IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 2009

MARYROSE OGUEZUONU

Appellant

v.

IGNATIUS IWUALA

Appellee

No. 02789

Appeal from the Circuit Court for
Prince George's County
(Herman Dawson, Judge)

BRIEF OF THE APPELLEE

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STATEMENT OF THE CASE

On August 29, 2000, the Trial Court docketed Findings of Fact, Conclusions of Law and Order of Court. (Apx.1.) The Findings of Fact, Conclusions of Law and Order of Court addressed, in part, the parties rights with regard to custody and visitation with their minor children. (Id.)

On September 10, 2001, the Trial Court docketed a Consent Order. (Apx.18.) The Consent Order amended the terms of the Findings of Fact, Conclusions of Law and Order of Court. (Id.)

On July 24, 2006, the Appellee filed a Petition for Contempt with the Trial Court. (Apx.21.) On July 25, 2006, the Appellee filed a Motion to Shorten Time, (Apx. 26), and Schedule a Hearing and an Emergency Motion for Return of Minor Children to Custodial Parent. (Apx 33.) The Petition for Contempt and the Emergency Motion for Return of Minor Children were both based upon the Appellant's failure to comply with the Orders of the Trial Court and return the parties' minor children to the Appellee.

On August 31, 2006, the Trial Court held a hearing on the Appellee's Emergency Motion for Return of Minor Children to Custodial Parent. The Trial Court ruled that the Appellant should immediately return the parties' minor children to the Appellee and suspended the Appellant's visitation rights until a hearing could be held on the Appellee's Motion to Modify Visitation. (Apx. 39.) An appropriate Order was docketed on September 7, 2006. (Id.)

On January 29, 2007, the Trial Court docketed an Order that amended the Order docketed on September 7, 2006. (Apx. 41.) The Order suspended visitation until further order by the Trial Court. (Id.)

A hearing was held before the Trial Court on January 19, 2007. As a result of the hearing, the Trial Court docketed an Order on July 25, 2007. (Apx.42.) The Trial Court's Order entitled the Appellant to telephone contact with the parties' minor children. (Id.)

On August 19, 2008, the Trial Court held a hearing. As a result of that hearing, on October 3, 2008, the Trial Court docketed an Order permitting supervised visitation between the Appellant and the parties' minor children. (Apx. 44.)

On September 22, 2009, the parties appeared before the Trial Court for a hearing on a Petition for Modification of Visitation that had been filed by the Appellant. At that hearing, with the assistance of the Trial Court, the parties entered into an agreement that permitted the Appellant unsupervised visitation with the parties' minor children. That agreement was reduced to an Order and docketed by the Trial Court on October 19, 2009. (Apx. 46.) The Order was corrected by an Amended Order docketed by the Trial Court on November 10, 2009. (Apx. 50.)

On November 23, 2009, the Appellant filed an Emergency Motion to Enforce Orders of this Court. (Apx. 54.) The motion was based upon the Appellant's failure to return the parties' minor children to the Appellee after the Appellant's unsupervised visitation. (Id.) The Court held a hearing on Appellee's motion. With the promise of the Appellant to abide by the Orders of the Trial Court the Trial Court declined to take any actions.

On December 23, 2009, the Appellant filed an Emergency Motion for Return of Minor Children and to Suspend Visitation Between the Defendant and the Minor Children. (Apx. 61.) The Trial Court conducted an evidentiary hearing on December 23, 2009. (App. 1-52.) As a result of the hearing, on December 23, 2009, the Trial Court issued an Order suspending visitation between the Appellant and the parties' minor children. (Apx. 70.)

The Appellant has taken this appeal as a result of the December 23, 2009 Order of the Trial Court.

STATEMENT OF THE FACTS

On December 8, 2009, the Appellee left the United States for Africa. (App. 4.) The Appellee was scheduled to return to the United States on January 10, 2010. (Id.) While the Appellee was out of the country, his current wife, Afeyinwa Iwala, was charged with caring for the parties' three (3) minor children. (Id.)

On December 18, 2009, consistent with the Orders of the Trial Court, the Appellee's wife took the parties' minor children to the designated exchange point in Hyattsville, Maryland. (App. 5.) The Appellant was to return the children to the Appellee's wife on December 20, 2009 at 6:00 p.m. (Id.)

On December 20, 2009 at 4:00 p.m., the Appellee's wife arrived at the designated exchange point. (Id.) The Appellee's wife stayed in the parking lot until 6:45 p.m. and the Appellant did not arrive. (App. 6.) The Appellee's wife knows what the Appellant's car looks like and did not see it while she waited. (App. 6-7.) The Appellee's wife tried to reach the Appellant by telephone, but she did not get an answer. (App. 7.) The Appellee's wife left a message on the voice mail of the parties' minor daughter. (Id.)

On Monday, December 21, 2009 at 8:00 a.m., the Appellee's wife tried to reach the Appellant by telephone and did not get an answer. (App. 7.) The Appellant called the Appellee's wife's and told her that the Appellee's wife was supposed to pick up the children. (App. 10.) The Appellee's wife said that she knows and that she was at the designated exchange point and the Appellant never showed up. (App. 10-11.) The Appellant then hung up on the Appellee's wife. (Id.) The Appellee's wife immediately called the Appellant back and the Appellant did not answer. (App. 11.) The Appellee's wife tried again at 11:00 a.m. to reach the Appellant and did not get an answer. (App. 8-9.) The Appellee's wife left a second message on the phone of the parties' minor daughter. (App. 9.) At 2:00 p.m. on that day, the Appellee's wife tried again to reach the Appellant and did not get an answer. (App. 10.)

At 11:12 p.m. on December 21, 2009, the Appellee's wife received a telephone call from the parties' minor daughter. (App. 11.) The daughter asked the Appellee's wife to pick up the children and advised the Appellee's wife that the children were at the

police station. (Id.) The phone was then handed to the parties' minor son, who asked the Appellant to give the address of the police station to the Appellee's wife. (App. 12.) The Appellant responded that "She knows it. She knows it.". (Id.) Eventually, with the pleading of the parties' minor children, the Appellant provided the address to the Appellee's wife. (Id.) The Appellee's wife immediately got into her car to go to the police station. (Id.) The Appellee's wife became stuck in the snow. (Id.) Upon that occurring, the Appellee's wife immediately called the Appellant. (App. 13.) The Appellee's wife asked the Appellant to bring the children to her. (Id.) The Appellant refused the Appellee's request. (Id.) The Appellee's wife then called the parties' minor daughter to tell her that she was stuck but on her way. (Id.) However, the Appellant left the police station with the parties' minor children at 11:20 p.m., only ten (10) minutes after the first phone call. (Id.)

On Tuesday, December 22, 2009, the Appellee's wife tried to reach the Appellant by telephone at 8:00 a.m. and there was no answer. (App. 14.) The Appellee's wife tried again an hour later with the same result. (Id.) At 6:00 p.m. on that date, the Appellee's wife received a telephone call stating that she could come pick up the children. (Id.) However, the Appellee's wife was taking a final exam and could not come right then. (App. 14-15.) The Appellee's wife said she would come after her exam. (Id.) The Appellee then received a telephone call from the parties' minor daughter saying that the Appellee's wife should pick the children up on the following day. (Id.) The Appellee's wife was then informed that she could pick up the children on December 23, 2009 at 11:00 a.m.

The children were brought with the Appellant to the hearing before the Trial Court. Prior to that, the Appellant had not returned the children to the Appellee's wife. (App. 16.)

QUESTIONS PRESENTED

The Appellant has raised the following issues in her appeal:

1. Whether the lower court erred when it terminated a mother's visitation rights with her minor children without a finding that she had the ability to comply with the Court order during a violent snow storm?
2. Whether the lower court erred by systematically failing to accord a disabled mother reasonable accommodation under the American with Disability Act [sic.]?
3. Whether the lower court erred by refusing to appoint Counsels [sic.] for the children before severing their visitation with their mother?
4. Whether this case should be reassigned to a new judge to take a fresher [sic.] and neutral look?

ARGUMENT

The findings and ruling of the Trial Court should be affirmed by this Court. The Appellant has raised issues not properly before this Court. Further, the Appellant has failed to show any reversible error on the part of the Trial Court.

I. THE TRIAL COURT PROPERLY SUSPENDED THE APPELLANT'S VISITATION UNTIL FURTHER ORDER OF THE COURT.

The Appellant's argument that the Trial Court erred when it suspended the Appellant's visitation until further order of the court is without merit.[1] The Appellant has

[1]The Appellant incorrectly states that the Trial Court "terminated" her visitation rights. (Appellant's Brief at 6.) However, the Court clearly stated at the conclusion of the hearing on December 23, 2009 that "the court signs the order suspending visitation until further order of the court. ... Case closed statistically. If no one makes a request, I don't have to deal with it." (App. 51.) The Order issued by the Court as a result of the hearing on December 23, 2009 stated "that all future overnight visitation between the [Appellant] and the parties' minor children be suspended until further Order by this Court after an evidentiary hearing at which the [Appellant] will be provided an opportunity to explain her actions and for [the Trial Court] to fashion an appropriate remedy." (Apx. 70.) The Appellant is entitled to resume her visitation upon making an appropriate motion

completely ignored the facts that were presented to the Trial Court. Accordingly, this Court should affirm the ruling of the Trial Court.

The standard of review to be utilized in considering a decision of a trial court after a bench trial is well established by this Court. As stated by this Court in Brown & Sturm v. Frederick Road LP, 137 Md. App. 150, 768 A.2d 62 (2001):

> In a bench trial like this one, "the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). The trial court is thus the gatekeeper for receiving and weighing the evidence. In contrast, we are bound by the trial court's evidentiary findings, and we will not disturb those findings on appeal if they have support in any competent material evidence, even if we would have reached a different conclusion regarding that evidence. Barnes v. Children's Hosp., 109 Md. App. 543, 553, 675 A.2d 558 (1996); Mayor & Council of Rockville v. Walker, 100 Md. App. 240, 256, 640 A.2d 751 (1994). Likewise, for mixed questions of fact and law, such as the questions posed by the appellants, we will affirm the trial court's judgment when we cannot say that it evidentiary findings were clearly erroneous, and we find no error in that court's application of the law. Bowers v. Eastern Aluminum Corp., 240 Md. 625, 626-27, 214 A.2d 924 (1965).

Id., 137 Md.App. at 170. This standard of review has been applied equally to matters involving child custody. Maness v. Sawyer, 180 Md. App. 295, 950 A.2d 830 (2008)("because only [the trial judge] sees the witnesses and the parties, hears the testimony, and has the opportunity to speak with the child; he is in a far better position than is an appellate court, which has only a cold record before it, to weigh the evidence and determine what disposition will best promote the welfare of the minor.")

The findings of the Trial Court are clearly supported by the record. The Appellant argues that the "[Appellant] was without fault because her inability to return the children was not within her power and control". (Appellant Brief at 6.) The sole support presented to the Trial Court for the Appellant's position was the testimony of the Appellant. Accordingly, this testimony is critical to the Appellant's claim.

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with the Trial Court and satisfying the Trial Court that she will abide by the terms of the Trial Court's visitation order.

The Appellant testified that:

On Sunday, December 20, 2009, she tried to reach the Appellee's wife by telephone at 4:10 p.m. (App. 20.) The Appellant drove to the designated exchange point and arrived at 6:00 p.m.. (App. 20-21.) Between 6:00 p.m. and 6:15 p.m., while the Appellant was waiting for the Appellee's wife, from the back seat of the Appellant's vehicle, the parties' minor children were on the phone with Appellee's wife. (App. 35-36.) The Appellant did not ask the children where the Appellant's wife was because "It was not the best interest for me to find out some information from [the children]." (App. 36.) The Appellant did not see the Appellee's wife, so she called the police and spoke with Officer Boswell, who after speaking with the Appellant came to the designated exchange point between 6:30 and 6:45 p.m. (App. 22-23.) The Appellant left the designated exchange point at 6:50 p.m. (App. 23.)

On the following day, at approximately 8:00 a.m., the Appellant left a message for the Appellee's wife that the Appellant wanted to meet at the designated exchange point and return the children to the Appellant's wife. (App. 25-26.) The Appellant then drove to the designated exchange center and waited for between an hour and an hour and a half. (App. 27-28.) Between 8:00 p.m. and 8:30 p.m. the same evening, the Appellant drove to the Hyattsville Police Station after leaving a message for the Appellee's wife. (App. 28-29.) Before arriving at the Hyattsville Police Station, the Appellant tried to reach the Appellee's wife by telephone but was unsuccessful. (App. 30.) The Appellant stayed at the Hyattsville Police Station for Two and a half hours. (App. 30.) The Appellant did speak with the Appellee's wife and the Appellee's wife asked for information about the Hyattsville Police Station. (App. 37.) The Appellant was willing to provide that information to the Appellee's wife; however, for reasons unexplained by the Appellant, the Appellee's wife never picked up the children that evening. (App. 37; 24-39.)

On Tuesday, December 22, 2010, at approximately 7:00 p.m. to 7:10 p.m., the Appellant took the parties' minor children to the Appellant's house. (App. 38.) The Appellant knocked on the door and no one answered. (App. 39.) The Appellant then drove to the Hyattsville Police Station, (App. 38), and between 10:00 p.m. and 10:10

p.m., the Appellant called the Appellee's wife and told the Appellee's wife to come and pick up the children. (App. 32-33; 37.) However, for a second time, the Appellee's wife did not come to pick up the children. (App. 33.)

After carefully analyzing the Appellant's testimony, the Trial Court completely disregarded the testimony of the Appellant as the Trial Court stated that it "[did] not believe one word of Mrs. Oguezuonu". (App. At 49.) The Trial Court stated:

> I do not believe one word of Mrs. Oguezuonu, that she was there at 6 p.m. on Sunday and, just by happenstance, with all other things going on in the Baltimore/Washington area, she's going to be in Baltimore, she's going to make a call and, within 15 minutes, the police are going to respond to a phone call that she's in a parking lot, without an emergency, and take a report. Yeah, I'm going to give you a report that, yeah, you're here. And she's unable to reach Mrs. Iwuala.
>
> And at the same time – this is probably the one that she had not thought about before she gave the response or had not recalled the earlier testimony – the children are talking to Mrs. Iwuala after six o'clock. And her response as to not asking the children to find out where Mrs. Iwuala was is because it was not her business. It is her business to drop the children off. It is her business to comply with the Court's order.

(App. 49-50.)

In contrast, the Court found the Appellee's wife's testimony to be highly credible. In considering the testimony of the Appellee's wife, the Court stated:

> [The Appellee's wife] may have been one of the more credible persons I've seen in any domestic case recently. I believe her testimony one hundred percent; that, yes, she wanted to make certain that she was there early enough. She got there at four o'clock. She waited. She waited. She called. Did not reach anybody. Called. Called. She did everything she could.

(App. 49.)

The Trial Court's conclusion is soundly supported by the record. After considering the testimony of both the Appellant and the Appellee's wife, the "[Appellant had] proven that there's been a willful, knowingly, complete disregard for the Court's order." Given the Trial Court's conclusions regarding the testimony presented, the conclusion of the Court is soundly supported by the record. Accordingly, there is no basis upon which to reverse the ruling of the Trial Court.

A. The Appellant's Argument that She Could Not Return the Children Because of the Snow Storm is Belied by the Record.

It is remarkable that after the testimony presented to the Trial Court, the Appellant would argue to this Court that she did not have the ability to comply with the Trial Court's Order because of the snow storm. (Appellant Brief at 6-13.) Before the Trial Court, the Appellant claimed that she had driven to the designated exchange facility. (App. 20-1.) The Court found that this was untrue testimony and further stated that "I am absolutely certain that on Sunday, December 20th, Ms. Oguezuonu said Mr. Iwuala is not here; I don't know this lady – she does not know her – I believe I'm the better mom than the stepmother, and I'm not going to return the children." (App. 49-51.) To accept the Appellant's argument, this Court would need to disregard the testimony of the Appellee's wife and accept the Appellant's new position that she lied to the Trial Court and the weather kept her from being able to deliver the children to the designated exchange point. This argument is without any merit and should be disregarded on its face.

B. The Trial Court did not Violate the Appellant's Constitutional Rights

The Appellant's argument that the ruling of the Trial Court violated the Appellant's constitutional rights fails as a matter of law and in light of the facts presented. It is well settled that "in any child custody case, the paramount concern is the best interest of the child." Maness v. Sawyer, 180 Md. App. 295, 313, 950 A.2d 830 (2008). This standard is "of transcendent importance" and "the sole question". Id. (quoting, Ross v. Hoffman, 280 Md. 172, 175 n.1, 372 A.2d 582 (1977)).

The Trial Court considered the best interests of the children as they relate to the Appellant's actions. In so doing, the Trial Court stated:

> And what is so frightening about this case – what is it? Two weeks ago or so we were just in court. I pleaded with Ms. Oguezuonu not to do this. She wanted to litigate the reason why the children should be with her, as opposed to being with their step mother, because she doesn't know anything about her. And I said "Mrs. Iwuala, this is your last chance." I said, "Mr. Havens raised hell because I went over and above and awarded the visitation against the agreement and against his client's wishes." Don't know whether he could have appealed it. But my position was I was going to give Mr. Oguezuonu every opportunity.

> The first time that she was supposed to return – I believe it was the first time, there was another incident. We've got to stop this. The problem is these children are put in this position every time.

(App. 50.)

The Appellant's constitutional rights do not trump the best interests of the children. The Trial Court found that the Appellant's actions and the impact on the parties' minor children warranted a suspension of her visitation rights. Given the circumstances, the Trial Court's ruling was appropriate.

C. The Trial Court's Findings of Fact Were Not Arbitrary and Clearly Wrong

The Appellant argues that the Trial Court's Order was arbitrary and clearly wrong**.** (Appellant Brief at 9-12.) In support of her position, the Appellant trumpets the testimony of the Appellant while challenging the testimony of the Appellee's wife. The Appellant completely ignores the Trial Court's finding that the Appellant's testimony was not credible, while that of the Appellee's wife was one hundred percent believable. (App. 49.) In light of this ruling, the Trial Court found that "the plaintiff has proven that there's been a willful, knowing, complete disregard for the Court's Order." (App. 50.) The Appellant fails to present a sufficient basis for this Court to find that the Trial Court's Order was arbitrary and clearly wrong. In fact, as set forth above, when the Trial Court's ruling is considered in light of the testimony presented, the Trial Court's ruling is well reasoned and completely supported by the record.

D. The Argument that the Appellee Breached the Court Order is Without any Basis

The Appellant's argument that she did not violate the Trial Court's Order but, in fact, the Appellee did is so far off base that it is nearly sanctionable. The Appellant states that "[the Appellant] was **under no obligation** to move an inch beyond The Visitation Center of Baltimore County located [at] 3525 Resource Drive, Randallstown, Maryland to attempt to return the children." (Appellant Brief at 13(emphasis in original).) While this may be correct, the Appellant ignores the fact that the Trial Court found that she did not take the children to that location. (App. 51.)

Further, the argument of the Appellant ignores the fact that the Trial Court found that the Appellee's wife was sitting in the parking lot of the designated exchange point at the appointed time waiting for the Appellant. (App. 49.) The Appellant's argument is devoid of any potential merit and should be disregarded.

II. THE TRIAL COURT HAS NOT FAILED TO ACCORD A DISABLED MOTHER REASONABLE ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT

The Appellant's argument that the Trial Court failed to accord a disabled mother reasonable accommodations under the Americans with Disabilities Act, 11 U.S.C. § 12101 et seq., is without merit and should be rejected. The issue has not been properly preserved. If this Court were to consider the issue, the Appellant has failed to present a sufficient basis for this Court to consider the issue.

As a preliminary matter, this is not an issue that is properly before this Court. Rule 8-131(a) provides that:

> The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will note decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue is necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

The instant issue raised by the Appellant was never raised in the hearing before the Trial Court. (App. 1-52.) Therefore, this issue is not a properly preserved issue and should not be considered.

The Appellee anticipates that in response to the Appellee's argument, the Appellant will argue that she raised the issue of the applicability of the Americans with Disability Act in a motion filed with the Trial Court. The Plaintiff raised the issue of the applicability of the Americans with Disabilities Act in her Emergency Motion to Rescind the Suspension of a Mother's Visitation Rights, Appoint Best Interest Attorney for the Children, and Make Reasonable Accommodation for a Disabled Mother, or in the Alternative Set an Immediate Evidentiary Hearing (the "Motion"). However, the Appellant failed to include the Motion, the Appellee's opposition and the Trial Court's

ruling thereon in the Appendix. As this Court has stated previously, this Court is "not required to ferret out from the record those materials which counsel should have printed in the [record] extract." Eldwick Homes Ass'n, Inc. v. Pitt, 36 Md. App. 211, 212, 373 A.2d 957 (1977). Accordingly, the issues raised in those pleadings are not properly before this Court and should not be considered.

If this Court were inclined to consider the issues raised in the Motion, the Appellant's opposition thereto and the Trial Court's order thereon, this Court would find that the Trial Court properly denied the Motion. The Motion failed to comply with Rule 9-202(a). Specifically, the Motion was not signed by the Appellant. Additionally, the Appellant was requesting that the Trial Court deal with the issues raised in the Motion on an emergency basis. The Trial Court's denial of the Motion was merely a denial to treat the issues raised on an emergency basis. The Appellant need merely file a similar motion for consideration by the Trial Court in the ordinary course.

Further, there has been no evidence presented upon which this Court could conclude that: (1) the Americans with Disabilities Act applies to this scenario; (2) the Appellant has a disability as defined by the Americans with Disabilities Act; or (3) the Trial Court failed to comply with the Americans with Disabilities Act. (App. 1-52.) It is well settled that "mere bald allegations without evidentiary support will not be considered on appeal." Bland v. Larsen, 97 Md. App. 125, 137, 627 A.2d 125 (1993). The Appellant presents to this Court a number of wild and outlandish allegations, (Brief at 13-18), and has included in her Appendix documents, in some cases only portions of documents, that were not admitted into evidence by the Trial Court, (App. 57-63). These allegations and documents should not be considered by this Court.

As is evident, the issue of whether the Trial Court failed to accord a disabled mother reasonable accommodations under the Americans with Disabilities Act is not properly before this Court and, to the extent that the issue is before this Court, it is without merit and should be rejected.

III. THE TRIAL COURT DID NOT ERR BY DENYING THE APPELLANT'S REQUEST TO APPOINT A BEST INTERESTS ATTORNEY

The issue of whether the Trial Court erred by not appointing a best interests attorney for the children is without merit. The issue is not properly before this Court. Further, if this Court should consider the issue, the Court did not err by declining to appoint a best interests attorney for the parties' minor children.

As with the issue of the applicability of the Americans with Disabilities Act, the Appellant has failed to properly preserve the issue of whether the Trial Court properly denied the Appellant's request that a best interests attorney be appointed for the parties' minor children. This issue was not raised at the hearing before the Trial Court. (App. 1-52.) Furthermore, the Appellant has failed to present any portion of the record in which this issue was raised. (Id.) Accordingly, as a matter of law, this issue is not properly before this Court. Eldwick Homes Ass'n, Inc. v. Pitt, 36 Md. App. 211, 373 A.2d 957 (1977).

The Trial Court did not err by declining to appoint a best interests attorney for the parties' minor children. As cited by the Appellant, Md. Code Ann., Fam. Law § 1-202 gives a trial court the authority to appoint a best interests attorney. However, a trial court is not obligated to do so. As this Court stated in Auclair v. Auclair, 127 Md. App. 1, 730 A.2d 1260 (1999), "[i]n light of the minimal contribution a children's advocate could make to custody proceedings and the tremendous increase in time and cost that would result from allowing children to have an advocate, ... children are not entitled to an advocate for their preferences in their parents' custody dispute." Auclair, 127 Md. App. at 26.

The issue before the Trial Court was not custody. Rather, the issue before the Trial Court was the failure of the Appellant to comply with the terms of the custody and visitation Orders. Accordingly, a best interests attorney for the parties' minor children would not have contributed in a meaningful manner to the proceedings.

As is patently clear, the Appellant's argument related to Trial Court declining to appoint a best interests attorney is without merit. The issue is not properly before this Court. To the extent that this Court should consider the issue, it is clear that the Trial Court did not commit reversible error.

IV. REVERSAL OF THE TRIAL COURT'S DECISION AND RECUSAL OF JUDGE DAWSON IS NOT WARRANTED

The reversal of the Trial Court's decision and the recusal of Judge Dawson are not appropriate. This issue was never raised by the Appellant at the trial court level. Further, the record does not support a conclusion that Judge Dawson was biased, prejudiced or impartial. Accordingly, the Appellant's argument must be rejected.

The issue of whether Judge Dawson should be removed from this case is not properly before this Court. The Appellant did not raise this issue before the Trial Court either before, during or after the hearing. (App. 1-52.) The first time the Appellant raises this issue is in her Brief. Accordingly, this issue should not be considered by this Court. Rule 8-131.

Even if this Court should consider the Appellant's argument, it is clear that the Appellant falls well short of meeting the requisite burden necessary for this Court to reverse the decision of the Trial Court and order that Judge Dawson be recused from this case.

"[W]hen bias, prejudice, or impartiality is alleged, a Judge's decision regarding recusal will not be overturned absent a showing of abuse of discretion." Surratt v. Prince George's County, 320 Md. 439 (1990). As stated by this Court in Reed v. Baltimore Life Ins. Co, 127 Md. App. 536, 733 A.2d 1106 (1999):

> With respect to a claim of actual prejudice made under these circumstances, it has been said that "[a] Judge is presumed to be impartial," United States v. Sidener, 876 F.2d 1334, 1336 (7th Cir. 1989); that "[a] Judge is presumed not to confuse the evidence in one case with that in another," Dove v. Peyton, 343 F.2d 210, 214 (4th Cir. 1965); and, that "Judges are men [and women] of discernment, learned and experienced in the law and capable of evaluating the materiality of evidence," State v. Babb, 258 Md. 547, 550, 267 A.2d 190 (1970). As Blackstone put it, "the law will not suppose a possibility of bias or favor in a Judge, who is already sworn to administer impartial Justice, and whose authority greatly depends upon that presumption and idea." 3 W. Blackstone, Commentaries of Laws of England 361

> (1st ed. 1769). Thus, where an allegation of actual bias or prejudice is made, the burden is upon the [party alleging bias] to make the showing from the record. Casey v. State, 43 Md. App. 246, 248-9, 405 A.2d 293, 296 (cert. denied, 445 U.S. 967, 100 S.Ct. 1660 (1980)." Boyd, 321 Md. At 80-81 (emphasis added). The standard in reviewing such a claim is objective: "whether a reasonable member of the public knowing all the circumstances would be led to the Conclusion that the Judge's impartiality might reasonably be questioned." Surratt, 320 Md. At 465.
>
> In order to obtain review of the trial Judge's conduct, the record must contain the following elements: "(1) facts are set forth in reasonable detail sufficient to show the purported bias of the trial Judge; (2) the facts in support of the claim must be made in the presence of opposing counsel and the Judge who is the subject of the charges; (3) counsel must not be ambivalent in setting forth his or her position regarding the charges; and (4) the relief sought must be stated with particularity and clarity." Braxton,91 Md. App. At 408-9. Absent each of these elements, we will not review a party's assertion of prejudice.

Reed v. Baltimore Life Ins. Co, 127 Md. App. 536, 553-4, 733 A.2d 1106 (1999).

When the above stated standard is applied to the case before this Court, it is clear that the impartiality of Judge Dawson can not be questioned. As set forth above, the ruling of Judge Dawson was well reasoned and supported by the facts presented. Further, the Appellant has failed to point to the portions of the record that support the elements set forth in Reed.

As stated by this Court in Koffley v. Koffley, 160 Md. App. 633, 866 A.2d 161 (2004):

> Rare are the cases in which a Family Division judge should grant a motion for recusal on the ground that, as a result of prior rulings in ongoing domestic relations case, the judge has become "prejudiced" against the party who has moved for the judge's recusal. In "family law" cases, however parties are often overcome by emotion when they are disappointed by an adverse custody or visitation ruling ... .

Koffley v. Koffley, 160 Md. App. 633, 645, 866 A.2d 161 (2004). Such are the circumstances in the case before this Court.

As set forth above, the Appellant's argument that the ruling of Trial Court should be reversed and Judge Dawson should be removed from this case is without merit. The issue is not properly before this Court. Additionally, if this Court should consider the issue, the only possible conclusion is that Judge Dawson has not acted improperly or with bias, prejudice or impartiality.

CONCLUSION

For the reasons set forth above, the ruling of the Circuit Court of Maryland for Prince George's County should be affirmed.

Respectfully submitted,

_____
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CERTIFICATE OF SERVICE

I hereby certify that two (2) copies of the foregoing Brief for Appellee were mailed, first-class, postage prepaid, on this 18th day of August, 2010 to:

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APPENDIX

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