

Circuit Court for Montgomery County
Case No. 121013FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1508

September Term, 2022

CHRIS DELEON

v.

BRANDEY PRUSO

Graeff,
Reed,
Kenney, James A. III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 13, 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 Md. Rule 1-104 (a)(2)(B).

In the instant appeal, the Appellant, Chris DeLeon (“Father”) asks us to reconsider his Notice for In Banc Review, which was denied by the Circuit Court for Montgomery County after Appellant did not comply with Md. Rule 2-551(c). He argues that he was entitled to an in banc review of the court’s decision to grant in part Appellee, Brandey Pruso’s (“Mother”) Motion to Dismiss Appellant’s Motion to Modify Custody. In bringing this appeal, Appellant presents one issue for appellate review, which we have rephrased:

- I. Did the circuit court err by denying Appellant’s Motion for Reconsideration after the Appellant failed to timely file his Memorandum for In Banc Review?¹

For the reasons outlined *infra*, we affirm the decision of the court to deny the Motion to Reconsider.

FACTUAL & PROCEDURAL BACKGROUND

The parties in this appeal are the parents of a minor child, born on May 12, 2014. On July 15, 2014, Appellant filed a Complaint for Emergency Custody in the Circuit Court for Montgomery County. On that same day, the court awarded him emergency custody of his son. The next day, Appellee filed her own Emergency Motion for Immediate Custody. The court granted her motion in part and awarded the parties joint legal custody and instituted an access schedule for Father. Following further litigation in the circuit court, the

¹ Appellant presented the issue for review as:

- I. Did the circuit court commit reversible error by dismissing Appellant’s Notice for *In Banc* Review when there was no prejudice to the Court or to the Appellee in his having filed his Memorandum late, especially since Rule 2-551 does not mandate dismissal of a belated Memorandum?

parties reached a Consent Custody and Child Support Order on January 27, 2015, which provided sole legal custody of the minor child to Mother, primary physical custody to Mother, and an access schedule for paternal visitation. The Consent Order further provided that if Mother decides to relocate from the State of Maryland, “she will notify Plaintiff/Father thirty (30) days in advance of her intention to do so.”

On May 1, 2019, Mother filed a Line of her Notice of Intent to Relocate to Chicago on June 8, 2019. Father filed his Opposition to Mother’s Notice of Intent to Relocate and Request for Stay and Request for Hearing, which was denied by the court. Next, Father filed multiple Motions to Modify Custody and a hearing on the Motion was set. The parties jointly stipulated to dismiss the custody hearing on December 7, 2020. Subsequently, Father filed another Motion to Modify Custody, Visitation, Child Support and Request for Hearing on August 17, 2021. This Motion closely resembled the previous Motions to Modify that Father had filed. Father alleged that there had been a material change in circumstances to warrant a modification of the custodial arrangement because he had not seen his son for seven years. He also included allegations of intimidation during the pendency of the ongoing custody case.

In response, Mother filed a Motion to Dismiss [Father]’s Motion to Modify Custody. In her Motion to Dismiss, Mother argues that Father’s Motion to Modify should be dismissed because Maryland does not have home state jurisdiction over the minor child, there has been no material change in circumstances, and the motion fails to state a claim upon which relief can be granted. Father filed an Amended Opposition to the Motion to Dismiss on December 18, 2021. The court held a hearing on the Motion to Dismiss on

January 14, 2022. The court granted the Motion to Dismiss in part, but denied it as to child support and the court dismissed the Motion to Modify as to all custody and visitation issues. The court reasoned that “Maryland is not the home state for the minor child” and “[t]he child and one parent no longer live in the state and that substantial evidence is not available in the state concerning the child’s care, protection, training, and personal relationships.” The court continued that Father’s Motion to Modify was “deficient based upon...the conclusory allegations made in the claims” and “[h]e sets forth no facts as to a material change in circumstances affecting the welfare of the child and a modification of custody can only occur if there has been a material change in circumstances affecting the welfare of the child.”

Following the decision by the court, Father filed a Notice for In Banc Review on January 18, 2022. The court appointed the three-judge panel on March 8, 2022.² On April 6, 2022, the court *sua sponte* dismissed Father’s Notice for In Banc Review for “failure to comply with Md. Rule 2-551(c).” The Order was dated April 6 but entered by the Clerk’s Office for Montgomery County on April 8, 2022. On April 8, Mother filed a Motion to Dismiss Plaintiff’s In Banc Review, citing the failure of Father to file a Memorandum pursuant to Rule 2-551(c). Father filed his Memorandum for In Banc Review on April 11, 2022. Father filed his Opposition to Mother’s Motion to Dismiss In Banc Review on April 18, 2022, and requested that the court not dismiss the in banc review. On April 20, 2022,

² The panel was later amended on March 11, 2023, after the court discovered a conflict of interest with one of the appointed judges.

the court granted the Motion to Dismiss and again dismissed Father’s Notice for In Banc Review without prejudice.

On May 3, 2022, the court entered a Child Support Consent Order that resolved all issues in dispute between the parties. In that Order, the parties agreed that “no further custody related issues, including but not limited to, contempt, enforcement, or modification will be filed in Maryland, unless home state jurisdiction transfers back to Maryland.” Approximately three months later, on July 12, 2022, Father filed a Motion to Reset the In Banc Hearing. The court denied the Motion to Reset on August 2, 2022. Father filed an Amended Motion to Reset the In Banc Hearing and a Motion to Reconsider, on July 27, 2022, and August 24, 2022, respectively. Mother filed a Motion to Dismiss the Motion for Reconsideration on September 8, 2022. On September 27, 2022, the court denied Father’s Motion for Reconsideration and dismissed it with prejudice.³ The court ruled that Mother’s Motion to Dismiss Father’s Motion for Reconsideration was denied as moot.⁴ Father filed a Notice of Appeal on October 26, 2022, to the denial of his Motion for Reconsideration.

³ The Order Granting [Mother]’s Motion to Dismiss [Father]’s Motion for Reconsideration was signed on September 26, 2022, and subsequently entered by the Clerk’s Office on September 27, 2022.

⁴ In the September 27, 2022 Order, the court ordered that Father’s Motion for Reconsideration was denied and dismissed with prejudice. The court further ordered that Mother’s Motion to Dismiss Father’s Motion for Reconsideration was granted. However, on November 1, 2022, the court inexplicably entered an Order that denied Mother’s Motion to Dismiss as moot. Despite this procedural hiccup, the record is clear that Father’s Motion to Reconsider, originally filed on August 24, 2022, was denied by the court on September 27, 2022.

DISCUSSION

I. In Banc Review

A. Parties' Contentions

Father argues that the court erred by dismissing his Notice for In Banc Review. Father's first contention is that the Maryland Rules do not require a mandatory dismissal of the in banc appeal if the appealing party does not timely file their Memorandum. Instead, in the instance where a Memorandum is untimely, the Rules provide a discretionary authority to dismiss the in banc appeal. Father argues that the court should have considered the best interests of the minor child and accepted the late filing of Father's memorandum. Next, Father argues that this matter is appealable and properly before this Court because he did not obtain in banc review pursuant to Rule 2-551(h). Father asserts that the Order dismissing Father's Motion for Reconsideration is properly before this Court for review. Father asks this Court to vacate the decision of the court and either remand the matter for in banc review, remand the case for a trial on the merits, or remand the case back to the court for their decision of how best to proceed.

On appeal, Mother does not argue that the procedural defect warranted dismissal of Father's Motion for Reconsideration but, rather, contends that the May 3, 2022, Child Support Consent Order resolved all pending issues in the case concerning jurisdiction. Mother states that "[Father] acquiesced to the Court's ruling on jurisdiction over custody by subsequently negotiating a reduction of his child support obligation, dismissing his remaining claims with prejudice, and stipulating that Maryland does not have jurisdiction over custody-related issues." In the alternative, Mother argues that should we reach the

issue of jurisdiction, the court “properly declined to exercise subject matter jurisdiction for Appellant’s requested custody modification pursuant to the Maryland Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).” Finally, Mother asks us to affirm the decision of the court.

In his Reply Brief, Father argues that the Child Support Consent Order “did not waive subject matter jurisdiction of the custody matter in Maryland.” Furthermore, Father asserts that parties are unable to “confer subject matter jurisdiction by consent”. Finally, Father argues the Consent Order only included provisions to not file further custody related issues in Maryland “unless home state jurisdiction transfers back to Maryland.”

B. Standard of Review

“[W]here an order [of the trial court] involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the court’s conclusions are legally correct under a *de novo* standard of review.” *Mayor and City Council of Baltimore v. Thornton Mellon, LLC*, 478 Md. 396, 410 (2022) (internal citation and quotations omitted). “Because an interpretation of the Maryland Rules is appropriately classified as a question of law, we review the issue *de novo* to determine if the court was legally correct in its rulings on these matters. *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 77 (2001) (citing to *Calomiris v. Woods*, 353 Md. 425, 434 (1999)).

C. Analysis

Before turning to the merits of the instant appeal, we must first consider whether the issues are properly before us for consideration. As stated *supra*, following the decision by the court to dismiss Father’s Motion to Modify Custody, Father filed for in banc review.

Specifically, Father filed an Amended Motion to Reset In Banc Hearing on July 27, 2022. The court denied that motion on August 2, 2022. Father proceeded to file a Motion to Reconsider on August 24, 2022, twenty-two days later.

Md. Rule 2-535 governs the revisory power of the court following the entry of judgment. Rule 2-535(a) provides that:

[O]n motion of any party 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 as, but after, the entry on the docket.

Father asked the court to exercise its revisory power pursuant to Rule 2-535. Father's Motion to Reconsider was filed within 30 days following the entry of judgment denying Father's Amended Motion to Reset In Banc Hearing. This filing put Father's Motion for Reconsideration squarely under the realm of Rule 2-535. Rule 2-535 authorizes the court to take any action as proscribed by Rule 2-534. Rule 2-534 says 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 enter new findings or new reasons, may amend the judgment, or may enter a new judgment."

As noted by Mother in her brief, "[w]hen a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion." *Syndor v. Hathaway*, 228 Md. App. 691, 707-08 (2016) (quoting *Furda v. State*, 193 Md. App. 371, 377 n. 1 (2010)). We review the decision of the court to deny the motion to reconsider

under an abuse of discretion standard. *Id.* at 708 (citing *U.S. Life Ins. Co. in City of N.Y. v. Wilson*, 198 Md. App. 452, 464 (2011)). Our review is limited to decide whether the court abused its discretion in denying to revise the judgment, not the judgment itself. *Furda v. State*, 193 Md. App. 371, 377 n. 1 (2010). The court’s underlying decision to grant Mother’s Motion to Dismiss has not been preserved for our consideration. Therefore, our review is limited to Father’s Motion to Reconsider, and all responses thereto.⁵

We now turn to consider the parties’ arguments concerning the court’s decision to deny the Motion to Reconsider. We begin our analysis by looking at Md. Rule 2-551, which governs In Banc Review. In relevant part, Rule 2-551 states:

- (a) Generally.** When review by a court in banc is permitted by the Maryland Constitution, a party may have a judgment or determination of any point or question reviewed by a court in banc by filing a notice for in banc review. Issues are reserved for in banc review by making an objection in the manner set forth in Rules 2-517 and 2-520. Upon the filing of the notice, the Circuit Administrative Judge shall designate three judges of the circuit, other than the judge who tried the action, to sit in banc.
- (b) Time for Filing.** Except as otherwise provided in this Rule, the notice for in banc review shall be filed within ten days after entry of judgment. When a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice for in banc review shall be filed within ten days after (1) entry of an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534 or (2) withdrawal of the motion. A notice for in banc review filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. If a notice for in banc review is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice for in banc review shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

⁵ Rule 2-551(h) provides that “[a]ny party who seeks and obtains review under this Rule has no further right of appeal.” In the instant case, Father sought in banc review, but his notice was dismissed. Subsequently, Father filed a Motion to Reconsider, which was denied by the court. This appeal properly follows from that denial.

(c) Memoranda. Within 30 days after the filing of the notice for in banc review the party seeking review shall file a memorandum stating concisely the questions presented, any facts necessary to decide them, and supporting argument. Within 15 days thereafter, an opposing party who wishes to dispute the questions, facts, or arguments presented shall file a memorandum stating the alternative questions presented, any additional or different facts, and supporting argument. Any person filing a memorandum under this section who is not required to file electronically under MDEC shall file four copies of the memorandum in paper form.

We proceed to analyze whether Father adhered to the process promulgated by Rule 2-551. The court granted Mother's Motion to Dismiss Father's Motion to Modify Custody as to the custody and visitation issues on January 18, 2022. On the same day, Father filed his Notice for In Banc Review. Father complied with Rule 2-551(a) by timely filing his Notice for In Banc Review. Father's 30-day clock to file an in banc memorandum began to run on January 18, 2022. The 30-day timeline expired before Father filed his In Banc Memorandum. The court entered an Order that dismissed the Notice for In Banc Review for failure to comply with the deadline to file a memorandum as outlined by Rule 2-551(c) on April 8, 2022. Mother filed a Motion to Dismiss Father's In Banc Review on the same day, arguing that Father failed to file a timely memorandum. Father filed his memorandum shortly thereafter on April 11, 2022.

Rule 2-551(g) governs dismissal of in banc review and says:

The panel, on its own initiative or on motion of any party, shall dismiss an in banc review if (A) in banc review is not permitted by the Maryland Constitution, (B) the notice for in banc review was prematurely filed or not timely filed except as provided in subsection (g)(2) of this Rule, or (C) the case has become moot. **The panel may dismiss if the memorandum of the party seeking review was not timely filed.**

Rule 2-551(g) (emphasis added). This Rule gives the court discretionary authority to

dismiss the Notice for In Banc Review if the memorandum is not timely filed. Despite their authority to dismiss the Notice, Father asserts that the court erred by not considering the best interest of the minor child.

Father cites to *Kadish v. Kadish* for the proposition that procedural defects must be resolved with full consideration of the minor child’s best interests. 254 Md. App. 467, 493 (2022). In that case, we considered whether the court erred by imposing sanctions in a child custody case. *Id.* at 472. On appeal, the Court reiterated that “procedural defects should not be corrected in a manner that adversely impacts the court’s determination regarding the child’s best interests.” *Id.* at 493 (quoting *A.A. v. Ab.D.*, 246 Md. App. 418, 441 (2020), *cert. denied*, 471 Md. 75 (2020)). After emphasizing the guiding principle of the child’s best interest, we affirmed the court’s decision to impose sanctions while protecting the child’s best interests. *Id.* at 497. In *Kadish*, the Mother of the minor child ignored numerous discovery requests and violated numerous court orders. *Id.* at 499. The Court affirmed the decision of the court to bar Mother from presenting evidence that she failed to produce in discovery while allowing evidence that weighed on the minor child’s best interest. *Id.* at 501.

The instant case presents a different factual scenario than we contemplated in *Kadish*. In this case, we are not dealing with a party’s ability to present evidence despite discovery violations but instead whether the court properly denied a Motion to Reconsider after Father failed to adhere to filing requirements for in banc review. Father posits that the minor child suffered “severe prejudice” when the court dismissed the notice for in banc review. It is unclear how the minor child was prejudiced simply by the dismissal of Father’s

notice for in banc review. Without reaching the merits of the jurisdictional questions involved, the court took special consideration of the best interest of the child in the hearing on Mother’s Motion to Dismiss. The record is replete with references to the availability of evidence bearing on the child’s well-being. Specifically, the court noted that, “any evidence according to the statute[,] substantial evidence regarding the child’s care, protection, training, and personal relationships is no longer available in this state.” The availability of this evidence would be paramount to an analysis of the minor child’s best interest. *See Taylor v. Taylor*, 306 Md. 290 (1986); Md. Rule 9-204.1(c).

Despite stating that the minor child suffered prejudice as a result of Father’s Notice for In Banc review being dismissed by the court, there are no allegations as to specific harm that the minor child has incurred as a result of the court’s decision. Instead, the court properly considered the minor child’s best interest at the hearing on the Motion to Dismiss. Subsequently, Father filed a Notice for In Banc Review. On January 18, 2022, Father’s clock to file his memorandum began. He did not file his memorandum until April 22, 2022, months after it was due to be filed. It was well within the court’s explicit discretionary authority to dismiss the Notice for In Banc Review pursuant to Rule 2-551(g).

Finally, we will review the operative Motion to Reconsider, filed by Father on August 24, 2022. Father posits that although the memorandum was filed late, it was still filed “two months before the hearing” and that trial counsel had not received an in banc scheduling order. Even if these allegations are true, this does not change the 30-day timeline that Father was under to file his memorandum. In the Motion to Reconsider, Father argues that the underlying decision of the court is inconsistent by splitting jurisdiction

between Maryland and Illinois. As noted by Mother, we agree that the law does allow for one state to have jurisdiction over custodial issues while another state has jurisdiction over child support. *See* Uniform Interstate Family Support Act; Md. Code Ann., Fam. Law § 10-308. Indeed, following the decision of the court, the parties consented to the jurisdiction of the Maryland court to modify his ongoing child support obligation. Given these facts, the court did not err in denying Father’s Motion to Reconsider.

In conclusion, based on all of the above, we hold that the court did not abuse its discretion in denying the Motion to Reconsider. The court acted with statutorily conferred discretionary authority to dismiss the Notice for In Banc Review. Furthermore, Father raised no new substantive arguments in his Motion to Reconsider. Again, the court properly exercised its discretion to deny the Motion.

Having dispensed with the Father’s appeal based on Rule 2-551, we decline to reach the Mother’s argument that the May 3, 2022 Child Support Consent Order disposed of the case. We do note that under the Consent Order, Father stipulated that “no further custody related issues” would be filed in Maryland. However, it is far from clear that this stipulation would foreclose Father’s right to litigate his dismissed Notice for In Banc Review and corresponding relief.

CONCLUSION

Accordingly, we affirm the decision to deny Father’s Motion for Reconsideration.

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