UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0542

September Term, 2014

HENRI JEAN-BAPTISTE

v.

VIKKI JEAN- BAPTISTE

Woodward,
*Zarnoch,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: October 15, 2015

*Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

Vikki ("Wife") and Henri ("Husband") Jean-Baptiste were married on May 13, 1988. The parties are the parents of two children: a twenty-one-year-old daughter and a nineteen-year-old son. Wife filed for divorce on February 25, 2013. Husband counterclaimed. After a merits trial on March 31, 2014, the Circuit Court for Montgomery County (Burrell, J.) granted the parties a divorce and made an award of marital property. Husband noted a timely appeal.[1]

ANALYSIS

Although the grounds for the parties' divorce are not among the questions that Husband has presented for our review, they are undoubtedly the source from which the controversies arose. Wife's initial complaint pled both the no-fault ground of a 12-month separation without cohabitation, FL § 7-103(a)(4), *and* the fault-based ground of excessively vicious conduct, FL § 7-103(a)(7). Husband's counter-complaint pled *only* the no-fault ground of the 12-month separation. At trial, however, Husband also wanted to put on evidence that he thought would support the additional ground of adultery by Wife. FL § 7-103(a)(1).[2]

At trial, Wife testified and introduced evidence only with respect to the 12-month separation. Husband agreed that those no-fault grounds were satisfied. A neighbor provided

[1] Husband has prepared his own brief. Untutored in legal procedure, he has not produced a usable brief. Wife did not file a responsive brief.

[2] Husband moved to amend his counter-complaint to add, among other things, a claim for vicious conduct, but not for adultery. That motion was denied and that ruling was not challenged in this appeal.

corroborating testimony. As a result, the trial court declined to allow Husband to cross-examine Wife, to testify himself, or to present other evidence of either Wife's claim of vicious conduct or Husband's unpled claim of adultery, ruling both avenues of questioning to be irrelevant.[3] Thus, Husband was prevented from putting on much of his planned case, including his efforts to explain why (1) Wife's prior claims of domestic violence in a separate protective order proceeding were unwarranted, (2) to show that Wife had committed adultery (with evidence that she had drank coffee at her supervisor's hotel in New Orleans), and (3) to show behind both events a scheme by Wife's employer to harm Husband and keep him out of the way while it bid on a lucrative contract with the federal government.

Husband did not at the time and does not appear today to understand the trial court's ruling. But it was unquestionably correct. Once the no-fault grounds for the parties' divorce were established, there was no need for Wife to present evidence of any other grounds. To do so would have been duplicative, wasteful of the Court's time, and unnecessarily provocative.[4] Similarly, it would have been erroneous for the trial court to have allowed

[3] In Judge Burrell's words: "[W]e're not going to turn this into a domestic violence hearing. … This is a merit[s trial] for a divorce. You want a divorce. She wants a divorce. You agree that you've lived apart for a year. That's what we're going to be focusing on."

[4] When a party pleads alternative grounds for divorce, it is for the trial court to decide the grounds for the divorce. *Welsh v. Welsh*, 135 Md. App. 29, 38 (2000). As a practical matter, trial courts uniformly prefer no-fault grounds, a practice of which we wholeheartedly approve.

Husband to put on evidence to support his unpled ground of adultery. As a result, the trial was appropriately limited, first to the no-fault grounds for the divorce and then to the appropriate financial resolution.

With that firmly in mind, we turn to the questions presented in Husband's brief.

1. The Trial Court Did Not Abuse Its Discretion in Denying Husband's Motion for a Postponement.

Husband's first and third questions presented concern his allegation that the trial court erred by denying his request for a postponement.[5] We have scoured Husband's brief but cannot find an "[a]rgument in support of the party's position on [this] issue," in violation of Rule 8-504(a)(6). That alone is sufficient to reject Husband's claims regarding the denial of the requested postponement.

Moreover, we see no basis on which Husband could prevail in this argument. Rule 2-508(a) governs requests for postponements and continuances. It states:

> **(a) Generally.** On motion of any party or on its own initiative, the court may continue a trial or other proceeding as justice may require.

[5] As formulated by Husband, the questions were:

> 1. Was Judge Debelius correct to deny Appellant request for postponement?
>
> * * *
>
> 3. Was the judge correct to deny the request for postponement knowingly there were open motions that were not been ruled with regard the said merit trial?

The decision to grant or deny a postponement "lies within the sound discretion of the trial judge" and will not be disturbed absent an abuse of that discretion. *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). An abuse of discretion isn't just a mistake: it is a decision that is "'clearly against the logic and effect of facts and inferences before the court'" or "'violative of fact and logic.'" *Id*. (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). The Court of Appeals has identified two postponement circumstances that may constitute an abuse of discretion: (1) when a postponement is mandated by law; or (2) "in the face of an unforeseen event, [when] counsel [or a self-represented party] had acted with diligence to mitigate the effects of the surprise." *Id*. at 669-70.

Although Husband's brief fails to make an argument, we understand from his question presented, *see* supra, note 5, that he believed he needed a postponement because there were open discovery motions. He argued the same point orally to Judge John W. Debelius, III, stating that he sought a postponement "because I have not received any discovery from the opposing party. As of yet, the[re] [is] still [a] pending motion. Such a motion need[s] to be ruled on." After a discussion of who owed discovery to whom, Judge Debelius denied the postponement request and transferred the case to Judge Sharon V. Burrell. We conclude that, in the circumstance, it was not an abuse of Judge Debelius's discretion to deny the postponement request. Open discovery motions do not automatically compel a postponement. This is neither a situation where a postponement is required by law or an unforeseen circumstance. As a result, the decision of whether to grant a postponement was within Judge Debelius's discretion, which we will not question.

Moreover, the record demonstrates the wisdom of the trial court's approach: Judge Burrell considered Husband's allegations of Wife's discovery failures on a case-by-case basis when they became relevant to the proceedings. Because Judge Burrell declined to admit evidence relevant to either Wife's vicious conduct grounds or Husband's unpled adultery grounds most, if not all, of the discovery disputes were rendered moot.

2. The Trial Court Did Not Abuse Its Discretion in Denying Husband's Motion for Contempt.

Husband's second question presented concerns his allegations that Wife failed to provide him with necessary discovery materials and that the trial court erred by failing to grant his motion for sanctions. Husband's brief is deficient in that it fails to identify what discovery materials he wanted and the prejudice that he suffered by not obtaining the materials. *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 618 (2011) (reaffirming that appellate courts are not expected to search the record for facts to support a party's position). As discussed in the prior section, however, it is apparent to us that Judge Burrell's decision not to admit evidence relative to the alternative grounds for divorce rendered most, if not all, of Husband's claims regarding discovery moot.

3. The Assignment of This Case to Judge Burrell Did Not Deprive Husband of a Fair Trial.

Husband's fourth question presented suggests that because Judge Burrell was unfamiliar with this complicated case, Husband was denied his right to a fair trial.[6] Husband has not identified any complexity in the case that caused Judge Burrell difficulty or any errors that she made as a result of this complexity. In fact, our review of the record suggests precisely the opposite. First, the only complexity that we discern from the record was caused by Husband's unfamiliarity with court procedures and unwillingness to appreciate and abide by the trial court's ruling regarding evidence to the abandoned grounds for divorce. Second, the trial court dealt with this complexity with admirable patience, forbearance, and restraint. As such, we see no basis for Husband's claim that he was denied a fair trial.

4. Judge Burrell Did Not Abuse Her Discretion in Rejecting Husband's Proffered Evidence.

Husband's fifth question presented concerns the manner in which Husband's evidence was rejected.[7] Wife's counsel told Judge Burrell that Husband had failed to respond to discovery propounded by Wife, including discovery intended to show what

[6] Husband's question was: "4. After losing the pre-scheduled judge (Salant), was the decision to send the Two days merit trial to an on duty judge unfamiliar with the complexity of the case, precluded Appellant to a fair trial?"

[7] Husband's question asked: "5. Was judge Burrell correct after having Appellant presents all his evidence to Appellee and rejected them into evidence exhibits, and penalized Appellant for lack of evidence to support Appellant's claims? Or did the Judge indirectly granted Appellee's oral Motion for Sanctions?"

evidence Husband intended to put on at trial. A confusing discussion ensued about who had propounded discovery on whom, who had filed motions to compel or for sanctions, and who had had their respective motion granted. To cut short the debate, Judge Burrell asked Husband to proffer what evidence he intended to put on at trial. In response, Husband listed an inventory of documents relevant to re-litigating the domestic violence protective order that Wife had obtained against him and to his claims of marital infidelity by Wife with her supervisor. As we have discussed, none of these documents were relevant to the issues at trial and Judge Burrell did not err by excluding them. Moreover, it is worth noting that Judge Burrell also asked Husband for other documents that he would want to introduce at trial—documents that might be relevant to the issues that she would be deciding—and Husband specifically denied having anything to introduce. We find no abuse of discretion here.

5. The Trial Court Did Not Err in the Marital Property Award.

Husband's next claim of error concerns the award of marital property. Judge Burrell's Memorandum Opinion was thorough in its analysis. The trial court ordered the sale of the marital home because "[n]either party can afford to pay the mortgage and other expenses." She awarded Wife a credit from the proceeds of the sale in the amount of $178,901.55 because, she found, that Wife's testimony was unrebutted that she alone had been making mortgage payments since 2006.

Husband challenges that factual finding. He points out that there was testimony that Wife worked for Husband's businesses from March 2002 until 2011. He claims now that

when he "[p]urchased the Marital home in December 2001, for business purposes [he] placed all Assets [in] wife's name and that is the reason the Mortgage payments records were from [Wife] who was employed by [Husband] at the time." We understand this to mean that Husband claims to have contributed money to the mortgage payments through the salary he paid Wife while she was his employee. While their arrangement could have been precisely as Husband describes, we cannot know if it actually was. The trial court is limited to making findings that are supported by the evidence presented at trial. As Judge Burrell noted, "[Wife] offered testimony and documents in support of her Statement [Concerning Marital and Non-Marital Property. Husband] did not dispute the items or the values included in [Wife's] Statement and offered no testimony or documents in support of his Statement." We have reviewed the record and transcript and agree with this characterization. Given this, we cannot say that Judge Burrell erred in awarding Wife a credit in the amount of $178,901.55 from the proceeds of the sale of the marital home.

5. The Clerk's Office Did Not Err by Correcting Documents.

Although it is not completely plain, it appears that Wife's counsel made typographical errors first by identifying the defendant as "Saul Reyes" in the initial complaint and, in a subsequent document, by using the wrong case number. Husband faults the clerk's office for correcting these errors. We can discern no prejudice to Husband from these errors or their correction.

6. There was No Generalized Unfairness.

Husband's next contention is that while he was required to comply with the trial court's orders, Wife was not. While it may have felt that way to Husband, he has not provided us with examples of rulings in which he was treated unfairly. It is not our function to search the record for examples to prove his point. *Ruffin Hotel Corp.*, 418 Md. at 618. Therefore, we reject this contention.

7. There Was No Error in Allowing Wife *Not* to Submit Exhibit 12 into Evidence.

Particularly difficult for an appellate court to analyze is Husband's ninth question presented, in which he claims that the trial court erred by allowing Wife *not* to submit her Exhibit 12 into evidence. The transcript reveals that Wife introduced, and the trial court accepted into evidence, her Exhibit 11 followed by her Exhibit 13. Judge Burrell asked if skipping Exhibit 12 was intentional: "You skipped 12?" and Wife's counsel acknowledged that it was: "I did, your honor." Exhibit 12 was never introduced and it has not been made part of the record on appeal. We don't know what it was or what it would have said. The trial court didn't see it or rule on its admissibility. Therefore, no claims about this exhibit are preserved for our review. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court..."). The only thing that we can say with certainty is that it would be an unusual circumstance indeed in which we would find error with a trial court not forcing a party to introduce an exhibit into evidence. This claim is rejected.

8. The Trial Court Did Not Err in Dismissing Witnesses and Refusing to Issue Bench Warrants.

Finally, Husband's last claims concern the trial court dismissing his witnesses and refusing to issue bench warrants for witnesses who failed to appear. The dismissed witnesses were deputy sheriffs who were subpoenaed by Husband to bring records relating to the domestic violence protective order previously brought by Wife against Husband. This information was not relevant and Judge Burrell was correct in dismissing the deputy sheriffs from the courtroom. The record also discloses a stack of bench warrant requests for employees of Wife's employer. On each, Judge Burrell drew a diagonal line through the request and wrote "denied." Although we have no proffer as to what testimony was anticipated from these witnesses, from our review of the transcript, we understand that one of the bench warrants was for Wife's immediate supervisor, with whom Husband alleges she was conducting an adulterous affair. The other proposed witnesses were other employees of Wife's employer, who Husband might have questioned about their alleged scheme to harm Husband and to keep him out of the way while they bid for a federal contract.[8] We have discussed why this testimony would not have been relevant to the issues

[8] In the weeks leading up to trial, Husband issued subpoenas for the testimony of these same witnesses. Wife filed a "Motion to Quash Subpoena[s] and for Protective Order." In that pleading, Wife said that Husband had stated in open court that the witnesses were "being called for the purpose of providing testimony related to national security interests related to [Wife's] employment and National Security Violations." Husband filed a "Motion Opposing Motion to Quash Subpoena[s] and Protection Order" in which he denied having made such a proffer and asserted that by Wife (continued…)

in the trial. Therefore, we find no error in the trial court's decision not to issue the bench warrants.

CONCLUSION

For the foregoing reasons, the judgment of the Circuit Court for Montgomery County is affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

"implying National Security employment and National Security violations," she and her employers were falsely impersonating federal employees. On the record in this Court, it is unclear with whom this idea (that Wife and her employers were attempting to assert national security as a basis for refusing to provide discovery materials and appear for depositions) arose but we see no relevance to it or prejudice to Husband from the way in which the trial court dealt with it, which was to ignore it.