

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0042

September Term, 2014

DENNIS ALAN VAN DUSEN

v.

ALLA MALOVA

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: September 10, 2015

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On March 27, 2014, Dennis Van Dusen filed a notice of appeal from two judgments against him for a total of \$827,688 in compensatory and punitive damages. A jury in the Circuit Court for Montgomery County had awarded those damages after the court directed liability against Van Dusen on tort claims brought by his former tenant, Alla Malova. Malova had also asserted a fourth count against Van Dusen, seeking to set aside a fraudulent conveyance and requesting declaratory and injunctive relief. That claim is not yet fully adjudicated.

In his appellate brief, Van Dusen attempts to submit three questions. The issues are identical to those he raised in his unsuccessful prior appeal from a judgment against him that resulted from a separate lawsuit involving his same underlying conduct. *Van Dusen v. Prywes, et al.*, No. 43, Sept. Term 2014 (filed May 13, 2015) (unreported).¹

¹ Those questions are:

1. Did the court below err by directing a verdict for Fraudulent Conveyance, denying Appellant's Motion To Release Pre-judgment Encumbrance and to Quash Pre-judgment Attachment of 6910 Ridgewood Avenue; denying Appellant's Spouse's Motion To Dismiss Amended Complaint; granting Appellee's Request for Attachment Before Judgment; granting Appellee's Motion To Correct Date Of Attachment Before Judgment; failing to grant outright Defendant Irina Popova Van Dusen's Motion To Dismiss; striking and terminating Irina Popova Van Dusen's Notice of *lis pendens*; awarding Spouse's acquired marital property to Appellee; or setting aside the conveyance of 6910 Ridgewood Avenue as a fraudulent conveyance pursuant to either Md. Code (2000), §§ 15-206 and 15-207 of the Commercial Law Article, or Md. Code Ann., Family Law Article § 4-301(d)(2)(i) where the property was re-titled into Tenancy by The Entireties of the Family Home to the Appellant's Spouse who at that time was entitled to substantial marital property fairly equivalent to the value received, and the court was aware that grantee, Appellant's Spouse, had no foreknowledge of

(continued...)

This Court has no jurisdiction to answer those questions because the circuit court has not entered an appealable, final judgment. We dismiss the appeal pursuant to Md. Rule 8-602(a)(1).

PROCEDURAL HISTORY

Malova sued her landlord Van Dusen when she discovered that he used hidden cameras to secretly view and record her in her private bedroom without her knowledge or consent. This case commenced on January 28, 2013, when Malova filed a three-count complaint against Van Dusen in the Circuit Court for Montgomery County for invasion of privacy, trespass, and intentional infliction of emotional distress.

Days after Malova filed her initial complaint and requested a prejudgment attachment, Van Dusen executed a deed transferring the title to his house from himself as the sole owner to himself and his estranged wife as tenants by the entirety. Van Dusen received no new consideration for the transfer. Malova responded by amending her complaint, adding a fourth count alleging a fraudulent conveyance. In that count, Malova sought no damages, but instead asked the court to “issue a declaratory judgment” that the

the transaction and was dismissed as a defendant after quitclaiming the property.

2. Was the trial court’s award of punitive damages prohibited under the Due Process Clause of the Fourteenth Amendment, as being grossly excessive, per *BMW of N. Am., Inc. v. Gore*?
3. Did the trial court abuse its discretion when it failed to grant a new trial or reduce damages?

conveyance was invalid, to “set aside” the conveyance, and to “restrain [Van Dusen] from conveying or encumbering the property[.]”

After the dismissal of various other claims, cross-claims, and counterclaims,² the case proceeded to trial on Malova’s four counts against Van Dusen. At the close of the evidence, the circuit court directed a verdict as to Van Dusen’s liability on the counts for invasion of privacy, trespass, and intentional infliction of emotional distress. Assessing damages for those claims, the jury awarded \$456,288 in compensatory damages and \$371,400 in punitive damages. The awards were formalized in two separate judgments, which were properly docketed on March 27, 2014, and recorded in the judgment index.

Van Dusen argued that the remaining claim for fraudulent conveyance was moot because, before the trial, his wife had executed a quitclaim deed reconveying her interest (if any) in the property to him. The judge commented that he had “no idea why [Malova was] going forward on this count.” The court nonetheless concluded that Malova was entitled to judgment on her claim. The judge orally ruled that the transfer was invalid under the Uniform Fraudulent Conveyance Act. The court, however, did not announce a decision as to what remedy, if any, Malova was entitled to receive.

² Malova’s boyfriend, Michael Antonov, had intervened as a plaintiff, but dismissed his claims on February 25, 2014, the morning of trial. Malova had asserted her fraudulent conveyance claim against Van Dusen’s estranged wife, Irina Popova, as well as Van Dusen, but the court dismissed the claim against Popova on the first day of trial. Popova had asserted a cross-claim against Van Dusen, but the court dismissed the cross-claim on the first day of trial as well. Finally, Van Dusen had asserted a counterclaim against Malova and Antonov, but the court granted a motion to dismiss the counterclaim on December 19, 2013, several months before trial.

Despite the requirement of Md. Rule 2-601(a), no separate document was prepared to memorialize the oral ruling on the fraudulent conveyance claim or to specify any relief. A docket entry in connection with the proceeding stated only that the court granted a motion for judgment as to count four of the amended complaint, but did not indicate what relief, if any, the court had awarded. Nor did either party request the award of any specific relief or the entry of a judgment on the fraudulent conveyance claim.

Instead, Van Dusen moved for a new trial as to all claims. His motion proceeded on the incorrect assumption that the court had already entered a final order setting aside the conveyance. Van Dusen filed his notice of appeal after the court denied his new trial motion.

DISCUSSION

Van Dusen noted an appeal before the entry of a final judgment that disposed of all claims in the case. Malova’s fraudulent conveyance claim was only partially, not fully, adjudicated. The court did not decide whether to grant or to deny Malova’s requests for injunctive and declaratory relief in her amended complaint. Nor did the court exercise its discretion to determine the appropriate remedy, if any, under the Uniform Fraudulent Conveyances Act. *See* Md. Code (1975, 2013 Repl. Vol.), Commercial Law Art., §§ 15-209, 15-210. In effect, the court determined that Malova was legally entitled to a remedy without deciding which remedy to award.

The court’s ruling was not a complete, unqualified disposition of the matter in controversy. Whether intentionally or inadvertently, Malova did not request or obtain a remedy on the fraudulent conveyance claim. In these circumstances, there is no final

judgment. *See Waterkeeper Alliance, Inc. v. Maryland Dep’t of Agric.*, 439 Md. 262, 281-90 (2014) (dismissing appeal for lack of appealable judgment where court’s orders did not resolve pending constitutional claim, and parties failed to follow up so that the court could address final resolution of that claim); *see also Estep v. Georgetown Leather Design*, 320 Md. 277, 286-87 (1990) (oral comments by judge regarding outstanding claim did not create final judgment sufficient to confer appellate jurisdiction, even though court’s rulings rendered claim groundless as a practical matter).

Some of the judge’s oral comments suggested that the court intended to “set aside” the conveyance and to deny any other forms of relief, such as the declaratory judgment and injunction that Malova requested. On the other hand, the court may also have intended to deny all relief on the theory that the issue of a fraudulent conveyance had become moot when Van Dusen’s estranged wife reconveyed her interest (if any) in the property to him.³

In either event, the unqualified, final disposition of the claim must be embodied in a separate document signed by the judge and in an accompanying docket entry from the clerk. *See* Md. Rule 2-601; *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 489, 503

³ In a recent opinion in which it disbarred Van Dusen for the misconduct connected to his unlawful surveillance of his tenants, the Court of Appeals wrote: “In an arrangement apparently negotiated between Mr. Van Dusen’s son and the attorneys for the plaintiffs in the civil actions, the property was sold to an investment company related to the son and listed for sale. Under the agreement, Mr. Van Dusen was to receive credit for three times the actual amount of money paid to the victims with ‘surplus’ credit applied to their liens on the property.” *Att’y Grievance Comm’n v. Van Dusen*, 443 Md. 415, 423 (2015).

(2014).⁴ Only after that date of such a docket entry can Van Dusen take an appeal, if he so chooses.

**APPEAL DISMISSED. COSTS TO
BE PAID BY APPELLANT.**

⁴ In *Meese v. Meese*, 212 Md. App. 359 (2013), this Court affirmed a judgment setting aside a fraudulent conveyance. The docket entry for the judgment stated: “Order of Court (Rubin, J.) that Plaintiff Tim Meese’s Motion for Summary Judgment is Granted and that the defendant Megan S. Meese’s May 2005 Conveyance of the Real Property located at 3316 Weller Road in Wheaton, Maryland, to Anthony Armstrong Miller, is hereby Vacated and Stewart A. Sutton is appointed Trustee to record a Quitclaim Deed to convey the Real Property back to Defendant Megan S. Meese, Entered.”