Circuit Court for Montgomery County
Case No. 146464FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2373

September Term, 2018

ERIC LAPPI

v.

CYNTHIA KAMGA NENKAM

Nazarian,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 4, 2019

*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.

Eric Lappi, appellant, and Cynthia Kamga Nenkam, appellee, are the parents of S.L., a minor child. On August 13, 2018, the Circuit Court for Montgomery County entered an order granting Ms. Nenkam primary physical custody of S.L., with the parties sharing joint legal custody. Mr. Lappi was also granted regular visitation and ordered to pay $1,077.00 per month in child support. Mr. Lappi filed a notice of appeal raising four issues: (1) whether the trial court abused its discretion in vacating a sanctions order that had been issued by another judge; (2) whether the trial court abused its discretion in granting Ms. Nenkam's motion to postpone the hearing date from April 25, 2018, to June 11, 2018; (3) whether the trial court erred in not granting him "custody of his child because it considered [granting him custody] to be punishing the child"; and (4) whether the trial court erred in "mov[ing] on with the trial hearing . . . when a legal counsel of the Appellee [had] been contacting and providing legal advice to [him]." For the reasons that follow, we shall affirm.

Background

In 2017, Ms. Nenkam filed a complaint seeking child support and sole legal and physical custody of S.L, who was living with her at the time. Mr. Lappi filed an answer contesting paternity and seeking genetic testing. Thereafter, the court entered a scheduling order, requiring discovery to be completed by January 16, 2018, and setting a trial date for April 25, 2018. After genetic testing revealed that Mr. Lappi was the father, he filed a counter-complaint for custody and child support on January 29, 2018. In that complaint, Mr. Lappi requested sole legal and physical custody of S.L. and asserted that he had "concerns regarding [S.L.'s] physical safety and well-being" because Ms. Nenkam was

living with her father and sister, who, he claimed, had been convicted of fraud and embezzlement in Cameroon.

Thereafter, the parties were involved a series of discovery disputes. Relevant to this appeal, Mr. Lappi sought an order preventing Ms. Nenkam from deposing him because she had not attempted to schedule his deposition until after the January 16 deadline for completing discovery. On March 23, 2018, Judge Cynthia Callahan granted the motion and entered a protective order. Mr. Lappi also filed a motion to compel Ms. Nenkam to respond to certain interrogatories and requests for production of documents. On April 16, 2018, Judge James Bonifant directed Ms. Nenkam to respond to Mr. Lappi's discovery requests by April 18, 2018. When Ms. Nenkam failed to do so, Mr. Lappi filed a motion for sanctions, which was granted without a hearing by Judge Debra Dwyer on April 23, 2018. The sanctions order struck Ms. Nenkam's complaint for custody and child support; prohibited her from calling any witnesses and contesting any claims of Mr. Lappi in connection with the case; ordered that "all of the matters sought to be discovered by [Mr. Lappi] and/or any other designated facts sought to be established by [Mr. Lappi] . . . .[were] established in accordance with the claim(s) of [Mr. Lappi]; and "barred [Ms. Nenkam] from opposing [Mr. Lappi's] claims."

On April 25, 2018, the parties appeared for the scheduled custody hearing. At that hearing, Judge Bonifant acknowledged that Ms. Nenkam had failed to comply with the April 16 discovery order and indicated that he was reluctant to go forward "when a colleague . . . [had] said that all [Ms. Nenkam's] pleadings [were] to be dismissed." However, he noted that the discovery Ms. Nenkam had failed to produce related to her

finances, which was only one factor that he would have to consider in determining custody. He also noted his concern that "[S.L. would] be harmed if [he] didn't allow [Ms. Nenkam] to put on some evidence regarding custody" because S.L. had been living with Ms. Nenkam since birth. After hearing arguments from counsel, Judge Bonifant determined that he was "very worried about [Ms. Nenkam's] discovery transgressions harming the child," and that he believed it would be in S.L.'s best interest for him to be able to consider Ms. Nenkam's claims and evidence before rendering a custody decision. Therefore, he vacated the sanctions order.

The same day Judge Bonifant also granted Ms. Nenkam's motion to re-open discovery and ordered appellant to appear for a deposition on May 25, 2018. In so ruling, Judge Bonifant noted that Mr. Lappi had not filed his counter-complaint until after the time for completing discovery had expired and therefore, that Ms. Nenkam could not be faulted for failing to notice his deposition before that date. After the court resolved several additional discovery issues, the case was continued, over Mr. Lappi's objection, so that the parties could complete discovery.

On June 11-12, 2018, Judge Bonifant held a hearing on the parties' custody and child support complaints. Based on the evidence presented at that hearing, he entered an order granting the parties joint legal custody; awarding Ms. Nenkam primary physical custody; allowing Mr. Lappi regular visitation; and ordering Mr. Lappi to pay Ms. Nenkam $1,077.00 per month in child support. This appeal followed.

DISCUSSION

Mr. Lappi first contends that Judge Bonifant abused his discretion in vacating Judge Dwyer's sanctions order because, he claims, a ruling by one circuit court judge should "be trusted and respected by his peers."[1] However, a circuit court judge is "'free at any time during the trial to reconsider any prior ruling in the case, whether made by him or by another judge'" of the same court. *Placido v. Citizens Bank & Trust Co. of Maryland*, 38 Md. App. 33, 45 (1977) (citations omitted). *See Scott v. State*, 379 Md. 170, 184 (2004)("'[A]s a general principle, one judge of a trial court ruling on a matter is not bound by the prior ruling in the same case by another judge of the court.'")(citations omitted)).

Here, the best interests of S.L. transcended the interests of either party. And Ms. Nenkam's failure to file timely discovery responses did not necessarily render her unfit to have custody. Because this case involved an initial custody determination and S.L. was living with Ms. Nenkam, it was not unreasonable for Judge Bonifant to be concerned that denying Ms. Nenkam an opportunity to present her case would interfere with his ability to make a decision that was in the best interest of S.L. *See generally Flynn v. May*, 157 Md. App. 389, 410 (2004) (holding that a child has "an indefeasible right to have any custody determination concerning him made, after a full evidentiary hearing, in his best interest" and that the child cannot lose that right based on a procedural pleading deficiency by his

[1] Mr. Lappi specifically asserts that Judge Bonifant vacated the sanctions order because he believed Judge Dwyer "was new and unexperienced in family law." However, Judge Bonifant never stated that this was the reason he was vacating the sanctions order at the April 25 hearing and we can find no support for this claim in the record.

or her parents).[2] Consequently, we hold that he did not abuse his discretion in vacating the sanctions order.

Mr. Lappi also claims that the court abused its discretion in continuing the custody hearing from April 25, 2018 to June 11, 2018. However, the same day that the case was continued, Judge Bonifant also granted Ms. Nenkam's motion to re-open discovery and set a date for Mr. Lappi to be deposed, a ruling that Mr. Lappi does not challenge on appeal. Moreover, Judge Bonifant also directed Ms. Nenkam to provide additional discovery to Mr. Lappi and set a date for Ms. Nenkam to be deposed. In light of these outstanding discovery issues, we thus perceive no abuse of discretion in the court's decision to continue the custody hearing.[3]

Next, Mr. Lappi asserts that Judge Bonifant improperly believed that "granting [him] custody of his child [would] equate to punishing the child," and for that reason, erred in not awarding him custody of S.L. In support of this contention, Mr. Lappi notes that, at the April 25 hearing, Judge Bonifant stated that a "child [in a child custody case] should

[2] Mr. Lappi asserts that *May* is distinguishable because Ms. Nenkam brought the custody action in the instant case, whereas, in *May*, the sanctioned party was the defendant who never had an opportunity to respond to the plaintiff's complaint. However, even if we assume that *May* is distinguishable, and did not prohibit Judge Dwyer from entering the sanctions order, it does not follow that Judge Bonifant abused his discretion in vacating that order based on his belief that, as the trial judge, he needed to hear evidence from both parties before making a custody decision.

[3] Moreover, even assuming the court had abused its discretion in continuing the case for six weeks, we would not vacate the custody order as Mr. Lappi has not demonstrated how he was harmed by the continuance. *See Bowser v. Resh*, 170 Md. App. 614, 648 (2006) (noting that in a civil case "the appellant must show not only error but prejudicial error" to succeed on appeal).

not be punished for the problems or transgressions of the parent[.]" However, Mr. Lappi takes Judge Bonifant's statement out of context. First, when Judge Bonifant made the statement, he was not deciding which party should have custody, but only whether he should vacate the sanctions order. More importantly, we are not persuaded that Judge Bonifant was in any way inferring that awarding custody to Mr. Lappi would amount to a punishment. Rather, he was simply indicating that he was not going to allow Ms. Nenkam's discovery violations to keep the court from obtaining all the information that it needed to make a decision that was in S.L.'s best interest. Consequently, this claim lacks merit.

Finally, Mr. Lappi contends that an attorney representing Ms. Nenkam's father violated Maryland Rule 19-304.2 by contacting him and offering him legal advice when he was represented by counsel. Mr. Lappi further asserts that, "[a]lthough the trial court removed that counsel from the courtroom [on the day of the custody hearing], hav[ing] a hearing with these new facts was not legally correct." However, review of this issue is constrained because Mr. Lappi has not provided us with a copy of the transcript of the July 11, 2018, custody hearing. Moreover, he has not directed us to any portion of the record from which we could determine what happened at the custody hearing or whether the trial court, in fact, erred by proceeding with the hearing. Instead, the only information before us is Mr. Lappi's conclusory assertion of wrongdoing. As the party claiming error, Mr. Lappi has the burden to show "by the record, that error occurred." *Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993). Consequently, we must reject this claim on appeal. *Id*. ("The

failure to provide the court with a transcript warrants summary rejection of the claim of error.").

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