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SUMMARIES OF ALL REPORTED AND UNREPORTED FAMILY LAW CASES

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Mother's arrest not an emergency

Md. court lacked jurisdiction over Florida girl

A father's fears about what would happen to his daughter if her mother was convicted on criminal charges in Florida did not create grounds for temporary emergency jurisdiction in Maryland, the Court of Special Appeals has held.

The decision vacated the award of custody to Jose Fuste because the evidence failed to establish that his child was subjected to or threatened with mistreatment or abuse.

Fuste and Janet Kalman were married in 1997 and lived in Maryland until Kalman became pregnant, at which point she moved to Florida.

Kalman gave birth in Florida in July 2006, and raised the child there with the help of her own mother and Fuste's parents.

The parties finalized their divorce in Frederick County, Md. in July 2008. At the time, they agreed that Kalman would have primary physical custody with liberal visitation to Fuste. However, they continued to litigate custody disputes in Montgomery County, Md.

In August 2011, the child was with Fuste's parents when Florida police detained Kalman on a shoplifting charge. The officers also found she had hydrocodone in a prescription bottle labeled with someone else's name.

Kalman was arrested and charged with theft and drug trafficking, held overnight, and released on her own recognizance.

Fuste learned of Kalman's arrest, traveled to Florida and told Kalman that he and his parents would watch the child

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UCCJEA

Justices reject international custody fight

The U.S. Supreme Court has declined to hear a Maryland father's bid to gain custody of his 9-year-old daughter in Japan following the death of her Japanese mother in 2007.

U.S. Navy Commander Paul Toland said he has seen Erika only twice since the summer of 2003, and that as her sole surviving parent, he is entitled to custody.

Erika has lived her entire life in Japan, the last five years with her grandmother. Therefore, the Maryland Court of Appeals found in March that decisions regarding Erika's custody must be made by the Japanese courts, which have granted guardianship to the child's grandmother, Akiko Futagi.

"So now we file for custody in Japan (as the Court of Appeals suggested) — which will go nowhere and then we refile for custody in Maryland," Toland's attorney, Stephen J. Cullen wrote in an email on Oct. 1, the day the high court denied the petition for certiorari.

Cullen, of Miles & Stockbridge P.C., had argued that Maryland judges owe no deference to the Japanese court because it awarded the grandmother guardianship without notifying Toland or giving him an opportunity to be heard.

The case is *Toland v. Futagi*, No. 11-1549.

The Supreme Court justices did not comment on the Maryland Court of Appeals decision they declined to review.

Toland was stationed in Japan when he married Etsuko Futagi in March 1995. Erika was born on Oct. 17, 2002.

In 2003, Futagi left with Erika and filed for divorce, which the Tokyo

See CERT *page 7*

Family law case leads to Alston suspension

A lawyer for Del. Tiffany T. Alston said she will "sit out for just over a year" before seeking to have her law license reinstated, following her indefinite suspension Tuesday by the Maryland Court of Appeals.

The year will enable Alston, D-Prince George's, to meet the requirements of a Conditional Diversion Agreement she reached with the Attorney Grievance Commission back in 2010 and to show she is ready to return, attorney J. Wyndal Gordon said.

"She'll bounce back and she'll be better, stronger and faster, like the $6 million man," said Gordon, a Baltimore solo practitioner who consulted on the disciplinary case and represents Alston in two criminal matters against her.

The indefinite suspension is unrelated to Alston's June conviction for misdemeanor theft and misconduct in office or the charges that she misused campaign funds to pay for her wedding, charges that she resolved on Oct. 9 with plea deal in Anne Arundel County Circuit Court. Under the agreement, she received a suspended sentence for the June theft conviction and probation before judgment on the pending charge.

Counsel for the General Assembly said the following day that the sentence operated to suspend her from the General Assembly as a matter of law.

It was Alston's failure to live up to the terms of the 2010 agreement with the Attorney Grievance Commission that led to Tuesday's suspension of her law license. She also was sanctioned for her lack of diligence in representing a family-law client in June 2009 and for failing to respond to communications from the commission's chief prosecutor.

Alston missed a court hearing in Walesia Robinson's family-law case and failed to keep Robinson informed of the case's status, the opinion notes. Alston also failed to promptly give Robinson's new attorney papers related to the case after the client fired her.

Robinson complained to the commission, which led to the Conditional Diversion Agreement. Under its terms, Alston was required to repay $5,000 to Robinson within 60 days and take a continuing legal education course on ethics, the high court noted.

The ethics charges would not have been brought against Alston but for her failure to comply with that agreement, Deputy Bar Counsel Raymond A. Hein told the Court of Appeals at its June 7 hearing.

Representing herself at the same hearing, Alston told the high court that an indefinite suspension would be "overly harsh" and should be reserved for attorneys who steal from their clients. She said her ethical lapses were never "malicious, intentional or deceitful."

The court, in finding lack of diligence on Alston's part, said she replied neither to Bar Counsel Glenn M. Grossman's invitation to refute his claim that she violated the agreement nor to his petition to revoke the

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Suzanne E. Fischer-Huettner
Publisher

Barbara Grzincic, Esq.
Editor

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Monthly Memo

IDEA case settles

The Montgomery County Board of Education has agreed to settle a long-running dispute over compensation for one semester of private-school tuition for an autistic girl. Terms of the settlement with Thomas and Laura Lorenzen were not disclosed due to privacy provisions of the Individuals with Disabilities Education Act.

The Lorenzens put their daughter in private school for the 2006-2007 school year after the county missed the deadline for preparing her Individualized Education Program. An ALJ ordered the county to pay for one semester. On judicial review, the circuit court granted summary judgment to the Lorenzens, but the 4th Circuit remanded the case. Trial was scheduled for Oct. 23, but the settlement was reached Oct. 2. The case is 8:07-cv-02405-AW, U.S. District Court, Greenbelt. Jeffrey A. Krew represented the school board; the Lorenzens were represented by Michael J. Eig.

Unbundled by Kimbro

Stephanie L. Kimbro, one of the first virtual law practitioners, has written a book for the ABA addressing the ups and downs of unbundling. "Limited Scope Legal Services: Unbundling and the Self-Help Client" walks through the various services, offering tips and flagging potential ethical concerns. The book also offers case studies from a cross section of practitioners, including family law. It is available from the ABA store (http://apps.americanbar.org/abastore/index.cfm).

For what it's worth

According to a poll last month by the American Academy of Matrimonial Lawyers, slightly more than half the divorce lawyers who responded (51%) said they had seen an increase in couples requesting post-nuptial agreements over the course of the last three years. Details of the poll's methodology were not disclosed.

Gamesmanship, maybe; fraud, no, in handling estate

Top court rejects sanctions in 'soap opera' of a case

The state's highest court has refused to impose any sanctions on a lawyer whose stepmother accused him of deceit and fraud in handling the estate of his deceased father, who was a famed night club operator and real estate developer.

Although David L. Zeiger may have engaged in gamesmanship and was possibly negligent in the handling of the estate, the Court of Appeals dismissed the Attorney Grievance Commission's petition because there was no evidence of any intent to defraud.

The opinion came more than four years after the top court heard argument in the case, which it called "a virtual soap opera of alleged infidelity, divorce, estrangement, lawsuits, murder accusations, and other high drama within the Zeiger family."

The court ruled that David had not engaged in dishonest, fraudulent or deceitful conduct. The court said any errors made by Zeiger in dealing with his late father's estate stemmed from his unfamiliarity with out-of-state law, rather than any sort of scheme.

"I am very happy for him," said David's attorney, Harvey Greenberg, a solo practitioner in Baltimore. "I think it's the right decision."

The court did not explain the delay in its decision, nor did not disclose which judge wrote the 15-page opinion, instead listing the author as "per curiam."

Since David had not been suspended from practicing in the meantime, the court's lengthy decision process did not cause David any inconvenience, Greenberg said.

"When there isn't any egregious kind of conduct, we usually don't get quick decisions," Greenberg said. "This one's a little long in the tooth, but no harm done."

Multiple phone numbers listed for David had been disconnected.

His mother's lawyer

Zeiger's father, Leon Zeiger, owned several night clubs in Washington, D.C., including the Casino Royal, a center of 1950s jazz nightlife that hosted acts like Ella Fitzgerald and Tony Bennett.

David Zeiger worked for his father for more than 25 years. In 1991, he was replaced by Barbara Kohl, a woman 30 years Leon's junior.

In 1995, Leon, then in his late 70s, ended his marriage of more than 50 years to David's mother and wed Kohl.

David represented his mother in the divorce, and his relationship with his father deteriorated.

While Leon told his sister in 1999 that he had written a will that provided for his children, he named Kohl the executor of his estate and a trust as his sole beneficiary in a will executed in 2001.

Leon Zeiger died in 2002 at the age of 84.

An attorney for David wrote to Kohl, asking about Leon's will, but Kohl did not respond.

Since David could not find a will, he and his sister opened an estate for his father in Hampshire County, W.Va., where Leon was living when he died. Doing so would obligate anyone with a will — including Kohl — to produce it, the Court of Appeals noted.

Eventually, Kohl did produce the 2001 will and, in 2005, she filed a petition to remove David and his sister as co-administrators of Leon's estate. They were relieved of their positions a few months later.

Kohl filed a complaint with the Attorney Grievance Commission, which petitioned for sanctions. The Court of Appeals assigned Baltimore City Circuit Judge Lynn K. Stewart as the hearing judge.

Stewart concluded that David Zeiger had been dishonest in filing to be administrator of the estate, noting in part that Zeiger left blank a portion of the form asking if there was an existing will.

The Court of Appeals, however, ruled that Zeiger could not have been dishonest, because he did not know himself if there was a will.

"In this case, the failure to answer questions on the form was not equivalent to an affirmative false statement," the per curiam opinion says.

Stewart had also found that Zeiger had given an inaccurate account of his father's property and made other errors, but the Court of Appeals said they were not fraudulent.

"Because he was focused on uncovering a valid will, and not on the administration of the estate, the inaccuracies on the form were not intended to mislead, but were, at worst, negligent," the court wrote.

While the Court of Appeals acknowledged Zeiger had not performed his duties as co-administrator of the estate, it found this was more out of misunderstanding of West Virginia law than a sinister plot.

"There is no indication in the record that Mr. Zeiger's actions resulted in any real harm to Ms. Kohl, his father's estate, or to the government and citizens of Hampshire County," the court wrote. "Without showing of 'any actual and substantial harm,' we decline to find that Mr. Zeiger's delay in fulfilling his duties as administrator constituted conduct prejudicial to the administration of justice."

— Kristi Tousignant

WHAT THE COURT HELD

Case: *AGC v. David L. Zeiger*, Misc. No. AG 28, September Term 2007. Argued April 8, 2008. Decided Sept. 24, 2012. Reported. Per Curiam opinion.

Issue: Did the hearing judge err in finding that an attorney violated the rules of professional conduct by filing a petition to administer an estate in West Virginia in an effort to "smoke out" a will he suspected his stepmother might be concealing, and by failing to carry out his duties as administrator?

Holding: Yes; petition for disciplinary action dismissed. The Court of Appeals ruled that the attorney did not engage in deceitful, dishonest or fraudulent conduct, but had simply made uninformed errors as his father's estate's administrator.

Counsel: Assistant Bar Counsel Raymond A. Hein for petitioner; Harvey Greenberg, solo practitioner, Baltimore, for respondent.

RecordFax 12-0924-21 (15 pages)

Emergency

Continued from page 1

overnight, ostensibly because Kalman also was moving into a new residence that night.

That evening, though, Fuste returned to Maryland and took the girl. He filed an emergency motion for custody in Montgomery County Circuit Court the following day, the opinion says.

The circuit court granted Fuste temporary sole custody and scheduled a hearing on the merits for Aug. 29, 2011.

Both parties appeared at that hearing. Kalman moved for judgment at the close of Fuste's case, arguing in part that the court lacked emergency jurisdiction.

The court denied the motion and awarded Fuste temporary sole legal and physical custody, with reasonable visitation for Kalman and the child's grandparents, pending further custody proceedings.

Kalman appealed. The Court of Special Appeals vacated the judgment and remanded, in an opinion written by Judge Albert J. Matricciani.

Erroneous presumption

Under the Uniform Child Custody Jurisdiction and Enforcement Act, Family Law §§9.5-101 to 9.5-318, Maryland would have "exclusive, continuing jurisdiction" over custody "until a court of this State determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships."

The circuit court presumed it had continuing, exclusive jurisdiction because Maryland was the decree state and the parties continued to litigate their divorce and its related matters in Maryland.

That, however, was an error of law, the appellate court held.

Under the UCCJEA, parties cannot confer jurisdiction upon the court by consent; and, to hold that ongoing custody proceedings create the necessary "significant connection" would introduce a circular definition of jurisdiction and defeat the principles embodied in the law.

Even so, the appeals court was willing to affirm the ruling if it were substantively correct.

FL §9.5-204(a) grants a Maryland court "temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child…is subjected to or threatened with mistreatment or abuse."

Under Family Law §9.5-204(a), "abuse" requires some actual injury or substantially probable threat to the victim's physical or mental welfare, the court held. And, while the plain meaning of "mistreatment" would make it redundant with "abuse," the appeals court said, the redundancy is eliminated if "mistreatment" is read as a proxy for "neglect"

Accordingly, both "abuse" and "mistreatment" under FL §9.5-204(a) require at least a substantial risk of physical or mental harm or injury.

In this case, however, there was no assertion of physical or mental injury, and no evidence or finding that Kalman and Fuste's daughter faced a "substantial risk" of harm from either abuse or neglect.

The fears expressed by Fuste were contingent on Kalman's conviction and potential loss of freedom and income, none of which had occurred.

It was clear that Fuste did not believe that Kalman herself posed a threat to their daughter, for he conceded that Kalman should be allowed to exercise unsupervised visitation, the court held. Nor did Fuste express any specific danger from the child's environment in Florida.

It was clearly the uncertainty of Kalman's situation that led the trial court to grant the emergency motion, Matricciani wrote. But uncertainty is a far cry from imminent harm or abuse or mistreatment, and there was no evidence of abandonment here.

Fuste's concerns for his daughter's care and safety did not constitute an emergency. His daughter had the support of her grandparents in Florida but very limited experience living with her father in Maryland. There was no need for emergency intervention to protect the girl from her mother.

Accordingly, the appeals court vacated the award and remanded the case for further proceedings.

WHAT THE COURT HELD

Case: *Kalman v. Fuste,* CSA No. 1617, September Term 2011. Argued June 6, 2012; decided Sept. 5, 2012. Opinion by Matricciani, J. Reported.

Issue: Did the circuit court properly grant emergency custody to a Maryland man after criminal charges were filed against his ex-wife in Florida, where the mother, the child and the child's grandparents lived?

Holding: No, vacated and remanded. The circuit court presumed it had continuing jurisdiction without making the necessary findings under the UCCJEA; and, substantively, the father's fear and uncertainty about what would happen if his wife were to be convicted did not meet the standard for imminent abuse or mistreatment (neglect), and there was no evidence of abandonment, especially since the child was accustomed to being in the care of her grandparents.

RecordFax #12-0905-02 (24 pages)

Alston

Continued from page 2

agreement.

"When [Alston] received from the commission additional time within which to respond, even then she did not act timely, either by submitting a response or, at the least, seeking still more time to respond," Judge Mary Ellen Barbera wrote Tuesday for the unanimous court.

"Respondent, after being notified of her breaches and the commission's intent to file a petition to revoke the agreement, consistently chose not to participate in these proceedings and belatedly, past the 'eleventh hour,' sought to delay them," Barbera added. "Indefinite suspension is appropriate given such disregard for these proceedings."

Grossman declined to comment on the court's decision.

On the phone after the Court of Appeals' per curiam opinion, Alston, a Lanham solo practitioner who joined the Maryland bar in June 2004, requested that questions about the court's decision be emailed to her. However, she did not respond to the emailed questions.

— Steve Lash

Mental illness, developmental delay and aging out

I never really understood why my parents had occasional sleepless nights. I mean, I knew what they said — that they were worried about my brother (some) and about me (mostly).

But not being a parent, I never had any visceral connection to their experience until I began to represent abused and neglected children in foster care.

Some of them are burdened with developmental delays, and others with mental illness — and all of them are going to age out of the system that provided, more or less successfully, for their needs.

By Mark Stave, Esq.

How would medication get managed, what about therapy, or food, or work? Who would be there when they went through a bad patch or needed to make their way through some bureaucracy?

Those are disturbing questions even in the light of day. At four in the morning, they banish sleep.

For attorneys representing foster youth challenged with developmental delay or mental illness, these questions lead first to either the Mental Hygiene Administration or the Developmental Disabilities Administration. The first step is to determine which one best fits the child client.

For DDA purposes, developmental delay describes a condition that manifests before a child client is 22, tends to involve cognitive issues (intellectual deficits, brain damage, organically-based mental illness, etc), and produces problems in adaptive functioning.

In other words, whatever the source, the client is functioning at a lower level than her/his chronological age, and the deficit is severe, chronic and likely to continue, with a couple of notable exceptions. One is attention deficit/hyperactivity disorder (which is served by the MHA and is addressed below), and the other is autism.

For children with autism, Maryland has sought and received a waiver from the federal government to use Medicaid funds for support services without regard for financial need. This program is administered through the Department of Education and is limited to 900 children, with a waiting list of thousands.

Once a client is diagnosed with autism, one can begin the process of securing a slot on the waiting list by reviewing the Maryland Disability Law Center's practical guide (available on its website, http://www.mdlclaw.org/)

The DDA is divided into four regional offices — Central, Eastern Shore, Southern, and Western — each with its specific application. All of these applications, called Eligibility Determination, can be found online at http://dda.dhmh.maryland.gov/SitePages/applicationforms.aspx.

This is a fairly technical application, and the DDA would prefer that the application be made as early as possible (as soon as it becomes clear that a client is challenged by developmental delay, even though services will almost always start only after the 21st birthday) and be completed by one of the client's healthcare providers.

A few simple "do's and don'ts" will minimize problems with the application.

Do review the DDA website for the specific language used in determining eligibility, and take that language to the client's healthcare providers. Ask them, where appropriate, to use that language in the client's records.

Do attach as much information as can be located relevant to the client's condition — up-to-date psycho-social evaluations, neurological evaluations, Individualized Education Programs — as many as possible and in chronological order.

Don't turn this process over to the DSS case manager to complete, or have the healthcare provider send in a completed packet, because the DDA will return any incomplete application to whoever sent it, where it may languish. Get the packet back from the person preparing it, review it and send it.

Do call the regional office and get the name and contact info of whoever can provide updates as to the progress of the application, and diary a follow-up contact with that person.

DDA will respond in one of three ways: 1) the client is not eligible — this is an appealable ruling and directions to appeal will be found on the response and on the DDA website; 2) the client is eligible for Individual Support Services (indicating that DDA thinks the client does not need the highest level of care); or 3) DDA Eligible.

In either of the latter two cases, DDA will also provide a list of specific services that that it considers the client needs — everything from housing to psychological/psychiatric services to daily living support.

Crucially, DDA will also appoint a service coordinator. The SC is not DDA staff and is contracted to ensure that services are provided, are timely and needed, and assign a priority level to each service. The priority levels are threefold; future needs, crisis prevention, or crisis resolution.

As with any money-limited program, plan on the crisis resolution level being reached before the expensive services are provided. Fortunately, the SC functions as a sort of "nurse case manager" and is empowered to request a change in the priority level for any service and make things happen for the client.

The process of obtaining services for those clients who have a mental illness is quite different. All young people committed to DSS have Medical Assistance and there are no eligibility screens for mental health services.

As a client approaches his/her 21st birthday, one can contact the local county core service agency (a list these agencies can be found at http://www.marylandbehavioralhealth.org/core-service-agency-directory) and ask for the adult services coordinator. The ASC will review the client's needs from the point of view of preventing hospitalization, and can mobilize services for a client so that she/he can be supported after aging out.

The various structures of MHA and DDA may eventually be combined to become a "one-stop shop." In addition to reducing redundancy and delay (saving resources that can go into actual care), the intention is to reduce the barriers to services for clients who need them. The timeline for this consolidation is yet to be determined.

Until then, there will continue to be those fraught questions at four in the morning.

Mark Stave is a staff attorney in the Child Advocacy Unit of Maryland Legal Aid in Baltimore.

Legal community mourns loss of Judge Loney

Retired Anne Arundel County Circuit Court Judge Michael E. Loney died Oct. 5 of congestive heart failure at his home in Arnold. He was 73.

Loney joined the circuit court in 1997, following more than two decades as a master and judge on the Maryland District Court. He served on the circuit court, concentrating on family law, until 2009, when he reached the mandatory retirement age. He continued to work by assignment until August.

"He had to retire on a Thursday and went back to work Tuesday part-time," said his wife, Nicole Loney. "He always said he had a long-weekend retirement."

Judge Loney also was a founder and director of the county's Adult Drug Treatment Court Program.

In court, Loney was known as a quietly knowledgeable "lawyer's lawyer." When he put the gavel down, however, Loney taught himself Spanish and traveled on humanitarian trips to South and Central America. In his 60s, he learned to ride a motorcycle, bought a Harley-Davidson and would ride with a few other circuit court judges, calling themselves the "Circuit Riders."

"He was a person who was just curious," said Anne Arundel County Circuit Court Administrative Judge Nancy L. Davis-Loomis. "There was always something more to learn."

However, he was also seen as a teacher, she added.

"He was the judge that the other judges went to if had they had a particularly difficult case or weren't sure if there was some updated case law, because he always had all of that information," Davis-Loomis said. "He was very thorough. He would give anyone before him his undivided attention. He was a terrific judge."

Family and friends remembered Loney as a humble man, who, when asked, would simply tell strangers he worked as a state employee.

"I think, in his mind, he always stayed a simple guy from Baltimore," said Mrs. Loney said.

Judge Loney was born July 17, 1939, in Baltimore. He started working when he was 12 years old, Mrs. Loney said, delivering groceries and newspapers.

"He worked all his life," she said. "And he is known in the legal community as an extra-hard worker."

Loney attended Mount Saint Joseph High School and then the Baltimore College of Commerce. He attended the Mount Vernon School of Law (which merged into the University of Baltimore School of Law in the 1970s) and was admitted to the Maryland Bar in 1966.

After a decade in private practice, Loney worked as a court master and examiner from 1976 to 1990. He was appointed to the Maryland District Court in 1990 and the circuit court seven years later.

Loney was a member of the Maryland State Bar Association, serving on the board of governors from 1980 to 1982, and the Anne Arundel Bar Association, where he served as president from 1979 to 1980.

"The Anne Arundel Bar Association would not be what it is if it were not for such a complete, committed leader as Judge Loney," said Fran Czajka, the association's executive director.

Loney taught paralegal studies at Anne Arundel Community College from 1986 to 2001. He then worked as an adjunct professor at the University of Baltimore School of Law, where he received the Outstanding Adjunct Faculty Award in 2008.

Loney is survived by his wife; his sister, Joyce Loney of Linthicum; four children and their spouses, Patricia and Russell Peusch of Madison, Ala., Karen and Thomas Walsh of Arnold, Kevin and Susan Loney of Wilmington, Del., and Elizabeth Garvey of Niceville, Fla.; and nine granddaughters.

A memorial service was held Oct. 13 in Annapolis at at St. Margaret's Episcopal Church, where Loney was an active member for many years.

In lieu of gifts or flowers, the family suggested donations to the University of Baltimore Foundation's Michael E. Loney Law Scholarship, which Loney funded for a number of years; to St. Margaret's; or to Hospice of the Chesapeake.

— Kristi Tousignant

UNREPORTED CASES IN BRIEF

Ed. note: Unreported opinions of the Court of Special Appeals are neither precedent nor persuasive authority. See Md. Rule 1-104.

*Alan Billups v.Patricia DaSilva**

DIVORCE: ATTORNEYS' FEES: ASSIGNMENT OF JUDGMENT

CSA No. 0537, September Term, 2011. Unreported. Opinion by Woodward, J. Filed Aug. 28, 2012. RecordFax #12-0828-06, 7 pages. Appeal from Anne Arundel County. Affirmed.

Appellant failed to cite any legal authority to support his contention that appellee's assignment of her judgment for attorneys' fees should be voided or that he has standing as a third party to challenge that assignment; nor was the court aware of any such authority. Therefore, the court declined to address it on appeal.

"On November 26, 2007, Alan Billups filed a Complaint for Custody in the Circuit Court against his wife, Patricia DaSilva (appellee). On December 12, 2008, appellee filed a supplemental counterclaim for absolute divorce, custody, and child support. A merits hearing on custody, visitation, and child support was held, and in an order entered on May 11, 2009, the court awarded appellee, among other things, attorney's fees in the amount of $10,000.

Following a merits trial on divorce, alimony, and monetary award held on June 8, 2009, the circuit court, in an order entered on June 9, 2009, (1) denied appellee's request for absolute divorce, (2) awarded alimony to appellee, (3) amended a prior child support award, and (4) awarded an additional $5,000 in attorney's fees to appellee. The court also ordered the entry of a money judgment in favor of appellee and against appellant for $15,000 to reflect the $10,000 and $5,000 awarded to appellee for attorney's fees.

Over one year later, on June 25, 2010, appellee filed a Notice of Assignment of Judgment, assigning her $15,000 judgment to her counsel's law firm. The clerk of the circuit court issued a Notice of Modification of Judgment. On July 30, 2010, appellant, proceeding *pro se,* filed a motion in opposition to the notice of assignment of judgment

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Cert

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Family Court granted on Sept. 29, 2005. The court also awarded her custody of Erika.

Futagi died on Oct. 31, 2007. Two years later, Toland filed for custody in Montgomery County Circuit Court as Erika's sole surviving parent.

That court found it lacked jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. On March 28, the Court of Appeals affirmed, and Cullen filed a petition with the U.S. Supreme Court.

Futagi's attorney had urged the Supreme Court to deny Toland's appeal, saying the decision to grant comity in family law cases properly rests with state courts.

Maryland's high court considered the due-process arguments and validly deferred to the Japanese court's award of guardianship, said Judy Dugger, a solo practitioner in Fairfax, Va.

Reached on the morning of Oct. 1, Dugger said she was "pleased" with the high court's decision not to review the case.

Cullen, though, expressed hope that Japan will sign the Hague Convention on the Civil Aspects of International Child Abduction, which could lead to Japanese acceptance of U.S. jurisdiction in the case.

"And the day Japan ratifies The Hague Convention with the USA, we file an access application," added Cullen, who practices in Washington, D.C. "We are sticking with Paul for the duration."

First argument

While Cullen will not be arguing Toland's case, he will make one appearance in the Supreme Court — his first — this year.

The justices will hear argument Dec. 5 in *Chafin v. Chafin*, in order to resolve a split in the circuits over the limits on appellate jurisdiction in an international custody dispute once the successful custodial parent has taken the child out of the country.

Army Sgt. Jeffrey L. Chafin is challenging a ruling that the U.S. courts lack jurisdiction over the dispute. The 11th U.S. Circuit Court of Appeals found the case was moot once the child returned to Scotland, saying he would have to seek custody through Scotland's courts.

Cullen represented Lynne Hales Chafin, who prevailed below. However, Cullen supported the petition for certiorari.

"We want the Supreme Court to say: 'Once this case moved back to Scotland, you're too late, mate,'" said Cullen. "If this was still dragging on for Ms. Chafin, it would continue to cause huge stress."

Jeffrey Chafin's lawyer, though, expects to prevail "because the downside is so steep."

"When the children are taken abroad, they are gone" under the 11th Circuit's decision, said Michael E. Manely, who heads The Manely Firm PC in Marietta, Ga. "We have no power over them, and that is an unthinkable result."

The 11th Circuit's decision conflicts with a 2003 decision of the 4th U.S. Circuit Court of Appeals. In *Fawcett v. McRoberts*, the 4th Circuit held that U.S. courts retain continuing jurisdiction to review the legal basis of a lower U.S. court decision.

Cullen argued and lost *Fawcett* in the 4th Circuit, and the Supreme Court declined to hear that case.

— Steve Lash

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and a motion to vacate the notice of modification of judgment, and filed a supplement to these motions on March 23, 2011. On April 19, 2011, the court entered an order denying appellant's motions.

Appellant presents one question for our review, which we have slightly rephrased: Did the circuit court err or abuse its discretion in denying appellant's Motion in Opposition to Assignment of Judgment?

DISCUSSION

The Parties' Agreement

Appellant contends that "the circuit court never reviewed the evidence presented outlining [appellee]'s joint agreement that waves [sic] [appellant]'s obligation to pay legal fees, which should void any and all obligations toward the balance of fees owed to [appellee']s council." [sic]

Appellant claims that appellee's counsel deliberately withheld evidence of the joint agreement that was "in full effect as of August 24, 2009" from the court "prior to the judge's decision to grant the order of assignment." Appellant also contends that appellee "has clearly committed a fraudulent act by conferring assignment of her said attorney's fees over to council [sic], after making a joint agreement with [appellant] to remove liability to those fees."

Appellee claims that appellant's appeal should be dismissed for failure to cite legal authority for his arguments. We agree.

"It 'is not our function to seek out the law in support of a party's appellate contentions." *Higginbotham v. PSC,* 171 Md. App. 254, 268 (2006) (quoting *Anderson v. Litzenberg,* 115 Md. App. 549, 578 (1997)). If a party fails to adequately brief an issue, we may decline to address it on appeal. *See Honeycutt v. Honeycutt,* 150 Md. App. 604, 618 (2003). In the instant appeal, appellant fails to cite any legal authority, nor are we aware of any, to support his contention that appellee's assignment of the judgment should be voided or that he has standing as a third party to challenge such assignment. Because appellant provides no legal authority for his argument, it is not adequately briefed, and thus we decline to address it on appeal.

Appellee's Perjury

Appellant claims that appellee committed perjury by stating in the notice of assignment of judgment that appellant "has to date paid nothing toward the outstanding judgment for attorney's fees." In support of his argument, appellant directs us to two checks made by appellant and payable to appellee for "[l]egal fees." The first check is in the amount of $100 and the second is in the amount of $50. Although appellant's apparent payment of $150 on the judgment appears to be in conflict with appellee's statement that appellant had paid nothing toward the judgment, such conflict has no effect on the validity of the judgment or on its assignment. Appellee and her assignee are required by law to credit all payments made by appellant on the judgment toward the satisfaction of such judgment. *See Univ. Sys. Of Md. v. Mooney,* 407 Md. 390,411(2009); *Rohr v. Anderson,* 51 Md. 205,216 (1879) (a defendant sued on a judgment is not precluded from the benefit of partial payments of the judgment, under the plea of payment)." *Slip op at various pages, citations and footnotes omitted.*

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UNREPORTED CASES IN BRIEF *Continued from page 7*

*Jeffery L. Brooks v. Jacqueline Brooks**

CIVIL PROCEDURE: TIME TO APPEAL: JURISDICTION

CSA No. 1270, September Term, 2010. Unreported. Opinion by Woodward, J. Filed Aug. 27, 2012. RecordFax #12-0827-04, 5 pages. Appeal from Baltimore City. Affirmed.

Because of the elapsed time between the judgment of absolute divorce, the filing of the motion for reconsideration and the appeal, the Court of Special Appeals had jurisdiction only over the denial of appellant's motion for reconsideration; and, since all of appellant's issues and argument related instead to the underlying Judgment of Absolute Divorce, the case was not properly before the court.

"On April 28, 2010, the Circuit Court entered a Judgment of Absolute Divorce as to appellant, Jeffery L. Brooks, and appellee, Jacqueline Brooks, which required, among other things, that the parties sell real property located [in] Baltimore (the "3833 Property"). On May 19, 2010, appellant filed a motion to revise, alter, or amend the judgment pursuant to "[Maryland] Rule 2-534/2-535." On June 28, 2010, the circuit court entered an order denying appellant's motion. On July 23, 2010, appellant filed a Notice of Appeal.

Appellant presents three questions for review:

1. In considering disposition of the parties' marital property, including the two homes, did the trial court err in balancing the needs of the minor children, in its attempt to avoid potential future "elevated tension" between their parents, while ignoring the risk of loss of visitation with [appellant], due to his inability to afford alternative housing to meet their needs?

2. Did the trial court err in ordering [appellant] to sell the [3833 Property], when their was another, simple method available to achieve the identical financial adjustment of debt and equity between the parties, without requiring a sale and relocation?

3. Did the trial court have the authority to order [appellant] to vacate the [3833 Property], thereby dictating where he would not be allowed to reside?

Appellant's issues are not properly before this Court.

Maryland Rule 8-202(a) sets forth that, "[e]xcept as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." This filing requirement is jurisdictional and, if not met, this Court does not acquire jurisdiction and the appeal must be dismissed. *Houghton v. Cnty. Comm'rs of Kent Cnty., 305* Md. 407, 413 (1986).

In a civil action, when a party files a motion within ten days after the entry of judgment under Rules 2-532—2-535, the time for noting an appeal is extended until the disposition of the motion. However, a motion for reconsideration under Rule 2-535 filed more than ten days after entry of judgment does not stay the running of the period for noting an appeal. *Pickett v. Noba, Inc.,* 122 Md. App. *566,* 570 (1998).

As indicated, appellant's motion to revise, alter, or amend the judgment was not filed within 10 days of the entry of the Judgment of Absolute Divorce, and the time to appeal that judgment was not extended. Consequently, appellant was required to note an appeal within 30 days after the April 28, 2010 entry of judgment, or by May 28, 2010. *See* Maryland Rule 8-202(a). Because appellant's Notice of Appeal was not filed until July 23, 2010, this Court has no jurisdiction to review that judgment.

Appellant's Notice of Appeal, however, was filed within 30 days of the circuit court's denial of his motion to revise, alter, or amend. Accordingly, we have jurisdiction over appellant's appeal of the court's denial of that motion.

Appellant contends, first, that the circuit court's stated reasoning for ordering the sale of the 3833 Property, namely to avoid increased tension between the parties, was "inconsistent with the court's anticipation of better communication in the future" between the parties. Appellant also claims the court ignored appellant's testimony that forcing him to sell the 3833 Property would leave him with insufficient assets to obtain appropriate housing to accommodate the needs of his children. According to appellant, the sale of the 3833 Property "will result in his having to give up his schedule of visitation with the children, either because he is unable to afford appropriate replacement accommodations for them or because he will need to take a second job, in order to afford his new housing expenses and not have time to spend with the children."

Second, appellant contends that his alternative proposal "to retain the [3833 Property] and mortgage the property in an amount sufficient to pay off the home equity line of credit attached to [other real property] would accomplish the exact same financial result, without the need to sell the [3833 Property] or to incur costs of sale." Finally, as to the third issue, appellant claims that "the trial court had no authority, absent a protective order, to decide that Appellant would not be permitted or entitled to reside adjacent to Appellee, if he so chooses, regardless of whether there is any sale of [the 3833 Property]."

Each of the above issues and arguments are directed only to the Judgment of Absolute Divorce. They do not address whether and how the circuit court abused its discretion in denying appellant's motion to revise, alter, or amend the judgment. Because we have no jurisdiction to review the Judgment of Absolute Divorce, the issues and arguments raised by appellant in the instant case are not properly before this Court. Accordingly, we affirm the judgment."

Slip op at various pages, citations and footnotes omitted.

*Gerald Anthony Forest V. Vivian K. Morrison-Forest**

DOMESTIC PROTECTIVE ORDER: FINAL ORDER: JURISDICTION

CSA No. 2661, September Term, 2010. Unreported. Opinion by Berger, J. Filed Aug. 24, 2012. RecordFax #12-0824-10, 7 pages. Appeal from Charles County. Affirmed.

The trial court had jurisdiction to proceed with a Final Protective Order Hearing even after the petitioner had filed a motion to rescind the Temporary Ex Parte Protective Order, because the temporary order had not expired and could not be rescinded without a hearing.

"This appeal arises from a final protective order issued at the request of Vivian K. Morrison-Forest, appellee. The Circuit Court entered the final protective order on January 3, 2011. Gerald Anthony Forest filed this timely appeal.

Forest presents the following question:

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I. Did the trial court have jurisdiction to proceed with a Final Protective Order Hearing under §4-506 of the Family Law Article after the Petitioner (Appellee) filed a Motion to Rescind the Temporary Ex Parte Protective Order under §4-507, before anything had been filed by Defendant (Appellant) and prior to such hearing?

We conclude that the Circuit Court had jurisdiction and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 17, 2010, Morrison-Forest filed a petition for protection from domestic violence. In her petition, Morrison-Forest stated that, on several occasions, she had returned home to find Forest there although he had not been invited. Morrison-Forest stated that she had asked Forest to stay away but he had not. A temporary protective order was issued. A hearing was held on November 22, 2010. Forest, having not yet been served, did not appear. Morrison-Forest did appear. The court scheduled a protective order hearing for December 13, 2010.

On November 29, 2010, Morrison-Forest filed a Petition to Modify/Rescind Protective Order. In her petition, Morrison-Forest asked the court to rescind the protective order, giving the reason, "am not being threatened." The court did not respond to Morrison-Forest's petition to rescind.

On December 2, 2010, unaware that Morrison-Forest had filed a petition to rescind, Forest filed a motion for postponement of the December 13 hearing because he was scheduled for surgery. That motion was denied. The final protective order hearing was held on December 13, 2010. Neither Forest nor Morrison-Forest appeared at the hearing; Forest's attorney, however, did appear at the December 13, 2010 hearing. The circuit court extended the temporary protective order and set a final protective order hearing for January 3, 2011.

On January 3, 2011, the final protective order hearing was held. Morrison-Forest appeared pro se and Forest appeared represented by counsel. Both parties agreed to a consent final protective order with no finding of abuse. The final protective order issued by the Circuit Court for Charles County (Harrington, J.) included a finding of abuse rather than no finding of abuse. Forest filed a timely notice of appeal to this Court on January 21, 2011.

On May 24, 2011, while the appeal was pending, Judge Harrington wrote to this Court, requesting leave to correct a clerical error pursuant to Maryland Rule 2-535(d)4, stating that, "[t]he final protective order with a finding of abuse in this case should have been entered as a consent protective order with no finding of abuse." On November 7, 2011, Appellant's counsel submitted a letter to this Court stating, "[i]t seems to me that, if the Court of Special Appeals granted such leave and Judge Harrington entered the corrected Order under Maryland Rule 2-535(d), as she has proposed, this entire appeal would be rendered moot."

On April 5, 2012, this Court ordered that the Circuit Court for Charles County was granted leave to correct the clerical error by changing the final protective order with a finding of abuse to a final protective order with no finding of abuse. We ordered that, upon correction of the clerical error, Forest, through counsel, "shall advise the Court of Special Appeals whether he wishes to withdraw the appeal, and if so, Appellant shall file a notice of dismissal pursuant to Maryland Rule 8-601."

On April 11, the Circuit Court (Harrington, J.) issued an amended final protective order with no finding of abuse. Forest has not filed a notice of dismissal, and accordingly, we are left to address the merits of his first argument regarding jurisdiction. We decline to address the merits of Forest's second argument, regarding clerical error, as our April 5 order, as well as the Circuit Court's April 11 order, render it moot.

DISCUSSION

Forest argues that because Morrison-Forest filed a petition to rescind the protective order on November 29, 2010, the circuit court did not have jurisdiction to proceed with a final protective order hearing on January 3, 2011. We disagree.

Maryland Rule 2-506, governing voluntary dismissals of claims, provides, in pertinent part:

Except as otherwise provided in these rules or by statute, a party who has filed a complaint, counterclaim, cross-claim, or third party claim may dismiss all or part of the claim without leave of court by filing (1) a notice of dismissal at any time before the adverse party files an answer or (2) by filing a stipulation of dismissal signed by all parties to the claim being dismissed.

Maryland Rule 2-506(a) (emphasis added). Forest argues that Rule 2-506 applies in the instant case, and that Morrison-Forest's petition to rescind the protective order qualifies as a notice of dismissal. Because Forest had not filed an answer prior to the filing of the petition to rescind, Forest argues that pursuant to Maryland Rule *2-506(a),* Morrison-Forest was entitled to dismiss the claim without leave of court by filing the petition to rescind the protective order.5

Maryland Rule 2-506(a), however, explicitly states that its terms apply "[e]xcept as otherwise provided in these rules or by statute." Section 4-507 of the Family Law Article, governing modification or rescission of protective orders, provides, in pertinent part:

(a) Modification or rescission of orders; appeals. —

(1) A protective order may be modified or rescinded during the term of the protective order after:

(i) giving notice to all affected persons eligible for relief and the respondent; and

(ii) a hearing.

See Torboli v. Torboli, 365 Md. 52, 63 (2001) ("[M]odification or rescission of a protective order must occur, by the court that issued it, during the term of the order and after notice and a hearing.").

By its terms, FL §4-507 provides that an order may not be modified or rescinded merely by filing a petition to modify or rescind a protective order. Rather, a hearing is required. Accordingly, Morrison- Forest's temporary protective order was not rescinded when she filed her petition to modify or rescind. The petition to modify or rescind did not divest the circuit court of jurisdiction, and therefore, the circuit court retained jurisdiction when it considered the petition at the January 3, 2011 hearing and granted a final protective order. We affirm the judgment."

Slip op at various pages, citations and footnotes omitted.

*In Re: Michael G., Renee G., and Guinnivere S.**

CINA: PARENTAL CONTACT: SUSPENSION OF WRITTEN COMMUNICATION

CSA No. 1591, September Term, 2011. Unreported. Opinion by Woodward, J. Filed Aug. 15, 2012. RecordFax #12-0816-02, 26 pages. Appeal from Frederick County. Affirmed.

Based on an earlier finding in a CINA proceeding that a father had abused his oldest daughter and the lack of any evidence from which the

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court could conclude that no further abuse was likely to occur, the trial court did not err or abuse its discretion in concluding that it was not in the best interest of the two younger children to have any contact with him, including receiving letters from him.

"William G. is the natural father of Guinnivere S. (DOB 5 /30/2002), Michael G. (DOB 4/9/2007), and Renee G. (DOB 5/23/2009). All three children were adjudicated to be Children in Need of Assistance on October 8, 2010.

Mr. G. appeals from the circuit court's order of August 9, 2011, amending the permanency plans to suspend all contact between Mr. G. and his two younger children. His timely appeal presents a single question, which we have rephrased: Did the circuit court abuse its discretion by denying appellant's request to continue written communication with his minor children, Michael and Renee?

We shall affirm the judgments of the circuit court.

ANALYSIS

The parental right to raise one's child free from undue and unwarranted interference on the part of the State is a "fundamental, Constitutionally-based right." *In re Adoption/Guardianship of Rashawn H.,* 402 Md. 477, 495 (2007); *see also In re Samone H.,* 385 Md. 282, 299-300 (2005). Parental rights are not absolute, however. *See In re Yve 5,* 373 Md. at 568-71. Although it is the intent of the courts to "harmonize" the fundamental rights of the parents with the best interests of the child, the best interest of the child must prevail. *See In re Rashawn H.,* 402 Md. at 496.

Visitation or other regular contact "is not an absolute right, but is one which must yield to the good of the child." *Roberts v. Roberts,* 35 Md. App. 497, 507 (1977). Generally, courts have the authority to deny visitation only if there is clear evidence demonstrating that continued contact with the parent is not in the best interest of the child. *See In re Yve* S, 373 Md. at 568-72; *In re Mark M., 365* Md. at 705-06.

A complete denial of all visitation rights, including supervised visitation, is an extreme option that Maryland courts have only exercised in rare circumstances. *See In re Iris M.,* 118 Md. App. 636, 648 (1998).

Where, however, a child has been declared a CINA due to previous incidents of abuse or neglect, the circuit court's discretion to order visitation is constrained by statute, [Family Law Art.] § 9-101, §9-101.1.

"Thus, when a court has reasonable grounds to believe that neglect or abuse has occurred, … custody or visitation must be denied, … unless the court makes a specific finding that there is no likelihood of further abuse or neglect." *In re Billy W.,* 387 Md. at 458-59 (citing *In re Yve S.,* 373 Md. at 566-68). Moreover, by the plain language of F.L. § 9-101.1, the court is obliged to consider the parent's prior neglect or abuse of any child, not just the child at issue in the current proceeding. *In re Adoption No. 12612,* 353 Md. 209, 234 (1999).

When considering the likelihood of future abuse, the focus is not on a particular child but on the likely actions of the previously abusive parent. *Id.* The burden of proving that the neglect or abuse that occurred in the past is unlikely to be repeated remains upon the parent seeking visitation. *In re Yve S.,* 373 Md. at 587.

As an exception to §9-101, the court *may* provide supervised visitation between a child and an abusive parent subject to any conditions imposed by the court to assure the safety and well-being of the child. On the other hand, the law *does not require* that a parent be permitted to have supervised visitation or any other contact with his or her child if there is evidence that the contact would be detrimental to the child's best interest. *See, e.g., Painter v. Painter,* 113 Md. App. 504, 518-21 (1997). "Every case must be considered on its own facts." *Arnold,* 61 Md. App. at 433.

In the instant appeal, Mr. G. asserts that the circuit court abused its discretion by suspending his written communication with Michael and Renee, "based on scant and speculative evidence." Mr. G. emphasizes how infrequently visitation is completely suspended by Maryland courts. Mr. G. further asserts that there was no evidence that his letters caused any trauma to Michael and Renee, but only that the process utilized to deliver the letters caused Renee some separation anxiety. Finally, Mr. G. contends that speculative fears regarding Guinnivere's possible reactions to her younger siblings receiving letters from Mr. G. were not appropriate considerations for the circuit court.

The circuit court expressly recognized its obligation to consider F.L. § 9-101 and 9-101.1. The evidence indicated that Mr. G. suffered from multiple mental and sexual disorders and anger management issues, which, if left untreated, created a continued elevated risk of abuse. As of the date of the hearing, Mr. G. had failed to undergo any of the testing or treatment that had been recommended by the professionals who evaluated him. Furthermore, at the hearing, beyond expressing his own desires to maintain contact with Michael and Renee so that they would not forget him, appellant offered no evidence from which the court could conclude that future abuse to the children was unlikely.

Even without a finding that there was no likelihood of further abuse by Mr. G., the circuit court was authorized to allow Mr. G.'s requested communication if he satisfied his burden to show that such communication would assure his children's "physiological, psychological, and emotional well-being." F.L. § 9-101(b); *see In re Shirley B.,* 419 Md. at 22. Representatives for DSS, the mother, and the children asserted that the letters, especially the first few, were not age appropriate for four-year-old Michael and two-year-old Renee.

Most compellingly, there was substantial evidence that the delivery of Mr. G.'s letters and drawings to Michael and Renee was, at best, ineffective and at worst, was causing traumatic damage to his children. Renee would scream and cry when she was taken from her home to have the letters read to her, demanding to return home. Michael was calmer but inattentive. On other occasions, Michael displayed avoidance behaviors when Mr. G. was mentioned. Based on this evidence, the trial court found that "[t]he children are being traumatized by being removed from their mother's home to receive the contact." This finding is amply supported by the record and thus is not clearly erroneous.

The trial court also considered the potential damaging effect the letters might have on Guinnivere if she were to discover that Michael and Renee were receiving letters while she was not. Although there was no evidence that Guinnivere had become aware of the communication as of the time of the hearing, the possibility that she might, at some point, and be emotionally or psychologically damaged as a result, was argued by counsel for DSS, the children, and Ms. S. Given her conflicting emotions regarding her relationship with Mr. G., it was not unreasonable for the court to conclude that damage would be the likely result of such a discovery.

Mr. G., nevertheless, asserts that the court erred by considering potential injuries to Guinnivere in the instant case, which concerned

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only the best interest of Michael and Renee. As the circuit court noted, F.L. § 9-101.1(c) requires the court to consider not only the children who are the subject of the proceeding, but also the victim of the abuse.

Mr. G. further asserts that it was the process of delivering the letters, not the content, that was causing any trauma. Whether the children were harmed by the contents or the procedure would appear to this Court to matter very little in the analysis of the children's best interest.

Based on our independent review of the record, we conclude there was no error in the trial court's application of the law and no abuse of discretion.

Mr. G., however, cites to this Court's determination in *In re Iris M.* and the Court of Appeals' decision, *In re Billy W.*, in support of his assertion that the decision was an infringement upon his parental rights.

We note that in *In re Iris M.*, there were only allegations of abuse that were not sufficient to support a finding that any abuse had, in fact, occurred. Indeed, the lower court in *In re Iris M.* made no finding of abuse, as required by F.L. §9-101(a), prior to suspending all visitation between the father and his daughter. We conclude, therefore, that *In re Iris M.* is factually distinguishable from the instant case.

Appellant's reliance on *In re Billy W.* is also inappropriate. In *In re Billy W*, the Court of Appeals was asked to consider whether the circuit court erred by imposing certain stringent conditions upon the visitation of an admittedly abusive father, which conditions were intended to ensure the child's safety during the visitation. The Court's conclusion, that the circuit court did not err by including specific protective measures in the child's permanency plan with which the abusive father was obliged to comply if he wanted to continue supervised visitation, was specifically limited to the facts therein. Beyond reviewing the applicable statutes and facts, the *Billy W.* Court was not asked to consider and did not specifically remark upon the appropriateness of the circuit court's decision to allow visitation. *Id.* at 446-51.

In sum, the holdings in *In re Iris M.* or *In re Billy W* cannot be construed as suggesting that courts are obligated to provide abusive parents the opportunity to engage in supervised visitation or have contact with their children. We conclude, therefore, that the holdings in these opinions do not conflict with our conclusion in the instant case."

Slip op at various pages, citations and footnotes omitted.

*In Re: Rachel B.**

CINA: REMOVAL FROM PARENTAL CARE: MENTALLY ABUSIVE BEHAVIOR

CSA No. 2701, September Term, 2011. Unreported. Opinion by Watts, J. Filed Aug. 15, 2012. RecordFax #12-0816-04, 31 pages. Appeal from Montgomery County. Affirmed.

The circuit court did not abuse its discretion in declaring a 15-year-old girl a CINA and removing her from the custody of her mother, where, although the mother presented evidence that she was taking steps to better control her behavior, the record reflected that she continued to struggle with serious emotional outbursts, and the girl's father admitted violating the shelter care order by facilitating visits between the mother and daughter.

"Patricia B., appellant appeals the decision of the Circuit Court for Montgomery County, sitting as a juvenile court, declaring her 15-year-old daughter, Rachel B., a Child in Need of Assistance and removing Rachel from her care. Appellant raises two issues:

I. Did the [circuit] court err in finding Rachel to be a [CINA]?

II. Assuming *arguendo* that the CINA finding was not erroneous, did the [circuit] court err in removing Rachel from [appellant]'s custody and limiting [appellant]'s access to Rachel?

We answer both questions in the negative and, therefore, affirm.

To substantiate a CINA finding, the circuit court was required to determine that Rachel was abused or neglected by both of her parents and that her parents were "unable or unwilling to give proper care" to Rachel. C.J.P. §3-801(1). At the CINA hearing, the circuit court heard testimony regarding how appellant's behavior impacted Rachel. Officer Bachofsky described Rachel as "exhausted [and] tired" when dealing with appellant, with her "head sunk low, bags under [her eyes], shoulders forwarded[.]" Gregory testified that appellant's behavior toward Rachel raised his concern about Rachel's welfare. Cruickshank testified that appellant's actions impact Rachel's emotional safety because of appellant's criticism, in which she "berat[es Rachel and] demean[s] her." Dr. Miller expressed concern about Rachel's emotional trauma from interactions with appellant causing low self-esteem, and admitted concern for Rachel's welfare. Several witnesses described Rachel as being "numb" to appellant's behavior, which Hill explained was concerning because it meant that Rachel was used to the behavior. Phillips testified that, following an argument, appellant threatened to kill Rachel.

This testimony, which appellant does not contest, sufficiently established that appellant inflicted "mental injury" upon Rachel and that Rachel was "at substantial risk of being harmed." We are unpersuaded by appellant's argument that, because "[t]here was no evidence that Rachel was crying, not eating, not sleeping, having psychosomatic illnesses, withdrawn, lacking an interest in activities, lethargic, depressed, unable to concentrate in school, or even desiring to be away from" appellant, and because Rachel is a good student, there was no evidence of harm.

Despite the lack of certain potential symptoms identified by appellant, those who interacted with appellant and Rachel, including the therapists, Dr. Miller, Cruikshank, and Phillips — who, by definition, are trained to interpret and diagnose behavior — testified that Rachel's demeanor evidenced mental injury stemming from appellant's treatment of her. We conclude that the circuit court's finding that Rachel was abused by appellant is not clearly erroneous.

Pursuantto C.J.P. § 3-801(c), "neglect" is "the leaving of a child unattended or other failure to give proper care and attention to a child" in a situation in which the child "has suffered mental injury[.]" Although it is not alleged that appellant left Rachel unattended, by subjecting Rachel to emotional abuse, appellant failed to give her proper care and attention. *In re: Joseph G.*, 94 Md. App. 343, 347 (1993).

It is evident from the testimony at the adjudicatory CINA hearing that, although appellant is currently attempting to be able to provide proper care for Rachel, she continues to struggle with controlling her behavior. As recently as January 2012, Michael B. called the police because appellant would not stop calling Rachel derogatory names, appellant "jumped on top of [Michael B.] to prevent him from leaving[,]" and "wouldn't get out of his vehicle." We perceive no error in the circuit court's finding that appellant neglected Rachel.

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As to Michael B., despite appellant's abusive behavior, Michael B. not only took no action to protect Rachel, but, in fact, facilitated interactions between appellant and Rachel by bringing Rachel to visit appellant after she was removed from appellant's custody. At the CINA hearing, Michael B stated that he did not know if he would follow the circuit court's shelter care order in the future—that Rachel remain in his custody with weekly visitation with appellant as directed by the Department — because he believed Rachel and appellant were family and should not be kept apart. Under the circumstances, we conclude that the circuit court did not err in finding, by a preponderance of the evidence, that both appellant and Michael B. neglected Rachel and are unable to give her proper care at this time.

Because the Circuit court's findings fulfill the relevant requirements of C.JP. § 3-801(f), we perceive no abuse of discretion in the circuit court's determination that Rachel is a CINA.

II.

Appellant contends that "the evidence in this case did not support a finding that Rachel was at a substantial risk of harm, necessitating that she be placed outside [appellant's] care." Appellant argues that, rather than removing Rachel from the home, the circuit court should have ordered in-home services to help appellant and Rachel better deal with their conflicts. Appellant asserts that, because Rachel is old enough to "cry out for help if necessary[,]" the circuit court "abused its discretion in removing Rachel from [appellant]'s care and curtailing their contact[.]"

Maryland has adopted, in ...custody proceedings, a *prima facie* presumption that a child's welfare will be best served in the care and custody of [her] parents. That presumption is overcome if opposing parties show that the natural parent is unfit to have custody, or exceptional circumstances make parental custody detrimental to the best interests of the child. Exceptional circumstances include "[w]here the child has been declared a '[CINA]' because of abuse or neglect," *In re: Caya*, 153 Md. App. 63, 76 (2003) (citation omitted). In such cases, the court is constrained by §9-101 (b) to deny custody unless the court makes a specific finding that there is no likelihood of further abuse or neglect.

Because the question of whether appellant has met her burden to present sufficient evidence to show that Rachel will not be abused in the future if returned to her custody is within the discretion of the trial court, we will reverse only for an abuse of that discretion. *In re: Shirley B.*, 419 Md. at 18.

In this case, the Department rebutted the presumption that it was in Rachel's best interest to remain in appellant's custody by demonstrating that appellant had abused Rachel. Although appellant presented evidence that she was taking steps to better control her behavior, including new medication and therapy, the record reflects that she continues to struggle with serious emotional outbursts. Dr. Miller, who testified on behalf of appellant, stated that appellant was "making progress but there is much work yet to be done [Hen work should stabilize before Rachel [sh]ould resume on a full-time basis with her." We are satisfied that the circuit court properly exercised its discretion in removing Rachel from appellant's custody and finding that appellant failed to demonstrate that Rachel would not be abused in the future if returned to her care."

Slip op at various pages, citations and footnotes omitted.

*Richard Katz v. Elizabeth Katz**

CIVIL PROCEDURE: TIME TO APPEAL: JURISDICTION

CSA No. 1661, September Term, 2010. Unreported. Opinion by Woodward, J. Filed Aug. 27, 2012. RecordFax #12-0827-01, 5 pages. Appeal from Howard County. Affirmed.

Because of the elapsed time between the judgment, the filing of the motion for reconsideration and the appeal, the Court of Special Appeals had jurisdiction only over the denial of appellant's motion for reconsideration; and, since all of appellant's issues and argument related to the underlying judgment, not the motion for reconsideration, the case was not properly before the court.

"On July 13, 2010, the Circuit Court for Howard County entered a memorandum opinion and order which, among other things, (1) vacated an April 8,2008 order that found Dr. Elizabeth Katz, appellee, in contempt of a previous order by interfering with the visitation rights of Richard Katz, appellant, with one of the parties' two minor children, David, and (2) ordered that appellant pay $10,966.61 to appellee for out-of-network medical expenses for the parties' minor children. On August 11, 2010, appellant filed a motion for reconsideration of the July 13, 2010 opinion and order. On August 31, 2010, the court denied appellant's motion. On September 28, 2010, appellant filed a notice of appeal.

Appellant presents three question for our review:

1. Did the Court err in vacating its April 8, 2008 Order?

2. Did the Court err in determining the amount of payments [appellant] made for extraordinary medical expenses?

3. Did the Court err in determining the amount [appellant] had to pay for extraordinary medical expenses?

For the reasons set forth herein, we shall hold that appellant's issues are not properly before this Court and therefore shall affirm the judgment of the circuit court.

DISCUSSION

Maryland Rule 8-202(a) sets forth that, "[e]xcept as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." This filing requirement is jurisdictional and, if not met, this Court does not acquire jurisdiction and the appeal must be dismissed. *Houghton v. Cnty. Comm'rs of Kent Cnty.*, 305 Md. 407, 413 (1986).

In a civil action, when a party files a motion within ten days after the entry of judgment under Rules 2-532, 2-533, 2-534, or 2-535, the time for noting an appeal is extended until the disposition of the motion. However, a motion for reconsideration under Rule 2-535 filed more than ten days after the entry of judgment does not stay the running of the period for noting an appeal. Pickett v. Noba, Inc., 122 Md. App. 566, 570 (1998).

As previously indicated, appellant's motion was not filed within 10 days of the entry of the July 13, 2010 order, and the time to appeal that order was not extended. Consequently, to appeal the July 13, 2010 order, he was required to note an appeal by August 12, 2010. See Maryland Rule 8-202(a). Because appellant's notice of appeal was not filed until September 28, 2010, this Court has no jurisdiction to review the July 13, 2010 order.

Appellant's notice of appeal, however, was filed within 30 days of the circuit court's denial of his motion for reconsideration. Accordingly, we have jurisdiction to review the denial of that motion.

In the instant appeal, appellant contends, first, that the circuit court erred in vacating its April 8, 2008 order, because appellee failed to adequately demonstrate an exigent basis to enroll the parties' minor son,

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David, in any outpatient facility, RedCliff Ascent, without securing the court's permission to do so. Appellant claims that the record did not show, and the court failed to identify, any "urgent need" for appellee to ignore the court's order prohibiting such interference with appellant's visitation rights with David. Appellant asserts that the court failed to review all of the transcripts, exhibits, testimony, and evidence, because "such a review demonstrates that there was no exigency and there was ample time to file a motion or petition" before sending David to the outpatient facility.

Second, appellant contends that the circuit court, in calculating the amount of payment for medical expenses, erred in crediting him for only a single medical payment of $182.70, because the court failed to "account for all of the payments that [appellant] made" to appellee.

Finally, appellant argues that the circuit court erred in ordering appellant to pay his pro-rata share of the parties' minor children's out-of-network medical expenses. Appellant contends the court erred in determining the expenses were "medically necessary and reasonable"; that the court erred in some of its evidentiary rulings. Finally, appellant contends that the court erred in failing to presume that appellee's failure to produce medical witnesses to testify as to whether the expenses were medically necessary and reasonable indicates that such testimony would have been unfavorable to appellee.

All of the above issues and arguments are directed only to the July 13, 2010 order. They do not address whether and how the circuit court abused its discretion in denying appellant's motion for reconsideration. Indeed, appellant never even mentions the court's denial of his motion for reconsideration anywhere in the argument section of his briefs. Because we have no jurisdiction to review the July 13, 2010 order, the issues and arguments raised by appellant in the instant case are not properly before this Court. Accordingly, we affirm the judgment of the circuit court."

Slip op at various pages, citations and footnotes omitted.

*Alex Myers v. Baltimore County Department of Social Services, et al.**

CINA: OASDI BENEFITS: REIMBURSEMENT FOR COST OF FOSTER CARE

CSA No. 2765, September Term, 2009. Unreported. Opinion by Krauser, C.J. Filed Aug. 29, 2012. RecordFax #12-0829-00, 43 pages. Appeal from Baltimore County. Affirmed.

The circuit court properly dismissed an action by a young man who had 'aged out' of the foster system regarding the Department of Social Services' practice of using his OASDI benefits to reimburse itself for costs incurred for his care, as the young man had no standing to bring an action under the Administrative Procedures Act, or to seek a declaratory judgment and a permanent injunction; and his remaining claims were either time-barred under the Maryland Tort Claims Act or lacked any merit.

"Following the death of his mother, Alex Myers, then twelve, entered foster care under the auspices of the Baltimore County DSS. Two years later Alex's father died, making Alex eligible for his father's Social Security benefits under the Old-Age, Survivors, and Disability Insurance plan of the Social Security Act. 42 U.S.C. § 401 *et seq.* The Commissioner of the Social Security Administration, upon application by DSS, designated DSS the "representative payee" of Alex's OASDI benefits. In October 2002, DSS began receiving Alex's monthly OASDI benefits and applied those funds each month to the costs of Alex's care until Alex "aged out" of the system in December 2005.

In October 2006, a couple of months shy of his nineteenth birthday, Alex filed a claim with the State Treasurer seeking to recoup those funds. On November 1, 2006, the Treasurer acknowledged receipt of the claim, which was deemed denied on May 1, 2007, after six months had elapsed without a "final decision" by the Treasurer. *See* State Gov., § 12-107(d).

On November 26, 2008, Alex filed an action in Circuit Court. His twelve-count complaint alleged that appellee breached its fiduciary obligations and was liable for conversion, negligence and unjust enrichment. He further maintained that DSS violated the equal protection and due process clauses and had taken his property in violation of the Fifth and Fourteenth Amendments and Article III of the Maryland Constitution. Finally he claimed that COMAR 07.02.11.29.L, a Maryland regulation requiring that a foster child's resources "shall be applied directly to the cost of [foster] care," is not supported by any statutory authority, contravenes federal law and the United States and Maryland Constitutions and, therefore, violates the Maryland Administrative Procedure Act ("APA").

Alex sought a declaratory judgment that COMAR 07.02.11.29.L is invalid and a "permanent injunction prohibiting DSS and all other Maryland state agencies from taking the OASDI and other Social Security benefits belonging to a foster child to reimburse the State for the cost of foster care." Furthermore, he demanded $11,500 in damages.

Appellees filed a motion to dismiss on the grounds that Alex lacked standing to bring the action, that the action was moot, and that it was time-barred under the Maryland Tort Claims Act. The circuit court granted the motion *in toto*. It further ruled that the remaining claims were time-barred under the MTCA and, if not time-barred, hey had no merit.

The issue before us is whether the court erred in granting the motion to dismiss. We first address whether the court erred in ruling that Alex had no standing to bring the APA and the declaratory judgment claim. Because we conclude that that ruling was not erroneous, we shall next address whether the circuit court erred in ruling that Alex lost his right to sue appellees in tort because he did not file a written claim with the State Treasurer within one year after the "injury" and failed to file his complaint within three years after the cause of action arose as required by the MTCA. Hence, the key issue for resolution is when the "injury" occurred. To the extent that Alex's claims are based on any loss sustained because of DSS's appointment as his representative payee, we hold that any such claims are clearly time barred under the MTCA. To the extent, however, that Alex alleged he suffered loss as a result of DSS's monthly expenditures of his OASDI benefits, we conclude that the cause of action arose each month DSS appropriated those funds, and, therefore, the time restrictions under the MTCA began running anew each month.

That means his claim was timely filed under the MTCA with respect to DSS's actions in November and December 2005. Nonetheless, we hold that the court properly dismissed Alex's tort claims because DSS spent his OASDI benefits on his behalf and in a manner consistent with feder-

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al and Maryland law and regulations. Finally, we hold that the court did not err in dismissing Alex's constitutional challenges. Accordingly, we shall affirm the judgment.

I. DISCUSSION

Alex contends that the circuit court erred in dismissing his Administrative Procedure Act claim and his request for a judgment avowing that COMAR 07.02.11.29 is illegal.

By the time Alex filed suit he was no longer in or eligible for foster care, and DSS was no longer acting as representative payee for his OASDI benefits. It appears that Alex was no longer even entitled to OASDI benefits. Consequently, Alex could not seek a declaratory judgment challenging the legality of COMAR 07.02.11.29 because there was no real possibility that the regulation would or could ever apply to him again.

Furthermore, not only is there no suggestion in his complaint that the benefits have been retained by DSS, but, in fact, Alex repeatedly asserted that his OASDI benefits were spent by DSS each month to cover his foster care costs and that DSS failed to conserve any of those benefits.

In any event, as appellees point out, the Court of Appeals has rejected the contention that the Maryland regulation directing DSS to utilize a child's resources to pay for the cost of foster care lacks statutory authority. *Conaway v. Social Services Administration,* 298 Md. 639, 644 (1984). Consequently, we hold that the circuit court did not err in dismissing the APA and declaratory judgment counts of Alex's complaint.

II. TIMELINESS OF CLAIMS UNDER MARYLAND TORT CLAIMS ACT

By enacting the MTCA in 1981, the General Assembly waived the State's immunity and "afforded a remedy for individuals injured by tortious conduct attributable to the State," if certain conditions are met. *Condon v. State,* 332 Md. 481, 492 (1993).

Failure to file a written claim with the State Treasurer within one year after the injury that is the basis of the claim "extinguishes the right" to sue the State in tort. *Ferguson, supra,* 186 Md. App. at 727.

Tolling principles applicable to statutes of limitations are inapplicable to conditions precedent and, consequently, inapplicable to the time restrictions in the MTCA. Consequently, the "discovery rule" does not apply to the MTCA's written claim requirement. *State v. Copes,* 175 Md. App. 351, 366 (2007)

Because the time restriction for filing a claim with the Treasurer is not tolled by either Alex's minority status, *Johnson, supra,* or by the discovery rule, *Copes, supra,* the key question here is when did the alleged injury occur.

To the extent Alex is alleging injury because of DSS's appointment as his representative payee, such claims are clearly time barred under the MTCA because that appointment was a single act in October 2002, although it continued through December 2005. But, to the extent Alex suffered injuries as a result of DSS's alleged misuse of his monthly OASDI benefits, we believe that a new claim arose each month DSS allegedly misappropriated those funds, and, consequently, the time restrictions for filing a claim and cause of action under the MTCA also began to run anew each month.

Because Alex filed his notice of claim with the Treasurer on October 16, 2006, and his complaint on November 26, 2008, his cause of action based on DSS's actions during December 2005 (and possibly November 2005, depending on the day DSS appropriated the OASDI benefits that month), were timely under the MTCA. But any claims based on DSS's use of Alex OASDI benefits prior to November 2005 are clearly barred.

III. TORT CLAIMS

Turning now to the court's dismissal of Alex's tort claims, we hold that the court committed no error.

Alex contends that the circuit court erred in dismissing his negligence claim because DSS breached its "state law" fiduciary duties, he maintains, by applying his OASDI benefits to the cost of his foster care, even though he claims he had no obligation to pay for that care. Alex asserts that the level of care provided to him by DSS was no different than the care provided to other foster care children and, as such, he obtained no benefit from DSS's use of his OASDI funds.

Alex further contends that the circuit court erred in dismissing his claim that DSS violated the Social Security Act and thereby breached its "federal law" fiduciary duties.

In *Washington State Dept. of Social & Health Services v. Keffeler,* 537 u.s: 371,386 (2003), the Supreme Court declared that a social service agency's use of OASDI benefits to reimburse itself for the cost of foster care services is "consistent with" the SSA's regulations directing payees to use the funds for the beneficiary's use and benefit, including current maintenance. Because DSS used Alex's OASDI benefits in a manner consistent with both State and federal law and regulations, we conclude that the circuit court did not err in dismissing Alex's negligence and breach of Social Security Act claims.

B. Conversion

Alex contends that the circuit court erred in dismissing his claim for conversion. As the purported "beneficial owner of the benefit checks," Alex claims that he "had a right to have the funds applied in his best interests." Assuming that Alex's OASDI benefits were kept by DSS as "segregated or identifiable funds," Alex nonetheless failed to state a cause of action for conversion given that DSS, as his representative payee, used his OASDI benefits on his behalf and in a manner consistent with State and federal law.

C. Unjust Enrichment

Alex claims that the circuit court erred in dismissing his claim for unjust enrichment. Because DSS applied to be Alex's representative payee and, after appointment to that position, used Alex's OASDI benefits in accordance with State and federal law and regulations, we conclude that DSS was not unjustly enriched at Alex's expense and, therefore, the circuit court properly dismissed Alex's unjust enrichment claim.

IV. CONSTITUTIONAL CLAIMS

Alex next avers that the circuit court erred in dismissing his claims that DSS violated the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, as well as Article 24 of the Maryland Declaration of Rights and that DSS's use of his OASDI benefits constituted an unconstitutional taking of his property in violation of the Fifth and Fourteenth Amendments and Article III of the Maryland Constitution. We fail to find any merit to any of these claims."

Slip op at various pages, citations and footnotes omitted.

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