

Circuit Court for Prince George's County
Case No. CAD16-20472

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 757

September Term, 2017

TISA J.D. CLARK

v.

WILLIE JOSEPH CLARK, JR.

Graeff,
Nazarian,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: September 14, 2018

*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.

As a part of the divorce proceedings involving Tisa J.D. Clark (“Wife”), appellant, and Willie Joseph Clark, Jr. (“Husband”), appellee, the Wife requested a preliminary determination regarding “the validity, nature, and extent” of an agreement executed by the parties. The Circuit Court for Prince George’s County held a hearing and it ordered that the agreement was enforceable and the term \$150,000 was interpreted to mean that Husband “shall receive \$150,000” from Wife.

On appeal, Wife presents the following two questions for this Court’s review, which we have reordered and rephrased slightly, as follows:

1. Did the circuit court err in finding that the parties’ “agreement” was a valid and enforceable marital settlement agreement?
2. If the parties’ “agreement” is valid and enforceable, did the circuit court err in interpreting the document?

For the reasons set forth below, we conclude that the appeal is not properly before us, and therefore, we shall dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On July 2, 2005, Wife and Husband married in Upper Marlboro, Maryland. They had one child born in 2006.

On January 20, 2016, Husband and Wife separated. On April 26, 2016, Wife filed a complaint for custody of the child. Husband filed an answer to the complaint for custody, along with a Counter Complaint for divorce. Husband alleged that “the parties have executed an agreement that disposes of all matters of property between the parties,” and he requested that the agreement “be incorporated but not merged into the Judgment of

Absolute Divorce.” Alternatively, Husband requested a division of marital property and an award of alimony. Husband did not attach a copy of the agreement to his counterclaim.

On January 12, 2017, Wife filed an answer to Husband’s counter complaint. Wife requested “that a hearing in the nature of a declaratory judgment be scheduled to determine the validity of the Parties’ Agreement and the scope and effect thereof on the instant proceeding.” She alleged that “the Agreement was intended to settle and resolve all aspects of the Parties [sic] instant divorce case,” but Husband was asking for relief inconsistent with the agreement. Wife asserted that the “issue needs to be resolved so as to control the discovery process and allow the Parties to figure out what issues are actually left for trial.” She joined Husband’s request that “the Agreement be incorporated, but not merged into the Judgment of Absolute Divorce.”

Wife included, as an exhibit to her answer, a copy of the parties’ handwritten agreement, which was dated November 11, 2015 (the “Agreement”). We have reproduced this document in its entirety below:

11/11/2015

<u>Tisa [Wife]</u>	<u>Willie [Husband]</u>
JDCPS Business/Assets	\$150,000
Tisa’s Retirement Accts	Willie’s Retirement Acct
9503 Victoria Drive	2125 Columbia Place
7609 Oxman Road	6501 Walker Mill Road
7602 Oxman Road	Indian Acres/land & trailer
So. MD property (land & trailer)	Boats & Attached trailer
73 Mustang	Some tools from Business
Mercedes GL450	Harley Davison MC
Mercedes S500	Hyundai
Full Set from Family Room	VW Bug
½ split of movies	F150 Truck (Burgundy)
Dining Room Set	E250 Van

Jeremy's Bedroom Set/Furnishing	Couch, chair from TV Room
Home Office Set & Furnishings	TV from TV Room
Master BR [bedroom] Bed	½ split of movies
Master BR Armoire	Table from TV Room
Master BR nightstands	One of Joshua's Beds
Master BR dresser	Coffee Maker
Kitchen Table	
Kitchen Furnishing/Items	

We have agreed to the distribution of these assets in exchange for An Absolute divorce.

/s/ Willie Clark, Jr.
/s/ Tisa Clark

On February 10, 2017, Wife amended her complaint for custody, seeking an absolute divorce. In the amended complaint, Wife reiterated her belief that the parties' Agreement was intended to "fully resolve all issues pertaining to [the parties'] absolute divorce . . . including, but not limited to, a distribution of their marital and non-marital property; waiver of spousal support obligations, any claims for a monetary award and legal fees." She requested a preliminary determination of the "validity, nature, and extent" of the parties' Agreement "so that discovery can be limited and deadlines established and so that the Parties will know what issues are in dispute and subject to resolution at trial."¹ The relief Wife requested was that the court: (1) grant her an absolute divorce; (2) declare the Agreement a final marital property settlement agreement, waiving spousal support, a

¹ Wife recommended that the matter proceed in two stages, as follows:

Stage 1 would be limited to the issue of the validity, nature, extent and enforcement of the Agreement and the issues, if any, that are left for a merits trial. Stage 2 would be limited to the issues determined to be heard at the merits trial as established at the conclusion of the Stage 1 hearing.

monetary award, and legal fees; (3) order Husband to pay reasonable child support; (4) order reasonable attorney's fees to Wife; (5) enter a judgment against Husband for 50% of the marital debt; (6) grant Wife a use and possession order for her and the child to occupy the marital home; and (7) issue other orders regarding property owned by the parties.

On May 11, 2017, the court held a motions hearing "on issues of the agreement." The court stated that "[t]he only thing" that was before the court was "this document and whether there was a contract and a meeting of the minds and the \$150,000."

Wife's counsel, in his opening statement, noted that, although both parties wanted the Agreement enforced, there was a disagreement as to what the \$150,000 term meant. Wife believed that the \$150,000 term meant that Husband would "retain[] \$150,000." Husband's counsel argued, however, that the Agreement was that Wife kept the business assets, and Husband got \$150,000 as a marital award in lieu of alimony.²

Wife and Husband both testified during the hearing regarding their understanding of the Agreement. Wife testified that, although they had been discussing the Agreement for months, one morning Husband woke her up at the crack of dawn, i.e., approximately 5:30 a.m., "to discuss putting the agreement together." Wife testified that Husband dictated what was to be in the Agreement. She stated that she "grabbed a piece of paper out of the

² Counsel for Husband stated that, after Wife started the business, Husband left his job "to help work at the business." He earned \$55,000, but when the marriage broke down, Wife fired Husband.

printer, pulled the paper out, and [] said, Okay, fine, I'll put my name on one side, your name on the other side, we'll draw a line down, you tell me what you want."

Wife testified that Husband's list was written first. She then wrote what she thought was appropriate for her column, asked if he was okay with the list, and had Husband sign the document first.

Wife stated that the Agreement was intended to function as a distribution of the listed assets in exchange for an absolute divorce. With respect to the \$150,000 term, Husband came up with that number, and the intention of placing that sum in Husband's column was that "he could keep that," the money he made from his previous employment. She testified that "there was never an agreement that [she] would be paying him anything."

Husband testified that the parties had been discussing the settlement for at least eight months. He did not recall waking Wife up to discuss the list, and he recalled the discussion taking place at approximately 8:30 a.m. He testified that "the discussion was about the divorce and the assets." He further stated:

We went back and forth. We had the company business, which we both started, and we went down the list. And I said I know you have the company business, I said I know your retirement account has \$200,000-and some in it, I said, but right now I don't have anything. I said, so I'll take \$150,000 and I said the Walker Mill property, of course, my old house, and you keep the house you have.

We just went down the list and we discussed it. And we came up with – and I didn't have any money coming in, not much at all. That's why I tried to pick properties which either was paid for, or something that was previous, because I didn't really want the headache of a whole bunch of rental properties because I knew that with the way my credit score was – it was 730 at one point, it had dropped down drastically. So refinancing anything would have been rough.

And to even pay to have the business – you know, somebody evaluate the business, that would have been too costly for me, so I couldn't do any of that.

Husband testified that the Agreement clearly stated that “the \$150,000 was to be paid to [him],” but he admitted that the words Wife “is to pay this sum” were “not written on the piece of paper.” He further testified that, if he received the \$150,000 as a marital award, he did not intend to pursue alimony.

During closing argument, Wife's counsel stated that he thought there was a “real question[] as to whether or not this is an agreement . . . a marital property agreement,” but he stated that Wife was “a person of her word and she want[ed] it enforced,” and that is why he requested that the document be enforced.³ Counsel stated that the Agreement was “very unspecific about one very big point and that [was] who pays who \$150,000,” but he argued that the “four corners” of the Agreement did not say that Wife was to pay Husband \$150,000. He argued that, if Wife “was to pay [Husband] anything, there would be an arrow from her column to his column, there would be a statement in this agreement she's going to pay [Husband] 150 grand,” but that was not in the Agreement.

Husband's counsel argued that the reason the parties executed the Agreement was to avoid the expense of a trial. She asserted that the document was clear, i.e., that Husband

³ Wife's counsel later asserted that a “fair reading of this case is the parties don't have an agreement, they've got a trial and a trial [j]udge is going to have to sort it out,” but he again stated that Wife had “asked that this [Agreement] be enforced,” and looking at the document, it was “a stretch to say that [Wife] is to pay [Husband] 150 grand, when there's nothing in [t]here that says that.”

would receive \$150,000 in exchange for the business. She explained that Husband accepted this because he did not have the money to pay for the business to be appraised. Counsel further argued that, contrary to Wife's argument, Husband did not have \$150,000.

On rebuttal, Wife's counsel reiterated that the Agreement was that Wife "keeps a business, [Husband] keeps 150 grand." He then stated:

I'm not looking to push this into trial, it's just I'm not going to BS a Court and argue to you that, you know, that this is a legally sufficient agreement. I think it's – it's a shaky agreement. And I think you sort of have to make a stretch to find that it's a marital property settlement agreement. And my client wants it enforced and I'd like it to be enforced as it's written, not writing in words, oh we're going to move \$150,000 out of your column into his column.

On May 19, 2017, the court orally issued its ruling. The court stated that, "[a]fter reviewing the evidence, hearing testimony, and weighing the credibility of the witnesses," it found that the parties executed a marital property settlement agreement. It summarized the dispute regarding the \$150,000 term written in Husband's column as follows: Wife "argues that this means [Husband] could keep \$150,000 in his possession, and [Husband] argues this meant [Wife] is to pay him \$150,000."

The court ultimately found, "[u]sing the objective approach to interpreting contracts," that the Agreement was unambiguous. It explained:

The contract, as a whole, shows that each item on the [Wife's] list directly corresponds to the item directly across from it on [Husband's] list.

Therefore, looking at the Agreement from a reasonable person's standard, it clearly means that [Husband] was to receive \$150,000 from the [Wife] and, in turn, [Wife] would keep the JDCPS business assets.^[4]

Therefore, the contract is unambiguous and the character, purpose and language of the contract as a whole supports the [Husband] is to receive \$150,000 from the [Wife].

The court then stated that, even if the contract was deemed to be ambiguous, it would reach the same conclusion. Based on the testimony and the way the document was drafted, the court found that the parties' intent was for Wife to pay Husband \$150,000 in exchange for her keeping the business. Accordingly, the court found that the Agreement was enforceable, and it interpreted the \$150,000 term to mean that Husband would receive \$150,000 from Wife.

The court subsequently issued a written order to that effect:

ORDERED, that [Wife's] Motion to Enforce, or for Interpretation of a Marital Property Settlement Agreement is hereby GRANTED, and it is further,

ORDERED, that the Marital Property Settlement Agreement signed by both [Wife] and [Husband] on November 11, 2015, is enforceable; and it is further,

ORDERED, that the term "\$150,000" contained within the Marital Property Settlement Agreement, is interpreted to mean that [Husband] shall receive \$150,000.00 from [Wife].

This appeal followed. Trial on the merits of the remainder of the case was stayed pending the outcome of this appeal.

⁴ In this regard, the court noted that there had been testimony that the business was valued at \$1.2 million at some point.

DISCUSSION

Before addressing Wife's arguments, we must address whether this appeal is properly before us. On April 18, 2018, this Court issued an order directing the parties to show cause why the appeal should not be dismissed. Wife argued that "the instant appeal [was] entirely proper and should be allowed to proceed" because it was an interlocutory appeal from an order for the payment of money authorized pursuant to Md. Code (2013 Repl. Vol.) § 12-303(3)(v) of the Courts and Judicial Proceedings Article ("CJP"). She asserted that the order, which interpreted the Agreement to mean that Husband shall receive \$150,000 from Wife, was an order for Wife to pay \$150,000 to Husband.

Husband agreed that the appeal is an interlocutory one, but he asserted that the appeal was impermissible because the circuit court's order did not involve an order for a "payment of money." Rather, Husband argued that the order was a finding that the Agreement reflected a marital award, but it did not specifically order Wife to pay Husband. Accordingly, Husband requested that this Court dismiss the appeal.

Appellate review generally is authorized only where a final judgment has been entered. CJP § 12-301. *Accord URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 65 (2017) ("As a general rule, under Maryland law, litigants may appeal only from what is known as a 'final judgment.'"). "To constitute a final judgment, a trial court's ruling 'must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding.'" *Md. Bd. of Physicians v. Geier*, 451 Md. 526, 545 (2017) (quoting *Harris v. State*, 420 Md. 300,

312 (2011)). A final order must “leave nothing more to be done in order to effectuate the court’s disposition of the matter.” *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989). If “appellate jurisdiction is lacking, the appellate court will dismiss the appeal on its own motion.” *Schuele v. Case Handyman & Remodeling Servs.*, 412 Md. 555, 565 (2010) (quoting *Gruber v. Gruber*, 369 Md. 540, 546 (2002)).

Here, the divorce proceedings are still pending, and the parties agree that the appeal is not from a final judgment. As indicated, however, Wife contends that this case involves an exception to the final judgment rule; she asserts that this is a proper appeal from an interlocutory order entered by a court in a civil case for the payment of money.

CJP § 12-303 provides, in pertinent part, as follows:

A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:

* * *

(3) An order:

* * *

(v) For the sale, conveyance, or delivery of real or personal property or *the payment of money* . . . unless the delivery or payment is directed to be made to a receiver appointed to the court.

(Emphasis added).

In *Anthony Plumbing of Md., Inc. v. Attorney General*, 298 Md. 11, 20 (1983), the Court of Appeals held that the history of § 12-303 “indicates a legislative intent to allow interlocutory appeals only from those orders for the ‘payment of money’ which had traditionally been rendered in equity.” It explained that the “types of orders previously held by this Court to be orders for the ‘payment of money’ are orders for alimony, child

support, and related counsel fees.” *Id. Accord Cannon v. Cannon*, 384 Md. 537, 544 n.1 (2005) (order to pay alimony). *Cf. Della Ratta v. Dixon*, 47 Md. App. 270, 276-77 (1980) (partial summary judgment for money damages is not a “payment of money” under CJP § 12-303(3)(v)).

Another type of order considered a “payment of money” under this statute is one “directing an assignee for the benefit of creditors in an insolvency proceeding to pay certain monies to a corporate creditor in order to discharge certain debts.” *Allfirst Bank v. Dep’t of Health and Mental Hygiene*, 140 Md. App. 334, 360 (2001). In sum, a payment of money under CJP § 12-303(3)(v), which is immediately appealable, is one

which “proceeds directly to the person” and for which that individual is “directly and personally answerable to the court in the event of noncompliance.” *Della Ratta v. Dixon, supra*, 47 Md. App. at 285, 422 A.2d 409. These characteristics of a traditional equity order for the payment of money differ markedly from those of a typical judgment at law for the payment of money. The latter type of judgment “may settle the respective rights of the parties . . . but it does not purport to order anyone to do anything.” *Ibid.* It is “not immediately enforceable,” *id.* at 286, 422 A.2d 409.

Knott v. Knott, 146 Md. App. 232, 246 (2002).

Here, the court’s order was not one that ordered the payment of money. The court’s written order stated only that it interpreted the term \$150,000 to mean that Husband “shall receive \$150,000 from” Wife. Counsel for Wife conceded at oral argument, appropriately, that this order did not constitute an order for Wife to pay Husband at this point. Because

there was no order directing Wife to pay Husband money that was immediately enforceable, Wife's interlocutory appeal is not proper under CJP § 12-303(3)(v).⁵

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**

⁵ Wife does not argue, and we do not perceive, any other ground on which this interlocutory appeal is permissible.