

Circuit Court for Baltimore City  
Case No.: 03-C-13-003758

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 447

September Term, 2018

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LAYLA BRABHAM

v.

MICHAEL PFEIFFER, et al.

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Kehoe,  
Leahy,  
Salmon, James P.  
(Senior Judge, Specially Assigned),  
JJ.

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Opinion by Salmon, J.

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Filed: June 7, 2019

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

On September 17, 2014, Layla Brabham, a minor, was awarded a \$30,000 judgment against Juanita Pfeiffer (“Mrs. Pfeiffer”).<sup>1</sup> The judgment was duly entered in the land records of Baltimore County. About three and one-half years later, on March 19, 2018, Ms. Brabham filed a writ of execution upon real property located in Baltimore County. The address of the property was 7943 Lynch Road (“the Property”). In Ms. Brabham’s request for the issuance of a writ of execution, her counsel alleged that the Property had previously been held by Mrs. Pfeiffer and her husband, Michael Pfeiffer, as tenants by the entirety but that tenancy had been “severed” by actions taken in a divorce action filed by Mrs. Pfeiffer against her husband.

On April 5, 2018, Michael Pfeiffer filed a response to the request for a writ of execution in which he contended that the Property was still held by him and his wife as tenants by the entirety because no judgment of divorce had been entered dissolving their marriage. The matter was heard before the Honorable Kathleen G. Cox on April 25, 2018. Judge Cox issued an order on that same date quashing Ms. Brabham’s writ of execution. She quashed the writ on the grounds that, presently, no judgment of absolute divorce had been entered concerning the marriage between Juanita and Michael Pfeiffer, and therefore Ms. Brabham had no right to enforce a judgment against Mrs. Pfeiffer by attempting to attach property still held by a married couple as tenants by the entirety. Ms. Brabham filed this timely appeal, in which she raises one issue:

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<sup>1</sup> The judgment was obtained on behalf of Ms. Brabham by her mother and next friend, Jessica Brown.

Whether the circuit court committed reversible error by quashing appellant's writ of execution?

**I.**

**UNDISPUTED FACTS**

Juanita and Michael Pfeiffer married on July 15, 1995. Mrs. Pfeiffer, on November 5, 2004, signed a quit-claim deed transferring the Property from her sole name into the names of herself and her husband as tenants by the entireties. Juanita and Michael Pfeiffer separated on March 18, 2013.

Because of injuries suffered in a dog bite incident, Ms. Brabham filed a personal injury action against Mrs. Pfeiffer in the Circuit Court for Baltimore County. On September 17, 2014, she obtained a \$30,000 judgment against Juanita Pfeiffer in that suit. After the \$30,000 judgment was entered, no payments were made on that judgment, and interest on the judgment began to accrue.

On June 29, 2016, Mrs. Pfeiffer filed a complaint for absolute divorce against her husband in the Circuit Court for Baltimore County.<sup>2</sup> The divorce matter was heard before Judge Cox on March 14, 2018. At the beginning of the hearing, counsel for Mrs. Pfeiffer announced that the parties had reached a settlement agreement concerning all property issues that had previously separated the parties. More specifically, the parties orally agreed that: (1) the Property was encumbered by a home equity line of credit with a current balance of approximately \$30,000; (2) Mrs. Pfeiffer alone owed the money due on the home equity loan; (3) Mr. Pfeiffer, through his employer, had a 401-K Plan with an outstanding lien

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<sup>2</sup> A supplemental complaint for absolute divorce was filed on October 20, 2017.

against it but with a positive balance of \$19,096.51; (4) Mrs. Pfeiffer's counsel would prepare a qualified domestic relations order ("QDRO") transferring the \$19,096.51 balance to "a 401-K of" Mrs. Pfeiffer's choosing; (5) once Mrs. Pfeiffer received the \$19,096.51 balance, she would execute a quit-claim deed, that would result in Mr. Pfeiffer having sole and exclusive ownership of the Property; (6) Mr. Pfeiffer, within six months, would refinance the home equity loan that encumbered the Property and eliminate Mrs. Pfeiffer's liability for the loan; (7) during the aforementioned six-month period, Mr. Pfeiffer would have the right to live on the Property and would "continue to make the payments and pay any and all expenses associated with the home" while he was in residence; and (8) in the event that Mr. Pfeiffer was unable to refinance the Property within six months, the Property "may have to be sold." Counsel for the parties, in placing the agreement on the record, told Judge Cox that they did not anticipate that Mr. Pfeiffer would have any problem refinancing the home equity loan because the equity in the Property was great when compared with the relatively small balance due on the home equity loan. In their oral settlement agreement, the couple also voiced their agreement as to several other matters, none of which are germane to the issues presented in this case.

After the oral settlement agreement was placed on the record, Mr. Pfeiffer testified that he and his wife had been separated since 2013, and that there was no hope or reasonable expectation of a reconciliation. At the conclusion of the proceeding, Judge Cox requested that counsel for Mr. Pfeiffer prepare an order granting a final judgment of divorce and then forward it to her for signature. Judge Cox added that after she received the appropriate

paper work, the judgment of divorce would “be granted, incorporating the agreement” that had been placed on the record by counsel.

Four days after the aforementioned divorce hearing, counsel for Ms. Brabham filed a writ of execution in an attempt to assert a lien against what Ms. Brabham contended was Mrs. Pfeiffer’s one-half interest in the Property. After Mr. Pfeiffer filed an opposition to the writ of execution, Ms. Brabham’s counsel filed a response in which he relied on three cases, viz., 1) *Bryce v. Dyer*, 309 Md. 421 (1987); 2) *Eder v. Rothamel*, 202 Md. 189 (1953); and 3) *Chambers v. Cardinal*, 177 Md. App. 418 (2007).

At the April 25, 2018 hearing, counsel for Ms. Brabham acknowledged that, as of the date of the hearing, the Property was still titled in the name of Michael and Juanita Pfeiffer as tenants by the entireties.

## II.

### DISCUSSION

Judge Cox did not err in quashing the writ of execution. This Court, in *Watterson v. Edgerly*, 40 Md. App. 230, 236 -37 (1978), said:

It has long been settled in this State that the property of a husband or wife held as tenants by the entireties cannot be taken by the creditors to satisfy the individual debts of either the husband or wife. *Hertz v. Mills*, [166 Md. 492, 171 A. 709 (1934)], *Annapolis Banking & Trust Co. v. Neilson*, 164 Md. 8, 164 A. 157 (1993); *Wolf v. Johnson*, 157 Md. 112, 145 A. 363 (1929); *McCubbin v. Stanford*, 85 Md. 378, 37 A. 214 (1897); *Marburg v. Cole*, 49 Md. 402 (1878). That was also the rule at common law. 2W. Blackstone, *Commentaries on the Laws of England* \*182 (Lewis’s ed. 1898), observes that when “both are seised of the entirety, *per tout, et non per my* [by all and not by the half] . . . neither the husband nor the wife can dispose of any part without the assent of the other. . . .” Because a judgment against either the husband or the wife does not attach to the judgment debtor’s interest in the

entirety, *Hertz v. Mills*, 166 Md. at 496, 171 A. at 711, the husband and wife may convey the property to a third party free and clear of the judgment. *Hertz v. Mills, supra*; *Jordan v. Reynolds*, 105 Md. 288, 66 A. 37 (1907).

*See also, In re: Birney*, 200 F.3d. 225, 227 (1999) (“Although generally a money judgment arising out of a Circuit Court proceeding will constitute a lien on the judgment debtor’s land located in the county in which the judgment was rendered . . . , property held as tenants by the entireties cannot be taken by creditors to satisfy the individual debts of either the husband or the wife” (citing *Watterson, supra.*)).

Appellant contends that Judge Cox committed reversible error by granting the motion to quash the writ of execution. In support of that position, appellant first asserts:

It is Appellant’s position that the Appellees were effectively divorced on March 14, 2018, when Judge Cox orally granted Appellees an absolute divorce. Therefore, tenants by the entireties status was terminated and all such property held by Appellees was converted to tenants in common. Consequently, any property owned by Appellee, Juanita Pfeiffer, was subject to the Writ of Execution filed by the Appellant on March 19, 2018.

Appellant’s counsel makes essentially the same contention when he next argues:

Appellant believes that once the Appellees placed their testimony on the record and Judge Cox orally ordered that they be granted an absolute divorce that Appellee Juanita Pfeiffer lost any tenants by the entireties protection.

We reject these contentions.

Judge Cox never orally granted Mr. and Ms. Pfeiffer a divorce. She simply expressed her willingness to sign an order granting an absolute divorce, when an appropriate order was received by her. In other words, the divorce was not yet final.

Maryland Rule 2-601 provides, in relevant part:

(a)(4) A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule. . . .

(b)(2) *Entry*. The clerk shall enter a judgment by making an entry of it on the docket of the electronic case management system used by that court . . . .

(d) *Date of Judgment*. . . [R]egardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule.

A plain reading of Rule 2-601 makes clear that what Judge Cox said at the divorce hearing did not dissolve the Pfeiffer's marriage because no final judgment of divorce was subsequently entered. Therefore, the parties were still married at the time the court determined that Ms. Brabham did not have an enforceable lien against the Property.

In the circuit court and in this Court, appellant relies on *Chambers v. Cardinal*, 177 Md. App. 418, 425 (2007) for the proposition that severance of a joint tenancy can “occur involuntarily, such as when . . . a creditor obtains a judgment against one of the joint tenants *and* levies upon the property in execution on the judgment” (citations omitted). Appellant's reliance of *Chambers* is misplaced because that case dealt with property held by a married couple as joint tenants and not as tenants by the entirety. *Id.* at 422. A creditor, prior to a divorce, may execute against property that the debtor owns as a joint tenant. *See Bruce v. Dyer*, 309 Md. 421, 428 n.2 (1987). But, as shown by *Watterson, supra*, the same rule does not apply as to property held by a husband and wife as tenants by the entirety.

Appellant's reliance on *Eder v. Rothamel*, 202 Md. 189 (1953) is likewise misplaced for the same reason. The *Eder* case also dealt with land owned by the litigant as joint tenants, in contrast to the case *sub judice* where a party attempts to attach property owned as tenants by the entirety. See also, *Diamond v. Diamond*, 298 Md. 24, 29 (1983) (property held in a tenancy by the entirety cannot be taken to satisfy individual debts of a husband or wife.).

Appellant also relies on *Bruce v. Dyer*, *supra*. In the *Bruce* case, a husband and wife executed a voluntary separation and property agreement on October 11, 1984. 309 Md. at 424. Paragraph six of the agreement stated that the marital home, which Mr. and Mrs. Bruce owned as tenants by the entirety, would be put up for sale by October 15, 1984. *Id.* The agreement further provided that once the house was sold, the net proceeds of sale would be divided 55% to Mr. Bruce and 45% to Mrs. Bruce. *Id.* at 425. The husband died on December 14, 1984, as a result of injuries received in an automobile accident. At the time of Mr. Bruce's death, no divorce had been granted and the marital home had not been sold.

The widow, Nancy Lee Bruce, brought suit in the Circuit Court for Frederick County asking the court to declare that the personal representative of her husband's estate had no claim or interest in the marital home because the tenants by the entirety ownership in the property had expired with her husband's death. The trial court ruled in favor of the personal representative of the husband's estate, holding that the contract set forth in the separation and property agreement was enforceable. *Id.* at 425. Ultimately, the Court of



Appeals granted cross petitions for a writ of certiorari. The personal representative of the husband's estate contended that the separation and property settlement agreement converted the title of the marital home from tenancy by the entireties into a tenancy in common. *Id.* at 426. The widow, Nancy Bruce, on the other hand, contended that her husband's death operated to terminate the separation and property settlement agreement, thereby eliminating any right of the personal representative to enforce the agreement to sell the real property. *Id.*

The Court of Appeals first addressed the contention made by the personal representative that the separation and property agreement converted the title from tenancy by the entireties to tenancy in common. The Court held that it did not. *Id.* at 438. The precise holding of the *Bruce* Court, in regard to the first question presented, was "that the spouses in the case at bar continued to own the land in question as tenants by the entireties following the execution of their separation and property settlement agreement . . . ." *Id.* In reaching that conclusion, the *Bruce* Court cited, with approval, the case of *Jonas v. Logan*, 478 So.2d 410 (Fla. Dist. Ct. App. 1985), a case with facts quite similar to those in the present case. 309 Md. at 434. The *Bruce* Court summarized the facts and holding in the *Jonas* case as follows:

In *Jonas* . . . , a creditor (mortgage holder) of one spouse contended that the following language in a property settlement agreement converted a tenancy by the entireties into a tenancy in common upon execution of the agreement:

"The Husband agrees to forthwith produce the deed on said marital home to the Wife and execute a Quit-Claim Deed to the Wife, thereby giving up any right, title or interest which he may claim in the said property

within fourteen (14) days from the date of signing this Agreement.” 478 So.2d at 411.

The Florida court disagreed, stating:

“The property settlement agreement discloses that the parties intended to convey Mr. Logan’s interest upon execution of the quit-claim deed to Mrs. Logan . . . . Although a husband and wife may contract to terminate an estate by the entirety, contractual termination did not occur in this case. *The parties merely agreed that Mr. Logan would convey the property to Mrs. Logan at a later date. They did not agree to change the status of the property prior to the conveyance.*” 478 So.2d at 411 (emphasis added).

309 Md. at 434.

After disposing of the first issue presented, the *Bruce* Court addressed the widow’s contention that her husband’s death operated to terminate the separation and property settlement agreement. *Id.* at 438. In regard to the second issue, the Court of Appeals held that this Court did not err when it said in *Bruce v. Dyer*, 67 Md. App. 499, 507 (1986) the following:

[W]e conclude that the [personal representative of the husband] is possessed of an enforceable interest in the property titled in the name of the [widow]. [The personal representative] may obtain appropriate relief to compel a sale of the property and a distribution of the proceeds in accordance with the separation and property settlement agreement entered by her decedent and the [widow].

In her brief, appellant, after summarizing some of the important facts in *Bruce*, makes the following argument:

The wife [Mrs. Bruce] set up, as her defense, that she was the sole owner of the real property by virtue of the TBE status terminating upon the death of her husband and that she owed his estate nothing. The Court, however, granted the husband’s estate an enforceable interest in the formerly held TBE real estate because the parties, i.e. the husband and wife, had acted jointly to

terminate the TBE status of their real property by mutual consideration in a fully formed contract, i.e. the separation and property settlement agreement.

In the case at issue, both Appellees, Michael Pfeiffer and Juanita Pfeiffer, by virtue of their property agreement placed on the record before the trial Court on March 14, 2018, had created a fully formed contract between themselves that has the consequence of allowing for Appellant to levy and execute her judgment upon Appellee, Juanita Pfeiffer's, complete interest in 7943 Lynch Road, Baltimore, Maryland 21222.

We disagree with appellant's analysis of the holding in *Bruce*. The *Bruce* Court did not grant the husband's personal representative an enforceable interest in the property "because the . . . husband and wife, had acted jointly to terminate the TBE status of their real property by mutual consideration in a fully formed contract. . . ." Instead, the *Bruce* Court held that the agreement, when it was signed, did not terminate the tenants by the entirety status of the property; it remained titled as tenants by the entirety until the husband's death. 309 Md. at 438. The reason that the *Bruce* Court upheld the right of the husband's personal representative to a 55% interest in the property was based on the legal principal that, unless a contract is for personal services, or by its express provisions terminates upon the death of a party, a contract survives the death of a party and is binding upon his estate. *Id.* at 439. Moreover, in the *Bruce* case, the separation and property settlement agreement specifically addressed the possibility of one of the parties' death by providing that the parties bound not only themselves but their heirs and personal representatives. *Id.* at 440.

Nothing in the *Bruce* case, or any other case cited by appellant, supports her contention that Mr. and Mrs. Pfeiffer, by virtue of their March 14, 2018 agreement,

“created a fully formed contract between themselves that has the consequence of allowing for Appellant to levy and execute her judgment upon . . . Juanita Pfeiffer’s, complete interest in” the property. As previously stated, because no divorce had been entered, the oral property agreement entered into on March 14, 2018, did not change the ownership of the property from tenants by the entirety into tenants in common. But even assuming, *arguendo*, that a third party, like appellant, could somehow enforce the settlement agreement, as the personal representative of the husband did in *Bruce*, appellant would not benefit because, if the terms of the settlement agreement were fulfilled, Mr. Pfeiffer, in the future, would own the property – not Mrs. Pfeiffer.<sup>3</sup>

### CONCLUSION

At the time that Judge Cox denied appellant’s request for a writ of execution against the Property, the parties were still married. And, as far as is disclosed in the record, Mr. and Mrs. Pfeiffer are still married. An agreement to convey tenants by the entirety property, in the future, does not change the tenancy from tenants by the entirety to tenants in common. Therefore, because it is clear that a creditor may not seize property owned as

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<sup>3</sup> We reject appellant’s characterization of the oral contract that was put on the record before Judge Cox as “fully formed.” Under the contract, two contingencies had to be fulfilled before Mrs. Pfeiffer had any obligation to quit claim her interest in the Property to Mr. Pfeiffer. Neither of the contingencies had been fulfilled at the time of the hearing concerning the writ of execution. In this case, as in *Jonas v. Logan*, 478 So.2d at 411, the parties agree that one spouse would make a conveyance of property to another in the future; but in their agreement, the spouses did not agree to change the status of the Property prior to the conveyance.

tenants by the entirety to satisfy the debt incurred by one spouse alone, Judge Cox did not err in denying appellant's request for a writ of execution.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**