

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 1805

September Term, 2022

DEANNE R. UPSON GIESE

v.

WILLIAM EARL WALLACE, III

Friedman,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 12, 2023

* 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.

** 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 appeal from an order of dismissal in a child access case, by the Circuit Court for Montgomery County, on the ground that the child had reached the age of 18 years and, therefore, the court no longer has jurisdiction. We shall affirm.

BACKGROUND

Georgiana Rose Wallace (“Daughter”), the daughter of Deanne R. Upson Giese (“Mother”), the appellant, and William Earl Wallace, III (“Father”), the appellee, was born in May 2004, “in the Commonwealth of Virginia, nine months after her parents engaged in a brief intimate relationship.” *Upson v. Wallace*, 3 A.3d 1148, 1151 (D.C. 2010). “After a contentious custody dispute in 2006 between” the parties, “a Virginia court awarded Wallace full custody in March 2007.” *Wallace v. Poulos*, 861 F. Supp. 2d 587, 592 (D. Md. 2012).

On June 14, 2022,¹ Mother filed a petition in the Circuit Court for Montgomery County seeking, among other things, a “court Order invalidating all Virginia” custody orders previously issued that had awarded sole custody of Daughter to Father; a “court Order for Mother to have sole physical and legal custody of [Daughter] and entitled to child support through [Daughter]’s age of 21”; an order of protection to prevent Father from having any contact with either Mother or Daughter; and an order that Daughter’s surname be changed from “Wallace” to “Upson.” On July 13, 2022, Mother filed an amended petition, asking for Daughter “to be produced for law enforcement.”

¹ Mother previously filed a similar petition on May 27, 2022, but it appears that the circuit court rejected the petition because of failure to conform to the requirements of the Maryland Electronic Courts filing system (“MDEC”), Maryland Rule 20-101.1, and because it was unsigned.

On July 21, 2022,² Father filed a motion to dismiss on several grounds, including that Daughter had attained age 18 and graduated high school, resulting in the termination of custody and child support obligations as a matter of Maryland law. On August 22, Mother filed a motion for summary judgment, asserting that “[n]o facts of this case are in genuine dispute” and that she was “entitled to judgment as a matter of law,” as well as a renewed emergency motion for protective order.

On August 26, 2022, the circuit court issued an order, dismissing, with prejudice, Mother’s June 14th custody petition and July 13th amended petition, declaring that it “does not have jurisdiction over the child of the parties who is emancipated by age[.]” On August 31, 2022, a magistrate convened a virtual hearing on Mother’s petitions and informed the parties of the circuit court’s order and concluded the hearing. The circuit court’s order was entered the same day and docketed in MDEC September 6, 2022. On September 16, 2022, the circuit court entered an order, denying Mother’s motion for summary judgment.

Mother filed a motion for reconsideration the same day. On November 21, 2022, the circuit court denied her motion for reconsideration. Mother then noted this appeal.

DISCUSSION

Maryland Code (1984, 2019 Repl. Vol.), Family Law Article (“FL”), § 9.5-101(c) defines “[c]hild” as “an individual under the age of 18 years.” The jurisdiction of a circuit

² Father’s motion to dismiss is time-stamped July 21, 2022 but appears to have been entered July 26, 2022. This discrepancy is not material.

court in matters affecting such things as the custody, support, and visitation of a child is defined in FL § 1-201(b):³

(b) An equity court has jurisdiction over:

* * *

(5) custody or guardianship of a child except for a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance;

(6) visitation of a child;

* * *

(9) support of a child;

FL § 5-203 states more specifically:

(b) The parents of a minor child, as defined in § 1-103 of the General Provisions Article:

(1) are jointly and severally responsible for the child’s support, care, nurture, welfare, and education; and

(2) have the same powers and duties in relation to the child.

* * *

(d)(1) If the parents live apart, a court may award custody of a minor child to either parent or joint custody to both parents.

³ Family Law Section 1-201(a) provides: “For the purposes of subsection (b)(10) [concerning certain immigrant children] of this section, ‘child’ means an unmarried individual under the age of 21 years.” Under basic principles of statutory construction, this clearly means that, for all other subsections of FL § 1-201(b), “child” means “an individual under the age of 18 years.” FL § 9.5-101(c). *Griffin v. Lindsey*, 444 Md. 278, 287-88 (2015) (applying doctrine of *expressio unius est exclusio alterius* to jurisdictional statute), *disapproved on other grounds, Rosales v. State*, 463 Md. 552, 566 (2019).

(2) Neither parent is presumed to have any right to custody that is superior to the right of the other parent.

(Emphasis added.)

Maryland Code (2014, 2019 Repl. Vol.), General Provisions Article (“GP”),

§ 1-103 states:

(a) “Adult” means an individual at least 18 years old.

(b) Except as provided in § 1-401(b) of this title, as it pertains to legal age and capacity, “minor” means an individual under the age of 18 years.

And finally, GP § 1-401(b) states:

(b) An individual who has attained the age of 18 years and who is enrolled in secondary school has the right to receive support and maintenance from both of the individual’s parents until the first to occur of the following events:

- (1) the individual dies;
- (2) the individual marries;
- (3) the individual is emancipated;
- (4) the individual graduates from or is no longer enrolled in secondary school; or
- (5) the individual attains the age of 19 years.

The undisputed facts are that Daughter’s 18th birthday was in May 2022 and that she no longer attends secondary school. When Mother filed her petition, on June 14, 2022, the circuit court lacked subject matter jurisdiction over her petition. Therefore, the circuit

court correctly dismissed Mother’s petition and supplemental petition and furthermore correctly denied Mother’s motion for summary judgment and motion for reconsideration.⁴

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

⁴ Even if Mother’s original petition, filed May 27, 2022, had been accepted for filing, the case would have been rendered moot as a consequence of Daughter attaining her 18th birthday and graduating high school. Therefore, the circuit court, in that case, still would have been correct in dismissing Mother’s filings in this case. *See generally In re M.C.*, 245 Md. App. 215, 224 (2020).