Circuit Court for Prince George's County
Case No. CAD18-37570

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1966

September Term, 2022

JACQUELINE ITEGBE
v.

ANTHONY OKENWA

Beachley,
Albright,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 30, 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.

Appellant Jacqueline Itegbe ("Mother") appeals the Circuit Court for Prince George's County's contempt order that found Mother in willful violation of the Judgment of Absolute Divorce for not allowing appellee Anthony Okenwa ("Father") visitation with their children. Mother presents the following questions on appeal:

> 1. Whether the lower [c]ourt erred as a matter of law in forcing the children to go back to their abuser without making the necessarily [sic] finding of not likely to abuse as required under [FL §] 9-101?
>
> 2. Whether the lower [c]ourt erred as a matter of law in finding the [a]ppellant in contempt of the Parties Separation Agreement, without a purge provision and when the [a]ppellee failed to initiate the condition precedent as required in the agreement?

We will not substantively address these questions because, as we shall explain, Mother recognized the validity of the circuit court's contempt order. Accordingly, we shall dismiss the appeal.

FACTS AND PROCEEDINGS

Mother and Father were married and had two children. On October 16, 2018, Mother filed for a divorce. During a settlement conference, the parties entered into a Separation and Settlement Agreement. On May 1, 2019, the Circuit Court for Prince George's County incorporated, but did not merge, the Separation and Settlement Agreement into the Judgment of Absolute Divorce. Relevant to this appeal, the Judgment of Absolute Divorce granted Father "visitation with the minor children in accordance with the parties['] Separation and Settlement Agreement" which, in turn, granted Father "reasonable visitation rights."

On November 18, 2021, Father filed a Petition for Contempt in which he asserted that "for a period of nearly two (2) years, [Mother] has taken willful action to prevent [Father] from having any contact with the minor children[.]" On May 31, 2022, the circuit court held a contempt hearing. At the end of the hearing, the court found Mother in contempt of the divorce judgment and set a temporary access schedule for Father. The judge asked Father to prepare an order consistent with her bench opinion. Father emailed the proposed order to both Mother and the court. Before the order was entered, Mother filed a "Motion for Reconsideration, Motion to Alter & Amend, Timely Request for a New Trial, and Request for Hearing" that represented that she was "not opposed to the interim access schedule[] that the [c]ourt is about to order," but further asserted that both parties should be found in contempt. Mother attached a proposed order to her motion that slightly altered Father's proposed order. On August 16, 2022, the court entered Mother's proposed order.

On August 29, 2022, Father filed a Motion to Vacate Order Signed in Error, claiming that Mother's proposed order distorted the court's bench opinion. On September 14, 2022, Mother filed an opposition in which she stated that "[t]here is NOTHING wrong with the order" that she had proposed and which the court signed. On December 19, 2022, the court vacated the August 16, 2022 order and entered Father's original proposed order. Mother then noted this timely appeal.

DISCUSSION

Mother alleges that the court erred by entering the December 19, 2022 contempt

order without making a finding concerning Father's alleged abuse as required by Md. Code (1984, 2019 Repl. Vol.) § 9-101 of the Family Law Article ("FL"). She further argues that the December 19, 2022 contempt order is deficient because it lacks a purge provision. Significantly, the December 19, 2022 contempt order was nearly identical to the August 16, 2022 contempt order that was proposed by Mother and signed by the court. The August 16, 2022 contempt order submitted by Mother provided:

> This matter having come before the Court on May 31, 2022, on *Defendant's Petition for Contempt (Interference with access) and Request for a Specific Access Schedule* and the Court having taken evidence on the issues, it is this 26th day of July, 2022[1], by the Circuit Court for Prince George's County, Maryland, hereby
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> **ORDERED**, that both Parties willful violation [sic] the court order dated October 12, 2021, ordering both parties to attend a mediation; and it is further
>
> **ORDERED**, that Defendant, Anthony Okenwa shall have access with the minor children of the parties, namely Jane C. Okenwa, born June 4, 2011 and Nathan U. Okenwa, born March 1, 2014, at the *Children's Rights Council (CRC)* in Hyattsville, Maryland located at the University Christian Church, 6800 Adelphi Road, Hyattsville, Maryland 20782. Said access shall take place between the hours of 9:00 a.m. until 11:00 a.m. for a total of four (4) sessions; and it is further
>
> **ORDERED**, that commencing August 6, 2022, Defendant shall have unsupervised access with the parties' minor children from 10:00 a.m. until 6:00 p.m.; and it is further
>
> **ORDERED**, that commencing August 13, 2022, Defendant shall have unsupervised access with the parties' minor children every other Saturday at 10:00 a.m. until Sunday at noon; and it is further

[1] The order was signed on July 26, 2022, but was not entered until August 16, 2022.

> **ORDERED**, that on September 10, 2022, Defendant shall have unsupervised access with the parties' minor children from Saturday at 10:00 a.m. until Sunday, September 11, 2022 at 6:00 p.m.; and it is further
>
> **ORDERED**, that on September 24, 2022, Defendant shall have unsupervised access with the parties' minor children from Saturday at 10:00 a.m. until Sunday, September 25, 2022 at 6:00 p.m.; and it is further
>
> **ORDERED**, that commencing August 6, 2022, all exchanges between the parties shall occur at the *Landover Police Station* located at 7600 Barlowe Road, Hyattsville, Maryland 20785; and it is further
>
> **ORDERED**, that the Parties' Separation Agreement dated May 1, 2019 is in full force and effect; and it is further
>
> **ORDERED**, that before the [sic] September 25, 2022, the parties must either agree on an access schedule or attend the mediation to resolve this matter as contained in the Parties' Separation Agreement.
>
> **ORDERED**, that this case be closed for statistical purposes.

(Emphasis in original).

The December 19, 2022 contempt order—the order originally proposed by Father—is identical to the August 16, 2022 order except as follows:

1) The December 19, 2022 contempt order found that "Jacqueline Itegbe is in willful violation of the visitation/access terms of the parties' Judgment of Absolute Divorce dated May 1, 2019[,]" whereas the August 16, 2022 order found *both* parties in contempt.
2) The December 19, 2022 order deleted the provision "that the Parties' Separation Agreement dated May 1, 2019 is in full force and effect[.]"

3) The December 19, 2022 order deleted the provision "that before the [sic] September 25, 2022, the parties must either agree on an access schedule or attend the mediation to resolve this matter as contained in the Parties' Separation Agreement."

In *Williams v. Md. Dep't of Hum. Res.*, this Court stated that "Maryland law is well settled that '[t]he right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.'" 136 Md. App. 153, 176 (2000) (quoting *Osztreicher v. Juanteguy*, 338 Md. 528, 534 (1995)); *see also Mona v. Mona Elec. Grp., Inc.*, 176 Md. App. 672, 723 (2007) ("An appeal must be dismissed 'if the appellant 1) accepts a benefit from *or* 2) acquiesces in *or* 3) recognizes the validity of the judgment or decree *or* 4) acts in a manner inconsistent with the maintenance of the appeal.'" (quoting *First Md. Leasecorp v. Cherry Hill Sand & Gravel Co.*, 51 Md. App. 528, 534-35 (1982))). In *Franzen v. Dubinok*, the Supreme Court of Maryland[2] stated:

> This general rule of preclusion . . . has been variously characterized as an "estoppel," *Dubin v. Mobile Land Corp.*, 250 Md. 349, 353, 243 A.2d 585, 587 (1968), a "waiver" of the right to appeal, *id.* at 353, 243 A.2d at 587; *Bowers v. Soper*, 148 Md. 695, 697, 130 A. 330, 331 (1925), an "acceptance of benefits" of the court determination, *Dubin v. Mobile Land Corp., supra*, creating "mootness," *Durst v. Durst*. 225 Md. 175, 182, 169 A.2d 755, 758 (1961), and an "acquiescence" in the judgment, *Rocks v. Brosius*, [241 Md. 612, 630 (1966)]; *Stewart v. McCaddin*, [107 Md. 314, 318 (1908)]. We think the label applied to the rule is less important than its essence that a voluntary act of a party which is inconsistent with the assignment of errors

[2] 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.

on appeal normally precludes that party from obtaining appellate review. 290 Md. 65, 68-69 (1981). Furthermore, in *Claybourne v. State*, this Court stated that "[a] defendant may not 'be permitted to "sandbag" trial judges by expressly, or even tacitly, agreeing to a proposed procedure and then seeking reversal when the judge employs that procedure; . . . nor will they freely be allowed to assert one position at trial and another, inconsistent position on appeal.'" 209 Md. App. 706, 748 n.28 (2013) (second alteration in original) (quoting *Miles v. State*, 365 Md. 488, 554 (2001)).

Mother's first question presented on appeal asserts that the court erred by granting Father unsupervised visitation without making findings required by FL § 9-101.[3] However, Mother's proposed order that the court entered on August 16, 2022, expressly granted Father unsupervised visitation with the children. After Father objected to other provisions in the August 16, 2022 order, Mother responded, "[t]here is NOTHING wrong with the [August 16, 2022] order[.]" Mother therefore has forfeited any right to challenge the identical visitation rights granted to Father in the December 19, 2022 order. Because Mother expressly accepted and argued for the validity of the visitation access provided to

[3] FL § 9-101 states:

> (a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.
>
> (b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

Father in the August 16, 2022 order, she cannot challenge those same provisions that were adopted in the December 19, 2022 contempt order.[4]

Mother's second appellate argument—that the December 19, 2022 contempt order lacks a purge provision—fails for the same reason. The August 16, 2022 order proposed by Mother and signed by the court did not contain a purge provision. Neither did the December 19, 2022 order which is the subject of this appeal. Mother cannot propose an order to the court that is allegedly deficient because of a lack of a purge provision, subsequently argue that there is "NOTHING wrong" with the order, and then appeal that very "deficiency" that she both proposed and accepted. We also note that the lack of a purge provision actually benefitted Mother because its omission meant that she could not be sanctioned if she failed to comply with the contempt order.

[4] Even if Mother had not recognized the validity of the order, the court still did not have to make a FL § 9-101 finding. Father was granted visitation rights in the Judgment of Absolute Divorce and Mother did not appeal that decision. Instead, Mother is appealing the contempt order enforcing Father's visitation rights. In *In re G.T.*, this Court stated "FL § 9-101 concerns whether 'the court shall deny custody or visitation rights' and does not concern situations in which visitation has been [already] ordered" but is not occurring. 250 Md. App. 679, 694 (2021). Thus, Mother's FL § 9-101 argument is unavailing.

Furthermore, FL § 9-101 only requires the court to find that there is no likelihood of further abuse or neglect before granting visitation "if the court . . . has reasonable grounds to believe that a child . . . has been abused or neglected by a party to the proceeding[.]" *Gizzo v. Gerstman*, 245 Md. App. 168, 193 (2020) (alterations in original) (quoting *In re Adoption No. 12612 in Circuit Court for Montgomery Cnty.*, 353 Md. 209, 234 (1999)). Here, Mother agreed to give Father visitation rights at the settlement conference and never argued before the court that abuse had occurred.

Although we have addressed both of Mother's "Questions Presented," embedded within her second appellate argument is her contention that the December 19, 2022 contempt order nullified the parties' Separation and Settlement Agreement. We need not consider this argument because it is not articulated in Mother's "Questions Presented." *See* Md. Rule 8-504(a)(3); *see also Green v. N. Arundel Hosp. Ass'n, Inc.*, 126 Md. App. 394, 426 (1999), *aff'd on other grounds*, 366 Md. 597 (2001) (stating that "[a]ppellants can waive issues for appellate review by failing to mention them in their 'Questions Presented' section of their brief"). Even if we were to consider this argument, it would fail. First, Mother stated when she proposed the August 16, 2022 contempt order that she was "not opposed to the interim access schedule[.]" Not only did Mother not oppose the interim access, it was clear that the ordered visitation was temporary and did not nullify the visitation provided in the Separation and Settlement Agreement. Second, although the August 16, 2022 contempt order expressly stated that "the Parties' Separation Agreement dated May 1, 2019 is [still] in full force and effect," while the December 19, 2022 contempt order did not contain this language, the court made it clear at the contempt hearing that it would not modify the visitation provisions set forth in the Separation and Settlement Agreement. The court stated:

> The order has to be modified in order for me to do a permanent schedule. But we don't have a modification hearing[;] we have a contempt hearing.
>
> So what I can do is set some time though for you to see the children, and I think at this point -- *but it is not going to be a modification*. It is not going to be a permanent schedule. I just can't do that.

(Emphasis added). Contrary to appellant's assertion, the court was clear that the December 19, 2022 contempt order did not nullify or modify the parties' Separation and Settlement Agreement.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.