

Circuit Court for Prince George's County
Case No. CAD22-07087

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1605

September Term, 2022

JOSE D. MARTINEZ LAZO

v.

DICSI E. BONILLA MENDEZ

Kehoe, S.,
Tang,
Zic,

JJ.

Opinion by Kehoe, J.

Filed: March 13, 2025

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

The appeal before this Court results from the denial of Appellant’s motion for reconsideration of the magistrate’s decision granting Appellee’s complaint for divorce, custody, and child support, after a virtual divorce hearing in Appellant’s absence. Appellant presents the following question for this Court’s review:

Did the circuit court abuse its discretion when it denied the appellant’s motion for reconsideration?

BACKGROUND

Appellee, Dicsi E. Bonilla Mendez (“Mendez”), filed a complaint for divorce against the Appellant, Jose D. Martinez Lazo (“Lazo”), on March 11, 2022. In the complaint, Mendez also sought primary physical and sole legal custody of their minor daughter, as well as child support from Lazo. On May 9, 2022, Mendez filed a request for order of default against Lazo for his failure to respond to the complaint for divorce and custody, which was granted. The court issued an Order of Default on June 14, 2022 which advised Lazo of his “right to move to vacate this Default” within thirty days of the order. A separate Notice of Default Order further advised Lazo of his right to move to vacate the Order of Default within thirty days of its entry and explained that any such motion “shall state the reasons for the failure to plead and the [l]egal and [f]actual basis for the [d]efense to the claim.” However, Lazo did not move to vacate the entry of default.

A virtual hearing for uncontested divorce was scheduled for July 25, 2022 before a magistrate, and notice was sent to the parties with instructions on how to participate in the virtual hearing. The notice also provided a number to call if a participant could not log into

the Zoom call. After the divorce hearing before the magistrate,¹ at which Lazo was not present, the magistrate recommended, in the form of a proposed order for judgment of absolute divorce, that Mendez be granted an absolute divorce and sole legal and primary physical custody of the minor child. The magistrate also recommended that Lazo be ordered to pay \$1,162.00 per month in child support to Mendez. The Magistrate's written Report and Recommendations was mailed to Lazo on July 25th and filed with the clerk on August 9, 2022. It advised the parties that "if written exceptions are not filed on or before August 8," the proposed order would be submitted to the court for approval. However, Lazo did not file exceptions to the Report and Recommendations.

On August 23, 2022, Lazo filed a motion for reconsideration of the "magistrate's decision" under "Md. Rule 2-311" and requested a hearing, alleging that he was unable to connect to the virtual hearing on July 25th with the instructions provided to him.² Lazo's motion for reconsideration specifically stated:

I am requesting that Magistrate's decision be reconsidered and a hearing be scheduled. A hearing (virtual) was scheduled for July 25, 2022 and I wasn't able to connect to the hearing with the access information I received. On August 2, 2022, I filed an Answer and Countercomplaint for Absolute Divorce and would greatly appreciate an opportunity to put forth my case with regards to custody and child support obligation. I attach here proof of Income and proof of my court-ordered child support obligation for another child.

¹ The transcript of this hearing is not contained in the record.

² Lazo also filed an answer to the complaint for absolute divorce against him and a counter-complaint for absolute divorce against Mendez on August 2, 2022.

Although Lazo's proposed counterclaim sought an absolute divorce on the grounds of mutual separation and desertion, he does not contest the granting of the absolute divorce in his appeal.

In a Memorandum to File dated September 20, 2022, the magistrate wrote:

This case came before the Family Magistrate on July 25, 2022, for a remote hearing on the Plaintiff's Complaint for Absolute Divorce filed March 11, 2022. The Plaintiff was present. The Defendant was not present. The Family Magistrate made findings and recommendations. On August 23, 2022, the Defendant filed a Motion for Reconsideration. The Magistrate is hereby denying that Motion.

This Memorandum was filed by the clerk on September 22, 2022, however, a judge never signed an order to this effect.

On August 23, 2022, the same day Lazo filed the motion for reconsideration, the court executed the proposed order of judgment of absolute divorce. The order of judgment of absolute divorce was entered on October 13, 2022, and Lazo filed a notice of appeal on November 11, 2023. The notice of appeal was docketed on November 15, 2022.

STANDARD OF REVIEW

Generally, the ruling on a motion for reconsideration is discretionary, and thus the standard of review is for abuse of discretion. *Wilson-X v. Dep't of Hum. Res.*, 403 Md. 667, 674-75 (2008). However, "a failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion." *Id.* at 675 (quoting *Pasteur v. Skevofilax*, 396 Md. 405, 433 (2007)). It is the decision to grant or deny the motion for reconsideration that is under review for abuse of discretion, rather than review of the merits of the judgment

sought to be reconsidered. *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475-76 (1997).

DISCUSSION

Lazo argues on appeal that his inability to connect to the virtual divorce hearing with the information provided by the court is an irregularity as contemplated under Rule 2-535(b) and, therefore, a new hearing on the merits should be ordered. Rule 2-535(b) on the revisory powers of the circuit court states, “[o]n motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” Md. Rule 2-535(b). An irregularity is defined as “the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done,” such as “a nonconformity of process or procedure.” *Pelletier v. Burson*, 213 Md. App. 284, 290 (2012) (quoting *Davis v. Attorney General*, 187 Md. App. 110, 123–24 (2009)). Examples of irregularities include “failures to send notice of a default judgment, to send notice of an order dismissing an action, to mail a notice to the proper address, and to provide for required publication.” *Thacker v. Hale*, 146 Md. App. 203, 219-20 (2002).

A motion filed pursuant to Rule 2-535(b) depends on the entry of a judgment. In this case, at the time Lazo filed his motion, there was no judgment as the order for absolute divorce had not yet been entered by the court. The motion was filed pursuant to Rule 2-311. In any event, it was incumbent on a judge in the trial court to have disposed of Lazo’s motion to reconsider. Accordingly, we address, *sua sponte*, the magistrate’s exercise of

putative authority to deny Lazo's motion for reconsideration. The magistrate did not make any findings of fact or present a recommendation to a judge to consider as required by Rule 9-208(e). Lazo filed his motion for reconsideration on August 23, 2022, and on September 22, 2022, the magistrate filed a memorandum "hereby denying" Lazo's motion, but an actual order denying the motion, signed by a judge, is absent from the case file.

The magistrate's authority in family law matters is derived from Maryland Rule 9-208. In family law cases, the magistrate has "the power to regulate all proceedings in the hearing," including:

- (1) direct the issuance of a subpoena to compel the attendance of witnesses and the production of documents or other tangible things;
- (2) administer oaths to witnesses;
- (3) rule on the admissibility of evidence;
- (4) examine witnesses;
- (5) convene, continue, and adjourn the hearing, as required;
- (6) recommend contempt proceedings or other sanctions to the court; and
- (7) recommend findings of fact and conclusions of law.

Md. Rule 9-208(b). Following a decision, "the magistrate shall prepare written recommendations, which shall include a brief statement of the magistrate's findings and shall be accompanied by a proposed order." Md. Rule 9-208(e)(1).

A magistrate's recommendations and proposed order are then reviewed by a judge who "may direct entry of the order or judgment or take other appropriate action." Md. Rule 9-208(i)(2). The court will consider a magistrate's findings of facts as "prima facie correct" and will not disturb those findings unless they are "clearly erroneous, i.e. unsupported by substantial evidence." *O'Brien v. O'Brien*, 367 Md. 547, 554 (2002). However, "[t]he [magistrate's] report is advisory only... [and] the [magistrate's] ultimate conclusions are

merely recommendatory and must be reviewed by the court ‘with an independent exercise of judgment.’” *Id.* at 554–55 (quoting *Harryman v. State*, 359 Md. 492, 507 (2000)). A magistrate is not a “judicial officer” and does not have “judicial powers,” but is rather an “assistant and advisor to the court.” *Id.* at 554.

Here, it appears from the case file that a judge of the Circuit Court for Prince George’s County never reviewed the magistrate’s recommendation, as expressed in the memorandum filed on September 22, 2022, denying Lazo’s motion for reconsideration. Ruling on motions is not a power explicitly conferred to a magistrate under Rule 9-208. Md. Rule 9-208(b). As such, a judge must review the magistrate’s recommendation on the motion and then issue an order either granting or denying the motion. An order, signed by a judge, ruling on Lazo’s motion for reconsideration is absent from the case file. To date, the circuit court has yet to rule on Lazo’s motion or issue an order.

A similar issue occurred in *O’Brien v. O’Brien*, where the circuit court never entered an order on the matter appealed. *O’Brien*, 367 Md. at 551–56. In that case, the adult sister filed for, *inter alia*, arrearages in child support for the care of her minor sister against their father. *Id.* at 551. The magistrate recommended a finding in favor of the adult daughter and the father filed exceptions to the magistrate’s recommendation. *Id.* at 552. After a hearing, the judge agreed with the father and entered an order declaring “that the exceptions filed by [the father] are hereby sustained, without prejudice.” *Id.* at 553. The adult daughter appealed the judge’s decision to this Court.³ However, “[n]o order denying or dismissing

³ See *O’Brien v. O’Brien*, 136 Md. App. 497 (2001), *rev’d and rem’d* 367 Md. 547 (2002).

[the adult sister's] motion for relief—has ever been filed.” *Id.* For that reason, our Supreme Court held that there was no final appealable judgment to review. *Id.* at 547.

“[A] party may appeal from a final judgment entered in a civil or criminal case by a circuit court.” Md. Code Ann., Cts. & Jud. Proc. § 12-301. For a judgment to be final, it must be “an unqualified, final disposition of the matter in controversy.” *O’Brien*, 367 Md. at 554 (quoting *Davis v. Davis*, 335 Md. 699, 711 (1994)). Our Supreme Court in *O’Brien* declared that the trial court:

[M]ust rule upon the exceptions, either by sustaining or overruling them, *and it must then enter an appropriate order consistent with that ruling.* In this instance, where the court sustained the exceptions, the next required, and final, step would have been an order denying [adult sister's] motion for relief. That would have terminated the case... It is not over until a judgment... is signed and entered on the docket. As that has yet to occur, [adult sister's] appeal was plainly premature and it should have been dismissed by the Court of Special Appeals.

Id. at 555–56 (emphasis in original). By dismissing the appeal, the case would return to the circuit court to either “reconsider the ruling on the exceptions or enter a judgment on that ruling.” *Id.* at 556. The adult sister would then be free to appeal the final judgment once entered, if she desired. *Id.*

Likewise, in the case before us, the magistrate filed a memorandum “hereby denying” Lazo’s motion in question, however, the judge never signed or issued an actual order denying the motion. To be sure, the magistrate has no authority to grant or deny a motion. That authority rests solely with a judge. Although there is a final judgment in this matter, the instant appeal deals with a motion that was never addressed by the trial court.

We do not presuppose any objections or defenses that Mendez may raise to Lazo's motion. The remaining issues raised by Lazo all relate to custody, access, and child support. Should the trial court determine that a new hearing is appropriate, then it must be mindful of this Court's discussion of orders of default in *Flynn v. May*, 157 Md. App. 389 (2004). Judge Charles E. Moylan, Jr. pointed out that the entry of a judgment by default is discretionary, not mandatory, when a party fails to file a timely responsive pleading. *Id.* at 403. In a custody action, a default judgment cannot be a substitute for the trial court's determination of the best interest of the child after a full evidentiary hearing. *Id.* at 407. In this case, a judge of the circuit court must consider the merits of Lazo's motion in light of the holding in *Flynn v. May*.

We make this note on the allocation of costs in this case. Rule 8-607(a) sets a default rule of awarding costs to the prevailing party. The court can order otherwise. *Id.* We note for the record that Mendez had been represented on a *pro bono* basis. It would be inequitable to impose costs Mendez in this matter. Therefore, we will waive the costs in this matter.

CONCLUSION

For the reasons *supra*, we remand the case to the Circuit Court for Prince George's County to address Lazo's motion for reconsideration. We recommend that the circuit court

address the motion for reconsideration, either by conducting a hearing on the motion or by entering a ruling on the motion.⁴

CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.

⁴ We note that should Lazo appeal again, transcripts of the proceedings in question would be beneficial for this Court's review.