Circuit Court for Anne Arundel County
Case No. 02-C-11-160977

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1636

September Term, 2022

OLUSHADE ADEPEJU-JOSEPH

v.

OLUREMI TOLULOPE FOLARIN

Graeff,
Albright,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

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.

The appellant, Olushade Adepeju-Joseph ("Mother"), and the appellee, Oluremi Tolulope Folarin ("Father"), are the parents of a child born in April 2010 ("the Child"). On February 24, 2022, Father filed a motion in the Circuit Court for Anne Arundel County to modify a previously entered consent custody order, seeking, *inter alia*, sole legal custody of the Child. Following a hearing on Father's motion, the presiding family law magistrate issued a report recommending that the circuit court grant Father's request. In an order entered on August 3, 2022, the court adopted the magistrate's recommendation, thereby granting Father's motion and awarding him exclusive custody of the Child. Mother moved to vacate the court's order that same day, which motion the court denied on November 17, 2022.

On appeal, Mother presents two questions for our review, which we have consolidated and rephrased as follows:

> Did the court abuse its discretion by denying Mother's motion to vacate its order modifying child custody?[1]

For the following reasons, we shall affirm the judgment of the circuit court.

[1] In her brief, Mother presented the issues as follows:

1. Did the court err in refusing to vacate the judgment when [Father] received a custody determination at a scheduling conference where [Mother] was not served the notice of hearing to attend and thus [was] denied the opportunity of [sic] a fair hearing?

2. Did the trial court err in deciding child access rights when [Mother's] attorney failed to provide notice to her of the scheduling conference two times, and also; when [Mother] filed timely motions to be heard before the August 3rd Order became a final judgment?

BACKGROUND

The Motions to Modify Custody

On January 3, 2019, Father filed a motion to modify physical and legal custody of the Child, both of which the court had previously awarded exclusively to Mother.[2] In his motion, Father sought joint legal and primary physical custody pursuant to a consent agreement, which both parties had signed and which provided, in pertinent part:

> The [p]arties agree that both parents will share joint custody of the [C]hild.
>
> The [p]arties agree that the [C]hild will reside with [Father] and that both parents will have legal custody jointly but [Father] will have physical custody of the [C]hild.
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> * * *
>
> The [p]arties agree that neither [p]arty will change the residence of the [C]hild without adequate prior written notification. The [p]arties agree to provide one another with their current phone number[s] and physical address[es] for the purposes of coordination and communication.

(Paragraph numbering omitted.)

On April 30, 2019, Father (but not Mother) appeared before a family magistrate for a hearing on his motion.[3] Following that hearing, the magistrate issued a written report and recommendation, wherein he determined "that the parties' agreement [was] in the [C]hild's

[2] In an order entered on September 28, 2012, the circuit court awarded Mother sole legal and physical custody of the Child, and Father supervised visitation. Father appealed from that judgment on October 26, 2012. We dismissed that appeal in March 2013 due to Father's failure to timely file an appellate brief.

[3] According to her amended motion to modify custody, Mother's absence was attributable to her having been "outside the country at an educational institution" on the date of the hearing.

best interest" and recommended that the circuit court incorporate the parties' consent agreement into an order granting Father sole physical custody of the Child and the parties joint legal custody. Neither party filed exceptions, and the court adopted the magistrate's recommendations in an order entered on May 30, 2019.

On February 24, 2022, Father filed another motion to modify custody, seeking sole legal custody, with supervised visitation to Mother. In that motion, Father also requested that the court require Mother both to relinquish the Child's passport and to produce him at "the first court proceeding in this matter[.]" In support of his motion, Father alleged:

> In Summer 2020, [Mother] refused to return the minor child to [Father]. Since that time, [Mother] has relocated the minor child to Nigeria without [Father's] consent. [Mother] has intentionally, without excuse, interfered with [Father's] physical and legal custody rights to the minor child, and this is not in the minor child's best interest. Upon information and belief, the minor child is currently in a country where there is an uptick in crimes against youth. [Mother] is an unstable parent to the minor child. [Mother's] access to the minor child should be supervised, as this is in his best interest. Further, because [Mother] was able to procure a passport for the minor child without [Father's] consent, sole legal custody should be awarded to [Father].

In a response to Father's motion filed on April 15, 2022, Mother neither admitted nor denied these allegations.

The Contempt Proceedings

Contemporaneous with his motion to modify custody, Father filed a petition for civil contempt against Mother on February 24, 2022, wherein he alleged, *inter alia*, that she had failed to comply with the physical custody provision of the court's 2019 consent order. On March 3, 2022, the court scheduled a hearing on the contempt petition for May 4 and issued

an order requiring Mother to show cause why she should not be held in contempt. Thereafter, Mother retained an attorney, who entered his appearance on April 18, 2022.

Although Mother had been properly served with the contempt petition and show cause order on March 28, 2022, neither she nor her attorney attended the May 4 contempt hearing. Father, who did appear, testified to the following facts. In December 2019, Mother advised Father of her intent to transfer physical custody of the Child to him and prepared a consent agreement to that effect. Father acquiesced and signed the consent agreement because he had learned that Mother had left the Child "with a total stranger" in California (where Mother resided) during the preceding two months. After the parties signed the consent agreement and physical custody had been transferred to Father, the parties agreed that the Child would visit Mother in California during his 2020 summer vacation but would return to Father's care on August 26. However, Mother failed to return the Child to Father and instead enrolled him in a California school.

Father presented the court with an e-mail that he sent Mother on September 4, 2020, wherein he wrote, *inter alia*:

> Before you collected [the Child] in June, you made a promise verbally and supported it with a flight ticket which showed the return date as August 26th, 2020[.] . . . The plan was to return him before school resumes, which would have enabled him to settle well before school resumes based on the time difference between the East and West Coasts. I expect that you return [the Child] as quickly as possible because school resumes on September 8th.
>
> Take this as an official notice for you to return [the Child] and resolve any other concerns relating to [the Child].

Mother did not comply with Father's request that she return the Child. Father also presented the court with an e-mail that he had sent to Mother on January 18, 2022, which read, in part:

> It's important for me to maintain my right to communicate with [the Child] as clearly stated in the court order. However[,] you have bluntly denied me of this and have also disobeyed the court order and the agreement you wrote.
>
> I want you to understand that it is highly important for [the Child] to have his father play a major role in his growth and development in all areas. This he enjoyed greatly for the wonderful 2 years he was with me, which had a great deal of influence and developmental change in him. It's important that this continues and [is] highly maintained.
>
> **I want to come and see [the Child]. I am worried about him and concerned about his development. I need you to confirm where you are? I mean your location or are you now in San Francisco?**

(Emphasis retained.)

Father testified that Mother's persistent reticence prompted him to call the San Francisco police on February 6, 2022, and request that they perform a wellness check on the Child. Upon arriving at Mother's California residence at approximately 10:00 p.m. Pacific Standard Time, the police found Mother—but not the Child.[4] During the wellness

[4] Because of the time difference, it is not entirely clear from the record on what date this call was placed. We reproduce verbatim Father's relevant testimony:

> So January of this year, I was totally unsettled in my spirit, that something is really very wrong with my son. I have phone records to show that, since November, is when I've been calling, with no response. So January, I was -- I sent email. And I have copy of that email, to say I'm going to come, regardless, to California, to see my son, I need to know he's okay, wherever is. I didn't get any response.

(continued…)

check, Father insisted (by telephone) to speak to the Child. Mother responded that the Child was unavailable because he was at school. Given the late hour, Father inquired: "Which school is he in?" Mother answered that she could not disclose that information, as the Child was not in the United States. At the officers' insistence, Mother placed a three-way call to the Child the following day. During that call, Father asked the Child how and where he was. To the second question, the Child answered: "Nigeria." Father then asked him which

> So February 6th, I called the San Francisco police to do a well check for me, for my son. When they got there, they found the mother. But they did not find my son. So I got to figure out, that day. The next morning, because they insisted that she must grant a call. She lied to them that very day, that she has custody. She showed them, apparently, the old custody order she had. So they did not pursue the matter at that point.
>
> But the officer insisted that she must ensure that I have -- there was a call made between myself and my son, for me to know that my son is okay. That call lasted less than a minute, and she controlled that call. She made a connect call. And there were only two question I was able to ask my son: how are you, are you okay, where are you. And he said Nigeria.
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> Because I insisted, the night that the officer went to do the well check -- he got to, about 1 a.m. Eastern Time, when all this matter. So I said, I have to talk to him. Then she said, at that time, that the boy is going to school at that time, that is -- she's going to call me back, when he leaves school. I said -- this is about 2 a.m. Eastern Time. That's about 11, 12 a.m., your time. Which school is he in? Then she said she cannot disclose that the boy is not in -- in the U.S., that she cannot give me any information.
>
> So the next day, they called me. And there were only two question I was able to place to my son: how are you and where are you. The third question was what school are you in. And then, she cut off the phone. So when I asked him how are you and where are you, he said he was in Nigeria. And she confirmed he was in Nigeria.

school he was attending. Before the Child could answer, however, Mother terminated the call. Mother subsequently confirmed that the Child was, in fact, in Nigeria.

Based on the foregoing evidence, the court announced the following findings from the bench:

> [I]t is quite clear that [Mother] has violated this [c]ourt's March 30th, 2019 order, by, as I said, even if the standard[] [is] clear and convincing evidence, [Father] has met that burden of proof. She has violated the March 30th, 2019 order, which provides that [Father] . . . will have physical custody of the [Child].
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> * * *
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> She took the [C]hild, under a pretense of having a summer visit, with an agreement that she would return him on August 26th, 2020. And she has not done so. [Father] has made a number of attempts to regain custody of the [C]hild. And [Mother] has not cooperated in returning the [C]hild to Maryland, to [Father's] custody.
>
> For this contempt, the [c]ourt will sentence [Mother] to 30 days of incarceration, to commence on June 13th, 2022, in the Anne Arundel County Detention Center. [Mother] may purge her contempt by returning the minor child to [Father's] custody, in Maryland, on or before that date.

The court then scheduled a contempt review hearing for June 15th.

On May 5, the court memorialized its oral ruling in a written order. Mother did not timely comply with the purge provision in the court's contempt order, nor did she (or her attorney) attend the June 15 contempt review hearing to which she had been summoned. Accordingly, the court issued a writ of body attachment for her arrest.

The Motion for Emergency and Ex Parte Relief

When Mother had not yet complied with the purge provision's requirement that she return the Child to his care, Father filed a "Motion for Emergency and *Ex Parte* Relief" on

May 11, 2022.[5] In that motion, Father reiterated his allegation that Mother had both refused to return the Child to his custody and had transported him to Nigeria without Father's consent while she remained in San Francisco. A family magistrate held a hearing on Father's emergency motion on the same day it was filed. Following the hearing, the magistrate issued a "Report and Recommendation," wherein he found:

> [Father] allowed [Mother] to have the [C]hild in her care for the summer of 202[0], where she resides in California. When school started in the fall of 202[0], [Mother] refused to return the [C]hild to [Father's] care. In February of 2022, [Father] learned that the [C]hild is in Nigeria against his wishes. On May 5, 2022, [Mother] was adjudicated in contempt for failing to return the [C]hild to [Father's] care. If [Mother] fails to return the [C]hild to [Father's] care by June 12, 2022, [Mother] is facing a 30 day period of incarceration. [Mother] should not have joint legal custody of the [C]hild based on her actions and [Father] needs sole legal custody immediately to pursue every avenue to have the [C]hild returned to his care.[6]

Also on May 11, the circuit court entered a "Temporary Order in Response to Emergency Filing," temporarily granting Father sole legal custody of the Child.

On May 24, 2022, the court held a scheduling conference, which neither Mother nor her attorney attended. The court issued a "Show Cause Order for Failure to Appear" and a "Scheduling Order" that same day. In those orders, the court scheduled a follow-up scheduling conference and a concurrent show cause hearing for June 28, 2022. The show

[5] Father initially filed his "Motion for Emergency and *Ex Parte* Relief" on May 9, 2022. Because Father failed to notify Mother's attorney of a hearing held on his motion that same day; however, the court did not consider his initial motion at that hearing.

[6] The Magistrate, in his factual recitation, stated that Father permitted Mother have child in her care during the summer of 2021. In fact, Father's testimony relates to the summer of 2020, not the summer of 2021. That the Magistrate misspoke is of no substantive significance.

cause order advised: "Failure to appear and show cause as directed may result in the conversion of the show cause hearing into a merits hearing. At which time, testimony may be taken in support of the opposing party's Complaint/Petition/Motion, which may resolve the case in its entirety." (Emphasis omitted.) The scheduling order similarly stated: "[T]he scheduling conference shall be converted to a merits hearing if counsel [and Mother] fail to appear."

The Merits Hearing & The Magistrate's Report

Neither Mother nor her then-former attorney attended what would have been a remote joint scheduling conference and show cause hearing, but because of their absence became a remote merits hearing.[7] At that June 28, 2022, hearing, Father reiterated that he had agreed to permit the Child to reside with Mother during his 2020 summer vacation provided that she return him in August. Father again averred that Mother had violated their agreement by refusing to return the Child to him and prohibiting Father from visiting him. When, on February 6, 2022, Father had not heard from the Child in approximately a month, Father contacted the San Francisco authorities and requested that they perform a wellness check. With respect to his telephone conversation with the Child the following day (which was the last time he had spoken to the Child), Father testified: "[H]e wasn't sounding well. Because, when I asked him, where are you, he paused before he answered, Nigeria. And I asked, are you okay with school, are you -- he paused. Then [Mother] took the phone."

[7] On May 26, 2022, Mother's attorney filed a line to withdraw his appearance accompanied by a certificate of service. The circuit court granted counsel's request in an order entered on June 27, 2022.

Following the merits hearing, the presiding magistrate issued a third report and recommendation on July 11, 2022, wherein he made the following factual findings:

> Pursuant to an [o]rder in this matter docketed May 30, 2019, the parties were awarded joint legal custody of the [C]hild with [Father] having physical custody of the [C]hild subject to [Mother] having access with the [C]hild as set forth in the parties' Consent Agreement for Child executed January 3, 2019, (which was incorporated but not merged into the Order).
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> * * *
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> At this hearing, [Father] testified that in July of 2020, he allowed [Mother] to have access with the [C]hild for the summer in California (where [Mother] was residing). The parties agreed that at the conclusion of the summer break, the [C]hild would be returned to [Father's] care and custody for the [C]hild to continue to go to school in Maryland. However, [Mother] failed to return the [C]hild to [Father's] care and actually enrolled the [C]hild in school in California in September of 2020. [Father] was concerned about going to California to pick-up the [C]hild and planned on picking up the [C]hild at the end of the year. Although the parties have joint legal custody of the [C]hild, [Mother] made the unilateral decision to enroll the [C]hild in school in California. While [Father] had some regular telephone access with the [C]hild since July of 2020, that began to trail off, especially in November and December of 2021.
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> On February 6, 2022, [Father] called the police in San Francisco, California to do a wellness check of the [C]hild at [Mother's] residence. On February 7, 2022, [Father] last spoke with the [C]hild and learned from the [C]hild that he is residing in Nigeria. [Father] contends he learned this from the [C]hild after his last phone call with the [C]hild on February 7, 2022.
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> * * *
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> Following a contempt hearing before this [c]ourt on May 4, 2020, for [Mother's] failure to return the [C]hild to [Father], [Mother] was adjudicated in contempt and had until June 12, 2022[,] to return the [C]hild to [Father's] care or be subject to incarceration. A review hearing was held on June 15, 2022, and as [Mother] had not returned the [C]hild to [Father's] care, a body attachment was issued for her arrest. As of the June 28, 2022[,] hearing, [Mother] has not returned the [C]hild to [Father's] care.

* * *

> At the present time, [Father] does not know where the [C]hild is in Nigeria or whether the [C]hild is in school. [Father] testified that [Mother] may have been born in Nigeria and may have a sister in Nigeria. [Father] testified that the [C]hild should be going into the 7th grade this year and that the [C]hild's health is "good." [Father] testified that [Mother] has a doctorate degree of project management from the United Kingdom, and he does not know where [Mother] resides.

The magistrate determined that Mother's "failure to return the [C]hild to [Father's] physical care, as the [C]hild's physical custodia[l] parent, is a material change of circumstance." Applying the factors enumerated in *Taylor v. Taylor*, 306 Md. 290 (1986), and *Montgomery Cnty. Dep't of Soc. Servs. v. Sanders*, 38 Md. App. 406 (1978), to his factual findings, the magistrate concluded that "it is in the [C]hild's best interest for [Father] to be awarded sole legal custody" and for Mother to be permitted supervised visitation. The magistrate's report and recommendation was served upon Mother at her last known address by first-class mail sent on July 11, 2022.

The Court's Orders

As neither party filed exceptions to the magistrate's July 11 report, the circuit court adopted his factual findings and recommendations in an order entered on August 3, 2022, which awarded Father sole legal custody of the Child and granted Mother supervised visitation. That same day, Mother filed a motion to vacate the court's order, as well as a motion to quash the court's body attachment and contempt orders.[8] In her motion to vacate, Mother claimed that she was "prevented access to the courts to present the material facts

[8] During the ensuing three months, Mother filed a series of additional motions in which she reiterated the challenges raised in her August 3 motions.

in this case," namely that "[t]he [C]hild experienced an unwholesome/unhealthy controlled environment where he was systematically manipulated against [her], his biological mother, starved of meals to stifle his growth spurts, and his ability to grow naturally his potential." Father filed oppositions to both motions. On November 10, 2022, the court held a hearing on Mother's motions, at which both parties appeared and were represented by counsel.[9] One week later, the court entered an order wherein it quashed the contempt order, vacated the order for body attachment, and denied Mother's motion to vacate the court's August 3 order.[10] On November 18, 2022, Mother noted the instant appeal.[11]

[9] Mother failed to provide this Court with a transcript of the November 10 hearing.

[10] In its November 10 order, the court also granted a motion to correct Mother's name.

[11] On April 30, 2023, Mother requested an extension of the 20-day deadline for filing a reply brief. We granted that request in an order entered on May 4, which provided, in part: "[T]he appellant's reply brief shall be filed on or before May 24, 2023. The Court will not grant any further extensions of time." Notwithstanding the plain language of that order, Mother filed a second request for an extension on May 21, which we denied. Apparently undeterred by that denial, Mother filed a "[Motion for] Reconsideration of Denial of Motion for Time Extension" on May 26, wherein she sought "just a few more days – from the due date of May 24, 2023 to May 28, 2023 to properly collate my reply to appellee's brief." Although we had denied Mother's second motion for an extension and the May 24 deadline had passed, Mother filed a reply brief on May 30. We denied Mother's motion for reconsideration in an order entered the following day and struck her untimely reply brief. On June 2, however, Mother filed a motion for reconsideration of *that* denial, which we denied on June 9, 2023. Accordingly, we will neither address the arguments raised in Mother's Reply Brief nor consider the exhibits contained in the accompanying appendix.

DISCUSSION

Standard of Review

Ordinarily, this Court reviews child custody determinations utilizing three interrelated standards of review, which the Supreme Court of Maryland has described as follows:[12]

> When the appellate court scrutinizes factual findings, the clearly erroneous standard of [Rule 8-131(c)] applies. [Secondly,] [i]f it appears that the [court] erred as to matters of law, further proceedings in the trial court will ordinarily be required unless the error is determined to be harmless. Finally, when the appellate court views the ultimate conclusion of the [court] founded upon sound legal principles and based upon factual findings that are not clearly erroneous, the [court's] decision should be disturbed only if there has been a clear abuse of discretion.

In re Yve S., 373 Md. 551, 586 (2003) (quotation marks and emphasis omitted) (quoting *Davis v. Davis*, 280 Md. 119, 125-26 (1977)). Where, as here, however, a party appeals not from the underlying judgment, but from the denial of a motion to revise that judgment, "'the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion.'" *Canaj, Inc. v. Baker & Div. Phase III*, 391 Md. 374, 400-01 (2006) (quoting *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997)). *See also Jones v. Rosenberg*, 178 Md. App. 54, 72 ("We review the circuit court's decision to deny a request to revise its final judgment under the abuse of discretion standard."), *cert. denied*, 405 Md. 64 (2008).

[12] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

A court abuses its discretion when its decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Yve S.*, 373 Md. at 583-84 (quotation marks and citation omitted). In other words, we will not disturb a trial court's discretionary ruling unless "no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quotation marks and citation omitted). An abuse of discretion should therefore "only be found in the extraordinary, exceptional, or most egregious case." *Alexander v. Alexander*, 252 Md. App. 1, 17 (2021) (quotation marks and citations omitted). Accordingly, "'an appellate court should not reverse a decision vested in the trial court's discretion merely because the appellate court reaches a different conclusion.'" *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 242 (2011) (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 436 (2007)).

The Parties' Contentions

Mother contends that the court abused its discretion by denying her motion to vacate the order awarding sole legal custody to Father. If she had attended the evidentiary hearing on Father's motion to modify custody, Mother claims, "the court would have quickly realized that" she had not returned the Child to Father's custody "due to the abuse, neglect, and cruelty" to which Father subjected the Child while in his care. Mother attributes her absence from that hearing both to her purportedly not having been served with notice thereof and to "[t]he actions of the errant attorney . . . who [she] had initially retained to

represent [her] in this case[.]" Although she does not use the phrases "due process" or "effective assistance of counsel," Mother effectively contends that she was denied both.

Father responds that by failing to file exceptions to the magistrate's report, with which she was served by first class mail at her San Francisco residence, Mother waived any challenges to the factual findings contained therein. Father further counters that "Mother was informed of [the] hearing, and surely . . . Mother's attorney informed her of that hearing before his appearance was withdrawn[.]"

Analysis

Maryland Rule 9-208 governs domestic relations proceedings before magistrates. Except in certain circumstances not applicable to this case, the Rule requires that after a hearing the magistrate "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). The magistrate must advise the parties of his or her recommendations "either on the record at the conclusion of the hearing or by written notice served pursuant to Rule 1-321." *Id*. "Promptly after notifying the parties," the Rule mandates that the magistrate "file the recommendations and proposed order with the court." *Id.* The findings of fact contained in a magistrate's written recommendations "are merely tentative and do not bind the parties until approved by the court." *Doser v. Doser*, 106 Md. App. 329, 343 (1995).

If a party wishes to challenge a magistrate's findings and recommendations, subsection (f) prescribes the following procedure for doing so:

> Within ten days after recommendations are placed on the record or served pursuant to section (e) of this Rule, a party may file exceptions with the clerk. Within that period or within ten days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

Md. Rule 9-208(f). If an excepting party wishes to introduce evidence that was not presented to the magistrate, his or her exceptions must "set[] forth with particularity the additional evidence to be offered and the reasons why the evidence was not offered before the magistrate[.]" Md. Rule 9-208(i)(1). If the court determines that such evidence warrants consideration, it may either "remand the matter to the magistrate to hear and consider the additional evidence or conduct a de novo hearing." *Id.*

Unless "a magistrate finds that extraordinary circumstances exist and recommends that an order be entered immediately," Md. Rule 9-208(h)(2), the court must postpone "direct[ing] the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions[.]" Md. Rule 9-208(h)(1). If exceptions are not timely filed, however, "the court may direct the entry of the order or judgment as recommended by the magistrate." Md. Rule 9-208(h)(1)(B). As this Court has previously held, "'if an appellant's sole basis for appeal was that the [m]agistrate's factual findings . . . were clearly erroneous, her failure to file exceptions is fatal to such an argument.'" *Dillon v. Miller*, 234 Md. App. 309, 317 (2017) (cleaned up) (quoting *Miller v. Bosley*, 113 Md. App. 381, 393 (1997)). *See also Barrett v. Barrett*, 240 Md. App. 581,

587 (2019) ("A party's failure to timely file exceptions forfeits any claim that the [magistrate's] findings of fact were clearly erroneous." (quotation marks and citation omitted)); *Green v. Green*, 188 Md. App. 661, 674 (2009) ("[F]ailing to file exceptions to a [magistrate's] findings prevents a party from appealing the circuit court's adoption of the [magistrate's] factual findings[.]").

In this case, the magistrate properly served Mother with written notice of his recommendations by mailing his report to her last known address on July 11, 2022, in accordance with Maryland Rule 1-321(a).[13] The magistrate's report expressly advised the parties "that they have ten (10) days from the date of service upon them of this Report within which to file [e]xceptions, and, if [e]xceptions are not filed, the recommended [o]rder will be submitted to a [j]udge for approval." As Mother was served with the report by mail, Maryland Rule 1-203(c) extended the deadline for her to file exceptions until July 24th. Because July 24 fell on a Sunday, Rule 1-203(a) further extended the deadline until July 25. The circuit court adopted the magistrate's factual findings and recommendations nine days after that deadline. By failing to file timely exceptions to the magistrate's report and recommendation, Mother waived any claim that those findings were deficient or otherwise clearly erroneous, as well as the opportunity to present new evidence.

[13] Maryland Rule 1-321 governs service of pleadings and papers other than original pleadings, and provides, in pertinent part: "Service upon . . . a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address." Md. Rule 1-321(a).

Although Mother remained free to "challenge the court's 'adoption of the [magistrate's] application of the law to the facts[,]'" her motion to vacate the court's order did not allege that the court committed any such error. *Barrett*, 240 Md. App. at 587 (quoting *Green*, 188 Md. App. at 674). Rather, she claimed that the court erred by failing to consider certain facts, namely alleged instances of abuse and neglect by Father. The proper method and time to raise such issues was either at the evidentiary hearing before the magistrate or by exceptions on or before July 25, 2022. *See Green*, 188 Md. App. at 674 ("[E]xceptions are the proper vehicle for review of the [magistrate's] findings[.]" (quoting *In re Levon A.*, 124 Md. App. 103, 123 (1998) (quoting *Miller*, 113 Md. App. at 390 n.8)).

Mother's accusation that her initial attorney failed to notify her of the merits hearing is a serious one, particularly given that the court granted that attorney's request to withdraw the day before that hearing. Had the court not held a hearing on her subsequent motion to vacate the child custody order, we would remand this case for one. Despite Mother's failure to timely file exceptions to the magistrate's factual findings, however, the court *did* hold such a hearing on November 10, 2022, at which both parties appeared and were represented by counsel. Although it is the ensuing denial of her motion to vacate from which Mother appeals, she has failed to produce the transcript of the November 10 hearing. *See* Md. Rule 8-411(a). *See also Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993) ("The failure to provide the court with a transcript warrants summary rejection of the claim of error."), *cert. denied*, 334 Md. 211 (1994). In the absence of that transcript, "we will simply presume that [the

court] did the right thing for the right reason[,]" and properly determined that, rather than having been prohibited from attending the merits hearing, Mother merely failed to appear. *Campbell v. State*, 235 Md. App. 335, 339 (2017).

We are sympathetic to Mother's former (and present) *pro se* status. However, that status does not excuse her noncompliance with the applicable procedural rules. *Dep't of Lab., Licensing & Regul. v. Woodie*, 128 Md. App. 398, 411 (1999) ("It is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel."). *See also Tretick v. Layman*, 95 Md. App. 62, 68 (1993) ("The principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident.").

In summation, by failing to file exceptions to the magistrate's July 11, 2022, report, Mother waived any claim that the factual findings contained therein were deficient or otherwise clearly erroneous. Finding no legal error in the court's application of the law to those then unassailable facts, and without a transcript of the hearing on Mother's motion to vacate, we must affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANT TO PAY COSTS.