

Circuit Court for Charles County
Case No. 08-C-14-001231

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 559

September Term, 2020

DAVID THORNE

v.

CYNTHIA THORNE

Fader, C.J.,
Nazarian,
**Gould,

JJ.

Opinion by Nazarian, J.

Filed: September 17, 2021

** Steven B. Gould, now serving on the Court of Appeals, participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a specially assigned member of this Court.

* 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.

David Thorne (“Husband”) and Cynthia Beuchert, formerly Cynthia Thorne, (“Wife”) were divorced and a Judgment of Absolute Divorce was entered by the Circuit Court for Charles County on August 19, 2015. As part of the Judgment, the court appointed a trustee to sell and distribute several items of marital property and the proceeds of items that would be sold. This appeal involves the decision, at the close of a review hearing, to distribute items of marital property to Husband and Wife rather than allowing the trustee to sell the property. Husband challenges the court’s order, and we vacate and remand.

I. BACKGROUND

Husband and Wife were married on August 31, 1991. During their marriage, they started and operated Zekiah Valley Farms, a farm business that produced and sold meats, produce, and honey and hosted farm-related events.

After twenty-four years of marriage, Wife filed for divorce, and on August 19, 2015, the circuit court entered their Judgment of Absolute Divorce. Because they had not been able to reach agreement on elements of their property distribution, the Judgment included a provision for the court to appoint a trustee to sell and distribute the proceeds of the remaining marital property. The Judgment specified twelve items of property the trustee would sell:

- (1) 16255 Inheritance Drive, Brandywine, Maryland 20613;
- (2) 115.655 acres recorded in Book 0551, Page 0330 of the Land Records of Charles County, Maryland, and known as “Booth Place.”
- (3) 198.91 acres at 5235 Bryantown Road, Waldorf, Maryland 20601;
- (4) 23 acres at 13725 Booth Place, Waldorf, Maryland 20601;

- (5) 15295 Beuchert Place, Hughesville, Maryland 20637;
- (6) Zekiah Farms, LLC;
- (7) 2003 Chevrolet Suburban 1500;
- (8) 3 AR 15s;
- (9) 2 Block [sic] 27s
- (10) 2 Beretta 92 Fs 9 mms;
- (11) Wather [sic] Air Rifle; and
- (12) Sig Soure [sic] Pistol P230 380 caliber

The Judgment also stated “that all farm equipment shall be immediately returned to the location of the business being operated and known as Zekiah Farms, LLC.”

In December 2015, the trial court ordered that the farm properties¹ would be listed for sale, but that Husband or Wife could make an offer for the properties and the livestock, equipment, and other assets of Zekiah Farms, LLC:

[T]he property and holdings of Zekiah Farms, LLC, will be placed for sale with a listing by [the real estate agent], however, either party may make an offer to purchase equipment, livestock, and other portions of the assets, under supervision by the Trustee and any such offers to purchase by the parties of the real property shall be evaluated by [the real estate agent], and said cost and evaluations shall be paid out of the proceeds of the sale and said offers by the parties on the property will be excluded from the listing agreement by [the real estate agent]

In March 2016, the trustee filed a Report of Sale and asked the court to approve an agreement to sell to Wife the three farm properties and a list of tangible property for \$550,000. Husband filed exceptions to the Report, and excepted specifically to the

¹ The farm properties are the ones listed in the Judgment on lines (2), (3), and (4).

inclusion of items of personal property among the items Wife was buying. In September 2016, the circuit court ratified the sale of the three farm properties, but sustained Husband’s exception to the sale of the personal property items. In its memorandum, the court stated that there are “three potential owners of the personal property located on the farm: Husband, Wife, and Zekiah Farms, LLC. . . . It is unclear from the testimony who is the owner of the personal property items located on the farm.”

After the sale of the farm properties, the court held a series of review hearings to monitor the progress of the trustee’s efforts to sell and distribute the marital property. The first review hearing was held on January 23, 2017. At the second review hearing in June 2017, the trustee struck his appointment and a new trustee was appointed.

The third review hearing took place on October 13, 2017. As the hearing was under way, the court directed the parties to leave, gave them ninety minutes to drive to the farm and inventory the property and return to court. The court then took testimony about the value of the property and, in an oral ruling, distributed it. The court awarded Husband the 5420 John Deere tractor, stand-up tool chest, stuffed deer head, bull’s horn, snow plow, and salt spreader, and awarded all other items at Zekiah Farms to Wife. At the close of the hearing, the trial court asked Wife’s attorney to prepare an order to memorialize the oral ruling. But an order was never filed, and Husband never claimed the sixteen items of property that the court distributed to him.

In June 2020, Husband filed a proposed order with the trial court asking the court to distribute the property consistently with the oral ruling and docket entry from the

October 13, 2017 review hearing. Wife then filed two Motions for Appropriate Relief, one of which asserted that Husband had forfeited his rights to the property by not collecting it after the review hearing. On July 2, 2020, the court entered a written order “memorializing the oral ruling” he made on October 13, 2017 and acknowledging the time lapse by “not assessing fault for the failure to have these items removed in 2017 as previously ordered.” Husband filed a timely notice of appeal from the July 2, 2020 order, and Wife filed a cross-appeal that was stricken as untimely.²

To summarize the state of the property distribution: items one through four have been sold, items five and seven are not yet sold, but are not the subject of this appeal,³ and the parties’ rights to items six and eight through twelve remain contested:

- As to the sixth property, Zekiah Farms, LLC, the court distributed some of the tangible farm equipment during the October 13, 2017 review hearing, then concluded that the LLC had no value.
- The various firearms listed as items eight through twelve remain undistributed. At the review hearing on January 23, 2017, Husband offered to purchase a portion of the firearms for \$7,000. The court gave Wife a few days to counter with a higher offer, but she never did. The issue of distributing

² Wife did not file a brief to represent her position as the appellee in this matter, so we address only Husband’s contentions.

³ The first item, the Inheritance Drive property, the marital home, was sold. The court approved the sale on August 2, 2019. The second, third, and fourth properties (Book 0551, Page 0330, Bryantown Road, and Booth Place) were sold to Wife. The properties were sold together because Zekiah Farms was built upon these three adjacent parcels of land, and the court ratified the sale on September 29, 2016. The fifth property, Beuchert Place, remained unsold at the time this appeal was filed. The record does not indicate whether the Chevrolet Suburban, item seven, has been sold by the trustee or bought by either party.

the firearms was raised at the October 13, 2017 hearing, but the court never ruled and they remain undistributed marital property.

We supply additional facts as necessary below.

II. DISCUSSION

Husband raises five arguments on appeal, four of which boil down to whether the trial court erred when it distributed property at the October 13, 2017 review hearing in the manner memorialized in the July 2, 2020 order.⁴ Husband’s fifth argument challenges the

⁴ Husband phrased the Questions Presented in his brief as follows:

I. Did the trial court violate [Husband’s] right to procedural due process by *sua sponte* holding an evidentiary hearing during what was scheduled to be a review hearing on the Trustee’s progress, for which [Husband] acknowledged that he was not prepared?

II. Did the trial court err in failing to enter a judgment on the disposition of the guns?

III. Was the trial court’s award of most of the tangible property on the Farm properties to [Wife], without a thorough inventory and valuation of same, clearly erroneous?

IV. Was the trial court’s failure to approve [Husband’s] offer to purchase the tangible property the Farm properties for more than the estimated fair market value clearly erroneous?

V. Was the trial court’s unsubstantiated conclusion that Zekiah Farms, LLC had no value clearly erroneous?

We note as well that although the July 2, 2020 order of the circuit court post-dates the Judgment by five years, it nevertheless is appealable as an order for the sale, conveyance and delivery of personal property. *See* Md. Code (1973, 2020 Repl. Vol.), § 12-303(3)(v) of the Courts and Judicial Proceedings Article (“CJ”) (allowing a party to appeal from an interlocutory order “[f]or the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court”).

court’s failure “to enter a judgment on the disposition of the guns.” Because, as we explain, the court’s order—which distributed property previously committed to the trustee for sale and distribution—effectively modified the underlying Judgment rather than implementing it, we vacate it and remand for further proceedings consistent with this opinion.

Courts have a great deal of discretion when distributing marital property. *See Freese v. Freese*, 89 Md. App. 144, 147–48 (1991). However, “[t]he authority of a circuit court to revise or modify a final judgment is limited—‘once parties have had the opportunity to present before a court a matter for investigation and determination, and once the decision has been rendered and the litigants, if they so choose, have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation.’” *Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013) (quoting *Schwartz v. Merchs. Mortg. Co.*, 272 Md. 305, 308 (1974)). Aside from modifications ordered by an appellate court after appeal, a judgment may be revised only pursuant to Maryland Rule 2-535 or CJ § 6-408. *See id.* “Read together, [Rule 2-535 and CJ § 6-408] permit revision or modification of a final judgment only upon motion by a party to the proceeding asserting fraud, mistake, or irregularity,” *id.* at 367, or filed within thirty days after entry of the judgment. Md. Rule 2-535; *see also* CJ § 6-408.

Husband and Wife agreed to the terms of the Judgment, and the court entered it, on August 19, 2015. Those terms included the appointment of a trustee “to sell the parties’ jointly titled properties identified” in the Judgment, including Zekiah Farms, LLC. The Judgment required as well that “all farm equipment shall be immediately returned to the

location of the business being operated and known as Zekiah Farms, LLC.” In addition, the Judgment specifies that “each party shall be the sole owner of the personal property not specifically identified herein, currently in said party’s possession.”

At the October 13, 2017 review hearing, the court addressed the sale of the farm equipment and other personal property. Most likely due to frustration that two years had passed since the Judgment was finalized, the court directed Husband and Wife to inventory the farm’s tangible property and testify to its value, after which the court would distribute the property:

[TRUSTEE]: Your Honor, I think . . . I think one of the issues here is that the . . . in the judgment of divorce, the items that the trustee, of the items that the trustee was ordered to sell, and those are the same items I am ordered to sell as trustee, one of the items was Zekiah Farms, LLC.

[THE COURT]: Uh-hum?

[TRUSTEE]: So, the entire LLC, or the asset . . . all of the assets thereof. And then it was also ordered that all farm equipment shall be immediately returned to the location of the business being operated, known as Zekiah Farms, LLC.

And my understanding is that some of this farm equipment was not titled in the name of the LLC. It’s also my understanding that . . . that we are not exactly sure what those assets are, that farm equipment is.

And I don’t know that we have any kind of inventory of what, there were supplies, what, there was . . . the inventory of the farm. And there was a farm store at the time. And anything else.

So I . . . and I look at that and say, I’m wondering what the intent of the Court was with regard to that?

* * *

[THE COURT]: The Court is going to get a complete list of every item in dispute, and the judge would be authorized to

say, “These are hers, these are his.” And then it’s over.

[TRUSTEE]: Oh, in other words, taking the . . . taking the assets of the LLC and dividing them?

[THE COURT]: Just everything on that farm that is not tied down, that they have been fighting about for two years.

[TRUSTEE]: Now, is that a full resolution of the LLC, as well? Because –

[THE COURT]: The LLC, to me, has no value. It’s a name.

And that’s what it did: the court took a ninety-minute recess and directed Husband and Wife to drive to the farm, inventory everything, return to court, and testify about the property’s value, and then the court distributed the property. The court awarded Husband the 5420 John Deere tractor, stand-up tool chest, stuffed deer head, bull’s horn, snow plow, and salt spreader. The court awarded all other items at Zekiah Farms to Wife. After emptying its assets, the court left the LLC undistributed.

To be sure, the court had the authority to implement the Judgment, and we share the court’s frustration with the pace of the trustee’s implementation of the Judgment to that point. But the court lacked authority to modify the Judgment: neither party filed a motion to modify the Judgment, with demonstrated good cause, and would have needed to do so within thirty days of its entry back in 2015.⁵ The Judgment had required all farm equipment

⁵ There is no allegation of fraud, mistake, or irregularity, nor of newly discovered evidence, that might justify a later exercise of revisory power or a new trial. *See* Md. Rule 2-535(b) and (c).

A circuit court may modify any provision of a deed, agreement, or settlement that is: (1) incorporated, whether or not merged, into a divorce decree; and (2) subject to modification under § 8-103 of this subtitle, Md. Code (1984, 2019 Repl. Vol.), § 8-105(b) of the Family Law Article (“FL”). But that revisory power is limited to provisions that concern the care, custody, education, or support of any minor child of

to be returned to Zekiah Farms, LLC, and directed the trustee to sell the listed marital property and distribute the profits equitably, including the LLC itself and the assets it owned. The July 2, 2020 order, and the oral ruling it embodied, effectively modified the Judgment in two ways. *First*, the court removed assets that had been part of Zekiah Farms, LLC from the LLC and distributed them to the parties directly. The LLC may or may not have value beyond the property it owned, but it is an entity unto itself with assets that the court-ordered distribution disregarded. *Second*, the court's distribution prevented the trustee from fulfilling his responsibilities to sell the marital property and distribute the proceeds, didn't account for the value of the distributed property that each was receiving, and converted what should have been a distribution of proceeds into a transfer of property.

We acknowledge that years have passed, that the distribution of Husband and Wife's marital property remains incomplete, and that the whole point of appointing a trustee was to prevent the very impasse that Husband, Wife, and the court are experiencing. Even so, the Judgment provided that the property would be sold and the proceeds distributed by the trustee, and the decision to divide property outside of those terms, and especially without regard to the LLC's ownership of those assets, was inconsistent with the Judgment itself. On remand, the court has several options. The court could direct the assigned trustee to sell the equipment and other remaining items or to propose a distribution between Husband and Wife, if they were to agree. The court could remove the trustee and direct the parties to sell

the spouses or provisions that related to spousal support or alimony (depending on the date), FL § 8-103, and none of those exceptions applies here.

the property themselves or appoint a new trustee. *See* Maryland Rule 14-302 (allowing the court to order a sale and appoint a trustee to make the sale); *but see Welsh v. Welsh*, 135 Md. App. 29, 60–63 (2000) (a trustee appointed to disperse marital property was limited by supplemental orders directing which expenses are able to be distributed). Whatever course the court takes, the court must be able to ratify the trustee’s proposed sale and the ultimate distribution of proceeds to the parties, as the Judgment directs.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY VACATED AND
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. APPELLEE TO PAY
COSTS.**