Exceptions and Denies His Motion to Modify Custody

On March 21, more than fourteen days after the clerk had issued the deficiency notice, the court entered an order striking Father’s exceptions. The order stated that the deficiency “has not been corrected within the required 14 days. The court has not issued an order related to the deficiency. Per Rule 20-203(d)(3), the deficient submission(s) is/are stricken.”

number Rule 20-107(a)(2). *The clerk will issue a deficiency notice if any of this information is missing.*

Id. at 31 (emphasis added).

The following day, on March 22, the court entered an order denying Father’s request to modify custody. According to that order, this decision was made after considering the magistrate’s report and recommendations and the fact that Father’s “exceptions [had] been stricken.”

Father’s Motion for Reconsideration

That same day (March 22), Father filed a *pro se* “Motion for Reconsideration” of the order striking his exceptions. In the motion, Father stated:

I am representing myself in this matter. I filed Exceptions without an attorney.

I have received notice that my Exceptions, filed timely on March 1, 2024, have been stricken.

My exceptions appear to have been stricken due to a Notice that my filing did not contain my address, email address or telephone number.

The initial filing did include this information, albeit in a format and fashion which may have been irregular, but nonetheless all information required was provided.

Maryland has long held that trial courts have broad discretion to revise a judgment to ensure that “technicality does not triumph over justice.” Haskell v. Carey, 294 Md. 550, 558, 451 A.2d 658 (1982).

If Plaintiff is not permitted to proceed with his filed exceptions, this [c]ourt will be championing form over substance which case law and the notions of equity and fairness seek to prevent.

I respectfully request that the order striking my exceptions be vacated and/or reconsidered and that I be permitted to proceed with my Exceptions.

Additionally, I have paid for a copy of the transcripts to be transcribed back on March 4th 2024.

Mother opposed the motion, arguing that the clerk had issued a notice that clearly described the deficiency, the steps needed to correct it, and the potential consequence of failure to cure it. She explained that Father was experienced in filing submissions through

MDEC and had successfully corrected other deficiencies based on previous notices sent by the clerk.

On April 8, 2024, the court denied Father’s Motion for Reconsideration without explanation.

On April 22, 2024, Father noted this appeal.

SCOPE OF REVIEW & STANDARD OF REVIEW

The sole issue presented for our consideration is whether the circuit court erred in denying Father’s Motion for Reconsideration of the order striking his exceptions. During oral argument, Father confirmed that he was not appealing the earlier order that struck the exceptions. This distinction is important for appellate review.

A ruling on a motion for reconsideration is ordinarily discretionary. *Morton v. Schlotzhauer*, 449 Md. 217, 231 (2016). As we explained in *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002):

A decision on the merits, for instance, might be clearly right or wrong. A decision not to revisit the merits is broadly discretionary. The appellant’s burden in the latter case is overlaid with an additional layer of persuasion. *Above and beyond arguing the intrinsic merits of an issue, he 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 (emphasis added). Thus, we employ the abuse of discretion standard when reviewing a trial judge’s denial of a motion for reconsideration. *See Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723–24 (2002).

Abuse occurs when the discretion was “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons,” or when “no reasonable person would take

the view adopted by the [trial] court.” *Wilson-X v. Dep’t of Human Res.*, 403 Md. 667, 677 (2008) (alteration in original) (citation omitted); *Jenkins v. State*, 375 Md. 284, 295–96 (2003) (abuse occurs when the judge “exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law”); *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) (abuse may be found when the court acts without reference to any guiding rules or principles, 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).

DISCUSSION

Father’s argument can be divided into two contentions. First, he asserts that the circuit court’s denial of his Motion for Reconsideration was not “legally correct” because he was denied the right to a hearing under Maryland Rule 2-311(f). He does not claim that he was entitled to a hearing on his Motion for Reconsideration. Instead, he argues that he was entitled to a hearing on his exceptions before the court disposed of them. According to Father, he requested a hearing in the “Wherefore” clause of his exceptions, where he asked “to appear before a Judge and discuss all the evidence.” He explains that under Rule 2-311, the court cannot render a decision that is dispositive of a claim without first holding a hearing if one has been requested. By denying his Motion for Reconsideration, he contends that the court disposed of his exceptions without providing him the opportunity for a hearing.

Second, Father argues that his exceptions contained all the necessary identifying information that would typically be found in a signature block, albeit formatted differently.

He maintains that trial courts have broad discretion to revise a judgment to ensure that “technicality does not triumph over justice.” *Haskell v. Carey*, 294 Md. 550, 558 (1982). He also contends that upholding the denial of his motion would impose an extreme sanction for a technicality. *See, e.g., Bond v. Slavin*, 157 Md. App. 340, 355 (2004) (suggesting that including the wrong case number on motions for a protective order and a restraining order should not be grounds for denying those motions). Therefore, he argues that his Motion for Reconsideration should have been granted, and the court should have considered his exceptions.

A.

Entitlement to Hearing on Exceptions

Father’s first argument lacks merit. According to Maryland Rule 2-311(f), a hearing must be provided upon request before a court can grant a motion that is dispositive of a claim or defense. A dispositive ruling of a claim or defense occurs when the court’s “decision is one that conclusively settles a matter.” *Pelletier v. Burson*, 213 Md. App. 284, 292 (2013) (citation omitted); *see also Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 76 (1986) (stating that a court’s ruling can be “dispositive” even if the ruling is not a final judgment). The striking of Father’s exceptions was indeed dispositive, as it prevented him from challenging the magistrate’s recommendations, which the court ultimately adopted and resulted in the denial of his request to modify custody.

However, Father’s contention that the denial of the Motion for Reconsideration effectively disposed of the exceptions without a hearing is essentially attacking the striking of the exceptions themselves—an issue that he acknowledged is not the subject of this

appeal. Even if this issue were properly presented on appeal, we would conclude that the circuit court did not err in disposing of Father’s exceptions without a hearing. Rule 2-311(f) specifies that “[a] party desiring a hearing . . . 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.” The title to Father’s exceptions did not state that a hearing was requested, nor did he include a heading titled “Request for a Hearing” or a statement expressly requesting a hearing. Since Father did not request a hearing in the format required by Rule 2-311(f), the court was not required to hold a hearing before ruling on Father’s exceptions.

B.

Motion for Reconsideration

Regarding Father’s second argument, we conclude that the circuit court did not abuse its discretion in denying the Motion for Reconsideration. When a motion for reconsideration is filed within ten days after the entry of a final judgment, as in this case,⁶ it is treated as a motion under Rule 2-534. *See Bd. of Liquor License Comm’rs for Balt. City v. Fells Point Cafe, Inc.*, 344 Md. 120, 134 (1996). The court has broad discretion in deciding whether to grant a motion for reconsideration filed within ten days of the judgment, and its discretion is applied liberally so that technicality does not triumph over

⁶ Father’s Motion for Reconsideration was filed within ten days of the circuit court’s order denying his request to modify custody. *See* Md. Code Ann., Cts. & Jud. Proc. § 12-303(x) (“A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case: . . . [d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order.”); *Velasquez v. Fuentes*, 262 Md. App. 215, 236 (2024) (“Custody orders are treated as final judgments.”).

justice. *Schlotzhauer*, 224 Md. App. at 84. “[W]hether the court entertained a reasonable doubt that justice had not been done is an appropriate basis for the exercise of that discretion.” *Benson v. State*, 389 Md. 615, 653 (2005) (citation omitted).

“When a party requests that a court reconsider a ruling solely because of new arguments that the party could have raised before the court ruled, the court has almost limitless discretion not to consider those argument[s].” *Schlotzhauer*, 224 Md. App. at 85; *see Steinhoff*, 144 Md. App. at 484 (“The trial judge has boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have been raised earlier but were not or to make objections after the fact that could have been earlier but were not.”). “By contrast, when a party makes a prompt and timely request that a court reconsider a ruling because of a development that the party could not have raised before the court ruled, the court can and should reconsider its decision.” *Schlotzhauer*, 224 Md. App. at 85. Thus, “in appeals from the denial of a post-judgment motion, reversal is warranted in cases where there is both an error and a compelling reason to reconsider the underlying ruling.” *Id.* at 85.

Here, the Motion for Reconsideration did not identify any error or compelling reason to revisit the order that struck Father’s exceptions. In the motion, Father did not assert that the court committed an error in striking the exceptions, nor did he claim that the clerk failed to send the deficiency notice in accordance with Rule 20-203(d)(1). Instead, Father argued that the court should overlook the technical deficiency and allow his exceptions to proceed. In evaluating whether there was reasonable doubt that justice had not been served, the court could have reasonably concluded that denying Father’s attempt

to raise an argument—which could have been addressed earlier through the procedures outlined in Rule 20-203(d)(3)—would not result in any injustice. Moreover, his motion did not provide any reason, much less a compelling one, for failing to utilize those procedures before the court struck the exceptions.

During oral argument, Father acknowledged receiving an email regarding the deficiency. However, he claims that he did not realize the deficiency notice was included in that email until after his exceptions were struck. The problem with this claim is that it was not explicitly made in his Motion for Reconsideration for the court to consider. *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.”); *Baltimore County v. AECOM Servs., Inc.*, 200 Md. App. 380, 421 (2011) (“A contention not raised below . . . and not directly passed upon by the trial court is not preserved for appellate review.” (citation omitted)). Based on the points that were presented in the motion, we find no abuse of discretion in the court’s denial of Father’s Motion for Reconsideration.⁷

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

⁷ At oral argument, Father argues the circuit court should have articulated its reason for denying his Motion for Reconsideration. We decline to address that point as it was not argued in his brief. *See Ruiz v. Kinoshita*, 239 Md. App. 395, 435 n.15 (2018) (declining to consider an argument raised for the first time at oral argument); *Uninsured Emps.’ Fund v. Danner*, 388 Md. 649, 664 n.15 (2005) (the Court need not address arguments raised at oral argument that were not briefed on appeal).