Circuit Court for Baltimore County
Case No. 03-C-12-008433

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 755

September Term, 2017

JERRY PRINCE

v.

MIHRIGUL PRINCE

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 2, 2018

Jerry Prince, appellant, filed an appeal from a May 31, 2017 order of the Circuit Court for Baltimore County denying his motion to vacate a consent order dated December 6, 2013 ("Consent Order"), and holding him in contempt of same. Appellant raises the following issues for our review:

1. Whether the circuit court erred in the law, or abused its discretion, in ruling that a Consent Order is purely an order, not a contract, and therefore immune to all contractual arguments.

2. Whether the circuit court erred in the law, or abused its discretion, by finding that the issues of lack of consent and "unjustness," need to be raised before final judgment when Md. Rule 2-535(b) clearly states that arguments based on fraud, mistake or irregularity may be heard "at any time".

3. Whether the circuit court erred in the law, or abused its discretion, by finding that the new Consent Order, dated April 13, 2015, regarding custody and child support, affirmed the first Consent Order, dated December 6, 2013.

4. Whether the circuit court erred in the law, or abused its discretion, by finding contempt without evidence presented of Appellant's financial capacity to comply with the Consent Order.

As we shall explain, appellant's challenges to the Consent Order are untimely. Therefore, we address the merits of appellant's fourth question only. We conclude that the circuit court did not err in finding appellant in contempt of the Consent Order, and we affirm.

Appellant married Mihrigue Prince, appellee, in 2002, and the couple had two children together. In 2012, appellant filed a complaint in the Circuit Court for Baltimore County, seeking a judgment of absolute divorce. Appellee filed a counterclaim for absolute divorce.

A settlement conference was held on July 11, 2013. Appellant appeared unrepresented by counsel, as he has been throughout the course of the underlying litigation and this appeal.[1] The following agreement was put on the record:

> THE COURT: Okay. I understand that the parties have been discussing issues, and that you've agreed to resolve some issues, is that correct?
>
> [COUNSEL FOR APPELLEE]: Yes, that is correct.
>
> THE COURT: Would you indicate for the record what agreements you've reached?
>
> [COUNSEL FOR APPELLEE]: Yes. With regard to the pensions, the parties agree that whatever their marital shares are on the date of the divorce . . . the Court would make the appropriate decisions, and that QDRO's would be entered. . . . With regard to the use and possession of the family home, [appellee] shall have use and possession of the family home until the youngest child [J.] graduates from high school. . . . While [appellee] has use and possession of the family home [ ] <u>they will each pay half the mortgage and half the Homeowners Association fee. If there are any repairs that have to be made to the home they will each split the cost of the repairs</u>.

(Emphasis added). In addition to the above, several agreements regarding the sale of the family home, taxes, daycare expenses, health insurance, and custody of the parties' children on holidays were placed on the record. Appellant acknowledged, without qualification, that he agreed with what counsel for appellee had put on the record. Appellant did not raise any other matter except for requesting a clarification regarding the sale of the home:

> THE COURT: All right. Mr. Prince, you heard the items that counsel has enumerated indicating that there was an agreement on those issues?

[1] We note that appellant is an attorney in the Baltimore City Office of the Public Defender.

[APPELLANT]: Yes.

THE COURT: Do you agree with them?

[APPELLANT]: Yes.

THE COURT: You have no question about any of those that she's recited? (PAUSE) –

[APPELLANT]: Um, my one question is if [appellee] chooses to move out of the house before [J.] is, is graduated, we sell the house and divide the proceeds, correct?

Counsel for appellee provided the clarification, and the court confirmed that counsel for appellee would draft an order reflecting the agreed upon issues for the parties to sign and submit to the court.

Prior to the start of the trial on November 26, 2013, counsel for appellee informed the court that appellant refused to sign a proposed consent order that counsel had drafted following the settlement conference. Appellant did not dispute that he agreed to the terms contained in the proposed order, but claimed that it was incomplete in that it did not contain "other things that [the parties] had discussed as well." Appellant did not provide any details of the "other things" that he claimed had been omitted. The court reviewed the proposed order, and the following colloquy took place:

THE COURT: Use and possession of the family home until [J.] graduates from high school. The parties will share evenly the cost of the mortgage, and the home owner association dues and the cost of repairs for the home. [ ] The tax return deduction for the mortgage interest and property taxes. The selling of the home. Dependency exemptions. Health insurance. Daycare [ ] Retirement plan. And some of the access. . . . All right. Are – do you contend that on the day of the Settlement Conference on July 11, 2013, other matters were agreed?

> [APPELLANT]: Your Honor, I contend that the, the Settlement Conference did not reach a finality. We had not finished our discussions and the judge called us into the office in order to talk about what we had, so far, reached. . . . I agreed to those things [in the proposed order] but I also indicate[d] that this is a partial agreement. That we have not completed the, the discussions. . . . [I]f you're asking whether I made an agreement at that time, no. . . . I put on the record that this was not a complete agreement. . . . I'm not saying that what's in [the proposed order] I disagree with. What I'm saying is this is half of what we had discussed. . . . I don't agree with this Consent Order because it's not complete.

During a recess in the trial, the court reviewed a CD of what had been put on the record following the July 2013 settlement conference. When trial resumed, the court stated as follows:

> THE COURT: The C.D. does very clearly demonstrate that you agreed to what was placed on the record. . . . It's very clear you reached a partial agreement in this case . . . on all of the issues in the Consent Order. At no time did you say this is not an agreement. I haven't agreed to this because we haven't wrapped up everything else. . . . The Consent Order seems to be a fair reflection of the agreement that was reached.

At the conclusion of the trial, the court announced its intent to award appellant a judgment of absolute divorce based on constructive desertion, and it dismissed appellee's counter-complaint with prejudice. The court found that appellant entered into the Consent Order, and the court stated that the Consent Order would be incorporated but not merged into the Judgment of Absolute Divorce. Sole legal and physical custody of the parties' children was awarded to appellant.

The Judgment of Absolute Divorce, entered on December 6, 2013, ordered, *inter alia*, that "the terms contained in the Consent Order agreed to by the parties at a settlement conference held on July 11, 2013 and signed by the Court on November 27, 2013 shall remain in effect." The Consent Order was entered on the same date as the judgment of

divorce, bearing the signature of appellee indicating that appellee approved the order as to form and content. The Consent Order was not signed by appellant. As noted above, the Consent Order provided *inter alia*, that, "[w]hile [appellee] has use and possession of the family home . . . [the parties] will each pay half the mortgage and half the Homeowners Association fee. If there are any repairs that have to be made to the home they will each split the cost of the repairs." (Emphasis added). No appeal was noted by either party and the case was closed.

The case remained closed until two years later, when, in April 2015, a second consent order, signed by both parties, was entered, modifying the child custody and visitation schedule. The second consent order provided that "all other provisions of the Judgment of Absolute Divorce shall remain in full force and effect."

In February 2017, appellee petitioned the court for an order holding appellant in contempt of court for failing to abide by the terms of the December 2013 Consent Order. Specifically, it was alleged that appellant stopped paying his full share of the mortgage in November 2016; and that he stopped paying his share of the homeowners' association fees in April 2016. It was further alleged that appellant refused to pay his half of a home repair bill that was incurred in 2016.

On April 24, 2017, the court held a show cause hearing on appellee's petition for contempt. Appellant stated that he never gave his consent to the Consent Order, because "[n]one of the things that [he] was asking for" were included. He claimed that, even if he had agreed to the terms of the Consent Order, it was financially impossible for him to

comply. Appellant stated the amount of his salary, rent, and student loan payment, but did not provide evidence of any other financial obligations.

Ruling from the bench, the court found appellant in contempt. The court found that appellant agreed to the terms of the Consent Order, and even if he did not consent, he waived any challenge by failing to file a motion for modification. The court further found that appellant had the ability to make the payments required in the Consent Order, as appellant was fully employed and had introduced no evidence of an inability to pay. The court stated that it would issue an order consistent with its findings.

Nine days after the show cause hearing and finding of contempt, and prior to the issuance of the court's written order, appellant filed a motion to vacate the Consent Order. Appellant argued that the court lacked authority to enforce the Consent Order because (1) it was entered without his consent, (2) the order was not an enforceable contract between the parties because he received no consideration, and (3) the order was inequitable and unjust.

On May 31, 2017, the court entered a written order denying appellant's motion to vacate the Consent Order and finding appellant in contempt of same. In denying appellant's motion to vacate, the court stated as follows:

> [A] consent order is an order pursuant to MD. RULE 2-612 and is not a contract. *Kent Island LLC. v. DiNapoli*, [430] Md. 348, 360 (2013). The Consent Order became final no later than thirty days following its entry on December 6, 2013. Unless later modified as to child custody or child support, such an order can only be attacked upon proof of "fraud, mistake or irregularity." See MD. RULE 2-535(b). Inasmuch as [appellant] was provided with copies of the December 6, 2013 Consent Order and Judgment of Divorce, any objections based on a lack of consent or any perceived unjustness of the orders had to be raised before the judgment became final.

> For the reasons articulated earlier, the argument that the Consent Order fails for lack of consideration – a purely contractual requirement – has no application in this context. Lest there be any doubt, [appellant] affirmed his agreement to the disputed terms by way of the April 13, 2015 Consent Order, as evidenced by his notarized signature.

The court found that appellant was therefore bound by the Consent Order, that he had failed to comply with its terms, and that he had the ability to pay the amounts he was obligated to pay under the Consent Order. To purge the contempt, appellant was required to pay all outstanding amounts directly to appellee within 240 days.

Additional facts will be introduced in the discussion, as they become relevant.

Discussion

As a general rule, "no appeal lies from a consent order." *Barnes v. Barnes*, 181 Md. App. 390, 411 (2008). The rationale for the rule is that "'[t]he availability of appeal is limited to parties who are aggrieved by [a] final judgment,'" and "'[a] party cannot be aggrieved by a judgment to which he or she acquiesced.'" *Id.* at 410 (quoting *Suter v. Stuckey*, 402 Md. 211, 224 (2007)). One narrow exception to the rule is that a consent order may be appealed "[i]f there was no actual consent because the judgment was coerced, exceeded the scope of consent, or was not within the jurisdiction of the court, or for any other reason consent was not effective[.]" *Id.* (quoting *Suter*, 402 Md. at 224 n.10) (emphasis deleted).

A party has the right to appeal from a final judgment of a circuit court. Md. Code (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings Article, § 12-301. "A 'final judgment' is a judgment that 'disposes of all claims against all parties and concludes the case.'" *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 660 (2014) (quoting

Miller & Smith at Quercus, LLC v. Casey PMN, LLC, 412 Md. 231, 241 (2010)). In general, a party has thirty days from entry of the judgment to note an appeal. Md. Rule 8-202(a).

The Judgment of Absolute Divorce, which incorporated the terms of the Consent Order, and apparently disposed of all claims between the parties, became a final judgment upon its entry on the docket on December 6, 2013. Accordingly, to the extent an appeal from the Consent Order was allowed by law, the appeal should have been filed no later than 30 days from that date.[2]

Appellant suggests that his arguments on appeal are claims of "fraud, mistake, or irregularity" that may be asserted at any time under Md. 2-535(b).[3] Specifically, appellant asserts that (1) "omitting consideration from a contract is fraud[,]" and (2) "entering a consent order without a party's signature is an irregular departure from normal procedures." Appellant points to no authority in support of these contentions.

"Under Md. Rule 2-535(b), fraud is defined as an event that is 'collateral to the issues tried in the case where the judgment is rendered[,]' such as 'whether the fraud

[2] In *Barnes v. Barnes*, 181 Md. App. 390 (2008), we addressed an issue similar to appellant's untimely claim of lack of consent. There, the wife in a divorce proceeding filed a timely appeal from a consent order that, although not signed by the wife, was entirely consistent with an oral agreement that was entered by the parties on the record. *Id.* at 416-18. We dismissed the appeal as there was no evidence on the record to contradict the conclusion that both parties voluntarily agreed to the terms of the order. *Id.* at 420.

[3] Md. Rule 2-535(b) provides: "[o]n motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity."

prevented the actual dispute from being submitted to the fact finder at all.'" *Powell v. Breslin*, 430 Md. 52, 71 (2013) (quoting *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990)). An irregularity "usually means irregularity of process or procedure, and not an error, which in the legal parlance generally connotes departure from truth or accuracy of which a defendant had notice and could have challenged." *Thacker v. Hale*, 146 Md. App. 203, 219 (2002).

No fraud or irregularity within the meaning of Md. Rule 2-535(b) occurred here. Nothing prevented appellant from litigating the issue of consideration or any other disputed issue. Nor was there any irregularity in process or procedure. The circuit court entered an order on an agreement. Appellant did not note an appeal from that order or seek a modification until after he had been found in contempt.

Accordingly, the only issue properly before this Court is whether the circuit court erred in finding appellant in contempt of the Consent Order "without evidence presented of [his] financial capacity to comply[.]" We perceive no such error.

"The decision to hold a party in contempt is vested in the trial court." *Marquis v. Marquis*, 175 Md. App. 734, 746 (2007). "'This Court will only reverse such a decision upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous.'" *Id.* (quoting *Droney v. Droney*, 102 Md. App. 672, 683-84 (1995)).

A finding of contempt "requires proof, by the petitioner, that the defendant acted in contradiction of the applicable court order." *Lynch v. Lynch*, 342 Md. 509, 520 (1996). "Where the order requires the payment of money, [the petitioner] has to prove that it was

not paid." *Id.* "Moreover, because the purpose of civil contempt proceedings is to coerce future compliance, [ ] the defendant must have been fully capable of having complied; in addition, the ability to perform the act required by the court order must have been within the power of the defendant." *Id.* (citation omitted). "The latter requirement, whether or not the defendant is able to comply with the court order is, however, a matter of defense." *Id.* at 521. *Accord*, *Dodson v. Dodson*, 380 Md. 438, 450 (2004) ("[P]resent inability to comply with a court order or the purging provision is traditionally a defense in a constructive civil contempt case." (citation omitted)).

There is no dispute that, beginning in 2016, appellant failed to make payments as required by the Consent Order. Appellee introduced evidence that appellant's share of the monthly mortgage payment was $932, and his share of the monthly homeowner's association fee was $32.50, for a total monthly obligation under the Consent Order of $962.50. In addition, appellant's share of a one-time home repair bill was $231.50.

Appellant raised inability to comply as a defense to appellee's petition for an order of contempt, stating that even if he had agreed to the Consent Order, it was "impossible to perform." He testified that his monthly income was "around" $3,000,[4] and that his monthly rent and student loan payments totaled approximately $1,700. He said that he had "other bills" that would demonstrate his inability to comply, but he did not bring them to court, nor did he provide any details about the bills. Based on the evidence presented at the show

[4] In its written order of contempt, the circuit court noted that, according to child support guidelines attached to the Judgment of Absolute Divorce filed in December 2013, appellant earned $5,417 per month.

cause hearing, we conclude that the circuit court did not err in finding that appellant was financially able to comply with the Consent Order.

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