Circuit Court for Prince George's County
Case No. CAD17-17132

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 215

September Term, 2019

DWAYNE DEASE

v.

ADDIE DEASE

Graeff,
Nazarian,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: April 30, 2020

On July 14, 2017, appellant, Dwayne Dease, filed a Complaint for Absolute Divorce in the Circuit Court for Prince George's County after approximately fifteen years of marriage to appellee, Addie Dease. Appellee then filed a counter-complaint in which she requested an absolute divorce, alimony, a monetary award, and other appropriate relief. At trial, the court entered into evidence Plaintiff's Statement Concerning Marital and Non-Marital Property Pursuant to Maryland Rule 9-206[1] ("9-207 Statement"), which was signed by counsel for both parties. In the 9-207 Statement, the parties agreed that there were two pieces of real property that were marital property—residential property titled solely in appellant's name on Brock Hall Drive in Upper Marlboro, Maryland, (the "Brock Hall property") and residential property titled in both appellant and appellee's names on Sultan Avenue in Capitol Heights, Maryland, (the "Sultan Avenue property"). In the 9-207 Statement, appellant and appellee also agreed that a third piece of real property located on Landover Road (the "Landover Road property") was titled solely in appellant's name and was non-marital property. After trial, the court issued an oral ruling that granted appellee temporary alimony, a $100,000 monetary award, one of the parties' vehicles, and one-half of the proceeds from the sale of the Brock Hall property and the Sultan Avenue property. The court's ruling was embodied in a judgment of absolute divorce entered on February 5, 2019.

Appellant presents three questions for our review,[2] which we have rephrased:

[1] Throughout the hearing, and in appellant's brief, this document is correctly referred to as the joint statement pursuant to Md. Rule 9-207.

[2] As stated in his brief, appellant's questions presented are:

1. Did the trial court err by basing its valuation of the Landover Road property on hearsay testimony?

2. Did the trial court abuse its discretion by granting appellee a monetary award of $100,000?

3. Did the trial court abuse its discretion by ordering that the Brock Hall property be sold and the net proceeds divided equally between appellant and appellee?

For the reasons discussed below, we shall affirm the judgment of the circuit court. We note that appellee did not file a brief in this Court.

BACKGROUND

Appellant and appellee were married on October 13, 2002. No children were born of the marriage. The parties separated in July 2016.

Appellant filed a Complaint for Absolute Divorce in the Circuit Court for Prince George's County on July 14, 2017. On January 11, 2018, appellee filed a counter-complaint in which she requested an absolute divorce, alimony, a monetary award, and other appropriate relief.

The circuit court held a trial on the matter on April 24, August 1, and October 25, 2018. The April 24, 2018 hearing dealt with preliminary matters, none of which are at

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I. Was the trial Court clearly erroneous in accepting [a]ppellee's valuation of [a]ppellant's non-marital property?

II. Did the trial Court err and abuse its discretion, in granting a $100,000.00 [ ] award to [a]ppellee?

III. Did the Court abuse its discretion when it ordered the Brock Hall property titled in [a]ppellant[']s sole name to be sold?

issue in this appeal. At the beginning of the August 1, 2018 hearing, the trial court entered into evidence, without objection, the 9-207 Statement, which was signed by both appellant's and appellee's counsel, as Court's Exhibit 1. The first section of the 9-207 Statement states that "[t]he parties agree that the following is 'marital property' under Maryland [Code,] Family Law ["F.L."] Section 8-201[.]" The parties listed in this section two pieces of real property and three vehicles. Regarding the real property, the parties first agreed that the Brock Hall property was titled solely in appellant's name. Appellant listed the fair market value of the Brock Hall property as $490,000, while appellee valued the property at $580,000, and both parties stated that there was $367,000 of debt. Second, the parties listed the Sultan Avenue property and agreed that it was jointly titled in both of their names. Appellant stated that the fair market value of this property was $200,000, and appellee stated that the fair market value was $241,000. Both parties agreed that there was $200,000 of debt on the Sultan Avenue property. Under the second section, entitled in part,[3] "[t]he parties agree that the following property is not marital property," the parties listed the Landover Road property. According to the 9-207 Statement, the reason that the Landover Road property was non-marital was that it was "[p]urchased [by appellant] while dating and not married." The fair market value of the Landover Road property was listed as $334,000 with no lien against it.

[3] The entirety of the section title reads:

> The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person, (c) has been excluded by valid agreement, or (d) is directly traceable to any of those sources.

On January 15, 2019, the trial court issued an oral ruling and written judgment that granted appellee temporary alimony, a $100,000 monetary award, one of the parties' vehicles, and one-half of the proceeds from the sale of the Brock Hall property and the Sultan Avenue property. On January 25, 2019, appellant filed a "Motion to Alter or Amend Judgment Pursuant to Mar[]yland Rule 2-534." The circuit court denied appellant's motion to alter or amend on March 22, 2019. Appellant noted this timely appeal on April 3, 2019.

We will provide additional facts as necessary to the resolution of this appeal.

DISCUSSION

I. The Valuation of the Landover Road Property

Appellant contends that the circuit court "erred when it accepted [a]ppellee's valuation of the non-marital Landover Road property over the objection of [a]ppellant." Specifically, appellant claims that appellee could not testify as to the value of the Landover Road property because she was not an owner of such property. In addition, appellant asserts that the court allowed appellee "to enter hearsay evidence in the form of estimates from the Zillow.com website" in violation of Md. Rules 5-801 and 5-802. Then, according to appellant, the trial court "adopted [ ] [a]ppellee's valuation of the Landover Road property based solely upon the hearsay evidence obtained . . . from the website Zillow.com."

Maryland Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." "Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible" under Md. Rule

5-802. Maryland Rules 5-803 and 5-804 provide exceptions to the rule against hearsay. The Court of Appeals has held that "'[w]hether evidence is hearsay is an issue of law reviewed *de novo*.'" *Gordon v. State*, 431 Md. 527, 536 (2013) (quoting *Bernadyn v. State*, 390 Md. 1, 8 (2005)).

Here, after appellee's counsel attempted to enter Zillow estimates for all three properties during appellee's direct examination, the following exchanged occurred:

[Appellant's Counsel]: Your Honor, I'm going to object.

These are not appraisals or property tax assessments. These are something that's just been pulled off the Internet, it's not indicative of the value of the properties and that's, no certifications, nothing.

[Appellee's Counsel]: They are public information.

***

[Appellee's Counsel]: They're not necessarily offered for the truth of the matter asserted, they're being offered as the research [appellee] did to find out what the values on the properties were.

The Court: I'm going to overrule.

[Appellee's Counsel]: Thank you.

The Court: It will be admitted.

[Appellee's Counsel]: And –

The Court: Over objection.

In its oral decision, the trial court ruled:

> The Landover Road property. [Appellee] testified that the Landover Road property was purchased by [appellant] prior to the marriage for 30,000 dollars. [Appellee] further testified that Zillow now values the property at approximately 334,000 dollars, that's [appellee]'s Exhibit Number 22.
>
> The Landover Road property[is] also titled in [appellant]'s name. See [the 9-207 Statement].
>
> According to testimony and evidence the Court received, the value of the Landover [Road] property increased by approximately 304,000 dollars during the course of the marriage.

Here, we agree with appellant that appellee cannot testify regarding the value of the Landover Road property because she is not the owner of that property. *Colonial Pipeline Co. v. Gimbel*, 54 Md. App. 32, 44 (1983) ("The rule is stated to be that an owner of property is presumed to be qualified to testify as to his [or her] opinion of the value of property he [or she] owns[.]"). Additionally, although the trial judge seemed to agree with appellee that the Zillow estimates were not to be used for the truth of the matter asserted, the trial court in fact used the Zillow estimate for the Landover Road property for the truth of the matter asserted when the court cited to the Zillow estimate of $334,000 in determining the value of the Landover Road property. Therefore, we conclude that the Zillow estimate for the Landover Road property is hearsay and that the trial court improperly relied on such Zillow estimate when valuing the Landover Road property.

Appellant, however, failed to state in his brief that he had agreed that the fair market value of the Landover Road property was $334,000 in the 9-207 Statement. As explained, *supra*, appellant's counsel signed the 9-207 Statement, which listed the fair market value of the Landover Road property as $334,000. No disagreement between the parties on such value was indicated in the 9-207 Statement. Maryland courts have consistently held that

statements made in 9-207 joint statements are admissions by the parties. *See Huntley v. Huntley*, 229 Md. App. 484, 494 (2016) (quoting *Beck v. Beck*, 112 Md. App. 197, 205 (1996) ("[F]acts stated on the Rule 9-207 form are "'admissions by the parties in a judicial proceeding.'")); *see also* Linda J. Ravdin & Eric P. Bacaj, Maryland Divorce and Separation Law, Ch. 4 Property Disposition in Divorce and Annulment § III.E.2 (10th ed. 2019) ("The trial judge may consider as evidence of value a party's statement of value in a joint statement of marital and non[-]marital property filed with the court in accordance with [Md. Rule] 9-207."). Furthermore, it is clear that the trial court considered the 9-207 Statement as evidence because the court (1) admitted the statement into evidence as a court's exhibit, and (2) specifically cited to the statement in its oral ruling.

We have previously held: "'Unless an appellant can demonstrate that a *prejudicial* error occurred below, reversal is not warranted.'" *Green v. Taylor*, 142 Md. App. 44, 60 (2001) (quoting *Bradley v. Hazard Tech. Co.*, 340 Md. 202, 206 (1995) (emphasis in *Green*)). Prejudice means an "'error that influenced the outcome of the case.'" *Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) (quoting *Harris v. David S. Harris, P.A.*, 310 Md. 310, 319 (1987)). Additionally, "[i]t has long been established that only the party aggrieved by a judgment can appeal it." *Goldberg v. Goldberg*, 96 Md. App. 771, 784 (1993).

Here, the trial court's improper reliance on the Zillow estimate to value the Landover Road property did not prejudice appellant. The 9-207 Statement was an admission by appellant and contained the exact same value for the Landover Road property as the Zillow estimate. Therefore, because appellant himself valued the Landover Road

property at $334,000, he was not prejudiced by the trial court's erroneous reliance on the Zillow estimate to find the same value.

II. The Monetary Award

Appellant contends that the trial court "abused its discretion in making a monetary award to [a]ppellee entirely based upon undisputed non-marital property." In particular, appellant claims that the court improperly ruled that the Landover Road property had increased in value during the marriage by $304,000 and that the Landover Road property "had become marital property." Thus, according to appellant, the court abused its discretion by holding that appellee was "entitled to a $100,000.00 [ ] monetary award due to the vast appreciation of the Landover Road property during and in the course of the marriage." Also, appellant asserts that the trial court "did not value any of the marital property except for the vehicles," "except to note for the record what the parties agreed was marital property and non-marital property per their 9-207 [S]tatement." Appellant concludes that "[i]t was clear abuse of discretion for the Court [to] make a monetary award to [a]ppellee based solely on the value of undisputed non-marital property."

"A circuit court's classification of property as marital or non-marital is subject to review under the clearly erroneous standard, while a discretionary standard of review applies to the decision of whether to grant a monetary award and the amount of that award." *Huntley*, 229 Md. App. at 489 (citation omitted). Under the abuse of discretion standard, "we may not substitute our judgment for that of the fact finder, even if we might have reached a different result, absent an abuse of discretion." *Id.* (quoting *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007)).

"The three-step process for determining whether to grant a monetary award is well settled. First, for each disputed item of property, the judge must determine whether it is marital or non-marital." *Abdullahi v. Zanini*, 241 Md. App. 372, 405 (2019) (citations omitted). "Second, the court must determine the value of all marital property." *Id.* Finally, "the court 'must decide if the division of marital property according to title would be unfair,' and if so, it 'may make a monetary award to rectify any inequity created by the way in which property acquired during marriage happened to be titled.'" *Id.* at 405–06 (quoting *Flanagan v. Flanagan*, 181 Md. App. 492, 519–20 (2008) (internal quotation marks omitted)). "'The clear intent of [the monetary award] is to counterbalance any unfairness that may result from the actual distribution of property acquired during the marriage, strictly in accordance with its title.'" *Id.* at 406–07 (quoting *Brewer v. Brewer*, 156 Md. App. 77, 110 (2004) (brackets in original)).

Here, the trial court stated:

> Prior to the distribution of marital property, the Court must employ a three-step process, see [F.L.] Section[s] 8-201, 8-203, 8-204[,] and 8-205.
>
> The first step is to determine what is marital property. Second, the Court must value the marital property and, third, consider the factors found in [F.L.] Section 8-205 before there is a distribution of marital property.
>
> ***
>
> **In, with respect to the Landover [Road] property, this property is in [appellant]'s name and was acquired before the marriage. The parties agreed that the Landover Road property is not marital property and that's from Court's Exhibit Number 1 [the 9-207 Statement].**
>
> ***

> According to testimony and evidence the Court received, the value of the Landover [Road] property increased by approximately 304,000 dollars during the course of the marriage.
>
> Although the Landover Road property itself is not marital property as it was purchased by [appellant] prior to the marriage, a portion of the value becomes marital property as stated in *Innerbichler*, . . . if property interests cannot be traced to a marital source, it is considered – to a non-marital source, it is considered marital property. And that's 132 Maryland App[.] 27 at 227, that's a 2000 case.
>
> Furthermore, the case states that under certain circumstances when the division of marital property by title is inequitable, the Court may adjust the equities by granting a monetary award.
>
> Due to the inequities presented here, the Court will be granting a monetary award to [appellee] which will be discussed later in the opinion, because of the increase in the value of the property.

(Emphasis added). Later in its opinion, the trial court reiterated: "The Landover Road property. *As noted, the parties agree and consent that this property itself is not marital property.* The Landover Road property was acquired while the parties were dating but not married. The property is titled in [appellant]'s name." (Emphasis added). The court again emphasized:

> **The Landover Road is titled to [appellant] and was purchased before the marriage. This is not marital property. The Court heard testimony indicating, however, that the Landover [Road] property was purchased for 30,000 dollars and that Zillow now, and Zillow now estimates that its worth is 334,000 dollars.**
>
> The Landover Road property shall remain in [appellant]'s name as it should. However, the Court will award [appellee] a monetary award that I'm going to discuss further momentarily.

(Emphasis added). The trial court concluded:

> As, with respect to the monetary award, pursuant to [F.L.] Section 8-205, after the Court determines which property is marital property, the value

> of the marital property, the Court may transfer ownership of an interest in property, grant a monetary award or both as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded.
>
> Furthermore, the monetary award is in addition to and not a substitution for a legal division of the property accumulated during the marriage according to title. It is intended to compensate a spouse who holds title to less [than] an equitable portion of property. And that's from *Innerbichler* . . . .
>
> Based on the findings the Court made above and the fact that the Court already evaluated the factors and circumstances under 8-205, the Court does find that an equitable distribution does not necessarily mean equal, but I, the Court does find that an equitable distribution is necessary in this case.
>
> **[Appellee] is entitled to a monetary award. The Court believes that an equitable distribution, that [appellee] is entitled to a 100,000 dollar monetary award due to the vast appreciation of the Landover Road property during and in the course of the marriage.**

(Emphasis added).

The trial court cited to *Innerbichler v. Innerbichler*, 132 Md. App. 207 (2000), in support of its statement that, "if property interests cannot be traced to a marital source, it is considered – to a non-marital source, it is considered marital property." The court, however, never expressly found that the appreciation in the Landover Road property during the marriage, or any part thereof, was marital property, nor did the court point to any evidence supporting such finding. We shall explain.

Innerbichler dealt with determining whether a significant increase in the value of a business, which the husband founded approximately one year before the marriage to his wife, was marital property. *Id.* at 214–16. In that case, the trial court found that the post-marriage increase in the value of the business was marital because the business's "success

[wa]s attributable to a large degree to the work efforts of the [h]usband throughout the marriage." *Id.* at 224–25. The trial court therefore calculated the value of all marital property, including the husband's interest in the business minus the value of his share of the business before the marriage, and ordered that the wife was entitled to a monetary award equal to one-half of all marital property. *Id.* at 226. We affirmed the court's decision that the increase in the value of the business was marital property because the business's "value soared after the marriage, while the [h]usband was at the helm and shepherded [the business]'s growth." *Id.* at 236.

Here, unlike *Innerbichler*, the trial court did not expressly find that the increase in the value of the Landover Road property was marital property. Nor did the court find that such increase was attributable to either appellant's or appellee's efforts during the marriage. Appellee testified on direct examination that she "put money" into the Landover Road property because appellant and appellee were "moving to Landover" and that "Landover was going to be our new [childcare] center and it needed a whole, whole lot of work." The court, however, did not cite to this testimony as to why the value of the Landover Road property increased. Similarly, the court did not specify the amount of money or work that appellee put into the Landover Road property.

Furthermore, throughout the transcript of the trial court's ruling, the court repeatedly stated that the Landover Road property was non-marital. The court explicitly stated: "The parties agreed that the Landover Road property is not marital property and that's from the [9-207 Statement]"; "[a]s noted, the parties agree and consent that this property [the Landover Road property] itself is not marital property"; and "[t]he Landover Road

[property] is titled to appellant and was purchased before the marriage. This is not marital property." Thus we conclude that the trial court's opinion, taken as a whole, properly views the current value of the Landover Road property, including any appreciation in the value during the marriage, as non-marital property.

Nonetheless, appellant argues that the trial court could not use the value of the non-marital property when determining whether to grant appellee a monetary award. Appellant is mistaken. Maryland courts have consistently held that, "even if the parties' Rule 9-207 Statement excluded certain assets as marital property, this 'does not mean that the court may not consider such non-marital property as a factor in its equitable distribution of the remaining marital property.'" *Brown v. Brown*, 195 Md. App. 72, 116 (2010) (quoting *Flanagan*, 181 Md. App. at 532). We explained in *Flanagan*: "[T]he fact that property may be excluded from the marital property 'pool,' by agreement of the parties in a Rule 9-207 joint statement, does not mean that the court may not consider such non-marital property as a factor in its equitable distribution of the remaining marital property." 181 Md. App. at 532. We elaborated:

> With respect to the *amount* of a monetary award, [F.L. § 8-205(b)(2)] instructs the court to consider "the value of *all property interests of each party*", which includes non-marital property. Unlike F.L. § 8-204, which governs what property is subject to distribution by the court, F.L. § 8-205(b)(2) requires that, in evaluating the equities between the parties, the court must consider all of the property of each party, both marital and non-marital. That would necessarily include marital property that becomes non-marital by virtue of the parties' agreement in a Rule 9-207 statement.

Id. at 534–35 (emphasis in original). Thus, in the case *sub judice*, F.L. § 8-205(b)(2) expressly authorized the trial court to consider the current value of the non-marital

Landover Road property, including any appreciation in the value of such non-marital property during the marriage, in determining whether to grant appellee a monetary award.

Finally, we disagree with appellant that the trial court did not properly value the marital property. F.L. § 8-204(a) states: "[T]he court shall determine the value of all marital property." "The statute does not require a separate decision identifying and valuing every piece of marital property in every case." Cynthia Callahan & Thomas C. Ries, Fader's Maryland Family Law § 13-12[b] (6th ed. 2016). Here, the trial court did in fact properly identify all of the marital property that was listed on the 9-207 Statement. Under the circumstances of the instant case, we disagree with appellant that the trial court was required to do anything further to value the marital property. We therefore hold that the trial court did not abuse its discretion in granting appellee a monetary award.

III. The Brock Hall Property

Finally, appellant argues that the trial court abused its discretion when it ordered the Brock Hall property sold. Appellant claims that, although the Brock Hall property is marital property, "it is not jointly titled property and therefore [is] not subject to being ordered sold by the Court."

We agree with appellant that, when marital property is titled in one spouse's name alone, the trial court can only enter a monetary award to adjust the equities of the parties in marital property. *See Brewer*, 156 Md. App. at 114 (holding the trial court "had no authority to order the sale of the property and the division of the proceeds" of office furniture because that furniture "was owned by the parties individually, not jointly").

Appellant, however, failed to state in his brief that he consented to the sale of the Brock Hall property and to the division of the sale proceeds between the parties. During direct examination, appellant testified:

> Q. [Appellant], what exactly do you want the Court to order today?
>
> A. I guess we are going to split the proceeds from Brock Hall Drive and –
>
> ***
>
> Q. How soon do you think the Brock Hall property could sell?
>
> A. I have no idea but it shouldn't be long.
>
> Q. And you are – you don't object to splitting those proceeds?
>
> A. No, not at all.

Also, during closing argument, appellant's counsel stated:

> And the Brock Hall [property], [appellant] asserts that its market value is 490,000 [dollars] and [appellee] asserts that it's 580,000 [dollars]. They both agree that it's only – it's 367,000 [dollars] owed.
>
> If you take the lowest value, and it could be high, we don't know, we don't know what it will sell for, but **I have to say that upon the sale of that home, they both stand to earn quite a bit from the proceeds of that sale. In fact, the sale of that property and in the event the proceeds were divided evenly, [appellee] would have sufficient funds to move forward and be self-supporting** immediately, even if she continued, if, you know, she chooses not to work. **If she chooses not to work, the proceeds from the sale of Brock Hall would certainly allow her to be self-supporting.**

(Emphasis added).

F.L. § 8-101(a) provides that spouses "may make a valid and enforceable deed or agreement that relates to alimony, support, property rights, or personal rights."

Furthermore, in *Droney v. Droney*, 102 Md. App. 672, 690 (1995), we explained that F.L. § 8-105(a) allows trial courts to "merge the terms of a deed, agreement, or settlement made between the parties during the divorce as part of the divorce decree." In *Harbom v. Harbom*, 134 Md. App. 430, 454–55 (2000), this Court analyzed whether in a divorce proceeding the trial court erred in ordering that the husband transfer title of a minivan, which was titled solely in his name and was stipulated by the parties as non-marital property. On appeal, the wife argued that the husband's "counsel twice consented to such a transfer, giving the court authority to order the transfer of title." *Id.* at 454. We reasoned that in previous cases, this Court has held that "'*[a]bsent consent of the parties,* ordering the . . . transfer of the husband's property to the wife, instead of increasing the monetary award *pro tanto*, was improper.'" *Id.* at 455 (quoting *Fox v. Fox*, 85 Md. App. 448, 453 n. 2 (1991) (emphasis in *Harbom*)). In *Harbom*, however, because "the [trial] court ordered the transfer of the van *only with [the husband]'s consent, stated twice by his attorney in open court*," the trial court did not err in transferring the title of the minivan to the wife. *Id.* (emphasis added).

Here, both appellant and appellant's counsel requested in open court that the trial court order the sale of the Brock Hall property and the proceeds of that sale be split between appellant and appellee. Thus, like the husband in *Harbom*, appellant consented to the sale and division of the sale proceeds of the Brock Hall property. Therefore, the statements by both appellant and his counsel gave the trial court the authority to order the sale and the division of the sale proceeds of the Brock Hall property in the divorce decree. Accordingly, the trial court did not err in so doing.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.