

Circuit Court for Caroline County
Case No. C-05-FM-20-000176

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1723

September Term, 2023

GARY STOLTZ

v.

TINA STOLTZ

Arthur,
Beachley,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 9, 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 persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In this family law case, the Circuit Court for Caroline County found a father in constructive civil contempt and ordered him to pay the mother’s attorneys’ fees as a “sanction.” While the father’s appeal of that ruling was pending, the circuit court purported to amend its order by recharacterizing the “sanction” as remedy for unjustifiably denying or interfering with visitation rights under section 9-105 of the Family Law (“FL”) Article of the Maryland Code (1984, 2019 Repl. Vol.).

The father appealed. We reverse.

BACKGROUND

Gary Stoltz (“Father”) and Tina Stoltz (“Mother”) were married in 2008 and divorced in 2022. This is the second time their case has come before this Court.

While the divorce proceedings were pending in the circuit court, Mother filed a petition for constructive civil contempt. In brief, she argued that Father had violated an agreement that the parties placed on the record. The agreement was not yet contained in a court order, in part because Father had refused to sign a proposed order.

In an order dated April 14, 2023, “the court found Father in contempt of ‘prior Orders,’ the identity of which it did not specify.” *Stoltz v. Stoltz*, 2023 WL 8824788, at *2 (App. Ct. Md. Dec. 21, 2023). “The court stated that Father could ‘purge’ his contempt by ‘complying with [the court’s] prior Orders’ and by providing Mother with ‘[three] additional weeks of parenting time during the Summer of 2023.’” *Id.* “In addition, the court imposed what it called a ‘sanction[]’ in the amount of \$12,000.00,

representing Mother’s reasonable and necessary attorneys’ fees.” *Id.* “The court required Father to pay the \$12,000.00 to Mother within ten days of the order.” *Id.*

Father appealed, and we reversed. Among other things, we reasoned that, “insofar as the order imposed a ‘sanction’ in the amount of Mother’s attorneys’ fees, it is invalid because it does not prescribe any way by which Father could avoid the ‘sanction.’” *Id.* at *4. “Instead, the ‘sanction’ of attorneys’ fees” was really just a “penalty for past conduct, not a coercive measure that Father could avoid by bringing himself into compliance with a court order.” *Id.* Because the purpose of civil contempt is to coerce a party to come into compliance with the court’s orders and not to punish a party for failing to comply with orders, the award of fees did not belong in an order for constructive civil contempt.

Meanwhile, on July 11, 2023, while Father’s first appeal was pending before this Court, Mother filed a second petition for constructive civil contempt. In that second petition, Mother alleged that Father had disobeyed the earlier contempt order because he had “failed and refused to pay the award of [attorneys’] fees” that the circuit court had imposed as a purported sanction.

On September 7, 2023, the trial court held a show cause hearing to address Mother’s second contempt petition. Neither party adduced evidence at the hearing. Rather, Mother argued that, when the court found Father in contempt and ordered him to pay her attorneys’ fees as a “sanction,” it “intended the award of attorney’s fees to exist separate and apart from [any] sort of carrot for [Father].” In other words, Mother argued that the court intended for the award of fees to be separate from an order of civil

contempt, which is designed to induce a party to come into compliance with court orders. According to Mother, the use of the word “sanction” to describe the award of fees was “a scrivener’s error.”

To correct the alleged “scrivener’s error,” Mother requested that the trial court revise the terms of the original order, which was on appeal, to clarify that the payment of attorneys’ fees was intended as a remedy for unjustifiably denying or interfering with visitation rights under FL section 9-105, and not a “sanction” for civil contempt.¹ The trial court agreed to “amend” the earlier order to state that it had based the award of fees on section 9-105. In every other respect, the order remained the same.

¹ Section 9-105 provides as follows:

In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:

- (1) order that the visitation be rescheduled;
- (2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order; or
- (3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.

On September 28, 2023, Mother submitted a proposed order that revised the previous order. On October 13, 2023, the trial court signed the proposed order. This timely appeal followed.²

QUESTION PRESENTED

Father presents two questions for our review, which, in the interest of concision, we have condensed and reworded: Did the trial court erroneously modify an order that was the subject of an appeal?³

STANDARD OF REVIEW

“Post-appeal orders which affect the subject matter of the appeal are prohibited.” *In re Emileigh F.*, 355 Md. 198, 202-03 (1999). Therefore, we conduct a de novo review

² Although the order no longer purports to award attorneys’ fees as a “sanction” for contempt, the order continues to adjudge Father in contempt; therefore, it is appealable under section 12-304(a) of the Courts and Judicial Proceedings Article. In addition, like the earlier order, the amended order continues to impair Father’s custodial rights by stating that he can “purge” his contempt by providing Mother with “[three] additional weeks of parenting time”; therefore, it is appealable under section 12-303(3)(x) of the Courts and Judicial Proceedings Article. Finally, a trial court’s ruling on a request for attorneys’ fees is reviewable as part of an appeal from the related custody determination. *See Alexander v. Alexander*, 252 Md. App. 1, 25 (2021).

³ Father formulated his questions as follows:

1. Is the trial court prohibited from modifying an order subject to appeal?
2. Did the modification of the Original Contempt Order occur without legal authority?

of an order that modifies an order that is the subject of an appeal.

DISCUSSION

An appeal from a final judgment does not deprive the trial court of “fundamental jurisdiction.” *See, e.g., Pulley v. State*, 287 Md. 406, 417 (1980); *accord Jackson v. State*, 358 Md. 612, 620 (2000); *In re Emileigh F.*, 355 Md. at 202. Thus, after the filing of an appeal, a trial court may still “act with reference to matters not relating to the subject matter of, or matters not affecting, the appellate proceeding[s].” *State v. Peterson*, 315 Md. 73, 80 (1989); *accord In re Emileigh F.*, 355 Md. at 203.

Nonetheless, an appeal prohibits the trial court from acting in a way that frustrates the appellate court’s exercise of appellate jurisdiction. *In re Emileigh F.*, 355 Md. at 202-03. A trial court may not exercise its fundamental jurisdiction “in a manner that affects either the subject matter of the appeal or the appellate proceeding itself—that, in effect, precludes or hampers the appellate court from acting on the matter before it.” *Jackson v. State*, 358 Md. 612, 620 (2000); *accord Folk v. State*, 142 Md. App. 590, 597 (2002). “Any post-judgment ruling by a circuit court that has that effect may be subject to reversal on appeal[.]” *Jackson v. State*, 358 Md. at 620.

In this case, Father’s earlier appeal directly challenged the award of attorneys’ fees as a “sanction” for civil contempt. Once Father had initiated that appellate challenge, the circuit court was prohibited from exercising its power to premise the award of fees on another ground and thus, evade this Court’s ability to review its decision. The circuit

court erred in modifying the order of civil contempt and in basing the fee award on FL section 9-105.

Mother defends the modification by arguing that the court corrected a clerical mistake—a scrivener’s error—which the court may do at any time under Maryland Rule 2-535(d). Her argument has no merit. The court did not correct a clerical mistake, such as a misspelled word or name, a misplaced decimal point, or an error in punctuation; the court made a substantive change to its order by basing the award of fees on FL section 9-105 instead of characterizing it as a “sanction” for civil contempt. Moreover, the court made the substantive change while the order was pending on appeal, which it may not do without leave of the appellate court. *See Short v. Short*, 136 Md. App. 570, 580 (2001); *see* Md. Rule 2-535(d) (stating that, “[d]uring the pendency of an appeal,” clerical mistakes may be “corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court”).

Mother argues, however, that the court’s error is “harmless.” Again, her argument has no merit. Once the court’s award of fees was challenged on appeal (on valid, substantive grounds), the court attempted to devise another basis to uphold the award. Unless we reverse the modified order, we would countenance these efforts to avoid the limitations on a circuit court’s ability to preclude or hamper the appellate court from acting on the matter before it.

The court’s original order was invalid for the reasons stated in our previous opinion. The amended order is invalid because the court erred in purporting to amend the

original order while it was on appeal. Father has no obligation to pay the award of fees, whether as a “sanction” for contempt or as remedy under FL section 9-105.⁴

**JUDGMENT OF THE CIRCUIT COURT
FOR CAROLINE COUNTY REVERSED;
APPELLEE TO PAY ALL COSTS.**

⁴ Because the amended order replicates many of the provisions of the original order, those provisions are also invalid for the reasons stated in our earlier opinion.